



Determination and interim authorisation

Application for revocation of A91482 and the substitution of
authorisation AA1000521 lodged by
Australian Retail Credit Association

in respect of certain provisions of the Principles of Reciprocity and
Data Exchange.

Authorisation number: AA1000521

Date: 15 December 2020

Commissioners: Keogh
Rickard
Court
Ridgeway

Summary

The ACCC has decided to re-authorise the Australian Retail Credit Association Ltd (ARCA) and current and future signatories to the Principles of Reciprocity and Data Exchange (the **PRDE**) to give effect to certain reciprocity, consistency and enforceability provisions contained in the PRDE for a further six years, until 31 December 2026.

The PRDE sets out rules and standards for participating credit providers and credit reporting bodies to follow when contributing and accessing consumers' **comprehensive credit information**. Comprehensive credit information includes both positive and negative credit information – for example, the maximum amount of credit available to a consumer and how well the consumer is meeting their repayment obligations (that is, 'repayment history information'). This information is used by credit providers (and consumers) to indicate an individual's credit worthiness (such as in the form of a 'credit score').

ARCA is the industry association for organisations involved in the provision, exchange and application of retail credit reporting data in Australia. Its members include credit providers and credit reporting bodies. It is currently not mandatory to provide comprehensive credit information in Australia, and participation in the PRDE is voluntary.

Specifically, ARCA sought re-authorisation of the following category of provisions within the PRDE:

- **Reciprocity provisions:** credit providers can only receive consumer credit information from credit reporting bodies up to the same level at which they are willing to supply information
- **Consistency provisions:** credit providers must supply the same consumer credit information to all credit reporting bodies with whom they have a services agreement and
- **Enforceability provisions:** procedures and sanctions to address non-compliance with the PRDE.

The reciprocity, consistency and enforceability provisions of the PRDE were originally authorised by the ACCC in 2015 (the **2015 Authorisation**), for five years, expiring on 25 December 2020.

Since the 2015 Authorisation, participation and support for the PRDE and comprehensive credit reporting has steadily grown in Australia.

As well as the significant uptake of comprehensive credit reporting since the PRDE was originally authorised, some progress towards further legislative reforms for Australia's credit reporting system was made – for example, the proposed introduction of mandatory comprehensive credit reporting and proposed inclusion of financial hardship arrangements as a new category of comprehensive consumer credit information.¹

ARCA sought re-authorisation for six years. It submits this would allow sufficient time for the second scheduled independent review of the PRDE to occur in at least five years' time.

¹ See National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019.

ACCC assessment

The ACCC considers the PRDE has played a significant role in facilitating the realisation of the public benefits of comprehensive credit reporting. The PRDE has assisted the entry and expansion of smaller credit providers, and improved the consistency and quality of information to assist credit providers make lending decisions.

The ACCC considers that the continuation of the reciprocity, consistency and enforceability provisions in the PRDE is likely to maintain and improve the comprehensive and consistent exchange of consumer credit data between signatories, resulting in public benefits from:

- Improved lending and risk management decisions of signatory credit providers, and associated time and cost efficiencies, as a result of the availability of improved information to assess credit risk. This is likely to lead to consequential benefits for borrowers, in terms of increased financial inclusion and less over-indebtedness.
- Promoting competition between credit providers, potentially lowering barriers to entry and expansion in the market, particularly for small credit providers. This may lead to improved availability and pricing of credit for consumers.
- Promoting competition between credit reporting bodies, through increased innovation in financial analytical services provided to credit providers.

The ACCC also considers there are public benefits for consumers in having more consistent and accurate credit information held by all credit reporting bodies. This will increase access to a consumer's credit profile and avoid the need to apply to all credit reporting bodies to compile a complete credit report.

The ACCC considers there is likely to be minimal public detriment arising from the costs of compliance with the relevant provisions of the PRDE, most notably as a result of sharing data with multiple credit reporting bodies under the consistency provisions. However, these costs appear to be relatively small and are offset by the cost savings and other benefits of the provision of the PRDE.

Ongoing interested party concerns

The ACCC notes that ongoing concerns regarding default listing and financial hardship reporting under the PRDE, continue to sit outside the scope of application for reauthorisation and are not public detriments likely to result from the PRDE.

More broadly, the ACCC notes that legislative reform to ensure consistency in reporting financial hardship arrangements is yet to be achieved. In the absence of a legislative solution, consumer advocates submit that the PRDE should be amended to provide clarity and consistency about how credit providers should report financial hardship arrangements to credit reporting bodies.

ARCA advises it is not practical or possible to amend the PRDE to deal with reporting financial hardship information, as submitted by some interested parties, as this would take the PRDE outside the bounds of what is lawful under the Privacy Act. That is, incorporating financial hardship information into the credit reporting system first requires amendments to the Privacy Act.

The Credit Reporting Code would also require amendments to give practical application to any new legislation such as hardship reporting. In its role as the Credit Reporting Code

author, ARCA advises this would involve an extensive consultation process with all stakeholders, including consumer advocates, at that time.

Accordingly, the ACCC considers that it is beyond the scope of the current re-authorisation process to seek financial hardship information reforms within the PRDE.

During the ACCC's consultation process, consumer advocates also raised concerns about a lack of effective consumer engagement during the independent review process for the PRDE. ARCA has made a public commitment to 'ensure that consumer advocate groups are consulted in respect to any future PRDE amendments which are likely to lead to broader consumer impacts that are not otherwise dealt with under the existing credit reporting framework.' The ACCC has had regard to ARCA's commitment. The extent to which ARCA consults with the relevant consumer advocacy groups in developing any future amendments to the provisions of the PRDE will be taken into account by the ACCC in assessing any future application for re-authorisation.

Re-authorisation and interim authorisation

Taking into account the above factors, the ACCC is satisfied that the conduct for which ARCA has sought re-authorisation is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the proposed conduct.

Accordingly, the ACCC grants authorisation for a further six years, until 31 December 2026. As requested by ARCA, the ACCC considers this period provides sufficient time for the second scheduled independent review of the PRDE to occur, and any subsequent amendments to the PRDE to be developed and considered, prior to any further re-authorisation application.

Given the 2015 Authorisation is due to expire on 25 December 2020, the ACCC has also decided to grant interim authorisation to allow the signatories to the PRDE to continue to give effect to the specific provisions of the PRDE on the same terms as the 2015 Authorisation. Interim authorisation commences immediately and will remain in place until it is revoked or the date the ACCC's final determination comes into effect.

The ACCC considers that ongoing reform in comprehensive credit reporting would not be impacted by the re-authorisation. Importantly, the ACCC understands there will be an opportunity for all interested parties to provide input about how financial hardship reporting will be practically implemented under the Consumer Credit Code via future ARCA consultation processes.

Further, the ACCC can review this authorisation during the period of authorisation if it considers there has been a material change of circumstances.

1. The application for revocation and substitution

- 1.1. On 26 June 2020 the Australian Retail Credit Association Ltd (**ARCA**) lodged with the Australian Competition and Consumer Commission (the **ACCC**), on behalf of itself and current and future signatories to the Principles of Reciprocity and Data Exchange (**PRDE**), an application to revoke authorisation A91482 and substitute authorisation AA1000521 for the one revoked (**re-authorisation**).
- 1.2. The PRDE establishes a set of business to business industry standards and rules for exchanging consumer credit information between credit reporting bodies and credit providers. The PRDE framework supports the operation of '**comprehensive credit reporting**' in Australia. The Australian credit reporting system is regulated by Part IIIA of the *Privacy Act 1988* (**the Privacy Act**). The Privacy Credit Reporting Code 2014 (**the Credit Reporting Code**) is also part of the Australian regulatory framework for comprehensive credit reporting.
- 1.3. This application for re-authorisation AA1000521 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (**the Act**). ARCA seeks re-authorisation of the PRDE as it involves cooperation between signatories that are otherwise competing credit reporting bodies (Equifax, Experian and illion) and credit providers (such as banks and building societies) in the Australian financial services industry.
- 1.4. The ACCC may grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching the competition law but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.5. ARCA has sought re-authorisation on behalf of itself and current and future signatories to the PRDE to make and give effect to certain provisions of the PRDE that fall into the following categories:²
 - a. **Reciprocity provisions:** credit providers can only receive consumer credit information from credit reporting bodies up to the same level at which they are willing to supply information – specifically paragraphs 4, 8, 10, 14, 34, 35, 36, 38, 39 and, by way of anti-avoidance, 11, 12 and 44
 - b. **Consistency provisions:** credit providers must supply the same consumer credit information to all credit reporting bodies with whom they have a services agreement – specifically paragraphs 9, 15 and 16, and
 - c. **Enforceability provisions:** procedures and sanctions to address non-compliance with the PRDE – specifically, paragraph 89,
(the **Proposed Conduct**).
- 1.6. The Proposed Conduct is set out in Version 20 of the PRDE (and provided at **Attachment A** to this determination).
- 1.7. The PRDE only applies to consumer credit information (not business credit information), and participation in the Proposed Conduct is voluntary.
- 1.8. ARCA submits that continued authorisation of the PRDE is necessary to ensure the credit reporting system continues to operate effectively, and provides incentives for industry participation. Further, ARCA submits the ongoing need for the PRDE framework is enhanced by recent legislative and regulatory developments, such as the proposed introduction of mandatory comprehensive credit reporting.

² ARCA application for reauthorisation A1000521, 26 June 2020, p. 14.

1.9. Since the original ACCC authorisation, there are relatively minor changes proposed to the following paragraphs of the PRDE (as authorised in 2015):³

- Reciprocity provisions – paragraphs 4 and 12
- Consistency provisions – paragraph 16, and
- Enforceability provisions – paragraph 89.

1.10. The nature of the changes to the Proposed Conduct since 2015 are described below.

1.11. The current credit provider and credit reporting body signatories to the PRDE are listed in ARCA's [application for re-authorisation](#).⁴

The ACCC's draft determination and subsequent consultation process

1.12. On 9 October 2020, the ACCC issued a draft determination proposing to re-authorise ARCA, and current and future signatories to the PRDE, to give effect to certain reciprocity, consistency and enforceability provisions contained in the PRDE, for six years. The ACCC requested submissions in response to the draft determination by 30 October 2020.

1.13. Due to an IT error, a submission received from the Australian Privacy Foundation on 30 October 2020 was not seen by the ACCC at the time of submission. A purported decision to grant authorisation by the ACCC dated 19 November 2020 was not validly made in accordance with section 91C of the Act, which requires all submissions to be taken into account.

1.14. The ACCC extended the consultation period and ARCA and interested parties were invited to provide any submissions in response to the Australian Privacy Foundation's submission by 4 December 2020.

1.15. In making this determination, the ACCC has taken into account all submissions received throughout the ACCC's consultation process, including the submission from the Australian Privacy Foundation and all subsequent submissions received.

The Applicant - ARCA

1.16. ARCA is the peak industry association for businesses that use credit reporting or consumer data for credit risk and credit management in Australia. ARCA was established in 2006, and its purpose is to promote best practice in credit risk assessment and responsible credit practices.

1.17. ARCA currently has 40 members⁵, comprising Australia's leading banks, credit unions, finance companies, fintechs, and credit reporting bodies. Collectively, ARCA's members account for over 95 per cent of all consumer lending in Australia.⁶

1.18. ARCA developed the PRDE in consultation with its members and other stakeholders, following changes to the law which allowed credit providers to not only exchange 'negative credit information' (such as defaults), but also 'positive credit information' (such as a consumer's history of paying back credit).

³ ARCA application for reauthorisation A1000521, 26 June 2020, p. 14.

⁴ ARCA application for reauthorisation A1000521, 26 June 2020, pp. 11-13.

⁵ See ARCA website: <https://www.arca.asn.au/members/our-members.html>, viewed on 16 September 2020.

⁶ ARCA application for reauthorisation A1000521, 26 June 2020, p. 10.

1.19. ARCA also led the development and consultation process for subsequent variations to the Credit Reporting Code, at the request of the Office of the Australian Information Commissioner (**Information Commissioner**).⁷

The PRDE Administrator

1.20. The Reciprocity and Data Exchange Authority (**RDEA**), a subsidiary of ARCA, was registered in 2015.

1.21. The RDEA is the **PRDE Administrator Entity**. This role includes maintaining registers of PRDE signatories, receiving and distributing reports, supporting the administration of the dispute process, and recovering costs associated with undertaking these activities.

1.22. Currently, the RDEA Board comprises five Directors - two from credit provider signatories, two from credit reporting bodies, and one Independent Director.⁸

1.23. The RDEA's constitution outlines its objectives, being:⁹

- To administer the PRDE, including the compliance process, and any documents or instruments created for the purpose of assisting the administration, governance and operation of the PRDE.
- To promote and maintain trust and confidence in the PRDE and, in doing so, to promote and maintain the integrity of the credit reporting system as a whole.
- To ensure that the administration of the PRDE is adequately funded and resourced to operate effectively.

ARCA's proposed changes to the conduct covered by the 2015 authorisation

1.24. Under the terms of the PRDE, a mandatory independent review, in consultation with PRDE signatories, occurred after the PRDE had been operating for three years. In 2019, Price Waterhouse Coopers (**PWC**) was engaged to undertake this independent review.

1.25. Following the independent review, ARCA identified that some of the proposed amendments to the PRDE affected four specific paragraphs that were covered by the 2015 authorisation – namely, paragraph 4 (Reciprocity); paragraph 12 (Reciprocity); paragraph 16 (Consistency); and paragraph 89 (Enforceability). The other provisions of the PRDE for which ARCA has sought re-authorisation have not changed since 2015.

1.26. The proposed changes are relatively minor, namely to insert additional cross referencing (to non-authorized paragraphs of the PRDE) at paragraph 4¹⁰, 12¹¹ and 16¹². The proposed amendment to paragraph 89 introduces a new compliance outcome – that is, the respondent credit provider or credit reporting body is technically

⁷ ARCA submission, 28 August 2020 A1000521, p. 3.

⁸ ARCA application for reauthorisation A1000521, 26 June 2020, Appendix E, p. 3.

⁹ PWC, *Reciprocity and Data Exchange Administrator, Review of the Principles of Reciprocity and Data Exchange*, July 2019, p. 1 (ARCA application for reauthorisation A1000521, 26 June 2020, Appendix E).

¹⁰ Additional cross reference to paragraph 33A of the PRDE, which permits exceptions for credit providers contributing repayment history information in defined circumstances (listed at Schedule 2 of Version 20 the PRDE).

¹¹ Additional cross reference to paragraph 46A of the PRDE (Version 20), which permits the on-supply of credit information by a credit provider to a third party where mortgage credit is secured by the same real property.

¹² Additional cross reference to paragraph 33A of the PRDE, which permits exceptions for credit providers contributing repayment history information in defined circumstances (listed at Schedule 2 of Version 20 of the PRDE).

non-compliant with the PRDE, however, the non-compliant conduct is not material to the proper operation of the PRDE.¹³

2. Background

Australia's credit reporting system

- 2.1. Credit reporting is a system whereby credit reporting bodies collect credit information about consumers from credit providers, and make consolidated credit reporting information about individual consumers available to credit providers on a commercial basis. Consumers can obtain basic access to their own credit reporting information held by a credit reporting body for free or extended access on a commercial basis.
- 2.2. The Australian credit reporting system is regulated by Part IIIA of the Privacy Act. Supporting this legislation, the Privacy (Credit Reporting Code) 2014 (**Credit Reporting Code**) sets out how the credit reporting provisions of the Privacy Act are to be practically applied or complied with.

What is Comprehensive Credit Reporting?

- 2.3. Consumer credit information is often categorised as 'negative' or 'positive'. 'Positive' information can be further categorised as 'consumer credit liability information' and 'repayment history information':
 - a. **Negative information** - includes credit application enquiries, payment defaults (more than 60 days overdue), insolvency/bankruptcies and court judgements.
 - b. **Consumer credit liability information** - includes, but is not limited to, the type of credit account, how the consumer's credit is to be paid, whether the term of the credit is fixed or revolving, the length of the term, whether the credit is secured or unsecured.
 - c. **Repayment history information** - includes information about whether or not an individual has met an obligation to make a periodic payment that is due and payable in relation to consumer credit.
- 2.4. Before 2014, the credit reporting system, pursuant to the Privacy Act, limited the information that could be collected, used and disclosed by credit providers and credit reporting bodies to 'negative information' about an individual.
- 2.5. The Privacy Act was amended in 2012,¹⁴ and amendments came into effect in March 2014, to allow for the collection and disclosure of positive information. The amendments allow for the introduction of comprehensive credit reporting in Australia which means that credit providers are now able to collect and disclose consumer credit liability information and repayment history information, in addition to negative information.
- 2.6. The explanatory memorandum to the amending legislation stated that comprehensive credit reporting would give credit providers access to additional personal information to assist them in establishing an individual's credit worthiness. The additional credit information would allow credit providers to make a more robust assessment of credit risk and assist credit providers to meet their responsible lending obligations. It was

¹³ ARCA supplementary submission, *PRDE changes to the authorised paragraphs*, 21 September 2020, see: [Summary of changes - ARCA](#).

¹⁴ The Privacy Amendment (Enhancing Privacy Protection) Act 2012.

expected that this would lead to a reduction in over-indebtedness and lower credit defaults. Comprehensive credit reporting was also expected to improve competition and efficiency in credit markets which could reduce the cost of credit for individuals.¹⁵

- 2.7. These amendments aligned Australia's credit reporting system with comparable international systems, including in America, United Kingdom and New Zealand.

Participants in the credit reporting system

Credit providers

- 2.8. Credit providers supply credit reporting bodies with consumer credit information collected from credit applicants, and also use consumer credit reporting information and other information-related commercial services provided by credit reporting bodies.
- 2.9. All credit providers may become PRDE signatories (there are currently 46) and participate in credit reporting to the extent they are permitted under the Privacy Act.
- 2.10. For credit reporting purposes, a key distinction is made between credit providers that hold an Australian Credit Licence (**ACL**) under the *National Consumer Credit Protection Act 2009* (**Credit Act**), and those that do not.
- 2.11. **ACL** holders are responsible for the majority of consumer credit (both by account volume and by lending value) in Australia, and are also able to participate most fully in comprehensive credit reporting, with the Privacy Act allowing them to both contribute and access repayment history information and consumer credit liability information (for example account open and close dates, type of credit, credit limit) from the credit reporting system, as well as 'negative' information (for example defaults and bankruptcies).
- 2.12. **Non-ACL** holders are restricted from exchanging repayment history information, but may participate and exchange consumer credit liability information and negative information.
- 2.13. Another less significant distinction for credit reporting is the distinction between credit provided by Authorised Deposit-taking Institutions (**ADIs**) and other financial institutions, and that provided through non-financial services institutions, such as telecommunications companies and utilities providers (non-ADIs).
- 2.14. **ADIs** are responsible for the majority of consumer credit provided by ACL holders. While the number of ADIs in Australia has declined since 2015, there have also been a significant number of new ADI licences granted to start-ups such as 'neobanks', while existing ADIs have also launched new competitors into the market such as Up (Bendigo and Adelaide Bank) and Ubank (NAB).¹⁶
- 2.15. There have also been a significant number of new non-ADI lenders holding ACLs entering the market. These 'fintechs', like the neobanks, have developed new business models emphasising innovative technology. The largest proportion of fintechs have focused on the unsecured personal loan market, though others have focused on the home loan market. ARCA submits that fintechs have been enthusiastic and early participants in comprehensive credit reporting – where the first four credit providers to sign up to the PRDE were all fintechs.¹⁷

¹⁵ <https://www.comlaw.gov.au/Details/C2012B00077/Explanatory%20Memorandum/Text> (accessed 22 July 2020).

¹⁶ ARCA application for re-authorisation, supporting submission, p. 20.

¹⁷ Ibid.

- 2.16. The Buy-Now-Pay-Later (**BNPL**) sector has recently emerged in Australia. AfterPay and ZipPay launching in 2015, followed by humm (Flexigroup), BrightePay, Klarna, Latitude Pay, LayBuy, Openpay, and Payright. An ACL is not required for these BNPL products. At this time, they are not participating in comprehensive credit reporting (though, as non-ACL holders, the Privacy Act limits their participation so that they cannot exchange repayment history information).¹⁸
- 2.17. ARCA estimates that there are 30.1 million open and active credit accounts in Australia. Of these accounts, credit cards make up 59 per cent of accounts, home loans make up 27 per cent, while auto and personal loans make up 14 per cent.¹⁹ Further, Australia's four major banks hold 55 per cent of all credit accounts, and outside the major banks, finance companies account for 31 per cent of accounts.²⁰

Credit reporting bodies

- 2.18. Credit reporting bodies collect credit information and other allowable data in order to develop and provide financial products (such as credit reports) and services to credit providers and consumers.
- 2.19. Credit reporting bodies may receive and hold credit information about the same consumer from a number of credit providers that it deals with. Effectively, credit reporting bodies act as an information exchange, consolidating data on consumers across the credit providers each consumer may deal with, and then supply this consolidated data back out to the credit providers that utilise the credit reporting body.
- 2.20. There are three credit reporting bodies currently operating in Australia – namely, Equifax (formerly Veda)²¹, illion (formerly Dun & Bradstreet)²², and Experian.²³

Principles of Reciprocity and Data Exchange (PRDE)

- 2.21. The PRDE is a set of principles applicable to signatory credit providers and credit reporting bodies. The PRDE is intended to be a standardised, open and transparent system for the exchange of comprehensive credit information between signatory credit reporting bodies and credit providers. ARCA submits that the reciprocity, consistency and enforceability provisions in the PRDE are central to the effective operation of the PRDE and hence comprehensive credit reporting in Australia.
- 2.22. In summary, the PRDE sets out three 'Tier Levels' for the exchange of consumer credit information:
- a. Negative – this includes consumer credit information other than consumer credit liability information and repayment history information.
 - b. Partial – includes negative information and consumer credit liability information, but not repayment history information.

¹⁸ Ibid.

¹⁹ ARCA application for re-authorisation, supporting submission, p. 26.

²⁰ The finance company sector is broad, including specialist consumer finance providers, motor vehicle financiers, and BNPL providers.

²¹ Equifax is a large international CRB headquartered in the US which in November 2015 announced its acquisition of Veda, Australia's largest CRB, for US\$1.8B: ARCA application for reauthorisation A1000521, 26 June 2020, p. 19.

²² Earlier in June 2015 private equity firm Archer Capital announced its purchase of the Australian and New Zealand arm of Dun & Bradstreet for \$220M: ARCA application for reauthorisation A1000521, 26 June 2020, p. 19.

²³ Experian is a leading global information services company, providing data and analytical tools to clients around the world: <https://www.experian.com.au/about-us> (accessed 29 September 2020).

- c. Comprehensive – includes negative information, consumer credit liability information and 24 months of repayment history information.
- 2.23. Under the consistency provisions of the PRDE, a credit provider selects a Tier Level, and must contribute all available credit information at its elected Tier Level to all credit reporting bodies with which it has a services agreement, and consistently across all consumer credit accounts for all of its credit portfolios (such as mortgage portfolios and credit card portfolios).
- 2.24. Under the reciprocity provisions of the PRDE, a signatory credit provider will only obtain credit information from a signatory credit reporting body at the same Tier Level as it contributes data.
- 2.25. The enforcement and governance provisions of the PRDE provide a compliance framework for signatories, with graduated stages of compliance procedures and outcomes, including peer-industry review and use of an independent and experienced arbiter for final decisions, being the Eminent Person.²⁴ Potential compliance outcomes include formal warnings, obligations to undertake staff training, or requiring a respondent credit provider or credit reporting body to contribute and obtain supply of credit information and credit reporting information (as applicable) at a lower Tier Level for a nominated period.²⁵
- 2.26. ARCA advises that since the PRDE has been operational, the dispute resolution provisions within the PRDE (Principle 5) have not been fully utilised. The Industry Determination Group (**IDG**) has not yet had to be formed to provide a recommendation on the outcome of a dispute. Further, an Eminent Person has not yet been appointed to issue a final determination on the outcome of a dispute.²⁶
- 2.27. Consumer credit information exchanged under the PRDE must comply with standardised technical specifications (set out in the Australian Credit Reporting Data Standards), developed by ARCA.
- 2.28. The potential signatories to the PRDE include any credit providers or credit reporting bodies who wish to participate in this reciprocal data exchange. There is no prerequisite that a signatory become an ARCA member.

Rationale for the PRDE

- 2.29. While the Privacy Act sets out the requirements for the collection, use and disclosure of new types of positive consumer credit information, it was silent on how or why credit providers would exchange that information with other participants in the system. The PRDE sought to address this issue by setting out a framework for the sharing of comprehensive credit information between credit providers and credit reporting bodies.
- 2.30. At the inception of comprehensive credit reporting in Australia, ARCA considered that the reciprocity, consistency and enforceability provisions of the PRDE were necessary to build confidence in the system, to ensure the system's effectiveness and to encourage credit providers and credit reporting bodies to participate in comprehensive credit reporting. Even though the implementation of comprehensive credit reporting is largely complete, ARCA submits the PRDE remains fundamental to the operation of comprehensive credit information exchange, as it incentivises and helps to assure ongoing participation.²⁷

²⁴ ARCA application for reauthorisation A1000521, 26 June 2020, p. 51.

²⁵ See paragraph 89 of the PRDE (Version 20).

²⁶ ARCA application for reauthorisation A1000521, 26 June 2020, p. 51.

²⁷ ARCA application for reauthorisation A1000521, 26 June 2020, p. 55.

2.31. In particular, ARCA submits that it seeks re-authorisation of the PRDE because the market dynamics that gave rise to the need for the PRDE still exist, and would re-emerge in the absence of the PRDE. These include:²⁸

- the commercial incentive for free-riding by credit providers, which the reciprocity provisions seeks to address
- the incentive for credit reporting bodies to seek exclusive or preferential data supply, which the consistency provisions seek to address, and
- even under the PRDE, self-reporting has been the only way disputes have been raised. ARCA considers this may suggest for credit reporting bodies at least, a commercial disincentive to raise disputes against their clients.

2.32. Further, ARCA submits that since the original authorisation of the PRDE, draft legislation²⁹ proposing mandatory comprehensive credit reporting for large ADIs, has recognised and incorporated the PRDE's framework.³⁰ In particular, the explanatory memorandum to the 2019 Bill states:³¹

The mandatory comprehensive credit regime recognises that industry stakeholders have already taken steps to support sharing comprehensive credit information. This includes the Principles of Reciprocity and Data Exchange and supporting Australian Credit Data Reporting – Industry Requirements & Technical Standards.

To the extent possible, the mandatory comprehensive credit reporting regime operates within the established industry framework but also provides scope for future technological developments.

ARCA's 2015 authorisation

2.33. On 3 December 2015, the ACCC granted authorisation for five years to ARCA for certain reciprocity, consistency and enforceability provisions of the PRDE (the **2015 Authorisation**). The 2015 Authorisation expires on 25 December 2020.

2.34. In 2015, Veda (now Equifax), the largest credit reporting body in 2015, was concerned that the PRDE was too prescriptive and went beyond what was necessary to support comprehensive credit reporting.

2.35. Previously, consumer advocacy associations raised strong concerns about the lack of a clear resolution for how credit providers were expected to record repayments under financial hardship arrangements and the settlement of defaults.

The 2015 Authorisation – ACCC assessment

Significant public benefits

2.36. The ACCC was of the view that the PRDE would enable wider and improved access to comprehensive credit reporting in Australia, than under a purely voluntary system, with general public benefits of comprehensive credit reporting including: improved consistency and quality of credit information available to credit providers; facilitating competition between credit providers; increased financial inclusion for consumers; a

²⁸ ARCA application for reauthorisation A1000521, 26 June 2020, pp. 56, 57.

²⁹ See National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 (the **2019 Bill**).

³⁰ ARCA application for reauthorisation A1000521, 26 June 2020, pp. 5, 6.

³¹ Explanatory Memorandum, National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019, p. 7.

decrease in over-indebtedness of consumers; and support for responsible lending obligations.

Public detriments

- 2.37. The ACCC accepted that there were some potential public detriments arising from the costs imposed by the relevant provisions of the PRDE, most notably as a result of the consistency provisions. Despite Veda's concerns, credit providers submitted that these ongoing costs were likely to be relatively small and would be offset by the cost savings and other benefits of these provisions. The ACCC accepted these views, and considered that each credit provider would make a commercial decision whether or not to provide data and consume data from multiple credit reporting bodies, based on their estimates of the associated costs and benefits.
- 2.38. In relation to how financial hardship arrangements were to be reported and concerns regarding the settlement of defaults, the ACCC considered these were important issues that needed to be resolved. However, the ACCC noted that resolution of these issues should be co-ordinated by industry and relevant regulators outside the authorisation process. The ACCC flagged that it would be keen to see this matter resolved in assessing any application for re-authorisation.

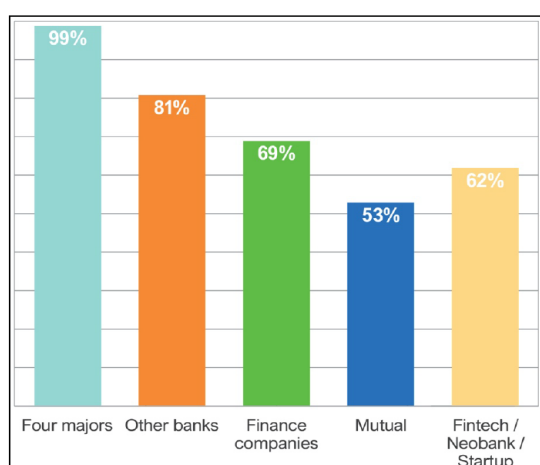
What has changed since the 2015 Authorisation of the PRDE?

Voluntary participation in comprehensive credit reporting and the PRDE

- 2.39. ARCA submits that contribution of comprehensive credit information under the PRDE began in 2016, but substantial quantities of data were not contributed until the first quarter of 2018.
- 2.40. ARCA submits that most credit providers of significant scale have completed or are on track to complete their transition to comprehensive credit reporting – and all are doing this under the terms of the PRDE. By the end of September 2019 when the last of the four major banks completed their migration to comprehensive credit reporting, 85 per cent of consumer credit accounts in Australia had comprehensive credit information contributed.³²
- 2.41. ARCA submits, as of June 2020, 92 per cent of consumer credit accounts in Australia are 'live' with comprehensive credit information being reported under the PRDE, and a further 5 per cent of consumer credit accounts are either committed to go live or are planning to supply comprehensive credit information but are yet to complete testing.
- 2.42. ARCA submits that Figure 1 shows that the four major banks have effectively completed their migration to comprehensive credit reporting. Other sectors within the industry have commenced implementation of comprehensive credit reporting, and are all over 50 per cent completion.

³² ARCA application for reauthorisation A1000521, 26 June 2020, p. 23.

Figure 1: progress implementing comprehensive credit reporting across the sector³³



- 2.43. ARCA estimates that 95 per cent of all credit card accounts and 88 per cent of home loans now have comprehensive credit information reported, compared to 75 per cent of auto and personal loans. No BNPL accounts currently have comprehensive credit information being reported.³⁴
- 2.44. By the end of 2020, ARCA submits that most accounts in the system will have at least two years' worth of repayment history information being reported, so the system from a contribution perspective at least will be largely complete and fully operational.³⁵

Proposed mandatory comprehensive credit reporting

- 2.45. As outlined above, the Privacy Act was amended in 2012, to allow for the collection and disclosure of positive information, but did not mandate the disclosure of that information. In the 2017-18 Budget, the Australian Government committed to mandating a comprehensive credit reporting regime if credit providers did not meet a threshold of 40 per cent of data reporting by the end of 2017. In November 2017, the Government announced that legislation for the mandatory regime was to be introduced.
- 2.46. The National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 (**2019 Bill**), which among other things proposed the introduction of mandatory credit reporting, passed the House of Representatives on 5 February 2020. However, it stalled in the Senate and since that time, Parliament has been interrupted by the COVID-19 pandemic.
- 2.47. In particular, Schedule 1 to the 2019 Bill amends the Credit Act to mandate a comprehensive credit reporting regime. It was proposed under the 2019 Bill, that eligible licensees, who on 1 April 2020 are large ADIs which hold an Australian Credit License, must provide comprehensive credit information on consumer credit accounts to credit reporting bodies. An ADI is considered large when its total resident assets are greater than \$100 billion.³⁶

³³ ARCA application for reauthorisation A1000521, 26 June 2020, p. 28.

³⁴ ARCA application for reauthorisation A1000521, 26 June 2020, p. 27.

³⁵ ARCA application for reauthorisation, 26 June 2020, p. 23.

³⁶ Explanatory Memorandum, National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019, p. 10.

2.48. The 2019 Bill also expands ASIC's powers to make it responsible for monitoring compliance with the mandatory regime. ASIC's new powers include collecting information and requiring audits to confirm the supply requirements are being met. ASIC may also prescribe the technical standards for the reported credit information. While ASIC has the power to approve technical standards, the explanatory memorandum to the 2019 Bill notes that the sector has already developed a technical standard – the ARCA Technical Standard, which would already apply for large ADI's that are signatories to the PRDE. It goes on to note that ASIC would not be expected to intervene to prescribe a technical standard (even for non-PRDE signatories), unless the approach taken by the sector was creating inefficiencies or making mandatory credit reporting inoperable.³⁷

Proposed financial hardship information reporting

2.49. Although hardship arrangements between consumers and their credit providers can be entered into under the Credit Act, the Privacy Act does not currently permit these arrangements to be reported as part of a consumer's credit report. The 2019 Bill also proposed legislative changes to the Privacy Act to address this, which have also stalled. Any such legislative changes would also require reforms to the Credit Reporting Code for their practical implementation.³⁸

2.50. The Explanatory Memorandum to the 2019 Bill explains that the efficacy of Australia's credit reporting system is reduced because of the current lack of visibility of hardship information about a consumer that is relevant to their creditworthiness. This information asymmetry in turn affects the ability of credit providers to meet their responsible lending obligations.

2.51. The ACCC understands that in the absence of specific hardship arrangement information, there has been inconsistent industry practice in how repayment history information is reported—leading to potential distortions in credit assessments.³⁹

2.52. Prior to the 2019 Bill, the Attorney-General's Department led a review into financial hardship arrangements. In August 2019, the Department published a framework for representing hardship arrangements in Australia's credit reporting system, which included:⁴⁰

- amendments to the Privacy Act would introduce hardship information as a new category of information that would be displayed on credit reports adjacent to repayment history information
- to ensure consumers are not subsequently disadvantaged once they are no longer experiencing hardship, the proposed amendments to the Privacy Act would only permit retention of hardship information for 12 months, and
- hardship arrangements would be represented by two indicators – one for 'temporary hardship arrangements' (for example, indulgences, forbearances and simple arrangements), and one for 'permanently varied credit contracts'.

³⁷ Explanatory Memorandum, National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019, p. 33.

³⁸ Explanatory Memorandum, National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019, p. 47.

³⁹ Explanatory Memorandum, National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019, p. 46.

⁴⁰ Attorney-General's Department, *New framework for representing hardship arrangements in credit reporting system*, pp. 1, 2.

- 2.53. Consistent with this framework, Schedule 2 to the 2019 Bill proposed to amend the Privacy Act to permit reporting of financial hardship information. In conjunction with financial hardship information (or 'flag'), repayment history information will reflect a consumer's ability to meet their obligations against a financial hardship arrangement that is in place at that time rather than the original credit contract.
- 2.54. Also consistent with the Attorney-General's Department framework, the 2019 Bill financial hardship information is to be retained in the credit reporting system for 12 months, while repayment history information is retained for 24 months.⁴¹
- 2.55. Schedule 2 to the 2019 Bill also proposed that the Attorney-General would cause an independent review of the proposed amendments to the credit reporting system, as set out in Part IIIA of the Privacy Act. The 2019 Bill envisaged the report being completed and given to the Attorney-General before 1 October 2023.⁴²

Changes to the Credit Reporting Code

- 2.56. The Credit Reporting Code is a code of practice about credit reporting which sets out how the credit reporting provisions of the Privacy Act are to be applied or complied with – for example, how the use, access, corrections and complaints provisions operate, and how consumer credit liability information, repayment history information, default information, payment information and serious credit infringements should be reported. Credit reporting bodies and credit providers are bound by this code.
- 2.57. An independent review of the Credit Reporting Code was undertaken by PWC, with the final report published in December 2017.
- 2.58. Recommendations from the PWC report, as well as changes identified through industry consultation, were felt necessary to better support comprehensive credit reporting data exchange. ARCA, in its role as the Credit Reporting Code developer, subsequently made two applications to vary the Credit Reporting Code, both of which were approved by the Information Commissioner. These variations commenced on 1 July 2018 and 14 February 2020.⁴³
- 2.59. The amendments which impacted the exchange of comprehensive credit reporting data included changes to:
- the meaning of consumer credit liability information datasets
 - clearly define account open date and account close date (based on feedback that the previous definitions had resulted in different approaches by credit providers, even for the same account type), and
 - changes to the repayment history information provisions to address operational issues and to limit variance in assessment of this form of information.⁴⁴

⁴¹ Explanatory Memorandum, National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019, p. 47.

⁴² Explanatory Memorandum, National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019, p. 47.

⁴³ ARCA application for reauthorisation A1000521, 26 June 2020, Appendix D, p. 10.

⁴⁴ ARCA application for reauthorisation A1000521, 26 June 2020, Appendix D, p. 10.

The new Consumer Data Right

- 2.60. Parallel to developments within Australia's comprehensive credit reporting system, in November 2017, the Australian Government announced the introduction of a consumer data right (**CDR**) in Australia, starting in the banking sector. The CDR gives consumers greater access to and control over their data. It improves consumers' ability to compare and switch between products and services, and encourages competition between service providers, leading not only to better prices for customers but also more innovative products and services.
- 2.61. The CDR will be introduced into the banking sector in phases. On 6 February 2020, the Competition and Consumer (Consumer Data Right) Rules 2020 commenced. These rules set the framework for how CDR operates in the banking sector. From July 2020, the major banks must share certain consumer data, such as data relating to credit and debit cards, deposit accounts and transaction accounts, where directed by a consumer to do so. Consumer data relating to mortgage and personal loan data must be available to share from November 2020.

Regulatory guidance

- 2.62. In addition to proposed legislative amendments, there have also been the following regulatory developments since 2015:
- The Australian Prudential Regulatory Authority updated its Prudential Standards APS 220 Credit Risk Management, which requires ADIs' credit assessment for individuals to 'verify commitments and total indebtedness' and consider the borrower's repayment history (as enabled through comprehensive credit reporting participation).⁴⁵
 - In February 2019, the Australian Securities and Investments Commission (**ASIC**) initiated a review of its regulatory guide for responsible lending. In its updated guide, ASIC outlined its view that the reasonable steps that a credit provider could be expected to undertake were not static and would be influenced by industry's adoption of innovations such as open banking and comprehensive credit reporting.⁴⁶
- 2.63. The ACCC notes there have been recent regulatory reforms announced by the Australian Government regarding proposed changes to responsible lending principles, including:⁴⁷
- removing responsible lending obligations from the Credit Act, with some exceptions
 - ADIs will continue to comply with APRA's lending standards requiring sound credit assessment and approval criteria
 - adopting key elements of APRA's ADI lending standards and applying them to non-ADIs, and
 - allowing lenders to rely on the information provided by borrowers, replacing the current practice of 'lender beware' with a 'borrower responsibility' principle.

⁴⁵ ARCA application for reauthorisation A1000521, 26 June 2020, p. 33.

⁴⁶ ARCA application for re-authorisation A1000521, 26 June 2020, p. 32.

⁴⁷ Joint media release: The Hon Josh Frydenberg MP, Treasurer, and The Hon Michael Sukkar MP, Minister for Housing and Assistant Treasurer, *Simplifying access to credit for consumers and small business*, 25 September 2020 see: <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/simplifying-access-credit-consumers-and-small> (viewed 29.9.20).

2.64. The Government's public consultation period on the proposed reforms closed on 20 November 2020. The measures will commence on 1 March 2021, subject to the passing of legislation required to implement the reforms.⁴⁸

2019 independent review of the PRDE

2.65. PWC conducted the inaugural independent review of the operation of the PRDE in 2019. ARCA advises that the PWC Report acknowledged that the PRDE is widely accepted and supported by industry and that there had been few reported issues with its adoption. The ACCC is advised that the independent review did not see a need for radical change, areas for improvement to the PRDE were identified, and the final report made 15 recommendations.⁴⁹

2.66. PWC made a significant recommendation that consideration should be given to strengthening the independent compliance investigation and monitoring capabilities of the PRDE Administrator Entity (or RDEA). Pursuant to PWC's recommendations, ARCA proposes amendments to the compliance framework under Principle 5 of the PRDE (which are tracked in Version 20 of the PRDE, provided at **Attachment A** to this determination).

3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including banks and credit unions, credit reporting bodies, government and consumer protection agencies, and industry associations.

Prior to the draft determination

- 3.3. The ACCC received public submissions from four interested parties – namely, the Insurance Council of Australia, Australian Institute of Credit Management, Financial Rights Legal Centre, and Legal Aid Queensland. ARCA also provided a detailed submission in response to concerns raised by Financial Rights Legal Centre and Legal Aid Queensland.
- 3.4. **Insurance Council of Australia (the Insurance Council)** – supports ARCA's application for re-authorisation of the PRDE, including the proposed improvements to its operation.
- 3.5. **Australian Institute of Credit Management (AICM)** – supports ARCA's application for re-authorisation. AICM submits its members need access to reliable data to make fully informed credit decisions, and this is facilitated by the PRDE.
- 3.6. **Financial Rights Legal Centre (Financial Rights)** – in a joint oral submission with Legal Aid Queensland, Financial Rights expressed ongoing concerns about the operation of the PRDE which it considers require further amendments. Financial Rights submits that the PRDE should ensure that credit providers consistently report repayment history information to credit reporting bodies, where financial hardship arrangements have been agreed. It also considers that the PRDE should be amended

⁴⁸ Consumer Credit Reforms consultation, The Treasury, <https://treasury.gov.au/consultation/c2020-124502>, viewed on 1 December 2020.

⁴⁹ ARCA application for reauthorisation A1000521, 26 June 2020, Appendix E, p. 19.

to allow an exception for listing defaults in repayment history information where there has been a negotiated settlement. Financial Rights considers that any re-authorisation of the PRDE should be for a maximum of 5 years.

- 3.7. **Legal Aid Queensland (LAQ)** – in a separate written submission to the ACCC, LAQ submits at a minimum, the PRDE must be amended to introduce consistent repayment history information reporting for consumers in hardship arrangements with a credit provider, and provide for exceptions for listing defaults where there has been a negotiated settlement. LAQ does not support re-authorisation of the PRDE for 6 years, given the pending legislative changes, and time taken to complete the previous independent review.

After the draft determination

- 3.8. On 9 October 2020 the ACCC issued a draft determination proposing to re-authorise the Proposed Conduct for a further six years. The ACCC invited submissions in response to its draft determination, including whether it was appropriate to impose a condition of authorisation to require ARCA to consult with core consumer advocacy groups in developing any future amendments to relevant provisions of the PRDE to facilitate a comprehensive review process and more fully realise the public benefits of the Proposed Conduct.
- 3.9. A conference was not requested following the draft determination.
- 3.10. The ACCC received public submissions in response to the draft determination from four parties – Financial Rights, the Australian Privacy Foundation (**APF**), LAQ, and ARCA.
- 3.11. Regarding the issue of whether a consumer consultation condition is appropriate, ARCA opposes the imposition of a condition of authorisation. Financial Rights expressed support for a condition of authorisation.
- 3.12. The **APF** submits the PRDE is not meeting its objective of ensuring consistency and accuracy in credit reporting. It considers that any authorisation granted should be limited to two years.
- 3.13. **LAQ** does not support reauthorisation of the PRDE at this time until, among other things, the impact of the changes on responsible laws on credit reporting is known. It also considers that any authorisation should be limited to two years.
- 3.14. Interested party submissions are discussed in further detail where relevant in the ACCC's Assessment.
- 3.15. Public submissions from ARCA and interested parties are all available on the ACCC's [Authorisations public register](#) for this matter.

4. ACCC Assessment

- 4.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. ARCA has sought re-authorisation for the Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act.⁵⁰
- 4.3. Consistent with subsections 90(7) and 90(8) of the Act as they apply to this application for authorisation,⁵¹ the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would result or be likely to result from the conduct (**authorisation test**).
- 4.4. The ACCC notes that this assessment is on the basis of the revised 'PRDE Version 20' lodged with the ACCC on 26 June 2020 (and provided at Attachment A to this determination).

Relevant areas of competition

- 4.5. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.6. In its application for re-authorisation, ARCA submits the relevant areas of competition impacted by the PRDE are those identified in the 2015 Authorisation.⁵²
- 4.7. Consistent with the 2015 Authorisation, the ACCC considers the relevant areas of competition likely to be impacted by the Proposed Conduct are the national supply of:
 - credit reporting services, which includes:
 - the supply of consumer credit information by credit providers to credit reporting bodies, and
 - the supply of consumer credit reporting services by credit reporting bodies to credit providers,
 - various credit/lending products and services to consumers including credit cards, car loans, and home loans.

Future with and without the Proposed Conduct

- 4.8. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 4.9. Since 2015, comprehensive credit reporting in financial services has become well established, but not complete. Further, the ACCC notes that the core PRDE framework of reciprocity and consistency in comprehensive data exchange has been referenced and reflected within proposed legislation to mandate comprehensive credit

⁵⁰ ARCA application for reauthorisation A1000521, 26 June 2020, p. 14.

⁵¹ See section 91C(7) of the Act.

⁵² ARCA application for reauthorisation A1000521, 26 June 2020, p. 21.

reporting for large ADI's.⁵³ It was proposed that the mandatory comprehensive credit reporting regime would operate within the established PRDE framework.⁵⁴

Submissions

- 4.10. **ARCA** submits that the appropriate counterfactual for the ACCC to consider is a world with and without the PRDE (and its authorised terms), rather than comparing the PRDE with a 'hypothetical PRDE' with alleged 'better terms' and 'better governance' (which certain interested parties are seeking).⁵⁵
- 4.11. ARCA agrees with the ACCC's 2015 conclusions that a future without the PRDE, and which relied on bilateral contracts between credit providers and credit reporting bodies, would not result in the same level of participation. ARCA submits that the PRDE's obligations of reciprocity, consistency and enforceability remain necessary in 2020 for credit providers to have sufficient incentives and confidence to participate in comprehensive credit reporting.⁵⁶
- 4.12. ARCA notes that while there has been a significant uptake of comprehensive credit reporting for financial services (covering 92 per cent of major consumer credit accounts), it advises that there is still a long tail of credit providers that are yet to participate. For example, while many larger mutual banks are participating, there are still close to 40 mutual banks yet to start. Also, the payday lending sector has minimal participation at this time, and the very large (by consumer numbers) BNPL sector is also yet to participate in comprehensive credit reporting. Likewise, the telecommunications and utility sector are not participating (though their participation, like that of the BNPL providers, is restricted due to the Privacy Act).⁵⁷
- 4.13. ARCA submits that without the Proposed Conduct and in the absence of the PRDE, the level of compliance around reciprocity would start to break down, unless some other arrangement was created with similar terms and enforceability of the PRDE. Further, ARCA submits that consistency of data supplied to credit reporting bodies would fall away, and contractually enforced exclusivity of data supply would re-emerge.⁵⁸
- 4.14. The **Insurance Council** submits that if the PRDE was not authorised, it would likely restrict the flow of credit eligibility information to providers of 'lenders mortgage insurance' (an insurance product for consumers that would otherwise have difficulty obtaining a home loan due to lack of a 20 per cent deposit or an established credit repayment history to obtain mortgage finance). The Insurance Council submits that a likely consequence of this would be that it would become harder for first home loan buyers, for example, to purchase homes.⁵⁹
- 4.15. The **AICM** submits that without the provision of comprehensive credit information, facilitated by the PRDE, the ability of credit providers to make informed credit

⁵³ Explanatory Memorandum, National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019, pp. 31, 34.

⁵⁴ Explanatory Memorandum, National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019, p. 7.

⁵⁵ ARCA submission, 28 August 2020, p. 5.

⁵⁶ ARCA application for reauthorisation A1000521, 26 June 2020, p. 55.

⁵⁷ ARCA application for reauthorisation A1000521, 26 June 2020, p. 55.

⁵⁸ ARCA application for reauthorisation A1000521, 26 June 2020, p. 57.

⁵⁹ Insurance Council of Australia submission, 15 July 2020, p. 2.

decisions efficiently and effectively will be reduced, which will increase the cost of credit.⁶⁰

ACCC view

- 4.16. Under the 2015 Authorisation, the PRDE appears to have facilitated comprehensive and consistent data supply between credit providers and credit reporting bodies. The ACCC also notes that the PRDE framework is embedded in proposed legislative reforms mandating comprehensive credit reporting.
- 4.17. ARCA reports that to date, 46 credit providers (representing 92 per cent of total consumer credit accounts in Australia) have signed the PRDE. This is growing, with a further 5 per cent of consumer credit accounts committed to the PRDE, but yet to complete testing.⁶¹
- 4.18. ARCA also reports that credit reporting bodies (namely, Experian and Equifax) have observed in their interactions with credit providers that the PRDE's framework was fundamental in securing support from internal stakeholders to participate in comprehensive credit reporting. Having said that, Equifax acknowledged that the proposed mandatory comprehensive credit reporting legislation may have also influenced the rate of uptake by credit providers.⁶²
- 4.19. The ACCC therefore considers that the Proposed Conduct is critical to the effective operation of the broader PRDE framework which will continue to facilitate and support growing participation in comprehensive credit reporting in Australia.
- 4.20. The ACCC accepts that the underlying commercial incentives leading to the free-rider concern for credit providers, or credit reporting bodies seeking exclusive or preferential data supply, remain. As such, the ACCC considers that without the Proposed Conduct, the financial services sector is likely to see a reduction in the comprehensive and consistent supply of consumer credit information. Consistent with its 2015 Authorisation, the ACCC considers that without the specific provisions of the PRDE, bilateral service agreements between credit providers and credit reporting bodies might attempt to include some form of reciprocal exchange obligation to encourage more complete data supply. However, this is unlikely to be as complete as has been achieved under the PRDE.
- 4.21. Further, the ACCC notes that without the Proposed Conduct, significant proposed legislative reforms to mandate a comprehensive credit reporting regime, and which relied on the existing industry framework provided by the PRDE, might be impeded.

Public benefits

- 4.22. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**)

⁶⁰ The Australian Institute of Credit Management, 5 August 2020, p. 1.

⁶¹ ARCA application for reauthorisation A1000521, 26 June 2020, p. 23.

⁶² ARCA application for reauthorisation A1000521, 26 June 2020, p. 35.

which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁶³

4.23. **ARCA** submits that under the 2015 Authorisation, the PRDE has been integral to the realisation of the anticipated public benefits of comprehensive credit reporting in Australia. It submits that the reciprocity, consistency and enforceability provisions of the PRDE will continue to result in the following public benefits:

- Improved lending decisions and competition between credit providers. In turn, improved lending decisions reduce the over-indebtedness of consumers (via the *reciprocity provisions*).
- A more complete exchange of consumer credit information and promotion of competition between credit reporting bodies and credit providers (via the *consistency provisions*).
- Promoting assurance to signatories about the integrity of the PRDE framework (via the *enforceability provisions*).

4.24. As in 2015, the ACCC notes the general acceptance amongst the industry of the range of public benefits arising from the migration to comprehensive credit reporting in Australia, including: improved consistency and quality of credit information available to credit providers to assist them to make more informed credit decisions, facilitating competition between credit providers, increased financial inclusion for consumers,⁶⁴ a decrease in over-indebtedness of consumers and support for responsible lending obligations.

4.25. The ACCC considers the proposed reforms to responsible lending obligations (described at paragraph 2.63) do not materially affect its assessment of the likely public benefits from the PRDE. The proposed reforms do not remove the fundamental lending principle (under existing APRA lending standards) that credit providers need to undertake sound credit assessments and assessment processes, which would be facilitated by comprehensive credit reporting information. The PRDE framework supports comprehensive credit reporting in Australia. In the absence of the reciprocity, consistency and enforceability provisions of the PRDE, the ACCC considers the comprehensiveness and consistency of data supply between credit providers and reporting bodies would decrease. Therefore, the ACCC considers the PRDE would become more important in those circumstances.

4.26. In its authorisation role, the ACCC's assessment focuses on the likely public benefits (and public detriments) from the relevant provisions of the PRDE for which re-authorisation is sought. However, the ACCC acknowledges the broader benefits of comprehensive credit reporting, particularly the extent that the relevant provisions of the PRDE facilitate the realisation of the public benefits from comprehensive credit reporting. With 92 per cent of consumer credit accounts in Australia now having comprehensive credit information supplied, it appears that the PRDE has played a

⁶³ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

⁶⁴ With one exception: Legal Aid Queensland submits that there is no evidence the comprehensive credit reporting or the PRDE has resulted in greater financial inclusion for vulnerable consumers. See Legal Aid Queensland submission, 27 July 2020, p. 4.

critical role in the successful implementation of comprehensive credit reporting in Australia.

4.27. Having regard to the submissions from ARCA and interested parties, the ACCC considers the following public benefits are likely to result from the Proposed Conduct under the PRDE:

- improved lending and risk management decisions, of signatory credit providers, which is likely to lead to consequential benefits for borrowers, in terms of increased financial inclusion and less over-indebtedness
- promotion of competition between credit providers, potentially lowering barriers to entry and expansion in the market, particularly for small credit providers. This may lead to improved availability and pricing of credit for consumers.

4.28. These public benefits are discussed in further detail below.

Public benefits arising from reciprocity

4.29. The PRDE's principles of reciprocity establish that credit providers are only able to receive consumer credit information from credit reporting bodies up to the same level that they contribute.

Submissions

4.30. **ARCA** submits that reciprocal data exchange under the PRDE is critical to attaining public benefits, given the absence of reciprocity can lead to data asymmetry and fragmentation. ARCA submits that the reciprocal exchange of data by credit providers under the PRDE results in the following public benefits:⁶⁵

- improved lending decisions and enabling credit providers to more easily meet their responsible lending obligations
- promoting competition between credit providers, and
- reducing over-indebtedness and increasing financial inclusion of consumers.

i. Improved and more efficient lending decisions

4.31. ARCA advises that signatory credit providers state that better information about customers' current credit accounts (referred to as 'consumer credit liability information') has significantly improved their ability to verify an individual's financial position and has reduced the information asymmetry which exists between credit providers and potential customers.

4.32. ARCA advises that signatory credit providers have discovered under or undisclosed debt within the region of 25-35 per cent, with examples provided of failures to disclose \$200,000 of liabilities, borrowers with multiple undisclosed credit cards, or customers who have been cycling debt between credit providers.⁶⁶

4.33. ARCA advises that credit providers consider this improved information about an individual's liabilities has resulted in better lending decisions. However, some credit

⁶⁵ ARCA application for reauthorisation A1000521, 26 June 2020, pp. 36, 38.

⁶⁶ ARCA application for reauthorisation A1000521, 26 June 2020, pp. 36-37.

providers have noted that additional inquiries required to verify under or undisclosed liabilities have, at times, slowed the lending process. Ultimately, this has enabled credit providers to reassess a customer's ability to afford the credit (the subject of the application) and either proceed with the application, reduce the credit amount (to align with the re-assessment of affordability) or reject the application.⁶⁷

- 4.34. ARCA advises that the use of 'repayment history information' to support credit providers' lending decisions is currently less advanced than 'consumer credit liability information'. This is because the major banks completed their implementation of comprehensive credit reporting in September 2019. This means that there has only recently been a critical mass of data in the system. Repayment history for an account, when complete, provides a 24-month view of that individual's repayment behaviour. For many accounts, that full 24-month view is not yet complete. Credit providers will also need to upgrade current 'scorecard' processes to use repayment history information.⁶⁸
- 4.35. Having said this, ARCA advises that credit providers have started using repayment history information. Some credit providers have noted a 'swap in' factor impacting lending decisions - that is, using repayment history data to support lending money to a customer who (in the absence of that data) would have a credit application rejected. For instance, if a customer had some negative information on their credit report, but also a history of positive payment behaviour, the positive payment behaviour can provide better context to understanding the customer's overall position, and support the customer's ability to service new credit.
- 4.36. Credit providers have also advised that accessing more complete information about customers via credit reports, as opposed to previous methods, is easier and more efficient. Examples reported by PRDE signatories include:⁶⁹
- There is less friction being able to point to a discrepancy between a credit report and a customer's application.
 - Credit providers have implemented automated or more simplified lending decision processes, which have been facilitated by broader credit decision rules.
 - Some credit providers previously used automated decision processes for refinancing credit of existing customers only, but now – with the inclusion of a greater depth of comprehensive credit information – are extending automated decision processes to 'new-to-bank' customers.
 - Credit providers in the mutual sector have reported that access to 'scorecards' containing comprehensive credit information has improved the predictive nature of credit decisions, and led to significant cost savings and process efficiencies, all of which can ultimately lead to public benefits through greater competition and the lower cost of credit.
- 4.37. In a joint oral submission, **Financial Rights** and **Legal Aid Queensland** submit that ARCA has not sufficiently distinguished its public benefit claims from the PRDE to those from comprehensive credit reporting. They submit the primary benefit from comprehensive credit reporting is that it allows credit providers to price their lending

⁶⁷ ARCA application for reauthorisation A1000521, 26 June 2020, p. 37.

⁶⁸ ARCA application for reauthorisation A1000521, 26 June 2020, p. 37.

⁶⁹ ARCA application for reauthorisation A1000521, 26 June 2020, pp. 37-38.

decisions more accurately, and assists licensed credit providers fulfil their responsible lending obligations.⁷⁰

ii. Improved competition between credit providers

4.38. **ARCA** submits that, as anticipated in the 2015 Authorisation, the reciprocal exchange of comprehensive credit data under the PRDE, has resulted in increased competition between credit providers. Reciprocity helps to ensure that larger credit providers (with a significant customer base and access to transaction data for those customers) are not automatically at an advantage compared to smaller credit providers (with a less significant customer base and therefore less access to transaction data for new customers).

4.39. ARCA advises that a range of different credit provider signatories have reported increased competition under the PRDE (and comprehensive credit reporting). For example:⁷¹

- Fintech lender, WISR Credit, says that without the PRDE it is unlikely that fintechs would have been able to enter the market. WISR considers the PRDE framework, and particularly the reciprocal exchange embedded as part of that framework, was necessary to give assurance to smaller credit providers of having access to larger credit providers' data.
- The mutual bank sector, which often does not have a customer's debit and credit 'transactional' accounts have benefited from being able to see comprehensive credit data, including the full range of credit accounts and repayment history.
- The major banks advise that greater access to data has enabled them to develop strategies for lending to 'new-to-bank' customers and focus on improving lending processes for existing customers.

iii. Improved financial inclusion for consumers and reduced over-indebtedness

4.40. **ARCA** acknowledged that comprehensive credit reporting is still in relative infancy in Australia, and as such, the flow on public benefits to consumers are yet to be fully realised. In addition, due to restrictions in the Privacy Act, which prevent payment behaviour being reported by the growing BNPL sector for instance, certain consumer segments are less likely to receive the benefits of having a credit report with a more meaningful data set. Similarly, ARCA notes that the 'payday' lending sector has also minimal involvement in comprehensive credit reporting, despite being able to participate.⁷²

4.41. This view would appear to be supported by **Legal Aid Queensland** which submits that:⁷³

Comprehensive credit reporting may have resulted in consumers not obtaining credit from banks, credit unions and building societies but there is no evidence that these borrowers have not obtained more expensive credit from other credit providers.

4.42. Having said this, ARCA notes that signatory credit providers have consistently identified that their use of comprehensive credit data to support lending decisions has

⁷⁰ Joint oral submission from Financial Rights Legal Centre and Legal Aid Queensland, 15 July 2020, p. 3.

⁷¹ ARCA application for reauthorisation A1000521, 26 June 2020, p. 39.

⁷² ARCA application for reauthorisation A1000521, 26 June 2020, p. 40.

⁷³ Legal Aid Queensland submission, 27 July 2020, p. 4.

led to benefits for their customers – that is, credit offered is a ‘better fit’ for their circumstances, or credit is approved where (in the past) only negative information about a customer would have meant their credit application was automatically declined.⁷⁴

4.43. ARCA submits that these views are supported by a University of Sydney Research Paper,⁷⁵ which looked at three months of comprehensive credit data collected by the credit reporting body, illion. ARCA advises this research found that comprehensive credit data allowed for better separation of good and bad credit risks, and overall evidence of good payment behaviour was likely to lead to an improved credit score. It also found access to a greater choice of credit providers and cheaper interest rates for individuals who were younger, from higher risk geographical areas, with lower estimated incomes and wealth and from less established households.⁷⁶

ACCC view

4.44. The ACCC considers the experiences of participating credit providers under the 2015 Authorisation outlined above, suggest that the anticipated public benefits from comprehensive credit reporting, facilitated by the reciprocity framework of the PRDE, are being realised. The ACCC acknowledges that comprehensive credit reporting is still in relatively early stages of implementation across the entire sector, and expects that these outcomes will be likely to continue to improve.

4.45. Compared to a situation without the PRDE, by addressing the free rider concern, the ACCC considers that the reciprocity provisions contained in the PRDE (together with the enforcement provisions) are likely to lead to a more fulsome exchange of comprehensive credit information between credit providers and credit reporting bodies, resulting in the following public benefits:

- improved lending and risk management decisions by signatory credit providers, with associated time and cost efficiencies, as a result of the availability of better information to assess credit risk. This is likely to lead to consequential benefits for borrowers, in terms of increased financial inclusion and less over-indebtedness, and
- the promotion of competition between smaller and larger credit providers, potentially lowering barriers to entry and expansion in the market, particularly for small credit providers. This may lead to improved availability and pricing of credit for consumers.

Public benefits arising from consistency

4.46. The consistency provisions under the PRDE provide that a credit provider must contribute the same information to all credit reporting bodies with which it has a services agreement. A credit provider may choose to have service agreements with more than one credit reporting body, based on usual commercial decision making. In addition, the PRDE requires credit providers to contribute credit information consistently across all credit portfolios (subject to minor exceptions).

4.47. The consistency obligations apply only to the contribution of information by credit providers to credit reporting bodies, not to the information that credit providers choose to consume from credit reporting bodies. For example, a credit provider may decide to

⁷⁴ ARCA application for reauthorisation A1000521, 26 June 2020, p. 40.

⁷⁵ Andrew Grant, The University of Sydney Business School, ‘The Impact of the Introduction of Positive Credit Reporting on the Australian Credit-Seeking Population’, August 2019 at https://sbfc.sydney.edu.au/program/papers/P204_Named.pdf

⁷⁶ ARCA application for reauthorisation A1000521, 26 June 2020, p. 40.

provide information consistently to all credit reporting bodies, but only obtain credit reports from one credit reporting body.

Submissions

- 4.48. ARCA submits that the purpose of the consistency provisions under the PRDE (in tandem with the prohibition under the PRDE on credit reporting bodies including exclusivity in data supply in service agreements) is to minimise the degree of data fragmentation in the market, or for a single dominant credit reporting body to emerge. ARCA considers that under the 2015 Authorisation, the consistency provisions of the PRDE have improved the overall supply of consumer credit data. This has resulted in the anticipated public benefit of increased competition between credit reporting bodies and credit providers, with flow on benefits to consumers.
- 4.49. ARCA submits that many credit providers have commenced supplying data to multiple credit reporting bodies as part of their transition to comprehensive credit reporting. As at the end of May 2020, 60 per cent of credit providers were supplying consumer credit information to two or more credit reporting bodies, while 47 per cent were supplying data to all three credit reporting bodies.⁷⁷
- 4.50. Regarding the consistency of data supplied by credit providers under the PRDE, ARCA reports there has been strong compliance by credit providers with consistency obligations. In particular, it advises that for 15 significant credit providers who supply data to all three credit reporting bodies, 14 of them achieved consistency of data of around 98 per cent or better.⁷⁸
- 4.51. ARCA submits that increased competition between credit reporting bodies has been observed in increased innovation – for example, products and services offered by credit reporting bodies have expanded from being primarily data supply, to now include data verification services, analytical services, benchmarking, uploading tools for comprehensive credit reporting, portfolio management services, and collections tools.⁷⁹
- 4.52. ARCA advises that the impact of increased competition between credit providers on the price of credit reports has been varied, depending on the arrangements credit providers had made pre-comprehensive credit reporting. ARCA understands that for credit providers who had historic exclusive data consumption arrangements with credit reporting bodies, there has been little impact on overall cost of credit reports. Other credit providers have experienced a drop in the price of credit reports, or the ability to negotiate arrangements which enable them to pay a fixed annual fee to the credit reporting body for unlimited credit report access.⁸⁰
- 4.53. Further, ARCA submits that during the period of the 2015 Authorisation, the consistency provisions of the PRDE have increased competition between credit providers, particularly smaller institutions. In accordance with those provisions, ARCA advises that more data is available to all three credit reporting bodies, and there is much greater consistency in the data held by each of the credit reporting bodies. For smaller credit providers, who are more likely to continue to obtain credit data from a single credit reporting body only, this has increased their access to a larger pool of data supplied by that single credit reporting body.

⁷⁷ ARCA application for reauthorisation A1000521, 26 June 2020, p. 42.

⁷⁸ ARCA application for reauthorisation A1000521, 26 June 2020, p. 45.

⁷⁹ ARCA application for reauthorisation A1000521, 26 June 2020, p. 49.

⁸⁰ ARCA application for reauthorisation A1000521, 26 June 2020, p. 49.

ACCC view

- 4.54. Given the outcomes under the 2015 Authorisation outlined above, the ACCC considers that the consistency provisions of the PRDE are likely to continue to facilitate a more complete exchange of consumer credit information between credit providers and credit reporting bodies, than would otherwise be the case. In turn, this is likely to promote competition between credit providers and credit reporting bodies – including, through increased innovation in service offerings from credit reporting bodies (for example, ongoing improvements in financial analytical services provided to credit providers), and smaller credit providers having access to more comprehensive credit data which is likely to reduce barriers to entry and expansion, and enable them to better compete with larger credit providers.
- 4.55. The ACCC also considers there are public benefits for consumers in having more consistent and accurate credit information held by all credit reporting bodies. This will increase access to a consumer’s credit profile and avoid the need for applications to multiple credit reporting bodies for a complete credit report, and is likely to lead to better lending decisions by credit providers.

Public benefits arising from the governance of the PRDE

- 4.56. Governance arrangements under the PRDE include graduated stages of compliance processes, including peer-industry review and use of an independent and experienced arbiter for final decisions, being the Eminent Person. There is also a graduated stage of compliance outcomes.

Submissions – prior to the draft determination

- 4.57. During the period of the 2015 Authorisation, **ARCA** acknowledges that the broader dispute resolution provisions (under Principle 5) have not been fully utilised – namely, the Industry Determination Group has not yet had to be formed to provide a recommendation on the outcome of a dispute, nor has an Eminent Person needed to be appointed to issue a final determination on the outcome of a dispute.⁸¹
- 4.58. However, ARCA advises that signatories have initiated disputes using the PRDE process, including self-reports of non-compliant conduct.⁸²
- 4.59. Also, given that many organisations have only recently completed data supply projects, ARCA envisages that their focus will now shift to data consumption. ARCA expects that once data consumption of comprehensive credit reporting is fully operational, niche compliance issues (if they do exist) will become evident, and then progressed through the PRDE compliance process.⁸³
- 4.60. Generally, ARCA submits that signatories have made the following observations regarding governance and compliance levels under the PRDE:⁸⁴
- credit providers are generally satisfied that their fellow signatories are meeting their obligations
 - credit providers are satisfied with the role played by ARCA and its workgroups in raising awareness of PRDE compliance and also broader data quality requirements, and actively tackling these issues, and

⁸¹ ARCA application for reauthorisation A1000521, 26 June 2020, p. 51.

⁸² ARCA application for reauthorisation A1000521, 26 June 2020, p. 51.

⁸³ ARCA application for reauthorisation A1000521, 26 June 2020, p. 52.

⁸⁴ ARCA application for reauthorisation A1000521, 26 June 2020, p. 52.

- credit reporting bodies consider there is a high level of overall compliance with the PRDE, and ARCA has played an effective role in bridging the gap between the Privacy Act, Credit Reporting Code and PRDE (although Equifax noted that the response to COVID-19 has exposed some issues with the operation of the system).
- 4.61. Following the independent review of the operation of the PRDE, ARCA noted that compliance and governance arrangements of the PRDE have been strengthened, including:⁸⁵
- signatories' attestations of compliance will now also include information supporting and evidencing these attestations
 - improving the PRDE Administrator Entity's compliance, investigation and monitoring capabilities for example, the ability to audit a signatories' evidence of compliance, and to proactively develop a rectification plan that addresses non-compliant conduct across multiple signatories arising from the same or similar issues, and
 - formalising an interpretation and guidance role for the RDEA, with the development of guidance requiring appropriate consultation with signatories and other interested stakeholders as appropriate.
- 4.62. Conversely, **Financial Rights** considers that that the PRDE Administrator Entity lacks effective consumer representation, and ARCA did not conduct a meaningful consultation process with consumer advocates following the independent review of the PRDE.⁸⁶
- 4.63. Similarly, **Legal Aid Queensland** submitted that re-authorisation of the PRDE should not occur until consumers have been resourced to respond to and have been consulted in relation to the proposed amendments to the PRDE, and the PRDE's governance requirements meet minimum standards under relevant regulatory guidance issued by ASIC and the ACCC.⁸⁷ In addition, Legal Aid Queensland submitted that the governance body of the PRDE (the RDEA), does not currently comprise all stakeholders, and needs to include effective representation from consumers and a genuinely independent chair person.⁸⁸
- 4.64. In response to the governance concerns raised above, **ARCA** submitted that it values the input and guidance offered by consumer advocate groups, and advises that it has, and will continue to, work closely with consumer groups about key matters such as the development and subsequent variations to the Credit Reporting Code, and the creation and maintenance of ARCA's consumer education website (CreditSmart).⁸⁹
- 4.65. Regarding the independent review of the PRDE, ARCA considers the type and depth of engagement with consumer advocate groups and financial counsellors was appropriate.
- 4.66. ARCA emphasised that the PRDE is not a consumer-facing document, but rather a set of business to business data exchange rules designed to support comprehensive credit reporting, and to ensure that credit reporting bodies and credit providers have trust and confidence in their credit reporting exchange.⁹⁰ ARCA submitted that in

⁸⁵ ARCA application for reauthorisation A1000521, 26 June 2020, p. 53.

⁸⁶ Joint oral submission from Financial Rights Legal Centre and Legal Aid Queensland, 15 July 2020, pp. 1, 3.

⁸⁷ Legal Aid Queensland submission, 27 July 2020, p. 2.

⁸⁸ Legal Aid Queensland submission, 27 July 2020, p. 3.

⁸⁹ ARCA submission, 28 August 2020, p. 3.

⁹⁰ ARCA submission, 28 August 2020, p. 3.

developing the PRDE, it considered the guidelines for industry codes issued by regulators and applied those principles in an appropriate manner for a code that deals with business to business obligations.⁹¹

- 4.67. ARCA believes that given the nature of the PRDE, consumer representation in its governance is unnecessary and inappropriate, for example, hearing disputes between industry participants. It notes that consumer related issues are covered by the Credit Reporting Code and are the responsibility of the Information Commissioner and other entities such as the Australian Financial Complaints Authority (AFCA).⁹²
- 4.68. Further, ARCA submitted that it already recognises the importance of independence in governance, with the PRDE Administrator chaired by an Independent Director. The current Independent Director was selected after an openly advertised and rigorous recruitment process.⁹³

Submissions – after the draft determination

- 4.69. In its draft determination, the ACCC sought interested party submissions about whether imposing a condition of authorisation to require ARCA to consult with core consumer advocacy groups in developing any future amendments to relevant provisions⁹⁴ of the PRDE was appropriate to facilitate a comprehensive review process and more fully realise the public benefits of the Proposed Conduct. The ACCC received submissions from Financial Rights, Legal Aid Queensland and ARCA on this issue.
- 4.70. Even though the PRDE is not a ‘consumer facing’ code, **Financial Rights** submits that its provisions affect consumer outcomes. As such, it considers that the PRDE Administrator Entity should have effective consumer representation to ensure key stakeholder representation. For example, data exchange rules about how repayment history information is recorded when a consumer is in financial hardship will have an enormous effect on the financial wellbeing of a consumer.⁹⁵
- 4.71. In addition, Financial Rights supports the ACCC imposing a condition of authorisation to require ARCA to consult with core consumer advocacy groups in developing any future amendments to relevant provisions of the PRDE. In particular, it submits:⁹⁶

This should be seen as a minimum standard. We agree this will help to facilitate any comprehensive review process and more fully realise the public benefits of the PRDE. We believe ACCC should go further to require that ARCA have an accountability mechanism to ensure any feedback is appropriately implemented or responded to.

- 4.72. **Legal Aid Queensland** submits that it does not support reauthorisation at this time, ‘until there is genuine consultation with consumer advocacy groups in relation to the PRDE.’⁹⁷
- 4.73. In response to the draft determination, **ARCA** maintains that it has an established record of working closely with core consumer groups in appropriate forums, including in its role as Credit Reporting Code developer. It submits that it has strong incentives

⁹¹ ARCA submission, 28 August 2020, p. 4.

⁹² ARCA submission, 28 August 2020, p. 4.

⁹³ ARCA submission, 28 August 2020, p. 4.

⁹⁴ The reciprocity, consistency and enforceability provisions of the PRDE.

⁹⁵ Financial Rights Legal Centre submission, 30 October 2020, p. 1.

⁹⁶ Financial Rights Legal Centre submission, 30 October 2020, p. 1.

⁹⁷ Legal Aid Queensland submission, 2 December 2020, p. 1.

to continue to work closely with these groups in its consumer education and guidance work, as well as on the Credit Reporting Code.⁹⁸

- 4.74. By way of example, ARCA highlighted that recent variations to the Credit Reporting Code involved extensive consultation. ARCA notes that Credit Reporting Code changes did not require any changes to the PRDE itself, which highlights that the appropriate forum for changes affecting consumers is the Credit Reporting Code, and that the PRDE is focused on business-to-business issues. While possible future changes to the Privacy Act and Credit Reporting Code (such as hardship reporting) will require changes to the PRDE, these changes will be consequential to the Credit Reporting Code changes giving effect to them (in the case of hardship reporting, this would involve adding this new type of credit reporting information to the data to be contributed under the PRDE, and the removal of the current temporary measure under the PRDE which exempts the reporting of repayment history information when a customer is in financial hardship).⁹⁹
- 4.75. Having said this, ARCA is mindful of the concerns expressed by consumer advocates to the ACCC about their level of consultation, and it commits to:

...ensure that consumer advocate groups are consulted in respect to any future PRDE amendments which are likely to lead to broader consumer impacts that are not otherwise dealt with under the existing credit reporting framework.

- 4.76. Given its strong record of consumer engagement, ongoing incentives, and its public commitment to consult with consumer groups about any future amendments to the PRDE, ARCA submits there is no basis for the ACCC to impose a consumer consultation condition of authorisation.

ACCC view

- 4.77. The ACCC considers that robust governance and compliance measures are critical to support the effective operation of the PRDE. The ACCC acknowledges the concerns expressed by Financial Rights and Legal Aid Queensland about the consultation process for the independent review of the PRDE, as well as a lack of consumer representation in its governance.
- 4.78. The ACCC acknowledges that the PRDE governs business-to-business data exchange, and a consumer representative may not be an appropriate person to hear a data compliance dispute between credit providers or credit reporting bodies. The ACCC also acknowledges that future consultation processes for variations to the Credit Reporting Code is an appropriate forum for dealing with consumer issues arising from comprehensive credit reporting, and particularly the anticipated introduction of financial hardship information. However, the purpose of the PRDE is to govern how consumers' comprehensive credit data is exchanged between credit providers and credit reporting bodies. Therefore, consumer advocates are relevant stakeholders in the operation of the PRDE and there is value in ARCA consulting with them about any future amendments.
- 4.79. The ACCC considers it would be appropriate for ARCA to continue to work closely with consumer advocates in appropriate forums, including its consumer education and guidance work and in any future reviews of the Credit Reporting Code. Acknowledging this history of engagement with consumer advocates and noting ARCA's public commitment to also consult in respect of future PRDE amendments that are likely to

⁹⁸ ARCA submission, 30 October 2020, p. 2.

⁹⁹ ARCA submission, 30 October 2020, p. 3, and Annexure B.

lead to broader consumer impacts that are not otherwise dealt with under the existing credit reporting framework, the ACCC does not consider it is necessary to require consultation as a condition of authorisation. The extent to which ARCA consults with the relevant consumer advocacy groups in developing any future amendments to the provisions of the PRDE will be taken into account by the ACCC in assessing any future application for re-authorisation.

- 4.80. Seeking the views of consumer groups earlier on in the process for future reviews of the PRDE, including the second independent review, would be beneficial to all parties. By doing so, ARCA could prevent similar concerns being raised about future operational reviews of the PRDE, by ensuring that the views of consumer groups are sought earlier on in the process.
- 4.81. In considering the current application for re-authorisation, the ACCC's role is to consider the future with the PRDE, compared to a future without the PRDE. Absent the governance and compliance provisions in the PRDE, credit providers would be unaware of obligations under a bilateral agreement between another credit provider and credit reporting body, and there would be an inability to enforce those obligations as an independent third party.
- 4.82. As discussed above, the ACCC considers that the principles of reciprocity and consistency are important to realising the benefits of comprehensive credit reporting and other specific public benefits mentioned. A robust compliance framework is essential to maintain confidence in the integrity of the system, and will more likely enable the benefits listed above to be realised.
- 4.83. Following the inaugural independent review of the PRDE, PWC recommended a number of improvements to strengthen governance and compliance arrangements. The ACCC considers that ARCA has taken genuine steps to strengthen its compliance and governance processes, as appropriate. Further, the ACCC notes the general satisfaction of signatories during the 2015 Authorisation period.
- 4.84. The ACCC considers that the enforcement mechanism provided for under the PRDE appears to be adequate to maintain the integrity of the PRDE and encourage signatories to comply with the reciprocity and consistency provisions, leading to the benefits outlined above.

ACCC conclusion on public benefits

- 4.85. The ACCC considers the PRDE has played a significant role in facilitating the realisation of the public benefits of comprehensive credit reporting. Since the original authorisation of elements of the PRDE in 2015, there has been significant migration to comprehensive credit reporting by credit providers in Australia, with 92 per cent of consumer accounts having comprehensive credit information supplied. The PRDE appears to have assisted the entry and expansion of smaller credit providers, and improved the consistency and quality of information to assist credit providers to make lending decisions.
- 4.86. In particular, the ACCC considers that the continuation of the reciprocity, consistency and enforceability provisions in the PRDE is likely to maintain and improve the comprehensive and consistent exchange of consumer credit data between signatories, resulting in public benefits from:
 - Improved lending and risk management decisions of signatory credit providers, and associated time and cost efficiencies, as a result of the availability of improved information to assess credit risk. This is likely to lead to consequential

benefits for borrowers, in terms of increased financial inclusion and less over-indebtedness.

- Promoting competition between smaller and larger credit providers, potentially lowering barriers to entry and expansion in the market, particularly for small credit providers. This may lead to improved availability and pricing of credit for consumers.
- Promoting competition between credit reporting bodies, through increased innovation in financial analytical services provided to credit providers.

4.87. The ACCC also considers there are public benefits for consumers in having more consistent and accurate credit information held by all credit reporting bodies. This will increase access to a consumer's credit profile and avoid the need to apply to all credit reporting bodies to compile a complete credit report.

Public detriments

4.88. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined public detriments as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹⁰⁰

4.89. Financial Rights and Legal Aid Queensland maintain that the PRDE results in public detriment due to its failure to provide:

- consistent reporting of repayment history information when customers have entered into hardship arrangements and
- explicit exceptions for disclosing default information where there has been a negotiated settlement.

4.90. Similarly, the APF submits that PRDE has failed to deliver accurate and consistent credit reporting, particularly the reporting of repayment history information during the COVID-19 pandemic, and a lack of reporting of default information. This results in public detriments if consumers are receiving loans based on inaccurate information.

4.91. In support of its current application for re-authorisation, ARCA submits there are minimal, if any, public detriments likely to result from the reciprocity, consistency and enforceability provisions of the PRDE. In particular, it considers that the issues raised in 2015 have not led to public detriments in the operation of the PRDE. It considers that no part of the amendments to the PRDE would give rise to any public detriments not previously considered by the ACCC.¹⁰¹

4.92. Further, ARCA submits that the ongoing financial hardship and default information concerns being raised by interested parties are broader policy issues under comprehensive credit reporting, that are not appropriate (or capable) of being addressed via amendments to the PRDE.¹⁰²

¹⁰⁰ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

¹⁰¹ ARCA application for reauthorisation A1000521, 26 June 2020, p. 58.

¹⁰² ARCA submission, 28 August 2020, p. 4; ARCA submission 1 December 2020, p. 3.

4.93. The ACCC's assessment of the likely public detriments from the Proposed Conduct follows.

Costs to signatories from the relevant provisions of the PRDE

4.94. In the 2015 Authorisation, the ACCC considered that there were potential public detriments arising from the Proposed Conduct (most notably, from complying with the consistency provisions) in terms of the direct costs payable by signatories to the PRDE in annual fees and implementation costs.

4.95. The ACCC noted in its 2015 Authorisation, that the actual costs of implementing the PRDE will be an important consideration for the ACCC in any application for re-authorisation of the PRDE.

4.96. The ACCC notes that no interested parties have raised public detriment concerns about the costs of implementing the PRDE over the period of the 2015 Authorisation during the current consultation process for ARCA's re-authorisation application.

Submissions

4.97. **ARCA** submits that the costs of the PRDE have either been the same, or less, than anticipated in its 2015 application – namely, implementation costs, PRDE Administrator Entity fees and enforcement/governance costs.¹⁰³

4.98. In particular, ARCA advises that the current signatory fees are either at a similar level or significantly lower (especially for smaller credit providers) than those suggested in ARCA's 2015 application for the PRDE. Points of difference between the fees put forward in ARCA's 2015 application to the fees actually charged to signatories are:¹⁰⁴

- In 2015, ARCA expected that the largest credit providers' annual signatory fees would be between \$15 000 and \$35 000 and most other credit provider fees would range from \$10,000 to \$20,000. The fees for large credit providers (of which there are 6) are consistent with ARCA's 2015 expectations (albeit at the upper end of \$35 000). However, all but the largest credit providers' annual fees are lower than envisaged (namely, below \$10 000).

4.99. ARCA advises that the cost of the consistency provisions, namely the supply of data to multiple credit reporting bodies, has been slightly more significant than the incremental cost anticipated in the 2015 Authorisation, but this is largely due to underlying data validation or data quality issues for credit reporting bodies and credit providers, and would arise with or without the PRDE.

4.100. For example, ARCA reports that certain credit providers have needed to improve the quality of their data upfront, with 'address data' often cited as creating issues. It may be that the credit provider has stored its address in the wrong order (street number, for instance, coming after street name) or repeated text as part of the address field (for example, suburb entered multiple times). To successfully load the data, the credit reporting body must identify these errors in the unformatted string and process the address correctly. Where this process is repeated with two other credit reporting bodies (each of which has its own software), different results may arise and can lead to inconsistencies in validation. Further, some credit reporting bodies may be able to load an address which has errors, but others may not.¹⁰⁵

¹⁰³ ARCA application for reauthorisation A1000521, 26 June 2020, p. 59.

¹⁰⁴ ARCA application for reauthorisation A1000521, 26 June 2020, Appendix E, p. 10.

¹⁰⁵ ARCA application for reauthorisation A1000521, 26 June 2020, p. 60.

4.101. Regarding the costs of the consistency provisions of the PRDE, the ACCC notes the following statements of signatories provided to ARCA prior to lodging the current application for reauthorisation:

- *Citibank* – the ‘process and cost of supplying all three credit reporting bodies is not all that difficult. This investment was made as part of a longer term decision.’¹⁰⁶
- *Equifax* - for the smaller credit providers there’s an ongoing challenge for them to invest to continue to be part of the credit ecosystem. It’s not an issue around the PRDE per se, its due to their size and general challenge they face to fund new investments and to upgrade their infrastructure over time.¹⁰⁷
- *Latitude* - while there is minimal operational overheads associated with supplying data to all three credit reporting bodies, it does create incremental operational process as part of the data upload and maintenance process at the credit reporting bodies. This is because of the differences in matching logic and data validation.¹⁰⁸

ACCC view

4.102. Given the experiences of PRDE signatories under the 2015 Authorisation outlined above, it would appear that the PRDE has not given rise to excessive additional costs for signatories over what they would have incurred moving to comprehensive credit reporting without the PRDE.

4.103. Consistent, with its 2015 Authorisation, the ACCC considers that credit providers and credit reporting bodies have incurred, and will continue to incur costs, in migrating to a comprehensive credit reporting system which will occur regardless of their obligations under the PRDE.

4.104. In addition, the incremental costs in sharing data across multiple credit reporting bodies, appears to be relatively small in the context of the investment required for a credit provider to share comprehensive data and the benefits that credit providers derive from having arrangements with multiple credit reporting bodies. The ACCC maintains that credit providers will continue to make commercial decisions whether or not to provide data and consume data from multiple credit reporting bodies, based on their estimates of the associated costs and benefits.

4.105. Therefore the ACCC considers there is likely to be minimal public detriments arising from the PRDE in terms of the proportion of the direct costs payable by signatories to the PRDE in annual fees, costs of implementing the relevant clauses of the PRDE and any additional costs incurred in resolving disputes under the PRDE.

Financial hardship information and reporting repayment history information

4.106. Consumers who are experiencing ‘financial hardship’ (e.g. due to illness, loss of employment etc.) can request a hardship variation with respect to their loan contract with a credit provider. This could take the form of a reduction in the regular payments for a period of time or a short term pause in payments altogether.

¹⁰⁶ Statement of CLN Murthy, Country Credit Risk Director of Citigroup Pty Ltd (Citi), 24 June 2020, p. 1 (Appendix F to ARCA’s application for reauthorisation A1000521, 26 June 2020).

¹⁰⁷ Statement of Lisa Davis, Chief Operating Officer, Equifax, 24 June 2020, p. 1 (Appendix F to ARCA’s application for reauthorisation A1000521, 26 June 2020).

¹⁰⁸ Statement of Tim Brinkler, GM Credit Risk of Latitude Group, 25 June 2020, p. 2 (Appendix F to ARCA’s application for reauthorisation A1000521, 26 June 2020).

4.107. As outlined above (from paragraph 2.49), reporting financial hardship arrangements is currently not permitted in comprehensive credit information under the Privacy Act. The 2019 Bill proposed amendments to the Privacy Act to include financial hardship information in comprehensive credit reporting. Under the 2019 Bill, it was proposed that a 'hardship flag' be included in credit reports, which would qualify the repayment history information against the terms of any agreed temporary or permanent financial hardship arrangement with a credit provider.

Submissions

4.108. **Financial Rights** and **Legal Aid Queensland** consider the PRDE's failure to promote consistent reporting of repayment history information for consumers who have entered into approved financial hardship arrangements results in public detriment, as consumers' true financial positions are not being accurately reported in credit reports. Financial Rights submits that when consumers contact their credit provider to seek a financial hardship arrangement, they rightly expect this to be fairly reported in the credit reports, and as this doesn't currently occur, it may act as a disincentive for consumers to seek the financial assistance they require.

4.109. In the absence of a legislative solution (which appears uncertain), Financial Rights and Legal Aid Queensland submit that the PRDE must, at a minimum be amended to ensure that credit providers consistently report repayment history information to credit reporting bodies when financial hardship arrangements have been agreed.

4.110. In particular, where financial hardship arrangements have been entered into, Financial Rights submits that repayment history information provided to credit reporting bodies should show that a consumer's repayments are up to date if there is an agreed financial hardship arrangement in place with their credit provider.

4.111. Legal Aid Queensland submits that the PRDE should be amended to ensure that signatories are uniformly reporting repayment history information that accurately reflects the hardship variation entered. For example:

- if a hardship arrangement allows a debtor a moratorium or variation in payments for a certain period, repayment history information should reflect whether the debtor is making payments in accordance with the arrangement, not the original contract, and
- credit providers should carefully explain (and confirm in writing) whether a variation will have any impact on a debtors credit file.¹⁰⁹

4.112. Further, Legal Aid Queensland submits that the way repayment history information is reported should avoid operating in a way that discourages debtors from seeking a hardship variation and that 'hardship arrangement' should also be defined broadly in the PRDE, including any kind of agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not its enforceable by legal proceedings.

4.113. The **APF** also considers that the PRDE has failed to ensure consistent reporting of financial hardship arrangements, and this has been particularly noticeable during the COVID-19 pandemic. In particular, APF submits that as of June 2020 there were 500 000 loan deferrals, and three different approaches by credit providers in reporting them – that is, some have stopped reporting during the deferral period, some have reported the deferrals as being paid, and others have reported the missed

¹⁰⁹ Legal Aid Queensland submission, 27 July 2020, p. 5.

repayments.¹¹⁰ The APF submits that the PRDE requires significant amendment given the experience during the pandemic and proposed reforms to responsible lending laws.¹¹¹

- 4.114. In response, **ARCA** agrees that reporting repayment history information for accounts that are covered by hardship arrangements is an important issue that needs to be addressed. However, ARCA advises that submissions for the PRDE to be amended to provide for financial hardship information reporting cannot be practically (or lawfully) implemented.¹¹²
- 4.115. In particular, ARCA submits that the PRDE must operate within the framework of the Privacy Act, the Privacy Regulations and Credit Reporting Code. Legislative reforms, enabling ‘hardship flags’ were set out in the 2019 Bill that stalled in the Senate. Consistency in repayment history information reporting for accounts in hardship can only be achieved as part of proposed reforms to the legislative framework (and subsequently the Credit Reporting Code), not through amending the PRDE. That is, the Privacy Act needs to be amended to introduce financial hardship information as a new category of comprehensive credit information.
- 4.116. ARCA notes that, to address current practices and as an ‘interim solution’ (agreed to by the then Treasurer, the Hon Scott Morrison and the Australian Banking Association), the PRDE provides a ‘repayment history information reporting exception’ for customers in hardship, which results in ‘non-reporting’ of these accounts.¹¹³
- 4.117. Regarding the COVID-19 pandemic, ARCA submits that the disruption it caused across the credit industry is not a matter for resolution through the PRDE. Having said this, ARCA recognises that COVID-19 and the use of payment deferrals by many lenders to manage its sudden economic impact has had flow-on effects for the credit reporting system, and as such, it has been pro-active in its communications on this issue – for example, the Australian Banking Association (ABA) and ARCA both issued press releases on April 6 2020 to provide clarity around how COVID-19 payment deferrals for consumers would be reflected in the credit reporting system. These releases were picked up by mainstream media and consumer advocate groups acknowledged the banks’ response.¹¹⁴ ARCA also advises that it provided extensive consumer education material through its consumer education website, Credit Smart.¹¹⁵
- 4.118. Further, ARCA disagrees that the response to COVID-19 is indicative of widespread inconsistency and continuing inaccuracy in credit reporting under the PRDE. Regarding the reporting of repayment history information for COVID-19 deferrals, ARCA submits that any differences arise because of the differences in the nature of relief provided by lenders. Some lenders may have provided a previously up-to-date customer with a deferral, which means the next payment obligation does not fall due until the end of the deferral period and resumption of ordinary repayments. Other lenders may have opted to continue to have payment obligations fall due and owing but to suppress the reporting of repayment history because of an agreement not to pursue the consumer for the unpaid amounts (consistent with the ‘interim measure’

¹¹⁰ Australian Privacy Fund submission, 30 October 2020, p. 3.

¹¹¹ Australian Privacy Fund submission, 30 October 2020, p. 4.

¹¹² ARCA submission, 28 August 2020, pp. 11, 12.

¹¹³ ARCA submission, 28 August 2020, p. 12.

¹¹⁴ ARCA's submission, 1 December 2020, p. 2: See <https://www.news.com.au/finance/business/banking/what-deferring-mortgage-repayments-means-for-your-credit-score/news-story/095f38c216784d5aacf1a208a3d8855f> See also <https://financialrights.org.au/media-release-no-impact-on-credit-files-during-covid-19-pandemic-a-welcome-announcement-by-banks-say-consumer-advocacy-groups/>.

¹¹⁵ ARCA submission, 1 December 2020, p. 2: See <https://www.creditsmart.org.au/covid-19-what-does-it-mean-for-my-finances-and-my-credit-health/covid-19-payment-pause-impact-on-credit-reports/>.

under the PRDE which permits 'non-reporting' of repayment history information for customers in hardship).

ACCC view

- 4.119. Consistent with its conclusions in the 2015 Authorisation, the ACCC agrees that consumers should not be unduly discouraged from applying for financial hardship arrangements. It is also important that any such arrangements are accurately recorded in repayment history information in order for credit providers to properly assess the credit risk of a consumer and avoid over indebtedness (this is relevant to the public benefits of comprehensive credit reporting). Given the proposed reforms to responsible lending laws, the ACCC considers a robust comprehensive credit reporting system in Australia will become more important.
- 4.120. However, the ACCC notes that the much needed financial hardship reporting reforms remain outside the scope of the PRDE. That is, what is able to be reported is set out in the Privacy Act and the Credit Reporting Code. The ACCC accepts ARCA's submission that until the proposed changes to that Act and Code are made, amending the PRDE to require reporting of financial hardship arrangements would likely put it in breach of the Privacy Act. As such, it can only occur via legislative reform to the Privacy Act, and subsequent revisions to the Credit Reporting Code to give practical application to any such reforms. The ACCC also notes that had all of these reform processes been completed prior to the COVID-19 pandemic, the credit industry and consumers would have benefitted from increased clarity around reporting repayment history information under various financial hardship arrangements entered into.
- 4.121. While a legislative amendment to ensure consistency in financial hardship reporting is yet to be achieved, the ACCC acknowledges the significant volume of work undertaken since the 2015 Authorisation. The ACCC expects that ARCA will work closely with relevant stakeholders during any future consultation processes regarding financial hardship reporting amendments to the Credit Reporting Code.

Default reporting and exceptions to listing default information

- 4.122. The Privacy Act and the Credit Reporting Code govern the use and disclosure of credit information, including what information constitutes default information, and the requirements to be met before default information can be disclosed. In comparison, ARCA submits that the role of the PRDE is to mandate supply of 'available default information' by credit provider signatories, and require that this information be disclosed within a 'reasonable timeframe' of an account becoming overdue.¹¹⁶

Submissions

- 4.123. **Financial Rights** submits that the PRDE should be amended to allow an exception for listing defaults in repayment history information where there has been a negotiated settlement. Absent such an amendment, the efficacy and fairness of the PRDE is reduced, which is a public detriment.
- 4.124. Financial Rights submits, for example, if an ombudsman decides that a disputed default listed against a consumer should not be listed in a credit report, the PRDE does not currently allow credit providers not to list the default. Financial Rights submits this causes widespread non-compliance around defaults under the PRDE, and has a significant impact on vulnerable consumers that have been successful in having a

¹¹⁶ ARCA application for reauthorisation A1000521, 26 June 2020, pp. 63 – 64.

disputed default listing overturned by Australian Financial Complaints Authority (**AFCA**) or an ombudsman.¹¹⁷

4.125. **Legal Aid Queensland** submits that the PRDE should be amended to expressly provide for exceptions for listing default information by credit providers in certain circumstances, for example:¹¹⁸

- where there is an ongoing dispute between the parties that has not been resolved
- the credit provider has entered into a binding settlement agreement with regards to the default listing, or
- the credit provider is acting in accordance with a recommendation or determination of the AFCA.

4.126. The **APF** submits that the PRDE has failed to ensure accuracy in how default information is reported. In particular, the APF points to statements made by Equifax in ARCA's application for reauthorisation that 'defaults are now hardly ever being reported.' Failure to report default information is a clear public detriment, as consumers may receive loans based on inaccurate information. As such, the APF submitted that ARCA had failed to provide sufficient information about this issue to the ACCC.

4.127. In response to the APF's concerns, **ARCA** notes that the Equifax statement in its original application for reauthorisation identified that the PRDE had led to an improvement in default reporting, although gaps still remained.¹¹⁹ ARCA submits that these gaps were acknowledged in its application, with the example provided of the development of mortgage default guidelines as part of the PRDE framework, in order to drive greater consistency in mortgage default reporting.¹²⁰

4.128. Contrary to APF's submission, ARCA submits that default information is, in fact, regularly reported by PRDE signatories and many other credit providers. Further, the PRDE obligations (which require all PRDE signatories to contribute all available default information for their consumer credit accounts within a reasonable timeframe of an account falling due) are directed to, and play a critical role in, promoting and ensuring that default information continues to be reported.¹²¹

4.129. More generally, ARCA submits that there is no ongoing public detriment resulting from the listing of defaults under the PRDE. As such, it considers that the PRDE should not be amended with regard to listing default information, as the disclosure and correction of default information is a matter for the operation of the Privacy Act and Credit Reporting Code, and not the PRDE.¹²² ARCA submits that there is nothing in the PRDE which requires a credit provider to disclose default information in circumstances in which a dispute is on foot, noting that the PRDE permits a credit provider to report in a 'reasonable timeframe.'¹²³

¹¹⁷ Joint oral submission by Financial Rights Legal Centre and Legal Aid Queensland, 15 July 2020, p. 2.

¹¹⁸ Legal Aid Queensland, 27 July 2020, p. 6.

¹¹⁹ ARCA application for reauthorisation AA1000521, Appendix F, Statement of Lisa Davis, paragraphs 15 and 16.

¹²⁰ ARCA application for reauthorisation AA1000521, Appendix D, paragraphs 93 and 194 (section 12).

¹²¹ ARCA submission, 1 December 2020, p. 4.

¹²² ARCA submission, 28 August 2020, p. 13.

¹²³ ARCA submission, 28 August 2020, p. 14.

4.130. Further, ARCA advises that where a customer has made a hardship request or entered into a negotiated payment arrangement, the Credit Reporting Code explicitly prohibits a credit provider disclosing default information.¹²⁴ ARCA also advises that the Privacy Act obliges a credit provider to correct default information where credit information or credit eligibility is inaccurate, out-of-date, incomplete, irrelevant or misleading.¹²⁵

4.131. Finally, ARCA submits that the intersection of the requirements of the PRDE with the requirements of the Privacy Act and Credit Reporting Code is emphasised in the PRDE which states:¹²⁶

Nothing in the PRDE obliges a CRB [credit reporting body] or CP [credit provider] to do or refrain from doing anything, where that would breach Australian law.

ACCC view

4.132. The ACCC notes ARCA's advice that default information continues to be regularly reported by signatories to the PRDE, which helps to ensure credit providers receive accurate information upon which to base their lending decisions. The ACCC understands that the Privacy Act and Credit Reporting Code govern what information constitutes default information, and the requirements to be met before default information can be disclosed. Given these obligations on credit providers are governed by this broader legislative framework, and the PRDE does not appear to inhibit signatories complying with their obligations, the ACCC does not consider that listing default information is a likely public detriment generated by the PRDE.

ACCC conclusion on public detriment

4.133. The ACCC notes that over the period of the 2015 Authorisation, there has been no evidence received that the PRDE resulted in excessive additional compliance and costs for signatories.

4.134. While the incremental costs of supplying comprehensive credit data to multiple credit reporting bodies may have been slightly higher than anticipated under the 2015 Authorisation, the ACCC understands that these costs have been largely driven by underlying data quality and verification problems that would have arisen in moving to comprehensive credit reporting with or without the PRDE.

4.135. The ACCC considers that there are some minimal public detriments likely to arise from the costs of compliance with the relevant provisions of the PRDE, most notably as a result of sharing data with multiple credit reporting bodies under the consistency provisions. However, these costs appear to be relatively small and offset by the cost savings and other benefits of the Proposed Conduct.

4.136. The ACCC notes that ongoing concerns regarding default listing and financial hardship reporting under the PRDE continue to sit outside the scope of the application for reauthorisation and are not public detriments likely to result from the PRDE. The 2019 Bill is likely to further address these industry issues.

¹²⁴ ARCA submission, 28 August 2020, p. 14.

¹²⁵ ARCA submission, 28 August 2020, p. 14.

¹²⁶ ARCA submission, 28 August 2020, p. 15.

Balance of public benefit and detriment

4.137. For the reasons outlined in this determination, based on the information before it, the ACCC is satisfied that the Proposed Conduct is likely to result in significant public benefits, which would outweigh the likely minimal detriment to the public from the Proposed Conduct.

4.138. Accordingly, the ACCC has decided to grant authorisation, allowing the ongoing operation of specific provisions of the PRDE.

Length of authorisation

4.139. The Act allows the ACCC to grant authorisation for a limited period of time.¹²⁷ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

Submissions

4.140. In this instance, **ARCA** seeks authorisation for a further six years. ARCA submits that authorisation of the Proposed Conduct for a further six years will enable time for the next independent review to be completed (scheduled in 2024),¹²⁸ as well as subsequent stakeholder consultation and any further required amendments being made to the PRDE, ahead of any future application for re-authorisation to the ACCC.¹²⁹

4.141. **Financial Rights** does not support a six year authorisation, as requested by ARCA. Because consumers have not been meaningfully consulted by ARCA or the independent reviewer about the operation of the PRDE, it submits that the ACCC's public authorisation consultation process is the only opportunity that consumer organisations get to comment. Instead, Financial Rights considers a maximum five year period of authorisation is appropriate.¹³⁰

4.142. Similarly, **Legal Aid Queensland** does not support re-authorisation for 6 years. It considers this period is too long because the ACCC's re-authorisation process is the only formal opportunity for consumers to voice their concerns regarding the impact of the PRDE on them. In addition, given the pending legislative changes to comprehensive credit reporting, Legal Aid Queensland considers legislative changes are likely to affect the operation of the PRDE.¹³¹

4.143. The **APF** also submits that any reauthorisation should be limited to two years.¹³² It submits that granting authorisation for a shorter timeframe will help to drive reforms to the PRDE to ensure it delivers accuracy and consistency in credit reporting. It considers this is more critical now due to the impact of the COVID-19 pandemic and Government's proposed reforms to responsible lending laws.¹³³

¹²⁷ Subsection 91(1).

¹²⁸ Paragraph 109 of the PRDE requires an independent review of the PRDE after it has been in operation for three years (the inaugural independent review was undertaken in 2019) and thereafter at least every 5 years.

¹²⁹ ARCA submission 28 August 2020, p. 15.

¹³⁰ Joint submission from Financial Rights Legal Centre and Legal Aid Queensland, 15 July 2020, p. 3.

¹³¹ Legal Aid Queensland submission, 27 July 2020, p. 6.

¹³² Australian Privacy Foundation submission, 30 October 2020, p. 3.

¹³³ Australian Privacy Foundation submission, 30 October 2020, p. 3.

- 4.144. Legal Aid Queensland supports the APF's submission that, should the ACCC grant reauthorisation, it should be for no longer than two years.¹³⁴
- 4.145. In response, **ARCA** submits that a six year authorisation would be preferable to allow sufficient time for proper evaluation of the operation of the PRDE and consultation, following the next independent review.
- 4.146. ARCA considers that a two-year period of authorisation, as proposed by certain interested parties, will preclude the ability of the PRDE to operate effectively and reduce the public benefits likely to result – given the uncertainty such a short timeframe introduces to the ongoing operation of the PRDE. ARCA considers such a short period could be a disincentive for participation in the PRDE framework, given signatories have less assurance of the framework's continued operation. This is especially important given the long-term nature of investments PRDE signatories have made in building and continuing to upgrade the capability to supply and consume credit reporting information. Such long-term investments need to be matched by a significant period of authorisation such as the six years sought by ARCA.¹³⁵
- 4.147. Further, ARCA submits that when the pending legislative changes are enacted (for example, enabling the reporting of financial hardship information in comprehensive credit reporting), the consequential amendments to the PRDE will be minor. Rather, the changes to the Credit Reporting Code will be critical, and any future variations to the Credit Reporting Code, including hardship reporting, will entail significant consultation with all stakeholders, including with consumer advocates.

ACCC view

- 4.148. The ACCC notes interested party submissions that any reauthorisation should be limited to two years, to help drive reforms to the PRDE following the COVID-19 pandemic and given proposed reforms to responsible lending obligations. However, the ACCC considers it has not been demonstrated that the COVID-19 pandemic highlighted the need for reform to the specific provisions of the PRDE for which reauthorisation is sought. Indeed, important reforms to allow financial hardship information to be reported within Australia's comprehensive credit reporting system (which has been highlighted by the pandemic) is proposed to occur outside the PRDE itself – involving amendments to the Privacy Act in the first instance. As such, the ACCC does not consider it necessary to limit the authorisation period to two years and considers that doing so may reduce incentives for parties to participate in the PRDE framework and impose unnecessary costs on the applicants in having to potentially seek reauthorisation again in 18 months time.
- 4.149. The ACCC accepts that it would be appropriate to undertake the next independent review of the operation of the PRDE (in 2024) before any future application for re-authorisation is lodged.
- 4.150. The ACCC considers that a six year authorisation period would provide sufficient time for ARCA to properly consider the operation of the PRDE, undertake an independent review of its operation, prepare any consequential changes to the PRDE and make any future application for re-authorisation to the ACCC.
- 4.151. Importantly, the ACCC considers that impending legislative reform is not impacted by the period of authorisation. Indeed, the 2019 Bill proposing mandatory comprehensive credit reporting recognised the existing industry framework provided by the PRDE. As

¹³⁴ Legal Aid Queensland submission, 2 December 2020, p. 1.

¹³⁵ ARCA submission, 1 December 2020, p. 5.

part of the legislative reform process, the ACCC expects there will be an opportunity for all interested parties to influence how financial hardship reporting will be practically implemented under the Consumer Credit Code via future ARCA consultation processes.

- 4.152. Any subsequent changes to the PRDE might not require ACCC authorisation. Should there be a need for consequential amendments to provisions of the PRDE that are covered by this authorisation, ARCA can seek to vary its authorisation at any time.
- 4.153. Further, the ACCC can review the authorisation during the period of authorisation if it considers there has been a material change of circumstances.

5. Determination

The application

- 5.1. On 26 June 2020 the Australian Retail Credit Association Ltd (ARCA) lodged an application to revoke authorisation A91482 and substitute authorisation AA1000521 for the one revoked (re-authorisation) with the Australian Competition and Consumer Commission (the ACCC) on behalf of itself and current and future signatories of the Principles of Reciprocity and Data Exchange (**PRDE**) to make and give effect to certain provisions of the PRDE that fall into the following categories:
- a. **Reciprocity provisions:** credit providers can only receive consumer credit information from credit reporting bodies up to the same level at which they are willing to supply information – specifically paragraphs 4, 8, 10, 14, 34, 35, 36, 38, 39 and, by way of anti-avoidance, 11, 12 and 44
 - b. **Consistency provisions:** credit providers must supply the same consumer credit information to all credit reporting bodies with whom they have a services agreement – specifically paragraphs 9, 15 and 16, and
 - c. **Enforceability provisions:** procedures and sanctions to address non-compliance with the PRDE – specifically, paragraph 89,

(the **Proposed Conduct**).

The authorisation test

- 5.2. Under subsections 90(7) and 90(8) of the Act as they apply to this application for authorisation,¹³⁶ the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct would result or is likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would result or be likely to result from the conduct.
- 5.3. For the reasons outlined in this determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.4. Accordingly, the ACCC proposes to grant re-authorisation as described below.

¹³⁶ See section 91C(7) of the Act.

Conduct authorised

- 5.5. The ACCC has decided to revoke authorisation A91482 and grant authorisation A1000521 in substitution. Authorisation A1000521 is granted to enable ARCA and current and future signatories of the PRDE to make and give effect to certain provisions of the PRDE that fall into the following categories:¹³⁷
- a. **Reciprocity provisions:** credit providers can only receive consumer credit information from credit reporting bodies up to the same level at which they are willing to supply information – specifically paragraphs 4, 8, 10, 14, 34, 35, 36, 38, 39 and, by way of anti-avoidance, 11, 12 and 44
 - b. **Consistency provisions:** credit providers must supply the same consumer credit information to all credit reporting bodies with whom they have a services agreement – specifically paragraphs 9, 15 and 16, and
 - c. **Enforceability provisions:** procedures and sanctions to address non-compliance with the PRDE – specifically, paragraph 89,
(the **Proposed Conduct**).
- 5.6. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act.
- 5.7. The authorisation is in respect of the Proposed Conduct as it stands at the time authorisation is granted (and provided at Attachment A to this determination). Any changes to the relevant provisions of the PRDE during the term of the proposed authorisation would not be covered by the authorisation.
- 5.8. The ACCC grants authorisation AA1000521 until 31 December 2026.
- 5.9. This determination is made on 15 December 2020.

Date authorisation comes into effect

- 5.10. This determination is made on 15 December 2020. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 6 January 2021.

Interim authorisation

- 5.11. The 2015 Authorisation (A91482), which currently provides legal protection for specific provisions of the PRDE, is due to expire on 25 December 2020.
- 5.12. Given the ACCC's determination will not come into force until after the expiry of the 2015 Authorisation, the ACCC has decided to suspend the operation of authorisation A91482 and grant interim authorisation in substitution. Interim authorisation is granted to enable ARCA and current and future signatories of the PRDE to continue to make and give effect to certain reciprocity, consistency and enforceability provisions of the PRDE on the same terms as the 2015 Authorisation.
- 5.13. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

¹³⁷ ARCA application for reauthorisation A1000521, 26 June 2020, p. 14.



PRINCIPLES of RECIPROCITY & DATA EXCHANGE

PRINCIPLES OF RECIPROCITY AND DATA EXCHANGE (PRDE)

Version 20 (As at [Date])

INTRODUCTION

The PRDE is a set of agreed principles that credit reporting bodies (**CRBs**) and credit providers (**CPs**) agree to abide by to ensure those **CRBs** and **CPs** have trust and confidence in their credit reporting exchange. The PRDE is not intended to be relied upon by non-signatories, or other stakeholders, in any way or in any forum.

The intention of the PRDE is to create a clear standard for the management, treatment and acceptance of credit related information amongst **signatories**. The PRDE only applies to consumer **credit information** and **credit reporting information**.

Adherence to the **ACRDS** is a fundamental part of the PRDE for **signatories**, as is adherence to the principles of reciprocity as set out in this PRDE.

For the avoidance of doubt, a requirement on a **CP** to **contribute credit information** only applies to the available information held by that **CP**. If the **CP** does not hold the **credit information**, this does not prevent it from participating in this PRDE.

The PRDE also facilitates the creation of three **Tier Levels** in the PRDE credit reporting exchange, and allows **CPs** to voluntarily select their own **Tier Level** of participation.

The PRDE applies to **CRBs** and **CPs** that choose to become **signatories** to this PRDE.

It comes into effect on the **Commencement Date**.

A **CRB** or **CP** is bound to comply with the PRDE upon becoming a **Signatory**.

Nothing in the PRDE obliges a **CRB** or **CP** to do or refrain from doing anything, where that would breach Australian law.

PRINCIPLE 1

Principle 1: The obligations under this PRDE shall be binding and enforceable upon PRDE signatories. PRDE signatories agree to execute the Deed Poll to make this PRDE and the authority of the PRDE Administrator Entity (and through it, the Industry Determination Group and Eminent Person) effective and binding.

Effect of the PRDE

1. The PRDE are a set of agreed principles that are governed by the **PRDE Administrator Entity**. The principles within the PRDE are given effect by each **signatory** executing the **Deed Poll** on the **Signing Date** and covenanting to comply with the requirements of the PRDE and therefore to be bound by the obligations contained within this PRDE. Upon a **CP** or **CRB** executing the **Deed Poll** and nominating an **Effective Date**, the CP or CRB are deemed to be **Signatories** from that **Signing Date** and are bound from the **Effective Date** to comply with any request made by the **PRDE Administrator Entity** pursuant to this PRDE, any recommendation issued by the **Industry Determination Group** (which is accepted by the parties) pursuant to this PRDE and any decision issued by the **Eminent Person** pursuant to this PRDE.

Promises by CRBs

2. Our **services agreement** with a **CP** will oblige both us and the **CP** to execute and give effect to the **Deed Poll**.
3. We will allow a **CP** to choose its supply **Tier Level** consistent with the requirements of this PRDE.
4. We will only **supply credit reporting information** to a **CP** to the extent permitted under this PRDE and if we have a reasonable basis for believing that the **CP** is complying with its obligations under this PRDE to **contribute credit information** (subject to the exceptions contained in paragraphs 29 to 33A or transitional provisions contained in paragraphs 53 to 64 that apply to that **CP**).
5. On request, we will inform a **CP**, with which we have a **services agreement**, and the **PRDE Administrator Entity**, of the **Tier Level** of a **CP** that **contributes credit information** to us.
6. Our **services agreement** with a **CP** will not prevent the **CP** from **contributing credit information** to another **CRB**.
7. We will pay such costs identified by the **PRDE Administrator Entity** as required to administer this **PRDE**, in the manner required by the **PRDE Administrator Entity**.

Promises by CPs

8. We will only obtain the **supply of credit reporting information** from a **CRB** that is a **signatory** to this PRDE. Our **services agreement** will oblige both us and the **CRB** to execute and give effect to the **Deed Poll**.
9. We will nominate a single **Tier Level** at which we will obtain **supply of credit information** (whether from one or more **CRBs**). We will disclose our chosen **Tier Level** to the **PRDE Administrator Entity** so that it can make this information available to **CRBs** and **CPs**.

10. We will **contribute credit information** to the extent required by this PRDE to a **CRB** from which we obtain the **supply of credit reporting information**. Our **contribution of credit information** will comply with **ACRDS** including its timeframe requirements and will be at the chosen **Tier Level** for **supply**.
11. If we are supplied by a **CRB** with **partial information** or **comprehensive information**, we will not **on-supply** to another CP (whether a **signatory** or non-signatory) any **partial information** or **comprehensive information** that the other CP (whether a **signatory** or non-signatory) is not able to obtain directly from the **CRB**, because the other CP either:
 - a) is not a **signatory**; or
 - b) does not **contribute** any **credit information** to the **CRB**; or
 - c) has chosen to be **supplied** with **credit reporting information** at a lower **Tier Level** than that we have chosen.
12. The provisions in paragraph 11 above do not, however, apply:
 - a) where the **on-supply** is for the purposes of another CP (whether a **signatory** or non-signatory) assessing whether to acquire our consumer credit accounts; or
 - b) where the **on-supply** is to a **Securitisation Entity** in accordance with paragraphs 41, 42 and 44 below; or
 - c) where the **on-supply** is to a third party in accordance with paragraphs 46 and 46A below.
13. We will pay such costs identified by the **PRDE Administrator Entity** as required to administer this **PRDE**, in the manner required by the **PRDE Administrator Entity**.

Tier Levels

14. A **CP** and its **Designated Entity** (if applicable) is able to choose its **Tier Level** for obtaining **supply of credit reporting information** from **CRBs** (although the **CP's** and its **Designated Entity's** choice may be restricted by the **Privacy Act** requirement that **repayment history information** may only be supplied to a **CP** that is an Australian credit licensee).
15. The **CP's** and its **Designated Entity's** (if applicable) choice of **Tier Level** means that it must **contribute credit information** at that chosen **Tier Level** to all **CRBs** that it has a **services agreement** with (see paragraph 30 for the **contribution requirements** for each **Tier Level**) to the extent the **CRB** is able to receive **supply of credit information**. This does not, however, mean that the **CP** and its **Designated Entity**, when making an **access request** to one **CRB**, must also make the same **access request** to all other **CRBs** with which it has a **services agreement**.
16. The **CP** and its **Designated Entity** (if applicable) must **contribute credit information** to all those **CRBs** with which it has a **services agreement** consistently across all of their consumer credit accounts for all its credit portfolios subject only to:
 - a) the materiality and other exceptions set out in paragraphs 29 to 33A; and
 - b) the transitional provisions in Principle 4; and
 - c) any recommendation by the **Industry Determination Group** or decision by the **Eminent Person**.

Contribution of Negative information

17. A **CRB** may **supply negative information** to any person or organisation as **permitted** by the **Privacy Act**. It is not necessary for that person or organisation to be a **signatory** to this PRDE to **receive** supply of **negative information**.
18. All **negative information** contributed by a **CP** can be supplied to a person or organisation as permitted by the **Privacy Act**.
19. Where a **CP** has chosen to **contribute negative information** under this **PRDE** (for any of the three **Tier Levels**), the **CP** must **contribute** the following types of **credit information**:
 - a) identification information (paragraph (a) of the definition of **credit information** in the **Privacy Act**);
 - b) default information (paragraph (f) of the definition of **credit information** in the **Privacy Act**);
 - c) payment information (paragraph (g) of the definition of **credit information** in the **Privacy Act**); and
 - d) new arrangement information (paragraph (h) of the definition of **credit information** in the **Privacy Act**).
20. When **contributing** default information in accordance with subparagraph 19(b) above, where an individual has defaulted on their obligations, a **CP** must ensure default information is contributed within a reasonable timeframe of the account becoming overdue.
21. Where a **CP** chooses to **contribute** to a **CRB credit information** including its name and the day on which consumer credit is entered into, in relation to consumer credit provided to an individual, this **contribution of credit information**, for the purposes of this PRDE, will be deemed a **contribution of negative information** provided:
 - a) the **CRB's** subsequent **supply of credit reporting information** at the **CP's** nominated **Tier Level** is a permitted CRB disclosure (in accordance with item 5 of subsection 20F(1) of the **Privacy Act**); and
 - b) the **CP's** use of the **credit eligibility information** is a permitted CP use (in accordance with item 5 of section 21H of the **Privacy Act**).
- 21A. The type of credit account is an element of **consumer credit liability information**. However, for the purposes of this PRDE, all contributions of type of credit account in conjunction with the contribution of **negative information** is deemed a contribution of **negative information**.

Designated entities

22. A **CP** may nominate one or more **Designated Entities** where permitted to by paragraphs 23 to 28.
23. Each **Designated Entity** must choose a **supply Tier Level** and **contribute credit information** consistent with that choice. A **CP's Designated Entities** are not all required to choose the same **Tier Level**.
24. If a **CP** nominates **Designated Entities**, the **CP** must notify the **PRDE Administrator Entity** of its **Designated Entities** so that the **PRDE Administrator Entity** can make this information available to **signatories**. The **CP** must also provide a copy of the notification to each **CRB** with which it has a **services agreement**.

Designated entity requirements

25. A **CP** may nominate as a **Designated Entity**:
- another **CP** that is a related body corporate of the designating **CP**; or
 - a division or group of divisions of the **CP** that operate one or more distinct lines of business;
- provided that (and for so long as) the specified entity meets the requirements of paragraph 26.
26. A **Designated Entity** must satisfy the following criteria:
- it operates under its own brand or brands; and
 - it has in place documented controls to prevent **on-supply** of **partial information** or **comprehensive information** to other **CPs** (whether **signatory CPs** or non-signatory **CPs**) or **Designated Entities**, where **on-supply** is not permitted by this PRDE.
27. If a **CP** chooses to nominate a **Designated Entity**, whether as a result of acquisition, or the result of internal creation of the **Designated Entity**, the **CP** must notify the **PRDE Administrator Entity** of its proposed **Designated Entity** and identify how it satisfies the **Designated Entity** criteria.
28. If a **Designated Entity** ceases to meet the criteria in paragraph 26, the **CP** must:
- Notify the **PRDE Administrator Entity** and advise any change in the **supply Tier Level** for the **CP**;
 - Where this means that the former **Designated Entity** will now be **supplying** at a different **Tier Level**, advise each **CRB** with which it has a **Services Agreement** of its new **supply Tier Level**.

Materiality exception

29. A **CP** is required to endeavour to **contribute** all eligible **credit information** for its chosen **Tier Level**. A **CP** will comply with its obligations if it meets the **Participation Level Threshold**, subject to the run-off exception in paragraphs 31 to 32A, the account exceptions in paragraph 33 and the Repayment History Information reporting exceptions in paragraph 33A.
30. The **Participation Level Threshold** is met if:
- the consumer credit accounts for which **credit information** is not **contributed** (“excluded accounts”) do not represent a subset of consumer credit accounts that are unique in terms of their credit performance or behaviour (for example, excluded accounts cannot be all of the delinquent accounts); and
 - the **CP** has acted in good faith to provide all available **credit information**.

Run-off exception

31. A **CP** is not required to **contribute credit information** about consumer credit accounts where:
- the accounts relate to a product that is in run-off and accordingly no new accounts of this type are being opened (“run-off account type”); and
 - the number of accounts of the run-off account type is not more than 10,000; and

- c) the total number of accounts excepted under this paragraph does not constitute more than 3% of the total number of consumer credit accounts of the CP.
32. In calculating the number of accounts of the run-off account type in subparagraph 31(b), a **CP** and its **Designated Entity** or **Entities** (as applicable) will be treated as separate **CP** entities.
- 32A. In calculating the total number of consumer credit accounts in subparagraph 31(c), a **CP** and its **Designated Entities** (if any) will be treated as one **CP**.

Account exceptions

33. A **CP** is not required to **contribute credit information** about those accounts listed in Schedule 1 to this PRDE.

Repayment History Information reporting exceptions

- 33A. A **CP** is not required to contribute repayment history information in the circumstances listed in Schedule 2 to this PRDE.

PRINCIPLE 2

Principle 2: It is necessary to be a PRDE signatory in order to exchange PRDE signatory Consumer Credit Liability Information (CCLI) and Repayment History Information (RHI) with other PRDE signatories.

Exchange of Partial Information and Comprehensive Information

34. For a **CP** to **contribute partial information** or **comprehensive information** and, if it then elects, to obtain **supply** of **partial information** or **comprehensive information** which has been **contributed** by a **signatory** it must also be a **signatory** to this PRDE and its nominated **Tier Level** must be either **partial information** or **comprehensive information** (as applicable).
35. For a **CRB** to receive **contribution** of **partial information** or **comprehensive information** from a **signatory** it must also be a **signatory** to this PRDE. For a **CRB** to then **supply** that **contributed partial information** or **comprehensive information** to a **CP** it must ensure that **CP** is a **signatory** to this PRDE and each recipient of such information must have nominated a **Tier Level** of either **partial information** or **comprehensive information** (as applicable).
36. A **CRB** may receive **contribution** of **partial information** or **comprehensive information** from a non-signatory **CP**, and a **CRB** may also **supply partial information** or **comprehensive information** to a non-signatory **CP**. However, a **CRB** must not **supply signatory CP partial information** or **comprehensive information** to a non-signatory **CP**.
37. **Contribution** and **supply** of **partial information** and **comprehensive information** by **signatories** must comply with the **ACRDS**.

Promises by CRBs

38. We will only **supply partial information** and **comprehensive information contributed** by a **signatory** to a **CP** if it is a **signatory** to this PRDE or a **CP** which is engaged by a **CP** as an agent or as a **Securitisation Entity** (either in its own capacity or for or on behalf of the CP), or the recipient is otherwise a **Mortgage Insurer** or a **Trade Insurer** and receives the information for a **Mortgage Insurance Purpose** or **Trade Insurance Purpose**.

Promises by CPs

39. We will only **contribute** and obtain **supply of partial information** and **comprehensive information** from a **CRB** which is a **signatory** to this PRDE.
40. We will notify the **PRDE Administrator Entity** of the **Securitisation Entities** we engage and enable to obtain **supply of partial information** or **comprehensive information** from a **CRB** for a **securitisation related purpose**. We will disclose these **Securitisation Entities** to the **PRDE Administrator Entity** so that it can make this information available to **CRBs** and **CPs**.

Securitisation Entities

41. Where a **Securitisation Entity** nominated under paragraph 40 obtains the **supply of credit reporting information** from a **CRB** for the **securitisation related purposes** of the **CP**, the **Securitisation Entity** will only be able to obtain **credit reporting information** that would have been accessible to the **CP**.
42. The **CP** referred to in paragraph 41 must:
- include in its agreement with the **Securitisation Entity** a requirement that the **Securitisation Entity contribute credit information** held by the **Securitisation Entity**; and
 - take reasonable steps to enforce the requirement referred to in subparagraph (a).

However if such **contribution** is at a lower **Tier Level** this will not prevent the **supply of credit reporting information** at a higher **Tier Level**, subject to the requirements of paragraphs 40 and 41.

On supply of information

43. Disclosure to other CPs (whether a **signatory** or non-signatory) and to **Designated Entities**

A **CP** is not permitted to **on-supply partial information** or **comprehensive information** to another CP (whether a **signatory** or a non-signatory) or **Designated Entity** if the terms of this PRDE prevent that other CP (whether a **signatory** or a non-signatory) or **Designated Entity** from obtaining the **supply** of that **partial information** or **comprehensive information** directly from that **CRB**.

For example, where a **CP** has chosen to obtain the **supply** from **CRBs** of **comprehensive information**, the **CP** is prohibited from **on-supplying** any **repayment history information** or information derived from that information to a **CP** or to a **Designated Entity** that has chosen to obtain the **supply** from **CRBs** of **partial information** only.

44. Despite paragraph 43, a **CP** is permitted to **on-supply partial information** or **comprehensive information** to a **Securitisation Entity** provided that the purpose of

the **on-supply** of that **partial information** or **comprehensive information** is for **securitisation related purposes** of a **CP**.

45. Despite the prohibition preventing **on-supply** above, a **CP** may make **credit eligibility information** available to another **CP** (whether a **signatory** or non-signatory) for review purposes only to enable them to assess whether or not to acquire consumer credit accounts.

For example, if a **CP** (the acquirer **CP**) who has chosen to contribute **negative information** only, acquires consumer credit accounts from a **CP** (the acquired **CP**) who has chosen (in respect of the acquired consumer credit accounts) to contribute **comprehensive information**, the acquirer **CP** will be able to review the **comprehensive information** of the acquired **CP** (in respect of the acquired consumer credit accounts) to assess whether or not to acquire the consumer credit accounts. The acquirer **CP**'s review of the **credit eligibility information** may be restricted by the **Privacy Act** requirement that **repayment history information** may only be supplied to a **CP** that is an Australian credit licensee.

46. Disclosure to third parties (including Mortgage Insurers)

Despite the prohibition preventing **on-supply** above, a **CP** is permitted to **on-supply partial information** or **comprehensive information** to third parties who are not **CPs** or who are a **CP** within the meaning of s6H of the **Privacy Act**, where the disclosure of this information is a permitted disclosure in accordance with section 21G(3) of the **Privacy Act** and, the **on-supply** of **repayment history information**, occurs only in the circumstances set out in section 21G(5) of the **Privacy Act**.

- 46A. Disclosure where mortgage credit is secured by the same real property

Despite the prohibition preventing **on-supply** above, a **CP** is permitted to **on supply partial information** or **comprehensive information** to another **CP** (whether a **PRDE signatory** or not) (the **same mortgage credit CP**) where both the **CP** and the same mortgage credit **CP** have provided mortgage credit to the same individual and the disclosure of this information is a permitted disclosure which meets the requirements of section 21J(5) of the **Privacy Act**.

PRINCIPLE 3

Principle 3: Services agreements between PRDE signatories will require reciprocity and the use of the ACRDS

Services agreements

47. **Services agreements:**

- a) will require **CPs** to **contribute credit information** at their nominated **Tier Level** and **CRBs** to **supply credit reporting information** at the nominated **Tier Level**;
- b) will require **CPs** to use the **ACRDS** when **contributing credit information** to **CRBs**;
- c) will require **CPs** and **CRBs** to adhere to the **Publication Timeframe** for use of the **ACRDS**; and

- d) may, in respect of those **services agreements** with non-signatory CPs, provide that the non-signatory CPs can continue to **contribute** outside the **ACRDS**, provided that this provision of information meets the requirements under the **Privacy Act** and also encourage the use of the **ACRDS**.

Promises by CRBs

48. We will not accept **contributed credit information** from a **CP** unless the information is compliant with **ACRDS** or the **CP** has engaged us to convert the **contributed credit information** into an **ACRDS** compliant format. When we accept information compliant with the **ACRDS**, we will apply the validation requirements for the **ACRDS** version nominated by the **CP**, provided that the version accords with the **Publication Timeframe** issued by the **PRDE Administrator Entity**.
- 48A. We will implement new versions of the **ACRDS** in accordance with the **Publication Timeframe** issued by the **PRDE Administrator Entity**.
49. We may provide a service for **CPs** that will convert **contributed credit information** into an **ACRDS** compliant format.

Promises by CPs

50. Our **contributed credit information** will comply with the **ACRDS** or alternatively we will utilise the **CRB's** service to convert our **contributed credit information** into an **ACRDS** compliant format.
- 50A. We will implement new versions of the **ACRDS** in accordance with the **Publication Timeframe** issued by the **PRDE Administrator Entity**.

Contribution barriers

51. **CRBs** must not impose constraints to restrict a **CP** from **contributing credit information** to another **CRB**.

Management of the ACRDS and Publication Timeframe

52. The **PRDE Administrator Entity** is required to maintain and manage the **ACRDS** and the **Publication Timeframe**.

PRINCIPLE 4

Principle 4: PRDE signatories agree to adopt transition rules which will support early adoption of partial and comprehensive information exchange.

Transitional arrangements

53. Subject to the materiality and other exceptions set out in paragraphs 29 to 33A and the transitional provisions set out in paragraphs 54 to 64, a **CP** will **contribute credit information** about their consumer credit accounts at their chosen **Tier Level** before obtaining their first **supply of credit reporting information** from a **CRB**.

54. For **CPs** that become a **signatory** to the PRDE:
- a) at the time of the **Effective Date**, they must **contribute** the **credit information** for at least 50% of the accounts for the nominated **Tier Level** that they are required by this PRDE to **contribute** prior to obtaining **supply of credit reporting information** at this nominated **Tier Level** from a **CRB**;
 - b) within 12 months of the **Effective Date**, they are required to **contribute** all of the **credit information** for the accounts at the nominated **Tier Level** to fully comply with their obligations under this PRDE.
55. For **CPs** that are existing signatories to this PRDE and nominate to obtain **supply of credit reporting information** (and to **contribute credit information**) at a different **Tier Level**:
- a) they must notify their nomination of the different **Tier Level** to the **PRDE Administrator Entity** and to a **CRB** with which they have **services agreements** not less than 30 calendar days before commencing **contribution of credit information** at the different **Tier Level**. The notification of the change in **Tier Level** will be provided to the **PRDE Administrator Entity** so that it can make this information available to **CRBs** and **CPs**;
 - b) at the time of notifying their nomination, and if nominating to a higher **Tier Level**:
 - i) they must **contribute** the **credit information** for at least 50% of the accounts for the **Tier Level** they are required by this PRDE to **contribute** prior to obtaining **supply of credit reporting information** at the higher **Tier Level** from a **CRB**;
 - ii) within 12 months of nomination of the **Tier Level**, they must **contribute** all of the **credit information** for the accounts they are required to **contribute** to fully comply with their obligations under this PRDE.
56. **CPs** can nominate to **contribute** at a different **Tier Level** in accordance with paragraph 55, although the full **contribution of credit information** in accordance with paragraph 54 has not occurred.
- For example, on signing the PRDE at the start of January 2015, a **CP** may nominate to obtain **supply at negative information Tier Level** with full **contribution** required by the end of December 2015 (to be compliant for January 2016). The **CP** subsequently nominates to obtain **supply at comprehensive information Tier Level** at the start of June 2015. **Contribution** at each **Tier Level** will run from the date of each nomination so that the **CP** will provide full **contribution of negative information Tier Level** in December 2015, six months before it is required to provide full **contribution of comprehensive information Tier Level** by the end of May 2016 (to be compliant for June 2016).
57. **CPs** must notify the **PRDE Administrator Entity** upon attainment of full compliance, in accordance with subparagraphs 54(b) and 55(b)(ii) above. Such notification may be provided at any time before the expiry of the 12 month period and will be published to other signatories.

Data supply

58. Subject to the above transitional requirements, **CPs** must comply with the following requirements when **contributing credit information**:
- a) For **negative information, contribution of negative information** for all consumer credit accounts which are eligible in accordance with the **Privacy Act** and **ACRDS** at the date of first **contribution** by the **CP** and, thereafter, all consumer credit accounts on an ongoing basis.
 - b) For **partial information**, in addition to complying with the requirements for **negative information, contribution of consumer credit liability information** for all consumer credit accounts which are open at the date of first **contribution** by the **CP** and, thereafter, all consumer credit accounts on an ongoing basis.
 - c) For **comprehensive information**, in addition to complying with the requirements for **negative and partial information, contribution of repayment history information** for all consumer credit accounts which are open at the date of first **contribution** by the **CP** for a period of three calendar months prior to the first **contribution** by the **CP** or alternatively, supply over three consecutive months to then amount to first **contribution** by the **CP**, and, thereafter, all consumer credit accounts on an ongoing basis.

For example, where a **CP** has chosen to **contribute comprehensive information**, the **CP** will be required to provide at least 50% of the **repayment history information** for the period dating three calendar months immediately prior to first **contribution** by the **CP** and, ongoing, at least 50% of all **repayment history information** for those first 12 months. This means that, 12 months from the date of the first **contribution** the **CP** will be required to have **contributed**:

- i) at least 50% **repayment history information** on the first **contribution** (for the previous 15 months) then;
- ii) all **repayment history information** on an ongoing basis.

Acquisition of consumer credit accounts

59. Where a **CP** acquires consumer credit accounts from another **CP**, the **CP** may, for a period of 90 calendar days (the review period), from the date of acquisition, review these accounts for compliance with the PRDE. The **CP** must notify the **PRDE Administrator Entity** of the acquisition of these consumer credit accounts, including the date of acquisition, within 10 business days of this acquisition.
60. At the expiry of the review period, and subject to the run-off exception in paragraphs 31 and 32A above and the **Designated Entity** provisions in paragraph 22 to 28 above, the **CP**:
- a) must **contribute** the **credit information** for at least 50% of the acquired consumer credit accounts for the **Tier Level** they are required by this PRDE to **contribute**;
 - b) within 12 months, they must **contribute** all of the **credit information** for the acquired consumer credit accounts.
61. The provisions relating to acquisition of consumer credit accounts only apply to acquired consumer credit accounts, and do not affect all other **CP contribution** obligations contained in this PRDE.

Testing and data verification

62. Despite the provisions above in Principle 4, the PRDE does not prohibit a **CP** or **CRB** (as applicable) from the **supply** and/or **contribution** of **credit information** and the obtaining **supply** and/or **contribution** of **credit reporting information** where such **contribution, supply** and obtaining of **supply** is for testing and data verification purposes.

Non-PRDE Services Agreements

63. Where a **CRB** and a **CP** (whether **signatories** or non-signatories)
- enter into a services agreement which enables the **contribution, supply** or obtaining of **supply** of **partial information** or **comprehensive information** outside of the PRDE; and
 - the **CRB** or **CP** choose to subsequently become PRDE **signatories**;
 - the **contribution, supply** or obtaining of **supply** of **partial information** or **comprehensive information** pursuant to that services agreement (non-PRDE services agreement) will be deemed compliant with this PRDE provided that the criteria set out in paragraph 64 below is satisfied.
64. The **contribution, supply** or obtaining of **supply** of **credit information** and/or **credit reporting information** by either the CP or CRB under the non-PRDE services agreement will be compliant with this PRDE where, within a period of no longer than 90 calendar days from the **Signing Date**:
- the **supply, contribution** and obtaining of **supply** of **partial information** or **comprehensive information** is in accordance with this PRDE;
 - the **contribution** of **credit information** by the **CP** to the non-PRDE services agreement is in accordance with the **ACRDS**;
 - the **credit information** previously contributed for the **CP's** consumer credit accounts is included in the calculation of initial **contribution**, in accordance with paragraph 54 above;
 - the transition period which applies to the **contribution** of **credit information** by the **CP** is 12 months from the **Signing Date** or in the event that a **CP** has supplied its **partial information** or **comprehensive information** pursuant to a non-PRDE services agreement for a period of more than 12 months prior to the **Signing Date**, then 90 calendar days from the **Signing Date**;
 - the **contribution, supply** and obtaining **supply** of the **partial** and/or **comprehensive information** is subject to the monitoring, reporting and compliance requirements contained within Principle 5 below. However, it is noted that the obligations contained in Principle 5 will only become effective at the **Signing Date**.

PRINCIPLE 5

Principle 5: PRDE signatories will be subject to monitoring, reporting and compliance requirements, for the purpose of encouraging participation in the exchange of credit information and data integrity. The PRDE Administrator Entity will have the ability to provide guidance on the interpretation and application of the PRDE.

65. Upon becoming a **signatory** to the PRDE, a **signatory** does not make any representation (whether direct or implied) arising by reason of its signing the PRDE to any other **signatory** to this PRDE. Principle 5 sets out the agreed process for addressing non-compliance with the PRDE. A **CP** or a **CRB** who forms an opinion of **non-compliant conduct** by another **CP** or **CRB** is required to adhere to the process set out in this Principle to resolve a dispute about **non-compliant conduct** and may not take any other action or steps against the **CP** or **CRB**. Any information exchanged by the parties as part of this process cannot be relied upon in any other forum.

Initial report of **non-compliant conduct** – Stage 1 Dispute

66. Where a **CP** or **CRB** (the **reporting party**) forms an opinion that a **CP** or **CRB** (the **respondent party**) has engaged in **non-compliant conduct**, it will issue to the **respondent party** a report of **non-compliant conduct**. Such a report must comply with the **SRR**.
- 66A. Where the **PRDE Administrator Entity** (the **reporting party**) forms an opinion pursuant to paragraph 98H or paragraph 107 that a **CP** or **CRB** (the **respondent party**) has engaged in **non-compliant conduct**, it may issue to the **respondent party** a report of **non-compliant conduct**. Such a report must comply with the **SRR**.
67. From the date of receipt of the report by the **respondent party**, the parties have 30 calendar days in which to:
- a) Confer;
 - b) (For the respondent party) Respond to the report of **non-compliant conduct**, providing such supporting information as the **respondent party** deems necessary; and
- Either:
- c) Enter into a **Rectification Plan**. The **Rectification Plan** must comply with the **SRR**; or
 - d) Agree that the conduct of the **respondent party** is compliant with the PRDE.
68. If the **Rectification Plan** entered under subparagraph 67(c) results in the **non-compliant conduct** being rectified within the 30 calendar day period of a Stage 1 Dispute, or if the parties agree under subparagraph 67(d) that the conduct of the **respondent party** is compliant with the PRDE; the dispute is closed and no information about the dispute will be provided to the **PRDE Administrator Entity** (unless the **PRDE Administrator** is a party to the dispute).
69. If the **Rectification Plan** entered under subparagraph 67(c) will not result in the **non-compliant conduct** being rectified within the 30 calendar day period of the Stage 1 Dispute the parties to the **Rectification Plan** must provide the **Rectification Plan** to

the **PRDE Administrator Entity** within 3 business days of the expiry of the 30 calendar day period of the Stage 1 Dispute. The dispute will then become a Stage 2 Dispute.

70. If no **Rectification Plan** is entered into within the 30 calendar day period of the Stage 1 Dispute and there is no agreement that the conduct is compliant with the PRDE, the parties to the Stage 1 dispute must notify the **PRDE Administrator Entity** within 3 business days of the expiry of the 30 calendar day Stage 1 Dispute period. The dispute will then become a Stage 3 Dispute.

Referral to **PRDE Administrator Entity** – Stage 2 Dispute

71. When a Stage 2 Dispute is referred to the **PRDE Administrator Entity** under paragraph 69, the **PRDE Administrator Entity** must make the **Rectification Plan** available to **signatories** within 3 business days of receipt of the **Rectification Plan**. Where a dispute arises from a self-report of **non-compliant conduct** under paragraph 96, the **PRDE Administrator Entity** will take reasonable steps to de-identify the **Rectification Plan** before making it available under this paragraph.
72. Any **signatory** may object to the **Rectification Plan** by issuing a notice of objection to the **reporting** and **respondent parties** or to the **PRDE Administrator Entity**, within 5 business days of the **Rectification Plan** being made available to **signatories** under paragraph 71. Such notice of objection must comply with the SRR.
73. In the event that a **signatory** issues a notice of objection, for the purposes of this PRDE that **signatory** will become the **reporting party**, and the **reporting** and **respondent parties** from the Stage 1 Dispute will become the **respondent parties**. The dispute resolution process set out in paragraphs 66 to 70 will then apply to the dispute.

Referral to **Industry Determination Group** – Stage 3 Dispute

74. When a Stage 3 Dispute is referred to the **PRDE Administrator Entity** under paragraph 70, the **PRDE Administrator Entity** must, within 3 business days of referral of the dispute:
- a) make a de-identified report of the dispute available to **signatories**;
 - b) make an identified report of the dispute available to the **Industry Determination Group**.
- Both reports of the dispute must comply with the **SRR**.
75. The **Industry Determination Group** will convene within 3 business days of receipt of an identified report of dispute under subparagraph 74(b).
76. The Industry Determination Group will:
- a) Review the dispute; and
 - b) Identify further information required to determine the issues in dispute, the manner in which that information will be presented (whether oral or documentary) and a reasonable timeframe for production of this information.
77. The **Industry Determination Group** may, where it considers necessary, request representatives of the parties attend the **Industry Determination Group** meeting.

78. Where the **Industry Determination Group** determines that it has sufficient information and/or no further information is required, the **Industry Determination Group** will, within 10 business days:
- a) Direct the parties to participate in a conciliation in accordance with paragraph 80 and set a reasonable timeframe for this conciliation to occur; or
 - b) Issue a recommendation under paragraph 89 as to the resolution of the dispute. The recommendation must comply with the **SRR**.
79. The **PRDE Administrator Entity** will issue to the parties the **Industry Determination Group's** directions or recommendation within 3 business days of the **Industry Determination Group** making its direction or recommendation.
80. Where the **Industry Determination Group** has directed the parties to conciliation, the following process applies:
- a) The conciliation will be confidential;
 - b) The conciliation will be conducted by a nominated representative of the **Industry Determination Group** and will occur in the presence of a representative of the **PRDE Administrator Entity**;
 - c) At the conclusion of the conciliation, the **Industry Determination Group** representative ('the conciliator') will provide the **PRDE Administrator Entity** a certificate of outcome. This certificate will:
 - i) Confirm settlement of the dispute and attach a statement of agreement between the parties that the conduct is compliant with the PRDE or an agreed **Rectification Plan**; and refer the dispute back to the **Industry Determination Group** for further review under paragraph 81; or
 - ii) State that the dispute has not been settled and refer the dispute back to the **Industry Determination Group** to make a recommendation within 10 business days in accordance with subparagraph 78(b).
81. Where a dispute has been referred to the **Industry Determination Group** in accordance subparagraph 80(c)(i), the **Industry Determination Group** will within a period of 3 business days review the **Rectification Plan** and:
- a) Confirm endorsement of the **Rectification Plan** and notify the **PRDE Administrator Entity** to make the **Rectification Plan** available to all **signatories**; or
 - b) Decline endorsement of the **Rectification Plan** and provide its reasons to the parties to the dispute. The parties will then have 3 business days in which to provide the **PRDE Administrator Entity** an amended **Rectification Plan** which the **PRDE Administrator Entity** will provide to the **Industry Determination Group**. Where the **Rectification Plan** is then not endorsed by the **Industry Determination Group**, the **Industry Determination Group** will be required to issue a recommendation in accordance with subparagraph 76(b); or
 - c) Direct the parties to present further information (whether oral or documentary) in a reasonable period to assist with its review of the **Rectification Plan**. On receipt of this information, the **Industry Determination Group** will confirm or decline endorsement of the **Rectification Plan** in accordance with subparagraphs (a) and (b).

Referral to Eminent Person – Stage 4 Dispute

82. Where the **Industry Determination Group** has issued a recommendation in accordance with subparagraph 78(b), the parties have 10 business days from issue of the recommendation by the **PRDE Administrator Entity** to accept or reject this recommendation. If a party does not respond within this timeframe, they are deemed to have accepted the recommendation.
83. In the event a party rejects the recommendation, the dispute will be referred to the **Eminent Person** for review and decision.
84. The **PRDE Administrator Entity** will brief the **Eminent Person** within 10 business days of receipt of a party's rejection under paragraph 82. The brief to the **Eminent Person** will include:
 - a) The **Industry Determination Group** recommendation;
 - b) The report of **non-compliant conduct** or notice of objection (as applicable);
 - c) Any further information provided to the **Industry Determination Group** by the parties.
85. The **Eminent Person** will:
 - a) Review the dispute; and
 - b) Identify further information required to determine the issues in dispute, the manner in which that information will be presented (whether oral or documentary) and a reasonable timeframe for production of this information.
86. The **Eminent Person** may, where it considers necessary, request representatives of the parties meet with the **Eminent Person** to discuss the dispute. Such meeting may be on a confidential basis and will occur in the presence of a representative of the **PRDE Administrator Entity**.
87. Where the **Eminent Person** determines that it has sufficient information and/or no further information is required, the **Eminent Person** will issue a decision within 10 business days. The decision will comply with the **SRR**.
88. The decision of the **Eminent Person** is binding and final.

Compliance outcomes

89. The possible outcomes available to the **Industry Determination Group** (by way of recommendation) and to the **Eminent Person** (by way of decision) are:
 - a) The respondent **CP** or **CRB** is compliant with the PRDE and no outcome is required; and/or
 - aa) The respondent **CP** or **CRB** is technically non-compliant however the non-compliant conduct is not material to the proper operation of the PRDE and no further outcome is required; and/or
 - b) Issue a formal warning to the respondent **CP** or **CRB** regarding their compliance with the PRDE; and/or
 - c) Issue a direction to the respondent **CP** or **CRB** with which they must comply, including, but not limited to, the completion of staff training, and/or provision of satisfactory evidence of compliance; and/or

- d) Require the respondent **CP** or **CRB** to **contribute** and obtain **supply of credit information** and **credit reporting information** (as applicable) at a lower **Tier Level** for a nominated period.
90. Any **CP** (whether a party to a dispute or not) will be exempt from the requirements in paragraph 15, for the **CRB** which has had a compliance outcome applied to it in paragraph 89 (b to d).
91. The compliance outcomes under paragraph 89 may be identified as an escalated process within the recommendation or decision.
92. The respondent **CP** or **CRB's** compliance with any compliance outcomes will be monitored by the **PRDE Administrator Entity**.

Obligations

93. **CPs and CRBs** will:
- a) Comply with the direction or request for information from s of the **Industry Determination Group** and the **Eminent Person** within the time specified in the direction or request;
 - aa) Comply with all requirements in a **Rectification Plan**;
 - b) Be bound by a compliance outcome, where contained in recommendation from the **Industry Determination Group** that has been accepted under paragraph 82, or a decision made by the **Eminent Person** (under paragraph 87);
 - c) Comply with a request from the **PRDE Administrator Entity** in respect to matters arising from paragraph 89, including where the **CP** and/or **CRB** is not a party to the compliance outcome but may be required to take steps to give effect to the compliance outcome;
 - d) Act in good faith at all times;
 - e) When provided with confidential information during the compliance process, keep this information confidential. Confidential information means information provided by either party to a dispute and which, in the circumstances surrounding disclosure, a reasonable person would regard as confidential; and
 - f) Attest to their compliance with the PRDE. Such attestation will be provided by a representative of a **signatory** who has the authority to bind the **CP** or **CRB** and who has the primary responsibility for the records of the **signatory** relating to its compliance with the PRDE. The attestation will be wholly true and accurate, will comply with the **SRR** and be provided on an annual basis to the **PRDE Administrator Entity** within 10 business days of the **Effective Date** anniversary. Without limiting what may be required as part of the attestation, the PRDE Administrator Entity may require the CP or CRB to include any information with the attestation that it considers is reasonable to support and evidence the attestation.
 - g) On request from the PRDE Administration Entity, arrange for its attestation under subparagraph 93(f) and/or its response to a request for information made by the PRDE Administrator Entity under paragraph 98A to be audited or reviewed by a suitably qualified person as determined by the PRDE Administrator Entity in consultation with the CP or CRB. The reasonable fees and expenses of an auditor or other suitably qualified person for preparing a report under this subparagraph are payable by the CP or CRB.

94. The **Industry Determination Group** and **Eminent Person** are obliged to act in accordance with their respective Terms of Reference.
95. The **PRDE Administrator Entity** is obliged to:
 - a) Issue such reports as are identified in paragraphs 103 to 105;
 - b) Provide assistance, as requested, to the **Industry Determination Group** and **Eminent Person**; and
 - c) Act in accordance with its constitution.

Self-reporting for **non-compliant conduct** – Pre-Dispute period

96. Where a **CP** or **CRB** forms an opinion that it has engaged in, or is likely to engage in, **non-compliant conduct**, it may issue a report to the **PRDE Administrator Entity**. Such a self-report must comply with the **SRR**.
97. Where a **CP** or **CRB** files a self-report, it will have 30 calendar days in which to file a **Rectification Plan** with the **PRDE Administrator Entity**. This **Rectification Plan** must comply with the **SRR**.
98. Upon the expiry of the 30 calendar day Pre-Dispute period, or earlier upon mutual agreement between the self-reporting signatory and the **PRDE Administrator Entity**, the dispute resolution process set out in paragraphs 66 to 70 will apply to the issue, with the **PRDE Administrator Entity** acting as **reporting party** and the self-reporting party becoming the **respondent party**.

PRDE Administrator Entity power to identify **non-compliant conduct**

- 98A. Where the **PRDE Administrator Entity** forms an opinion on reasonable grounds that any **CP** or **CRB** ('the answering **CP** or **CRB**') to this PRDE-may have engaged, or be engaging, in **non-compliant conduct** ('potential non-compliance'), it may request that a **CP** or **CRB**, or any other **CP** or **CRB** that may have information that is relevant to the potential non-compliance, to provide information to the **PRDE Administrator Entity**. The information requested by the **PRDE Administrator Entity** may include any information that the **PRDE Administrator Entity** reasonably considers is relevant to determining whether the answering **CP** or **CRB** is engaging in **non-compliant conduct** and may require the **CP** or **CRB** to provide a written statement relating to the **CP's** or **CRB's** compliance with the PRDE. Such a request must comply with the **SRR**.
- 98B. In making a request under paragraph 98A, the **PRDE Administrator Entity** will:
 - a) describe the conduct that may involve potential non-compliance; and
 - b) provide a reasonable timeframe for production of the information requested.
- 98C. A **CP** or **CRB** may within 10 business days of receiving a request under paragraph 98A provide a written objection to providing the information on the basis that:
 - a) there is no reasonable basis upon which the **PRDE Administrator Entity** has formed an opinion on potential non-compliance; or
 - b) the request is onerous and excessive
 - c) the timeframe for production of the information is unreasonable.

The objection must comply with the **SRR**.
- 98D. If a **CP** or **CRB** objects to a request under paragraph 98C, the **PRDE Administrator Entity** must either withdraw the request or refer the request and the objection to the **Industry Determination Group**.

98E. From the date of referral of the objection the Industry Determination Group has 5 business days in which to:

- a) review the request and the objection;
- b) require the **PRDE Administrator Entity** or **CP or CRB** to provide additional information in relation to the request or objection.

98F. From the date of referral under paragraph 98D, or from the date of receipt of additional information under subparagraph 98E(b), the **Industry Determination Group** must, within 10 business days, issue its decision to:

- a) affirm the request;
- b) amend the request and require the **CP or CRB** to provide the information within a reasonable timeframe; or
- c) cancel the request.

The decision of the **Industry Determination Group** is final. Any requirement under paragraph 98A to supply the requested information is suspended until the **Industry Determination Group** makes a decision.

98G. Upon receipt of the information requested under paragraph 98A, the **PRDE Administrator Entity** may:

- a) advise the answering **CP or CRB** in writing that it considers that the **CP or CRB** is engaging in **non-compliant conduct**;
- b) suggest to the answering **CP or CRB** that it make a self-report of **non-compliant conduct** under paragraph 96.

98H. If the **PRDE Administrator Entity** has not received a self-report of **non-compliant conduct** from the answering **CP or CRB** after the expiry of 10 business days from the **written** notice referred to in paragraph 98G, the **PRDE Administrator Entity** may issue a notice of **non-compliant conduct** in accordance with paragraph 66A. For the purposes of this paragraph, the **PRDE Administrator Entity** will be deemed as the reporting party.

98I. A **CP or CRB** that is requested to provide information under paragraph 98A, and which isn't the answering **CP or CRB**, must treat the request as confidential.

Systemic Non-Compliance

98J. Where the **PRDE Administrator Entity** forms an opinion that 2 or more **signatories** are engaging, or are likely to engage, in **non-compliant conduct** that is due to the same or similar issues and it considers that it would be efficient for the **non-compliant conduct** to be addressed in a consistent manner across **signatories**, the **PRDE Administrator Entity** may develop a **Rectification Plan** that addresses the **non-compliant conduct**. The **Rectification Plan**:

- a) will be developed by the **PRDE Administrator Entity** in consultation with **signatories** and must provide a reasonable period of time to allow affected **signatories** to become compliant;
- b) must identify the conduct that, if it were being engaged in by a **signatory**, would constitute **non-compliant conduct**;
- c) may require affected **signatories** to provide periodic updates to the **PRDE Administrator Entity** as to compliance with the **Rectification Plan**;

- d) will require an affected **signatory** to notify the **PRDE Administrator Entity** of its adoption of the **Rectification Plan**;
- e) must comply with the **SRR**, including any requirements that apply specifically to **Rectification Plans** made under this paragraph; and
- f) must be made available to **signatories** within 3 business days of being finalised by the **PRDE Administrator Entity**;
- g) is subject to the objection process in paragraph 72. If an objection is made to a **Rectification Plan** developed by the **PRDE Administrator Entity**, the **PRDE Administrator Entity** will be the nominal respondent party for the purposes of the dispute process in paragraphs 66 to 70, save that it may withdraw the **Rectification Plan** at any stage so that the dispute will not proceed.

Extension of time

- 99. At any stage, other than the 30 calendar day period for a Stage 1 Dispute, the parties may apply to the **PRDE Administrator Entity** to seek an extension of time. The request for an extension of time must comply with the **SRR**.
- 100. Where a dispute is being dealt with by the **Industry Determination Group** or **Eminent Person**, the request for an extension of time will be determined by the **Industry Determination Group** or **Eminent Person** (as applicable).
- 101. In all other circumstances, the request for an extension of time will be determined by the **PRDE Administrator Entity**.

PRDE Administrator Entity reporting

- 102. The **PRDE Administrator Entity** will keep a register of:
 - a) **Signatories**, their **Signing Date** and **Effective Date** for the **Deed Poll**, and key contacts at each **signatory**;
 - b) The nominated **Tier Levels** for each **CP**;
 - c) The **Designated Entities** of each **CP**;
 - d) The **Securitisation Entities** of each **CP**;
 - e) Attestation of compliance for each **CP** in accordance with paragraph 57.
- 103. The **PRDE Administrator Entity** will report to signatories:
 - a) De-identified reports of Stage 2 disputes;
 - b) Identified reports of the **Industry Determination Group's** recommendations (where such a recommendation is accepted by the parties) or identified reports of the **Eminent Person's** decision.
- 104. The **PRDE Administrator Entity** will report to **CPs**:
 - a) **Tier Levels** of **signatories** in accordance with paragraph 9;
 - b) **Designated Entities** of **CPs** in accordance with paragraph 24;
 - c) **Securitisation Entities** in accordance with paragraph 40;
 - d) Where a **CP** notifies of its nomination of a different **Tier Level** in accordance with subparagraph 55(a);
 - e) Attainment of full compliance by a **CP** in accordance with paragraph 57; and
 - f) The **Effective Date** of the **CP** in accordance with paragraph 54.

105. The **PRDE Administrator Entity** may report to a **CRB**, the following information about a **CP**:
- Tier Level** of the **CP** in accordance with paragraph 9;
 - The **Designated Entities** of the **CP** in accordance with paragraph 24;
 - The **Securitisation Entities** of the **CP** in accordance with paragraph 40;
 - Where a **CP** notifies of its nomination of a different **Tier Level** in accordance with subparagraph 55(a);
 - Attainment of full compliance by a **CP** in accordance with paragraph 57.; and
 - The **Effective Date** of the **CP** in accordance with paragraph 54.
106. **CPs** and **CRBs** will supply the **PRDE Administrator Entity** such information as required to enable it to fulfil its obligations as specified in 102 to 105.

PRDE Administrator Entity powers

107. The **PRDE Administrator Entity** may initiate a report of **non-compliant conduct**, in which case it will be the reporting party, and the dispute resolution provisions set out in paragraphs 66 to 70 will apply. Such a report can only be issued where the non-compliance relates to:
- A **CRB** or **CP's** failure to pay the costs identified by the **PRDE Administrator Entity**, as required by paragraphs 7 and 13;
 - A **CRB's** failure to inform the **PRDE Administrator Entity** of the **Tier Level** of a **CP** that contributes credit information, as required by paragraph 5;
 - A **CP's** failure to disclose its chosen **Tier Level** to the **PRDE Administrator Entity**, as required by paragraph 9;
 - A **CP's** failure to notify the **PRDE Administrator Entity** of its **Designated Entities** and/or a failure to notify the **PRDE Administrator Entity** if the **Designated Entity** ceases to meet this criteria, as required by paragraphs 24 and 28;
 - A **CP's** failure to notify the **PRDE Administrator Entity** when it changes **Tier Level**, as required by paragraph 55;
 - Where a **CP** has not notified the **PRDE Administrator Entity** of its compliance within the 12 month period, as required by paragraph 57;
 - A **CP's** failure to notify the **PRDE Administrator Entity** of the acquisition of consumer credit accounts, as required by paragraph 59;
 - A **CRB** or **CP's** failure to comply with the compliance framework notification requirements set out in paragraphs 69 and 70;
 - A **CRB** or **CP's** failure to comply with a compliance outcome, as required by subparagraphs 93(b);
 - A **CRB** or **CP's** failure to comply with a request from the **PRDE Administrator Entity**, as required by subparagraph 93(c);
 - A **CRB** or **CP's** failure to provide its annual attestation as required by subparagraph 93(f), or the provision of an attestation which, on reasonable grounds, the **PRDE Administrator Entity** believes to be wholly or partly false [or does not meet the requirements for the attestation \(including a request under subparagraph 93\(g\)\)](#);

- l) A **CRB** or **CP**'s failure to comply with a request under paragraph 98A;
- m) An allegation of **non-compliant conduct** notified by the **PRDE Administrator Entity** to the **CP** or **CRB** under paragraph 98F.

107A. Nothing in this PRDE prevents the **PRDE Administrator Entity** from acting as the reporting party and the **PRDE Administrator Entity** in respect of the same dispute.

108. A reporting or respondent **CP** or **CRB** may request the **PRDE Administrator Entity** issue a direction to join disputes (whether at a Stage 2 Dispute or Stage 3 Dispute) where:

- a) There are common parties and issues; and
- b) The **PRDE Administrator Entity** determines the joining of disputes is necessary for the effective resolution of the disputes.

Guidance on the interpretation and application of the PRDE

108A. The **PRDE Administrator Entity** may issue formal guidance on the application of the PRDE. Such guidance must comply with the **SRR** and be supported by a statement of consultation, with such consultation appropriate to the nature and scope of the guidance.

108B. The **PRDE Administrator Entity** may develop and issue formal guidance:

- a) at the request of a **signatory**; or
 - b) at the request of another entity, provided the **PRDE Administrator Entity** believes that the entity has sufficient interest in the outcome. For example, an entity that is actively preparing to become a signatory; or
 - c) if it considers that it is necessary or would improve the operation of the PRDE.
- A request under subparagraphs (a) or (b) must comply with the **SRR**.

108C. In developing formal guidance under paragraph 108A, the **PRDE Administrator Entity** must:

- a) consult as appropriate to the nature and scope of the guidance. This may include consultation with **signatories** and other entities that have a sufficient interest in the outcome (as set out in paragraph 108B);
- b) make the formal guidance available to **signatories** and other entities with a sufficient interest in the outcome;
- c) if it considers is appropriate, allow for a reasonable period of time before the guidance becomes applicable.

108D. A formal guidance does not change the obligations of a **signatory** under the PRDE. However, the **Industry Determination Group** when making a recommendation under subparagraph 78(b) and the **Eminent Person** when making a decision under paragraph 87, will take in to account any formal guidance issued under paragraph 108A and its associated statement of consultation when considering whether a **signatory** is engaging in **non-compliant conduct**.

108E. For the avoidance of doubt, the **PRDE Administrator Entity** may also provide informal guidance on the application of the PRDE, however such guidance will not be considered formal guidance under paragraph 108A. **Signatories** who seek a position that will be considered by the **Industry Determination Group** and **Eminent Person** should seek formal guidance under subparagraphs 108B(a) and (b).

PRINCIPLE 6

Principle 6: A broad review of the PRDE to be completed after three years.

Independent review

109. The terms and operation of this PRDE, including the continued operation of the transitional provisions in Principle 4, must be reviewed by an independent reviewer after the PRDE has been in operation 3 years and at regular intervals after that (not more than every 5 years).
110. The **PRDE Administrator Entity** is responsible for formulating the scope and terms of reference of an independent review. These must be settled in consultation with **signatories**. The **PRDE Administrator Entity** must also ensure that the independent review is adequately resourced and supported, the reviewer consults with **signatories**, the review report is made available to all **signatories** and the review recommendations are adequately responded to.
111. In addition to the independent review, the **PRDE Administrator Entity** may review and vary the PRDE at any time during its operation, on the recommendation of the **Industry Determination Group** or the **PRDE Administrator Entity**. Such recommendation must be supported by:
- a) A statement of consultation, with such consultation appropriate to the nature and scope of the variation; and
 - b) 75% resolution of the **PRDE Administrator Entity**.

Promises by CRBs

112. Each **CRB** will cooperate in good faith with the **PRDE Administrator Entity** and assist with the review.

Promises by CPs

113. Each **CP** will cooperate in good faith with the **PRDE Administrator Entity** and assist with the review.

DEFINITIONS

“**Access request**” means a request from a **CP** to a **CRB** for the supply of **credit reporting information**.

“**ACRDS**” means the Australian Credit Reporting Data Standards which are the technical standards and specifications used for exchanging **credit information** and **credit reporting information**. The reference to the **ACRDS** extends only to those versions of the **ACRDS** which are current and supported by **CRBs**, and does not include historic or retired versions of the **ACRDS**.

“**Commencement Date**” means 25 December 2015.

“**Consumer credit liability information**” has the same meaning as defined by the **Privacy Act**.

A **CP** “**contributes**” **credit information** when it discloses that information to a **CRB** in circumstances permitted by the **Privacy Act**.

“**CP**” has the same meaning as defined by the **Privacy Act**. Any reference to a **CP** in this PRDE is a reference to a **signatory** **CP** unless otherwise expressly stated, and also includes reference to any **Designated Entities** of the **CP**.

“**CP derived information**” has the same meaning as defined in the **Privacy Act**.

“**Credit information**” has the same meaning as defined by the **Privacy Act**.

“**Credit eligibility information**” has the same meaning as defined by the **Privacy Act**.

“**Credit reporting information**” has the same meaning as defined by the **Privacy Act**.

A **CP** “**on-supplies**” **partial information** or **comprehensive information** (excluding that component of **partial information** and **comprehensive information** which is **negative information**) when it discloses that information to another **CP**, a **Designated Entity** or **Securitisation Entity**.

“**CRB**” has the same meaning as defined by the **Privacy Act**. Any reference to a **CRB** in this PRDE is a reference to a **signatory** **CRB** unless otherwise expressly stated.

“**CRB derived information**” has the same meaning as defined in the **Privacy Act**.

A “**Designated Entity**” is a business or collection of businesses of a **CP** as determined by the **CP** for the purposes of the PRDE. The criteria for **Designated Entities** and related operational matters is set out in further detail in paragraphs 22 to 28 of this PRDE.

“**Deed Poll**” means the pro-forma PRDE deed poll which is a schedule to a **Services Agreement** and is effective, in relation to a **CP** or **CRB**, at the **Effective Date**.

“**Effective Date**” means the date nominated by the **CP** or **CRB** as the date that the **CP** or **CRB**’s obligations (as applicable) under the PRDE become effective. The **Effective Date** may be the **Signing Date**, in which case the two dates will be the same.

“**Eminent Person**” means an independent person who fits the criteria of **Eminent Person**, in accordance with the **Eminent Person** Terms of Reference, and who has consented to inclusion on the panel of **Eminent Persons**.

“**Industry Determination Group**” means a group formed by representatives of signatories, in accordance with the **Industry Determination Group** Terms of Reference.

“**Mortgage Insurer**” has the same meaning as defined in the **Privacy Act**.

“**Mortgage Insurance Purpose**” has the same meaning as defined in the **Privacy Act**.

“**Non-compliant conduct**” means conduct which breaches this PRDE.

“**Participation Level Threshold**” has the meaning given to it by paragraph 30 of this PRDE.

“**PRDE Administrator Entity**” means the Reciprocity and Data Exchange Administrator Pty Ltd (ACN 606 611 670), a subsidiary of the Australian Retail Credit Association Ltd (ACN 136 340 791).

“**Privacy Act**” means the *Privacy Act 1988* as amended from time to time (including by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) and includes Regulations made under that Act, and the *Privacy (Credit Reporting) Code 2014* (CR Code) registered pursuant to that Act.

“**Publication Timeframe**” means the timeframe for the **ACRDS** which identifies when each version, sub-version and release of the **ACRDS** will be published, implemented and retired.

“**Rectification Plan**” has the same meaning as defined by the **SRR**.

“**Repayment History Information**” has the same meaning as defined in the **Privacy Act**.

A **CRB** “**supplies**” **credit reporting information** when it discloses that information to a **CP** in circumstances permitted by the **Privacy Act** and in response to an **access request**.

“**Securitisation entity**” means an entity which is not a **Mortgage Insurer** or a **Trade Insurer**, but which is engaged to assist a **CP** for a **securitisation related purpose**.

“**Securitisation related purpose**” has the same meaning as defined in the **Privacy Act**.

A “**services agreement**” is an agreement which is intended (whether expressly stated or otherwise) to enable a **CRB** to assist a **CP** to assess and manage its consumer credit risk (as determined by the **CP**). The agreement will include, in addition to other provisions, an agreement between a **CRB** and **CP** for the contribution of **credit information** and/or supply of **credit reporting information** (as applicable). For the avoidance of doubt, a **services agreement** does not include an agreement which has been suspended or is an agreement for the contribution of personal information (which may include **credit information**) solely for identity verification purposes pursuant to the relevant provisions of the *Anti-Money Laundering and Counter-Terrorism Finance Act 2006* (as amended from time to time).

“**Signatory**” in relation to a **CP** or **CRB**, means a **CP** or **CRB** that has chosen to be a **signatory** to this PRDE by signing the **Deed Poll** and has not withdrawn from its participation in this PRDE in accordance with the **Deed Poll**.

“**Signing Date**” means the date that a **CP** or **CRB** executes the **Deed Poll**.

“**SRR**” means the Standard Reporting Requirements which are the standards used for reporting compliance with this PRDE.

Three “**Tier Levels**” have been established for the **supply** by a **CRB** to a **CP** of **credit reporting information**, the **contribution** by a **CP** to a **CRB** of **credit information**, and the **on-supply** by a **CP** of **credit eligibility information**:

- a) “**negative information**” means:

- i) **credit information** about an individual other than **consumer credit liability information** or **repayment history information**; and
 - ii) **CP derived information** and **CRB derived information** which is not derived wholly or partly from **consumer credit liability information** or **repayment history information**.
- b) “**partial information**” means:
- i) **credit information** about an individual other than **repayment history information**; and
 - ii) **CP derived information** and **CRB derived information** which is not derived wholly or partly from **repayment history information**.
- c) “**comprehensive information**” means all **credit information**, **CP derived information** and **CRB derived information** about an individual.

“**Trade Insurer**” has the same meaning as defined in the **Privacy Act**.

“**Trade Insurance Purpose**” has the same meaning as defined in the **Privacy Act**.

SCHEDULE 1

Account exceptions (paragraph 33 above)

1. Margin Loan accounts being a loan product where the products purchased (using the loan funds) are shares and the loan security is the shares purchased.
2. Novated Lease accounts.
3. Flexible Payment Option accounts being an account facility offered on charge card products that enables consumers, pursuant to the terms and conditions of the account, to revolve or defer payment of their outstanding balance.
4. Overdrawn deposit or transaction accounts that are not formal overdrafts.

SCHEDULE 2

Repayment History Information reporting exceptions (paragraph 33A above)

1. The 'month' applicable to the **repayment history information** does not meet the 'month' definition in the Privacy (Credit Reporting) Code 2014.
2. The 'month' applicable to the **repayment history information** overlaps with a previous 'month'.
3. The monthly payment that is due in relation to the consumer credit is the result of a Part IX or Part X debt agreement pursuant to the Bankruptcy Act 1966 (Cth).
4. The obligation to make a monthly payment in relation to the consumer credit (the payment obligation) is in dispute in its entirety by the individual and is under investigation on the basis the balance of the consumer credit relates to an unauthorised transaction or the consumer credit was fraudulently opened in the individual's name. This exception will apply only to the time period in which there is a dispute as to liability. Once the dispute is resolved and if the individual remains liable, then RHI for the period of the dispute is no longer subject to this exception.
5. Unless and until a legislative approach to the reporting of hardship information is made and in force, **repayment history information** for an arrangement as defined in Section 28TA of the consultation draft National Consumer Credit Protections Regulations 2010 released for consultation on 14 February 2020 or, if the final version of the Regulations differs, as defined in those final Regulations, where that arrangement is entered into between a **CP** (including any **CP** not covered by Regulation 28TA) and an individual.