



Record of oral submission:

Matter name:	Australian Retail Credit Association application for reauthorisation		
ACCC parties	David Hatfield and Jaime Martin		
TRACKIT No	AA1000521		
Other parties	Financial Rights Legal Centre – Julia Davis Legal Aid Queensland – Loretta Kreet		
Date:	15 July 2020, 3pm		
Phone to <input type="checkbox"/>	Phone from <input type="checkbox"/>	Meeting <input checked="" type="checkbox"/>	Other <input type="checkbox"/>

Financial Rights Legal Centre (**Financial Rights**) requested a teleconference with the ACCC to provide an oral submission in relation to the Australian Retail Credit Association's (**ARCA**) application for re-authorisation of certain provisions of the Principles of Reciprocity and Data Exchange (**PRDE**). Financial Rights noted that its views regarding the PRDE are the same as those contained in the joint letter to ARCA (from Financial Rights, Financial Counselling Australia, Consumer Action Law Centre) of 18 May 2020, which is attached to ARCA's application.

Legal Aid Queensland also participated in the teleconference and advised that it is likely to make a separate written submission to the ACCC.

The following issues were raised during the teleconference.

Lack of consultation with consumer organisations

Financial Rights submits that ARCA did not conduct a meaningful consultation process with it following the independent review of the PRDE by Price Waterhouse Coopers (PWC) in 2019. ARCA provided a presentation to consumer organisations in May 2020. Financial Rights did not have a prior opportunity to comment on the outcome of the independent review or have input into the proposed changes to the PRDE. How consumers' credit information is reported has a real impact on their lives, and consumer organisations deserve a proper seat at the table when these issues are being discussed.

The joint letter to ARCA of 18 May 2020 attempted to capture Financial Rights' key ongoing concerns with the proposed PRDE following ARCA's May presentation. ARCA has not amended the PRDE in response to the concerns raised in the May 2020 letter.

Financial Rights considers there is a lack of transparency over how ARCA has implemented the recommendations arising from the 2019 independent review.

Repayment History Information (RHI)

An ongoing lack of consistency in RHI remains an important issue for Financial Rights in comprehensive credit reporting. Financial Rights maintains that the PRDE needs to be amended to ensure that credit providers consistently report this information to credit reporting bodies, especially where financial hardship arrangements have been agreed.

Financial Rights disagrees with ARCA's claims that this issue 'sits outside' the PRDE, and will soon be resolved when the *National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019* (the Bill) passes through the Senate.

Financial Rights noted that it is was opposition from consumer groups on a range of issues that stopped the passage of the Bill, and these broader concerns remain. As a result, it is not certain when the Bill may be passed. Financial Rights considers that RHI data 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, as proposed under the Bill. Financial Rights considers it is appropriate for the PRDE to also reflect this.

Financial Rights submits there is systemic non-compliance with the current RHI obligations under the PRDE, which is acknowledged in ACRA's application for re-authorisation. Financial Rights submits there is a high rate of non-compliance among signatories because there is a lack of equity in how RHI is reported under the PRDE where credit providers have entered into financial hardship arrangements with customers, and which those customers are complying with.

The importance of this issue has been highlighted during the current COVID-19 pandemic. Banks have been required to get together (through the Australian Banking Association) to resolve how to consistently report RHI where consumers have reached a financial hardship agreement with their credit provider. If this issue was dealt with under the PRDE, this would have been effectively dealt with right from the start of the pandemic. Financial Rights considers that when consumers contact their credit provider seeking a financial hardship agreement, they (rightly) expect this to be fairly reported in their credit reports. This does not currently occur, and may act as a disincentive for consumers to seek the assistance they require.

Exceptions for listing 'defaults' under the PRDE when there has been a negotiated settlement

As outlined in the letter to ARCA of 18 May 2020, Financial Rights considers the PRDE should be amended to allow an exception for listing defaults in RHI where there has been a negotiated settlement.

Financial Rights stressed that it is not trying to change the definition of 'default'. Rather this issue revolves around fairness. For example, if an ombudsman decides (or the Australian Financial Complaints Authority (AFCA) determines) that a disputed default listed against a consumer should not be listed on a credit report, the PRDE does not currently allow credit providers not to list the default. Financial Rights submits this is another reason why there is widespread non-compliance around 'defaults' under the PRDE (as outlined in paragraphs 163-173 of ARCA's submission in support of its application for re- authorisation). A number of banks are just not reporting defaults in these circumstances.

Consumers lose a high number of 'points' (namely, 150) from their total score when they have a single default listed on their credit report. This can be enough on its own for credit providers to decide not to lend money to those consumers. This highlights the significant impact that the PRDE has on consumers, and potentially vulnerable consumers that have been successful in having a disputed default listing overturned by AFCA or an ombudsman.

Financial Rights also noted that many disputed default listings are settled before they reach AFCA or an ombudsman.

Effective consumer representation

Financial Rights submits that effective consumer representation is required on the PRDE Administrator to ensure that the monitoring, reporting and compliance framework under the PRDE is sufficiently transparent and independent.

The new PRDE Administrator will also be issuing more guidance material on consumer issues – therefore, consumers should have a representative on that body.

Without consumer representation, Financial Rights submits that the PRDE Administrator is currently not set up in accordance with ACCC Guidelines for developing effective voluntary industry codes of conduct.

Likely public benefits and detriments

Financial Rights submits that ARCA links its public benefit claims from the PRDE to comprehensive credit reporting. However, it considers there is a lack of international evidence that comprehensive credit reporting leads to greater financial inclusion for consumers.

Financial Rights considers that the primary benefit from comprehensive credit reporting is that it allows credit providers to price their lending decisions more accurately, and assists licensed credit providers fulfil their responsible lending obligations.

Financial Rights would not support a longer six year authorisation, as requested by ARCA in its application. Because consumers have not been meaningfully consulted by ARCA or the independent reviewer about the operation of the PRDE, the ACCC's public authorisation consultation process is the only opportunity that consumer organisations get to comment. It considers that a maximum of five years is appropriate. Six years would be too long if there was an ongoing need for change.

Signature: Jaime Martin	Date:	29 July 2020
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