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Strong banks – strong Australia

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Manager
Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600
By email ccr.reforms@treasury.gov.au

Dear Sir/Madam

Mandatory Comprehensive Credit Reporting

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide the Treasury with our comments on the exposure draft legislation to mandate a comprehensive credit reporting regime.

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

Flagging Customers in Hardship

Banks have well established programs to assist customers who experience financial difficulty. These can include measures to help them manage their repayment of loans, including concessional rates of interest and reduced payments of principal. In terms of reporting of repayment history information these agreed concessional financial hardship payment arrangements would be revealed as a fall in the regular pattern of payments. Concessional payment arrangements for hardship are often temporary, with repayments of loans being restored to the originally scheduled payment plan once the period of hardship is over.

The ABA believes there would be benefits for customers for the period of hardship to be flagged in the repayment history information provided under positive credit reporting. It would signal that a customer is working with their credit provider to get back on their feet through a period of hardship and that their credit standing remains sound.

We note that Section 133CT of the legislation provides that details of changed information on customers must be advised to credit bureaux. We suggest that the commencement and subsequent termination of hardship arrangements would constitute a relevant change in information. This would seem to be required to maintain the integrity of the repayment history information and more broadly the credit reporting system.

The Privacy (Credit Reporting) Code version 1.2 (**CR Code**) is an important part of the regulatory framework for the credit reporting system in Australia. The CR Code contains explanations of how credit providers and credit reporting bodies are to report various information such as consumer credit liability information and repayment history information to a credit reporting body.

The ABA notes that the scope of the review of the CR Code in 2017 which was initiated by the Office of the Information Commissioner specifically excluded consideration of the debate around the need for hardship flags in credit reporting and how this might operate in practice. The ABA believes it is time this issue was addressed.

The ABA proposes that Treasury should include regulations to allow for transparent reporting of repayment history information through amendment of the CR Code, for example to allow for a hardship 'flag' field.

Provision of Information to Treasurer

The Bill requires licensees and eligible reporting bodies to provide audited reports to the Treasurer.

Division 4 mandates different time periods for reporting to the Minister.

Section 133CX provides that audited reports about initial bulk supplies of credit information must be supplied to the Minister within 6 months after 1 July.

Section 133CY provides that audited reports about ongoing supplies of credit information must be supplied to the Minister within three months after a financial year.

It is not clear why the reporting time periods are different and clarification on this point would be helpful.

More generally, it seems somewhat unusual to essentially duplicate the compliance monitoring role established for ASIC in the legislation, with the information reported to the Treasurer essentially being a subset of the reporting to ASIC. If this is the case, it would be more efficient and entail a lower compliance burden on the banks if ASIC were to produce an aggregated report to Treasury. The proposed arrangements seem inconsistent with the Government's stated objective of reducing red tape for business.

Finally, on this point, the legislation provides that the reporting requirements will be laid out in the regulations. Given the tight timeframes for the commencement of the regime, it would be desirable for credit providers to have an understanding of their reporting requirements as soon as possible to expedite the building of the systems to comply with the new regime.

50 Per Cent

The exposure draft legislation provides that eligible licensees are required to supply credit information on 50 per cent of their active and open credit accounts by 28 September 2018. For entities which include distinct subsidiaries, clarification is required as to whether this refers to the entire conglomerate entity on average and in what proportions, whether the 50 per cent requirement must be met individually by each of the separate corporate entities or by only one entity of the conglomerate.

This clarification is important for the transitional period from September 2018 to September 2019; it is acknowledged that from September 2019 the major banks will be supplying credit information on 100 per cent of relevant accounts.

PRDE

The comprehensive credit reporting regime is mandatory for large ADIs and their subsidiaries.

The ABA notes that under subsection 133CV(4) credit providers will be able to access credit information supplied under the regime by voluntarily supplying comprehensive credit information to a credit reporting body if:

- It is a signatory to the Principles of Reciprocity and Data Exchange (PRDE) and with which the credit provider has a services agreement OR
- It meets the conditions of supply prescribed in the regulations.

This means there will be three classes of participant in the CCR regime.

- Major banks, with mandated participation. Their data will be available to all participants.
- Other credit providers who elect to sign up to the PRDE. Their data will only be available to other PRDE signatories. They will be able to access the data provided by PRDE signatories and also the data provided by the major banks.

- Other credit providers who do not sign up to the PRDE. They will be able to access the data provided by other non-PRDE signatories where that is facilitated by individual service agreements with the credit reporting bodies, and also data provided by the major banks, but will not be able to access data provided by non-major bank PRDE signatories.

The protocols for participation by PRDE signatories will be governed by the PRDE. The protocols for participation by non-PRDE signatory credit providers or credit bureaux can be prescribed by regulations under Section 133CV(4)(b). However, the Explanatory Memorandum (paragraph 1.110) states that the government does not intend to prescribe an equivalent technical standard to the PRDE and expects ASIC would only exercise its powers and prescribe a technical standard if it became apparent that the absence of such a standard was creating inefficiencies or meant that the mandatory regime was inoperable.

The ABA suggests that ASIC consider mandating a standard early to ensure clarity to data suppliers and to ensure the credit information supplied by non-PRDE signatories has the same meaning as that supplied by PRDE signatories. This should include definitions and standards at the field level to ensure data has a consistent meaning across suppliers.

The ABA recognises the need for technical neutrality and the need for the regime to be open to new technologies to preserve efficiency and competitiveness. But these objectives could be achieved by requiring equivalence in the operational rules and technical standards adopted by participants. Credit providers who are not signatories to the PRDE should be required to demonstrate equivalence as a pre-requisite for participation in the system. This would include equivalence for data standards as above and dispute resolution and enforcement rules.

If equivalence is not achieved, credit providers which join the regime voluntarily could participate under different sets of rules, creating a “two tier” credit system.

Definition of Eligible Credit Account

There appears to be an inconsistency between “consumer credit” as defined by the Privacy Act and a “credit contract” as defined by the Credit Code (under the National Consumer Credit Protection Act (NCCP)).

This Bill provides that credit providers will need to supply credit information on unregulated credit contracts if they fall within the wider definition of “consumer credit” in the Privacy Act, even though this Bill is an amendment to the NCCP Act.

This issue needs to be clarified as soon as practicable to allow time for banks to make the necessary changes to IT systems and account identification systems.

I would welcome further discussion of these issues.

Yours faithfully

Signed by

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