

23 February 2018

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Dear James

National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) – Exposure Draft Bill

Thank you for the opportunity to comment on the draft bill. ANZ supports Comprehensive Credit Reporting (CCR) as an important tool for credit providers (CP) to improve the quality of credit decisions. CCR will help credit providers improve the level and efficiency of compliance with responsible lending provisions in the *National Consumer Credit Protection Act 2009 (Cth)* (NCCP Act).

ANZ has made significant progress towards commencing CCR in 2018. Enforcing an effective date provides confidence to industry participants that their efforts to supply information will be matched by others.

We have six observations that may assist you in finalising the bill's text and to better align the bill with the Principles of Reciprocity and Data Exchange (PRDE) framework developed by ARCA, with significant input from ANZ.

Operation of a data sharing system outside the PRDE

First, it is unclear whether reciprocity rules apply to a credit provider that is seeking supply of mandatory credit information under section **133CV(2) and (3)**. As currently drafted, to be eligible to receive on-supply from a credit reporting body (CRB), the credit information disclosed by the credit provider to the credit reporting body must relate to at least 50 per cent/100 per cent of its eligible credit accounts. As the draft bill does not specify the types of credit information required to be disclosed on eligible accounts, the requesting CP may not be required to *contribute* comprehensive information before *receiving* comprehensive information collected under the mandatory regime.

Further, the words "less than 12 months" in section **133CV(2)(f)** appear inconsistent with obligations to supply in section **133CR**. Due to the 90 day transition allowance in this section, a large ADI may have been reporting 50 per cent of eligible credit accounts for longer than 12 months and still be compliant with section **133CR**. However, a CRB may not be permitted to on-supply credit information to the large ADI under section **133CV(2)(f)** because more than 12 months would have elapsed since it first began reporting 50 per cent of its eligible accounts.

Operational considerations within the PRDE not captured

Second, the draft bill replicates the PRDE's main purpose of ensuring consistency of credit information through reciprocity. We note that other factors have been included in the PRDE Principles covering what are considered to be likely scenarios that may impact



the core reciprocity principle (eg. run-off/materiality exceptions, operational issues). Treasury could consider replicating these elements of the PRDE in the bill to avoid potential problems.

Ongoing supply of credit information

Third, ANZ understands the intent of section **133CT(1)(c)** is to ensure a CP continues to supply ongoing information to a CRB within a reasonable timeframe. We wonder if this section could be simplified if it were redrafted to state that CPs are required to report mandatory credit information for all credit accounts opened after the initial and subsequent bulk supplies, and must continue to update the comprehensive credit information that is disclosed to credit reporting bodies for all credit accounts (opened before and after bulk supplies), as required by the Privacy Act and the Privacy Code.

As currently drafted, the definitive list set out in the table could be read narrowly, and interpreted as excluding a requirement to report certain forms of credit information. For example, on our reading:

- The table in section 133CT only applies to eligible credit accounts reported as part of the initial and subsequent bulk supplies;
- the table may not cover RHI in relation to accounts opened after the bulk supplies. Item 1 appears only to apply to credit information that was provided under the relevant Division;
- Item 3 could be read as only applying to mandatory credit information required by the event of the opening of an eligible credit account (ie CCLI); and
- SCI is not dealt with.

We also note that the use of “calendar month” in section **133CT(1)(c)** is likely to create operational issues for CPs and may have adverse implications on reporting. For example, a CP may withhold disclosures until the beginning of the following month, increasing the period of time allowed to deal with operational issues. It would seem preferable to reference a fixed period of time period following the occurrence of an event or applicable reporting period.

Repayment History Information

Fourth, section **133CS(4)** operates to limit the application of section 133CR(1) and (3) to RHI. Specifically, those provisions do not apply to RHI more than 3 months before the 1 July on which the licensee is an eligible licensee.

It is therefore unclear why section **133CS(5)** then goes on to characterise reliance on section 133CS(4) as a defence to a contravention of section 133CR(1) and (3) and why an evidential burden is placed on a person seeking to rely on the section. If section 133CS(4) moderates the operation of section 133CR(1) and (3), we do not see how reliance on that section constitutes a contravention or even an exception.

Regulations

Fifth, sections such as **133CP(1)(b)** include a regulation-making power. We are mindful that regulations developed under the proposed legislation can impact compliance with the mandatory scheme and would appreciate an early indication of and consultation on any regulations proposed.

We also note that prescribed information under a section **133CP(1)(b)** regulation would need to take account of restrictions in the Privacy Code about information which may be collected by CRBs. Specifically, clause 5.1(a) of the Privacy Code prohibits a CRB from collecting personal information about an individual’s activities in relation to consumer credit that is not credit information.



Ongoing security of credit information held by a CRB

Finally, section **133CS** allows a CP to withhold disclosure in certain circumstances during the initial bulk supply period. We would encourage Treasury to ensure an appropriate mechanism is in place that would allow a CP to suspend supply at some point beyond the initial bulk supply period if there are valid concerns about CRB data security.

If you have any questions or require clarification, please do not hesitate to contact David Erving (david.erving@anz.com, 03 8654 5623, Tom Westcott (Thomas.westcott@anz.com, 03 8655 5814) or me (rob.lomdahl@anz.com, (03) 8654 3459).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Rob Lomdahl', with a horizontal line extending to the left.

Rob Lomdahl
Group Head of Government and Regulatory Affairs