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RETAIL
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Thank you for the opportunity to provide a submission on the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018* (draft Bill).

We appreciate having had the opportunity to engage with you directly on three occasions during the consultation process on the draft Bill.

For background, the Australian Retail Credit Association (ARCA) is an industry association with its Members drawn from both credit providers (CPs) and credit reporting bodies (CRBs). ARCA's membership includes the thirteen largest Australian Prudential Regulation Authority (APRA) regulated banks, and a broad range of fintechs, finance companies, and credit union and mutual CPs. Collectively, ARCA Members account for over 95 percent of all consumer lending by dollar volume, and over 80 percent by number of accounts. Furthermore, the four national CRBs are all ARCA Members.

ARCA's objective is to promote the integrity of the credit reporting system, enabling better lending decisions.

Our submission is an opportunity to outline a number of policy issues with the draft Bill, which are set out below, and technical issues, which are summarized in *Annexure One*.

POLICY ISSUES

The creation of 'two models' for information disclosure.

The draft Bill mandates that eligible licences, effectively the four major banks, disclose their comprehensive credit information to the CRBs with whom they had commercial relationships on 2 November 2017 and that those CRBs must on-disclose all of the eligible licensee data to any CP who fulfils limited reciprocity criteria.

To enable on-disclosure of information supplied by the eligible licensees, the draft Bill envisions two models of data sharing; **Model 1** which uses the industry developed Principles of Reciprocity and Data Exchange (PRDE) to facilitate data sharing including a robust

multilateral governance framework with oversight and dispute mechanisms, and **Model 2** which is a legislative default non-PRDE model that lacks any of these frameworks.

The draft Bill is primarily directed towards requiring the four major banks to contribute their credit information within certain timeframes. Less consideration has been given to the manner by which the 'two models' in the draft Bill interact, and for the subsequent market dynamics created for all market participants. **Model 1** (the PRDE) has effectively been breached by the draft Bill. The framework for **Model 2** only provides a legislated process to access the data supplied by the four major banks and is silent on other data sharing arrangements. Hence the draft Bill has damaged the integrity of the PRDE and creates incentives for alternative models operating with lower standards to undermine it. These issues affect not only the major banks who are the primary focus of the draft Bill, but also all other market participants.

Model 1 partially embeds the PRDE into legislation by making it an approved mechanism of data disclosure under S*ection 133CV*. Industry developed the PRDE for the comprehensive credit reporting environment to overcome what industry recognised as limitations in the operation of the current credit reporting industry. The PRDE effectively creates a multilateral framework which requires adherence to a set of core principles (including reciprocity, consistency, and a transparent dispute resolution process).

In the absence of the creation of alternative multilateral model, similar to the PRDE, **Model 2** will effectively operate as a series of private bilateral contracts between individual CRBs and individual CPs for data supply. **Model 2** then, is, not a single model but a multitude of different arrangements which will not be transparent, creating commercial incentives to fragment the credit reporting market, undermining efficiency and competition, and detrimentally impacting consumers.

MODEL 1	MODEL 2
Strong Reciprocity • PRDE CCR data only shared amongst signatories. • Mandated default listing process. • Controlled on-supply of derived information.	**Weak Reciprocity** • Major bank data can be on-shared to any CP. • No mandatory default listing process. • No limit on supply of derived information.
Strong Consistency • PRDE prohibits CRBs fragmenting market. • CPs provide data consistently to all CRBs it engages.	**Weak Consistency** • Only major bank data restricted from fragmentation. • Other CP data may be shared with CRBs differentially.
Strong Quality of Data • PRDE and Data Standards mandate data quality.	**Weak Quality of Data** • No standard data quality requirements.
Strong Governance • PRDE includes robust dispute resolution process. • Industry involvement and oversight. • Transparent industry reporting mechanisms. • Governance process has strong penalties. • Governing body can monitor and enforce compliance.	**Weak Governance** • No dispute resolution process. • No industry transparency or involvement. • Annual non-public report to Minister. • No penalties for non-major bank CPs. • ASIC has no CP intervention power beyond majors.
Strong Flexibility • Flexibility for small CPs to operate at negative tier. • PRDE allows non-ACLs (e.g. Telcos) to participate. • Industry can amend PRDE.	**Weak Flexibility** • Forces small CPs to contribute at comprehensive tier. • Stops non-ACLs from accessing major bank data. • Requires legislative amendment for any change.

The PRDE itself was developed to overcome the shortcomings of operating the comprehensive credit reporting environment through private, bilateral contracts allowed for under **Model 2**. The key principles embedded in the PRDE were authorised by the Australian Competition and Consumer Commission (ACCC) – on the basis that restrictions on competition for data supply from CPs to CRBs generated an overall net benefit for both industry and consumers through less fragmentation in the credit reporting dataset[1].

To be clear, in developing the PRDE, industry never sought to rule out alternative and competing frameworks for comprehensive credit reporting participation. However, in order to achieve the economy wide benefits from comprehensive credit reporting, industry seeks to ensure that the integrity of the PRDE framework is maintained. As currently drafted, the proposed legislation breaks the integrity of the PRDE framework, undermining its ability to compete with those operating under **Model 2**. In effect the draft legislation provides incentives for market behaviour that will likely lead to data fragmentation, data inconsistency, and incomplete data supply in the market – something the PRDE was specifically created to avoid (and whose core principles were authorised by the ACCC). Fragmentation, inconsistency, and incomplete data will increase costs and undermine the efficiency of the credit reporting system for both CPs and consumers.

Protecting the integrity and performance of the credit reporting system.

The key element of the draft legislation that undermines the PRDE is the ability for non-PRDE participants to access data supplied by major banks who are signatories to the PRDE. This attacks the integrity of the PRDE and reduces the incentive to participate in **Model 1**. The PRDE itself was designed as a principles-based framework that not only facilitates data sharing but also provides a robust governance framework with transparent oversight and dispute mechanisms. **Model 2** lacks any of these frameworks and creates a serious potential to bypass **Model 1**.

One of the key principles of the PRDE is that comprehensive PRDE data is not made available to any non-signatories. By upholding a strict reciprocal framework, each PRDE signatory can have confidence that its data is exchanged under the same set of rules and enforcement provisions – maximising incentives to participate.

To ensure that the PRDE's reciprocity framework is not undermined, it is recommended that the legislation be amended to prohibit the on-disclosure of eligible licensee PRDE signatory credit information to a non-signatory. Effectively, this would mean that any CP who signs the PRDE can contribute data in confidence knowing that it will only be on-supplied to other PRDE signatories. This is a fundamental principle underpinning the PRDE - allowing **Model 1** participants to take advantage of industry best practices which are embedded in the PRDE and authorised by the ACCC.

Recommendation:

Insert a provision into *Section 133CV* of the legislation that restricts the on-disclosure of *Division 2* information that has been supplied by an eligible licensee, who is a signatory to the PRDE, only to other signatories of the PRDE.

[1] See *Annexure Two* for extract from ACCC Final Determination

Compliance with the PRDE should be a safe harbour.

Under either model, a CP (whether an eligible licensee or not) that wants to obtain the *Division 2* information of an eligible licensee, must comply with the reciprocity requirements of *Section 133CV*.

The draft Bill allows a CP that is not an eligible licensee to satisfy their obligations by meeting the supply requirements of the PRDE (**Model 1**). These requirements include the types of credit information to be supplied, and its timing and quality requirements, which are set out in the PRDE and the Australian Credit Reporting Data Standards (ACRDS).

The draft Bill, however, creates a second supply regime that must be complied with by the eligible licensees in order to meet the obligations in *Division 2* (whether or not they are also complying with the supply requirements of the PRDE under **Model 1**). Compared to the PRDE, *Division 2* creates numerous distinct supply obligations, including those related to the types of credit information required to be disclosed, the identification of accounts for which reporting must be made and the timing and manner of disclosure.

Hence, under the draft Bill, eligible licensees are effectively under a double obligation. This creates a duplicity of supply obligations on the major banks and undermines the efficiency of the PRDE and potentially provides a commercial incentive not to sign the PRDE.

We note that the process for developing the PRDE was long and complex, involving a collaborative effort across all participants in the industry. It is likely that additional unforeseen problems will be identified as eligible licensees and eligible CRBs implement the new requirements. The PRDE establishes processes to adapt the supply requirements as issues are identified and also in addition to changing circumstances, including product innovations. The draft Bill does not have this flexibility and, as a result, it is likely that the differences between the supply requirements in the PRDE and *Division 2* will grow over time.

In *section 133CV*, the draft Bill recognises the benefits of allowing industry to apply the industry developed method of supplying credit information to the CRBs. It is recommended that the legislation be amended to extend this ability to the obligations in *Division 2.* This will simplify the supply requirements imposed upon major banks by permitting eligible licensees to meet their supply obligations under *Division 2* by participating in the PRDE regime at a 'Comprehensive Tier'.

Recommendation:

Insert a provision into *Division 2* of *Part 3-2CA* that provides a 'safe harbour' to the obligations under that Division to eligible licensees that are signatories to the PRDE and have nominated to participate, and commenced contributing, at a 'Comprehensive Tier'.

Ensuring that the two models are on an equal footing.

As drafted, **Model 2** undermines the operation and design of the PRDE, by giving individual CPs and CRBs a commercial incentive to operate outside the industry developed multilateral framework. Because **Model 2** is inherently based around a multiplicity of private bilateral

arrangements, it also lacks a number of critical components that are core features of the PRDE (**Model 1)**. Examples of how **Model 2** is less robust include:

- Under **Model 2** data standards are determined bilaterally, so they will vary across CRBs and CPs. The PRDE including adherence to the ACRDS ensures a consistent quality of data in the system under **Model 1**.
- The draft Bill creates incentives under **Model 2** for CRBs to obtain exclusive access to credit information from CPs with material or unique market share, increasing the potential to fragment the market. For example, a CRB may target car finance companies, through an offer of very low-cost access to the major banks' data, on the basis that the car finance companies only provide that CRB with their data. The PRDE prohibits a CRB from entering into an exclusive arrangement with a CP requiring that CP not to supply its data to other CRBs.
- The draft Bill creates incentives under **Model 2** for individual CRBs to reward CPs who differentially supply data to other CRBs (e.g. full comprehensive credit reporting data to one CRB, only negative data to another). The PRDE prohibits this.
- The draft Bill is silent on governance and dispute resolution under **Model 2**. The PRDE includes a robust and transparent governance and dispute resolution mechanism.
- The draft Bill is silent on requirements to follow the default listing process under **Model 2**. The PRDE sets out mandatory processes to ensure the listing of defaults.
- The draft Bill is silent on the ability of a CRB under **Model 2** to disclose information that has been derived from the *Division 2* information. The PRDE prohibits a CRB from doing this. [See *Item 26* of *Annexure One*.]

Noting that these deficiencies will drive outcomes that are clearly at odds with the policy intent of the legislation, it is recommended that the characteristics of **Model 2** be enhanced. This will ensure all arrangements between CRBs and CPs are subject to the same minimum terms. Embedding better practices in **Model 2** will limit the ability of dominant players to take advantage of their market position.

Recommendation:

Incorporate additional core principles into the draft Bill for **Model 2** arrangements.

The 50 percent at 'Group' versus individual entity level (*Also noted at Item 37 of Annexure One*)

The definition in *Section 133CN* provides that an eligible licensee is either a large Authorised Deposit Taking Institution (ADI) or a subsidiary of a large ADI.

This drafting means that every CP subsidiary that forms part of a large group entity will need to separately meet the supply requirements, relevantly requiring each subsidiary to meet the 50 percent initial supply requirements.

ARCA notes that this is inconsistent with the approach taken under the PRDE to data contribution by large group entities. Under the PRDE, a large group entity may elect to either have its data contribution determined collectively as part of the group structure, or alternatively,

to identify its subsidiaries (under separate brands) as Designated Entities (who then determine their respective data contribution).

ARCA considers the PRDE approach to be both reasonable and necessary, as it recognises the realities faced by large group entities, particularly where subsidiary entities may operate with substantially different technology platforms and be at different capability levels. It also recognises the challenges faced by group entities integrating 'legacy' systems (e.g. as the result of previous mergers and acquisitions).

It is unreasonable and unnecessary to require each subsidiary entity within that group to have the capability to meet initial supply requirements by September 2018.

Mandating of the group entity will still result in each subsidiary transitioning to comprehensive credit reporting contribution, however, this transition will occur within an appropriate timeframe, allowing for the various technological and systems capability issues to be addressed.

Recommendation:

Amend the legislation to permit large group entities to calculate the 50% initial supply requirements at the group level.

Addressing Hardship.

Industry is concerned that the *Privacy Act 1988* (Cth) does not adequately deal with how to report a consumer's Repayment History Information (RHI) in circumstances where the consumer has made a hardship notice or received a hardship variation under the National Credit Code. The importance of resolving this issue was noted by the ACCC in its Final Determination authorising the PRDE.[2]

ARCA has proposed legislative reform to the Privacy Act to allow CPs to better report on consumer's true repayment capacity and behaviour in these circumstances. We appreciate this issue will be addressed after the current legislation in finalised. However, we wish to highlight that the urgency and necessity of this reform proposal is increasing as industry transitions to comprehensive credit reporting.

Recommendation:

That the Federal Government address the manner in which hardship is reported in the credit reporting system as a priority.

[2] See *Annexure Two*

TECHNICAL ISSUES

Summary of detailed technical feedback.

Annexure One to this submission sets out ARCA's detailed feedback concerning the draft Bill. *Items 1* to *32* of the table at *Annexure One* were raised with Treasury earlier in the consultation period. The table has been updated to reflect further consideration by ARCA to some of those items, and to include new points of feedback after *Item 32*.

Key feedback items include:

- Amending the 'mandatory credit information' definition to ensure that eligible licensees are not mandated to supply certain data elements, including enquiry information (which notably also includes commercial enquiries), and serious credit infringements. [See *Item 7* in *Annexure One*]
- Providing an exemption for initial bulk supply of default information to each eligible CRB, so that the eligible licensee must only supply historic default information to an eligible credit reporting body who has previously been supplied that default information. [See *Item 17* in *Annexure One*]
- For the ongoing supply of credit information by an eligible licensee, requiring this supply to occur based on the reporting periods, rather than calendar months, as well as extending the mandated timeframe for supply beyond 20 days (from the end of the reporting period). Further ensuring all ongoing reportable events for an account are adequately captured by the ongoing supply requirements. [See *Items 22*,*23* and *24* in *Annexure One*]
- Allow for tiers in accessing the major four banks' data in *Section 133CV* so as not to exclude non-Australian Credit Licence holders (non-ACLs) and those wanting to operate at less than fully comprehensive. Amend *subsections 133 CV(2) and (3)* to confirm that the disclosure of information by the CP must be made at the 'comprehensive' level to ensure that CPs are not permitted to supply negative information and receive comprehensive information. [See *Items 27* and *39* in *Annexure One*]
- Removing the requirement for a CRB to on-disclose mandatory credit information within 10 business days of a CP request, noting that any time period for CRB supply to a CP will be a commercial matter, dealt with under existing services agreements. [See *Item 29* in *Annexure One*]

We believe the manner in which the draft Bill has dealt with these issues has created unintentional consequences, and do not reflect a policy intent. Our suggested changes would bring the draft Bill into line with existing industry practice as already embedded in the PRDE. Failure to make these changes will result in significant market disruption and/or impose significant costs on some participants. In some cases, it may make compliance with the draft Bill in the mandated timeframes impossible.

Recommendation:

Refer to *Annexure One*.

If you have any questions about this submission, please feel free to contact me on 0414 446 240 or at mlaing@arca.asn.au.

Yours sincerely,

Mike Laing
Executive Chairman

AUSTRALIAN RETAIL CREDIT ASSOCIATION

ANNEXURE ONE:

ARCA's Submission on Mandatory Comprehensive Credit Reporting Bill 2018

	Reference (Page/ Line/ Section)	Description/Issue	ARCA Comments	ARCA's Submission
1.	Page 3 [insert definition]	Consider defining 'transitional reporting period' or similar	This would ease references to July 1, second July 1 throughout the draft Bill.	Minor drafting change for consistency and clarity: ***transitional reporting period*** *refers to the period beginning on the first 1 July on which the CP is an eligible licensee and ends on the following 1 July*
2.	Page 4, Line 11 (and throughout)	Refers to information "about" credit accounts	Credit information is information about an individual (rather than account) and is personal information under the Privacy Act. We note the issue of whether information is 'about' a person or service was considered in *Privacy Commissioner v Telstra Corporation Limited* [2017] FCAFC 4. This decision highlights that the referring to information being 'about' credit accounts, rather than simply being credit information (and therefore personal information) could suggest that the information is no longer personal information, and therefore not regulated by the Privacy Act.	Minor drafting change for consistency and to ensure clear application of the *Privacy Act*.
3.	Page 4, Line 12	"supply updated information to these bodies on an ongoing basis"	The intent of this part of the draft Bill appears to be to ensure ongoing supply of information, however the phrasing suggests an obligation to update rather supply information. For consistency and clarity, we suggest the	Minor drafting change for clarity: *…must then supply to these bodies on an ongoing basis, current and up-to-date credit information*

			draft Bill reflect language used in the *Privacy Act* regarding ongoing supply of information.	
4.	Page 4, Line 14 (and throughout)	"on-disclose"	For consistency and clarity, we suggest using the term 'disclosure' in a manner that is consistent with Privacy Act; or to use 'supply' rather than 'on-disclose' if the draft Bill seeks to distinguish supply from disclosure under the Privacy Act. Refer also to ARCA comments at *Item 15* of this table.	Minor drafting change throughout the draft Bill for consistency and clarity
5.	Page 5, Line 6	"in force on 2 November 2017"	We note this section would exclude any future services agreements between eligible licensees and new CRBs from mandatory supply requirements. However, applying a strict "time stamp" to the meaning of eligible credit reporting body may unduly restrict new CRBs seeking to enter the market, as well as imposing restrictions preventing amendment to existing service agreements (between eligible CRB and eligible licensee), or changes to the legal entity for the parties to these agreements.	Moderate drafting change to enable an 'eligible CRB' to include a new entrant CRB or otherwise an existing CRB where that entity has changed, or the agreement with the CP has been amended.
6.	Page 5, Lines 10 – 16, s133CO	Meaning of eligible credit account	The term 'eligible credit account' is inconsistent with the defined terms used in the *Privacy Act*, being 'consumer credit' and 'credit.' The differences in definitions of important terms, including 'credit' between the Privacy Act and the NCCP Act and NC Code can cause confusion. This section should therefore be streamlined to clearly import the relevant Privacy Act definitions in to this part of the NCCP Act. We would also note the *Privacy Act* definition of 'consumer credit' includes an application for credit and states the credit must be provided to an individual; in this respect some parts of the definition of 'eligible credit account' in the draft Bill are unnecessary.	Minor drafting change for significant consistency issue and clarity: Term should be 'eligible consumer credit.'

7.	Page 5, Lines 17 – 30, s133CP	Meaning of mandatory credit information	The effect of the mandatory credit information definition (in conjunction with the *Division 2* supply requirements) is to mandate the supply of all elements of credit information. However, the PRDE has been drafted so that the following elements of credit information are excluded from contribution requirements: • Enquiry information (*Privacy Act*, *Section6N(d)* and *(e)*) • Serious credit infringements (*Privacy Act*, *Section 6N(l)*)[3]. Requiring supply of all elements of credit information will result in a significant and costly change to CP practice, with no corresponding benefit. In respect to enquiry information, CPs do not currently submit application enquiries to all CRBs – the number of CRBs contacted for an enquiry will depend on the CP's decisioning policy (factors will include the type and amount of credit, and the credit scoring obtained with the initial CRB enquiry). Commercial credit enquiries also fall within the 'enquiry information' definition. This broadens the application of the draft bill to commercial credit. Therefore excluding 'enquiry information' also ensures the draft legislation does not purport to mandate supply of commercial data.	Moderate drafting change required amending the definition of mandatory credit information to exclude credit information referred to in *Privacy Act*, *Subsections 6N(d), (e)* and *(l).*

[3] It also excludes contribution of court proceedings information, personal insolvency information and publicly available information although – in the context of the draft Bill – this is not an issue, given CPs do not disclose this information.

			Serious credit infringements (SCIs) have been excluded from the PRDE because, as a result of the 2014 *Privacy Act* amendment, the requirements for disclosure of SCIs are considerably more onerous. The inclusion of SCIs as part of the supply requirements, would force these CPs to now disclose SCIs for every individual who meets the requisite requirements for SCI disclosure.	
8.	[General]	Default information is not captured by mandatory requirements	The draft Bill only requires credit providers to supply information that is able to be supplied under the *Privacy Act*. This is relevant in the context of default information, because a credit provider must take steps to meet a number of requirements under the *Privacy Act* and CR Code before it can be said to hold 'default information' as defined under the *Privacy Act*. There is no requirement for a CP to take these steps though. This means a CP may hold an account with an overdue payment that is capable of being default listed, however the CP may opt to not take the necessary steps to create 'default information.' The CP will not be required to disclose default information under the draft Bill, because the CP can opt not to take the necessary steps to create 'default information' and so it has no default information to supply. Industry has recognised that the *Privacy Act* and CR Code requirements may lead to CPs not reporting on defaults. The PRDE therefore sought to address this issue by including a requirement that CP's contribute default information within a reasonable time of the account becoming overdue. This puts impetus on the CP to satisfy the *Privacy Act* and CR Code requirements to create 'default information.'	Significant drafting change to include a requirement that eligible licensee and other credit providers seeking access to *Division 2* information must supply default information within a reasonable timeframe of the consumer credit becoming overdue.

9.	Page 5, Line 18 – 19	"held by natural persons with a credit provider"	We refer to ARCA comments at *Item 6* regarding the risk of confusion between the language of the *Privacy Act* and NCCP Act. The definition of credit information and eligible credit accounts stipulates credit is given to an individual by a credit provider, making these words unnecessary.	Minor drafting change for clarity and consistency: Remove wording in its entirety from the definition
10.	Page 5, Line 19	"is any or all of the following information"	There is concern a CP could interpret 'any or all' to mean it is not required to provide all credit information it holds (e.g. that it could understand the terminology to mean it is not required to provide both CCLI *and* RHI).	Minor drafting change for clarity: Redraft to read, "is the following information: …"
11.	Page 5, Line 20	"collected by or for the CP"	We note that collection of credit information is not strictly required by any legislation. If a CP does not collect any information, it cannot be required to disclose it. This is relevant in the context of default information and our comments at *Item 8* above.	
12.	Page 5, Line 20	"collected by or for the CP"	The *Privacy Act* deals with requirements around credit information collected by the CP, rather than information collected 'for the CP'. It is worth noting that section 6H of the Privacy Act states that an Agent of a CP is considered a CP for the purposes of the *Privacy Act*. We submit the distinction between information collected 'by' or 'for' the CP is unnecessary and confusing.	Minor drafting change for clarity and consistency: "collected by the CP"
13.	Page 5, Line 22 (and throughout)	"about the natural person"	As noted above, the *Privacy Act* defines credit information as information about an individual. This line in the draft Bill is therefore inconsistent and unnecessary.	Minor drafting change for clarity and consistency: remove or change 'natural person' to 'individual'
14.	Page 5, Lines 23 – 26	Mandatory credit information includes information prescribed by regulation that relates to (i) accounts; or (ii) the natural persons who hold those accounts	Refer to *Item 2* above. The *Privacy Act* definition of 'credit information' clearly states it is personal information about a person. As well as 'identification information for the individual,' the elements of credit information under *Section 6N* of the *Privacy Act* are categories of information relevant to or connected to the individual and their creditworthiness.	Minor drafting change for consistency. Moderate drafting change to limit the regulation-making power in *Section 133CP(1)(b)* and to address the risk that *Section 133CP(2)* would see additional information regulated under *Section 133CP*, be treated as credit information under the *Privacy Act*.

			This part of the draft Bill seeks to distinguish between information about accounts and information about the individual in a way that is inconsistent with the Privacy Act treatment of credit information. Maintaining consistency with the *Privacy Act* reduces any suggestion that personal information deemed to be 'relating to accounts' is not treated as personal information (see *Item 2* above). In addition, enabling regulation under the NCCP Act to prescribe the collection of information about the individual could mean that personal information beyond the scope of the *Privacy Act* forms part of the credit reporting system. *Section 133CP(2)* of the draft Bill has the effect that any information relating to accounts that is regulated as mandatory credit information under *Section 133CP(1)(b)* becomes credit information to be dealt with under the *Privacy Act*. We are concerned this possibility is inconsistent with the intent of the legislation and would conflict with the operation of the *Privacy Act*. We would also note that any regulation made under this section would only apply to an eligible licensee's credit information. This raises concern that regulation pertaining to the reporting of – for example – specific types of credit accounts, may lead to eligible licensees reporting in a way that is not consistent with the rest of industry.	
15.	Page 6, Lines 2 – 7	"if the supply is in accordance with: (a) the registered CR Code (within the	We refer to the ARCA comments on Item 4 around consistency of language. We would also note the term 'supply' is used in the ACRDS (in context of provision of information by CP to CRB) but is not used in the *Privacy Act* or CR Code. For consistency and clarity	Moderate drafting changes for consistency and clarity: Given the different terminology used in the various instruments, we suggest keeping reference to 'supply requirements' but cross-referencing the term used in each instrument.

		meaning of the Privacy Act 1988); (b) any determination under subsection (2); (c) any technical standards approved under subsection (4)"	we suggest using the term 'disclosure' in a manner that is consistent with *Privacy Act*. Regarding *Section 133CQ(1)(a)* of the draft Bill, we note the requirements around disclosure of credit information are contained in both the *Privacy Act* and the CR Code.	We also suggest the reference to CR Code should be a reference to the *Privacy Act* and the CR Code.
16.	Page 6, Lines 19 – 20	Reference to CR Code only	Refer to ARCA comments at *Item 15*.	Minor drafting change for consistency and legal clarity: Reference to CR Code should be a reference to the *Privacy Act* and the CR Code.
17.	Page 6, Line 26, s133CR	Initial bulk supplies of credit information	We note that the initial bulk supply of default information by eligible licensees to each eligible credit reporting body may be subject to disclosure restrictions under the *Privacy Act*. That is, if the disclosure of default information is a disclosure of 'historic' default information (that is, default information previously disclosed to a CRB, which remains within its relevant retention period), and that disclosure has not previously occurred at the relevant eligible CRB, then the Privacy Act may only allow disclosure to occur where appropriate notification requirements have been met. In practical terms, this may mean that a 4-year-old default listed with CRB1, can only be listed with CRB2 if the eligible licensee serves fresh default notices on the individual. This will cause significant issues, not least of which is that it will appear the eligible licensee is seeking to double default the individual.	Significant drafting change: an exemption should apply to the initial bulk supply for default information. This exemption would be on the basis that default information disclosed (prior to the commencement of the legislation) by an eligible licensee to an eligible CRB, which has not been disclosed to each eligible credit reporting body must only be supplied to the previously-supplied eligible CRB.

			We further note issues arising from historic default disclosure has separately been raised with the Office of the Australian Information Commissioner through an independent review of the CR Code. These issues (within the context of the *Privacy Act*) are yet to be resolved.	
18.	Page 7, Line 1-3	"…accounts held with the licensee on the first 1 July on which the licensee is an eligible licensee"	Comments resolved.	
19.	Page 7, Line 1-3	"…accounts held with the licensee on the first 1 July on which the licensee is an eligible licensee"	Default information for closed accounts will need to come within the supply requirement scope (provided that default information meets the *Privacy Act* requirements and remains within the relevant retention period). As it stands, the wording does not reflect an intention to require supply of default information on closed accounts. Note also the issue of disclosure of historic default information consistently to the 3 CRBs at *Item 17*. This transition issue is more likely to cause issues for those CPs transitioning from single to multiple CRB agreements, however it may impact licensees.	Moderate drafting change to capture supply of default information on closed accounts
20.	Page 7, Line 7	Licensee may believe CRB is not complying with s20Q of Privacy Act	ARCA notes that the eligible licensee's ability to form a belief that a CRB is not complying with s20Q of the Privacy Act will depend entirely upon the terms of the services agreement between CP and CRB. In comparison, under the *Privacy Act* and CR Code, a CRB is empowered with oversight of CP activity, including the undertaking of audits and directing rectification action.	Moderate drafting change to *Section 20Q(3)* to provide that a CRB must, under its agreement with credit providers, provide evidence to the credit providers that it has met its storage obligation under *Section 20Q(3)*.

			This may mean an eligible licensee is restricted in its ability to form a reasonable belief of compliance, as compared to a CRB (in the context of its oversight of CP compliance with *Privacy Act* requirements).	
21.	Page 10, Line 2	Evidential burden	As a minor drafting point, the draft Bill at page 12 line 9 refers the reader to 13.3 Criminal Code. It may be consistent to do the same here.	Minor drafting change for consistency and clarity
22.	Page 10, Lines 13 and 25 s133CT	Reference to 'calendar month'	Ongoing reporting of credit information occurs in accordance with the 'reporting period' for the account, rather than reporting based on the end of each calendar month. CPs' systems each operate differently – some will adopt a cycle date reporting mechanism, others will adopt an end of month reporting mechanism. (Notably the CR Code definition of 'month' for reporting repayment history information (RHI) adopts the *Acts Interpretation Act* definition of 'month' – which allows a month to be a period between two dates, where the starting date does not need to be the first day in the month, nor does the end date need to be the last date in the month). Maintaining a reporting requirement based on 'calendar month' rather than 'reporting period' could have significant ramifications for CP systems, and lead to non-compliance.	Moderate drafting change are required to replace 'calendar month' with 'reporting period'. 'Reporting period' be defined as the period for reporting data for an account, which will occur on a minimum monthly cycle.
23.	Page 10, Line 25, section 133CT	Requirement to supply within 20 days after the end of that calendar month	The draft Bill mandates ongoing CP data supply to occur 'within 20 days after the end of the calendar month'. The 'calendar month' issue is outlined at *Item 22* above. The mandating of supply within a 20-day timeframe may cause unnecessary compliance issues.	Moderate change in drafting is required to replace 'within 20 days after the end of that calendar month' with wording which either: • Enables ongoing supply to occur before the subsequent reporting period ends; or • (if a nominated time is required) 'within 30 days after the end of the reporting period'.

			At present, the Australian Credit Reporting Data Standards (ACRDS) requires a CP to use its best endeavours to supply data within 20 days of the end of the reporting period. This requirement has been framed as 'best endeavours' to allow for a range of circumstances. Critically, one of the key reasons for adopting a 'best endeavours' approach under the ACRDS is that this timeframe may be difficult to meet when disclosing RHI for the first overdue month. In that month, the overdue payment can only be disclosed on expiry of a 14-day grace period. This means in the first overdue month, RHI disclosure may not occur until day 15 (following the account becoming overdue). Where an account falls overdue on or close to the start of the reporting period, this may mean that the disclosure to the CRB must occur within 3 or 4 days following expiry of the grace period. If a CP reports to the CRB less frequently than every 3 or 4 days, than the CP will be unable to meet the 20-day reporting requirement. This illustration also assumes reporting based on reporting periods, rather than calendar months. Should reporting be based on calendar month cycles, this could mean that, depending upon when in the month an account falls overdue, a CP may be unable to disclose any RHI for that account within the requisite timeframe because the 14-day grace period has not yet expired. However, if the account were to remain overdue a subsequent month, this may then mean the first negative RHI disclosure is a '2' (indicating the account is between 30 to 59 days overdue), rather than a '1'. A further reason the ACRDS has adopted a 'best	

			endeavours' approach to meeting the 20-day reporting requirement, is that CPs may infrequently experience technical issues in their data loading and processing. A mandated 20-day reporting requirement could mean that unavoidable delays in RHI reporting, or technical data processing issues would need to be dealt with as 'compliance issues'[4].	
24.	Page 10, Line 29	Ongoing supplies of mandatory credit information	The table of events for the 'ongoing supplies of mandatory credit information' appears incomplete and does not reflect all ongoing reportable events. While *Item 3* of the table provides that, on opening (or re-opening) of an eligible credit account, mandatory credit information must be supplied for that account – it is unclear, and indeed arguable, that this does not adequately capture the ongoing supply of mandatory credit information (beyond that available at account opening). For clarity, all ongoing reportable events need to be adequately captured in table to ensure: • All initial credit information supplied is updated or corrected (as appropriate) • All new credit information for that account is disclosed.	Moderate drafting additions required to the table of events to include the supply of all new credit information for the account being: • Monthly RHI • New account holder or ceased account holder information • Account transfer information • New default information • New consumer credit liability information (beyond account/open close date) not previously disclosed.
25.	Page 10, Line 29	Ongoing supplies of mandatory credit information	*Item 1* of the table refers to 'the need to change any mandatory credit information' to ensure the information is 'accurate, up-to-date and complete.' This terminology does not reflect the *Privacy Act* or the ACRDS which provides for 'update' or 'correction' to information.	Minor drafting change for clarity and consistency: the 'need to *update* or *correct*' credit information previously supplied

[4] It is noted that s133CT(1) is an offence provision (per s133C(4)), and subject to reporting and audit requirements (per s133CY)

26.	Page 13, Line 1 onwards	On-disclosure of derived information	*Section 133CV* deals with the on-disclosure of Division 2 information, limiting it to CPs that meet certain contribution requirements. However, the draft Bill does not limit the on-disclosure of CP or CRB derived information (as defined in section 6 of the Privacy Act) that is created with Division 2 information. We consider it important that the legislation limit the on-disclosure of CP or CRB derived information to those CPs that meet supply requirements under *Section 133CV* of the draft Bill. It should be noted that without a reciprocity requirement on the on-disclosure of CP derived information, CPs may completely avoid obligations to contribute CCR and simply rely on rich and valuable information that is derived from *Division 2* information. We are particularly concerned about this apparent loophole for CP or CRB data based on *Division 2* information that is supplied under the PRDE, given the draft Bill would undermine the strong rules around reciprocity enshrined in the PRDE.	Significant drafting change to amend *Section 133CV(1)* to prohibit the disclosure of CP and CRB derived information that is derived from Division 2 information unless the conditions of that subsection are satisfied. Amend *Section 133CV(2)* and *(3)* accordingly to permit disclosure of derived information.
27.	Page 13, Line 1 onwards	Ability of non-signatories to participate at the negative tier	As it stands, the draft Bill would require credit providers to supply CCR in order to access any credit information – including negative information – supplied under *Division 2*. This would mean telecommunication companies and utilities (who are not ACL holders and therefore unable to disclose or access RHI) as well as smaller CPs or those CPs that are less prepared for CCR would not be able to access default information from eligible licensees. This would have an immediate adverse impact on credit decisioning across multiple industries. It is worth noting the PRDE seeks to avoid this impact	Significant drafting change to provide an exception to *Section 133CV* to permit CRBs to on-supply negative *Division 2* information without requiring the credit provider to be a signatory to the PRDE, or to meet reciprocity requirements. Note this may also require a definition of negative information.

			by allowing non-signatories to access negative information from PRDE signatories without signing the PRDE or satisfying the reciprocity principle.	
28.	Page 13, Line 5	"half of its credit information"	A minor drafting note; this language is inconsistent with the rest of the draft Bill.	Minor drafting change for clarity and consistency
29.	Page 14, Line 11 & 28	CRB requirement to 'disclose' information to a CP within 10 business days of the request day	The requirement for a CRB to make requested disclosure of information to a CP within 10 business days after the request day is excessive, unnecessary and inconsistent with current industry practice. CRBs and CPs negotiate data supply by CRBs through service agreements, with the time period for supply by the CRB a commercial matter (enabling CPs, in some instances, to obtain 'real time' data from CRBs, supporting automated credit decisions).	Moderate change in drafting to remove the wording *"within 10 business days after the request day"*. No additional wording required given the services agreement adequately addresses data supply timeframes.
30.	Page 14, Line 23	100% supply of eligible credit accounts held with the CP	The draft Bill requires 100% supply of eligible credit information. This requirement is 'unworkable' for our Members. The PRDE makes allowance for certain exceptions in calculating whether a CP has complied with the reporting requirements. For example, under the PRDE a CP is not required to report on run-off accounts where no new accounts of that type are being opened, and the number of accounts is no more than 10,000 and the total number of accounts is less than 3% of the CP's total number of credit accounts. These types of exceptions mean the CP may report less than 100% of its accounts without breaching the PRDE. Members are concerned that under the draft Bill, any exceptions to the supply requirements or the definition of 'eligible credit account' may need to be included in the legislation or a legislative instrument – and no such	Moderate drafting change to remove reference to 100%. Consideration to exceptions to be included in legislative instruments to take effect at the same time as the draft Bill.

			exceptions are included at this stage of the consultation on the draft Bill. It should also be noted here that if eligible licensees supply credit information in accordance with the legislation, and that standard differs from the requirements of the PRDE, the risk of data inconsistencies and fragmentation is amplified.	
31.	Page 15, Line 5	Endorsement of PRDE as amended from time to time	Comments resolved.	
32.	Page 15, Line 14 onwards	CRB's subject to penalties despite not being in control of relevant circumstances	The obligations and corresponding penalties in *Section 133CV* are placed on the CRB even though the CP is in control of the relevant pre-conditions (i.e. whether or not the CP is a signatory and/or whether or not the CP has supplied the required data.). There is no safe harbour made available to the CRB.	
33.	Page 16, Line 17	Working out whether a person is required to supply mandatory info	The drafting of this part of the section may be confusing.	Minor amendments relying on defined terms to improve clarity
34.	[General]	References to matters to be addressed in draft Regulations	The draft Bill refers to various matters that may be addressed through regulation. ARCA is keen to understand if and when any regulations will be prepared in conjunction with the Bill.	
35.	Page 17, Line 24	No oversight of other CP's receiving Division 2 information under s133CV(2) and (3)	The Bill does not establish a process for overseeing CPs (other than eligible licensees) that are expected to submit credit information under *Section 133(2)* and *(3)*.	
36.	Page 8 Line 6 onwards	The Bill does not require backloading of RHI	Under *Section 133CS(4)* of the draft Bill, the supply requirements in *Sections 133CR(1)* and *133CR(3)* do not apply to information that became RHI more than 3 months before 1 July. This confirms that the eligible licensee is not required to report RHI that relates to a	Moderate drafting change to clarify whether the draft Bill requires mandatory supply of RHI that became RHI less than 3 months before 1 July.

			period more than 3 months before 1 July. However, it does not appear that anything in the draft Bill requires the CP to contribute information that became RHI less than 3 months before the 1 July. Rather, the obligation to report RHI appears to commence from 1 July. The Explanatory Memorandum at 1.77 states the requirement to supply RHI applies to the 3 months *prior* to 1 July. However, this requirement does not seem to be achieved in the draft Bill.	
37.	Page 4, Lines 19 to 25	Meaning of eligible licensee	Under the eligible licensee definition, a licensee is either a large ADI or a subsidiary of a large ADI as defined in the *Banking Act*. We note the Banking Executive Accountability and Related Measures Bill will insert a definition in to the Banking Act however the term 'large ADI' is not currently defined in the Banking Act. This drafting means that every CP subsidiary that forms part of a large group entity will need to separately meet the supply requirements, relevantly requiring each subsidiary to meet the 50% initial supply requirements. It is unreasonable and unnecessary to require each subsidiary entity within that group to have the capability to meet initial supply requirements from September 2018. We note the approach taken under the PRDE to data contribution by large group entities. Under the PRDE, a large group entity may elect to either have its data contribution determined collectively as part of the group structure, or alternatively, to identify its subsidiaries (under separate brands) as Designated Entities (who then determine their respective data contribution).	Amend the legislation to permit large group entities to calculate the 50% initial supply requirements at the group level.

			This approach recognises the challenges faced by large group entities, particularly where subsidiary entities as part of the group may operate with substantially different technology platforms and be at different capability levels. It also recognises the challenges faced by group entities integrating 'legacy' systems (e.g. as the result of previous mergers and acquisitions). Mandating of the group entity will still result in each subsidiary transitioning to CCR contribution, however, this transition will occur within an appropriate timeframe, allowing for the various technological and systems capability issues to be addressed.	
38.	Page 13, Line 11	Type of credit information required to be supplied under s133CV(1)	We understand that the disclosures of credit information required by *Section 133CV(1)(b)* would allow the credit provider to supply information at a tier nominated under the PRDE, however this is not clear in the drafting.	Clarify that disclosures of credit information under requirement in *Section 133CV(1)(b)* refers to the supply of credit information to the CRB at a CP's nominated tier under the PRDE.
39.	Page 13, Line 31 and Page 14, Line 19	Type of credit information required to be supplied under s133CV(2) and (3)	We understand that the disclosure of credit information under *Section 133CV(2)* and *(3)* requires information to be disclosed at a "comprehensive" level. This is not clear in the drafting, which could be interpreted as permitting a credit provider to supply negative-only data but be provided comprehensive *Division 2* information.	Clarify that the "disclosure" requirement in *Section 133CV(2)* and *(3)* refers to the supply of credit information to the CRB at a comprehensive" level.
40.	Page 7, Lines 1 to 3	New eligible licensees	We note that if a CP became an eligible licensee under the *Section 133CN* definition, it would be required to supply credit information in accordance with the draft Bill no later than 90 days after the first 1 July after which it became "eligible". We are concerned about how this deadline may operate in reality and whether the new eligible licensee would have recourse to a temporary exemption in this circumstance.	ARCA notes that ASIC may be asked to use its exemption and modification powers in section 109 of the NCCP to provide a reasonable transition period where a credit provider becomes an eligible licensee at a later date.

AUSTRALIAN RETAIL CREDIT ASSOCIATION

ANNEXURE TWO:

Extract from ACCC Final Determination re Authorisation of PRDE[5]

(*3 December 2015, Authorisation number A91482 pp2-3*)
https://www.accc.gov.au/system/files/public-registers/documents/D15%2B182363.pdf

"The ACCC considers that the reciprocity, consistency and enforceability provisions in the Principles will assist with the realisation of the benefits associated with Comprehensive Reporting. ***The ACCC accepts that credit providers need adequate assurance in a framework for sharing of their commercially valuable consumer credit information in order to participate in Comprehensive Reporting.*** This is because there is a free rider concern that other credit providers will access and benefit from a credit provider's information without also contributing their own credit information. Absent a solution to the free rider concern there is likely to be inadequate incentives to participate in Comprehensive Reporting. ***The reciprocity provisions combined with the enforceability provisions are likely to provide the requisite assurance and improve incentives for participation***.

The consistency provisions are likely to facilitate a more complete exchange of consumer credit information between credit providers and each credit reporting body. This is likely to promote competition between credit reporting bodies and between credit providers and lower the cost for credit providers to comply with their responsible lending obligations. A more standardised system for the exchange of Comprehensive Reporting should bring benefits in terms of lower cost for the industry. ***These public benefits are likely to be substantial in total***. The ACCC also accepts that there are some potential public detriments arising from the costs imposed by the relevant provisions of the Principles, most notably as a result of the consistency provisions. In its submission on the ACCC's draft determination, Veda expresses concern that the extent of the detriments from the conduct had been underestimated, given the challenges in quantifying them. Veda submits that the consistency provisions will impose prohibitive additional costs on smaller credit providers who wish to have an agreement with more than one credit reporting body. It submits that the consistency provisions will impose significant ongoing costs, which the ACCC did not take account of adequately in its draft determination. However, other interested parties, including credit providers, submit that these ongoing costs are likely to be relatively small and would be offset by the cost savings and other benefits of these provisions. ***The ACCC accepts these views, and considers that each credit provider will 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.***

The ACCC has considered the concerns raised by the consumer associations, in relation to the recording of financial hardship arrangements and settlement of defaults. The ACCC understands that this issue has been the subject of discussion between ARCA, relevant regulators and consumer groups for some time. ***The ACCC considers that this issue needs to be resolved in order to address consumer concerns and notes the work that ARCA is doing to progress the issue. However, the ACCC considers that this should be co-ordinated by***

[5] Emphasis added

industry and relevant regulators outside of this authorisation process. The ACCC will be keen to see this matter resolved in assessing any application for re-authorisation.

Overall, the ACCC is satisfied in all the circumstances that ***the proposed conduct is likely to result in public benefits that would outweigh the likely public detriments***. The ACCC grants authorisation for the relevant provisions of the Principles for five years. The ACCC can review the authorisation during the authorisation period, for example, if there has been a material change in circumstances, and consider any change to the balance of benefits and detriments.

Authorisation does not represent ACCC endorsement of the Principles. Rather, it provides statutory protection from court action for conduct that meets the net public benefit test and that might otherwise raise concerns under the competition provisions of the Competition and Consumer Act 2010."