Draft Determination

Application for authorisation

lodged by

Australian Retail Credit Association Ltd

in respect of

the Principles of Reciprocity and Data Exchange

Date: 17 July 2015

Authorisation number: A91482

Commissioners:
Rickard Schaper
Cifuentes Court
Featherston Walker
Summary

The ACCC proposes to grant authorisation for five years to the Australian Retail Credit Association Ltd (ARCA) and current and future signatories of the Principles of Reciprocity and Data Exchange (the Principles) in relation to the reciprocity obligations, consistency obligations and enforceability provisions contained in the Principles.

The Principles are a system for exchanging comprehensive consumer credit data between signatory credit reporting bodies and credit providers to facilitate comprehensive credit reporting.

Next steps

The ACCC will seek submissions in relation to this draft determination before making its final decision. The applicant and interested parties may also request the ACCC to hold a pre-decision conference to allow oral submissions on the draft determination.

Credit providers, such as banks, provide their customers’ credit information to one or more credit reporting bodies. When a consumer applies to a credit provider for a loan, the credit provider will typically request a credit report about that customer from one of these credit reporting bodies.

In the past, only negative information such as defaults was allowed to be disclosed by credit providers. However, due to amendments made to the Privacy Act 1998 (Cth) in March 2014, positive information (comprised of repayment history information and information about the consumer's credit accounts) is now able to be collected and disclosed. The reporting of both negative and positive information is referred to as Comprehensive Credit Reporting (Comprehensive Reporting). This information is used by credit providers (and consumers) to indicate an individual's or business’ 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 credit reporting data in Australia. Its members include credit providers and credit reporting bodies.

ARCA has driven the development of the Principles in order to address issues with implementing Comprehensive Reporting. The Principles are 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 considers that the multilateral framework provided for by the Principles is necessary to ensure the credit reporting system operates effectively, build confidence in the credit reporting system and provide incentives for participation.

ARCA seeks authorisation for itself and the signatories to the Principles in relation to the following provisions in the Principles:

- 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.
- Enforceability provisions: procedures and sanctions to address non-compliance with the Principles.
ARCA considers that these provisions are central to the effective operation of the Principles and the realisation of the benefits of Comprehensive Reporting.

The ACCC has received submissions in response to the application for authorisation from credit providers and credit reporting bodies as well as government, consumer and industry bodies. ARCA submits there is industry wide support for Comprehensive Reporting and general support for the Principles. However, there have been some concerns raised with particular provisions of the Principles.

Specifically, a group of consumer associations have concerns about the lack of a clear resolution for how credit providers are expected to record repayments under financial hardship arrangements and the settlement of defaults.

Also, Veda, the largest credit reporting body in Australia, is concerned that the Principles are too prescriptive and go beyond what is necessary to support Comprehensive Reporting. Veda submits that smaller credit providers could be placed at a disproportionate cost disadvantage compared to larger credit providers if they choose to fully participate due to the consistency obligations and enforcement costs associated with the Principles.

The ACCC accepts that there are significant benefits arising from credit providers accessing positive information as a result of Comprehensive Reporting, such as improving the information available to credit providers to assist them in making more informed credit decisions and reducing the information asymmetry between potential borrowers and credit providers. This should lead to increased competition between credit providers, greater access to credit for consumers and avoid consumers from becoming over-indebted, benefitting consumers as well as other industry participants.

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 overcome the free rider concern which is the concern that other credit providers will access that information without also contributing their own credit information. The reciprocity provisions combined with the enforceability provisions are likely to provide this assurance.

The consistency provisions are likely to facilitate a more complete exchange of information between credit providers and each credit reporting body, leading to increased competition between credit reporting bodies and between credit providers and assisting credit providers to comply with their responsible lending obligations at less cost. A more standardised system for the exchange of Comprehensive Reporting should bring benefits in terms of lower cost for the industry. These 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. For example, 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. However, these costs appear to be relatively small and offset by the cost savings and other benefits of these provisions.

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.
Overall, the ACCC is satisfied that the proposed conduct is likely to result in public benefits that would outweigh the likely public detriments. The ACCC proposes to grant authorisation for the relevant provisions of the Principles for five years.

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*. 
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## Abbreviations

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<td>ABA</td>
<td>Australian Bankers Association</td>
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<td>ACCC</td>
<td>Australian Competition and Consumer Commission</td>
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<td>Act</td>
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<td>ADI</td>
<td>Authorised Deposit-taking Institution</td>
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<td>ARCA</td>
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<td>ASIC</td>
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<td>CALC</td>
<td>Consumer Action Law Centre</td>
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<td>Customer Owned Banking Association</td>
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<td>Comprehensive Reporting</td>
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<td>CR Code</td>
<td>Credit Reporting Privacy Code</td>
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<td>CRA</td>
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<td>Data Standard</td>
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<td>FCA</td>
<td>Financial Counselling Australia</td>
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<td>Financial Rights</td>
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<td>HoA</td>
<td>Heads of Agreement in respect of Principles of Reciprocity for Comprehensive Credit Reporting (NZ)</td>
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<td>National Consumer Credit Protection Act</td>
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<td>NCR</td>
<td>National Credit Regulator (South Africa)</td>
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<td>OAIC</td>
<td>Office of the Australian Information Commissioner</td>
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<td>Origin</td>
<td>Origin Energy Limited</td>
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<td>PoR</td>
<td>Principles of Reciprocity (UK)</td>
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<td>PRDE</td>
<td>Principles of Reciprocity and Data Exchange</td>
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<td>Privacy Act</td>
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<td>Proposed Conduct</td>
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<td>Tascol</td>
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The application for authorisation

1. On 20 February 2015, the Australian Retail Credit Association Ltd (ARCA) lodged application A91482 with the Australian Competition and Consumer Commission (ACCC) seeking authorisation 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, described below.

2. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010 Cth* (the Act). The ACCC may ‘authorise’ businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not. Before making its final decision on an application for authorisation the ACCC must first issue a draft determination.¹

The conduct

3. The PRDE establishes a standardised system for exchanging comprehensive consumer credit information between credit reporting bodies (such as Veda Advantage Information Services and Solutions Ltd (Veda) and Dun & Bradstreet) and credit providers (such as banks and building societies).

4. ARCA seeks authorisation in relation to provisions of the PRDE that fall into the following categories:
   a. **Reciprocity provisions:**² 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.
   b. **Consistency provisions:**³ credit providers must supply the same consumer credit information to all credit reporting bodies with whom they have a services agreement.
   c. **Enforceability provisions:**⁴ procedures and sanctions to address non-compliance with the PRDE (Proposed Conduct).

5. The PRDE only applies to consumer credit information and not to business credit information.

6. Authorisation is sought for five years.

Background

The applicant – ARCA

7. ARCA is the industry association for organisations involved in the provision, exchange and application of credit reporting data in Australia.

¹ Detailed information about the authorisation process is contained in the ACCC’s Guide to Authorisation available on the ACCC’s website www.accc.gov.au.
² Paragraphs 4, 8, 10, 14, 34, 35, 36, 38, 39 and, by way of anti-avoidance, 11, 12 and 43
³ Paragraphs 9, 15 and 16
⁴ Paragraph 89
8. ARCA currently has 23 members comprising of credit providers, including the four major banks, regional and international banks and finance companies, the three credit reporting bodies active in Australia, the Customer Owned Banking Association (COBA), and one utility company. A list of ARCA’s members is included in Attachment B.

9. ARCA submits that its purpose is to promote best practice in credit risk assessment and responsible credit practices. Further, ARCA submits that it facilitates collaboration between consumers, advocacy groups, industry and government to ensure fair, competitive, accurate and secure credit reporting standards.

10. ARCA submits that its membership represents over 90 per cent of the value of consumer credit offered in the Australian financial services industry.

Credit reporting

11. Credit reporting involves credit reporting bodies collecting consumer and business\(^5\) credit information from a range of public and private sources, including from credit providers. This information is then used by credit reporting bodies to provide reports about an individual’s or business’ credit worthiness to credit providers. The credit report usually includes a ‘credit score’ which is designed to give the credit provider an indication of the individual/business’ ability to repay a line of credit. Consumers are also able to apply to access their credit report.

12. For example, if a customer applies to a bank for a home loan, the bank might request a credit report from one or more credit reporting bodies before deciding whether to grant the loan. The credit report will provide information about that customer’s credit history.

13. The flow of credit reporting information helps credit markets to function more efficiently and at lower cost than would otherwise be the case by addressing problems of information asymmetry, adverse selection and moral hazard.

14. Information asymmetry arises because an individual consumer generally knows more about their credit worthiness than a single credit provider. Faced with information asymmetry, a credit provider might price credit on the basis of the average credit risk of individuals. This could lead to adverse selection because consumers who are less risky than average will not accept the credit provider’s offer whereas higher-than-average risk consumers will accept the offer. Moral hazard, where a consumer does not take necessary steps to minimise the risk of default, may also arise after credit has been granted because the credit provider cannot monitor the consumer’s actions.

15. The credit reporting systems seek to reduce information asymmetry by providing an independent source of information\(^6\) and providing a greater amount of information to the credit provider than the credit provider would have access to from their own database. This helps credit providers better assess risk and price of credit. Credit reporting can also reduce moral hazard because non-payment to one credit provider can be reported to other credit providers (who may otherwise have imperfect information about the applicant’s credit history).

16. 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 (Repayment History):

a. Negative information includes credit application enquiries, payment defaults (more than 60 days overdue), insolvency/bankruptcies and court judgements.

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\(^5\) As noted, the PRDE only relates to consumer credit information.
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 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.

17. The term 'comprehensive credit information' includes Consumer Credit Liability Information and Repayment History, in addition to 'negative information'.

Participants in the credit reporting system

18. The relationship between a credit provider and a credit reporting body is a commercial one governed by bilateral service agreements. These service agreements are often based on a standard set of terms and conditions that can be modified and varied as part of the negotiation process.

Credit Providers

19. 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 services provided by credit reporting bodies.

20. There are approximately 5500 credit providers in the financial services sector in Australia, categorised as:

   a. Authorised Deposit-taking Institutions (ADIs) – such as banks, building societies and credit unions, which also hold an Australian Credit Licence
   
   b. non ADI lenders – who provide credit as a substantial part of their business and are required to hold an Australian Credit Licence, such as American Express and GE Capital
   
   c. telecommunication providers, utilities companies and other retailers who provide goods and services with deferred payment options but are not ADIs and not required to hold an Australian Credit Licence.

21. At present, the Privacy Act 1988 (Cth) (the Privacy Act) only allows Australian Credit Licence holders to collect and disclose Repayment History. This means that non-Australian Credit Licence holders, including telecommunication companies and utility companies, are only able to exchange negative information and Consumer Credit Liability Information, but not Repayment History.

22. The credit reporting system also includes ‘affected information recipients’ such as mortgage insurers and trade insurers, who may access credit reports for limited purposes but do not contribute any credit information and are excluded from the PRDE (and thus cannot access the data of PRDE signatories).

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7 'Credit provider’ for the purposes of the Privacy Act has a broad definition and includes utility providers.

8 ADIs are authorised under the Banking Act 1959 (Cth) to carry on a banking business in Australia and are subject to prudential supervision by the Australian Prudential Regulation Authority.

9 To engage in credit activities generally an Australian Credit Licence is required prior to operating business (unless an exemption applies). Activities include those that relate to a type of credit or consumer lease to which the National Credit Code applies, and those activities are also a kind of credit activity that is covered by the licensing requirements in the National Consumer Credit Protection Act 2009 (Cth). Please see http://asic.gov.au/finance-professionals/credit-licensees/do-you-need-a-credit-licence/

10 ARCA submits that at present, there is no known timeframe for expanding Repayment History to non-Australian Credit Licence holders. Such a change would require amendment to the Privacy Act. The Financial System Inquiry (discussed below) did not make any recommendation in respect to this proposed reform.
Credit Reporting Bodies

23. 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.

24. The credit reporting bodies obtain their credit information by a variety of public and private means, including:
   a. financial information supplied to credit reporting bodies by credit providers on a regular basis, i.e. instances of default
   b. credit enquiry information generated when consumers or businesses make enquiries or applications for credit to a credit provider and a credit check is performed by the credit provider
   c. public records such as debt records and bankruptcy records held by courts
   d. other publically available information from government departments or agencies, such as the Australian Securities and Investment Commission (ASIC) or the Land Titles Office.

25. Credit reporting bodies also offer other services to credit providers to differentiate themselves and to expand their networks such as:
   a. providing support to credit providers
   b. providing additional data sets that may give credit providers unique insights, such as geo-demographic data
   c. providing analytical products which summarise aggregate data, compare, and/or assess individual consumers against their peers
   d. advising on the functionality and methods through which credit providers receive information
   e. consulting on and improving credit risk management.

26. The major credit reporting bodies in Australia are Veda, Dun & Bradstreet, and Experian. Veda is the largest with approximately 85 per cent of the market. Dun & Bradstreet and Experian have approximately 14 per cent and 1 per cent of the market respectively.¹¹

27. The Tasmanian Collection Service Credit Bureau (TASCOL) provides a comprehensive credit database available on the Tasmanian population, which is maintained in accordance with the Privacy Act. ARCA submits that TASCOL is not a full service credit reporting body in the same manner as Veda, Dun & Bradstreet and Experian. TASCOL will act as an agent of credit providers to obtain negative credit reports from other credit reporting bodies but does not intend to obtain comprehensive credit reports from these credit reporting bodies.¹²

28. Consumers can obtain basic access to their own credit information held by a credit reporting body for free every twelve months, or more detailed access on a commercial basis. A credit report should be provided to the consumer within ten days of the request. Consumers can also apply to have any errors on their credit report assessed by their credit provider and/or corrected by the credit reporting body.¹³

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¹¹ ARCA submission to ACCC in response to interested party submissions, 29 May 2015, p. 61.
¹² ARCA submission to ACCC in response to interested party submissions, 29 May 2015, p. 5.
¹³ Part IIIA, Division 2, Subdivision 20F of the Privacy Act, Access to and correction of information.
Privacy Act amendments to allow for the collection and disclosure of positive information (Consumer Credit Liability Information and Repayment History)

29. The Australian consumer credit reporting system is regulated by Part III of the Privacy Act. The Privacy Act prescribes the types of personal information that can be collected by credit providers and supplied to credit reporting bodies.

30. In January 2006, the Australian Law Reform Commission (ALRC) commenced an inquiry into the extent to which the Privacy Act and its related laws continued to provide an effective framework for the protection of privacy in Australia. The resulting 2008 final report recommended that Australia adopt a system of Comprehensive Credit Reporting (Comprehensive Reporting) to encourage more responsible lending, in line with reforms in countries including New Zealand, Germany, Singapore and the United Kingdom.

31. The final report recommended that credit reports include:
   a. when the account was opened
   b. the type of credit granted
   c. the current limits
   d. the date an account was closed
   e. the account Repayment History over the past two years.

32. The final report recommended that the Australian Government should permit credit reporting information to include an individual's repayment performance history only after it is satisfied that there is an adequate framework imposing responsible lending obligations in Commonwealth, state and territory legislation. This is discussed below.

33. The Privacy Act was amended in 2012 to allow for the collection and disclosure of positive information, and the amendments came into effect in March 2014. The amendments allow for the introduction of Comprehensive Reporting in Australia which means that credit providers are now able to collect and disclose Consumer Credit Liability Information and Repayment History, in additional to negative information.

34. The explanatory memorandum to the amending legislation states that Comprehensive Reporting will give credit providers access to additional personal information to assist them in establishing an individual's credit worthiness. The additional credit information will allow credit providers to make a more robust assessment of credit risk and assist credit providers to meet their responsible lending obligations. It is expected that this will lead to a reduction in over-indebtedness and lower credit defaults. More Comprehensive Reporting is also expected to improve competition and efficiency in credit markets which may reduce the cost of credit for individuals.

35. Although the Privacy Act amendments set out the requirements for the collection, use and disclosure of new types of consumer credit information, the Privacy Act is silent on how or why credit providers would exchange that information with other participants in the system. The PRDE (and the resulting authorisation application) seeks to address this

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14 The Attorney-General of Australia referred to the Australian Law Reform Commission for inquiry and report pursuant to subsection 20(1) of the Australian Law Reform Commission Act 1996, to address matters relating to the extent to which the Privacy Act and related laws continue to provide an effective framework for the protection of privacy in Australia.
16 Ibid, Recommendation 55-1 and 55-2
18 Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth).
residual issue arising from the reforms by setting out a framework for the sharing of comprehensive credit information between credit providers and credit reporting bodies.

**Financial System Inquiry**

36. In December 2013, the Treasurer, the Honourable Joe Hockey, set up a committee to examine how the financial system could be positioned to best meet Australia’s evolving needs and support Australia’s economic growth. The Financial System Inquiry final report was released in December 2014.

37. The final report recognised that more comprehensive sharing of consumer credit data would reduce information imbalances between credit providers and consumers, facilitate consumers switching between credit providers and facilitate greater competition among credit providers.\(^{20}\)

38. The final report acknowledged the role of industry implementation of a voluntary Comprehensive Reporting regime, suggesting that government should consider mandatory participation if, over time, participation is inadequate.\(^{21}\)

**Responsible lending obligations**

39. Chapter 3 of the *National Consumer Credit Protection Act 2009* (Cth) (*National Consumer Credit Protection Act*) contains responsible lending obligations for credit licensees. These obligations apply to credit providers, lessors under consumer leases and credit assistance providers (e.g. mortgage and finance brokers).

40. The key concept is that credit licensees must not enter into a credit contract or consumer lease with a consumer, suggest a credit contract or consumer lease, or assist a consumer to apply for a credit contract or consumer lease if the credit contract or consumer lease is unsuitable for the consumer.\(^{22}\)

41. Meeting the responsible lending obligations requires the credit licensee to take three steps:

   a. make reasonable inquiries about the consumer's financial situation, and their requirements and objectives
   b. take reasonable steps to verify the consumer's financial situation
   c. make a preliminary assessment (if providing credit assistance) or final assessment (if the credit provider or lessor) about whether the credit contract or consumer lease is 'not unsuitable' for the consumer (based on the inquiries and information obtained in the first two steps).

42. ASIC and consumers are able to take action against a credit licensee for non-performance of responsible lending obligations. A credit licensee's failure to meet the responsible lending obligations will give an affected consumer a right to seek compensation under section 178 of the National Consumer Credit Protection Act. There are significant criminal and civil penalties for credit licensees and credit representatives who fail to meet their disclosure obligations. ASIC may take administrative action by suspending, cancelling or imposing conditions on the credit licence or issuing an infringement notice.

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The PRDE

43. 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 effective operation of the PRDE.

44. 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.
   b. Partial information – includes negative information, and Consumer Credit Liability Information. Partial information does not include Repayment History.
   c. Comprehensive – negative information, partial information including Consumer Credit Liability Information, and 24 months of Repayment History.

45. Signatory credit providers must nominate a Tier Level for their information contribution.

46. A credit provider must contribute all available credit information at its elected Tier Level to all credit reporting bodies with which it has a services agreement, consistently across all consumer credit accounts for all its credit portfolios (such as mortgage portfolios, credit card portfolios etc.). This is provided for in the consistency provisions of the PRDE.

47. A signatory credit provider will only obtain supply of credit information from a signatory credit reporting body at the same Tier Level as it contributes data. This is provided for in the reciprocity provisions of the PRDE.

48. A credit provider’s nominated Tier Level will be known by all other credit provider signatories, but will only be known to those signatory credit reporting bodies with which they have a services agreement. Signatory credit providers therefore know the level of credit reporting information that they can/cannot on-supply to another credit provider. Signatory credit reporting bodies also know the level of credit information that they can expect to receive from and supply to relevant credit providers. ARCA submits that the availability of this information to signatories is relevant to the effective operation of the reciprocity provisions.

49. ARCA submits it is not mandatory to sign up to the PRDE in order to exchange consumer credit information and non-signatories are not bound by the PRDE in the exchange of any credit information. However, there are provisions which prevent dealing with non-signatories.

50. Signatory credit providers are only able to obtain credit reporting information contributed by signatory credit providers from a signatory credit reporting body, and must only exchange this information with signatory credit reporting bodies. While signatory credit reporting bodies are able to provide credit reporting information to non-signatory credit providers, they must not provide non-signatory credit providers information supplied to them by signatory credit providers.

51. However, signatory credit reporting bodies can still deal with non-signatory credit providers in relation to negative information as they did prior to the amendment of the Privacy Act.

52. There is an option for related credit providers to nominate different Tier Levels but those related credit providers are unable to on-supply information obtained at a higher Tier Level with those related entities participating at a lower Tier Level.

53. Signatory credit reporting bodies may receive partial and/or comprehensive information from non-signatory credit providers and supply such information to non-signatory credit
providers, as long as partial information and/or comprehensive information contributed by signatories is not supplied to non-signatories.

54. Consumer credit information exchanged under the PRDE must comply with standardised technical specifications set out in the Australian Credit Reporting Data Standard (Data Standard), developed by ARCA.23

55. 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.

56. Although all credit providers and credit reporting bodies are able to become signatories, ARCA submits that it is likely that within the first twelve months of operation the signatory base will be predominantly drawn from the ARCA membership, and also the few smaller credit providers who are currently contributing comprehensive information to a credit reporting body.

57. ARCA anticipates that once the PRDE becomes established, the signatory base will broaden to include smaller credit providers operating in financial services, as well as telecommunications companies and utility companies (to the extent they are permitted by law to access such information).

Rationale for the PRDE

58. ARCA submits that the PRDE will create a standardised system of reciprocal exchange of partial and comprehensive consumer credit information between PRDE signatories and also improve the existing contribution of negative information by PRDE signatories.

59. The rationale for the PRDE is to facilitate Comprehensive Reporting in a multilateral framework. ARCA considers that the reciprocity, consistency and enforceability provisions are necessary to build confidence in the system, ensuring the system’s effectiveness and encouraging credit providers and credit reporting bodies to participate in Comprehensive Reporting.

60. ARCA submits that Comprehensive Reporting and associated benefits will not be fully realised under a voluntary system of bilateral contracts between credit providers and credit reporting bodies, evidenced by the fact that credit providers have not yet responded to the opportunity to contribute positive credit information following the commencement of the Privacy Act amendments in March 2014.

61. ARCA submits that the reluctance to exchange comprehensive consumer credit information to date is due to a ‘free rider’ concern in the industry as discussed at paragraphs 134 to 150.24

62. ARCA submits that the reciprocity and enforcement provisions will provide credit providers and credit reporting bodies with the trust and confidence to exchange comprehensive credit information, addressing the free rider concern. The consistency provisions aim to result in a more transparent and efficient credit reporting system, also strengthening the confidence of participants in the system to encourage participation and achievement of the benefits from Comprehensive Reporting.

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23 The ARCA Data Standards Work Group has developed the Data Standard and Schema which include:
   a) requirements for which data elements will be reportable
   b) requirements for the reporting of validated credit data by credit providers to credit reporting bodies, including definition of all ‘reportable events’ and the data that must be reported under each event
   c) requirements for a standard format for the credit data supplied by credit providers to credit reporting bodies
   d) requirements for processing of supplied credit data by credit reporting bodies, including reporting back to the supplying credit provider of results of this processing
   e) the return of credit data by credit reporting bodies.

24 A number of the interested parties, particularly Experian, have also acknowledged this problem. Veda submits that it is unclear that the free rider concern is the primary factor that has limited the effective operation of Comprehensive Reporting to date. These views are discussed in more detail below.
ARCA consultation

63. Since July 2013, ARCA has conducted member workgroup meetings and engaged with various stakeholders on the Principles and drafting of the PRDE.

64. Veda submits that this consultation process may have had low visibility and failed to take into account the issues of small credit providers. Veda is also concerned that unforeseen consequences may arise from the application of provisions that were amended or introduced late in the consultation period or may not have been fully tested.

65. ARCA submits that the PRDE consultation process has been wide-ranging, lengthy, ongoing, inclusive and responsive. ARCA suggests that the PRDE reflects input from credit providers of all sizes and sectors, from the four major banks to the smaller customer-owned banks and credit unions (including via COBA), a range of utilities, telecommunications and finance providers, the three main credit reporting bodies in operation in Australia and broader industry stakeholders. ARCA submits that within the ARCA membership, the provisions of the PRDE were exhaustively discussed and debated prior to finalisation of the PRDE in February 2015.

66. ARCA expects that once the PRDE is in operation, a similar process will be in place to address any further concerns that may arise in respect of the operation and application of particular sections of the PRDE. ARCA notes that the PRDE is expected to be a ‘live’ document, and therefore it is expected that issues will arise from time to time and variations may be necessary.

67. A number of interested parties, including ME Bank and GE Capital, are of the view that the process followed to develop the PRDE has been comprehensive, inclusive and consultative, enabling industry participants and consumer advocates significant opportunity to contribute.

Governance

68. The PRDE will be governed by the PRDE Administrator Entity (known as the Reciprocity and Data Exchange Administrator) who will, amongst other administrative tasks, maintain a register of signatories, receive notifications from signatories of changes to their PRDE status, receive attestations from signatories to confirm their compliance with the PRDE, manage the Data Standard, have oversight of the compliance process, initiate disputes in limited circumstances and manage the review of and variations to the PRDE. The PRDE Administrator Entity will be a subsidiary entity within the ARCA group.

Dispute resolution

69. The PRDE provides for dispute resolution procedures to address non-compliance, including:
   a. conciliation between parties
   b. referral to an Industry Determination Group
   c. referral to an Eminent Person Panel.

70. The Industry Determination Group is established as a ‘peer review’ group, which may review, conduct conciliations and issue recommendations for PRDE disputes. It will be drawn from a representative signatory pool.

71. The Eminent Person Panel provides the appeal mechanism for recommendations issued by the Industry Determination Group. To qualify as an Eminent Person, a person must have a high level of legal or dispute resolution training or experience, be capable of decision-making, have knowledge of financial services or credit reporting, and cannot have been employed by a PRDE signatory within the previous 12 months. ARCA submits
that these requirements ensure that the Eminent Person will be sufficiently independent, but also capable of providing quality, considered decisions.

72. The enforcement mechanism in the PRDE is contained in clauses 65-101. ARCA submits that it consists of various escalating stages described below.

a. If, within 30 calendar days of the respondent credit provider or credit reporting body receiving a report of (alleged) non-compliant conduct, the dispute is resolved and any noncompliant conduct is rectified, then the dispute is closed and the matter will not go beyond the reporting and respondent parties (Stage 1 dispute).

b. If a Rectification Plan is entered into within the first 30 calendar days, but the non-compliant conduct will not be resolved within that time frame, there will be referral to the PRDE Administrator Entity, which is required to make the Rectification Plan available to all signatories, giving signatories an opportunity to object to the Rectification Plan (Stage 2 dispute).

c. If there is no Rectification Plan entered into within the first 30 calendar days, and there is no agreement that the conduct is compliant (Stage 3 dispute), then the dispute will be referred to the Industry Determination Group.

73. If either of the parties to the dispute reject the recommendation of the Industry Determination Group, the dispute will be referred to an Eminent Person, whose decision is binding and final. The possible compliance outcomes include the issuing of a formal warning to the respondent, the issuing of a direction to the respondent with which it must comply, and, in the worst case, requiring the respondent to contribute and obtain supply of credit information at a lower tier for a period.\(^\text{25}\)

**Fees**

74. The PRDE Administrator Entity will charge signatories annual fees for the costs associated with the administration and operation of the PRDE. ARCA submits that these fees will also partially cover the costs of the setup of the PRDE (discussed below), the Industry Determination Group, the dispute process and reviews of the PRDE. The fees will be set on a cost recovery basis.

75. ARCA submits that the PRDE Administrator Entity will take a principles-based approach to determining annual fees. The principles are that funding arrangements should:

a. be scalable

b. not advantage or disadvantage one class of signatories over another

c. apportion funding requirements according to usage of the credit reporting system by signatories.

76. ARCA submits that the largest credit providers’ annual signatory fees will be set at a range between $15,000 and $35,000. Most other credit provider annual fees are expected to range from $10,000 to $20,000. Very small credit providers will pay a nominal contribution of between $1,000 and $1,500.

77. Credit reporting bodies are expected to pay between $12,000 and $35,000 per annum.

78. In addition to the ongoing costs associated with the administration and operation of the PRDE, establishment costs of the PRDE will be incurred. These relate to staff time in setting up the governance structures, and educating potential signatories about the PRDE, as well as technology development. These establishment costs will be funded by ARCA (using ARCA membership fees and PRDE annual fees).

\(^\text{25}\)Paragraphs 89–92, page 17.
Comprehensive credit reporting overseas

79. Comprehensive credit reporting has only been permitted in Australia since March 2014. A number of countries have introduced, or are in the process of introducing, Comprehensive Reporting on either a voluntary or a mandatory basis.

80. The main features of the comprehensive credit reporting regimes in New Zealand, the United Kingdom, South Africa and the United States of America are set out below, as well as a brief summary of new and developing markets. In contrast with the PRDE, some of the regimes considered do not have consistency obligations or specific enforcement provisions. However, like the PRDE, the regimes considered generally involve some form of reciprocity obligation.

81. Veda considers that the approach taken in New Zealand and the United Kingdom are model Comprehensive Reporting regimes; however ARCA and other interested parties consider there have been issues with voluntary regimes overseas. ARCA submits that the PRDE seeks to learn from these overseas experiences.

New Zealand

82. New Zealand introduced Comprehensive Reporting in April 2012. It is a voluntary scheme that is not legally binding and operates under the Credit Reporting Privacy Code 2004 (NZ) issued by the New Zealand Privacy Commissioner under the Privacy Act 1993 (NZ).

83. A non-binding Heads of Agreement in respect of Principles of Reciprocity for Comprehensive Credit Reporting (HoA) has been signed by ten credit providers, including all major banks (except ANZ) and all three credit reporting bodies. The purpose of the HoA and the Principles of Reciprocity (PoR) are to:
   a. enable the parties to agree to the PoR before participating in Comprehensive Reporting
   b. seek consistent Comprehensive Reporting data sharing practice in New Zealand
   c. evidence the commitment of all parties to the HoA to adhere to the PoR.

84. The HoA operates on the understanding that:
   a. credit providers are entitled to receive comprehensive credit information to a level commensurate with the information they have provided
   b. signatory credit providers will work towards providing comprehensive credit information on all their product lines to the relevant credit reporting body(s) with whom they have a subscriber agreement as soon as their systems and processes permit it (however there is no specific consistency obligation)
   c. signatory credit reporting bodies will promote adherence to the PoR and endeavour to include them in their subscriber agreements.

85. While there are no enforcement provisions in the HoA, disputes are settled by reference to credit reporting body subscriber contracts (i.e. the bilateral contracts between credit providers and credit reporting bodies) taking into account the principles set out in the HoA. Further, credit reporting bodies will work with all other parties to the HoA to address adherence to the PoR. If any party does not comply with the PoR, the matter will be communicated to the affected participant data group.

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**United Kingdom**

86. The United Kingdom’s voluntary regime is dominated by three significant credit reporting bodies receiving data submission from lenders.

87. Credit reporting bodies are regulated by the Consumer Credit Act 1974 (UK) and the Data Protection Act 1988 (UK). Those Acts allow for Comprehensive Reporting.

88. Participants in credit reporting operate under the guidance of the Steering Committee on Reciprocity, which was created following discussions in the finance industry in the 1990s. The Steering Committee on Reciprocity is a cross industry forum made up of representatives from credit industry trade associations, credit industry bodies and credit reference agencies. The Steering Committee on Reciprocity has no devolved powers of its own and may only recommend decisions to its membership.\(^{29}\)

89. The consumer credit data sharing guidelines, the Principles of Reciprocity (PoR), were developed and are administered by the Steering Committee on Reciprocity. All credit reporting bodies reference the PoR in their service agreements and credit reporting bodies have a responsibility to ensure that they only supply data in accordance with these principles. The PoR provides, amongst other things, that data will be shared on the reciprocity principle that subscribers receive the same credit performance level data that they contribute. The PoR also provides for:

   a. a compliance process – participating organisations have responsibility for ensuring their internal compliance. Organisations must monitor and certify their compliance for internal purposes or in response to a request from a credit reporting body or the Steering Committee on Reciprocity. The Steering Committee on Reciprocity, through the credit reporting bodies, will seek confirmation from time to time of compliance by the credit reporting body and its members

   b. a dispute process – if a credit reporting body cannot get a member to comply with the PoR, the matter may result in an appeal to the Steering Committee on Reciprocity and/or access to the data ceasing.\(^{30}\)

90. There is no consistency requirement in the PoR.

**South Africa**

91. The National Credit Regulator (NCR) was established under the National Credit Act 2005 (South Africa) and is responsible for the regulation of the South African credit industry. The Consumer Protection Act 2008 (South Africa) and the Protection of Personal Information Act 2013 (South Africa) also make up the legislative regime in South Africa. The introduction of the National Credit Act (South Africa) in 2005 expressly allowed the sharing of positive credit information.\(^{31}\)

92. ARCA submits that the regime is mandatory, in that under the constitution of the Credit Providers Association, credit providers are required to submit identical comprehensive data to all credit reporting bodies (rather than relying on reciprocity).

93. The NCR is tasked with enforcing compliance with the National Credit Act 2005 (South Africa). Credit reporting bodies are also regulated by the Credit Industry Code of Conduct 2006 (South Africa) under which they are required to report credit providers who have not submitted data or who have had data rejected. Members who breach the

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\(^{29}\) The Steering Committee on Reciprocity website, [http://www.scoronline.co.uk/about-us](http://www.scoronline.co.uk/about-us);
http://www.scoronline.co.uk/sites/default/files/por_version_36.pdf.

\(^{30}\) The Steering Committee on Reciprocity website, visited 29 June 2015, [http://www.scoronline.co.uk/sites/default/files/por_version_36.pdf](http://www.scoronline.co.uk/sites/default/files/por_version_36.pdf); [http://www.scoronline.co.uk/principles](http://www.scoronline.co.uk/principles).

\(^{31}\) ARCA submission, Attachment C – Overseas experiences in relation to the introduction of comprehensive credit reporting, p. 38.
Credit Providers Association constitution or the Credit Industry Code of Conduct 2006 (South Africa) face a range of possible sanctions and penalties.

United States of America

94. The Fair Credit Reporting Act 1970 (US) and the Fair and Accurate Credit Transactions Act 2003 (US) govern the exchange of credit information and allow positive as well as negative credit information to be exchanged in the United States of America (US).

95. The US has one of the oldest Comprehensive Reporting regimes and one of the most complete credit files on the largest percentage of its adult population of any country. Credit reporting body data on consumer borrowing and payment behaviour has become key to the underwriting decision for consumer loans in the US. Generic scoring models have been utilised commercially by creditors since 1987 to predict bankruptcies, charge offs and serious delinquencies. 32

96. The trade organisation called the Consumer Data Industry Association establishes reporting standards and lobbies on industry issues. There are also a number of smaller private credit reporting bodies, often servicing particular niche member markets such as telecommunications companies, landlords or retailers.

97. Information exchange is conducted on a voluntary basis without an overarching industry framework, having developed with the growth of consumer credit in the US over many decades. 33

98. However, the CRA Report submits that reciprocity and consistency in contribution of consumer credit information has been a matter of regulatory oversight and commentary from time to time. Nevertheless, the US has experienced many instances of strategic incomplete data provision by credit providers. 34

Other

99. ConsumaData 35 submits that many new and developing markets (including China, Vietnam, Malaysia, the Philippines and Indonesia) have elected for a mandatory data submission model, usually with direct government involvement and a central credit register often administered by the central bank. Additional countries considering (or in the process of) introducing registers include Croatia, the Czech Republic, Hong Kong, India, Singapore and Tanzania. ConsumaData submits that this has been a ‘fast-track’ method of stabilising the lending environment, stimulating responsible credit granting and promoting economic growth.

Submissions received by the ACCC

100. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process.

101. The ACCC sought submissions from around 100 interested parties potentially affected by this application, including banks and credit unions, credit reporting bodies, government and consumer protection agencies, mortgage aggregators, and industry associations. The ACCC received 13 submissions in response.

33 ARCA submission Attachment C – Overseas experiences in relation to the introduction of comprehensive credit reporting, p. 39-40.
35 Rory Mathews of ConsumaData is an independent expert with over 25 years of experience in the consumer and commercial credit reporting industry.
102. Summaries of the public submissions received from ARCA and interested parties are below, and are discussed in more detail in the ACCC evaluation.

103. Copies of public submissions may be obtained from the ACCC’s website www.accc.gov.au/authorisationsregister.

ARCA

104. ARCA provided an initial submission to the ACCC in support of its application on 20 February 2015, which included a report prepared by KPMG, ‘The benefits of enhanced credit data exchange’, dated January 2015.


106. ARCA submits that the Proposed Conduct will facilitate better use of comprehensive credit information through standardised, reliable and timely exchange of credit information.

107. ARCA submits that the benefits from the Proposed Conduct will include an increase in consistency and fairness in credit decisions for consumers by reducing discrepancies in credit information held by different credit reporting bodies and accessed by different credit providers. This will enable credit providers to make more informed decisions as regards consumer credit worthiness and therefore improve credit management.

108. ARCA submits that the Proposed Conduct will provide benefits to consumers, regulators and the economy at large through more responsible lending. ARCA is also of the view that there will be limited, if any, public detriments associated with the Proposed Conduct. The claimed public benefits and detriments are discussed below.

Interested parties

109. The ACCC has received a number of submissions from interested parties. Submissions suggest there is industry wide support for Comprehensive Reporting, and general support for the PRDE. There have been some concerns raised with particular provisions of the PRDE, and these are summarised below and discussed in more detail later in the draft determination.

Credit providers

110. GE Capital36 is supportive of the PRDE and submits that the PRDE provides the necessary framework, standards and governance in regards to the exchange of credit information.

111. ME Bank37 is supportive of the PRDE and submits that it is necessary to enable the benefits of Comprehensive Reporting to be realised. ME Bank submits that its participation in Comprehensive Reporting is contingent on the PRDE being in place, and is supportive of mandatory participation in the PRDE.

36 Provides a range of commercial and consumer lending products directly to customers and through intermediaries and major retail partners such as Coles and Harvey Norman.

37 Established in 1995 and is one of Australia’s financiers providing a range of commercial and consumer lending products directly to customers and through intermediaries such as Coles and Harvey Norman.
112. Origin Energy Ltd (Origin) supports the authorisation and submits that the PRDE will support effective operation of the system and provide appropriate incentives for participation in the standardised, reliable and timely exchange of credit information. Origin also supports non-Australian Credit Licence holders exchanging Comprehensive Reporting.

113. Origin raised concerns about the Participation Level Threshold – that is, the level of credit information a credit provider must contribute in order to be considered compliant with the contribution requirements under the PRDE. Origin is concerned that credit providers may be unable to meet this threshold for reasons outside their control, identifying two particular circumstances. ARCA subsequently advised that it does not consider either of these situations to be a breach of the PRDE.

114. COBA members are generally supportive of the PRDE concept, its aims and proposed framework. A small group of members have raised concern that the consistency provisions will impose additional costs upon smaller credit providers who want to have a relationship with more than one credit reporting body. This concern is discussed in the Public detriments section, below.

115. The Australian Bankers Association (ABA) is supportive of the PRDE and submits that industry self-regulation is a necessary requirement to encourage and support the move to Comprehensive Reporting.

116. The Australian Finance Conference (AFC) acknowledges that its members are not obliged to be signatories and could exchange information through a credit reporting body outside of the PRDE framework.

**Consumer groups**

117. Consumer Action Law Centre (CALC), the Financial Rights Legal Centre (Financial Rights) and Financial Counselling Australia (FCA), in a joint submission, acknowledge some benefits of the PRDE. It submits that the Comprehensive Reporting regime cannot be effective unless there is an element of reciprocity as demonstrated by the lack of industry participation in Comprehensive Reporting to date.

118. They raise a concern about the lack of a clear resolution for how credit providers are expected to record Repayment History when a consumer has entered into a repayment arrangement due to financial hardship and the recording of defaults. They also raise concerns with the compliance model and consider that the governance decision making bodies should be independent from the industry and include consumer representation. (These issues are discussed in the Public detriments section below.)

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38 Australian energy company.
39 Including: the acquisition of another retailer’s customers including the Retailer of Last Resort Scheme; and vacant consumption. Vacant consumption is where energy companies have sites that record consumption and are therefore accruing an outstanding account balance but may not have identified the responsible customer. It would not be possible to report the responsible person and site until the point at which the customer is identified and billed for the consumption.
40 ARCA submission to the ACCC responding to interested party submissions, 29 May 2015, p. 6.
41 Association for Australia’s customer owned banking institutions, which consists of 72 credit unions, 11 mutual banks and 6 mutual building societies.
42 Peak national body representing banks which are authorised by the Australian Prudential Regulation Authority to carry on banking business in Australia.
43 A national financier association with membership including credit providers, vendor and general financiers, receivables managers and the three Australian credit reporting body entities.
44 CALC is an independent, not-for profit consumer organisation based in Melbourne, Financial Rights is a community legal centre specialising in financial services, particularly in the areas of consumer credit, banking, debt recovery and insurance, and FCA’s role is to support the financial counselling profession, including providing a voice in national debates.
Government bodies

119. The Office of the Australian Information Commissioner (OAIC) does not have any specific comments on the PRDE but notes that the OAIC has been consulted by ARCA throughout the development of the PRDE and notes that the OAIC will not be responsible for enforcing the obligations of the PRDE.

120. ASIC is supportive of the effort to improve the accuracy and completeness of the credit reporting system. ASIC acknowledges that credit providers will need to consider the comprehensive credit reporting system, and becoming signatories to the PRDE, when complying with their responsible lending obligations. ASIC notes ARCA’s submission that without the consistency principles of the PRDE, credit providers might consider it necessary to obtain reporting information from more than one credit reporting body, in order to comply with their responsible lending obligations, which ASIC considers would increase the costs to credit providers.

Credit reporting bodies

121. Experian supports the PRDE and comprehensive credit reporting and submits that costs for signatories are not substantial or prohibitive. It considers that the greater exchange of credit data is likely to drive innovation, as information will inform lenders to current deficiencies in credit products.

122. Dun & Bradstreet supports the intent of the PRDE but considers that it should be more prescriptive and proposes that credit providers and credit reporting bodies must be required to be signatories to the PRDE before participating in any exchange of comprehensive credit information. It considers that otherwise there will be exclusive data-sharing agreements and the establishment of closed user groups that apply their own standards and principles of data exchange.

123. Veda provided a detailed submission on the application, including an economist report by Houston Kemp. Veda is supportive of Comprehensive Reporting and of an industry framework including principles of reciprocity. However, Veda is concerned that the PRDE is too prescriptive and goes beyond what is necessary to support Comprehensive Reporting. Veda submits that smaller credit providers could be placed at a disproportionate cost disadvantage compared to larger credit providers if they choose to fully participate due to the consistency provisions and enforcement costs associated with the PRDE. Veda considers that the consistency principle in the PRDE is likely to cause a number of credit providers not to participate in Comprehensive Reporting data sharing at all or to limit themselves to data sharing with one credit reporting body only.

124. Veda has also provided a number of suggested changes to the PRDE, in a tracked version of the PRDE attached to its submission, which would address its concerns.

Independent consultant

125. ConsumaData submits that the concept of reciprocity is of cardinal importance to an effective full comprehensive data exchange, although recommends stronger measures to monitor progress and reporting to the Regulator. ConsumaData fully supports mandating Comprehensive Reporting and recommends that provisions be made in the PRDE for mandatory submission of all available data to all credit reporting bodies.

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45 The OAIC is responsible for privacy functions that are conferred by the Privacy Act and other laws. As part of its privacy functions, the OAIC is responsible for administering the credit reporting provisions in Part IIIA of the Privacy Act.

46 This situation might arise if credit providers choose to supply different consumer credit reporting to different credit reporting bodies.
ACCC evaluation

126. The ACCC’s evaluation of the relevant provisions of the PRDE is in accordance with the net public benefit tests\(^{47}\) contained in the Act. In broad terms, the ACCC is required to identify and assess the likely public benefits and detriments, including those constituted by any lessening of competition and weigh the two. In broad terms, the ACCC may grant authorisation if it is satisfied that the benefit to the public would outweigh the public detriments.

127. In order to assess the effect of the relevant provisions of the PRDE and the public benefits and detriments likely to result, the ACCC identifies the relevant areas of competition and the likely future should authorisation not be granted.

The relevant area of competition

128. ARCA submits that the relevant area of competition affected by the Proposed Conduct is the national supply of credit reporting services, including the supply of credit reports by credit reporting bodies to credit providers (and consumers).

129. Within this relevant area of competition ARCA submits that:

   a. credit reporting bodies compete with each other for the establishment of relationships with credit providers (to expand their network and increase the information to which they have access)
   b. credit providers establish relationships with one or more credit reporting bodies to obtain access to credit reports.

130. ARCA submits that competition for the supply of credit by credit providers to consumers is unlikely to be affected by the implementation of the PRDE.

131. The ACCC has previously considered that there is a national market for the provision of credit reporting services. The ACCC considered that this involves the collection of credit information from a variety of sources and the delivery of consolidated credit reports to credit providers and is distinct from the provision of credit.\(^{48}\)

132. The ACCC has also previously considered that there exist various markets for lending products/services to consumers (including credit cards, car loans, home loans, small business loans etc.).\(^{49}\)

133. The ACCC does not consider it necessary in this matter to precisely define the relevant markets. For the purpose of the current matter, the ACCC considers that the relevant areas of competition are the national supply of:

   a. credit reporting services, which includes:
      i. the supply of consumer credit information by credit providers to credit reporting bodies
      ii. the supply of consumer credit reporting services by credit reporting bodies to credit providers
   b. various credit/lending products and services to consumers.

\(^{47}\) Subsections 90(5A), 90(5B) and 90(8). The relevant tests are set out in Attachment A.


\(^{49}\) Ibid.
Is there a free rider problem

ARCA submission

134. ARCA submits that the reluctance to exchange comprehensive consumer credit information to date is due to the ‘free rider’ concern in the industry. As noted at paragraphs 61 to 62, the rationale for the PRDE includes addressing this free rider concern.

135. The KPMG report provided with ARCA’s initial submission notes that the free rider problem arises from the asymmetric incentives of credit providers in contributing and consuming data. All credit providers have strong incentives to access as much consumer credit data as possible in order to better assess, manage and price credit risk. However, credit providers have weaker incentives to supply consumer credit information as this will advantage their competitors. This is especially so for larger credit providers who already have in-house access to a reasonably large amount of consumer credit data and thus relatively less to gain from exchanging comprehensive consumer credit data with smaller credit providers. In order to address the free rider problem, KPMG says that credit providers’ incentives to supply comprehensive consumer credit data must be strengthened. According to KPMG, the PRDE is designed to do this.

Interested party submissions

136. GE Capital agrees with ARCA and submits that the lack of reciprocity will lead to free riders operating in the industry and will reduce the overall value of Comprehensive Reporting.

137. Similarly, Experian recognises the reluctance of credit providers to share Comprehensive Reporting customer information due to the risk that it might give competitors undue and unearned advantage.

138. However, Veda submits that the free rider issue is exaggerated and that credit providers will have commercial incentives to share their comprehensive consumer credit information with reciprocity enforced through bilateral agreements with their credit reporting bodies. Veda submits that delays in credit providers contributing Comprehensive Reporting to date (since March 2014) is entirely understandable given overseas experience and timing of legislative changes in Australia. It submits that:

- a. a more likely cause for the limited exchange of positive credit information since March 2014 is the significant investment required and the associated time taken for credit providers to develop the systems and processes necessary and to ensure that they are technically and operationally ready to consume Comprehensive Reporting data in an appropriate format (such as the Data Standard)
- b. in Veda’s experience, Comprehensive Reporting typically takes 2-3 years to become operational
- c. Comprehensive Reporting participation in New Zealand has been driven by major credit providers (excluding ANZ) that have already implemented the required system changes to report and consume data. This is demonstrative of credit providers’ incentives to exchange Comprehensive Reporting under purely voluntary systems of reciprocity, once the major technical challenges to consuming data are overcome.

139. Veda submits that bilateral arrangements that do not include any form of reciprocity arrangement have been sufficient for negative data exchange. The Houston Kemp
report states that if free rider concerns were significant, one would not see the widespread contribution of negative information currently.

ARCA submission in response

140. In its submission in response, ARCA notes that the disincentives and free rider concerns associated with credit data exchange (particularly in a Comprehensive Reporting environment) are real, substantial, and widely supported by economic analysis.

141. ARCA submits that the disincentives against sharing credit data are stronger for positive data than for negative data (as confirmed by the CRA Report). This is because positive information is intrinsically more valuable to credit providers than negative information, not least because there is positive data for every consumer that has a credit account with an Australian Credit Licence holder while there is negative information for only a subset of such consumers. As positive data is more valuable, credit providers may be less willing to share this information in the absence of reciprocity.

142. ARCA (and the CRA Report) note that credit providers may have incentives to share negative information even without reciprocity that might outweigh the incentives to keep negative information proprietary for commercial advantage. This is because negative information can be used to discipline borrowers who, if aware that defaults on payments will impact on their future ability to obtain credit, may have incentives to repay loans. Also if the negative information causes the credit provider to want to offer higher interest rates to the borrower (because of higher credit risk), the credit provider would want rivals to be aware of this negative information to avoid other credit providers mistakenly offering lower interest rates to the consumer and taking business away from the first credit provider.

143. The CRA Report notes that it is true that credit providers currently contribute negative information without any transparency regarding whether other credit providers that access that information are reciprocating with the same information. However, it is CRA’s understanding that negative information is currently under contributed (i.e. only certain portfolio lines are contributed at the moment) and one of the benefits that ARCA and the majority of its members anticipate from the PRDE is that more negative data will be shared.

144. ARCA submits that this pattern of under contribution is consistent with the free rider concerns which predict that the largest credit providers will have the strongest incentives to keep their data private and will require the greatest assurances that other credit providers will contribute their data. From a practical perspective, ARCA submits that the New Zealand exchange is missing 45 per cent to 50 per cent of the comprehensive data potentially available to the system.

145. ARCA submits that delays in the introduction of Comprehensive Reporting are likely to be attributable to both system changes and competitive disincentives. However, ARCA understands that a number of credit providers are well advanced in implementing the necessary system changes but intend to wait until the free rider concerns can be addressed.

ACCC view

146. The ACCC accepts that there are free rider concerns that are likely to inhibit full and complete implementation of Comprehensive Reporting without some type of mechanism to ensure that other credit providers are not able to free ride on that information.
147. The ACCC considers that reciprocity is a key requirement for addressing free rider concerns and providing improved incentives for credit providers to participate in Comprehensive Reporting.

148. The ACCC is not convinced that the current exchange of negative information demonstrates that reciprocity is unnecessary for the successful implementation of Comprehensive Reporting. The ACCC accepts that comprehensive credit information is significantly more valuable for credit providers than negative data and thus credit providers have stronger incentives to withhold comprehensive data absent reciprocity. Further, credit providers may have incentives to share negative information because it can be used to discipline borrowers to repay loans.

149. The ACCC has heard from credit providers who have implemented the appropriate systems to enable exchange of comprehensive consumer credit information, including IT infrastructure. However, some are not willing to participate in data exchange at this time because of the free riding concern.

150. However, the ACCC does not consider that a free rider concern is the sole reason for delays in implementing Comprehensive Reporting in Australia. The ACCC understands that there is considerable investment needed by participants in the industry, particularly credit providers, in order to be ready to exchange comprehensive credit information and that this is likely to take some time (at least 12 months) (as discussed further under Future with and without below).

The future with and without

151. To assist in its assessment of the conduct against the authorisation tests, the ACCC compares the likely future with the conduct that is the subject of the authorisation to the likely future without the conduct that is the subject of the authorisation. The ACCC will compare the public benefits and detriments likely to arise in the future where the conduct occurs against the future in which the conduct does not occur.

Submissions

152. The ACCC has received varying views on what the likely future with and without the relevant provisions of the PRDE might be, including ARCA’s submission that absent a PRDE, Comprehensive Reporting would not be implemented in practice, and Veda’s submission that Comprehensive Reporting will be implemented without such prescriptive principles as are required by the PRDE.

ARCA submission

153. ARCA submits that the most likely future without the relevant provisions of the PRDE is where Comprehensive Reporting is theoretically permissible, but would not be implemented in practice. This is due to the reluctance by many credit providers to share consumer credit information in circumstances that give their ‘free riding’ competitors an unearned advantage (explained above at paragraphs 134 to 150).

154. ARCA submits that without the PRDE’s reciprocity, consistency and enforceability obligations, credit providers that rely on bilateral agreements will have insufficient incentives and confidence to engage in Comprehensive Reporting. ARCA submits that bilateral arrangements are unlikely to lead to a significant exchange of comprehensive information and so the benefits of Comprehensive Reporting are unlikely to be realised.

155. ARCA also submits that bilateral arrangements alone are unlikely to encourage the provision of the same level of comprehensive credit information to all credit reporting
bodies with which a credit provider has a relationship, as the PRDE would. Any exchange of comprehensive credit information would be likely to be concentrated within a dominant credit reporting body or fragmented into multiple credit reporting bodies each with different levels and different kinds of information.

156. ARCA submits that absent an industry wide framework for the exchange of comprehensive credit information like the PRDE, it is possible that a number of smaller data exchanges might be established, including along the lines of credit provider type, customer type or credit product, for example mortgage information only. ARCA submits that a collection of separate data exchanges would provide significantly less benefit.

Interested party submissions

157. As noted, GE Capital and Experian agree with ARCA in recognising the reluctance of credit providers, absent the PRDE, to share positive consumer credit information.

158. In contrast, Veda favours a principles-based approach to reciprocity that would be enforced through bilateral contracts between credit providers and credit reporting bodies. According to Veda, credit reporting bodies will have strong commercial incentives to enforce reciprocity through their bilateral contracts with credit providers. It submits that this is because reciprocity is essential to enable a credit reporting body to build its database of credit reporting information which is fundamental to the credit reporting body’s business and a credit reporting body would suffer reputational damage from not enforcing reciprocity.

159. Veda submits that the incentives for credit providers to participate in Comprehensive Reporting are as outlined by the Financial System Inquiry. Specifically, the incentives will depend on the net benefits of participation which are likely to change over time as the pool of comprehensive consumer data expands. Initially there are likely to be relatively greater benefits from participation for smaller credit providers than for larger ones (who already have access to information about their larger customer base). However, as participation grows and the comprehensive data pool expands, the incentives for all credit providers to participate would increase.

160. As regulator of the National Consumer Credit Protection Act, ASIC submits that according to responsible lending obligations, credit providers will be required to take reasonable steps to verify a consumer’s financial position, which is likely to include the Comprehensive Reporting system. ASIC does acknowledge that this may increase costs for credit providers. ASIC also notes the recommendation of the Financial System Inquiry that contemplates legislating for mandatory participation in Comprehensive Reporting if voluntary participation is inadequate.

161. ASIC notes ARCA’s submission that in the absence of consistency principles, industry could implement ‘exclusivity arrangements’ under which the supply of data to multiple credit reporting bodies could be limited. ASIC notes that to the extent such arrangements eventuated, it would expect a credit provider to consider whether it was necessary to obtain credit reporting information from more than one credit reporting body in order to properly verify a consumer’s financial situation. ASIC expects that this would result in an increase in costs to the credit provider.

ARCA submission in response

162. In response to Veda’s submissions, ARCA submits that the principle of reciprocity, on its own, is not sufficient for credit providers to share positive data with each other. This is because, according to the CRA Report, credit providers will have an incentive to deviate from an undertaking to share data as it will get a higher payoff from
withholding its own data from the pool if other credit providers are contributing.\textsuperscript{50} The mechanism needed to overcome this problem is the principle of reciprocity together with transparency and a trusted enforcement mechanism.

163. In addition, ARCA submits that credit reporting bodies would have conflicting incentives to enforce reciprocity in their bilateral contracts with credit providers. On the one hand, credit reporting bodies have incentives to observe reciprocity to overcome credit providers’ reluctance to share information with the credit reporting body. On the other hand, credit reporting bodies have incentives to not enforce reciprocity in relation to particular credit providers as each credit provider agreement represents additional revenue for the credit reporting body. The larger the credit provider, the lesser the credit reporting body’s incentive to enforce reciprocity and hence the greater the likelihood that the credit provider will not contribute full information despite a bilateral commitment to do so.

164. ARCA submits that the ability of signatories to see other signatories’ Tier Level is important as it will give credit providers confidence that they will be able to identify deviations from reciprocity obligations. Without this information, credit providers may have limited insight into the types of information that other credit providers are contributing and receiving and thus whether or not reciprocity is being adhered to.

165. ARCA uses the situation in New Zealand to support its argument that the lack of a binding, multilateral framework based on reciprocity will result in less than ideal uptake of Comprehensive Reporting. In New Zealand, the HoA is a non-binding, multilateral reciprocity framework. ARCA submits that there are concerns about the uptake of Comprehensive Reporting. Two of the largest credit providers, ANZ and Bank of New Zealand, have yet to participate in the exchange of Comprehensive Reporting – and the single largest bank, ANZ, is not a signatory to the HoA.

166. ARCA submits that if the government adopted the recommendation by the Financial System Inquiry\textsuperscript{51} and decided to mandate participation, the process would be lengthy and uncertain, the industry would remain without the benefits of comprehensive credit information exchange for a much longer period, and any mandatory scheme is likely to be more costly and less responsive than the industry framework proposed under the PRDE.

ACCC view

167. The ACCC considers that without the relevant provisions of the PRDE, the industry may develop more high-level data sharing principles to provide an assurance of reciprocity to credit providers, in an attempt to overcome the free rider concern. Given the time and effort already committed by the industry to develop the PRDE, any alternative is likely to be a variation of the PRDE. This is unlikely to include transparency, consistency and strong enforcement mechanisms. The ACCC does not consider that high-level data sharing principles alone would be sufficient to overcome credit providers’ free rider concerns.

168. The ACCC understands from ASIC’s submission that compliance with responsible lending obligations under the National Consumer Credit Protection Act is likely to require credit providers to make all reasonable attempts to determine the financial situation of consumers. This is likely to create incentives for credit providers to obtain credit reports from credit reporting bodies that contain comprehensive credit

\textsuperscript{50} The CRA Report submits that the sharing of credit information between credit providers may give rise to a ‘Prisoners’ Dilemma’ whereby credit providers would be better off if all share but some may have a dominant strategy (be better off) of not sharing regardless of whether or not other credit providers share. This may lead to a sub-optimal outcome.

\textsuperscript{51} The Financial System Inquiry’s Final Report has recommended that the government review participation in comprehensive credit reporting in 2017 and consider mandating participation if industry solutions such as the PRDE have not been implemented.
information. This may also result in credit providers providing comprehensive credit information to these credit reporting bodies if they are required to do so under their bilateral service agreements.

169. Without the relevant provisions of the PRDE (and with or without alternative high-level data sharing principles), the ACCC considers that credit providers and credit reporting bodies will continue to execute bilateral service agreements for the supply of credit information by credit providers to credit reporting bodies and the acquisition of consumer credit reporting information from credit reporting bodies by credit providers. The terms of these agreements are likely to vary according to the commercial incentives of the credit reporting body and credit provider to the agreement. Although the bilateral agreements are likely to include some form of reciprocal exchange obligation to encourage more complete data submission, contrary to Veda’s submission, the ACCC considers that under this scenario, reciprocal Comprehensive Reporting data exchange is unlikely to be as complete as under the proposed arrangement. The commercial incentives for credit reporting bodies to enforce the service agreements might also vary depending on the countervailing power of the credit provider.

170. The ACCC is of the view that without the consistency provisions of the PRDE it is possible that data will be more fragmented across credit reporting bodies. If this is the case, credit providers may need to have arrangements with more than one credit reporting body to acquire adequate consumer financial data to comply with responsible lending obligations. This is likely to increase costs for those credit providers that would otherwise prefer to have agreements with fewer credit reporting bodies.

171. The Government has not yet responded to the recommendation by the Financial System Inquiry that it should review participation in Comprehensive Reporting by 2017, and consider legislative intervention if participation in Comprehensive Reporting has been inadequate. Given the uncertainty of any review occurring in 2017 or the outcome of such a review, the recommendation does not alter the ACCC’s view of the appropriate likely future without the Proposed Conduct for the purpose of assessing the current authorisation.

Public benefit

172. Public benefit is not defined in the Act. However, the Australian Competition Tribunal has stated that the term should be given its widest possible meaning. In particular, it 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.\(^{52}\)

Benefits of Comprehensive Reporting

173. There is broad acceptance of the benefits associated with effective credit reporting systems. For example, the World Bank has recognised a number of benefits including:\(^{53}\)

\(^{52}\) Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677. See also Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242.

\(^{53}\) World Bank, 2011, General Principles for Credit Reporting, September, pp.7-8. The World Bank defines credit reporting systems as the institutions, individuals, rules, procedures, standards and technology that enable information flows relevant to making decisions related to credit and loan agreements.

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a. reduction in information asymmetries between credit applicants and credit providers and therefore an effective tool for mitigating adverse selection and moral hazard
b. provision of objective data that may improve access to credit for applicants who may previously have been denied credit due to some form of prejudice
c. imposition of discipline on debtor behaviour
d. improvement in micro and macro prudential supervision of the financial system.

174. The World Bank has also noted that information quality and accuracy is the basic building block of an effective credit reporting environment. It notes that one of the requirements is for accurate data to also be sufficient and adequate which requires the capturing of relevant negative and positive data.54

175. The Financial System Inquiry also acknowledged more comprehensive sharing of credit information would reduce information imbalances between credit providers and consumers, facilitate consumers switching between credit providers and increase greater competition among credit providers. The Financial System Inquiry also pointed to overseas experience suggesting that Comprehensive Reporting reduces the likelihood that originated loans will default and/or increases the availability of credit.55

176. The ALRC recognised that, according to widely accepted economic theory, making more information available to credit providers will tend to increase efficiency in the market for credit. It also will assist in making credit more available to those able to repay and/or reduce rates of default. There was no significant disagreement among stakeholders that Comprehensive Reporting has the potential to improve risk assessment by credit providers.56

177. In this context, there is general acceptance amongst the interested parties, including ARCA, of the range of benefits arising from the wide access to Comprehensive Reporting in Australia, including:

a. improving the quality of consumer credit information available to credit providers and thereby reducing the information asymmetry between potential borrowers and credit providers, enabling credit providers to more accurately price credit and better meet their responsible lending obligations
b. facilitating competition between credit providers. Greater sharing of comprehensive data should allow more competition between credit providers, as there will be less information asymmetry between these credit providers
c. financial inclusion for consumers, where there may be: greater confidence to extend credit to creditworthy consumers; more accurate pricing of credit relative to the risk of the consumer; a greater range of options for consumers to access credit; and credit available on more favourable terms, including lower cost of credit
d. a decrease in over-indebtedness of consumers as more informed credit decisions are made.

178. The ACCC accepts the general views amongst interested parties of the range of benefits arising from the wide and improved access to Comprehensive Reporting in Australia.

Compliance with responsible lending

ARCA initial submission

179. ARCA submits that access to Comprehensive Reporting will significantly aid regulatory compliance, both in terms of responsible lending and in terms of prudential requirements. Access to this information gives credit providers greater knowledge about their (potential) customers and their ability to repay, which in turn better enables them to manage the risk associated with their portfolios.

Interested party submissions

180. ASIC acknowledges the role that an effective credit reporting system, including comprehensive data, has in assisting a licensed credit provider to verify a consumer’s financial position and meet its responsible lending obligations under the National Consumer Credit Protection Act.

181. Conversely, CALC, Financial Rights and FCA submit that Comprehensive Reporting will have minimal bearing on whether or not a credit provider has met its responsible lending obligations and, as such, the benefits to credit providers or ASIC may not be realised. Meeting responsible lending obligations requires an assessment of a borrower’s financial situation, needs and objectives, which cannot be met simply by obtaining a comprehensive credit report for a borrower.

ARCA’s submission in response

182. In response, ARCA submits that a comprehensive credit report will provide a credit provider more information about a borrower’s financial situation, which will assist in managing the risk of a borrower not disclosing the number, limit and status of each of his/her liabilities. In doing so, it will be a source of objective information which a credit provider can use to verify whether the borrower’s financial situation (reflected in part in the information contained in the comprehensive credit report) properly matches the borrower’s stated needs and objectives. It is unlikely to be the only tool relied on by the credit provider, but it will be important and useful nonetheless.

ACCC view

183. The ACCC considers that the PRDE (including the provisions for which authorisation has been sought) is likely to promote Comprehensive Reporting, which the ACCC considers will enable credit providers to better assess a consumer’s credit-worthiness. This is more likely to assist a credit provider to meet its responsible lending obligations.

184. The ACCC notes that the requirement upon credit providers to use Comprehensive Reporting to verify a consumer’s financial position arises with or without the PRDE. However, the ACCC notes ASIC’s submission that, in the absence of a consistency provision such as that proposed in the PRDE, ASIC would expect a credit provider to consider whether it was necessary to obtain reporting information from more than one credit reporting body to properly verify a consumer’s financial position. As such, the ACCC considers that the relevant provisions of the PRDE will provide time and cost efficiencies for credit providers in complying with their responsible lending obligations.

Public benefits of the relevant provisions of the PRDE

185. As noted, ARCA submits that the potential benefits of the legislative change enabling Comprehensive Reporting are unlikely to be realised in a system of bilateral contracts
and that a form of industry collaboration is required in order to realise these benefits. In particular, ARCA submits that the PRDE’s principles of reciprocity, consistency, and enforcement in a multilateral framework are necessary to realise these benefits. ARCA also submits the PRDE will result in other benefits to credit providers, credit reporting bodies and consumers that go beyond the benefits of improved access to Comprehensive Reporting, arising from the PRDE’s consistency, reporting obligations and Data Standard, and its transparency and enforceability provisions.

186. However, Veda submits that the PRDE is unduly prescriptive and that the operation of the reciprocity, consistency and enforcement provisions will have adverse consequences for competition and reduce the public benefits from Comprehensive Reporting because it will lead to less rather than more data exchange.

187. The conflicting views on the public benefits arising from the reciprocity, consistency and enforcement provisions are discussed in more detail below.

188. The ACCC’s assessment focuses on the public benefits (and public detriments) of the relevant provisions of the PRDE. The assessment does not include the broader public benefits of Comprehensive Reporting except to the extent the relevant provisions of the PRDE realise the public benefits of Comprehensive Reporting.

Public benefits arising from reciprocity

189. The principle of reciprocity is that credit providers are only able to receive information from credit reporting bodies up to the same level at which they supply information.

190. Interested parties including ARCA, GE Capital and Experian submit that an enforceable principle of reciprocity addresses the free rider issue (described under The future with and without and Is there a free rider problem). ARCA submits that the general benefits of Comprehensive Reporting are therefore more likely realised. However, Veda disputes that a free rider problem needs to be addressed using the reciprocity provisions as contained in the PRDE.

ARCA submission

191. ARCA submits that reciprocity has been broadly recognised as a necessary element for the successful implementation of credit reporting regimes around the world. ARCA submits that the PRDE will significantly improve access to Comprehensive Reporting as it combines the necessary elements of reciprocity, consistency and enforceability in an open and multilateral industry framework.

192. ARCA submits that the obligations relating to reciprocity in the PRDE will lead to benefits that go beyond the general benefits of Comprehensive Reporting, namely, they will:

   a. create a standardised, reliable and timely exchange of credit related personal information

   b. enhance the ability for signatory credit providers to access data from other signatory credit providers on a non-discriminatory basis, irrespective of their size, industry and product mix.

193. ME Bank submits that the failure to ensure reciprocity would allow credit providers to receive more information than they have provided, which will disincentivise other industry participants, reducing the amount of information being shared and thereby reducing the overall effectiveness of Comprehensive Reporting.

194. Experian submits that it has experience in 19 countries, and along with the single Data Standard, reciprocity is vital to ensure accurate, up to date, complete and relevant credit reporting information is available for use in making credit decisions.
195. GE Capital submits that in order to maintain an ongoing commitment by credit providers to contribute full and accurate data on all accounts, the Comprehensive Reporting scheme must be based upon the principle of reciprocity. Based on GE’s experience in Comprehensive Reporting jurisdictions, no individual provider of data usually contributes more than 10-15 per cent of the total file/pool of comprehensive data. Therefore, every recipient will benefit, as the total file is usually at least six times larger than the individual contribution of any one provider.

196. Veda is supportive of Comprehensive Reporting and of the need for an industry framework embodying principles of reciprocity to operate in conjunction with legislative mechanisms that give effect to Comprehensive Reporting. However, it is of the view that the reciprocity obligations of the PRDE go beyond what is required. Veda disputes that there are public benefits from the reciprocity provision because it considers that the free rider issue is overstated.

**ACCC view**

197. The ACCC considers that a free rider concern is likely to inhibit full and complete implementation of Comprehensive Reporting without a robust principle of reciprocity. The principle of reciprocity is a widely accepted response to this potential market failure and is a key feature of most international consumer credit reporting systems. Submissions in response to this application for authorisation generally accept that reciprocity is fundamental to the successful operation of Comprehensive Reporting and the realisation of the public benefits of Comprehensive Reporting.

198. In addressing the free rider concern, the ACCC accepts 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:

   a. improvement of the 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

   b. 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**

199. A credit provider may choose to have service agreements with more than one credit reporting body. This provides the option to gain credit information from one or all of these credit reporting bodies. Depending on the size of the credit provider, its commercial incentives may dictate how many credit reporting bodies it decides to consume data from. For example, a small credit provider may choose to only consume from one credit reporting body due to the time and costs associated.

200. Credit reporting bodies cannot prohibit customer credit providers from providing their credit information to other credit reporting bodies. A credit provider can decide to only have a relationship with one credit reporting body. Credit providers may also

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57 The PRDE prohibits exclusive arrangements between signatories. For example, Clause 6 requires a signatory credit reporting body to promise that its services agreements will not prevent credit providers from contributing credit information to other credit reporting bodies and Clause 51 more generally provides that credit reporting bodies must not impose constraints to restrict a credit provider from contributing credit information to another credit reporting body.
decide to provide credit information to some or all credit reporting bodies, but only obtain credit reports from one or a few of those credit reporting bodies.

201. The consistency provisions in the PRDE aim to ensure that there is consistency in the information that credit providers contribute to each of the credit reporting bodies with which the credit provider has a relationship. Clause 15 of the PRDE provides that a credit provider must contribute the same information to all credit reporting bodies with which it has a services agreement. In addition, Clause 16 of the PRDE requires credit providers to contribute credit information consistently across all credit portfolios (subject to minor exceptions).

202. 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. As noted, a credit provider may decide to provide information consistently to all credit reporting bodies, but only obtain credit reports from one credit reporting body.

ARCA submission

203. ARCA submits that the principle of consistency will result in the following public benefits, which go beyond the benefits of the Comprehensive Reporting framework:

a. Benefits for competition between credit reporting bodies:

- The consistency obligations are designed to maintain the focus of competition among credit reporting bodies on the supply of credit reporting information and other services to credit providers, including competition on price and the quality of the services that the credit reporting bodies provide (rather than competition to obtain credit providers’ data per se in order to acquire a larger dataset than competitors). These include improved analytical products, additional data sets, assistance with integration between the credit reporting body’s credit reporting information and the credit provider’s internal systems and consulting and other services that may improve a credit provider’s credit risk management capabilities.

- The consistency obligations lower barriers to entry and expansion for small credit reporting bodies, prevent discrimination between credit reporting bodies and facilitate competition between credit reporting bodies.

- Small credit reporting bodies are likely to have access to more data to include in their pools, which will enhance the ability of small credit reporting bodies to compete with large credit reporting bodies to attract credit providers.

- A credit reporting body is prevented from offering inducements to credit providers with the effect that the credit reporting body obtains exclusivity in the supply of positive data from credit providers.58

b. Benefits for competition between credit providers:

- By enabling small credit providers to access a greater amount of credit information through any single credit reporting body relationship, the consistency obligations lower barriers to entry and expansion for small credit providers.
In the absence of consistency obligations, if small credit providers cannot afford the additional costs of purchasing information from multiple credit reporting bodies and integrating that information into their internal systems, their ability to lend responsibly and also their ability to compete with larger credit providers (that have a greater ability to integrate information from all credit reporting bodies) will be compromised.

c. Benefits to consumers:

- Consumers will benefit from the consistency obligations as credit reports produced by credit reporting bodies are likely to contain more complete and consistent pictures of consumers’ credit histories, so that consumers will have less need to obtain reports from all credit reporting bodies to see their full credit file picture, and consumers will encounter less inconsistency in terms of credit risk assessments by credit providers.

- Clauses 16 and 29, requiring that all eligible credit information across all portfolios within the relevant Tier Level be contributed by credit providers, will not allow credit providers to ‘pick and choose’ what information is supplied to credit reporting bodies. This will make credit reports more comprehensive within any Tier Level of information and ensure that good credit histories across all portfolios are contributed.

**Interested party submissions**

204. ME Bank submits that the consistent nature and format of the data to be exchanged will drive innovation between credit reporting bodies of products and services resulting in better outcomes for credit providers, and prevent exclusive or protectionist behaviours. Further, it argues that there will be greater transparency for consumers on credit availability and price.

205. GE Capital submits that where a credit provider chooses to deal with multiple credit reporting bodies, it is important that this be done on a consistent basis. Consistency will enable credit providers to make responsible and informed credit decisions, provide broader consumer awareness, confidence and education and prevent credit reporting bodies from obtaining exclusivity in data supply.

206. Experian submits that the broad sharing of data across the market will limit consumer confusion, as information in consumer credit reports will be consistent across the board. This will in turn improve the consumer’s ability to select credit providers, and enhance competition and innovation in the credit market.

207. Experian agrees that consistency (and reciprocity) of data exchange supports responsible lending by promoting a more holistic picture of a consumer’s financial affairs to be accessed by credit providers. This in turn brings greater macro financial stability within retail lending and the appropriate allocation of resources.

208. The majority of COBA members support the consistency provisions and agree with ARCA’s submissions that clause 15 will strengthen the quality of credit analytics and lead to more comprehensive and consistent data across the credit reporting bodies, benefitting both industry and consumers. These COBA members submit that it would save them money because consistent data across the credit reporting bodies will benefit smaller providers who only have one relationship with a single credit reporting body. Without clause 15, smaller credit providers may need to incur additional costs by signing up to multiple credit reporting bodies to get a full picture of credit information on record.
209. ASIC submits that if exclusive arrangements between credit providers and credit reporting bodies arise, which according to ARCA might eventuate due to a lack of consistency provisions in the PRDE, it would be necessary for a credit provider to obtain credit reporting information from more than one credit reporting body in order to properly verify a consumer's financial position.

210. In contrast, Veda submits that the consistency provisions as drafted will not prevent discrimination against smaller credit providers and credit reporting bodies. Nor will they materially increase usage of credit reporting body services by credit providers or facilitate competition in consumer credit or credit reporting markets. Instead, Veda and some COBA members submit that the consistency obligations impose substantial additional costs on smaller credit providers and are likely to entrench the position of larger credit providers. According to Veda, this is because the consistency requirements operate as a disincentive to smaller credit providers to participate in Comprehensive Reporting data exchange as the costs of providing and maintaining data would be too high.

211. As a result Veda submits that smaller credit providers are likely to:
   a. opt not to become signatories to the PRDE and not participate in Comprehensive Reporting; or
   b. opt to become signatories and operate at negative information; or
   c. limit themselves to reporting to, or obtaining data from, one credit reporting body only.

212. Under any of these outcomes, Veda submits that credit information may be more fragmented between credit reporting bodies than it would be if the consistency provisions were removed. Veda submits that this may also reduce the amount of negative data communicated across the credit reporting bodies. This is because previously credit providers would have service agreements with a number of credit reporting bodies to provide negative information, where the negative regime would require significantly less investment in supply of data.

213. The issue of costs imposed by the Proposed Conduct, including the costs of the consistency obligations, is discussed in more detail in the Public detriments section below.

214. Veda also submits that the consistency obligations would reduce rather than enhance competition between credit reporting bodies and likely raise, rather than lower, already high barriers to entry. In particular, Veda submits that the consistency obligations will not lead to more data equalisation across credit reporting bodies and in any event, equalising data would not lead to a material increase in competition between credit reporting bodies. Data fragmentation is not likely to be a major concern absent the PRDE because of high concentration in credit markets and the likelihood that the largest credit providers already deal with all credit reporting bodies. However, as the consistency obligations would limit the formation of further or additional data pools, the PRDE may stifle innovation. Finally, as the consistency obligations impose costs on small credit providers that outweigh the benefits of dealing with multiple credit reporting bodies, small credit providers are unlikely to deal with a new entrant credit reporting body. Instead a small credit provider is likely to restrict itself to dealing with one (likely the largest) credit reporting body.

**ARCA submission in response**

215. In response to Veda, ARCA submits that if the consistency obligations are removed from the PRDE, the resulting system is unlikely to be as fully effective in establishing Comprehensive Reporting. Instead, such a framework would likely result in either the development of a dominant credit reporting body or the fragmentation of the industry.
(several credit reporting bodies with different pools of information). The consistency obligations counter these negative tendencies.

216. The CRA Report considers that it would be possible to establish a multilateral framework for Comprehensive Reporting without consistency provisions. However, such a framework would likely result in either the development of a dominant credit reporting body or greater data fragmentation. Each of these outcomes would raise costs for credit providers and reduce the effectiveness of the comprehensive credit reporting system compared with a system with the PRDE’s consistency obligations.

217. According to the CRA Report, the consistency provisions in the PRDE counter the natural tendency for unequal data pools to develop and therefore maintain the focus of competition between credit reporting bodies on price and service quality rather than obtaining the largest data pool.

218. The CRA Report notes that fragmentation might also harm consumers who may need to obtain credit reporting information from all credit reporting bodies in order to understand their full credit profile.

ACCC view

219. The ACCC is of the view that the consistency obligations will facilitate a more complete exchange of information between credit providers and each credit reporting body with which they have a services agreement, leading to a reduction in data fragmentation and greater dissemination of consumer data across the industry. This should promote competition among credit reporting bodies and among credit providers.

220. With more consistent credit information available to credit reporting bodies, the ACCC considers that credit reporting bodies would no longer compete to the same extent on the basis of obtaining credit information from credit providers, and will be required to differentiate themselves in ways beyond access to consumer data to attract credit provider business. This is likely to include the development of financial and analytical services tailored for credit providers, and the innovation of new financial products, benefiting consumers.

221. The ACCC considers that the greater access to consistent information, leading to greater competition between credit reporting bodies and greater potential for innovation in the industry will also lower the barriers to entry for credit reporting bodies although the ACCC acknowledges that entry barriers will remain high, so that this public benefit would be small.

222. The ACCC understands that the four major banks currently provide information to all credit reporting bodies. However, in the absence of the consistency provisions, given the value in comprehensive data, the big four banks may have some incentives to attempt to withhold part of their data, while continuing to consume services from all three credit reporting bodies. The consistency provisions will mean that for the larger signatory credit providers to maintain the option to consume data from all of the credit reporting bodies, the credit providers will be required to provide credit data to all these credit reporting bodies at the same Tier Level. Assuming that the big four banks continue to provide data to all three major credit reporting bodies, this would represent a very large amount of the market data being shared with all three credit reporting bodies.

223. In this environment, the ACCC considers that the consistency provisions are likely to enable smaller credit providers to obtain more complete consumer credit information with which to better assess credit-worthiness and assist the compliance with responsible lending obligations by having a relationship with only one credit reporting body. This is likely to generate benefits of time and cost efficiencies for smaller credit providers.
providers in consuming credit data, compared with a situation where credit providers would have to access and purchase multiple credit reports from each credit reporting body in relation to each consumer. This is also likely to promote competition in the market for credit services and lower the barriers to entry into this market.

224. The ACCC also considers there are benefits for consumers in having more consistent and accurate information held by credit reporting bodies on their credit profile. This should make it easier for consumers to access their credit profile, and consumers may not be required to apply to all credit reporting bodies for a complete credit report. Consumers are also likely to benefit from a reduction in data fragmentation where credit providers are likely to make better lending decisions.

225. The ACCC considers that the extent to which consistency provisions would realise public benefits depends on the incremental cost the obligations impose on credit providers who prefer to obtain consumer credit data from more than one credit reporting body, but otherwise would not provide the same information to all credit reporting bodies with whom they have a relationship.

226. The ACCC considers that these incremental costs are unlikely to be significant for most credit providers for reasons that are discussed in more detail in the Public detriments section. In addition, it would be a matter for each credit provider to consider whether these incremental costs exceed the benefits that the credit provider expects from participating in the PRDE. In this regard, the ACCC considers that the benefits from participation for small credit providers are likely to be significant.

227. The ACCC notes that the consistency obligations do not oblige credit providers to have a relationship with all three credit reporting bodies and this decision will be left to each credit provider according to their commercial incentives. Despite the likely benefits outlined above, the consistency obligations may not result in a comprehensive picture being held by each credit reporting body for each consumer. The ACCC notes that the greatest benefits will be realised where the larger credit providers, at a minimum the big four banks, have connections with all three credit reporting bodies.

228. In the alternative, absent the consistency provisions, it is possible that given the network effects inherent in credit information markets, credit providers will contribute more information to some credit reporting bodies, in particular the large credit reporting bodies, than others. This could support the dominance of one credit reporting body. The ACCC considers that this is a particular risk in Australia where one credit reporting body has a large market share based on the exchange of negative information alone. The largest credit reporting body may be in a position to leverage this position to achieve a superior data pool based on Comprehensive Reporting, and hence a superior market position. The consistency provisions help to counter this potential.

229. The ACCC considers that the consistency provisions help to mitigate the network effect advantages of large credit reporting bodies and are likely to level the playing field between credit reporting bodies by increasing the amount of consumer credit data that smaller credit reporting bodies have in their data pools. This should make it easier for smaller credit reporting bodies to compete with larger ones.

59 The more credit providers that contribute data to a data pool, and receive information from it, the more valuable it is for other credit providers to have a relationship with the credit reporting body that owns the data pool.
Public benefits arising from the governance of the PRDE

ARCA’s submission

230. ARCA submits that without genuine consequences and sanctions that would affect a signatory’s participation, non-compliance may not be viewed seriously and the PRDE would not provide other signatories with assurance of high levels of compliance, particularly in relation to the necessary elements of reciprocity and consistency.

231. CRA (for ARCA) submits that a credible enforcement mechanism may be particularly important in Australia where there are large credit providers that would otherwise have significant bargaining power in their dealings with credit reporting bodies and where CRA understands there is currently a lack of confidence and trust in the ability of credit reporting bodies to unilaterally enforce reciprocity. CRA submits that without an enforcement mechanism that credit providers have confidence in, the principle of reciprocity lacks substance and sharing of Comprehensive Reporting is unlikely to occur.

Interested party submissions

232. The ABA and ME Bank agree that the benefits of the PRDE will only be achieved if there is integrity in the system. They consider that the enforcement of the PRDE provides clear expectations and standards, consequence management and breach escalation mechanisms, which will enable broad participation.

233. GE Capital also submits that genuine consequences for blatant breach and disregard for the PRDE instils confidence in the PRDE, and such confidence promotes greater participation.

234. COBA members have communicated the importance of independent oversight of the PRDE, and submit that the proposed Administrator Entity provides this. Further, that the proposed Industry Determination Group (a key feature of the PRDE) is a cost-effective mechanism for smaller credit providers to raise disputes. They submit that this is important to COBA members given the ‘power imbalance’ in the market.

235. In contrast, the consumer associations CALC, Financial Rights and FCA have raised the concern that the monitoring, reporting and compliance process of the PRDE are not sufficiently independent and transparent to create any real public benefits.

236. The consumer associations submit that at the very least monitoring and compliance functions should be independent from the industry, to facilitate consumer confidence. They recommend that any governance or decision-making bodies include representation from consumers, be chaired by someone independent from the industry, that reporting be public, and that all decision-making and/or sanctions be transparent.

237. Veda has raised concern that the enforceability provisions may be too cumbersome, costly and disproportionate to the issues that will arise. Veda submits that there are no complaints, dispute resolution, monitoring or enforcement or compliance provisions in the HoA in practice in New Zealand, unlike the PRDE. Disputes are enforced or reconciled by reference to credit reporting body subscriber contracts taking into account the principles set out in the HoA. However, Veda notes that overseas experience suggests that compliance mechanisms are not regularly used. Veda submits that this is strong evidence that there is no need for a materially more intrusive and expensive enforcement mechanism in Australia.\(^\text{60}\) Instead, Veda

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\(^{60}\) VEDA initial submission to the ACCC dated 2 April 2015, p. 15
favours a conciliatory and collaborative industry approach similar to the United Kingdom.

ARCA’s submission in response

238. In response to the consumer associations’ submission, ARCA submits that the PRDE does not directly involve consumers and falls outside the Privacy Act obligations. Consumers already have extensive rights under the Privacy Act to raise issues with the operation of the credit reporting system through external dispute resolution schemes and the OAIC. ARCA submits that compliance outcomes will only directly impact PRDE signatories, and not the public at large, and as such it is not appropriate for consumers to have a role in PRDE compliance, or for PRDE compliance outcomes to be made public.

239. In response, ARCA submits that credit reporting systems internationally fall along a wide spectrum of prescription and enforceability, from high-level or aspirational principles to the mandatory provision of all information with legal penalties for non-compliance. ARCA also submits that the United Kingdom and New Zealand systems are less successful than Veda suggests. Nevertheless, ARCA submits that these systems have more in common with the PRDE than Veda acknowledges. According to ARCA, the PRDE is not materially more prescriptive than the UK system that Veda prefers. The chief difference is that the New Zealand and United Kingdom systems place more reliance on credit reporting bodies to ensure reciprocity, while the PRDE provides for transparency and independent oversight and recourse in order to avoid the conflicting incentives that credit reporting bodies may have in deciding whether to enforce reciprocity against their larger customers in particular.

240. ARCA has resubmitted that the two PRDE decision-making bodies, the Industry Determination Group and the Eminent Person panel, are appropriate bodies to manage PRDE compliance:

   a. The Industry Determination Group is established as a ‘peer review’ group, which may review, conduct conciliations and issue recommendations for PRDE disputes. It will be drawn from a representative signatory pool.

   b. The Eminent Person panel provides the appeal mechanism for recommendations issued by the Industry Determination Group. ARCA submits that to qualify as an Eminent Person, a person must have a high level of legal or dispute resolution training or experience, be capable of decision-making, have knowledge of financial services or credit reporting, and cannot have been employed by a PRDE signatory within the previous 12 months. ARCA submits that these requirements ensure that the Eminent Person will be sufficiently independent, but also capable of providing quality, considered decisions.

ACCC view

241. As discussed above, the ACCC considers that the principles of reciprocity and consistency are important to realising the benefits of Comprehensive 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.

242. Without an effective compliance mechanism in the PRDE, the ACCC considers that the enforcement of bilateral service agreements may not be consistent across all credit providers in the industry (noting the conflicting commercial incentives of credit reporting bodies – see paragraph 169).
243. The ACCC also acknowledges the inability of a credit provider to be aware of the obligations under a bilateral agreement between another credit provider and credit reporting body, and the inability to enforce those obligations as an independent third party absent the governance and compliance provisions in the PRDE.

244. The ACCC considers that international experience indicates that there is a range of ways in which compliance frameworks can be structured and implemented. These are likely to have varying degrees of effectiveness depending on the other aspects of the Comprehensive Reporting framework and the degree of competition in credit providing and credit reporting sectors.

245. 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.

246. The ACCC is of the view that the Eminent Person will require sufficient knowledge of the industry to undertake its function, and considers that the condition placed upon the Eminent Person in relation to employment over the previous 12 months is appropriate to maintain independence for its purpose under the PRDE. The expenses related to the governance regime are examined in more detail below in the Public detriments section of this draft determination.

247. The ACCC notes the submission of the consumer associations that the governance decision making bodies should be independent from the industry and include consumer representation. However, the ACCC accepts that this is not necessary, noting that the PRDE does not directly involve consumers. Further, it is possible that the Eminent Person panel may include members with consumer experience.

ACCC conclusion on public benefits

248. The ACCC notes the general acceptance amongst the industry of the range of public benefits arising from the wide and improved access to Comprehensive Reporting in Australia, including improved consistency and quality of credit information available to credit providers, facilitating competition between credit providers and credit reporting bodies, financial inclusion for consumers, a decrease in over-indebtedness of consumers and support for responsible lending obligations.

249. The ACCC considers that the free rider concern is likely to inhibit full and complete implementation of Comprehensive Reporting without adequate reassurance in the framework that sharing of such information will not unduly advantage a credit provider’s competitors.

250. The ACCC is of the view that the PRDE will enable more of the benefits of Comprehensive Reporting to be realised than under a purely voluntary system due to the reciprocity, consistency and governance provisions.

251. The ACCC is of the view that the principle of reciprocity is fundamental to comprehensive data exchange in attempting to address the free rider concern. The reciprocity provisions in the PRDE are likely to lead to the following public benefits:

   a. improvement of the lending and risk management decisions of signatory credit providers as a result of the availability of improved information to assess credit risk

   b. the promotion of competition between smaller and larger credit providers, potentially limiting the barriers of entry into the market, particularly for small credit providers
c. consequent benefits for borrowers, in terms of increased financial inclusion and less over-indebtedness

d. time and cost efficiencies associated with a more standardised, reliable and timely exchange of comprehensive data.

252. The ACCC considers that the principle of consistency will counter the tendency for data to become more fragmented, or a dominant credit reporting body to emerge, facilitate a more complete exchange of information between credit providers and each credit reporting body, encouraging the development of financial and analytical services tailored for credit providers, and the innovation of new financial products. Further, consistency is likely to lower the barriers to entry and expansion for smaller credit reporting bodies, assist smaller credit providers to compete with larger credit providers, and assist credit providers to comply with responsible lending practices. The ACCC notes that the greatest benefits to smaller credit providers will be realised where larger credit providers have connections with all three credit reporting bodies.

253. The ACCC considers that the enforcement mechanism provided for under the PRDE is necessary to maintain the integrity of the PRDE and is likely to encourage signatories to comply with the reciprocity and consistency provisions, leading to the public benefits outlined above. The ACCC considers that the condition placed upon the Eminent Person is adequate to maintain independence for its purpose under the PRDE.

254. The ACCC also considers that the Proposed Conduct will provide time and cost efficiencies for credit providers in complying with their responsible lending obligations.

Public detriment

255. Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

…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.61

256. ARCA submits that the implementation of the Proposed Conduct will lead to minimal, if any, public detriment. ARCA submits that the major costs associated with implementing Comprehensive Reporting, such as IT and reporting systems, arise from legislative change rather than directly from the PRDE.

257. ARCA submits that the challenges associated with developing and maintaining an industry-based self-regulatory arrangement are not unique to the PRDE. The PRDE has sought to address these challenges with the most appropriate compromises, i.e., those that would create the greatest benefit with the least detriment to the public.

258. ARCA submits that the PRDE plays an important role in making Comprehensive Reporting possible, but the PRDE has not been designed to address every possible issue associated with Comprehensive Reporting implementation in Australia. To the extent that concerns continue to arise, ARCA submits that it will be up to the industry to continue working out appropriate solutions.

259. Interested parties, such as GE Capital, ME Bank and Experian support ARCA’s view that there are limited public detriments associated with the Proposed Conduct. However, other parties such as Veda, the consumer associations, COBA and ConsumaData submit that the Proposed Conduct raises public detriments of concern.

61 Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.
260. The ACCC’s assessment of the likely public detriments from the Proposed Conduct follows. In particular, interested parties have raised:
   a. the costs to signatories imposed by the relevant provisions of the PRDE
   b. how financial hardship arrangements will be recorded
   c. whether participation in the PRDE is in effect mandatory.

261. The discussion of the effect on competition and data fragmentation is included in the Public benefits discussion.

Costs to signatories from the relevant provisions of the PRDE

262. ARCA submits that the costs of becoming and remaining a signatory of the PRDE are neither onerous nor discriminatory. Other interested parties have commented on the cost of the PRDE, including the cost of enforcement and governance.

263. Costs to signatories arising directly from the Proposed Conduct are discussed below under the following categories:
   a. costs paid to the PRDE Administrator Entity for administration and operation of the PRDE (i.e. annual fees). Note that a proportion of the annual fees is attributable to the Proposed Conduct
   b. initial and ongoing costs of implementing the Proposed Conduct
   c. costs associated with having to provide the same data to all credit reporting bodies that the credit provider has a service agreement with (i.e. the consistency obligations)
   d. costs of enforcement/governance.

264. The ACCC notes that while there are a number of costs from implementing Comprehensive Reporting, such as IT and reporting systems, these are mostly not attributable to the PRDE or the Proposed Conduct. For example, ARCA submits that if a small credit provider were to decide to engage in Comprehensive Reporting with one credit reporting body, that credit provider would incur costs for the following (regardless of the PRDE):
   a. comprehensive credit information extraction, such as the processes, policies, procedures and notifications to automatically extract this data from a credit provider’s banking system on a monthly basis
   b. conversion of the data to a standard format or fees paid to the CRB to convert the data (e.g. into the Data Standard format)\(^62\)
   c. establishing an interchange link or interface through which information will be exchanged between the credit provider and the credit reporting body
   d. testing the data with that credit reporting body to ensure that the credit reporting body can accept and interpret the data (and the credit provider can receive data), minimising errors and enabling integrated/automated monthly contribution of data.

Annual fees

265. The PRDE Administrator Entity will charge signatories annual fees to cover the costs associated with the administration and operation of the PRDE (such as set up costs, compliance with the Data Standard is not compulsory for non-signatories, ARCA notes that non-signatories can use the Data Standard and it may form a term of their services agreement with the credit reporting body that data is formatted in accordance with the Data Standard.)
overseeing the scheme and complaints). In addition to these ongoing costs, ARCA will fund costs for the establishment of the PRDE (e.g. staff time in setting up the governance structures and educating potential signatories about the PRDE, and technology development).

266. ARCA submits that registration fees will be structured on a cost-recovery basis and be proportionate to the size of the signatory and should not act as a barrier to participating in the PRDE for smaller players (see paragraph 74 to 78 above).

267. Experian submits that the costs for signatories to the PRDE are not substantial or prohibitive and are reasonably calculated, noting the tiered fees.

Initial and ongoing costs of implementing the Proposed Conduct

268. As noted, there are a number of costs to credit providers and credit reporting bodies associated with transitioning to Comprehensive Reporting and the ongoing exchange of Comprehensive Reporting. Signatories to the PRDE will incur some additional costs as a result of the Proposed Conduct.

269. ARCA submits that, while the PRDE will require credit providers to adhere to the Data Standard (noting that the Data Standard will be optional for non-signatories), this will reduce the costs associated with moving to Comprehensive Reporting for credit providers (including small credit providers).

270. ARCA agrees that the costs to smaller credit providers of transitioning to Comprehensive Reporting may be proportionately higher compared to their larger counterparts, but that this is not a function of the PRDE but rather Comprehensive Reporting. Further, ARCA states that the absolute cost may be higher for larger credit providers in moving to Comprehensive Reporting. In particular, larger credit providers would actually have much larger amounts of data to extract, cleanse, test, exchange and correct than smaller credit providers and may have more complicated legacy systems, resulting in amplified costs for larger credit providers.

271. Experian submits that the Data Standards will enhance the exchange and reduce the cost of data interpretation. They will support the accuracy and completeness of the data that is brought into the system, reducing the cost of resupply and correction, and support the integrity of the system. Experian also notes that credit reporting bodies can provide a conversion service to assist contribution of data into the system at the requisite standard.

272. Veda and some credit providers submit that if a credit provider intends to have agreements with more than one credit reporting body, that credit provider may incur additional costs as a result of the consistency obligations under the PRDE, as discussed below.

Costs of consistency obligations

273. As noted, the consistency obligations under the PRDE require that credit providers provide the same data to all credit reporting bodies that the credit provider has a services agreement with (and for all portfolios). This may involve additional cost for a credit provider that chooses to have a relationship with more than one credit reporting body but would otherwise choose to provide different data to different credit reporting bodies.

274. For a credit provider deciding to move to Comprehensive Reporting, this will generally be a significant investment and may cost hundreds of thousands of dollars in terms of initial and ongoing project costs. Once that decision is made, the decision whether to provide data to one credit reporting body or to multiple credit reporting bodies will depend on a range of factors. It is the ACCC’s understanding based on the
information before it that the incremental cost of providing data to multiple credit reporting bodies is not a very significant part of overall project costs. ARCA submits that those credit providers who consider there is an incremental cost of contribution to all credit reporting bodies, and have identified that cost, have identified a figure which is approximately 10 per cent of the total cost of transitioning to Comprehensive Reporting. The additional costs are those summarised at paragraph 264 above.

275. Veda submits that the consistency obligations impose substantial/prohibitive additional costs on smaller credit providers who wish to have an agreement with more than one credit reporting body because they will be required to contribute the same comprehensive information to each credit reporting body. Veda submits that ideally, smaller credit providers would be able to obtain positive data from one credit reporting body and list defaults (negative information) with three credit reporting bodies. Credit providers may also wish to obtain positive data from one credit reporting body for enquiries, and other ‘negative services’ (for example, negative account management information, or pre-screening) from other credit reporting bodies (with attendant negative contribution obligations). The consistency provisions would prevent these types of arrangements.

276. Veda submits that this will place smaller credit providers who choose to fully participate in Comprehensive Reporting at a disproportionate cost and competitive disadvantage relative to large credit providers (see also paragraphs 210 to 214).

277. Some COBA members claim that the consistency obligations will impose additional costs upon smaller credit providers who want to have relationships with more than one credit reporting body – the main cost being to develop the interface between the core banking system and the credit reporting bodies. COBA advised that currently the majority of smaller credit providers have only developed an interface with one credit reporting body for the purpose of supplying negative credit information. While there is a cost to update the interface for positive credit reporting, it is significantly lower than the development of the new interface for the new credit reporting body.

278. ARCA notes that some costs will arise with respect to each additional credit reporting body the credit provider enters into an agreement with as a result of the consistency obligations. The cost arises from:

a. the need to establish an interface – ARCA considers that, based on the feedback of some ARCA members, the cost of linking with an additional credit reporting body would not be significant.

   It is ARCA’s understanding that credit providers do not pay significant fees to provide data to credit reporting bodies.63

b. COBA notes that a minority of its members that currently exchange negative information with one credit reporting body via an interface and with a second credit reporting body using a simple online portal will have to upgrade their systems to interface with multiple credit reporting bodies. ARCA submits that Ultradata has confirmed that if these credit providers were to upgrade their core banking system to supply comprehensive credit information, a simultaneous upgrade to supply that information to multiple credit reporting bodies would not add significant cost (noting the uniform Data Standard). ARCA submits it is also possible for a small credit provider to implement Comprehensive Reporting and supply to multiple credit reporting bodies without the assistance of its core banking system provider

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63 ARCA’s understanding of standard industry practice is that a credit reporting body will generally charge a credit provider based on its information supplied by the credit reporting body to the credit provider, rather than information contributed by the credit provider.
c. testing of data – this includes one-off testing of the ability to contribute information, and periodically testing whether the exchange is operating effectively. However testing the contribution of credit information will represent only a portion of the entire testing cost.

d. contribution and infrastructure to support contribution – ARCA and its members indicate that the incremental costs of data contribution requirements will be minimal as a result of the Data Standards (i.e. the same data file can be provided to each credit reporting body). As noted by the CRA Report, the infrastructure costs arising from contribution of credit information to additional credit reporting bodies will be minimal and in the case of small files, should be able to be contributed by use of secure file transfers over the credit provider’s existing internet connection, and storage and back-up can use the existing systems. Further, software solutions are available which enable contribution to all three credit reporting bodies in one system, and can also enable streamlining of corrections and compliance process (such as Veda’s Smartdata service).

e. corrections – ARCA submits that incremental costs of corrections can be minimised by initial testing of data contribution, the use of the Data Standards and the use of software that stores cleansed data separate to the data warehouse. Further, there are corrections solutions that provide data handling capabilities that remove issues of error and dispute management for smaller credit providers.

279. ARCA (the CRA Report) and Experian indicate that these incremental costs of providing the data to additional credit reporting bodies are not likely to be prohibitive or significant relative to the overall costs of Comprehensive Reporting. The CRA Report suggests that if these costs affect the behaviour of any small credit providers, it is only likely to be a small proportion of them. As such, it submits that there should be no concerns for small credit reporting bodies or for greater fragmentation.

280. ARCA, COBA and Experian submit that the costs of consistency will be outweighed by the benefits of consistency (discussed under Public benefits).

281. These parties consider that costs for credit providers will be lower as a result of consistency, for example:

a. ARCA submits that it would be more expensive and complex for small credit providers to provide different Tier Levels of information to different credit reporting bodies because it would require the development and maintenance of separate reporting frameworks for the different Tier Levels.

b. COBA submits that the members who support the consistency obligations do so because it will save them money and avoid a need to incur additional costs by having to deal with multiple credit reporting bodies to obtain a more complete picture of a consumer’s credit obligations. ARCA agrees with this view.

c. As noted previously, ASIC submits that to the extent exclusivity arrangements eventuate, this could force credit providers to deal with multiple credit reporting bodies in order to fulfil their responsible lending obligations, raising costs for credit providers.

282. Further, ARCA submits that in the process of developing the PRDE, ARCA members did not indicate that contributing data to multiple credit reporting bodies was determinative of the adoption of a particular credit reporting body strategy by credit providers.

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64 And obtain information; however this is not required by consistency obligation but is instead a choice for the credit provider to make.
providers. ARCA submits that some very small credit providers have already decided to share data with all three credit reporting bodies.

283. COBA submits that the majority of COBA members currently only have a relationship with a single credit reporting body and, if consistency obligations are included in the PRDE, are likely to continue with a single credit reporting body strategy because data would be more consistent across credit reporting bodies, as a consequence of the consistency provision.

Costs of enforcement/governance

284. As noted, if a signatory is not complying with the PRDE, the first step is to try to resolve the dispute between the disputing parties. If the dispute cannot be resolved, the enforceability obligations enable the Industry Determination Group to recommend, and the Eminent Person to make a binding decision, to limit the capacity of a credit provider or credit reporting body to exchange Consumer Credit Liability Information or Repayment History.

285. Veda submits that these enforceability provisions may be too costly to the issues that will arise, and proposes that the Eminent Person step be removed from the PRDE. Veda submits that the experience in credit reporting in New Zealand\(^65\) is strong evidence that there is no need for a materially more intrusive and expensive enforcement mechanism in Australia.

286. In contrast, the joint consumer advocate submission queries whether the monitoring, reporting and compliance process in the PRDE should be more robust (which would presumably be more costly) (see Public benefit arising from governance of the PRDE above).

287. ARCA submits that the monitoring, reporting and compliance processes achieve an appropriate balance, providing rigour and accountability without being cumbersome or imposing unnecessary costs on smaller credit providers in particular. It is designed to offer an effective assurance of the PRDE that is suitable for smaller and larger participants alike (the benefits of which are discussed under Public benefit arising from governance of the PRDE).

288. ARCA submits that the only direct cost that will arise for signatories from the enforceability provisions is from the use of an Eminent Person,\(^66\) noting that parties are denied the ability to refer disputes to courts or tribunals.

289. COBA agrees that the proposed Industry Determination Group is a key feature of the PRDE and is a cost-effective mechanism for smaller credit providers to raise disputes.

ACCC view

290. The ACCC considers that credit providers and credit reporting bodies will incur costs in moving to a Comprehensive Reporting system. The issue is the extent to which the Proposed Conduct would be likely to create additional, or incremental, costs for credit providers and credit reporting bodies over and above those associated with Comprehensive Reporting itself. The ACCC notes that most of the costs of implementing Comprehensive Reporting appear likely to arise regardless of the Proposed Conduct (see paragraphs 262 to 264 above).

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\(^65\) Veda understands that in New Zealand, there are no complaints, dispute resolution, monitoring or enforcement or compliance provisions in the Heads of Agreement for Principles of Reciprocity for Comprehensive Reporting.

\(^66\) Given that the PRDE Administrator Entity and some of the costs of the Industry Determination Group will be covered by signatories’ annual fees. ARCA submits that the Industry Determination Group will be funded in part by the annual signatory fee, and in part by the Industry Determination Group representatives themselves.
291. However, the ACCC accepts that credit providers and credit reporting bodies will incur some additional costs if they become signatories to the PRDE as a result of the Proposed Conduct. These include a portion of the annual fees (which are levied to cover costs for administration, operation and disputes), the initial and ongoing costs of implementing the relevant provisions of the PRDE, as well as additional costs for resolving disputes using the Eminent Person.\(^\text{67}\)

292. The PRDE’s consistency obligations may also impose costs on credit providers that would have different arrangements for the supply of consumer credit data to credit reporting bodies absent the PRDE. For example, credit providers that would prefer to deal with different credit reporting bodies at different Tier Levels will, if the consistency provisions are authorised and the credit provider chooses to become a signatory, have to choose different arrangements, such as only dealing with one credit reporting body or providing the same Tier Level of information to all its credit reporting bodies. Alternatively, such a credit provider may choose not to become a signatory to the PRDE.

293. The decision as to whether to provide data to more than one credit reporting body will take into account the benefits of pursuing this strategy, which would include giving the credit provider more options in terms of consuming Comprehensive Reporting and putting itself in a better bargaining position in negotiating terms with credit reporting bodies.

294. Whether the credit provider decides to also consume data from multiple credit reporting bodies is a separate decision from the decision of whether to provide data to multiple credit reporting bodies. Based on the information before the ACCC, the more significant cost for a credit provider comes from consuming data from multiple credit reporting bodies, rather than from contributing data to multiple credit reporting bodies. A credit provider’s decision to obtain data from multiple credit reporting bodies is not required by the consistency provisions or any other provisions of the PRDE. In fact the consistency provision may mean that a credit provider is less likely to have to obtain data from more than one credit reporting body (as noted under Public benefits arising from consistency above).

295. The ACCC considers that the annual fees payable by signatories are likely to be small relative to the revenues and cost bases of most credit providers and credit reporting bodies and the fees are unlikely to affect signatories’ competitiveness. The ACCC considers that the size of the fees is unlikely to be determinative of participation in the PRDE for many credit providers and credit reporting bodies noting that the fees are set on a cost-recovery basis and are tiered based on the size of the signatory. Further, only a proportion of the annual fees are attributable to the Proposed Conduct; in particular, the costs arising from the enforcement provisions of the PRDE.

296. The ACCC notes that some enforcement costs will only be incurred if a dispute is notified and cannot easily be resolved. If enforcement costs are excessive this may deter the notification of disputes. However, the ACCC notes that the PRDE enforcement mechanism consists of various escalating stages which may enable the costs of disputes to be minimised.

297. The ACCC acknowledges the different views about whether the enforcement processes are too cumbersome. ARCA submits it has struck the right balance between an effective process that is not overly costly and the ACCC is inclined to agree with this view.

\(^\text{67}\) ARCA notes that the costs of the Eminent Person will be paid by the unsuccessful party to the dispute and will be apportioned where a party is only partially unsuccessful.
Recording of financial hardship arrangements

298. 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 or a short term stop.

299. Under the PRDE, Repayment History will be reported as a monthly payment status by credit providers to credit reporting bodies. The Repayment History is information about whether a consumer has made a payment on time, or whether the consumer has missed a credit repayment. A consumer will be considered to have missed a consumer credit payment if a payment has not been made more than 14 days after the day it was due to be paid. This is not automated but rather by proactive supply of information by credit providers to credit reporting bodies.

300. CALC, Financial Rights and FCA in a joint submission have raised concern regarding the reporting of financial hardship in the context of Comprehensive Reporting and the legitimate settlement negotiations that relate to the listing of credit defaults.

301. These consumer associations submit that:

   a. Repayment History must be reported in a way that accurately reflects any hardship variation or settlement entered by the consumer with the credit provider. If a hardship arrangement allows a debtor a moratorium or variation on payments for a certain period, Repayment History should never suggest that there was an obligation to make payment and payment was missed. Under contract law, repayments can be varied by agreement for a range of reasons, including hardship. If the contract is varied and the debtor meets the obligations under the varied contract, then there can be no missed payment during the period of hardship the Repayment History should be recorded as ‘current up to and including the grace period’ and that ‘hardship arrangement’ should be defined in the PRDE

   b. credit providers should carefully explain (and confirm in writing) whether a variation will have any impact on a debtor’s credit file

   d. how Repayment History is reported should avoid operating in a way that discourages debtors from seeking a hardship variation. Using temporary hardship flags as previously proposed by ARCA will cause the majority of debtors to avoid asking for hardship variation if other credit providers will be informed (the Government has also rejected industry calls for hardship flags).

302. The consumer associations also submit that representatives of consumers regularly include the contents of credit reports in negotiated settlement outcomes (for a disputed debt). The consumer associations suggest adding another exception to the requirement to contribute credit information, which would provide that a credit provider can delay, remove or choose not to list credit defaults about a consumer if a settlement or dispute resolution is underway or has been entered into.

303. In response, ARCA submits that hardship reporting and default listing negotiations either fall outside the PRDE requirements or are beyond the scope of the PRDE to solve.

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304. ARCA is involved in broader efforts to address the hardship reporting issue and is confident it will be resolved in the appropriate forum and should not be considered a detriment of the PRDE. ARCA submits that this issue is complicated because:

a. while information about reporting Repayment History is contained in the Privacy Act and the National Credit Code, neither the Privacy Act nor the Credit Reporting Privacy Code (CR Code) address how to report Repayment History where a customer is subject to hardship arrangements and no provision is made which enables a hardship status to appear on a credit file

b. this issue may have impacts across ASIC, APRA and the OAIC regulatory responsibilities of credit providers. For example:

i. ASIC is responsible for regulating the obligations of Australian Credit Licence holders in dealing with customers who are in hardship, in accordance with the National Credit Code

ii. for credit providers who are both regulated by ASIC and APRA, any Repayment History disclosed must be consistent with any hardship arrangement but must also accurately record whether arrears will continue to accrue for the loan

c. whether a contract has been varied in writing will impact on whether the credit provider’s systems treat the contract as overdue.

305. ARCA states that it has been actively involved in discussions with relevant regulators, as well as industry associations and consumer advocates, to resolve this issue and those discussions are well progressed and ongoing. It anticipates that by the time a significant volume of Repayment History is being exchanged, this issue will have been resolved.

306. If this has not occurred, it is possible that the PRDE could be varied to enable an exception to Repayment History reporting where a customer is in hardship. ARCA submits that variation to enable such an exception would be a last resort interim measure because:

a. the non-reporting of Repayment History may inadvertently flag that the credit provider’s customer is in hardship

b. credit providers who are seeking to avoid meeting their contribution obligations could rely on this exception

c. non-signatories would not be subject to this or any other provisions of the PRDE.

307. ARCA submits that the PRDE will not require a credit provider to disclose default information which does not adhere to the Privacy Act or the CR Code requirements. The PRDE simply requires that this information is disclosed in a reasonable time.

**ACCC view**

308. The ACCC has considered the concerns raised by the consumer associations. The ACCC agrees that consumers should not be discouraged from applying for financial hardship arrangements or settling defaults. It is also important that any such arrangements are accurately recorded in the Repayment History 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 Reporting).

309. The issue of reporting financial hardship arrangements and settlement of defaults has impacts across multiple regulatory bodies and Comprehensive Reporting goes wider than the PRDE provisions the subject of this application. The ACCC considers that it is appropriate that a solution is designed by consultation and agreement between the
relevant stakeholders including financial regulators. The ACCC understands that this issue has been the subject of discussion for some time and considers that it needs to be resolved in order to address consumer concerns.

**Voluntary vs mandatory participation in the PRDE**

310. ARCA considers that any detriments arising from the PRDE (which includes the Proposed Conduct) are mitigated by the fact that participation is voluntary. ARCA submits that organisations can freely choose whether or not to become signatories of the PRDE at any time and the PRDE is only binding on signatories. Regardless of when a credit provider or credit reporting body signs the PRDE, it will have access to all data at its nominated Tier Level (there is no quarantine period).

311. Interested parties and ARCA have commented on the following issues:
   a. whether participation in the PRDE should be made mandatory for credit providers and credit reporting bodies
   b. whether the PRDE will be, in effect, mandatory for credit providers
   c. the impact of the PRDE on non-signatories.

**Whether participation should be mandatory**

312. ARCA submits that a voluntary industry framework that is developed by the credit reporting industry is preferable to a mandatory regime imposed by legislation or regulation. This is because it is likely to be better tailored to the needs of stakeholders, more effective and less costly. ARCA submits that the PRDE represents the industry’s best effort to steer between a wholly private, unregulated system and a mandatory system imposed by regulation or legislation.

313. Veda supports a voluntary regime. Veda considers that the overseas experience demonstrates credit providers’ incentives to exchange Comprehensive Reporting under purely voluntary systems, once the major technical challenges to consuming data are overcome. As noted previously, Veda supports an industry framework like the PRDE but considers the consistency and enforcement provisions in the PRDE are too prescriptive.

314. Other submissions argue that the PRDE should be more prescriptive in order to fully realise the benefits of Comprehensive Reporting, and should be amended to:
   a. require credit providers and credit reporting bodies to join the PRDE in order to exchange any comprehensive credit information or Repayment History, as this is the only way that the credit reporting system will develop in a way that is consistent with supporting optimal consumer, competitive and economic outcomes (as submitted by Dun & Bradstreet). Dun & Bradstreet is concerned that the fact that the PRDE allows for non-signatories to share Comprehensive Reporting will result in exclusive data sharing agreements and the establishment of closed non-signatory user groups that apply their own standards and principles on data exchange. Dun & Bradstreet submits that this will substantially increase the information asymmetries, and/or create data monopolies, limiting a credit provider’s capacity to accurately assess a consumer’s financial position and comply with responsible lending obligations
   b. require all credit providers to provide full comprehensive data across all portfolios to all credit reporting bodies by 2017 if that credit provider intends to access comprehensive data (as submitted by ConsumaData)
c. appoint the ‘regulator’ to monitor ARCA’s progress to encourage full and complete data submission by credit providers to credit reporting bodies, and to consider making data submission mandatory (as submitted by ConsumaData).

315. ARCA notes that the PRDE was negotiated between stakeholders with a range of incentives and priorities and represents a compromise between different views of the ideal framework for reciprocity and data exchange.

316. ARCA considers that there will be adequate participation in the PRDE before 2017. Further, mandatory participation is likely to have a discriminatory effect, given that smaller credit providers may not have the financial resources to transition to Comprehensive Reporting within this timeframe, and non-financial credit providers (telecommunication companies and utility companies) are currently prohibited from participating in the exchange of Repayment History. Similarly, requiring all credit providers to supply data to all credit reporting bodies would remove the freedom of a credit provider to make a commercial decision whether or not to adopt a multi-credit reporting body strategy, which may discourage smaller credit providers from joining the PRDE. Using the PRDE as the only means to exchange Consumer Credit Liability Information and Repayment History would also remove the ability for market participants to form alternative exchanges if they have commercial reasons to do so.

317. ARCA submits that the suggestion that the ‘regulator’ play a role in review of the operation of the PRDE confuses the obligations in the PRDE with the Privacy Act obligations. Also, a review of comprehensive credit reporting arrangements in 2017 is contemplated by the Financial System Inquiry final report.

Whether participation is in effect mandatory

318. Veda submits that the PRDE is in effect a mandatory regime in that if a majority of ARCA members become signatories, it will not be viable for other credit providers to stand outside the PRDE given the very limited access to data which would result.

319. The AFC also considers that although there is no obligation to become a signatory to the PRDE, given the critical mass of data that will be exchanged through the PRDE framework and the value of that data to the prudent and responsible credit provider, the case for becoming a signatory will be compelling.

320. In response, ARCA submits that the fact that there may be strong and increasing commercial incentives to sign up to the PRDE is evidence that it is reasonably tailored to the needs of stakeholders and is likely to involve low compliance costs.

321. As noted, ASIC submits that responsible lending will be an important factor when considering whether to become a signatory to the PRDE, and at what Tier to participate.

Impact on non-signatories

322. ARCA considers that there will be no negative impact from the Proposed Conduct on non-signatories of the PRDE. The PRDE does not seek to restrict the ability of such participants to continue to engage in credit reporting under the current system, including with respect to reporting negative data to signatories and non-signatories.

323. Signatory credit reporting bodies can deal with non-signatory credit providers in relation to Consumer Credit Liability Information and Repayment History (however, the credit reporting bodies will not be able to provide non-signatory credit providers with information that has been provided to them by signatory credit providers). Non-signatory credit providers will also have the ability to create their own data exchanges, although this may create data fragmentation.
324. Dun & Bradstreet submits that the divide in signatory and non-signatory information exchange pursuant to the PRDE will result in exclusive data-sharing agreements and the establishment of closed user groups that apply their own standards and principles of data exchange – substantially increasing information asymmetries. Further, this will create data monopolies in which one credit reporting body has control over a segment of the market. Thus participation in the PRDE should be mandatory.

325. The Financial System Inquiry has noted that credit providers that do not participate in Comprehensive Reporting are at risk of adverse selection with respect to potential new borrowers. However ARCA submits that this risk arises as a result of the industry shift to Comprehensive Reporting rather than the PRDE, and could be addressed by making participation in Comprehensive Reporting mandatory.

ACCC view

326. The ACCC notes that participation in the PRDE is voluntary. This will allow industry participants to consider whether it is worthwhile for them to sign up and for credit providers in particular to make commercial decisions about whether to participate in the PRDE and the number of credit reporting bodies with which to have commercial relationships with. This is in contrast to the situation in some other jurisdictions, such as South Africa, where governments have made decisions to mandate the provision of comprehensive consumer credit information as well as in some circumstances creating a public body to collect credit information.

327. The ACCC acknowledges however that if a sufficient number of credit providers and credit reporting bodies become signatories to the PRDE this will create strong incentives for other credit providers to also become signatories so as to benefit from the PRDE data pool. The responsible lending obligations are also likely to alter credit providers’ incentives to participate in Comprehensive Reporting, and the PRDE if this becomes the main consumer credit data pool. However, the mere fact that participating in the PRDE may become more compelling does not make that participation mandatory. Indeed, increasing credit providers’ incentives to exchange comprehensive consumer credit data lies at the heart of the PRDE.

328. It is uncertain whether it is likely that alternative exchanges among particular types of lenders will develop, as claimed by Dun & Bradstreet. The ACCC also notes the concern by Dun & Bradstreet that the reciprocity provisions will result in exclusive data sharing agreements and the establishment of closed non-signatory user groups. The ACCC notes that the incentives to establish data exchanges and closed user groups that operate outside the PRDE will depend in part of the extent to which industry participants become signatories to the PRDE.

329. In terms of the impact on non-signatories, the ACCC does not consider that the barriers to participating in the PRDE, including the incremental costs and specific provisions the subject of this application, are substantial (i.e. any party can sign up and the costs are unlikely to be prohibitive). If a non-signatory considered that they would be better served participating in the PRDE, they can sign up at any time.

330. Network effects may mean that, over time, participation in the PRDE will become extremely compelling in so far as credit providers that do not participate will face a competitive disadvantage in not being able to access as good information on potential lenders as their competitors and also face obstacles in fulfilling their responsible lending obligations. The ACCC considers that these factors are a consequence of a successful PRDE as a system for sharing comprehensive credit information and do not constitute significant public detriments.
ACCC conclusion on public detriments

331. The ACCC considers that there are potential public detriments arising from the Proposed Conduct in terms of a 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.

332. Most of the costs of implementing Comprehensive Reporting appear to arise independently of the PRDE obligations or the Proposed Conduct. The main cost directly attributable to the Proposed Conduct appears to arise from the consistency provisions in so far as they might cause credit providers to act differently in relation to how they provide Comprehensive Reporting data to credit reporting bodies than they would absent these provisions. However, the additional costs of sharing data across multiple credit reporting bodies appear to be relatively small in the context of the investment required for a credit provider to share comprehensive data.

333. In summary, the ACCC considers that, while there are some public detriments associated with the Proposed Conduct, these detriments are likely to be small.

Balance of public benefit and detriment

334. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the Proposed Conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.

335. As noted previously, the ACCC’s assessment focuses on the benefits and detriments that arise directly from the reciprocity, consistency and enforceability provisions of the PRDE.

336. As noted at paragraphs 248 to 254, the ACCC considers that the reciprocity, consistency and enforceability provisions in the PRDE will assist the benefits associated with Comprehensive Reporting to be realised, for example by addressing the free rider concern. The PRDE will also promote competition between credit reporting bodies and between credit providers and assist credit providers to comply with their responsible lending obligations at lower cost. A more standardised system for the exchange of Comprehensive Reporting should bring benefits in the form of lower costs for the industry. These benefits are likely to be substantial in total.

337. The ACCC also accepts that there are some potential public detriments arising from the costs imposed by the Proposed Conduct (paragraphs 331 to 333), most notably as a result of the consistency provisions. However, these costs appear to be relatively small and offset by the cost savings and other benefits of the Proposed Conduct.

338. As such, for the reasons outlined in this draft determination the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit that would outweigh the likely public detriment, including the detriment constituted by any lessening of competition that would be likely to result.

339. Accordingly, the ACCC proposes to grant authorisation.

340. Subsection 91(3) of the Act allows the ACCC to grant authorisation subject to conditions specified in the authorisation.

341. Veda proposes that authorisation should be conditional on the adoption of an alternative PRDE, which would retain parts of the PRDE but remove the consistency provisions, the Eminent Person Panel and several other amendments.
ARCA submits that the arrangement proposed by Veda would be likely to benefit the dominant credit reporting body but would impose considerable detriments on other credit reporting bodies, credit providers – particularly smaller credit providers – and consumers. ARCA considers that these relative benefits and detriments are reflected in the submissions provided to the ACCC by and on behalf of Veda’s competitors, credit providers and representative industry bodies.

Considering that the ACCC’s preliminary view is that the likely public benefit from the Proposed Conduct will outweigh the likely public detriments, the ACCC does not propose to grant authorisation subject to conditions.

Length of authorisation

The Act allows the ACCC to grant authorisation for a limited period of time. This allows 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.

In this instance, ARCA seeks authorisation for five years.

ARCA’s submission

ARCA considers that a period of five years is appropriate to allow for the introduction and implementation of the new credit reporting regime. ARCA submits that five years will enable signatories to better realise the benefits associated with the Proposed Conduct and will also allow other industry stakeholders, such as the government, sufficient time to monitor the progress of the reforms.

ARCA anticipates that a period of three to six months is required to:

- facilitate the execution of the PRDE deed poll by potential signatories
- establish the signatory website and associated database
- provide information and support to potential signatories about the PRDE
- enable credit reporting bodies to test signatory credit provider data.

ARCA anticipates the later stages of implementation will involve:

- increased signatory database information. It is likely that the bulk of the information will not be contributed to the database for between 15 months and three years following authorisation
- expansion of the signatory credit providers to include non-ARCA members
- review of the utilisation of comprehensive credit information and its impact on credit decisions to coincide with any possible Federal Government review in 2017 (although the likelihood and timing of any such review and its outcome are uncertain) and the PRDE review scheduled to occur after three years of operation.

ARCA considers that any detriments arising from the PRDE will be unlikely to increase over a five year period and in fact the industry may see increased competition.

ARCA submits that the review of the PRDE will occur after three years and that any findings or recommendations will need to be tested with PRDE signatories. ARCA
notes that if changes are made to the PRDE as a result, it would have to seek reauthorisation.

Interested party submissions

351. Veda submits that the period of authorisation should coincide with the three year review of the PRDE. Veda submits that a longer period would be inappropriate since relevant industry matters may have changed in response to the changing commercial environment under Comprehensive Reporting.

ACCC view

352. The ACCC proposes to grant authorisation for five years. The ACCC notes that a three year authorisation will be insufficient to include the review of the PRDE after three years of operation and for signatories to consider any changes arising from that review. Five years will also allow the operation of the PRDE, including the Proposed Conduct, to be observed and assessed over a longer period.

353. Relevantly, if changes to the relevant provisions of the PRDE are proposed as a result of the review, ARCA will have to seek reauthorisation at that time.

354. Further, if there is a material change of circumstance, such as a change in the industry as a result of Comprehensive Reporting, the ACCC can review the authorisation and consider any change to the balance of benefits and detriments.

Draft determination

The application

355. On 20 February 2015 the Australian Retail Credit Association (ARCA) lodged application for authorisation A91482 with the ACCC. Application A91482 was made using Form A, Schedule 1, of the Competition and Consumer Regulations 2010. The application was made under subsection 88(1) and 88(1A) of the Act.

356. ARCA seeks authorisation on behalf of itself 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:

   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.

   b. **Consistency provisions:** credit providers must supply the same consumer credit information to all credit reporting bodies with whom they have a services agreement.

   c. **Enforceability provisions:** procedures and sanctions to address non-compliance with the PRDE (Proposed Conduct).

357. ARCA seeks authorisation of this conduct as it may contain cartel provisions and/or an exclusionary provisions (within the meaning of section 45 of the Act).

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70 Paragraphs 4, 8, 10, 14, 34, 35, 36, 38, 39 and, by way of anti-avoidance, 11, 12 and 44.
71 Paragraphs 9, 15 and 16.
72 Paragraph 89.
358. Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

359. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to sections 90(5A) and 90(5B) of the Act, that in all the circumstances the Proposed Conduct for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the Proposed Conduct.

360. The ACCC is also satisfied, pursuant to section 90(8) of the Act, that the Proposed Conduct for which authorisation is sought is likely to result in such a benefit to the public that the Proposed Conduct should be allowed to take place.

361. The ACCC therefore proposes to grant authorisation to application A91482.

Conduct for which the ACCC proposes to grant authorisation

362. The ACCC proposes to grant authorisation to ARCA and current and future signatories of the PRDE to make and give effect to the following provisions of the PRDE:

   a. Reciprocity provisions:73 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.

   b. Consistency provisions:74 credit providers must supply the same consumer credit information to all credit reporting bodies with whom they have a services agreement.

   c. Enforceability provisions:75 procedures and sanctions to address non-compliance with the PRDE.

363. Further, the proposed authorisation is in respect of the Proposed Conduct as it stands at the time authorisation is granted. Any changes to the relevant provisions of the PRDE during the term of the proposed authorisation would not be covered by the proposed authorisation.

364. Authorisation is proposed to be granted for five years.

365. This draft determination is made on 17 July 2015.

Further submissions

366. The ACCC will now seek further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.

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73 Contained in the following paragraphs of the PRDE: 4, 8,10, 14, 34, 35, 36, 38, 39 and, by way of anti-avoidance, 11, 12 and 44.
74 Contained in the following paragraphs of the PRDE: Paragraphs 9, 15 and 16.
75 Contained in paragraph 89 of the PRDE.
Attachment A - Summary of relevant statutory tests

Subsections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Subsection 90(8) states that the ACCC shall not:

- make a determination granting:
  - an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
  - an authorization under subsection 88(7) or (7A) in respect of Proposed Conduct; or
  - an authorization under subsection 88(8) in respect of Proposed Conduct to which subsection 47(6) or (7) applies; or
  - an authorisation under subsection 88(8A) for Proposed Conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the Proposed Conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the Proposed Conduct should be allowed to take place, as the case may be; or

- make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.
### Attachment B – ARCA Members

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<thead>
<tr>
<th>Name and ABN</th>
<th>Address</th>
<th>Business</th>
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<tr>
<td>American Express Australia Limited ABN 52 108 952 085</td>
<td>12 Shelley Street Sydney NSW 2000</td>
<td>Retail finance services</td>
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<tr>
<td>Australia New Zealand Banking Group Limited ABN 11 005 357 522</td>
<td>10/833 Collins Street Melbourne VIC 3008</td>
<td>Retail banking services</td>
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<tr>
<td>Bank of Queensland Limited ABN 32 009 656 740</td>
<td>100 Skyring Terrace Newstead QLD 4006</td>
<td>Retail banking services</td>
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<tr>
<td>Bendigo and Adelaide Bank Limited ABN 11 068 049 178</td>
<td>The Bendigo Centre Bendigo VIC 3350</td>
<td>Retail banking services</td>
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<tr>
<td>Citigroup Pty Limited ABN 86 004 325 080</td>
<td>2 Park Street Sydney NSW 2000</td>
<td>Retail banking services</td>
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<tr>
<td>Commonwealth Bank of Australia ABN 48 123 123 124</td>
<td>11 Harbour Street Sydney NSW 2000</td>
<td>Retail banking services</td>
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<td>Credit Union Australia Limited ABN 44 087 650 959</td>
<td>145 Ann Street Brisbane QLD 4000</td>
<td>Retail banking services</td>
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<tr>
<td>Customer Owned Banking Association Limited ABN 98 137 760 897</td>
<td>Level 11, 35 Clarence Street Sydney NSW 2000</td>
<td>Mutual banking and credit union association</td>
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<tr>
<td>GE Capital Finance Australia ABN 42 006 563 568</td>
<td>572 Swan Street Richmond VIC 3121</td>
<td>Retail finance services</td>
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<tr>
<td>HSBC Bank Australia Limited ABN 48 006 434 162</td>
<td>580 George Street Sydney NSW 2000</td>
<td>Retail banking services</td>
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<td>ING Bank (Australia) Limited ABN 24 000 893 292</td>
<td>140 Sussex Street Sydney NSW 2000</td>
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<tr>
<td>Macquarie Leasing Pty Ltd ABN 38 002 674 962</td>
<td>9 Hunter Street Sydney NSW 2000</td>
<td>Vehicle and equipment financing services</td>
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<td>Members Equity Bank Limited ABN 56 070 887 679</td>
<td>360 Elizabeth Street Melbourne VIC 3000</td>
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<td>Momentum Energy Pty Limited ABN 42 100 569 159</td>
<td>628 Bourke Street Melbourne VIC 3000</td>
<td>Retail gas and electricity services</td>
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<td>Level 1, 800 Bourke Street Docklands VIC 3008</td>
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<td>207 Pacific Highway St Leonards NSW 2065</td>
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<tr>
<td>Volkswagen Financial Services Australia Pty Limited ABN 20 097 071 460</td>
<td>Level 1, 24 Muir Road Chullora NSW 2190</td>
<td>Motor vehicle financing services</td>
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<tr>
<td>Westpac Banking Corporation ABN 33 007 457 141</td>
<td>275 Kent Street Sydney NSW 2000</td>
<td>Retail banking services</td>
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<tr>
<td>Veda Advantage Ltd</td>
<td>100 Arthur Street</td>
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<tr>
<td>ABN 29 080 662 568</td>
<td>North Sydney NSW 2060</td>
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<td>Dun &amp; Bradstreet (Australia) Pty Ltd</td>
<td>479 St Kilda Road</td>
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<td>ABN 95 006 399 677</td>
<td>Melbourne VIC 3004</td>
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<tr>
<td>Experian Australia Pty Ltd</td>
<td>Level 6, 549 St Kilda Road</td>
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<tr>
<td>ABN 95 082 851 474</td>
<td>Melbourne VIC 3004</td>
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Attachment C – ARCA PRDE
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.

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.

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.

“Commencement Date” means [insert date to be determined following ACCC authorisation]

“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 to be confirmed), 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.

“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:

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.

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**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 33 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 paragraph 46 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 service 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 service agreement.

16. The CP and its Designated Entity (if applicable) must contribute credit information to all those CRBs with which it has a service 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 33; 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).

Designated entities

22. A CP may elect to specify one or more Designated Entities where permitted to by paragraphs 23 to 28.

23. Each Designated Entity must then 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 specifies 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 service agreement.

Designated entity requirements

25. A CP may specify as a Designated Entity:
   a) another CP that is a related body corporate of the designating CP; or
b) 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:

   a) It operates under its own brand or brands; and

   b) It must have 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 this criteria, the CP must:

   a) Notify the PRDE Administrator Entity and advise any change in the supply Tier Level for the CP;

   b) 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 Service 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 and 32 and account exceptions in paragraph 33.

30. The Participation Level Threshold is met if:

   a) 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

   b) 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:

   a) the accounts relate to a product that is in run-off and accordingly no new accounts of this type are being opened; and

   b) the number of accounts is not more than 10,000; and

   c) the total number of accounts does not constitute more than 3% of the total consumer credit accounts of the CP.

32. In calculating the total consumer credit accounts of the CP in paragraph 31(b), a CP and its Designated Entity or Entities (as applicable) will be treated as separate CP.
entities and may apply the calculation of number of accounts based upon the total consumer credit accounts separately held by each of the CP and its Designated Entity or Entities (as applicable).

Account exceptions

33. A CP is not required to contribute credit information about those accounts listed in Schedule 1 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 obtains the supply of credit reporting information 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 Securitisation Entity will be required to contribute credit information held by the Securitisation Entity, but 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

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.

PRINCIPLE 3

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

**Service agreements**

47. **Service 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**; and

c) may, in respect of those service 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.

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.

**Contribution barriers**

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

**Management of the ACRDS**

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

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 33 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 service agreements not less than 90 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:

a) at least 50% repayment history information on the first contribution (for the previous 15 months) then;

b) 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 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 7 business days of this acquisition.

60. At the expiry of the review period, and subject to the run-off exception in paragraphs 31 and 32 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 verification purposes.

Non-PRDE Service Agreements

63. Where a CRB and a CP (whether signatories or non-signatories)
a) enter into a service 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 service agreement (non-PRDE service 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 service agreement will be compliant with this PRDE where, within a period of no longer than 90 days from the Signing Date:
a) the supply, contribution and obtaining of supply of partial information or comprehensive information is in accordance with this PRDE;
b) the contribution of credit information by the CP to the non-PRDE service agreement is in accordance with the ACRDS;
c) 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;
d) 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 service agreement for a period of more than 12 months prior to the Signing Date, then 90 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**

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**

66. Where a **CP** or **CRB** (the reporting **CP** or **CRB**) forms an opinion that any **CP** or **CRB** (the respondent **CP** or **CRB**) to this PRDE has engaged in **non-compliant conduct**, it will issue to that **CP** or **CRB** a report of **non-compliant conduct**. Such a report must comply with the **SRR**.

67. From the date of the receipt of the report by the respondent **CP** or **CRB**, the parties have 30 calendar days (the Initial Period) in which to:

   a) Confer;

   b) Respond to the report of **non-compliant conduct**, providing such supporting information as the respondent **CP** or **CRB** deems necessary; and/or

   c) Enter into a **Rectification Plan**. The **Rectification Plan** must comply with the **SRR**; or

   d) Agree that the conduct of the respondent **CP** or **CRB** is compliant with the PRDE.

68. If the **Rectification Plan** results in the **non-compliant conduct** being rectified within the Initial Period (Stage 1 Dispute), the dispute is closed and no information about the dispute will be provided to the **PRDE Administrator Entity**.

69. If the **Rectification Plan** is entered into within the Initial Period but the **non-compliant conduct** will not be resolved within that timeframe (Stage 2 Dispute), both parties to the **Rectification Plan** are obliged to provide the **Rectification Plan** to the **PRDE Administrator Entity** within 3 business days of the expiry of the Initial Period.

70. If there is no **Rectification Plan** entered into within the Initial Period and there is no agreement that the conduct is compliant (Stage 3 Dispute), both parties to the dispute are obliged to notify the **PRDE Administrator Entity** within 3 business days of the expiry of the Initial Period.

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

71. When a Stage 2 Dispute is referred to the **PRDE Administrator Entity**, the **PRDE Administrator Entity** is required to make the **Rectification Plan** available to **signatories** within 3 business days of receipt of the **Rectification Plan**.

72. Any **signatory** may object to the **Rectification Plan** by issuing a notice of objection to the two initial reporting and respondent parties within 7 calendar days of publication of the **Rectification Plan**. 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 be the reporting **CP** or **CRB**, and the two initial reporting and respondent parties will be deemed to be the respondent parties. The dispute resolution process set out in paragraphs 66 to 70 above will then apply to the dispute.

**Referral to PRDE Administrator Entity – Stage 3 Dispute**

74. When a Stage 3 Dispute is referred to the **PRDE Administrator Entity**, the **PRDE Administrator Entity** is required to, within 3 business days of referral of the dispute:

   a) make a de-identified report of the dispute issues 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**.

**Referral to the Industry Determination Group**

75. The **Industry Determination Group** will convene within 3 business days of receipt of an identified report of dispute from the **PRDE Administrator Entity**.

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:

   a) Determine whether it is necessary for the parties to participate in a conciliation to resolve the dispute and a reasonable timeframe for this conciliation; or

   b) Issue a recommendation within 14 calendar days. 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 each **Industry Determination Group** 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 an agreed Rectification Plan; and

ii) Refer the dispute back to the Industry Determination Group for further review, in accordance with paragraph 76 above.

81. Where a dispute has been referred to the Industry Determination Group in accordance with paragraphs 76 and 80 above, the Industry Determination Group will within a period of 3 business days:

   a) Confirm endorsement of the Rectification Plan and notify the PRDE Administrator Entity to publish the Rectification Plan; or

   b) Decline endorsement of the Rectification Plan and provide its reasons to the parties. 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 paragraph 76(b) above.

Referral to Eminent Person

82. Where the Industry Determination Group has issued a recommendation in accordance with paragraph 78 above, the parties have 14 calendar days from issue of the recommendation by the PRDE Administrator Entity to accept or reject this recommendation. If the parties do not respond within this timeframe, they are deemed to have accepted the recommendation.

83. In the event either or both of the parties reject 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 14 calendar days of notice of the rejection. The brief 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 it necessary, request the parties meet with the **Eminent Person** to discuss the dispute. Such meeting may be on a confidential basis and will be attended by 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 14 calendar 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** and to the **Eminent Person** are:

   a) The respondent **CP** or **CRB** is compliant with the **PRDE** and no outcome is required; and/or

   b) Issue a formal warning to the **CP** or **CRB** on 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 above, for the **CRB** which has had a compliance outcome applied to it in paragraph 89 (b to d) above.

91. These outcomes may be identified as an escalated process within the recommendation or decision.

92. Such outcomes will be overseen by the **PRDE Administrator Entity**.

**Obligations**

93. **CPs** and **CRBs** will:

   a) Comply with the directions of the **Industry Determination Group** and the **Eminent Person** within the time specified in the direction;

   b) Be bound by a compliance outcome, where contained in a **Rectification Plan** (under paragraphs 68, 69 and 81(a)), or an accepted recommendation (under paragraph 82), or Eminent Person decision (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 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 7 business days of the effective date anniversary.

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 below;
   b) Provide assistance, as requested, to the Industry Determination Group and Eminent Person; and
   c) Act in accordance with its constitution.

Self-reporting

96. Where a CP or CRB forms an opinion that it has engaged in non-compliant conduct, it may issue a report to the PRDE Administrator Entity. Such a self-report is required to 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 will comply with the SRR.

98. Upon the expiry of 30 calendar days, the dispute resolution process set out in paragraphs 66 to 70 above will apply to the issue, with the respondent to the dispute being the PRDE Administrator Entity.

Extension of time

99. At any stage, other than the Initial Period, the parties may apply to the PRDE Administrator Entity to seek an extension of time for a response. 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 paragraph 55(a);
   e) Attainment of full compliance by a CP in accordance with paragraph 57.

105. The PRDE Administrator Entity will report to a CRB, upon request by a CRB and where consent is provided by a CP, the following information about that CP:
   a) Tier Level of the CP in accordance with paragraph 9;
   b) The Designated Entities of the CP in accordance with paragraph 24;
   c) The Securitisation Entities of the CP in accordance with paragraph 40;
   d) Where a CP notifies of its nomination of a different Tier Level in accordance with paragraph 55(a); and
   e) Attainment of full compliance by a CP in accordance with paragraph 57.

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) A CRB or CP’s failure to pay the costs identified by the PRDE Administrator Entity, as required by paragraphs 7 and 13 above;
   b) 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 above;
   c) A CP’s failure to disclose its chosen Tier Level to the PRDE Administrator Entity, as required by paragraph 9 above;
   d) 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 above;

e) A CP’s failure to notify the PRDE Administrator Entity when it changes Tier Level, as required by paragraph 55 above;

f) Where a CP has not notified the PRDE Administrator Entity of its compliance within the 12 month period, as required by paragraph 57 above;

g) A CP’s failure to notify the PRDE Administrator Entity of the acquisition of consumer credit accounts, as required by paragraph 59 above;

h) A CRB or CP’s failure to comply with the compliance framework notification requirements set out in paragraphs 69 and 70 above;

i) A CRB or CP’s failure to comply with a compliance outcome, as required by paragraphs 93(b) above;

j) A CRB or CP’s failure to comply with a request from the PRDE Administrator Entity, as required by paragraph 93(c) above;

k) A CRB or CP’s failure to provide its annual attestation, or the provision of an attestation which, on reasonable grounds, the PRDE Administrator Entity believes to be wholly or partly false, as required by paragraph 93(f) above.

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.

**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.
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.