

## Principles of Reciprocity and Data Exchange (PRDE)

Application for revocation of existing authorisation number A91482 and substitution of new authorisation

ARCA submission in response to Australian Privacy Foundation Submission, Authorisation Number AA1000521

1 December 2020

## Response to issues raised by Australian Privacy Foundation (APF)

1. ARCA refers to your letter dated 26 November and the attached submission from the Australian Privacy Foundation (APF).

### *Treatment of credit reporting & credit scores during COVID-19*

2. APF has submitted that the ACCC 'must require ARCA to provide further detail on the operation of credit reporting during the COVID-19 pandemic.' APF have suggested that absent information on COVID-19's impact on the PRDE that the ACCC should not authorise the PRDE.
3. APF does not explain how further information about the operation of the PRDE during COVID-19 relates to the requisite ACCC assessment of the public benefits and public detriments arising from the specific provisions of the PRDE for which authorisation is sought. Especially given the COVID-19 pandemic is an unparalleled, once in a century event, which challenged the 'normal' operation of all Australian industries and our lives.
4. Nonetheless, ARCA submits that the ACCC should be satisfied that it has been provided a substantial amount of relevant information that sufficiently enables it to conduct its authorisation assessment:
  - a. For completeness, COVID-19 and its impact on the credit reporting system was recognised in ARCA's application, including statements by CUA (paragraphs 19 and 20), NAB (paragraph 11), Wisr (paragraphs 20 to 22), MoneyPlace (paragraphs 21 to 22) and Equifax (paragraphs 22 and 23). The submissions highlighted the disruptions caused by COVID-19 and the resilience of the PRDE framework in providing a mechanism to deal with them.
  - b. As above, ARCA submits that the disruption of COVID-19 across the credit industry is not a matter for resolution through the PRDE. Nonetheless, ARCA recognises that COVID-19 and the use of payment deferrals by many lenders to manage its sudden economic impact has had flow-on effects for the credit reporting system, and we have been pro-active in communicating this. Industry has worked hard to address these challenges. The Australian Banking Association (ABA) and ARCA both issued press releases on April 6 2020 that provided clarity around how COVID-19 payment deferrals for consumers would be reflected in the credit reporting system. These releases were picked up by mainstream media and consumer advocate groups acknowledged the banks' response<sup>1</sup>. ARCA has also provided extensive consumer education material through its consumer education website CreditSmart<sup>2</sup>, and this material has been widely referenced by others<sup>3</sup>.

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<sup>1</sup> See news.com.au article: <https://www.news.com.au/finance/business/banking/what-deferring-mortgage-repayments-means-for-your-credit-score/news-story/095f38c216784d5aacf1a208a3d8855f>  
See also <https://financialrights.org.au/media-release-no-impact-on-credit-files-during-covid-19-pandemic-a-welcome-announcement-by-banks-say-consumer-advocacy-groups/>

<sup>2</sup> See for example: <https://www.creditsmart.org.au/covid-19-what-does-it-mean-for-my-finances-and-my-credit-health/covid-19-payment-pause-impact-on-credit-reports/>

<sup>3</sup> <https://moneysmart.gov.au/managing-debt/credit-scores-and-credit-reports>

- c. ARCA strongly disputes APF's assertion that the response to COVID-19 is indicative of widespread inconsistency and continuing inaccuracy. In terms of the reporting of repayment history for COVID-19 deferrals, any differences arise because of the differences in the nature of relief provided by lenders. Some lenders may have provided a previously up-to-date customer with a deferral, which means the next payment obligation does not fall due until the end of the deferral period and resumption of ordinary repayments. Other lenders may have opted to continue to have payment obligations fall due and owing but to suppress the reporting of repayment history because of an agreement not to pursue the consumer for the unpaid amounts (consistent with the hardship reporting arrangements, explained in ARCA's application<sup>4</sup> and ARCA's response to the interested party submission<sup>5</sup>). In this context, the repayment history information then provides a record of whatever arrangement has been implemented between lender and consumer.
- d. Differences in those arrangements (which are inevitable in a situation as widespread and sudden as COVID-19 which has impacted all forms of credit, and all lenders to some degree) means that there are then differences in repayment history information. As APF have identified, this may then impact credit scores (which is information derived from credit information, including RHI), so that the credit score of an individual who is reported as up-to-date during their COVID-19 payment deferral may increase<sup>6</sup>.
- e. As covered extensively in ARCA's original application<sup>7</sup> and response to interested party submissions<sup>8</sup>, until there is an ability to disclose financial hardship information, the differences in the reporting of repayment history information in situations such as COVID-19 will remain. But as has been identified in many prior submissions, the inclusion of financial hardship information depends on passage of the Privacy Act amendments, which is yet to occur.
- f. ARCA further submits that the APF is incorrect in its assertion that PRDE obligations to adhere to the Australian Credit Reporting Data Standard (ACRDS) means that the PRDE somehow should ensure identical reporting of RHI for COVID-19 deferrals and arrangements. The ACRDS requires that a credit provider report an RHI status for an RHI month. The PRDE further imposes a contribution obligation which then requires the provision of this RHI for all available consumer credit portfolios for a PRDE signatory (where that signatory has nominated to participate at comprehensive tier level).
- g. How an RHI status is determined by a credit provider is not a PRDE matter. Instead, the Privacy Act (sections 6V and 21D) and Privacy (Credit Reporting) Code (CR Code) (paragraph 8) sets out the basis for determining this status. For example, the Privacy Act requires RHI to reflect whether or not a payment obligation has been met, and the CR Code says this assessment is made for

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<sup>4</sup> At section 2.4.6 and Appendix E

<sup>5</sup> At pages 11 to 13

<sup>6</sup> The increase in credit scores is a global phenomenon, see <https://www.wsj.com/articles/coronavirus-tanked-the-economy-then-credit-scores-went-up-11603013402>

<sup>7</sup> See paras 66-69, 224-230

<sup>8</sup> See section 5, pp11-13

an RHI month, with an RHI status between 0 to 6 and 'X' then applicable depending upon how overdue the payment obligation is.

### *Reporting of defaults*

5. APF have referred to the Equifax concerns (set out in ARCA's application) about the reporting of defaults and the APF appear to quote Equifax when they say, 'it would appear that defaults are now "hardly ever" being reported'. This is misconceived and unsubstantiated.
6. ARCA notes that the Equifax statement in our application actually identified that the PRDE had led to an improvement in default reporting, although gaps still remained<sup>9</sup>. These gaps were acknowledged in the ARCA application itself, with the example provided of the development of mortgage default guidelines as part of the PRDE framework, in order to drive greater consistency in contribution of mortgage defaults<sup>10</sup>.
7. Contrary to APF's submission, ARCA's view is that default information is, in fact, regularly reported by PRDE signatories and many other credit providers.
8. Further, the PRDE contribution obligations (which require all PRDE signatories to contribute all available default information for their consumer credit accounts within a reasonable timeframe of account falling due) are directed to, and play a critical role in, promoting and ensuring that default information continues to be reported to achieve the intended public benefits.

### *Broader regulatory developments*

9. APF have referred to a number of broader regulatory developments which they say are relevant to the reauthorisation of the PRDE, including the Consumer Data Right, and the proposal to remove responsible lending requirements from the national credit laws.
10. ARCA's application<sup>11</sup> has noted the broader regulatory framework in which the PRDE operates and has, in turn, promoted the public benefits of the PRDE.
11. These broader regulatory developments in fact support the continued authorisation of the PRDE.

### *Reauthorisation period*

12. APF submits that authorisation should be granted for a two-year period only. It cites in its submission of insufficient information and the importance of credit reporting as reasons for this.
13. As noted above, there is no basis to consider there is insufficient information before the ACCC to enable it to conduct an assessment of the proposed authorisation. Nonetheless, the PRDE is a voluntary framework that is directed to improving the quality

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<sup>9</sup> see Appendix F, Statement of Lisa Davis, paragraphs 15 and 16

<sup>10</sup> see paragraphs 93 and 194, Appendix D, section 12

<sup>11</sup> See para 59-79

of credit information. The importance of credit reporting is one of many compelling reasons for the six-year authorisation.

14. ARCA's view is that the appropriate authorisation period remains six years. A two-year period, as proposed by the APF, will preclude the ability of the PRDE to operate effectively – given the uncertainty such a short timeframe introduces to the ongoing operation of the PRDE. A two-year period further does not, as the APF asserts, increase an incentive to improve performance. In fact, it does the opposite. It disincentivises participation in the PRDE framework, given signatories have less assurance of the framework's continued operation. This is especially important given the long-term nature of investments PRDE signatories have made in building and continuing to upgrade the capability to supply and consume credit reporting information. Such long-term investments need to be matched by a significant period of authorisation such as the six years sought by ARCA.
15. ARCA submits that a two-year authorisation period would undermine the achievement of the public benefits of the PRDE.

### **Impact on assessment of public detriments and public benefits**

16. ARCA's view is that, when evaluating the matters raised by APF in terms of the authorisation of the PRDE and the PRDE's impact on the attainment of net public benefits, the matters raised by the APF actually support – rather than detract from – the authorisation of the PRDE.
17. The ACCC accepted in its draft determination that the operation of the PRDE framework (particularly the reciprocity, consistency and enforceability provisions) leads to significant public benefits, including improvements in consumer lending and risk management (with resultant benefits for borrowers), and improved competition for both credit providers and credit reporting bodies<sup>12</sup>.
18. In this context, the PRDE plays a critical role in improving both the quality and coverage of information contributed through the credit reporting system. While the concerns of APF are understandable – issues such as the impact of COVID-19 are not issues created or exacerbated by the PRDE, but issues which will eventually be alleviated through reliance on the PRDE framework. In particular, the PRDE obligations to contribute RHI and to do so consistently across portfolios means that RHI is continuing to be reported during COVID-19. Once the economic impact of COVID-19 lessens, and credit deferrals or arrangements are less common, the ongoing reporting of RHI under the PRDE will continue to provide valuable information about an individual's creditworthiness.
19. To be clear, the issues raised by APF are not issues which give rise to public detriment that have been caused by the PRDE, but instead are issues which only reinforce the need for the PRDE to achieve the significant public benefits which is created by the PRDE framework, namely the principles of reciprocity, consistency and enforceability.
20. Without the PRDE, participation in comprehensive credit reporting would be lower, and information contributed would be less consistent and less evenly distributed across credit reporting bodies. ARCA's application clearly demonstrated the impact the PRDE has had on achieving participation, consistency and more even distribution of data, and

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<sup>12</sup> ACCC draft determination, page 3

how this has already improved (and will continue to improve) consumer lending practices and competition for both credit providers and credit reporting bodies.

21. As ARCA has set out, it is important to assess the PRDE based on what it actually does (as related to but distinct from what other legislative and regulatory instruments are intended to achieve), which is, subject to the legislative and regulatory framework created by Parliament, to establish a set of industry rules around how industry participants will engage with each other.
22. ARCA submits that the core PRDE principles of reciprocity, consistency and enforcement are essential to incentivise participation in credit reporting and the efficient operation of the credit reporting system, and in doing so maximise the public benefits of credit reporting (including the supply and cost of credit, competition and innovation, and reducing the chance of at-risk consumers being over-extended credit).
23. ARCA's firm view is that the position set out by the ACCC in its draft determination remains correct and the matters raised by APF, when considered in their proper context and responded to as ARCA has done in this submission, should not impact this position.