

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 ACCC draft determination,
Authorisation Number AA1000521

Introduction

1. ARCA refers to the Draft Determination dated 9 October 2020 and acknowledges and supports the conclusions by the ACCC including that:
 - The Principles of Reciprocity and Data Exchange (PRDE) has played a significant role in facilitating the realisation of the public benefits of comprehensive credit reporting.
 - The continuation of the reciprocity, consistency and enforceability provisions in the PRDE are likely to maintain and improve the consistent and comprehensive exchange of comprehensive credit reporting (CCR) and lead to public benefits including improvements in lending and risk assessment, competition benefits for credit providers (CPs) and credit reporting bodies (CRBs) and public benefits for consumers including increased access to more consistent and accurate information.
 - There is likely to be minimal public detriment from the costs of compliance with the PRDE, with any such costs relatively small and outweighed by cost savings and other public benefits of the PRDE provisions.
 - The ongoing concerns raised by interested parties concerning default listing and financial hardship reporting continue to sit outside the scope of the application for reauthorisation and are not public detriments likely to result from the PRDE.

2. ARCA refers to paragraph [4.70] of the Draft Determination, in particular the ACCC's:
 - encouragement of ARCA to work closely with consumer advocates in appropriate forums, including its consumer education and guidance work and in any future review of the CR Code;
 - invitation to ARCA to seek the views of consumer groups earlier on in the process for future reviews of the PRDE to prevent similar concerns being raised about future operational reviews; and
 - consideration as to whether to impose a condition of authorisation requiring ARCA to consult with core consumer advocacy groups in the development of future amendments to the authorised paragraphs of the PRDE, and whether such a condition is appropriate to facilitate a comprehensive review process and to more fully realise the public benefits of the Proposed Conduct.

3. ARCA submits that:
 - Reflecting ARCA's strong appreciation of the importance and value of consumer advocacy in all relevant matters, it has a current practice of working closely with consumer advocates across all appropriate forums including its consumer education and guidance work and the CR Code, and will continue to have strong incentives to operate accordingly. ARCA has no intention to cease working closely with consumer advocates, and there is no reason to believe that it would not continue to do so in the future;
 - while ARCA maintains that consultation with consumer groups on the PRDE is unlikely to have any impact on the realisation of public benefits of the Proposed Conduct (given the PRDE is not a consumer-facing document), mindful of the concerns expressed by consumer advocate groups in market feedback, ARCA will ensure that consumer advocate groups are consulted in respect to any future PRDE amendments which are likely to lead to broader consumer impacts that are not otherwise dealt with under the existing credit reporting framework; and

- accordingly, there is no basis for imposing a condition to consult with consumer groups on consultation.

ARCA's current practice is to work closely with consumer advocates in appropriate forums – there is no reason to believe it would not continue to do so

4. Critical to ARCA's consultation with core consumer advocate groups has been ARCA's role as CR Code developer.
5. In undertaking this role ARCA drafted the initial CR Code and its two subsequent variations, which reflected the findings of PWC's independent review of the CR Code undertaken for the Office of the Australian Information Commissioner (OAIC) in 2017. The Privacy Act and the OAIC's Guidelines for Developing Codes require the application for registration of the CR Code and variations to be supported by consultation, including with consumer groups.
6. As part of this process, any comments must be given full and proper consideration and, where necessary, stakeholders consulted as part of any further drafting amendment. These consultation requirements have been quite extensive, and this is reflected in the detailed and ongoing discussions that are held with consumer advocate groups. By way of example, the most recent CR Code variation application (made by ARCA in April 2019) recorded consultation with four different consumer advocate organisations (Consumer Action Law Centre, Financial Counselling Australia, Financial Rights Legal Centre (FRLC) and Legal Aid Queensland). The bulk of consultation occurred with FRLC, and between May 2018 and February 2019, ARCA held three informal meetings and two formal consultation sessions with FRLC, and received four separate emails and written submissions from FRLC (whether from FRLC alone or in conjunction with other consumer advocate organisations). This level of consultation is fairly typical of the level of consultation that ARCA undertakes in its Code development role.
7. **Annexure A** to this submission sets out the key issues addressed by the CR Code variations arising from PWC's independent review of the PRDE in 2017, and how these were subsequently addressed in the CR Code variation applications submitted by ARCA to the OAIC after consultation with consumer advocates. Apart from highlighting the pro-consumer outcomes recommended by ARCA's variation applications, **Annexure A** also assesses whether any changes to the terms of the PRDE were required as a result of the changes to the CR Code. In short, the CR Code changes did not require any changes to the PRDE, again highlighting that the vehicle for making changes affecting consumers is the CR Code, and that the PRDE is focused on B2B issues. It is conceivable that future changes to the Privacy Act and CR Code (such as hardship reporting) will require changes to the PRDE, but these changes will be consequential to the CR Code changes giving effect to them (in the case of hardship reporting including this new type of credit reporting information to the data to be contributed under the PRDE).
8. We would also note that **Annexure A** indicates that consumer advocates raised issues around RHI reporting and hardship, and default listings during the CR Code review and variations processes, and these were recognised as being outside the scope of the review, with the hardship issue then referred to the Attorney General's Department for

separate review. ARCA submits that aside from hardship reporting and default listing,¹ which are clearly outside the province of the CR Code to resolve, the advocates have raised no other substantive issues in relation to the operation of the PRDE itself.

9. Outside of the CR Code and its role as Code Developer, ARCA also engages with consumer advocate groups regularly in a number of different contexts. **Annexure B** sets out the ongoing engagement ARCA has had with consumer advocates since 2015 on a range of issues including RHI reporting and hardship, credit repair activity, and consumer education. ARCA's submission in response to interested party submissions, dated 28 August 2020, also highlighted how ARCA has worked closely with consumer advocate groups on ARCA's consumer education initiative, CreditSmart (www.creditsmart.org.au), as well as regular engagement on a range of policy issues including mostly recently hardship reform, credit repair, responsible lending, COVID-19 and reforms to the credit reporting framework.
10. ARCA has clearly demonstrated that it regularly engages and consults with consumer advocate groups and will ensure that consumer advocate feedback is sought wherever issues impact on consumers in the operation and ongoing development of the credit reporting framework. In this context, any consultation with consumer advocates on amendments to the PRDE will be guided by the extent to which those amendments impact on consumers. As stated above, given the focus and operation of the PRDE is a B2B framework, direct consumer impacts are likely to be limited.

ARCA will ensure it consults with consumer advocate groups in respect to any future PRDE amendments which are likely to lead to broader consumer impacts

11. As set out in ARCA's submission in response to interested party submissions, dated 28 August 2020, the PRDE is not a consumer-facing document but a set of data exchange rules designed to support CCR. The parties to the PRDE are CRBs and CPs who voluntarily sign the PRDE. The PRDE operates within the overall credit reporting framework of the Privacy Act, Privacy Regulations and Privacy (Credit Reporting) Code (CR Code), but the PRDE itself does not alter the rights of consumers under this framework. Requiring consultation with core consumer advocacy groups when amending the PRDE appears both unnecessary, and out-of-step with the scope and operation of the PRDE as a 'B2B' code. It follows that imposing a consultation requirement would have little or no public benefit.
12. Nonetheless, ARCA seeks to be responsive to consumer concerns and, mindful of the concerns expressed by consumer advocate groups in market feedback, will ensure that consumer advocate groups are consulted in respect to any future PRDE amendments which are likely to lead to broader consumer impacts that are not otherwise dealt with under the existing credit reporting framework.

¹ It should be noted that the default listing issue raised by consumer advocates appears arise from a particular interpretation of the operation of the Privacy Act, CR Code and PRDE, which as explained in ARCA's response to interested party submissions dated 28 August 2020, ARCA considers may be a misunderstanding. While there is no issue to resolve via the PRDE, it also appears that there is no issue to resolve which is not already addressed via operation of the Privacy Act/ CR Code provisions relating to disclosure and correction of default information.

No basis for imposing consultation with consumer advocates as a condition of Authorisation

13. ARCA's view is that for the reasons above, it proposes to consult with consumer advocate groups with respect to any future PRDE amendments which are likely to lead to broader consumer impacts (not otherwise dealt with under the existing credit reporting framework). ARCA has a strong demonstrated track record of consulting with consumer advocate groups where it has indicated to do so, and there is no reason to believe it will act any differently.
14. Given ARCA's proposal to do so and demonstrated track record and incentives, it submits that there is no basis for imposing any condition to this effect on any Authorisation because:
 - Proceeding without a condition will reduce the need for the ACCC to seek to 'substantially redraft or redesign' ARCA's processes to improve the conduct: Authorisation Guidelines at [9.5].
 - The ACCC need not make a finding that the consultation would lead to an enhancement of the likely benefits (when it is procedural mechanism and there is no clear evidentiary basis as to how this would impact the assessment of public benefits): Authorisation Guidelines at [9.5].
 - In any event, as the ACCC recognises, it has the ability to review the proposed authorisation during the period of authorisation if it considers there has been a material change of circumstances. In the event ARCA did not consult on amendments to the PRDE, the ACCC would be able to address this under the current authorisation or future authorisations.²

² See for example ACCC Authorisation of Recyclers SA Determination (AA1000415) at [127]-[128] – there the ACCC noted that conditions requiring prevention of conflicts of interests were not necessary as the ACCC understands those processes would be adopted in any event and that if not adopted, the ACCC could initiate a review and revoke or change the authorisation.

Annexure A – CR Code Review and Impact on PRDE

Issues raised during PWC’s independent review of CR Code (and subsequent CR Code variation application by ARCA in 2019)

Issue	Details	How the issue has been addressed	Has any CR Code variation required change to the PRDE?
Default removals and default listing during settlement	Consumer advocates raised concerns with default disclosures during binding settlements and settlement negotiations, and enforcement of EDR scheme recommendations or determinations	PWC noted that reporting of default information as factually accurate information is a fundamental principle which underpins the efficacy of the credit reporting system as a whole. PWC suggested consideration be given to whether further information could be included in a credit report where a default is ‘paid’. (In late 2018, the OAIC provided a view confirming the only permitted disclosure of payment information was that a default was ‘paid’).	No – changes to the meaning of default information and corrections requirements are outside the scope of the PRDE
Ban periods	Consumer advocates raised concerns with the ban period process and whether the process could be streamlined	The CR Code was changed in February 2020 to introduce requirements for CRBs to coordinate a ban period request, enabling a consumer to implement a ban period with all 3 CRBs by making the initial request to a single CRB	No – the PRDE does not deal with consumer rights to access and correct credit reporting information, nor does it deal with the ability for consumers to place bans on credit reports
Access to credit reports	Consumer advocates raised concerns about the access to free credit reports provided by CRBs, in particular, whether free credit reports should include credit scores, the ability to access a credit report without an email address, the use of pre-ticked consent boxes for direct	Partly – the CR Code was changed in February 2020 to prohibit the use of pre-ticked consent boxes by CRBs, and also to introduce a provision as part of the CR Code introduction to reinforce that the CR Code must be read in conjunction with other relevant legislation, including the Australian Consumer Law. The PWC report concluded that the Commissioner had already addressed the	No – the PRDE does not deal with consumer rights to access nor the content of consumer credit reports

	marketing consents, and the requirement for CRBs to make commitments to not engage in misleading conduct in respect to the marketing of paid services	<p>different modes of access, and CRBs were required to provide access by a range of measures, and a change to the law was unnecessary.</p> <p>The inclusion of credit scores on free credit reports was identified as an issue under the Privacy Act (concerning whether or not the CRB 'held' the information, as the CRB may only generate a score on request). Whether an amendment to the Privacy Act is necessary to introduce this requirement is an issue raised by consumer advocates in the context of the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 (noting the current Bill does not deal with this issue)</p>	
Court judgment and publicly available information	Consumer advocates raised concerns about the inclusion of initiating proceedings on credit reports, as well as judgments unrelated to an individual's creditworthiness	The CR Code was changed in February 2020 to explicitly provide that originating process could not be included on credit reports, and further to clarify that judgments unrelated to credit or which related to proceedings where an individual's rights had been subrogated to an insurer could not be included on a credit report	No – the PRDE cannot change the meaning of court judgment or publicly available information, terms defined by the Privacy Act and CR Code
Correction of credit reporting information	The consumer advocates raised a number of concerns with corrections provisions including the correction timeframe (and shortening that timeframe), separating obligations for CPs and CRBs, corrections in debt transfer	Partly – the CR Code was changed in February 2020 to introduce requirements to process a correction within a five business day period of a correction being determined, and further to introduce stricter requirements for consultation between CPs/CRBs (which would cover consultation between a debt purchaser and original CP).	No – the correction of credit reporting information is outside the scope of the PRDE

	scenarios and the need for better internal dispute resolution (IDR) processes by CRBs	ARCA has also indicated an intent to work with its Members to produce a separate corrections guideline to clarify industry practices and address any further issues raised by consumer advocates	
Complaints (i.e. consumer complaints against CPs or CRBs)	The consumer advocates have sought improved complaints requirements for CRBs, including the introduction of stricter time requirements for complaint handling	Partly – the CR Code was changed in February 2020 to update the references to the relevant ISO standard which applies to CRB complaint handling. ARCA also acknowledged as part of the application the deficiencies of the ISO standard for CRB complaints, and the need to develop a new complaint handling standard (which would be referred to in a future varied CR Code) for CRBs. The development of this standard was tied to finalisation of the review of RG165 (the complaint handling standard applicable to financial services CPs), which has only recently occurred with publication of RG271 on 30 July 2020 (with RG271 coming into effect in October 2021).	No – complaints are outside the scope of the PRDE

Annexure B – Other engagement with consumer advocates since 2015 on key issues

Issue	Details	Forum/context in which issue was raised	How the issue has been addressed	Would or has variation to the PRDE address (or addressed) this issue?
RHI and hardship	<p>How repayment history for a consumer in financial hardship or otherwise subject to a temporary arrangement (indulgence) should be reflected on that consumer’s credit report.</p> <p>Consumer advocates have sought an outcome where the customer’s RHI is reported as ‘current and up to date’ or ‘reset to zero’ during any hardship or arrangement</p>	<p>Multiple forums – ARCA’s Consumer Advisory Panel sessions; review of CR Code in 2017 (PWC concluded that policy issues related to financial hardship and hardship flags were beyond the scope of their CR Code review¹); Attorney-General Department’s review of financial hardship reporting; submissions in respect to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019</p>	<p>Proposed amendments to the Privacy Act set out in the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019</p>	<p>Not at this stage – any change will be minor:</p> <ul style="list-style-type: none"> • Changes to provide for new type of credit information being ‘financial hardship information’; • Removal of RHI reporting exception which enables suppression of RHI during hardship or temporary arrangement
Credit repair	<p>Credit repair companies and the need to regulate the activities of these</p>	<p>ARCA’s Consumer Advisory Panel sessions; ASIC research report</p>	<p>Senate inquiry recommended reform of debt management firms – however, no further</p>	<p>No – credit repair agents and regulation of credit repair agents is</p>

¹ PWC CR Code review issues paper dated 20 September 2017, page 7; PWC CR Code review report dated 8 December 2017, page 16

	companies to provide appropriate consumer protection	published January 2016; joint stakeholder communique (including industry and consumer advocate representatives) seeking reform in February 2016; Senate Standing Committee on Economics inquiry into credit and financial services targeted at individuals at risk of financial hardship in 2018 and 2019	Government action has been taken in response to this recommendation	outside the scope of the PRDE
Consumer education	Concern about lack of financial literacy, and lack of understanding and knowledge of consumer credit reporting, particularly coinciding with shift to comprehensive credit reporting	ARCA's Consumer Advisory Panel sessions	ARCA established CreditSmart (now trademarked) with funding provided by industry. CreditSmart provides an information website about consumer credit reporting targeted at consumers. It also provides a range of resources for industry, consumer advocates and financial counsellors to use in their engagement with consumers. CreditSmart also actively publicises credit reporting issues through active media engagement	No – the PRDE does not impose any requirements in respect to consumer education