



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

Secretary@privacy.org.au

<http://www.privacy.org.au/About/Contacts.htm>

30 October 2020

ACCC

By email: adjudication@accg.gov.au

RE: ARCA Authorisation of the PRDE

Authorisation no: AA1000521

This submission from the Australian Privacy Foundation (the “Foundation”) responds to the Draft Determination dated 9 October 2020.

Summary

The Foundation submits that the authorisation should not proceed, based on the information currently provided to the ACCC from ARCA.

The ACCC must require ARCA to provide further detail on the operation of credit reporting during the COVID-19 pandemic (the “pandemic”). The ACCC must have sufficient information to make an informed decision on the authorisation based on the current operation of the PRDE. The lack of consistency and inaccurate information (according to the PRDE) means that the current PRDE is not meeting its stated objectives.

The authorisation should only proceed for a maximum of 2 years, given the inadequacy of ARCA’s response, the significance of credit reporting for vulnerable Australians, the dominant positioning of key players and the immaturity of developments such as the Consumer Data Right. It is incumbent on the industry to step up to responsibility under the co-regulatory regime; one incentive for improved performance is authorisation for a period less than that sought by ARCA.

Credit reporting in the pandemic

Credit reporting has changed significantly in the pandemic. Although ARCA has not provided detail of those changes in its submission, there is no doubt that the changes are significant. We argue that ARCA was required to provide a detailed analysis of the pandemic on the PRDE. We further argue that the ACCC has regrettably failed administratively when it knew or ought to have known that significant extra information was required to proceed with the authorisation.

The approach of credit providers needs to be consistent (and meet a data standard – see Principle 3) for the PRDE to achieve its aim. It is worth restating Principle 3:

***Principle Three** ensures that data meets a certain standard before it is exchanged, by requiring that shared data adheres to the Australian Credit Reporting Data Standard (ACRDS). The standardised system means that data is communicated in a way that it can be universally understood by other signatories to the PRDE.*

There is now considerable authoritative evidence available publicly that credit providers have significantly changed the way they report on credit reports. There is widespread inconsistency and continuing inaccuracy:

1. The ARCA application refers to the Equifax concerns about the reporting of defaults. It would appear that defaults are now “hardly ever” being reported. Some credit providers are still reporting. ARCA has not produced data on the extent of this issue. It follows that if defaults are not being reported then this increases the inaccuracy of credit reports. It is incumbent on ARCA to substantiate.
2. Credit scores are going up. See for example, the article in *The Australian* on 19 October 2020: ‘Go figure: Credit Scores for Australians improve’. Australia is in a recession with billions of dollars in deferred loans, something that has been recurrently acknowledged by the Treasurer. Increasing credit scores indicates systemic inaccuracy. It also indicates non-compliance with the PRDE.

3. Deferrals are very common in response to the pandemic. In June almost 500,000 loans¹ were deferred according to the Australian Banking Association (ABA).² More accurate numbers should be available in the next few days. The reporting of these deferrals has varied amongst credit providers. Some have stopped reporting during the deferral period, some have reported the deferrals as being paid, and others have reported the missed repayments. To have three approaches for the one financial hardship cannot meet the accuracy and consistency requirements of the PRDE.

There is sufficient publicly available evidence of inconsistency and non-compliance with the PRDE that ARCA must provide detailed information before the ACCC proceeds to a determination. A failure to request that detailed information means that the ACCC is making the authorisation on inaccurate, misleading and/or incomplete information. It also signals that industry can assume the provision of inadequate (incomplete, inconsistent, superficial) information is permissible. That signalling is contrary to expectations in the legislation and is contrary to what Australia has learned from the Hayne Financial Services Royal Commission on the financial services sector, where leading institutions were criticised for going through the motions at the expense of consumers and regulators were condemned for inadequate regulation that resulted in substantial harms to mums, dads and small businesses alike.

Re-authorisation period

The pandemic means that there is a great deal of uncertainty about providing credit and credit reporting. Reauthorisation for 5 years in this state of uncertainty and non-compliance with the PRDE would be foolish. It is at odds with what is known about industry practice and uncertainty about new initiatives such as the Consumer Data Right.

The Government has a current proposal to remove responsible lending requirements from the national credit laws. This would mean even further reliance on credit reporting for responsible lending. Credit providers could not responsibly or reasonably rely on credit reports at the moment given the current systemic inconsistency and inaccuracy.

¹ See <https://www.abc.net.au/news/2020-10-15/half-of-deferred-australian-home-loans-back-to-payments/12767990>

² See <https://www.ausbanking.org.au/banks-enter-phase-two-on-covid-19-deferred-loans/>

The ACCC must use this reauthorisation process to drive changes to ensure that the PRDE actually delivers accuracy and consistency. The authorisation period must be limited to a maximum of 2 years. Granting a longer period signals to industry that it can take authorisation for granted.

We note that corporations such as Experian and Equifax operate globally, on a large scale and are highly profitable. In many ways they resemble the dominant global enterprises at the heart of the ACCC's *Digital Platforms* report and need to recognise that they enjoy a social licence rather than operating outside accountability.

Ongoing interested party concerns

The ACCC concluded in its draft determination that the ongoing interested party concerns are outside the scope of application for reauthorisation as they are not likely to result in public detriment.

The Foundation argues that this conclusion is unsupported, given the ACCC does not have enough information to conclude whether the current impacts on the pandemic will cause public detriment.

The ACCC has no detailed information on reporting and the inaccuracy before it. It has erroneously assumed that the reporting approach before the pandemic has continued.

There is clear public detriment that is foreseeable on giving people loans based on inaccurate information when no defaults or RHI are recorded. This foreseeable detriment is exacerbated by the planned removal of responsible lending provisions which would (at least based on prudent lending standards that comply with the credit laws) have protected consumers from irresponsible lending. Again, the ACCC cannot continue without considering the impact of the removal of the responsible lending laws (which is imminent).

The PRDE needs significant amendment given the pandemic and planned removal of responsible lending laws. A failure to consider all of these issues (and get sufficient information) would be maladministration.

If you have any questions please do not hesitate to contact Kat Lane.

Yours sincerely



Kat Lane,
Vice-Chair



About the Australian Privacy Foundation

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions. The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems.

The APF makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters. Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance. When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.