

REVIEW OF AUSTRALIA'S CREDIT REPORTING FRAMEWORK

SUBMISSION TO THE ATTORNEY-GENERAL'S DEPARTMENT

June 2024

EXECUTIVE SUMMARY

1. ANZ thanks Ms. Heidi Richards and the Australian Government for the opportunity to comment on the Review of Australia's Credit Reporting Framework (**Review**).
2. ANZ is a credit provider using the Australia's credit reporting framework (**Framework**) and an 'eligible licensee' under the mandatory comprehensive credit reporting regime.
3. We strongly support the Framework as it facilitates the efficient flow of credit and provides benefits for consumers and credit providers, particularly since the introduction of mandatory comprehensive credit reporting.
4. We believe there is an opportunity to improve the Framework by expanding the types of credit-related information that should be shared in the credit reporting regime. This would better support responsible lending decisions by credit providers.
5. We support the regulatory architecture and believe that it can be improved through further simplification of the Privacy (Credit Reporting) Code 2014 (**CR Code**) and addressing some specific legislative drafting issues.
6. We note that further matters related to the Review are addressed in the submission of the Australian Banking Association (**ABA**).
7. We offer our ongoing support to the Review and would be happy to discuss our submission.

DETAILED POINTS

<p><i>Should credit reporting legislation be aligned with financial services regulation, including the regulation of consumer credit and the Consumer Data Right?</i></p>
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8. The Review has noted the differences between the credit definition contained in the *Privacy Act 1988* (**Privacy Act**) and the credit definitions contained in financial services regulation. ANZ does not believe these definitions require alignment.
9. The definition of 'credit' is broader in the Privacy Act than in the *National Consumer Credit Protection Act 2009* (**National Credit Act**). The latter incorporates exclusions such as for short-term credit and credit for which only account charges are payable.
10. The Privacy Act definition must remain broader to enable credit reporting by organisations such as utility companies. Credit provided by these organisations would

likely be excluded under the National Credit Act as they would fall under the definition of short-term credit.

11. The definition of 'credit provider' in section 6G(2) of the Privacy Act contemplates short term credit (credit deferred for at least 7 days) being within the definition of 'credit'.
12. However, this difference between credit definitions can pose challenges.
 - Provisions in the Privacy Act relating to Financial Hardship Information (**FHI**) reporting (which impact Repayment History Information (**RHI**) reporting) only apply to credit regulated by the National Credit Act.
 - This means that credit providers are required to differentiate credit reporting for facilities in hardship, depending on whether they are regulated by the National Credit Act or not.
 - Specifically, National Credit Act regulated facilities with a hardship arrangement are reported with FHI and RHI reported against that hardship arrangement ('moderated RHI').
 - Whereas for facilities not regulated by the National Credit Act FHI doesn't come into existence. RHI is reported in accordance with the consumer's ability to meet repayments against the underlying credit contract.
 - For example, a residential investment loan entered on or after 1 July 2010 would be reported with FHI and moderated RHI. The same facility entered into before that date (unregulated) would receive a different reporting outcome, i.e., no FHI and RHI against the underlying credit contract.
 - While ASIC's no action relief issued in June 2022 has been helpful in mitigating the impact of this inconsistency, it does not resolve it. Reporting for facilities in hardship is still different between regulated and unregulated facilities.
 - In ANZ's view, FHI (and moderated RHI) reporting should be applied consistently across all credit contracts. This would enable customers in similar circumstances to receive similar treatment rather than differential treatment due the date on which the customer entered into the credit contract.
13. However, issues like the above can be addressed through amendments to discrete provisions rather than making substantive changes to the broader definition of 'credit'.

Is the purpose and scope of CR Code appropriate? What provisions in the Act should be referred to the Code, and vice versa?

14. ANZ supports the purpose and scope of the CR Code and agrees it plays an important role in providing operational guidance to credit providers and credit reporting bodies.
15. ANZ also acknowledges the work of the Australian Retail Credit Association (**Arca**) in proposing and consulting on changes to the CR Code to implement proposals from the Final Report of the Independent Review of the CR Code (**CR Code Review**), conducted by the Office of the Australian Information Commissioner (**OAIC**).
16. The amendments will help to clarify and simplify aspects of the CR Code including in relation to the definition of 'month' as it relates to RHI.
17. However, in ANZ's view, there are several aspects of the CR Code that still require attention which were not specifically addressed by the CR Code Review.
18. Amendments made to the CR Code to implement provisions supporting the introduction of FHI (and the impacts on RHI) remain lengthy and difficult to follow. One example is paragraph 8A.1 of the current CR Code which effectively:
 - States that consumer credit will be affected by a financial hardship arrangement if the arrangement is 'active', and
 - Sets out an arrangement will be active if a payment is 'affected' by the arrangement.
19. ANZ considers this to be circular and does not provide any meaningful clarification.
20. In another example, the CR Code uses notes throughout the document to clarify the meaning of clauses. However, the extent to which notes can change or add to the meaning of clauses is unclear. For example:
 - The note to 8A.1(f) states that the effect of the relevant provision is that credit providers are not required to obtain the agreement or consent of all joint account holders to a financial hardship arrangement.
 - However, clause 8A.1(f) does not contain such a statement or have that effect. It simply states that financial hardship information may be disclosed in respect of all joint account holders.

21. ANZ acknowledges the wording of this note is proposed to be amended as part of the proposed variations lodged with the OAIC by Arca.
22. These deficiencies are not material when considered in isolation. ANZ is raising them as illustrative examples of broader drafting issues with the CR Code.
23. Given the binding nature of the CR Code further review is needed to improve the drafting. The current complexity of the CR Code increases the risk of inconsistent interpretation. Improving the drafting of the CR Code would aid understanding by all who use it including those regulated by it. This could reduce compliance costs and improve compliance and trust in the CR Code.

Impact of the credit reporting framework

<i>What evidence is available to demonstrate whether comprehensive credit reporting has met its policy objectives</i>
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24. The availability of credit data and repayment performance has reduced information asymmetry and improved the way in which credit providers can meet their responsible lending obligations. By incorporating 'positive' information into the system credit providers can better understand customers' credit commitments and how they are able to manage their financial obligations.
25. Comprehensive credit reporting has allowed ANZ to improve lending decisions.
 - Improved risk-based decisions where positive information has become available.
 - ANZ observed improved coverage of default information in the system as comprehensive credit reporting led to reciprocity and automated sharing of data.
 - Inclusion of RHI has allowed ANZ to understand customers' most recent repayment performance. For example, a customer may have had a historic credit event that led to a default. Recent RHI of that customer may demonstrate willingness and ability to repay current debts and so the historic credit event may no longer be relevant to the customer's current financial circumstances.
 - The introduction of positive RHI enables greater access to credit for consumers who may not have been offered credit if only 'negative' information had appeared on their credit report.

- Use of Consumer Credit Liability Information (**CCLI**) has allowed ANZ to identify credit commitments that may not have been disclosed by the customer in a new credit application. Removing the data asymmetry between credit providers and consumers supports improved lending decisions.

Credit data

What other types of credit-related information should be reported, or excluded, as part of Australia's credit reporting framework?

26. ANZ supports expansion of CCLI information collected under the Framework to include:
 - Balance
 - Minimum monthly payment/repayment amount required in period
 - Payment amount made in period
 - Remaining loan term
27. The current definition of CCLI incorporates the maximum amount of credit available under the consumer credit but does not include information about what progress the consumer has made in paying it off or how they are using that limit.
28. For example, a customer may have a credit card balance of \$15,000 against a limit of \$20,000 and pay the minimum monthly amount, thereby attracting interest. In comparison, another customer may have a balance of \$1,000 against a limit of \$20,000 and pay the balance in full each month.
29. Based on the data currently available both these customers would present similar risk profiles whereas their credit behaviour is markedly different.
30. Inclusion of balance, repayment amount and remaining loan term would help credit providers better understand the state of existing liabilities and how effectively the consumer is managing those liabilities. Currently, credit providers must make assumptions based on the maximum amount of credit in trying to determine a consumer's monthly repayment amount on an existing home loan.
31. Visibility of a prospective customer's remaining loan term would better enable credit providers to set the credit limit for new credit at an affordable level.
32. For example, a customer might have debt due to be repaid within the next few months. Understanding the forecasted impact on the customer's affordability might enable the

credit provider to determine that offering a higher credit limit would be affordable for the customer. Remaining loan term would also assist credit providers calculate the future principal and interest repayments on a loan currently in an interest-only period.

Small business information

- 33. ANZ suggests the Review consider broadening the Framework to cover credit reporting information relating to small business products.
- 34. We consider that the credit reporting regime has an important role to play in helping credit providers to lend responsibly to small businesses and increase small businesses' confidence that their credit provider has appropriately considered their circumstances when assessing a new or varied loan.
- 35. By extending the regime to this segment credit providers would have greater access to information about a small business' financial position and ability to repay a loan. This information would reduce frictions small businesses experience in seeking finance.
- 36. However, we note there are many regulatory definitions of 'small business'. Careful consideration would need to be given to the definition and we would encourage consultation on this.

<i>Are the definitions of the different types of credit information detailed in Part II of the Privacy Act fit for purpose?</i>
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- 37. Provisions relating to RHI contained in the Privacy Act and the CR Code could be reviewed to ensure they remain applicable to the range of consumer credit products on offer and that may be offered in future. This is particularly so if mandatory credit reporting was expanded to capture more credit providers (and therefore a wider range of credit products).
- 38. The current RHI definition is based on the concept of consumers having one monthly payment obligation under all consumer credit contracts.
- 39. This framing is not necessarily relevant to all forms of consumer credit. Some products require more frequent repayments than monthly.
- 40. The CR Code contains provisions to help operationalise the definition of RHI for different types of credit contracts. It does this by converting the concept of RHI into a monthly determination by the credit provider as to whether, at that point in time, there are any overdue payments under the credit contract.

41. We suggest the definition of RHI contained in the Privacy Act could be revised to align with the approach taken in the CR Code, i.e., by referring to overdue amounts at the end of a month, rather than a missed monthly payment.
42. In addition, we suggest that 'days past due' and/or 'amount of arrears' be reported alongside RHI to give credit providers better context when analysing RHI. Currently credit providers are unable to determine whether an RHI value represents a whole missed repayment or only part of a repayment and how 'late' the relevant repayment is.

Consumer protection and awareness

How can consumer understanding about credit reporting be improved?

43. While dedicated resources are available to assist consumers to understand credit reporting (e.g., ASIC's Moneysmart website, Arca's CreditSmart website, IDCARE and materials produced by credit providers and Credit Reporting Bodies (**CRBs**)), we think a coordinated approach is needed to uplift consumer education.
44. ANZ has observed that consumers are typically not motivated to understand credit reporting until they are required to. For example, this occurs when they are applying for credit or have been declined credit.
45. It is likely that many consumers are unaware of how to access their credit reports and that they can access their reports for free every 3 months.
46. If consumers had a better awareness of credit reporting, and understood the purpose and use of credit reports, this may enable them to be more proactive in managing their credit information. For example, knowing what actions may negatively impact their credit report could assist with decisions a consumer makes.
47. If consumers more actively managed their credit reports, it would reduce the risk that credit report inaccuracies would need to be fixed at the time of applying for credit.
48. We believe there is value in the Government and OAIC leading a consumer education program to raise awareness of credit reporting. This could leverage existing available resources on credit reporting.

Can protections for victims of financial abuse and family violence be improved to better protect consumers at reasonable cost?

49. ANZ considers there is room for improvement in how the credit reporting regime responds to family abuse and violence scenarios to better protect victim-survivors.
50. Recognising the potential impact a victim-survivor's credit report can have on their ability to reestablish financial independence, where a victim-survivor has a hardship arrangement in place, banks under the voluntary credit reporting regime can 'suppress' RHI and FHI for the duration of that arrangement.¹
51. However, this treatment is not available to eligible licensees under the mandatory regime. In recognition of this issue, ASIC provided a temporary no action position to enable eligible licensees to suppress RHI and FHI where doing so may lead to consumer harm, including where a consumer may be the victim of family violence.
52. While recognising that the Parliamentary Joint Committee on Corporations and Financial Services is inquiring into the financial services regulatory framework in relation to financial abuse, it would nonetheless be helpful if the Review consider whether ASIC's no action position be formally incorporated into the Framework and whether the position might benefit by expanding to cover other relevant areas of customer vulnerability.
53. For example, elder abuse (this overlaps with family violence but may not include scenarios where the abuser is a carer who is not a family member) and financial abuse (which may be perpetrated by non-family members, e.g., friends, colleagues, people employed to provide care and volunteers).

Has mandatory comprehensive credit reporting increased the voluntary participation of credit providers and the voluntary supply of credit information in the credit reporting system?

54. The introduction of mandatory comprehensive credit reporting succeeded in increasing the level of participation in the regime. Requiring large entities to share comprehensive credit reporting information removed the 'first-mover' problem and enabled supply to reach a point where other credit providers saw value in participating in the regime on a voluntary basis, under the Principles of Reciprocity and Data Exchange (**PRDE**).

¹ Australian Banking Association, [Industry Guideline: Preventing and responding to family and domestic violence](#), March 2021, p. 11.

55. ANZ considers that mandatory reporting also led to improvements in the quality of other information being supplied within the regime. For example, more effective reporting of default information in line with the Credit Reporting Code and PRDE.

Should the scope of mandatory credit reporting be expanded to include other credit providers or other types of information, and if so, how should this be done?

56. More participants will lead to a more effective credit reporting regime which will translate into better credit outcomes for consumers.
57. Accordingly, we consider that expanding mandatory participation to other sectors would be important to driving increased comprehensive credit information penetration by product and overall market coverage. We support the ABA's submission that Buy Now Pay Later and pay day providers should be required to report CCLI.

Are the Part 3-2CA legislative provisions fit for purpose, and if not, what improvements should be made to ensure the legislation is working effectively?

58. Sections 133CR and 133CU of the National Credit Act require eligible licensees to supply and update mandatory credit information on eligible accounts within required times.
59. For various reasons, including where certain credit account information may be rejected by CRBs ('account rejections' issue) a small number of eligible credit accounts may not be supplied to CRBs within the required timeframes.
60. In the account rejections example, an eligible licensee's ability to comply with the supply obligations is not entirely within the eligible licensee's control – the eligible licensee is dependent on whether a third-party (each CRB) chooses to accept or reject the account information having regard to how that CRB has interpreted the Australian Credit Reporting Data Standards.
61. In recognition of these issues, ASIC set out its expectations about initial and ongoing supply requirements which acknowledged a level of tolerance on eligible licensees' compliance with supply obligations.
62. We suggest the Review consider incorporating a degree of flexibility into the primary legislation to accommodate technical issues such as account rejections.