

**The ARCA response to the
Review of Australian
Privacy Law Discussion
Paper 72 undertaken by the
Australian Law Reform
Commission (ALRC)**

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Appendices

The following detailed documents are attached as appendices:-

- 1 Chart of three tier structure
- 2 Predictive Value of Different Levels of Allowable Content
- 3 Credit Application information analysis
- 4 Detailed response to proposals and questions
- 5 ARCA Proposed Definitions
- 6 ARCA standard on default reporting as agreed with the BFSO October 2006
- 7 ARCA standard on recording schemes of arrangement
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PART A – Australasian Retail Credit Council (ARCA) Background

- 1 The ARCA was established in 2006 as an independent industry sponsored body focussed on retail credit issues.
- 2 The Charter of the ARCA is, “To lead the ongoing examination of retail credit practices and the development of improved policies for the betterment of the consumer credit industry”. Its primary objective is the continued improvement of responsible credit provision.
- 3 The ARCA has particularly focused on all matters related to the sharing and use of credit reporting information and has developed an unauthorised code of conduct to improve the associated policies and practices under the following governing principle:

“Credit reporting data is shared only for the prevention of over-commitment, bad debt, fraud and to support debt recovery and debtor tracing and other uses in accordance with the law, with the aim of promoting responsible credit provision.

Credit reporting data is not shared for direct marketing purposes”.
- 4 The ARCA consists of the most senior credit executives of financial institutions, telecommunication companies and credit bureaux.
- 5 In 2007 the central advisory body of the ARCA consists of the following groups:
 - (a) Data Sharers and Users:
 - (i) Major Banks (ANZ, CBA, NAB, Westpac)
 - (ii) Other Australian Banks (St George, BOQ, BW)
 - (iii) Telecommunication Companies (Optus, TCNZ, Telstra, Vodafone)
 - (iv) International Banks +/- Non-bank Lenders (Amex, Citigroup, GE, HSBC)
 - (v) Building Society or Credit Union (Abacus)
 - (b) Credit Reference Agencies (D&B, Veda).
- 6 Since its formation the ARCA has implemented a number of significant improvements to credit reporting, notably:-
 - (a) Developed an industry code of conduct, with principles and rules for credit reporting operations;
 - (b) Improved complaint handling with the establishment of single points of contact;

- (c) Established minimum default reporting standards;
- (d) Collaborated with the BFSO, OPC and consumer advocates to improve and recommend new default reporting definition (see recommendation in the Appendix);
- (e) Reviewed international practices and progressed data quality improvements with a work group established to produce a common industry data reporting standard (see recommendation in the Appendix);
- (f) Developed 'scheme of arrangement' reporting standards;
- (g) Improved the linkage of credit reporting to existing hardship policies;
- (h) Established policies for 'ageing' notably for divested debt portfolios;
- (i) Established ongoing engagement with consumer and privacy advocates.

The ARCA Submission on behalf of the credit reporting industry

- 7 This submission is made on behalf and supported by all current ARCA members. ARCA notes that its members may also make individual submissions to the ALRC. These individual submissions may have some differences in terms of points of detail but will be consistent with the overall position of this ARCA submission. For example, the telecommunications companies may focus on the issues arising for them under Part J of DP72 rather than Part G.

PART B – Submission Overview

- 8 The ARCA congratulates the ALRC on the depth and completeness of the review of the Australian Privacy Law detailed in Discussion Paper 72 (DP72). Our response to DP72 needs to be read in the context described in this overview.

Responsible Lending

- 9 The guiding principle of the ARCA response is the continued improvement of responsible credit provision. To support this guiding principle we acknowledge the ALRC DP72 recommendations but suggest these require further refinement.

Paragraph 48.16 of DP72 quotes Professor Daniel Solove who explains, credit reporting is an understandable response to a modern, interconnected world containing 'billions of people' and where 'word-of-mouth is insufficient to assess reputation. He goes on to state:

"Credit reporting allows creditors to assess people's financial reputations in a world where first-hand experience of the financial condition and trustworthiness of individuals is often lacking".

Paragraph 48.20 also highlights the primary rationale as follows, 'while the major purpose of credit reporting is to provide information to assist credit providers to assess applications for credit, credit reporting also may be seen as serving the associated purpose of facilitating responsible lending. That is, the information provided by credit reporting to credit providers may help to prevent individuals becoming financially overcommitted. Credit reporting also assists in trade and mortgage insurance and in debt collection'.

Three Tier Structure

- 10 The ARCA recommends that a three tier regulatory structure is established. Details of the how the structure might operate at an implementation level are supplied in the illustrative table of the 3 tier structure at Appendix 1. The first tier is the Uniform Privacy Principles (UPPs) as recommended by the ALRC. The second tier details the new Privacy (Credit Reporting Information) Regulations ("Regulations") that are linked to the relevant UPPs. The Regulations provide a framework for the regulation of credit reporting, modify the UPPs where necessary and set out the additional obligations of credit providers and CRAs. The third tier provides the detail within the framework of the Regulations and involves an ACCC authorised, code of conduct that includes all the detailed policies and procedures of credit reporting. This three tier structure blends the Code of Conduct approach recommended by the ALRC for industry generally in Proposals 44.9 and 44.10 with the ALRC recommendation of regulations in the credit reporting industry. Consistent with the ALRC's view that the OPC should have the power to request industry to develop a code under the Privacy Act, ARCA proposes to develop a code to be made binding on all industry participants i.e. by contract law. The code would be developed by consumers and industry participating equally on the ARCA policy and compliance committee, chaired independently. It would be made pursuant to the Privacy Act, monitored by the compliance committee and be authorised under the Trade Practices Act.

ARCA notes that in its achievements to date, it has engaged all relevant stakeholders to seek to ensure sound industry and regulatory outcomes across the various credit regulators, including the OPC.

ARCA is concerned that the Regulations, while supplementing the UPPs should not contain a level of detail that would result in rigid and prescriptive rules that rapidly date and impede innovation. It is proposed that the rules underpinning the regulations have flexibility to support an industry operating in a climate of evolving technology and that would be supported by a code of conduct approach. However, it is necessary that the code be binding on all participants in the industry. As explained later the structure of the code of conduct (COC) is recommended to be in two layers so as to manage in the first layer, policy and compliance and in the second layer operational and procedural matters. The prime rationale for the third tier is to facilitate, under appropriate governance, continuous review and improvement but without the burdens to development and implementation that would apply under regulation. ARCA recognises that the structure is one that would need to be developed over time with input from stakeholders.

However, ARCA also recommends in alignment with the New Zealand Privacy Regulation that the credit reporting regulation should, for the first three years of its implementation, have an annual review to ensure the intended objectives are being achieved.

Single regulator

- 11 It has been suggested by some stakeholders that the regulator of credit reporting is divided along subject matter lines. ARCA recommends that a single regulator is responsible for all matters related to credit reporting and that this should be the Privacy Commissioner (OPC). ARCA supports a single regulator to help ensure the consistency of policy decision making and reduced complexity, noting that the lending industry is already a highly regulated sector with compliance to multiple regulations requiring careful consideration to limit duplication and management confusion.

ARCA acknowledges that credit reporting is a specialised area and that the OPC will need to have the appropriate resource and skill base to fully support the ALRC recommendations. ARCA, working closely with its industry base, suggests it may be able to provide access to highly skilled resources that could be seconded on a programmed basis to the OPC to support its resourcing requirements. Should such a recommendation be progressed these resources would operate on a 'Chinese wall' basis. We suggest these resources will be invaluable to support the initial review period of the regulation.

ARCA is concerned as to whether the OPC is appropriately resourced to be fully capable of dealing with the increasingly complex requirements of credit reporting. The industry is reliant on accurate and up to date information to function and meet its responsible lending objectives. It is also essential that the OPC fully understands the implications of credit reporting regulatory decisions on industry. This is a further reason why industry suggests it may be beneficial to provide skilled industry resources to the OPC.

Code of conduct

- 12 The Code of Conduct would be developed by industry under the Privacy Act, and authorised by the ACCC. It would be implemented in two layers. As detailed in point 10, ARCA recommends that the third tier is an authorised COC under the Privacy Act. The first implementation layer will be responsible for policy development and compliance to credit reporting regulation policies and procedures. The COC board would be the ARCA Policy and Compliance Committee, comprising an independent chairman but will otherwise consist of an equal representation of industry directors and non-industry directors (i.e. consumer and privacy advocates). The second layer will consist of industry participants responsible for managing operational matters to continually improve the quality and efficiency of credit reporting.

ARCA notes that it has developed a voluntary unauthorised COC (see appendix) but acknowledges that this COC needs to be authorised under the Trade Practices Act to deliver a stronger COC that is binding on all participants in credit reporting and facilitates a more detailed, stringent and balanced responsibility. The unauthorised COC, by definition, positions the role of ARCA as a standard setting entity. The authorised COC will enable ARCA to develop and implement more appropriate credit reporting policies and procedures through stronger sanctions including suspension or expulsion from access to information for a serious compliance breach.

ARCA also recommends that the COC is binding on all participants in credit reporting and that a credit provider must comply with the COC if they are to access and use credit reporting information that is available from credit reporting agencies (CRA). The terms and conditions of CRA will incorporate the policies and procedures of the COC.

For further detail see Part E of this submission and the example operation in the 3 tier structure at Appendix 1.

Benefit from overseas and prior experience

- 13 ARCA agrees with the ALRC that there is value in leveraging aspects of the New Zealand code and also the existing Privacy Act Part IIIA. Full details of the recommended aspects are in the appendix.

Consent

- 14 ARCA members consistently support the current bundled form of consent in regard to credit reporting. ARCA supports the proposal for the OPC to undertake a review of consent. ARCA also supports a review of the use of plain English and the general clarity of the privacy consent clauses within a consumer's credit application declaration.

Pre-screening

- 15 The term pre-screening has been defined in the proposed ARCA definitions to ensure that any such action undertaken in respect of a list of names will operate to reduce the list, giving a harm reduction outcome and enhancing the principle of responsible lending. ARCA is concerned that there is some confusion between the use of personal information for direct marketing and the use of credit reporting information in the process of pre-screening. ARCA's proposed definition is the process by which a credit reporting agency uses credit reporting information to identify individuals with poor credit worthiness and to exclude them from a list provided by a credit provider without disclosure of credit reporting information to the credit provider or another party. Pre-screening is a process applied to UPP6 compliant personal information as set out in the example below.

- The Bank acquires an external list of 100,000 ADMA approved names;

- The list vendor sends the list to CRA;
- The Bank sends its pre-screening criteria, limited to negative data only, to the CRA for the purpose of excluding those with poor credit worthiness;
- The CRA applies the pre-screening criteria to reduce the list to say 90,000;
- The CRA sends the reduced list to the Mailing House;
- The Mailing House mails 90,000 and notifies the Bank of the number so the Bank can pay for the mailing;
- 500 respond to the Bank with an application form;
- 400 are accepted and loans advanced;
- Say 2 go into delinquency.

This approach reduces the volume of direct marketing of credit offers to credit provider customers with poor credit history by 10,000.

Note that the Bank does not receive any information from the CRA unless the customer submits an application and provides consent for a credit check in relation to that application.

See also the detailed proposals and responses document at Appendix 2 for a response to question 53.2.

Reciprocity

- 16 ARCA supports the principle of reciprocity for the use of credit information available from CRA. It notes, however, that its practical implementation is likely to be more complex than suggested in DP72. To illustrate: as credit providers are from different industries, ARCA believes that a credit provider shares all available information from its particular industry e.g. a Telco should be able to access all credit reporting information from a different industry e.g. a bank. ARCA also acknowledges that although there may be limitless variations to the forms of reciprocity, it may for implementation purposes also need to keep the policy relatively simple.

As this is only of relevance to industry it is recommended that this is the responsibility of the industry COC to manage.

PART C – ARCA Commitments to Consumers

- 17 ARCA respects the rights of consumers and under its Principles, embeds the following obligations on credit providers for the benefit of consumers:
- (a) To use credit information to support responsible credit provision decisions;
 - (b) To abide by the policies and procedures of the ARCA Code of Conduct;
 - (c) To supply current, complete and correct credit information to Credit reference agencies;
 - (d) To adopt appropriate minimum standards from related regulators and entities to provide a consistent response and service to consumers, including such matters as hardship, accessing ability to re-pay and individual identity policies;
 - (e) To support data security standards and to publicly notify consumers of any material breach of personal information security. .

Under its Code of Conduct ARCA ensures these rights are upheld by imposing the following obligations on members:

- (f) To respond to consumer complaints and disputes in a prompt and efficient manner as outlined in the Code of Conduct;
- (g) To join an ASIC approved EDR scheme and to abide by their policies and determinations;
- (h) To review and amend systemic policy and/or procedures that are identified by an ASIC approved EDR scheme or the ARCA policy and compliance committee;

As part of its objective to improve responsible lending, ARCA members agree:

- (i) To abide by the decisions of the ARCA Code of Conduct policy and compliance committee;
- (j) To continuously seek to improve consumers' financial literacy with the establishment of an ongoing work group assigned to this task;
- (k) To continuously monitor operations and quality standards and to implement improvement programmes as they are identified.

PART D – Consumer complaint handling

- 18 Part C of the ARCA submission details the ARCA commitments to consumers that include our obligations in regard to handling and responding to consumer complaints and disputes and the requirement to join and fully participate in an ASIC approved EDR scheme.
- 19 The following provides further detail in regard to the handling of credit reporting consumer complaints.

Objective

- 20 To improve the quality, timeliness, fairness and competence of the response of ARCA members to credit reporting consumer complaints.

Task Force

- 21 An ARCA standing task force has established the following policies and procedures:-
- (a) Implemented ARCA complaints handling policy in accordance with the ARCA Principles and Rules (see Appendix 8)
 - (b) Established ARCA policy and procedures for industry and third party complaints handling;
 - (c) Set minimum standards, policy and procedures for ARCA members to handle consumer complaints;
 - (d) Established the process for identifying and resolving complaints;
 - (e) Agreed on the process for reviewing and referring unresolved systemic industry complaints to the ARCA for guidance and resolution.

Management of multi-party complaints

- 22 ARCA has noted that there are different standards across industry sectors and that complaints to CRAs often require the involvement of Data Sharers to investigate and resolve complaints, commonly resulting in longer turnaround time frames.
- 23 To improve the management of this situation all members have appointed a single point of contact for complaint handling which includes the phone number and person or functional area.
- 24 ARCA credit providers and CRAs collaborate to resolve a consumer complaint if at all possible at the first point of contact or where it needs to be referred to other parties to simplify the process through the use of the single point of contact network. This has improved customer management, reduced 'hand-offs' of customers and supported an 'end to end process'. ARCA is endeavouring to establish a target of a

maximum number of consumer contacts in such a situation. This is expected to include a standard of no more than 2 contacts for a significant proportion.

- 25 All ARCA members participate in approved EDR schemes and advise complainants in accordance with the Australian Standard of their rights to access an EDR to consider their complaint.
- 26 ARCA is currently considering the value and implementation processes required to establish a central complaints database to further improve the management and review of consumer complaints.

Systemic matters

- 27 ARCA will use its complaints committee to review systemic issues that have been raised by its members, an ASIC approved EDR or other stakeholders e.g. the consumer and privacy advocate forum.
- 28 The ARCA complaints committee will establish policies and procedures by which they will review, resolve and where necessary implement corrective actions to improve the management and resolution of complaints and identified systemic issues.
- 29 A complaint that cannot be resolved due to lack of ARCA policy, policy interpretation or the continuing dissatisfaction of any of the involved parties will be raised to the attention of the ARCA for review and resolution. In this instance a full report will be prepared for the ARCA board.

Industry roll out

- 30 ARCA members have approved the complaint handling policy as detailed in the appendix and have all established complaint handling single points of contact to manage credit reporting complaints.
- 31 ARCA recommends the task force develops the process for launching this complaint handling procedure to all credit providers and CRA as an integral requirement of the Code of Conduct

PART E – The Code of Conduct

- 32 As detailed in the overview, ARCA recommends a two layered approach to the authorised COC. The OPC regulation will include details of controls and the obligation of the OPC to undertake regular audits of the CRA. ARCA also seeks to establish transparent and robust compliance at the COC level. This should also include review of systemic issues that may be raised by such entities as the BFSO and TIO that may require changes to the policy and procedures of the COC and downstream to CRA terms and conditions. The COC gives flexibility for this under the auspices of the OPC that would be unavailable under regulation.

- 33 ARCA recommends that the penalties for breach of some areas of compliance policy be a civil penalty. However, it also recommends dependent on the severity of the compliance breach, and also if it is a continuing unremedied breach that this may eventuate in temporary or permanent expulsion from the use of credit reporting information both as a credit provider and as a credit reporting agency.
- 34 ARCA notes the requirement for implementation of appropriate governance by the COC compliance board not only to ensure due and independent process has been undertaken, but also to protect individual institutions from the incidence of 'rogue employees' that may not reflect the usual practices of the employing institution.
- 35 ARCA recommends that the COC policy and compliance boards are assigned the responsibility of developing and implementing the following:-
- (a) Credit reporting audit procedures;
 - (b) Categorising compliance breach severity levels;
 - (c) Setting penalty policies for each level of compliance breach.
- 36 As noted in this overview at point 16, ARCA supports the principle of reciprocity for the use of credit reporting information. As also explained this has the ability to be highly complex but needs, for operational purposes, to be kept at an acceptable level of simplicity and comprehension. It is also important that within the principles of reciprocity there is the capability for a credit provider to 'opt out' so that it can continue to access a specified level of information prior to 'opting in' and meeting all the related requirements to gain the greater benefits of increased information. This is important to credit providers that may be challenged with the implementation required to meet the 'opt in' standards. This is a complex matter of interest to industry only to be dealt with under the Code of Conduct.

PART F – ARCA Credit Reporting Principles

- 37 ARCA has established the following Credit Reporting Principles and would recommend incorporating these in the Code of Conduct:-
- (a) *Responsible Credit Provision;*
 - (b) *No marketing* usage of credit data with significant penalties for non compliance (with the exception of an agreed procedure to prevent or reduce offers of credit being sent to those that should not receive such offers);
 - (c) *Consumer commitments* policies established;
 - (d) Data Sharers to share and use credit bureau data on the *principle of reciprocity*;

- (e) The *consumer's credit standing* that can be used to gain best personal advantage is best achieved through the provision of complete and accurate information;
- (f) The Principles are governed by a *Code of Conduct* that is robust, transparent with all relevant controls and compliance policies and procedures;
- (g) *Consumer complaints and disputes* are well and fully managed;
- (h) Data definitions and standards maintain and continually *improve data quality*;
- (i) *Security* of shared and used data;
- (j) *Independent oversight*.
- (k) An *implementation roadmap* developed that continuously improves credit reporting over the long term and to the fullest possible participation;
- (l) *Access to data is electronic*.

PART G – Allowable credit reporting information

Overview

- 38 The following provides the rationale for the ARCA recommendation regarding the types of personal credit information that should be permitted under new regulation.
- 39 In overview the ARCA advises that the best process in terms of fully understanding a consumer's ability to repay a debt or potential debt is to have full disclosure of all the relevant credit information. To achieve this, ARCA believes that full comprehensive credit reporting would provide the optimum solution to the community at large. However, ARCA also acknowledges that there are concerns that need to be addressed and that a gradual process of implementation is likely to gain more support and enable us to measure our achievements and constantly review how this can be further enhanced.

Recommendation Rationale

- 40 The guiding principle and motivation for ARCA is to achieve improved standards of responsible credit provision. It is also important to note that ARCA is unequivocal in its intent to not allow the use of incremental credit reporting information for the use as a source of acquiring prospects for direct marketing and indeed fully supports that a serious breach (subject to appropriate governance procedures) of such a protocol should have as a remedy the removal from future use of credit information available from credit reference agencies.

- 41 ARCA members including the 4 Major Banks and a number of our international financial services groups have undertaken a detailed analysis of the predictive value of different levels of credit information reporting. Five levels were assessed which shows that by increasing the allowable content to the level recommended, only a 23% improvement in value be attained as detailed below:-

Overall weighted contribution to customer behavioural scorecards		
Scenario	Percentage Contribution	Incremental Contribution
Today	10%	10%
ALRC	23%	33%
ALRC + Account Payment status	22%	55%
ALRC + Account Payment status + Repayment History	19%	74%
Full	26%	100%

- 42 The above chart clearly illustrates why credit providers are concerned by the limited predictive value of the recommendation and why it is important to have allowable data under constant review so that significant improvements to responsible lending can be achieved for the benefit of the community. The appendix provides a more detailed presentation of the analysis undertaken by a number of ARCA members.
- 43 ARCA also notes the inaccuracy of application information used to assess a credit application. ARCA highlights to the ALRC that the incidence of application error is exceedingly common. This takes the form of both human error but more importantly fraudulent input, particularly in situations where the consumer is already vulnerable to debt stress.

In the appendix we have supplied summary details of over 50 incidences from recent weeks of such occurrences from 7 different lenders (including all four Major Banks). In each example the customer failed to disclose existing debt to attempt (sometimes successfully) to procure further credit from a lender. In all examples the customer if not rejected at the time of application has become delinquent or bankrupt.

- 44 ARCA advises the ALRC that the current credit information available in Australia and also the reliance on application data (see separate analysis) does not support the guiding principle of responsible lending most notably for borrowers that may already be in a state of financial stress.
- 45 ARCA notes the following research findings that have been provided by Veda from their survey of 11000 randomly selected households:-
- (a) Question, "Have you ever exaggerated your financial situation even if only a small amount to get credit?" Answer "Yes" from 18% which equates to 2.67M Australian individuals.
 - (b) Question, "Have you ever been denied credit despite a good payment history?" Answer "Yes" from 13% which equates to 1.9M Australian individuals.
 - (c) Question, "Do you agree or disagree that someone who pays their debts on time should be entitled to a borrow money at a lower interest rate?" Answer, "agree or strongly agree" 80%
- 46 ARCA acknowledges the concerns of other stakeholders, and recognises the need to compromise. For these reasons ARCA supports the ALRC's proposal with the addition of a 24 months account payment status but on the basis that the details of allowable content fall within the scope of the code of conduct so that it can be under continuous review to facilitate the optimum outcome for responsible credit provision. ARCA is concerned that under the current recommendation there may be very limited, if any, actual implementation of the proposal as the cost of implementation is deemed to not support the proposed benefit and therefore not warrant the investment. ARCA believes that a modest, single increase to the ALRC proposal without the implementation of full comprehensive reporting will gain widespread support, will significantly improve responsible lending and most importantly will be implemented by credit providers and credit reference agencies.
- 47 The additional information will enable credit providers to more effectively assess the financial situation of borrowers that may not yet have recorded a default (nearly 90% of the community) who may be starting to move into a situation of financial stress. The existing allowable data only provides protection for those that are already in a default situation.

ARCA Recommendation

- 48 ARCA recommends that in addition to the ALRC proposal, 24 months of account payment status is also allowed. This is proposed on the basis of implementing a series of codes along the following lines: assigns a '0' for no payment required, a '1' for a payment required and made, a '2' for one contractual payment missed, a '3' for two contractual payments missed, and so forth up to '7' for 6 or more payments missed (180 or more days delinquent). Other codes such as 'B' would be recorded

if the account were included in a bankruptcy, or 'D' if the status of the account was in 'dispute', or 'H' if the account was involved in a hardship arrangement.

- 49 It should be noted that a minimum payment for a line of credit product including credit cards is qualified as a contractual payment.
- 50 ARCA accepts that other full comprehensive credit reporting content data previously requested e.g. historical and current balance and delinquency repayment amount data has been removed. It is noted that this additional data will bring further responsible credit provision benefits but ARCA also notes the need for credit providers and credit reference agencies to demonstrate to individuals that they can deliver improvements from the foregoing recommendation and gain the confidence of all stakeholders including the improvements to data quality standards and consumer protections before further expansion of allowable content.
- 51 ARCA also assumes that to deliver improved data quality standards that credit providers will be obliged to provide monthly updates to individual files including exposure to credit line increases.
- 52 ARCA reconfirms that the regulation in regard to such matters as allowable personal information files should be detailed in the code of conduct so that it can be under regular review subject to appropriate governance to ensure the guiding principle is best supported.
- 53 ARCA reconfirms that access to personal credit information held at credit reference agencies is to be governed under a principle of reciprocity (refer to the ARCA response to proposal 51-2).

The ALRC Proposal

- 54 **Proposal 51 – 1** The proposed *Privacy (Credit Reporting Information) Regulations* should permit the inclusion in credit reporting files of the following categories of personal information in addition to those currently permitted under s 18E of the *Privacy Act*:
- (a) the type of each current credit account opened (for example mortgage, personal loan, credit card);
 - (b) the date on which each current credit account was opened;
 - (c) the limit of each current credit account (for example initial advance, amount of credit approved, approved limit); and
 - (d) the date on which each credit account was closed.

Submission Conclusion

- 55 In summary ARCA has the support of the substantial majority of Australia's credit providers, representing an estimated 90 percent of Australia's outstanding consumer credit balances.
- 56 ARCA is fully supportive that the current credit reporting regulatory regime should be significantly amended and ARCA has sought to develop the ALRC approach into the proposed three tier structure that facilitates:
- Parliamentary scrutiny of fundamental rights and obligations in Credit Reporting regulations
 - An industry Code of Conduct that details rights and obligations, but also permits regulation to respond to changing consumer and market demand;
 - Continuous review of the detailed underlying policies and procedures in an authorised code of conduct.
- 57 ARCA notes that industry and consumer advocates universally regard the current Part IIIA provisions as inflexible, difficult to work with and poorly suited to both consumer protection and efficient business objectives.
- 58 Existing regulation has resulted in unnecessary complexity and an inability to advance Australia to more prudent, responsible and modern methods for the collection and use of credit reporting information, ARCA seeks to ensure any new regime avoids repeating this approach
- 59 The standardisation and improvement of credit reporting procedures and a code of conduct that is obligatory to credit providers if they are to access CRA credit reporting information will deliver significant improvements to data quality, enhancing results for both industry and consumers.
- 60 Consumer protections and servicing standards will be improved with the establishment of new credit reporting commitments to consumers and complaint handling procedures.
- 61 We recommend a workable point of compromise on more comprehensive data with the proposed addition of 24 month delinquency status. We make this compromise in the interest of reaching wider consensus. However, as our own modelling shows lesser amounts of information do not provide predictive power of material value which is why we cannot support a lesser position.
- 62 This careful extension of allowable credit reporting information will improve the predictiveness of the information which will result in improved responsible lending standards. ARCA acknowledges there are community concerns about the amount of allowable information and how it may be used and that it is unlikely that the current differing views will be resolved.

- 63 As a result ARCA supports a structure that allows for ongoing review of outcomes and the capability to modify policies and procedures as would be enabled by the proposed three structure. We believe a steady move towards full comprehensive data after proper further review is the only way to provide credit providers with the essential information to enable responsible credit provision.
- 64 The regulation must clarify that pre-screening is an allowable process as it reduces the volume of direct marketing transactions per campaign and helps protect those vulnerable individuals from receiving further offers of credit.
- 65 And finally ARCA is absolutely consistent in its view that credit reporting information must not be used or disclosed as a source for acquiring prospects for direct marketing purposes and that a serious breach of this obligation should not only result in a civil penalty but should also include suspension from the future use of credit reporting information.

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ARCA - PROPOSED ARCHITECTURE OF 3 TIER STRUCTURE

This table incorporates proposed definitions to work with the proposed credit reporting regulations

Preamble

This 3 tier structure is based on the assumption that, in accordance with recommendation 50.4 where the UPPs do not support the broad requirements of credit reporting, the regulations will enable those requirements to be met. That is, they will facilitate actions that may be otherwise broader than contemplated by the UPPs. Similarly, the regulations will provide a framework for credit reporting outcomes and impose specific obligations and constraints on credit providers and CRAs. The code will supply the detail within the framework of the regulations, imposing obligations and constraints, granting rights and imposing sanctions in addition to civil penalties. Accordingly the drafting in the regulations column seeks to clarify the reach of the regulations and the outcome sought.

UPP No	UPP Requirement	Credit Reporting Regulations Proposed words for regulations under proposals 50.2 ,50.3 and 50.4	Code of Conduct	ALRC Proposal/ question
1 Anonymity		Not relevant	Not relevant	
2 Collection	2.1 'reasonably believes the information is necessary'	A credit provider or a CRA may collect credit reporting information for the following purposes: <ul style="list-style-type: none"> for the assessment of credit worthiness, prevention of over-commitment, bad debt, fraud and identity crime 	<ul style="list-style-type: none"> Provides detail of purposes under the ARCA Governing Principles 	
	Consent to Collection	A CRA may not collect sensitive information		Responds to 52.7

UPP No	UPP Requirement	Credit Reporting Regulations Proposed words for regulations under proposals 50.2 ,50.3 and 50.4	Code of Conduct	ALRC Proposal/ question
		<p>A credit provider or a CRA must not collect credit reporting information about a person known to be under 18 years of age</p> <p>A CRA or a credit provider may collect credit reporting information relevant to the primary purpose as specified in the Regulations including information about an individual's:</p> <ul style="list-style-type: none"> • Non payment of credit obligations • Credit enquiries • Details of open and closed accounts, not including account balances • Serious credit infringement 	<p>The Code, consistent with the regulation</p> <ul style="list-style-type: none"> ▪ Determines allowable data ▪ Primary purposes of collection defines use limitation ▪ Including 24 months delinquency ▪ Minimum amounts for default 52.2 ▪ Detail of dishonoured cheque mechanism to be provided in the Code <p>Code to provide detail consistent with 50.11</p>	<p>Responds to 52.8</p> <p>See ARCA proposed definition of serious credit infringement</p> <p>51.1 content plus 24 months delinquency status. See Part G of the ARCA submission</p> <p>52.1 identity theft to be in Code</p> <p>Proposal 52.3</p>
	2.2 lawful and fair			Responds to 16.2
	2.3 direct collection	A CRA may collect personal information	Code provides non-exhaustive	As to Q52.3 the code should

UPP No	UPP Requirement	Credit Reporting Regulations Proposed words for regulations under proposals 50.2 ,50.3 and 50.4	Code of Conduct	ALRC Proposal/ question
		indirectly, including from credit providers and sources of publicly available information	list of some of the parties from whom CRA may collect	reflect trigger events and appropriate forms of communication Regulation responds to Q52.4 and 52.5, 52.6
3 Specific notification	3.1 At time of collection	<i>Credit provider</i> required to give notice prescribed in the Code A <i>Credit provider</i> or assignee must give notice about when defaults are listed or adverse credit decision is made or a debt is assigned.	Requirements to be in Code reflecting 52.9 Form of notice to be in Code covering and timing for providing notice. Code to explain what scoring is for the purposes of the notice in 55.3 – see definition at the end of this table	52.9 52.10
	3.2 Indirect collection “reasonable steps”	A <i>CRA</i> must be reasonably satisfied that <i>credit providers</i> provide reasonable notice to consumers	Form of notice in Code	

UPP No	UPP Requirement	Credit Reporting Regulations Proposed words for regulations under proposals 50.2 ,50.3 and 50.4	Code of Conduct	ALRC Proposal/ question
		Public register information able to be collected without any requirement to rely on UPPs		
	Consent		Detailed provisions covering bundled consent	16.2
4 Openness			Commitment to plain language to be restated	
5 Use & disclosure	5.1 secondary purpose: use or disclose <ul style="list-style-type: none"> Related to the primary purpose; and reasonable expectation; Or the individual has consented Or required or authorised by or under law 	Provide for OPC to determine if an organisation is or is not a credit provider for the purposes of the Code of Conduct A CRA may disclose credit reporting information to a credit provider for the purpose of making a credit decision affecting an individual and directly related purposes, including the ongoing management and administration of credit and prevention of over commitment, bad debt and identity crime and such other purposes of the credit provider as are	<ul style="list-style-type: none"> Provide greater detail on credit provider using wider NZ definition and reflect relevant sections of Part IIIA in accordance with definition in regulations Detail the list of credit provider uses for credit data Code to deal with reciprocity 	Regulation implements 53.2 53.1 51.2 reciprocity The draft use regulations for CRAs and credit providers reflect proposal 53.4, and respond positively to question 53.1

UPP No	UPP Requirement	Credit Reporting Regulations Proposed words for regulations under proposals 50.2 ,50.3 and 50.4	Code of Conduct	ALRC Proposal/ question
		<p>specified under the Code.</p> <p>A CRA may disclose credit reporting information to:</p> <ul style="list-style-type: none"> • another CRA; • a body that assists in the settling of disputes where the credit reporting information is relevant to a dispute; • a mortgage insurer; • a trade insurer; • a government body tasked with assisting individuals with credit; • a potential assignee of an individuals debt; and • as otherwise required by law. <p>A CRA may disclose credit reporting information to a reporting entity under AML/CTF for identity verification for</p>		

UPP No	UPP Requirement	Credit Reporting Regulations Proposed words for regulations under proposals 50.2 ,50.3 and 50.4	Code of Conduct	ALRC Proposal/ question
		AML/CTF.		
		<p>A CRA may use credit reporting information to provide a pre-screening service</p> <p>Pre-screening means the process by which a credit reporting agency uses credit reporting information to identify individuals with poor credit worthiness and to exclude them from a list provided by a credit provider without disclosure of credit reporting information to the credit provider or another party.</p>	<p>Definition of pre-screening is set out in Appendix 3 of the ARCA submission.</p> <p>Further details as to operational/implementation issues to be set out in the Code as part of responsible lending</p> <p>53.2</p>	<p>53.2</p> <p>Refer to overview point 15 p9-10</p>
6 Direct marketing	<ul style="list-style-type: none"> ▪ Use or disclosure for primary or secondary purpose of DM prohibited unless (additive) <ul style="list-style-type: none"> ○ Consent ○ Free DNC 	<ul style="list-style-type: none"> ▪ A CRA or a credit provider must not use or disclose credit reporting information for direct marketing purposes. ▪ Civil penalty for breach 	<p>Code will have detailed provisions on direct marketing, sanctions for non compliance, and a compliance process</p> <p>Serious penalty for serious or persistent breach – suspension or permanent expulsion</p>	53.3

UPP No	UPP Requirement	Credit Reporting Regulations Proposed words for regulations under proposals 50.2 ,50.3 and 50.4	Code of Conduct	ALRC Proposal/ question
	<ul style="list-style-type: none"> ○ Notice each time for DNC ○ Reasonable steps info source 			
7 Data Quality		<ul style="list-style-type: none"> ▪ CRA enter into agreements with credit provider and make 'reasonable endeavours' for data quality as in 54.4 ▪ Remove requirement for 'relevant' ▪ Regulation to implement 54.7 deletion provisions in line with section 18F ▪ 54.8 current retention periods to remain. ▪ Regulation to implement 55.2 – may overlap with notice provisions 	<ul style="list-style-type: none"> ▪ Code will spell out obligations to improve data quality incorporating proposals in DP 72, including 54.2 and the implementation of recording schemes of arrangement. ▪ Disagree with relevance requirement in 54.3 as unnecessary if consistent with primary purpose and that is dealt with under Collection ▪ Code to deal with specific issues under 54.4 and 54.5 	54.1, 54.2

UPP No	UPP Requirement	Credit Reporting Regulations Proposed words for regulations under proposals 50.2 ,50.3 and 50.4	Code of Conduct	ALRC Proposal/ question
8 Data Security				54.9 covered by the UPP
9 Access & Correction	<ul style="list-style-type: none"> Organisations must provide access within reasonable time Reasonable charging Q55.1 	<ul style="list-style-type: none"> Freely available reports Dispute resolution to be in Code Regulation to implement broad 55.1 recommendations Regulation to implement 55.2 Regulation to implement 55.7 subject to comments on implementation – see detailed proposals and response document at Appendix 2 of the ARCA submission Regulation to implement 55.6 but note to reflect ASIC approved rather than OPC approved scheme 	<ul style="list-style-type: none"> Details of dispute resolution to reflect 55.4 Proposed EDR requirement through ASIC approved scheme to reflect schemes to which most credit providers belong 55.6 Independent oversight Code to deal with 55.3 to ensure general understanding of scoring, see definition. Code to implement 55.5. Code to establish a framework to implement a single point of contact mechanism for dispute resolution to meet the 	<p>See also Part D of the ARCA submission – commitments to consumers and proposals and response to proposals for 55.1 and 55.7</p> <p>55.3 responded to under notice above</p>

UPP No	UPP Requirement	Credit Reporting Regulations Proposed words for regulations under proposals 50.2 ,50.3 and 50.4	Code of Conduct	ALRC Proposal/ question
			objectives of 55.7	
10 Identifiers		Not Relevant	Not Relevant	
11Transborder		Not Relevant	Not Relevant	

PREDICTIVE VALUE OF DIFFERENT LEVELS OF ALLOWABLE CONTENT

Overview

- ARCA members implemented a methodology to gauge the benefit of different levels of bureau reporting
- This involved weighting each scorecard characteristic by its absolute point range
- The following assumptions form the basis of ARCA's model

Bureau Scenario	Description	Assumed to be Included	Assumed not to be Included
Today *	<ul style="list-style-type: none"> • Current Australian bureau • Information on some credit accounts only • Extreme negative information only 		
ALRC	<ul style="list-style-type: none"> • Information on all credit accounts • Opened date • Whether active • Limits 	<ul style="list-style-type: none"> • Consumer or business account • Number of account-holders • Whether PL is secured or unsecured 	
ALRC + Delinquency	<ul style="list-style-type: none"> • Information on all credit accounts • ALRC information + • Delinquency history 	<ul style="list-style-type: none"> • Consumer or business account • Number of days in excess • Whether PL is secured or unsecured 	<ul style="list-style-type: none"> • If over limit (credit cards) • Amount and number of repayments ahead • Value in excess
ALRC + Delinquency + Repayment	<ul style="list-style-type: none"> • Information on all credit accounts • ALRC information + • Delinquency history • Repayment history 	<ul style="list-style-type: none"> • Consumer or business account • Number of days in excess • Whether PL is secured or unsecured • Value, number and dates of repayments 	<ul style="list-style-type: none"> • If over limit (credit cards) • Amount and number of repayments ahead • Value in excess
Full	<ul style="list-style-type: none"> • Current arrangement in the USA (FICO) • Information on all credit accounts • Balance and repayment history • Transaction / purchase information • Delinquency history 	<ul style="list-style-type: none"> • Consumer or business account • Amount due (credit cards) • Time and value in excess 	<ul style="list-style-type: none"> • Savings account details • Term deposit account details • Cash advance behaviour • Cash balance • Amount and number of repayments ahead

* Today includes application, internal and bureau never-available data

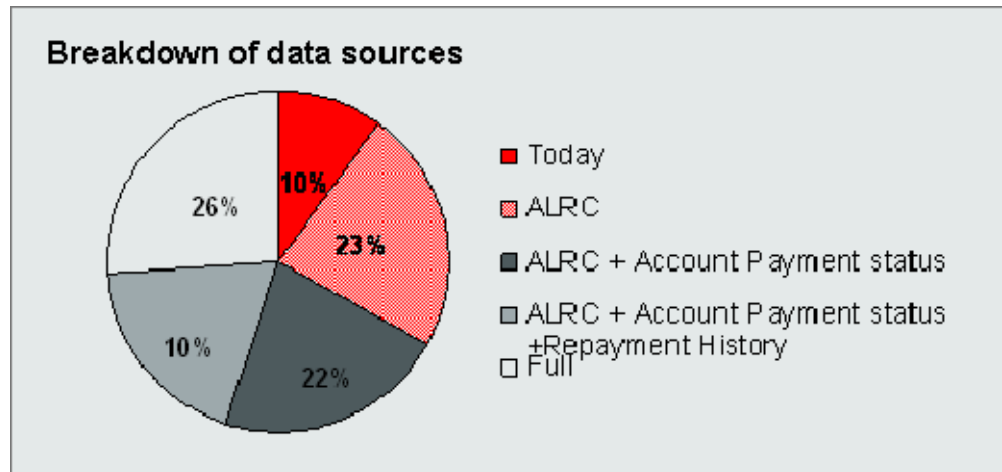
Results

Overall weighted contribution to customer behavioural scorecards		
Scenario	Percentage Contribution	Incremental Contribution
Today *	10%	10%
ALRC	23%	33%
ALRC + Account Payment status	22%	55%
ALRC + Account Payment status + Repayment History	19%	74%
Full	26%	100%

- The figures represent the proportion of information used in Member's customer-level behavioural scorecards that would be available under different levels of bureau reporting
- The "limited" data currently proposed (ALRC) would support 33% of the full predictive power that would be available under comprehensive (Full) bureau reporting
- Adding account payment status would improve the predictive power to 55%
- Adding account payment status *and* repayment history would improve the predictive power to 74%
- This is still 26% short of the potential predictive power of a full bureau

* Today includes application, internal and bureau never-available data

Bureau Scenarios



Today	ALRC	ALRC +Account Payment status	ALRC +Account Payment status + Repayment	Full
Current bureau information	'Today' information	'ALRC' information	'ALRC +Account Payment status' information	'ALRC + Account Payment status + Repayment' information
Application data	Information on all credit accounts	Delinquency history	Repayment history	Balance history
Internal data	Limits		Credit turnover	Transaction and purchase history
	Opened date			Debit turnover
	Active or inactive			Unsecured exposure
				Outstanding

ARCA Application Error Analysis

Seven ARCA Members completed an analysis of recent applications to identify the severity of application errors and the outcome from the errors.

The following members participated:-

- ANZ
- CBA
- NAB
- Westpac
- Citigroup
- GE Money
- St George

Though the sample size is too small to quantify precisely the extent of under reported debts it does provide insights into the range of applicant profiles where this has occurred.

Results

Under reporting of debts on credit applications comes from across the full spectrum of applicants.

There are no easily identifiable 'profiles'. The results listed are conservative as they are based on only the amount of undisclosed debt lenders were able to identify after substantial investigation.

In several instances even after the undisclosed debts were identified and confirmed, the applications remained adamant they were unaware of their other commitments.

The appendix provides details of the results of the analysis but in summary the results are as follows:-

1. 53 application cases were included in the survey
2. All cases occurred in 2007 with the majority within the last few weeks
3. The most common error was the lack of disclosure of existing debts
4. Undisclosed debts ranged from \$14k - \$526K per application
5. 73% Male; 27% Female
6. Even spread across age ranges from 20 to 58 years of age
7. Annual income was concentrated in ranges between \$31-50K and \$51-75K but all income groups have errors
8. Loan purposes were dominated by car purchase and debt consolidation
9. Living status indicates majority are either at family home or renting but a significant number indicated they owned their home outright
10. 76% disclosed less than 50% of the total debt later identified whilst 30% disclosed less than 10%
11. The average amount not disclosed was almost \$38K
12. Where the error was identified prior to approval the application was rejected
13. Where the error was not identified until the loan had moved into arrears the outcomes were as follows:-
 - a. Lender write off
 - b. Customer in hardship
 - c. Customer in default
 - d. Customer bankrupt and filed with ITSA

The appendix includes two charts one a summary of 33 cases where full details have been obtained, the second is a sample of the assessment provided (the full individual details are considered privileged information but can be made available on a confidential basis).

Conclusion

The supply of positive credit reporting information by credit providers to CRA would have identified the errors and omissions, and prevented the lender from advancing the loan and facilitated more responsible lending outcomes.

Summary of Undisclosed Debts

	File			
	#			
	Product			
		COUNTS		
Gender	Male		24	73%
	Female		9	27%
Age	<=20		2	
	21 - 30		7	
	31 - 40		7	
	41 - 50		10	
	51 - 60		7	
	60+		0	
	Min		20	
	Max		58	
Income	<=20		4	
	21 - 30		1	
	31 - 50		20	
	51 - 75		6	
	76 - 100		1	
	100+		1	
	Min	\$ 13,044		Net
	Max	\$ 112,332		Gross
Loan Purpose	Car		7	
	Misc		3	
	Household or White Goods		1	
	Travel/Holiday		3	
	Personal Goods		2	
	Refinance or Debt Consol		10	
	Investment		3	
	Wedding		1	
	Unknown		3	
Housing	Board or @ Home		13	
	Rent		8	
	Buying		3	
	Own		8	
	Unkn		1	
% undisclosed	<25%		3	
	25-50%		6	
70% listed less than 1/2 their debt	51-90%		13	
	>90%		10	
	Unkn		1	
30% listed less than 10% of their debt	Min		8	%
	Max		100	%
\$ amount		\$ 5,070,629		Total
#			134	
Avg.		\$ 37,840.51		
Not suitable for use....				
Outcome	BKO		14	
	in Collection		1	
	Declined		15	
	hardship		3	

Applicant	001
Gender	F
Age	20
Income Listed (annual)	\$ 19,212
Product Applied for :	Personal Loan
Amount applied for:	\$ 20,135
Debt Purpose:	Travel and Holiday
Expenses Listed/mo by Cust.	\$ 217
Residential Status	Boarder with parents

Comments

Monthly

Debts listed	Limit/Orig Amnt	Balance	
Credit Store Card	\$ 1,000	\$ -	NIL owing
Subtotal		\$ 1,000	

Undisclosed Debts

St George Bank	\$ 5,000								
St George Bank	\$ 13,000								
GE Money Mastercard	\$ 2,500								
Amazing Loans	\$ 4,000								
Subtotal		\$ 24,500							

	\$	%
Disclosed	\$ 1,000	4%
Undisclosed	\$ 24,500	96%
Grand Total	\$ 25,500	100%

Comments:

All un-stated liabilities discovered when Bankruptcy filed with ITSA - we went back to ITSA asking for origination dates of unknown liabilities to find that all were incurred prior to our loan therefore if Positive Bureau was in place loan would not have been approved or funded

Responses to ALRC Proposals and Questions

The following is a list of the Proposals and Questions raised in Discussion Paper 72 Volume 3 part G (Credit Reporting Provisions)

The Approach to reform

<p>Proposal 50–1 The credit reporting provisions of the <i>Privacy Act</i> should be repealed and credit reporting regulated under the general provisions of the <i>Privacy Act</i> and proposed Unified Privacy Principles (UPPs).</p>	<p>50-1: Agree Part IIIA of the Privacy Act should be repealed. Our recommendation is to establish a three tier structure. Top tier is the UPPs that include all aspects of the principles of credit reporting. The second tier is credit reporting regulation that includes long term policy obligations that is managed by a single regulator (assumed to be the OPC). This tier should have a formal review process in 3 years time. The third level is an authorised, mandatory code of conduct. The code of conduct is to include all the details of credit reporting, is to be an obligation to credit providers and credit reporting agencies if they are to access and use credit information available at credit reference agencies and should be open to continuous improvement with a mandatory annual review. The code of conduct should consist of a policy and compliance committee that has an independent chairman with a board/committee that has an equal participation of credit providers and non industry (comprised of privacy and consumer advocates). The code should also include the ARCA industry body to manage operational aspects and continued quality enhancements.</p> <p>The need for a three tiered approach stems from the requirement to enable adequate flexibility and sufficient detail to ensure that certain elements of privacy are able to be maintained to meet changes in the market.</p> <p>Those elements of the controls that are unlikely to change with market conditions, would be appropriate to include in regulation, and should generally be worded from the perspective of an outcome to be achieved, rather than a prescription activity or method as to how it is to be achieved e.g. Regulation may say that an assessment of capacity to repay is an obligation that should be placed on credit providers, but then leave it to the code to deal with any necessary details with regard to how that should be undertaken. Within the regulation there should also be a requirement to monitor and periodically review and confirm the appropriateness of the code ongoing. Such a structure would help to minimise the need for regulatory changes and the overhead that entails, whilst enabling those working with the detail to institute change as and when required. Whilst perhaps not a conventional methodology, it seems necessary to enable adaptability, in particular as there are clear signs the speed of change in technology and information usage relating to the credit environment are likely to increase going forward.</p>
<p>Proposal 50–2 Privacy rules, which impose obligations on credit reporting agencies and credit providers with respect to the handling of credit reporting information, should be promulgated in regulations under the <i>Privacy Act</i>—the proposed <i>Privacy (Credit Reporting Information) Regulations</i>.</p>	<p>50-2: As for 50-1, credit reporting obligations should be managed by an authorised Code of Conduct supervised by the OPC. The policy and compliance committee of this code of conduct should be independently chaired and with an equal membership of industry and non industry</p>

	<p>(comprised of privacy and consumer advocates).</p> <p>Credit providers (see definitions) include as a matter of law agents / outsourcers (e.g. debt purchasers) as a credit provider, hence all obligations applied to credit providers are applicable to these parties.</p>
<p>Proposal 50–3 The obligations imposed on credit reporting agencies and credit providers by the proposed <i>Privacy (Credit Reporting Information) Regulations</i> should be in addition to those imposed by the proposed UPPs.</p> <p>Proposal 50–4 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should be drafted to contain only those requirements that are different or more specific than provided for in the proposed UPPs.</p>	<p>50-3: Agree on the basis of the response to 50-1 and 50-2</p> <p>50-4: Agree as for 50-3 (note all further responses to ALRC proposals and questions assume the structure is on the basis of an authorised, mandatory code of conduct managed by the OPC). The attached 3 tier structure document sets out examples of either proposed words for those regulations or their proposed coverage, and the way the regulations interact with the material in the proposed code.</p>
<p>Proposal 50–5 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should apply only to the handling by credit reporting agencies and credit providers of personal information maintained by credit reporting agencies and used by credit providers in assessing an individual's credit worthiness. This category of personal information should be defined as 'credit reporting information'.</p>	<p>50-5: In principle agree, see the proposed ARCA definitions.</p> <p>As ARCA proposes that 'credit reporting information' be subject to a regulated primary purpose, it is important that the definition is distinct and workable. If not, other personal information in the hands of a CRA will be drawn into the definition, and a CRA would then not be permitted to use or disclose that information for purposes unrelated to the credit reporting primary purpose. For example, organisations that operate credit reporting businesses use and disclose some types of personal information (especially that drawn from public registers) for multiple purposes, only one of which is credit reporting, and unless the credit reporting information definition is focussed on 'credit worthiness' as the ALRC proposes for credit reporting information in the</p>

	<p>hands of a credit provider, additional costs would be imposed on CRAs as they would need to maintain multiple copies of data bases to ensure that these categories of information could be used in non-credit circumstances. ARCA therefore proposes that the definition include the words “about an individual’s credit worthiness” for CRA held information as much as for credit provider information.</p>
<p>Proposal 50–6 The definition of a ‘credit reporting business’ in the proposed <i>Privacy (Credit Reporting Information) Regulations</i>, if based on that in s 6(1) of the <i>Privacy Act</i>, should exclude the phrase ‘other than records in which the only personal information relating to individuals is publicly available information’.</p>	<p>50.6: In principal, agree (as for 50.5), see also the proposed ARCA definitions.</p>
<p>Proposal 50–7 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should include a simplified definition of ‘credit provider’ under which those individuals or organisations who are currently credit providers for the purposes of Part IIIA of the <i>Privacy Act</i> (whether by operation of s 11B of the <i>Privacy Act</i> or pursuant to determinations of the Privacy Commissioner) should generally continue to be credit providers for the purposes of the regulations.</p>	<p>50.7: Please see the proposed ARCA definitions.</p>

<p>Question 50–1 Should organisations be regarded as credit providers if they make loans in respect of the provision of goods or services on terms that allow the deferral of payment, in full or in part, for at least thirty days as compared to seven days, as is currently the case under the OPC's <i>Credit Provider Determination No. 2006–4 (Classes of Credit Provider)</i>?</p> <p>Question 50–2 Should the definition of 'credit provider' under the <i>Credit Reporting Privacy Code 2004 (NZ)</i> be adopted as the definition of 'credit provider' under the proposed <i>Privacy (Credit Reporting Information) Regulations</i>? That is, should 'credit provider' be defined simply as 'a person that carries on a business involving the provision of credit to an individual'; and credit as 'property or services acquired before payment, and money on loan'?</p>	<p>Q. 50-1 No.</p> <p>Q. 50.2 Agree in principle but his requires some further definition and be kept under review by the code of conduct.</p>
<p>Proposal 50–8 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should exclude: the reporting of personal information about foreign credit and foreign credit providers; and the disclosure of credit reporting information to foreign credit providers.</p>	<p>50.8: Agree although this should be subject to review by the ARCA and the potential future benefit of extending to overseas countries.</p>

<p>Proposal 50–9 The Australian Government should consider including credit reporting regulation in the list of areas identified as possible issues for coordination pursuant to the <i>Memorandum of Understanding Between the Government of New Zealand and the Government of Australia on Coordination of Business Law</i> (2000).</p>	<p>50.9: Agree but subject to review by the ARCA and the potential future benefit of extending to NZ.</p>
<p>Proposal 50–10 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should apply to personal information relating to credit advanced to an individual for any purpose and not limited to ‘domestic, family or household’ purposes as is currently the case under the definition of ‘credit’ in the <i>Privacy Act</i>.</p>	<p>50-10: Disagree with proposal. There are no clear responsible lending benefits provided by this proposal in regard to commercial or SME lending. The privacy provisions are designed to apply to individuals, if they extend into business and the small business sector they will become unworkable.</p> <p>See also the comments in the proposed ARCA definitions as to consistency with other legislative approaches.</p>
<p>Proposal 50–11 Credit reporting agencies and credit providers should develop, in consultation with consumer groups and regulators, including the Office of the Privacy Commissioner, an industry code dealing with operational matters such as default reporting obligations and protocols and procedures for the auditing of credit reporting information.</p>	<p>50 – 11: Agree although ARCA recommends this is a mandatory code and that the code is extended to include policy and compliance to policy. See the overview for more comment on the proposed structure.</p>

More Comprehensive Credit Reporting

<p>Proposal 51 1 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should permit the inclusion in credit reporting files of the following categories of personal information in addition to those currently permitted under s 18E of the <i>Privacy Act</i>:</p> <ul style="list-style-type: none"> (a) the type of each current credit account opened (for example, mortgage, personal loan, credit card); (b) the date on which each current credit account was opened; (c) the limit of each current credit account (for example, initial advance, amount of credit approved, approved limit); and (d) the date on which each credit account was closed. 	<p>51-1: Agree to the proposal subject to it also including a 24 month history of repayment.</p> <p>This is proposed on the basis of implementing a series of codes along the following lines: assigns a '0' for no payment required, a '1' for a payment required and made, a '2' for one contractual payments missed, a '3' for two contractual payments missed, and so forth up to '7' for 6 or more payments missed (180 or more days delinquent). Other codes such as 'B' would be recorded if the account was included in a bankruptcy, or 'D' if the status of the account was in 'dispute', or 'H' if the account was involved in a hardship arrangement.</p> <p>The final technical detail needs to be a matter for the Code of Conduct to ensure accuracy and consistency in implementation to avoid issues like those relating to the current default reporting regulation.</p> <p>It should be noted that ARCA accepts that other content data previously requested e.g. historical and current balance data has been removed. ARCA believes that by definition full credit reporting would provide the optimum support for responsible lending. However, ARCA also acknowledges that there are concerns such as privacy that need to be addressed and that a gradual process of implementation is likely to gain broader support.</p> <p>ARCA highlights the need to have a sufficient view of a customer's credit worthiness. It does require historical repayment data together with the existing credit reporting information and the ALRC proposed additions. This will also provide sufficient additional data to support industry's investment in resources to develop the capability to implement the proposed changes to deliver more responsible credit provision.</p> <p>ARCA also assumes that to deliver improved data quality standards that credit providers will be obliged to update individual files including credit line increases on a monthly basis.</p> <p>Refer to the ARCA submission section on recommended content data for further information on this proposal.</p>
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<p>Proposal 51-2 The credit reporting industry code (see Proposal 50–11) should provide for access to information on credit information files according to principles of reciprocity. That is, in general, credit providers only should have access to the same categories of personal information that they provide to the credit reporting agency.</p> <p>Proposal 51-3 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide for a review after five years of operation. The review should focus on the impact of more comprehensive credit reporting on privacy and the credit market.</p>	<p>51-2: Agree in principle but the principles of reciprocity have the potential for considerable complexity as there is a need to meet the requirements of different industry sectors e.g. Telcos, Banks, Non-Bank lenders, the complexity needs to be balanced with the ability to implement and support different levels of reciprocity.</p> <p>51-3: ARCA agrees that those aspects in the three tier structure that are in UPPs should have a future review period established. Those that are tier two regulations should have a review period in 3 years time and that policy matters in the authorised code of conduct should be under continuous improvement review but with a mandatory annual review. Subject to the final ALRC recommendations, if a level of detail is provided in the regulations it may be appropriate for an annual review of the regulations.</p>
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Continued Responses to ALRC Proposals and Questions

Collection of Credit Reporting Information

<p>Proposal 52-1 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide for the recording, on the initiative of the relevant individual, of information that the individual has been the subject of identity theft.</p>	<p>52-1: Agree in principle, a mechanism for assisting consumers to deal with identity fraud should be developed to investigate the best ways to implement this. Currently ARCA supports a consumer initiated 'freeze' which would allow a consumer who fears they have been subject of identity theft to freeze and unfreeze their credit file at their request, preventing fraudsters obtaining access to credit.</p> <p>To ensure that this is done in a practical manner, this issue should be left to the Code of Conduct to develop detail.</p>
<p>Proposal 52-2 Credit reporting agencies only should be permitted to list overdue payments of more than a minimum amount.</p> <p>Question 52-1 Should the proposed <i>Privacy (Credit Reporting Information) Regulations</i> provide a minimum amount for overdue payments listed by credit reporting agencies? If not, by what mechanism should a minimum amount for overdue payments be set and enforced?</p>	<p>52-2: Agree. Note a standalone paper has been submitted to the ALRC recommending the proposed revisions that have been reviewed by ARCA, BFSO and the ARCA Consumer Advocate forum, and a copy is attached in the Appendix to the ARCA submission</p> <p>The operational details of this proposal are recommended to be included in the authorised code of conduct.</p> <p>Q 52-1: Agree in principle but to be detailed in the code of conduct and under continuous review of the code of conduct policy committee.</p>
<p>Proposal 52-3 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should not permit credit reporting information to include information about presented and dishonoured cheques, as currently permitted under s 18E(1)(b)(vii) of the <i>Privacy Act</i>.</p>	<p>52-3: Disagree. For the benefit of responsible lending this facility should be retained as it is highly predictive information in the case of repeated dishonours. The focus should be on improving the quality of the provision of this type of information.</p>

<p>Proposal 52-4 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should permit credit reporting information to include personal insolvency information recorded on the National Personal Insolvency Index (NPII) administered under the <i>Bankruptcy Regulations 1966</i> (Cth).</p> <p>Proposal 52-5 Credit reporting agencies, in accordance with obligations to ensure the accuracy and completeness of credit reporting information, should ensure that credit reports adequately differentiate the forms of administration identified on the NPII.</p>	<p>52-4: Agree with principle that bankruptcy data should be included, and that the various types of bankruptcy need to be distinguishable.</p> <p>However, ARCA notes that NPII information held by a CRA will not always be credit reporting information under its proposed definition. Where NPII information is credit reporting information, a CRA's data quality obligations to consumers (including correction) will be limited by their obligation to reproduce the NPII accurately as determined by ITSA. Where a CRA reproduced record is accurate, but the consumer disputes the record, that dispute will be referred to ITSA for its consideration.</p> <p>52-5: Agree. The authorised code of conduct is to indicate the standards for reporting e.g. details of the 'adequate differentiation on the forms of administration'.</p>
<p>Question 52-2 Should the proposed <i>Privacy (Credit Reporting Information) Regulations</i> allow for the listing of a 'serious credit infringement' or similar and, if so, how should this concept be defined?</p>	<p>Q 52-2: Agreed in principle, ARCA recommend that the definition of 'serious credit infringement' is established and continuously reviewed by ARCA and incorporated into the code of conduct.</p>
<p>Proposal 52-6 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should permit credit reporting information to include publicly available information.</p>	<p>52-6: Agree, see the ARCA proposed definition of credit reporting information. However, ARCA is concerned that public information, without other information, held by a CRA is not by virtue of being held by a CRA, regulated as credit reporting information. See also the response to proposal 50.5 on this point.</p>

<p>Proposal 52–7 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should prohibit the collection in credit reporting information of ‘sensitive information’, as that term is defined in s 6(1) of the <i>Privacy Act</i>.</p>	<p>52.7: Agree</p>
<p>Proposal 52–8 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should prohibit the collection in credit reporting information about individuals the credit provider or credit reporting agency knows to be under the age of 18 years.</p>	<p>52-8: Agreed</p>
<p>Proposal 52–9 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide that, at or before the time credit reporting information is collected about an individual, credit providers must take reasonable steps to ensure that the individual is aware of:</p> <ul style="list-style-type: none"> (a) the fact and circumstances of collection (for example, how and where the information was collected); (b) the credit provider’s and credit reporting agency’s identity and contact details; 	<p>52.9: Agree with the basic principles of notification regarding collection and use, but seek to have the details regarding practical implementation left to the Code of Conduct.</p>

<ul style="list-style-type: none"> (c) the fact that the individual is able to gain access to the information; (d) the main consequences of not providing the information; (e) the types of people, organisations, agencies or other entities to whom the credit provider and credit reporting agency usually discloses credit reporting information; and (f) the avenues of complaint available to the individual if he or she has a complaint about the collection or handling of his or her credit reporting information. 	
<p>Proposal 52–10 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should prescribe the specific circumstances in which a credit provider must inform an individual that personal information might be disclosed to a credit reporting agency, for example, in circumstances where the individual defaults in making payments.</p> <p>Question 52–3 In what specific circumstances should a credit provider be obliged to inform an individual that personal information might be disclosed to a credit reporting agency; and what</p>	<p>52-10: Agree with the basic principles of notification regarding provision of data to credit reporting agencies, but seek to have the details regarding practical implementation left to the Code of Conduct.</p> <p>Q 52-3: Regulation needs to prescribe circumstances of material significance with the detail in the code of conduct. The two main circumstances requiring notice additional to notice at the point of first collection are when a default is to be listed with a CRA or when a debt is assigned. In the second case, it would be the obligation at the time of the sale for the assignee to notify the consumer that the debt has been assigned.</p>

<p>information should notices contain? Who should give notice when a debt is assigned—the original credit provider, the assignee or both?</p> <p>Question 52–4 Should the proposed <i>Privacy (Credit Reporting Information) Regulations</i> prescribe specific circumstances in which a credit reporting agency must inform an individual that it has collected personal information?</p>	<p>Q 52-4: The collection responsibility is with the credit provider. The only circumstances where a CRA should provide notice to consumers that it has collected personal information are those circumstances where the consumer may have no other means of notice – that is, for information collected indirectly other than from credit providers. This category is almost exclusively public information. CRAs should provide general rather than individual notice to consumers, for example in the form of tiered privacy notices.</p>
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Continued Responses to ALRC Proposals and Questions

Use and Disclosure of Credit Reporting Information

<p>Proposal 53–1 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide a simplified list of circumstances in which a credit reporting agency or credit provider may use or disclose credit reporting information, based on those uses and disclosures currently permitted under ss 18K, 18L and 18N of the <i>Privacy Act</i>.</p> <p>Proposal 53–2 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide that, in addition, a credit reporting agency or credit provider may use or disclose credit reporting information for related secondary purposes, as permitted by the proposed ‘Use and Disclosure’ principle.</p>	<p>53-1: The regulation should include that a Credit Reporting Agency (CRA) may disclose credit reporting information to a credit provider to:</p> <ul style="list-style-type: none"> • Assess a credit application; or • Administer an account – such as assessment for incremental credit, or collection of the debt, or • Develop and maintain its credit risk assessment systems. <p>The regulations should also provide that a CRA may disclose credit reporting information to a reporting entity under AML/CTF for identity verification for AML/CTF subject to continuous review by the ARCA and the policy committee of the code of conduct. The code of conduct should provide greater detail on credit providers using the wider NZ definition and reflect relevant sections of Part IIIA in accordance with the definitions in the regulations</p> <p>The attached 3 tier structure document sets out either proposed words for those regulations or their proposed coverage, and the way the regulations interact with the material in the proposed code.</p> <p>53-2: Agree in principle but on the basis described under point 2 of the ARCA submission description of the recommended three tier structure and the allowable data content recommendation.</p>
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<p>Question 53–1 Should the proposed <i>Privacy (Credit Reporting Information) Regulations</i> allow credit providers (but not credit reporting agencies) to disclose an individual's credit reporting information to a mortgage or trade insurer, where access to the information is required to assist in the assessment of the individual's credit worthiness?</p>	<p>Q 53-1: Agree, to preserve the current position under the Privacy Act</p>
<p>Proposal 53–3 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should prohibit the use or disclosure of credit reporting information for the purposes of direct marketing.</p> <p>Question 53–2 Should credit providers be permitted to use credit reporting information to</p>	<p>53-3: Agree – Refer to point 6 of the three tier regulatory structure in the ARCA submission.</p> <p>Q53-2: The use of credit reporting information is to be precluded from use as a source of direct marketing prospects. To further clarify, credit providers should be precluded from supplying criteria to a credit reporting agency for the purposes of extracting customer records fitting any particular profile to then solicit business. In addition the credit reporting agencies should be precluded from undertaking such activity, and</p>

<p>'pre-screen' credit offers? If so, should credit providers be required to allow individuals to opt out, or should credit providers only be permitted to engage in pre-screening if the individual in question has expressly opted in to receiving credit offers?</p>	<p>there should be heavy penalties for any breach of such a rule. This is an element that should be included in regulation – as it should not be subject to change without the full process of regulatory review.</p> <p>Agree - Credit providers should be able to use credit reporting information on a 'no-eyes' basis to ensure a customer does not receive an inappropriate offer. Selection (including statistical models) can be used to remove negative customer records only, with no selection of clean/comprehensive data customer records. Refer to the definition and objectives of pre-screening detailed in the ARCA submission at Appendix 4.</p> <p>The development of a standard criteria (a definition of what is 'negative') needs to be developed and agreed by the managers of the Code of Conduct. This includes representation of consumer and privacy advocates.</p> <p>Individuals should be allowed to opt out of all marketing with all individuals selecting this option recording their selection in a single database, ARCA recommends this is the ADMA database.</p>
<p>Question 53–3 If the use and disclosure of credit reporting information for identity verification purposes is not authorised under the proposed <i>Privacy (Credit Reporting Information) Regulations</i>, what other sources of data might be used by credit providers to satisfy obligations under the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> (Cth) and similar legislation? What are the advantages and disadvantages of the alternate sources of data?</p>	<p>Q 53-3: The use of credit reporting information should be authorised and permitted and detailed in the code of conduct.</p>

<p>Question 53–4 There should be no equivalent in the proposed <i>Privacy (Credit Reporting Information) Regulations</i> of s 18N of the <i>Privacy Act</i>, which limits the disclosure by credit providers of personal information related to credit worthiness. The use and disclosure limitations should apply only to personal information maintained by credit reporting agencies and used in credit reporting.</p>	<p>53-4: Agree.</p>
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Continued Responses to ALRC Proposals and Questions

Data Quality and Security

<p>Proposal 54–1 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should prohibit expressly the listing of any overdue payment where the credit provider is prevented under any law of the Commonwealth, a State or a Territory from bringing proceedings against the individual to recover the amount of the overdue payment.</p>	<p>54-1: Agree but should be detailed in the code of conduct. In the instance of bankruptcy, pre-existing listings should remain on the record with no requirement to delete all listings predating the bankruptcy. Those listings will remain for the usual retention period and the listing of the bankruptcy will inform the status of those debts</p>
<p>Proposal 54–2 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide that where the individual has entered into a new arrangement with a credit provider to repay an existing debt, such as by entering into a scheme of arrangement with the credit provider, an overdue payment under the new arrangement may be listed and remain part of the individual's credit reporting information file for the full five year period permissible under the regulations.</p>	<p>54-2: Agree – Refer to the separate paper submitted by ARCA on schemes of arrangement. The details of these arrangements should be detailed in the code of conduct.</p>

<p>Proposal 54–3 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide that credit reporting agencies must:</p> <ul style="list-style-type: none"> (a) enter into agreements with credit providers that contain obligations to ensure data quality in the information credit providers provide to credit reporting agencies; (b) establish and maintain controls to ensure that only information that is accurate, complete, up-to-date and relevant is used or disclosed; (c) monitor data quality and audit compliance with the agreements and controls; and (d) identify and investigate possible breaches of the agreements and controls. 	<p>54-3: Agree and detailed in the code of conduct. Note that in point (b) the term ‘relevant’ should be removed. This is explained in point 2 relating to the Collection UPP in the three tier regulatory structure, it is also dealt with in the proposed ARCA definition of credit reporting information.</p>
<p>Proposal 54–4 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide that credit providers and credit reporting agencies have an obligation to take reasonable steps to ensure that credit reporting information is accurate, up-to-date, complete and not misleading.</p>	<p>54-4: Agree- With the obligations applying to the ARCA definition of Credit Providers.</p>

<p>Proposal 54–5 The credit reporting industry code (see Proposal 50–11) should promote data quality by mandating procedures to ensure consistency and accuracy in the reporting of overdue payments and other personal information by credit providers. These procedures should deal with matters including:</p> <ul style="list-style-type: none"> (a) the timeliness of the reporting of personal information, such as overdue payments; (b) the calculation of overdue payments for credit reporting purposes; (c) obligations to prevent the multiple listing of the same debt; (d) the updating of personal information reported, including where schemes of arrangement have been entered into; and (e) the linking of credit reporting information where it is unclear whether the information relates to more than one individual with similar identifying details or to one individual who has used different identifying details. 	<p>54-5: Agree- with the detail in the code of conduct.</p> <p>Note point (c) should exclude schemes of arrangement and point (e) to include the best endeavours of CRAs to deal with possible matches.</p>
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<p>Proposal 54-6 The proposed review of the <i>Privacy (Credit Reporting Information) Regulations</i> after five years' of operation (Proposal 51-3) also should consider whether further regulation is required to ensure the data quality of credit reporting information.</p>	<p>54-6: Agree with the need to set a review timeframe, however believe that regulation should be reviewed within 3 years, and based on the New Zealand precedent, 2 years would be appropriate.</p> <p>As stated previously the ARCA and OPC policy committee governing the code of conduct should undertake to have continuous review and improve data quality and credit reporting information. Subject to the final ALRC recommendations and the amount of detail contained in the regulations, ARCA considers the regulations may need annual review.</p>
<p>Proposal 54-7 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide for the deletion of different categories of credit reporting information after the expiry of maximum permissible periods, based on those currently set out in s 18F of the <i>Privacy Act</i>.</p> <p>Proposal 54-8 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide for the deletion of information about voluntary arrangements with creditors under Part IX and Part X of the <i>Bankruptcy Act 1966</i> (Cth) five years from the date of the arrangement as recorded on the National Personal Insolvency Index.</p>	<p>54-7: Agree with the detail in the code of conduct.</p> <p>54-8: Disagree – information should be retained for 7 years per existing policy.</p>
<p>Proposal 54-9 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should contain no equivalent to s 18G(b) and (c), dealing</p>	<p>54-9: Agree.</p>

<p>with the security of credit information files and credit reports, as these obligations are adequately covered by the proposed 'Data Security' principle.</p>	
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Continued Responses to ALRC Proposals and Questions

Rights of Access, Complaint Handling and Penalties

<p>Question 55-1 Should the proposed <i>Privacy (Credit Reporting Information) Regulations</i> provide that individuals have the right to obtain a free copy of their credit reporting information?</p> <p>Question 55-2 Should the proposed <i>Privacy (Credit Reporting Information) Regulations</i> provide an equivalent to s 18H(3) of the <i>Privacy Act</i>, so that an individual's rights of access to credit reporting information may be exercised by a person authorised in writing and for a credit-related purpose?</p>	<p>Q 55-1: ARCA expects that with more comprehensive credit reporting, more consumers will want access to the credit files. ARCA supports free access to credit files for consumers, as currently provided by the law, but notes that because of limitations of the current law, processes for identifying consumers and providing access to credit information are highly labour intensive and there are limits on how much automation is possible. These processes will be reformed as the law changes. ARCA supports a goal of free access to reports for consumers, including ultimately online, web enabled access, but recommends that the law be non-prescriptive on charging and the detail of access methods, but rather these details be left to the Code of Conduct.</p> <p>Q 55-2: Agree.</p>
<p>Proposal 55-1 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide individuals with rights to access and correct credit reporting information based on the provisions currently set out</p>	<p>55-1: Agree in principle but note additional recommendations in regard to this proposal noted below in response to Proposal 55-7</p>

<p>in ss 18H and 18J of the <i>Privacy Act</i>.</p>	
<p>Proposal 55–2 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide individuals with rights to be notified where a credit provider refuses an application for credit based wholly or partly on credit reporting information, based on the provisions currently set out in s18m of the <i>Privacy Act</i>.</p> <p>Proposal 55–3 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide that the information to be given if an individual's application for credit is refused based wholly or partly on credit reporting information should include any credit score or ranking used by the credit provider, together with explanatory material on scoring systems, to allow individuals to understand how the risk of the credit application was assessed.</p>	<p>55.2: Agree.</p> <p>55-3: Disagree there needs to be greater transparency with regard to the use of scoring in credit assessment. There are however practical issues with the provision of detailed information. Unlike the US where a single model is used to determine credit scores there is no uniform score in Australia. Different institutions use different models which represent highly complex proprietary information that differs between them, and even between different parts of a single institution. ARCA would support provision of a brief description, in plain english, of standard credit scoring and an explanation of how this may have been used in the credit decision. See the proposed ARCA definition of credit score.</p>

<p>Proposal 55–4 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide that:</p> <ul style="list-style-type: none"> (a) credit reporting agencies and credit providers must handle credit reporting complaints in a fair, efficient and timely manner; (b) credit reporting agencies and credit providers must establish procedures to deal with a request by an individual for resolution of a credit reporting complaint; (c) a credit reporting agency should refer to a credit provider for resolution of a complaint about the content of credit reporting information provided to the agency by that credit provider; and (d) where a credit reporting agency or credit provider establishes that it is unable to resolve a complaint it must 	<p>55-4: Agree with the detail in the code of conduct. Note that point (c) should reflect that ARCA has adopted single points of contact to improve the speed and quality of resolving complaints and disputes</p>
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<p>immediately inform the individual concerned that it is unable to resolve the complaint and that the individual may complain to an external dispute resolution scheme or to the Privacy Commissioner.</p>	
<p>Proposal 55–5 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide that the information to be given if an individual's application for credit is refused based wholly or partly on credit reporting information should include the avenues of complaint available to the individual if he or she has a complaint about the content of his or her credit reporting information.</p>	<p>55-5: Agree with the detail in the code of conduct.</p>
<p>Proposal 55–6 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide that credit providers may</p>	<p>55-6: Agree in principle but it should be an ASIC approved EDR and a prerequisite for the code of conduct and access to CRA credit reporting information.</p>

<p>only list overdue payment information where the credit provider is a member of an external dispute resolution scheme approved by the Office of the Privacy Commissioner.</p>	<p>This higher threshold is needed to ensure the integrity of the credit reporting process, including data quality, is maintained. To simply restrict default listing ignores the need to maintain the data quality of the other elements of data – which constitute the majority of content for the majority of consumers. In addition, a higher threshold would help ensure and other process requirements are followed – eg. complaint handling.</p>
<p>Proposal 55–7 The proposed <i>Privacy (Credit Reporting Information) Regulations</i> should provide that credit providers have an obligation to provide evidence to individuals and dispute resolution bodies to substantiate disputed credit reporting information, such as default listings, and that if the information is not provided within 30 days the credit reporting agency must delete the information on the request of the individual concerned.</p>	<p>55-7: Agreed. To facilitate the process credit providers and credit reporting agencies need to work together to devise a framework for implementation. It is suggested a taskforce be established to undertake this task. It is noted that the ALRC proposal reverses the current onus of proof and a strict time limit would potentially allow disreputable individuals to engage in “credit repair” which is currently a significant problem in both the US and the UK. That is, individuals flood credit providers with questions that cannot be answered in the timeframe and thus are rewarded by information being removed from their record.</p> <p>Controls will also be established so that third parties cannot use credit repair like techniques to impede the review process. The controls will be continuously reviewed and updated to protect the incidence of fraud and other inappropriate credit repair operations.</p> <p>ARCA supports the principle of a 30 day timeframe subject to the comments above and the findings of the taskforce.</p>
<p>Proposal 55–8 The <i>Privacy Act</i> should be amended to:</p> <p>(a) remove the credit reporting offences by repealing ss 18C(4), 18D(4), 18K(4), 18L(2),</p>	<p>55-8: (a) Agree</p>

<p>18N(2), 18R(2), 18S(3) and 18T; and</p> <p>(b) allow a civil penalty to be imposed where there is a serious or repeated breach of the proposed <i>Privacy (Credit Reporting Information) Regulations</i>.</p>	<p>(b) Agreed and to also include temporary or permanent restriction of access to credit reporting information held at credit reporting agencies by the offending company and its subsidiaries</p>
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ARCA - PROPOSED DEFINITIONS TO SUPPORT THE PRIVACY (CREDIT REPORTING INFORMATION)REGULATIONS

No.	Source	Definitions	Comments
1	NZ Code of Conduct	Credit means property or services acquired before payment, and money on loan.	Note this potentially broad definition is partly offset by the narrow requirements for access to and use of credit information.
2	NZ Code of Conduct	Credit provider means an organisation that carries on a business involving the provision of credit to an individual.	Note the Regulations should allow the OPC to prescribe further classes of persons who may be included as credit providers such as mortgage and trade insurers, to preserve the existing position, or excluded from that class.
3	ALRC DP72 paragraph 50.87 as amended	<p>Credit reporting information means any record that contains personal information about an individual's credit worthiness and is:</p> <ul style="list-style-type: none"> (a) Maintained by a credit reporting agency in the course of carrying on a credit reporting business; or (b) Held by a credit provider; and <ul style="list-style-type: none"> (i) Is being or has been prepared by a credit reporting agency; and (ii) Has any bearing on an individual's eligibility to be provided with credit, history in relation to credit, or capacity to repay credit; and (iii) Is used or has been used to or has the capacity to be used for the purpose of serving as a factor in establishing an individuals eligibility 	<p>Credit reporting information is a subset of personal information and hence the definition should operate only to regulate that subset of information. The key issue is that it relates to credit worthiness and does not capture the wider ambit of personal information.</p> <p>This definition responds to proposal 50.5</p> <p>New paragraph (c) responds to proposal 50.10 and ensures credit reporting remains focussed on consumer credit. The current regime does not give to business the same support as is given to consumers, and this should remain. This position is consistent with the approach taken under the Consumer Credit Code and the Trade Practices Act to distinguish consumers from businesses.</p> <p>Implementing the distinction in this way preserves the individual's rights under the UPP's to access and correction of personal information and so addresses the ALRC's concerns in paragraph 50.157</p>

No.	Source	Definitions	Comments
		for credit; and (c) Relates to credit advanced or to be advanced for domestic, family or household purposes.	
4	Proposal 50.6, simplified by ARCA	Credit reporting agency or CRA means an organisation that carries on a business or undertaking that involves the preparation or maintenance of records containing personal information for the dominant purpose of, providing to other persons information on an individual's credit worthiness	This definition responds to proposal 50.6, but varies the ALRC proposal to take account of the proposed new definitions to sit within the CRR framework
5	From draft ARCA Code of Conduct	Credit score means a score that applies an algorithm to summarise historical credit reporting information into a single risk index.	
6	ARCA	Code of Conduct or Code means the ACCC authorised Code of Conduct developed in conjunction with the Privacy Commissioner.	
7	ALRC DP72 paragraph 23.1	Direct Marketing means the promotion and sale of goods and services directly to consumers.	Credit Reporting Information cannot be used for Direct Marketing whether in the hands of CRA or a Credit Provider. See definition for Credit Reporting Information.
8	Privacy Act s 6, as amended by ALRCE DP72 proposal 3.5(a)	Personal information means information or an opinion whether true or not, and whether recorded in a material form or not, about an identified or reasonably identifiable individual.	ARCA's view is the definition should be complete and not rely on comments in an Explanatory Memorandum – an EM is only to be referred to where legislation is ambiguous. This fundamental definition cannot be ambiguous and must be clear about excluding the implications in proposal 3.5(b). This could be a matter for guidance from the OPC and to be documented in the Code.

No.	Source	Definitions	Comments
9	ARCA members	<p>Pre-screening means the process by which a credit reporting agency uses credit reporting information to identify individuals with poor credit worthiness and to exclude them from a list provided by a credit provider without disclosure of credit reporting information to the credit provider or another party.</p>	<p>For example:</p> <ul style="list-style-type: none"> • The Bank acquires an external list of 100,000 ADMA approved names • The list vendor sends the list to CRA • The Bank sends its pre-screening criteria to the CRA for the purpose of excluding those with poor credit worthiness • The CRA applies the pre-screening criteria to reduce the list to say 90,000; • The CRA sends the reduced list to the Mailing House; • The Mailing House mails 90,000 and notifies the Bank of the number so the Bank can pay for the mailing; • 500 respond to the Bank with an application form; • 400 are accepted and loans advanced; • Say 2 go into delinquency. <p>This approach reduces the volume of direct marketing of credit offers to credit provider customers with poor credit history by 10, 000.</p> <p>See also questions and responses to question 53.2.</p>

No.	Source	Definitions	Comments
10	Privacy Act s6	Serious credit infringement means an act done by a person that a reasonable person would consider indicates an intention, on the part of the first-mentioned person, no longer to comply with the first person's obligations in relation to credit and the provider has made an effort to contact the consumer.	We note this adds a requirement for a credit provider to make an effort to contact the consumer, not currently contained in Part IIIA.

Default Reporting - BFSO

This paper describes in overview the differences between the internal accounting and reporting procedures used by lenders and the default reporting allowed to Credit Reference Agencies. The purpose is to highlight the differences and facilitate a review to potentially enable a more informative and practical solution that also supports the principle of responsible lending.

The paper deliberately uses a highly simplified illustration as the purpose is to focus on the broad principles rather than micro-analyse the methodologies used for calculating loan repayments and the related fees and charges.

Illustration with assumptions based on a credit card:

Account Opened 01/01/06

Credit Limit: \$3,300

Interest Rate 19.5% per annum assume 30 days interest charged each statement and 30 days in each month for simplicity and interest is added to account on cycle date

Cycle Date 1st of each month

Payment Due date 25 days after cycle date

Merchant Transaction for \$3,300 on 15/01/06

First Statement Issues 01/02/06

First Payment due 26/02/06

First Minimum Monthly Payment (MMP) due 26/02/06 (1.5%) \$49.5

Any amount over limit after payment is made is due and payable immediately

For simplicity we assume no payments are ever made

Late fee charged 10 days after due date \$20.00
Assume late fee is capitalised

Generally Financiers would list an account in batch at month end at the credit bureau

Assume following table is the month end snapshot

	End January	End February	End March	End** April	End May	End June	End July
Outstanding Balance	3300	3300	3374	3449	3525	3602	3681
Interest	0	0	54*	55*	56*	57*	59*
Late Fee	0	0	20	20	20	20	20
Min. Monthly Payment	0	50	51+50 = 101	52+ 101 = 153	53+153 = 206	54+206 = 260	55+260 = 315
Over Limit Amt due (after payment)	0	0	0	0	19	42	66
Total Payment Due	0	50	101	153	225	302	381
Days Past Due	0	4	34	64	94	124	154
What can be reported at 60 days***	0	0	0	50	101	153	225
What can be reported at 60 days if you accelerate the debt @ 60 days with 30 days notice	0	0	0	50	101	153	3449

* = estimate

** Section 80 – accelerated debt notice issued

*** Note this ignores the \$100 minimum

Based on the illustration the lender may act as follows:

1. Write to the consumer in March requesting payment of the minimum outstanding payment of \$101 within 30 days. The letter may also contain other details such as the outstanding balance. The lender may also advise the consumer that non payment may result in a listing with a CRA should the payment be more than 60 days in arrears.
2. Write to the consumer at the end of April requesting payment of the outstanding balance (section 80 - accelerated debt payment) of \$3449 within 30 days.
3. The lender may list the minimum payment that is in default for 60 days (\$50) with a CRA in April onwards however the amount due is \$153. Note - subject to the minimum \$100 listing limit.
4. The lender may list the accelerated debt that is default for 60 days (\$3449) with a CRA at the end of July (this has provided the consumer with 30 days to pay the accelerated debt) – note that the letter sent to the customer when we

accelerated the debt requested \$3449 but the actual debt owing at the end of July is \$3681.

The issues with the above reporting standard are as follows:-

1. Inconsistent management information:-

- The amount information provided to the lender's collection management is inconsistent with the amount reported to the CRA.
- This can lead to confusion between the lender, the consumer and the CRA.
- Lender technology platforms are not developed to support the CRA reporting requirement.

2. Poor quality information:-

- Other lenders who read the information at the CRA do not know what the reported default represents.
- To support responsible lending it is important to provide full credit information. This includes the total potential exposure and the full outstanding minimum payment. This will enable potential lenders to understand the current exposure before considering a further loan advance.

3. Continued fair practice:-

- The information should not be reported to the CRA until the consumer is at least 60days past due (note to replicate Basel II reporting all banks have to meet 90 day default reporting standards).
- All lenders should be encouraged to move to a consistent reporting standard rather than the current voluntary code. Note the ARCA are recommending that banks, finance houses and card issuers report all unsecured loan defaults that are 90 days or more past due to at least one CRA and all secured loans that are 120 or more days past due.
- The information provided to CRAs should be consistent with that advised and communicated in writing to consumers.

Recommendation:

1. Stage one:

Allow the lender to record at the CRA the full amount outstanding at the time of listing e.g. at the end of July this would be \$3681 rather than \$3449.

II Stage two:

Allow the lender to record at the CRA the minimum outstanding payment (on the same basis as currently authorised) but also show in a separate field the related outstanding balance to enable a potential future lender to understand the credit exposure of the consumer to enable a responsible lending decision.

Next Steps:

1. To meet with the BFSO, Consumer Advocates and the OPC to review and confirm support for stage one and agree how this can be implemented and in what timeframe.
2. To meet with the same stakeholders and seek to include the proposed amendment or a revised version in the Legal Reform review (ALRC).

ARCA – Scheme of Arrangement

A prime objective of the ARCA is to improve the quality and consistency of data to facilitate more responsible lending. The compulsory reporting of defaults is one of the methods that has been proposed to achieve this objective. However, as a number of members have advised, this needs to work within established hardship and disputed case policy such as established by ACIF. In certain circumstances lenders establish schemes of arrangement with debtors to assist them in repaying the default and enabling them to retain a more positive credit history.

Recommendation:

To use 'schemes of arrangements' more consistently as an indication that the creditor and the defaulter have reached a mutual agreement for the resolution of the outstanding debt. To establish the process whereby a scheme of arrangement can be listed without the need to list as a default. The record of a scheme of arrangement is removed from the CRA data file at a shorter period than a default (time tba).

Background:

Under sections 66 and 67 of the UCCC a lender and debtor may change the terms of the debtor's obligations (see the appendix 1 for full details).

The Credit Reporting Code of Conduct – issued by the Office of the Privacy Commissioner originally in 1991 has in its 2001 edition following group consultation supported the reporting of 'schemes of arrangement' on a voluntary basis (see appendix 2 to that document for fuller details).

Process

A scheme of arrangement can only be entered into once a default has been reported and a documented agreement has been reached with the defaulter. It is potentially preferable to encourage customers to enter into acceptable forms of scheme of arrangement to allow the listing of such arrangements without the prior or concurrent listing of a default. Should this proceed it will be necessary to change current practices and also to establish policies that ensure the scheme of arrangement is appropriately used by data sharers and monitored by compliance.

Benefit of the Recommendation

It will provide Data Sharers with the ability to put in place schemes of arrangement to assist and encourage debtors to manage their 'way out' of

default situations. It will provide lenders with the constructive option to help assist defaulters and provide a code record at CRAs of the defaulter's support for the arrangement. Lenders credit policy and scoring algorithms may consider the value of schemes of arrangement.

Consumer advantage

This should encourage a consumer to reach an acceptable arrangement with the lender to avoid the implications of a default listing.

Implications

- The CRAs already have in place the ability to show a customer has a scheme of arrangement in place with relevant system codes at both Baycorp Advantage and Dun and Bradstreet.
- CRAs may need to further develop the scheme of arrangement functional capability should data sharers require more than the reporting of the fact of such an arrangement.
- Lender score cards may need to be amended to show a new value for Schemes of Arrangement.
- Collection functions will need to move their focus to payment default status rather than the simple listing of a default.
- Receivables management companies may need to consider the implications.
- CRAs will need to monitor that schemes of arrangement are used appropriately and not as a 'soft option' to avoid default listing.

Appendix 1

The following details sections 66 and 67 of the UCCC.

66 Changes on grounds of hardship

- (1) **General Principle.** A debtor who is unable reasonably, because of illness, unemployment or other reasonable cause, to meet the debtor's obligations under a credit contract and who reasonably expects to be able to discharge the debtor's obligations if the terms of the contract were changed in a manner set out in subsection (2) may apply to the credit provider for such a change.
- (2) **Changes.** An application by a debtor must seek to change the terms of the contract in one of the following ways-
 - (a) extending the period of the contract and reducing the amount of each payment due under the contract accordingly (without a change being made to the annual percentage rate or rates);

- (b) postponing during a specified period the dates on which payments are due under the contract (without a change being made to the annual percentage rate or rates);
- (c) extending the period of the contract and postponing during a specified period the dates on which payments are due under the contract (without a change being made to the annual percentage rate or rates).

67 Notice of Change

- (1) A credit provider that enters into an agreement with a debtor on any such application must, not later than 30 days after the date of the agreement, give to the debtor, and any guarantor under a guarantee related to the contract, a written notice setting out-
 - (a) particulars of the change in the terms of the credit contract; and
 - (b) any information required by the regulations.
- (2) The credit provider may, under subsection (1), give a person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider-
 - (a) makes it clear to the person that the matter has changed; or
 - (b) issues to the person a new set of terms and conditions relating to the credit contract.

Subsequent sections of the UCCC are concerned with how this may be imposed on a lender by a Court.

Appendix 2

The following provides background from the credit reporting code.

Credit Reporting Code of Conduct - Part 2 - Credit Providers (2001 edition)

Reporting of Schemes of Arrangement (Privacy Commissioner's comments)

Prior to its amendment, paragraph 2.10 of the Code of Conduct provided that where a credit provider has reported an overdue payment to a credit reported agency, and subsequently enters into an arrangement for repayment of the outstanding amount, a note indicating that this action had been taken was required to be included in the individual's file held by the credit reporting agency.

In discussions with my Consultative Group, the majority favoured the view that the reporting of arrangements to credit reporting agencies should be optional rather than mandatory. This was because of differing views as to what

constitutes a scheme of arrangement, and also because the requirement to report schemes of arrangement was proving to be onerous in some situations. I have amended paragraph 2.10 to give effect to this view, by replacing the word "must" with "may".

- 2.10** Where a credit provider has previously listed with a credit reporting agency an overdue payment or a serious credit infringement against an individual in respect of an amount outstanding, and the credit provider subsequently enters into an arrangement with the individual for the repayment of the outstanding amount, the credit provider may contact the credit reporting agency to advise that a note should be included in the individual's credit information file to the effect that an arrangement has been entered into with the individual for repayment of the outstanding amount.

2.11

From the Credit Reporting Advice Summaries (2002 edition)

9.3 Repeat listings of overdue payments (extract re Scheme of Arrangement)

The situation is different where the individual has entered into a new arrangement with the credit provider to repay the debt, such as entering into a scheme of arrangement with the credit provider. The new situation is not regarded as being information about the same default as the original entry. If the individual subsequently falls into arrears under the new arrangement, then once the requirements for listing a default entry have been met in relation to the new situation, a default entry may listed and remain on the individual's credit information file for the full five year period permissible under section 18F(2)(c) of the Act.

9.9 Reporting arrangements for repayment

The requirements of paragraph 2.10 of the Credit Reporting Code of Conduct, concerning reporting by a credit provider to a credit reporting agency of arrangements for repayment, apply to those formal arrangements involving a renegotiation of the terms of payment of an individual's debt. Such an arrangement is usually devised to assist an individual in discharging his or her debt in circumstances where the individual is having difficulty meeting the existing repayment schedule. The arrangements should be formal, written agreements so that where the individual conforms, to the revised payment schedule; he or she would be legally considered to be fully complying with the terms of the new loan agreement.

Paragraph 2.10 of the Code was not intended to encompass situations where a one-off late payment may have been agreed to by a credit provider to cover extenuating circumstances.

ALRC submission - Consumer Complaint Handling

Part C of the ARCA submission details the ARCA commitments to consumers that includes our obligations in regard to handling and responding to consumer complaints and disputes and the requirement to join and fully participate in an ASIC approved EDR scheme.

The following provides further detail in regard to the handling of credit reporting consumer complaints.

Objective

'To improve the quality, timeliness, fairness and competence of the response of ARCA members to credit reporting consumer complaints'.

Task Force

An ARCA standing task force has established the following policies and procedures:-

1. Implemented ARCA complaints handling policy in accordance with the ARCA Principles and Rules (see the appendix)
2. Established ARCA policy and procedures for industry and third party complaints handling.
3. Set minimum standards, policy and procedures for ARCA members to handle consumer complaints.
4. Established the process for identifying and resolving complaints.
5. Agreed the process for reviewing and referring unresolved systemic industry complaints to the ARCA for guidance and resolution.

Industry roll out

ARCA members have approved the complaint handling policy as detailed in the appendix and have all established complaint handling single points of contact to manage credit reporting complaints.

The ARCA recommends the task force develops the process for launching this complaint handling procedure to all credit providers and CRA as an integral requirement of the Code of Conduct

ARCA – Internal Dispute Resolution Guidelines

1.0 Introduction

The ARCA Internal Dispute Resolution (IDR) Guideline policies and procedures comply with the Essential Elements of the Australian Standard AS4269-1995 for Complaints Handling, and the minimum requirements of the Australian Securities and Investments Commission (ASIC) Policy Statement PS165 (as amended). The IDR guideline policies and procedures also comply with international standard on complaint handling, Quality Management - Customer Satisfaction - Guidelines for Complaints Handling in *Organisations* (ISO 10002) as well as the complaints handling policies as required under the Codes it must comply with. This guideline is to ensure there is a consistency with existing ARCA member complaint handling and dispute policies and existing industry standards.

2.0 Appointment of Complaints Contact Persons

ARCA members are to appoint on a full or part time basis a 'Customer Resolutions Manager' (or other job description term used within the member organisation) who meet the following criteria:

- have, or are deemed to have, sufficient experience in relation to the business of ARCA so as to adequately understand the Customer's complaint;
- have received adequate training and/or have satisfactory experience in complaint handling and dispute resolution;
- are able to deal with Customer complaints in a fair and reasonable manner;
- have been given written authority from the ARCA member to make decisions about the Customer's complaint. This written authority is to be contained within their job description (e.g. a Key Result Indicator); and
- are committed to ensuring that the ARCA member delivers a high quality of service to its Customers.

If required, the Customer Resolutions Officer(s) must attend training in complaint handling and dispute resolution. Such training may be ongoing, as required from time to time.

3.0 Informing relevant parties of the IDR Procedures

All ARCA member staff must be informed of the names and contact details of their Customer Resolutions Officer(s) in writing. This must include:

- Staff training which outlines the role and obligations of the Customer Resolutions Officers, including their contact details.
- Procedures for IDR within ARCA members, including:

- How Customer feedback may be received, i.e. in person, in writing, by telephone, by facsimile or e-mail etc.
- How to transfer a Customer who has a complaint to the Customer Resolutions Officer(s), or how to refer the Customer feedback to the Customer Resolutions Officers.
- What Customer details to record when logging a complaint (Customer's name, telephone number, additional contact details, description of the product or transaction to which the Customer's complaint relates).

4.0 IDR Procedures

4.1 Many complaints are caused by confusion or misunderstanding, which can often be resolved within 24 hours. It is preferable if complaints can be resolved at the first point of contact, because it is more efficient and cost-effective, and helps to preserve the Customer relationship.

4.2 The first point of contact must report the details of the complaint (including details about the resolution of the complaint, if any) to a Customer Resolutions Officer. The Customer Resolutions Officer must enter the details of the complaint into an Issues Log.

If the complaint is to be investigated and resolved by the Customer Resolutions Officer, the first point of contact must provide the Customer with the name and contact number of the Customer Resolutions Officer.

4.3 The Customer Resolutions Officer must document the complaint using the Issues Log (and continue to update the Issues Log with the progress of the complaint resolution until the complaint is resolved or closed). They must also provide such assistance to the Customer as necessary in the circumstances to enable that Customer to make a complaint.

4.4 The Customer Resolutions Officer must make best efforts to resolve or respond to the complaint within 5 working days.

4.5 If the customer asks the ARCA member in writing to resolve the complaint or requests a written response to the complaint, the Customer Resolutions Officer must, within 30 days:

- complete their investigation and write to the Customer with the outcome of the investigation; or
- advise the Customer of the need for more time to complete the investigation.

4.6 If the Customer Resolutions Officer is unable to resolve the complaint within 30 days, they must:

- inform the Customer of the reasons for the delay;
- provide the Customer with monthly updates on the progress of the dispute; and

- specify a date when a decision can reasonably be expected.

The only exception to the above is if the Customer Resolutions Officer is waiting for a response from the Customer, which they have told the Customer they require.

In any case, the Customer Resolutions Officer must inform the Customer of their right to refer the matter to the relevant External Dispute Resolution Scheme e.g. the Banking and Financial Services Ombudsman (BFSO) or Telecommunications Industry Ombudsman (TIO) Schemes.

- 4.7 In resolving the complaint, the Customer Resolutions Officer must:
- accept the complaint and, where appropriate, offer redress; or
 - offer redress without accepting the complaint; or
 - reject the complaint with reasons.
- 4.8 Generally, remedies should be fair and reasonable and may be non-financial as well as, or instead of, financial. Where a financial remedy is considered to be appropriate, the aim should be to provide fair compensation. As a minimum, compensation should be given for any direct loss or damage caused as a result of a breach of ARCA member obligations to the Customer. When determining the appropriate remedy and the extent of loss or damage, the Customer Resolutions Officer should consider relevant legal principles, relevant codes of conduct, concepts of fairness and relevant industry best practice.

When resolving complaints, the Customer Resolutions Officer may seek input from senior management of the ARCA member.

When providing a written response to a Customer complaint, the ARCA member must give reasons for reaching a particular decision regarding the complaint. The response must adequately address the issues raised by the Customer and, where practicable, must refer to applicable provisions in legislation, codes of conduct, standards or procedures.

Senior management of the ARCA member and/or the board may determine the maximum amounts of remuneration (ex-gratia or otherwise) which Customer Resolutions Officers are permitted to authorise (in order to resolve a Customer complaint) without prior approval from the Board. If such maximum amounts are established, then the Customer Resolutions Officers must be informed in writing of such limits.

- 4.9 A Customer's complaint must not be investigated by a Customer Resolutions Officer who is involved in the subject matter of the complaint. Such complaints must be managed by staff senior to the Customer Resolutions Officer.

- 4.10 The Customer Resolutions Officers must periodically report the nature and outcomes of ARCA member IDR Process to Senior Management as directed from time to time. This may assist Senior Management and nominated risk partners to identify compliance issues or risks. In any case, quarterly reports must be submitted to the Executive Management Committee +/- Board
- 4.11 ARCA members should classify complaints according to the particular provision of the relevant Code or legislation alleged by the Customer to have been breached.
- 4.12 ARCA members must make information about Customer Complaints available to the Australian Securities and Investments Commission (ASIC), so long as this is permitted by the Customer privacy consents and authorities held and with regard to the ARCA member policy from time to time.

5.0 Issues Log

- 5.1 The Issues Log must be designed and maintained in a manner such that all ARCA members will be able to analyse the information contained in the Issues Log according to:
- type of complainant;
 - subject of complaint;
 - outcome of complaint;
 - timeliness of response.
- 5.2 In order assist with the identification of systemic and recurring problems, as far as practicable and relevant the Customer Resolutions Officers must, under the “subject of complaint” section of the Issues Log, classify complaints according to the particular provision of the Code or legislation alleged by the Customer to have been breached.
- 5.3 The Senior Customer Resolutions Officer must review the Issues Log quarterly in order to identify any systemic issues that need to be reported to relevant parties. Such reviews may (without limitation) identify the need for:
- additional resources
 - additional staff training
 - service improvements
 - review of the IDR Process

6.0 Referral of Customer to External Dispute Resolution Scheme (e.g. BFSO or TIO)

The BFSO, TIO and other external dispute resolution (EDR) schemes offer free help to individual and small business customers who are unable to resolve a dispute with the member of the EDR.

The EDR scheme is fully funded by all participating members but operates independently of them. This independence is ensured by the board of the EDR, generally consisting of equal numbers of consumer and industry representatives.

The EDR scheme offers assistance to customers who have exhausted the IDR procedures of ARCA members, in cases that involve claims up to \$250,000 (or other maximum determined by the EDR from time to time) and otherwise come within the Ombudsman's Terms of Reference.

The ARCA member is bound by whatever the EDR decides. The Customer, however, is not bound, and can ultimately take the matter to court if they wish.

7.0 Monitoring and Reporting

- 7.1 The Issues Log must be reviewed quarterly (refer Item 5.3), or more frequently if required.
- 7.2 The Customer Resolutions Officer, in conjunction with senior management of the ARCA member must identify all Customer complaints that arise from issues with the services (including service standards). The ARCA member must review this report for systemic issues with the objective to minimise the further occurrence of such complaints.
- 7.3 The IDR Procedures must be reviewed every two to three years to ensure that they are:
 - operating effectively and efficiently and are meeting the needs of the business; and
 - comply with current Australian Standards, legislative requirements, industry Codes and industry best practices.

Code of Conduct of The Australasian Retail Credit Association

This Code of Conduct has been prepared by ARCA members to reflect the operation of the Privacy Act 1998 and the methodology by which industry would self-regulate within that framework. The Code is intended to become binding on credit providers through contractual arrangements with credit reporting agencies. The sanctions provided in this Code of Conduct are currently limited. At this point, ARCA acts primarily as a standard setting body. ARCA is in the process of seeking ACCC authorisation of the Code and, in its authorised form, ARCA will be able to impose stronger sanctions on credit providers for breach of the Code without contravening the Trade Practices Act. The standards set in this Code reflect an industry consensus position and, as such, may be useful in the formation of a code under the auspices of the Office of the Privacy Commissioner as proposed in ALRC DP72

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1 INTRODUCTION

1.1 The Australasian Retail Credit Association

- 1.1.1 **The Australasian Retail Credit Association (ARCA)** has been established to provide a forum for senior credit executives from lenders and Credit Reporting Agencies in Australia and New Zealand, to examine retail credit issues, resolve technical, quality and new product data issues, develop policies for the betterment of the retail credit industry within existing regulatory regimes, and, where appropriate, advocate for legislative change to assist in achieving these outcomes.

In summary, the ARCA seeks to set industry standards for retail credit and, in particular, credit reporting and Data sharing.

- 1.1.2 The governing principle of the ARCA is that Data is shared only for the prevention of over-commitment, bad debt and fraud, for supporting debt recovery and debtor tracing with the aim of promoting responsible lending, and establishing a benchmark for industry best practice. This is consistent with the requirements of the Privacy Act.

1.2 Participants

- 1.2.1 **Credit Reporting Agencies (CRAs)**, which are currently responsible for managing Shared Data. CRAs have agreed to incorporate the Principles into their terms and conditions to facilitate the adoption of industry best practice by Data Sharers.
- 1.2.2 **Data Sharers**, which currently provide Shared Data to the CRAs. The Data Sharer Participants undertake to contribute all Data from their Consumer Credit Portfolios.

1.3 Code of Conduct

- 1.3.1 The ARCA has developed the Code of Conduct for the reciprocal sharing and use of Data, and has established the Principles to provide best practice standards.
- 1.3.2 The Principles cover the supply of, and access to, credit performance Data and the recording and sharing of credit Search Data. Under the Code of Conduct, the ARCA will develop the process for sharing Data, products, definitions and compliance policies.
- 1.3.3 The ARCA has developed the Code of Conduct to:
- establish a benchmark for best practice in credit management;

- promote responsible lending;
- comply with current regulatory requirements;
- protect authorised users of Shared Data;
- protect the privacy rights and general legal rights of Individuals; and
- provide an avenue for Individuals to address grievances.

1.3.4 The ARCA's objective is to enhance the confidence of stakeholders in the consumer credit reporting process, through improving the standards for Data sharing.

1.3.5 The Code of Conduct has been produced after consultation with and agreement from existing Data Sharer Members. The Code of Conduct is consistent with applicable laws and regulatory requirements, including the Privacy Act, Trade Practices Act 1974 and corresponding state fair trading legislation, and relevant industry codes.

1.3.6 The ARCA seeks to implement the Code of Conduct by June 2008. The Code of Conduct will continue to be further developed by the ARCA, being updated from time to time as industry best practice evolves and so as to comply with legislative requirements.

1.4 Adoption of the Code of Conduct

1.4.1 The Members each undertake to adopt the standards set out in the Code of Conduct in relation to the sharing of Data after its implementation. For existing Shared Data, material threshold(s) will be established for compliance.

1.5 Comments

1.5.1 Interested stakeholders are invited to submit their comments on the Code of Conduct. Comments can be forwarded to:

Stephen Balme
ARCA General Manager
sbalme@bigpond.net.au

2 THE PRINCIPLES

2.1 Governing Principle

- 2.1.1 The Code of Conduct is designed to establish a benchmark for industry best practice within the existing regulatory regimes. Data is shared only for the prevention of over-commitment, bad debt and fraud, and supporting debt recovery, debtor tracing and other uses in accordance with the law, with the aim of promoting responsible lending.
- 2.1.2 The Code of Conduct is recognised by industry as representing best practice in Data sharing standards and supporting the aim of more responsible lending in the interests of the Consumer.

2.2 General Principles of Data Sharing

- 2.2.1 Data provided for sharing purposes must meet legal and regulatory requirements, as well as voluntary codes of practice, before provision and, once in use, Data Sharers must only use Data for the purposes for which consent has been given in the required form.
- 2.2.2 Data will be shared on the principle that Data Sharers contribute all Data on their Consumer Credit Portfolios.
- 2.2.3 Data may only be used or made available by CRAs in ways permitted by law and the Principles.
- 2.2.4 Data Sharers, CRAs and their agents must take reasonable steps to ensure the accuracy, security, timeliness and validity of the Data they are providing.

2.3 Uses of Shared Data

- 2.3.1 Data Sharers must not use Shared Data for marketing purposes, as prohibited by the Privacy Act.
- 2.3.2 The use of aggregated Adverse Risk Indicators and the filtering out of bad risks from an Existing Customer list, including prospect lists, is permitted.

2.4 Adherence to the Principles

- 2.4.1 Data Sharers and CRAs have a responsibility to perform regular monitoring to ensure compliance with the Principles and the quality, completeness and accuracy of the Data supplied.

- 2.4.2 Data Sharers, CRAs and any other institutions using Data must nominate a point of contact within their institutions to manage customer inquiries and/or complaints, and establish internal complaint handling processes that, as a minimum, comply with applicable industry standards such as those in the Telecommunications, Privacy or Banking industries.
- 2.4.3 In the event an institution is unable to manage a complaint to the satisfaction of the complainant, the institution must advise the complainant of external dispute resolution processes, including the option to contact the Office of the Privacy Commissioner, relevant regulators and Ombudsman schemes.

3 ROLES AND IMPLEMENTATION

3.1 Roles of the Participants

3.1.1 The ARCA has established a council to review, determine, publish and support policy and procedural matters (the **Council**).

3.1.2 The current members of the Council are as follows:

ABACUS
American Express
ANZ
Bank of Queensland
Bank West
Citibank
Commonwealth Bank
Dun & Bradstreet
GE Money
HSBC
NAB
Optus
St George
Telecom New Zealand
Telstra
Veda Advantage
Vodafone Australia
Westpac

- 3.1.3 Non-Council Members will be able to access policy and procedures through a business advisory group that will, in time, include a website where policies, procedures and general information are available for input and review.
- 3.1.4 In general it will be the responsibility of the Council's CRA Members to communicate with Data Sharers to assist comprehension, support and compliance with the Principles, Code of Conduct and the ARCA's general policies and procedures.

3.2 Implementation of the Principles

- 3.2.1 CRAs will ensure that all Data Sharers that utilise and subscribe to Shared Data will undertake to abide by the Principles. Contracts between CRAs and Data Sharers will reflect the CRA obligations under the Principles, and CRAs will provide Data to Data Sharers only in accordance with the Principles.
- 3.2.2 CRA products must be used in accordance with the Principles and must not be developed from Shared Data where an identifiable single Data Sharer represents 20% or more of the sample, unless the consent of that Data Sharer is first obtained in writing.
- 3.2.3 Data Sharers must ensure compliance with the Principles including, but not limited to, implementation processes and procedures that reflect the Principles, internal audit checks to determine compliance and training of staff.
- 3.2.4 Within each Data Sharer it is expected that training on the Principles will be undertaken within the following departments, as a minimum:
- Credit;
 - Marketing (for credit purposes);
 - Product Management;
 - Operations and Customer Service;
 - Collections;
 - Legal & Compliance; and
 - Audit.
- 3.2.5 The Principles will be implemented and managed in accordance with this Code of Conduct.

- 3.2.6 This is the complete statement of the agreed Code of Conduct. Any amendments will be approved by the ARCA and published accordingly.

4 MAINTAINING DATA QUALITY

4.1 General rules of Data submissions

- 4.1.1 The Data Sharers will ensure that, in addition to being Privacy Act compliant, all Data supplied to a CRA will be submitted to the CRA only after the Data Sharer has tested that it complies with best practice, that is, after it is determined that:
- the Data accords with the ARCA definitions;
 - the Data is accurate and complete;
 - generally accepted standards have been used to verify the identity of the Data subject; and
 - the Data complies with agreed Shared Data standards, formats and frequency.
- 4.1.2 The Data Sharer must share default Data in respect of all consumer accounts in their Consumer Credit Portfolios, as defined by CRA terms and conditions.
- 4.1.3 The Data Sharers must demonstrate that they adhere to any customer consents required by the Privacy Act, the National Privacy Principles and other relevant legislation if a complaint is made and a CRA or the ARCA reasonably request that they do so.

4.2 Data quality measures– CRA Obligations

- 4.2.1 Each CRA should undertake that Shared Data is:
- properly and accurately recorded, maintained, collated, synthesised and/or processed in a timely manner;
 - protected against loss (including adequate backup and disaster recovery processes); and
 - protected against unauthorised access, use, modification or disclosure.
- 4.2.2 Each CRA should:
- establish controls and procedures to be applied when a Data Sharer or Consumer seeks access to a Credit Report;
 - establish procedures to maximise match rates, minimise duplicates and produce performance reports;

- maintain logs of all accesses, amendments and audit trails;
- review, on a regular basis, patterns of usage of Shared Data with a view to detecting and investigating any unusual or irregular patterns of access or use;
- develop operational guidelines to be applied in relation to improper use or access of Shared Data by any party
- ensure that Shared Data is retained and displayed for the relevant periods; and
- prepare specifications for the provision of Data by Data Sharers.

4.2.3 Shared Data may be used by a Data Sharer for the development of Risk Scorecards, behavioural or predictive statistical models and other models from time-to-time, provided that the identity of a Consumer or Data Sharer is not revealed. CRA Risk Scorecards must not be developed from Shared Data where an identifiable single Data Sharer represents 20% or more of the sample on which the Risk Scorecard is developed, unless the consent of that Data Sharer is first obtained in writing. The CRAs will use best endeavours to certify compliance with this practice.

4.2.4 The CRAs are responsible for the management of Data once it is received from Data Sharers and will establish procedures for monitoring the accuracy and completeness of the Data submitted to them.

4.3 Data quality measures – Data Sharer Obligations

4.3.1 The Data Sharers are responsible for the accuracy of the Data supplied to the CRAs.

4.3.2 A Data Sharer will establish procedures to monitor the accuracy and completeness of the Data submitted to the CRAs.

4.3.3 Data Sharers will randomly compare extracts of Shared Data sent to the CRAs with accounting system Data to ensure accuracy and completeness.

4.3.4 A Data Sharer should also take measures to safeguard the security of Shared Data provided to and received from the CRAs.

5 DISPUTE HANDLING

5.1 Consumer Complaints

5.1.1 The concepts of transparency and accountability underpin the Code of Conduct.

5.1.2 The ARCA recognises that consumer complaints will be dealt with as set out in Section 5 of this Code of Conduct.

5.1.3 Non-compliance with the Code of Conduct should be reported to either of the following CRAs:

Veda Advantage	Dun and Bradstreet
Level 5	PO Box 7405
90 Arthur Street	St Kilda Road
NORTH SYDNEY NSW 2000	MELBOURNE VIC 3000
Attention:	Attention:

5.1.4 Each Member will have internal dispute resolution (**IDR**) policies and procedures that comply with the Essential Elements of the Australian Standard AS4269-1995 for Complaints Handling, and the minimum requirements of the Australian Securities and Investments Commission (ASIC) Policy Statement PS 165 (as amended). IDR policies and procedures must also comply with international standards on complaint handling, Quality Management – Customer Satisfaction – Guidelines for Complaints Handling in Organisations (ISO 10002), as well as the complaints handling policies required under any other Codes of Conduct it must comply with.

5.1.5 Additionally, each Member will adopt a point of contact to manage Consumer inquiries about access to their Credit Report File to further ensure compliance to the complaint handling standards.

5.1.6 Where a Consumer wishes to query their Credit Report File they may either contact the CRA or the Data Sharer with which they have a relationship. Either the CRA or Data Sharer will refer the Consumer to the agreed point of contact for the Data Sharer. The Data Sharer will investigate the issue and update the Credit Report File where necessary.

5.1.7 The IDR policies of the Members will make best efforts to resolve or respond to customer complaints within 5 working days. If the IDR policy of a Member is unable to resolve the complaint within 30 days the Member will:-

- inform the Customer of the reasons for the delay;

- provide the Customer with regular updates on the progress of the complaint or dispute; and
 - specify a date when a decision can reasonably be expected.
- 5.1.8 The only exception to the above is if the CRA or Data Sharer is waiting for a response from the Customer, which they have advised the Customer they require.
- 5.1.9 In all cases, the CRA and/or Data Sharer will inform the Customer of their right to refer the matter to the relevant external dispute resolution scheme, e.g. the Banking and Financial Services Ombudsman (BFSO) or Telecommunications Industry Ombudsman (TIO) schemes.

6 CODE MONITORING

6.1 Monitoring Compliance

- 6.1.1 Each of the CRAs, in their capacity as CRAs, will have systems and processes in place to manage and monitor compliance with the Code of Conduct.
- 6.1.2 The CRAs, through this process, are responsible for ensuring that the Data Sharers comply with the Code of Conduct.
- 6.1.3 When a CRA is notified of non-compliance with the Code of Conduct it will investigate the alleged non-compliance. The Data Sharer Members agree to co-operate with any investigation by a CRA.
- 6.1.4 A CRA investigating alleged non-compliance with the Code of Conduct will provide the Member with an opportunity to respond. If the CRA determines that the Member has not complied with the Code of Conduct, it will agree on a course of corrective action with the Member and timeframes for the implementation of that corrective action, which may include:
- a compliance audit to be undertaken;
 - corrective advertising; and/or
 - publication of the non-compliance.
- 6.1.5 Data Sharers accept the responsibility of adherence to and the auditing of their compliance with the Code of Conduct. All Data Sharers will provide an annual statement of compliance with the Compliance Policies to a CRA Member.

7 ENFORCEMENT AND SANCTIONS

7.1 Establishment and role of the ACRA Compliance Committee

- 7.1.1 The ARCA will establish a Compliance Committee, elected by the Council. The Committee will include the independent ARCA General Manager as an independent member.
- 7.1.2 The Compliance Committee will operate:
- to develop the Compliance Policies in accordance with the Code of Conduct;
 - to review, develop and propose improvements to the ARCA Compliance Policies; and
 - to review, wherever notified by the CRAs, non-compliance or alleged non-compliance with ARCA Compliance Policies.
- 7.1.3 The Compliance Committee will monitor reports from the CRAs and develop policy responses and/or inform the appropriate regulatory body where a potential systemic compliance matter has been identified.
- 7.1.4 Where the Compliance Committee considers that a Member may not have complied with the Code of Conduct, the Compliance Committee may write to the Member reminding them of the existence of the Code of Conduct and request compliance. The Compliance Committee may also write to the relevant regulatory body for further action.
- 7.1.5 Where the Compliance Committee is aware that a non-Member is not acting in accordance with the Code of Conduct, they may bring the existence of the ARCA and the Code of Conduct to the non-Member's attention.

8 INTERPRETATION AND DEFINITIONS

8.1 Interpretation

- 8.1.1 The introduction of the Privacy Act in Australia resulted in the clear differentiation between the provision of consumer credit and commercial credit. 'Consumer credit' is defined under the Privacy Act as credit obtained for family, domestic and household purposes. 'Commercial credit' is defined as credit obtained for business purposes. This type of credit includes credit sought by companies and businesses, as well as company directors, sole traders, partners and business proprietors. Consumer credit is fully regulated under the Privacy Act, however commercial credit is not. As a result, Australian CRA Data held in respect of Individuals is split into two distinct 'files' – consumer files and commercial files, where the activities regarding the relevant type of credit are recorded separately. The Data contained in these files is generally referred to as credit performance data.
- 8.1.2 The Code of Conduct is concerned with conduct surrounding credit Data in respect of an Individual, which may relate to either consumer credit or commercial credit, or both.

8.2 Definitions

Adverse Risk Indicator	means an aggregated or individual Data item that can be used to identify higher risk prospective or Existing Customers. It may be used to remove Consumers from a target list of either New Prospects or Existing Customers, but not for personalised target marketing.
ARCA	means the Australasian Retail Credit Association.
Code of Conduct	means this code of conduct, produced by the ARCA.
Compliance Committee	means the compliance committee elected by the Council in accordance with section 7.1.
Compliance Policies	means the compliance policies established by the Compliance Committee, relating to the Code of Conduct.
Consumer	means the type of Individual identified by this term in the definition of Individual.
Consumer Credit Portfolios	include, in relation to Individuals, the following: <ul style="list-style-type: none">• continuing credit contracts (such as credit cards or line

	<p>of credits);</p> <ul style="list-style-type: none"> • various property mortgage products (including home loans, investment loans, equity loans); • overdrafts; • personal loans; • equipment hire, rental and leasing products; • margin lending; and • telecommunications and utilities credit. <p>As Data Sharers innovate and bring new products to market, these will be included within this definition.</p>
Council	means the council established by the ARCA to review, determine, publish and support policy and procedural matters.
CRA	means credit reporting agency, an organisation responsible for managing Shared Data.
Credit Report	<p>means, as defined in the Privacy Act, any record or information, whether in a written, oral or other form, that:</p> <ul style="list-style-type: none"> (a) is being or has been prepared by a CRA; and (b) has any bearing on an Individual's: <ul style="list-style-type: none"> (i) eligibility to be provided with credit; (ii) history in relation to credit; or (iii) capacity to repay credit; and (c) is used, has been used or has the capacity to be used for the purpose of serving as a factor in establishing an Individual's eligibility for credit.
Credit Report File	means the file containing the information in an Individual's Credit Report.
Customer	means the type of Individual identified by this term in the definition of Individual.
Data	means information and data.

Data Sharers	means those institutions who share Data with the CRAs in accordance with the Privacy Act.
IDR	means internal dispute resolution.
Individuals	<p>means the following types of individuals:</p> <p>Consumers: A named individual transacting in a personal capacity (for consumer or commercial credit purposes where applicable, e.g. Director's Guarantees).</p> <p>Existing Customers: A Consumer who has a credit, telecommunications or utilities account with a Data Sharer, or who has held and closed a credit, telecommunications or utilities account with a Data Sharer.</p> <p>Financial Units: Two or more Consumers that have joint financial dependency. Links will normally be created by joint applications or accounts, or by declarations by one or other of the parties.</p> <p>New Applicants: A Consumer, not an Existing Customer, who has applied for any form of credit, telecommunications or utilities account with a financial or service providing Data Sharer.</p> <p>New Prospects: A Consumer who is not an Existing Customer or a new applicant and who has been identified as a potential customer of a Data Sharer.</p>
Members	means those CRAs and Data Sharers that are members of the ARCA.
Participants	means those institutions which implement the Code of Conduct, including Members and non-Members of the ARCA.
Principles	means the principles developed by the ARCA, which are contained within the Code of Conduct.
Privacy Act	means the <i>Privacy Act</i> 1988 (Cth).
Risk Scorecard	means a scorecard that provides a score which summarises historical credit application Data into a single risk index that can be used by a lender.
Search Data	means Data which results from searches that may be conducted for a wide variety of authorised purposes. The purpose of a search will determine the amount of Data to be supplied and the type of enquiry record recorded. Search Data is associated with:

	<ul style="list-style-type: none"> • the recording of searches on shared credit databases held at CRAs; and • Data supplied in the course of a search.
Shared Data	means Data which is provided to a CRA by a Data Sharer and, in some instances, reciprocally shared between Data Sharers and CRAs, in accordance with the Privacy Act.

SCHEDULE 1

1 TYPES OF DATA

- 1.1.1 **Negative Data:** All delinquent and default credit performance Data once it becomes more than 90 days past due for debts that are a minimum of A\$100 when originally listed.
- 1.1.2 **Default:** Consumer defaults are filed according to the Code of Conduct and Part IIIA of the Privacy Act, and the Credit Reporting Code of Conduct.
- 1.1.3 The relationship with the Individual is deemed by the lender in a standard business relationship to have broken down. Australian Privacy regulations allow reporting of such defaults to occur after they reach 60 days in arrears. However, to achieve a more consistent approach the ARCA will adopt an approach similar to the Basel II default definition of 90 days for accounts which are (or have been) in arrears.
- 1.1.4 If a Data Sharer exercises their right to share this Data there must be an amount greater than A\$100 owing on the account and collection action must have commenced.
- 1.1.5 Credit related Data is held on file for 5 years, except for Bankruptcies and Serious Credit Infringements, which remain on the file for 7 years. Default listings are only removed after an investigation carried out by a CRA establishes conclusively that the entry was made in error.

2 PROPOSED DEFAULT SHARING CRITERIA [TO BE RESOLVED IN TERMS OF TELCOS/NON-TELCOS FOR FINAL APPLICATION]

2.1 Agreed Terms

- 2.1.1 Generally, an account will be considered to be in default for the purpose of reporting to the CRAs when it is more than a number of days (to be specified) past due, or satisfies such other standard as may be published from time to time and differentiated according to the product/portfolio (**Other Standard**).
- 2.1.2 The Data Sharer must have appropriate disclosure notices in its customer documentation to advise the Individual that they may be listed with a CRA if they to be reported as in default.
- 2.1.3 Default reporting will not be required if there is financial hardship or a dispute in relation to the particular account, being dealt with by the Data Sharer according to its industry compliant internal hardship and IDR policies.

- 2.1.4 The original default balance amount must be at least A\$100.
- 2.1.5 The mandatory fields for default reporting are: date of default, type of account, original balance amount, current status and reference number.

ADDENDUM TO THE ARCA SUBMISSION, POINTS OF CLARIFICATION

Since lodging its submission on 30 November ARCA members have provided some feedback as to items where the wording, on reflection, may not accurately capture the spirit on the submission. Those few items are addressed below.

In addition, one factual error has been identified and the ALRC has asked ARCA to provide some further information in response to proposals 50-10 and 55-7, and that information is also provided in this supplementary submission.

Error

On page 17 paragraph 45 the reference to 11,000 should be to 1,100. We note this still represents a statistically significant sample.

Points of clarification

1 ARCA membership

Since inception Optus and Telstra have been members of ARCA. During the preparation of the submission Optus took the view it could conduct its regulatory affairs without the benefit of ARCA membership and resigned. Telstra is currently reconciling its position as a member of ARCA with its involvement in telecommunications specific forums covering credit issues. This clarifies the position stated on page 5 paragraph 5(a) (iii).

2 Information to be included in Credit Reporting Information

This material clarifies the proposed regulation on page 23. Proposal 50.5 covers in part information to be included in Credit Reporting information and proposal 51.1 covers proposed allowable content. The ARCA submission responds to both these proposals and suggests in its table of proposed definitions a definition of credit reporting information.

Generally, ARCA supports the need for Regulation to be clear about the outcomes to be achieved and takes the view that matters of detail be left to the Code of Conduct.

In the specific case of allowable data content, ARCA would support a recommendation by the ALRC that the initial Code of Conduct, must exclude account balance data. This approach, in conjunction with ARCA recommendations about how the code would be developed (collaboratively between industry and non industry), administered and governed with supervision by the OPC, is considered crucial to ensure sufficient flexibility is maintained to meet the needs of a more rapidly changing credit environment.

3 Question 53-1

This document attaches to and forms part of the ARCA response to ALRC DP72 and must be construed in conjunction with that document

This clarifies the position stated on page 50. ARCA wants to preserve the current position under the Privacy Act, and need to clarify the wish to preserve the current situation, as mortgage and trade insurers are currently able to access the credit reporting agencies directly today, but are excluded as the question is worded. This access to CRAs reflects commercial practice.

4 Proposal 55-3 transparency in credit scoring

This clarifies the position expressed on page 59. ARCA wishes to emphasise that while it agrees with the need for transparency of reporting to consumers. However, the nature of the use and development in scorecards in Australia means the US model, based on a single nationwide score, is inappropriate here. Hence ARCA disagrees with the detail of the ALRC proposal.

5 Proposals 50-5 and 53-3 and the interface with direct marketing

This clarifies the position as put in the draft definition on page 64 and the response on page 38. The ARCA submission responds to both of these proposals specifically and seeks to provide assistance as to how relevant regulations may be implemented in the 3 tier table and proposed definitions. It is the intention of the ALRC that the drafting suggestions for the definitions of Direct Marketing and Credit Reporting information work together to ensure that the use of the centrally held credit information can not be used as a marketing database for the purpose of developing lists for solicitation. It is also not the intention that the information held at each institution about the accounts that their customers hold with them be precluded from use in marketing. The intention is to neither expand nor reduce the personal information available to credit providers from which to develop lists to direct market their products as a result of the introduction of more comprehensive credit reporting.

Additional information requested by the ALRC

6 Proposal 50-10 – privacy and the commercial lending interface

ARCA is of the view that privacy protection in credit reporting is appropriately limited to the individual so that commercial lending is excluded from the ambit of privacy regulation for reasons including the following:

- (a) Individual commercial information would already be covered by UPPs and regulated as personal information
- (b) If individual commercial information (ie on sole traders and unincorporated partners) is included in credit reporting information then it is subject to additional requirements including:
 - (i) Collection – would need to align with the primary purpose of collection ARCA has suggested in regulations.
 - (ii) Access and correction – commercial credit providers would need to be members of EDR schemes, and would need to

provide additional forms of statutory notice. Dispute resolution would be subject to much tighter standards being proposed for consumer credit

- (c) The undesirable consequences of this would be:
- (i) Significant additional compliance costs for the commercial credit reporting sector (access and correction; re-tooled business processes)
 - (ii) Significant additional compliance costs for commercial credit providers (EDR, additional statutory notice requirements)
 - (iii) Different treatment of commercial debtors who are superficially similar: a sole trader's record would have additional protection; if the same or similar business were incorporated as an association or a company, even if it were smaller, it would not have the protection
 - (iv) Departure from the general consumer protection principle (FSR and UCCC) that people in business have less need of higher standards of protection (including disclosure)
 - (v) The consumer credit market is very different from the trade and commercial credit markets, and the primary purpose is likely to unreasonably constrain credit reporting in commercial contexts.

7 Proposal 55-7 international experience in credit repair

It is noted that reference to international experience covers jurisdictions with a variety of underlying regimes, hence their responses to credit repair reflect those various regimes.

Examples of the commercial services offered by credit repairers can be found at the following links.

<http://www.credit-repair-blog.net/>

<http://www.consumerbadcreditguide.com/creditfileinfoireland.html>

<http://www.consumerbadcreditguide.com/creditreportdispute.html>

Credit repair involves the technique of 'flooding' the credit bureau with challenges to legitimate data, other methods include a number of elements where borrowers are encouraged to only agree to pay if the lender agree to remove (factually accurate) negative data. Some lenders obviously agree to this in an effort to obtain the money.

Proposal 54-4 suggests an obligation for credit providers and credit reporting agencies to take reasonable steps to ensure that credit reporting information is accurate, up-to-date, complete and not misleading. ARCA supports this proposal and suggests 'only inaccurate data should be removed. Removal of default data should not be 'for sale'. This sort of

situation perverts the productiveness of credit data - undermining the very capability to lend more responsibly.

In the US, there is no 'law' that says a credit provider must report in order to use the credit bureau. There are also no laws that state that factually accurate information must stay.

In Ireland the law is different. There it is law that credit providers maintain a complete and accurate record.

In regard to the timeline of 30 days, this is the situation in the USA. While ARCA supports the move to a 30 day timeframe as set out in its response to proposal 55-7, it is concerned that the assumption of "consumer innocence" and deletion of factually accurate information in the face of credit repair may impede the credit provider or credit reporting agency's ability to comply with proposal 54-4. Possibly the 30 day framework needs an interface with the external dispute resolution process to ensure no factually accurate data is removed.