



Australian Government

Review of Australia's Credit Reporting Framework

FINAL REPORT, SEPTEMBER | 2024

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Letter of Transmittal

The Hon Mark Dreyfus KC MP
Attorney-General
Parliament House
CANBERRA ACT 2600

The Hon Stephen Jones MP
Assistant Treasurer and Minister for Financial Services
Parliament House
CANBERRA ACT 2600

Dear Attorney-General Dreyfus and Assistant Treasurer Jones,

In accordance with the Review's Terms of Reference, I have assessed the efficiency and effectiveness of Australia's credit reporting framework and in particular the operation of Part IIIA of the *Privacy Act 1988* (Privacy Act) and Part 3-2CA of the *National Consumer Credit Protection Act 2009* (Credit Act) and related provisions.

The Review considered community expectations about the role and function of the credit reporting system and the underpinning framework, including consumer privacy and information security, access to finance, financial hardship support, and other important consumer protections.

The Review also considered the extent to which the credit reporting framework supports the credit industry in meeting its responsible lending obligations, and in promoting competition and innovation.

The Review solicited stakeholder input across a range of matters as outlined in the Issues Paper published in April 2024. The Review team held over 60 meetings with industry associations, credit bureaus, credit providers, consumer representatives, and government agencies. It received 31 written submissions as part of the formal public consultation process, and several supplementary submissions.

There is a paucity of published data on credit reporting, which at times made drawing conclusions difficult. While industry participants have supported the Review by providing some data, much of it was provided on a commercial-in-confidence basis, which has limited the ability of the Review to use this evidence to support its recommendations.

Overall, the stakeholder feedback indicated that credit reporting is a critical and effective pillar of Australia's financial infrastructure but there are several areas where the regulatory framework could be improved.

Credit reporting data flows under the Privacy Act efficiently support the vast majority of major credit products and credit decisions made by Australia's retail credit sector under the Credit Act. Changes to the framework in the last decade introducing comprehensive credit reporting and mandatory supply requirements have helped to further embed industry usage of credit reporting.

Some frictions remain and there are a number of aspects that should be modernised to meet evolving community and industry expectations. The Review finds the following areas should be addressed through regulatory reforms:

- First, that consumer understanding, access, and control over their credit reporting information should be strengthened.
- Second, that the data collected and shared should be modernised to make it more relevant and efficient.
- Third, the legislation and related instruments should be restructured to make it less complex, rigid and prescriptive and allow the details of the regulatory framework to be updated over time as the environment changes.
- Fourth and finally, regulatory oversight and support for the credit reporting framework needs to receive higher priority.

The Review includes 37 recommendations.

Credit reporting is inherently complex due to the need to balance privacy and financial system considerations, and involves a diverse range of participants. Greater flexibility in the primary legislation, subject to clear objectives, would enable the credit reporting framework to support continued modernisation and evolution in the credit industry.

There is also a clear need, based on stakeholder feedback, for stronger and more proactive regulatory oversight of the credit reporting framework, and a shift in focus from historical privacy-focused concerns toward a focus on financial services conduct and consumer credit.

The Review is also recommending changes to the role of the industry-led *Privacy (Credit Reporting) Code 2014* to align more closely with the legal framework and ensure more effective compliance oversight.

It is important to emphasise significant additional focus and resourcing will need to be applied to the credit reporting regulatory framework in order for the Review's recommendations to be successfully implemented.

I would like to thank the members of the Review team from the Attorney-General's Department and the Treasury for their excellent support in conducting this Review.

Yours sincerely,



HEIDI RICHARDS

Independent Reviewer
30 September 2024

Executive Summary

This final report has been delivered to meet the statutory requirement to conduct an independent review of Australia's credit reporting framework (the Review) and provide a report to the responsible ministers by 1 October 2024 (the Report). The Review specifically addresses the legislative provisions in Part IIIA of the *Privacy Act 1988* (Privacy Act) and Part 3-2CA of the *National Consumer Credit Protection Act 2009* (Credit Act). The Terms of Reference for this Review are at **Annexure A**.

The Review has considered the overall efficiency and effectiveness of the legislative framework and the supporting instruments, its regulatory implementation, and the role of the industry code and industry self-regulation at a high level.

In assessing efficiency and effectiveness, the Review has focused on thematic issues and outcomes. It has sought to understand the evolving role of credit reporting in the consumer credit sector and how the regulatory framework supports both consumers and credit providers.

Consultation process

The Review commenced in February 2024 and since then has undertaken a significant stakeholder engagement process that has included more than 60 bilateral meetings with credit providers, credit reporting bodies, consumer groups, industry peak bodies, regulators, and government departments.

In April 2024, the Review released an issues paper with around 50 discussion questions which received 31 submissions (Issues Paper). A list of the 26 stakeholders which made non-confidential submissions is included at **Annexure B**. These submissions are available on the Attorney-General's Department Consultation Hub website.

Stakeholder input on what is working well and what could be improved has helped to define the characteristics of a well-functioning credit reporting system, and to identify a set of reforms that could modernise the framework. This is to ensure Australia's credit reporting framework is fit for purpose into the future.

Overview

Since the last major review of the framework over a decade ago, it has become evident credit reporting is a vital element of Australia's financial system infrastructure. Credit providers now rely on credit checks for most mainstream consumer lending applications, which can now be conducted more quickly than ever before and in many cases entirely electronically.

The legislative provisions in Part IIIA of the Privacy Act have supported centralised collection and sharing of consumer credit reporting data across the credit industry, subject to clear limitations and consumer protections. The more recent changes to the Credit Act have promoted strong uptake of more comprehensive data sharing that is now supporting a competitive lending industry and its ability to meet its responsible lending obligations. Effective credit decisioning is reflected in Australia's

- strong household credit performance over the last decade or more.

The Review found there are significant opportunities to modernise the framework to meet evolving community expectations, improve efficiency, and foster more innovative products and services.

Stakeholders provided a range of views on what is working well and what could be improved. Feedback from both consumer advocacy organisations and industry participants indicates the regulatory framework for credit reporting is complex and opaque. Policy and regulatory attention have been quite limited, and data that could provide insights into how the system is functioning is largely unavailable.

This has left the industry to seek to resolve a variety of technical issues without clear policy direction.

Outcomes of a well-functioning credit reporting framework

The Review found that a well-functioning credit reporting framework would have the following characteristics and outcomes:

Desired outcome: Consumers understand the information on their credit report and how their actions affect it.

Stakeholder experience: Currently, most consumers only engage with credit reporting when they are applying for a loan. It can be cumbersome and time-consuming for a consumer to obtain all of their credit reports. Consumers may not understand how information shows up on their credit report and who has accessed that information. When they find incorrect information, the process to correct data on a credit report can be frustrating and costly to both consumers and credit providers.

Desired outcome: Credit reporting supports fair access to credit and protects vulnerable consumers.

Stakeholder experience: Evidence provided to the Review indicates more detailed information is being made available through 'positive' credit reporting which has generally improved access to credit. Consumers in financial hardship can be identified for further review, without an impact on their credit scores or repayment history. Reporting exemptions have been implemented to help protect people experiencing family and domestic violence. There is scope to ensure that credit reporting practices minimise harm to vulnerable individuals. Consumers with 'thin credit files' or impaired credit histories still face some barriers to accessing credit.

Desired outcome: Credit assessments that consider credit reports are efficient and produce accurate credit decisions.

Stakeholder experience: Credit checks are used as an input for most mainstream credit applications in Australia, such as a credit card or home mortgage. This helps lenders make a thorough assessment of a consumer's ability to afford the requested type and amount of credit. Buy now, pay later (BNPL) and motor vehicle finance are notable coverage gaps that prevent credit reports

from enabling a complete picture of a consumer's financial position. Australia's credit reporting dataset is much more limited than many other countries, which means credit assessments may not be as robust.

Desired outcome: Sensitive credit reporting information is kept secure.

Stakeholder experience: To date, there have not been major data breaches in Australia directly involving credit reporting bureaus, but identity theft, fraud and scams increase the risk that sensitive credit information could be misused. This risk is likely to be increasing, which means robust and enforced information security and operational risk standards for credit reporting entities are critically important.

Desired outcome: The credit reporting framework supports competition and innovation.

Stakeholder experience: Evidence of new entrants such as fintech lenders and risk-based pricing models suggests that comprehensive credit reporting has supported greater competition and product innovation in consumer lending. The credit reporting industry itself remains highly concentrated and some stakeholders feel that industry initiatives are too heavily influenced by large incumbents. Consumers may perceive the credit reporting system as limiting their ability to 'shop around' for different credit offers.

Desired outcome: The regulatory framework is clear, effective and enforced.

Stakeholder experience: An effective credit reporting framework is one where participants have confidence they would be supported by a responsive regulator, there is a clear and flexible regulatory structure, with proactive compliance oversight. Stakeholder feedback indicates this is a key area where the implementation of the credit reporting framework is falling short.

Summary of recommendations

To move Australia's credit reporting framework towards these outcomes, the Review considered numerous suggestions for changes to the credit reporting framework put forward by stakeholders across a wide range of topics. The recommendations set out in this Report reflect those suggestions as well as other research, such as international experience and academic research.

Some of these recommendations would require changes to the primary legislation and subordinate instruments, and others would involve efforts led by industry. These recommendations also address all of the issues referred by the 2021 Independent review of the *Privacy (Credit Reporting) Code 2014* (CR Code) (the 2021 CR Code Review).

The material recommendations are as follows:

Improving the consumer experience

There is a need to improve how consumers interact with the credit reporting system:

- Improving consumer access to credit reports. Industry should be doing more to ensure consumers can access their credit reports easily across different credit bureaus without being marketed credit products that they may not want or need.
- Giving consumers more control when they apply for credit, so that they understand they are authorising a credit provider to access their credit report, and that their credit score will potentially be affected.
- Improving protections in the framework for vulnerable consumers, including those at risk of financial abuse or financial hardship.
- Industry participants should be held to higher standards in responding to consumer requests to correct credit report information and there should be clear criteria and industry guidance governing corrections.
- Enabling consumers to protect themselves from fraud and scams by requesting a freeze or ban on anyone accessing their credit report for as long as they need, but without adversely affecting the legitimate flow of information to credit bureaus.
- Ensuring the regulator has sufficient powers, to combat conduct by credit repair services that undermines the credit reporting framework, or causes consumer harm, and then strengthen these powers if appropriate.

Improving the efficiency, coverage and quality of credit reporting data.

The clear message from stakeholders is that the legislative framework needs to be more responsive to the evolving data needs in the credit reporting system. This means the regulatory structure should have more options for adding and modifying data requirements and removing unnecessary provisions. The Review recommends making changes to some data items in the primary law, but going forward this should be the subject of ongoing review by the regulator, to be incorporated through changes to the regulations and data standards, with appropriate consultation.

- The primary law should include overarching principles to guide future changes to the credit reporting dataset.
- Based on the relatively strong level of voluntary adoption, the Review is not recommending material expansion in mandatory comprehensive credit reporting. The participation of key sectors in credit reporting should be monitored, and if material gaps in coverage of consumer liabilities remain, the legislative framework for mandatory reporting should allow for additional sectors to be included over time.

- There is a strong case based on evidence provided to the Review to include a few additional data items within the framework, notably the outstanding balance for each credit account.
- Some changes to the retention and reporting of historical information would help streamline and simplify the framework and reduce incentives for consumers to correct historical data. This includes limiting the retention of credit report enquiry information to two years (currently five years). Retention of defaults (five years) should be based consistently on the original due date, rather than an arbitrary reporting date.
- Thresholds should be raised to reduce reporting of minor defaults and overdue repayments.

Maintaining a competitive industry subject to high standards.

The credit bureau sector is highly concentrated reflecting the strong network effects inherent in data firms more generally. Therefore, it is important credit bureaus are held to high standards of trust and that the regulatory framework and industry standards encourage broader data sharing and interoperability. Competition among lenders can be strengthened by supporting smaller and newer entrants and improving consumers' ability to 'shop around' for better deals.

- To support consumers' ability to seek quotes for different rates from different lenders, the Review recommends the concept of a 'soft enquiry' be elevated to the primary legislation to provide a clear legal foundation and a consistent approach across the industry. A 'soft' credit check or enquiry would not be disclosed to other credit providers, and cannot be reflected in a consumer's credit score. This contrasts to a 'hard' credit check that would stay on a consumer's credit file for two years.
- The Review recommends the 'Access Seeker' provisions be clarified such that it is not available for indirect use by credit providers to avoid the core consumer protections set out in Part IIIA.
- Credit bureaus (termed 'credit reporting bodies' under the Privacy Act) provide essential financial and economic infrastructure to credit providers and consumers, and should be subject to modern licensing arrangements commensurate with other key participants in the financial services sector.¹

Reforming the regulatory structure to improve accountability and flexibility.

The recommended improvements addressing consumer outcomes, data items and industry competition, are incremental changes that by themselves are not sufficient to support the ongoing evolution of the credit reporting system. To better allow for the future evolution of credit reporting, the Review recommends the following reforms to the legislative structure and regulatory responsibilities:

- Enabling a more principles-based legislative framework by setting out modern objectives for the credit reporting framework, and generally moving matters of detail into regulations so that they can be updated when needed.

¹ The common term 'credit bureau' generally encompasses the defined legal term 'credit reporting body' under the Privacy Act, as well as commercial credit reporting services. Both terms are used in this Report depending on context.

- Uplifting key definitions and obligations of industry participants from the CR Code into the regulations or primary law as appropriate, and recasting the industry-drafted CR Code as a consumer-facing industry code-of-conduct.
- Establishing a more proactive regulatory implementation and compliance regime by:
 - Considering the most effective allocation of regulator accountabilities, including whether to transfer compliance responsibility for credit licensees to their primary regulator (Australian Securities and Investments Commission (ASIC)) and a more formalised co-regulatory regime between the Office of the Australian Information Commissioner (OAIC) and ASIC.
 - Fully resourcing the relevant regulators and related government policy departments to be in a position to implement needed reforms and enforce the framework going forward.
 - Encouraging the industry to take on more formal compliance responsibilities with respect to industry standards and conduct obligations. The industry should establish a code compliance committee as is now standard in other areas of financial services such as banking.

These reforms, particularly to the legislative and regulatory structure, will take a sustained effort and the final section of this Report includes suggestions relating to the implementation process. This includes developing a staged implementation plan and establishing an advisory committee including industry participants, consumer advocacy organisations, and regulators.

It is important to emphasise that these reforms will require a significant commitment of additional resourcing and attention to credit reporting policy and regulatory implementation within Government.

Recommendations

Recommendation 1: Improving consumer access to credit reports

Amend the Privacy Act to allow (but not require) credit providers to provide existing customers with access to their credit reports.

Recommendation 2: Improving consumer access to credit reports (industry)

That industry undertake the following initiatives to improve access to credit reports:

- a) establish and communicate best practice processes for consumers, including:
 - i. a standard report format and access through digital and alternative channels (phone, mail)
 - ii. a more limited credit report that the consumer could obtain at the consumer's discretion
 - iii. ensure consumer representatives such as financial counsellors can access a consumer's free credit report on their behalf.
- b) develop a common portal for free access to credit reports including streamlined customer identification verification requirements.

Recommendation 3: Clarifying the notice and consent framework

Amend the Privacy Act to specify consistent and clear notice and consent provisions including consumer authorisation for a credit report enquiry and clear disclosure of the implications of that enquiry.

Recommendation 4: Improving the corrections process

Amend the Privacy Act to move or specify detailed requirements for credit report corrections into the Privacy Regulation, including:

- a) more granular and enforceable timeframes for implementing corrections
- b) the ability to suspend the inclusion of disputed credit information in a credit report that is subject to a complaint or investigation due to fraud or abuse
- c) the permitted reasons for corrections.

Recommendation 5: Improving the corrections process (industry)

That industry should develop a free corrections portal allowing a consumer to request and monitor the status of corrections across all credit bureaus and credit providers.

In addition, a new consumer-facing code-of-conduct should include information about:

- a) expected documentary evidence for requesting different types of corrections
- b) procedures for expedited processing of corrections where the request is a result of fraud, identity error/mismatch, or financial abuse.

Recommendation 6: Strengthen operation of credit report bans

Amend the Privacy Act to provide greater consumer control over credit report bans and increase fraud protections:

- a) modify the current ban provisions to remove the 21-day initial ban period and allow consumers to request a ban of any length for any reason relating to the misuse of credit. Details around timing, format, disclosures and process should be in the regulations.
- b) bans should not prevent credit providers from reporting updates to a consumer's credit file (for example, repayment history information) or from accessing an existing consumer's credit report for purposes of account management
- c) prohibit access seekers from accessing a credit report during a ban period
- d) clarify that consumers may access their credit report during a ban period.

Recommendation 7: Additional protections for vulnerable consumers

That Government and industry undertake the following initiatives to address the risk of financial abuse, family and domestic violence, associated with the credit reporting framework:

- a) the industry should adopt code of conduct provisions and associated guidance for credit bureaus and credit providers to protect victim-survivors of financial abuse from harm relating to their credit reports
- b) the framework and industry data standards should be amended to reflect the option of separate reporting of financial hardship and repayment information for joint account holders, if appropriate, in cases of financial abuse
- c) the mandatory credit reporting provisions in the Credit Act should be amended to support the suppression of relevant information on joint accounts in cases of financial abuse or other risks to a consumer
- d) clarify in the framework that financial hardship information should only be used to assess applications for credit.

Recommendation 8: Review of regulation of credit repair services

ASIC should investigate the conduct of the credit repair industry since licensing commenced, including compliance with licence obligations and whether they are operating honestly and fairly with consumers. Based on the evidence, the Government should make recommendations for further regulation of credit repair, such as to bring it under similar conduct obligations as credit assistance providers, and to place restrictions on fees that can be charged.

Recommendation 9: Introducing statutory data principles for credit reporting

The Privacy Act should be amended to include general statutory principles to support the inclusion of new data types in the credit reporting framework. The detail of existing data definitions should be referred to the Privacy Regulation to allow them to be updated regularly.

Recommendation 10: Maintain and monitor mandatory reporting requirements

Maintain the operation of the mandatory supply requirements in the Credit Act, by:

- a) fixing the eligibility threshold at (for example) \$150 billion in assets to improve transparency and accelerate the participation of mid-sized authorised deposit-taking institutions (ADIs) in comprehensive credit reporting
- b) the Government should investigate what data is needed to implement a mandatory reporting threshold based on a credit provider's number of accounts
- c) the Government should monitor the credit reporting participation of major consumer credit sectors to determine whether mandatory supply requirements should be imposed on the sectors in future
- d) amend the Credit Act to provide the ability for the regulations to designate (or exempt) additional entities for inclusion in mandatory reporting.

Recommendation 11: Additional data items

Make the relevant amendments to introduce or clarify that the following data items may be reported in the credit reporting framework, with the details included in the Privacy Regulation:

- a) outstanding account balance
- b) product and provider information such as credit provider brand
- c) additional contact details such as email address and mobile phone number, subject to disclosure and use requirements
- d) 'flags' to specify certain types of information that can be included in the credit reporting framework in future if warranted.

Recommendation 12: Research including debts to Government in credit reporting

The Government should consider whether individual debts to government bodies should be supplied to credit reporting bureaus and, if so, how this should be done.

Recommendation 13: Reduce enquiry information retention period

Amend the credit reporting framework to reduce the retention period for enquiry information ('Information Requests') from five years to two years.

Recommendation 14: Improving the accuracy of default information

Amend the credit reporting framework by introducing a 'date of default' data item and amending the default information retention period to start from the date of default.

Recommendation 15: Reporting of historical account information

Make the relevant amendments to clarify that historical consumer credit liability information (CCLI) can be reported.

Recommendation 16: Increase the threshold for default listing

Amend the Privacy Regulation to increase the default listing threshold to \$300 or higher.

Recommendation 17: Introduce a threshold for reporting missed repayments

Amend the Privacy Act to introduce a standard missed repayment dollar threshold for repayment history information, with details to be specified in the Privacy Regulation.

Recommendation 18: Removing unused or underused data items

Amend the Privacy Act to remove unused or underused data items such as new arrangement information and serious credit infringement information.

Recommendation 19: Establishing a clear framework for soft enquiries in primary law

Amend the Privacy Act to set out categories of credit enquiries ('Information Requests') made to credit bureaus, such as for purposes of pre-screening and indicative pricing of credit applications, including 'soft enquiries' that cannot be disclosed to third parties, with details to be specified in the Privacy Regulation.

Recommendation 20: Clarifying use of the Access Seeker provision

Amend the Privacy Act to improve the privacy and information security protections by:

- a) requiring Access Seekers to hold an Australian Credit Licence or be the consumer's professional advisor or advocate holding an authority (such as financial counsellors or financial advisors)
- b) prohibiting Access Seekers from disclosing a consumer's credit reporting information to third parties without the consumer's explicit consent.

Recommendation 21: Improving credit bureau competition and data consistency

That industry continues to develop industry-wide technical standards, including for data submission and validation, to reduce the costs of wider data sharing. This work should include newer credit bureaus as well as established providers.

Recommendation 22: Prohibit exclusive data sharing arrangements

Amend the Privacy Act to introduce a prohibition on exclusive arrangements between credit bureaus and credit providers that reduce broader sharing of data.

Recommendation 23: Clarify the definition of credit reporting business

Amend the Privacy Regulation to exclude from the definition of 'credit reporting business' those entities that, for example, do not hold credit reporting data or disclose credit scores.

Recommendation 24: Licensing of credit reporting bodies

Amend the legislation to introduce the following requirements on credit reporting bodies and the relevant regulator:

- a) credit reporting bodies should be required to hold a licence from the relevant regulator (OAIC or ASIC)
- b) the regulator should maintain and publish a register of licensed credit reporting bodies
- c) the regulator should have authority to implement appropriate risk management and related standards for credit reporting bodies as part of the licence conditions.

Recommendation 25: Modernise the objects of the credit reporting legislation

Amend the Privacy Act to modernise the objects of credit reporting legislation to reflect important concepts such as fairness and competition, in addition to the existing objects of privacy and efficiency.



Recommendation 26: Introducing greater flexibility in the credit reporting framework

Introduce greater policy and regulatory flexibility into the credit reporting framework by:

- a) transferring technical provisions including data definitions and other quantitative thresholds currently in the Privacy Act to the Privacy Regulation
- b) amending the Credit Act to introduce broader regulation-making and exemption powers for the regulator.

Recommendation 27: Streamlining credit reporting legislation

The Government should consider consolidating the credit reporting framework in the Privacy Act and Credit Act into its own streamlined Act.

Recommendation 28: Consider co-regulatory models to give ASIC a greater role

The Government should consider alternative models to improve regulatory oversight for credit reporting, such as by establishing a formal co-regulatory model between OAIC and ASIC.

Recommendation 29: Elevating credit reporting as a regulatory priority

Revise the Ministerial Statement of Expectations for the OAIC to expressly reference credit reporting. The OAIC and ASIC should develop an appropriate performance measure for credit reporting.

Recommendation 30: Enhanced regulator powers

Amend the Privacy Act to introduce new regulatory powers for instrument-making, exemption and surveillance activities specifically related to credit reporting to improve accountability, flexibility, and compliance, and to better align the regulation of credit reporting with financial sector regulation.

Recommendation 31: Improved regulator resourcing for credit reporting

The Government should increase budget resourcing for the relevant regulators to reflect the increased responsibility and compliance activity recommended by this Review.

Recommendation 32: Improved departmental resourcing for credit reporting

The Government should provide additional ongoing departmental funding to the Attorney-General's Department and the Treasury to support further stakeholder engagement, policy development, implementation and provide an ongoing policy capability.

Recommendation 33: Reform the function of the CR Code

Amend the Privacy Act to reform the function and operation of the CR Code by:

- a) revoking the CR Code's status as a legislative instrument
- b) uplifting provisions integral to the functioning of the credit reporting framework to primary law or regulations as appropriate
- c) providing authority for an industry code-of-conduct with regulatory approval.

The industry should develop a consumer-facing code-of-conduct for credit reporting consistent with other financial services sectors.

Recommendation 34: Establish an industry-funded Code Compliance Committee

The industry should establish an independent and industry-funded Code Compliance Committee to support industry compliance with its credit reporting obligations.

Recommendation 35: Reforming industry compliance and oversight

Amend the Privacy Act to remove private contractual compliance audit obligations, and replace with regulator authority to require regular audits.

Recommendation 36: Technical and consequential issues

As a part of the policy and legislative development process, the Government consider the technical and consequential issues that have been identified as part of this Review.

Recommendation 37: Establishing a technical advisory group

The Government should establish a technical advisory group to support the policy development and implementation process associated with implementing the recommendations of this Report.

The credit reporting environment

Credit is a vital part of the Australian economy. There is a strong positive link between credit availability and economic growth, and the ability of individual Australians to access credit is integral to social inclusion and overall participation in everyday life, such as the purchase of a home or car.

Many of these interactions rely on Australia's credit reporting system, and its supporting regulatory framework, for lenders to assess credit eligibility via a credit report from a credit bureau. The information in these reports, such as past defaults or successful loan repayments, reflects consumer behaviour and can disqualify or limit their ability to access the amount of finance they need at the price they want.

The Review's Issues Paper asked: 'How important is credit reporting?' While submissions commonly said that credit reporting was an important piece of economic and financial infrastructure, feedback suggests that the system is considered complex and opaque. The opaque nature of credit reporting is reflected in the fact that there is little industry-wide data reported on the scale or scope of activity.

Unlike other areas of financial services, neither regulators nor the Australian Bureau of Statistics collect or report industry data, and very little information is published by industry participants.² It is difficult to provide an accurate picture of trends in usage of credit reporting or its impact due to the paucity of published data and research.

It is likely that most adults have a credit report at one of the three main credit reporting bureaus, although they may not know it. As at June 2023, there were about 20 million adults in Australia aged 20 and above, and the majority of these are likely to hold some form of credit account or to have made an application for credit, and will therefore be a participant in the credit reporting system. The Review is aware that one bureau has around 21 million active credit files.

Comprehensive credit reporting coverage of consumers and credit accounts in the credit reporting system has grown significantly since 2018, following the announcement of the Government's intention to legislate mandatory credit reporting for the major banks in late 2017. For example, around 3.3 million households hold a mortgage, and there are approximately 13.5 million credit and charge card accounts outstanding.³

The significant majority of these accounts opened in recent years would have resulted from a credit check on the borrowers conducted by the lender as a routine part of the credit assessment process. Financial accounts with comprehensive credit reporting information reached over 23 million in 2023, including about 92 per cent of home loans and nearly 100 per cent of credit card accounts.⁴ Of those accounts, the most numerous are credit cards (13 million in 2022), followed by mortgages (7 million).

² The Review requested and received some data from the major credit bureaus but as this data is commercially sensitive it was not available for publication. The CR Code requires credit bureaus to publish some data but this typically does not include aggregate data, such as the number and type of accounts or the number of credit report enquiries.

³ Australian Institute of Health and Welfare, [Home ownership and housing tenure - Australian Institute of Health and Welfare \[aihw.gov.au\]](#), 12 July 2024; Reserve Bank of Australia, [Statistical Tables | RBA](#), Credit and Charge Cards.

⁴ This excludes some accounts that are outside comprehensive credit reporting, such as mobile phone contracts, as well as lenders that choose not to participate in comprehensive credit reporting.

Personal loans accounted for the smallest share of reported accounts in the credit reporting system, with motor vehicle loans total only 700,000 because of limited participation by those lenders in the credit reporting system.⁵ No data is publicly available on non-financial credit accounts such as mobile phone plans reported to credit bureaus.

Participants in the credit reporting industry

Credit bureaus

In 2024, there are at least four consumer credit reporting bureaus in Australia (defined as 'credit reporting bodies' in the Privacy Act) – with three 'main' bureaus and one small challenger bureau. Under mandatory credit reporting, Equifax, illion and Experian are supplied with credit information from the major banks, covering around 80 per cent of financial accounts in Australia.

Equifax, the largest bureau, entered the Australian market in 2016 when it purchased Veda Advantage.⁶ Veda was originally established in 1967 as the Credit Reference Association of Australia.⁷ Estimates from stakeholders put Equifax's market share ranging from at least 70 per cent of the secured lending market to as much as 90 per cent for unsecured lending.⁸ This market dominance reflects the relative depth and quality of its dataset compared with the other bureaus, particularly so-called 'negative' types of credit information such as credit report enquiries. Equifax's market position was also confirmed by the ACCC in its recent decision not to oppose the merger of its two largest competitors in illion and Experian.⁹ Equifax provides a range of other data-related services in addition to credit reporting.

illion was established in 1986 in Australia as Dun & Bradstreet Australia, and is a provider of consumer credit reporting, commercial credit reporting, and identity and verification solutions in Australia and New Zealand. Experian is a large international credit reporting firm with a significant presence in North America, the United Kingdom and Ireland.¹⁰ Experian entered the Australian market as a joint venture with the major banks around the same time comprehensive credit reporting was established in Australia in 2014. In April 2024, Experian announced intentions to purchase its competitor illion, and by August 2024, the ACCC announced it would not oppose the acquisition.¹¹

5 Australian Retail Credit Association (Arca), [ARCA Credit Data Fact Base \(Volume 10\)](#), September 2022, pp. 5-6.

6 Equifax, [Equifax Completes Acquisition of Australia's Leading Credit Information Company, Veda Group Limited, for Total Consideration of USD\\$1.9 Billion](#), 25 February 2016.

7 Equifax, [Our History](#), 1967-2017.

8 This feedback is consistent with other reported publicly available information, for example: Eyers, J, '[ACCC reviewing credit data deal as Experian pounces on illion](#)', Australian Financial Review, 9 April 2024.

9 Australian Consumer and Competition Commission (ACCC), [Public informal merger reviews register: Experian – Illion](#), 15 August 2024.

10 Experian, [Experian Annual Report 2024](#), p. 2.

11 Experian, [Experian to acquire illion in Australia and New Zealand](#), 4 April 2024.

TaleFin is a small challenger consumer credit reporting body with clients listed on its website including unsecured personal lenders and consumer lessors. It provides a bespoke product offering to these lenders that is tailored to the interests of the consumers of these products. There is general limited consumer awareness of TaleFin's presence in the credit reporting market.¹²

Commercial credit reporting

Australia also has a number of credit reporting agencies that collect and disclose commercial credit data about businesses but not individual consumers, using a business identifier such as an Australian Business Number or Australian Company Number.¹³ Other major commercial credit reporting agencies dominate government and corporate debt ratings including Moody's and Standard and Poors, but do not engage in consumer credit reporting. The Australian Finance Industry Association (AFIA) facilitates the National Credit Reference Scheme for its members that supports the exchange of credit reference information on mostly business customers.

Credit providers

Credit providers are entities that may access credit reporting information under the Privacy Act. The definition of 'credit' in the Privacy Act is quite broad, and as a result a wide range of entities can participate, including telecommunications providers, store credit providers, debt collectors as well as banks and other traditional lenders. As discussed later in this Report, the importance of credit reporting to lenders and other credit providers varies depending on their scale, scope and business model.

Comprehensive credit reporting, which involves more detailed sharing of customer credit repayment history and hardship arrangements, is restricted to accounts with entities that hold an Australian Credit Licence (ACL) issued by ASIC.

The industry peak body, the Australian Retail Credit Association (Arca), provided information to the Review that there were 85 credit providers participating in 2023 in comprehensive credit reporting, and nearly half were smaller credit providers with fewer than 100,000 accounts. Around 80 per cent of accounts were held by the banking sector. Most of the remainder were held by non-bank lenders or finance companies (18 per cent), and a very small proportion by specialist automotive lenders (1 per cent).¹⁴

Aside from the major banks, and in certain cases telecommunications providers, participation in credit reporting is a voluntary commercial decision.¹⁵ Buy-now-pay-later (BNPL) providers will be required to undertake a credit check as part of their responsible lending obligations following the passage of legislation currently before Parliament.¹⁶

12 See TaleFin, [2023 Annual Report](#), 28 August 2023, on credit reporting compliance. On page 4, the annual report indicates that only 0.002% of consumers with a file requested their free credit report from TaleFin.

13 For example, CreditorWatch refers to itself as a commercial credit reporting bureau. See [CreditorWatch](#).

14 This is based on the updated correspondence provided by Arca for this Review.

15 Under the [Telecommunications Consumer Protections Code](#), since 2019 telecommunications providers are required to conduct a credit check for plans involving credit of more than \$1,000.

16 Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024.

Credit scores and credit reports

The information a credit bureau holds about an individual is typically referred to as a credit report or credit file. A credit report is a record of an individual's credit history according to data reported to a credit bureau and enquiries made about them by credit providers who participate in the credit reporting framework.

Credit bureaus receive data on credit applications and accounts from lenders, telecommunications providers and other credit providers, and they may receive information about whether a consumer is making their repayments on time. They also collect data on defaults, bankruptcies and court judgements and integrate these with a consumer's credit report. The Privacy Act sets strict time limits on the retention and disclosure of this data, depending on the type of information.

A credit score is a numerical representation of the quality of the individual's credit history in terms of access to and capability to repay credit, or creditworthiness. Credit scores are based on the credit bureau's proprietary algorithms and can reflect a range of data about an individual. Credit scores are widely used in other jurisdictions to determine credit eligibility, and their usage is becoming increasingly prevalent in Australia.

The three main credit bureaus generate at least one score for each individual on whom they hold any data. A higher score is considered better and will generally enable more and easier loan or service contract approval. Equifax uses a scale of 0 to 1,200 while illion and Experian uses a scale of 0 to 1,000. Each bureau has different ratings for what is a low, fair, average, good or excellent credit score and some bureaus provide multiple types of credit scores to lenders.

Credit bureaus and credit providers bilaterally negotiate terms of service covering the exchange of data and the price of that data. Credit providers generally pay the credit bureau for each credit report enquiry about an individual, but credit bureaus advised they do not charge credit providers to supply their data to the bureau.

Reciprocal data sharing arrangements are set out in the industry-led Principles of Reciprocity and Data Exchange (PRDE). It is not a legal requirement under the Privacy Act to be a signatory to these arrangements but in practice many of the larger credit providers are signatories.

As a result, the bulk of Australian credit reporting data is captured by the PRDE, creating a strong incentive to sign up to these reciprocal arrangements.

Additionally, consumers and those they appoint as their 'Access Seekers' are able to obtain credit report information about themselves.¹⁷

¹⁷ See Privacy Act 1988 (Privacy Act) ss 6L and 20R.

Generally, the following types of data can be collected and shared by credit bureaus under Part IIIA of the Privacy Act:

Table 1: Overview of credit reporting data types¹⁸

Category	Examples	Access to
Personal data	Identifying information, employment	All credit providers
Negative data	Defaults, bankruptcies, credit enquiries/applications	All credit providers
Partial data	Credit limit, account open and closed dates	Credit providers on a reciprocal basis
Comprehensive data	Repayment history including late payments, financial hardship status	Credit licensees on a reciprocal basis

Credit report enquiries

There is no data reported publicly on how many credit applications or credit report enquiries occur across the credit reporting system each year. The credit bureaus generally consider data that might provide an indication of their market share as commercial-in-confidence and having the potential to affect current or prospective client decisioning. The bureaus provided some information to the Review.

In its submission, Equifax states that it handled more than 9 million loan enquiries in 2023.¹⁹ The other bureaus are likely to have received a lower number of enquiries, and some credit providers make multiple enquiries to different credit bureaus for the same application to support data consistency across the credit reporting framework. The Review estimates that across all the credit bureaus there may be around 15 million credit enquiries a year.

Data obtained by this Review suggest that there are usually more credit report enquiries than accounts opened in any given year. A large proportion of accounts do not have any enquiries in their credit file in a given year, while a small number of accounts have multiple enquiries. This may result from consumers 'shopping around' for the best price, or making multiple applications for credit after being declined at some lenders. It may also be related to the success of entirely online credit application processes in recent years, which makes credit applications much more streamlined for a consumer (meaning there are more loan enquiries), and to online direct marketing through 'free credit report' services.

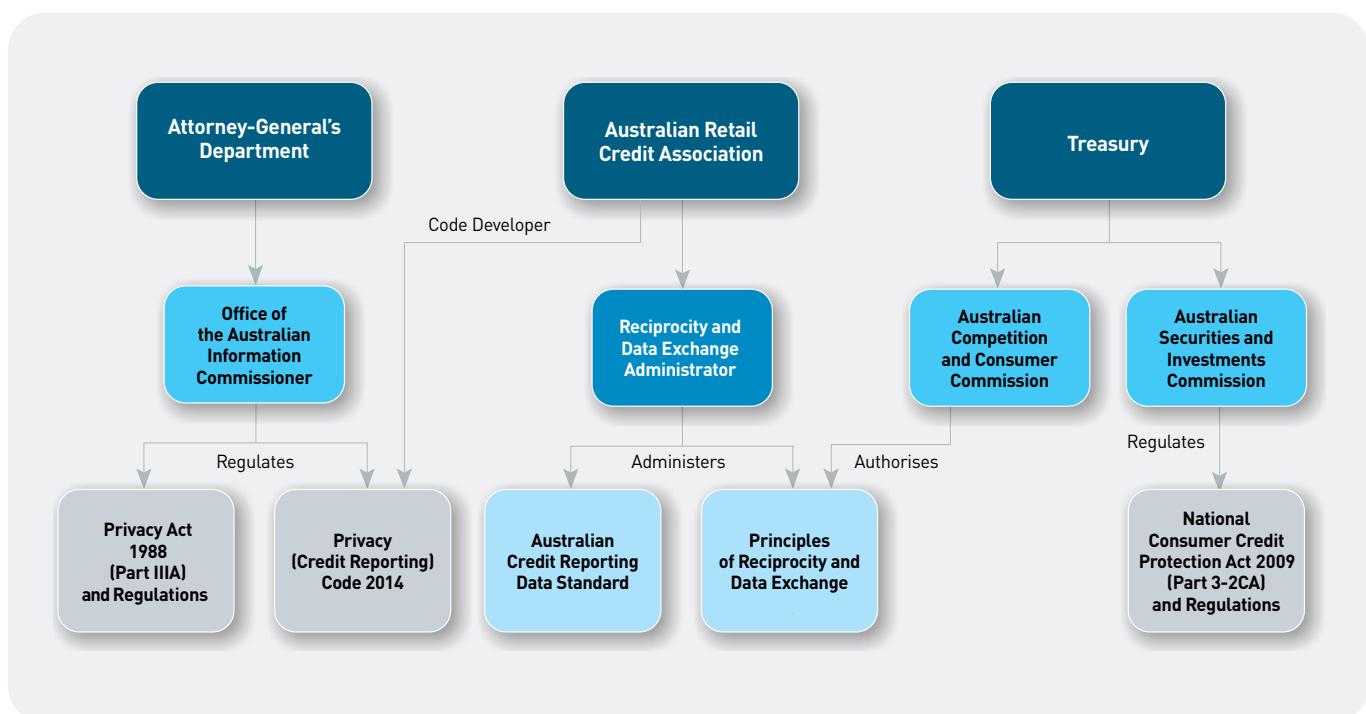
¹⁸ Table 1 presents a high-level summary only; more specific requirements on data sharing apply in some cases. For more information, see Arca's [Principles of Reciprocity and Data Exchange](#), in particular paragraphs 17-21A and 34-37 and page 34.

¹⁹ Equifax, Submission to the Issues Paper, 14 June 2024, p. 2.

The regulatory framework

The 2008 privacy law review conducted by the Australian Law Reform Commission (ALRC) provides a comprehensive historical review of credit reporting legislation in Australia.²⁰ Additional detail was provided in the Issues Paper. The national credit reporting framework has been in place in some form since reforms were made to the Privacy Act in 1990, and the current arrangements mostly came into effect in 2014 to implement the Government's response to the recommendations of the ALRC Review.²¹ There are a number of layers to the regulatory framework as well as several regulatory and industry bodies that each play a role, which results in many observers and participants considering the framework to be complex and difficult to navigate.

Figure A: Credit reporting governance chart



20 Australian Law Reform Commission, [*For Your Information: Australian Privacy Law and Practice \(ALRC Report 108\) / ALRC*](#), 12 August 2008.

21 Office of the Australian Information Commissioner (OAIC), [*History of the Privacy Act / OAIC*](#), 1991–2012.

Legislative provisions

Part IIIA of the Privacy Act sets out the main concepts and principles of the credit reporting framework, with the object of facilitating an efficient credit reporting system while ensuring that the privacy of individuals is respected. At a high level, these provisions exempt credit reporting activities from the Australian Privacy Principles (APPs) and apply bespoke credit reporting obligations on credit reporting participants. The APPs apply to a credit bureau or credit provider in handling other types of personal information. Part IIIA is administered by the Office of the Australian Information Commissioner (OAIC), and the Attorney-General's portfolio. The Attorney-General has policy responsibility for credit reporting.

Part IIIB of the Privacy Act authorises the development of the CR Code as a binding and enforceable instrument that sets out 'how one or more of the provisions of Part IIIA are to be applied or complied with'. The CR Code may impose additional requirements to those imposed by Part IIIA, so long as the additional requirements are not contrary to, or inconsistent with, Part IIIA.

Although drafted by the industry body Arca (the 'Code Developer'), to be a binding legislative instrument enforceable by the OAIC, the CR Code must be approved by the Australian Information Commissioner.²² The first version of the binding CR Code was issued in 2014, and subsequent independent reviews of the Code were conducted in 2017 and 2021 which have informed amendments over time.

In 2021, given the slow uptake of comprehensive credit reporting, legislation was passed to mandate that the four major banks supply comprehensive credit information to the credit bureaus.²³ This requirement was imposed on these banks as a condition of their ACL via legislative amendments to the Credit Act. These provisions are administered by the Australian Securities and Investments Commission (ASIC) with the Treasury portfolio having policy responsibility.

Regulators

The OAIC is Australia's independent privacy regulator, established under the *Australian Information Commissioner Act 2010*. Under Part IIIA of the Privacy Act, the OAIC 'has regulatory responsibility for the privacy protections relating to credit reporting in Australia, including the use and disclosure of credit reporting information'.²⁴ The OAIC has regulatory responsibility for the CR Code made under Part IIIB.

Under the Privacy Act, the Australian Information Commissioner has powers to conduct assessments, undertake voluntary investigations, make enquiries, accept enforceable undertakings, make determinations, seek injunctions and apply to a court for civil penalties in relation to Part IIIA of the Privacy Act and the CR Code. For credit reporting in particular, the Australian Information Commissioner also has powers to receive and investigate credit reporting complaints.

22 See OAIC, [Privacy Codes Register](#), namely Part IIIB Division 3 – Privacy (Credit Reporting) Code 2024 (CR Code).

23 *National Consumer Credit Protection Amendment (Mandatory Credit Report and Other Measures) Act 2021*.

24 OAIC, Submission to the Issues Paper, 14 June 2024, p. 5.

ASIC has responsibility for the administration and enforcement of the credit laws, including the National Credit Code and the Credit Act. ASIC plays an important consumer protection role, whereby it licenses and oversees regulated credit providers, and debt management and credit repair firms, and their compliance with their obligations under the Credit Act. Since July 2021, it has had regulatory oversight of the implementation of the mandatory credit reporting arrangements and ongoing responsibility for ensuring the compliance with these arrangements.

The Australian Competition and Consumer Commission (ACCC) has authorised relevant provisions of the PRDE to provide the credit reporting sector with protection from legal action under competition law to coordinate the sharing of credit reporting data. The ACCC is currently undertaking a five-year inquiry into markets for the supply of digital platform services.

On 21 May 2024, the eighth interim report of the inquiry was published and considered the potential competition and consumer issues in the supply of data products by data firms in Australia.²⁵ This review excluded from its scope the credit reporting activities of Equifax, illion, and Experian because these activities are regulated by the Privacy Act.

Australian Retail Credit Association (Arca)

Arca is an industry association that was established in 2006 for organisations involved in the provision, exchange and application of retail credit reporting data in Australia. Its members include credit providers and credit bureaus. In 2012, the OAIC appointed Arca to develop the CR Code under Part IIIB of the Privacy Act. Once approved, the CR Code is a legislative instrument and applies to all credit reporting framework participants regardless of whether they are Arca members, PRDE signatories, or neither.

Arca's subsidiary, the Reciprocity and Data Exchange Administrator (RDEA), maintains the PRDE reciprocal arrangements, which are a voluntary agreement among credit reporting participants. The purpose of the PRDE is to provide an industry-wide reciprocal data exchange that incentivises participation in Australia's consumer credit reporting system. Effectively, it requires credit providers to contribute the same type of information that they receive. As at 1 June 2024, there are 115 signatories to the PRDE, representing over 96 per cent of regulated credit accounts in the Australian market.²⁶ The PRDE is currently being independently reviewed.

PRDE signatories are required to comply with the Australian Credit Reporting Data Standard (ACRDS). The ACRD provides for 'consistency of data contributions by setting out the structure and technical requirements of the data that is contributed by [credit providers] to [credit reporting bureaus]'.²⁷

25 ACCC, *Digital Platform Services Inquiry: Interim report 8: data products and services – how information is collected and used by data firms in Australia*, March 2024.

26 Arca, Submission to the Issues Paper, 14 June 2024, p. 2.

27 *ibid.*, p. 23.

External Dispute Resolution (EDR) schemes and ombudsman services

Part IIIA of the Privacy Act and the CR Code addresses the handling of consumer complaints about credit reporting and outlines the rights and obligations of consumers, credit providers and credit reporting bodies. In the first instance, an individual can make a complaint to a credit reporting body or a credit provider, and if they remain unsatisfied, they can complain to an external dispute resolution scheme.

Under the Privacy Act, a credit provider or credit reporting body must be a member of the relevant EDR scheme such as the Australian Financial Complaints Authority (AFCA), state and territory energy and water ombudsmen, or the Telecommunications Industry Ombudsman.

AFCA is responsible for handling consumer complaints about credit and other financial products or services, and assists consumers to reach agreements with financial firms including credit providers. It can also make binding decisions about a dispute or complaint, and this extends to consumer complaints about credit reporting. With respect to credit complaints, AFCA's decisions can require amendments to a consumer credit report such as the removal or correction of adverse credit information (for example, default information). AFCA's experience with credit reporting complaints is discussed further in Part Two.

Part Two: How effective is the regulatory framework?

What is working well?

The credit reporting framework supports a widely used and efficient credit assessment system. Australia's regulated credit reporting system has matured over the years to become essential infrastructure for a large proportion of credit-related decision-making across the Australian retail credit sector. The system now facilitates standardised and largely centralised comprehensive credit reporting data reporting across nearly 100 lenders, as well as telecommunications providers and numerous other credit providers accessing more limited 'negative' credit information. While stakeholders express many different perspectives on what could be improved, there is little disagreement that the system as a whole is serving its intended function.

The credit reporting framework is structurally sound

Although its operation could be improved in some areas, the conceptual structure of the regulatory framework is fundamentally sound. There are many suggestions for improvements in the details of the framework as detailed later in this Report, but the Review did not receive sufficient feedback to conclude the underlying legislative framework, namely Part IIIA of the Privacy Act and Part 3-2CA of the Credit Act, is fundamentally flawed, excessively costly, or causing widespread consumer harm.

The rights and obligations of participants in collecting and disclosing credit reporting data are reasonably clear. Consumers have rights and channels available to obtain and correct their information and credit providers can obtain and share data according to their level of participation in the system. The basic structure and principles of the credit reporting framework have stood the test of time, that is:

- carving out credit reporting from the Privacy Act's mainstream privacy framework (the Australian Privacy Principles) to create its own standalone privacy protection regime
- setting out types of prescribed credit reporting data
- setting out obligations of key participants in their handling of credit reporting data and in dealing with consumers.

Credit reporting supports risk and price assessments

Credit reporting has played an important role in ensuring lending is provided to consumers who can afford it. In recent years, the quality of retail credit in Australia has remained strong, suggesting that the credit assessment process used by lenders is generally sound. Aggregate household credit performance as summarised by the Reserve Bank of Australia (RBA) in its *Financial Stability Review* indicates that households in loan arrears has increased only modestly since late 2022, despite significant increases in interest rates and rising cost of living. While this cannot be attributed solely to better decisions based on credit reporting data, lenders argue that credit reporting is a critical

component of good lending decisions and in complying with their responsible lending obligations under the Credit Act.²⁸

The introduction of comprehensive credit reporting, was intended to support the establishment of responsible lending obligations under the Credit Act by providing lenders with additional evidence of potential borrowers' ability to repay a loan. This outcome was only practically achieved following the participation of the major banks in comprehensive credit reporting, and the related introduction of mandatory supply requirements in Part 3-2CA of the Credit Act.

Stakeholders provided quantitative evidence to the Review about the significant additional predictive power from considering a consumer's actual credit repayment history. The more granular data and analytical power provided by comprehensive credit reporting also helps ensure credit can be more fairly and better priced relative to risk.

Consumer engagement and access has improved

Credit reporting is complex and can be confusing for some consumers, but those consumers who are motivated to obtain information can readily access comprehensive and accessible explanatory material from sources such as ASIC's MoneySmart website and Arca's CreditSmart website.²⁹

The three main credit bureaus provide a significant amount of information about credit reporting issues and consumer rights, as do consumer advocacy groups such as the Financial Rights Legal Centre (FRLC) and CHOICE. The Australian Banking Association (ABA) has credit reporting fact sheets for customers and financial counsellors on its website. Many credit providers participating in credit reporting publish explanatory information about how they use credit reports as part of the lending process.

The Privacy Act requires that credit bureaus provide a free credit report to every consumer, if requested, every three months.³⁰ The evidence on consumer access is mixed, but suggests an increasing level of engagement. Credit bureau annual compliance reports indicates that between around two to seven per cent of consumers access their reports directly (see Table 2). Identity and cybercrime support provider IDCARE surveyed its clients and found that three per cent had engaged with a credit bureau to obtain their credit report or apply for a credit ban.³¹

In contrast, an annual industry survey indicates that the proportion of consumers who have checked their credit report in the last 12 months has increased strongly over the last five years to nearly 40 per cent, and the number who have never checked has fallen from almost 60 per cent to less than 40 per cent (see Table 3). This inconsistency with the requests made directly to credit bureaus may result from an increasing number of consumers who access their credit report through a

28 Reserve Bank of Australia, [Financial Stability Review – March 2024](#). See Chapter 2 – Resilience of Australian Households and Businesses on page 12.

29 [Home – Moneysmart.gov.au](#) and [Credit Report – Free Comprehensive Credit Reports – CreditSmart](#).

30 Privacy Act s 20R.

31 IDCARE, Submission to the Issues Paper, May 2024, p. 2.

third-party service such as a credit monitoring, credit repair service, or mortgage broker. The increasing engagement is potentially due to concerns about fraud from high profile data breaches, where affected consumers are often recommended to monitor their credit reports for potential unauthorised transactions.

Table 2: Free credit reports provided – % of total accounts

	2019	2021	2023
Equifax	1.5%	1.8%	1.6%
illion	N/A	4.7%	7.5%
Experian	0.1%	0.2%	0.5%

Source: Equifax, illion and Experian, Annual Compliance Reports, 2019, 2021 and 2023.

Table 3: Proportion of consumers who have checked their credit report

	2019	2021	2023
In last 12 months	27%	29%	39%
More than 12 months ago	15%	19%	21%
Never checked	57%	52%	37%
Don't know	Excluded	Excluded	3%

Source: Arca, Submission to the Issues Paper, 14 June 2024, p. 66.

Mortgage brokers are now estimated to be used for more than 70 per cent of all mortgage applications.³² The Mortgage and Finance Association of Australia (MFAA) notes that brokers provide significant financial literacy support and help customers understand their credit report. Since 2021, mortgage brokers have also been subject to a 'best interest duty' which may have contributed to a greater demand for access to a consumer's credit report. Accessing a customer's credit report helps the broker get a better understanding of their eligibility and pricing before they formally apply for a loan, with the broker's help.

32 Mortgage and Finance Association of Australia, Submission to the Issues Paper, 7 June 2024, p. 3.

Credit reporting has improved financial inclusion and access to credit

The Review did not receive feedback indicating that credit reporting is preventing consumers being approved for a suitable loan. Academic research provides some evidence that comprehensive credit reporting improves access to credit. Grant (2019) found that:

more than two-thirds of the population experience a [credit] score increase following the implementation of positive reporting, lowering their perceived credit risk by an average of 25–35%.³³

This is consistent with information provided to the Review by credit bureaus indicating that average credit scores have increased in recent years, due in part to the advent of positive information through comprehensive credit reporting.

Consumer advocates suggested credit reporting may support pricing riskier borrowers out of mainstream credit because they are less likely to have a positive credit history.³⁴ If true, it is equally likely that this trend is due to a stronger regulatory focus and tightening lending standards for home mortgages and consumer credit, as well as tighter credit conditions as interest rates have risen. Revolut stated that comprehensive credit reporting information allows it to offer risk-based pricing to provide the lowest cost credit according to the risk profile of each customer. Further, customers who might otherwise not be eligible for a loan may be assessed more favourably with comprehensive credit information available.³⁵

Credit reporting is supporting lending efficiency

Credit reporting has improved lending speed and efficiency, particularly for newer digital services. The expansion of credit reporting within the framework to include more granular data has enabled faster and more efficient credit application processing and a better consumer experience. Arca notes that 'Consumer expectations have changed, with greater desire to access and purchase products and services online ... [and] apply for credit in a simple, convenient way and receive a prompt response.'³⁶ Credit providers state that as a result of credit reporting³⁷:

- automatic loan approval rates have increased without increasing risk

33 Andrew Grant, University of Sydney Business School, *The Impact of the Introduction of Positive Credit Reporting on the Australian Credit-seeking Population*, August 2019.

34 Financial Rights Legal Centre, Australian Communications Consumer Action Network, Australian Privacy Foundation, Care (Consumer Law Program, ACT), CHOICE, Consumer Action Law Centre, Consumer Credit Legal Service (WA) Inc., Consumer Policy Research Centre, Financial Counselling Australia (FCA), Mob Strong Debt Help, Mortgage Stress Victoria, Public Interest Advocacy Centre- Energy and Water Consumers' Advocacy Program, Redfern Legal Centre, Uniting Communities Law Centre (SA) (collectively, Joint Consumer Groups), Submission to the Issues Paper, May 2024, p. 36.

35 Revolut, Submission to the Issues Paper, 7 June 2024, p. 2.

36 Arca, Submission to the Issues Paper, 14 June 2024, p. 13.

37 *ibid.*, p. 30.

- lenders are able to detect more liabilities that prospective borrowers did not disclose on loan applications (10 per cent of applications). This helps ensure lenders do not provide unaffordable credit.
- significant reductions in time to loan approval (for example, from around five days to two days)
- significant reduction in manual review of files.

National Australia Bank (NAB) notes that it has achieved a 52 per cent reduction in median time to unconditional approval since the introduction of mandatory comprehensive credit reporting.³⁸ NAB also uses repayment history information on an existing loan through credit reporting to facilitate a refinance application without the customer having to provide this information.

Consumer protections have been strengthened over the years

Consumer advocates acknowledge that '[t]he current credit reporting framework has been developed after decades of consultation and reforms to ensure it strikes the right balance between protecting the privacy of individuals' sensitive information while enabling effective lending decisions by credit providers.'³⁹ They also note that the framework 'has been refined over the years to strengthen consumer protections and data accuracy requirements.'⁴⁰ For example, by actively monitoring their credit reports, consumers can flag and identify suspicious or unauthorised transactions, and more quickly remedy potential instances of fraud. This in turn can prevent further harm to consumers and reduce losses for lenders.

Consumers can request, extend, and remove a credit report ban through an online application, and can have the ban request shared to other credit bureaus. Proposed changes to the CR Code would also require credit bureaus to offer a free notification service to consumers during a ban period.⁴¹ An exemption to mandatory comprehensive credit reporting arrangements allowed major banks to suppress reporting of certain adverse information in a domestic abuse situation.⁴²

Improved visibility of financial hardship

There are now better protections for more vulnerable consumers and those in financial stress. Since 1 July 2022, regulated credit providers have been able to place a financial hardship flag on a consumer credit report where that consumer has a financial hardship arrangement with the lender. The hardship flag remains on a customer's credit report for only 12 months, unlike defaults or enquiries which generally can be disclosed for up to five years.

38 National Australia Bank (NAB), Submission to the Issues Paper, p. 5.

39 Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 57.

40 *ibid.*, p. 11.

41 OAIC, [Consultation on application to vary the Credit Reporting Code](#), 8 April 2024. See [Annexure 1 – Proposed CR Code](#).

42 ASIC, No-action letter – Mandatory CCR – Family violence and unregulated credit contracts, 30 June 2022.

This flag allows prospective lenders to see if a consumer has had a financial hardship arrangement (for example, reduced payments) with a lender in the past 12 months, while still allowing the consumer to demonstrate a positive repayment history if they make those payments. Financial hardship information does not adversely impact a consumer's credit score.

Before 1 July 2022, an individual could have a financial hardship agreement with their credit provider but there was no way to show this arrangement on their credit report. As a result, there were inconsistent practices among lenders which meant reported data could be misleading (for example, a consumer made their repayments in full) or would affect credit scores (for example, the consumer had not made a repayment, even if they had made a repayment in line with the financial hardship arrangement).

The Review understands that less than one per cent of all credit files include financial hardship information. This understanding is consistent with AFCA data which suggest that financial hardship information accounts for only around 1 per cent of the credit reporting complaints it receives.⁴³

Evidence provided to the Review indicates that financial hardship reporting is supporting access to finance where this is appropriate. Arca surveyed 21 of its members about their practices with respect to approving loans for applicants with financial hardship information reported on their credit report.⁴⁴ It was evident from this data that lenders may make different judgements about lending to applicants with financial hardship information reported. This is likely based on differences in risk appetite.

On average, customers who have had financial hardship flags reported are less likely to receive a loan than similar customers who are not reported as being in financial hardship, but they still have access to credit if it is affordable for them. The survey concluded that⁴⁵:

- lenders do not treat financial hardship information as a 'black mark' that would automatically prevent further lending
- most lenders have a process for referring individuals with financial hardship flags for manual assessment
- individuals who are declined for credit generally because of other adverse information (which may be correlated with financial hardship assistance).

The ABA has published consumer guidance on financial hardship and credit report impacts, which clearly explains who can see financial hardship information and for how long. It does not provide further explanation on how lenders consider financial hardship information in assessing a credit application as this depends on the credit policies of each individual lender.⁴⁶

43 Australian Financial Complaints Authority (AFCA), Submission to the Issues Paper, June 2024, p. 22.

44 Arca, Supplementary information provided to the Review, August 2024.

45 Arca, Submission to the Issues Paper, 14 June 2024, pp. 31-33.

46 Australian Banking Association, [Financial Hardship & Your Credit Report](#), June 2022.

Comprehensive credit reporting has supported greater competition in lending markets

Credit reporting's expansion to include positive information over the last 10 years has mitigated informational imbalances inherent in Australia's concentrated banking system, and resulted in more data being available to smaller lenders. This has been driven by the significant increase in data flowing into the credit reporting framework by the mandatory credit reporting requirements imposed on the major banks.

Historically, the largest banks had vastly more data on customers that they could draw on to make effective risk-based lending decisions. Under the reciprocity arrangements, even smaller lenders can now access a consumer's repayment history and liability information from major banks, and a variety of other lenders to help make lending decisions.

For example, Revolut noted that comprehensive credit reporting has empowered fintech lenders to compete with the major banks.⁴⁷ One fintech credit provider confirmed that comprehensive credit reporting data on its prospective customers has been fundamental to its ability to compete with large incumbents in concentrated lending markets.

These benefits flow to consumers, as lenders are better able to offer consumers lower prices as they have greater ability to assess risk and price credit appropriately. Some of these benefits may also flow through to sole traders and other small businesses whose individual credit reports contain more and better information.

Mandatory reporting requirements have been effective

Since 2021, the credit reporting framework has included mandates for the major banks to supply consumer credit data to the credit bureaus for 50 per cent of accounts by July 2021, with full mandatory reporting commencing in July 2022.⁴⁸ The purpose of this reform was to increase the sharing of comprehensive credit information and incentivise the participation of other lenders in the credit reporting framework to support responsible lending.

There has been significant growth from a low base between 2017 and 2022 in credit provider participation and the number of accounts, with a significant proportion of this growth happening between 2017 and 2019, largely driven by the four major banks beginning to supply comprehensive credit reporting data in 2018 (see Table 4).

⁴⁷ Revolut, Submission to the Issues Paper, 7 June 2024, p. 2.

⁴⁸ National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019.

Table 4: Growth in Comprehensive Credit Reporting Participation

	2017	2018	2019	2020	2021	2022	2023
Credit providers	4	19	34	43	62	79	85
Accounts (millions)	0.1	11.7	21.5	22	23	23.1	23.1

Source: Arca, *Credit Data Fact Base*, Vol 10, Sept 2022 and additional information.

Although the data shows that there was clearly some level of voluntary participation prior to the formal effective date of mandatory reporting, it is likely the prospect of these requirements being legislated incentivised the major banks and others to implement the required processes and systems, and without the pending legislation, this may not have occurred.⁴⁹ Delays in full participation may also have resulted from related implementation efforts, including the PRDE, system changes, data testing, and quality assurance.⁵⁰

Greater public scrutiny on bank practices may have been a contributing factor in driving credit providers to participate in comprehensive credit reporting. This included the focus on bank lending conduct as a result of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and the delivery of its report in February 2019.⁵¹ ASIC also commenced a review of its guidance on responsible lending (RG209) in late February 2019, which considered comprehensive credit reporting.⁵²

The overall cost of mandatory supply requirements appears to have been manageable and is now largely historical. NAB's submission stated that it:

... made significant investments to enable mandatory credit reporting. This includes software across multiple account ledgers, customer master systems, collection systems, and the requirements for data warehouses, to ensure we can comply with our obligations. A key driver of the ongoing cost has been the disparate data validations between CRBs.⁵³

Arca's submission highlighted several of its members identified distinct costs arising from mandatory credit reporting related to testing systems to ensure the full range of credit products were appropriately reported under mandatory supply requirements, and relevant flow-on impacts were considered.⁵⁴

49 See [National Consumer Credit Protection Amendment \(Mandatory Credit Reporting and Other Measures\) Bill 2019](#) and [National Consumer Credit Protection Amendment \(Mandatory Comprehensive Credit Reporting\) Bill 2018](#).

50 Arca, Submission to the Issues Paper, 14 June 2024, p. 94, and Productivity Commission, [Inquiry Report No. 82 – Data Availability and Use](#), 31 March 2017.

51 Royal Commissions, [Misconduct in the Banking, Superannuation and Financial Services Industry – Final Report](#), 4 February 2019.

52 ASIC, [CP 309 Update to RG 209: Credit licensing: Responsible lending conduct](#), 14 February 2019.

53 NAB, Submission to the Issues Paper, 7 June 2024, pp. 10-11.

54 Arca, Submission to the Issues Paper, 14 June 2024, pp. 95-96.

The industry has led on regulatory development and data standards

Credit reporting has been characterised by a self-regulatory structure which has managed a complex set of technical rules and data standards. Arca and its subsidiary the RDEA have effectively organised industry participation as quasi-regulators in the form of:

- an industry-drafted, government-approved CR Code which sets out certain obligations
- a data-sharing reciprocity structure
- data standards for the technical exchange of information.

Subject to the issues described later in this Report, Arca's role provides a structure for industry to coordinate their credit reporting activities. Arca has expertise in areas covered by the CR Code and maintains relationships with industry as well as consumer advocates. Both the CR Code and data standards are updated regularly.

Arca's membership base includes more than 50 members and there are 115 PRDE signatories (who are not necessarily members of Arca).⁵⁵ Its board and members do not include consumer representatives, but consumer advocates note that they have had a constructive and collaborative relationship with Arca, and feel Arca makes a genuine effort to ensure that consumer groups are consulted.⁵⁶ The industry-managed reciprocity arrangements are promoting open access and minimising the extent of 'free riding' within the credit reporting framework by ensuring that credit providers that share data in the system can also access data at the same level of granularity.

Credit reporting has not been a significant focus for information security risks

While there have been high profile data breaches overseas relating to credit reporting, and in Australia relating to other industries, there are no known major data breaches at credit bureaus in Australia. One small data breach of a utility provider allegedly included credit reporting information.⁵⁷ Since the establishment of AFCA, OAIC has received a relatively low number of complaints relating to credit reporting (see Figure B), significantly lower than the approximately 7,600 credit reporting complaints AFCA receives each year. Some anecdotal reports have emerged regarding the impact of identity theft as well as consumers whose data has been incorrectly merged with another consumers' data due to identity mismatch by a credit provider or credit bureau.⁵⁸

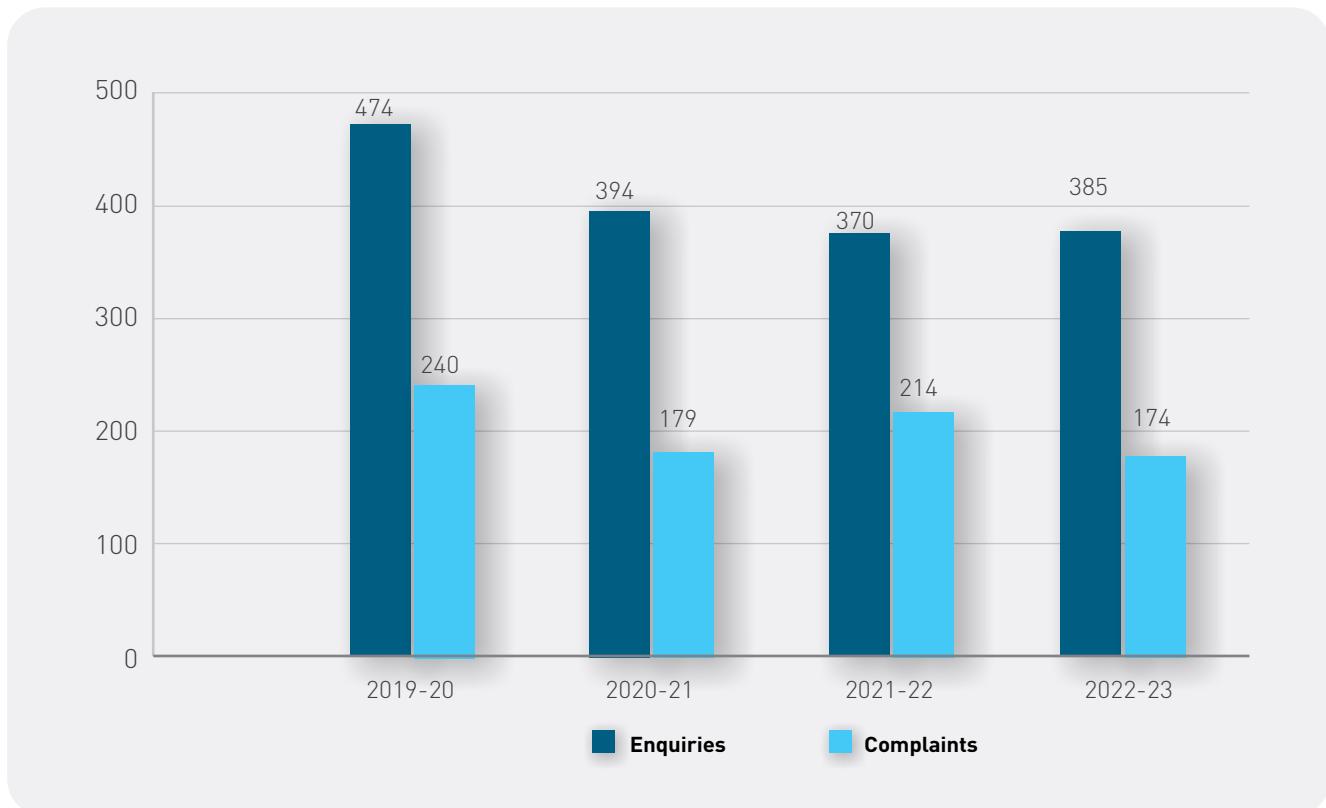
55 ibid., p. 27.

56 Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 30.

57 Swan D, ['Sumo slammed by data breach, as energy and internet customers have details leaked'](#), Brisbane Times, 15 May 2024.

58 AFCA, Submission to the Issues Paper, June 2024, p. 10.

Figure B: Annual credit reporting enquiries and complaints to OAIC



Source: OAIC, Submission to the Issues Paper, pp. 25-26.

What could be improved: Issues and concerns with the framework

The consumer experience is often poor

While credit reporting works effectively for the vast majority of consumers, there is an ongoing level of confusion and friction for a proportion of consumers who interact with the credit reporting system. Key areas where consumers struggle to engage with credit reporting are outlined below.

Friction in accessing credit reports

The process for consumers to obtain and understand their credit reports remains cumbersome and confusing, despite recent improvements making online access faster.

A consumer's interaction with credit reporting generally starts when they request a copy of their credit report as part of a loan or other credit application (such as purchasing a mobile phone on a fixed contract) or because they have been rejected for credit and want to understand why.

They may discover that there are in fact three main credit bureaus, which may hold different data about them.⁵⁹ Although a lender is required to disclose which credit bureau information was involved in a credit application, there is no guarantee that this bureau will be relevant for a future application.

To find out more, including how to obtain their reports, many consumers are likely to use internet search engines. The search typically directs a consumer to a variety of commercial websites that collect the consumer's personal information in order to offer free 'credit monitoring,' often a channel for direct marketing of credit products, 'credit repair' (see below) or other debt management services targeted at consumers who are under financial stress.

Some credit bureaus may offer paid subscription services for consumers to monitor their credit report, sometimes promoted alongside or above the consumer's right to a periodic free report.⁶⁰

A common frustration is that documented identity verification is necessary to obtain a credit report, which is critical to protecting privacy and ensuring only the actual consumer can access their credit information. The identity verification procedures and requirements differ across the three main credit bureaus, and as Arca noted in its submission to the Digital ID Bill 2023, '[i]t is common for ARCA members to find inconsistency between identity documents, e.g. different names of drivers licences and passports. This creates friction in the system and issues for customers.'⁶¹

Further, some credit bureaus require the consumer to sign up for an account to request the report online. The sign-up process of two bureaus requires the consumer to agree to terms and conditions (such as agreeing not to disclose credit reports to third parties) in order to obtain their free credit report, despite their unconditional right to this information under the Privacy Act.

⁵⁹ In addition, there is a fourth newer credit bureau TaleFin which is not referenced on CreditSmart or other credit bureau sites.

⁶⁰ The CR Code now requires credit bureaus to prominently display the 'free credit report' link and to suggest the consumer request reports from the two other bureaus. In practice, consumers can be redirected to a paid subscription service.

⁶¹ Arca, [Submission to the 2023 Digital ID Bill](#), 10 October 2023.

Consumers may also be pressured by third parties such as prospective employers or landlords to provide a copy of their credit report for purposes of assessing their financial situation. While under the Privacy Act, such parties are prohibited from obtaining a credit report directly from a credit bureau, there is nothing to prevent a consumer from providing their report directly in hard copy or via email, despite the consumer's possible discomfort in sharing this information with a third party.

Low consumer understanding of credit reports

Once a consumer obtains their credit report, they need to figure out what it means for them. Submissions to this Review from industry and consumer advocates strongly agree most consumers have a limited understanding of credit reporting, including what information about them is reported, how credit scores are generated, and who has access to this data.

Credit report formats and descriptive material differs across credit bureaus. Arca has developed detailed recommendations for clear presentation and accessibility of free credit reports, but these have not yet been adopted in the CR Code.⁶²

When they see their credit report, consumers typically focus on the credit score as well as any adverse information such as defaults or missed payments. For many consumers, this may be the first time they are faced with the concept of a credit rating or score. Although credit reports now contain plain English descriptions of the consumer's score and what influences it, this may differ across the three main bureaus. The credit report also lists historical accounts and transactions, including repayment history. This can extend over several pages.

Not all of a consumer's accounts may be listed. Some credit providers do not provide information to credit bureaus at all, including some major BNPL providers. Additionally, some lenders use different brand or trading names rather than the legal name reported on the credit report, which can confuse consumers.

Consumers may also be confused about past credit enquiries that appear on their report. They may not understand that 'shopping around' for lower-priced loans can hurt their credit rating. Some lenders or brokers advertise that they can do a 'soft touch' enquiry that does not affect a consumer's credit file, but there is currently no clear legal basis for a 'soft enquiry'.

Lenders that are selling credit products have minimal incentives to explain clearly the potential negative impact of a credit enquiry on a consumer's credit report and credit score, nor are they required to obtain consumer consent to make an enquiry under the Privacy Act. Required disclosures to consumers are inconsistent in their quality, clarity and timeliness. For example, the NSW Energy and Water Ombudsman noted that in the energy industry, the required notification is often buried in the retailer's privacy statement, which many consumers may not even open.⁶³ These points of difference can give rise to subsequent complaints where a consumer did not notice that a credit check would be required for a particular application or enquiry about credit.⁶⁴

62 Arca, Submission to the Issues Paper, 14 June 2024, pp. 67-68.

63 Energy and Water Ombudsman NSW, [Submission to the Australian Retail Credit Association consultation on the Privacy \(Credit Reporting\) Code 2014 and potential variations](#), 16 November 2023, p. 4.

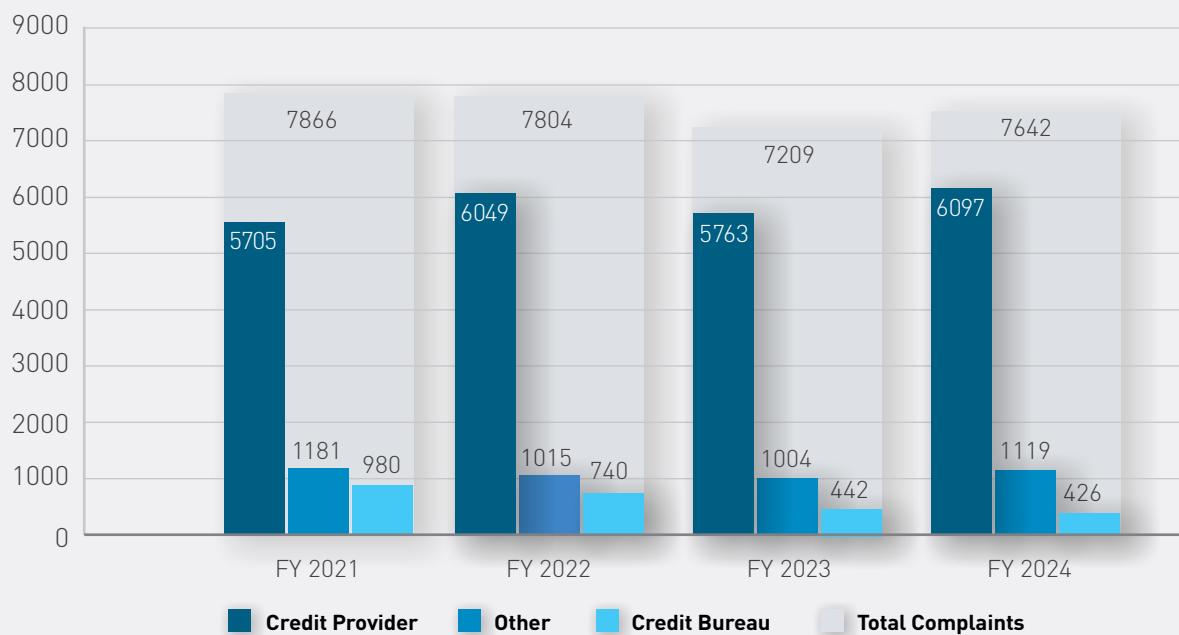
64 In changes pending to the CR Code, Arca is proposing that for both hard and soft enquiries, consumers need to be told of the implications of the enquiry – and in particular that it may affect their credit score.

Consumer complaints about credit reporting remain high

Consumer requests for corrections and complaints filed with lenders, credit bureaus and external dispute resolution schemes such as AFCA, the state and territory Energy and Water Ombudsmen and Telecommunications Industry Ombudsman indicate the challenges consumers have understanding and dealing with the credit reporting system.

AFCA captures and publishes comprehensive data on its cases. In 2024, AFCA received around 7,600 complaints about credit reporting, across both credit providers and credit bureaus (see Figure C).⁶⁵ This represented about seven per cent of all complaints received by AFCA in the financial services sector and has remained relatively constant in recent years. Additionally, in 2022-23 the Telecommunications Industry Ombudsman received 970 complaints categorised as a 'credit default report'.⁶⁶

Figure C: Credit reporting complaints received by AFCA, 2021-2024



Source: AFCA

65 AFCA, Submission to the Issues Paper, June 2024, p. 3.

66 Telecommunications Industry Ombudsman (TIO), Submission to the Issues Paper, 14 June 2024, p. 1.

Although significant, these complaints represent only a small fraction of more than approximately 20 million credit files held by each of the credit bureaus. Data is not published on the number of credit reporting complaints or corrections lodged with credit bureaus or credit providers, although the credit bureaus are required to publish some data as noted below. According to AFCA, most complaints arise:⁶⁷

- after a consumer becomes aware of an adverse credit listing
- following an unsuccessful credit application, or
- because of a privacy breach, identity theft, scam or fraud.

AFCA declines to progress a significant number of complaints received for a variety of reasons, including that the complaint is not valid or outside of AFCA's scope or if the parties agree on a resolution themselves. Consumers are expected to first attempt to resolve an issue with the credit provider or credit bureau, before proceeding to lodge a complaint with an external dispute resolution body.

According to AFCA, most complaints about credit reporting are made to the credit provider, which are typically banks and non-bank lenders, and not to the credit bureau. AFCA's view is that lenders often try to shift responsibility onto credit bureaus.⁶⁸ According to IDCARE, complaint-handling teams at credit bureaus can be understaffed or lack sufficient training.⁶⁹

Concerns about credit checks appearing on consumers' credit reports are among the three most common source of complaints (see Table 5). Credit report enquiries remain on a consumer's file for five years. These can include a routine credit check performed for a consumer who is 'shopping around' for a car loan or even a mobile phone plan. Complaints about consumers' actual credit scores are significantly less common.

AFCA reports on systemic complaint issues that it sees through its case work to the relevant regulators, such as ASIC and OAIC, for further follow-up. Systemic issues are those that are seen to be widespread or affecting multiple consumers or industry participants. AFCA noted there were 16 systemic issues over three years affecting 270,000 consumers.⁷⁰

Six issues related to process errors with a credit provider or failure to update information, such as reporting accounts were closed. Several errors were attributed to communication failures between a credit provider and a credit bureau, often resulting from the credit bureau's data validation process, which rejects certain data items based on automated validation rules. The remainder were process errors in listing defaults.

67 AFCA, Submission to the Issues Paper, June 2024, p. 22.

68 *ibid.*, p. 9

69 IDCARE, Submission to the Issues Paper, May 2024, p. 4.

70 AFCA, Submission to the Issues Paper, June 2024, p. 22.

Table 5: AFCA top credit reporting complaints by issue received

	2020–21	2021–22	2022–23	2023–24
Default Listing	3713	3407	2612	2830
Credit Enquiry	1708	1777	1898	1884
Repayment History Information	1402	1923	1892	1812
Credit Score	420	503	617	748

Source: AFCA

The complaints process and particularly engagement with the external dispute resolution regime is also a concern for industry participants. Arca notes that the EDR schemes play a more significant role than the regulators in providing oversight of system compliance.⁷¹ The volume and cost of EDR is challenging for industry participants, and there can be inconsistent outcomes across cases, which makes it difficult for credit providers and credit bureaus to improve their processes. Overall, there is a sense of excessive reliance on EDR processes to address consumer issues in the credit reporting system.

Data coverage is limited for some sectors

A credit reporting system is less effective in providing an accurate picture of an individual's creditworthiness where relevant information is not available, either in terms of specific data items or coverage of credit products or relevant industry sectors. Generally, industry participants view Australia's credit reporting regime as more restrictive, and providing much less relevant data on consumers, than many international credit reporting systems. The World Bank has published guidelines on minimum recommended data for credit reporting that includes additional datasets not covered in Australia.⁷²

Gaps in coverage can also contribute to the number of customers with 'thin credit files' – those who do not have credit history with traditional credit providers and so have more challenges in obtaining credit – estimated to be around two million adults. These gaps can mean smaller and newer lenders are disadvantaged relative to the large banks, which hold extensive historical information on their customers. Material gaps in coverage and participation can lead to credit reports for some consumers being less complete and reliable. The lack of credit information for motor vehicle finance,

71 Arca, Submission to the Issues Paper, 14 June 2024, p. 20.

72 World Bank, *General Principles for Credit Reporting*, September 2011, p. 27.

consumer leases, BNPL, and other unsecured personal lending products required to assess a borrower's loan servicing capacity are key concerns. One submission argued mandatory reporting requirements on major banks has led to a homogenous dataset that does not provide good risk differentiation, particularly in high-risk segments.⁷³

Arca and individual lenders note the lack of data such as outstanding balances (which can help a lender infer their demand for credit) as well as historical (closed) account information.⁷⁴ This can also negatively impact consumers where a consumer pays off an account without fully closing it. These consumers will not benefit from improved creditworthiness or credit score having used only a small proportion of the credit available to them under the limit.

ANZ's submission included an example of a customer who has used 75 per cent of their credit limit and makes only the minimum monthly repayment, versus one with a balance of only five per cent of a large limit that is always paid on time.⁷⁵ In this case, the credit limit does not inform the lending risk without information on the balance due, and this information will help differentiate between those consumers who consistently use the credit they have up to its limit, and those who do not.

There are also gaps in industry and product coverage due to differing levels of participation in the credit reporting system. While many regulated lenders now participate in at least 'partial' credit reporting, there are segments of the credit market with little coverage even at a negative reporting level. Consumer advocates note:

There is significant use of the credit reporting system by mainstream consumer credit providers, but patchy use by BNPL providers and almost none by pay day lenders and other fringe providers.⁷⁶

Providers of these credit products may feel a credit check is unnecessary, or have other data sources that they use for credit assessment. Because they also do not report accounts to credit bureaus, other lenders may end up providing a loan to a consumer who does not disclose these debts and would not otherwise be able to afford the loan. Purchased debt obligations (typically defaulted credit products sold to debt buyers to attempt to collect) also are generally not reported although they may still be valid, legally owed debts.⁷⁷

Telecommunications providers generally participate in credit reporting at the negative (enquiry only) level, due in part to operational cost and complexity, or reporting more detailed data to credit bureaus, as well as privacy considerations. This means they are not able to access information on a customer's financial hardship situation, even though they also have financial hardship responsibilities under the financial hardship industry standard.⁷⁸

73 Kadre, Submission to the Issues Paper, 29 May 2024, p. 4.

74 Arca, Submission to the Issues Paper, 14 June 2024, pp. 41-42.

75 ANZ, Submission to the Issues Paper, June 2024, p. 6.

76 Joint Consumer Groups, Submissions to the Issues Paper, May 2024, p. 105.

77 Australian Collectors and Debt Buyers Association (ACDBA), Submission to the Issues Paper, 31 May 2024, p. 8.

78 See [Telecommunications \(Financial Hardship\) Industry Standard 2024](#).

Industry participants have also raised issues with the availability of credit-related court judgment information, which is a type of credit data that credit bureaus may collect that is historical, for example past contractual defaults that were enforced through a court. This matter deals with reporting procedures in different jurisdictions, rather than the credit reporting framework. As such it is considered outside the scope of this Review.

Quality and timeliness of credit reporting data could be improved

Data accuracy and corrections

Consumers, particularly those seeking to obtain credit, can be anxious about any information listed on their credit report. Errors in credit report data is one of the key harms that can arise in the credit reporting framework: 'Errors can lead to unfair denial of credit, higher interest rates or unfavourable loan terms.'⁷⁹

Although there is no industry-wide data relating to volumes of corrections, some data is reported via the bureaus' annual reports. The Equifax report shows that 0.34 per cent of individuals with credit accounts at the bureau made a correction request (of which 32 per cent were successful), and the bureau itself made corrections to 0.71 per cent of accounts.⁸⁰ illion and Experian report lower rates of corrections.

Data accuracy and the right to correct credit information held and reported by credit bureaus is a core consumer right enshrined in Part IIIA. The Privacy Act imposes obligations on both credit bureaus and credit providers to take reasonable steps to ensure that credit information is accurate, up to date, and complete including entering into agreements with credit providers to do the same.⁸¹ The Privacy Act makes it an offense for the provision of materially false or misleading credit reporting information by either credit providers or credit bureaus.⁸² Consumer advocates state that:

Rectifying errors in credit reports in Australia is a cumbersome and time-consuming process, causing frustration and stress for individuals trying to correct inaccuracies.⁸³

Detailed obligations and procedures for credit providers and credit bureaus around corrections (set out in paragraph 20 of the CR Code) can be complex and difficult to understand. Consumers may need to obtain and correct their credit reports from multiple credit bureaus, making this process even more confusing and frustrating. The corrections process was also emphasised in the 2021 CR Code Review as particularly problematic.⁸⁴

⁷⁹ Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 13.

⁸⁰ Equifax, [2022-2023 Credit Reporting Annual Report](#), August 2023, pp. 4-5.

⁸¹ Privacy Act s 20N.

⁸² Privacy Act ss 20P and 21R.

⁸³ Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 14.

⁸⁴ OAIC, [2021 Independent Review of the Privacy \(Credit Reporting\) Code](#), September 2022, pp. 97-105.

AFCA notes that 'complaints to AFCA typically relate to the accuracy of credit reporting data'.⁸⁵ Consumers can find it difficult to have errors corrected by a lender or credit bureau, even if the information is clearly incorrect (such as an incorrect identification or another consumer's data appearing on a credit report). This can negatively affect consumers experiencing fraud and financial hardship.⁸⁶

Lack of consumer understanding is heightened by the disproportionate impact of some technical details of credit reporting information. Consumers often require professional assistance (such as a financial counsellor or lawyer) to understand their rights in these situations, which can include:

- the relatively low \$150 minimum threshold for default information
- small missed repayments due to an error or inadvertent timing difference
- credit enquiries from several years ago without an associated credit account
- the name of the credit provider being listed and not the brand name
- debts that are no longer legally collectable (statute-barred).

Not all corrections are appropriate and credit bureaus report that on average well under half of correction requests they receive from consumers are 'successful' (that is, accepted and changed).⁸⁷ Some requests stem from information that a consumer is hoping to have removed to increase their credit score, which may or may not be justified and if removed, may leave the consumer open to being provided with credit that they cannot afford. Correction requests need to be investigated on a case-by-case basis, which can be time consuming and costly for credit bureaus and credit providers, particularly when they are unfounded.

Credit providers may sometimes remove adverse listing on a 'goodwill' basis to resolve disputes, although there is no provision in the CR Code, data standards or legislation that supports this practice. In practice, this behaviour undermines the integrity of the data in the credit reporting framework and reduces its ability to accurately assess the credit risk of a consumer who has already established themselves to be a default risk. Conversely, creditors reportedly may use the threat of a default listing to negotiate a payment arrangement with a consumer.⁸⁸

IDCARE has found that correction requests are often passed between entities rather than the credit bureau initially receiving the request from the consumer. This creates a frustrating cycle for the consumer, who may already be distressed.⁸⁹ In some cases, the consumer no longer has a relationship with that lender if it was a historical account or an old enquiry that did not result in a loan being made, or was the result of fraud.

85 AFCA, Submission to the Issues Paper, June 2024, p. 16.

86 AFCA, *Systemic Issues Insights Report – Quarters 3 and 4 – Financial year 2022-23, Edition 3*, pp. 7-8.

87 For example, Equifax, *2022-2023 Credit Reporting Annual Report*, p. 4, and illion, *Annual Report*, August 2024, p. 6.

88 ACDBA, Submission to the Issues Paper, May 2024, p. 4.

89 IDCARE, Submission to the Issues Paper, May 2024, pp. 3-4.

The Privacy Act requires credit bureaus and credit providers to address correction requests within 30 days of a request by the individual, unless the consumer agrees to a longer timeframe.⁹⁰ The CR Code also includes provisions for corrections that are not complex to be actioned within five business days.⁹¹

Table 6: Selected correction requests by type (per cent of total correction requests)

	2019	2021	2023
Equifax			
Enquiries	57.5%	28.2%	31.3%
Defaults	26.4%	13.7%	10.8%
Repayment history	N/A	35.3%	32.8%
CCLI	N/A	13.0%	11.8%
Personal information	7.9%	8.5%	12.1%
illion			
Enquiries	N/A	74.8%	51.8%
Defaults	N/A	10.4%	7.7%
Repayment history	N/A	2.8%	1.2%
CCLI	N/A	6.4%	17.7%
Personal information	N/A	4.3%	18.6%

Equifax and illion Annual Compliance Reports, 2019, 2021 and 2023.

90 Privacy Act s 21V.

91 Privacy (Credit Reporting) Code 2014 (CR Code), para 20.2.

In practice, it appears that correction timeframes often take much longer than the five days and even longer than the 30-day statutory requirement. Experian, for example, reported an *average* correction time of around 35 days in 2023, implying that some corrections are taking even longer.⁹² Equifax also reported an average correction time of 35 days in 2021, falling to 21 days in 2023.⁹³ Delays in correcting information can lead to significant financial harm for a consumer if, for example, they are in the process of applying for a loan to purchase a property.

Correction requests arise most commonly relating to enquiries and defaults, with repayment history information being a focus more recently as the volume of this type of information has increased. Credit bans can also interfere with the corrections process.

Credit repair

Both industry and consumer advocacy stakeholders have raised significant ongoing concerns with the credit repair sector. Credit repair is a way for consumers to seek to remove adverse information from their credit file and these services are widely advertised on the Internet. These companies provide fee-based service to dispute and seek to remove defaults, enquiries and other information on a consumer's credit report. Lenders and consumer advocates provided evidence that credit repair firms continue to drive a higher level of complaints and undermine the valid corrections process.

Since 2021, credit repair firms have been required to hold an ACL from ASIC and as a result must meet basic conduct requirements including operating efficiently, honestly and fairly. This appears to have reduced some of the more egregious behaviour and abusive business models but according to AFCA they continue to drive a high level of correction-related complaints. Credit repair and debt management services submitted nearly 6,500 complaints to AFCA over the past three years, or 22 per cent of all credit reporting complaints.⁹⁴

A review of credit repair websites indicates that they often exaggerate claims about the ease of removing adverse information through their service, and rarely highlight that consumers can request corrections themselves for free. While some credit repair services only charge a fee for successfully removing adverse information, others charge high up-front fees as well. These fees and terms are typically not transparent on their websites.

This can leave an indebted consumer in an even worse financial position. Some services suggest that they will attempt to negotiate a payment plan in exchange for removing a default listing. Manipulating the reporting of defaults in order to secure payment seems inconsistent with the legislative intent of the credit reporting framework or an appropriate outcome of the credit reporting system.

The Australian Collectors and Debt Buyers Association (ACDBA) reports that 74 per cent of complaints to its members are received via a credit repair service firm and that these often involve excessive documentation requests to credit providers and threats of escalation.⁹⁵

92 Experian, *Experian Credit Reporting: 2022-23 Annual Report*, p. 5

93 Equifax, *2022-2023 Credit Reporting Annual Report*, p. 4, and various Equifax annual reports.

94 AFCA, Submission to the Issues Paper, June 2024, p. 11.

95 ACDBA, Submission to the Issues Paper, May 2024, p. 9.

AFCA provided evidence that complaints lodged by professional credit repair firms are less likely to be resolved quickly and are more likely to be rejected as out of scope. Lenders that appropriately refuse to remove valid debts or defaults bear the cost of complaints.⁹⁶ According to the newer credit bureau TaleFin, the high level of complaints and corrections has also led to smaller and more innovative lenders simply avoiding the traditional credit reporting bureau arrangements.⁹⁷

Reporting frequency and timeliness

The Privacy Act provisions were developed around a monthly batch updating and reporting process and this is reflected in the batch reporting processes between credit bureaus and credit providers. This made sense in a 20th Century credit environment based around mortgages and credit cards, but some stakeholders, particularly more innovative fintech lenders, argue that this approach is outdated.

Stakeholders from both industry and consumer perspectives cite instances where credit reporting data is not sufficiently frequent or recent. The ABA expressed concerns that credit reporting bodies do not have mandated timeframes to upload data and that a requirement of five to ten days would be reasonable.⁹⁸ Out-of-date data can harm consumers, for example, if they have recently paid off a loan, and are seeking new credit. A lender may make an unsuitable lending decision if a recent default or new account has not been reported yet. Minimum reporting obligations on credit providers are set out in the credit reporting data standards and require monthly reporting within 20 business days of the end of the period on a 'best endeavours' basis.⁹⁹

In contrast, many innovative technology-driven lenders and other newer fintech companies, as well as the legislated Consumer Data Right (CDR) initiative, have largely moved to API-based transmission and real-time, event-driven systems. These are also generally considered to be easier to reconcile than large batches of data items. More modern credit assessment services are now being developed in some jurisdictions with a greater range of more timely data.¹⁰⁰

Timely reporting of defaults by credit providers or debt collection/debt buyers has been raised as a concern by both industry and consumer advocates. Default data can be retained by a credit bureau for five years after it is reported to the bureau. A default can remain in the credit reporting system for longer than five years after the point of original default and even after the debt is no longer legally enforceable. Failure to report defaults can occur when debts are sold to a debt collection firm, either because the consumer is subject to an ongoing payment arrangement or potentially due to a lender avoiding listing a default.

96 AFCA, Submission to the Issues Paper, June 2024, p. 12.

97 TaleFin, Submission to the Issues Paper, 2024, p. 13.

98 Australian Banking Association, Submission to the Issues Paper, 7 June 2024, p. 14.

99 Australian Credit Reporting Data Standard (ACRDS), BR10.

100 See for example UK-based credit assessment service in fact.io which sources real-time credit information to provide credit assessments.

Related to timing of reporting, technical issues with the data definitions set out in the Privacy Act or Privacy Regulation continue to arise, such as the definition of 'month' for purposes of reporting of repayments.¹⁰¹ Submissions from fintech lenders are of the view that data definitions are not fit for purpose, with more flexible products such as those with weekly or fortnightly payments not easily accommodated, although Arca has issued guidance on reporting of more frequent payment cycles within the monthly framework.

Consumers requiring more support

Financial hardship reporting

There has been significant focus on access to financial hardship arrangements by consumer advocates, ASIC and the credit industry. New regulations requiring financial hardship assistance also now apply to telecommunications providers.¹⁰² While financial hardship information on credit reports conceptually supports more responsible lending, its implementation has not been without challenges.

ASIC's recent review of financial hardship found that lenders need to improve their processes to meet their hardship responsibilities, including providing clearer and more accurate information about the impact on credit reports.¹⁰³ Consumer advocates do not believe the financial hardship provisions within the comprehensive credit reporting regime have struck the right balance between responsible lending and responding to financial hardship.

AFCA has asserted that there is widespread consumer misunderstanding about financial hardship reporting on credit reports. The ABA concurs that hardship reporting is often misunderstood by consumers and that some customers are reluctant to accept hardship assistance because of credit reporting impacts.¹⁰⁴

AFCA has seen cases where a credit provider continues to report missed payments where the consumer believes a hardship arrangement is in place. Accurate reporting of hardship on credit reports is the regulatory responsibility of the OAIC, rather than ASIC. Revolut has observed instances where customers who initially sought hardship assistance discontinued the process when they were advised that this would be reflected on their credit file.¹⁰⁵

Consumer advocates separately suggest that lenders are not explaining the implications of hardship arrangements and their advantages over allowing arrears to arise fully to consumers. ASIC in its recent review of hardship arrangements reported that 35 per cent of consumers failed to complete a hardship request, although this was often for other reasons than worries about their credit report.¹⁰⁶

¹⁰¹ AFCA, Submission to the Issues Paper, June 2024, p. 11.

¹⁰² Telecommunications (Financial Hardship) Industry Standard 2024.

¹⁰³ ASIC, *Report 783: Hardship, hard to get help: Lenders fall short in financial hardship support*, 20 May 2024.

¹⁰⁴ Australian Banking Association, Submission to the Issues Paper, 7 June 2024, p. 10.

¹⁰⁵ Revolut, Submission to the Issues Paper, 7 June 2024, p. 3.

¹⁰⁶ ASIC, *Report 783: Hardship, hard to get help: Lenders fall short in financial hardship support*, 20 May 2024, p. 4.

Protection for consumers who are victims of financial abuse

Consumer advocates are concerned the mandatory reporting regime has made it more difficult for lenders to respond appropriately to suppress credit reporting information for vulnerable consumers such as those experiencing domestic violence or abuse.¹⁰⁷ AFCA and consumer advocates have noted cases where credit reporting 'is used as a weapon in family violence', with some abusers opening credit accounts in the name of victims without their authorisation. AFCA reported that more than 10 per cent of consumer credit complaints it flagged as related to financial abuse involved credit reporting.¹⁰⁸

Some victims are coerced into opening credit accounts in their name while the proceeds were used by their abuser. Defaults or missed payments then appear on the victim's credit report. Jointly held liabilities where one or more borrowers exploit others in an arrangement can also present similar challenges in reflecting credit performance fairly. These are often complex cases and increasingly mainstream lenders have dedicated hardship and family violence teams, but that is not the case for all. A related concern is the fact that a financial hardship arrangement requested by one account holder in a joint account will be reported and disclosed on credit reports for all account holders and can alert a perpetrator about a victim's financial activity.

Consumer representatives such as financial counsellors typically request that credit providers defer listing defaults or missed payments while an issue is being resolved.¹⁰⁹ While many credit providers ultimately agree to remove adverse information in these cases, there are no clear guidelines on when this is appropriate and permitted. For purposes of mandatory credit reporting, ASIC has provided a no-action letter to support this practice.¹¹⁰

Access to credit reports and support for First Nations and clients without online support

Some consumers may have difficulty access their credit reporting information due to a lack of digital access or other barriers. IDCARE's clients found the online forms complex and difficult to navigate. This was more of a concern for those from non-English speaking backgrounds.¹¹¹ Digital exclusion can be a problem when credit reports are generally available only online. Some stakeholders suggested bureaus could better align their practices with AUSTRAC guidance for consumers who don't have standard forms of identification.¹¹²

¹⁰⁷ Economic Abuse Reference Group, [*Response to Inquiry into Financial Services Regulatory Framework in Relation to Financial Abuse*](#), 28 June 2024, pp. 25-27.

¹⁰⁸ AFCA, [*Submission to the Parliamentary Inquiry into the Financial Services Regulatory Framework in relation to Financial Abuse*](#), July 2024, p. 10.

¹⁰⁹ See Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 103.

¹¹⁰ ASIC, [*ASIC helps credit providers protect victims of family violence*](#), 8 July 2022.

¹¹¹ IDCARE, Submission to the Issues Paper, May 2024, p. 3.

¹¹² See AUSTRAC, [*Assisting customers who don't have standard forms of identification*](#), 17 January 2024.

Arca's submission included survey information showing that 72 per cent of Indigenous respondents had checked their credit report, that many had concerns about security of their personal data, and were concerned with their ability to access credit.¹¹³ Consumer advocates highlighted barriers to First Nations people in accessing and using credit reports and recommended that credit bureaus in particular have staff with appropriate training to engage with First Nations customers.¹¹⁴ Banks and insurers have made commitments through industry codes of practice and conduct to assist these customers.¹¹⁵

Protection from fraud and information security risks

Fraudulent access to credit can be facilitated by identity theft and use of stolen credentials to apply for credit. There is no data publicly available on the prevalence of fraudulent credit obtained in this manner, but the incidence of data breaches suggests it may be increasing. A credit ban is a common means for consumers to try to protect themselves from potential fraudulent credit being taken out in their name as a result of identity theft or data breach.

Under the Privacy Act, an individual can request to not disclose their credit report to any party (a credit freeze or 'ban') due to concerns about fraud or identity theft (but not for other reasons). While a ban does not preclude all types of lending, most potential lenders that encounter a ban while processing a credit application will be unwilling to proceed with an application or will enquire further with the customer directly. The credit provider may not disclose information unless it separately verifies the consumer's identity.¹¹⁶

The Review understands that the use of bans has increased in recent years due to high profile data breaches, but bans still only cover a small fraction of those consumers whose data has been illegally disclosed. National non-profit cybercrime and identity support service IDCARE managed about 82,000 cases in 2023 and of those, 25,000 obtained their credit report.¹¹⁷ IDCARE noted that 'frequently, clients also had false expectations regarding the ability of CRBs to protect people from credit-misuse.'¹¹⁸ While some consumers affected by a major data breach may place a ban on their credit report, many more consumers also affected by the same breach, and who would benefit from a ban, do not place a ban on their credit report.

The Privacy Act limits credit report bans to cases of fraud or suspected fraud. The process to request a ban requires consumers to answer questions and provide evidence about why they feel they are at risk of fraud. The ban process itself can interfere with correcting fraudulent entries on an account. Placing a ban on a consumer's account means that even legitimate applications or corrections cannot be processed while the ban is in place. A credit ban can also interfere with legitimate debt collection activities. Some consumers also forget they have a ban in place and then attempt to apply for credit.¹¹⁹

113 Arca, Submission to the Issues Paper, 14 June 2024, p. 81.

114 Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 88.

115 For example, see Australian Banking Association, [Banking Code of Practice](#), 5 October 2021, Chapter 13, and Insurance Council of Australia, [General Insurance Code of Practice](#), 5 October 2021, p. 32.

116 *Privacy Act* s 21F.

117 IDCARE, Submission to the Issues Paper, May 2024, p. 2.

118 *ibid.*, p. 3.

119 Arca, Submission to the Issues Paper, 14 June 2024, pp. 70-71.

In other cases of fraud, consumers may request that a credit bureau remove certain adverse information such as defaults and enquiries. The credit bureau may initially expect the consumer to contact the lender that reported the information, even though the consumer may not have a genuine relationship with that lender, or where the lender is uncooperative.

The FRLC and consumer advocates provided examples of cases where a credit bureau refused to remove information about fraudulent credit. Some non-mainstream lenders may have weaker compliance processes and little incentive to proactively assist consumers in these cases. Correcting information in these cases can be a lengthy and frustrating process for a consumer who has been a victim of criminal activity. The FRLC has previously recommended that credit bureaus be required to coordinate fraud correction requests and make corrections rather than wait for instructions from the lender.¹²⁰

Although there have not been widespread information security breaches as seen in other industries, privacy breaches can occur when mismatched records show a consumer's file has been inappropriately merged with another, disclosing the other consumer's personal data. The Review was provided one example of a consumer affected by this very distressing situation. Lack of standardised identity verification procedures across credit bureaus and credit providers, as well as an absence of clear matching criteria, may exacerbate these problems. Use of definitive government identifiers such as a tax file number is generally prohibited.

Competition and innovation

Uneven impacts on industry competition

Supporting industry competition and innovation is not an explicit objective of the credit reporting framework. Nevertheless, credit reporting can have a material impact on competition, for example, in terms of providing beneficial information access by smaller lenders. Some stakeholders are concerned about the concentration in the credit bureau sector as well as the power of dominant incumbents in the lending and credit reporting sectors. Less competitive markets may be less open to innovative competitors and technologies.

The credit bureau industry itself remains highly concentrated, and is set to become more concentrated with the anticipated merger of the two smaller credit bureaus, illion and Experian. This is not surprising and is common in other countries. According to the World Bank, the credit bureau business is characterised by network externalities and economies of scale that could classify the business as a natural monopoly.¹²¹

It is also difficult for new data firms to join the consumer credit reporting market. For instance, a new credit bureau (TaleFin) is outside the scope of mandatory credit reporting, and is not referenced on any OAIC or Arca information as a credit bureau.

120 Financial Rights Legal Centre, Financial Counselling Australia and Consumer Credit Legal Service WA, [Submission to the Consultation on CR Code Review and potential variations, June 2023](#), 17 July 2023.

121 World Bank, [Credit Reporting Knowledge Guide 2019](#), 2019, p. 19.

As a result, affected consumers may not know that they may have a record with a fourth bureau, and can also access a free credit report.

The Review heard from stakeholders that there is a substantial disparity in the data coverage across credit bureaus, with the largest bureau Equifax holding much greater volume and scope of data than its competitors. This results in large part from this natural monopoly effect together with a historically dominant position. This disparity may also contribute to consumer confusion if they are dealing with a smaller bureau such as Experian, thinking it has the same information as Equifax.

Although mandatory reporting by the four major banks alleviates this to a limited extent, the disparity in availability of data on credit enquiries and more specialised credit providers means that this disparity appears unlikely to resolve through market forces.

Some stakeholders provided anecdotal evidence that credit enquiries cost much more in Australia, than comparable overseas jurisdictions, for significantly less information, although this may not be due solely to market concentration, and may be indicative of Australia's smaller market and more restricted dataset.

Dominant providers may not have incentives to invest in their infrastructure or service quality. The Review understands that at least one operational credit bureau outage occurred in 2024, causing widespread disruption to lending operations. As a result, some larger credit providers find it beneficial to supply and receive information with more than one credit bureau to ensure they do not have a loss in service that could affect their business volumes.

The PRDE requires authorisation by the ACCC because it involves a cooperative agreement to restrict data sharing between competitors. These restrictions have generally been accepted as necessary to support the integrity of the credit reporting data. The ACCC concluded that the PRDE addresses a 'free rider' problem where some credit providers would access credit reporting data without reporting into it.¹²²

Some stakeholders feel that the PRDE acts as a barrier to entry for new entrants and smaller innovative lenders. The PRDE rules are viewed as overly rigid and govern what data is provided to the bureaus and who can access it. The cost and rigid technical approach has, according to some stakeholders, led some smaller lenders to avoid participating in the credit reporting system.

Smaller participants may also have less leverage with the large credit bureaus in terms of pricing and access. The World Bank recommends in its *Principles for Credit Reporting* that data providers should 'refrain from entering into exclusivity agreements with a particular credit reporting service provider' to ensure wide and equitable access to data.¹²³ Although there is no evidence of exclusivity agreements in Australia, it could be a concern if bilateral business arrangements were limiting data sharing across credit bureaus.

122 ACCC, [Authorisations register: Australian Retail Credit Association](#), 15 December 2020.

123 World Bank, [General Principles for Credit Reporting](#), September 2011, p. 25.

Smaller credit providers may not be able to diversify across credit bureaus because of the costs of dealing with more than one credit bureau, particularly the areas where data and systems are not standardised across bureaus. According to Arca, a working group is looking at how to improve consistency of data and systems across credit bureaus.¹²⁴

The terms on which datasets are shared under the PRDE can have important implications for competitive positioning between lenders, as well as for potential new credit bureaus. While signing the PRDE is voluntary, the PRDE restricts data a signatory can share with a non-PRDE signatory.

Limited support for innovation

The inherent rigidity of the legislative framework means that the scope for innovation within the credit reporting system is limited. Although innovation in the techniques used for credit analysis at individual lenders and in credit scoring methodologies has certainly occurred, credit bureaus are not at liberty to collect and share different types of data from consumers under Part IIIA outside those defined in the legislation, regulations and CR Code.

For example, some credit assessment services now collect data through the CDR based on consumer consent, but CDR data is not permitted within the credit reporting framework unless it falls into existing data definitions. TaleFin argues that innovation and improvement in the credit reporting industry have not kept pace with evolution in community expectations and technology developments.¹²⁵

Likewise, some submissions argued that the general approach to credit reporting, based on monthly batch reporting, is outdated and precludes innovation, but this may be more an issue of industry structure as technical standards could be updated. BNPL credit products, leases and other short-term credit are examples where repayments do not have a standard monthly repayment frequency. There is an ongoing debate within industry about whether these products can or should fit within the current data requirements.

The definition of 'credit reporting body' (that is, credit bureaus) also appears potentially outdated. A credit reporting business regulated under the Privacy Act is defined as 'a business or undertaking that involves collecting, holding, using or disclosing personal information about individuals for the purpose of, or for purposes including the purpose of, providing an entity with information about the credit worthiness of an individual.' This effectively means that other forms of credit assessment services that use other types of data may inadvertently come under Part IIIA of the Privacy Act as a credit reporting body, even if they do not provide credit scores.

Algorithmic credit decisions and the potential for bias

The Issues Paper asked questions about the impact of algorithmic decision making in lending and how lenders monitor for any inappropriate bias. In their submissions, industry participants asserted that they regularly test for bias, and that automated tools can actually reduce bias that may be introduced by human assessments.

124 Arca, Submission to the Issues Paper, 14 June 2024, p. 37.

125 TaleFin, Submission to the Issues Paper, 2024, p. 5.

The ABA asserted that automated and algorithmic decisioning in lending has enabled banks to better undertake responsible lending, and that 'banks also undertake routine reviews of projects relating to automated and algorithmic lending from an ethical standpoint prior to implementation of new processes...'¹²⁶ NAB noted that it has been using advanced data analytics to assess credit risk for retail customers since 1997 and believes that AI-enabled decision methods can reduce human bias.

Stakeholders did not provide any examples or data on how they monitor for potential bias in their use of credit reporting information. It appears this issue has received little attention in Australia. In contrast, there is extensive research overseas on lending bias and some countries are introducing guidelines or have existing rules requiring lenders to promote fairness in lending, including automated tools and artificial intelligence.¹²⁷ This is an area where further research would be useful.

Complex and inflexible regulatory structure and limited accountability

Complex and overly prescriptive legislation

Several submissions were of the view that the operation of the regulatory framework is complex and fragmented, with multiple pieces of legislation, regulations and industry standards and administration shared across multiple regulators with often unclear accountabilities. AFCA notes in its submission that:

*The evolution of Australia's credit reporting infrastructure and framework has been distinguished less by purposeful design than an iterative process of expansion and addition.*¹²⁸

Due to this complexity, consumer advocates view the framework as incomprehensible even by their specialists like financial counsellors and consumer lawyers, and AFCA case managers. Consumer advocates also believe the framework does not meet a minimum standard of accessibility. In particular, because core data definitions are set in legislation, the process to clarify or update these definitions as products or technology changes is very slow and unpredictable. This means that changes that could benefit industry participants as well as consumers are often delayed for years.

Key data definitions are effectively 'hard coded' in legislation and constrain the ability of even regulators to progress improvements that can address consumer harms or reflect innovations in the market. Arca notes that some data definitions 'do not work properly and/or do not cater to complex arrangements, innovations or market developments.'¹²⁹

¹²⁶ Australian Banking Association, Submission to the Issues Paper, 7 June 2024, p. 5.

¹²⁷ See for example, Sian Townson (November 2020), 'AI can make bank loans more fair', *Harvard Business Review*.

¹²⁸ AFCA, Submission to the Issues Paper, June 2024, p. 2.

¹²⁹ Arca, Submission to the Issues Paper, 14 June 2024, p. 38.

This includes core concepts such as default information, consumer credit liability information, and financial hardship information. Making small, non-controversial changes to these definitions or resolving ambiguity almost always requires legislative reform. One area identified by the OAIC is the collection and reporting of historic (that is, closed) credit accounts.¹³⁰ This is also illustrated by the number of relatively technical or administrative issues from the 2021 CR Code Independent Review that were referred to this Review for potential legislative change.¹³¹

Objectives have evolved

Many submissions suggested that the objectives of the regime have moved beyond the relatively narrow privacy concerns, although there was a general understanding and acceptance of the purpose of the credit reporting framework in Australia's financial system. AFCA's view is that there is a lack of clarity of the primary purpose of the credit reporting framework, for example, supporting lenders to make appropriate credit decisions and comply with responsible lending obligations, versus primarily protecting the privacy of individuals.¹³²

The concept of 'privacy' is not well defined in the public realm of credit reporting. Consumers are not concerned so much with protecting privacy as with obtaining credit on fair terms. There are key policy objectives of preventing harms to vulnerable consumers due to fraud, domestic abuse that do not necessarily involve additional privacy protections. Consumer advocates argue that the credit reporting framework is flawed in that it does not cover fairness.¹³³ They note that an obligation to act fairly toward customers is a component of most industry codes in financial services as well as financial services licensing, but there is no mention of fairness in the credit reporting provisions.

Regulator engagement and accountability is lacking

There is a general view among many stakeholders that there has been inadequate regulatory engagement and oversight of the credit reporting framework.

The Ministerial Statement of Expectations for the OAIC does not include any reference to credit reporting and information is not prominent on the OAIC website. The Review is aware of a single instance where the OAIC has taken regulatory action in relation to credit reporting, and does not appear to publish summaries of compliance activity undertaken.¹³⁴ The ACCC has also taken legal action against a credit bureau in a related matter.¹³⁵ Issues of statutory interpretation and operational compliance have been largely left to the industry to address. Regulations have not been updated to address technical definitions and other issues within their remit, such as default reporting thresholds.

130 OAIC, [2021 Independent Review of the Privacy \(Credit Reporting\) Code](#) (Proposal 15), September 2022, p. 58.

131 *ibid.*, p. 5.

132 AFCA, Submission to the Issues Paper, June 2024, p. 5.

133 The Privacy Act Review similarly concluded that concepts of 'fairness' and 'reasonableness' should be introduced to the broader Act (in relation to collection, use and disclosure of personal information). See proposal 12.1 in the 2022 Privacy Act Review Report.

134 *Financial Rights Legal Centre Inc. & Others and Veda Advantage Information Services and Solutions Ltd* [2016] AICmr 88 (9 December 2016), and Law Council of Australia, Submission to the Issues Paper, 18 June 2024, p. 9.

135 ACCC, [Equifax \(formerly Veda\) to pay \\$3.5 million in penalties](#), 2 October 2018.

More generally, consumer representatives are of the view that the OAIC does not have 'sufficient understanding of consumer credit arrangements to provide effective oversight of Australia's credit reporting framework.'¹³⁶ In contrast, ASIC maintains deep expertise in consumer credit and routinely carries out detailed investigations of the regulated credit sector, such as its recent report into financial hardship practices at lenders.

The 2021 CR Code Review highlights resourcing issues at the OAIC and proposed exploring alternative funding avenues to support the regulator's credit reporting functions in future (see Proposal 12).¹³⁷ This partially stems from the structure and focus of the regulatory framework. Although the OAIC has overall administrative responsibility for Part IIIA, the law largely allocates responsibility for compliance to industry participants. The OAIC is also experiencing a challenging funding environment in the context of delivering its existing responsibilities with terminating funding.¹³⁸

In particular, credit bureaus must establish a risk-based program to monitor credit providers' compliance with their obligations under Part IIIA and to enforce compliance through contractual obligations. The OAIC has general regulatory powers under the Privacy Act but no explicit credit reporting compliance monitoring or data gathering powers under Part IIIA. Its reporting activities over credit bureaus are set out in the CR Code, which is drafted by industry and approved by the OAIC.

Ongoing complaints about data quality and the correction process as discussed above may be symptomatic of a lack of adequate compliance oversight and enforcement. Consumer advocates' view there 'is little transparency or oversight when it comes to compliance enforcement of credit reporting participants. The entire framework relies on consumers raising complaints and credit providers and [credit bureaus] monitoring each other.'¹³⁹

Role and administration of the CR Code

While many stakeholders expressed the view that the CR Code has been administered efficiently and effectively, some stakeholders commented that the CR Code has expanded beyond its initial purpose, is confusing and difficult to understand in places how it adds value to the detailed provisions in the Privacy Act. The CR Code's scope overlaps with the legislation and the Privacy Regulation and the Privacy Act itself does not provide clear direction to what matters should be covered by the CR Code.

Some commentators, including consumer representatives, asserted that the CR Code's quasi-regulatory functions should more appropriately reside with a government regulator. Industry stakeholders who are not Arca members have expressed dissatisfaction with a perceived bias toward large, incumbent organisations in Arca's rules and processes.¹⁴⁰ Three of the four major banks and two of the credit bureaus sit on Arca's board.

136 Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 29.

137 OAIC, *2021 Independent Review of the Privacy (Credit Reporting) Code* (Proposal 15), September 2022, pp. 46-47.

138 OAIC, *Statement on the Federal Budget 2024–25*, 15 May 2024.

139 Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 100.

140 For example, TaleFin, Submission to the Issues Paper, 2024, p. 10.

Other stakeholders noted the process to update the CR Code is lengthy and duplicative, with consultation processes occurring under both Arca and the OAIC. This can lead to long lead times to approve changes. For example, recommendations stemming from the 2021 CR Code Review are still in progress.

Unlike other industry codes in financial services, there is no industry-based compliance oversight of the CR Code. The CR Code requires credit reporting bodies to publish independent reviews of their compliance with the Privacy Act, but these reports provide little detail or assurance on the effectiveness or coverage of these audits and consist largely of policy reviews.¹⁴¹

¹⁴¹ CR Code s 23 – Credit Reporting System Integrity.

Part Three: Outcomes and success measures

As a foundation to developing recommendations for change, this section considers the question: What would a well-functioning credit reporting framework look like?

Below are set out some high-level policy and community outcomes that could characterise an efficient and effective credit reporting framework that protects the rights of consumers. In some cases, there are trade-offs between these objectives that need to be considered in shaping policy actions.

The previous section also presented some available data on outcome indicators. Some of these have regular data sources but others would be candidates for future regulatory data collections or surveys.

Outcome 1: Consumers understand their credit report and how their actions affect their creditworthiness

The credit reporting framework is designed so that consumers do not control the information that is shared between industry participants. Consumers do not need to understand the complexities of the regulatory structure or technical standards, but should have visibility of credit information held and shared about them, and be able to take steps to improve their ability to obtain credit or protect themselves from fraud.

Specific outcomes: access to and understanding of credit reports

- Consumers can access all information that is held by credit bureaus about them at no cost and with reasonable effort, or with assistance from a support service.
- Information explaining credit reporting is widely available and accessible to consumers through online and physical resources.
- Consumers understand how information such as defaults, timely repayments, and credit enquiries affect their future ability to obtain a loan, and what actions they can take to manage that information.
- Consumers have a reasonable expectation of control over who can access their credit report.

Specific outcomes: accuracy of data

- Consumers have visibility of any material changes in their credit scores or their credit reports.
- Consumers can request that incorrect data on their credit report is corrected quickly and efficiently with no cost to themselves.
- Consumers do not request changes to their credit report that are not justified under the law.
- Consumer complaints to credit providers, credit bureaus and external dispute resolution schemes are resolved quickly and fairly and without excessive cost.

Specific outcomes: vulnerable consumers

- Consumers such as those who are victims of domestic or other abuse, have access to expedited and more flexible processes to minimise risk of harm.
- Consumers are comfortable requesting hardship assistance from a credit provider when appropriate for them.
- Procedures are in place to minimise risk for consumers who are victims of fraud.

Specific outcomes: financial inclusion

- Consumers without previous credit history are not prevented from obtaining an affordable loan at reasonable cost.

Successful outcomes would be reflected in indicators such as:

- a high percentage of consumers who are regularly accessing their credit report, or who have accessed it in the last 12 months
- a declining trend in credit report complaints and correction requests
- a declining trend in complaints to external dispute resolution services
- a higher share of correction requests that are accepted by credit bureaus and credit providers
- timeliness of resolution of complaints and correction requests
- a declining share of complaints and correction requests submitted through credit repair services.

Outcome 2: Credit assessment effectiveness and efficiency

The core purpose of the credit reporting framework is to facilitate the efficient credit assessment and effective functioning of Australia's credit system, such that credit is granted appropriately to consumers who can afford it and that risks to lenders are minimised. This does not mean that credit reporting information is the only information a particular lender may use to make a credit assessment.

Successful outcomes would be evidenced by measures such as low or declining credit default rates, a high rate of financial inclusion, or access to credit by creditworthy consumers and a relatively low cost to credit providers of conducting credit assessments.

Specific outcomes: accuracy and efficiency in lending decisions

- Credit reporting helps consumers to obtain a loan or other form of credit appropriate for their circumstances and their ability to repay the credit.
- Credit reporting information is accurate, complete and up-to-date, and helps lenders make sound credit decisions efficiently and at minimum cost.
- Credit reporting data is sufficiently broad and deep to provide a reasonably accurate and complete picture of a consumer's credit commitments and past credit performance.
- Credit providers that offer risk-based pricing do so fairly and transparently and based on accurate information about risk.
- Lenders can manage and price the risk they are taking in providing credit and according to their risk appetite and to comply with regulatory requirements for responsible lending.
- Data shared by credit bureaus about consumers is up-to-date and accurate.

Successful outcomes would be reflected in indicators such as:

- lower default rates and losses for lenders and products that routinely use credit reporting information
- declining share of liabilities that do not appear on a consumer's credit report
- timeliness of information about consumers current credit obligations and performance held by credit bureaus
- industry and product coverage of credit reporting information at partial (account) or comprehensive (repayment history) level is increasing over time.

Outcome 3: Security and privacy

Credit reporting involves sharing of information without consumers necessarily being aware of this or explicitly consenting to this use. As a result, the privacy protections and security controls around this information are critical.

Specific outcomes: privacy

- Credit reporting data is collected based on general data minimisation principles, such that it is limited to information that is demonstrated to be most predictive of and relevant to future credit performance and is retained for the minimum time period.

Specific outcomes: information security

- Credit providers and credit bureaus apply industry-standard information security measures for protecting sensitive personal information they hold and share.
- Credit reporting system uses highly available technology and is resilient to outages and other disruptions.

Specific outcomes: fraud and scams prevention

- The credit reporting system helps protect consumers from fraud and scams and helps consumers and lenders to resolve incidents of fraud after they occur.
- Consumers can quickly get fraudulent transactions removed from their credit report and prevent access by potential perpetrators.

Successful outcomes would be reflected in indicators such as:

- a declining trend in consumer requests for fraud-related corrections and complaints
- a declining trend in fraud losses at lenders due to identity theft or account compromise
- no data breaches relating to credit reporting data reported by credit bureaus or credit providers
- few and only short operational outages disrupting the flow of credit information between credit providers and credit bureaus.

Outcome 4: Competition and innovation

Although competition and innovation are not explicit objectives of the credit reporting framework, the design and implementation of the framework can affect the costs and competitive positioning of different participants in the industry and the incentives for innovation. Competition in lending and credit reporting should reduce the cost of credit. Innovation can bring new products and technologies that can give consumers greater choice and convenience.

Specific outcomes: competition

- Credit reporting facilitates quicker and easier switching between lenders and providers as well as consumers' ability to 'shop around' for better deals.
- Information imbalances that may affect the ability of smaller lenders to compete are minimised, such that lenders compete on price, product offerings and service.

Specific outcomes: innovation

- New and innovative credit products are readily accommodated within the credit reporting system and the regulatory framework.
- Innovative credit assessments methodologies can co-exist and complement traditional credit reporting.

Successful outcomes would be reflected in indicators such as:

- prices for credit report enquiries in Australia are reasonable and commensurate with other jurisdictions
- number of new lenders and credit products into the Australian market
- the rate of product and service quality improvements in credit reporting
- proportion of 'hard' vs. 'soft' credit report enquiries.

Outcome 5: Regulatory structure and effectiveness

An effective credit reporting framework in which participants have confidence would be supported by a clear overarching legislative structure that can accommodate evolution in the industry and community expectations, a responsive regulator, and proactive and effective compliance oversight.

Specific outcomes: regulatory structure

- Regulatory standards are updated regularly and clarified as needed to address technical issues and other concerns that arise.
- The relevant regulators have appropriate powers and resourcing to issue guidance and address technical and implementation issues with the framework.
- The framework is subject to regular review to ensure it remains fit for purpose.
- The regulator has a strong understanding of trends in the industry and any emerging risks and issues that may need to be addressed.
- Regulatory changes reflect public cost-benefit considerations and all stakeholders have opportunities to provide input including consumers and those not yet participating in the credit reporting system.

Specific outcomes: compliance oversight

- Credit reporting bodies, as central industry infrastructure providers, are required to maintain high standards of compliance, security, transparency and conduct.
- Expected behaviours and outcomes for compliance with laws and regulations are clearly documented and updated as needed for clarity and consistency.
- Compliance and oversight obligations and accountabilities, including between credit laws, privacy laws and other laws as well as industry self-regulatory codes and standards are clear and subject to regular reporting and review.
- There are clear and enforced penalties for material non-compliance.

Successful outcomes would be reflected in indicators such as:

- declining number of outstanding interpretive and technical issues raised about the regulatory framework
- per cent of recommendations from framework and industry self-regulatory reviews implemented within two years
- number of regular reports on compliance activities published
- frequency of aggregate data reporting on credit reporting.

Part Four: Policy recommendations

1. The consumer experience: improving transparency and control

This section outlines recommendations to achieve the outcomes described in Part Three of this Report, namely that:

- consumers can access all information that is held by credit bureaus about them at no cost and with reasonable effort
- information explaining credit reporting is widely available and accessible to consumers through online and physical resources
- consumers understand how information such as defaults, timely repayments and credit enquiries affect their future ability to obtain a loan, and what actions they can take
- consumers have a reasonable expectation of control over who can access to their credit report.

Improving consumer access to credit reports

Consumer access to their own information is a cornerstone of privacy laws, and consumer access to their own credit reporting information has improved but is still confusing and unnecessarily cumbersome. Consumers are increasingly being directed to third parties to access their reports. They often need to make multiple requests to different credit bureaus to get a full picture of the information that is being held by the bureaus.

The OAIC recommended the Review consider the question of broader access to credit reports by real estate agents, landlords and employers in the context of the 2021 CR Code Review (Proposal 34). A related issue is the use of credit reports for identity verification purposes.

Submissions to the Review did not support materially expanding the purpose for which credit reports can be accessed. The Law Council noted that laws enacted in the United States to allow prospective employers to review the credit reports of job applicants have since been banned at the state level due to concerns this practice perpetuates economic disadvantage.¹⁴² Additionally, if credit reports could be accessed by real estate agencies it would be difficult to implement appropriate information security protections across the sector for sensitive consumer data.

Accessibility can be improved

First, consumers should not have to sign up for an account or agree to give up any rights in order to access their credit report. They should also be able to obtain their credit report from their existing credit provider, which already has access to their report and has verified their identity, if the credit provider chooses to provide that service.

¹⁴² Law Council of Australia, Submission to the Issues Paper, 18 June 2024, p. 20.

Second, consumers should be able to access their free credit reports as required by law through a portal that provides access to all credit bureau reports. Such a portal could be established by an industry body or government agency. This would require the industry to develop common identity verification procedures to allow for a single application to suffice across all credit bureaus.

It could also leverage identity verification that credit providers have already undertaken on their customers, such as by allowing access directly within a customer's existing banking app. Consumers should also be able to authorise a representative such as a financial counsellor or legal advisor to access their free credit reports on their behalf. Currently, some credit bureaus require non-profit financial representatives to pay for access to credit reports of their clients.¹⁴³

Third, although the Review does not support expanding direct access to credit reports beyond a credit purpose, consumers should have the option of obtaining a more limited version of their credit report if they decide they wish to provide it to a third party. While the Privacy Act prohibits direct access by other parties, it is likely that consumers will continue to receive requests to provide their credit report as a means of verifying their identity or their financial standing. It is preferable for a consumer to have the option of providing a limited set of information from their credit report rather than providing detailed bank or other financial statements.

Recommendation 1: Improving consumer access to credit reports

Amend the Privacy Act to allow (but not require) credit providers to provide their existing customers with access to their credit reports.

Recommendation 2: Improving consumer access to credit reports (industry)

That industry undertake the following initiatives to improve access to credit reports:

- a) establish and communicate best practice processes for consumers, including:
 - i. a standard report format and access through digital and alternative channels (phone, mail)
 - ii. a more limited credit report that the consumer could obtain at the consumer's discretion
 - iii. ensure consumer representatives such as financial counsellors can access a consumer's free credit report on their behalf.
- b) develop a common portal for free access to credit reports including streamlined customer identification verification requirements.

¹⁴³ Joint Consumer Groups, Submission to the Issues Paper (Recommendation 48), May 2024, p. 8, IDCARE, Submission to the Issues Paper, May 2024, p. 6, and Equifax, Submission to the Issues Paper, 14 June 2024, ss 6.1 and 7.4.

Improving the notice and consent framework

Consumers and consumer advocates often think that consumers lack a clear understanding of how credit reporting affects them, what rights they have and how to exercise them.

Part IIIA of the Privacy Act contains differing and potentially confusing range of requirements for disclosures, notifications, authorisations and consent to be provided to or obtained from consumers and the OAIC concluded that 'there is a general level of misunderstanding in the community about what the law requires'.¹⁴⁴ The OAIC therefore recommended that this Review consider 'a holistic review of the notice framework within Part IIIA'.¹⁴⁵

Under the Privacy Act, credit providers are only required to provide a notification that they will be submitting a consumer's information to a credit bureau at or before a credit application is made.¹⁴⁶ This notification is critical as it is intended to cover both the initial collection of consumer information, as well as subsequent reporting of account or adverse information.

In other cases, they must obtain written consent (for example, when the consumer is a guarantor or applying for trade credit). Access seekers who are assisting a consumer, in contrast, must obtain written authorisation from the consumer, but this obligation applies to the consumer rather than the access seeker itself or the credit bureau. The Privacy Act requirements are summarised in Table 7.

More specifically, information from many stakeholders indicates that consumers do not understand the difference between consents and notifications that are required under the credit reporting framework. The fact that a single notification is required for both the disclosure for the purpose of a credit application, as well as subsequent reporting if a credit account is actually opened, is also potentially confusing.

Table 7: Required consumer notices and consents

Action	Type of notice/consent	Who must provide	When notice/consent is required	Privacy Act reference
Credit application	notification	credit provider	at or before collecting personal information likely to be disclosed to a credit reporting body	s 21 C
Subsequent reporting of credit information about an account	notification	credit provider	as above (at time of credit application), except specific rules applying to defaults	s 21 C

144 OAIC, [2021 Independent Review of the Privacy \(Credit Reporting\) Code](#), September 2022, p. 79.

145 ibid., Proposal 25.

146 Privacy Act s 21C.

Action	Type of notice/consent	Who must provide	When notice/consent is required	Privacy Act reference
Access seeker request	written authorisation	consumer	request for credit reporting information	s 6L
Application for: commercial credit related purpose, credit guarantee or trade insurer	express consent	credit provider	presumed to be at or before time of disclosure/credit application	s 20F
Overdue payment	notice	credit provider	once a payment is overdue	s 6Q
Default information	notice	credit provider	at least 14 days before disclosure to a credit reporting body	s 21D
Refusal of credit application	notice	credit provider	after refusing the application	s 21P
Refusal to give information to access seeker	notice (to access seeker)	credit providers and credit reporting bodies	at time of refusing access to information by an access seeker	ss 20R and 21T
Correction request	notice	credit providers and credit reporting bodies	when correction made or declined	ss 20U and 21W
Fraudulent information	notice	credit reporting body	when a credit reporting body destroys credit information from fraud	s 20Y
Complaints	notice	credit providers and credit reporting bodies	acknowledging the complaint and when decision made about a complaint	ss 23B and 23C
Ban periods	consent	credit reporting body	consent to disclose information during a ban period	s 20K
Disclosures between credit providers	consent	credit provider	sharing credit information with other credit providers	ss 21J and 21K

Arca has proposed that the CR Code be modified to emphasise that consumer consent to a credit report enquiry is not required under the law, while providing consumers with more information on the impact of a credit check.¹⁴⁷ Consumer advocates agree that:

*Giving people real-time information about what is being listed on their credit report and why, is the most effective way to educate consumers and influence behaviour.*¹⁴⁸

The Review supports the changes to the CR Code that will give consumers more information at the point when it is most relevant to them. While there is a risk that consumers simply do not read the disclosure information, this is less likely if it is presented to them explicitly as part of a decision about whether to apply for credit. The Review recommends the initial notification be changed to an explicit authorisation of the credit enquiry to ensure this information is provided and accepted by the consumer. In practice, most consumers are likely to believe that they are, in fact, agreeing to a credit check.

The term 'consent' should be avoided in this context, as it implies that the decision is optional for the consumer (meaning they can proceed with the action without consenting) and that they can withdraw their consent at any time.¹⁴⁹ Neither is appropriate in a credit reporting context, where ongoing disclosure of credit reporting information must be able to proceed without the consumer's consent. The following terminology and framework would provide the basis for a more consistent approach:

Notice: information provided to consumers about an event or action that has occurred or about the implications of an action. Mandatory notifications should have a timeliness requirement set out in the regulations. The notice could include options available to the consumer and where to find more information.

Authorisation: the consumer must explicitly agree to the action before it can occur and this agreement must be documented.

In practice, the difference between presenting a required disclosure and obtaining a written authorisation may simply be a matter of a consumer ticking an on-screen box or signing a credit application form, after explanatory information has been presented to them. Moreover, the regulatory framework should clarify that a consumer should have the option to decline to proceed with a credit enquiry once the implications of a credit enquiry have been explained. Particularly, that there may be a negative impact on their credit score and that the enquiry will be visible to other credit providers in the future. Table 8 details the changes recommended by this Review.

¹⁴⁷ OAIC, [Draft CR Code \(marked-up version\)](#), 19 December 2023, pp. 10-11. The notification covers the name and contact details of the credit reporting body and any other matters specified in the CR Code. Proposed changes to the CR Code currently being considered by the OAIC would include as part of the required notification, among other things, a description in general terms of how the enquiry may affect a credit score.

¹⁴⁸ Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 60.

¹⁴⁹ Attorney-General's Department, [Government Response to the Privacy Act Review Report](#), 28 September 2023, p. 17.

Table 8: Proposed notice framework

Action	Type of notice/consent	Who must provide/collect	When notice/consent is required
Credit application	authorisation	credit provider	before each application
Subsequent reporting of credit information about an account	no change		
Access seeker request	authorisation	Access seeker	request for credit reporting information
Application for commercial credit related purpose, credit guarantee or trade insurer	disclosure	credit provider	before each application
Overdue payment	no change		
Default information	no change		
Refusal of credit application	no change		
Refusal to give information to access seeker	no change		
Correction request	no change		
Fraudulent information	no change		
Complaints	no change		
Ban periods	authorisation	credit reporting body	to disclose information during a ban period
Disclosures between credit providers	authorisation	credit provider	before each application

Recommendation 3: Clarifying the notice and consent framework

Amend the Privacy Act to specify consistent and clear notice and consent provisions including consumer authorisation for a credit report enquiry and clear disclosure of the implications of that enquiry.

Other notifications – missed payments and alerting services

In the 2021 CR Code Review, the OAIC considered and agreed with the proposals from consumer advocates that consumers should be notified when a credit provider will report missed repayments to a credit bureau.¹⁵⁰ This change would be consistent with the principle that consumers should have full transparency of information that is disclosed about them.

The Review agrees conceptually, this type of real-time notification would aid consumer understanding of how missing a payment will affect their credit report and potentially help consumers in acting sooner to make payments to avoid adverse impacts. However, notifications of missed payment reporting to credit bureaus could result in information overload and have unintended consequences for consumers, particularly those already under financial stress.

Differences in collections processes, late fees and payment grace periods across credit providers could add significant operational complexity. As a result, the Review does not support mandating missed payment alerts, although credit providers should assess whether such alerts would be a good practice that would benefit their customers.

The Review’s proposed change to the legislation to accommodate a missed repayment reporting threshold, consistent with proposals by consumer advocates and discussed further below, would potentially reduce the value of ongoing missed payment notices. The Review agrees with Arca’s suggestion that credit providers should be able to suppress a missed payment report for small or inadvertent late payments, but further guidance would be required in law to ensure this flexibility is not used inappropriately or exploited by credit repair services.¹⁵¹

Separately, some credit bureaus provide services to alert credit providers to adverse information appearing on an existing customer’s credit report, such as a late payment on another account. The Privacy Act allows disclosure of information by a credit bureau to any credit provider that currently holds an open account for the consumer, which the credit provider can use for purposes of managing the credit or ‘assisting the individual to avoid defaulting on his or her obligations.’¹⁵²

¹⁵⁰ OAIC, [2021 Independent Review of the Privacy \[Credit Reporting\] Code](#) (Proposal 18), September 2022.

¹⁵¹ Arca, Submission to the Issues Paper, 14 June 2024, p. 74.

¹⁵² Privacy Act s 21H.

Alerting services are available from credit bureaus in other countries, and can be a useful risk management tool for lenders, but there are different interpretations about what 'assisting the individual' means in the context of this provision of the Privacy Act. For example, this could include contacting the individual about a payment or hardship arrangement, but could also involve freezing a credit card or reducing a customer's credit limit.

In practice, it may be difficult to determine which actions would 'assist' a particular consumer, and attempts to legislate how this information can be used by a credit provider could cause unintended consequences. As a result, there does not seem to be a strong rationale to make changes to the current provisions in this area.

Improving the corrections process

Part Two summarised the evidence about systemic issues with the corrections process as a source of consumer confusion and harm. The OAIC has published guidance on the corrections process, including individuals' rights and obligations under the CR Code and Part IIIA.¹⁵³ This may go some way to improving transparency for consumers around the corrections process.

Other recommendations in this Report may help to alleviate some drivers of consumers seeking historical corrections, including:

- raising the threshold for default listing
- reducing the retention period for information requests and enquiries
- legislating a 'soft enquiry' framework
- stronger oversight of credit repair services.

Nevertheless, the timeframes for implementing corrections for consumers who may be urgently seeking to obtain credit (such as in the process of purchasing a home) is relatively long. Additionally, the statutory timeframes are sometimes not met according to public reporting by the credit bureaus. The Review supports moving the specific corrections deadlines into the Privacy Regulation to allow for more appropriate timeframes to be implemented.

Consumers should also have a right for disputed information to be temporarily suspended if an investigation and resolution by a credit bureau or credit provider is likely to take longer than the statutory timeframes, or if the information has resulted from fraud or other abuse.

The Review also received examples of credit providers agreeing to remove information such as defaults or enquiries, for 'goodwill' purposes. This can also result from aggressive credit repair services or from consumers not understanding what grounds exist to request corrections.

Inappropriate corrections to remove information can harm consumers if it leads to a consumer being provided with credit that is unaffordable and can reduce lenders' ability to manage their risks. Reporting or removal of information should not be a negotiation tool for creditors.

At the same time, there is limited information available to consumers on what are appropriate

¹⁵³ OAIC, *Guidance for industry on corrections requests and the 'no wrong door' approach to corrections*, 27 September 2023.

grounds to correct reported information, and what evidence is required to be provided. For example, there is no clear standard of evidence to request removal of fraudulent credit accounts or defaults. The lack of clear criteria and evidence requirements may be contributing to excessive or inappropriate corrections requests, the prevalence of credit repair services and complaints to external dispute resolution bodies. The Review concluded that more explicit criteria and guidance on documentary evidence for valid corrections should be issued by industry in conjunction with the regulator.

Consumers should also be provided with better tools that do not require them to make numerous separate requests to different credit bureaus and credit providers when requesting or correcting their information. This could take the form of a free cross-industry corrections portal that would allow them to request corrections across all credit bureaus and monitor the progress of their request. It would also reduce the reliance on credit repair services.

Recommendation 4: Improving the corrections process

Amend the Privacy Act to move or specify detailed requirements for credit report corrections into the Privacy Regulation, including:

- a) more granular and enforceable timeframes for implementing corrections
- b) the ability to suspend the inclusion of disputed credit information in a credit report that is subject to a complaint or investigation due to fraud or abuse
- c) the permitted reasons for corrections.

Recommendation 5: Improving the corrections process (industry)

That industry should develop a free corrections portal allowing a consumer to request and monitor the status of corrections across all credit bureaus and credit providers.

In addition, a new consumer-facing code-of-conduct should include information about:

- a) expected documentary evidence for requesting different types of corrections
- b) procedures for expedited processing of corrections where the request is a result of fraud, identity error/mismatch, or financial abuse.

Strengthen operation of credit report bans

Consumer rights to freeze access to their credit reports are common in most countries, and provide consumers with some degree of control and assurance that they can take reasonable steps to protect their identity if they believe it has been compromised by a malicious actor.

The right to request a credit ban has become an option for consumers to protect their information in the wake of recent high-profile data breaches in Australia. Consumers have requested data bans in increasing numbers to help protect against identity theft and credit fraud and this is often recommended by public information about data breaches. Support organisations such as IDCARE provide information for consumers on how to request a credit report ban, which can now be requested through online portals at most credit bureaus.

While most stakeholders support the use of credit report bans, concerns with the current ban process include:

- the initial 21-day ban period is too short to protect against fraudulent activity
- consumers needing to provide evidence of potential fraud in order to request a ban, with bans not supported in other cases of credit misuse
- the process involves unnecessary friction, whereby a consumer must contact each credit bureau to have the credit ban removed or extended
- the flow of information to credit bureaus is disrupted during a ban period, with consumers themselves being unable to access their own account information
- the credit ban process puts the onus solely on the consumer to protect themselves.

The Review concluded that the ban process could be strengthened to better protect consumers and streamline the process for applying and removing a ban. These changes will be complemented by the proposed new fraud flag provisions. The initial default ban period of 21 days should be removed, with details of the length and nature of the ban referred to the Privacy Regulation.

The Review recognises that there is a need for credit providers to maintain a consumer's credit file during a ban period. The Privacy Regulation should allow for certain information flows during a ban:

- to the consumer's existing credit providers, for purposes of managing open credit accounts (for example, to manage the risk of default or potential fraud)
- to the consumers themselves
- to and from a consumer's existing credit providers to the credit bureau.

Consumers should not be restricted to requesting a credit report ban only for fraud or potential fraud. Enforcing this provision places an unnecessary burden on both consumers and credit bureaus. There are other reasons a consumer may reasonably wish to limit access to their credit report, such as domestic financial abuse, or a problem credit use, or gambling issue. A credit ban should not enable deliberate or permanent suppression of adverse information about a consumer.

Recommendation 6: Strengthen operation of credit report bans

Amend the Privacy Act to provide greater consumer control over credit report bans and increase fraud protections:

- a) modify the current ban provisions to remove the 21-day initial ban period and allow consumers to request a ban of any length for any reason relating to the misuse of credit. Details around timing, format, disclosures and process should be set out in the regulations.
- b) bans should not prevent credit providers from reporting updates to a consumer's credit file (for example, repayment history information) or from accessing an existing consumer's credit report for purposes of account management
- c) prohibit access seekers from accessing a credit report during a ban period
- d) clarify that consumers may access their credit report during a ban period.

Additional protections for vulnerable consumers

The credit reporting framework interacts with measures to protect vulnerable consumers such as those in financial hardship and victims of financial abuse or other personal threats. Financial hardship reporting requirements have been in effect for two years, and as a result The Review has concluded that it is too early to recommend any substantive changes to the legislative provisions.

The Review received feedback that consumers remain concerned about the prospect of financial hardship information being listed on their credit report and that this creates a disincentive for some vulnerable consumers to take up financial hardship arrangements in the first place.¹⁵⁴ To address this concern, the industry should progress proposed standard communications templates for lenders to use in dealing with consumers to ensure they receive consistent and accurate information.

A point of debate is that consumer advocates are of the view the introduction of the financial hardship flag was not meant to be shared with creditors for purposes of credit monitoring and debt collection.¹⁵⁵ The legislation as passed does not specifically restrict disclosure of the hardship flag for purposes of new credit applications, as opposed to management of existing credit.¹⁵⁶

The Review agrees if consumers are aware that hardship information will be shared with their other creditors, they may be significantly less inclined to request hardship assistance. They may be concerned about creditors reducing credit limits or closing accounts. While the Review is not recommending general changes to increase or reduce the scope of alerting services, the communication of hardship flags is particularly sensitive and there are grounds to restrict its disclosure.

¹⁵⁴ ASIC, *Report 782: Hardship, hard to get help: Findings and actions to support customers in financial hardship*, 20 May 2024, pp. 103-104.

¹⁵⁵ Legal Aid Queensland, Submission to the Issues Paper, 4 June 2024, p. 6.

¹⁵⁶ National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019, *Supplementary Explanatory Memorandum*, p. 5. This refers to limiting disclosure of the hardship flag to 'access to new credit'.

Telecommunications providers are now subject to requirements to provide financial hardship assistance to their consumers.¹⁵⁷ Although under the Privacy Act telecommunications providers that do not hold an ACL are not permitted to access credit reporting financial hardship information, there may be benefits for consumers to aligning the hardship reporting regimes. In principle, the Review supports financial hardship information being available to credit providers in assessing new applications to help make responsible lending decisions, whether the source is telecommunications providers or regulated lenders. Achieving this would require further consultation and investigation.

The interaction of credit reporting with domestic violence and financial abuse concerns is being considered by the Joint Committee into Financial Services Regulatory Framework in Relation to Financial Abuse.¹⁵⁸ In its submission, Arca notes that it is considering industry guidance to promote consistent approaches and support frontline staff in addressing financial abuse situations.¹⁵⁹ AFCA's submission also supports clear and comprehensive rules and processes for responding to financial violence and financial abuse. The effort to provide a consistent approach should be progressed.

A related issue is the reporting of information on joint accounts. Some submissions argued that certain credit reporting data should be reported on an individual basis rather than an account basis, particularly financial hardship and repayment information. This would assist in helping victims of domestic violence, where a joint loan is held with a perpetrator, or where a couple has separated.¹⁶⁰

Legal Aid Queensland has described arrangements such as hardship or other payment arrangements can be negotiated with only one party in a jointly held loan.¹⁶¹ The Review supports in-principle introducing greater flexibility into the law, with the operational details requiring further consideration by industry and government given the small numbers of people affected by this issue.

Under the Privacy Act, credit reporting relates to individuals not accounts. The credit reporting data standards are based on account-level reporting, however, in order to align to how lenders normally manage joint accounts and their underlying legal basis. The ACRDS does contain existing provisions for credit providers to report information separately for joint account holders if they choose to do so; this could be formalised for cases of financial abuse. The Review supports in-principle introducing greater flexibility into the credit reporting framework with respect to joint accounts in cases of financial abuse with the operational details requiring further consideration by industry and government.

The Review also supports the recommendation of the Economic Abuse Reference Group for Arca to develop a best practice financial abuse guideline on credit reporting.¹⁶² The Review concurs with the recommendations of the ABA and other stakeholders that the mandatory credit reporting provisions should permit suppression of repayment history and financial hardship information for cases involving a risk of threat or harm to a consumer.

157 [Telecommunications \(Financial Hardship\) Industry Standard 2024](#).

158 Parliament of Australia, [Financial Services Regulatory Framework in Relation to Financial Abuse](#), 2 April 2024.

159 Arca, [Submission to the Inquiry into the Financial Services Regulation Framework in relation to Financial Abuse in Australia](#), 14 June 2024.

160 Joint Consumer Groups, Submission to the Issues Paper (Recommendation 37), May 2024, p. 83.

161 Legal Aid Queensland, Submission to the Issues Paper, 4 June 2024, p. 18.

162 Economic Abuse Reference Group, [Response to Inquiry into Financial Services Regulatory Framework in Relation to Financial Abuse](#), 28 June 2024, p. 27.

Recommendation 7: Additional protections for vulnerable consumers

That government and industry undertake the following initiatives to address the risk of financial abuse, family and domestic violence, associated with the credit reporting framework:

- a) the industry should adopt code of conduct provisions and associated guidance for credit bureaus and credit providers to apply to protect victim-survivors of financial abuse from harm relating to their credit reports
- b) the framework and industry data standards should be amended to reflect the option of separate reporting of financial hardship and repayment information for joint account holders, if appropriate, in cases of financial abuse
- c) the mandatory credit reporting provisions in the Credit Act should be amended to support suppression of relevant information on joint accounts in cases of financial abuse or other risks to a consumer
- d) clarify in the framework that financial hardship information should only be used to assess applications for credit.

Review of regulation of credit repair services

There is broad agreement across industry, regulators and consumer groups that credit repair services are undermining the integrity of the credit reporting system and exploiting vulnerable consumers. Submissions to this Review and the 2021 CR Code Review provided examples of how these services can put consumers further in debt, clog up dispute resolution processes, and undermine data quality and integrity. Few credit repair firms appear to provide a genuine assessment of a consumer's position, including investigating the validity of potential correction requests before agreeing to proceed.

Credit repair businesses are regulated as debt management firms by ASIC under the Credit Act and a thorough review of their regulatory arrangements is not within the scope of this Review. Although credit repair services have been required to hold an ACL since 2021, there is limited evidence as to whether licensing has improved conduct and practices within the industry. In particular, ASIC's guidance for debt management licensees issued in 2021 directed newly licensed entities to operate 'efficiently, honestly and fairly'¹⁶³ by:

- ensuring their services are promoted in a manner that does not create unrealistic expectations about the benefits or costs
- ensuring consumers know all costs and what they can expect to pay in total
- ensuring consumers know about the availability of free alternatives
- not offering to help if the consumer does not have reasonable grounds to support the lodgement of a complaint.

¹⁶³ ASIC, [Information Sheet 254: Debt management services: Applying for a credit licence or variation](#), May 2021.

It is unclear the extent to which credit repair firms are complying with these expectations. ASIC noted that it continues to hear about concerning practices with credit repair firms.¹⁶⁴ While credit repair 'success' fees that are only payable upon the successful removal of credit file information may seem to be advantageous for consumers, they would also seem to create an incentive for credit repair firms to submit large numbers of potentially spurious correction requests with the hope that some will be successful, rather than to provide well-informed advice to the consumer. Further, the high credit repair fees potentially put consumers with debt problems further into debt.

Stakeholders have suggested options to reduce the negative impact of credit repair services, including by imposing a 'best interest' duty to consumers that would require them to conduct a full financial assessment of each consumer, and imposing restrictions on fees that can be charged to clearly notify consumers of the option of using free services. ASIC's submission suggests that the more specific conduct provisions applicable to credit assistance providers would be appropriate, including greater transparency around fees.

The prevalence of credit repair services is a symptom of how consumers interact with credit reporting, rather than the main cause of corrections. The underlying causes are the complex nature of credit report information, the lack of consumer understanding and difficulty for consumers in accessing credit reports regularly, as well as the frustrating and time-consuming process to request corrections across multiple bureaus and credit providers. The recommendations made elsewhere in this Report should help alleviate some of those underlying causes.

The Review recognises the consensus about the harm caused by credit repair services, but notes also that there may be in some cases a genuine need for consumers to be able to purchase expert services to help them navigate the complex process of understanding the information on their credit report and any valid grounds to make corrections. Articulating a clear 'best interest' for a consumer in these situations is likely to be problematic. A widespread view is that credit repair services need to be more transparent about their fees, the grounds for valid corrections to be made and how consumers can request corrections without paid assistance.

This Review has not specifically consulted with credit repair services on developing an additional appropriate set of requirements. The regulator should conduct a targeted investigation into whether credit repair firms are complying with existing licence and conduct requirements, and what additional provisions would be most effective in reducing the concerns about their business practices.

Recommendation 8: Review of regulation of credit repair services

ASIC should investigate the conduct of the credit repair industry since licensing commenced, including compliance with licence obligations and whether they are operating honestly and fairly with consumers. Based on the evidence, the Government should make recommendations for further regulation of credit repair, such as to bring it under similar conduct obligations as credit assistance providers, and to place restrictions on fees that can be charged.

¹⁶⁴ ASIC, Submission to the Issues Paper, 31 May 2024, and [Report 465: Paying to get out of debt or clear your record: the promise of debt management firms](#), January 2016.

2. Credit reporting data: improving efficiency, coverage and quality

Many of the core concerns raised by stakeholders and summarised in this Report relate to the nature of the data maintained within the credit reporting system. The scope of credit reporting data has evolved over time, with the addition of data items such as repayment history information and the increased coverage of positive (account and repayment) data sharing by a wider range of credit providers.

The Review heard that the scope of data in the credit reporting framework is considered by industry to be incomplete, and would benefit by expanding coverage to improve lending decisions efficiency and effectiveness. For lenders, more information nearly always improves the predictive power of credit models. Consumer advocates also support ways to achieve a more complete coverage of debts to support responsible lending, such as BNPL, and also argue for a reduced focus on historical credit report enquiries, which may entrench bias and not accurately reflect a consumer's financial situation.

Improving the coverage and relevance of credit reporting data can improve the quality of credit reports and the effectiveness and efficiency of credit assessments which in turn helps consumers understand data held about them and obtain quick and affordable credit. This must be balanced against concerns about the negative implications of vast amounts of personal data being collected and monitored by corporations, and about decisions being made by opaque, algorithmic models and technologies. More detailed data being held within third-parties increases the scope for errors, corrections and disputes. A focus on historical credit performance data, as opposed to current and future affordability, may lead to unfair outcomes.

Based on the feedback to the Issues Paper, this section sets out the Review's proposed changes to data. The Review has looked for evidence to support proposals to expand the universe of credit reporting data, but for the most part this type of evidence or research has not been forthcoming. Although industry participants pointed to overseas experience where a greater range of data is often available, the Review did not find this to be sufficient justification to depart materially from Australia's longstanding parsimonious approach to credit reporting.

Additionally, it is important to recognise the purpose of the credit reporting framework has never been to facilitate a full credit assessment or affordability analysis for all credit applicants, or to provide a system of ongoing risk monitoring and management for credit providers. There are other mechanisms for lenders to obtain detailed financial data on potential customers with appropriate consent, such as through CDR data sharing arrangements.

Introducing statutory data principles for credit reporting

The Review is recommending that detailed data definitions be moved to subordinate instruments and that categories of credit reporting data be identified in the primary legislation. The core categories of data should continue to be in legislation (that is, the core categories of data within the definition of 'credit reporting information') while providing sufficient flexibility such that they are able to be adapted

over time through regulations, and where appropriate industry technical data standards, to ensure they continue to be fit for purpose.

To support the transfer of the detail of data definitions from primary law to regulations, new general statutory principles should be adopted to guide the inclusion of new data items. The intent of the general principles is to set out key criteria that should be considered when developing new data definitions or revising existing data items. Principles should be drafted with specific reference to the overall objectives of the credit reporting framework and incorporated into the legislation. Principles could include:

- **Minimisation:** credit reporting data items should be limited to the minimum required to assist consumers and provide efficient credit decisions, and should not duplicate data available through alternative means including consent-based data collection.
- **Efficiency:** new or modified credit reporting data items will materially and demonstrably improve the efficiency and accuracy of credit assessments for the majority of products and providers.
- **Fairness:** new or modified credit reporting data items promote fair treatment of consumers in seeking or using credit, minimising potential harm to consumers including vulnerable consumers.
- **Accuracy:** accuracy and timely reporting of data items is maintained, minimising the need for corrections.
- **Competition:** changes do not reduce competition between credit providers or between credit reporting bodies (or other industry participants).

Recommendation 9: Introducing statutory data principles for credit reporting

The Privacy Act should be amended to include general statutory principles to support the inclusion of new data types in the credit reporting framework. The detail of existing data definitions should be referred to the Privacy Regulation to allow them to be updated regularly.

Reporting of information by credit providers

Stakeholder submissions to this Review, including from the major banks, supported the mandatory data supply requirements in Part 3-2CA of the Credit Act continuing, although some felt that mandatory reporting did not go far enough. There has been a perceived decline in value of negative information relative to other partial or comprehensive types of information, but this is seen as a positive development for consumers.¹⁶⁵

¹⁶⁵ Equifax, Submission to the Issues Paper, 14 June 2024, Part 9.4.

The Productivity Commission also originally proposed suspending the enactment of mandatory supply legislation if the 40 per cent target was met, but this approach was not ultimately adopted by the Government.¹⁶⁶ The Review agrees with the majority of stakeholders that the mandatory reporting requirements applicable to the major banks have had important benefits including on lending efficiency and competition, and that there is no strong evidence to support the removal or scaling back of the requirements.

Maintain and monitor mandatory reporting requirements

Industry participants have noted that there are gaps in coverage of credit information across credit providers and credit bureaus. Some submissions proposed the blanket application of mandatory credit reporting to all credit providers. Reasons include establishing a level playing field in credit reporting – such that all credit providers regardless of size are required to supply comprehensive credit information to at least one credit bureau.

Generally, broader coverage is preferable to piecemeal, selective mandates, which can create adverse incentives and competitive inequities, and add to consumer confusion. Expanding mandatory participation needs to be balanced against the cost of participation to credit providers and the potential impacts on consumers of having more of their credit information accessible to third parties. For example, the proposed regulatory reforms to BNPL will include for the first time a requirement to undertake a credit check for a new customer or loan, depending on the size of the loan or transaction, to meet the proposed new responsible lending obligations for BNPL.

The expectation is that in accessing this information, BNPL providers will need to participate in the PRDE reciprocity arrangements (if they are not already doing so). This will mean they will need to commence sharing information about consumers with at least one credit bureau, and for this information to appear on consumer's credit reports and be visible to other lenders. (It should be noted that some BNPL providers already participate in credit reporting.) This will result in more complete and accurate credit assessment information.

There are operational impacts with BNPL participation that will need to be resolved, including incorporating flexible purchase limits and more frequent payment cycles. Importantly, consumer behaviour may also change as new information on accounts appears on their credit report. This could have both positive and negative implications for consumers. As a result, consumer education will be important in implementing these reforms.

The BNPL industry body Australian Finance Industry Association (AFIA) does not agree with expansion of mandatory credit checks to BNPL providers:

It is important to note that for many innovative providers such as BNPL, the use of mandatory credit reporting is not appropriate or proportionate, being better suited to large purchases or revolving credit and not to small, individual purchases.¹⁶⁷

¹⁶⁶ Productivity Commission, [Inquiry Report No. 82 – Data Availability and Use](#), 31 March 2017, p. 230.

¹⁶⁷ Australian Finance Industry Association, Submission to the Issues Paper, 31 May 2024, p. 12.

Mandating BNPL participation in credit reporting will help close one information gap, but will not address other inconsistencies. Motor vehicle loans, which are arguably equal or more important sources of consumer liability as BNPL, are not required to be reported to credit bureaus. The 2022 reforms to payday lending and consumer leases imposed a range of additional responsible lending requirements on providers and lessors but did not include a requirement to undertake a credit check.¹⁶⁸

A more consistent approach would be to impose mandatory reporting or credit check requirements, or both, according to some measure of size and materiality to consumer credit assessments. Where feasible, the Review supports a more consistent and evidence-based approach to expansion of mandatory reporting, rather than piecemeal targeting of particular entities or sectors.

In summary, although the Review is not recommending wide-scale expansion of mandatory participation in credit reporting at this time, the government should determine clear high-level criteria for future expansion of mandatory reporting or credit checks, and provide authority to the regulator to designate entities, subject to consultation and a public interest test.

Threshold for participation in mandatory credit reporting

An approach to incremental expansion of mandatory credit reporting is to modify the minimum asset value threshold for a large ADI, which is defined in the *National Consumer Credit Protection (Large ADI) Determination 2023* (the Large ADI Determination). The current headline figure for participation is an ADI's total asset size at the start of a financial year of at least \$136 billion, which currently captures the four major banks: ANZ Bank, Commonwealth Bank, NAB and Westpac.¹⁶⁹

The Review considered the merits of lowering the asset value threshold to a lower figure, such as \$50 billion or \$100 billion. Lowering the threshold would capture or accelerate the application of mandatory credit reporting to mid-sized ADIs such as Bank of Queensland, Bendigo Bank, and ING Bank Australia. While the mid-sized ADIs will likely meet the threshold for mandatory participation with time, this can be accelerated by removing the indexation arrangements and fixing the threshold definition of large ADI at a figure of (for example) \$150 billion.

The Customer Owned Banking Association (COBA) opposes expanding mandatory comprehensive credit reporting participation to its members, which generally have assets that range in size up to \$25 million.¹⁷⁰ This reflects the disproportionate costs of system setup and staff training. COBA notes that around one third of COBA members are currently participating on a voluntary basis.

Removing the indexation arrangements would help improve overall transparency by providing a single fixed threshold while removing what is effectively a moving start line for participation in mandatory credit reporting. The Review has concluded that this would be a fairly straightforward and low-cost means of achieving a modest expansion in mandatory reporting over the medium term.

168 Financial Sector Reform Act 2022.

169 Since mandatory credit reporting commenced in 2021 the threshold for participation has increased from \$107 billion to \$136 billion in 2024. Due to a technical drafting issue, Macquarie Bank exceeds the threshold but participates in comprehensive credit reporting on a voluntary basis.

170 Customer Owned Banking Association, Submission to the Issues Paper, 7 June 2024, p. 2.

Continuing to rely on an asset-dollar approach will always skew the reporting population to large mortgage lenders, however, where loan sizes are much larger, rather than to smaller and unsecured lenders such as motor vehicle finance and BNPL. If mandatory reporting is to extend to other types of lending on a comprehensive basis (rather than by picking products of particular interest at a given point in time), a different metric should be used.

A logical measure for expanding mandatory reporting could be built around the number of consumer accounts (such as at least 1 million), or the total number of consumers with access to credit above a certain threshold, such as \$2,000. Data on some credit providers could be obtained from the credit reporting bodies, with other information to be obtained by the regulator under the reporting provisions set out in Division 5 of Part 3-2CA. The actual threshold would be set based on analysis of the size and capacity of credit providers to share their data and the importance of their products to assessing consumer creditworthiness.

Types of industry participants

A number of industry submissions proposed expansion of comprehensive credit reporting (on either a voluntary or mandatory basis) to non-financial sectors, particularly telecommunications and utilities. Currently, under the Privacy Act, non-ASIC licensed credit providers (generally those outside the financial services industry) are not permitted to access or report repayment history information and may report account information only voluntarily. Credit bureaus and credit providers argue that the reporting of repayment history information by telecommunications firms and utilities providers will help consumers who have not accessed mainstream credit build a positive credit history.

Table 9: International comparison of credit reporting

Country	Telecommunications or utility access to repayment history
Australia	No
New Zealand	Yes
Singapore	No
United Kingdom	Yes
Canada	Yes
United States	Yes
Japan	Yes

Source: Arca

COBA proposed that having more information on utilities and telecommunications accounts would enable COBA members to lend to more low-risk customers with limited credit history, who would otherwise be declined for credit.¹⁷¹ When compared with other jurisdictions, Australia's limitations with respect to industry coverage are notable (see Table 9).

Consumer advocates and the telecommunications providers that the Review consulted did not support expansion of comprehensive or mandatory reporting to non-financial providers. Providers are concerned about the significant operational costs on them, and the limited benefit given their products are generally relatively low value credit. Consumer advocates are also concerned about the impact on consumers, who may not have understood that debts to phone and utility providers would have the same financial implications as a credit card or home mortgage.

The Review concluded that mandatory reporting of credit data for use of core consumer utilities, while potentially improving financial inclusion, would affect millions of Australian consumers and is a significant step that should only be undertaken after significant additional research and consumer education.

Industry did not provide any data to support the expansion in comprehensive reporting to non-financial providers. The Review understands that at least one telecommunications provider has recently commenced partial reporting (of credit accounts) and there are incentives for others to report voluntarily if they see benefit to their business and their customers.

For these reasons, the Review is not recommending inclusion of non-financial entities with mandatory or comprehensive credit reporting at this time. If the industry conducts further research and data analysis into the likely impact and benefits, this should be revisited in the future.

Commercial credit

Some industry participants argued for expansion of the credit reporting framework to encompass business credit, in order to better support small business lending and risk management. This could include, for example, the ability to report a business loan against a sole trader's credit report. A thorough investigation of this issue would require an understanding of the operation of existing small business credit assessment providers including the associated data requirements and infrastructure. There would also be potential consumer protection issues with co-mingling complex business loans with personal and household credit that would require further analysis and consultation. As a result, the Review is not recommending any changes to bring commercial credit reporting under the credit reporting framework at this time.

¹⁷¹ *ibid.*, p. 5.

Recommendation 10: Maintain and monitor mandatory reporting requirements

Maintain the operation of the mandatory supply requirements in the Credit Act, by:

- a) fixing the eligibility threshold at (for example) \$150 billion in assets to improve transparency and accelerate the participation of mid-sized authorised deposit-taking institutions (ADIs) in comprehensive credit reporting
- b) the Government should investigate what data is needed to implement a mandatory reporting threshold based on a credit provider's number of accounts
- c) the Government should monitor the credit reporting participation of major consumer credit sectors to determine whether mandatory supply requirements should be imposed on the sectors in future
- d) amend the Credit Act to provide the ability for the regulations to designate (or exempt) additional entities for inclusion in mandatory reporting.

Additional data items

The most common recommendation among industry submissions was for the credit reporting framework to permit a greater range of data items, to support more accurate credit assessment and thereby potentially greater access to credit. Other jurisdictions commonly include a greater range of data about consumer behaviour and the details of credit products held. Including more types of data will help improve the scope and coverage of the credit reporting framework and help address the estimated 2 million thin credit files in the Australian credit reporting framework.

The Review concludes that a more flexible legislative framework with appropriate powers delegated to the regulations or regulator, would support additional data items to be added or removed from the framework over time in response to industry, consumer and technological developments.

The Report's recommendations do not constitute a definitive list of data items that could be included in the credit reporting regime, but only those where the industry has provided sufficient evidence of benefits to warrant inclusion at this time. The framework should have flexibility to introduce new data items as evidence of the benefit of including those items arises.

Table 10: Data items in credit reporting regimes

Country	Outstanding balance	Repayment amounts
Australia	No	No
New Zealand	No	No
Germany	No	Unclear
Singapore	Yes	Yes
United Kingdom	Yes	Yes
Hong Kong	Yes	Yes
Canada	Yes	Yes
United States	Yes	Yes
Japan	Yes	Yes

Source: Arca

Outstanding balance amount

Currently, the credit reporting framework includes credit limit information (the maximum amount that can be drawn on a particular account), which is generally a static number. The actual amount drawn or owing may be substantially different. For example, many people have unused credit cards or redraw facilities on their home loan. Industry participants argue that the extent of utilisation of a credit limit, including how it is changing over time, is a particularly useful indicator of financial capacity as well as potential financial stress.

For instance, a consumer may have a credit card with a \$10,000 limit but may pay off the balance every month, or only use the card for occasional travel needs. Another customer may have a credit card with a \$5,000 limit which is often fully utilised for regular expenses, and is not paid off each month. These consumers would be viewed as distinctly different levels of credit risk, but this cannot be inferred from the limit alone.

Stakeholder submissions suggest that including this information is highly predictive and contributes significantly to the calculation of credit scores. For instance:

One CRB had conducted analysis of the effect of balance in six jurisdictions where that information is available for credit reporting bodies. Although the exact results vary between jurisdictions, the analysis indicates that balance provides 40% or more of the total predictive power of the top 20 data elements that contribute to the credit score. The CRB observed that balance is often the most significant contributing factor to a credit score for individuals who consistently make repayments on time (i.e. it provides the most predictive power to the credit score in those circumstances).¹⁷²

Quantitative evidence provided to the Review indicates that reporting of outstanding balance information has the potential to significantly improve the overall accuracy and timeliness of the credit reporting data and support responsible lending. While current balance information could be requested from the consumer applying for a loan directly, obtaining it from a credit report would allow a credit provider to build a more accurate initial picture of a consumer's overall financial position much more quickly and efficiently.

Further details around outstanding balance information, such as reporting timeframes (for example, point-in-time only, monthly), and retention periods should be considered following further consultation with stakeholders. The Review's initial view is that the current balance could be included within partial reporting and credit enquiries, while historical (monthly) balances could only be accessed as part of repayment history data for those participants that can access that data.

Repayment amounts and product details

The Review is not recommending inclusion of specific repayment amounts or payments due, as well as details such as interest rates. This information can be obtained in more detailed affordability assessments from the consumer directly or from consent-based services such as the CDR. While not ruling out inclusion eventually, the Review received insufficient evidence for how this information would materially improve credit assessments in addition to outstanding balances. Given that any additional piece of data increases the scope for errors, corrections and consumer confusion, the Review is not recommending inclusion of additional repayment history information at this time.

Additional contact details

Currently, credit bureaus are not able to collect and share a consumer's contact details other than a residential address. Equifax has proposed including mobile phone and email within the definition of identification information, to help reduce data errors and improve accuracy through better matching of consumers with their credit reports, allow communication in exceptional circumstances such as remediation programs, and support two-factor authentication.¹⁷³

¹⁷² Arca, Submission to the Issues Paper, 14 June 2024, p. 41.

¹⁷³ Equifax, Submission to the Issues Paper, 14 June 2024, ss 5.2 and 8.1.

The Review agrees that the collection of contact details should be permitted for the credit bureaus' internal purposes such as identifying and matching accounts and authenticating consumers who have signed up for accounts. Consumers are however justifiably very sensitive about who has access to their contact details. The ACCC has provided survey information showing consumers feel it that is unacceptable for their email and mobile number to be used without their permission.¹⁷⁴ Disclosing personal information to third parties that have access to credit reports could have significant unintended consequences for vulnerable consumers or the potential to be misused for marketing or other purposes.

Further disclosure should only be undertaken after consultation with consumer advocacy organisations and other relevant stakeholders. For example, an option is for contact information to be disclosed only with the consumer's explicit consent for a specific purpose. Alternatively, there could be a clear and simple process to opt-out of sharing contact details with third parties.

Credit provider brand name information

Currently, consumer credit liability information as defined in the Privacy Act includes the name of the credit provider. Arca has proposed inclusion of credit provider brand name to help promote clarity for consumers about information on their credit report. Credit brand names can arguably be included within the current scope of the CR Code, as it is consistent with the requirements of the Privacy Act, which clearly intends that consumers are able to identify the credit provider and accounts listed on their report.¹⁷⁵ For clarity, product descriptions and brand names should be included in the definition (whether in legislation or as proposed in the Privacy Regulation) as a data item within consumer credit liability information.

Other data: 'flags'

Some stakeholders have proposed the addition of various 'flags' on an individual's credit report to indicate the need for some form of special arrangement. Examples of proposed flags include:

- **Fraud/scam risk:** where a consumer has been a victim of identity theft or data breach, the inclusion of the fraud flag is intended as a prompt for a credit provider to make further enquiries to verify a consumer's identity.¹⁷⁶
- **Family violence/financial abuse:** where a consumer is identified as a victim of family violence (including elder abuse) or financial abuse, this flag could be a prompt for a credit provider to undertake relevant procedures to support or prevent access to credit or to expedite corrections processes for victim-survivors.¹⁷⁷

174 ACCC, *Digital Platform Services Inquiry: Interim report 8: data products and services – how information is collected and used by data firms in Australia*, March 2024, p. 97.

175 Arca, Submission to the Issues Paper (Recommendation 8), 14 June 2024, p. 6.

176 *ibid.*, pp. 71-72.

177 Equifax, Submission to the Issues Paper, 14 June 2024, Part 6.3.

- **Disaster hardship:** where a consumer is identified as experiencing disaster-related hardship, this flag could support banks to more quickly understand whether a customer is impacted by hardship due to a natural disaster event, and to support the customer's ability to access disaster hardship packages when needed.¹⁷⁸

While the Review supports in principle the concept of a flag to assist in expediting assistance to a consumer, these information types can be deeply personal and sensitive and would require changes to the credit reporting framework including additional consumer protections to prevent misuse. There could be significant unintended consequences for a flag of this sort to be set without the consumer's explicit consent or knowledge.

It is important that the consumer has visibility of all information held about them and the opportunity to correct this information, including any potential flags about their status. Further consultation should be undertaken to assess whether any of these types of flags would have benefits for consumers that would outweigh the potential privacy concerns or have unintended consequences.

Recommendation 11: Additional data items

Make the relevant amendments to introduce or clarify that the following data items may be reported in the credit reporting framework, with the details included in the Privacy Regulation:

- a) outstanding account balance
- b) product and provider information such as credit provider brand
- c) additional contact details such as email address and mobile phone number, subject to disclosure and use requirements
- d) 'flags' to specify certain types of information that can be included in the credit reporting framework in future if warranted.

Research including debts to government in credit reporting

A notable gap in the liability and default information included in a credit report are debts or past defaults on debts to government. These can include, for example, unpaid tax debts, Centrelink debts relating to income support, and student debts such as FEE-HELP. Some state governments also operate their own loan programs. Currently, the Australian Taxation Office supplies credit information about limited set of business tax debts to selected commercial credit bureaus, but individual debts are not included.¹⁷⁹

¹⁷⁸ Australian Banking Association, Submission to the Issues Paper, 7 June 2024, p. 6.

¹⁷⁹ Australian Tax Office, [Disclosure of business tax debts](#), 2024.

The inclusion of federal and state debts in the credit reporting framework would improve a credit providers' visibility of an individual's liabilities and assist in making better lending decisions, preventing inappropriate credit from being granted. Consumers could also benefit from not having to search for and provide a range of documents to support a lending application. For example, around three million Australians collectively owe more than \$78 billion in outstanding student debts.¹⁸⁰ Inclusion of student loans could help address issues relating to 'thin' credit files by helping younger individuals opt-in to build a positive repayment history.

However, this area would need substantial further research to avoid unintended consequences or consumer harms. Many government debt obligations have special features that mean they cannot be interpreted in the same way as private credit; for example, HELP debts are income contingent loans and not subject to default.¹⁸¹

Government debts in many cases do not have the same type of contractual basis, do not have responsible lending requirements, and may not be subject to a statute of limitations. There are likely to be significant operational hurdles as well. Nevertheless, there is merit in exploring the potential for inclusion of government debts in the credit reporting framework.

Recommendation 12: Research including debts to Government in credit reporting

The Government should consider whether individual debts to government bodies should be supplied to credit reporting bureaus and, if so, how this should be done.

Data retention periods and other timing issues

Reduce enquiry information retention period

Credit report enquiry information is a significant source of consumer confusion and complaints about the credit reporting system (see Table 11). An enquiry can stay on a consumer's credit report for up to five years, even if no credit is ever provided. Enquiry information is of mixed importance – credit providers make inferences based on enquiry information, particularly where there was an enquiry and no record of an account being opened. While a single enquiry generally will have a small negative impact on consumer's credit score, a large number of enquiries can have a significant negative impact on a consumer's credit score. Generally, the impact of enquiries on credit scores and lending decisions is opaque to consumers.

180 Australian Tax Office, [Study and Training Support Loans](#), HELP Statistics, 2005-06 to 2022-23 financial years, Table 5.

181 See Australian Universities Accord, [Final Report](#), 25 February 2024. The Australian Universities Accord – Final Report discussed HELP debt and home lending, and discussed the interaction between HELP debt repayments and mortgage servicing in the credit assessment process.

Table 11: Most common types of correction requests to credit bureaus (per cent)

Data	Equifax	illion
Enquiry information	31.3	51.8
Repayment history	32.8	1.2
Credit limit/account	11.8	17.7
Default	10.8	7.7
Court judgement	0.1	0.8
Personal information	12.1	18.6
Personal insolvency	0.2	0.2

Source: Equifax, 2022-2023 Credit Reporting Annual Report, August 2023, and illion, Annual Report, August 2023. Experian and TaleFin figures are not available.

According to industry participants, newer enquiry information (for example, less than 12 months) is relatively more important than older enquiry information (for example, more than three years) in terms of credit scores, but consumers are unlikely to understand this distinction.

Consumer misunderstanding about the importance of enquiry information can lead to some consumers engaging free external dispute resolution processes and costly credit repair firms to seek to remove enquiry information regardless of whether the information will affect their ability to obtain credit.

Increasingly, providers touting the ability to make ‘soft enquiries’ are proliferating, with some advertising that they will not affect a consumer’s credit report. Consumers are potentially confused about which enquiries will affect their report and score and which will not, and this can further exacerbate requests for corrections and complaints.

On balance, the Review has concluded that further limiting the historical retention of enquiry information would reduce consumer confusion and the need for corrections and disputes, while marginally reducing the explanatory power for credit providers. This would also encourage lenders to rely more on a potential borrower’s recent performance and current affordability information, rather than historical decisions made by other lenders from years earlier.

The simplest way of achieving this outcome is to reduce the retention period for enquiry information from five years to two years. This could remove approximately 60 per cent of enquiry information from the credit reporting framework over time. A two-year retention period would align enquiry information’s retention period with consumer credit liability information and repayment information.

Recommendation 13: Reduce enquiry information retention period

Amend the Privacy Act to reduce the retention period for enquiry information ('Information Requests') from five years to two years.

Improving the accuracy of default information

Default information is a key indicator of consumer behaviour and its presence on a credit file can have a disqualifying effect on access additional credit such as a mortgage or car loan. It is essential that default information is correct and meaningful, as it is a significant source of consumer complaints to credit providers, credit reporting bodies and external dispute resolution processes. Challenging default information is a key reason some consumers seek to engage the services of credit repair companies.

Under the Privacy Act, the retention period for default information is five years and starts on the day on which the credit reporting body collects the information from the credit provider. A concern expressed by consumer advocates and others is the risk of statute-barred debts remaining on a consumer's credit file. Debts are not legally collectable after a period of inactivity, typically six years, and there is general consensus that a statute-barred debt should not be listed on a consumer's credit file. In practice, determining whether a debt is statute-barred is complex. The statute of limitations for recovering a debt can vary between states and territories, the type of debt (for example, a mortgage or credit card), and whether there is a court judgement in relation to the debt.¹⁸²

The CR Code provisions (paragraph 20.6) require a credit bureau to remove a default at the request of an individual if the credit provider is prevented by a statute of limitations from recovering the amount. The 2021 CR Code Review highlighted that the onus is on individuals to request the removal and that it happens very rarely in practice, and recommended amendments to the CR Code putting in place positive obligations on credit providers and credit bureaus to work together to remove this information.¹⁸³

The PRDE contains a timeliness requirement for the reporting of default information but despite these arrangements, timeliness of reporting default information continues to be an issue as highlighted by the 2021 CR Code Review:

The Review is concerned by the examples provided and the possible practice that CPs are choosing to list defaults years after the initial debt was incurred by the individual. It appears to show that default listings are being artificially extended by a CP or 'reset' by a subsequent debt buyer who decides to list the default again. This practice is not in keeping with the intention of Part IIIA. The Review considers that a default should be listed within a reasonable time from when the debt was originally incurred. This will need to be addressed through amendments to Part IIIA.¹⁸⁴

¹⁸² See for example, Financial Rights Legal Centre, [Recovery of Old Debts](#), October 2022.

¹⁸³ OAIC, [2021 Independent Review of the Privacy \(Credit Reporting\) Code \(Proposal 19\)](#), September 2022, p. 68.

¹⁸⁴ OAIC, [2021 Independent Review of the Privacy \(Credit Reporting\) Code](#), September 2022, pp. 70-71.

Stakeholders proposed a range of solutions to improve default reporting. One proposal involved scalable default information retention periods – with information about smaller defaults retained only for one year, with larger defaults progressively increasing in retention period up to five years.¹⁸⁵ The Review considered this proposal as adding unnecessary complexity to an already complex credit reporting framework, and would likely contribute to further consumer confusion.

The Review understands that setting or enforcing stricter deadlines for reporting defaults than what is already set out in the CR Code could interfere with a credit provider that is handling a hardship situation in good faith or involved in a lengthy dispute. A simpler approach would be to clarify the retention requirements for defaults as applying from the date of default (accounting for the required notice periods under the Privacy Act). This change will require adding an original default date data item, which will need to be defined.

Arca notes that such a change would have the effect of reducing the effective time that a default can be listed, particularly in comparison with other countries that may have retention periods of six or seven years. An alternative would therefore be to extend the retention period, for example to six years from the date of default.¹⁸⁶

Recommendation 14: Improving the accuracy of default information

Amend the credit reporting framework by introducing a ‘date of default’ data item and amending the default information retention period to start from the date of default.

Reporting of historical account information

Some stakeholders have highlighted that special cases such as closed accounts and debt that is subsequently sold to debt buyers can create gaps in a consumer’s credit history or lead to consumer confusion.¹⁸⁷ The data category of consumer credit liability information contains financial information such as the account’s credit limit as well as other information about the credit product. This limit can change over time, but generally is only disclosed as at the current date.

The Privacy Act is silent on whether historical changes in this information can be reported and disclosed. The Privacy Act also does not explicitly permit or prohibit purchased debt that is still collectable but has been written off by the original credit provider to be reported by the debt buyer. The 2021 CR Code Review referred the issue of disclosing historical information to this Review (Proposal 16) and found that:

The Review notes that this aspect of the legislation is ambiguous, and it is open on a statutory interpretation approach to take either position.¹⁸⁸

¹⁸⁵ Energy and Water Ombudsman Queensland, Energy and Water Ombudsman South Australia, Energy and Water Ombudsman Victoria, and Energy and Water Ombudsman New South Wales (collectively, Energy and Water Ombudsmen), Submission to the Issues Paper, 29 May 2024, p. 4.

¹⁸⁶ Arca, Submission to the Issues Paper (Recommendation 19), 14 June 2024, p. 8.

¹⁸⁷ ACDBA, Submission to the Issues Paper, 31 May 2024, p. 7.

¹⁸⁸ OAIC, *2021 Independent Review of the Privacy (Credit Reporting) Code*, September 2022, p. 60.

The OAIC took the view that only current credit information should be disclosed to ensure consistency across credit bureaus. Arca's submission to this Review highlights that the disclosure of historic information may help address consumer confusion by showing how information such as a change to the credit limit, changes from principal and interest to interest only, or changes to the credit provider's name in instances of purchased debt.

The Review supports inclusion of clarifying historical information which appears to be consistent with the existing law. Historical information can improve the quality of information used for lending decisions and reduce consumer confusion. Information on historical changes including closed accounts is a valid depiction of a consumer's past credit activity and should not be suppressed. The reporting of purchased debts by a debt collector is more complex but is explicitly contemplated under the Privacy Act.¹⁸⁹

Recommendation 15: Reporting of historical account information

Make the relevant amendments to clarify that historical consumer credit liability information (CCLI) can be reported.

Information reporting thresholds

Increasing the threshold for default listing

Credit bureau information provided to the Review indicates that around 1.5 per cent of consumer files have a default listed. The minimum threshold for listing default information is set at \$150, with existing scope to be updated in the Privacy Regulation, but this amount has not been updated since it came into effect in 2014.¹⁹⁰ Several submissions highlighted that the \$150 amount is no longer appropriate, with relatively more small debts and defaults being captured by the threshold than was the case ten years ago. This may be contributing to the incentives for consumers to make complaints, corrections or engage a credit repair firm. This threshold should be lifted.

If the threshold was indexed to the Consumer Price Index it would be approximately \$200 in 2024. The Joint Consumer Group submission supports increasing the threshold from \$150 to \$500 and indexing the threshold.¹⁹¹ The Joint Energy and Water Ombudsman Submission proposed a figure of at least \$300 (for the energy industry) which more closely reflects the typical quarterly energy bill and aligns with the minimum disconnection amount set by the Australian Energy Regulator:

¹⁸⁹ Privacy Act para 6K. Arca has also provided detailed technical guidance to its members on the data reporting of credit reporting information by debt buyers.

¹⁹⁰ Privacy Act s 6Q.

¹⁹¹ Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 56.

An appropriate amount for the energy sector would be at least \$300. This is the amount that the Australian Energy Regulator (AER) for New South Wales, Queensland and South Australia and the Essential Services Commission in Victoria has set as the minimum threshold below which a customer's energy supply cannot be disconnected for non-payment. Energy regulators set this amount to give customers protection against being disconnected for the non-payment of one quarterly bill, and we believe this same principle should apply for credit default listings. Notably, the AER is currently exploring whether the threshold of \$300 should be increased.¹⁹²

The Review considers that this minimum disconnection amount of \$300 is an appropriate benchmark for the credit reporting default threshold. A \$300 threshold would also exclude smaller BNPL debts, but would be unlikely to affect reporting of mortgage, motor vehicle finance or credit card debts.

The average outstanding credit and charge card debt, for example, is \$2,700.¹⁹³

The general aim of the threshold is to exclude incidental or accidental defaults of a small amount that can occur from time-to-time, for example, when a utility bill is lost or missed as a result of a change of address. A higher figure of may be warranted to reflect the cost of energy increasing over time and the typical quarterly household energy bill which may be higher in some jurisdictions.¹⁹⁴ There may be merit to indexing the threshold or instituting a regular review process for the default threshold.

Recommendation 16: Increase the threshold for default listing

Amend the Privacy Regulation to increase the default listing threshold to \$300 or higher.

Introduce a threshold for reporting missed repayments

The Privacy Act defines repayment history data but does not provide for any minimum threshold for reporting, nor does the mandatory reporting regime for the major banks. As a result, even small or accidental missed payment amounts can impose a significant negative impact on a consumer's credit score. Recent media has highlighted a case study where a consumer had unintentionally left a small debt on his credit card, which impacted the consumer's ability to purchase a property:

The \$1.50 of debt was lodged on Sam's report behind the scenes. He had stopped using a Citibank-branded credit card in 2023 and thought he had paid it off. Citibank's Australian consumer business was bought out by the National Australia Bank in 2022. Unbeknownst to Sam, nominal fees and interest charges continued to accrue on his Citibank card and every month a black mark was recorded on his 'repayment history information', which formed part of his credit history sent off to external credit reporting bureaus.

¹⁹² Energy and Water Ombudsman, Submission to the Issues Paper, 29 May 2024, p. 3.

¹⁹³ Reserve Bank of Australia, [Statistical Tables | RBA](#), Credit and Charge Cards.

¹⁹⁴ See for example, Kelseigh Wrigley, [What is the average electricity bill?](#), Canstar, 2 September 2024.

His 'debt' to the bank grew by two cents a month, eventually reaching \$1.66. The first he heard about it was when he tried to get a home loan earlier this year with NAB, only to be told the debt could lead to his loan pre-approval being rejected due to what they said was his bad credit history. "I was bidding on the property and I had to cancel my bid because I just wasn't sure what was going on (with my pre-approval). So I lost the property I wanted over it," he says.¹⁹⁵

The Arca submission provided a possible explanation for these types of scenarios:

We are aware of limited instances where the individual has made the significant majority of their payment, but unintentionally underpaid the amount owing (e.g. accidentally only paid \$126 of a \$129 payment, due to mis-reading the amount due). In such cases, the unpaid amount may be below the collections threshold that trigger the CP's contact with the individual; as such the relevant person may be unaware of the small amount outstanding for a significant period of time.¹⁹⁶

The Review's preferred option is to introduce minimum thresholds for reporting a missed payment of a fixed amount such as \$25, to minimise 'nuisance' reporting. An appropriate threshold should be set in the Regulations in consultation with industry and consumer representatives.

Recommendation 17: Introduce a threshold for reporting missed repayments

Amend the Privacy Act to introduce a standard missed repayment dollar threshold for repayment history information, with details to be specified in the Privacy Regulation.

Removing unused or underused data items

If legislative provisions for data items are unused or underused, and contain little or no useful information, they should be removed from the credit reporting framework.

'New arrangement information' about an individual is a statement that the terms and conditions of the original consumer credit have been varied, or that the individual has been provided with other consumer credit that relates to that amount of credit (either wholly or in part). Industry advises this type of information lacks utility compared to the recently introduced financial hardship information, it is difficult for credit providers to report, and that as a result very few credit providers report new arrangement information.¹⁹⁷

¹⁹⁵ CHOICE, [Sam was told he could be denied a home loan because he owed \\$2 on a credit card](#), 15 May 2024.

¹⁹⁶ Arca, Submission to the Issues Paper, 14 June 2024, p. 74.

¹⁹⁷ *ibid.*, p. 45.

The 2021 CR Code Review referred issues around new arrangement information to this Review and found one credit reporting body confirmed few credit providers were reporting new arrangement information.¹⁹⁸ The Review concurs that this information can be removed from the framework, including mandatory reporting.

The Privacy Act allows a credit reporting body to collect information about 'serious credit infringements' which are intended to represent cases where an individual has fraudulently obtained credit, sought to fraudulently evade credit obligations, or no longer intends to comply with their credit obligations.¹⁹⁹

Serious credit infringements are considered more serious than a default. The requirements on a credit provider to report serious credit infringements are onerous, such as reasonably establishing that an individual made false statements. Arca advised the 2021 CR Code Review that no serious credit infringements were disclosed for a 12-month period.²⁰⁰

If in future, versions of these types of information are needed, the approach proposed in this Review to allow for new types of data to be included via regulation should enable information to be reintroduced in future.

Recommendation 18: Removing unused or underused data items

Amend the Privacy Act to remove unused or underused data items such as new arrangement information and serious credit infringement information.

198 OAIC, [2021 Independent Review of the Privacy \(Credit Reporting\) Code](#) [Proposal 22], September 2022, p. 73.

199 Privacy Act s 6.

200 OAIC, [2021 Independent Review of the Privacy \(Credit Reporting\) Code](#), September 2022, p. 77.

3. Maintaining a competitive industry held to high standards

The Review agrees that the credit reporting framework regulation should be proportionate, assist lenders to provide accurate pricing and allocation of credit, and 'increase competition between lenders by incentivising product innovation and tackling barriers to entry for smaller providers.'²⁰¹

This section outlines recommendations aimed at moving industry practice toward outcomes proposed in Part Three that support strong industry competition, innovation and transparency around compliance with the Privacy Act protections by the industry, including:

- facilitating quicker and easier switching between lenders and providers as well as consumers' ability to 'shop around' for better deals
- minimising information imbalances that may affect the ability of smaller lenders to compete on price, product offerings and service
- accommodating new and innovative credit products within the credit reporting system and the regulatory framework
- ensuring a transparent and effective regulatory compliance regime
- credit reporting bodies, as central industry infrastructure providers, should be held to high standards and their compliance with regulatory requirements should be transparent.

Soft enquiries and Access Seekers

Some stakeholders raised a concern that the credit reporting framework may restrict the ability of consumers to 'shop around' for credit. Multiple consecutive credit report enquiries generally lead to reductions in a consumer's credit score, reflecting the higher risk associated with someone appearing 'desperate' for credit. Credit bureaus have provided evidence to the Review that a single enquiry contributes a modest negative amount to a credit score, while a large number of enquiries contribute significantly to the predictive power of credit scores and credit performance.

As a result, over recent years, mortgage brokers and other third parties have increasingly used the Access Seeker provisions in the Privacy Act to obtain full credit report information without affecting the client's credit report.²⁰² They assist consumers by facilitating comparison of likely credit offers without the information being visible to other credit providers. In fact, one credit bureau provided evidence that Access Seeker requests increased by around 500 per cent over the five years to 2023.

²⁰¹ Australian Finance Industry Association, Submission to the Issues Paper, 31 May 2024, p. 3.

²⁰² See *Privacy Act* s 6L.

The growth in Access Seeker requests provides evidence that there is strong consumer and credit provider demand for credit assessments that do not affect a consumer's credit report. The trade-off is a reduction in the informational content of the credit reporting data, with fewer 'hard' credit enquiries reported.

The model of access to and use of credit reports through the Access Seeker regime as used by mortgage brokers seems to be well understood, widely used for home lending, and provides important benefits for consumers. Mortgage brokers are also subject to regulatory licensing and a best interest duty to their customers.²⁰³ A broker assessment through the Access Seeker regime is likely to subsequently result in a formal credit enquiry to the mortgage lender to ensure that responsible lending obligations are met, so little informational value is lost in practice.

Some fintech lenders have acknowledged that they are using the Access Seeker provisions to pre-approve consumers and offer pricing on products, in some cases through a third-party online credit report monitoring service.²⁰⁴ The Review understands that this practice is more common in the personal loan and motor vehicle finance sectors. Some lenders can be seen specifically advertising that they will conduct a credit assessment without affecting a consumer's credit report.

The Privacy Act does not contemplate such extensive use of the Access Seeker channel, and indeed its use by credit providers to obtain information for assessing credit applications is explicitly prohibited under section 6L of the Privacy Act. Access Seekers are not subject to regulatory obligations to safeguard information under the credit reporting provisions of the Privacy Act, although they may be subject to the APPs and other professional standards, and credit reporting bureaus may also impose contractual requirements on their participation.

Access Seekers must obtain written authorisation from consumers, but the Privacy Act does not specify when or how often this consent must be obtained. Use of the Access Seeker regime in this way could potentially enable circumvention of important consumer protections applicable to credit providers, such as restrictions on disclosure and use of hardship information.

Establishing a clear framework for soft enquiries in primary law

The Access Seeker channel is informally described as a 'soft enquiry' by some industry participants. Arca has proposed changes to the CR Code to create a new formal category of 'soft enquiry' which would not be reported on a consumer's credit report, while at the same time imposing restrictions on the use of Access Seeker provisions.²⁰⁵

²⁰³ Credit Act, Pt 3-5A.

²⁰⁴ Eyers J, [Four listed fintechs says they'll be smashed by credit report rules](#), Australian Financial Review, 21 May 2024.

²⁰⁵ OAIC, [Consultation on application to vary the Credit Reporting Code](#), 8 April 2024.

The soft enquiries proposal would permit a limited set of data to be provided to a credit provider, rather than the full report including comprehensive information that is available through the Access Seeker regime. The intent is that this limited information would be sufficient to determine if a consumer met a lender's baseline credit eligibility criteria, but would be insufficient for most lenders to support a full credit application without further information gathered via a 'hard enquiry' if the consumer decides to proceed. The CR Code would correspondingly restrict the use of the Access Seeker channel.²⁰⁶

Submissions to the OAIC's consultation process indicated there was general support for a soft enquiries framework, there were mixed views within the industry on how much data should be supplied in a soft enquiry. FinTech Australia argues that lenders need the full range of comprehensive information to accurately price products and pre-qualify consumers.

... limiting the information types and use cases permitted under the soft enquiry framework and using it to replace the existing Access Seeker framework will have an adverse impact on the ability of smaller lenders and neobanks to compete with large credit providers. Specifically, members are concerned about restrictions on providing RHI or enquiry data in response to a soft enquiry, if it is to replace the Access Seeker framework.²⁰⁷

FinTech Australia argues that a more limited dataset would restrict the information needed to assess a consumer's eligibility or pre-populate an application and provide an accurate price quote, particularly when compared to larger and more established banks which have significant reserves of data from their pre-existing relationships with the consumer. The ABA and Equifax support a soft-enquiries framework sufficient to allow pre-qualification and pre-filling of applications.²⁰⁸

The Review has concluded that a transparent framework for credit enquiries that are not disclosed on a credit report would benefit consumers and competition, and should be explicitly accommodated within the legislative framework. Currently there is a single concept of an 'Information Request' in the Privacy Act, although the Act does not dictate which information must be disclosed.

The Review recommends that the primary legislation should include general principles for a non-disclosed category of Information Request. Principles could include for example, where non-disclosure of an Information Request substantially improves consumer choice among lenders, and does not unduly reduce the informational value of the credit reporting system. The details of soft enquiries including what data can be disclosed should be delegated to the regulations.

Some reduction of detailed credit information available through a soft enquiry relative to an Access Seeker request is appropriate, but soft enquiries should allow sufficient information for a lender to provide a consumer with a reasonably accurate price and loan quotation. A soft enquiry may also be appropriate in certain other circumstances, for example, a modest increase in a credit limit.

206 ibid. See [Annexure 4 – Explanatory Statement](#).

207 FinTech Australia, Submissions to the Issues Paper, May 2024, p. 13.

208 Equifax, [Response to the CR Code Consultation October 2023](#), November 2023, and Australian Banking Association, Submission to the Issues Paper, 7 June 2024, p. 7.

Importantly, soft enquires will create additional complexity in the credit reporting framework, so it will be even more important that there are clear notices, including explanation to consumers about the difference between hard and soft enquiries at the time they are engaging with these channels. This is preferable to the current opaque arrangements where some credit applications are reported and others are not.

Recommendation 19: Establishing a clear framework for soft enquiries in primary law

Amend the Privacy Act to set out categories of credit enquiries ('Information Requests') made to credit bureaus, such as for purposes of pre-screening and indicative pricing of credit applications, including 'soft enquiries' that cannot be disclosed to third parties, with details to be specified in the Privacy Regulation.

Clarifying use of the Access Seeker provision

The use of the Access Seeker regime to access a consumer's credit report should also be more limited to prevent avoidance of regulatory requirements that apply to credit providers.

Given that most Access Seekers are in practice mortgage brokers, credit assistance services that are required to hold a credit licence, or non-profit advisors holding an authority from the consumer such as financial counsellors, the Review concludes that it is appropriate for Access Seekers to hold an ACL or be an authorised professional advisor/counsellor.

This will ensure that those obtaining this information are bound by appropriate professional and regulatory standards in assisting customers. This would not prohibit credit assistance providers that are affiliated with credit providers from obtaining a customer's credit report with their consent, but the credit assistance provider should not disclose that report to an affiliated or unaffiliated credit provider.

An Access Seeker disclosing a customer's credit reporting information to any third parties potentially undermines the privacy protections in Part IIIA. With reasonable exceptions for valid uses such as to service providers for its own internal operational purposes, or to pre-populate information on a credit application with the consumer's explicit consent, Access Seekers should use the information only to assist and advise consumers as directed. Access Seekers should also demonstrate strong controls for information security to protect their clients' sensitive information.

Recommendation 20: Clarifying use of the Access Seeker provision

Amend the Privacy Act to improve the privacy and information security protections by:

- a) requiring Access Seekers to hold an Australian Credit Licence or be the consumer's professional advisor or advocate holding an authority (such as financial counsellors or financial advisors)
- b) prohibiting Access Seekers from disclosing a consumer's credit reporting information to third parties without the consumer's explicit consent.

Improving credit bureau competition and data consistency

Credit providers and consumer advocates have highlighted frustrations with consumer data that is often inconsistent across credit bureaus. This is confusing for consumers and imposes additional costs on lenders, who may need to make multiple credit enquiries to get a full picture of a consumer's credit position and performance.

Inconsistent datasets may result from the unique nature of competition in the credit bureau sector. The credit bureau industry in Australia, as in most countries, is characterised by extreme market concentration resulting from inherent network effects and the value of the data each credit bureau obtains from its customers. According to the ACCC, 'barriers to entry and expansion in consumer credit reporting are very high and the most fundamental barrier to expansion is access to large and high-quality dataset assets.' The ACCC noted in its recent decision regarding the acquisition of Experian by illion:

The majority of credit providers appear to use a single credit bureau and most often that bureau is Equifax. The ACCC also found that even where the large credit providers contract with multiple bureaux, some see Equifax as the primary bureau and utilise Experian and illion as a secondary data source. Primary bureau status is considered important to a credit reporting body. Where customers tend to direct more enquiries to their primary bureau, this allows the bureau to obtain more enquiry data than if they were a secondary bureau.²⁰⁹

Although mandatory reporting has significantly improved consistency for large bank lending segments, the Review understands that many smaller and 'niche' lenders only report to one credit bureau due to operational costs. This situation tends to be self-perpetuating, particularly if dealing with a single credit bureau leads to lower costs for each credit provider. The ACCC concluded that:

As credit providers are generally only required to share data with bureaux with which they have a credit services agreement, the more agreements a bureau has, the greater the amount of data accessible to that bureau, and the more detailed their credit reports will be.²¹⁰

²⁰⁹ ACCC, [Public informal merger reviews register: Experian – Illion](#), 15 August 2024.

²¹⁰ *ibid.*

To address this issue, the Issues Paper raised the prospect of data sharing across credit bureaus, a concept suggested by many stakeholders in preliminary discussions. Submissions generally supported the concept of data sharing across credit bureaus. They felt that reducing competition on data coverage may provide more incentive to compete on price and service.

Submissions, however, acknowledge that the cost and complexity of achieving data consistency across credit bureaus is likely to be significant.²¹¹ It would require, for example, common customer identification protocols and closer alignment on technical interchange specifications. It could also create unintended consequences or actually reduce incentives for bureaus to vigorously compete for clients if their data is no longer as valuable. Additionally, with the merger of Experian and illion now likely to go ahead, the benefits of data sharing across bureaus may be less immediate.

Consumer confusion could be alleviated by the creation of digital portals where a consumer can obtain all credit reports together. Industry participants can also ensure more consistent datasets by sharing data with all bureaus and distributing their business across credit bureaus. This has the added benefit of adding redundancy and greater resilience across the credit reporting framework, particularly if one bureau temporarily ceases to operate. This could be hindered by operational costs for smaller credit providers, as well as pricing and business arrangements with credit bureaus.

Credit providers have the option of addressing inconsistent data by requesting multiple enquiries to different bureaus to ensure they have complete information. This adds a cost but also promotes some market discipline and provides visibility of how the datasets differ. Broader data sharing by credit providers can be encouraged by reducing technical and operational differences between credit bureaus. In this regard, Arca has been working with the major credit bureaus to progress greater consistency and this work should continue.

Recommendation 21: Improving credit bureau competition and data consistency

That industry continues to develop industry-wide technical standards, including for data submission and validation, to reduce the costs of wider data sharing. This work should include newer credit bureaus as well as established providers.

Prohibit exclusive data sharing arrangements

The Review heard suggestions that some smaller credit providers may enter exclusive arrangements with a particular credit bureau, for example to access more advantageous pricing. The Review does not have any information about whether and how widespread this practice is, and certainly some credit providers may choose to only use a single bureau for valid operational cost reasons. Restrictive contractual arrangements (whether for credit report enquiries or supply of credit information) tend to perpetuate data inconsistencies and imbalances. For the avoidance of doubt, any contractual arrangements that limit potentially wider data sharing should be prohibited.

²¹¹ For example, see Arca, Submission to the Issues Paper, 14 June 2024, pp. 35-36.

Recommendation 22: Prohibit exclusive data sharing arrangements

Amend the Privacy Act to introduce a prohibition on exclusive arrangements between credit bureaus and credit providers that reduce the broader sharing of data.

Fostering an innovative industry

Use of CDR data in credit reporting

In Australia and around the world, new technology-driven services are emerging for conducting credit assessments outside of, or complementary to, traditional credit reporting arrangements. AFIA has noted concerns about insufficient incentives in Australia for credit bureaus to innovate and improve their data offerings.²¹² Credit reporting today is based on technology processes of incumbent providers, typically the larger banks in Australia and the incumbent credit bureaus, and is not technologically neutral.

It is important that Australia's credit ecosystem can benefit from new approaches and that the credit reporting framework itself does not stifle innovation by mandating particular technologies or assessment methodologies. For example, the CDR and other data exchange technologies are leading to the development of new approaches for conducting responsible lending credit assessments. Some credit bureaus are becoming Accredited Data Recipients under the CDR or are offering services that access consumer data through 'screen scraping' or other data exchange methods.

The Issues Paper asked about the relationship between CDR and credit reporting, given that there is some overlap in the datasets covered. Stakeholders expressed varied views, but most stakeholders were strongly of the view that the CDR and credit reporting should remain separate regimes.²¹³

Equifax argued in its submission that CDR data should be allowed to be used within the credit reporting framework.²¹⁴ AFIA stated a view that credit reporting data from credit bureaus should not preference CDR and other forms of data. Consumer advocates are concerned that the historical financial information available through the CDR regime may 'circumvent the long-negotiated limitations of the CCR regime.'²¹⁵

The Review concluded that, although eventually the potential to bring the two regimes closer together should be explored, it would not be appropriate to allow CDR data within the credit reporting framework and vice versa. This could effectively circumvent the specific controls in place for data collected and used within each regime.

²¹² Australian Finance Industry Association, Submission to the Issues Paper, 31 May 2024, p. 10.

²¹³ For example, see Australian Banking Association, Submission to the Issues Paper (Recommendation 2), 7 June 2024.

²¹⁴ Equifax, Submission to the Issues Paper, 14 June 2024, ss 3.3 and 5.9.

²¹⁵ Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 57.

Each is subject to a different set of regulatory requirements, with credit reporting data provided to credit providers relatively freely and without consumer control, but limited as to specific uses, whereas CDR data is not limited in its use but can only be provided to accredited participants and subject to initial and subsequent consumer consent for ongoing usage.

There is the potential for some overlap to be accommodated, for example by allowing CDR data (such as repayment and loan information) to be incorporated into a credit score on an opt-in basis with consent. This would require changes to the so-called 'derived data' restriction within the CDR regime. This is a broader issue for Government to consider within its CDR strategy.

Clarify the definition of credit reporting business

Due to the broad definition of a credit reporting business, there is a risk that some services using other consumer data, such as through the CDR, to conduct credit assessments fall within the definition of a credit reporting business (and therefore the definition of credit reporting body) under the Privacy Act. This would include new services that are emerging in the mortgage and consumer lending sector that could technically be considered a regulated credit reporting business even if it only used consent-based CDR data or other data gathered subject to the general Privacy Act provisions from consumers. The Review considers there would be benefit from amending the Privacy Regulation to prevent the unintended application of credit reporting rules to other types of data used in credit assessments, by excluding certain activities where this is not appropriate.

The CDR specifically restricts use and disclosure of this information to purposes agreed by the consumer and there are equivalent protections to those under the Privacy Act. Relevant amendments should be made to avoid the unintended interaction of Part IIIA with the CDR, noting the situation would become more complex if the CDR provider also used the information to calculate and disclose a credit score that could be used more widely for credit assessment purposes.

Recommendation 23: Clarify the definition of credit reporting business

Amend the Privacy Regulation to exclude from the definition of 'credit reporting business' those entities that, for example, do not hold credit reporting data or disclose credit scores.

Licensing and regulatory oversight of credit reporting bureaus

Licensing of credit reporting bureaus

Unlike in some other countries, credit bureaus in Australia do not require a licence to provide credit reporting services.²¹⁶ Additionally, the financial services and credit licensing regime has evolved considerably since 1990 when the Part IIIA provisions were legislated, to the extent that the significant majority of credit providers using the credit reporting system hold an ACL or other authority (for example, telecommunications and utilities providers).

Licensing of credit providers ensures a common baseline of conduct expectations and provides a nexus for regulatory oversight. Credit bureaus occupy a position of significant trust with significant powers to collect and disclose sensitive personal data that can drastically affect an individual's participation in society at key moments in life. They also interact directly with consumers for purposes of complaints and corrections, as well as access to their credit reports.

The Issues Paper posed the question as to whether credit bureaus should be licensed. Industry participants generally opposed licensing as unnecessary, while consumer representatives supported the concept in the context of the need for stronger compliance oversight across a range of areas. Consumer representatives and certain other stakeholders generally expressed the view that credit bureaus should be 'regulated like public utilities'.²¹⁷ AFIA has also suggested that given the data held by credit bureaus and authorised deposit-taking institutions are similar, 'consideration should be given to enhancements regarding the security, data quality and processes of CRBs in a comparable manner to financial institutions holding similar data'.²¹⁸

The Law Council supported a registration requirement for credit reporting bodies along with periodic reporting on their activities to the regulator, noting that in 2018, Equifax was ordered to pay penalties for misleading and deceptive conduct in relation to provision of paid credit reports.²¹⁹

Currently, there is no public confirmation as to which entities are credit reporting bodies under the Privacy Act. It is effectively up to each entity to determine if it considers that it is a credit reporting body subject to Part IIIA. In contrast, regulators such as APRA and ASIC are required to publish a register of regulated entities, and entities are expected to disclose their regulated status. This helps consumers and counterparties ensure they are dealing with a regulated entity and to understand what rights they have under the relevant laws.

²¹⁶ For example, the United Kingdom and Singapore require credit bureaus to have a licence.

²¹⁷ Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 29.

²¹⁸ Australian Finance Industry Association, Submission to the Issues Paper, 31 May 2024, p. 18.

²¹⁹ See *Australian Competition and Consumer Commission v Equifax Australia Information Services and Solutions Pty Ltd [2018] FCA 1637*, and ACCC, [Equifax \(formerly Veda\) to pay \\$3.5 million in penalties](#), 2 October 2018.

The regulator does not have power to determine which entities are credit reporting bodies under Part IIIA or issue exemptions in order to resolve any uncertainty. This creates potential confusion for consumers and credit providers. This issue may become more relevant with the prospect of legislation requiring interaction by BNPL providers with credit reporting bodies.

As a result, the Review concludes that credit reporting bodies should be required to obtain a regulatory licence. If ASIC is given a greater role in credit reporting, as recommended in this Review, it would be appropriate for this licence to be an ACL with core conduct obligations similar to credit reporting assistance providers and to be subject to ongoing oversight by ASIC in the same manner as other credit licensees. If regulatory oversight for credit reporting bodies remains with the OAIC, a licensing regime with basic capability and conduct provisions similar to those required for an ACL or an Australian Financial Services Licence would seem appropriate.

Similar to regulated credit providers, credit reporting bodies should be required to meet basic standards for:

- risk management and compliance policies, processes and audits
- fit and proper directors and executives
- complaints handling and breach reporting
- regular reporting to the regulator.

Recommendation 24: Licensing of credit reporting bodies

Amend the legislation to introduce the following requirements on credit reporting bodies and the relevant regulator:

- a) credit reporting bodies should be required to hold a licence from the relevant regulator (OAIC or ASIC)
- b) the regulator should maintain and publish a register of licensed credit reporting bodies
- c) the regulator should have authority to implement appropriate risk management and related standards for credit reporting bodies as part of the licence conditions.

4. Regulatory structure: legislation, oversight, accountability and flexibility

Participants should be able to have confidence in a regulatory regime that is both responsive to current issues and is effectively enforced in practice. This requires that a sufficiently flexible legislative framework with clear objectives and a properly structured and resourced regulator.

Regulatory changes should reflect public cost-benefit considerations and all stakeholders should have opportunities to provide input including consumers and those not yet participating in the credit reporting system. Compliance and oversight obligations and accountabilities should be clear, enforceable and subject to regular reporting and review.

There are a range of options that the Review has considered to improve the effectiveness of the regulatory structure, and many involve some degree of challenging legislative and regulatory reform. Many of the improvements to consumer protection, data coverage and industry competition outlined above could be implemented without major legislative or accountability changes. However, the underlying issues that are limiting the efficiency and effectiveness of the framework would persist.

Designing a more principles-based framework

The credit reporting framework is not principles-based but instead quite prescriptive, with the significant bulk of the provisions ‘hard-coded’ into the Privacy Act, and with few matters specifically delegated to the Privacy Regulation, the CR Code, or regulator discretion. The Review is proposing some steps to achieve a more principles-based framework.

Modernise the objectives of the credit reporting legislation

The legislated objective of credit reporting in the Privacy Act should be modernised to better reflect the modern role of Australia’s credit reporting framework in the financial system.

Legislative objects provide guidance to regulators, courts, regulated entities and others in implementing and enforcing legislation. The current object in the Privacy Act relating to credit reporting is: ‘to facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected.’ Stakeholders have highlighted that the purpose of credit reporting has expanded well beyond simply the original policy objective of protection of personal information and that other concepts such as fairness should be included.²²⁰

²²⁰ Joint Consumer Groups, Submission to the Issues Paper (Recommendation 3), May 2024, p. 21.

Regulation of credit reporting is important in supporting responsible lending and consumer protection, fair treatment of vulnerable consumers, financial inclusion and access to finance, competition between emerging and existing credit providers, and other outcomes. These concepts should be reflected in the objects of the credit reporting framework. Including some or all of these concepts in the objects will guide regulators in the decision making and in providing regulatory guidance to industry. As an example, a possible object for the credit reporting framework, could be:

to facilitate a fair and efficient credit reporting system that supports an effective and competitive credit market while ensuring the privacy of individuals is respected.

Recommendation 25: Modernise the objects of the credit reporting legislation

Amend the Privacy Act to modernise the objects of credit reporting legislation to reflect important concepts such as fairness and competition, in addition to the existing objects of privacy and efficiency.

Greater flexibility in the Privacy Act

Greater flexibility should be introduced into the credit reporting framework by moving, where appropriate, matters of detail that are currently in primary law to regulations, for more substantive changes, or regulator discretion, for minor or technical changes. This would enable these provisions to be more easily updated or modified to reflect the needs of credit reporting framework participants. It would also enable certain unused types of credit information to be removed over time. The primary law should set out at a high level, for example:

- the core concepts of credit reporting relating to the key participants, including consumers, credit reporting bodies, credit providers, and access seekers
- key privacy protections, including the broad types of credit information that can be exchanged and expectations around the use, disclosure, retention and destruction of this credit information
- general principles for the scope of data and general categories of data that can be exchanged through the credit reporting framework
- consumer rights including provisions around consent requirements, complaints, notifications, bans, and corrections
- the powers of the regulator in relation to credit reporting, including surveillance and information gathering powers, amendment and exemption powers, regulation making powers, and penalties that can be applied
- core system integrity standards, compliance activities such as audits, and data reporting.

More detailed provisions should be referred to the Privacy Regulation to allow them to be revised and updated as needed. Referring matters to a subordinate instrument will better allow for the data definitions and technical details to evolve over time to address technological developments and industry practice, while still providing an appropriate level of parliamentary oversight.

Matters that should be referred to the Privacy Regulation include for example, detailed data definitions, specific timeframes for notifications, corrections or complaints handling, reporting thresholds, and data retention periods.

Greater flexibility in the Credit Act

The lack of flexibility in the credit reporting framework is also present in the mandatory supply provisions in the Credit Act. While ASIC has the power to exempt accounts, it does not have the power to exempt the reporting of certain types of credit information (for example, to not report financial hardship information where there is no repayment history information). To support the implementation of mandatory credit reporting, ASIC issued a number of no-action letters to provide technical flexibility with the commencement of mandatory supply requirements, which helped ensure it better protected consumers and worked effectively. As outlined in ASIC's submission:

In response to the relief sought by ARCA, ASIC consulted with Treasury and issued no-action letters that provide the major banks with the flexibility to suppress credit information in the limited circumstances described above. We encourage the Review to consider whether permanent changes to relevant legislative requirements are warranted, to give greater certainty to the eligible licensees and protect consumers.²²¹

The no-action letters were provided on a temporary basis and subject to further detailed policy consideration and legislative changes.²²² The Credit Act should be amended to make these provisions permanent and to allow for a broader regulation making and exemption powers for ASIC under appropriate circumstances.

Recommendation 26: Introducing greater flexibility in the credit reporting framework

Introduce greater policy and regulatory flexibility into the credit reporting framework by:

- a) transferring technical provisions including data definitions and other quantitative thresholds currently in the Privacy Act to the Privacy Regulation
- b) amending the Credit Act to introduce broader regulation-making and exemption powers for the regulator.

²²¹ ASIC, Submission to the Issues Paper, 31 May 2024, p. 3.

²²² For example, ASIC, No-action letter – Mandatory CCR – Family violence and unregulated credit contracts, 30 June 2022.

Streamlining credit reporting legislation

A number of stakeholders commented on the complex legislative structure, and the historical reasons that credit reporting was addressed in the Privacy Act rather than as part of financial services legislation and regulation to which it is more closely aligned in terms of public policy objectives.

The Law Council's Business Law Section suggested establishing standalone credit reporting legislation in order to address the complexity in Part IIIA and to cover mandatory participation.²²³

As part of its response to the recommendations in this Report, the Government should consider the feasibility of streamlining the credit reporting legislation in the Privacy Act and Credit Act into a separate, stand-alone Act. This may be the most effective way to address the entirety of the recommendations in this report together, which include the significant movement of provisions between primary law, regulations, and the CR code, modernised objectives, new regulatory powers and responsibilities, as well as new requirements, and technical amendments.

It would also be an opportunity to address credit reporting's somewhat anomalous location in the Privacy Act, which has meant credit reporting has been excluded from other directly relevant reviews, such as the ACCC's Digital Platforms Review and in particular the 2023-24 Review of Data Firms, and also, the Australian Law Reform Commission's recent Review of the Legislative Framework for Corporations and Financial Services Regulation. Credit reporting was also excluded from the scope of the 2022 Privacy Act Review, and was only mentioned in passing in various ASIC reviews relating to consumer credit, such as its recent review of hardship arrangements at lenders. In this sense, credit reporting has fallen through the cracks in terms of financial services regulatory attention, despite being a critical element supporting financial institutions.

A separate Act would better enable the proposed enhanced credit reporting co-regulatory arrangements for ASIC and the OAIC, and their relevant responsibilities and powers. The alternative would be to have ASIC and the ACCC to be authorized under the Privacy Act to undertake certain responsibilities and powers with respect to credit reporting. The latter arrangement may enhance consumer confusion and add to the overall complexity of the credit reporting framework, rather than reduce or simplify it. A separate Act avoids this problem.

An alternative approach the Government may wish to consider is regulating credit reporting under the current consumer credit law in the Credit Act. At the time credit reporting was legislated in the Privacy Act, the states and territories were responsible for the regulation of consumer credit, and this responsibility was not transferred until 2009, meaning the Credit Act was not a legislative option in the late 1980s. A challenge is that the definition of credit under the Credit Act and the Privacy Act are different, with the Privacy Act definition being broader and covering unregulated and non-financial credit.

The Review is not making a strong conclusion about rewriting the law, recognising that the current structure is largely working in practice, and that legislative restructuring is complex and time consuming. The most appropriate outcome may depend on other legislative priorities and resources and the extent to which the Privacy Act itself must be restructured in light of the recently announced reforms.

²²³ Law Council of Australia, Submission to the Issues Paper, 18 June 2024, p. 7.

Recommendation 27: Streamlining credit reporting legislation

The Government should consider consolidating the credit reporting framework in the Privacy Act and Credit Act into its own streamlined Act.

Consider co-regulatory models to give ASIC a greater role

As the credit regulator, ASIC should have a greater role in the credit reporting framework. There are significant synergies between the credit reporting framework and ASIC's existing statutory responsibilities in areas such as financial hardship, responsible lending, credit assistance and debt management services, as well as its active role in championing consumer education resources including MoneySmart and its work in indigenous financial services. A regulatory structure that fails to integrate and leverage this expertise and focus across regulators represents a significant missed opportunity for the community. For example, compliance with the hardship credit reporting requirements could be reviewed during ASIC's investigations into lenders' hardship practices.

Since the introduction of comprehensive credit reporting in 2014, the role of the credit reporting framework has evolved from one focused on protecting the sensitive information and privacy of consumers to one focused more on supporting credit risk assessments and the consumer protections in the Credit Act. It now accommodates financial hardship arrangements, supports responsible lending obligations, and helps to protect against fraud. Credit providers and credit bureaus have direct, ongoing relationships with consumers and the credit reporting framework places obligations on their conduct in a similar manner as other financial services and credit laws.

The OAIC's core privacy focus no longer aligns with the credit reporting framework as it has evolved over time. The OAIC may have a natural inclination to focus primarily on protecting the privacy of consumer information, rather than considering outcomes that would support consumer access to appropriate credit and the functioning of the credit system more broadly. Stakeholders also criticized the lack of regulatory activity and engagement of OAIC on credit reporting, citing a lack of timeliness in addressing complaints, minimal transparency about compliance and enforcement activities, and failing to provide timely regulatory guidance where needed.

A significant proportion of credit reporting participants are already regulated by ASIC as credit licensees under the Credit Act, including credit providers, mortgage brokers, and debt management including credit repair firms. ASIC's resourcing is based on an existing industry funding model.

The Review considered several models for ASIC to take on a greater role:

Option One: ASIC replaces the OAIC as the credit reporting regulator

One option is for ASIC to replace the OAIC and take over the entire regulatory responsibility for credit reporting including compliance oversight, guidance and input into relevant rules and standards. This approach would logically fit with a wholesale restructure of the Privacy Act

Part IIIA provisions into a separate Act or into the consumer credit laws. This option would clearly have resourcing implications for ASIC, although the skills required would fall well within ASIC's existing expertise with credit entities and markets. Consumers advocates are strongly supportive of this model. ASIC is concerned about its different regulatory focus and approach, and additional responsibilities particularly with respect to credit reporting participants that are not within its regulatory purview, such as telecommunications providers and utilities.²²⁴

Option Two: Establish an ASIC-OAIC credit reporting co-regulatory regime

A second option is for ASIC only to assume compliance responsibilities for credit providers currently under its regulatory licensing regime, namely bank and non-bank lenders, debt management firms and credit brokers. This would essentially be a co-regulatory regime that would require collaboration between OAIC and ASIC on matters of system-wide standards and guidance. To the extent that credit bureaus are brought into a licensing regime as proposed in this Review, ASIC would be the logical licensing authority given its existing licensing regime applying to consumer lenders and credit assistance providers, as well as its wholesale licensing of financial market operators.

Option Three: Establish a credit reporting cross-regulatory committee

A third option is a lighter level of involvement, with ASIC formally collaborating with OAIC (and vice-versa) on areas of regulatory focus and compliance where credit reporting affects its remit. This could include financial hardship, BNPL regulation and responsible lending as well as being consulted on approval of industry credit reporting code changes. A formal cross-regulatory committee or advisory body would be a means of providing additional accountability and could include the Government policy departments as well.²²⁵

The Review finds that there are strong arguments to adopt the first option, to ensure that the entire system of consumer credit in Australia is subject to a coherent regulatory framework and implementation approach. In practice, however, this may be too great and disruptive a shift to the credit reporting framework.

The middle-ground option would leverage ASIC's extensive expertise focus on consumer credit by providing it with a specific mandate to oversee credit reporting compliance by its licensees, while leaving the OAIC as the primary overall regulator for credit reporting under the Privacy Act. There would be resourcing synergies with ASIC's existing regulatory oversight activities. ASIC's traditionally more proactive approach to engaging with its licensees to address emerging risks and consumer harms could achieve a more significant uplift in the effectiveness of the implementation of the credit reporting framework.

224 ASIC, Supplementary Submission to the Issues Paper, 30 August 2024.

225 A [Memorandum of Understanding](#) was signed by ASIC and OAIC on 13 June 2024. It does not specifically reference credit reporting responsibilities.

The third option would also provide some benefits in terms of communication and coordination of regulatory strategy across the agencies, but without clear accountabilities for compliance oversight it would be less likely to result in a significant improvement in the effectiveness of how regulatory responsibilities are carried out in practice.

Recommendation 28: Consider co-regulatory models to give ASIC a greater role

The Government should consider alternative models to improve regulatory oversight for credit reporting, such as by establishing a formal co-regulatory model between OAIC and ASIC.

Elevating credit reporting as a regulatory priority

Stakeholders consistently provided feedback to the Review that credit reporting seems to have little or no profile within the government's regulatory and policy administration. For instance, the recent strategic review of the OAIC barely mentions credit reporting, in contrast to the relatively more high-profile endeavours of CDR and digital identification.²²⁶ Similarly, the OAIC's Annual Report does not include credit reporting as a specific performance measure.²²⁷ The absence of any mention of credit reporting in the Attorney-General's Ministerial Statement of Expectations for the OAIC is also noteworthy.²²⁸

The Review considers the profile of credit reporting should be elevated to reflect the fact that it is an important part of Australia's financial system regulatory framework. The Ministerial Statement of Expectations should be revised to emphasise the OAIC's responsibilities for regulating credit reporting. Credit reporting should have an elevated profile in other regulatory documentation such as the OAIC's annual report and performance measures, and in future strategic reviews of the organisation.

Recommendation 29: Elevating credit reporting as a regulatory priority

Revise the Ministerial Statement of Expectations for the OAIC to expressly reference credit reporting. The OAIC and ASIC should develop an appropriate performance measure for credit reporting.

²²⁶ OAIC, *Strategic Review – Final Report* (as redacted), 19 February 2024.

²²⁷ OAIC, [Annual report 2022-2023](#) (Part 2: Performance), 19 October 2023.

²²⁸ Letter from the Attorney-General to OAIC, [Ministerial Statement of Expectations](#), 9 March 2023.

Enhanced regulator powers

The Privacy Act confers on the OAIC a range of general regulatory powers where there is a suspected act or practice that may be an interference with the privacy of an individual. These powers extend to the credit reporting provisions in the Part IIIA provisions and the CR Code. These include powers to conduct assessments, undertake voluntary investigations, make enquiries, accept enforceable undertakings, make determinations, seek injunctions and apply to a court for civil penalties. The Privacy and Other Legislation Amendment Bill 2024 includes provisions to expand the OAIC's powers.

The OAIC has limited powers to support the day-to-day administration of the credit reporting framework. Unlike other parts of the financial system regulated by ASIC, there are no instrument or rule-making powers, nor discretion to modify or grant relief from legislation or regulations, to allow for minor and technical relief to address specific instances of consumer harm or market inefficiency.

As a result, there has been an accumulation of minor and technical issues that would under other parts of the financial system (such as the Credit Act) be addressed by ASIC using its rule making and relief powers. Generally, the powers of the regulator of the credit reporting framework should be similar or the same as those as the rest of the financial system. The OAIC does not have routine data gathering powers or a mandate to conduct ongoing compliance surveillance activities in credit reporting.

The OAIC should have general information gathering and surveillance powers, including routine data gathering and document production, receive breach reports for non-compliance with credit reporting law (not limited to data breach reporting), improved auditing and oversight powers to ensure the supply of accurate data that maintains the privacy of consumers, combined with enforcement powers and penalties where appropriate.

Recommendation 30: Enhanced regulator powers

Amend the Privacy Act to introduce new regulatory powers for instrument-making, exemption and surveillance activities specifically related to credit reporting to improve accountability, flexibility, and compliance, and to better align the regulation of credit reporting with financial sector regulation.

Improved regulator resourcing for credit reporting

Stakeholders commonly commented that the OAIC appears to have inadequate staffing, skills and resources to carry out its responsibilities effectively with respect to the credit reporting provisions of the Privacy Act. Clearly, the outcomes for the credit reporting system that are outlined in this Review will not be achieved if the regulator is not adequately resourced to contribute to the reforms and for the ongoing administration of the credit reporting framework.

An option for the Government to consider is an industry funding model similar to what has been well established for other areas of the financial services sector. The Privacy Act Review recommended that further work be done to investigate the effectiveness of an industry funding model for the OAIC.²²⁹

The ASIC industry funding model may be a more viable alternative. Many credit reporting participants (for example, the deposit taking and credit sector includes credit providers, mortgage brokers and debt management firms) are levied to support regulatory funding of ASIC and APRA. The Review expects the proposed licensing arrangements for credit bureaus could bring them within the scope of ASIC's existing industry funding model.

Recommendation 31: Improved regulator resourcing for credit reporting

The Government should increase budget resourcing for the relevant regulators to reflect the increased responsibility and compliance activity recommended by this Review.

Improved departmental resourcing for credit reporting

The reforms proposed in this Report will require the Attorney-General's Department, as the department with primary responsibility for credit reporting, to build greater capability in credit reporting to support the further stakeholder consultation, policy development and the implementation of the recommendations of this report. The Treasury may also require additional resourcing and may be better placed to take on many of the responsibilities relating to policy design.

Further, recommendations to allow for greater flexibility in the credit reporting framework with more matters referred to the Privacy Regulation, will require the department to maintain a stronger ongoing policy capability to ensure the regulations can be updated on a regular basis as intended by this Review. Required changes over time are likely to be technical in nature and would need dedicated resources with expertise in credit reporting to ensure changes are developed and implemented effectively.

Recommendation 32: Improved departmental resourcing for credit reporting

The Government should provide additional ongoing departmental funding to the Attorney-General's Department and the Treasury to support further stakeholder engagement, policy development, implementation and provide an ongoing policy capability.

229 Attorney-General's Department, [Privacy Act Review Report](#) (Proposal 25.7), 16 February 2023.

Reform the function of the CR Code

Although feedback from stakeholders indicates that Arca has proactively and efficiently maintained the CR Code over a number of years, it is timely that the role and function of the CR Code be fundamentally reconsidered.

The CR Code is a somewhat confusing middle-ground between a voluntary (or accredited) industry code and a regulation, and as a result adds to the perceived complexity of the credit reporting framework. The CR Code is legally binding, yet is industry-driven, but with the regulator responsible for its enforcement. Unlike other APP codes, there must always be a registered CR Code in place, and it has equivalent legal status of the Privacy Regulation as a legislative instrument once it has been registered by the OAIC.

The CR Code is not a consumer-facing document, written for a general audience, unlike the Banking Code or the BNPL Code.²³⁰ The CR Code has a similar role and is a source of certain expectations of how industry participants engage with consumers on issues such as credit report corrections. Consumer advocates commented:

While we have a constructive and collaborative relationship with ARCA, in principle we do not believe it is appropriate for an industry body to have such a comprehensive role in developing the CR Code. As a quasi-legislative instrument, the CR Code is different from other industry-owned codes in the financial services sector. CR Code is a legally enforceable code and it is wrong in principle for an industry body to be writing its own binding rules.²³¹

Moreover, the value of some aspects of the CR Code are not clear as it appears to largely restate parts of Part IIIA and the Privacy Regulation. In other aspects it adds and clarifies aspects of the credit reporting obligations imposed by Part IIIA and the Privacy Regulation.

There are some concerns that the scope of the CR Code has expanded beyond its original privacy and data protection purpose and is engaging with other concepts such as industry competition.²³² Additional concerns about the CR Code relate to Arca's role as the CR Code developer and its governance arrangements being potentially dominated by large incumbent industry participants. The OAIC lacks strong powers to direct a Code Developer to take certain action or amend an application where necessary.²³³ AFCA commented:

... issues AFCA considers material to the accuracy and consistency of credit reporting information, the likelihood of subsequent complaints, and good consumer outcomes generally are either not being progressed or are partially or wholly referred to other processes/reviews. This leads to uncertainty and a lack of transparency as to if, how and when those issues will be addressed.²³⁴

²³⁰ Australian Banking Association, [Banking Code of Practice](#), 5 October 2021, and Australian Finance Industry Association, [Buy Now Pay Later Code of Practice](#), 1 March 2021.

²³¹ Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 30.

²³² Eyers J, ['Four listed fintechs says they'll be smashed by credit report rules'](#), Australian Financial Review, 21 May 2024.

²³³ OAIC, Submission to the Issues Paper, 14 June 2024, pp. 21-22.

²³⁴ AFCA, Submission to the Issues Paper, June 2024, p. 7.

The CR Code also has been expanded to include provisions for credit reporting body audit and reporting requirements, as well as activities of the Australian Information Commissioner. Provisions relating to the oversight tools and functions of the regulator are more appropriately set out in the primary law. Other provisions relating to consumer communications or technical data requirements would be a matter for industry to address via a consumer-facing credit reporting code of conduct, or through the reciprocity arrangements or data standards.

Recommendation 33: Reform the function of the CR Code

Amend the Privacy Act to reform the function and operation of the CR Code by:

- a) revoking the CR Code's status as a legislative instrument
- b) uplifting provisions integral to the functioning of the credit reporting framework to primary law or regulations as appropriate
- c) providing authority for an industry code-of-conduct with regulatory approval.

The industry should develop a consumer-facing code-of-conduct for credit reporting consistent with other financial services sectors.

Establish an industry-funded Code Compliance Committee

The Review heard broad dissatisfaction with the level of compliance activity undertaken by the OAIC as well as discomfort with the expectation for self-regulatory and cross-industry compliance monitoring by industry participants under the PRDE. In line with the proposal to align the CR Code's status with other financial services industry codes, the Review recommends industry establish an independent credit reporting Code Compliance Committee to oversee industry compliance.

The credit reporting Code Compliance Committee would be responsible for driving best practice participation by credit providers and credit reporting bodies with the consumer-facing code-of-conduct. It can be modelled off similar arrangements such as the Banking Code Compliance Committee or the BNPL Code Compliance Committee, and play a role in improving consumer education and awareness about credit reporting, and the roles and responsibilities of framework participants. Core responsibilities of the proposed Code Compliance Committee could include:

- monitoring the credit reporting compliance performance of credit providers and credit reporting bodies
- identifying any current and emerging systemic problems with the credit reporting framework
- recommending improvements to industry practices
- sanctioning credit providers and credit reporting bodies for serious non-compliance
- supporting consumer education and awareness of credit reporting
- facilitating dispute resolution between credit reporting framework participants.

Industry would be responsible for establishing and funding the credit reporting Code Compliance Committee, and appointing independent committee members.

Recommendation 34: Establish an industry-funded Code Compliance Committee

The industry should establish an independent and industry-funded Code Compliance Committee to support industry compliance with its credit reporting obligations.

Reforming industry compliance and oversight

The existing provisions in the Privacy Act for industry self-regulatory compliance are considered ineffective by participants. The Privacy Act requires credit reporting bodies to contractually obligate their credit provider clients to ensure that data is accurate and up to date and to implement information security safeguards.

Credit reporting bodies are also required to conduct regular independent audits of credit providers. The required audits of credit providers are not required to be published and there is no public follow-up as to their findings. As some stakeholders including consumer advocates and credit bureaus have noted, it is a conflict of interest for credit bureaus to enforce regulatory obligations on their direct customers and this role is more appropriately carried out by the regulator.²³⁵ Equifax argued in its submission that accountability for oversight of credit reporting participants should be with the regulator, rather than credit bureaus.²³⁶

While compliance audits are a good industry practice and should continue, mandating that credit bureaus oversee this process across the entire industry is impractical. Standards for data quality and security are more appropriately set and monitored at the industry level through Arca's data and reporting standards process and the compliance committee recommended above.

Recommendation 35: Reforming industry compliance and oversight

Amend the Privacy Act to remove private contractual compliance audit obligations, and replace with regulator authority to require regular audits.

²³⁵ For example, see Joint Consumer Groups, Submission to the Issues Paper, May 2024, p. 101, and OAIC, [2021 Independent Review of the Privacy \(Credit Reporting\) Code](#), September 2022, pp. 49-52.

²³⁶ Equifax, Submission to the Issues Paper, 14 June 2024, s 8.7.

5. Technical and consequential issues

The lack of regulatory flexibility in the credit reporting framework has led to the accumulation of a large variety of minor, technical, or consequential issues that have been raised by stakeholders. Some are simply clarifications of the law, straightforward improvements or minor drafting 'fixes,' while others are more substantive changes that are still mainly technical in nature and require further analysis. The Review has considered the more material of these suggestions and the identified issues (see Tables 12 and 13) should be considered and addressed by government as part of the future policy and legislative development in response to these reforms. This list is not exhaustive and industry and other stakeholders may identify additional technical issues they may wish to address once any legislative reform process is underway.

Table 12: Technical and consequential issues supported by the Review

Issue	Explanation
Financial Hardship Information – clarifications on timing	Amend the Privacy Act to allow financial hardship information to be reported in the appropriate month and appropriate reporting of timing of hardship information contractual variations. ²³⁷
Definition of 'eligible credit reporting body' in Part 3-2CA	Amend the definition of eligible credit reporting body at section 133CN(2) of the Credit Act to avoid limits placed on the participation of new eligible licensees or eligible credit reporting bodies in mandatory credit reporting.
Lack of flexibility in Part 3-2CA requirements	Amend the Credit Act to provide flexibility in meeting the 100 per cent mandatory supply requirements due to minor or unavoidable technical issues, such as where data supplied by a credit provider to credit reporting bureau is initially rejected due to data validation checks.
Repeal spent provisions in the Privacy Act and Credit Act	Division 4 of Part 3-2CA of the Credit Act no longer applies and the data required to be reported can be collected by ASIC via other powers. ²³⁸ The sections requiring this Review to be conducted can also be repealed.

²³⁷ Arca, Submission to the Issues Paper (Recommendations 14 and 15), 14 June 2024, pp. 54-55.

²³⁸ *ibid.*, Recommendation 33, pp. 99-100.

Table 13: Issues that should be progressed but require further analysis

Issue	Explanation
Amend provisions in Part IIIA to reflect relevant changes as part of Privacy Act reforms	Sections 20Q and 21S of Part IIIA set out data security requirements that generally reflect the provisions of APP 11. These should be consistent with proposed reforms to the Privacy Act. ²³⁹
Data residency requirements	Section 20Q(3) of the Privacy Act imposes data residency requirements on the storing of credit reporting information in Australia. This requirement should be reconsidered to align with modern arrangements. ²⁴⁰
International disclosure of credit reporting information	Consider aligning Part IIIA with the accountability framework in APP 8 and Section 16C of the Privacy Act, and consider the establishment of a whitelist of countries that satisfy the requirements of APP 8.2(a). ²⁴¹
Direct marketing	Clarify if credit providers should have similar requirements to credit bureaus regarding direct marketing under Part IIIA, as some may not be considered APP entities and therefore would not be subject to APP7. ²⁴² Consider whether the direct marketing provisions of Part IIIA are still needed.
Inclusion of purchased debt	Clarify in the framework when credit reporting information relating to purchased debt can be disclosed.
Collection and disclosure of 'identification information'	Separate treatment for identification information under the Privacy Act which may validly be used for other purposes besides consumer credit. ²⁴³

Recommendation 36: Technical and consequential issues

As a part of the policy and legislative development process, the Government consider the technical and consequential issues that have been identified as part of this Review.

239 Equifax, Submission to the Issues Paper, 14 June 2024, s 8.1.

240 *ibid.*

241 OAIC, Submission to the Issues Paper, 14 June 2024, pp. 15-16.

242 *ibid.*, pp. 24.

243 Law Council of Australia, Submission to the Issues Paper, 18 June 2024, pp. 7-8, 11 [paras 40-43], 12 and 19, as it relates to commercial credit information.



Part Five: Implementation

Many of the recommendations in this Report will require substantive changes to the law which will be complicated and have flow on implications for credit bureaus, credit providers, regulators and consumers. Some changes may entail significant additional investment by industry in its credit reporting IT infrastructure that may be costly or time consuming to implement, and which may entail further refinement of the Government's response to this Report. The ABA has also proposed an 18- to 24-month lead time to enable changes to the banks' systems.²⁴⁴

Many of the proposals will need further consultation to support their development and to fully understand the legislative implications. This Review acknowledges that there is a desire by some stakeholders for a second round of formal consultation and the opportunity to respond to the recommendations of this Report. They have highlighted the relatively short timeframe the Review has been given, the single stage consultation process, and the breadth and complexity of issues being considered, as warranting at least a second round of consultation.

By way of comparison, the United Kingdom's Financial Conduct Authority's Credit Information Market Study took three to four years and included multiple rounds of consultation including on the terms of reference and an interim report, and a commissioned external report.²⁴⁵ A review of the comprehensive credit reporting laws led by the New Zealand Privacy Commissioner took more than 18 months and provided stakeholders significant time to respond to the issues raised.²⁴⁶

The credit reporting framework is complex and industry has a degree of expertise that could help inform any reform program. There may be further benefit in directly engaging with consumers via focus groups or surveys to develop a better understanding of the consumer experience with credit reporting.

The Review also acknowledges the significant legislative agenda of the Government and that the proposed changes will place some additional pressure on the Government's legislative pipeline. With this in mind, the Review has given some consideration to provide guidance to Government in how it may wish to approach implementing the recommendations of this Review. While some changes require further consultation and development, other changes could be progressed immediately as part of a staged approach. Ultimately, how the recommendations of this Report are progressed will be a matter for Government.

Significant legislative changes

Collectively, the recommendations of this Report will require a significant redrafting of Part IIIA of the Privacy Act and the Privacy Regulation as provisions are transferred from primary law to regulations. Further, parts of the CR Code are proposed to be uplifted to either primary law or the regulation, and additional amendments will be needed to strengthen and clarify regulator responsibilities, licensing requirements for credit bureaus and to address other recommendations. The Review considers the following recommendations will entail significant legislative changes:

²⁴⁴ Australian Banking Association, Submission to the Issues Paper, 7 June 2024, p. 16.

²⁴⁵ Financial Conduct Authority (UK), [MS19/1: Credit Information Market Study](#), 14 August 2024.

²⁴⁶ New Zealand Privacy Commissioner, [Comprehensive Credit Reporting Six Years On: Review of the operation of Amendments No 4 and No 5 to the Credit Reporting Privacy Code](#), 10 April 2018.

- Recommendation 3: Clarifying the notice and consent framework
- Recommendation 4: Improving the corrections process
- Recommendation 6: Strengthen operation of credit report bans
- Recommendation 7: Additional protections for vulnerable consumers
- Recommendation 9: Introducing statutory data principles for credit reporting
- Recommendation 11: Additional data items
- Recommendation 17: Introduce a threshold for reporting missed repayments
- Recommendation 19: Establishing a clear framework for soft enquiries in primary law
- Recommendation 20: Clarifying use of the Access Seeker provision
- Recommendation 24: Licensing of credit reporting bodies
- Recommendation 25: Modernise the objects of the credit reporting legislation
- Recommendation 26: Introducing greater flexibility in the credit reporting framework
- Recommendation 27: Streamlining credit reporting legislation
- Recommendation 28: Consider co-regulatory models to give ASIC a greater role
- Recommendation 30: Enhanced regulator powers
- Recommendation 33: Reform the function of the CR Code
- Recommendation 35: Reforming industry compliance and oversight

Minor changes requiring legislation

Some recommendations will require legislative amendment but are expected to involve relatively minor drafting changes, and the Government may wish to progress relatively quickly, ahead of a broader legislative reform package. These include:

- Recommendation 1: Improving consumer access to credit reports
- Recommendation 10: Maintain and monitor mandatory reporting requirements
- Recommendation 13: Reduce enquiry information retention period
- Recommendation 14: Improving the accuracy of default information
- Recommendation 18: Removing unused or underused data items
- Recommendation 22: Prohibit exclusive data sharing arrangements
- Recommendation 23: Clarify the definition of credit reporting business
- Recommendation 36: Technical and consequential issues

Changes that could be progressed immediately

Table 14 shows recommendations that can be largely progressed without amending primary law, and can be progressed via regulation amendment, budgetary processes, or are industry led.

Table 14: Other changes that could be progressed sooner

Recommendation	Comment
Recommendation 2: Improving consumer access to credit reports (industry)	Industry-led process.
Recommendation 5: Improving the corrections process (industry)	Industry-led process.
Recommendation 8: Review of regulation of credit repair services	No legislation required.
Recommendation 12: Research including debts to Government in credit reporting	No legislation required.
Recommendation 15: Reporting of historical account information	Minor change that may be able to be progressed within existing law.
Recommendation 16: Increase the threshold for default listing	Threshold can be increased by amending the Privacy Regulation.
Recommendation 21: Improving credit bureau competition and data consistency	Industry-led process.
Recommendation 29: Elevating credit reporting as a regulatory priority	No legislation required.
Recommendation 31: Improved regulator resourcing for credit reporting	Subject to government budget processes.
Recommendation 32: Improved departmental resourcing for credit reporting	Subject to government budget processes.
Recommendation 34: Establish an industry-funded Code Compliance Committee	Industry-led process.

Establishing a technical advisory group

Once it has formulated its response to this Report, the Government should establish an advisory committee to support the policy development and technical implementation process. Membership should include representatives from credit providers, credit bureaus, consumer groups, and industry bodies. The advisory committee should have regular meetings with regulators and Government policy makers during the policy design and implementation phase.

An advisory committee would help ensure industry's technical expertise is reflected in the development of the legislation, and that the full impact of any proposed changes can be fully considered by Government. This advisory group could provide advice on the operational impacts of proposed legislative changes to the credit reporting framework on industry participants, and consumer representatives could assist in testing consumer feedback on proposed changes.

Recommendation 37: Establishing a technical advisory group

The Government should establish a technical advisory group to support the policy development and implementation process associated with implementing the recommendations of this Report.

Annexure A: Terms of Reference

Objectives

The Review of Australia's Credit Reporting Framework (the Review) will examine the effectiveness and efficiency of the credit reporting provisions in the *Privacy Act 1988* (the Privacy Act) and the *National Consumer Credit Protection Act 2009* (the Credit Act) in enabling effective lending decisions by credit providers while ensuring the personal information of consumers is adequately protected.

Purpose

The *National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Act 2021* introduced parallel requirements for the relevant ministers to cause independent reviews of Australia's credit reporting system:

- A review of the credit reporting provisions in Part IIIA of the Privacy Act 1988 (**Privacy Act**) with the report to be provided to the Attorney-General (s25B of the Privacy Act refers).
- A review of the mandatory credit reporting provisions in Part 3-2CA of the *National Consumer Credit Protection Act 2009* (**Credit Act**) with the report to be provided to the Assistant Treasurer (s133CZL of the Credit Act refers).

These reviews must be undertaken with reports provided to the relevant ministers no later than 1 October 2024. The reports then must be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the relevant minister.

Matters to be considered by the Review

1. The Review will consider the overall efficiency and effectiveness of Australia's credit reporting framework with regard to Part IIIA of the Privacy Act and Part 3-2CA of the Credit Act, related provisions in those Acts, and supporting regulations.
2. With regard to the overall operation of the credit reporting framework, the review should consider:
 - a) the roles, responsibilities, powers, and obligations of credit reporting framework participants, including credit providers, credit reporting bodies, regulators, consumers, and other relevant participants;
 - b) contemporary community expectations about the ongoing role and function of the credit reporting framework, including:
 - i. ensuring the privacy and security of credit information;
 - ii. facilitating access to finance and supporting financial inclusion;
 - iii. supporting responsible lending obligation assessments and reducing the risk of financial hardship;
 - iv. technological developments and other innovations in the financial system;
 - c) relationship between the credit reporting related provisions in the Privacy Act and the Credit Act.

3. With regard to credit reporting provisions in the Privacy Act, the review should consider:
 - a) whether Part IIIA continues to meet relevant objects of the Privacy Act;
 - b) whether the key definitions relating to credit reporting in Part II are fit for purpose;
 - c) whether comprehensive credit reporting is achieving its policy objectives;
 - d) whether reforms to address financial hardship have achieved their policy objectives;
 - e) other matters addressed by Part IIIA including, but not limited to, retention periods, disclosure, integrity and complaints.
4. With regard to the mandatory credit reporting provisions in the Credit Act, and in particular Part 3-2CA, the review should consider:
 - a) whether mandatory credit reporting has achieved its policy objectives, including improving overall credit provider participation in credit reporting;
 - b) the benefits for consumers, small businesses and credit providers, from mandatory credit reporting;
 - c) the scope of mandatory credit reporting, including the number and type of eligible licensees and the data they are required to contribute.
5. The review should also have regard as appropriate to the following:
 - a) The relevant recommendations of the Independent review of the Privacy (Credit Reporting) Code 2014;
 - b) The Australian Law Reform Commission's Review of the Legislative Framework for Corporations and Financial Services Regulation;
 - c) The Australian Competition and Consumer Commission's (ACCC) Digital Platform Services Inquiry 2020-2025, and the 2023 Data Broker Review;
 - d) The Attorney-General's Department's 2022 Privacy Act Review;
 - e) The 2023-2030 Australian Cyber Security Strategy and government commitments relating to datasets and data brokers;
 - f) The Consumer Data Right and related reviews.

Approach

6. The government has appointed Ms Heidi Richards as the independent reviewer.
7. The independent reviewer is being supported by a secretariat in the Attorney-General's Department (AGD) which includes officials from the Treasury and AGD.

Structure and Timing

8. The government expects the independent reviewer's report to satisfy the statutory requirements in the Privacy Act and Credit Act. This report is to be supported by stakeholder engagement during 2024.
9. The legislation requires the report to be provided to the relevant ministers before 1 October 2024 and to be tabled in each House of the Parliament within 15 sitting days of that House.

Annexure B: Stakeholder Engagement

The Review was informed by a public consultation process which received a total of 31 formal submissions, of which 26 were non-confidential:

Organisation Type	Organisation Name
Regulators and government agencies	Office of the Australian Information Commissioner
	Australian Securities and Investments Commission
Industry associations	Australian Retail Credit Association
	Australian Banking Association
	Australian Collectors and Debt Buyers Association
	Australian Finance Industry Association
	Customer Owned Banking Association
	Finance Brokers Association of Australasia
	FinTech Australia
	Law Council of Australia
	Mortgage and Finance Association of Australia
Credit bureau	Equifax
	illion
	TaleFin
Credit providers	ANZ
	Beforepay Group Limited
	Block Inc.
	National Australia Bank
	Revolut Payments Australia

Organisation Type	Organisation Name
Consumer advocacy organisations	<p>Financial Rights Legal Centre, with endorsement from:</p> <ul style="list-style-type: none"> • Australian Communications Consumer Action Network • Australian Privacy Foundation • Care (Consumer Law Program, ACT) • CHOICE • Consumer Action Legal Centre • Consumer Credit Legal Service (WA) Inc. • Consumer Policy Research Centre • Financial Counselling Australia (FCA) • Mob Strong Debt Help • Mortgage Stress Victoria • Public Interest Advocacy Centre – Energy and Water Consumers' Advocacy Program • Redfern Legal Centre • Uniting Communities Law Centre (SA) <p>IDCARE Australia and New Zealand</p> <p>Legal Aid Queensland</p>
Ombudsman	<p>Telecommunications Industry Ombudsman</p>
	<p>Australian Financial Complaints Authority</p>
	<p>Joint Submission by:</p> <ul style="list-style-type: none"> • Energy and Water Ombudsman Queensland • Energy and Water Ombudsman South Australia • Energy and Water Ombudsman Victoria • Energy and Water Ombudsman New South Wales
Consultancy	<p>Kadre</p>

Additional Stakeholder Engagement

In addition to the bilateral engagements outlined in the Issues Paper, meetings were also held with the following organisations to support the development of the Report:

Organisation Type	Organisation Name
Regulator and government agency	Attorney-General's Department
	Treasury
	Office of the Australian Information Commissioner
	Australian Securities and Investments Commission
	Australian Competition and Consumer Commission
	Australian Financial Security Authority
Industry association	Australian Retail Credit Association
	FinTech Australia
Credit bureau	Equifax
	Experian
	TaleFin
	CreditorWatch
Credit provider	Commonwealth Bank of Australia
Consumer advocacy organisation	Financial Rights Legal Centre
Telecommunications provider	Optus
	TPG
Credit monitoring	Clearscore
Ombudsman	Australian Financial Complaints Authority
Consultancy	Cameron Ralph Khoury

Glossary

Term or acronym	Meaning
2021 CR Code Review	The 2021 OAIC Independent Review of the CR Code
ABA	Australian Banking Association
ACCC	Australian Competition and Consumer Commission
ACL	Australian Credit Licence
ACRDS	Australian Credit Reporting Data Standard
ADI	Authorised deposit-taking institution
AFCA	Australian Financial Complaints Authority
AFIA	Australian Finance Industry Association
APP	Australian Privacy Principle
Arca	Australian Retail Credit Association
ASIC	Australian Securities and Investments Commission
BNPL	Buy Now Pay Later
CCLI	Consumer credit liability information
CCR	Comprehensive credit reporting
CDR	Consumer Data Right
CRB	Credit reporting bureau or body
Credit Act	<i>National Consumer Credit Protection Act 2009</i>
Credit Regulations	<i>National Consumer Credit Protection Regulations 2010</i>

Term or acronym	Meaning
CR Code	<i>Privacy (Credit Reporting) Code 2014</i>
FHI	Financial hardship information
Issues Paper	The Issues Paper released in April 2024 as part of this Review
NAB	National Australia Bank
OAIC	Office of the Australian Information Commissioner
PRDE	Principles of Reciprocity and Data Exchange
Privacy Act	<i>Privacy Act 1988</i>
Privacy Regulation	<i>Privacy Regulation 2013</i>
RDEA	Reciprocity and Data Exchange Administrator
RHI	Repayment History Information
The Report	This Report
The Review	The Review of Australia's Credit Reporting Framework
TIO	Telecommunications Industry Ombudsman

