

NATIONAL CONSUMER CREDIT PROTECTION AMENDMENT
(MANDATORY COMPREHENSIVE CREDIT REPORTING) BILL 2018
SUBMISSION TO SENATE ECONOMICS LEGISLATION COMMITTEE

APRIL 2018

ANZ SUBMISSION

1. ANZ welcomes the opportunity to comment on the National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018 (the **Bill**).
2. ANZ supports Comprehensive Credit Reporting (**CCR**) as an important tool for credit providers (**CP**) to improve outcomes for consumers and the quality of credit decisions. CCR will help credit providers improve the level and efficiency of compliance with responsible lending provisions in the *National Consumer Credit Protection Act 2009 (Cth)* (*NCCP Act*).
3. CCR allows CPs to share information and gain a more detailed picture of a consumer's financial situation. CCR will assist in meeting statutory obligations to make reasonable inquiries about a consumer's financial position, to take reasonable steps to verify a consumer's financial situation and to ensure that a credit contract is not unsuitable for the consumer. It will improve the quality of information available to assess a consumer's ability to repay the loan without substantial hardship.¹
4. CCR involves CPs reporting to credit bureaus against five information fields: (1) Account type (Consumer credit card, Personal loan, etc.), (2) Account open date, (3) Account Close date, (4) Limit of the account, (5) Customer Repayment History Information (RHI) for last 24 months.
5. ANZ has made significant progress towards commencing CCR in 2018. Enforcing an effective date provides confidence to industry participants that their efforts to supply information will be matched by others.
6. ANZ is supportive of this bill subject to two suggested recommendations we believe the Committee should make: (1) that the Attorney-General's Department (**AGD**) **finalise its review before major banks are required to report repayment history information (RHI)**, either (a) as a result of completing the review before reporting is required by the existing bill, or (b) amending the bill to link an outcome from the review with reporting RHI; and (2) that **section 133CU**, regarding ongoing supply of credit information, be amended.

¹ *National Consumer Credit Protection Act 2009 (Cth) s 117, s 118.*

Reporting Repayment History Information

7. There are issues with the reporting of RHI for customers missing or making late payments due to financial hardship. ANZ supports the Government's announcement in March that the Attorney General's Department will conduct a review of the matter and make a recommendation to Treasury.
8. Customers not meeting their originally agreed loan repayment obligations may nevertheless be fully complying with concessional repayment arrangements under formal or informal financial hardship arrangements made with their bank. ANZ has established processes for dealing with customers who are unable to meet their contractual payments during periods of hardship. For example, customers may be offered a program of lower repayments of principal for a period, and reduced or suspended interest payments. Where this is formalised through a bank hardship program, it generally amounts to a contract variation. Where relief offered by a bank is shorter term or informal, it generally does not result in a change to the credit contract.
9. There are differing views amongst industry participants about how RHI should be reported under CCR when the customer is subject to short term hardship relief. There are legal considerations – based on requirements under existing law – and policy issues considerations: an RHI entry showing that a customer has failed to meet the original repayment obligations could reflect negatively on the customer.
10. ANZ supports a policy that ensures customers are dealt with fairly and in a consistent way. There are several potential policy responses to this issue, including:
 - A hardship "flag" added to RHI could be used where lending banks have provided concessional hardship repayment arrangements for these customers (not amounting to a variation of the credit contract). This flag would provide additional information to lenders about temporary repayment arrangement; or
 - Credit providers could exclude reporting RHI for the period customers are involved with financial hardship arrangements programs.
11. Consumer groups are of the view that RHI for a customer in hardship meeting concessional repayment arrangements should not record any missed payments.
12. ANZ is concerned that it cannot report customers in hardship programs as being up to date as this would not meet its reporting obligations under the Privacy Act and Privacy (Credit Reporting) Code. We also believe reporting a customer as meeting repayments under the original terms of the credit facility (as reflected in the consumer credit liability information) does not accurately reflect their position to credit providers who are using the credit reporting system to meet responsible lending obligations.

13. ANZ sees its obligations under the Privacy Act as requiring the reporting of RHI based on the customer's status in relation to contractual minimum monthly repayments. Where a customer enters into a temporary arrangement because they are experiencing financial hardship, and this does not involve a variation to the contract, our view is that reporting of repayment information must be by reference to whether the customer has met, and/or continues to meet, their originally contracted repayments, not the repayments under their temporary arrangement.
14. ANZ's view is based on the position that, where a customer enters a temporary repayment arrangement which does not vary the existing contract, the original contracted repayments continue to be due and payable.
15. Entry into a temporary arrangement will in most circumstances constitute a waiver by ANZ of its right to continue enforcement action in relation to the missed contractual repayments, not a variation. Despite this waiver, ANZ's right to recover overdue amounts in respect of the credit contract are not impacted. ANZ would retain the right to recover arrears accrued before the temporary arrangement and amounts which continue to accrue during the repayment arrangement – unless and until the credit contract is varied.
16. The Office of Australian Information Commissioner (**OAIC**) has provided a view that amounts are no longer 'due and payable' where a credit provider enters into a repayment arrangement and makes a representation that for the period of the temporary arrangement it will not pursue enforcement action. Under this view, a credit provider would not be able to report RHI while a customer is complying with a repayment arrangement. However, while ANZ would likely be prevented in these scenarios from taking enforcement action given the representations it has made, it does not appear to change the fact that ANZ would have an obligation to report any missed repayment(s). Standard repayments would still become 'due and payable' under the original contract even though ANZ would be prevented from taking enforcement action during the period of the temporary arrangement. Reporting of the relevant payments under the Privacy Act and NCCP Act amendments would not constitute 'enforcement action'.
17. ANZ submits that the Committee should recommend AGD finalise its review and settle on a consistent approach to treating hardship cases in the CCR regime before banks are required to report RHI. ANZ would support an approach which accurately reflects the circumstances of the consumer, but does not act to exclude them from obtaining further finance or create a disincentive from reporting financial difficulty to their credit providers.

Ongoing supply of credit information

18. ANZ's submission to Treasury during the Exposure Draft consultation noted that the intent of section 133CT (now **section 133CU**) is to ensure a CP continues to supply ongoing information to a CRB within a reasonable timeframe. We remain of the view that **this section could be simplified** if it were redrafted to state that CPs are required to report mandatory credit information for all credit accounts opened after the initial and subsequent bulk supplies, and must continue to update the comprehensive credit information that is disclosed to credit reporting bodies for all credit accounts (opened before and after bulk supplies), as required by the Privacy Act and the Privacy Code.

19. As currently drafted, the definitive list set out in the table could be read narrowly, and interpreted as excluding a requirement to report certain forms of credit information. For example, on our reading:

- the table in section 133CU only applies to eligible credit accounts reported as part of the initial and subsequent bulk supplies;
- the table may not cover RHI in relation to accounts opened after the bulk supplies. Item 1 appears only to apply to credit information that was provided under the relevant Division; and
- item 3 could be read as only applying to mandatory credit information required by the event of the opening of an eligible credit account.

Other matters

20. These implementation issues focus only on the provision (or 'supply') of data. In parallel ANZ is internally focussing on the use of the CCR data. We are progressing this aspect through our deployment of credit risk strategies (which is not part of any government mandate). These will naturally evolve over time.