Response to Questions on Notice

Does the Bill strike the right balance between protecting an individual's personal information and ensuring that sufficient information is available to assist a credit provider to determine an individual's eligibility for credit? (Explanatory Memorandum, p. 90)

ARCA believes that the additional credit reporting data that the Bill will enable credit providers to exchange will have a significant and positive impact for industry, consumers and the wider Australian economy. Whilst ARCA does have concerns with specific aspects of the Bill, we believe that on balance it does strike the right balance between protecting consumers and allowing credit providers to make the informed lending decisions.

With increased consumer protections, ARCA supports the submissions of the Communications Alliance, Optus and Telstra, in that we believe that these reforms should be seen as an incremental step towards allowing non-licensed credit providers access to repayment history information.

The Explanatory Memorandum states that the 'credit reporting provisions have been completely revised…with the intention to ensure greater logical consistency, simplicity and clarity throughout the Privacy Act' (p. 92). In your view, will the amendments to the credit reporting framework proposed in the Bill meet these goals?

ARCA commends the Australian Government on undertaking this significant microeconomic reform to credit reporting, as part of the reforms of the *Privacy Act 1988*. We note that this reform process has been ongoing since prior to the commencement of the Australian Law Reform Commission's inquiry into privacy commenced in 2006, which was commissioned by former Attorney General, the Hon Philip Ruddock MP.

ARCA has previously and publicly noted our disappointment at the complexity of the drafting of the new credit reporting provisions – and that we would have preferred a more principles-based drafting of the new arrangements.

However, ARCA notes that the Bill has been constructed so as to prohibit the exchange of consumer credit data, and then to allow the exchange of that data under certain circumstances. We note that the Bill and Explanatory Memorandum are lengthy and complex documents – however, the regulation of such a technical and complex matter of public policy will necessarily require complicated legislative drafting.

A number of submitters commented on the complaints mechanisms set out in the Bill (proposed section 23B; item 72 of Schedule 2). Is the new regime impracticable as suggested by the Financial Services Ombudsman (Submission 12, p. 7) or is there a better way in which to deal with complaints?

As noted in ARCA's submission to this inquiry, we have concerns that the consumer complaint handling mechanism may not meet the desired objectives of the government as the Bill is currently drafted.

As noted in our submission, many organisations are already covered by other legislative and regulatory requirements relating to complaints handling – with requirements that vary greatly to what is proposed in the Bill.

Our concerns relate to four specific concerns, namely:

Definitional issues with complaints
The obligations relating to Requests for Correction are made overly complicated by the breadth of the Credit Provider definition. The definition of a Credit Provider is very broad and is not restricted to those who participate in the data exchanges relating to credit reporting. An entity can be deemed to be a Credit Provider purely on the basis that they extend credit for a period greater than 7 days.

Timeframes for managing complaints
While the Bill is prescriptive in relation to timeframes relating to complaints, ARCA notes that there is little information regarding timeframe requirements for dealing with requests for corrections.

Financial industry participants already comply with *Regulatory Guide 165: Licensing: Internal and external dispute resolution* (RG165) from the Australian Securities and Investments Commission (ASIC) which applies to all credit licensees, and contains specific timelines (specifically that industry is managing timelines on a business day basis) and procedures to apply to complaints processes. The Bill currently proposes timeframes to acknowledge and respond to complaints which are in direct conflict with those in RG165 (for example, RG165 has a standard response within 45 days – not 30 days as noted in the Bill for complaints related to credit reporting).

Additionally, AS ISO 10002-2006 is widely recognised as best practice for managing consumer complaints, and it is widely applied across sectors and scalable to suit a range of organisations in Australia.

Communications regarding complaints
Section 23B of the Bill states that the respondent for the complaint must, within seven days, give the individual written notice that acknowledges the complaint and sets out how the respondent will deal with said complaint. The majority of complaints are resolved within 48 hours. As such, a written acknowledgement letter would be unnecessary, wasteful and irritating for the consumer in the majority of cases.

First point of contact complaints handling
Under the Bill provisions, whichever organisation a consumer first makes a complaint to regarding a credit reporting matter will be responsible for resolving that complaint. Unless the complaints handling process in the Bill is amended, it will require a complex system to be developed between the multitude of Credit Providers and CRBs who use the credit reporting system to manage the finalisation of consumer complaints. Such a system would increase the risk of inadvertent disclosure, remove the ability of the consumer to deal directly with the cause of the complaint, and is against industry practice and good business practice regarding customer service.

ARCA would encourage the Committee to review our submission for additional information regarding the proposed complaints mechanism.