



31 May 2024

Heidi Richards
Independent Reviewer
c/o Attorney-General's Department
Information Law Branch
Submitted via email to: creditreporting@ag.gov.au

Dear Ms. Richards

REVIEW OF AUSTRALIA'S CREDIT REPORTING FRAMEWORK - ISSUES PAPER (APRIL 2024)

The Australian Finance Industry Association (AFIA)¹ is the only peak body representing the entire finance industry in Australia. We appreciate the opportunity to respond to the 'Review of Australia's Credit Reporting Framework - Issues paper' dated April 2024 ('the review').²

We represent over 150 members, including bank and non-bank lenders, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry. We are the voice for advancing a world-class finance industry and our members are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes and create a resilient, inclusive and sustainable future. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

¹ [Australian Finance Industry Association \(afia.asn.au\)](http://afia.asn.au).

² [Australian Government, Review of Australia's Credit Reporting Framework, Issues Paper April 2024](#)

INTRODUCTORY COMMENTS

AFIA acknowledges the importance of a modern and effective credit reporting framework in Australia that is fit for purpose both now and in the future, that caters to all the requirements of the diverse variety of lenders. An effective credit reporting framework is central to enable timely lending decisions and ensure individual's personal information is secure and protected.

AFIA membership is diverse, and businesses vary in size, with some organisations relying on and engaging with Credit Reporting Bureaus (CRBs), and others utilising advancements in technology for credit risk assessments, such as artificial intelligence (AI) and machine learning (ML), which provide streamlined processes. AFIA facilitates a National Credit Reference Scheme for our members to allow for the prompt and accurate exchange of credit information on mostly business customers between lenders, although also has a wider application for consumer lending.

There are many AFIA members who participate in Comprehensive Credit Reporting (CCR) and others who are considering or preparing for participation in CCR in the future. We recognise that the information accessed through CRBs adds value to the credit decisioning process.

Nonetheless, given the diverse nature of the products and services that AFIA members provide, as well as many members who are not required to hold an Australian Credit Licence (ACL), many providers are currently excluded from the CCR regime and are unable to access the full range of consumer credit information available.

This review is an important opportunity to examine the effectiveness of the current credit reporting system in Australia, examine the complexities surrounding the current framework, and identify areas for improvement. AFIA members are uniquely placed to provide critical insights into the review including on the current impact of the credit reporting framework, consumer protection and awareness, access to and use of credit reports, and the application of mandatory credit reporting.

As a result of the significant social, policy and technological developments that have taken place since the last substantial review of the credit reporting framework, it is important that underlying policy rationales and decisions for the framework are evidence-based and proportionate. With more Australians doing it tough with ever-increasing cost of living pressures, credit information will continue to play a critical role. AFIA advocates for a proportionate, scalable and targeted approach to regulation that tackles the challenges presenting today, as well as an ability to evolve over time.

As the review notes as one of the significant recent developments impacting credit reporting, the *Privacy Act 1988* (Cth) ('the Privacy Act') has been subjected to extensive consultation and review, with the

Privacy Act Review Report published in 2022 and Government response published in September 2023.³ It is essential that this review consider all of the issues relating to the credit reporting framework in Australia in conjunction with the objectives of the Privacy Act Review.

Our position is that the credit reporting framework in Australia must support the following objectives:

1. **Responsible Lending Obligations:** provide effective and timely support to lenders for responsible lending assessments and decisions.
2. **An inclusive financial system:** promote an inclusive financial system where consumers have access to a choice of financial products.
3. **Promote competition, innovation and technology:**
 - the credit reporting framework must be proportionate, with the cost and regulatory burdens for lenders considered, and recognise valuable technological developments.
 - It must assist in promoting competition and driving innovation by assisting 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.
 - The credit reporting framework should facilitate broader access to credit information and services for businesses and consumers alike.
4. **Improve data quality:** promote consistent, up-to-date, accurate and better data quality, and common data collection and information sharing between lenders.
5. **Credible governance arrangements:** ensure credible credit reporting/industry governance arrangements which are quick to respond to emerging issues.
6. **Protect personal information:** ensure the protection of consumer's personal information.
7. **Promote good consumer outcomes:**
 - allow consumers to access their credit information and be able to easily record, amend and remove information where appropriate.
 - the credit reporting system should enhance consumer understanding and awareness of the credit reporting system and how their information is used.
8. **Support a national credit law regime** which is principles based, 'non-prescriptive and flexible', in line with the objectives of the National Credit Code (NCC).

AFIA recommends a holistic approach to achieving these outcomes and a collaborative approach between industry and key regulators. We believe that better customer and market outcomes can be achieved through carefully considered and constructed regulatory frameworks, supported by industry-led initiatives.

We believe it is crucial the credit reporting framework in Australia is proportionate and recognises technological developments. It should support competition and innovation across the financial services

³ See Attorney-General's Department, [Privacy Act Review - Report 2022](#) and Attorney-General's Department, [Government Response - Privacy Act Review Report \(2023\)](#).

sector by allowing the effective use of technological solutions by credit providers and enable consumers to make use of their own data. The credit reporting legislation should be aligned with other financial services regulations, including the Consumer Data Right (CDR).

The application of mandatory credit reporting in Australia must be proportionate, with the cost of reporting for financial firms considered, particularly for smaller less-resourced firms, compared to the benefit of some businesses providing credit reporting data to the pool of credit information accessed through CRBs.

Please find our more detailed comments within **Appendix A**.

CLOSING COMMENTS

Thank you for the opportunity to respond to the review issues paper. AFIA welcomes the opportunity to participate in ongoing discussions or to facilitate bilateral discussions with our members. Our members look forward to working further with you as the review progresses.

Should you wish to discuss any points or require additional information, please contact me at

[REDACTED]

Yours sincerely

[REDACTED]

Leisha Watson
Policy Director

APPENDIX A – COMMENTARY ON ISSUES PAPER

AFIA provides the following detailed commentary on the issues and questions outlined in the review paper.

1. Part One Question: The what and why of credit reporting

AFIA believes it is crucial Australia has a modern and effective credit reporting framework that is fit for purpose both now and in the future, and one that caters to all the requirements of the diverse variety of lenders. An effective credit reporting framework is central to enable timely lending decisions and ensure individual's personal information is secure and protected.

Credit reporting allows for the timely sharing of information about an individual's credit worthiness. We note the range of participants in the credit reporting system which includes banks, Non-Bank Lenders (NBLs), telecommunications, utilities providers, and businesses that provide goods or services on credit.⁴ Credit information is used by these industries to identify customers, reduce fraud, inform lending and risk-based decisions, and to manage customer accounts.

As described in our introductory comments, AFIA membership is diverse and businesses vary in size, with some organisations relying on and engaging with Credit Reporting Bureaus (CRBs), and others utilising advancements in technology for full and effective credit risk assessments, such as Artificial Intelligence ('AI') and Machine Learning ('ML') to provide streamlined processes. There are many AFIA members who participate in Comprehensive Credit Reporting (CCR) and others who are considering or preparing for participation in CCR in the future. There are also many AFIA members who provide products and services where CCR would not be appropriate and would impose a disproportionate burden, such as on their administrative costs, where they have an existing robust credit risk model.

The diverse nature of the products and services AFIA members provide, as well as many members who are not required to hold an Australian Credit Licence (ACL), means many providers are currently excluded from the CCR regime and are unable to access the full range of consumer credit information available.

AFIA therefore recognises that the information accessed through CRBs adds value to the credit decisioning process. However, many other providers utilise advancements in technology for credit assessments, where the application of CCR would be a disproportionate compliance burden. The role of credit reporting regulation in our view must be targeted, scalable and proportionate.

We agree with the review that one of the aims of credit reporting is to address the asymmetry of information between borrowers and lenders.⁵ The credit reporting regime has an information asymmetry, with consumers having access to more information about their credit risk compared to credit providers. It

⁴ [Australian Government, Review of Australia's Credit Reporting Framework, Issues Paper April 2024](#) page 7.

⁵ [Review of Australia's Credit Reporting Framework, Issues Paper \(n 4\)](#), page 8.

is essential lenders can access up-to-date and accurate information to support responsible lending decisions.

2. Part Two Question: Strategic, historical and international context

The credit reporting regulatory framework must be up to date to respond to emerging issues. There is a risk the current framework does not represent a modern and fit-for-purpose system given it has not been subject to a substantial review in more than 15 years since the Australian Law Reform Commission's (ALRC's) report '*For Your Information: Australian Privacy Law and Practice*'.⁶ AFIA agrees with the review that there has been significant social, policy and technological developments related to consumer credit, privacy and credit reporting since the last substantial review.

In our view, there are a range of areas which influence and impact credit information in the market and will therefore impact the underlying policy rationales for credit reporting regulation in Australia. These areas include:⁷

- advancing technology and innovations, such as new data sources, modern methods of sharing data instantaneously, the emerging application of AI/ML, increasing online lending and access to online services.
- changing market activities such as the role of CRBs, diversity and increasing choice of financial products, services and technologies.
- changing consumer behaviours including the demand for credit, levels of financial and digital literacy, and attitudes to privacy and data sharing.
- overarching regulation such as privacy legislation and consumer lending regulation (including the establishment of Responsible Lending Obligations ('RLOs') and the CDR.

Given the above developments and advancements, it is important that policy rationales and decisions made now are evidence-based and proportionate. AFIA advocates for proportionate, scalable and targeted approach to regulation that tackles the challenges of today and tomorrow, evolving with the changing times.

3. Part Three Questions: Australia's credit reporting framework

In AFIA's view, the regulatory framework for credit reporting should seek to address the following harms:

- misinformation or inaccurate credit information:
 - the framework should seek to ensure efficient, accurate sharing of credit information and address issues with the quality of credit information to inform credit assessments and responsible lending assessments. AFIA recognises there is a risk consumers may experience

⁶ ALRC, '*For Your Information: Australian Privacy Law and Practice*' (ALRC Report 108), August 2008.

⁷ See RAND Europe, '*Final report, 'Future of the Credit Information Market' Final report (2021)*', commissioned by the United Kingdom's Financial Conduct Authority (FCA) to conduct forward-looking research into how the credit information market might evolve in the future.

financial difficulty if their credit information does not accurately reflect their financial situation.

- consumer rights and accessibility:
 - the framework should allow consumers to have control of the secure sharing of their credit information and financial data, to allow access to finance.
 - the framework should improve consumer awareness of the credit reporting regime and overall understanding of consumer credit information.
- protect the privacy of individuals:
 - the framework must ensure the safe, consensual and responsible use and sharing of individual's personal data.

AFIA agrees with the review that the current credit reporting regulatory framework and oversight in place is overly complex.⁸ The overly complex structure creates challenges with compliance and difficulties for consumers and lenders to understand their rights and comply with their obligations.

This is compounded with by complex Australian financial services regulations. As the review highlights, the report by the Australian Law Reform Commission, *'Confronting Complexity: Reforming corporations and financial services legislation'* demonstrated the complexities of regulation within financial services including duplicative regulations, which risks confusion and complicates compliance.⁹ This report found that the financial services regulation in Australia is unnecessarily and overly complex, making 58 recommendations to help streamline the system.¹⁰

The complexity is heightened by a myriad of reforms impacting across the financial services industry which creates difficulties for coordination within the industry, impacting AFIA's membership. This complexity can create barriers to entry for smaller lenders with less resources who can struggle to navigate the requirements and therefore stifle innovation and competition. This challenge has been recognised by the Government's recent announcement to introduce a financial sector regulatory initiatives grid to help the financial services sector.¹¹

AFIA supports credit reporting legislation being more aligned to financial services regulation to avoid regulatory fragmentation and inefficiencies, for the reasons set out above. Credit reporting is intrinsically linked to RLOs as a way of enabling decisions by credit providers. We note the relevant provisions related to RLOs are outlined in sections 128-132 of the *National Consumer Credit Protection Act 2009* ('the NCCP') and the Australian Securities and Investments Commission ('ASIC') Regulatory Guidance 277 and 209.¹²

⁸ [Review of Australia's Credit Reporting Framework, Issues Paper \(n 4\)](#), page 13.

⁹ [ALRC Report 141, 'Confront Complexity: Reforming Corporations and Financial Services Legislation'](#).

¹⁰ [ALRC Report 141 \(n 9\)](#), page 18.

¹¹ [Media Release, The Hon Stephen Jones MP, 'Better coordinated financial sector regulation'](#) (11 March 2024).

¹² See the [National Consumer Credit Protection Act 2009](#) and [ASIC Regulatory Guides: RG 209 Credit licensing: Responsible lending conduct](#) and [ASIC Regulatory Guide: RG 277, Consumer remediation](#).

The credit reporting framework in our view must be consistent with and recognise the principles-based and scalable nature of RLOs. Including recognising the objectives of RLOs to minimise the incidences of unsuitable lending and appropriately maximise access to credit, and not inadvertently limiting it.¹³

The Explanatory Memorandum to the National Credit Code (NCC), Schedule 1 of the NCCP, states that the credit regulation framework's underlying purpose is:

*To ensure strong consumer protection through...recognising that competition and product innovation must be enhanced and encouraged by the development of non-prescriptive flexible laws.*¹⁴

An alternative measure to credit checks through CRBs is the use of the CDR. The CDR allows consumers to have control of the secure sharing of their financial data, providing flexibility and technology neutrality.¹⁵ The CDR breaks down data silos and allows for consensual and secure data exchange for the benefit of consumers, allowing consumers to control their data and understand their finances. These technological developments increase competition, encourage further innovation, and empower consumers. In comparison to the credit reporting regime, CDR can help to improve financial inclusion by helping customers manage their finances and provide a more holistic picture of a customer and a more consistent, real-time, granular view of income and expenditure.

As an example of this producing good consumer outcomes, the UK's Open Banking Limited ('OBL'), which produces Open Banking standards and industry guidelines, conducted consumer research showing that 64 per cent of UK consumers claimed using open banking savings applications increased their total level of savings and helped them to develop a regular savings habit.¹⁶ As the UK is increasingly embracing open banking, over 1 in 9 people are using open banking services. In comparison, according to 2023 research cited by Deloitte, 55 per cent of Australian consumers have never heard of open banking and only 6 per cent claimed to have a good understanding of the concept.¹⁷

It is therefore essential the credit reporting framework harness the benefits of the CDR and considers how credit information data interacts with CDR data.

AFIA believes that self-regulation is an important part of the regulatory framework, providing a mechanism for industry to work collaboratively to achieve customer-centric operating models. Introducing and regularly reviewing industry-led codes and standards and ensuring all relevant stakeholders are represented is key.

¹³ The Explanatory Memorandum to National Consumer Credit Protection Bill 2009 (Explanatory Memorandum).

¹⁴ Explanatory Memorandum, National Consumer Credit Protection Bill 2009 (Cth), 6.

¹⁵ [Consumer Data Right webpage](#).

¹⁶ [Open Banking Limited \(OBL\), Media Release, 'How Consumers use savings apps' \(6 January 2022\)](#)

¹⁷ [Open Banking Limited \(OBL\), 'The Open Banking Impact Report' \(October 2021\) and Deloitte, Perspective, 'Consumer Data Revolution - Empowering Australia's Future \(March 2024\)](#).

We recognise the significant work that the Australian Retail Credit Association (ARCA) has undertaken in developing and reviewing the Credit Reporting Code (CR Code) which remains ongoing.¹⁸ As this review issues paper noted, highlighted several issues with the current credit reporting legislation.¹⁹ In our view, it is essential that the role of the CR Code does not create inconsistent regulations that go over and above what is prescribed under the NCCP or the Privacy Act.

4. Part Four Questions: Impact of the credit reporting framework

AFIA recognises the value of CCR in mandating participation for large Authorised Deposit Taking Institutions (ADIs) who can provide rich data sets given their large and extensive client bases.

This mandatory participation for large ADIs helps to achieve more comprehensive data on consumers credit histories and improve the timeliness and accuracy of credit information. The reporting of 'positive' credit information arguably provides a holistic view of an individual's finances. In our view, the mandatory inclusion of large ADIs in CCR has been a proportionate and positive step to improve the credit reporting framework, given the large data sets that they provide.

The current credit reporting framework is restrictive on consumers ability to shop around between competitors without incurring the impact associated with multiple credit enquiries on their credit report, particularly when consumers are either declined or withdrawn. In this way, where the consumer is negatively impacted for conducting multiple enquiries, the framework in practice is not consistent with the intention of the framework to promote good consumer outcomes and competition.

The underlying credit reporting framework, concentrated credit reporting industry and CRB providers can create barriers to entry for smaller lenders to access information who can face disproportionately high costs. The costs for credit information can be very high for smaller lenders who would require using all three CRBs to access all the available data, while larger lenders can have more resources to use all three CRBs as well as have access to their own rich data sets, placing smaller lenders at a disadvantage.

As noted earlier in this submission, many AFIA members who are not required to hold an Australian Credit Licence (ACL) are currently excluded from the CCR regime and are unable to access the full range of consumer credit information available.

We understand that the disparity and quality of available data can affect lending decisions. Currently, CRBs provide different data sets as the same information is not shared with all CRBs. AFIA members have reported issues with duplicative records for consumers which can be difficult for CRBs and credit providers, to distinguish against. These duplicative records can distort the data and impact the credit decision process.

¹⁸ [Review of Australia's Credit Reporting Framework, Issues Paper \(n 4\)](#), page 13.

¹⁹ [Review of Australia's Credit Reporting Framework, Issues Paper \(n 4\)](#), page 41, Annex B.

Additionally, information on all financial products is not shared with CRBs which are engaged by providers. This disparity can create poor consumer outcomes if they are inadvertently declined credit where they would otherwise be offered a credit product.

Given the concentration in the credit reporting industry in Australia, there appears to be insufficient incentives for CRBs to innovate, improve data quality or acquire new data sets. If CRBs provided access to the same credit reporting data, this would help in improving competition in the sector, drive innovation and reduce costs, as CRBs would be further incentivised to compete on price, service, and their own unique value propositions. It appears that there are significant barriers for new entrants in the CRB sector.

5. Part Five Questions: Credit data

As noted above, the current credit reporting framework is restrictive on consumers ability to shop around between competitors without incurring the impact associated with multiple credit enquiries on their credit report. AFIA notes that current offerings by CRBs for 'soft credit enquiries' are not well defined in the Privacy Act, and current use cases for these types of enquiries appear overly narrow and limited to quotes, price checks and eligibility checks.²⁰ The Office of the Australian Information Commissioner (OAIC) previously commented that a 'soft' enquiry is:

[O]ne that is not recorded on the individual's credit report, such as where an individual is only seeking a quote, or to understand if they qualify for a certain product or offer.²¹

In comparison, a 'hard' enquiry was defined by the OAIC as:

[O]ne that is recorded on the individual's credit report and takes place once an individual has submitted an application for credit, to allow the credit provider to determine the individual's creditworthiness.²²

Further consultation on the practice and specific use cases for soft enquiries should result in the expanded use of these enquiries to the benefit of both lenders and consumers in the development of credit applications and arrangements. Additionally, the expansion of the types of information available in soft enquiries including repayment history information (RHI) would help to increase consumer choice and competition between lenders by providing smaller lenders with more credit data, compared to larger lenders who have their own rich data sets.

AFIA notes that 'Consumer Credit Liability Information' ('CCLI') includes information on any consumer credit contracts actually entered into, including the loan term, account start and end dates and

²⁰ See [Office of the Australian Information Commissioner \(OAIC\), 2021 Independent review of the Privacy \(Credit Reporting\) Code, September 2022](#), proposal 43, section 6.1.1, page 111.

²¹ *ibid*, page 112.

²² *ibid*.

information on whether accounts are active or closed.²³ Under the Privacy Act, CCLI may only be retained by CRBs for a maximum of two years from the date that consumer credit is terminated or otherwise ceases to be in force.²⁴ The CR Code permits CRBs to collect and disclose CCLI including '*the day on which the consumer credit is terminated or otherwise ceases to be in force*'.²⁵

AFIA's understanding is that while debts assigned to debt purchasers remain obligations of the debtor, the wording of the Privacy Act and the CR Code precludes debt purchase accounts, where they were charged off by the original financial service provider, from being reported by the debt purchaser as CCLI information.

The credit reporting system would benefit from CCLI of debt purchase industry participants. Such information is likely to assist lenders by providing a more holistic view of a consumer's overall liabilities.

AFIA believes that there would be benefit in identifying individuals in the credit reporting system who have previously been the victim of fraud, such as identity fraud or other financial crime. This practice would align with ASIC's continued focus on tackling scams and protecting vulnerable customers from financial abuse.²⁶

We note that the Privacy Act, after 1 July 2022, requires credit providers to inform a CRB that a customer has a financial hardship arrangement and the type of arrangement, temporary or permanent.²⁷ The CRB must therefore show this arrangement on the customer's credit report. AFIA recognises that this gives other credit providers a more complete picture of an individual's repayment obligations. This can also provide evidence of consumers working with their lenders and making timely payments on an agreed arrangement.

It is essential in our view for credit providers to be able to accurately report consumers who have a financial hardship arrangement in place, and for a common data format to ensure consistency and granularity of credit information which reports on payment performance.

AFIA members have observed customers experiencing hesitation or being deterred from requesting financial hardship assistance due to a sense of associated stigma felt by individuals, particularly in relation to credit reporting and any impact on credit files. AFIA supports further work by our members, the Government and the ARCA to increase consumer awareness on the role of financial hardship assistance. We are supportive of consistent messaging for consumers on how financial hardship information (FHI) is used and shown within credit reports.

²³ See Section 6N of [the Privacy Act 1988](#).

²⁴ [The Privacy Act 1998](#), Section 20W.

²⁵ [The Office of the Australian Information Commissioner \(OAIC\), Privacy \(Credit Reporting\) Code 2014 \(Version 2.2\)](#), Section 6 and 6(1)(g).

²⁶ See [Speech by ASIC Commissioner Alan Kirkland \(23 May 2024\), AFIA Risk Summit, May 2024, 'ASIC's priorities in a changing regulatory environment'](#).

²⁷ Section 6N, 6QA(1) and (4) of the *Privacy Act 1988*. See also [OAIC website](#).

In regard to the reporting obligations for repayment history and defaults, the perception of an ‘in or out’ approach, where consumers are not distinguished between those who have fallen overdue because of a technicality, or those who are overdue because of other reasons, can result in inaccurate depictions of an individuals’ finances.

Buy Now Pay Later products

The review paper notes the ongoing proposed Buy Now Pay Later (BNPL) regulations and draft legislation to amend the Credit Act and the NCCP to introduce new requirements for BNPL providers.²⁸ The review considers the applications these regulations may have on credit reporting. AFIA represents an estimated 90 per cent of the BNPL market in Australia. We have been at the forefront of ensuring high standards across the BNPL sector, introducing the world-leading AFIA BNPL Code of Practice in March 2021.²⁹ It is important to note that there are also several BNPL providers who are not members of AFIA or the BNPL Code of Practice. Therefore, AFIA does not represent the full sector.

BNPL products are innovative and have a diverse product structure. They are digitised products with differing user experiences and where providers ingest data in a range of ways to make credit decisions.

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.

As noted by the review issues paper, the Government are consulting on BNPL Regulatory Reforms.³⁰ These regulatory reforms contain proposals regarding how BNPL providers can satisfy RLOs and what inquires that are required for different BNPL products. The proposals include commentary on three types of credit check:

- negative credit checks – which provide information on defaults, credit scores and credit enquiries.³¹
- partial credit checks – which include the above, plus CCLI. CCLI includes - information on any consumer credit contracts actually entered into – the loan term; account start and end dates; and information on whether accounts are active or closed.³²
- comprehensive credit checks – which include all the above, plus repayment history information and hardship information.³³

²⁸ [Review of Australia's Credit Reporting Framework, Issues Paper \(n 4\)](#), page 24.

²⁹ See [AFIA Submission, \(December 2022\), 'Regulating BNPL in Australia'](#) for further information. See also [AFIA website, BNPL Code of Practice](#). AFIA Members include Afterpay, Brighte, Humm Group, Klarna, Plenti, Payright and Zip.

³⁰ [Buy Now Pay Later regulatory reforms](#).

³¹ Sections 6Q and 6N (d) or (e) of the *Privacy Act 1988* (Cth) (‘the Privacy Act’)

³² See aspects of the definition in s 6N of the *Privacy Act*.

³³ Sections 6(V)(1) and 6(Q)(a) of the *Privacy Act*.

Under regulation 28HAD of the proposed reforms, there are different requirements regarding the inquiries that need to be made for BNPL products depending on if they are valued over or under \$2,000.

Regardless of the value of the BNPL product, BNPL providers must 'seek to obtain' information about:³⁴

- the consumer's income
- the consumer's expenditure
- details on other LCCCs, small amount credit contracts or consumer leases of the consumer.

In relation to these categories of information, the explanatory statement indicates:³⁵

It is open to the LCCC licensee to determine how, from where, and in what form to obtain this information. The Regulations do not prescribe any particular source, means or format. However, these things may influence the licensee's belief in the accuracy of the information.

The explanatory statement further indicates that, in assessing these categories of information, the BNPL provider must: '*reasonably believes that the information it has regard to is accurate*'.³⁶

In addition to the requirements above, BNPL providers must 'seek to obtain' the following:

- for products under \$2,000, a negative credit check, as defined by regulation 28HAD(2).
- for products over \$2,000, a partial credit check, as defined by regulation 28HAD(3), which includes 'Consumer Credit and Liability Information' (CCLI) within the meaning of the *Privacy Act*.

AFIA advocates for a tailored approach to regulation for the BNPL sector, including requirements around credit checking the regulation of BNPL products should be done in a way that recognises the significant benefits of BNPL products, as indicated in the Explanatory Memorandum, which states:³⁷

New credit products, such as BNPL arrangements, can offer consumers a cheaper and easier way to access forms of credit when compared to most traditional forms of credit such as credit cards.... These new credit products have a range of benefits to both consumers and the economy. They also place competitive pressure on traditional forms of credit, reducing the cost of some products and triggering innovation in product design. BNPL has also generated increased business for merchants, as consumers have been able to access additional forms of credit to spend on goods and services.

³⁴ Explanatory Statement, 5. See too Regulation 28HAD(5).

³⁵ Explanatory Statement, 5.

³⁶ Explanatory Statement, 4.

³⁷ Explanatory Memorandum, Treasury Laws Amendment Bill 2024: Buy Now, Pay Later, 4.

Given the above, while AFIA does not believe that credit reporting should be mandated for BNPL products, any mandates must be done in a proportionate and scalable manner, particularly in relation to low-value BNPL services, which continue to afford lenders the flexibility to decide the most appropriate approach for their business and customer base.

As noted elsewhere in this submission, there are multiple pathways available to lenders in making credit decisions. As such, we encourage the review to consider that not only are negative and partial credit checks only one of these pathways, but these types of checks may also not be proportionate to the risk carried by either the lender or the customer.

6. Part Six Questions: Consumer protection and awareness

AFIA supports encouraging greater awareness and understanding of credit information to help consumers understand the potential impacts it may have on them. Consumers may have some awareness around credit scores for example, however they may not understand the underlying reasons impacting their credit scores, such as the impact of certain financial decisions.

AFIA members have experienced a lack of awareness of what positive reporting is and what the potential impacts are on credit reports if consumers fall into arrears. Consumers may unfortunately only come to an improved understanding when their credit report has already been negatively impacted by, for example, defaulted payments, despite consumers good intentions. This lack of understanding could be as a result of the over complexities in the system described in this submission above.

AFIA believes that as part of the review of the credit reporting system, it will be vital to undertake extensive consumer focus groups to provide a picture of current consumer understanding, attitudes and awareness in this area, and the resulting impacts. This will provide valuable evidence as to how credit reports can be made more user friendly, accessible and easy to understand for the typical consumer.

AFIA members regularly come into contact with credit repair and debt advice services acting on behalf of their customers. Credit repair services often advertise to consumers that they can 'fix' or 'clean' a credit report or improve a credit score.³⁸ ASIC has previously warned consumers about companies that claim they can fix a poor credit rating.³⁹ This warning included information that such companies '*often fail to fix credit and debt issues, which can leave people in a worse financial situation*'.

Former ASIC Deputy Chair, Peter Kell previously said:

[C]onsumers may not realise that free services exist to help them fix credit reports or resolve their debt problems, such as the National Debt Helpline.... Consumers experiencing money or debt

³⁸ See [ASIC's Moneysmart.gov.au website on 'Credit repair'](https://www.asic.gov.au/moneysmart/gov/au/website/credit-repair).

³⁹ [ASIC Media Release 18-163 \(4 June 2018\), 'ASIC warns consumers about paying high fees for credit repair and debt advice services'](#).

*problems don't need to put themselves under further financial stress by paying high fees to firms providing credit repair and debt solution services.*⁴⁰

In May 2021, ASIC published a report presenting findings of research on firms that promise to help consumers in financial a hardship or with listings on their credit reports in Australia.⁴¹ The report described Debt management firms (DMFs) as:

*[A] range of firms that promise to help consumers in financial hardship or with listings of payment defaults on their credit reports.... These firms operate by challenging credit default listings and making complaints on behalf of consumers to external dispute resolution (EDR) schemes.*⁴²

The report highlighted the following key concerns with DMFs:

- (a) charge high fees for services of little value;*
- (b) give poor or inappropriate services that can leave consumers worse off;*
- (c) have mis-sold services on the basis of misleading representations about the nature and effectiveness of the service; and*
- (d) have engaged in unfair and, in some cases, predatory conduct in relation to consumers in financial hardship.*⁴³

Given the above, there are concerns that:

- credit repair agencies are advertised heavily on media such as television, the internet and social media.
 - in conjunction with the above, consumers may not be adequately aware of the options and services available to them to fix their credit scores that has no cost.
- in some instances, consumers are charged unnecessarily large fees by credit repair agencies, and they may find it difficult to get out of the contract with the credit repair agency, adding to any existing difficulties they may be experiencing.

As a result of the concerns above, consumer harm could arise from consumers dropping out of the process to raise disputes regarding their credit score or file, or where errors are only corrected at only one CRB given the lack of interoperability.

AFIA supports additional consumer protections to address the above, including greater transparency within credit repair advertisements detailing the cost-free options available to consumers to enhance accessibility, as well as ASIC continuing to progress with its campaign to help consumers understand that by using credit repair and debt management firms, they may end up paying higher fees.

⁴⁰ *ibid.*

⁴¹ [ASIC, Information Sheet 254, 'Debt management services: Applying for a credit licence or variation'](#). See also [ASIC Media Release \(21-094\), \(5 May 2021\), 'Firms offering debt management services require credit licence to operate'](#).

⁴² *ibid.*

⁴³ See [ASIC Report 465, \(January 2016\), 'Paying to get out of debt or clear your record: The promise of debt management firms'](#), page 4.

The Australian Financial Complaints Authority (AFCA) can consider 'debt management complaints' about credit reporting and credit repair.⁴⁴ Credit reporting is often in the top banking and finance related complaints AFCA receive, with complaints received about a consumer's credit profile.⁴⁵ Our understanding is that many of such complaints will also involve credit repair services.

Treasury's review of AFCA in 2021 stated that during its first two years in operation, AFCA '*dealt with clear instances of inappropriate conduct by particular paid advocates in relation to how they were engaging and cooperating during IDR and EDR*'.⁴⁶

Financial firms and AFCA have found that AFCA's fees for resolving '*some very low-value complaints... are higher than the value of the original claim or service provided – leading to distorted resolution practices which can be exploited by fee-for-service representatives who pursue their pecuniary interests ahead of their client's best interests*'.⁴⁷

Members of AFIA report concerning distorted resolution practices which impact financial firms by the cost of very high AFCA fees to respond to credit reporting and credit repair complaints from credit repair services, when compared to the relative value of the small debts involved.⁴⁸

AFIA has regularly engaged with AFCA on behalf of our members to raise concerns about the poor conduct of some paid representatives such as credit repair services and the resulting impact on financial firms and outcomes for consumers. In particular, AFIA supported and welcomed AFCA introducing essential changes to strengthen its Rules and Operational Guidelines to effectively manage poor and unreasonable conduct of paid representatives within its Rules.⁴⁹

In our view, it is essential for the review of the credit reporting framework to consider the potential impact of the practices of credit repair agencies on the reliability and accuracy of consumer credit reports. A more streamlined process could potentially reduce time and effort for the consumer to correct errors. It could therefore be beneficial to consumers overall and help to reduce the cost of dealing with data disputes over the longer-term for both firms and consumers. It could also help to improve the overall quality of data.

The review may wish to consider a credit listing review service under the control of the Office of the Australian Information Commissioner (OAIC), where complaints can be fairly and efficiently adjudicated on a simple cost recovery basis, to reflect the relatively simple nature of credit listing disputes. The AFCA process for determining credit listing complaints could also be reviewed to help ensure these complaints are being dealt with effectively with cost burdens on firms considered.

⁴⁴ [AFCA Factsheet, 'Debt management firms'](#).

⁴⁵ See '[AFCA's first 6-months report](#)', section 4 'Banking and Finance'.

⁴⁶ [The Treasury, \(November 2021\), 'Review of the Australian Financial Complaints Authority - Final Report](#), paragraph 4.85.

⁴⁷ *ibid*, paragraph 4.86.

⁴⁸ See [AFCA's fee structure webpage](#).

⁴⁹ [AFIA Submission, \(4 May 2023\), 'AFCA Consultation on its Rules and Operational Guidelines'](#).

7. Part Seven Questions – Access to and use of credit reports

As stated above, given the diverse nature of the products and services that many AFIA members offer, as well as some members holding ACLs and others not, means many providers are currently excluded from the CCR regime, such as small business lenders. This can artificially restrict the information available to commercial lenders to make informed lending decisions and could risk lenders making more conservative credit assessments, thereby limiting access to finance.

It is critical for economic growth that small businesses have access to finance. AFIA believes there are benefits and value in small business lenders as commercial credit providers having access to comparative consumer credit information as consumer credit lenders do. This would be helpful for lenders financing small businesses and a benefit to customers generally for commercial lenders to have access to CCR, as well as the same consent requirements as consumer credit lenders.

This could be particularly helpful for:

- small businesses or startups where there is a limited or incomplete credit history, in order to enhance access to credit and assist with appropriate lending.
- any small business where the credit decision will in part be based on the creditworthiness of the individuals in the business, such as sole traders or business loans backed by an individual guarantee.

AFIA notes that consideration should also be given to the current regulatory distinction between a consumer and commercial report, as presently a commercial lender is unable to list a default on a person's consumer file and must list default on a commercial file. If this distinction were removed from the current framework, there is the potential for more commercial lenders to appropriately assess the risk associated with a loan. This may help to promote positive repayment behaviour from consumers.

All small businesses would benefit from a CCR system under which small business lenders can access CCR data, including RHI and FHI. The additional data sets would provide significant insight into creditworthiness, capacity and indebtedness, which in turn would inform credit decisions, improve consumer choice, accessibility and price in the small business lending market.

8. Part Eight Questions: Privacy, information security and regulatory oversight

We note that credit reporting is primarily legislated in the Privacy Act and regulated by the OAIC.⁵⁰ As the review notes as one of the significant recent developments impacting credit reporting, the Privacy Act has been subjected to extensive consultation and review, with the Privacy Act Review Report published in 2022 and Government response published in September 2023.⁵¹

⁵⁰ See [the Privacy Act 1988 \(Cth\)](#) and [Office of the Australian Information Commissioner \(OAIC\) website](#).

⁵¹ See Attorney-General's Department, [Privacy Act Review - Report 2022](#) and [Attorney-General's Department, Government Response - Privacy Act Review Report \(2023\)](#).

It is essential that the review consider all of the issues relating to the credit reporting framework in Australia in conjunction with the objectives of the Privacy Act review.

AFIA supports privacy laws and regulations that are appropriately tailored to maximise the safety and security of customers personal information. AFIA's position in relation to the current review of the Privacy Act is detailed within our submission to the Attorney-General's Department during the previous consultation in 2023.⁵²

In addition to considering the Privacy Act in the introduction of these reforms, it is imperative to consider the upcoming changes due to be introduced by Consumer Data Right. As both frameworks are currently being considered in draft form and neither are yet finalised, it is essential that they account for one another to avoid a conflict of interest, as these areas are likely to overlap in multiple areas.

Given the data sets which are held by CRBs can be comparable with ADIs, 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.

9. Part Nine Questions: Mandatory credit reporting

There is ample evidence that CCR has increased voluntary participation of credit providers and the voluntary supply of credit information. CreditSmart, owned by the Australian Retail Credit Association (ARCA) previously reported that 95 per cent of consumer credit accounts have repayment history being reported across Australia.⁵³ It states that '*Currently, most Australian credit consumers have comprehensive credit data being reported for at least one credit facility*'. Additionally, at the end of June 2023, more than 80 credit providers in Australia were supplying CCR data.

The Australian Retail Credit Association (ARCA) reported in September 2022 that 79 credit providers participated in CCR, representing over 23 million and 94 per cent of regulated credit accounts.

As stated above, we believe we believe that the inclusion of the major banks in Australia has provided valuable and rich data sets to other credit providers and smaller lenders for their use in credit decisions. This has incentivised and increased the voluntary participation of credit providers.

The barriers to participating in CCR include the costs involved and ensuring that the right technology is in place to facilitate the reporting. Credit providers face significant upfront costs to prepare and implement requirements under mandatory credit reporting. Our understanding is that CRBs can offer services to lenders to put in place the necessary systems to facilitate CCR which can be costly. Additionally, as CRBs

⁵² [AFIA Submission, \(March 2023\), 'The Government's response to the Privacy Act Review Report'](#).

⁵³ [CreditSmart website, 'Comprehensive credit reporting participants'](#)

use different technology and systems internally, lenders and credit providers must change their systems accordingly to facilitate reporting with each CRB.

The application of mandatory credit reporting in Australia must be proportionate, with the diversity of the finance sector and cost of reporting for financial firms considered, particularly for smaller less-resourced firms, compared to the benefit of some businesses providing credit reporting data to the pool of credit information accessed through CRBs. It is important to note that for many innovative providers, such as Buy Now Pay Later (BNPL), the use of CCR is not a proportionate or appropriate measure as it is better suited to large purchases or revolving credit and not to small, individual purchases.⁵⁴ For such providers, there is limited benefit in some businesses providing credit reporting data to the pool of credit information accessed through a CRB, which may not add value to credit decisions or product pricing.

Additionally, mandating the use of Credit Reporting Bureaus (CRBs), and preferencing this over other methods such as the Consumer Data Right (CDR), is not technologically neutral and can risk stifling innovation and competition.

⁵⁴ See Commonwealth Treasury, *Regulating Buy Now, Pay Later in Australia: Options paper* (November 2022), 6; HM Treasury (UK), *Regulation of Buy-Now Pay-Later: Response to Consultation* (June 2022), 16[3.1].