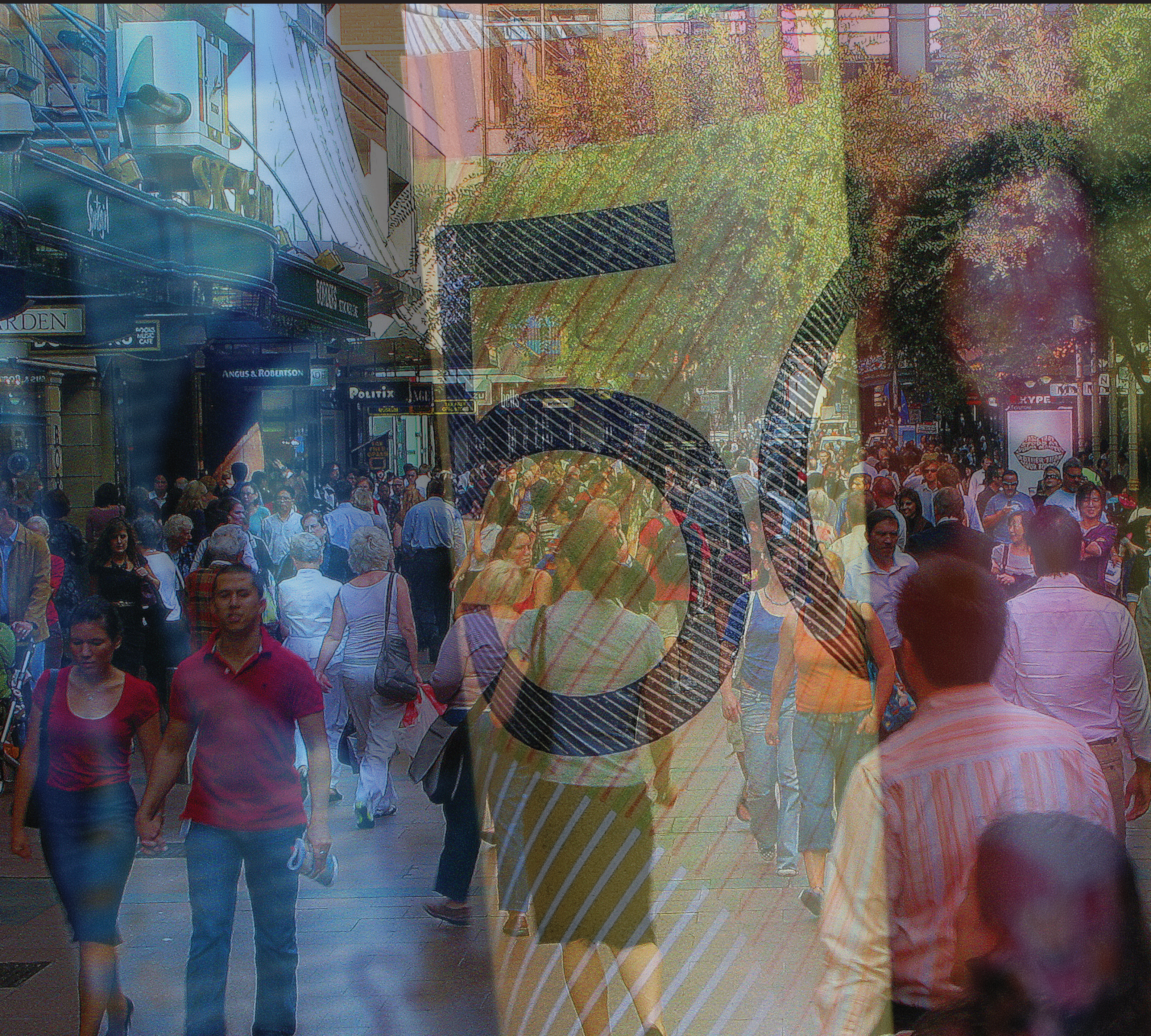
Credit reporting and financial hardship

Financial Rights
LEGAL CENTRE

Masterclass handout for financial counsellors | May 2022



Contents

Acronym Table:

ACL	Australian Credit License
CCR	Comprehensive Credit Reporting
FHA	Financial Hardship Arrangement
FHI	Financial Hardship Information
RHI	Repayment History Information

Introduction: Comprehensive credit reporting and repayment history information

- Most mainstream lenders in Australia now share information about consumers' credit accounts with credit reporting bodies (like Equifax, Experian and Illion) under the Comprehensive Credit Reporting (CCR) regime. Currently, lenders can report customers' monthly repayment history across all regulated credit accounts (ie. home loans, personal loans, credit cards and vehicle loans).
- New legislation passed in 2021 made it **mandatory** for major banks (NAB, ANZ, CBA, Westpac & Macquarie) to report comprehensive credit reporting information, which includes repayment history information (RHI). All other lenders which have an Australian Credit License (ACL) can but are not required to report RHI. For example, payday lenders generally choose not to report RHI for their customers.
- Most lenders only began reporting under CCR 3-4 years ago. CCR means lenders now have more detail, and more context about how a person interacts with credit, including positive financial behaviour.
  - Previously, a credit report mainly showed negative credit information such as defaults and bankruptcies. Now under CCR, a credit report also includes "positive" information like on-time monthly repayments.
  - This additional information provides a more complete picture of a customer's credit history and means that credit providers are better able to complete responsible lending assessments.
- Over 95% of all regulated consumer credit accounts are currently reported under CCR. The types of credit include Credit Cards, Home Loans, Personal Loans and Car Loans.
- Telco and Utilities providers can report a lot of the same information as other types of credit (like account information) but are not allowed to report repayment history information (RHI) or view it. Some Buy Now Pay Later accounts are being reported under CCR, however not all providers hold an ACL, which is a requirement for reporting RHI. Some lenders (like CBA or PayPal) do hold an ACL and have started offering BNPL products, which means they can report RHI for customers using those products (like CBA's StepPay customers).
- Repayment history information remains on a credit report for 24 months – providing a 2-year view of how a customer manages and pays their loan and credit accounts:
  - 0 or ✓ means they are up to date with repayments
  - 1 or more indicates how many months their repayments have been overdue
  - X means repayments are 7 or more months overdue

- **Remember**: Only banks, credit unions and licensed finance companies (ACL holders) can report or view repayment history information (RHI). All phone/internet, gas and electricity providers are not able to report or view this information. This means that a credit report will not show whether they have paid their phone/internet or utility bills on a month-by-month basis and utility providers cannot see if a consumer has missed payments on their loans.

Financial hardship assistance & credit reporting

- A financial hardship arrangement is an agreement between a borrower and a lender to adjust the loan repayments because something unexpected has occurred and has had a significant impact on the borrower's ability to repay. Financial hardship arrangements may be temporary, with borrower resuming full repayments after a period of time, or a permanent reduction for the life of the loan. Financial Counsellors regularly help clients put financial hardship arrangement in place with lenders.
- Prior to 1 July 2022 financial hardship arrangements could NOT be reported in the credit reporting system. Some lenders might have ceased reporting a customer's repayment history during a financial hardship arrangement – this approach resulted in 'blanks' - while others kept reporting customers as paying on time if they complied with an arrangement.
- Financial Hardship Information being added to the credit reporting system does **not** change the way hardship arrangements have always worked under the National Consumer Credit Protection Act. Financial Counsellors should continue to assist consumers to request hardship assistance from their creditors as they have done for many years.

Financial hardship information on credit reports

- From 1 July, Financial Hardship Information (FHI) will be introduced into the credit reporting system. This new type of information will be connected to repayment history information (RHI). It is subject to the same rules as RHI and therefore only licenced credit providers will be able to report or view FHI.
- If a lender agrees as part of a financial hardship arrangement, that a customer may temporarily reduce their monthly repayments or defer their payments entirely for a period of time, each month the arrangement is in place will have FHI reported alongside the RHI.
- The credit report will not include the reason for the hardship arrangement, nor the details of the arrangement.
- There are two types of financial hardship arrangements: Temporary and Ongoing/Variation arrangements.

Temporary financial hardship arrangements (Temporary FHA)

- **('A')** A Temporary FHA, is temporary relief from or deferral of their credit obligations, where the arrears continue to build up and must be caught up later. Most short term hardship arrangements will be in this category.
- FLAG: There will be an 'A' alongside each month the arrangement is in place. The first "A" should appear alongside/underneath the first payment that is due after the arrangement is put in place. You can request that the lender **backdates** the arrangement to the date the individual first asked for hardship if there has been an unreasonable delay in responding to the request or an earlier month if there was a reason beyond your client's control that prevented them asking for hardship sooner (natural disaster, DV, etc.).
- **RHI REPORTING:** During a Temporary FHA, missed payments will typically continue to build up under the terms of the consumer credit, however RHI will reflect the terms of the arrangement, not the underlying arrears. If the person makes the agreed reduced payment on time as agreed, their RHI will show that they are 'current and up to date' with payments for that month. If the arrangement is to pay nothing, then they will also be reported as up to date.
- **MISSING PAYMENTS DURING AN ARRANGEMENT:** Not all arrangements will be cancelled if your client misses one or two payments, but the RHI will not add up in the usual way. Lenders will use binary RHI reporting (1s and 0s only) while arrangements are in place. So if your client misses one reduced payment the RHI will say 1 and the A will be alongside it. If your client misses two reduced payments, the RHI will still say 1 with an A alongside it.
- **ARREARS:** The arrangement should include what will happen to get the person back on track at the end. This could include paying extra each month to catch up on the arrears that have accrued ("catch up period"), paying a lump sum (it would be unusual for this to be appropriate) or adding the arrears to the end of the contract (capitalising the arrears). If this is not included in the original arrangement, for example because the person was unemployed and did not know when they would be able to catch up, another arrangement should be made to deal with the arrears at the end of the original arrangement. If not, RHI will immediately revert to showing how far the client is behind according to their original contract at the end of the arrangement. This could mean having an RHI of 4 or 5 or higher, depending on the length of the original arrangement.
- **HOW LONG DOES IT REMAIN ON THE CREDIT REPORT?** An A will appear in each month the Temporary FHA is in place and remain for 12 months. This means it will be 12 months from the end of the arrangement before the last A disappears.
- **BREAKING THE ARRANGEMENT**: If your client does not stick to the arrangement and misses one or more of the agreed payments the lender should reach out to adjust the payments. If the terms of the arrangement specify that the arrangement will cease to be in place if the person does not comply with it, then the RHI will immediately revert to showing how far the client is behind according to the original contract and no new A's will be recorded.
- **Remember**: Always make sure a hardship arrangement covers what will happen to catch up on any arrears, or make sure the client knows to make another hardship arrangement to deal with any catch up period at the end of the first arrangement.

Ongoing temporary hardship arrangement – customer complying with arrangement

Robert	J	F	M	A	M	J	J	A	S	O	N	D
RHI	✔	1	2	✔	✔	✔	✔	✔	✔	✔	✔	✔
				Pays Zero	Pays Zero	Pays Zero	Pays 1.5	Pays 1.5	Pays 1.5	Pays 1.5	Pays 1.5	Pays 1.5
FHI				A	A	A	A	A	A	A	A	A

Three month hardship arrangement ends and no new arrangement is put in place – RHI goes back to being reported against original contract, but customer is paying down the arrears

Karen	J	F	M	A	M	J	J	A	S	O	N	D
RHI	✔	1	2	✔	✔	✔	6	5	5	4	4	3
				Pays Zero	Pays Zero	Pays Zero	Pays 1.5	Pays 1.5	Pays 1.5	Pays 1.5	Pays 1.5	Pays 1.5
FHI				A	A	A						

Variation financial hardship arrangements (variation FHA)

- (**'V'**) A Variation FHA is a variation to the terms of their credit agreement which does not result in arrears building up. Arrangements like recapitalising arrears or extending the term of the loan fall into this category. Some full or partial waivers may also attract a "V".
- **FLAG:** There will only be a 'V' alongside the first month the arrangement.
- **RHI REPORTING:** A Variation FHA is a change to the terms of the consumer credit. RHI will be based on the terms of the consumer credit, as varied by the Variation FHA. If the client is one month late on the varied contract, RHI will reflect a 1, even if the person would have been 6 months behind on their original contract. This is because the arrears have been cleared with the Variation Agreement and your client is starting fresh.
- **ARREARS:** No arrears will accrue if the individual makes all the payments required under the varied contract. These changes are considered to be 'permanent' variations because the consumer credit contract is changed and the arrears stop accruing, but the reduction in payments may not be permanent. The most common Variation FHA will include a permanent reduction in the repayments required over the life of the contract, but it could also include a temporary reduction in payments if the arrears are immediately waived or added to the end of the contract, even though the person goes back to making their original repayments at some point in time.
- **BREAKING THE ARRANGEMENT:** If your client breaks a contract that has been permanently varied, they will be in breach of the contract and they will be reported as late, unless they make a further hardship arrangement. RHI will be reported against the varied contract (not the terms of the original contract).
- **HOW LONG DOES IT REMAIN ON THE CREDIT REPORT?** The V will appear once in the month the contract is varied and remain for 12 months.
- **Note**: Sometimes a lender will grant a temporary FHA followed by a variation FHA. This could mean a period of no payments, followed by a period of usual or higher repayments, followed by a variation FHA to deal with the arrears. This might occur where a person has missed a lot of payments and the lender gives them a "test period" in which to show they can make their usual repayments before capitalising the arrears. This would be shown on the credit report as a series of A's for the length of the temporary arrangements, followed by a single V in the month the contract is permanently varied.

Frank	J	F	M	A	M	J	J	A	S	O	N	D
RHI	✔	1	2	✔	✔	✔	✔	✔	✔	✔	✔	✔
				Pays Zero	Pays Zero	Pays Zero	Pays	Pays	Pays	Pays	Re-age	
FHI				A	A	A	A	A	A	A	V	

Pros and cons of financial hardship information reporting

CONS: Advising a client about the possible consequences of seeing hardship assistance

- When a consumer applies for credit with a new lender, that lender will be able to see that a financial hardship arrangement is (or has been) in place with another lender. This should protect the borrower from taking on more unmanageable credit, but the borrower will not necessarily see this as a good thing at the time.
- Seeing FHI on a credit report should prompt the lender to ask more questions to understand whether the consumer is still experiencing hardship and if this will affect their capacity to take on new credit, rather than automatically reject an application. However, we don't know how diligently lenders will approach this in practice and it could be hard to prove why they rejected an application.
- We don't really know how lenders will incorporate FHI from other lenders into their own lending-decision algorithms or how it will affect their internal customer scoring. This is new and a lot is unknown about how it will affect consumers who experience hardship in the long run.

PROS: Convincing a client to go ahead with hardship assistance:

- If a lender agrees to an arrangement, as long as the consumer complies with the arrangement, their RHI will show an on-time repayment. And if their lender agrees that they do not have to make any payments under a hardship arrangement, their repayment history will show on-time repayments even during the period they are not making any repayments.
- Borrowers can protect their credit report even in times of financial hardship, because their RHI will be reported based on the arrangement they have in place with the lender. While RHI remains on a credit report for 24 months, financial hardship information (FHI) falls off after 12 months. So after 12 months, if the borrower made payments in accordance with the hardship arrangement then their RHI will appear completely up to date and there will be no evidence of the hardship.
- Importantly, financial hardship information cannot be included in the calculation of any credit reporting body **credit scores** (like an Equifax or Experian score).

- While we don't exactly know how lenders will generally view FHI when making lending decisions, the **new rules forbid lenders to use financial hardship information as the sole basis for closing a credit card or reducing its limit**. Sometimes the borrower may be in a very good position to afford a loan, even though they were in hardship a few months earlier. It is also possible a refinance, for example, could reduce a borrower's repayments and solve their hardship. Lenders should take these factors into account.
  - We can also safely assume that an extended period of missed payments (negative RHI), a default or a serious credit infringement will certainly be viewed more negatively than FHI, and will sit on the credit report for longer than FHI.
- Only lenders that hold an ACL will be able to view FHI. So telcos or utility providers will not be able to see evidence of hardship arrangements. (**CAVEAT** – if a landlord, for example, requests that a borrower provide a copy of their own credit report – FHI will be visible)

Disputing a creditor's decision

- Clients who are unhappy about the way their circumstances have been reflected on their credit report can raise a dispute with their lender.
  - Disputes could arise, for example, because people are unhappy about FHI being reported on their credit report, or because they unhappy about negative RHI being reported when they believed they were in a Financial Hardship Arrangement.
  - To be successful in their dispute they would need to show that the credit report was factually incorrect, or that the lender had not complied with its obligations under the law or the Credit Reporting Code. The communications between the credit provider and the client will be key in any dispute, including any written confirmation of relevant arrangements (by letter, e-mail, text, in app messaging) and call recordings.
- You can help your client contact the creditor and explain why the FHI or the negative RHI should be changed or is not recorded as your client was led to believe it would be. If the creditor doesn't agree, clarify that you are making a complaint. A creditor has 30 days to respond to a complaint.
- A creditor may:
  - Fail to respond in 30 days; or
  - Refuse to amend or remove your disputed listing.
  - If this occurs, you can make a complaint to Australian Financial Complaints Authority (AFCA) – *all creditors that list FHI must be members of AFCA*.
- **Note**: In many cases there will be no valid reason to dispute the listing. Your role will be to explain the rules and how they apply.

Other issues to consider

What happens when a person gets a debt waiver?

- If the waiver is because of a responsible lending breach or fraud, the account information should be simply erased with no evidence it existed.
- If the waiver is for compassionate reasons because of financial hardship the lender may put a "V" in the last month of RHI before closing the account. That indicator will remain for 12 months. There will not be any more information about why the account was closed, but a new lender might see the "V" and ask questions.

[redacted] BANK [redacted]

Account Type	Credit Limit	Open Date	Closed Date	Re-open Date	Ceased Date
Credit Card	$0.00	[redacted] 1992	[redacted] 2019		

Loan repayment arrangement	Term type	Terms in months
Principal and Interest are to be paid in full	Revolving	XXX

Current Repayment Status
Account has been closed

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019					R	R	R	5	6	✓ V	C	C
2020	C	C	C	C	C	C	C	C	C	C	C	C
2021	C	C	C	C								

Legends			
✓ Payment received on time	1 Up to 29 Days Overdue	2 30-59 Days overdue	3 60-89 Days Overdue
4 90-119 Days Overdue	5 120-149 Days Overdue	6 150-179 Days overdue	X 180+ Days Overdue
R Payment Not Reported	P Repayment pending	C Account Closed	Outside of Reporting window

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- If the waiver is just a partial waiver and part of a settlement before the account is closed, that will likely also attract a V.

Xara	J	F	M	A	M	J	J	A	S	O	N	D
RHI	✔	1	2	✔	✔	✔	✔	✔	✔	C	C	C
				Pays Zero	Pays Zero	Pays Zero	Pays 1.5	Pays 1.5	Full & Final offer - Partial waiver			
FHI				A	A	A	A	A	V			

Joint accounts and hardship

- The Privacy Commissioner (OAIC) has agreed that lenders do not need the consent of both joint account holders before a hardship arrangement is put in place, even though FHI will be reported on both credit reports.
- Lenders will still likely inform the joint account holder about the arrangement unless you ask them not to for safety/privacy reasons, for example in a DV situation.
- This aligns with what banks and AFCA both consider to be best practice when it comes to joint accounts and hardship.

Special arrangements for DV

- The industry is working on a plan to allow victim survivors who are in a joint account with their perpetrator to simply get "blanks" during a period of hardship, out of concern that putting FHI in both accounts my enrage a perpetrator and create safety concerns.
- You should ask a lender for this outcome if your client is a victim survivor.
- Also read ***Credit Reporting & Economic Abuse: A practical guideline for financial counsellors and community workers*** – A Guide recently developed by Financial Rights and the Economic Abuse Reference Group.

Do they have a choice? Avoiding FHI – 'Promise to Pay'

- We know some borrowers will not like the idea of hardship being recorded on their credit report - Borrowers DO have a choice
- If a borrower would prefer to let missed payments accrue (negative RHI) they can simply make a 'Promise to Pay' to their lender instead of making a 'Financial Hardship Arrangement'
- This would mean a **borrower** calls their lender, says:
  - "*I am going to miss the next 2 payments, but I will catch up after that. I don't want any hardship information on my credit report, I am just letting you know so you don't default me*"
- Then hopefully a **lender** would say:
  - "*To be clear, you will have 2 missed payments showing on your credit report, but we won't take any legal enforcement action if you catch up on those payments as you have promised.*"
- **Note**: As FHI is brand new there is genuine uncertainty about whether have a couple of 1s on your report will be worse in the short term than FHI. It may well be that lenders will look on recent FHI more unfavourably than a missed payment or two here and there. People who will miss more than one payment should be strongly encouraged to consider entering a hardship arrangement.

Example: Promise to Pay

	J	F	M	A	M	J	J	A	S	O	N
RHI	✔	✔	✔	1	2	1	✔	✔	✔	✔	✔
				Pays Zero	Pays Zero	Pays 2x	Pays 2x				
FHI											

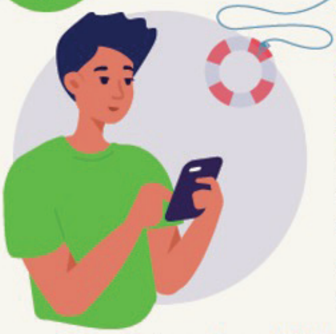
Example: Temporary FHA instead of Promise to Pay

	J	F	M	A	M	J	J	A	S	O	N
RHI	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
				Pays Zero	Pays Zero	Pays 2x	Pays 2x				
FHI				A	A	A	A				

Case study – Gil's Story

step 1

Gil's loan repayments are $2,000 per month. He stays up to date until April 2023, but then his work hours are cut down. **He misses April's payment and doesn't know when things will return to normal.**



In May, Gil speaks to his lender to explain the situation, and they agree to a temporary financial hardship arrangement (shown by an **A**) under which he can make reduced payments (i.e., $1,000) for the next three months.

From May to July, Gil makes reduced payments on time.

Note: **each month the difference between Gil's normal ($2000) and reduced payments ($1000) is temporarily deferred. The balance of the temporarily deferred payments needs to be dealt with by the end of an arrangement. Unless Gil speaks to his lender by then, his history will show missed payments.** (See 'What if things go wrong?').

step 2

Gil speak to his lender in July (i.e. by the end of the temporary arrangement) and advise them that his work hours are returning to normal. But while he is confident normal payments of $2,000 can be resumed, Gil can't immediately repay the balance of the temporarily deferred payments.

They agree for Gil to make normal payments for the next 6 months, before the lender adjusts the loan to finalise the financial hardship arrangement. This is **another temporary financial hardship arrangement** (shown by an **A**).

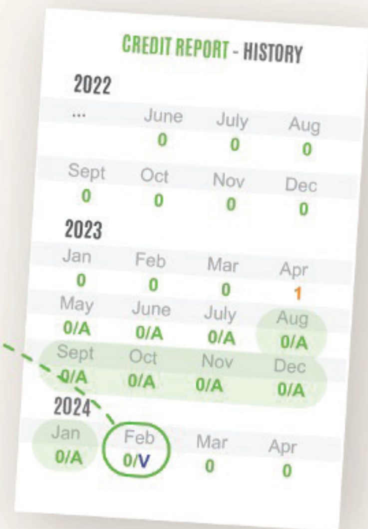
step 3

Gil makes normal repayments on time for the next 6 months. By the end of this second arrangement, Gil and his lender are now confident he has financially recovered. **The lender adjusts the loan by adding the balance of the temporarily deferred payments back into Gil's loan** (which means they can now be paid off over the rest of the loan term).

This is a variation of the loan and is a permanent change (shown by a **V** in February).

From then on, Gil keeps up with repayments, and no further financial hardship information is recorded in his history.

As it only stays for 12 months, the financial hardship information will disappear completely from Gil's credit report by March 2025.



Case study courtesy of the Australian Retail Credit Association (ARCA)

Need more help?
Feel free to reach out to the Financial Rights Legal Centre and we will do our best to figure out the answer! info@financialrights.org.au

Notes

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