

Office of the Australian Information Commissioner (OAIC)

By email to consultation@oaic.gov.au

7 May 2024

Dear Commissioner

Credit Reporting Code – proposed variations – soft enquiry framework

1. Introduction to fintech lender signatories

We, being Harmony, MoneyMe, Plenti and WISR are fintech providers of consumer finance including personal and automotive loans. Collectively we have funded ~\$15 billion in loans to over an estimated 700,000 Australians. Together we employ over 500 staff. Each signatory is listed on the ASX.

2. Context of signatories' submission

As innovative, technology-driven lenders we seek to provide customers with better experiences and value. Through our respective technology capabilities we have each brought new innovations to market, and we believe we have individually and collectively contributed meaningfully to the development of more competitive loan markets in Australia, through which consumers benefit from increased choice and value.

Importantly, as non-banks we operate at a significant experience and data disadvantage to large banks; when a customer seeks credit with their existing bank, the bank ordinarily makes use of the customer's historical account data to:

- Pre-qualify the customer, only allowing eligible customers to proceed to application (and rapidly declining customers who are not eligible) – an experience benefit for the customer, and cost benefit for the bank;

- Pre-fill application details based on existing credit products held with the bank and spend/income data from transaction accounts; and

- Provide a rapid credit assessment while remaining compliant with responsible lending and other regulatory obligations.

Given this comparative disadvantage, fundamental to our ability to compete with large incumbents in concentrated lending markets has been our ability to remove friction from our loan application and assessment processes – including through the use of the Access Seeker regime to provide potential customers with a means to obtain a rate quote and indication of whether they were eligible to apply for and/or receive credit without negatively impacting their credit bureau credit score. One of the signatories to this letter was the first to introduce this process to the Australian market in 2014 utilising information provided to a related entity via the Access Seeker regime, set out in section 20R of the Privacy Act (and related provisions in section 19R of the existing CR code). This innovation has been beneficial to industry stakeholders:

- Consumers have been delivered substantially improved choice, as they can obtain quotes from numerous lenders, without negatively impacting their credit score (which has increased consumer propensity to look for finance outside their incumbent banking relationship);

Consumers have been delivered substantially improved value, given their ability to ‘shop’ for the best rate, and the consequential increased levels of competition across lenders;

This innovation has now been widely adopted by credit providers, evidencing its value for credit risk outcomes and customer conversion rates; and

Credit bureaus have developed an alternative revenue source.

Generally, we support the introduction of a specific ‘soft enquiry’ mechanism, as is being considered by the OAIC, to formalise and improve on the existing Access Seeker-based process. However, the signatories to this letter wish to convey in the strongest terms that the soft enquiries framework as drafted in the proposed credit reporting code, presented by ARCA to the OAIC, is substantially defective and will:

Make it impossible for non bank and fintech lenders (including but not limited to the signatories to this letter) to provide accurate rate quotes to customers, which will both negatively impact their credit outcomes and make it more costly for them to acquire customers;

Lead to the demise of some non bank and fintech lenders, which in combination with the vastly reduced ability to compete for those which do survive, will cause a significant reduction in competition, ultimately resulting in higher interest rates for consumers, in more concentrated lending markets (in a bank dominated market structure, similar to what Australia had before comprehensive credit reporting was introduced); and

Lead to reduced innovation in personal and automotive lending markets, noting that fintechs are at the forefront of driving improvements in customer experience, data utilisation and product customisation.

In short, our submission is that the proposed soft enquiry framework represents a substantial downgrade of the status quo, and will cause high credit losses and higher customer abandon rates (increasing acquisition costs) for non bank and fintech lenders, threatening the financial viability of fintech lenders, which are only now reaching profitability after many years of competing against traditional banks. In our view, it would be to the competitive benefit of larger credit providers and the credit bureaus were the status quo to be substantively altered.

3. Summary perspectives on the proposed soft enquiry framework

3.1. Proposed soft searches do not allow for accurate pricing and eligibility estimates

When providing a consumer with a rate quote, pricing accuracy is of paramount importance for lenders, as it is determinative of both risk-adjusted credit performance and the efficiency of conversion of consumer demand into lending.

It is our shared view the proposed ‘soft enquiry’ framework does not fulfil the objective of allowing accurate rate quotes to be presented to consumers, and so would represent a significant downgrade on the status quo.

A bureau score alone is not sufficient to provide accurate pricing to a customer. A bureau score is predictive, but is built on industry-level data and does not take into account the selection effects specific to a given credit provider and its customers; for this reason, many credit providers build their own score models for both loan pricing and decisioning purposes. Pricing and eligibility models are typically based

on numerous fields of data from the Access Seeker result, augmented with self-disclosed data and product-specific data.

One signatory recently conducted an exercise to investigate how the rates it offered its customers over time would have differed if they had relied solely on bureau score, rather than its augmented score. It was found that:

Only ~57% of customers would have received the same rate if the lender was compelled to rely on bureau score alone;

On average, customers with good credit would have received **worse** rates than they otherwise would with the augmented score, noting the lender is sensitive to mis-pricings in this cohort given the competition typically faced with these customer's primary banks; and

On average, people with poorer credit would have received **better** rates than they otherwise would with the augmented score, noting the lender is sensitive to mis-pricings in this cohort given they would be under-provisioning for losses (further, in this cohort the extent of the mis-pricing is often large).

Importantly, the above investigation also evidenced that repayment history information (**RHI**), prior credit enquiry information and consumer credit liability information (**CCLI**), which are available under the Access Seeker regime but not under the proposed 'soft enquiry' framework, are required for accurate loan pricing and eligibility determination. The inclusion of RHI data and enquiries data raised the proportion of customers who would have received the same rate to ~78% - a substantial uplift of over 20% of customers. The results were particularly sensitive to the inclusion of consumer credit liability information (**CCLI**) data as these fields are used to construct a debt-to-income ratio estimates, which are widely known to be of strong value in predicting credit losses. Additionally, there is powerful predictive value in evidencing recent credit conduct via CCLI data, which in our shared experience is not sufficiently captured in bureau scores.

One argument justifying the exclusion of CCLI from soft enquiry results is that customers can be prompted to enter these details in a quoting experience. We find this suggestion unpersuasive as:

This is true of every data field on the credit file - if customers could be trusted to accurately enter their credit history into a form there would be no requirement for credit files; and

This negates the substantial experience detriment that non-bank lenders would suffer relative to major banks, with whom a customer may have multiple credit products.

Further, we are aware of an argument regarding pricing accuracy that when additional data is captured (say, after a credit enquiry is performed) the customer can simply be presented with a new price. Unfortunately, in our shared significant experience, re-pricing a customer with a new rate following a credit enquiry is not feasible:

If a rate is increased, customer funnel completion rates fall precipitously as customers can believe they were misled by the original rate estimate they were provided; and

There is little incentive for a credit provider to offer a lower rate as the customer has already shown commitment to proceed with the selected credit provider; rather, the credit provider may suffer from selection effects given a mis-priced customer has elected to proceed in the first place.

Additionally, we have compliance concerns with re-pricings, as such conduct may be indistinguishable from bait-and-switch tactics.

Furthermore, if fintech lenders face higher risks due to less information at the outset, they may need to increase the cost of credit to offset these risks. This would directly affect consumers, especially those in higher risk categories who are already paying more for credit.

3.2. Less detrimental methods to enforce the integrity of bureau enquiry data should be considered

We collectively support ARCA's ambition to ensure that credit enquiries are always submitted by a credit provider whenever a credit application is submitted. Further, we appreciate that Australian bureau credit scores currently rely more on enquiry data than scores in other markets (notably the UK and the USA), though as comprehensive data continues to build and models continue to be refined this emphasis on enquiries can be expected to abate.

As non-bank lenders, we necessarily have substantial reliance on bureau data; for this reason each of the signatories was a strong advocate for the adoption of Comprehensive Credit Reporting (CCR), and were each amongst the first credit providers in Australia to supply CCR data in shared mode (rather than in private mode) and to supply CCR data to multiple bureaus. We were also among the first credit providers to consume CCR data.

However, **we do not believe there is a necessary or obvious nexus between limiting the data fields able to be returned from a soft enquiry and measures to address issues of bureau data integrity.** We are concerned that by conflating the two topics, some industry participants are attempting to provide plausible cover for changes to the status quo that would be substantially to their competitive benefit – and enormously detrimental to other, smaller industry participants, and to consumer welfare.

Notably in this respect, we believe that before considering replacements to the existing and successful Access Seeker regime that could set back hard-fought gains in industry competitiveness, it would be responsible for the OAIC and industry to first exhaust all other reasonable measures to address integrity concerns. In this regard, we submit that any or all of the following measures should be investigated and trialled:

Bureaus should enforce existing commercial agreements with credit providers that require credit enquiries to be submitted upon completion of a credit application. Notably in this regard, signatories to this letter have reported non-compliance to bureaus, however, no action was taken

Bureaus should audit CCLI/RHI data to reveal cases where a credit contract has been entered into without a corresponding enquiry being lodged on bureau. Given reciprocity obligations and the fact that credit providers typically have “primary bureau” obligations under commercial agreements with bureaus, at least one bureau (the primary) will be able to robustly conduct this audit

Bureaus should audit Access Seeker enquiries to uncover noncompliance with enquiry obligations. In particular, bureaus should be suspicious of credit provider conduct where Access Seeker enquiries are being lodged, but either:

- i. No (or few) credit enquiries are subsequently being submitted for the same customers – this is evidence that the credit provider may not be submitting credit enquiries following credit applications, and may be decisioning based on the Access Seeker data alone; or

- ii. Both CCLI/RHI fields and credit enquiries are evident on the credit files of the credit provider's customers, however there are no (or few) credit enquiries without corresponding CCLI/RHI fields – this may be evidence that the credit provider is submitting enquiries for successful applications, but not declined applications.

Relevant industry codes of conduct should be revised (including the Credit Reporting Code and the Principles of Reciprocity and Data Exchange) to mandate that a credit enquiry must be submitted in respect of a credit application. Further, periodic attestations of compliance should be required of credit providers by the code administrators. Importantly, this requirement would provide bureaus with the ability to more effectively and legitimately enforce enquiries by their customer credit providers, without the risk of commercial considerations obstructing enforcement

3.3. The scope of permitted uses for soft enquiry data is too narrow and will restrict innovation and competition and should be expanded

If, contrary to our strong urgings to the contrary, the proposed Credit Reporting Code variations proceed, we strongly believe the proposed scope of permitted soft enquiry data uses should be expanded to include:

Informing a customer that they are not eligible to proceed to apply for credit; and
Pre-filling data fields on a credit application form.

In respect of eligibility screening, if we were unable to filter customers who are not eligible to apply based on credit file data, we may instead need to resort to cumbersome workarounds such as presenting unattractive rate options to dissuade the customer. We do not believe this is in customers' best interests.

In respect of pre-filling data fields, we note that pre-filling is a key technique available to us to deliver a more efficient application experience for both the customer (approaching the ease of application most customers will find available at their primary bank) and our credit operations. Notably, in many cases we are unable to simply rely on credit file data when we submit a credit enquiry after the customer has submitted an application; **the NCCP Act requirement to both capture and verify application fields means that we are frequently required to present a form field on an application form even when that data may be available from another source after completing the application** (such as the data fields available to us from a credit file after we have conducted a credit enquiry).

3.4. The 'Anti avoidance' clause in 14(8) of the proposed Credit Reporting Code is too broad and will likely cover existing usual practices activities by lenders and brokers/introducers

We wish to highlight to the OAIC that:

Clause 14(8) is overly broad, and might include a lender breaching the Credit Reporting Code when working with entities who are not subject to the Credit Reporting Code. For example, if a broker obtains a credit report on a prospective customer to assist them to select an appropriate lender and the broker provides information from that report in their application for credit (including for example, commentary relating to recent credit enquires or RHI data which are specifically excluded from the soft enquiries definition) this may give rise to a breach of the Credit Reporting Code; and

These interactions may be required for, amongst other things, helping brokers meet their own compliance requirements, as well as ensuring they meet a lender's own distribution requirements set out in a Target Market Determination under the DDO legislation.

3.5. Credit bureaus do not yet offer a soft enquiry product and approving proposed Credit Reporting Code amendments could leave CPs stranded

We wish to highlight to the OAIC that:

Credit reporting bureaus (**CRBs**) do not currently offer a soft enquiry product that would comply with the proposed changes and have not publicly committed to a date when such a product might be available

The Credit Reporting Code makes no provision for situations where a CRB decides to discontinue offering a soft enquiry product. Retaining access to the Access Seeker provisions would alleviate this concern as lenders could elect to utilise that means instead

If the Credit Reporting Code is authorised as drafted there is a likely situation where there is no CRB product available to perform a soft enquiry to provide a customer a quote, but due to the restriction in clause 14(8) lenders would not be able to use alternative means (including asking a customer to provide their own copy of a credit report) to quote a customer

Provisions restricting the use of Access Seeker soft enquiries should be not authorised until a soft enquiry product is developed, tested and utilised by credit providers. Further, if a soft enquiry product is not reasonably available on commercially attractive terms, credit providers should be exempt from clause 14(8).

3.6. The ARCA consultation process was insufficient and did not adequately represent the views of credit providers nor other stakeholders such as asset finance brokers

We wish to make the OAIC aware that there is limited representation of fintechs and non-banks within ARCA. This is partly due to the time and financial resources required to participate.

The consultation processes in relation to the proposed amendments to the Credit Reporting Code saw significant weight given to the perspectives of large banks, despite them not currently utilising (nor proposing to utilise) Access Seeker processes.

Importantly, despite repeated requests, **no draft of the proposed Credit Reporting Code amendments was provided to fintech members of ARCA during the brief consultation period prior, nor prior to the draft amendments being approved by the ARCA Board for submission to the OAIC for consideration.**

We further note in this regard, ARCA does not have a mandate to consider the impact of any changes on the level of competition in lender markets, so we query whether competition impacts were given due consideration by the ARCA Board.

4. Concluding remarks

In our view:

Soft credit enquiries returning the full complement of fields on the credit file (as currently available under the status quo via the Access Seeker regime) are essential to the competitiveness of non-bank lenders and other smaller credit providers;

If it is preferred by the OAIC that soft enquiries be brought within the aegis of the Credit Reporting Code rather than continue to exist under the Access Seeker regime, soft credit enquiries should preserve the scope of data available under the status quo, rather than reduce data fields returned for unsubstantiated benefit;


In the event that the OAIC was minded to restrict the data made available under a soft search via the Credit Reporting Code, the OAIC might refer this matter to the ongoing Treasury-initiated independent review of Australia's credit reporting framework, to give it further consideration, given the substantial competitive impacts that would flow from such a decision; and

By disadvantaging non-bank lenders who rely more heavily on soft enquiries for competitive pricing and risk assessment, the proposed changes could inadvertently decrease market competitiveness, leading to a less dynamic Australian financial services sector.

We would be pleased to provide further information in relation to the perspectives set out in this letter, or indeed empirical data to support our perspectives. We would also be pleased to discuss our perspectives in person.

Yours sincerely

Signature:



Name: Daniel Foggo

Title: CEO

Company: Plenti

Signature:



Name: Joanne Edwards

Title: COO

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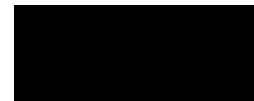


Name: Mike Travis

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