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6 May 2024

Information Commission and Privacy Commissioner
Public Consultation on application to vary the Credit Reporting Code
GPO Box 5288
SYDNEY NSW 2001

Via Email: consultation@oaic.gov.au

Dear Commissioner,

Application to vary the Privacy (Credit Reporting) Code 2014 (the “Application”)

As a one of three credit reporting bodies (“CRBs”) in the Australian credit landscape and a member of Australian Retail Credit Association (“ARCA”) illion is grateful for the opportunity of making a submission to the OAIC’s consultation on the application to vary the Credit Reporting Code.

illion supports the proposed introduction of a soft enquiry framework and the prohibition on the use of the Access Seeker provisions (as defined in S6L of the Privacy Act 1988 (‘the Privacy Act’)) being a means to assess the creditworthiness of an individual.

While illion supports the introduction of a soft enquiry framework (the “Proposal”) it is concerned the drafting as proposed in the Privacy (Credit Reporting) Code 2024 (Version 3.0) set out in the Application (the “New Code”):

1. is inconsistent with requirements set out in Part IIIA of the Act;
2. balancing the need of sharing credit information and the need to maintain integrity of the credit reporting environment.

Each of the above matters is addressed below.

1. The Proposal is inconsistent with Part IIIA of the Privacy Act.

illion is concerned the proposed changes to the Code can operate consistently within the framework of Part IIIA of the Privacy Act without needing to amend the Privacy Act. In this regard it is noted that a review of Part IIIA of the Privacy Act has commenced and is due to be completed this year.

It is important to consider what the role of the Code is and how it interacts with the Privacy Act. We acknowledge the fact that Section 26N(3)(A) provides that the Code may “impose additional requirements to those imposed by Part IIIA, so long as the additional requirements are not contrary to, or inconsistent with, that Part”.

1.1 Interaction with Key definitions.

We note the Review suggests an amendment to paragraph 7 to define soft enquiries and to require a CRB make a written note of a soft enquiry. The Review proceeds to say the written note must be on a record related to an individual, but not included on the individual's credit report.

Under s20F of the Privacy Act a CRB is strictly limited to when it can disclose credit reporting information to a CP. In the current environment this is when "the provider requests the information for a consumer credit related purpose of the provider in relation to the individual."

We note that a consumer credit related purpose is limited to:

- (a) assessing an application for consumer credit made by the individual to the provider;
- or
- (b) collecting payments that are overdue in relation to consumer credit provided by the provider to the individual.

In terms of the Proposal, we note the New Code definition is that a soft enquiry is an "indicative assessment...whether the individual is ineligible for particular consumer credit...".

We understand this will align with s20F of the Privacy Act and Section 7(2)(a)-(b) of the New Code such that a soft enquiry will fall within the definition of an information request (as set out in Section 6R of the Act) which in turn is a data element of credit reporting information as set out in Section 6N(d) of the Act. There remains a tension in that the Code confirms a soft enquiry is an information request yet excludes this from being a data element of credit information as set out in Section 6N(d) of the Act.

We note the Review relies on the fact that the Act allows for a disclosure to be captured as a "written note" (reference 304 on page 114) to address the record keeping obligations relating to a soft enquiry. We confirm this is the case for a CP disclosing information to a CRB (under Section 21D of the Act) but note this is relevant to a CP (Section 21 of the Act applies to CP's), a similarly clause for a CRB is captured under Section 20E(5), while this is the case it does not resolve the tension that a soft enquiry is an "information request" so is then captured as a piece of credit information according to the Act.

The drafting of the New Code currently does not consider the implications for a CRB responding to an information request as set out in s6R and an information request being a piece of credit information as per S6N(d).

illion recognises this tension (between the proposed Code and current Privacy Act definitions) may be addressed as part of the Part IIIA review currently under way, potentially by:

- recognising an Information Request as both a soft and hard enquiry; and
- limiting the definition of credit information (S6N(d)) to be a Hard Enquiry only.

2. Balancing the need of sharing credit information and the need to maintain integrity of the credit reporting environment.

illion notes the proposal suggest that the data returned in a soft enquiry may include:

- a) personal insolvency
- b) SCI's
- c) default information
- d) FHI Y/N flag
- e) CCLI
- f) Summarised / aggregated data derived from a) – e)
- g) a credit score

It is our view that the data proposed here for a soft enquiry is excessive, we note a credit score is exactly a summarised version of all items in a) – e) except for d).

illion's view is that a score (aligned with the level of data provided by the CP following the principle of reciprocity) is sufficient to respond to enquiries for the cost of credit, to help individuals in shopping around or showing the best rate available to them. Making all data available upfront greatly reduces the need to follow up with an enquiry to finalise the credit decision and may result in credit decisioning without hard enquiry, which in the medium to long term will result in a deterioration of the quality of credit reporting data and introduce greater credit risk.

One of the primary functions of credit enquiries is to help lenders assess the creditworthiness of individuals applying for credit. Reducing the numbers of enquiries may make it more difficult for some individuals especially those with limited credit history to access credit. Lenders rely on credit enquiries to gauge an applicant's credit risk, fewer enquiries could result in stricter lending criteria.

2.1 Loss of Credit Enquiries.

Introduction of the soft enquiry framework will have the effect of significantly reducing hard enquiries (information requests) received by credit reporting bodies and reducing the data available to CPs to allow them to make accurate credit decisions. By illion's estimate this may lead to the loss of approximately 1/3 of the credit enquiries across the industry.

In the absence of an alternate data source (such as extending mandatory comprehensive credit reporting ("CCR") and extending CCR beyond Australian Credit Licence holders) the proposed changes may lead to a deterioration in the ability to assess the credit worthiness of an individual causing CPs to advance credit to applicants who may otherwise be declined. This could cause:

- a. CP's incurring increased credit defaults putting prudential pressure on the CP;
and
- b. Individuals being advanced credit that places them at financial risk.

It is illion's view that such a significant loss of data may stifle the introduction of new credit providers or innovation in credit products limiting the price benefits that come from competition. We note that new Credit Providers rely strongly on the centralised data sets held by CRB's in the absence of holding their own historic data to allow them to make prudent lending decisions.

2.2 Loss credit profiles – New to Bureau (NTB).

As set out above, illion has concerns that under the Proposal a soft enquiry will not be treated as a data element of credit reporting information (so have no score impact and will not be visible to other CP's). However, it is also unclear how a soft enquiry would be treated for an individual who does not have a credit profile at all. We note that more than 70% of all credit profiles are created from information requests (enquiries where there is currently no distinction between a "soft" or "hard" enquiry) – it is unclear if a soft enquiry will lead to the creation of a credit profile given it is not intended to be a credit reporting data element.

This needs to be clarified to ensure that CRB's are acting in accordance with their obligations. As noted above we believe there is an inconsistency with the Part IIIA definition of an information request (under s6R) being a data element of credit reporting information (under s6N) and the current proposal for a soft enquiry as drafted in the New Code.

It is illion's preference that a soft enquiry should still allow for the creation of a new credit profile. While we accept this may lead to the creation of credit profiles holding no or minimal credit information this still serves a purpose for data matching and identity verification as set out in the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

We also note the importance NTB profiles in the context of Financial Inclusion. NTB profiles enable records to be created that recognise more accurately when an individual became active in the credit environment. This is particularly relevant for young adults or recent immigrants accessing mainstream credit and financial services. Without a complete credit history, these individuals may face difficulties obtaining loans, credit cards or other financials products.

In conclusion we support a soft enquiry framework that:

- operates in harmony with a CRB's obligation in the Privacy Act; and
- ensures ongoing integrity of the Australian Credit Reporting Regime.

Given a review of Part IIIA of the Privacy Act is currently underway, illion considers that implementation of the New Code should be considered in parallel with the upcoming review. It is vital for all parties that the New Code and amended Privacy Act operate together harmoniously to promote the interests of consumers and other participants in the credit industry.

The introduction of soft enquiries in the credit reporting regime in Australia has the potential to benefit consumers by providing greater access to credit while also posing challenges relating to incomplete credit information. Effective regulation and oversight are essential to ensure that soft



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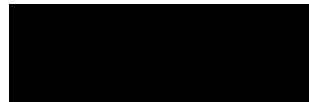
enquiries are used responsibly and in ways that ultimately serve the interests of consumers without compromising the integrity of the credit reporting eco-system.

If there are any questions or concerns arising from this, please feel free to contact either Milena Malev or Stephen Blyth.

Yours sincerely,



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