

Office of the Australian Information Commissioner (OAIC)
GPO Box 5218
SYDNEY NSW 2001

By email only: [REDACTED]

11 February 2022

Dear Sir/Madam,

**INDEPENDENT REVIEW OF THE PRIVACY (CREDIT REPORTING) CODE 2014 (CR CODE)
– RESPONSE TO CONSULTATION PAPER**

Thank you for the opportunity to provide a response to the CR Code review consultation paper. The review provides a timely opportunity to consider and evaluate the operation of the CR Code in light of a number of developments which have occurred since the last review in 2017, including the significant growth in participation in comprehensive credit reporting (CCR) data exchange and the ongoing evolution of the credit industry including CCR participation (partial) by the telco sector and the emergence of new sectors such as buy now pay later (BNPL).

The Australian Retail Credit Association (ARCA) plays a unique role in the credit reporting environment. ARCA is the peak industry association for businesses using consumer information for credit risk decisioning and credit management. Our Members include banks, mutual ADIs, finance companies and fintech credit providers, as well as all of the major credit reporting bodies (CRBs) and, through our Associate Members, many other types of related businesses providing services to the industry. Collectively, ARCA's Members account for well over 95% of all consumer lending in Australia.

ARCA has acted as the code developer for the initial version of the CR Code in 2013/ 2014, and all subsequent variations (2014, 2018, 2019 and, most recently, the yet-to-be-approved hardship variation in 2021/2022). ARCA (through its subsidiary, the Reciprocity and Data Exchange Administrator) is also the author and administrator of the industry rules for CCR data sharing, the Principles of Reciprocity and Data Exchange (PRDE).

ARCA has also played an instrumental role leading consumer education on credit reporting, through its consumer-facing website, CreditSmart (www.creditsmart.org.au). Through development of CreditSmart resources, direct engagement with consumers through this website, and ongoing consumer research, ARCA has been afforded direct exposure to consumers and their interactions with the credit reporting system.

General observations

ARCA's view is that the CR Code continues to work well for its intended purpose, being as a legislative instrument giving operative effect to Part IIIA of the Privacy Act. A key theme of the consultation paper is a concern about how the CR Code is understood and applied by broader audiences, and whether changes are required to make it more readable, and potentially more 'consumer-friendly'. ARCA's view is that the intended purpose of the CR Code and the complexity inherent in the underlying legislation makes simplification of the CR Code challenging. Without simplification or amendment to the terms of Part IIIA of the Privacy Act, it is difficult to envisage how significant change can be made to the CR Code without creating (to some degree and potentially, unintentionally) a discrepancy or disconnect between the operation of the laws contained within the Privacy Act and the terms of the CR Code.

Moreover, attempting to simplify the CR Code will likely lead to unintended consequences, including greater divergence in its application by industry and conflicting interpretations leading to a higher level of uncertainty and disputes. This, in turn, could undermine rather than improve the operation of the credit reporting system.

In our view, a better approach would see the CR Code remain largely 'as is' (and certainly any major changes not being made at least until implementation of the outcomes of the 2024 Part IIIA review). Instead, guidance issued by the OAIC and industry could provide a more effective means to 'unpack' and decipher the operation of the CR Code. Further, the use of consumer-facing resources that summarise the Code's content ought to be developed and made available to all credit reporting system participants, which extends beyond credit providers (CPs) and CRBs and to participants such as financial counsellors, consumer advocates, support services, etc.

ARCA further notes that emerging issues that have been identified in the operation of the CR Code largely stem from the evolution of the credit industry, including the growth of the BNPL sector and the move to CCR data exchange by telecommunication providers.

In recent years increased focus has also been given to issues such as domestic abuse and the interaction that victims, victim survivors and perpetrators may have with the credit reporting. We think this review provides a good opportunity to consider what level of engagement and understanding currently exists in Australia in relation to the impact of domestic abuse upon credit and credit reporting and how responsive the credit reporting system is to dealing with domestic abuse scenarios, and what improvements could be made.

Credit reporting has also continued to come under attack from the credit repair sector, which provides for-profit services to correct (or misleadingly to 'fix') credit files. Correction rights provide key consumer protections and are intended to be available for free and with a 30-day turnaround. We note that questions continue to be raised about corrections processes, and we consider this review will provide a good opportunity to examine the extent to which issues with processes stem from the wording of the CR Code, as opposed to some of the practical issues experienced in corrections disputes.

We also have noted that the credit repair sector has increasingly focussed on legitimate credit enquiries as a ground for dispute. We appreciate the review asking questions as to whether the CR Code can include provisions which may stem the flow of these types of disputes. Our recommendations have highlighted confusion about the basics of a credit enquiry – namely whether this is a consent or notification-based disclosure (to be clear, it is a

notification-based disclosure). We consider there may be merit in providing this clarification within the CR Code without amending any of the applicable CR Code terms

Specific changes recommended for consideration

ARCA has set out detailed responses to each of the 32 review questions in **Annexure A** below.

In terms of specific CR Code changes which have been included in these responses, these are as follows (noting the full context for each of these changes is also set out in Annexure A):

- Question 2 (What provisions in the CR Code are no longer ‘fit for purpose’?)
Sub-paragraph 20.1 of the CR Code (which sets out how correction provisions apply to non-participating CPs), could be removed from the CR Code if the proposed variation to introduce paragraphs 2.3 and 2.4 to the CR Code is approved.
- Question 4 (Does the CR Code need to be amended for clarity and readability?)
 - References in the ‘Source Notes’ column to the ‘pre-reform code’ can be removed
 - Outside the CR Code itself – there should be greater reliance on consumer-facing resources, the OAIC could exercise its guidance function, and ARCA could also develop guidelines-type resources.
- Question 5 (Are there any provisions which are open to interpretation or prone to misinterpretation?)
Paragraph 13.1(b) of the CR Code (which requires an assignment notice to be provided by an originating CP only) should be amended to be consistent with prevailing legal interpretation (of state-based Property Law legislation) and provide that the notice can be provided by either originating CP or acquiring CP.
- Question 6 (What is the effect of mandatory CCR on the CR Code?)
Guarantor consumer credit liability information (CCLI) should be removed as an allowable dataset under the Privacy Regulation, and the CR Code could possibly be amended to clarify what information can be disclosed on a guarantor’s credit report for credit guaranteed by them.
- Question 8 (How might the CR Code be updated to better accommodate other entities?)
 - Telecommunication companies and utilities – CCLI categories ought to be reviewed to more appropriately reflect account open and close dates, credit limit and reporting of accounts to reflect a supply of continuous credit
 - BNPL – the CR Code (or possibly the Privacy Act) could allow for the ‘grouping’ of transactions and reviewing the credit limit categories.
- Question 13 (Are the provisions regarding internal practices and record keeping appropriate?)
Consideration ought to be given to whether the CR Code could provide a limited exemption for data input files from retention period and destruction requirements.
- Question 14 (Are the CCLI provisions appropriate?)
 - Debt buyers submitting CCLI for inactive credit accounts – amend the account close definition to limit the ability to ‘pick and choose’ how account close date is reported
 - Historic CCLI – the CR Code provide clarity regarding historic CCLI and potentially enable the disclosure of these datasets (although in a manner which allows for this to be an optional dataset, recognising technical challenges which may exist).
- Question 16 (Are the RHI provisions appropriate?)

- Minor amendment should be made to the RHI 'month' definition to allow for technical challenges in determining a 'month' against varying calendar dates.
- Enabling RHI to be corrected in a similar manner to the correction of default information in paragraph 20.5 (and noting, as stated in response to question 25, that the list of circumstances also be amended to include domestic abuse).
- Question 18 (Are the provisions regarding publicly available information appropriate?)
 - Clarification is required regarding the commencement date for the 2020 variation to paragraph 11
 - The CR Code to provide further clarification to identify where a judgment or proceedings neither meets the definition of court proceedings information nor publicly available information.
- Question 20 (Are the provisions regulating how individuals are notified that their information will be provided to a CRB appropriate?)
Amending the CR Code to make it explicit that credit enquiries only require notification to an individual but do not require consent from the individual.
- Question 21 (Are the protections for victims of fraud appropriate?)
Consideration of changes to the ban period provisions to be more responsive to complex or protracted fraud cases, although not allowing for indefinite bans, or for ban periods to be used to limit legitimate credit management rather than to manage a fraud risk.
- Question 24 (Are the access provisions appropriate?)
Consideration be given to amending the CR Code to provide a legal framework for soft enquiry disclosures.
- Question 25 (Are the correction provisions appropriate?)
 - Simplifying the approach to multiple instances of incorrect information – ARCA supports implementing processes which could simplify processes in these instances, provided such measures appropriately differentiate legitimate, correct information.
 - Other circumstances beyond an individual's control (paragraph 20.5):
 - Include domestic abuse in the list of circumstances
 - Review the requirement in paragraph 20.5 for correction to be made in consultation with the CP, and potentially allow either the CRB or CP to make the correction.
- Question 32 (Are the obligations for use and disclosure appropriate?)
 - The CR Code definition of 'capacity information' in paragraph 1.2(c) ought to be reviewed to determine if it can be extended to identify credit entered into by an individual in their capacity as a trustee.
 - Consideration as to whether the agreed interpretation of section 21G(3)(c)(i) (disclosures of credit eligibility information by CPs direct to brokers and similar third parties) could be included as part of the CR Code.

We would welcome the opportunity to discuss this submission further. Please contact our Executive Director, Regulatory, Elsa Markula, on [REDACTED] with any queries.

Yours sincerely

Mike Laing
Chief Executive Officer

ANNEXURE A – RESPONSE TO REVIEW QUESTIONS

#	QUESTION	ARCA'S RESPONSE
1	<p>What provisions in the CR Code work well and should remain as they are or with minimal changes?</p>	<p>ARCA's view is that the CR Code works well in practice, including by appropriately supporting the credit reporting system and assisting those individuals and organisations who participate within the credit reporting system. ARCA is unaware of any significant systemic issues which would indicate that there are specific provisions which require substantial change (though as we have identified in this response, there may be opportunity for some small changes to a select number of provisions, which whilst generally operating well, may benefit from minor variation).</p> <p>The provisions in the CR Code need to be understood in their overall context – that is, how each provision sits alongside the related provisions in Part IIIA of the Privacy Act. In this regard, it is difficult to identify a CR Code provision which operates better or worse than another CR Code provision; each of the provisions are necessary to provide operative effect to Part IIIA.</p> <p>Moreover, as our overall feedback to the review questions reflects, issues in relation to the operation of the CR Code arise largely because of the evolution and expansion of the credit industry, and ongoing application of the CR Code to a range of credit products (including new and emerging products and services), and not because of inherent issues in the drafting of the CR Code itself.</p>
2	<p>What provisions in the CR Code are no longer fit-for-purpose? Why?</p>	<p>None of the CR Code provisions could be described as 'no longer fit-for-purpose'.</p> <p>Sub-paragraph 20.1 of the CR Code (which sets out how correction provisions apply to non-participating CPs), could be removed from the CR Code if the proposed variation to introduce paragraphs 2.3 and 2.4 to the CR Code is approved.</p> <p>Throughout this response, we have also identified changes which can be made to improve or alter the operation of particular provisions in the CR Code (with the full list set out in our cover letter under the heading 'Specific changes recommended for consideration'). To be clear, these changes do not stem from the CR Code provisions being fundamentally 'not fit-for-purpose', but instead are the consequence of a range of other factors including the growth of CCR data exchange, and participation of different entities.</p>

3	Does the CR Code get the balance right between the protection of privacy on the one hand and use of credit-related personal information on the other? Why or why not?	<p>ARCA's view is that the balance between privacy protection and the use of credit-related personal information is first and foremost established by the Privacy Act. The role of the CR Code is to reflect that balance rather than fundamentally shift it.</p> <p>Achieving the right balance between individual privacy protections and the use of credit-related personal information requires recognition that assessing and managing credit requires more than simply a direct exchange of information between an individual and an organisation. Information asymmetries will arise between an individual and a potential credit provider, which can mean there is an imbalance in terms of the information held by the individual and the information required by the credit provider to properly assess the individual's creditworthiness. Recognising this, the credit reporting system operates to provide an objective and comprehensive record of credit-related personal information for credit providers and affected information recipients to have access to information with which to form that assessment of that individual's creditworthiness.</p> <p>For the same reason, strict controls exist to promote data quality and data security, thereby ensuring the protection of the individual's privacy. For example, paragraphs 5.3 and 5.4 of the CR Code place a range of positive obligations on CPs and CRBs respectively to have in place reasonable practices, procedures and systems to support compliance with Part IIIA, the Privacy Regulation and the CR Code. Furthermore, the CR Code embeds important consumer protections including notification requirements, restrictions on direct marketing and alert services, ban periods, and corrections and complaints requirements. In addition, where credit information is disclosed, the CR Code includes strict requirements for different types of information (default information, payment information, consumer credit liability information and repayment history information). In doing so, it promotes fundamental principles of consumer protection (ensuring a consumer will only be able to have certain information disclosed if CPs meet necessary criteria) alongside promoting data quality, which in turn supports the use of that credit information by CPs and affected information recipients.</p> <p>ARCA considers any change to the fundamental 'balance' embedded in the operation of the CR Code could only occur alongside reconsideration of the operation of Part IIIA of the Privacy Act</p>
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		(noting that review of Part IIIA is not scheduled to occur until October 2024, notwithstanding that ARCA has sought to have Part IIIA included within the scope of the current Privacy Act Review ¹).
4	Does the CR Code need to be amended for clarity or readability? If so, in what way?	<p>Any amendment to the CR Code to achieve greater clarity or readability must first consider the purpose and context of the Code.</p> <p>First, it should be highlighted that the CR Code differs to most other financial services sector codes, as it is a legislative instrument and, under s26L of the Privacy Act, entities are required to comply with the registered CR Code. Changes which may seek to improve readability of the CR Code may impact its application and may unnecessarily either increase or detract from the legal compliance burden.</p> <p>Since the commencement of operation of the CR Code, issues have been raised by consumer groups about the purpose, structure and understandability of the CR Code. The recent hardship variation process highlighted this feedback, with consumer advocates proposing a ‘consumer-friendly’ version of the CR Code, with separate technical provisions. Such a proposal is potentially at odds with the operation of the CR Code under s26L.</p> <p>In light of this, ARCA considers that the CR Code’s overall level of clarity and readability is appropriate for its purpose. ARCA’s approach to the CR Code drafting is best described in the executive summary for the original CR Code application, a copy of which is attached as Annexure C. You will note that this identifies that the purpose of the CR Code is multi-faceted, and it provides an operational framework for a variety of participants.</p> <p>It is further identified that, reflecting the overall structure of Part IIIA of the Privacy Act, the CR Code is drafted based on issues rather than stakeholders (so, for instance, the rules on reporting default information are set out in a single paragraph, rather than setting out what consumers may need to know about default information, separate from what credit providers may need to know, and so forth).</p>

¹ See, for example, ARCA’s submission to the Privacy Act Review dated 29 November 2020, <https://www.ag.gov.au/sites/default/files/2021-01/australian-retail-credit-association.PDF>. ARCA has also separated attached as **Annexure B** to this response its most recent submission to the Privacy Act Review dated 10 January 2022 (noting that this submission again raises the same issue with the exclusion of Part IIIA from the terms of reference of the review).

	<p>This same drafting approach remains appropriate in 2022, as it continues to reflect the overall operation of Part IIIA. ARCA’s view is that any overhaul of the approach to drafting in the CR Code can only occur in conjunction with an overhaul of Part IIIA (noting again that this could be considered as part of the 2024 Part IIIA review).</p> <p>ARCA would note, as a minor improvement to the drafting, that references in the ‘Source Notes’ column to the ‘pre-reform code’ could now be removed, reflecting the significant passage of time since reform.</p> <p>Otherwise, ARCA considers that concerns about clarity and readability of the CR Code may be better addressed through the use of resources which assist consumers, and consumer representatives, to understand the legal framework for credit reporting (that is, including Part IIIA, the Privacy Regulations and the CR Code). ARCA, through CreditSmart (www.creditsmart.org.au), has sought to develop such resources including factsheets which explain topics including the contents of a credit report (for example: https://www.creditsmart.org.au/assets/Uploads/Sample-credit-report.pdf) and how to seek a correction of information on a credit report (https://www.creditsmart.org.au/consultant-resources/fixing-credit-report-errors/). Annexure D to this response also includes a sample of current CreditSmart resources which are provided to consumer-facing CP staff and financial counsellors. This material seeks to present the intricacies of the credit reporting system in a manner which is easy-to-understand and navigate.</p> <p>Finally, where further clarity on the interpretation and application of the CR Code (alongside Part IIIA) is required, ARCA considers that it may be more appropriate that guidance is developed, rather than additional provisions (which are more explanatory in nature, rather than operative) being included in the CR Code.</p> <p>Pursuant to section 28 of the Privacy Act, the Information Commissioner has a guidance related function to promote an acceptance and understanding of the Part IIIA and the CR Code. We note, to date, the OAIC has not sought to develop any such guidance material. Separate to this, ARCA Members have also identified a desire for ARCA to develop guideline material on a range of credit reporting related matters. The intent is that such guideline material would be developed in a manner similar to the CR Code itself, that is, allowing for a fulsome consultation process and reflecting various stakeholder views. While such industry-developed guidelines will not have the same status</p>
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		as Commissioner-developed guidance, they could still provide a useful resource for various participants.
5	Are there any CR Code provisions that are open to interpretation or prone to misinterpretation? Which provisions and how could they be improved?	<p>It is ARCA's view that the CR Code provisions are generally well understood and interpreted and applied consistently by participants. Like questions concerning the operation of the broader Part IIIA, ARCA's experience is that questions of interpretation of the CR Code provisions will still arise from time to time through industry forums such as ARCA Member groups, through external dispute resolution (EDR) cases, or through consumer advocate experiences. ARCA has found that regular robust engagement among all stakeholders is a useful approach to discussing and resolving interpretation.</p> <p>ARCA has only identified one CR Code provision which ought to be improved, to ensure it is consistent with legal interpretation.</p> <p>Paragraph 13.1(b) of the CR Code currently provides that, as a condition to reporting a transfer event, an original CP must have notified the individual of the transfer event.</p> <p>However, the debt assignment provisions in the various state Property Law legislation are silent as to whether a notice of assignment must be given by the original CP or the acquirer CP. This is reflected in the recent update to the Australian Security and Investment Commission's (ASIC's) Debt Collection Guideline which provides (at page 25): "Where the original creditor sells or assigns the debt, the debtor must be informed of this through express notice in writing. Under state-based property laws, this can be given by either the original creditor or debt purchaser".</p> <p>On this basis, paragraph 13.1(b) ought to be amended to provide that either the original or acquirer CP must have notified the individual of the transfer event.</p>
6	What has been the effect of mandatory CCR on compliance with the CR Code?	<p>Mandatory CCR legislation has required mandated CPs to supply mandatory credit information for their consumer credit accounts, subject to limited exceptions. This contrasts with the operation of Part IIIA and the CR code, which enables data supply (a series of 'can' provisions) but critically does not mandate it.</p> <p>Tension between the mandatory supply requirements, and the permissive nature of the Part IIIA/ CR Code framework arises where there is uncertainty as to whether or not particular information can be disclosed.</p>

Guarantor CCLI

A good example of this is the supply of consumer credit liability information (CCLI) for guarantors. The definition of CCLI in section 6(1) of the Act includes the terms and conditions of the consumer credit. This is expanded upon in regulation 6 of the Privacy Regulation 2013 which provides terms and conditions include “whether the individual is a guarantor to another individual in relation to the other individual’s credit”. ARCA has identified in correspondence to the OAIC dated June 2019 considerable uncertainty as to how these provisions ought to be interpreted, and what information (if any) can be disclosed on a guarantor’s credit report in respect to credit which that individual has guaranteed.

This uncertainty has been exacerbated by the Mandatory CCR legislation for the simple reason that, if guarantor CCLI can be disclosed on a guarantor’s credit report, then a mandated CP is compelled to disclose it.

ARCA’s view is that the uncertainty in respect to reporting of guarantor CCLI ought to be resolved on the basis that CCLI about credit guaranteed by an individual (but for which the individual is not the borrower) should not be disclosed on the guarantor’s credit report. There are a number of reasons for this approach:

- The wording in the Privacy Regulation lacks clarity and its application is uncertain. ARCA has reviewed the background drafting material, and further sought guidance from the Attorney General’s Department (AGD) on the intended application of this wording, and neither the drafting material nor the AGD has been able to shed further light on this.
- Information about guaranteed credit does little to aid assessment of an individual’s creditworthiness. To begin, the available CCLI would identify information about the borrower’s credit, but not information specific to the guarantee. For instance, the guaranteed amount may differ to the credit limit, but there is no means to disclose the actual guaranteed amount (and therefore, to differentiate between the two). Furthermore, the guarantee may be in place for a time period far shorter than the overall loan term but again, the length of the guarantee is not able to be disclosed (although the loan term is).
- A guarantee is a contingent liability, and will only become an actionable liability where there has been a default under the credit. Information about the existence of a guarantee without a

		<p>better understanding of the state of the underlying loan does little to help assess the likelihood of the guarantee being called upon. The borrower’s repayment history information cannot be disclosed on the guarantor’s credit report, as this information is disclosable only in respect to the borrower.</p> <ul style="list-style-type: none"> • Default information can be disclosed for a guarantor, per section 6Q(2). Arguably, this provides the best insight into the guarantor’s actionable liability, given the default information will only be disclosed where the guarantee has been called upon, and the guarantor has failed to adhere to the payment obligations under the guarantee. <p>Noting this position, the question for the CR Code review is the extent to which the CR Code can resolve the current uncertainty in respect to guarantor CCLI. The definition of CCLI in section 6(1) provides that, in respect to the terms and conditions of consumer credit, these relate to the repayment of the amount and are prescribed by the regulations. Given the issues with guarantor CCLI concern the wording in regulation 6, it is suggested that the resolution of these issues could be achieved with the removal of “whether the individual is a guarantor to another individual in relation to the other individual’s credit”. Otherwise, once that has occurred, the CR Code could include specific provision the effect of which is to provide that, in terms of information permitted to be disclosed in respect to credit guaranteed by an individual, the only permitted disclosure is guarantor default information or an information request (under section 20F, Item 3 and 21K).</p> <p>Negotiated settlements</p> <p>ARCA notes that the issue of credit reporting obligations impacting negotiated settlements was raised in the 2017 CR Code review (issue 13), although no recommendation was made in respect to this issue beyond the need for further consideration.</p> <p>ARCA notes that this issue concerns the interplay of differing legal obligations. On one hand, a CP will be subject to obligations under the National Consumer Credit Protection Act (NCCP Act) in respect to its lending decisions, and appropriate remediation (where there has been a failure to meet those obligations). On the other hand, a CP is obliged to meet its obligations under Part IIIA and the CR Code when it comes to the disclosure of credit information, noting the overriding obligation of data accuracy, completeness and currency.</p>
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7	<p>Are there inconsistencies between CCR requirements and CR Code requirements that could be addressed via an amendment to the CR Code? How could the CR Code be amended in this context?</p>	<p>See the discussion in response to question 6 above.</p>
8	<p>How might the CR Code need to be updated to accommodate other entities?</p>	<p>ARCA’s view is that this review process provides a timely opportunity to consider the application of both Part IIIA and the CR Code to other entities. While the credit reporting system has ostensibly been designed to apply to a broad range of ‘credit providers’, the adequacy of its application to different types of credit providers will often only be assessed where these credit providers commence or increase their participation in the credit reporting system.</p> <p>Telecommunication and utilities companies</p> <p>Telecommunication and utilities companies are restricted in their participation in comprehensive credit reporting (CCR). As non-Australian Credit Licensee (ACL) holders, they are unable to access</p>

	<p>and disclose repayment history information (RHI), however they can access and disclose consumer credit liability information (CCLI). Optus is the first telecommunications company to participate in the CCR data exchange, commencing participation in October 2021. No utility company has commenced participation in the CCR data exchange to date.</p> <p>The participation of Optus provides an opportunity to consider the adequacy of the application of existing CCLI disclosures to the telecommunications sector. For instance, in the telecommunications sector, account open and closure appear to align more to connection and disconnection of service (noting that multiple credit contracts may exist in the relationship between telecommunications company and provider, but the overall account may continue to operate through to the time of disconnection). It is unclear whether the existing account open and account close definitions within paragraph 6 of the CR Code accurately reflect the operation of telecommunication accounts.</p> <p>Furthermore, at present credit limit for telecommunication credit is reported as 'not applicable'. It is unclear whether a credit limit can readily be discerned for telecommunication credit, and, if so, whether the credit limit categories in paragraph 6 of the CR Code may need to be reviewed to ensure they adequately reflect the operation of telecommunication credit.</p> <p>Finally, the reporting of credit term for telecommunication credit may require further clarity, as noted above, it is possible that an individual may have multiple contracts which 'roll-over', however the underlying credit remains continuous during this period.</p> <p>Buy Now, Pay Later (BNPL) companies</p> <p>BNPL credit has been a recent development in the financial services industry. Because BNPL is generally not regulated by the National Credit Code, there seems to be a view that it is not credit and therefore cannot be reported through the credit reporting system. However, BNPL credit meets the Privacy Act definition and, as such, BNPL can be (and is being) reported through the credit reporting system.</p> <p>The Australian Credit Reporting Data Standard (ACRDS), which is the input data standard for credit reporting, has been amended to allow for the reporting of two types of BNPL accounts – the BNPL Facility account, and the BNPL Transaction account. The BNPL Facility account tends to operate in a</p>
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	<p>manner similar to traditional revolving credit facilities, with a single credit limit. However, BNPL Transaction accounts differ to traditional credit as the ‘credit’ is in respect to the transaction itself. While the customer may have an overall account with the BNPL provider, there is no credit advanced under that account.</p> <p>ARCA considers that one of the challenges of reporting BNPL Transaction accounts may simply be the appearance of the multitude of transactions, and how to ensure the number of transactions does not overwhelm a consumer accessing their credit report, nor confound a CP seeking to assess that consumer’s creditworthiness. In that regard, ARCA considers that this issue can largely be addressed by industry – given it is a matter of appearance, which is something that can be managed by the CRBs.</p> <p>That said, it may also be that either Part IIIA or the CR Code could be amended to better facilitate the reporting of BNPL Transaction accounts, for instance, by enabling the reporting of ‘grouped’ credit, where a series of credit are in fact a number of transactions which relate to the same overall credit relationship between CP and consumer, rather than distinct and unrelated credit.</p> <p>More broadly, ARCA considers there is merit in reviewing the existing credit limit categories in paragraph 6 to ensure they adequately reflect the operation of BNPL credit. For instance, BNPL credit often includes no interest charges, although BNPL credit may impose fees, such as facility fees or late payment fees. BNPL transaction credit will also usually require a series of weekly or fortnightly payments over a short term, between 4 to 10 weeks in length (though there are BNPL offerings with payment terms up to 60 months). The existing credit limit categories may require a CP to update the limit in accordance with the payment schedule multiple times within a short timeframe, which is likely to be impractical. Consideration ought to be given to whether the CR Code ought to provide an alternative means of reporting credit limit, for instance, the transaction amount.</p> <p>Participation in the credit reporting system by non-ACL entities and entities not bound by responsible lending</p> <p>ARCA is strongly of the view that the restriction on access and disclosure of RHI to ACL-holders requires review, although it is noted that this restriction appears in Part IIIA, not the CR Code. As</p>
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		<p>such, it is a matter for the Part IIIA review (or otherwise, for regulation under the Privacy Regulations) rather than within the scope of this CR Code review.</p> <p>ARCA’s policy position has consistently been that access and disclosure of RHI ought to be available to all credit providers, including telecommunication companies and utilities, as well as entities such as BNPL-providers who may not hold an ACL. There are clear benefits which flow both to industry and consumers from broadening the operation of CCR, not least of which is the ability for ‘new to credit’ customers to demonstrate their creditworthiness to potential lenders. For consumers, it is also inconsistent to have RHI reported by ACL holding BNPL providers but not for BNPL accounts held with providers not holding an ACL.</p> <p>Facilitating an improvement in credit decisions through this additional data from non-ACL holding entities will, in turn, promote competition between credit providers. The flow-on effects of improved competition include better pricing, and ultimately improved consumer choice.</p> <p>To be clear, ARCA’s view is that the link between responsible lending obligations and participation in the CCR data exchange merits reconsideration. Simply because a CP provides credit which isn’t regulated by the National Consumer Credit Code, does not mean that they should be unable to access and disclose payment information which would otherwise enable them to make credit decisions which are better for consumers and industry. Both Part IIIA and the CR Code also contain a range of restrictions on how CPs use RHI, which should be sufficient to alleviate concerns about the extension of participation to a greater range of CPs.</p>
9	<p>Is the current process for developing variations to the registered CR Code appropriate?</p>	<p>ARCA considers the current process for developing variations to the registered CR Code is appropriate.</p> <p>The Privacy Act establishes the role of the code developer, with the Information Commissioner maintaining oversight of the CR Code itself by its ability to approve a CR Code or a variation application to the CR Code, as well as its ongoing monitoring and governance role. The OAIC published its Guidelines for Developing Codes in 2013 to aid the process of code development and variation.</p> <p>By adopting this model, particularly when applied to a technical area such as credit reporting, it ensures that the CR Code is then developed and varied by a code developer who has the necessary</p>

		<p>technical expertise and knowledge of the credit reporting system. The code development process also includes consultation requirements, which ensure that the impact of any variations to the CR Code are assessed against feedback received from a range of stakeholders. As mentioned earlier, ultimately it is the OAIC that approves the CR Code and is responsible for enforcing compliance, not the code developer.</p> <p>ARCA has acted as the code developer for the registration version of the CR Code in 2014, and has acted as code developer for all variations to the CR Code to date (an initial variation in 2014, variations in response to the first review of the CR Code in 2018 and 2019, and most recently variations to support the hardship legislation in 2021/ 2022). It is open to the OAIC to appoint any entity as code developer.</p> <p>As noted earlier, ARCA's view is that whoever is appointed must have deep technical knowledge and expertise in credit reporting matters. They also need a current and up-to-date understanding of the issues impacting individuals and organisations when interacting with the CR Code, which they could gain through regular and on-going dialogue with industry participants and industry associations, consumer advocates, EDR schemes, government and regulatory bodies such as the ASIC and the Australian Competition and Consumer Commission (ACCC).</p>
10	Should additional compliance monitoring and governance arrangements be stipulated in the CR Code?	<p>ARCA's view is that the compliance, monitoring and governance arrangements stipulated in the CR Code are adequate. When the CR Code was initially developed, consideration had been given to independent code governance. However, this suggestion was not adopted on the basis it did not appear necessary because it would duplicate the role of the OAIC. This decision appears to have been sound. By and large, the CR Code has been effective in its operation, and ARCA is unaware of any significant compliance issues which have identified systemic issues of non-compliance with the CR Code.</p> <p>Separately, in considering the role of the OAIC, ARCA has concerns with resources available to the OAIC to undertake proactive monitoring and enforcement activities, although it is noted that OAIC resourcing and funding has been an issue identified through the current Privacy Act Review. In that regard, ARCA notes that its recent submission in response to the Privacy Act Review Discussion Paper has been supportive of improving funding and resourcing of the OAIC, including through the use of an industry levy (see Annexure B).</p>

11	Do industry and individuals have access to the information they need to understand and/or apply the Code in practice? If not, what amendments could be made to the CR Code to improve this?	<p>ARCA has been actively engaged in industry and consumer education around the credit reporting system for many years. We recognise that access to relevant, clear and accurate information about the operation of credit reporting is critical. In terms of the CR Code itself, our view is that while it should be a key resource and reference point for information about credit reporting, it is not the primary vehicle through which information would be delivered, especially to consumers.</p> <p>The main reasons for our view are as follows:</p> <ul style="list-style-type: none"> • As we have highlighted in response to question 4 above, the CR Code is a legislative instrument which provides operative effect to the provisions of Part IIIA. It would be challenging for any document that has the same standing as legislation to be drafted in the same manner as something drafted for information or education. • The CR Code has a variety of provisions affecting different categories of industry participants and individual consumers – it would be hard to draft it in a manner that spoke to only one audience without impacting the needs of other audiences. • Our experience with consumer education is that the context and timing of consumer engagement with credit reporting increases the challenges for the CR Code to be the vehicle for delivering information or education. In relation to context and timing, consumers usually engage with credit reporting only when it becomes necessary (e.g. they are about to apply for, or have just been declined for a loan), and then they are only interested in finding information directly relevant to their circumstances at the time. • Further, we would also observe that trying to mandate further disclosures or information provision to consumers through the CR Code is unlikely to achieve a goal of improving consumer awareness or understanding. While not specifically focused on credit reporting, recent CHOICE research found 72% of consumers never or rarely read privacy policies seeking consent – partly because of the length of disclosures required and the complicated nature of the disclosures. • In addition, recent research conducted by YouGov on behalf of CreditSmart in December 2021 emphasised that the consumers are still unaware of the basics of credit reporting. For instance: <ul style="list-style-type: none"> ○ 52% of Australians have never checked their credit report. ○ Awareness around repayment history information overall remains low as only 25% indicated that a credit report includes a 24-month breakdown of account payment
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		<p>history or that it shows if one has made payment on their recent home loan (29%) or credit card (35%) accounts.</p> <ul style="list-style-type: none"> ○ Overall, one in four (26%) Australians are unsure what types of information are included in a credit report, with a significant proportion of people wrongly assuming annual income (28%) and the balance of your savings account (21%) are included. ○ Australians are most likely to seek advice from their bank, credit provider/lender (40%) and financial advisors and financial counsellors (43%) about credit health or improving their credit health information, followed by friends/family (19%). <p>Hence, while the CR Code should be written in plain English, we consider that the Code should not be the primary vehicle for providing information and education on its operation. We also consider that building greater consumer awareness and understanding should start with educating consumers about the basics of credit reporting before seeking to build further knowledge about the specific operation of the CR Code.</p> <p>We refer again to our response to question 4, and the sample educational material provided as part of that response.</p> <p>ARCA's experience is that the provision of information and education around credit reporting needs to be:</p> <ul style="list-style-type: none"> • Readily accessible e.g. a consumer focused website such as CreditSmart (www.creditsmart.org.au) which delivers relevant information focused around the types of questions and issues consumers most frequently experience • Multi-channel e.g. all stakeholders must play a role and deliver consistent information including individual CPs, consumer advocates, financial advisers and intermediaries (brokers) etc. Within CPs, information and education cannot be assumed to be delivered to their customers though privacy notices, but also delivered though other touchpoints including CP websites, call centres, statements, social media etc. • Context and timing specific – given consumers engage with credit reporting when they have a specific issue/need, it is important that any information provided at that time is as contextually specific to that issue or need as possible – providing general information across a wide range of topics will likely lessen the value of the information provided.
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12	<p>Are the provisions on credit reporting agreements, audits, training and policies appropriate? Should they be amended in any way? If yes, how?</p>	<p>ARCA's view is that the provisions on credit reporting agreements, audits, training and policies are appropriate, and no specific amendments are required to these provisions.</p>
13	<p>Are provisions related to internal practices and recordkeeping appropriate? Should they be amended in any way? If yes, how?</p>	<p>ARCA notes an issue has been raised in respect to CRB recordkeeping requirements, which concerns data input files.</p> <p>In particular, an issue has arisen as to how data retention and destruction operates in terms of the practical operation of a CRB. When credit information is disclosed by a CP to a CRB, it will be contained within a data input file. That data input file will often contain multiple records for particular accounts (i.e. a mixture of different types of credit information, all with different retention dates). A CRB will extract information contained in a data input file, and the extracted information then forms part of the CRB database (where it is managed and destroyed at the end of the relevant retention period).</p> <p>However, the data input file will still exist as a record for the CRB. It provides evidence of actual disclosure of credit information, and may be highly relevant to any dispute which later arises in respect to data. CRBs will store data input files in a separate database. Because the data input file represents a 'mix' of data, there is no practical way to destroy these files upon certain elements of that data reaching a retention period (destroying some data will effectively destroy the entire file, even though other elements of the data input file will still be within the retention date).</p>

		<p>To be clear, it is highly problematic to remove certain types of data contained in a particular file, whilst retaining other types of data that have a different retention period. A CRB's ability to respond to certain queries including correction requests and complaints would also be hampered, if not entirely compromised.</p> <p>It does not appear that issues with data input files were understood at the time of drafting of the Privacy Act or CR Code retention period/ destruction requirements. It would be useful to understand whether clarification on this aspect of CRB operation is a matter which may be dealt with as part of the CR Code. In particular, it would be useful if the CR Code could provide a limited exemption for data input files from retention period/ destruction requirements.</p>
14	<p>Are the CCLI provisions appropriate? Should the CCLI provisions contained in paragraph 6 be amended in any way? If yes, how?</p>	<p>Broadly, ARCA's view is that the CCLI provisions are appropriate, and play an important role in promoting consistent use of CCLI datasets. ARCA is aware of a handful of issues with the CCLI provisions, discussion of which is set out below.</p> <p>Account open date</p> <p>ARCA notes there is concern that, when identifying the account open date, there may be a gap between the day that credit is unconditionally approved, and the day that the CP generates a consumer credit account within its credit management system. It is noted that such a delay between the two separate events was contemplated when the change to this definition was made in April 2019.</p> <p>However, we are now aware of some limited circumstances where the gap between unconditional approval and account generation may be weeks, and even months. This will depend on the CP and their processes, but tends to impact home loan or construction loan accounts. The approach in those circumstances will be that the account open date will be the day when the credit is both unconditionally approved, and the account has been generated (so the later of the two dates, when both of these factors are satisfied).</p> <p>ARCA's view is that there is little that can be done to address this issue. Requiring the account open date to both reflect the unconditional approval and account system generation remains important – as this is consistent with when the consumer will understand the account to be open. If unconditional</p>

	<p>approval alone was the factor to be satisfied it would mean that consumers would have accounts reported as open on their credit file, yet the account documentation provided by the CP will reflect the later date (and indeed no payment obligations will arise until account system generation). The potential consumer confusion could generate unnecessary disputes. Moreover, given the circumstances where lengthier gaps arise is limited, there may be little benefit in changing the definition to address this issue.</p> <p>Debt buyers submitting CCLI for inactive credit accounts</p> <p>ARCA notes the intention of the account close definition is that, where credit has been charged off by a CP but a debt remains outstanding, that credit will be reported as closed. In that regard, the different categories of account close were not intended to operate in an optional manner (that is, enabling a CP to charge off credit but not report it as closed until the debt was repaid in full). For this reason, ARCA would support amendment to the CR Code which limits the ability to ‘pick and choose’ how account close date is reported. ARCA’s view is that such an amendment will prevent a debt buyer submitting CCLI for an account which has been charged off, given that the original CP would have been obliged to report that account as closed at the time of charge off.</p> <p>Guarantor CCLI</p> <p>ARCA’s response to this issue is set out in the response to question 6 above.</p> <p>Historic CCLI</p> <p>ARCA notes that whether or not it is permitted under Part IIIA for CCLI disclosures to include both the previous and current CCLI held and disclosed for the credit is unclear. ARCA considers the CR Code could provide this clarity. In that regard, ARCA’s view is that there is merit in enabling CCLI to include both previous and current CCLI for categories such as credit limit, the name of the CP and possibly changes to certain terms and conditions (for instance, reflecting that credit has changed from ‘principal and interest’ to ‘interest only’ and vice versa).</p> <p>Understanding how a credit limit or term and condition has changed (for instance, whether there has been a significant increase or decrease in limit) provides a better ability for a CP to assess a</p>
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		<p>consumer’s creditworthiness. Furthermore, for a dataset such as name of CP, for debt purchase scenarios, there will be consumer benefit in being able to easily link original CP to an acquiring CP.</p> <p>Enabling the reporting of a historic dataset would, however, need to consider a range of technical challenges. For instance, for credit limit in particular it would need to be determined how many previous datasets could be reported (for credit with an amortised payment schedule, the first limit and the current limit may suffice, however, for revolving credit, there may be value in the most recent previous limit, and the current limit – or even enabling reporting of all previous limits). Furthermore, given many CPs may not currently store previous limits to enable reporting of this information, this capability may need to be developed. For this reason, reporting of this type of information should be optional (although acknowledging that whether or not information ought to be contributed is a matter for the industry framework, rather than the CR Code).</p>
15	<p>Are the definitions / interpretations contained in paragraph 6 appropriate? Should they be amended in any way? If yes, how?</p>	<p>See the discussion in response to question 14 above.</p>
16	<p>Are the RHI provisions appropriate? Should RHI provisions contained in paragraph 8 be amended in any way? If yes, how?</p>	<p>The RHI provisions, while complex, remain appropriate and do not require significant amendment.</p> <p>RHI and monthly reporting</p> <p>The RHI ‘month’ definition (contained in paragraph 1.2 of the CR Code) enables the RHI month either to be based on calendar month, or on corresponding dates across two months (for instance, between the 14th day of month 1 and the 13th date of month 2). A minor amendment in 2018 resulted in a change to the month definition to allow a month to be lengthened to allow for situations where a month ends on a non-business day.</p> <p>Since that time, ARCA has undertaken considerable work with its Members to better understand how RHI reporting has been implemented. In doing so, ARCA has identified that some technical issues remain with determining the RHI ‘month’. The ‘month’ definition only enables a CP to lengthen the month when the last day of the month is a non-business day, otherwise the end of the month</p>

	<p>must move forward. This is problematic for example, where a CP may elect to determine its payment due date based on the 31st, and as such, align its RHI month to being the 1st to the 31st of each month. However, it is not clear what would happen to the RHI month where there was no 31st of the month, but instead the month ended on the 28th or 29th (February), or the 30th (April, June, September, November).</p> <p>In short, the RHI ‘month’ would only align to the month definition for the month ending in the 31st, where the month is shorter (and there is no 31st), it is unclear how the month could be determined (and further what that would then mean for the proceeding month, i.e. if the month was shifted from 1st to the 31st of January, to 1st February to 1st March, then would the third month then have to run from 2nd March to 31st March?).</p> <p>It should be stressed that technical issues of this type are relatively limited, and will depend both on the type of CP product, and RHI reporting approach applied by the CP. Nonetheless, to ensure these issues are addressed there may be merit in some minor changes to the CR Code to allow CPs to apply a level of flexibility when setting, or re-setting the RHI month.</p> <p>RHI and corrections</p> <p>ARCA notes that the proposed hardship variation to the CR Code includes an ability to backdate RHI and financial hardship information (proposed paragraph 8A.1(d)). We consider that this provision is likely to assist in many of the instances where a consumer experiencing (or having experienced) domestic abuse requires previously-disclosed RHI to be corrected.</p> <p>ARCA would otherwise support enabling the correction of RHI where it can be established that the consumer was unable to meet the payment obligation (reflected in RHI that was then disclosed), in circumstances beyond their control. Like the current paragraph 20.5, we would suggest that this provision be limited to circumstances such as those listed in paragraph 20.5, and could also include domestic abuse. It should also be noted that, unless a consumer can establish that the payment obligation was met (for instance, a bank processing error prevented a payment being recorded), then RHI may be unable to be corrected to reflect payment being made. The correction may instead reflect the non-reporting or suppression of RHI.</p>
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		<p>RHI notification</p> <p>ARCA notes that this issue was raised as part of the 2017 CR Code review and ultimately it was concluded that it was an issue outside the scope of the CR Code (as a matter for possible Part IIIA reform).</p> <p>ARCA’s view is that the position from 2017 does not appear to have changed. Furthermore, the notification requirements apply to default information and serious credit infringements because these are ‘one off’ events, which are clearly understood as negative information impacting assessment of an individual’s creditworthiness. By contrast, RHI is an ongoing monthly dataset, reflecting individual’s account behaviour (and compliance or non-compliance with payment obligations is already reflected in account statements and payment reminders). Overlaying an additional notification requirement for RHI is unnecessary and inconsistent with the operation of RHI as a dataset (distinct from default information and serious credit infringements). Furthermore, ARCA considers that overwhelming a consumer with notifications may achieve little in terms of overall consumer understanding and awareness. In this regard, we refer again to the comments made in respect to question 11 above.</p>
17	<p>Are the default information and payment information provisions appropriate? Should the provisions contained in paragraphs 9 and 10 be updated in any way? If yes, how?</p>	<p>ARCA notes that the default information provisions, in particular, were a key improvement introduced by the original CR Code. The strict requirements for consumer notification and timeframes have played a key role in improving overall industry compliance with reporting of these datasets. These provisions remain appropriate, and we have not identified any specific changes which are required.</p> <p>We do wish to draw the reviewer’s attention to an issue with default reporting under Part IIIA, raised as part of the 2017 review (as issues 10 and 20) which concerns the lack of a single ‘default date’ under Part IIIA. This issue identified that a default may be identified by a series of dates – either disclosure by CP or collection by CRB – and that this can be compounded where a CP discloses default information to multiple CRBs (particularly where there is a time gap between those disclosures). This issue remains unresolved, and we intend to raise it as part of the 2024 Part IIIA review.</p> <p>Otherwise, in terms of the issues raised in the consultation paper, our comments are reflected below.</p>

	<p>Statute barred debts</p> <p>ARCA highlights that paragraph 20.6 of the CR Code already imposes a correction obligation on a CRB to destroy default information for a statute barred debt. The consultation paper does not refer to this provision, nor identify whether there is any issue of non-compliance with this requirement.</p> <p>ARCA understands that the numbers of defaults which are required to be removed on the grounds that they are statute barred are limited. Imposing a positive obligation on a CP to request removal will introduce a stringent compliance requirement, in circumstances where it is unclear that there is a significant issue or non-compliance with the existing provision. On this basis, ARCA would not support further amendment.</p> <p>Default timing</p> <p>ARCA notes that Part IIIA and the CR Code enable the reporting of different information types, but do not mandate contribution of that information. Industry separately developed the Principles of Reciprocity and Data Exchange (PRDE) to support the contribution of information and, subsequently, mandatory CCR has mandated contribution for eligible licensees (currently the four major banks).</p> <p>One of the provisions of the PRDE requires the contribution of default information within a reasonable timeframe of an account falling due. Similar provision is included in the mandatory supply requirements under the National Consumer Credit Protection Act (see, for example, section 133CU).</p> <p>ARCA does not support the suggestion to include such provision within the CR Code on the basis that this is outside the scope of the CR Code.</p> <p>Standalone section 21D notices</p> <p>ARCA notes that it is unclear the circumstances in which section 21D notices may be combined with other notices. For instance, a section 88 notice under the NCC may be combined with a section 6Q notice under the Privacy Act, given both are required as a notification where an individual has failed</p>
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		<p>to meet a payment obligation. However, the section 21D notice will be the subsequent notice given where the failure has not been rectified, and the CP provides one final opportunity to a consumer before proceeding to disclose default information with a CRB. The section 21D notice is likely to be a standalone notice, simply as a matter of practice.</p> <p>That said, without understanding in greater detail the issue sought to be addressed, it is unclear whether amendment to the CR Code is required.</p> <p>New arrangement information</p> <p>ARCA notes that feedback from Members indicates that new arrangement information has become a largely redundant dataset. It is technically complex to report new arrangement information, given it will not 'match' default information reported, but will instead be retained for only two years from disclosure of default information. In circumstances where there is a gap between disclosure of the default information and formation of the new arrangement, this may mean the disclosure only occurs for a short period, or not at all.</p> <p>On this basis, the PRDE (the industry rules for contribution of credit information) are in the process of being amended to remove new arrangement information as a contribution requirement. While signatories may continue to disclose this dataset, it will no longer be a requirement that they do so. Similarly, the mandatory supply requirements as part of the mandatory CCR legislation may need to be reviewed to consider whether this approach ought to apply to mandated CPs.</p> <p>It is ARCA's view that any amendment to the CR Code to include provisions dealing with new arrangement information will have limited value, given the shift away from the disclosure or use of this dataset.</p> <p>Economic abuse</p> <p>ARCA refers to its answer to question 25 below.</p>
18	Are the provisions regulating use of publicly available information appropriate? Should	Two concerns have been identified with this provision since its commencement. Firstly, a question has been raised as to the commencement date for the variations to paragraph 11. That is, does the variation to paragraph 11 only apply after 14 February 2020 (and not impact credit reporting

	<p>they be amended in any way? If yes, how? Is the meaning of publicly available information adequately clear?</p>	<p>information already held by a CRB), or does it apply, from commencement, to all credit reporting information already held by a CRB?</p> <p>Secondly, AFCA have raised a question about judgments which appear to neither meet the definition of ‘court proceedings information’ nor the exclusions in paragraph 11.2 of the CR Code (insurance judgments where the individual’s rights have been subrogated and any judgment or proceedings that is otherwise unrelated to credit). For example, judgments for payment of rates. It is suggested that further clarification might be needed in the CR Code to identify where a judgment or proceedings neither meets the definition of court proceedings information nor publicly available information.</p> <p>ARCA Members support an approach where a judgment which meets the definition of publicly available information, but does not otherwise meet the definition of court proceedings information, is deemed to meet the requirements under paragraph 11, provided it is established that they have a bearing on the assessment of an individual’s creditworthiness. ARCA has previously prepared the attached note (Annexure E) setting out how a judgment could be determined as relevant to an individual’s creditworthiness.</p>
19	<p>Are the provisions on serious credit infringements appropriate? Should they be amended in any way? If yes, how?</p>	<p>ARCA notes that serious credit infringements (SCIs) are no longer disclosed by CPs, with the most recent CRB website reports for each of the three CRBs reflecting no SCIs disclosed for the previous 12 months.</p> <p>ARCA does not support any amendment to the SCI provisions.</p>
20	<p>Are the provisions regulating how individuals are notified that their information will be provided to a CRB appropriate? Should they be amended in any way? If yes, how?</p>	<p>ARCA considers that the notification provisions are appropriate. We note the provisions in paragraph 4 were considered at length when the CR Code was first drafted, and feedback from our Members indicates that the list of relevant notification matters is sufficiently comprehensive.</p> <p>We have highlighted in our response to question 30 below some concerns about information requests (known more commonly as ‘credit enquiries’), which will often coincide with the relevant notification being provided to the individual. Where an individual seeks a correction request to remove the disclosure of this information request, the basis for this request is often that the consumer did not consent to the credit enquiry. However, an information request occurs with</p>

		notification to the consumer; consent is not a requirement. Given the level of misunderstanding of this requirement, we consider there may be benefit in making it explicit within the CR Code that credit enquiries only require notification to an individual but do not require consent from the individual.
21	Are the protections for victims of fraud appropriate? Should the provisions contained in paragraph 17 be updated in any way? If yes, how?	<p>ARCA notes the consultation paper raises a number of issues with ban periods and processes which will require amendment to the Privacy Act to resolve. While we do not disagree with this assessment, we do note that our Members are cognisant of the need to ensure the credit reporting system is robust and responsive to appropriate fraud protections (given identity fraud in particular impacts both the individual but also the credit provider who may lose considerable funds, with limited recovery available).</p> <p>While the 21-day initial ban period is the minimum requirement in the Privacy Act, CRBs have indicated they would be supportive of exploring changes to this time period including consideration of a longer initial period which would then be co-ordinated across the CRBs. An alternative approach would be to maintain the 21-day initial period, but perhaps have a consistent time period apply across CRBs for a ban period extension. In this regard, we note that Equifax have internal analysis which shows that more than 70 percent of people do not seek a further extension beyond 21 days. It is clear that further work still needs to be done to understand how bans could better meet the needs of consumers dealing with complex or protracted identity theft or fraud.</p> <p>ARCA's view is that, given the CR Code can impose additional requirements (so long as these are not inconsistent with Part IIIA, per section 26P(3)), such amendment could be made to the CR Code in the absence of amendment to the Privacy Act. Such potential amendments to the CR Code would both maintain the appropriate balance between privacy protections, and use of credit-related personal information, as well as recognising the ongoing prevalence of identity theft and fraud (and the sad reality that resolution of these issues within a 21-day period may not be possible for some consumers).</p> <p>It should be noted that introducing changes to ban periods should, however, seek to avoid situations where consumers implement indefinite, or extremely lengthy, ban periods. Ban periods should be used as a means to limit fraud, but not as a means to restrict credit providers from relying on the credit reporting system only with the individual's consent. For instance, it would be critical to avoid a</p>

		<p>situation whereby a consumer (in the absence of any fraud) who was at significant risk of default placed a ban on their credit report to prevent a credit provider receiving an alert.</p> <p>Regarding the burden of proof for demonstrating fraud, we would note that the challenge for CRBs and CPs in cases of identity theft is often establishing that the individual claiming identify theft is the victim (and not the fraudster, seeking to change account credentials to block the true account holder from control of the credit). As such, it is important that some measure exists to ensure the person alleging fraud is legitimate. CRBs, in particular, have indicated that they do not consider the current requirements of proof are onerous.</p>
22	Should there be further obligations on CRBs to alert individuals of enquiries received on a credit report during a ban period?	<p>ARCA notes that during a ban period a CRB is unable to disclose credit reporting information. As such any enquiry made will be automatically rejected (unless the individual has expressly consented to the disclosure of credit reporting information). It is unclear whether alerts would play any role to assist the individual to monitor efforts by the fraudster to access their credit report – given it does not appear that there would be any credit enquiry recorded to alert to the individual.</p> <p>In the absence of a clear understanding of the role that alerts could play to assist victims of fraud, ARCA does not support including any further obligations in the CR Code.</p>
23	Are the existing direct marketing provisions appropriate? Should they be amended in any way? If yes, how?	ARCA considers the existing direct marketing provisions are appropriate, and is unaware of any issues in respect to the operation of these provisions.
24	Are the access provisions appropriate? Should the provisions in paragraph 19 be updated in any way? If yes, how?	<p>ARCA notes broadly the access provisions are appropriate, and notes that these provisions are subject to proposed variation as part of the current hardship CR Code variation.</p> <p>We do consider that these provisions could however be enhanced, including through reforms to create a legal framework for soft enquiries.</p> <p>Soft enquiries</p> <p>The use of soft enquiries is well-established in a number of overseas jurisdictions (including the United Kingdom and New Zealand) as a means by which consumers can allow a potential lender to</p>

	<p>access their credit report without that access than being a recorded enquiry. These so-called soft enquiries occur predominantly as a precursor to a formal credit application (where a 'hard' enquiry will be recorded) and enable a consumer to understand terms of credit offered by a CP, before electing to apply for credit.</p> <p>Within Australia, information requests are recorded as 'hard enquiries'. We understand that consumers seeking the equivalent of a soft enquiry may undertake a 'soft search', whereby they, or someone engaged by them such as a broker, seek to use the access seeker provisions to obtain credit reporting information which is then shared with a CP.</p> <p>ARCA's view is that reform is required to implement soft enquiries as a recognised dataset, with a framework alongside to ensure the process of soft enquiries is adhered to. Enabling soft enquiries as part of the Australian credit reporting system will promote consumer choice in CP and credit products. Consumers can approach a CP to obtain a tailored interest rate or quotation, without such behaviour having (or being perceived to have) a detrimental impact on their credit score.</p> <p>In turn, greater consumer choice will promote greater competition between CPs. A consumer will not necessarily opt to apply for credit with a CP simply driven by a fear of approaching too many CPs and harming their credit score. Instead, CPs are incentivised to provide a competitive offering to a consumer upfront and, with the knowledge that the consumer may freely approach other CPs for similar quotations or rate estimates without fear of adverse consequences.</p> <p>This policy will have broader benefits beyond its competition impacts. The use of soft enquiries is well-established internationally and, like the enablement of comprehensive credit reporting, brings the Australian credit reporting system in line with its international counterparts.</p> <p>Further giving effect to this policy will establish a clear set of rules around the current practice of 'soft searches', which appear to rely on the access seeker provisions.</p> <p>It is unclear whether there is scope within the current CR Code to enable such a reform (given it concerns how an information request may be handled in a soft enquiry scenario as opposed to an ordinary credit application i.e. hard enquiry). ARCA considers such reform ought to be progressed</p>
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		<p>expediently and therefore would support such reform being progressed through the current CR Code (if deemed possible).</p> <p>Credit reports accessible from all CRBs</p> <p>ARCA notes the consultation paper raises the question as to whether free credit reports ought to be coordinated across CRBs, in a similar fashion to ban periods. ARCA understands that such an initiative would be difficult to coordinate across the CRBs, noting that a key feature of granting a consumer access to their credit report is a CRB ensuring that that consumer meets the necessary identification requirements. This requirement plays an important role in ensuring overall data security, which is a responsibility for each CRB (and as such, any coordination has the potential to hamper attainment of appropriate levels of data security).</p> <p>As an alternative, CRBs have indicated that, when obtaining a credit report with a particular CRB, that CRB (in providing the report) could also include links to the relevant ‘free credit report’ websites with their CRB counterparts. This would ensure the consumer is actively informed of the ability to obtain their credit information from all three CRBs, but equally would mean that each CRB would be able to undertake its own identity checks as part of the free credit report process.</p> <p>Access during ban period</p> <p>See ARCA’s response to question 22 above.</p>
25	<p>Are the correction provisions appropriate? Should the provisions in paragraph 20 be updated in any way? If yes, how?</p>	<p>ARCA broadly notes that the correction provisions have been identified as problematic as part of the 2017 CR Code review and the 2019 CR Code variation application considered many of the issues which have, again, been raised through this process.</p> <p>ARCA Members have been generally supportive of the corrections’ provisions, although it has been identified corrections’ processes could benefit from guidance.</p> <p>Separately, ARCA refers to its response to question 2 above, where we have identified that paragraph 20.1 of the CR Code may now be redundant as a result of the proposed variation to address non-participating CPs (paragraphs 2.3 and 2.4).</p>

	<p>Complexity</p> <p>The CR Code correction provisions are not intended to exhaustively map the corrections process but instead apply to address different operative requirements of that process, as follows:</p> <ul style="list-style-type: none"> • Consultation between CPs in a first responder scenario (20.2) • Extensions of time for the 30-day correction period (20.3) • If a correction has to be made, what information has to be corrected and timeframes (20.4) • The ability to correct default information if there are circumstances beyond the individual’s control which led to its disclosure (20.5) • The requirement to remove default information where the relevant debt is statute barred (20.6) • Notifications to be provided to an individual who requests a correction (20.7) • Notification requirements where updating identification information (20.8) • Notification requirements to previous information recipients (20.9) • How to deal with a correction request which is also a complaint (20.10). <p>ARCA’s view is that these provisions are appropriate, and are necessary to ensure the efficacy of the operation of the correction process. To be clear, these provisions are not intended to provide a ‘how to’ guide to process a correction request. It may be that if the reason these provisions are considered too complex is because they fail to achieve this outcome, then the appropriate approach may be to develop the ‘how to’ guide outside the CR Code framework (such as in guidance material, as suggested above).</p> <p>Simplifying approach to multiple instances of incorrect information</p> <p>ARCA Members appreciate the issue of multiple instances of incorrect information identified in the consultation paper. The challenge in addressing this issue would be ensuring that correct information is not inadvertently removed alongside incorrect information. ARCA Members cite instances where a number of entries on a credit report may be fraudulent, but these fraudulent entries have occurred alongside legitimate entries – so it will still be necessary to ensure that at the outset there is some means to differentiate between the two. Provided this concern could be readily addressed, ARCA Members would support implementing processes which may assist simplifying corrections processes for multiple instances of incorrect information.</p>
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		<p>CRB or CP unwillingness to process correction request</p> <p>ARCA notes the first responder provisions which underpin the correction obligations within the Privacy Act are already intended to ensure there is a ‘no wrong door’ approach to corrections. On this basis, it would appear that if there is an issue with the unwillingness of either a CRB or CP to process a correction request, this is a compliance issue. If it is felt the Privacy Act first responder correction obligations are ineffectual, it is unclear how this can be resolved through the CR Code. It may be that any issue with operation of the first responder provisions should be raised through the 2024 Part IIIA review.</p> <p>Other circumstances beyond an individual’s control – paragraph 20.5</p> <p>ARCA Members are supportive of including situations of domestic abuse in the list of circumstances included in paragraph 20.5 of the CR Code.</p> <p>ARCA also notes that there may be merit in reviewing the requirement in paragraph 20.5 for the correction to only be made by request to the CRB, in consultation with the CP. It may be appropriate for either CP or CRB to make the correction in the circumstances.</p> <p>Correction timeframes</p> <p>ARCA notes it is unclear how the CR Code could be amended to clarify the requirement to meet the 30-day correction timeframe. The correction timeframe is explicit, and we note the CR Code already provides for extension of this timeframe (paragraph 20.3), as well as requirements to process correction requests as soon as practicable and to make that correction within a five business day period (paragraph 20.4). ARCA considers that these provisions provide adequate timeframe clarification.</p>
26	Are the provisions on complaint handling appropriate? Should the provisions in paragraph 21 be amended in any way? If yes, how?	The 2019 CR Code variation application identified the need to develop a complaint handling standard for those CPs and CRBs whose complaint handling practices fall under the scope of the ISO standard only. This complaint handling standard is yet to be developed by ARCA. We intend to continue with this activity, subject to any constraints on our capacity to resource this activity.

27	Are arrangements for dispute resolution appropriate? Should the arrangements be changed in any way? If yes, how?	Besides the feedback provided in the response to paragraph 26 above, ARCA Members have no particular feedback on arrangements for dispute resolution, noting that ARCA Members are CPs and CRBs who will already be captured by the complaint handling provisions in paragraph 21.
28	How could the CR Code be amended to enhance protections for individuals?	<p>The issue of domestic abuse, and how domestic abuse interacts with the credit reporting system is a key topic of consideration for ARCA and its Members. We have recently conducted a series of consultations with our Members and broader stakeholders (including consumer groups, external dispute resolution and broader industry representatives) in an effort to better understand this interaction, and also to consider what ought to be done to provide greater protection for victims and victim-survivors. Part of this consultation has highlighted the need for a holistic approach – for instance, focussing not simply on removal of a discrete dataset, but considering all relevant credit reporting entries, and what principles ought to apply to determine what information should be disclosed (or removed), and how CPs ought to navigate some of the challenges in this area. ARCA has commenced developing guidelines to address this more holistic treatment, though through our engagement with industry and other stakeholders we are aware that there is no “simple” or necessarily “one size fits all” response required, and in itself improving the credit reporting treatment for victims and victim-survivors is only a small component of a broader response required to domestic abuse.</p> <p>In the meantime, ARCA also is supportive of more discrete variations to the CR Code to specifically address removal of certain datasets in situations of domestic abuse.</p> <p>Flexibility not to list or to remove negative information</p> <p>As noted in response to questions 17 and 25 above, ARCA supports enabling removal of default information and repayment history information in situations of domestic abuse. We would note that consideration should also be given to whether this treatment ought to extend to other datasets, such as CCLI (and, of course, to encompass the broader ‘circumstances beyond an individual’s control’, of which domestic abuse will be an example).</p>

	<p>In terms of electing not to disclose that information where there is domestic abuse, as we have noted in our response to question 17 above, whether or not a CP is compelled to report particular information is a matter outside the scope of Part IIIA and the CR Code, and instead is a requirement under the PRDE (and for mandated CPs, under mandatory CCR). ARCA is currently progressing an amendment to the PRDE which would exempt a CP from its contribution requirements in situations of domestic abuse².</p> <p>Customer-based vs account-based reporting</p> <p>An issue in the operation of the CR Code raised as part of the hardship variation process has been the reporting of credit information on an ‘account basis’, rather than individual account-holder basis.</p> <p>The Data Standards have been designed to support reporting on an ‘account basis’ (with each individual account holder than separately reported using the relevant account identification). This system of reporting has been designed in this manner to improve the accuracy of reporting, minimising errors that would otherwise occur in identification of individuals (and matching of data to individuals). That is, matching data based on an account number is less error prone and far more accurate.</p> <p>In a very small percentage of cases, it will be necessary to report different information for account holders (particularly where there is a breakdown in the relationship between existing account holders). The Data Standards already support the ability to ‘split’ an account, so that different information may be disclosed for account holders – though this solution creates significant challenges for CPs and CRB’s alike and could not be implemented across industry for all accounts and individuals. In these circumstances, it is considered that the issue of splitting reporting may be best resolved within the existing industry framework, rather than through any provision in the CR Code.</p> <p>Furthermore, it is noted that while Part IIIA and the CR Code enable the reporting of different types of credit information, they do not compel that reporting to occur (unless a data quality issue requires an update or correction) nor does it detail how contribution will occur. Instead, an industry</p>
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² We would note that whether or not a similar exemption is included as part of the mandatory CCR requirements will be a matter for ASIC to determine

		<p>framework, through the PRDE, sets out how contribution will occur. Part of the PRDE obligations includes a requirement to use the ACRDS to supply data. In light of this, our view is that any requirement around how data is supplied is outside the scope of the CR Code.</p> <p>Other issues</p> <p>We note a range of the other issues raised in the consultation paper are already addressed in other responses (see ARCA's responses to questions 17 and 25).</p> <p>In terms of concerns about the security of an individual's identity, and especially ensuring that controls prevent sharing a victim or victim-survivor's new address with a perpetrator, this is an issue which may require broader consideration (for instance, including through the guideline material developed by ARCA). We understand that CPs will generally store address data for individual account holders separately, and can implement restrictions to prevent sharing of that address data.</p> <p>ARCA acknowledges that a challenge will be preventing a perpetrator from committing identity theft, and using identification information for the individual (victim/ victim-survivor) to gain access to information held by a CP or CRB. However, CPs and CRBs continually face that challenge and have responded by continuing to improve fraud detection, and the continued implementation and testing of systems and processes to ensure that fraud detection remains effective. It does not appear that changes to the CR Code will have any practical impact.</p>
29	How could the CR Code be amended to better support people affected by economic abuse or domestic violence?	See ARCA's response to question 28 above.
30	Is the provision regulating information requests appropriate? Should it be amended in any way? If yes, how?	<p>As noted in response to question 20 above, an information request is also referred to as a 'credit enquiry'.</p> <p>In recent years (including since the conclusion of the previous CR Code review), credit enquiry disputes have increased and become a significant feature of overall credit reporting disputes (both at internal dispute resolution (IDR) and EDR level). These disputes tend to be lodged by paid</p>

	<p>representatives (for instance, credit repair agents), and often lack merit. These disputes also tend to equate the presence of a credit enquiry on a credit report as ‘negative’ and having equivalence to the presence of default information on a credit report³.</p> <p>Based upon publicly available information and information provided by our Members and AFCA, we note that issues raised as complaints tend to include the provision of notification (which is often confused as to whether or not the individual has “consented” to the enquiry, despite consent not being a requirement for conducting an enquiry), the timing of the notification, and allegations of fraud (raised often without any substantive basis beyond ‘I did not apply for credit with this CP’). These disputes rarely identify error on the part of the CP⁴.</p> <p>To be clear, credit enquiries generally have a minimal impact on an individual’s credit score, and as such, are not equivalent to default information in terms of potential negative impact. However, the increase in disputes has led to CPs often being pressured to remove legitimate enquiries, or perversely being scrutinised for appropriate and responsible use of the credit reporting system⁵.</p> <p>ARCA Members have considered at length what could be done to reduce the number of unmeritorious credit enquiry disputes. It has been identified that one possible ground for dispute is where, over the course of a lengthy application process, a CP is required to access an individual’s credit report multiple times. For instance, if an individual has applied for preapproval for a home loan, subsequently applies for a home loan with a CP, the CP may have accessed that individual’s credit file twice over a period of a few months. Both credit enquiries are legitimate and appropriate, but the individual may object to their being two entries on their credit report, rather than one. Having</p>
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³ It should be noted, that ARCA is aware of credit repair agents charging individuals the same rate to remove a credit enquiry that is charged to remove default information (for example, a rate of \$1,000 plus GST)

⁴ In making these comments, it should be stressed that substantive disputes do arise – and these tend to occur predominantly with in-person credit applications, and the use of third-party CP agents. Substantive disputes may also arise in cases of genuine fraud or also situations of domestic abuse e.g. where the perpetrator has applied for credit in the name of the victim/ victim-survivor and without their knowledge or consent. However, anecdotal information provided both by our Members and also from review of publicly available AFCA determinations supports the fact that these substantive disputes are significantly outnumbered by what we consider to be unmeritorious disputes.

⁵ One issue in particular for CPs in home lending may be the need to conduct 2 enquiries over the life of a home loan application (for instance, where pre-approval is granted and subsequent formal approval required, or where the application process exceeds 90 days). Conducting these enquiries may be necessary to support the lending decision, but may still lead to consumer complaints

		<p>considered this further, ARCA is hesitant to recommend an approach which may support removal of one of these enquiries, as both enquiries are legitimate and will have served different purposes through the loan approval process. The better approach is improved consumer education and awareness of credit enquiries, so it is appreciated that multiple enquiries are not necessarily 'negative', and reflect the ordinary loan approval process.</p> <p>Otherwise, ARCA highlights the suggestion in response to question 20 above, being highlighting within the CR Code that consent is not a requirement for conducting a credit enquiry. Further, ARCA highlights that enablement of soft enquiry reform (as set out in response to question 24 above) may also prove an additional means by which credit enquiry disputes are reduced.</p>
31	<p>Are the provisions regulating transfer of rights of CP appropriate? Should they be amended in any way? If yes, how?</p>	<p>ARCA refers to the response to question 5 above.</p> <p>In terms of whether the transfer provisions operate effectively when dealing with the transfer of credit from a fully participating CP to an entity with restricted participation in comprehensive credit reporting, it is noted that the OAIC has previously advised ARCA that an acquiring CP will be required to ensure CCR-data is kept up-to-date, including with all the CRBs who hold this data. ARCA does not disagree with this advice. Otherwise, ARCA Members have provided limited feedback on this issue.</p>
32	<p>Are the obligations for use and disclosure appropriate? Should any of the provisions applying to use and disclosure be changed? If yes, how?</p>	<p>Generally, ARCA considers the obligations for use and disclosure are appropriate, although it has identified a small number of 'niche' issues, identified below. ARCA also notes Members have highlighted whether consideration ought to be given to the technical neutrality of the CR Code provisions on use and disclosure, and whether any update to those provisions is required.</p> <p>Individuals acting in trustee capacity</p> <p>An issue which has emerged as a consequence of the increased participation in CCR is the reporting of trustee information. ARCA notes that it is possible for an individual to enter into consumer credit in their capacity as a trustee for a trust. However, where this does occur there is currently no means to identify that the individual has entered into consumer credit as a 'trustee'. This may be relevant to an assessment of the individual's creditworthiness, given that liability for any credit entered into as trustee will be the responsibility of the trust itself (with the individual indemnified by that trust).</p>

ARCA considers that the CR Code definition of 'capacity information' in paragraph 1.2(c) ought to be reviewed to determine if it can be extended to identify credit entered into by an individual in their capacity as a trustee.

CP disclosures of credit eligibility information

ARCA has previously written to the OAIC raising this issue (correspondence attached as **Annexure F**), although the OAIC is yet to respond to this issue. The issue concerns the meaning of a disclosure to "a person for the purpose of processing an application for credit made to the credit provider" under Privacy Act section 21G(3)(c)(i) and whether or not it is permissible for a CP to disclose CEI direct to a broker.

ARCA's view is that a broader interpretation of section 21G(3)(c)(i) which allows a disclosure direct from CP to broker is appropriate. While the agreed interpretation of section 21G(3)(c)(i) is yet to be resolved, the question for this review is whether the agreed interpretation could be included as part of the CR Code.

Consideration of additional uses and disclosures

ARCA notes there are additional uses and disclosures of credit reporting information which ought to be considered, although noting that it is likely the enablement of such uses and disclosures may be a matter for reform of Part IIIA, rather than variation to the CR Code.

For instance, CRBs are currently unable to disclose credit reporting information (including identification information) to a CP to assist customer remediation under ASIC Regulatory Guidance. This means if a customer is owed money by a CP, a CRB is unable to assist the CP to locate that customer, because this is not a permitted disclosure of identification information under Part IIIA.

In addition, where an existing customer of a CP has bankruptcy information disclosed for him or her, a CRB is unable to alert a CP to that disclosure. ARCA's view is that categories of permitted CRB to CP disclosures in the Privacy Act should be expanded to include the ability for a CRB to disclose to a CP that an existing customer of that CP has had bankruptcy information reported for him or her.

