



## ***Registered Credit Reporting Privacy Code — application to vary clause 8.1(b)***

Decision and reasons for decision of  
Australian Information Commissioner, Professor John McMillan

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### **Decision on registration**

#### **Section 26T of the Privacy Act 1988**

1. In accordance with s 26T(1) of the *Privacy Act 1988* (the Privacy Act), I hereby approve the variation of the registered Credit Reporting Privacy Code (CR code), submitted to me by the Australian Retail Credit Association on 31 March 2014.
2. I note that the only change to the registered CR code made by this variation approval is the substitution of the numeral '5' by the numeral '14' in clause 8.1(b), so that that clause will now read:
  - b. the grace period allowed by the CP for an overdue payment must be at least 14 days, beginning on the date that the CP's systems first classified the payment as being in arrears.
3. I also direct that, in accordance with s 26T(5), the existing CR Code on the [Codes register](#) (which is maintained on the OAIC website pursuant to s 26U of the Privacy Act) be removed and the CR code, as varied by this approval, be registered on the [Codes register](#).
4. In making this decision to vary the registered CR code I have taken into account the requirements set out in s 26T of the Privacy Act, including the matters specified in the [Guidelines for developing codes](#) issued under s 26V.
5. The varied CR code will come into effect on the day it is entered in the [Codes register](#).

[signed]

Professor John McMillan  
Australian Information Commissioner

3 April 2014

# Reasons for decision

## Background

1. The Credit Reporting Privacy Code (CR code) was registered, by my direction, on the Codes register maintained by the Office of the Australian Information Commissioner (OAIC) on 22 January 2014 and took effect on 12 March 2014. This followed an extensive period of development and consultation with industry, consumer advocacy organisations and the public.
2. On 31 March 2014 the OAIC received an application for variation of the registered CR code from the Australian Retail Credit Association (ARCA), the same organisation that developed and applied for registration of the currently registered CR code.
3. In accordance with s 26T of the *Privacy Act 1988* (the Privacy Act) the Information Commissioner may approve a variation of the CR code. Section 26T of the Privacy Act relevantly states:
  - (1) The Commissioner may, in writing, approve a variation of the registered CR code:
    - ...
    - (c) on application by a body or association representing one or more of the entities that are bound by the code.
  - (2) An application under paragraph (1)(b) or (c) must:
    - (a) be made in the form and manner specified by the Commissioner; and
    - (b) be accompanied by such information as is specified by the Commissioner.
  - (3) Before deciding whether to approve a variation, the Commissioner must:
    - (a) make a draft of the variation publicly available; and
    - (b) consult any person the Commissioner considers appropriate about the variation; and
    - (c) consider the extent to which members of the public have been given an opportunity to comment on the variation.
  - (4) In deciding whether to approve a variation, the Commissioner may consider the matters specified in any relevant guidelines made under section 26V.
  - (5) If the Commissioner approves a variation of the registered CR code (the **original code**), the Commissioner must:
    - (a) remove the original code from the Codes Register; and
    - (b) register the CR code, as varied, by including it on the Register.
  - (6) If the Commissioner approves a variation, the variation comes into effect on the day specified in the approval, which must not be before the day on which the CR code, as varied, is included on the Codes Register.
  - (7) An approval is not a legislative instrument.

Note: The CR code, as varied, is a legislative instrument once it is included on the Codes Register: see section 26M.

## Variation request

4. ARCA has requested an amendment to the CR code that involves changing the specified number of days for the 'grace period' in sub-paragraph 8.1(b) of the code from '5' to '14' days.
5. Currently, the CR code requires a minimum grace period of 5 days before an overdue payment is classified as overdue for the purposes of a credit provider disclosing repayment history information (RHI) to a credit reporting body (CRB). Under the request for variation, this grace period would be extended to 14 days.
6. Clause 8.1 currently states:

8.1 For the purposes of this paragraph and the definition of repayment history information in Section 6V of the Privacy Act:

(a) consumer credit is overdue if, on the last day of the month to which the repayment history information relates, there was at least one overdue payment in relation to which the grace period has expired; and

(b) the grace period allowed by the CP for an overdue payment must be at least 5 days, beginning on the date that the CP's systems first classified the payment as being in arrears.

7. I note that the proposed variation is minor, and importantly does not reduce the privacy protections afforded to individuals by the CR code.
8. Furthermore, a 14 day grace period was suggested in the Joint Consumer Submission made to ARCA during the public consultation period for the original CR code held in April/May 2013. The Joint Consumer Submission represented the views of the following organisations: the Australian Communications Consumer Action Network, the Australian Privacy Foundation, the Consumer Action Law Centre, the Consumer Credit Legal Centre (NSW), the Consumer Credit Legal Service (WA) and Financial Counselling Australia. According to ARCA's variation application all those groups (other than the Australian Privacy Foundation) have confirmed to ARCA that they continue to support a 14 day grace period.
9. ARCA has stated that it represents 16 credit providers who are likely to initially contribute 80 to 90% of RHI by volume to credit reporting bodies. ARCA further states that the bulk of RHI disclosures will not commence until at least the end of the third quarter 2014. This may allow credit providers to prepare for an orderly development and implementation of systems and procedures to comply with this minor variation. This may address the concern noted by ARCA that credit providers have already invested considerable capital in developing systems and procedures to reflect a 5 day grace period and that a variation to 14 days could result in additional cost and delay.

## Consultation

10. I do not consider that it is necessary to undertake consultation for the purposes of s 26T(3) of the Privacy Act (and s 27 of the *Legislative Instruments Act 2003*) because the effect of the proposed variation:

- a. is relatively minor in the overall scheme of the CR code
  - b. occurs well before any repayment history information will have been disclosed to any CRB
  - c. does not reduce the privacy protections afforded to individuals
  - d. has been put forward by the industry body that developed the original CR code and which represents the credit providers who will be providing 80 – 90% of the RHI by volume that may be submitted to the CRBs and who are the organisations who will be affected by this variation, and
  - e. is supported by the main consumer credit advocacy organisations.
11. Notwithstanding that I do not consider it necessary to undertake consultation, the application for variation was added to the OAIC’s Codes register webpage as soon as it was received to fulfil my obligation under s 26T(3)(a).
12. I note that the applicant is putting forward the variation on behalf of ARCA members who include the CRBs and the credit providers who will be submitting the vast bulk of RHI to the CRBs and that the applicant has consulted with the consumer groups with a relevant interest.
13. I also note that it is less than 12 months since the currently registered CR code was developed and extensively consulted on. Members of the public had adequate opportunity to provide information in relation to the grace period during that consultation and the consumer advocacy groups did so. As indicated above they supported a 14 day grace period then and continue to do so.

## **Conclusion**

15. Taking into account the information provided in ARCA’s application for variation and the currently registered CR code, I have decided to approve the variation to the CR code proposed by ARCA.

## **Registration of the amended CR code**

16. In accordance with s 26T(5) and s 26T(6), if the Information Commissioner approves a variation of a registered CR code, the Commissioner must:
- (a) remove the original code from the Codes Register; and
  - (b) register the CR code, as varied, by including it on the Register.
17. Furthermore, if the Commissioner approves a variation, the variation comes into effect on the day specified in the approval, which must not be before the day on which the CR code, as varied, is included on the Codes Register.
18. As such, the CR code as it currently stands will be removed from the OAIC’s Codes register and replaced with the varied CR code. The variation will come into effect on the day the varied CR code is entered onto the Codes register.

## **Attachments**

Application to vary the CR code received on 31 March 2014: [D2014/014718](#)