COMMUNICATIONS ALLIANCE LTD

REVIEW OF THE PRIVACY (CREDIT REPORTING) CODE 2014

Australian Government - Office of the Australian Information Commissioner (OAIC)

COMMUNICATIONS ALLIANCE SUBMISSION

FEBRUARY 2022

CONTENTS

INTRODUCTION

Communications Alliance welcomes the opportunity to respond to the Office of the Australian Information Commissioner (OAIC)'s review of the Privacy (Credit Reporting) Code 2014 (the CR Code).

About Communications Alliance

Communications Alliance is the primary communications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see http://www.commsalliance.com.au.

RESPONSE TO ISSUES

Scope and structure of this submission

Many Communication Alliance members are defined as credit providers (CPs) under the CR Code, as they offer deferral of payment for 7 days or more, for goods and services provided. This submission focusses on issues directly relating to those members. Comments are grouped under general topic, which may not align directly with the presentation of issues in the discussion paper.

CR code effectiveness, form and readability

The consultation paper (the paper) notes that concerns have been raised about the format and readability of the CR Code, suggesting that this impacts individuals' ability to pursue their rights. Communications Alliance agrees with the concerns and would support efforts to increase the CR Code's accessibility.

Communications Alliance recognises that there are several ways that the issues could potentially be addressed. In addition to ensuring the use of 'plain English', options include:

- restructuring the CR Code itself to consider the different audiences (individuals, industry), as canvassed in the paper; and
- publishing targeted guidance notes and other educational material to address identified problems and assist relevant parties to understand their rights and obligations. This could be particularly helpful for the consumer audience. One option may be for the OAIC to consider producing explanatory notes, like those it published to accompany the pre-2014 version of the CR Code[1].

Given the complexity of the requirements, the interaction with the Privacy Act (noting that that the Code structure and format takes its cue from Part IIIA of the Act), and different audiences' needs, it is difficult to provide further useful comment at this stage. Communications Alliance suggests that the Australian Retail Credit Association (ARCA) and the OAIC work together to flesh out the different options, before seeking further input from stakeholders. We would be pleased to provide further comments at that stage.

Participation of other entities – telecommunication provider context and definitions; ACL requirement

The discussion paper seeks input on whether the Code should be changed 'to accommodate different account arrangements', including asking whether the definition of credit limit should be adjusted to the telecommunication provider context (where there may be no credit limit per se, but instead there is a monthly plan for services and handset payment), and whether changes should be made to definitions of account 'open' and 'close' dates.

Communications Alliance recognises that some consumer credit liability information (CCLI) terms, such as 'open' and 'closed' accounts, and definitions of account limits, are not clear in the telecommunications context, where multiple services can be open for one individual/

[1] See: http://webarchive.nla.gov.au/gov/20151020083105/http://www.oaic.gov.au/privacy/privacy-archive/privacy-codes-archive/credit-reporting-code-of-conduct

under one account. We support proposals to improve clarity in the CR Code. We note that drafting definitions is not straight-forward; we would not, for example, support what appears to be the proposal put forward in the paper: for telecommunication providers to share the monthly plan arrangements for each customer, as we do not consider this to be the same as a credit limit. Additionally, we note that the sharing of any telecommunications data between providers will likely be addressed in the telecommunications designation of the Consumer Data Right (CDR). Communications Alliance would welcome the opportunity to be consulted as part of the more detailed Code review process, to help ensure that definitions and related guidance notes are clear in their application to the telecommunications provider context.

The paper also questions whether CPs should be required to have an Australian Credit Licence (ACL) and comply with responsible lending obligations before they are allowed to access credit reporting information (noting that such matters may fall outside the scope of the CR Code, but warrant further consideration).

Communication Alliance strongly opposes any requirement for CPs to hold an ACL; it is appropriate for non-ACL holders to continue to participate in the credit reporting system (aside from the comprehensive credit reporting CCR), as they do currently. In addition to the fact that the telecommunication industry is already highly regulated, many of the ACL-related regulatory requirements are not relevant to the types of credit provided by telecommunications providers and other utilities. Maintaining an ACL would impose a huge regulatory burden, with costs far outweighing any potential benefits.

CR Code development and ongoing monitoring

The current process for development of variations to the registered CR Code, and the current compliance and governing arrangements stipulated in the CR Code, seem appropriate.

Education and awareness – including about partial credit reporting

As discussed in response to the question about the format and readability of the CR Code, credit reporting is complicated and the Code and related information could be more accessible. In addition, Communications Alliance suggests that many issues raised in the paper and in this submission could be at least partially addressed through the ARCA – together with the OAIC where appropriate - taking a more active role in the education and awareness space.

In addition to addressing the other issues highlighted in this submission, Communications Alliance suggests that the ARCA undertake some work to help educate both CPs and CRBs about the definition of partial credit reporting (PCR), which appears to be frequently confused with default information on customers' files. This is because even though PCR resides in the CCLI section of a credit report, the absence of repayment history information is often interpreted as the consumer not making repayments, rather than the data not being available as optically it looks like a default. This may then have downstream impacts on credit scores. (See also comments under 'information requests'.)

Default information, payment information

Communications Alliance opposes any proposal to establish a positive obligation on CPs to request the removal of default information that has become statute barred.
Communications Alliance suggests that any such obligation should lie with the relevant CRB, as the holder of that information, given that the retention of information on credit reports are

based on the date CRBs collect that information; pursuant to section 20W and section 20X of the Privacy Act. It may, however, be reasonable for CPs to provide a 'limitations' date to the CRBs at the time of listing a default, for when a debt will become statute barred. The CRB could then automatically destroy the default information when the date is reached.

Communications Alliance notes the current requirement at paragraph 20.7 of the CR Code (which places the responsibility on CRBs to destroy default information on the individual's request). As stated above, we believe the obligations to remove statute-barred information should rest with CRBs; the onus should not be put on consumers. Nonetheless, we suggest that educational activities aimed at consumers would be beneficial. The focus would be to empower affected individuals/consumers recognise and request corrections if their credit information is inaccurate, out-of-date, incomplete, irrelevant, or misleading. This could include education about the concept of debts being statute barred.

Conversely, an alternative approach would be to allow for a statute-barred debt to remain listed as long as it is clearly notated as 'statute barred' on the individual's credit report. This notation would apply similarly to 'Payment Information', where a default that has subsequently been paid is marked so appropriately. The CRB can then remove the debt based on the s 20W and s 20X retention periods. The argument for updating statute barred defaults rather than removing them is strengthened in the following two cases:

1. where the statute of limitations is short, for example three years in the Northern Territory, or
2. for 'serious credit infringements' relating to overdue debts and which must be held by a CRB for 7 years after the date of collection (statute of limitations is generally 6 years).

Communications Alliance notes that this alternative option provides CPs with a clearer picture of an individual's credit worthiness. Additionally, given that the statute of limitations differs between the states, it provides an additional level of fairness for individuals living in different states. Communications Alliance notes, however, that this option would require an amendment to the definition of default information as per s 6Q(1)(c) of the Privacy Act.

On a separate but related point, Communications Alliance suggests that the proposal to 'list any defaults with CRBs within a reasonable timeframe' is problematic. Any 'reasonable period' definition would need to include multiple exemptions given the complex nature of debt collection activities prior to a listing being made. Failure of a well-qualified definition may lead to an undesirable increase in correction requests, which will drain more resources for both CPs, CRBs and all other related parties. We suggest that it may be better to address the problem through an amendment to the Privacy Act, changing it to require that CRBs keep default information for up to 5 years from when the debt was overdue, not 5 years from when they collected the default information.

Notice to individuals that their information will be provided to a CRB; information requests

The paper notes that there appears to be confusion about the difference between notice and consent, in relation to information requests (also called 'credit enquiries'). It also notes 'misapprehension regarding information requests', whereby credit repairers and similar entities are considering information requests reported in an individual's credit report as negative and similar to default information, and asks whether the CR Code should be amended to address this issue.

It is not uncommon for Communication Alliance members to experience complaints relating to this confusion around information requests; one member, for example, has advised that

they are currently responding to a complaint where the complainant alleges that the member acted unlawfully by performing a credit enquiry without obtaining the complainant's consent. Another advises that it received complaints about unauthorised credit checks when it had simply conducted an internal check of its own records. Communications Alliance suggests that both these issues could be addressed through CR Code clarification, guidance and educational activities aimed at both consumers (and their access seekers, such as credit repair agencies) and CPs. These could, for example, clarify the distinction between different types of credit checks, and provide examples to help stakeholders understand when consent is or is not required.

Communications Alliance suggests that the approach taken by some credit repair agencies may exacerbate the issue and should also be addressed. Members report that, while investigating a consumer's credit report, credit repair agencies often take a very wide 'scattergun' approach to having credit information removed from their client's file. CPs are obliged to respond, verifying that they followed all the necessary rules when placing the adverse listing. This is a time-consuming, resource-intensive exercise.

It is unclear whether the recently introduced requirement for credit repair agencies to have a credit licence will help address this issue. Other possible mechanisms to address these problems may include:

- having a 'frivolous and vexatious' test for correction requests
- providing industry information or guidelines specifically for credit repairers
- ensuring all correction requests are accompanied by evidence, and
- requiring credit repairers to act in a fair and reasonable manner.

Protection for victims of fraud

Communications Alliance recognises the need to have robust mechanisms in place to protect and assist victims of fraud and agrees that there are issues with both the length of the ban period currently in place (21 days), and with the responsibility for coordination of resolution essentially resting with the victim. We offer the following comments and suggestions, noting that where issues fall within Part IIIA of the Privacy Act, they should be explored in more detail as part of that review:

- 21 days is a somewhat arbitrary timeframe, not aligning with bill cycles and not generally providing time for victims of fraud to resolve their case.
- Putting the obligation on the victim to prove that fraud has occurred and to contact individual CRBs and/or CPs, both initially and to extend bans, is unreasonable, ineffective and inefficient.
- At the least, it would seem reasonable to align the ban period with the 30-day period applying to corrections. However, there may be merit in considering whether a workable solution could be agreed whereby the power to remove the ban rests with the victim of the fraud – the customer who initiated the ban, not with the CRB. This would appear reasonable when it is only the victim of the fraud inconvenienced by any ban (not CRBs or others). However, we note that it may be difficult for CRBs to be confident that any request for a ban to be removed came from the fraud victim and not the fraudsters.
- Another possible option could be to for victims of fraud to be given a choice of 'standard' ban periods to enact (e.g. 30 days, 60 days, 90 days). This option would reduce the pressure on the victim in needing to renew any ban, while also reducing the chance of fraudsters simply waiting for the 21-day ban period to lapse before recommencing fraud attempts.

- It would seem reasonable for there to be a single point of contact for victims of fraud, responsible for notifying other relevant parties about ban periods in place.
- The proposal for the CR Code to require free 'alerting' to the individual during a ban period, advising the individual about attempts made to access their credit reporting information, is problematic. Notifying the victims is likely to cause unnecessary stress and anxiety and offers no resolution. However, such alerts should be sent automatically to CRBs and CPs, alerting them that they are dealing with a victim of fraud or a banned identity/credential. If a credential or identity is banned due to misuse, any attempt to use that information should be automatically stopped.

Communications Alliance recognises that all these proposals and other potential solutions are complicated and not failsafe and would be happy to comment further as part of a separate review.

Correction of information

Communications Alliance believes that the 30-day timeframe for correction of information is appropriate and does not need to be changed.

We agree that simplification of the process of dealing with multiple instances of incorrect information would be desirable, particularly where they involve economic abuse or fraud. Again, a requirement for a single, central point of contact would be useful. A centralised system would also help with moves towards a 'no wrong door' approach, allowing the victim to have the option of reporting misuse and request corrections in one place, and for that information request/ban request or ban removal information to be managed through that central point.

Other options to enhance protections for individuals affected by domestic abuse

Communications Alliance suggests that targeted information, education and training programs are a key tool in helping industry to understand the issues and assist domestic abuse victims. There is always room for improvement in this area.

The telecommunications industry has a number of codes and guidelines in place to support those in situations of domestic and family violence, including provisions in its registered and enforceable Telecommunication Consumer Protections (TCP) Code, and its Assisting Customers Experiencing Domestic and Family Violence Industry Guideline. Developed through Communications Alliance in 2018 with input and assistance from community organisations, consumer representatives, government and regulatory agencies, the Guideline aims to help communication providers appropriately and sympathetically assist customers deal facing domestic abuse. It will be reviewed this year.

Use and disclosure

The provisions relating to use and disclosure of information in Part IIIA of the Privacy Act and in the CR Code are not fully aligned: the CR Code requires that refusal notification be give if credit reporting information is obtained from a CRB in the last 90 days, whereas the Privacy Act only requires that notice be given if the refusal is based on that information. Communications Alliance suggests that the CR Code wording be aligned with the provisions in the Act.

Published by:
COMMUNICATIONS
ALLIANCE LTD

Level 12
75 Miller Street
North Sydney
NSW 2060 Australia

Correspondence
PO Box 444
Milsons Point
NSW 1565

T 61 2 9959 9111
F 61 2 9954 6136
E info@commsalliance.com.au
www.commsalliance.com.au
ABN 56 078 026 507