

CR Code Application

Executive Summary

Introduction

1. The Credit Reporting Code of Conduct (CR Code) is a code of practice about credit reporting. It is required to adhere to the necessary legislative provisions set out in section 26N of the Privacy Act 1988 (the Privacy Act).
2. In December 2012, the Privacy Commissioner appointed ARCA to develop the CR Code. Following this appointment, the CR Code has been developed by ARCA with the assistance of independent consultants, Cameronralph Navigator. The CR Code has been developed to adhere to the requirements of section 26N and has otherwise satisfied the criteria necessary for the Office of the Australian Information Commissioner (OAIC) to register the CR Code as set out in section 26Q of the Privacy Act.
3. In particular:
 - A draft of the CR Code was made publically available by ARCA on 5 April 2013;
 - The public were invited to make submissions on the draft CR Code between 5 April 2013 and 5 May 2013; and
 - Consideration has been given to all submissions received (refer to 'submissions adopted' and 'submissions not adopted' analysis which detail how submissions have been treated).
4. In developing the CR Code, the following key objectives were identified:
 - Improve the economic effectiveness of credit reporting
 - Ensure the privacy of enhanced credit reporting information
 - Improve the integrity of credit reporting information

- Improve transparency in credit reporting processes
 - Set standards of conduct and practice for industry participation in the credit reporting system
 - Provide credible monitoring and enforcement of compliance.
5. Our view is that these objectives have been achieved in the CR Code which has been developed and which is now provided for registration.

Background

6. The CR Code will be a key pillar in the establishment of the new framework for credit reporting in Australia, as envisaged by the reforms to credit reporting in the amended Privacy Act.
7. The CR Code is the product of extensive credit law reform, commencing in 2006 with the Australian Law Reform Commission (ALRC) inquiry into privacy law in Australia. One of the significant issues considered by that inquiry was the use of financial information in a digital age; both for consumers accessing credit and for credit providers and credit reporting bodies handling credit information.
8. In August 2008, the ALRC published its report into privacy law *For Your Information: Australian Privacy Law and Practice* (ALRC Report 108) which included a recommendation for the implementation of a system of comprehensive credit reporting in Australia. The recommendation was expressed as contingent upon the Australian Government implementing an adequate framework for imposing responsible lending obligations on credit providers. The move to a system of comprehensive credit reporting in Australia was in line with similar reforms to credit reporting systems internationally, including Japan, the United States, Canada, Hong Kong and the United Kingdom.
9. The ALRC further recommended that a credit reporting code be developed by credit reporting agencies and credit providers, in consultation with consumer groups and regulators, including the Privacy Commissioner. In issuing this recommendation, the ALRC intended the CR Code would 'fill the gaps' between privacy principles, and application of, or compliance with, those principles.
10. Following the recommendations contained within the ALRC report, there have been reforms of both privacy law and credit law which support the implementation of comprehensive credit reporting. Credit law reform has resulted in the enactment of the National Consumer Credit Protection Act 2009 (Cth), which includes responsible lending obligations. These obligations have been further expanded by Australian Securities and Investments Commission (ASIC) regulation 209, that set out ASIC's expectations for compliance with responsible lending obligations.

11. Following the enactment of responsible lending obligations, the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 (Cth), was introduced and read in May 2012. This Bill sought to significantly amend the existing Part IIIA and facilitate a new credit reporting framework. This Bill gained Royal Assent on 12 December 2012 and the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth) (the Act) came into effect, with commencement for most provisions relating to credit reporting being 12 March 2014.
12. In December 2012, the Privacy Commissioner requested ARCA develop the CR Code and apply for the CR Code to be registered. The application for registration was initially due on 19 April 2013, but was extended by request to 1 July 2013.

Framework

13. The CR Code is a document that is intended to work in practice to achieve the ALRC's original goal of 'filling the gaps' between privacy principles and business operations. It provides industry with many of the details required to implement comprehensive credit reporting and effect the changes necessary to the system for implementation on 12 March 2014.
14. It aims to protect the personal information and privacy of consumers while meeting the operational requirements of a credit reporting system, which has an integral and highly relevant role in responsible lending.
15. The CR Code is not intended to be a standalone document, but a key component of Australia's overall credit reporting framework. Within this framework also sits the Credit Reporting Industry Code (Industry Code) and the Australian Credit Reporting Data Standard (Data Standards). While only the CR Code will be binding and have legislative effect, the Industry Code and Data Standards are important to the operation of the overall credit reporting framework structure.
16. The Industry Code is intended to regulate industry conduct and detail the conditions of participation within the credit reporting system for equity and transparency. The Data Standards are the technical standards set by industry, which ensure data quality, consistency and interchangeability. Both the Industry Code and Data Standards are subject to change from time to time and will be set, maintained and updated in a different way to the CR Code.
17. We note you have requested to view the Industry Code. The Industry Code is still at a very early stage of development, is currently under advice and may be subject to Australian Competition and Consumer Commission (ACCC) authorisation. For this reason, and as agreed with your office, it has not been included with this application.

Principles

18. For ARCA, the principles underlying the drafting of the CR Code were to:

- Meet the government and regulatory requirements
- Be outward looking
- Be outcome focussed
- Ensure scope discipline
- Ensure brevity where possible
- Ensure consistency of application of the credit reporting framework requirements; and
- Recognise the integral role of a compliance monitoring regime.

The CR Code has been developed with the aim of achieving as many of these principles as possible.

19. It is a code that binds all credit reporting bodies (CRBs), credit providers (CPs) and affected information recipients. It is divided into twenty-four sections, with introductory wording for each section referable to the relevant Act provisions.

20. It has addressed the expectations in the Explanatory Memorandum. It has also identified concepts and obligations in the legislation that may have been broadly expressed, or may be ambiguous, and has provided clarity and operational detail in respect of these obligations. Where the legislation allows imposition of additional obligations, and policy reasons support such obligations, the CR Code has included these obligations.

21. Within the constraints of complex and technical provisions, the CR Code has been drafted in plain English, using wording which is intended to be accessible to all stakeholders, not simply internal participants. Rather than setting out sequentially the obligations applicable to each group of industry participants, the obligations in the CR Code are framed where possible so that they have general application across industry groups. By shifting the structural focus of the Code from entities to issues, the aim has been to make the Code more comprehensible and accessible to all users of the Code including individuals interacting with the credit reporting system, consumer and privacy advocates, large and small CPs, CRBs, and affected information recipients.

22. The processes set out in the proposed CR Code have needed to allow for a large range of permutations. A great deal of the development work has been put into ensuring that the CR Code will work in practice through testing provisions with industry and consumer representatives.

23. There was some tendency in submissions received to seek to have the CR Code exhaustively prescribe every component of the credit reporting

system. However, the CR Code has deliberately avoided excessive prescription, because it is not considered necessary and, in fact, would hamper the implementation of the credit reporting framework. This means that the obligations in the CR Code are restricted to those that are required where there is a clear need to achieve the objectives of the Act, meet the operating needs of industry or deliver the appropriate protections for consumers.

24. As required by the Explanatory Memorandum, the CR Code addresses compliance and enforcement. The Code supports the OAIC's oversight role, and places an emphasis on CRBs fulfilling a gate keeper role, liaising with CPs to maintain the integrity of the credit reporting system.
25. The CR Code has been drafted to focus on the intended outcome for the credit reporting system, that is, by stipulating the manner in which credit information will be collected, used and disclosed. The language of the CR Code is purposive. The 'Explanatory Notes' column has been used during the consultation process to guide understanding of the outcomes set out in the CR Code and will continue to play a valuable guidance role in the future.

Consultation

26. The successful creation, development, registration and implementation of the CR Code is heavily reliant upon adequate consultation with relevant stakeholders. The CR Code will affect different stakeholders in different ways, dependent upon where they fit within the credit reporting system, and the extent to which they use or rely on the information within the system.
27. It is important to note that the CR Code is not a 'typical' voluntary industry code. Once registered by the Commissioner, the CR Code will have force of law and no entity will be able to participate in credit reporting without meeting its obligations.
28. Because of the wide range of stakeholders affected by the CR Code, there are highly divergent views held by different industry participants. They do not share all the same commercial interests, they do not all belong to one industry, nor do they all belong to a single industry body. This has meant that there have been, and will continue to be, limits on the ability of ARCA to produce a CR Code which is entirely satisfactory to all stakeholders.
29. As a key instrument of consumer protection, the role of the consumer interest in the CR Code can not be underestimated; there must be a level of openness and transparency within the credit reporting system to make it work in the interests of consumers.

30. ARCA consulted extensively and in different ways with a broad range of stakeholders, in each stage of the CR Code development process. To ensure that consumers' rights were adequately represented, ARCA funded the provision of a consumer submission, prepared jointly by a number of consumer groups.
31. Details of the consultation process are set out in the statement of consultation annexed to this application. The consultation undertaken adheres to the Privacy Commissioner's Code Development Guidelines, dated September 2001.

Contents

This application contains several documents in support of the submitted CR Code. A list of these documents follows:

Number	Name of document	Description
1.	The Credit Reporting Code (CR Code)	Includes printed and electronic copies of the CR Code, in a format suitable for publication and an additional version of the Code which retains the 'Explanatory Notes' column referred to above.
2.	Memorandum for the OAIC, Broad Overview of the draft CR Code	A brief to the OAIC as to the thinking behind the draft CR Code, with an explanation and discussion of relevant provisions of the Code.
3.	Annexure A	Treatment of pre-commencement information (Clause 5.1)
4.	Annexure B	Default information (Clauses 9.3 & 9.4)
5.	Annexure C	Alert system (Clause 16.2)
6.	Annexure D	Correction request exemption (Clause 20.1)
7.	Annexure E	Removal of default information (Clause 20.5)
8.	Annexure F	Updating identification information (Clauses 20.8 & 20.9)
9.	Annexure G	Complaint standards (Clause 21.1)
10.	Statement of consultation	A detailed chronology demonstrating that all relevant stakeholders (including industry, consumer groups and external dispute resolution schemes) have been given an adequate opportunity to comment on the CR Code.

		Identifies the people or groups likely to be affected, the methods employed to consult with stakeholders, and the list of individuals and groups who made submissions in response to the draft CR Code.
11.	Public consultation CR Code	Version 3 of the CR Code provided during the public consultation between 5 April 2013 and 5 May 2013.
12.	Submissions received in response to the CR Code	It is noted that one submission has been provided on a confidential basis and is released to the OAIC subject to that duty of confidentiality.
13.	Statement of 'Submissions Adopted'	A spreadsheet setting out where the draft CR Code was changed, including the submission supporting the change and details of the change.
14.	Statement of 'Submissions Not Adopted'	A spreadsheet setting out where submissions were not incorporated into the final CR Code, and the reasons that submissions were not incorporated.