AUSTRALIAN
RETAIL
CREDIT
ASSOCIATION

Ms Angelene Falk
Information Commissioner and Privacy Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

BY EMAIL ONLY

18 April 2019

Dear Ms Falk,

APPLICATION TO VARY *PRIVACY (CREDIT REPORTING) CODE 2014* (CR CODE)

Pursuant to section 26T of the *Privacy Act 1988* (Cth) (Privacy Act), the Australian Retail Credit Association (ARCA) applies to vary the following paragraphs of the CR Code:

- Paragraph 6.2(a) – 'The day the consumer credit is entered into'
- Paragraph 8 - Repayment history information (RHI)
- Paragraph 10.1 – Payment information (and a related minor variation to paragraph 12.2 – Serious credit infringements)
- Paragraph 11 – Publicly available information
- Paragraphs 17 – Protection for victims of fraud
- Paragraph 19 – Direct marketing
- Paragraph 20 – Corrections
- Paragraph 21 – Complaints
- Paragraph 24.3 – Further review of the CR Code.

ARCA was initially appointed as Code Developer for the CR Code by the OAIC in 2013.

Pricewaterhouse Coopers (PWC) conducted the independent review of the CR Code in 2017. The result of this review has been two tranches of CR Code variations; the first tranche was the subject of a variation application last April 2018, which was approved and commenced on 1 July 2018. This variation application represents the second (and final) tranche of variations stemming from the PWC review.

This second tranche of variations largely addresses unresolved issues with the CR Code which had been initially raised by consumer advocates, as well as proposing variations to address issues in industry practice which have arisen since completion of the PWC review.

ARCA wrote to your office last August 2018 regarding the potential scope for this variation application. In response, on 31 October 2018, your office wrote to ARCA setting out its proposed scope for a variation application.

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Following receipt of this correspondence, we have conducted both an initial informal consultation session with a targeted group of stakeholders, and (incorporating the outcomes of this initial consultation) a second four-week long formal public consultation on proposed variations to the CR Code. This two-stage approach to the consultation was appropriate to adequately identify the stakeholder issues in the context of possible variations to the CR Code and the impact of these variations.

To support this application, ARCA provides the following:

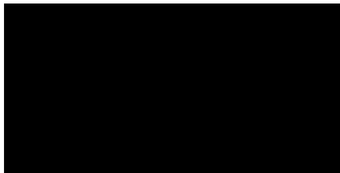
- A varied CR Code, both in 'track change', and 'final' version (Annexure A).
- A detailed analysis of each variation, setting out the wording, explanations and reasons for the variation, consequences of each variation, commentary from the PWC report about the relevant CR Code provision, and feedback obtained by ARCA during the variation consultation processes (Annexure B).
- A consultation statement, providing information about the consultation conducted by ARCA between 30 January 2019 and 28 February 2019 (Annexure C), as well as details of the consultation material provided to stakeholders (Annexures D and E), feedback from specific stakeholder consultation session (Annexures F), and written submissions received from external stakeholders (Annexure G).
- A copy of a letter sent from ARCA to the OAIC today regarding paragraph 21 of the CR Code (Annexure H).

In ARCA's view this material indicates that adequate consultation of the proposed variations has occurred, with the relevant entities impacted by the variation afforded an opportunity to provide feedback.

Moreover, as the analysis of this material demonstrates, ARCA has carefully taken into consideration all stakeholder views, and sought to draft each of the variations to appropriately incorporate and manage these views.

If you have any questions or concerns please contact ARCA's Legal & Regulatory Affairs Manager, Elsa Markula, on

Yours sincerely



Mike Laing

Executive Chair

cc. Ms Kellie Fonseca, Director, Regulation and Strategy Branch, OAIC

Mr David Moore, Adviser, Regulation and Strategy Branch, OAIC

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ANNEXURE B - VARIATIONS

1. Paragraph 6.2(a) – "the day consumer credit is entered into" (account open date)

Wording

*"6.2 (a) "the day the **consumer credit** is entered into" is:*

*(i) for **consumer credit liability information** disclosed up to and including [date 12 months from day of commencement of the varied CR Code], the day that, under the terms and conditions of the **consumer credit**, the **credit** is made available to the individual; or*

*(ii) for **consumer credit liability information** disclosed from [day of commencement of the varied CR Code], the day that, the **consumer credit** is unconditionally approved by the credit provider, and the credit provider has generated the **consumer credit** account within its credit management system;"*

Explanation and reasons

The proposed variation to the 'account open' date addresses issues identified with the existing definition.

The existing definition is problematic because:

- It is unclear and potentially contradictory. In the existing account open definition, '[t]he day that credit is entered into under terms and conditions' may vary to the 'day that credit is made available to the individual'. For instance, credit in the form of a credit card may be entered into on the day that the credit is approved by the credit provider (CP), but the credit is not available to the individual until the day the card is activated by the individual.

- In the absence of a clear and consistent definition, the disclosure of when credit is entered into then varies across CPs. This has the potential to diminish the reliability of information held on an individual's credit report, because whether credit is disclosed as open will depend upon the practice of the CP making that disclosure.

The varied definition proposes to solve these issues by introducing a single, consistent disclosure of account open day based on unconditional approval by the CP, and also allowing for account generation by that CP.

Unconditional approval means:

- The individual has applied to the CP for credit
- The CP (if a regulated Australian Credit Licensee) has conducted its responsible lending assessment under the *National Consumer Credit Protection Act 2009* (NCCP), and otherwise has conducted any credit assessment
- Any conditions placed on the credit assessment have been satisfied and, on that basis, unconditional approval of the credit has been granted by the CP.

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Unconditional approval does not require the credit funds to have been made available to the individual. For example, a credit card product that has been unconditionally approved may require the individual to 'activate' the card in order to access funds. Likewise, an individual may be required to provide evidence that a stage of construction has been completed before funds are provided under a 'construction home loan' (which is a loan provided for the construction of a new home and funds are progressively made available as the construction progresses).

Generation of the consumer credit account within the credit management system of the CP refers to the process of creating the account record by the CP. Some CPs have identified that system processing can mean that a short lag of no more than one to two days exist from the time of unconditional approval, to the setting up of the account within the CP system. For these CPs, the information provided to the customer will record an account open date based upon the setting up of the account, so consistency between this date and the date used for the account open disclosure is necessary.

The change to the account open definition means that credit may be disclosed as 'open' before the credit has been utilised by the individual. However, the purpose of identifying credit as open at this early stage is to ensure that information about a liability which has been assessed and granted to the individual is available to other credit providers, as information being relevant to that individual's creditworthiness.

To illustrate this issue:

- X applies, and is approved, for a credit card from ABC Bank
- The card and contract documents are given to X
- In order to access funds, X must first activate the card
- Prior to activating the card, X applies for a personal loan from XYZ Bank, which obtains a credit report from a credit reporting body
- XYZ Bank approves X for the personal loan
- X then activates the credit card and accesses funds under the credit card.

A credit provider making a responsible lending assessment under the NCCP will, amongst other things, need to consider the individual's ability to repay the new credit plus any other existing credit. In the above example, there will be two points at which this assessment must be made: when X applies for the credit card from ABC Bank and when X applies to XYZ Bank for the personal loan. It is important that XYZ Bank has a full understanding of X's potential liabilities when assessing X's application for the personal loan. This change will ensure that the potential liability with ABC Bank is visible to XYZ Bank, even though X has not yet activated the card.

This approach is consistent with the broad definition of credit in the Privacy Act which includes a 'contract, arrangement or understanding' for payment of a deferred debt.

While each CP's terms and conditions will determine when a contract is formed, at the time each CP has granted unconditional approval for the credit, an arrangement exists for the payment of the deferred debt.

For example, a credit card product may provide that a contract is only formed when the individual first uses the account or activates the card, on the basis that the use or activation constitutes that individual's acceptance of the contract.

However, an arrangement is in place at the time of unconditional acceptance. Under this arrangement:

- The CP's terms and conditions of the credit are established and unable to be negotiated or varied by the individual, and may only be accepted or rejected
- The CP has assessed the individual's credit application and issued an unconditional approval of that credit
- It is then a simple administrative step for the individual to accept and utilise the credit, which ordinarily can occur by using the card or telephoning a number and 'activating' the card through an automated process.

Where an individual does not utilise the card, CP policy will then be to close the account within a certain period (for example, 24 months). Similarly, where the individual opts to reject the card, the CP can again close the account.

It should be noted that not all CPs take the approach that 'activation' constitutes entry into the credit card contract. Some CPs will provide that the first utilisation of the card signals entry into the contract, other CPs will take the approach that entry occurs within a fixed timeframe of processing (for instance with a balance transfer, the credit may be entered into within a fixed number of days following the approval of the application and the generation of the consumer credit account within the CP's credit management system).

There are strong policy reasons for adopting this approach to account open date. As set out above, under the existing definition there is real risk that significant liabilities that will impact on a CP's responsible lending assessment may not appear on a credit report. In circumstances where a credit card can be activated by a phone call, credit immediately made available and utilised, the disclosure of this credit on the individual's credit report may be the only means that other CPs have of being notified of this credit.

The idea that 'credit' could be identified as being in place prior to the contract formally being accepted by the individual was contemplated when the Privacy Act itself was drafted. For instance, the Explanatory Memorandum to the Amendment Act provided:

> "The day on which the consumer credit was entered into is included in the definition. It is expected that this will generally refer to the date on which the contract for consumer credit was entered, although it is expected the registered CR code will provide more details about this category – for example, if a contract is not signed immediately but the credit is supplied, it is expected that the day on which the consumer credit was entered into would generally be the day the credit was available to the individual." (page 104)

For CPs who are Authorised Deposit-Taking Institutions (ADIs) the approach to 'account open' date is also consistent with their Australian Prudential Regulation Authority (APRA) reporting obligations. APRA requires an ADI to recognise commitments for capital adequacy purposes at the time an ADI makes a firm offer to a client (with customer acceptance not required)[1].

Consequences of variation

The proposed variation will impact on current CP practice, noting that CPs have differing approaches when disclosing account open date. To manage this impact and resultant costs associated with this change, a twelve-month transition clause (the same as that used for the change to the account close date definition) has been included in the drafting.

[1] See APG 112 Standardised Approach to Credit Risk (capital adequacy)

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The benefits of this variation, as noted above, will include greater consistency in disclosure of account open date, which will have the corresponding impact of improving data quality and promoting reliance on the credit reporting system to aid responsible lending assessments.

PWC report

This is a new issue which has arisen after completion of the PWC report.

Consultation feedback

The consultation version of the proposed variation included a distinction between credit and charge cards, and other credit products. However, industry feedback indicated that such a distinction was unnecessary, given unconditional approval was a concept applicable to all credit products (and for Authorised Deposit-taking Institutions, consistent with prudential reporting requirements).

Most stakeholders, including most ARCA Members, industry associations and consumer advocates, supported the policy intent expressed above. Notably, consumer advocates highlighted that responsible lending supported use of approval date:

> "In theory, the consumer could activate and spend the entire credit limit in the same day: it serves no responsible lending purposes not to list the card on the report until it is activated because other credit could be granted in the meantime without any knowledge of the existence of the approved but so far inactive account." (Joint Consumer Advocate submission, page 17)

Although AFCA supported the policy intent, it raised concerns with the legality of this approach and, more particularly, whether the disclosure of credit 'being entered into' where activation had not occurred was consistent with the National Credit Code (Schedule 1 to the NCCP). ASIC had similarly provided feedback where it noted a concern to ensure the definition of account open date under the CR Code was consistent with the Privacy Act 'the day credit is entered into' wording.

In this regard, ARCA notes the definition of 'credit' under the National Credit Code section 3 is considerably narrower than that under the Privacy Act; it requires a contract to be in place[2] while the Privacy Act recognises credit may be entered into where contract, arrangement or understanding exists.

An ARCA CP provided an objection to the varied account open date definition due to the need to change its current practice, which is to only disclose accounts as open at activation date. This CP raised concern with the prospect of increased customer complaints, including for customers who may be rejected for other credit due to the reported but un-utilised credit. The CP also noted their terms and conditions provided

[2] Specifically, the NCC definition provides: Meaning of *credit* and *amount of credit*

(1) For the purposes of this Code, *credit* is provided if under a contract:

(a) payment of a debt owed by one person (the *debtor*) to another (the *credit provider*) is deferred; or

(b) one person (the *debtor*) incurs a deferred debt to another (the *credit provider*).

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the credit contract only exists at card activation, at which point the customer is deemed to have accepted its terms and conditions.

In responding to these concerns, ARCA refers again to the discussion above regarding the broad meaning of ‘credit’ under the Privacy Act and notes that, under this definition, ‘credit’ may exist in the form of the arrangement between CP and customer. Regarding the prospect of increased customer complaints, ARCA included the 12-month transition timeframe to manage this issue, and resultant need for CPs to educate and notify their customers of the potential for their ‘rainy day bottom drawer’ credit card to appear as disclosed credit on their credit file.

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2. Paragraph 8 – Repayment history information

Wording

*"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, after any payments made during that **month** are taken into account, on the last day of the month to which the **repayment history information** relates, there ~~was~~ remained 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 14 days, beginning on the date that the CP's systems first classified the payment as being in arrears.

*8.2 Where a CP discloses **repayment history information** about **consumer credit** provided to an individual, the CP must take reasonable steps to ensure that:*

*(a) it does not disclose **repayment history information** about that **credit** more frequently than once each **month**; and*

*(b) for each **month**, as defined in paragraph 1.2 of this CR code, and after any payments made during that **month** are taken into account, it only discloses whichever of the following is applicable:*

- *(i) that the **consumer credit** was not overdue for that **month**; or*
- *(ii) that there was an amount overdue in relation to the **consumer credit** for that **month**; and*

*(c) ~~after any payments made during that **month** are taken into account,~~ the disclosure is expressed as a code representing the following:*

- *(i) where the **consumer credit** is not overdue – "Current up to and including the grace period"; or*
- *(ii) where there is an amount overdue in relation to the **consumer credit**, the age of the oldest outstanding payment:*
  - *1) 15 – 29 days overdue (this disclosure may only be made at day 15, as this allows for expiry of the 14-day grace period)*
  - *2) 30 – 59 days overdue*
  - *3) 60 – 89 days overdue*
  - *4) 90 – 119 days overdue*
  - *5) 120 – 149 days overdue*
  - *6) 150 – 179 days overdue*
  - *~~7)~~*
  - *X) 180 + days overdue."*

Explanation and reasons

The proposed variation addresses an inconsistency in how repayment history information (RHI) is assessed, when comparing the requirements of subparagraphs 8.1(a) and 8.2(c). From discussions with ARCA Members, we understand that there are currently two approaches utilised for RHI assessment. The first approach relies on the wording of 8.1(a) to assess the RHI reported based upon the 'worst' RHI position during

the month (allowing for the grace period). The second approach relies on the wording of 8.2(c) (and the view that 8.1(a) is consistent with this wording) to assess the RHI based on the 'point in time' RHI position at the time of the reporting period (again, allowing for the grace period).

The amendments to paragraphs 8.1 and 8.2 to clarify that any RHI assessment must take into account any payments made by an individual during the relevant RHI month. This removes the possibility that a CP will assess an individual's RHI without taking all payments into account, and instead reflecting what the RHI was whichever day in the month that the individual was at their most overdue.

A further minor amendment in RHI reporting is proposed, which is to change the RHI code '7' (which indicates a payment is 180 days or more overdue) with the RHI code 'X'. The industry practice is already to use the RHI code 'X' in these situations, and we understand most stakeholders are familiar and comfortable with this practice. Further, unlike the other RHI code numbers which represent a tightly defined time period, the current RHI code '7' represents a potentially open-ended time period. Using an 'X' code arguably more accurately represents the nature of the RHI being reported.

Consequences of variation

ARCA understands that only a handful of CPs utilise the 'worst case scenario' assessment for RHI reporting. While these CPs may incur costs in changing their RHI assessment approach, overall the costs to industry of this change will be minimal.

However, the benefits to both industry and consumers by ensuring a point in time assessment only is applied to RHI reporting are considerable. This mode of assessment will promote RHI as a dataset by ensuring its consistent use, and also promote positive consumer behaviour in making catch up payments before the end of the RHI reporting month.

The change in RHI code '7' to 'X' will incur no costs, given industry practice already supports the use of the 'X' code.

PWC report

This is a new issue which has arisen after completion of the PWC report.

Consultation feedback

Stakeholders were supportive of the variation to clarify the single method of RHI assessment. Industry stakeholders indicated a preference for a single mode of assessment, to improve the consistency of RHI as a dataset.

A CP provided a submission suggesting further drafting changes to this paragraph, which would tie the RHI 'month' end day to the repayment due date. This feedback goes beyond the intent of the variation (to address the use of differing RHI assessments), and instead proposes to introduce further prescription to RHI reporting. This feedback has not been adopted on the basis that the introduction of such prescription within the CR Code would necessitate significant change to current industry practice. While the CR Code 'month' definition does not require CPs to use calendar month for RHI reporting, many CPs will report based on calendar months.

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Consumer advocate feedback also supports removal of the 'worst case scenario' assessment, noting that allowing a point in time assessment only provides a strong incentive for consumers to get their payment behaviour back on track within the RHI month.

Consumer advocate feedback has not been supportive of the change from RHI status code '7' to 'X'. Consumer advocates have noted:

- A '7' is easier for an individual to understand than an 'X'
- It is concerning that the CR Code is being changed to align with industry practice (including the Australian Credit Reporting Data Standard which provides for an RHI status of 'X' rather than a '7'). There is concern about the precedent set by changing the CR Code to align with industry practice and the data standard, rather than requiring the opposite to occur.

ARCA has not adopted the consumer advocate feedback in the final variation drafting. ARCA agrees as a general principle, industry practice ought to be consistent with the CR Code, and where inconsistency arises, industry practice should align with the CR Code.

However, the change from '7' to 'X' provides an exception to this principle. All consumer credit reports, and consumer facing credit reporting material published by the major CRBs refers only to the RHI status code 'X' to represent 180+ days overdue. The use of the RHI status code '7' appears restricted to the CR Code only.

This practice has not evolved to undermine the CR Code. Instead it appears that when the CR Code was drafted, there was an oversight in the inclusion of '7' as an RHI status code, rather than 'X' (given at the time, 'X' had already been adopted by industry and was being used to represent the 180+ day period).

The proposed variation simply proposes to fix an error which occurred when the CR Code was initially drafted, and which has not yet been rectified.

The use of 'X' rather than '7' for the 180+ days RHI status is preferred in any event on the basis that it represents an open-ended period of time, rather than the other RHI status', each of which represent closed period of time. Given the 'X' has already been integrated into consumer-facing material, and there is no information to demonstrate it is not understood by consumers, there is a risk that requiring this material to change to be consistent with the existing CR Code '7' may be more likely to confuse consumers.

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3. Paragraph 10.1 – Payment information; Paragraph 12.2 – Serious credit infringement

Wording

*"10.1 For the purposes of the definition of **payment information** in Section 6T of the Privacy Act, the amount of the overdue payment to which the information relates is taken to be paid when:*

*(a) payment is received in cleared funds of the full amount of the overdue payment, including all interest, fees and other amounts that are included in the amount specified as overdue in the **default information**;*

(b) payment is received in cleared funds of part of the amount of the overdue payment and the CP accepts this amount in full settlement of the overdue payment; or

~~(c)~~ the CP waives the overdue payment~~; or~~

*(d) ~~the CP agrees to terminate the **consumer credit** provided to the individual to which the overdue payment relates and replace it with new **consumer credit**~~."*

*"12.2 If a CP discloses **payment information** or new arrangement information to a CRB that relates to an overdue amount that is the subject of a **serious credit infringement** disclosure (based on paragraph(c) of the Section 6(1) definition of **that term**), the CRB must destroy the information relating to the **serious credit infringement**."*

Explanation and reasons

The proposed variation relates to a view provided by the OAIC to ARCA in December 2018, on the OAIC's interpretation of 'payment information'. Relevantly, the OAIC provided an opinion that paragraph 10.1 of the CR Code lists circumstances in which an overdue payment is taken to be paid. In practical terms, this means each of the disclosures in paragraph 10.1 ought to then result in a disclosure of 'Paid' ('P') code, rather than other codes (in the context of the OAIC's view, this then has meant the 'Settled' ('S') code is no longer able to be disclosed).

However, paragraph 10.1(d) had also enabled a type of new arrangement information (being a statement that an individual has been provided with new consumer credit in accordance with section 6S) to also be a disclosure of payment information. Given the OAIC's view, it is proposed to remove this provision from the CR Code and enable new arrangement information (currently an 'N' (new consumer credit) or 'V' (varied consumer credit) to continue to be disclosed simply as provided under section 6S rather than the CR Code.

The proposed variation to paragraph 12.2 (serious credit infringement), regarding the obligation to destroy a serious credit infringement is a consequence of the variation to 10.1 and the separation of 'payment information' and 'new arrangement information'. This particular variation did not form part of the consultation, as it was identified subsequently by ARCA. However, this proposed variation fits within the scope of the necessary changes to the CR Code treatment of 'payment information' (and in that regard additional consultation on this particular variation was determined unnecessary).

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Consequences of variation

The proposed variation reflects the OAIC view on reporting 'payment information', a view which has already largely been implemented by industry. Given the proposed variation merely brings the CR Code into line with this view, and does not otherwise make further changes to practice, the costs of this proposed variation are negligible.

PWC report

This is a new issue which has arisen after completion of the PWC report.

Consultation feedback

Stakeholders have supported the variation, on the basis it is necessary to give effect to the OAIC view on 'payment information'.

Consumer advocates have suggested that additional provisions be added to the CR Code to deal with the disclosure of new arrangement information. It has been noted it would be preferable for consumers to not have to cross-reference the Privacy Act to understand credit reports.

ARCA has not proposed this additional change, on the basis that the disclosure of 'new arrangement information' is comprehensively addressed in section 6S of the Privacy Act. The purpose of the CR Code articulated by section 26N of the Privacy Act does not include providing a cross-reference to an existing Act provision; instead the CR Code is intended to provide information about the operative effect of Act provisions or include further obligations. As such, the inclusion of new provisions in the CR Code simply to facilitate cross-referencing to the Privacy Act would be inconsistent with the purpose of the CR Code.

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4. Paragraph 11 – Publicly available information

Wording

*"11.1 A CRB must only **collect publicly available information** about an individual:*

*a) from an **agency** or a **state or territory authority**; and*

*b) if the content of the information that is **collected** is generally available to members of the public (whether in the form provided to the CRB or another form and whether or not a fee must be paid to obtain that information); and*

~~*c) if the other requirements of Section 6N(k) are met.*~~

c) if it relates to activities conducted within Australia or its external territories; and

d) if it related to the individual's creditworthiness.

*11.2 For the avoidance of doubt **publicly available information** does not include:*

(a) originating process issued by a Court or Tribunal; or

(b) any judgment or proceedings where the individual's rights have been subrogated to an insurer; or

(c) any judgment or proceedings that is otherwise unrelated to credit;

because this information does not relate to the individual's creditworthiness."

Explanation and reasons

The proposed variation makes two changes: clarification to the existing requirements for publicly available information; and the introduction of three new exclusions to this definition.

The variation to the meaning of publicly available information clarifies the requirements of publicly available information, drawn from the section 6N(k) definition. While (as illustrated in the discussion around 'new arrangement information' above) the CR Code drafting approach avoids unnecessary repetition of Privacy Act provisions, an exception has been made to the proposed variation to paragraph 11.1. Reiterating the requirements for publicly available information improves understanding of this definition in the CR Code (particularly the need for this information to relate to an individual's creditworthiness to meet this definition) and does not unduly extend this provision.

The variation also provides clear exclusions from the meaning of 'publicly available information', with these exclusions intended to ensure that 'publicly available information' cannot be used as a means to disclose information about court proceedings which does not meet the court proceedings information definition in the Privacy Act, or which otherwise does not relate to the individual's creditworthiness.

The three exclusions are: originating process, subrogated judgments or proceedings, or judgments or proceedings unrelated to credit.

Originating process

The exclusion of originating process is intended to close a gap which exists between 'court proceedings information' and 'publicly available information'. The underlying intent of the 'court proceedings information' definition in section 6(1) is to ensure the

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only type of court proceedings information available on credit reports is a credit judgement.

An earlier iteration of the 'court proceedings information' definition referred broadly to 'information about a judgment'. In response, in October 2011, the Senate Finance and Public Administration Legislation Committee recommended strengthening this definition, citing concerns with the prospect that this could allow the disclosure of originating summons on credit reports[3]. Submissions to the Committee noted that originating summons could impact an individual's credit file even without liability having been established, moreover the summons did not necessarily have to relate to credit[4].

In addition, a further reason in support of the proposed variation is that no retention period applies to publicly available information (as the information can be disclosed so long as it remains 'publicly available'). This could mean originating proceedings could remain on credit files in excess of the five-year retention period that applies to court proceedings information (section 20W(b), Item 8).[5]

Based on its review of this material, ARCA has formed a view that the same concerns which saw the restriction placed on the 'court proceedings information' definition should apply to the publicly available information definition prohibiting the use of this definition to disclose originating process.

Subrogated judgments or proceedings

The exclusion of subrogated judgments or proceedings addresses an issue raised by consumer advocates. Consumer advocates have cited examples where individuals involved in motor vehicle accidents have had their rights subrogated to insurers (and with no control over court proceedings), yet with information in relation to these proceedings disclosed on their credit report. The insurance company will either defend or initiate proceedings in the name of the insured driver against the other driver. This information has no bearing on the individual's creditworthiness, given the individual's rights have been subrogated to an insurer.

This issue will not arise in relation to other forms of insurance, such as consumer credit insurance (where the insured's credit obligations are paid by the insurance company in certain situations), where there is no other party from which to claim compensation. This exclusion will not prevent judgments or proceedings against an individual being collected by a CRB simply because the credit provider's rights of recovery from the borrower are subrogated to an insurance company under a lender's mortgage insurance arrangement.

Any judgment or proceeding unrelated to credit

The final exclusion is a 'catch all' being judgments or proceedings unrelated to credit. Again, consumer advocates have cited various examples where this issue has arisen including the disclosure of claims for overpaid wages by an individual's former employer, judgment for a strata debt (in another individual's name), a business sale

[3] Senate Finance and Public Administration Legislation Committee Report on the Privacy Amendment Act October 2011, Recommendation 25

[4] Senate Finance and Public Administration Legislation Committee Report on the Privacy Amendment Act October 2011, discussion at paragraphs 9.5 – 9.8

[5] See Consumer Credit Legal Service WA (CCLSWA) submission to the Senate Finance and Public Administration Legislation Committee

agreement debt[6]. Such a 'catch all' exclusion is appropriate and restates the policy intent underlying the 'court proceedings information' definition, outlined above.

Consequences of variation

The proposed variation may involve minimal costs incurred by court registries and CRBs reviewing their current processes for disclosure and receipt of information. These costs are easily outweighed by the benefit to consumers, and industry in ensuring that information held on credit files relates to each individual's creditworthiness.

CRBs would reasonably be expected to ascertain whether court registry information previously disclosed meets the court proceedings information or publicly available information definitions and destroy that information which does not meet these definitions. In some instances, it may be difficult for CRBs to make this determination, and additional information may need to be provided by the court registry to ascertain the nature of the proceedings and the type of information disclosed.

PWC report

This proposed variation corresponds to PWC's issues 14a (Reporting court judgments unrelated to creditworthiness) and 14b (Reporting of writ and summons).

In respect to issue 14a, PWC noted that there was already a clear restriction in the Privacy Act preventing court judgments unrelated to creditworthiness to be listed. PWC considered that enhanced monitoring and enforcement activity may be appropriate, as well as enhanced guidance provided to Court registries.

PWC's evaluation of issue 14b provided:

> "Given the Act does not specifically prohibit the listing of writ and summons, and the OAIC's recent indication that such listing might not technically breach the Act, it is considered that the imposition of any specific restriction on the listing of writ and summons would represent an effective policy shift and would need to be implemented by changes to the Act. Nevertheless, given the consultation feedback indicated consistent support for a prohibition on the ability for CRBs to list writs and summons and the continued complaints lodged with the OAIC in this respect, it is considered that there is value in further consideration and resolution of this issue". (page 26)

PWC noted the OAIC had expressed that listing a writ might not necessarily breach the Act as it may relate to an individual's creditworthiness. PWC further noted the OAIC view that this would depend on the circumstances of the listing, and could not be generalised across all writs, and it would be necessary to consider if the writ is inaccurate, incomplete or out-of-date.

In considering the OAIC's view, ARCA first notes that only the summary of the view is referred to in the PWC report, the full view has not been available, and the fact scenario upon which the view was formed has not been made available.

In these circumstances, the OAIC view has been treated as factor for consideration by ARCA, but not determinative of this issue.

Instead, as set out above, ARCA has considered the legislative intent underpinning both the 'court proceedings information' and 'publicly available information' definitions. The

[6] Submission by the Financial Rights Legal Centre to the PWC independent review, October 2017, page 29

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material demonstrates a clear intent to exclude originating process from disclosure through the credit reporting system.

While the OAIC view had indicated there was some prospect that originating process may relate to an individual's creditworthiness, this position was not supported by the relevant Senate Committee.

ARCA's view is that originating process should not be treated as a disclosure that relates to an individual's creditworthiness on this basis that this material will be unsubstantiated, and untested. It is a claim against the individual only, and fundamentally cannot be treated as a statement of the individual's creditworthiness until such time as it has been proven.

In these circumstances, ARCA is satisfied that the proposed variation is consistent with the issue outcomes contemplated by PWC. Further, making provision for the exclusions on publicly available information in the CR Code is consistent with s26N of the Privacy Act, on the basis that, clear identification of these exclusions within the CR Code sets out how the Privacy Act definitions of both 'court proceedings information' and 'publicly available information' are to be complied with.

Consultation feedback

Most stakeholders strongly supported the proposed variation, with changes to the wording suggested by the Financial Rights Legal Centre agreed to be appropriate by the majority of stakeholders.

Some industry stakeholders questioned whether the exclusion of originating process was appropriate, on the basis that it may have a bearing on an individual's creditworthiness. This position was not accepted, for the reasons set out above.

Some industry stakeholders also cited concerns with the possible exclusion of writs of possession from publicly available information. A writ of possession (referred to in other jurisdictions as a warrant for possession) is a judgment enforcement option, so it will only ever be issued after a judgment has already been issued. ARCA's view is that writs of this nature may be disclosed as publicly available information (provided the writ of possession is a consequence of a judgment that relates to credit).

Credit reporting bodies did question the ability of court registries to differentiate between credit judgments, and other types of court proceedings information (which could not be disclosed). ARCA notes that information reported to a credit reporting body by a court registry should include (at a minimum) the nature of the document (eg. a judgment, a writ and summons etc), and the name of the plaintiff. This court registry would also have information readily available to it to identify the nature of the proceedings (for example, claim under credit contract; claim in respect to motor vehicle accident etc).

Court registries should be able to able to identify the material permitted to be disclosed to a credit reporting body being:

- Credit judgments (as court proceedings information); and
- Enforcement material relating to credit judgments (as publicly available information).

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To assist the implementation of the proposed variation, information should be provided to court registries to explain the new provision, and restrictions around information disclosures.

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5. Paragraph 17 – Protection for victims of fraud

Wording

"17.1 Where an individual believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud and the individual requests a CRB not to use or disclose their ***credit reporting information****, the CRB must immediately:*

(a) include on the ***credit reporting information*** *held in relation to the individual a notation about the individual's request and retain this for the duration of the* ***ban period****; and*

(b) explain to the individual the effect and duration of the ***ban period,*** *including that the individual may not be able to access* ***credit*** *during the* ***ban period****; and*

(c) explain to the individual that they may request a ***ban period*** *with other CRBs, and that the individual can consent to the CRB (the first CRB) notifying the CRBs nominated by the individual (the notified CRBs) that the individual has requested that the notified CRB/s not use or disclose the individual's* ***credit reporting information*** *(additional ban period request). Where this additional ban period request is made by the individual:*

(i) the first CRB must, as soon as reasonably practicable, provide the notified CRB/s with the ***ban period*** *request provided by the individual to the first CRB;*

(ii) The notified CRB must treat the additional ***ban period*** *request provided by the first CRB as if it had been provided by the individual directly to the notified CRB.*

17.3 Where a CRB has established a ***ban period*** *in relation to* ***credit reporting information*** *about an individual, the CRB must notify the individual not less than 5 business days before the end of the* ***ban period****:*

(a) of the date the ***ban period*** *is due to finish;*

(b) about the individual's rights under Part IIIA, the Regulations and this CR code to extend the ***ban period****; and*

(c) what, if any, information the CRB requires to support the individual's allegation of fraud.

17.4 For the purposes of paragraph 17.1(c), where an individual seeks to extend a ***ban period*** *under paragraph 17.3, the individual can consent to the first CRB notifying the previously notified CRBs of the request to extend to the* ***ban period*** *and, where this* ***ban period*** *extension request is made by the individual:*

(a) the first CRB must, as soon as reasonably practicable, provide the notified CRB/s with the ***ban period*** *extension request and any supporting material provided by the individual to the first CRB;*

(b) the notified CRB must treat the ***ban period*** *extension request provided by the first CRB as if it had been provided by the individual directly to the notified CRB."*

Explanation and reasons

The proposed variation to paragraph 17 introduces a new obligation on CRBs, which will require that, where requested by an individual, the CRB will notify that individual's ban period request to other CRBs. The CRB will similarly be obliged to notify these additional CRBs where the individual requests an extension of the ban period.

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The intention of this variation will be to provide a simple and expedient means for an individual to protect the entirety of their credit report, with multiple CRBs, through a single ban period request.

The variation addresses concerns raised by stakeholders about whether the current ban period process is effective and efficient. As detailed below, much of the feedback conflates ban period issues with corrections issues, and through the consultation process it was difficult to identify appropriate changes to the CR Code which would deliver improvements to current practice. However, information from the key-consumer facing organisation dealing with identity theft and fraud, IDCARE, highlighted the issues consumers face in multiple contacts with CRBs (to establish and maintain ban periods), and delays which arise as a result.

Situations of identity theft and fraud are time sensitive; delays in implementing ban periods could quite easily lead to adverse consumer outcomes. Faced with this, the proposed variation addresses a failing in the current ban period process, and should facilitate better outcomes for consumers responding to identity theft and fraud.

Notably, the variation imposes a new obligation on CRBs, but does not stipulate how that obligation need necessarily be met. It will be a matter for CRBs to determine the most effective means to fulfil this obligation, whether through manual process of contacting the notified CRBs, or another agreed process (for instance, use of an automated solution, and also facilitation through a third-party organisation, such as IDCARE).

Consequences of variation

The proposed variation will impact predominantly CRBs, who will need to implement a coordinated system of notifications. This change will therefore involve an immediate cost for CRBs. However, over time, the potential for efficiencies to improve in dealing with ban period processes (including less need for direct contact between each CRB and individual), may actual reduce the overall operational costs for CRBs.

The proposed variation will deliver a clear consumer benefit, by enabling a much simpler and more efficient ban period process. This in turn may increase knowledge of ban periods as an effective means to prevent credit application fraud.

Coordinated ban periods may also provide benefits across the rest of industry, by encouraging the use of ban periods by individuals, which could have the potential to limit the funds currently lost as a result of credit application fraud.

PWC report

This variation was addressed in issue 21 (notification where allegations of fraud) of PWC's report. PWC's evaluation of the issue concluded:

- The mechanism for dealing with fraud could be bolstered
- Conceptually, PWC supported shifting part of the obligations for responding to the fraud from the consumer onto CRBs and CPs
- However, further consultation was required regarding the current ban period process to consider the appropriateness of that process, and to assess the costs

and benefits of any shifting of obligations to CRBs and CPs, and to formulate a workable solution to the issue.

Consultation feedback

The stakeholder feedback on this issue was not straightforward as there was a tendency to conflate issues with fraud processes (including ban periods) and corrections issues.

In addressing this feedback, ARCA has dealt with the specific issues regarding ban periods separate to the corrections issues, which are addressed in the discussion of the variation to paragraph 20 below.

Although consumer advocates acknowledged client interaction in identity theft and fraud cases predominantly occurred *after* information had been disclosed on an individual's credit report, they were supportive of extensions to current ban period provisions and imposing an obligation on CRBs to act as an information hub in cases of identity fraud.

Industry stakeholders expressed greater reticence about changing the ban period provisions. CRBs identified concerns with the creation of an obligation to enable a co-ordinated ban period. Preference was expressed for adoption of a similar co-ordination provision used in the New Zealand Privacy Code (which enabled that an arrangement for notification may be established and maintained by a CRB). ARCA did not adopt this suggestion on the basis that the wording of the New Zealand provision was inconsistent with the drafting approach used for the CR Code, which has required the identification of clear obligations and timeframes for compliance.

CRB feedback also raised the need for clear evidence of the issues consumers have experienced with ban periods, which would justify a change to the CR Code. In response to this feedback, ARCA did consider whether an alternative approach to the variation would simply be the introduction of a requirement for CRBs to provide consumers seeking a ban with the contact details of the other CRBs (with whom a ban period may also be obtained).

However, this alternative approach was not adopted after late consultation feedback was provided by IDCARE, a national identity and cyber support operating as a not-for-profit Australian charity with direct experience in assisting individuals seeking ban periods. IDCARE has been operational since October 2014, and since that time had referred approximately 11,400 consumers to CRBs to seek a credit report and ban.

IDCARE provided a submission which, like many stakeholders, details issues both in the establishment of ban periods, and seeking corrections on credit reports.

In terms of ban periods, IDCARE highlighted that, based on their experience, the requirement for a consumer to contact each of the three main CRBs to establish a ban period caused delays, and increased the risk of harm to the consumer. IDCARE noted their clients cite very high levels of dissatisfaction with the current process, and particularly their direct engagement with CRBs. IDCARE's preference would be for an organisation such as IDCARE to be afforded the key contact role for consumers in their dealings with CRBs (and managing applications for credit reports, seeking bans and corrections related activities).

IDCARE also proposed:

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- abolition of the 21-day ban period, and instead adoption of a model enabling each consumer to determine the relevant ban period
- explicit guidance and compliance with ban, report and corrections processes
- policy and legislative change to provide greater protections for children and individuals who have had their identity information stolen, but who do not have a credit report that can be subject to a ban.

While IDCARE did not expressly support the variation to enable coordination of ban periods, its feedback does provide insight into the current difficulties of the ban period process and the adverse consequences experienced by consumers, particularly arising from multiple contacts with CRBs. ARCA considers the implementation of a coordinated ban period obligation will be a critical first step to improving the consumer experience in cases of identity theft and fraud.

IDCARE's suggestion that an organisation such as itself be enabled as a 'identity theft and fraud hub' for consumers has merit, and provides an interesting counterpoint to suggestions from consumer advocates that CRBs play this 'hub' role.

ARCA did not consider that the creation of a 'hub' through the CR Code was necessary or appropriate. Appointing a third-party organisation or a CRB as an information hub would effectively mandate CPs and CRBs to deal direct with that organisation (rather than the consumer). Imposing an 'information hub' obligation on CRBs would create a new obligation potentially at odds with the existing first responder correction provisions in the Privacy Act. Conversely, mandating CPs and CRBs to deal direct with a third-party organisation rather than the consumer is unnecessary, given a consumer can always appoint the third-party organisation as their agent, and under the terms of appointment, authorise that third-party organisation to handle all necessary contact related to their identity theft or fraud matter.

In any event, as noted above, the implementation of the proposed coordinated ban period obligations in the CR Code may be facilitated, in part, through the use of a third-party organisation such as IDCARE.

IDCARE's proposal regarding greater guidance for ban, report and correction processes is addressed in detail in the context of the corrections variations, in the discussion of paragraph 20 below.

IDCARE's proposals on the abolition of the fixed 21-day ban period, and the introduction of greater prospective protection of identity for individuals including children, also have merit, but fall outside the scope of the CR Code. Both proposals could be considered in any future Privacy Act review.

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6. <u>Paragraph 19 and introduction – Direct marketing practices</u>

Wording

19.4 "Where ***credit reporting information*** *is provided to an* ***access seeker*** *free of charge by a CRB as required by Part IIIA, the Regulations or this CR code:*

(a) the CRB must provide the ***access seeker*** *with access to:*

(i) all ***credit information*** *in relation to the individual currently held in the databases that the CRB utilises for the purposes of making disclosures permitted under Part IIIA; and*

(ii) all current ***CRB derived information*** *about the individual that is available;*

(b) the CRB must present the information clearly and accessibly and provide reasonable explanation and summaries of the information to assist the ***access seeker*** *to understand the impact of the information on the individual's* ***credit worthiness****;*

(c) <u>the CRB may only provide the</u> ***<u>access seeker</u>*** *<u>with a direct marketing communication where the</u>* ***<u>access seeker</u>*** *<u>has provided his or her consent to receipt of this communication by opting in to providing this consent. A pre-ticked consent box does not constitute opting in; and</u>*

(d) if the CRB does not provide the information to the ***access seeker*** *in the manner requested by the* ***access seeker****, the CRB must take reasonable steps to provide access in a way that meets the needs of the CRB and the individual."*

Introduction:

<u>8. Relevant documents</u>

<u>The CR code should be read in conjunction with related legislation, regulations, standards, determinations, OAIC guidance and fact sheets, including:</u>

(a) <u>the Privacy Act (including the Australian Privacy Principles);</u>

(b) <u>the Privacy Regulations 2013;</u>

(c) <u>the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law);</u>

(d) <u>the Acts Interpretation Act 1901 (Cth)."</u>

Explanation and reasons

These proposed variations remove the use of 'pre-ticked' marketing consents for consumers accessing free credit reports, and further reinforce the need for all credit reporting activity to be consistent with the Australian Consumer Law, and the Australian Privacy Principles.

It should be noted that the introduction to the CR Code is not an operative provision, and the additional wording in the proposed variation will not impact on the Commissioner's administration and enforcement of the CR Code.

The variations respond to consumer advocate concerns with CRB marketing practices, and access to credit reporting information.

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As detailed below, the consumer advocate feedback did propose far more extensive changes to the CR Code than was adopted in the variations. These additional proposed variations were either unnecessary (for instance, prohibitions on misleading and deceptive conduct which are already contained in the Australian Consumer Law) or outside the scope of the CR Code (prohibitions on sale of paid credit reports or requirements to include credit scores with free credit reports).

Consequences of variation

These changes to the CR Code will have limited cost.

ARCA understands a CRB who had utilised pre-ticked marketing consents has already ceased this practice, and it is further understood that no other CRBs currently use pre-ticked marketing consents. The benefit of this change will likely be the 'future proofing' of the CR Code to mitigate the risk of a CRB adopting the use of a pre-ticked marketing consent in the future.

The proposed variation to the introduction simply reinforces the existing legal framework, and the need for marketing practices to comply with that framework. Any change in practice to comply with the legal framework is a necessity of legal compliance, and not a cost attributable to this variation.

Reinforcing the legal framework has an obvious benefit. It emphasises the need for all marketing practices to be lawful, irrespective whether these practices occur in the context of free access to a credit report or indeed in respect to any product marketed by a CRB.

PWC report

This issue was partly dealt with in the PWC report as issue 8 'incorrect information provided to consumers requesting a free credit report'. However, the context of the issue as addressed in the PWC report was quite broad; a concern about aggressive marketing practices by CRBs, focussed on when individuals seek access to a free credit report.

PWC noted that many stakeholders had suggested appropriate redress either under the Australian Consumer Law or Australian Privacy Principle 7 (direct marketing). In its evaluation of the issue, PWC suggested that the OAIC and ACCC monitor complaints concerning CRB market practices, and also seek to increase awareness of consumers of existing legal rights to redress.

PWC did not recommend a change to the CR Code, on the basis that any such change was outside the scope of the CR Code (and ought to be dealt with under the Australian Privacy Principles or the Australian Consumer Law).

However, ARCA's view is that the variation to paragraph 19.4 is within the scope of the CR Code. Section 20R(4) of the Privacy Act provides that CRBs must give access to credit reporting information in the manner set out in the CR Code. This is a broad provision. Given the variation deals with how access is given, and applies particularly to marketing consents in the context of free access, ARCA considers this variation is within the scope of s26N(2) of the Privacy Act (which sets out matters the CR Code must deal with, relevantly including provisions permitted by Part IIIA).

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Consultation feedback

In the consultation draft, two variations were proposed: the pre-ticked marketing consent provision, and a provision requiring a CRB to differentiate between its free and fee-based credit reports.

The pre-ticked marketing consent provision was supported by all stakeholders. Consumer advocates had further suggested inclusion of further drafting that *"the CRB must not have any pre-ticked consent boxes relating to marketing on its online access-seeking platforms, and forms submitted that have included a pre-ticked consent box constitute neither opting in nor indicate the genuine consent of the access seeker"*. A small change to the drafting was made in response to this feedback (the inclusion of the sentence 'A pre-ticked consent box does not constitute opting in'). However, the remaining changes were not adopted on the basis that requiring the abolition of pre-ticked consent boxes on all CRB online access-seeking platforms was beyond the scope of the variation sought, and does not appear appropriate or warranted given the proposed variation already effectively prohibits the use of pre-ticked consent boxes for consumers accessing free credit reports.

The provision requiring a CRB to differentiate between its free and fee-based credit reports was initially included at the request of consumer advocates. However, upon reviewing the drafting, consumer advocates identified that the proposed provision did not achieve its intended purpose and had the potential to legitimise upselling of paid credit reports by a CRB. Consumer advocates instead suggested that a provision be included which provided: *"CRBs must not mislead consumers about their right to access their own credit reporting information for free, or about the differences in content between free and purchased reports; or indicate that exerting that right would negatively impact their creditworthiness."*

This proposal was not adopted in the variation drafting. To begin, the inclusion of a specific provision precluding misleading conduct by CRBs in the context of free credit reports was considered a re-statement of the existing prohibitions on misleading and deceptive conduct under the Australian Consumer Law (a schedule to the Competition and Consumer Act)[7]. Feedback from industry stakeholders (both ARCA Members and industry associations), strongly opposed adopting cross-references to other legal provisions within the CR Code. Communications Alliance, in particular, noted that its experience with the Telecommunications Consumer Protections Code had highlighted that cross-referencing ought to be avoided and, in its place, it was suggested that opening statements could be included within a code setting out relevant legislation and other material which ought to be read in conjunction with the relevant code.

This industry stakeholder feedback was adopted, and the introduction provision was included in the final draft of the proposed variations.

Consumer advocates also sought a prohibition on the sale of paid credit reports by CRBs, and a requirement that free credit reports include credit scores. These changes

[7] Consumer advocates had identified that the provision is 'in line with and builds upon Australian Privacy Principle 7 and ASIC's RG234 and makes clear that CRBs are to cease the damaging practice of upselling'. However, the relevant legal provision which prohibits misleading and deceptive conduct is the ACL provision; APP7 does not contain such a provision and RG234 does not apply to CRBs.

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were not adopted. Prohibiting CRBs from selling credit reports would place a restriction on current commercial practice and is not within the scope of either the Privacy Act (which, in section 20R, simply regulates *access* to credit reporting information) or the CR Code.

Requiring free credit reports to include credit scores was considered in the context of issue 6 in the PWC report. In evaluating this issue, PWC referred to the Privacy Commissioner's 2016 determination in the FRLC and Veda matter[8], where the Commissioner determined that a credit score was not credit reporting information 'held' by a CRB, and therefore the CRB was not required to give access to that information. PWC noted that it was generally considered that any change in this position would require an amendment to the Privacy Act and a shift in policy position.

PWC did note there were a number of arguments made both opposing the interpretation in the determination, as well as supporting that interpretation, and that further consultation was "required to better evaluate the desire and corresponding hesitation to disclose credit scores on free credit reports".

ARCA notes the position remains unchanged since the PWC report; that is, that the inclusion of credit scores on free credit reports will require a change to the Privacy Act, and this requires a reconsideration of the policy position. For this reason, this proposed change remains outside the scope of the CR Code.

[8] Financial Rights Legal Centre Inc. & Others and Veda Advantage Information Services and Solutions Ltd [2016] AICmr 88 (9 December 2016)

7. Paragraph 20 – Corrections

Wording

"20.2 ~~A~~ When a CRB or CP (the consulted CRB or CP) is consulted by another CRB or CP (the first responder CRB or CP) ~~about a correction request must take reasonable steps to respond to the consultation request as soon as practicable.~~:

(a) the first responder CRB or CP must take reasonable steps to provide the consultation request to the consulted CRB or CP within a time period of five business days of the correction request being made;

(b) when making the consultation request, the first responder CRB or CP must notify the consulted CRB or CP the date when the 30-day period to resolve the individual's correction request ends (the correction period);

(c) the consulted CRB or CP must take reasonable steps to respond to the consultation request as soon as practicable, and not less than five business days before the end of the correction period (unless the consultation request is made less than five business days before the end of correction period, in which case the response must be provided as soon as practicable);

(d) where the consulted CRB or CP will be unable to respond to the consultation request by the end of the correction period, it must advise the first responder CRB or CP at least five business days before the end of the correction period of the delay (unless the consultation request is made less than five business days before the end of correction period, in which case the advice must be provided as soon as practicable), the reasons for this and the expected timeframe to respond to the consultation request. This timeframe must be reasonable.

*20.4 When correcting **credit-related personal information**:*

*(a) If a CRB or CP receives a correction request, they must determine whether the **credit-related personal information** needs to be corrected as soon as practicable.*

*(b) If the CRB or CP is satisfied that **credit-related personal information** needs to be corrected (whether in response to a correction request, or under section 20S or section 21U), the CRB's or CP's obligation to take reasonable steps to correct the information will be satisfied where the CRB or CP, or a CRB or CP consulted in relation to the correction request (as applicable):*

*(i) corrects the **credit information** where this correction is in response to a correction request, within five business days of determining the correction should occur and otherwise as soon as practicable; and*

*(ii) takes reasonable steps to ensure that any future derived information is based on the corrected **credit information**; and*

*(ii) takes reasonable steps to ensure that any derived information that is based on the uncorrected **credit information** is not disclosed or used for the purpose of assessing the **credit worthiness** of the individual to whom the information relates."*

Explanation and reasons

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Two variations are proposed to the corrections provisions, as follows:

- Timeframes for consultation requests: A range of stakeholders (including consumer advocates, debt buyers and mortgage insurers) shared a common concern with the first responder provisions, and particularly, the current drafting of paragraph 20.2 of the CR Code which imposes an obligation on a 'consulted CP or CRB' but without a specific timeframe for that consulted CP or CRB to respond (beyond 'as soon as reasonably practicable'). The proposed variation addresses this concern by implementing a consultation timeframe (subject to the consultation request being received at least 5 business day before the end of the corrections period), to ensure the consulted CP or CRB is obliged to respond to the consultation request so that the first responder CP or CRB can meet their 30-day correction timeframe. The initial drafting of this provision had proposed a three-business day timeframe, however, this was changed to five business days at the suggestion of both industry and consumer advocate stakeholders.

  This proposed variation will improve the corrections process, particularly first responder corrections, by ensuring that both the first responder CP or CRB, and the consulted CP or CRB, are obliged to take all necessary steps to ensure the 30-day correction timeframe can be met.

- Shortened timeframe for response to correction requests: the second proposed variation to the corrections provisions (paragraph 20.4) introduces an obligation for a CP or CRB to, as soon as practicable, determine whether a correction should occur, and once this determination has been made, make this correction within a five business day timeframe. This obligation should provide an ability for expedient correction processes, but without implementing a blanket reduction in the timeframe for simple correction scenarios.

  This variation responds to stakeholder concerns with the strict reliance on the 30-day correction timeframe, even in straight-forward situations. Industry indicated that it would process corrections with expediency, but implementing a blanket reduction in the 30-day correction timeframe for 'simple situations' could be difficult, given apparent 'simple situations' could sometimes become more complex than anticipated.

  This new provision balances this concern by preserving the CP or CRB ability to determine whether to correct (in a timeframe 'as soon as practicable'), but then requiring expedient correction to occur once this determination has been made. In practice, this should mean that certain corrections can be determined and processed within far less than the 30-day correction timeframe. Where a CP or CRB unnecessarily delays in processing a correction (yet has all available information to determine this correction, and subsequently processes this correction without requesting additional information), it will be open to the individual to raise a possible breach of this provision of the CR Code.

Consequences of variation

These variations may require review of current corrections processes by CPs and CRBs, focusing particularly on CP or CRB response times to consultation requests, and the

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processing timeframes for determined corrections. This review of current processes will lead to costs being imposed on industry.

However, these costs will be outweighed by the benefits which will flow to both industry and consumers from more efficient and timely corrections processes. Removing incorrect credit reporting information from the credit reporting system benefits industry and consumers, as it will improve data quality and will also enable more efficient processing of credit applications (noting that often the reason why a consumer requires a correction to occur with expediency is to allow a credit application to proceed).

PWC report

The PWC review had identified the following corrections issues which required further consideration (issue 18):

- Review of correction timeframe – possible shortening of the 30-day correction time period in certain circumstances. PWC had noted this may be impractical given the need for CRBs to consult with third parties to achieve a correct outcome.
- Separating obligations of CPs and CRBs in paragraph 20.3. PWC had stated that this represented a fundamental change to the operation of the Code, and would require further consultation to confirm its practicality.
- Including identification information in paragraph 20.9 notifications (this has already been addressed in a variation to paragraph 20.9).
- Imposing responsibility for correction on the original CP in debt transfers. PWC had recommended further consultation to better assess the costs and benefits of this suggestion.
- Requiring better internal dispute resolution (IDR) procedures for CRBs. PWC determined this suggestion would require a policy change and could not be operationalised via the Code.

Consultation feedback

The stakeholder feedback was largely supportive of the two proposed variations, with industry stakeholders and EDR schemes raising no objection these variations, and feedback instead focussing on the relevant timeframes for both variations.

In respect to paragraph 20.4, additional feedback was provided by the OAIC about the drafting of the 'obligation to determine the correction' within the context of the original paragraph which provides this determination has already been made. Minor amendments were made to the drafting to address this feedback.

Consumer advocates welcomed the drafting changes proposed in paragraphs 20.2 and 20.4, although had further suggestions for improvement as follows:

- In respect to paragraph 20.2, consumer advocates supported a five business day time period and, where a consulted CP or CRB is unable to respond by the end of the correction period, a requirement to ensure that timeframe nominated by the consulted CP or CRB for a response be reasonable. Both suggested changes were adopted in the final drafting.

  Consumer advocates also noted they consider that it remained unclear how responsibility for consulted CPs or CRBs can be effectively enforced, and what recourse exists where there is responsibility to do so. Consumer advocates sought

explicit provision in the CR Code drafting that a failure to comply with the consultation request constitutes a breach of the CR Code, and the process for recourse following this breach.

ARCA's view is that the obligations imposed on consulted CPs and CRBs are set out in both the CR Code and Privacy Act, and a failure to comply with these obligations will constitute a breach of both the CR Code and the Act. Uncertainty in the application of these provisions should be addressed in corrections guidance (detailed further below), rather than additional drafting in the CR Code.

- In respect to paragraph 20.4, consumer advocates supported a three business day time period for correction. Consumer advocates noted this timeframe should apply where correction requests are made to CRBs and there is no need to involve the CP (who disclosed the incorrect information) to determine the inaccuracy of the information.

  ARCA has proposed a five business day time period, consistent with the time period in paragraph 20.2. Further provisions which would apply specifically to certain types of correction requests (i.e. the 'simple' correction) have not been included in the drafting. As set out above, the danger in making specific provision for 'simple' corrections is that correction requests need to be determined on a case-by-case basis, given sometimes even correction requests which appear on their face to be straightforward can become complex.

The remaining stakeholder feedback about the corrections provisions focussed on issues which have not been addressed in variations to the CR Code. ARCA has set out its response to these remaining issues below:

General feedback detailing issues in corrections

As highlighted in the discussion above, stakeholders provided information about issues with corrections processes including:

- Different standards for correcting information applied by different CPs and CRBs. In identity fraud cases involving multiple credit applications, this discrepancy in approach becomes most acute. The joint consumer advocate, Legal Aid Queensland and IDCARE submissions all cited examples of this issue.

- CPs or CRBs failing to act as 'first responder' when initially approached by consumers seeking a correction, instead referring the consumer to the organisation responsible for the entry of information.

ARCA considers this feedback highlights a possible gap between the current legal framework, and the implementation of this by CPs and CRBs. Further provisions in the CR Code will not address this gap, as these provisions would simply repeat the existing obligations. The gap should instead be addressed through the development of specific corrections guidance which sets out in detail the expectations for how a CP or CRB should implement these obligations. It is noted that the development of guidance is supported by the joint consumer advocate, Legal Aid Queensland and IDCARE submissions.

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ARCA proposes to develop this guidance by engaging with all impacted stakeholders. This guidance will be developed by November 2019, and will then be published by ARCA on its public website.

Separating obligations of CPs and CRBs

Consumer advocates have identified issues with the operation of the first responder provisions, which is that, consumer advocates have observed CPs or CRBs directing consumers to the CP or CRB, rather than dealing with the correction request themselves. Consumer advocates have proposed that redrafting the obligations for CPs and CRBs in the CR Code will:

- Make it clear what obligations and responsibilities are attributed to the entities
- Add clarity to the CR Code
- More clearly hold CPs and CRBs accountable to their obligations.
- Make it clear which entity is in breach of the CR Code if the correction does not happen in a timely manner and the consumer suffers additional detriment due to delay
- Ensure necessary communications occur.

ARCA has not adopted this proposed variation because separating the CP and CRB obligations within the CR Code will increase the length and complexity of this provision in the CR Code, without making any material change to the operation of the CR Code.

While ARCA appreciates the consumer advocate concerns about the ‘passing on’ of responsibility, the appropriate response to that is for more stringent guidance around corrections processes (see the discussion above), and, in addition, increased monitoring and enforcement action by the Privacy Commissioner to ensure that CPs and CRBs, where contacted by a consumer seeking a correction, are acting as first responder, in the manner prescribed by the Privacy Act and CR Code.

In this context, it is noted that the proposed variation to paragraph 20.2 should improve the operation of the first responder provisions, by imposing more onerous obligations on the consulted CP or CRB, and better enabling the first responder CP or CRB to meet the 30-day correction timeframe.

Imposing responsibility for corrections on original CPs

Consumer advocates have submitted that the proposed variation to paragraph 20.2 will be insufficient to address the difficulties faced by consumers and CPs correcting credit reporting information following a debt transfer. Consumer advocates have proposed an amendment to the CR Code which provides that, where the acquiring CP is unable to obtain relevant information from the original CP within the paragraph 20.2 timeframe, the consumer must be given the benefit of the doubt and the listing be corrected or removed (as appropriate). Consumer advocates say this provision will incentivise CPs to improve information sharing with debt buyers, and will also assist consumers dealing with listings where the original CP has gone into liquidation.

AFCA indicated that its experience had demonstrated issues with original CPs not cooperating with the correction process. AFCA suggested a solution could either be for the correction obligation to be imposed on the original CP, or alternatively, if the acquiring CP cannot demonstrate the information is accurate and up-to-date, this information should be removed.

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The debt buyer industry association, ACDBA, provided similar feedback concerning issues experienced by its members in processing correction requests and obtaining relevant information from the original CP. ACDBA noted that its members have experienced issues in dealing with AFCA with these issues. The preferred approach for the ACDBA would be for the original CP to be responsible for dealing with the correction of information reported by the original CP.

ARCA acknowledges that stakeholders have raised significant concerns with the sharing of information between original and acquiring CPs, and the impact this has on the corrections process. However, ARCA does not consider a variation to the CR Code is the appropriate response to these issues for the following reasons:

- <u>Imposing responsibility for the correction request on the original CP:</u> the inclusion of such a provision within the CR Code is not supported by the absolute nature of the assignment from original CP to acquiring CP, nor is it supported by section 6K of the Privacy Act which expressly provides for the acquisition of the rights of the CP (and notably extending to any application or credit being taken to have been made to the acquiring CP).

- <u>Requiring the information to be corrected because of failure to meet the correction timeframe</u>: inclusion of a provision of this nature was considered at the time of drafting CR Code. At the time, it was accepted that data accuracy was paramount, as was the need to ensure that credit repair did not exploit this type of provision. For this reason, 20.3 was drafted to instead provide that, where a CP or CRB could not respond to a correction request within the 30-day timeframe, they were required to seek an extension of time from the consumer and otherwise advise the consumer of their rights to refer the dispute to an EDR scheme. The CP or CRB was also required to provide the response to the consumer within the extended period, regardless whether the consumer agreed to the extension or not.

  The provision in paragraph 20.3 balances the needs of consumers for the expedient processing of correction requests, with the corresponding need to maintain the integrity of the data held in the credit reporting system.

The issues that persist with original/acquirer CP disputes would be better addressed in the corrections guidance, which is set out in more detail above. The guidance should place clear constraints on circumstances in which a correction can be made due to a failure to provide supporting documentation.

ARCA appreciates the concern expressed by both consumer advocates and AFCA about the need to preserve the interests of a consumer who may inadvertently find themselves caught in a ‘finger pointing’ stand off between an original CP and an acquiring CP. However, this concern must be balanced against the need to preserve the integrity of the credit reporting system – given undermining the operation of the system will also lead to consumer detriment, and fuel the likes of credit repair.

In this regard, this guidance should deal explicitly with expectations for information provided by an original CP to an acquirer CP (either at the time of debt assignment, or in response to a correction request) including the nature of information provided and reasonable timeframes for provision of information (allowing for retrieval of information from archive facilities).

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The corrections guidance can also address the scenario of the obligations of a first responder CP or CRB to correct information in a situation where it is unable to obtain supporting information from a CP or CRB to verify the information, for instance, where the original CP is in liquidation (and access to records is not provided by the liquidator). While each case will depend on its circumstances, the nature of the correction sought and the information provided by the consumer to substantiate the need for a correction, if a first responder is unable to verify the correctness of the information, it may be open for them to presume the information does not meet the requirements of sections 20S or 21U (as applicable), and correction may be made.

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8. Paragraph 21 – Complaints

Wording

"*21.1 Where a CRB or CP is required by Australian law, a condition of a licence issued by a regulatory authority or an enforceable Industry Code requirement to meet complaints handling requirements, the CRB or CP must comply with those requirements for the purposes of a complaint under Part IIIA. Any other CRB or CP must comply with the following sections of ISO ~~10002-2006~~* ISO 10002:2018(E) Quality management - Customer satisfaction - Guidelines for complaints handling in organisations *for the purposes of a complaint under Part IIIA:*

- *(a)* *Section 4* Guiding Principles;
- *(b)* *Section 5.2 ~~5.1~~* Leadership and commitment*;*
- *(c)* *Section 6.4* Resources*;*
- *(d)* *Section 8.1* Collection of information*; and*
- *(e)* *Section 8.2* Analysis and evaluation of complaints"

Explanation and reasons

The proposed variation to paragraph 21 replaces the references to the superseded ISO complaint handling standard with the current ISO complaint handling standard.

It is proposed that ARCA will apply again, within the next six months, to vary this paragraph further. The use of the ISO standard as the complaint handling standard for CRBs or CPs not covered by another complaint handling standard is acknowledged as problematic. The ISO standard is difficult and extremely costly for consumers to access and provides only very high-level detail about complaint handling standards.

ARCA has written separately to the OAIC outlining its intention to develop a complaint handling standard to replace the ISO standard. A copy of this correspondence is set out in Annexure H. Once this complaint handling standard is developed, ARCA will apply to vary paragraph 21 to specifically refer to this complaint handling standard.

Consequences of variation

Given the limited nature of the proposed variation, there will be no costs associated with this variation. The benefits, again, are limited and will simply be ensuring the currency of this cross-reference within the CR Code.

PWC report

This is a new issue which has arisen after completion of the PWC report.

Consultation feedback

The consultation feedback predominantly concerned the development of the further complaint handling standard to replace the ISO standard reference. It was proposed that this issue could be solved within the drafting of paragraph 21 by referring to a complaint handling standard 'approved by the Commissioner'. However, feedback from

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the OAIC indicated that such a provision would be problematic as there was no clear authority for the Commissioner to approve a complaint handling standard, this drafting has not been adopted.

The consultation feedback also suggested including additional complaint handling provisions within the CR Code (in addition to the replacement to the ISO standard). In particular, consumer advocates submitted that the CR Code should explicitly set out basic principles for internal dispute resolution processes, similar to the Code of Banking Practice and the Life Insurance Code of Practice and that this could be included as an interim measure (pending updating of the complaint handling standard).

ARCA's view is that this feedback ought to be considered when the further variation application is made for paragraph 21. In the absence of the replacement complaint handling standard, it is difficult to identify the necessity of the inclusion of basic principles within the CR Code. It should be observed that the approach to inclusion of specific CR Code complaint handling standards for CPs already subject to industry complaint handling standards was avoided in the initial drafting of paragraph 21, on the basis that it created a potential for a CP to have to manage two different sets of complaint handling standard.

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9. Paragraph 24.3 – Further review of the CR Code

Wording

"24.3 The Commissioner will initiate an independent review of the operation of this CR code within ~~3~~ 4 years of the date of the commencement of the initial independent review, and thereafter, every 4 years (following commencement of each independent review).~~within 3 years of the date of the commencement of this CR code.~~"

Explanation and reasons

The proposed variation replaces the existing independent review provision, with a provision that will provide for ongoing independent reviews of the CR Code.

The independent review period proposed is every four years, from commencement of each independent review. This provides a fixed time for each independent review (noting the next review will commence in mid-2021, four years after commencement of the PWC review). It allows time for both the review, and sufficient operation of the CR Code provisions. Given the review process has been used to facilitate variations to the CR Code, it was considered undesirable to allow a period any longer than four years between reviews.

Consequences of variation

The variation is an administrative variation, clarifying the operation of the independent review. The costs of the review process will be the same, although a more frequent review process will mean those costs are incurred more frequently. For the reasons set out above, the proposed four-year review time frequency is appropriate.

PWC report

PWC recommended that: "a review of the Code should be undertaken following the second anniversary of the commencement of mandatory [comprehensive credit reporting] CCR, to ensure that issues which arise as a result of the increased volume of information in the credit reporting system are captured and addressed".

The PWC recommendation was provided at a time when the introduction of mandatory CCR legislation appeared imminent. This legislation is yet to be passed by Parliament, and it is unclear that it will be passed (noting the Government is now in caretaker mode until the Federal Election on 18 May 2019). In any event, from late 2018, the largest credit providers have commenced voluntary contribution of CCR information. To the extent that the future review of the CR Code is intended to identify any changes to the CR Code responding to operational issues with CCR contribution, then the voluntary contribution of this information should be sufficient to enable these issues to be identified, and provide value input to the next CR Code review.

Consultation feedback

Stakeholders were supportive of the proposed review provision, with the four-year period fixed to commencement of each review being a suggestion from consumer advocates (responding to the consultation draft). Consumer advocates noted that a fixed review schedule was important, as the review schedule should not be tied to how long each review takes. Industry stakeholders (including ARCA Members, and industry associations) identified preference for this approach rather than a review period tied to the completion of each review.

Legal Aid Queensland suggested a five-year period was preferable, given the time and resources required for each independent review. Legal Aid Queensland further suggested that to address the issue of significant changes in the five-year period, a mechanism could be included in the CR Code to trigger an unscheduled review. These suggestions were not adopted based on the strong support from other stakeholders (including the consumer advocate submission) for the four-year period.

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ANNEXURE C – CONSULTATION STATEMENT

The consultation for the proposed variations occurred in two stages:

- **An informal consultation to scope out the variations to the CR Code, conducted in the latter half of 2018. Consultation material distributed by ARCA as part of the informal consultation process is contained in Annexure D – Informal consultation material.**
- **A formal consultation on the proposed variations between 30 January 2019 and 28 February 2019. ARCA placed a prominent link on its public website (www.arca.asn.au) to the CR Code Variation. Consultation material distributed by ARCA and made available on its public website as part of the formal consultation process is contained in Annexure E – Formal consultation material.**

The table below sets out consultation which occurred as part of both the informal, and formal consultation process.

External Stakeholder Engagement

Industry Association Stakeholders			
Stakeholder	Date	Nature of Engagement	Outcome/Feedback provided
Australian Bankers' Association (ABA)*	21 November 2018	Email to ABA providing consultation information and request to participate in industry association consultation session	No response received, no feedback provided
	30 January 2019	Email to ABA providing consultation information and request to participate in industry association consultation session	
Australian Collectors and Debt Buyers' Association (ACBDA)*	4 December 2018	Attendance at industry association consultation (see *Annexure F - Industry Association Consultation Outcomes* note)	Verbal feedback provided at EDR Schemes consultation – recorded in *Annexure F – Industry Association Consultation Outcomes* notes
	20 February 2019	Attendance at industry association consultation (see *Annexure F - Industry Association Consultation Outcomes* note)	
Australian Finance Industry Association (AFIA)*	4 December 2018	Attendance at industry association consultation (see *Annexure F - Industry Association Consultation Outcomes* note)	Verbal feedback provided at EDR Schemes consultation – recorded in *Annexure F – Industry*

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	20 February 2019	Attendance at industry association consultation (see *Annexure F - Industry Association Consultation Outcomes* note)	*Association Consultation Outcomes* notes
Australian Institute of Credit Management (AICM)	4 December 2018	Attendance at industry association consultation (see *Annexure F - Industry Association Consultation Outcomes* note)	Verbal feedback provided at EDR Schemes consultation – recorded in *Annexure F – Industry Association Consultation Outcomes* notes
	20 February 2019	Attendance at industry association consultation (see *Annexure F - Industry Association Consultation Outcomes* note)	
Communications Alliance	4 December 2018	Attendance at industry association consultation (see *Annexure F - Industry Association Consultation Outcomes* note)	Verbal feedback provided at EDR Schemes consultation – recorded in *Annexure F – Industry Association Consultation Outcomes* notes
	20 February 2019	Attendance at industry association consultation (see *Annexure F - Industry Association Consultation Outcomes* note)	
Data Governance Australia (DGA)*	21 November 2018	Email to DGA providing consultation information and request to attend industry association consultation	No response received, no feedback provided
Insurance Council Australia (ICA)*	10 December 2018	Discussion with ICA and ARCA re possible CR Code changes	No significant feedback provided
	4 February 2019	ICA confirmed they won't participate in industry association session; comfortable with proposed variations	
Mortgage Finance Association Australia (MFAA)*	21 November 2018	Email to MFAA providing consultation information and request to attend industry association consultation	No response received, no feedback provided

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	30 January 2019	Email to MFAA providing consultation information and request to attend industry association consultation	
National Credit Providers Association (NCPA)*	21 November 2018	Email to NCPA providing consultation information and request to attend industry association consultation	No response received, no feedback provided
External Dispute Resolution Schemes			
Stakeholder	Date	Nature of Engagement	Outcome/Feedback provided
Australian Financial Complaints Authority* (formerly Financial Ombudsman Service and Credit Investments Ombudsman)	5 December 2018	Attendance at AFCA consultation	Verbal feedback provided at AFCA consultations
	30 January 2019 and 6 February 2019	Emails to AFCA providing consultation information and request to attend EDR scheme consultation on 20 February 2019	
	13 March 2019	Attendance at AFCA consultation	
Energy and Water Ombudsman NSW*	30 January 2019 and 6 February 2019	Emails to EWON providing consultation information and request to attend EDR scheme consultation on 20 February 2019	No feedback provided
Energy and Water Ombudsman Victoria*	30 January 2019 and 6 February 2019	Emails to EWOV providing consultation information and request to attend EDR scheme consultation on 20 February 2019	Verbal feedback provided at EDR Schemes consultation – recorded in *Annexure F – EDR Schemes Consultation Outcomes* note
	20 February 2019	Attendance at EDR scheme consultation (see *Annexure F – EDR Schemes Consultation Outcomes* note)	
Telecommunications Industry Ombudsman	30 January 2019 and 6 February 2019	Emails to TIO providing consultation information and request to attend EDR scheme consultation on 20 February 2019	Verbal feedback provided at EDR Schemes consultation – recorded in *Annexure F – EDR Schemes Consultation Outcomes* note
	20 February 2019	Attendance at EDR scheme consultation (see *Annexure F –*	

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		EDR Schemes Consultation Outcomes note)	
Government or Regulators			
Stakeholder	Date	Nature of Engagement	Outcome/Feedback provided
Attorney-General's Department	30 January 2019	Email to AGD providing consultation information and request for feedback	No response received, no feedback provided
Australian Securities and Investments Commission (ASIC)	30 January 2019	Email to ASIC providing consultation information and request for feedback	Specific feedback provided by ASIC regarding variation to paragraph 6.2(a)
	14 February 2019	Verbal feedback provided by ASIC on paragraph 6.2(a)	
Consumer advocates			
Stakeholder	Date	Nature of Engagement	Outcome/Feedback provided
Consumer Action Law Centre (CALC)*	30 January 2019; 6 February 2019	Emails to CALC providing consultation information and request to attend consumer advocate consultation	No specific feedback provided – but endorsed joint consumer advocate submission
Financial Counselling Australia	30 January 2019; 6 February 2019	Emails to FCA providing consultation information and request to attend consumer advocate consultation	No feedback provided
Financial Rights Legal Centre (FRLC)*	2 May 2018	Informal telephone discussion with ARCA to discuss second trance variation issues	Extensive feedback provided – written submission addressing all proposed variations
	10 May 2018	Informal telephone discussion with ARCA to discuss second trance variation issues	
	12 September 2018	Informal telephone discussion with ARCA to discuss second trance variation issues	
	10 December 2018	Attendance at FRLC consultation (see *Annexure F – Consumer Advocate Consultation Outcomes* note)	

	30 January 2019; 6 February 2019	Emails to FRLC providing consultation information and request to attend consumer advocate consultation	
	7 February 2019	Email to ARCA raising issue with paragraph 21 (CRB complaint handling standard)	
	13 February 2019	Attendance at consumer advocate consultation (see *Annexure F – Consumer Advocate Consultation Outcomes* note)	
	28 February 2019	Written submission provided for FRLC, CALC, Consumer Credit Legal Service (WA) and Australian Privacy Foundation (see *Annexure F – CR Code Variation Written Submissions*)	
Legal Aid Queensland*	30 January 2019; 6 February 2019	Emails to Legal Aid Queensland providing consultation information and request to attend consumer advocate consultation	Extensive feedback provided – written submission addressing all proposed variations
	13 February 2019	Attendance at consumer advocate consultation (see *Annexure F – Consumer Advocate Consultation Outcomes* note)	
	19 February 2019	Written submission provided (see *Annexure F– CR Code Variation Written Submissions*)	
Other stakeholders			
Stakeholder	Date	Nature of Engagement	Outcome/Feedback provided
CreditWise*	30 January 2019	Email to CreditWise providing consultation information and request for feedback	No response received, no feedback provided

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Law Council of Australia*	30 January 2019	Email to Law Council of Australia providing consultation information and request for feedback	No specific feedback provided
	11 February 2019	Attendance at meeting of the Privacy Law Committee of the Business Law Section, briefing provided on CR Code variations	
MyCRA Lawyers*	30 January 2019	Email to MyCRA Lawyers providing consultation information and request for feedback	No response received, no feedback provided
IDCARE	11 March 2019	Attendance at meeting with ARCA	Feedback provided – written submission addressing paragraph 17 and 20 of the CR Code
	13 March 2019	Written submission provided	
CP (identity confidential)	7 February 2019	Email to ARCA providing feedback on paragraph 8 CR Code	Feedback provided – 2 email submissions addressing paragraph 8 of the CR Code
	22 February 2019	Discussion with ARCA regarding paragraph 8 CR Code	
	27 February 2019	Email to ARCA providing further feedback on paragraph 8 CR Code	

*** Stakeholders who participated in the CR Code Review (either by providing a written submission, or attendance at a consultation session, or both)**

ARCA Member Engagement

- **ARCA has provided its Members (full list of current Members is available at https://www.arca.asn.au/members/our-members.html) information about the CR Code variation through its monthly Member update newsletter (the CReditorial).**
- **ARCA has also formed a 'CR Code Review Member Workgroup' to provide feedback on both the CR Code Review, and the now the CR Code variations. This workgroup includes attendees from the following Member organisations: American Express, AMP, ANZ, Bank of Queensland, BCU, Bendigo and Adelaide Bank, Commonwealth Bank of Australia, Compuscan, Credit Union Australia, Equifax, Experian Australia, Good Shepherd Microfinance, HSBC Bank Australia Limited, illion, ING Direct, Latitude Financial Services, Macquarie Group, ME Bank, MoneyMe, National Australia Bank Limited, Pepper, Suncorp, Teachers Mutual Bank, Toyota Finance Australia Limited, Westpac Banking Corporation.**
- **ARCA held Workgroup meetings on 1 August 2018, 13 September 2018, 16 October 2018, 4 December 2018, 5 February 2019, 27 February 2019 to seek Member feedback on the CR Code variations.**

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Annexure D – Informal consultation material [Separate document file]

Annexure E – Formal consultation material [Separate document file]

Annexure F – Consultation outcome notes [Separate document file]

Annexure G – CR Code Variation Written Submissions [Separate document file]

Annexure H – Letter from ARCA to OAIC, 18 April 2019 re paragraph 21 [separate document file]