

CR Code Variation – Industry Association Consultation

20 February 2019

Attendees:

- Christiane Gillespie-Jones, Communications Alliance
- Alan Harries, ACDBA
- Nick Pilavidis, AICM
- Alex Thrift, AFIA
- Elsa Markula, ARCA

Paragraph 24.3 – CR Code review

- ARCA noted current drafting, as well as proposal by consumer advocates for a 4-year review period, but fixed to when each review commences (rather than concludes).
- ACDBA are not uncomfortable with 4-year proposal.
- AFIA think the 4-year proposal could be more certain.
- AICM and Comms Alliance both indicated no issue with 4-year proposal.

Paragraph 19 – Direct marketing practices

- ARCA noted proposed variation, and additional feedback from consumer advocates which had proposed redrafting 19.4 to provide that CRBs were not to mislead consumers about their rights to access free reports.
- AFIA noted that prohibitions on misleading conduct are already contained in the Australian Consumer Law. Also affects only 3 entities, so arguably element of ‘over-kill’.
- ACDBA queried the necessity of the extra sledgehammer of compliance – don’t want to re-write additional obligations of consumer law. It is not the right thing to introduce, and creates problems especially if there is ever a slight change in the ACL.
- AICM noted this is a conduct type issue – is it appropriate to use the Code to enforce compliance with other relevant laws.
- ACDBA suggested could be expressed as an overarching obligation in the Code – that nothing obviates the ACL.
- Comms Alliance observed, based on experience with code drafting, that Regulators usually advise that cross-referencing is a bad practice. Consumers will want to see cross references – however, a way to meet that need (but avoid cross referencing) can be to include an opening chapter which includes a statement that the Code should be read in conjunction with all relevant legislation.

Paragraph 11 – writ and summons information

- ARCA provided a background and suggested changes from consumer advocates.
- ACDBA are comfortable with exclusion for subrogated insurance judgments, as this does not relate to a credit transaction (for instance, an uninsured debt for a car accident might impact an individual’s creditworthiness but if they are insured, the insurer will pay). Will be worth checking if this causes problems for CRBs, whether it is overreach.
- AICM takes the approach that anything which results in someone having to pay money, relates to that individual’s creditworthiness. Would it limit other information being disclosed – for instance, if the ATO was to publish default information for individuals paying tax debts?

Paragraph 17 – protection for victims of fraud

- AFIA noted that this issue really does impact CRBs – and what they provide is important. The consumer advocate position (creating a fraud hub) is too difficult to implement, and shouldn't be adopted.
- ACDBA concur with AFIA's comments, the consumer advocate position would create more problems than it would solve.
- AICM observed that CRBs are data providers and in this sense they do play a role in resolution of fraud issues. However, if that comes at more cost to the CP, then that cost will be passed onto consumers, so this may not be an optimal outcome.
- Comms Alliance note that ID Care are the right place to direct inquiries, a lot of business are Members, and it may not be appropriate for CRBs to replicate the work already being done.

Paragraph 6.2(a) – account open date

- ARCA provided an update on feedback – noted differing views around approval date and drawdown date. It was also noted that the ARCA Board had expressed support for a disclosure based on unconditional approval date (applicable to all products).
- ACDBA noted that this does not have a great impact on ACDBA Members. That said, it would be nice to have predictability and consistency.
- AFIA note it would be appropriate to leave to ARCA Members for feedback.
- AICM agree with position identified by ARCA Board that ties the account open date to the concept of unconditional approval of committed liability.

Paragraph 8 – RHI assessment

- ARCA noted concern expressed in consumer advocate consultation about the change from RHI code '7' to RHI code 'X'. It was noted this concern was on the basis that the change was to endorse non-compliance with the Code.
- AFIA stated it doesn't agree with the consumer advocate views on the change from '7' to 'X'. AFIA is also comfortable with the change from 8.1 to 8.2, noting the benefits.

Paragraph 21 – complaints

- ARCA noted that consumer advocate feedback had raised issue with the accessibility and content of the ISO standard (noting this was the only complaint handling standard applicable to CRBs). ARCA Board feedback was that the views expressed by consumer advocates were warranted, and consideration was being had to developing a CRB complaint handling standard, which can be referenced via the CR Code as an 'approved code' (although to do it in such a way that does not delay the current variation process).
- ACDBA noted this reinforced the earlier discussion (in the context of paragraph 19) about cross-referencing things in the Code – as a general principle, we shouldn't be looking to link things in a definitive way.
- AFIA stated that they are working through a suggested way forward which would be a change away from the ISO standard. Attracted to an OAIC approved standard, although questions remain. For instance – in terms of flexibility of the development of the standard – is it a case of designating RG165 to apply to CRBs, or developing a separate process? There is also the question of deferring judgment of what is approved to the OAIC – is industry okay with that? Does it need to be OAIC approved? Are CRBs okay with OAIC doing it? AFIA aren't opposed, but just have some questions.

- AFIA noted that complaint handling is a fundamental core issue when it comes to credit reporting, so this should be addressed. Would ARCA look to draft the standard?
- ARCA clarified 'yes', that would be the intention. ARCA draft the standard, using RG165 as a guide, undertake consultation process and seek approval in similar fashion to a standard CR Code variation.
- Comms Alliance sought clarification – this standard wouldn't override other standards? ARCA indicated that was correct – it would apply to CRBs in absence of any other complaint handling standard. CPs would be subject to existing complaint handling standards.

Paragraph 20 – corrections

- ARCA provided background to proposed variation to paragraph 20.2, noted that it was intended to address issues raised by stakeholders, including debt buyers, concerning issues with corrections involving original CPs.
- ACDBA stated that none of its members are providing feedback that this is an issue. ACDBA members are currently encountering issues dealing with AFCA, for default removal issues. AFCA is refusing to grant extensions of time (to enable the debt buyer to obtain information from the original CP). Because of this refusal, debt buyers are incurring additional \$3300 cost for each dispute, and being told that if it is referred to the next level of the AFCA process they will be required to remove defaults anyway (“we've spoken with the lead Ombudsman, if it is referred to next level, the decision will be that you have to remove default”). This is for cases where the default is genuine and AFCA haven't cited any issue of inaccuracy – merely relying on consumer request to have it removed. ACDBA think this indicates a possible systemic issue with AFCA process – misstating position and removing legitimate defaults.
- ACDBA note that debt assignments are always going to be problematic. What would be good is to have regulatory or structural requirement to get around absolute assignment. (ARCA noted it seems outside scope of CR Code to undermine law of assignment – ACDBA to consider this further).
- AICM support ACDBA's comments regarding issues being encountered with AFCA – this is something which has also been raised by AICM members.

Paragraph 10.1 – payment information

- ACDBA noted that ARCA note on this issue had been provided to its members, no one had raised real objection.
- No other feedback on this proposed variation.