

Privacy (Credit Reporting) Code 2014 Review Consultation Paper December 2021

Experian feedback
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Executive summary

Experian welcomes the opportunity to provide feedback on the review of the Privacy (Credit Reporting) Code 2014 (CR Code) Consultation Paper (the **Consultation Paper**).

Experian's overall view is that most parts of the Code operate effectively and, with the exception of some minor amendments, most parts of the Code do not need substantial revision. The areas that Experian considers warrant the most attention, in order to ensure a consistent approach is taken by all CRBs, include:

- use of the Access Seeker provisions;
- use of credit reporting information for pre-screening and risk-based pricing; and
- appropriate recording of court judgment and public information.

Further, we note that, while not in scope for this review of the code, the provisions regarding use of de-identified information under the Privacy Act and the Privacy (Credit Related) Research Rule 2014 are difficult to interpret and the application of these provisions can lead to inconsistent outcomes.

3. Overarching issues

3.1 Effectiveness of the CR Code

1	What provisions in the CR Code work well and should remain as they are or with minimal change?
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Except the provisions discussed in this submission, Experian considers most provisions of the CR Code work well and should remain as they are or with minimal change.

2	What provisions in the CR Code are no longer fit for purpose? Why?
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Experian considers some provisions in the CR Code require modernisation or are simply no longer used. For example, the pre-screening provisions do not reflect modern digital advertising practices. Where we believe a provision should be reviewed or is no longer reviewed, we have commented in our submissions.

In addition, Experian considers section 22.3 of the CR Code requires revision. This section requires CRBs to destroy records at the end of the retention period required by Part IIIA but does not consider the action required when a record consists of information with differing retention periods. It is not possible to destroy records containing information required to be destroyed at 2 years without also destroying the information that must be maintained for 5 years. It is necessary to maintain all records contained in these files for 5 years to handle complaints and disputes.

3	Does the CR Code get the balance right between the protection of privacy on the one hand and use of credit-related personal information on the other? Why or why not?
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Experian considers that existing CR Code achieves an appropriate balance between the protection of privacy on the one hand and the use of credit related personal information. The one exception to this is the use of credit reporting information under the access seeker provisions. While Experian supports the rights of individuals to access and obtain credit reporting information about themselves and to disclose this information to third parties, we are increasingly being made aware of instances in which individuals are “consenting” to the disclosure of their credit information to entities that would not otherwise be entitled to access such information (for example recruiters/employers and real estate agents assessing lease applications). These types of uses of credit information raise ethical issues (such as the potential for individuals with poor credit history to be excluded from housing and employment) and we question the validity of the consent provided in these instances. Greater clarity regarding the appropriate use of access seeker provisions would assist CRB’s to take a consistent approach enabling parity between CRBs.

There is also some inconsistency between the objective of new laws (such as the consumer data right) and the Privacy Act and CR Code. For example, it is currently very difficult for individuals to utilise credit information about themselves for their own benefit including obtaining better rates on loans (or risk-based pricing). CPs are restricted from accessing credit information regarding individuals until an “application” has been made. This has led to uncertainty in the industry as to when it can be said an “application” has been made and whether or not an individual can consent to their credit information being provided to a CP prior to an application being made as part of “shopping around” for the best rate. Clarity regarding the circumstances in which an individual can provide their credit information to a CP in order to obtain a “quote” based on risk or, alternatively, clarity on when an “application for consumer credit” has been made would be welcomed.

3.2 Form and readability of CR Code

4	Does CR Code need to be amended for clarity or readability? If so, in what way?
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As the consultation paper notes, the CR Code follows specific conventions, mirrors the Privacy Act by way of structure and is by necessity an industry tool. Given that, the form and readability seem adequate. Generally, if one has to refer back to the Act to understand something in the Code, that is confusing and frustrating.

As the paper suggests, there could be value in adding consumer-friendly content however that material would need to explain legal obligations rather than support consumers in better understanding their rights. The purpose of the CR Code is to give further effect to Part IIIA of the Privacy Act, not to educate consumers.

Experian notes that the OAIC previously had published consumer facing content on the key Credit Reporting principles in a section called "Privacy Fact Sheets" - these were a valuable resource and would have achieved improved consumer clarity. Experian suggests reintroducing these sorts of education tools would be a more appropriate mechanism for providing consumers with a greater understanding of their rights in respect of the credit reporting system.

Regarding the "fairness" principle, Experian's view is that these would add little value in the CR Code and run the risk of creating ambiguity within what is already a complex domain. Many of the factors being considered as relevant to the proposed fairness principle in relation to APP3 and APP6 would simply not work in a credit reporting environment. For example, whether or not a consumer would reasonably expect personal information to be included on their credit file is not a good measure for determining whether or not such information is relevant and important to include. In Australia, up to 10% of consumers do not know what a credit report/score means.¹

A fairness principle would likely result in consumers challenging most negative credit events – consumers don't like negative credit events. However, recording negative events is important to ensure responsible lending practices can protect both the individual and the CP.

Experian opposes the introduction of any fairness principle and considers the CR Code would not be an appropriate document in which to do this.

5	Are there any CR Code provisions that are open to interpretation or prone to misinterpretation? Which provisions and how could they be improved?
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Experian refers to comments outlined in our submission below regarding:

- court judgments and publicly available information; and
- the ability to charge fees to access seeker organisations.

Further the provisions regarding use of de-identified information under the Privacy Act and the Privacy (Credit Related) Research Rule 2014 are difficult to interpret and the application of these provisions can lead to inconsistent outcomes.

¹ [Four in ten Aussies expecting to use credit to pay for their Christmas budget blowout - CreditSmart](#)

3.3 Interaction with the CCR System

6	What has been the effect of mandatory CCR on compliance with the CR Code?
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Experian notes the positive impact on adoption of CCR that the mandate of the Large ADIs has had. We do however note that many of the issues noted in this paper would not exist if the mandate applied to all lenders and all CRBs. Specifically, it is the asymmetry of sharing and service contracts that leads to consumer complaints and issues. Currently it is almost impossible for consumers to know which CRB their data has been shared with (if any) and which CRB might be providing data during an application. If a mandatory CCR regime applied to all CPs and CRBs it would significantly reduce the complexity and confusion for consumers and would address many of the issues noted in the consultation paper including coordination of Bans, gaining access to credit information from all CRBs consistently, notifications, corrections and remediation of fraud.

Countries such as India and Brazil that moved from a Negative to Positive reporting regime at a similar time to Australia have seized the opportunity to either put in place a mandate for all credit providers to share data, or for those sharing to do so equally with all credit reporting bodies.

7	Are there inconsistencies between CCR requirements and CR Code requirements that could be addressed via an amendment to the CR Code? How could the CR Code be amended in this context?
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Experian is not aware of any inconsistencies.

3.4 Participation of other entities

8	How might the CR Code need to be updated to accommodate other entities?
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Experian agrees that the CR Code (and Part IIIA of the Privacy Act) needs to be extended to accommodate other entities and also to address issues noted with Utilities/Telco's on definitions of specific data elements. CRBs would benefit from clarification on the applicability of Part IIIA to BNPL entities in particular. BNPL is a growing industry but the various models implemented mean that it can be difficult to understand if a BNPL is entitled to access and/or disclose credit reporting information at all. There are clear benefits to both consumers and the industry from increasing the participation of such entities in the credit reporting ecosystem.

Further, allowing other entities (including Telco's and Utility companies) to access and contribute RHI will improve outcomes for both consumers and lenders.

4. Governance of the CR Code

4.1 Code Governance, oversight and awareness

4.1.1 Code Development and ongoing monitoring of compliance

9	Is the current process for developing variations to the registered CR Code appropriate?
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Experian is satisfied with the current process for developing variations to the registered CR Code and considers appropriate industry input is sought.

10	Should additional compliance monitoring and governance arrangements be stipulated the CR Code
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Experian opposes the implementation of additional compliance monitoring and governance arrangements. CRBs are already subject to significant compliance obligations including the 3 yearly independent audit of each CRBs compliance for review by OAIC (CR Code 24.2), the obligations in section 20N and 20Q for CRBs to audit CP compliance with data quality and security obligations, the obligation on CRBs to publish an annual credit reporting report (in accordance with CR Code paragraph 23.11) and the newly introduced requirement to provide audited written statements to the Treasurer as required under in s133CZC of the Credit Act. These measures are sufficient and serve as good mechanisms for ensuring CRB compliance with the code.

4.1.2 Education and awareness of the CR Code

11	Do industry and individuals have access to the information they need to understand and/or apply the CR Code in practice? If not, what amendments could be made to the CR Code to improve this?
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The purpose of the CR Code is to give further effect to Part IIIA of the Privacy Act. It is legally binding and therefore not an appropriate tool to aid the education and understanding of individuals. Experian does not consider any amendments to the CR Code should made for this purpose.

Industry via their own marketing departments and ARCA as part of CreditSmart already provides a material amount of consumer education and awareness. As noted in 3.2, there is opportunity for the OAIC to play a more active role in consumer education, even beyond the Privacy Fact Sheets which were unfortunately deprecated.

4.2 Governance obligations applying to CRBs and CPS

4.2.1 Credit reporting agreements, audits, training and policies

12	Are the provisions on credit reporting agreements, audits, training and policies appropriate? Should they be amended in any way? If yes, how?
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Experian considers the provisions regarding audits, training and policies are appropriate. Whilst audits place an operational burden on both the CRB and CP and may be exacerbated if a CP is audited by more than one CRB in a short

space of time, without multiple audits there really is no other way for a CRB to have confidence that it is meeting its obligations to ensure that data is accurate and up to date.

Most audits of CPs result in findings or observations, implying that audits do add value. Furthermore, audits cover all types of data (not just CCR) and so they could be different for each CRB.

Allowing CRBs to adopt a risk-based approach to auditing, allows flexibility to prioritise efforts.

4.2.2 Internal practices and recordkeeping

13	Are the provisions related to internal practices and recordkeeping appropriate? Should they be amended in any way? If yes, how?
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Experian considers that a number of provisions regarding record keeping and internal practices could be improved as set out below:

- Experian suggests that a distinction be drawn between information held by CRBs outside of their bureau database and information held “within the bureau”. It is common for CRBs to retain data input files provided by CPs separately to the CRB’s bureau database and it would be preferable to have clear guidance as to the period of time that such input files can be retained.
- Experian suggest that section 22.3 of the Code should be modified to specifically address the destruction of records that span multiple retention periods. The input files supplied by CPs to be loaded by the CRBs frequently contain records that fall within different retention periods. It is not possible to destroy records containing information required to be destroyed at 2 years without also destroying the information that must be maintained for 5 years. It is necessary to maintain all records contained in these files for 5 years to handle complaints and disputes.
- Experian suggests that CRBs should be permitted to create a personal information record in respect of access seekers who are not (prior to their access request) recorded on that CRBs bureau database. CRBs are not currently permitted to collect personal information if they are not also collecting other credit information about an individual. When an access request has been made, CRBs should be permitted to retain that individual’s personal information and a record of the service request.
- As discussed further in this submission, Experian suggests that provisions which formalise the use of “soft” enquiries would improve consistency between CRBs and reduce consumers concern regarding this practice.

5. Provisions applying to certain types of information

5.1 Consumer credit liability information

14	Are the CCLI provisions appropriate? Should the CCLI provisions contained in paragraph 6 be amended in any way? If yes, how?
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Although the scope of the questions in this section are primarily directed at CPs, Experian notes that if CCR is to be a useful data set then consistency is key. Where CPs apply different definitions to the same data or element, that reduces trust in the data overall and increases the potential for consumer harm. Where consistency can be achieved, that will improve the credit reporting system. Generally, where it is practical to do so, standards should replace guidelines and the CR Code should support CPs to achieve consistency.

15	Are the definitions/interpretations contained in para 6 appropriate? Should they be amended in any way? If yes, how?
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The current wording paragraph 6 is unclear as to whether historical credit limit data can be retained and utilised. This information is a useful indicator of changes to an individual's financial circumstances. Experian would therefore advocate that the CR Code should clearly enable CRBs to retain this information.

5.2 Repayment history information

16	Are the RHI provisions appropriate? Should RHI provisions be contained in para 8 be amended in any way? If yes, how?
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Experian repeats its comments in section 5.1 above (in response to questions 14 and 15). The value of CCR is eroded by inconsistencies in data supply. Wherever possible, CPs should be held to the same definitions and set of standards. There would also be a consumer benefit where they can understand the data better (standards should replace guidelines).

5.3 Default information and payment information

17	Are the default information and payment information provisions appropriate? Should the provisions contained in paragraphs 9 and 10 be updated in any way? If yes, how?
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These provisions are primarily directed at CPs and as such Experian does not comment except to note that very few CPs are currently reporting new arrangement information and those CPs that are reporting such information appear uncertain as to the requirements.

5.4 Publicly available information

18	Are the provisions regulating use of publicly available information appropriate? Should they be amended in any way? If yes, how? Is the meaning of publicly available information adequately clear?
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There is currently serious inconsistency and confusion among CRBs, consumers and AFCA regarding the recording of judgment and publicly available information. We believe these provisions need more detailed guidance to ensure parity between CRBs and to reduce consumer confusion and disputes. A number of the issues are outlined below.

Court judgments are very valuable to the credit reporting ecosystem because they have a high correlation with an individual's credit risk. The various court registries around Australia have differing levels of sophistication in terms of the level of detail and information provided regarding judgements. Determining whether a judgment relates to credit that has been provided to or applied for by the individual is not always an easy task. Guidance on the steps a CRB needs to take to be satisfied of this would be welcome.

Secondly, there has been much industry speculation regarding which type of judgments fall within the credit information definition of court judgements and which (if any) fall within the definition of publicly available information. Some industry participants suggest that the inclusion of a specific provision for the court judgments in the definition of credit information must decisively determine the full extent to which court judgements can be included. This provision would not have been necessary to include, if it were intended that all court judgements fall within the definition of publicly available information. Other industry participants suggest that some court judgments that don't relate to credit that has been provided to or applied for by the individual may nevertheless relate to "credit worthiness" and therefore fall within the publicly available information provision.

Further, there is division over whether or not particular types of judgment relate to credit worthiness and can therefore be recorded as publicly available information. In particular, non-payment of council rates has been subject to much discussion.

Finally, there has been a significant increase in AFCA disputes regarding court judgements including whether the full judgement amount (including interest and/or legal costs) should be recorded on a credit file.

This lack of consensus leads to a lack of parity between CRBs and results in consumer confusion. For example, consumers (and their advocates) do not understand why some CRBs are recording certain judgment information and others are not. Greater guidance is urgently required to ensure CRBs can compete with each other fairly, CPs are making decisions consistently and consumers can understand and be informed about their rights when such information is included in their credit file.

5.5 Serious credit infringements

19	Are the provisions on serious credit infringements appropriate? Should they be amended in any way? If yes, how?
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The serious credit infringement provisions are rarely used in practice due to the onerous requirements currently in place. We question the utility of these provisions in light of the limited use in practice. It appears the intended objective of these provisions is not being met.

6. Protection and rights for individuals

6.1 Notice to individuals

20	Are the provisions regulating how individuals are notified that their information will be provided to a CRB appropriate? Should they be amended in any way? If yes, how?
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We note that the current requirements in the Privacy Act and the CR Code require notification of the details of the particular CRB to which the information will be provided. This can cause difficulties when a CP later wishes to change its CRB provider and disclose legacy credit information to the new CRB. While many CPs address this by listing the details of all three major CRBs, Experian suggests that the CR Code could be improved by allowing CPs to generically refer to disclosure to CRBs rather than providing each CRBs details. That would enable CPs to engage with more CRBs and remove a barrier to competition between CRBs.

Experian also notes that if CPs were subject to a mandate to share data with CRBs equally, the requirement to notify individuals of the details of particular CRBs could be likely be removed entirely.

6.2 Protections for victims of fraud

21	Are the protections for victims of fraud appropriate? Should the provisions contained in paragraph 17 be updated in any way? If yes, how?
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Experian considers the operation of ban periods and paragraph 17 of the CR Code should be reviewed and amended.

In Experian's view the 21-day ban period is not appropriate and is not consistent with the practice of other jurisdictions around the world. Although we recognise that the ban period is set by the Privacy Act and not the CR Code, Experian strongly supports amendment to this provision and the corresponding provision in the Privacy Act. The ban period should be set by the individual themselves and should continue for as long as the individual requires. This would largely ease the current administrative burden on both CRBs (who must notify individuals of the impending expiry of a ban) and the individuals currently, at times, must apply for extensions to the ban multiple times.

Further, the current requirement that a CRBs must not extend a ban unless it believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud is unduly onerous on CRBs and can result in inconsistent approaches between CRBs. CRBs are placed in a difficult position of making a subjective determination of whether or not there are "reasonable grounds" to believe the individual has been a victim of fraud and individuals are unnecessarily burdened with the task of collating proof of fraud. Greater clarity as to what proof should be provided and the time frame for providing such evidence would be welcomed.

Experian would also appreciate clarity on the requirement to "immediately" place a ban on the file as soon as a request is received. This is not possible if the CRB must first verify the individual's identity and make a determination on the presence or likelihood of fraud. A requirement to place a ban as soon as possible after receiving a request would be more appropriate.

Under the current provisions, a CRB is required to communicate with an individual who requests a ban including to provide various information to the individual. In order to do this, the CRB needs to collect contact information from the individual (primarily email address and/or phone number), however a strict reading of paragraph 5 of the CR Code leaves a question mark as to whether collection of personal information of this kind is permissible for this purpose. Clarification that collection of personal information by a CRB for this purpose would be welcome.

Experian also suggests that further review/guidance be provided regarding use of the access seeker provisions during a ban period. We believe that many businesses that operate access seeker services could assist individuals for whom they act when fraud occurs, but the Privacy Act and CR Code do not make it clear whether a CRB can continue to provide credit reporting information to such access seekers once a ban is placed. Nor is there any guidance as to what checks/balances need to occur before such access should be granted (for example further identifying the individual).

22	Should there be further obligations on CRBs to alert individuals of enquiries received on a credit report during a ban period?
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Since enquiries are not recorded during a ban period and CPs are unlikely to provide consumer credit if there is a ban on the consumer's credit file, Experian does not believe that alerts would provide individuals with any great benefit or protection. Accordingly, the additional burden on CRBs to build such alert systems would not be justified.

6.3 Use of credit reporting information for direct marketing

23	Are the existing direct marketing provisions appropriate? Should they be amended in any way? If yes, how?
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Experian broadly agrees with the restrictions regarding the use of credit information for direct marketing and does not consider they need amendment except in respect of the two items noted below:

- Pre-screening; and
- Risk-based pricing.

Although we agree with the objective of the pre-screening provisions, they are rarely used in practice and are significantly out of date. The provisions do not reflect the manner in which modern day marketing is undertaken (for example via online digital platforms). For example, entities such as loan comparison websites are not certain if they can utilise the pre-screening provisions to prevent the display of particular loan offers to some individuals. This type of pre-screening would need to operate on an "on-demand" type basis which does not fit the current provisions. The current provisions refer to lists of individuals being provided to CRBs for pre-screening prior to marketing being undertaken.

Similarly, the restrictions on the use of credit information for direct marketing significantly hamper the ability of lenders to offer risk-based pricing. Risk-based pricing is widely used as a beneficial tool in other jurisdictions, but is stifled in Australia due to the restrictions on direct marketing. Lenders are not able to access credit information in order to offer better deals to lower risk consumers until the individual formally applies for consumer credit with the lender. In effect, the cart goes before the horse. Experian would encourage a review of Part IIIA and the respective CR Code provisions with a view to enabling the use of risk-based pricing.

6.4 Access Rights

24	Are the access provisions appropriate? Should the provisions in paragraph 19 be updated in anyway? If yes, how?
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Experian considers the access seeker provisions are a significant area requiring review and reform. Experian supports the introduction of provisions that accommodate the use soft enquiries and provide clarity as to their permitted uses. Soft enquiries are a useful tool and should be permitted to record service requests by access seekers. This is consistent with other jurisdictions around the world.

In our view, the introduction of provisions to accommodate risk-based pricing in Australia would alleviate the concerns regarding potential misuse of the access seeker provisions by CPs and would ensure the Privacy Act is more aligned with the objectives of the Consumer Data Right to empower individuals to benefit from their own information. The ability for individuals to shop around for better pricing without a hard enquiry on their credit file will increase competition among CPs and result in better outcomes for individuals. This would also resolve the uncertainty that exists in respect of the use of the access seeker provisions by mortgage brokers and mortgage aggregator platforms (on behalf of mortgage brokers).

As discussed in section 3.1 of our submission, we are more concerned with the lack of guidance regarding potential misuse of use of access seeker provisions by entities such as real estate agents and recruiters/employers which could have very serious implications for individuals with poor a credit history and circumvent the principles of reciprocity. This is an instance where an individual's consent to the use of their information may not be sufficient or truly "freely" given. We believe that greater clarification/restriction on the use of credit information where an entity sources such information from a consumer themselves is important. Without this clarification, CRBs are left to make a subjective determination on whether such uses are permissible. This does not create a level playing field for CRBs to compete with each other and leaves more ethical CRBs at a disadvantage.

Experian would also welcome guidance on the use of the access seeker provisions by mortgage brokers and mortgage aggregator platforms (on behalf of mortgage brokers).

Experian opposes the introduction of any requirement that credit reports should be available for all CRBs following a request to any one CRB. This would be impractical to achieve if we are to meet the obligation of ensuring that the consumer has been appropriately identified.

We support the ability for consumers to continue to utilise the access seeker provisions during a ban period but suggest that sufficient guidance would need to be provided as to how a CRB can ensure the access request is legitimate in these circumstances.

Finally, Experian believes the provisions in the Privacy Act and the CR Code regarding the ability to charge fees for access seeker requests are open to misinterpretation. Industry practice is to charge fees to entities that operate as access seekers on behalf of multiple individuals (provided fees are not charged to the individual themselves). However, as currently drafted, such entities are regarded as access seekers themselves and the provisions regarding free access could be misinterpreted to apply to such entities when the intention is to ensure the individuals themselves are not charged.

6.5 Correction of Information

25	Are the correction provisions appropriate? Should the provisions in paragraph 20 be updated in any way? If yes how?
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Obligations on CP and CRB to ensure data is accurate and up to date are not fully supported by provisions for collecting, managing and disclosing corrections. By way of example, consumer contact information such as phone and email are necessary to support a correction but are not expressly permitted to be collected by a CRB.

Experian considers that the correction provisions could be expanded to more expressly support processes and systems that enable the efficient exchange of information between CRBs and CPs which is necessary to resolve many correction requests.

6.6 Complaint Handling

26	Are the provisions on complaint handling appropriate? Should the provisions in paragraph 21 be amended in any way.
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Experian is satisfied with the existing provisions.

6.7 Dispute resolution processes for individuals

27	Are arrangements for dispute resolution appropriate? Should the arrangements be changed in any way? If yes, how?
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The arrangements for dispute resolution should mandate that the relevant CP/CRB must be provided with an opportunity to resolve the issue with the individual directly before the OAIC commences its investigation. The first question from the OAIC should be to confirm if the individual has attempted to resolve with the original organisation first. This should apply to individuals or agents acting on an individual's behalf.

Experian is also concerned about the cost incurred by CRBs in respect of AFCA claims where the result is in favour of the CRB. In recent times, consumer advocates have initiated bulk claims on behalf of multiple consumers in respect of the same issue. This can result in an unfair cost burden in circumstances where the underlying issue is resolved in favour of the CP/CRB. The CP/CRB incurs the relevant AFCA costs for such bulk claims regardless of the favourable outcome. Experian suggests that the introduction of a process that enables such advocacy groups to obtain a preliminary AFCA view of the underlying issue would reduce these types of claims and the unnecessary cost and time involved in their resolution.

6.8 Other options to protect individuals affected by domestic abuse

28	How could the CR Code be amended to enhance protections for individuals?
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Experian considers the CR Code already contains thorough and appropriate protections for individuals and we do not believe amendment is required.

Whilst Experian recognises the difficulties faced by domestic violence victims and is strongly supportive of any mechanism that can support victims of domestic abuse, we do not believe adopting a customer-based approach to reporting credit information would be the best mechanism to achieve this.

The entire credit reporting system in Australia – and most other countries – is designed around accounts and not individuals. Seeking options to address domestic abuse issues via a change to this structure is impractical, would take years to implement and would likely result in a significantly higher volume of data issues and consumer harm.

The data standards, while account-based, already provide the ability to split account holder information in particular circumstances. Experian considers that this issue would be best dealt with by industry developed standards and is not a matter which requires amendment to the CR Code.

7. Permitted activities of CRBs and CPs

7.1 Information Requests

Experian agrees that consumers are frequently concerned about information requests recorded on their credit file, but we do not believe any amendment to the CR Code is necessary. In our view much of this concern could likely be alleviated by educating consumers about what an information request is, when information requests can be made, who can see that an information request was made and what impact it has on their credit score and/or subsequent applications for credit.

Experian also believes that some of contention regarding information requests likely arises from the record a CRB makes when an access seeker request is processed. These are also referred to as Service Requests or soft enquiries. In our experience consumers are not aware that, although they can see soft enquiries on their credit file, CPs cannot.

Finally, we refer to our earlier comments regarding the ability to use access seeker provisions or soft enquiries to allow CPs to provide a risk-based quote prior to a “formal” application for credit being is likely contributing to this issue. In those circumstances, it is understandable for a consumer to believe that they have not made an application for credit (because they have not). Further guidance or processes regarding when a “soft” enquiry versus a “hard” enquiry should be recorded by a CRB could resolve this issue.

7.2 Transfer of Rights of CP

Experian and other CRBs are currently in discussions with ARCA regarding these provisions. The current provisions may need to be amended to describe what the required outcome is meant to be, rather than trying to specify how the outcome should be achieved.

7.3 Use and Disclosure

32	Are the provisions regulating use and disclosure appropriate? Should they be amended in any way? If yes, how?
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Generally, Experian considers the provisions regulating use and disclosure are appropriate. Experian refers to and repeats its comments earlier in this submission regarding use and disclosure by access seekers which we consider requires review. Experian also refers to and repeats its comments regarding pre-screening and the potential use of and disclosure to CPs prior to an application for credit being made to enable CPs to offer risk-based pricing. In our view this would be greatly beneficial for consumers and CPs alike.

Further discussion

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Experian appreciates the opportunity to provide inputs and recommendations on the review of the Privacy (Credit Reporting) Code 2014. We welcome the opportunity to constructively participate in further consultations and we look forward to further and ongoing engagement.

Please contact me if you would like to discuss this submission further.

About Experian

Experian is the world's leading global information services company. During life's big moments – from buying a home or a car, to sending a child to college, to growing a business by connecting with new customers – we empower consumers and our clients to manage their data with confidence. We help individuals to take financial control and access financial services, businesses to make smarter decisions and thrive, lenders to lend more responsibly, and organisations to prevent identity fraud and crime.

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