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Australian Retail Credit Association
Via email: [REDACTED]

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Re: Discussion Paper – Introduction of Soft Inquiries Framework

Thank you for the opportunity to provide ARCA with our submission.

The FBAA strongly supports further reforms to the Privacy CR Code to enable credit inquiries to be undertaken by credit providers in such a way that a consumer's credit score is not impacted and where such inquiries are prospective or preliminary in nature.

The existing rules have produced convoluted arrangements, higher costs for business and lead to poor consumer outcomes. The current rules forcing credit providers to make hard inquiries on a credit file are damaging consumers' credit files and resulting in an increasing amount of complaints against credit providers.

It is our understanding that soft inquiries are currently recorded on a consumer credit file but:

- a) they do not have any impact on a consumer's credit score; and
- b) they are only visible to the consumer.

Submissions made to the 2021 Independent review of the Privacy (Credit Reporting) Code supported additional disclosure and consumer education as part of the solution to improving the operation of the CR. We have strong reservations against disclosure and education based solutions unless they are intended to operate alongside stronger actionable measures that produce better outcomes through action. A disclosure-based approach assumes a certain level of engagement with educational material by the target audience. In our experience, consumers do not have a high level of engagement with paperwork, and giving them more information risks overloading them, making it difficult to distinguish between what is important at a particular point in time. This in part is already contributing to elevated numbers of complaints.

It is often the case that consumers are already overwhelmed with the amount of information provided to them. The volume of statutory disclosure that already occurs in a 'typical' transaction, results in a sizeable amount of information being presented to a consumer.

We believe that making additional material available to consumers is reasonable where the consumer chooses to seek it out. We caution against any proposed reforms that require mandatory additional disclosure. We must ask the question whether a typical consumer really wants to understand the intricacies and nuances of credit reporting or whether all they want is a credit file they easily understand (i.e. one does not need to know how to bake a cake to be able to eat one).

It would be beneficial to identify in the credit report which inquiries had an impact on the consumer's credit score and which did not. This could address those consumer complaints that relate to entries on a consumer credit file that have no bearing on the score. We understand that it won't address other complaints relating to hard inquiries that are legitimately made but which the consumer wants removed.

A credit report should indicate that soft inquiries made on a credit file:

- a) are not visible to other entities that obtain this report from the CRB / other credit providers; and
- b) have no impact on the consumer's credit score.

We will address the discussion paper issues in the order they are raised.

A. Define the circumstances that amount to a soft enquiry

We agree that any alteration to the definition of *information request* under s6R of the Privacy Act may have a range of knock-on consequences. Introducing the concept of a soft enquiry at this level may cause confusion in other provisions or require significant consequential amendments to the Act.

We favour the approach of introducing a new definition into the Privacy Act and CR Code of an *information enquiry* or a *credit enquiry*. This will need some consequential modification in the Act such as inserting a new paragraph around 6N(d) or after 6N (e) to include an *information enquiry*.

The example definition of a soft enquiry provided in the CP is:

A soft enquiry refers to an enquiry made by an individual in connection with a consumer or commercial credit product offered by the CP and which is capable of being the subject of an application with the CP.

This definition needs to be broad enough to include an enquiry initiated on behalf of a consumer by a third party - such as a broker assisted application. Perhaps it is as simple as including the words "*by or on behalf of an individual*" in the definition of *information enquiry*.

It is becoming increasingly common for credit providers to customise an indicative rate based on a consumer's credit profile / credit score. Brokers may submit a single consumer application to multiple lenders to see which comes back fastest and/or with best terms. Technology will continue to make this process more seamless in future.

It is also in the best interests of all parties that credit providers can determine as early as possible whether the consumer's circumstances fit within their credit policy. This prevents all parties wasting time proceeding with an application that will fail on hard knockouts.

Where a decision to refuse to offer credit following receipt of an application is based on information in the credit file, credit providers are required to provide a s21P notice to the applicant. We believe early decisions that a prospective applicant is outside credit policy based on a soft enquiry should not fall under the same requirements because the credit provider is declining to accept an application rather than assessing an application and forming a decision to decline it. In this way, the ability to review a credit file through a soft enquiry would operate in the same way as an applicant falling outside of any other hard knockout terms that are evident from an application (or enquiry to the credit provider about whether a prospective applicant might qualify for consideration).

To illustrate this through an example, a credit provider's credit policy may preclude them from offering credit to a person who has been in their job for less than 6 months. On receiving an enquiry from a person who has been in a new job for only 4 months, a credit provider can quickly decline to consider an application because it falls outside credit policy. In this example, the decision to decline to entertain an application is not made based on the credit score or credit conduct of the consumer, but is made because of the existence of certain attributes that make a consumer ineligible to apply with a particular lender. A credit file can, at times, operate in a similar manner. A credit provider's credit policy may exclude applicants with loans with small amount lenders or other credit-related attributes which will quickly exclude them without a credit provider actually considering information specific to the creditworthiness of the applicant.

For the soft enquiry framework to operate effectively, credit providers need to be able to make a soft enquiry against a consumer's credit file early in the transaction and usually at a time prior to receiving an application or making a formal offer of credit.

Allowing credit providers to make soft inquiries is, at least in part, about achieving a better outcome for all parties. Consumers can avoid wasting time and impacting their credit file by applying to a credit provider that cannot entertain their application. Credit providers do not incur the expense of assessing applications that could never succeed and reduce their risk of later complaints by consumers about having inquiries on their credit file.

Credit providers continue to receive complaints from consumers that do not understand that an application for credit will mark their file even if the application is unsuccessful.

Credit providers are powerless to remove valid credit inquiries therefore cannot satisfy a consumer's complaint seeking such an outcome - which invariably results in escalation of consumer complaints to EDR. Licensees report that some consumers mistakenly believe that they must lodge a complaint with AFCA to have a credit enquiry removed – bypassing interaction with the credit provider altogether. Credit enquiry complaints are still too common and are costly.

The reforms need to recognise that the consumer enquiry submitted by a broker may come to the credit provider in the form of an application. This is so even if the broker and credit provider each understand there is no present intention of the application being anything more than the preliminary enquiry to determine whether the credit provider might make an offer and on what terms. A credit provider should be able to make a soft enquiry as a result of receiving an application where their preliminary processes involve credit scoring or utilising credit information as part of the initial eligibility assessment and before any decision is made whether to offer credit to an applicant.

Consumers may not appreciate the difference between an enquiry and an application or even be aware that their broker will submit an application to more than one credit provider. It is not contemplated by a consumer that their credit file would be negatively impacted by the broker seeking to secure an offer of finance that best suits their needs.

B. Specify when enquiry information will need to be reported by a CP

We want to ensure that the reporting requirements for soft enquiries are minimal. All that is required is a record of a soft enquiry being attached to the consumer's credit file.

We do not consider it necessary to connect the soft enquiry to any subsequent hard enquiry. If a credit provider runs a soft enquiry and the consumer then proceeds with an application to the credit provider then a hard enquiry will be made and information is captured by the CRB as it presently happens. The consumer's credit file would have a record of a soft enquiry (which does not impact their credit score and is only visible to them) and a hard enquiry which hits their credit file.

If a consumer does not proceed with an application after a CP makes a soft enquiry then no further information needs to be reported. The soft enquiry is recorded against their file but is not visible to others and has no impact on their score.

A CP should not use soft enquiry information to assess an application. This is probably one area that will be difficult to regulate.

From a cost-reduction and efficiency perspective it would be ideal if a credit provider could make a soft enquiry and subsequently "upgrade" it to a hard enquiry if the consumer

proceeds with an application. This would alleviate the need to undertake 2 inquiries and incur double costs. This would need the support of credit reporting bureaus.

C. Require CPs to use the CR Code framework to access credit reporting information in response to a soft enquiry

We propose a fourth option under this point – or at least a modification to the third point. CPs should be able to rely on credit reporting information provided by the consumer or their agent, and can otherwise obtain this information by accessing CRB data.

If a CP has received credit reporting information from a third party access seeker – for example where the broker has included information from the credit report in the information provided to the credit provider, there is no reason a credit provider should be prevented from taking the information into account. Making a soft enquiry should only be necessary where the credit provider does not already have access to this information and requires it as part of their process to consider whether they are able to receive and consider an application for credit.

We do not support either of the proposed drafting options in Table A for this issue.

D. Limiting the type of information which can be provided by a CRB to a CP in response to a soft enquiry

There should not be any limitations on a soft enquiry that can be made by a credit provider.

For the soft enquiry process to be beneficial, credit providers need to be able to see all of the credit information that is currently available to any access seeker. The idea of limiting the information is extremely impractical because it would undermine the purpose of allowing a credit provider to make soft inquiries.

Credit provider systems are always evolving and are utilising technology in a wide range of ways. For example, some systems already directly process information contained in a credit report using the source data. If the information is restricted or modified in such a way that a credit provider can only get partial information from a soft enquiry, there will be no benefit.

What is important is placing reasonable parameters around when a credit provider can make a soft enquiry; not what information they can obtain. Taking this approach is more likely to address any mischief that can be anticipated around credit providers utilising the information for purposes other than those directly related to a prospective application or an enquiry initiated by a consumer (or their agent).

E. Require CRBs to make a written note of the soft enquiry

Consistent with our statements above, we believe this soft enquiry framework should remain as simple as possible. To that end we support the idea of having a limited note along the lines of the first drafting option presented under Point E in Table A in the consultation paper. All that is needed is the date, name of the CP and the fact it was in connection with a soft enquiry. We also recommend the report should indicate that the soft enquiry has no impact on the consumer's credit score and is not visible to other credit providers.

5. Additional matters for consultation

Point 5 of the consultation paper addresses the issue of informing individuals about the impact of the credit enquiries. As we stated earlier in our response, care needs to be taken with attempts to educate individuals about the credit scoring process and the impact a credit enquiry can have on a credit file. It is a difficult issue to address because individuals are unlikely to engage with information about credit scoring and the impact an application can have on their credit file at the point in time when it is most important – namely the time before they make an application. Their focus will usually be on obtaining credit rather than disclosure warning them of potentially adverse consequences. High-level information and concise statements may assist but anything more complicated is likely to cause more confusion.

The most important issue relating to soft enquiries is to make sure an individual knows that a soft enquiry does not impact their credit score. This is the crux of most complaints relating to credit enquiries. Many credit-score related complaints are based on the complainants lack of understanding that a credit application will trigger a hard enquiry that will impact their credit score.

We look forward to being part of the continuing discussion.

Yours faithfully



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