Submission by the
Financial Rights Legal Centre
Financial Counselling Australia
Consumer Credit Legal Service WA

Australian Retail Credit Association

Consultation on CR Code Review and potential variations, June 2023

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Introduction

Thank you for the opportunity to provide feedback on potential variations to the Privacy (Credit Reporting) Code 2014 (Version 2.3) (**CR Code**). The Financial Rights Legal Centre will address the following proposals:

- Proposal 6: Accommodating other entities reporting CCLI;
- Proposal 19: Introduce positive obligations related to statute barred debts;
- Proposal 24: Notification obligations;
- Proposal 31: Require a CRB to record and alert an individual of access requests during a ban period;
- Proposal 37: Enable correction of multiple instances of incorrect information stemming from one event; and
- Proposals 39-41: Amend the mechanism for corrections due to circumstances beyond the individual's control.

If this submission does not provide feedback on other specific proposals, it is not because consumer representatives support or do not support those proposals, we simply don't have feedback on how they should be implemented in the CR Code at this stage. We may have feedback in the upcoming formal consultation after ARCA has considered how to give effect to all of the CR Code variations.

Proposal 6: Accommodating other entities reporting CCLI

What is the most appropriate comparison point for 'account open date' and 'account close date' in the telco/utility context?

For the purposes of CCLI relating to telecommunications or utilities consumer representatives believe these accounts should be opened when the services are connected and accounts should be terminated where the service has been disconnected. If an account has been disconnected but the telco or utility provider is still collecting arrears, the account should still have been terminated for CCLI purposes.

We want to note that connection and disconnection will not always be the dates that accurately reflect the relationship that many consumers have with energy or telecommunications providers, but they will be the simplest and most useful for credit reporting purposes.

In some instances, the relationship with the utility provider is straightforward – you close your account when you move or change providers and get the final bill. However, it is also quite normal for an energy account to roll-over to a new property or a phone account to roll-over to a new device – so even though you are disconnected at one property or on one device and reconnected at another your account does not close. In this common scenario we imagine a utility provider will need to list a close account date in one lot of CCLI and open another very similar CCLI on the consumer's credit report. As long as open and close dates are not overlapping we presume this will not have a negative effect on a consumer's credit rating.

Even the account open date does not always relate to when you are connected. For example, when it comes to energy services, if a person's home receives energy from the default supplier for their area then their home is probably already connected before they open an account with the retailer. Once they do open an account, they will get a bill for any energy already used at that address.

Nevertheless, since consumer representatives see the purpose of CCLI as a source of positive credit reporting information designed to assist with responsible lending then connection and disconnection dates make the most sense. Other lenders should use CCLI to assist them in making responsible lending decisions. Knowing how many utility accounts are actively open will assist in those decisions. Connection and disconnection dates will serve as concrete triggers for when CCLI is created and when it will fall off a person's report. But, we do believe the terms 'connection' and 'disconnection' need to be defined clearly in the CR Code so that they reflect some kind of account permanence. For example, if an account is disconnected and reconnected fairly often as part of a telco provider's business practice, it does not make sense to have 15 different CCLI listed for what is essentially the same ongoing account.

We agree with ARCA's assessment that if a telecommunications/utility service is disconnected but credit remains unpaid, it should be considered 'closed' for CCLI purposes.

Recommendations

1. **For the purposes of CCLI relating to telecommunications or utilities, these accounts should be opened when the services are connected and accounts should be terminated where the service has been disconnected.**
2. **If a telecommunications/utility service is disconnected but credit remains unpaid, it should be considered 'closed' for CCLI purposes.**

How should this outcome be achieved in the CR Code?

6.2 For the purposes of Part IIIA, the Regulations and the CR code:

a. the day on which the consumer credit is entered into is:

*i. for **consumer credit liability information** disclosed by a telecommunications or utility provider, the day that, under the terms and conditions of the service agreement, the **service** is connected.*

*b. for **consumer credit liability information** disclosed by a telecommunications or utility provider the "day on which the consumer credit is terminated or otherwise ceases to be in force" is:*

i. the day that, under the terms and conditions of the service agreement, the service is disconnected.

Is there any limit to the amounts that can be charged under a telco/utility credit contract? Do you consider that monthly plan arrangements are analogous to a credit limit?

We do not see monthly plan arrangements as analogous to a credit limit. When it comes to energy bills, amounts can change throughout the year. Usage can vary greatly, and energy costs tend to be seasonal. Telecommunications monthly charges can also vary greatly depending on usage.

We believe the best fit for 'Credit limit' when it comes to telcos and utility services is to list 'no fixed limit'. Similarly, since these arrangements are more similar to revolving arrangements (which can continue indefinitely) the best way to describe them in CCLI is 'no fixed term'.

In NSW there is no real limit to the amount that a retailer can charge for energy or water. There is a very high limit set for energy usage but it is not anything a consumer would approach.

When it comes to responsible lending however, we do have some concerns about listing 'no fixed limit' considering the increasing use of bundled sales tactics used by telco and utility providers. It is becoming more common for people to have retail products bundled in with their essential services, where they may owe way more money each month to the service provider than the cost of the essential service. In the energy space, it is becoming more common to see retailers willing to bundle solar panel sales into energy contracts. It has been common for many years for telecommunications providers to bundle the cost of devices (sometimes multiple devices) into a monthly service agreement. A more accurate reflection of a person's capacity to take on additional credit would be to show how much money they owe each month on these retail purchases (ie how much credit has been extended).

However, our preference is that the CR Code to quarantine off the retail costs (i.e. ipad, solar panels) and not list the cost of the essential product. This means if an account is simply the cost of energy or telco usage the CCLI would say no fixed limit or 'usage only' and if there were

retail products bundled in then the limit would say the monthly cost of those items and the fixed time it will take to pay them off.

If this is not possible, then it should be listed as 'no fixed limit'.

Recommendations

3. **Under CCLI the 'Credit limit' for telcos and utility services should be recorded as 'no fixed limit' and the 'Credit term' should be recorded as 'no fixed term'.**

Proposal 19 Introduce positive obligations related to statute barred debts

Consumer representatives strongly support establishing a positive obligation on CPs to request the removal of default information that has become statute barred. We have seen examples where defaults are listed just prior to the statute of limitations taking effect and the defaults are then not removed once that date is reached. The default continues to stay on the report, bringing down the individual's credit score and possibly preventing them from accessing credit or telco/utilities services. Many consumers would have no idea that the debt is statute barred even if they get a copy of their credit report and see the default. Consumers in these circumstances feel pressured to pay such debts and will commonly not be aware that they have a defence, even if the overdue amount was a result of something beyond their control, such as economic abuse. Statute barred debts should be removed from the credit file as soon as the statute of limitations has expired for recovery of the overdue amount.

We appreciate that implementing these changes will be complex. The date that a debt becomes statute barred depends on the jurisdiction of the credit contract and whether a consumer has acknowledged the debt or made payments recently. Nevertheless, we agree with the Review that the current arrangements involve a substantial imbalance of power that ought to be corrected. We will make some comments on the proposed options. Further, by requiring CPs to request the removal of default information that has become statute barred, they will need to turn their mind as to when the limitation period commenced and whether a consumer has acknowledged the debt or made payments recently. In the vast majority of cases, the CP will have more expertise and more information than the consumer to make a determination on this issue, regardless of whether they, as noted by ARCA, "*may face challenges systematically disclosing this information*".

A general obligation in the Privacy Act or the CR Code to require CPs to take steps to list defaults within a reasonable time

We want to point out that the vast majority of the examples we have seen where a default is listed late are examples where the default has been listed by a debt buyer. So, an obligation on CPs to list defaults within a reasonable time will not solve the problem of debt buyers who might acquire the debt and as a debt collection tactic list the default years after the debt first becomes due.

We also note that CPs already have an obligation to list defaults within a reasonable time under the PRDE. Consumer representatives have previously raised concerns that the CCR obligations (and PRDE requirements) will result in entities being inflexible when negotiating a resolution to a financial dispute, including decisions around the removal, delay or withholding from listing defaults or other credit information on credit reports.

Consumer advocates (including solicitors, financial counsellors and other caseworkers) regularly include the contents of credit reports in consumer disputes and settlements with industry. When we are assisting clients to resolve financial disputes it is standard practice for us to request that credit providers, debt collectors or utilities companies refrain from listing negative information while negotiations are ongoing and to refrain from listing, or removing a listing, as part of the settlement of a dispute. Most industry members will work with advocates to come to a fair outcome for their customers. A new provision in the Privacy Act of the CR Code which requires CPs to list defaults would not be something we support.

The development of a time period – either in the CR Code or Part IIIA – beyond which default information cannot be listed

Consumer representatives prefer this option to the one above, but we are worried it would still create an incentive to list all defaults, even when there are clear compassionate reasons not to. However, if a CP had a two-year limit to either list the default or sell the debt to a debt buyer that could list the default, then there would be very few defaults which linger on credit reports after they have become statute barred. Our preferred option is explained below, but this limited period of disclosure could be a transitional arrangement until any legislative changes take place.

We note ARCA's concern that prohibiting the disclosure of default information after 1-2 years could obscure information about recoverable debts that are relevant to the individual's creditworthiness. There will always be recoverable debts that consumers owe that are left out of the credit reporting system. There are lenders that choose not to participate in credit reporting (like payday lenders and wage advance). There are also service providers that are owed money but are not able to participate because they do not belong to an EDR scheme (like private schools, private solicitors, gyms, etc.). Finally, people might owe any number of debts to friends, family or other individuals who have legally recoverable claims but are not listing on credit reports.

Our preferred option: Five-year countdown clock

Our preferred option for proactively dealing with statute barred defaults is that the five-year limit for defaults on credit reports should run from the date of the default rather than the date of the default being listed on the credit report. We acknowledge this option might require legislative change. The idea is that a countdown clock starts when the debt first becomes overdue. The CP or any debt buyer that legally acquires the debt can list at any point in that five-year period, but at the five-year mark the default comes off. This might mean that a default is only listed for one year if a debt buyer lists it at year 4.

This is the second arm of what the OAIC suggests they will raise with the Attorney General for the review of the Act. The first arm is for CPs to list within a reasonable time. Consumer representatives support the second arm but not the first. We are not concerned with when CPs list a default, but we do care when it drops off. This option preserves flexibility but prevents statute barred defaults from lingering on consumer reports.

Nevertheless, we realise this option probably cannot be achieved in the CR Code at present. The 1-2 year time limitation for disclosing default information could act as a transitional arrangement until the countdown option can be implemented.

Recommendations

4. **Consumer representatives support the development of a five-year countdown option where the five-year time limit for defaults on credit reports runs from the date of the default rather than the date of the default being listed on the credit report.**
5. **As an alternative or transitional arrangement we support a limited time period beyond which default information cannot be listed (12-24 months).**

Proposal 24 Notification obligations

Causes of confusion and complaints

Questions from ARCA:

- Do you agree with the Review that most complaints in this area arise from individuals not being appropriately informed?
- In what situations do complaints about not being notified of/not consenting to the disclosure of information commonly arise?

Consumers get information about notification and consent to their credit reporting info being shared with CRBs generally when they apply for a loan or utility service account. It is probably one of a number of things they are told at that time, and likely a low priority issue for them to consider. It should not come as a surprise that down the track (possibly years down the track) they believe they were not told or not given a chance to consent to credit reporting information being shared.

We know from our experience consumers get very confused and vexed about credit enquiries, especially if there are a lot of them from debt collectors or a lot of them which are the result of economic abuse. Most consumers do not understand that they will not get any notice about access to their credit reports by CPs, and that their consent is not necessary. The only power consumers have is not to provide the information and not proceed with the transaction. When it comes to enquiries a consumer may realise too late, or not at all, that the interaction with a possible service provider would be listed. We are also aware of consumers who complain they did not receive any notice. In the energy sector there are reports from EWON of people having enquiries listed as a result of a simple and seemingly irrelevant exchange, such as updating their address details with their current energy provider.

Hopefully the new Soft Enquiries framework will help prevent lots of enquiries appearing on credit reports when consumers are shopping around. There also needs to be a lot more information from industry about how enquiry information is viewed and scored in a lending decision process. This could be done in the form of ARCA Guidance that financial counsellors could share with clients if they have concerns of this nature. If consumers knew that enquiries do not cause a lot of harm to credit scores then they wouldn't be so vexed by them, and the consent versus notice issue would not lead to as many disputes.

There should also be a warnings at the point where any credit enquiry will result. For online applications it should pop up saying "if you proceed beyond this point an enquiry will be recorded on your credit report. Do you want to proceed with this application?" The applicant should have to click yes to continue. If it is a hard copy application, then the warning should be prominent and next to any instructions on where to submit the application for credit.

What more could be done to address mistaken beliefs that consent is required prior to disclosure?

Regular notification of missed payments

Consumer representatives have argued for some time that lenders could do more to keep their customers informed in real time when negative information is going to be recorded on their credit reports.

The CR Code could require credit providers who are reporting missed payments (or negative RHI) about their customers, to notify those customers on their regular account statements or by SMS, about the information reported to the CRB and its meaning. We submit that there are advantages to CPs, consumers and CRBs:

For CPs:

- Consumers will have greater confidence that the credit provider is being open and transparent if they are notified in a timely fashion about adverse information being reported rather than finding out about it later when they are either refused other credit, or charged at a higher rate of interest than otherwise would be the case; and
- It will encourage consumers who can pay on time to do so. Consumers are extremely protective of their credit report/score and will not want to pay higher interest on credit in the future, or risk credit refusals. If they have the ability to pay on time, they will do so to avoid negative information being shared with other credit providers more readily than in response to late fees.
- It will take the heat out of complaints by alerting consumers to problems before they enter into contracts, such as for the purchase of real estate, which may cause them to incur financial loss as a result of being rejected for credit.

For consumers:

- They will receive timely notification of the consequences of their actions so that they can change their behaviour accordingly if it is within their power; and
- They will be able to dispute any adverse listing they disagree with in a timely fashion while memories are fresh and evidence can be easily located – it would be quite a forensic exercise to check the accuracy of repayment information up to 2 years down the track.
- They will be less likely to incur financial loss as a result of entering contracts without being aware of negative information on their credit report.

For CRBs:

- The information they hold will be much more likely to be accurate if consumers are informed and given an opportunity to raise errors and other complaints in a timely manner.

Case study – Sean's story - C225055

5 years ago, Sean and his brother Paul entered into a joint mortgage with a Bank for a property where Paul lives. Sean's name was on the mortgage to help Paul, and is only listed on the title as a 1% owner and jointly liable for the mortgage.

In 2021 Sean obtained a copy of his credit report and is shows in his RHI that there have been no payments on the joint mortgage for 11 months and a default notice had been issued. Paul was supposed to be making the mortgage repayments but during COVID had not done so. Sean has no dispute with Paul, he wants to help him. Sean wants to know if he can rectify his RHI if he addresses the mortgage arrears as he wants to purchase his own home in 1-2 years and that will be impossible with so much negative information on his report.

Sean says the Bank did not contact him regarding the mortgage. He did not receive the default notice and his recollection was he provided his address as a different address to Paul's when the loan was originally taken. Sean feels if the Bank had let him know earlier, he could have stepped in much sooner to rectify the problem before his credit report was impacted.

Recommendations

6. **ARCA should draft public Guidance which provides information from industry about how different enquiry information is viewed and scored in a lending decision process.**
7. **Require credit providers who are reporting missed payments about their customers, to notify those customers on their regular account statements or by SMS, about the information reported to CRBs and its meaning.**

Proposal 31 Require a CRB to record and alert an individual of access requests during a ban period

What benefit would an individual derive from an alert about an access request?

While consumer representatives don't have comments on what services CRBs already offer people who are under a ban period, we can comment on the benefit an individual might derive from an alert about an access request during a ban.

In the last few years hundreds of thousands of people have been told by various service providers that their personal details have been stolen (Optus, Latitude, Medibank Private, etc.). However, most of these individuals have no idea if anyone is actually using their personal information to fraudulently apply for credit. Many of these individuals will have put a ban period in place out of caution. Requiring CRBs to alert people if an access request has been made for their credit reporting information would help these individuals realise if the potential threat has become real. Once armed with information about when and through which CP a request was made they could take steps to change identifying documents. People could go to the CP who made the access request immediately to find out what ID details were used by the fraudster. It might also indicate to people that they need to extend the ban period.

A record of access attempts might also be useful evidence if legal proceedings could ever be brought against a perpetrator.

Finally, the Federal Government is now taking a strong interest in preventing scams, and a comprehensive (de-identified) record of how many access attempts are made for credit reporting information that is under a ban period could be very useful in making policy changes. The general public might take more steps to protect their own credit reporting information if they knew this practice was becoming more common.

While we appreciate there would be industry push back, we would strongly support a free credit alert service for all consumers whether they are in a ban period or not. If consumers could get a real time SMS notification from a CRB whenever an access request is made this might allow individuals to take steps to avoid scams and fraud before the damage is done. This would also provide an extra layer of fraud prevention for credit providers.

Proposal 37 Enable correction of multiple instances of incorrect information stemming from one event

Consumer representatives strongly support a solution where multiple credit listings can be removed in one go when economic abuse or fraud is involved. It can be extremely difficult, and even re-traumatising for a victim of economic abuse or fraud, to try to remove many credit listings relating to different credit providers from their report. This results in considerable harm, including time and resources, mental health deficits, and financial loss (where for example a consumer cannot complete a contract for purchase of real estate).

Questions from ARCA:

What types of information should a simplified process for correcting multiple pieces of information stemming from a single event apply to? What types of events/situations should be in scope?

Consumer representatives support a broad scope of situations and circumstances this new process should apply to. Victims should be able to nominate any type of credit reporting information to be corrected if they believe it stemmed from the same event including CCLI, RHI, defaults, enquiries, even audit trail entries.

While we appreciate that requesting all pieces of information held about an individual across all CRBs and all CPs be corrected in one go might be hard to implement, we do think this new mechanism should allow for the correction of multiple pieces of information about an individual held by a single CRB, disclosed by multiple CPs (e.g. multiple enquiries, but only those reported to the given CRB). Once this new process is in place we would imagine that one CRB who has completed the corrections could send a report to the other CRBs who could then delete any identical listings or undertake a similar process for any additional information they have about the individual which is likely to stem from the same event.

Recommendations

8. **This new corrections mechanism should allow for the correction of multiple pieces of information about an individual held by a single CRB, and disclosed by multiple CPs (e.g. multiple enquiries, but only those reported to the given CRB).**

Who should make a decision about whether the multiple enquiries are fraudulent – the entity the individual first approaches or the CP to which the applications were made?

Consumer representatives believe the CR Code should allow for CRBs to certify that multiple enquiries or other credit reporting information are a result of abuse or fraud. If the CRB needs to speak to each CP that listed the information, that is fine, as long as the consumer does not need to be involved after the initial correction request is made to the CRB and sufficient evidence is provided. The CRBs could notify all affected CPs of an allegation of fraud/abuse, ask lenders to provide the documentation on which they relied on to establish the identity of the person, track responses and then CRBs can then decide to remove the information. Only if absolutely necessary should the CRB go back to the consumer for clarification.

Key to this process should be that the victim only has to:

- **Establish once** that a particular type of fraud has occurred with reasonable evidence (whether that be a single theft of ID data or a series of fraudulent applications/loans by the same perpetrator); and
- Identify all the information the person believes stems from this event or pattern of conduct.

The CRB should then contact all relevant CPs and indicate that they will remove the information by a particular date unless the CP objects on reasonable grounds. Any dispute could then be determined by the CRB on the basis of the evidence provided, with escalation to external dispute resolution provided if the CRB decides in the CP's favour.

This amendment could be made in paragraph 17: *Where a CRB believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud or financial abuse the CRB must notify the listed CP for all of the credit reporting information that it believes is a result of the fraud or financial abuse and request that the CP consent to its destruction.*

We note that CRBs likely do not have sufficient specialised staff to deal with individuals who may be in trauma. Before CRBs could play this role, they would each need to invest in specialist training or recruitment of appropriate staff who are able to engage respectfully with victim survivors of abuse or fraud.

It is up to industry to determine in what situations CPs and CRBs should accept the fact that another entity has decided that the individual has 'made out' the case for a correction stemming from a certain event and also correct their own information. Presumably a standardised form certifying that adequate evidence of fraud or abuse has been provided

could be developed and approved by industry members. The key is that the consumer does not need to retell their story over and over and does not need to provide the same evidence to multiple parties.

When it comes to what evidence is sufficient to prove financial abuse or fraud, we hope the industry will continue to work closely with consumer representatives and family violence experts to come up with types of evidence that meet best practice and avoid as much as possible re-traumatising victim survivors.

Recommendations

9. **CRBs should be empowered under the CR Code to make a decision about whether multiple pieces of credit reporting information are fraudulent.**
10. **The credit reporting industry should continue to work closely with consumer representatives about what types of evidence are sufficient to prove financial abuse or fraud.**

Case study – Benjamin's story - C222659

Benjamin was a victim of identity fraud which he had reported to the police. When Benjamin called Financial Rights he had already dealt with several other loans and enquiries which were a result of the identity theft that were removed and resolved. He was frustrated by two matters he was struggling to resolve himself. The first related to someone who bought goods using his details and paid for it with a Buy Now Pay Later account. He was being chased by a debt collector. Secondly, he also had an enquiry on his credit report related to a telco service.

He was frustrated by the BNPL who had now taken over 30 days to investigate the matter. The BNPL provider requested more time to look into it, but didn't say how long they needed. Benjamin was concerned that he will need to spend money on a lawyer to resolve the dispute.

Benjamin requested a CRB remove the enquiry because it was a result of the fraud, but the CRB says they won't. They say he needs to speak to the telco, which he did at the local branch of the telco provider and all they did was note the fraud on their file, they did not give him anything in writing. The CRB still has the enquiry listed and will not remove it.

Case study – Emma's story - C221006

Emma was in an abusive marriage for several years. After separating from her husband Emma had to take out an ADVO. He was later incarcerated for the abuse. During her relationship Emma's husband exerted coercive behaviour over her. He was unemployed and had a very bad credit history and he pressured her to take out loans to pay for his addiction.

When Emma reached out to Financial Rights for help she had no assets apart from a vehicle and she was renting in private accommodation. In late 2021 she became aware of a number of default listings on her credit report by different lenders and debt collectors. Emma wants these defaults removed so she can move on with her life.

Emma did not receive any benefit from these loans and was experiencing domestic violence at the time the loans were issued. Financial Rights has had to help her apply to each of the 6 creditors to show evidence of the domestic violence, resolve the debts and remove the default listings.

Case study – Sophia's story - C201939

Sophia is a young single parent of a new baby and her sole source of income when she contacted us was Centrelink. Sophia had just recently taken out an AVO and separated from her partner of 7 years due to prolonged domestic violence including financial abuse. Sophia and her baby had to leave her rental and move to regional NSW to live with her parents because of her ex-partner's continued threatening behaviour. Sophia advised Financial Rights that her ex-partner has always been abusive physically and financially, that he did not contribute to household expenses so she had to manage all the bills herself – often when she was only working part-time.

When Financial Rights first started working with Sophia she had seven unsecured debts totalling around $10,000. Financial Rights helped Sophia contact her creditors one by one to request the removal of default listings from her credit report. Financial Rights was continuously met with barriers to communicating or getting a response from some of the creditors but in the end we were successful at helping Sophia clear her credit report. Sophia's life is now turning around, she seems happy and is back working with her previous employer before she had to flee her home.

Proposals 39-41: Amend the mechanism for corrections due to circumstances beyond the individual's control

Proposals 39 and 40 are both straight-forward and we support ARCA implementing them as described in this proposals paper. Proposal 41 is a bit more complicated and requires more attention.

It is worth noting that victim survivors of abuse and their advocates are unlikely to use specific provisions in the CR Code when requesting corrections. They are more likely to set out the circumstances of the abuse and simply request that a CP correct various pieces of information accordingly. Whether the CP believes it is correcting information under 20.5 or 20.4 won't really matter to the victim survivor, as long as the information is corrected.

Consumer representatives have requested the correction of all types of information on credit reports in relation to financial abuse: default data, RHI, CCLI, enquiry information, audit/access trail information and serious infringement information. All of these types of information should be able to be corrected whether because it is inaccurate, out-of-date, incomplete, irrelevant or misleading, or because it arose from circumstances outside the individual's control. If ARCA believes that RHI and Defaults are more likely to reflect circumstances outside the individual's control than CCLI or enquiries data, that is fine, as long as all types of data can be easily corrected under either 20.5 or 20.4.

Questions from ARCA

Do you support a potential expansion of the mechanism in paragraph 20.5?

Yes we support expanding 20.5 to include RHI as well as default information. These are the two types of information that are most likely to be affected by circumstances of abuse which are outside the victim survivor's control.

We can imagine situations where enquiries or CCLI are also a result of circumstances outside the individual's control (circumstances where an individual consents to credit applications being made in their name but under threat or coercion). However these situations also result in information that is irrelevant and misleading as to the victim survivor's creditworthiness, so they can be corrected under 20.4.

We also support expanding 20.5 so that it applies to CPs as well as CRBs. The drafting of 20.5 is somewhat anomalous and should be brought in line with how the other corrections provisions function. Consumer representatives also strongly support a "no wrong door" approach to corrections. Both CRBs and CPs have correction obligations under Part IIIA of the Privacy Act.

Options for correcting RHI

Consumer representatives support correcting/reconstructing RHI to what would have happened but for the circumstances. If the loan was affordable but for the abuse, or but for the

victim survivor losing access to funds when fleeing violence, then RHI should be reconstructed for the affected period to show that the victim survivor paid on time. This is the best way to ensure that the circumstances of abuse do not penalise the victim, and ensure they can still benefit from the period of positive credit reporting.

If the circumstances of abuse are less clear, or were on again off again over a period of time, then suppression of the RHI might be the best option. CPs should have discretion to work with the individual and correct the credit reporting information in the way that is fair in the circumstances.

Case study – Sarabi's story - C218648

Sarabi is a victim of domestic violence and has 2 dependent children with autism. Her mortgagee has granted her a hardship arrangement and frozen her payments during the pandemic, so she has not made any payments for a year. There is about $300,000 equity in the property, but this is a joint mortgage with her abusive ex-husband. They have done a final separation document in court and Sarabi has an AVO against him.

When her ex moved out he stopped contributing to the mortgage. As a part of his continuing economic abuse he keeps calling the bank and reinstating the mortgage payments. Sarabi believes her ex wants her to lose the house. By removing the hardship arrangement, RHI is reported on her credit report again. He tells the bank that they are in the process of selling but Sarabi says that is not true. She wants to remain in the house with her children. Sarabi wants to refinance but the missed payments now on her credit report are making that impossible. She has called several lenders and they have all said she cannot secure a loan with her current credit score.

There is a court order that Sarabi's ex should be removed from the title and the mortgage but her credit report is now too poor. The poor handling of the situation has triggered her trauma anxiety from the domestic violence and left her scared that she and her children will end up homeless.

Recommendations

11. **All types of credit reporting information should be able to be corrected under paragraph 20 and individuals or their advocates should not need to specify under which specific provision in order to achieve the correction.**
12. **Expand 20.5 to include RHI as well as default information, and to apply to CPs as well as CRBs.**

13. **CPs should have discretion to work with victim survivors of abuse and correct credit reporting information in the way that is fair in the circumstances. This should include reconstructing RHI when possible.**

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,

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About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

For Financial Rights Legal Centre submissions and publications go to www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/