

20 June 2023

Mary Vancea

Australian Retail Credit Association

by email: [REDACTED]; cc. Richard McMahon [REDACTED]

Dear ARCA

## Introduction of Soft Enquiries Framework

Thank you for the opportunity to comment on your Discussion Paper introducing a soft enquiries framework. The Financial Rights Legal Centre (**Financial Rights**) will continue to engage with the additional upcoming code variation consultations, but we do have a few comments on the matters relevant to the new framework which were set out in the Discussion Paper. On the positions below we have consulted with consumer representatives at Consumer Credit Legal Service in WA, Legal Aid Queensland and Financial Counselling Australia.

### A. Defining the circumstances that amount to a soft enquiry

The two options set out in the Discussion Paper are difficult to distinguish. We understand that the complexity of defining the circumstances that amount to a soft enquiry mainly stem from legislative constraints.

Financial Rights supports amending the Privacy Act in the upcoming review so that Section 6R specifically allows for an information request in connection with a soft enquiry. It would be preferable to have clear legislative recognition of soft enquiries rather than needing to deem these types of information requests an application for credit in order to fit it into the Privacy Act.

However, since this code variation will need to go ahead before any legislative amendments are in place we support Option 2 which states that a soft enquiry is deemed an **incomplete application** for credit. We think this Option 2 does a better job differentiating soft enquiries from hard credit enquiries.

### B. Specifying when enquiry information must be reported by a CP

Financial Rights supports Option 1. We believe this is a simpler variation and it will be clearer for consumers and their advocates when and how credit enquiry records are made to their credit report.

We do not have a comment about the timeframe in which CPs need to report credit enquiries.

### **C. Requiring CPs to utilize the CR Code framework to access credit reporting information in response to a soft enquiry**

Financial Rights supports Option 2, but with an amendment which states that CPs must not ask a consumer to provide their own credit reporting information.

We agree that CPs should be strongly encouraged to use the CR Code framework to access credit reporting information in response to a soft enquiry, but we think disallowing the use of a credit report supplied by a consumer directly would be disconcerting to prospective borrowers. Some borrowers will have gotten a copy of their credit report specifically to shop around for credit and to discuss information on their report. It would be inefficient and frustrating if a CP says they cannot use that report and have to get their own through the soft enquiry framework.

Nevertheless, we do not want to create a system which encourages CPs to ask consumers to supply their own credit reporting information. We believe a restriction in the CR Code which states CPs cannot ask a consumer to supply a credit report would be helpful in this regard.

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

Financial Rights supports Option 2. We want soft enquiry information to be limited but we also want it to contain enough information to give consumers a realistic response from CPs whether or not they would be extended credit on favourable terms should they put in a complete application.

We note that we have some concerns about including a statement about FHI in the limited information CPs would receive under the soft enquiry framework. We worry that prospective borrowers may be rejected out of hand for having any FHI when according to ASIC FHI is supposed to be a trigger to request further information. The mere presence of FHI should not be enough to reject credit, but there will be no way to track or enforce this since soft enquiry rejections won't be recorded. Nevertheless we think prospective borrowers will get a more realistic idea of whether they will be eligible for credit and at what price and will not get false expectations that will be sunk on actual application if they do have financial hardship information on their credit reports. So at this stage we support including the statement about FHI, but we still strongly encourage industry to keep tracking how FHI is used in lending decisions, even at the soft enquiry stage.

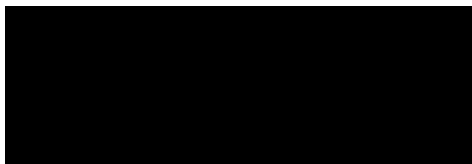
### **E. Incorporating a requirement upon CRBs to make a written note of the soft enquiry**

Financial Rights supports Option 2. The more information recorded in the written note the better, provided this information is only visible to the person seeking their own file as an audit trail. This will be useful for consumers or their advocates down the track if there is an allegation of fraud or abuse, or a dispute about a credit application. It would also be useful for the CRBs to collect this type of information about soft enquiries in a de-identified way for future legislative reform or CR Code variations.

## 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 Financial Rights

Financial Rights 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.