



CR Code Consultation

Equifax Response

July 2023

EQUIFAX

Starting in 1967 as the Credit Reference Association of Australia, a mutual and initially for retail stores and later large banks, we remain Australia's leading provider of credit risk and due diligence solutions. Today we employ around 1,000 people in Australia and New Zealand; since 2016 we have been part of Equifax, the global credit reporting group headquartered in Atlanta, GA, USA.

More particularly, in addition to hosting Australia's largest credit reporting body (**CRB**) for consumer credit, Equifax also hosts significant range of consumer identity and fraud mitigation solutions and a commercial credit bureau, as well as risk-mitigation solutions (such as the National Tenancy database), employment verification and, to a lesser extent, marketing services support solutions.

Personal information (**PI**) held as consumer credit reporting information is covered by extensive prescription in Part IIIA of the Privacy Act, its associated regulations and by additional detail in the Privacy (Credit Reporting) Code 2014 (Version 2.3) (**CR Code**, or **Code**), authorised by the Office of the Australian Information Commission (**OAIC**). PI held as part of commercial credit information, together with all other PI in Equifax's control, is protected by the Australian Privacy Principles (**APPs**).

The Privacy (Credit Reporting) Code 2014 (Version 2.3)

Equifax welcomes the opportunity to provide feedback to the Australian Retail Credit Association (**ARCA**) on potential variations to the CR Code in response to the proposals contained in the Final Report of the 2021 Independent Review of the CR Code (**the Review**) and in accordance with Proposal 10 of the Review and the OAIC's recently updated Guidelines for developing codes (**the Guidelines**). In particular we appreciate the opportunity to provide feedback on operational challenges with the more complex proposals and on the potential drafting of the CR Code, noting that at the end of the consultation process, ARCA intends to lodge an application with the OAIC for approval of variations to the CR Code under s26T(1) of the Privacy Act.

We respond in this submission to 18 of the 19 proposals contained in the Review for variations to the CR Code. We note that the one proposal not covered is Proposal 43 (Amend CR Code to introduce soft enquiries framework) in respect of which ARCA has already conducted a first round of consultation to which Equifax has contributed. We note that ARCA has not finalised its position about what, if any, variations to develop in response to any particular proposal. Similarly our views contained in this document may also be subject to further consideration.

SUMMARY OF EQUIFAX POSITIONS ON PROPOSALS OF CONCERN AND OF PARTICULAR INTEREST

Amend CR Code source notes column and blue row lines (Proposal 4):

Equifax **supports** Proposal 4 to review the source notes column and the blue rows of the CR Code to ensure that they clearly outline the purpose of the paragraph to which it relates and the applicable provision of the Privacy Act or Privacy Regulation. Equifax equally **supports** ARCA's proposal to amend (where necessary) the structure, format and wording of the CR Code to reflect its status, once registered, as a legislative instrument.

Equifax **recommends** that careful consideration be given by ARCA in any amendment to the wording of the Code to provide as much flexibility of application of the new provisions as is possible and practicable within compliance parameters. Equifax **supports** amendments to the CR Code where clarity is gained but **has some concern** about over-prescription of the terms of the Code terms. We **believe** that over-prescription would hinder innovation in both data products and services and likely make compliance with the new terms more challenging both practically and commercially to the extent they may differ from the status quo.

Amend CR Code to accommodate other entities (Proposal 6):

Equifax **supports** the amendment of **paragraph 6 of the CR Code** to clarify how 'account open date' and 'account close date' definitions apply to telco/utility providers. We **support** targeted consultation to understand how the 'credit limit' and 'credit term' definitions can apply to these products, taking into account how industry delivers, and how individuals use these products. We **consider** that telco/utility providers are best placed to determine whether service connection/disconnection is an appropriate proxy for 'account open date' and 'account close date'. Given the variability of fees and charges payable for utility and telecommunications services, including on a seasonal basis, we **suggest** that defining and reporting 'credit limit' may be problematic for these services and that perhaps a 'shadow limit' per individual customer may be worth consideration.

Amend CR Code to require CRBs to publish their CP audits and submit these to the OAIC (Proposal 13):

Equifax **notes** the intention of ARCA to vary the Code to further define and extend the obligations under paragraph 23 of the Credit Code to require CRBs to publish their CP audits required by s20N and s20Q of the Privacy Act and submit these to the OAIC. We **note** also that it is ARCA's intention that these reports can be redacted as needed for publication to ensure they do not include personal or commercially sensitive information. In relation to this proposal, Equifax **considers** that a statistical snapshot of aggregated audit findings included in the report required to be published annually under paragraph 23.11 would be sufficient for public disclosure subject to further considerations we have detailed below.

Amend CR Code to clarify the definition of 'account close' in respect of CCLI (Proposal 15):

Equifax **supports** the amendment for clarity of definition of paragraph 6.2(d) of the CR Code so that consumer credit is reported as closed on the earlier of these events occurring: credit is terminated, credit is charged off, or credit is repaid. Equifax **leaves** further consideration of the definition of 'account open date' and 'account close date' to those entities who are the providers of the relevant accounts.

Amend CR Code to clarify definition of 'month' to more flexibly accommodate CP reporting practices (Proposal 17):

Equifax **supports** in principle giving consideration to amending paragraph 1.2(i) of the CR Code to clarify the definition of 'month' to reflect the principles that reporting should reflect an individual's expectations around their repayment obligations and reflect their repayment behaviour. While we **believe** that the details of this are more a matter for CPs than CRBs, we **do observe** the importance of:

- providing for different CP reporting practices to support the accuracy and transparency of credit reporting, and

- avoiding in the making of any such relevant adjustment consequent systems changes for credit reporting.

Amend CR Code to introduce positive obligations related to statute-barred debts (Proposal 19):

Subject to practical considerations set out below, Equifax **supports** in principle the amendment to paragraph 20.6 of the CR Code to introduce positive obligations related to statute barred debt, specifically the requirement that:

- CRBs destroy statute barred debts from the consumer credit bureau where it is reasonable for them to have been aware of the statute of limitations applicable to the credit information;
- CPs take reasonable steps to inform CRBs when a debt has or will become statute barred; and
- when disclosing default information, CPs provide CRBs with the date that the debt is expected to become statute barred as they have determined.

Amend CR Code to specify that s 21D(3)(d) notice must be a standalone notice (Proposal 21):

Equifax **notes** ARCA's intention to amend paragraph 9.3 of the CR Code to specify that the s21D(3)(d) notice must not be bundled with any other correspondence.

While Equifax **considers** this question to be more one for consideration of the CPs, Equifax **does note** that given the importance of the section 21D(3)(d) notice to the customer, and the distinct preconditions that must be met before a CP can send one, we **support** that the notice be given specific prominence whether included with other disclosures or not.

Equifax **observes** as a matter of principle that it is preferable that CR Code requirements for prominence of notification should be able to be met by relevant website prominence or other online notification whenever practicable.

Amend CR Code regarding notification obligations (Proposal 24):

Equifax **supports** review and amendment of paragraph 4 of the CR Code to provide further clarity around notification obligations and **agrees** that such amendments should ensure that the notification obligations in the CR Code remain fit for purpose taking account of the Privacy Act.

Equifax **welcomes** the opportunity to comment on the effectiveness of the current CR Code requirements, including:

- the likely causes of confusion and complaints about consent versus notification;
- the situations in which confusion tends to arise;
- current practices and the operation of the mechanism in paragraph 4.2 of the CR Code; and
- measures that could help raise awareness (noting that complex disclosures can have limited effectiveness).

Amend CR Code to allow CRBs to offer individuals an automatic extension during the ban period (Proposal 28):

Equifax **supports** the amendment of paragraph 17 of the CR Code to allow CRBs to offer individuals an automatic extension to the ban period at the time they initially request a ban, where appropriate.

Amend CR Code to clarify the evidence that a CRB needs to implement a ban period/extension (Proposal 29):

Equifax **supports** ARCA's intention to amend the CR Code to clarify the evidence that a CRB needs to implement a ban period and/or extension. Equifax particularly **supports** the definition of what evidence could be taken by the CRB to constitute reasonable grounds to consider that the individual is, or is likely to be, a victim of fraud.

Amend CR Code to require a CRB to record and alert an individual of access requests during a ban period (Proposal 31):

Equifax **notes** the intention that the CR Code should be amended to require CRBs to make a record of access requests during a ban period and alert individuals of any attempts to access this information during that period. We **question** the benefit, however, of these alerts to the consumer.

Amend CR Code to require CRBs to provide information on accessing other CRB's reports (Proposal 32):

Equifax **notes** ARCA's intention to amend paragraph 19.4 of the CR Code to specify that when an individual seeks access to their credit report from a CRB, the CRB must tell the individual about how they can access other CRBs' credit reports.

Access to physical copies of credit reports (Proposal 33):

Equifax **notes** that ARCA intends to prepare a new provision alongside the other obligations in paragraph 19 to require CRBs to provide a physical copy of a credit report on request, noting also that their stakeholder engagement to date suggests that all three CRBs currently provide physical copies on request.

Amend CR Code to enable correction of multiple instances of incorrect information stemming from one event (Proposal 37):

Equifax **notes** ARCA's intention to amend paragraph 20 to introduce a mechanism to facilitate correction of multiple instances of incorrect information and **welcomes** the opportunity to share its view on the challenges attending this initiative.

Equifax **suggests** that only fraud/ identity events be included in this amendment. Information stemming from domestic violence or natural disasters should be managed under normal corrections processes (i.e 20.5). For Proposal 37 to be workable, Equifax **believes** that the individual must identify the fraudulent elements in question and provide enough information which can be passed onto the CP to make a determination if the credit information is fraudulent or not. Equifax **strongly believes** that CPs are still the only entity who has enough information to determine if fraud is present or not. Equifax **strongly believes** that responsibility for "making out" the case for a correction stemming from a certain event resides entirely with the CP who disclosed the information to the CRB.

Amend CR Code mechanism for corrections due to circumstances beyond the individual's control to:

- **include domestic abuse as an example (Proposal 39)**
- **extend correction requests to include CPs (Proposal 40)**
- **expand the correctable categories of information (Proposal 41)**

Equifax **notes** that ARCA intends to:

- intends to include domestic abuse as an example of a circumstance beyond the individual's control,
- allow CPs to make these corrections; and
- seek feedback on the types of information that should be able to be corrected under this mechanism, noting the existence of other mechanisms for correcting information that is incorrect on its face, and the potential options for RHI reporting if such information is to be corrected under what is now paragraph 20.5 of the CR Code.

Equifax **supports** expanding the definitions of 'beyond the individual's control' to include domestic abuse and not restrict its exhaustive list. Equifax **also agrees** that this provision should be extended to CPs being able to receive the request and process a correction. However, Equifax **does not support** the expansion of correctable categories under paragraph 20.5. Paragraph 20.5 is historically intended for negative elements which have been placed on the individual's credit file correctly, been repaid or have had an arrangement in place and the cause was outside the individual's control.

Amend CR Code 'capacity information' definition to include an individual in their capacity as a trustee (Proposal 44):

Equifax **notes** ARCA's intention to amend the definition of 'capacity information' in paragraph 1.2(c) to include an individual acting in their capacity as a trustee. Equifax also **notes** that ARCA seeks feedback on the potential hierarchy of different capacity information (e.g. if the individual took out a loan as a trustee but also provided a guarantee) as well as the effect that 'trustee' information should have on the individual's credit worthiness. Equifax **believes** there are a number of practical matters yet to be canvassed and addressed before an amendment of this nature is made.

THE DETAIL

Amend CR Code source notes column and blue row lines (Proposal 4):

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Equifax **recommends** that careful consideration be given by ARCA in any amendment to the wording of the Code to provide as much flexibility of application of the new provisions as is possible and practicable within compliance parameters. Equifax **supports** amendments to the CR Code where clarity is gained but **has some concern** about over-prescription of the terms of the Code terms. We **believe** that over-prescription would hinder innovation in both data products and services and likely make compliance with the new terms more challenging both practically and commercially to the extent they may differ from the status quo.

What consequences could arise from adjusting the format and drafting of the Code to align more closely with other legislative instruments?

As the amendments and definitions are drafted and new terminology introduced, Equifax **considers** it important that consideration be given in drafting to the terms of existing relevant legislation and regulatory guides so that there is an overall consistency of approach in the broader Australian financial services context.

Equifax **considers** that consistency where possible with the provisions of relevant credit, financial and data security services legislation will be important.

Equifax **also believes** that it will be especially important for the CR Code revisions not to impede the flexibility of the use of data under the new CR Code where that flexibility is provided for currently. Accordingly, Equifax **considers** that it will be especially important for those drafting the new provisions of the Code to be mindful of the provisions in other legislation that may inhibit a CP's or CRB's use of data collected by or provided to them under the provisions of the Privacy Act and the new CR Code. Equifax **considers** that at a minimum, the current range and specificity of data to be exchanged between these parties and the context of that exchange needs to be preserved.

Providing clarity to the effect of the amended CR Code

Equifax **supports** the provision of the context of any changes in the drafting of the updated, registered CR Code compared with that of the existing CR Code provisions in an Explanatory Memorandum that shows how each change links back to the Privacy Act and its effect on application of the Code. We **consider** that it would be helpful if the link between the section of the Privacy Act and the CR Code drafting were to be made explicit.

Other approaches to consider

Equifax **believes** that Regulatory Guides along the lines of those the Australian Securities and Investment Commission currently provides to industry in relation to responsible lending may also be helpful in not only

explaining and illustrating the context of new CR Code provisions but in illustrating the degree of flexibility that exists within relevant provisions.

Amend CR Code to accommodate other entities (Proposal 6):

Equifax **supports** the amendment of paragraph 6 of the CR Code to clarify how 'account open date' and 'account close date' definitions apply to telco/utility providers. We **support** targeted consultation to understand how the 'credit limit' and 'credit term' definitions can apply to these products, taking into account how industry delivers, and how individuals use these products. We **consider** that telco/utility providers are best placed to determine whether service connection/ disconnection is an appropriate proxy for 'account open date' and 'account close date'. Given the variability of fees and charges payable for utility and telecommunications services, including on a seasonal basis, we **suggest** that defining and reporting 'credit limit' may be problematic for these services and that perhaps a 'shadow limit' per individual customer may be worth consideration.

Amend CR Code to require CRBs to publish their CP audits and submit these to the OAIC (Proposal 13):

Equifax **notes** the intention of ARCA to vary the Code to further define and extend the obligations under paragraph 23 of the Credit Code to require CRBs to publish their CP audits required by s20N and s20Q of the Privacy Act and submit these to the OAIC. We **note** also that it is ARCA's intention that these reports can be redacted as needed for publication to ensure they do not include personal or commercially sensitive information. In relation to this proposal, Equifax **considers** that a statistical snapshot of aggregated audit findings included in the report required to be published annually under paragraph 23.11 would be sufficient for public disclosure subject to further considerations we have detailed below.

What personal and commercially sensitive information is likely to be in the report?

Equifax **agrees** that 'commercially sensitive documents' provided by an audit should not be shared.

It is noted that, pursuant to sections 20N and 20Q of the Privacy Act, a credit reporting body must enter into agreements with credit providers to:

- a) require credit providers to ensure that credit information that they disclose to the CRB is accurate, up-to-date and complete; and,
- b) protect credit reporting information that is disclosed to the CRB from misuse, interference and loss, as well as from unauthorised access, modification or disclosure.

The agreements between a CRB and a CP are commercially sensitive, containing details about the arrangements of the relationship, including enforcement rights and dispute resolution avenues, and audit obligations imposed on the CP by the CRB. We do not consider that it is appropriate for detailed information about the audits to be made publicly available, as that information pertains to the full commercial context that exists between the CRB and the CP as individually contractually documented between them

Further, Equifax **considers** that any CP's name should be redacted from an audit report consistent with the provisions of paragraph 23.11. Depending on the nature of the matters and records to be audited, there may arise other audit findings that also need to be redacted to protect the commercial interests and reputation of the CP – and the CRB. Equifax also **believes** that any publication of individual audit reports

should not disclose any other information which would identify the CP or otherwise reflect upon the CP-CRB contractual arrangement.

Should the CR code contain more detail about what is required of audits to provide greater clarity and consistency of the audit process?

Equifax **considers** that CRBs need to be able to maintain flexibility in their Audit programs due to the nature and categories of their customers.

What should be the content and process of CRB audits of CPs?

Equifax **considers** that there are a number of fundamental considerations that need to be taken into account as regards to CP audits by CRBs, in particular, the following:

- The scope of the audits. Equifax **questions** whether any matters to be taken into account in the production of the audit that are over and above the checking of the accuracy of the disclosures and where relevant, the timing of these disclosures, made to the CRB that are already part of the CRB compliance record.
- The practical and cost challenges of the placement of the onus for CP audits being placed almost entirely on CRBs. Equifax **has concerns** regarding:
 - The responsibility for ensuring compliance of CPs is placed with the CRB, rather than the CPs themselves.
 - The CR Code does not compel a CP to comply with audit obligations, meaning that non-compliance to an audit obligation will not result in non-compliance with their legislative obligations.
 - The additional cost and time intrusion to the CP in addition to the auditing requirements they may have in respect of their ACL and AFSL licensing obligations, as well as the potential to be audited by more than one CRB if they are multi-bureau.
 - The availability, expertise and cost of CRB employees required to audit a CP.
 - The tension and possible inconsistency of mandated paragraph 23 audits and the provisions for auditing of a CP by a CRB provided for in the contractual agreements between them.
 - The additional cost and intrusion to the CP in addition to the auditing requirements they may have in respect of their ACL and AFSL licensing obligations.
- The format and content of CRB reporting on CP audits. Equifax **considers** a CP statement annually, to relevant CRBs of its compliance with the requirements would be sufficient - at least for publication - subject to the following. Equifax **believes** that a statistical snapshot of aggregated audit findings would be sufficient for public disclosure, published within the report required under paragraph 23.11. As regards submission of the audit reports annually to the OAIC, again, Equifax **suggests** that a statistical summary report would suffice.
- Over prescription of the auditing content and process. Equifax believes that over-prescription of the auditing process **would create** a real possibility of rendering the CRB a policing entity of the CP for compliance with the law (especially when the Code is a registered legislative instrument). It would be inappropriate for the CRB to undertake this role for which it would also be inadequately equipped and staffed. Also, depending on the requirements of the audit, Equifax **believes** that a full submission of individual CP reports to the OAIC would undermine the risk based approach that is the only practicable way in which CRBs can audit their CP customers.

Does any accommodation need to be made for the fact that some audit findings may be disputed by CP? If so, how could this be framed?

Equifax **believes** that there would not need to be a formal dispute process specified as regards any audit dispute as these should fall under the dispute provisions of the CRB-CP contractual agreements.

Does your CRB audit of CPs vary in any substantial way? If so please describe the ways in which audits vary from one another

As reported in the Equifax Credit Reporting Annual Report 2021-2022, Equifax **adopts** a risk-based program (**Audit Program**) in accordance with clause 23 of the CR Code to monitor credit providers' compliance the following obligations:

- that credit information that the CP discloses to the CRB is accurate, up to date and complete; and
- that the credit reporting information that the CRB discloses to the credit provider is protected by the credit provider from misuse, interference and loss, and from unauthorised access, modification or disclosure.

Equifax also **uses** the Audit Program to **monitor** the obligation for credit providers to take steps in relation to requests to correct credit related personal information required by Part IIIA of the Privacy Act, the Privacy Regulations and the CR Code.

The Audit Program is consistent across all CPs.

The Audit Program includes a risk assessment of credit providers conducted against Equifax's scoring methodology, which establishes criteria to identify credit providers to participate in the Program. Those criteria include:

- the scale of the credit provider's credit reporting activity levels , as measured by the number of enquiries received;
- the credit provider's credit information accuracy, as determined through the number of incorrect enquiries or defaults received (i.e. defaults/enquiries that the credit provider has requested deleted from the bureau due to error);
- possible systemic issues identified through correction requests and complaints known to the CRB;
- any reported breaches of the Privacy Act, Privacy regulations or the CR Code; and
- previous audit experience and findings.

In addition to the Audit Program, Equifax **works** continuously with credit providers in improving their control environments.

Would publishing a consolidated report into the audits be sufficient if it were to be supported by clarity about the information that needed to be included Why or why not?

Equifax **believes** an annual consolidated statistical report in the nature of that reported in the Equifax Annual Report **should** be sufficient evidence to ARCA and to the OAIC of the CRB's and CP's compliance with their credit reporting obligations, provided this audit approach is supported by clarity about the information that needs to be included, and preferably by consistency between the bureaus.

Equifax also **considers** it is important to acknowledge that if greater specificity of data beyond aggregated data were to be disclosed, this may lead to the publication of data that may directly or indirectly suggest

security gaps in a CP's security posture that may expose that entity to further security risks (including data breaches).

Additionally, Equifax **believes** that:

- it is also important to bear in mind that the conduct of formal audits and the production of formal audit reports are just one part of the CRB's oversight and management of the data that CPs contribute to it, and
- the production of an aggregated statistical statement may assist the management of the cost impost of audits to the CRBs; and
- the extent of general information that could be made publicly available.

Amend CR Code to clarify the definition of 'account close' in respect of CCLI (Proposal 15):

Equifax **supports** the amendment for clarity of definition of paragraph 6.2(d) of the CR Code so that consumer credit is reported as closed on the earlier of these events occurring: credit is terminated, credit is charged off, or credit is repaid. Equifax **leaves** further consideration of the definition of 'account open date' and 'account close date' to those entities who are the providers of the relevant accounts.

Reverse mortgages

Equifax **acknowledges** that reverse mortgages pose a challenge in reporting under the Credit Code because the borrower's total liability under the credit contract/mortgage may exceed the maximum amount of credit that may be provided under the contract, with no requirement to reduce the amount owing (section 13A Credit Code). Additionally, Equifax **notes** that unlike a standard home loan, the liability increases not decreases in the course of the loan and of course, the borrower may not live long enough to draw down to the maximum allowed. Also, the account would not be closed unless and until the borrower dies or moves accommodation.

Taking into account the above factors, Equifax **suggests** that a determination of what the 'maximum amount of credit' for these may not necessarily be equivalent to what is intended as for other credit accounts and so different terminology may be needed for these accounts to be recorded accurately. Equifax **considers** that it may be that the CRB would need to take into account the full potential exposure on the account notwithstanding it is not fully drawn, even though the end final liability may end up being a greater liability than the original amount.

What amount do you consider should be reported for the 'maximum amount of credit available' for a closed revolving credit account?

Equifax **notes** that the CR Code defines the 'maximum amount of credit available' to mean the credit limit that applies at the time the information is disclosed to a CRB. Equifax also notes that this definition causes issues where a revolving credit contract has been closed, and the CP is subsequently disclosing the final set of information. We **believe**, however, that when an account is 'closed' that the credit limit should not be reduced to 0 *as reported on the bureau* but rather remain as the contractual limit. At account closure the ability to draw down on that credit is just not available.

We **believe** that this is the appropriate approach given that there are 2 scenarios that apply to revolving credit accounts:

- Scenario 1, where the account has been closed by the CP at the request of the account holder and the entire balance paid out or transferred. In this context, the maximum amount of credit that is currently available is 0 as the account does not exist anymore. However, we **consider** that the limit of the account in operation prior to closure should also be retained as part of the bureau record.
- Scenario 2: Where the CP closes puts a stop on the account (eg, because it has been mismanaged by the account holder) the maximum amount of credit that was available remains the pre-stop/closure account limit (the contractual limit) but the maximum amount of credit available is 0 and the outstanding balance is a debt attached to the account that may or may not be amortised in a repayment plan.

Scenario 1 should have a positive impact on the score from the perspective of the particular account. Scenario 2 should have a negative impact on the score. Should the reporting on revolving credit accounts provide for these two scenarios?

Amend CR Code to clarify definition of 'month' to more flexibly accommodate CP reporting practices (Proposal 17):

Equifax **supports** in principle giving consideration to amending paragraph 1.2(i) of the CR Code to clarify the definition of 'month' to reflect the principles that reporting should reflect an individual's expectations around their repayment obligations and reflect their repayment behaviour. While we **believe** that the details of this are more a matter for CPs than CRBs, we **do observe** the importance of:

- providing for different CP reporting practices to support the accuracy and transparency of credit reporting, and
- avoiding in the making of any such relevant adjustment consequent systems changes for credit reporting.

Amend CR Code to introduce positive obligations related to statute-barred debts (Proposal 19):

Subject to practical considerations set out below, Equifax **supports** in principle the amendment to paragraph 20.6 of the CR Code to introduce positive obligations related to statute barred debt, specifically the requirement that:

- CRBs destroy statute barred debts from the consumer credit bureau where it is reasonable for them to have been aware of the statute of limitations applicable to the credit information;
- CPs take reasonable steps to inform CRBs when a debt has or will become statute barred; and
- when disclosing default information, CPs provide CRBs with the date that the debt is expected to become statute barred as they have determined.

What is the effect of the exclusion of statute-barred debts from the definition of default information in s6Q(1)(c) of the Privacy Act?

Equifax **notes** that the exclusion of statute-barred debts from the definition of s6Q(1)(c) of the Privacy Act means that defaults remain on the bureau that can no longer be collected on. Equifax **also believes** that as the CRB cannot make a proactive determination of whether a debt is statute barred with the information we hold, this needs to be assessed on a case by case basis. For example, Equifax **considers** that the CP needs to determine if the limitations have been reset due to their customer's acknowledgement of the debt in writing or via payments made and report these matters to the CRB accordingly.

What steps would be reasonable for a CP to take to inform a CRB that a debt has or will become statute-barred?

Equifax **notes** that currently:

- CPs advise the removal of the debt is due to the 'debt becoming statute-barred', and
- CRBs do not require proof from the CP that the debt is statute-barred.

Equifax **believes** that in the future, with an amendment of paragraph 26.2 of the CR Code in the terms contemplated above, CRBs will need to rely on the understanding that CPs have effective procedures, policy and monitoring in place to identify statute-barred debts.

When is it reasonable for a CRB to have been aware of a debt being statute-barred?

Equifax **believes** that it is reasonable to expect a CRB to have been made aware of a debt being statute barred within 3 business days of that fact occurring in line with similar obligations, ie. For consistency within the reporting framework, the time period should be similar to that applicable to making the CRB aware of payment information.

If you are a CRB, do you allow CPs to request that default information be removed? If the answer is yes, what is the process the CP must go through and is there a cost associated with the request?

Equifax **advises** that yes, CPs can request removal of a debt due to its being statute barred. Equifax **does not require** evidence in this case as the CRB does not have enough information to test if the debt is statute barred or not.

Are you aware of some CPs disclosing the same default to different CRBs at different times?

Equifax **is not aware** of CPs disclosing the same default to other CRBs at different times, or if at all.

What are your views about the options listed above?

Equifax **considers** that a CP will need to provide a date in which the debt becomes statute barred which is an updatable field. The expectation will be that a CP will provide this date when listing the default. If and when the date changes, then the CP will need to send an update to the original date to reflect the new statute barred date. The CRB would then use this date to test the default retention date against the statute barred date and will remove the default or the date which comes first.

Equifax **considers** that the only other option would be that a CP is required to review all of its defaults on the Bureau and make the assessment if the defaults are statute-barred (or not) and remove any that have reached the statutory limit. Equifax **is unable** to make that assessment based on the current information available to it. Only the CP with the relevant account knowledge and management is in a position to do that.

Amend CR Code to specify that s 21D(3)(d) notice must be a standalone notice (Proposal 21):

Equifax **notes** ARCA's intention to amend paragraph 9.3 of the CR Code to specify that the s21D(3)(d) notice must not be bundled with any other correspondence.

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Amend CR Code regarding notification obligations (Proposal 24):

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Equifax **welcomes** the opportunity to comment on the effectiveness of the current CR Code requirements, including:

- the likely causes of confusion and complaints about consent versus notification;
- the situations in which confusion tends to arise;
- current practices and the operation of the mechanism in paragraph 4.2 of the CR Code; and
- measures that could help raise awareness (noting that complex disclosures can have limited effectiveness).

Causes of confusion and complaints. Do you agree with the Review that most complaints in this area arise from individuals not being appropriately informed? Why or why not?

Equifax **recognises** that there are significant issues arising from the current operation of the mechanism in paragraph 4.2 of the CR Code.

Equifax **believes** that complaints in this area arise from a number of factors, including the following notification issues:

- inadequate notification to consumers regarding when enquiries are reported to CRBs (including in the scenario where their application for credit has been declined);
- the lack of knowledge or mere forgetfulness of consumers that enquiries last on the credit file for 5 years, whether the credit is approved or not. Where a customer's application for credit is not approved, it is easy for them to forget that the enquiry was made by the credit provider who declined them;
- the structure of credit providers and white labelling can cause consumer confusion as to which entity actually made the enquiry; and
- The erroneous belief on the consumer's part that if their credit application has been declined, their consent for disclosure of that relevant enquiry to a CRB requires their specific consent.

From a **review of data** from consumer Corrections over the last 6 months, Equifax has **identified** that 33% of all disputed enquiries are due to claims from individuals that they did not authorise (consent) to the said enquiries.

Equifax **believes** that the number of corrections requests we receive for the above reasons indicate that consistent information around the lack of need of the CP for consent to their enquiry being reported to a CRB is not being received by consumers. Accordingly, Equifax **considers** that it would be helpful to consumers if:

- increased guidance were to be provided about the circumstances in which their information will be used and disclosed; including during the credit application process; and
- consideration was to be given to the mechanism of notifications to ensure that they are meaningful to consumers, including in their community language and at a relevant literacy level.

Amend CR Code to allow CRBs to offer individuals an automatic extension during the ban period (Proposal 28):

Equifax **supports** the amendment of paragraph 17 of the CR Code to allow CRBs to offer individuals an automatic extension to the ban period at the time they initially request a ban, where appropriate.

Do you support individuals being able to request a ban extension when they request the original 21 day ban? Please provide reasons for your view

Equifax **supports** a ban extension when the individual requests it provided that, for consistency between CRBs and for consumer transparency, the length of any ban extension is prescribed.

Could amendments to the CR Code assist with the development of an 'automatic' ban extension process? If so, how?

Equifax **believes** that to enable an extension, removal or clarification of a ban, a CRB must be able to rely on the individual to provide the evidence required to prove they are still at risk of fraud. Equifax **also considers** that it is important that the evidentiary requirement in each scenario be transparent to consumers and aligned between the CRBs so the process can be automated and the requests streamlined between CRBs.

Are there any risks we should be aware of or consequences we should seek to avoid when considering how to draft any CR Code variations?

Equifax **considers** that the risk to be aware of when considering how to draft any CR Code variation(s) in relation to bans is the likelihood that some individuals will seek to use ban periods as an always on function. Equifax **believes** that there should be limited ability to use credit information while a ban is on for portfolio management.

Are there any situations where an automatic extension should not be provided?

Where there is no fraud evident, Equifax **believes** that an automatic extension should not be provided.

Should the CR Code provide some indication about the potential length of an 'automatic' extension (e.g. that it run for 12 months unless the CRB has reasonable grounds to believe a different period would be more appropriate, and explains this to the individual)?

The CR Code should provide some indication about the potential length of an 'automatic' extension. Equifax **considers** an 'automatic' extension should run for 3 months and that it is preferable that the 'automatic

extension' be available only once. Equifax notes that of the ban requests received directly by an individual directly, in the last 6 months, 28% of requests were for ban removals, indicating the current CRB coordinated period of 12 months is too long.

If you are a CRB, what challenges would arise from 'automatic' ban extensions?

Equifax **believes** that there is a significant challenge for CRBs in applying an 'automatic' extension to a ban because of the potential quantum and nature of evidence that will be required so that the CRB can form a belief on reasonable grounds to apply the extension for the individual (as required by section 20K Privacy Act) and manage the legal risk that the CRB carries in relation to this.

More generally, what feedback do you have about the credit ban process?

Equifax **notes** that there is currently no coordination between CRBs as to the imposition or removal of bans. We **consider** that the need for such coordination will be increased if an automatic extension is put in place.

Amend CR Code to clarify the evidence that a CRB needs to implement a ban period/extension (Proposal 29):

Equifax **supports** ARCA's intention to amend the CR Code to clarify the evidence that a CRB needs to implement a ban period and/or extension. Equifax particularly **supports** the definition of what evidence could be taken by the CRB to constitute reasonable grounds to consider that the individual is, or is likely to be, a victim of fraud.

Do you have any feedback about this Proposal or ARCA's intended response?

As noted above, Equifax **supports** the Proposal but notes that given the current practice is not to request verification from the requesting individual to support the ban, the suggested process will add additional steps for the individual that they may have difficulty meeting, including within a timely timeframe. Equifax **queries** also whether it is intended that paragraph 17.3 of the CR Code would still apply to the auto extension process.

In what sort of situations do you consider that CRBs should require documentary evidence is needed to believe that an individual may be the victim of fraud (noting that the individual must have this view in order to request a credit ban in the first place)?

Equifax **recommends** that documentary evidence should be required to extend a ban after an automatic extension.

Do you think that a requirement for there to be something indicating that the individual may not be a victim of fraud is a reasonable grounds for further evidence or inquiries by a CRB?

Yes, Equifax **believes** that there should be a requirement that where the individual may not be a victim of fraud it would constitute reasonable grounds for further evidence or enquiries by a CRB.

If you are a CRB: what kinds of evidence (if any) do you collect from individuals now in order to conclude that they may have been the victim of fraud? Would a CR Code provision of the kind discussed above require you to change your ban extension processes?

Equifax currently **collects** the following information from individuals to conclude that they may have been the victim of fraud: an email confirming the data breach, a police report number, and/ or an ACSC incident number.

Amend CR Code to require a CRB to record and alert an individual of access requests during a ban period (Proposal 31):

Equifax **notes** the intention that the CR Code should be amended to require CRBs to make a record of access requests during a ban period and alert individuals of any attempts to access this information during that period. We **question** the benefit, however, of these alerts to the consumer.

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

Equifax **advises** that when a CP is enquiring into a banned file no information is disclosed other than a ban notification. This messaging should trigger the CP to make further enquiries into an application or potential fraud investigation. Equifax **considers** that alerts of this nature are of minimal benefit to the consumer as there is not much they can do with this information, other than serving as an indicator that further ban extensions may be needed.

Are you aware of services available to individuals which would have the effect of providing them with an alert when their credit information is requested? If so, how can these be accessed and is there a charge associated with doing so?

Equifax **does not provide** alert services when credit reporting information is requested.

What problems would providing automatic alerts cause? Please explain in detail. Please also explain if such problems would be present if:

- ***a requirement was developed that required a CRB to provide alerts on request in certain circumstances (e.g. if they had the contact details for the individual); or***
- ***a CRB was required to respond to requests from an individual to outline any access requests received during the ban period.***

Equifax **notes** that bans on a credit file are processed and communicated differently to that of accessing credit files. The verification threshold between a ban and an access is very different. Due to the need to complete the ban period immediately, Equifax **places** bans on credit reporting information where the name, address, date of birth and drivers licence details are able to return a file. When the ban is placed on an individual's credit reporting information, a communication is sent to the email that was included on the request. Minimal credit information is returned during subsequent communications. If ongoing alerts were to be required, the individual would need to be verified to ensure that the CRB is disclosing credit reporting information to the correct individual. Equifax **questions** the value of these notifications given there would be no enquiry or file access visible to the individual which may cause additional confusion as to why the alert was issued or what action the CRB should take apart from directing the individual to the CP. Given the limited value in being automatically notified of these access attempts, Equifax **would support** a more reactive approach that upon request by an individual Equifax **would provide** the information requested.

Equifax also **advises** that from an operational perspective, providing automatic alerts presents many challenges:

- Data or logs about access attempts during a ban are not readily available to internal users servicing consumers;
- Providing these alerts would likely cause significant overheads to build such the accessibility and automated processes required for limited end benefit to the consumer. Cost increases may ultimately impact the consumer if a the CRB passes these on to the CPs;
- Equifax **may not hold** a relationship with a consumer who places a ban, as bans can be shared by other CRBs and minimal information is collected. We **may not hold** sufficiently adequate and up to date contact information to maintain alert notifications (particularly during long extension periods of 12 months);
- It is unclear what specific data would be logged and could be included in such an alert, but assuming Equifax **could provide** credit reporting information, in this scenario we would not have been able to adequately verify the consumer to disclose such information. If an alert needs to be nonspecific as a result, this may lead to a reactive approach in any event where the consumer has to contact Equifax to determine who specifically accessed their information.

Whilst Equifax **believes** that the second option of a reactive approach (to respond to specific requests about accesses) is more practical and preferable to automatic alerts, this would still require the individual to be appropriately verified to obtain access to this information and also come with its own manual overheads.

Amend CR Code to require CRBs to provide information on accessing other CRB's reports (Proposal 32):

Equifax **notes** ARCA's intention to amend paragraph 19.4 of the CR Code to specify that when an individual seeks access to their credit report from a CRB, the CRB must tell the individual about how they can access other CRBs' credit reports.

It is likely preferable for the obligation on CRBs to be worded in general terms. Do you have any feedback about this Proposal or ARCA's intended response?

Equifax **supports** the wording of the obligation in general terms.

How specific should any obligation on CRBs be?

Equifax **believes** that the obligation contemplated should be restricted to directing the user to the other CRBs' websites. Equifax also **considers** that including other forms could lead to onerous compliance obligations if contact information needs to be updated. Our preferred position is that of the web address only. An acceptable alternative position would be web address, phone, and mail.

Access to physical copies of credit reports (Proposal 33):

Equifax **notes** that ARCA intends to prepare a new provision alongside the other obligations in paragraph 19 to require CRBs to provide a physical copy of a credit report on request, noting also that their stakeholder engagement to date suggests that all three CRBs currently provide physical copies on request.

Do you have any feedback about this Proposal or ARCA's intended response?

Equifax **believes** that the provision shouldn't have the physical copies of credit reports being made prominent or preferred. Equifax still **prefers** online delivery of credit reports because:

- this assists in keeping costs to a minimum; and
- is a mechanism that allows for a credit report to be in the hands of the consumer much quicker, in a more secure way.

Are there other barriers to individuals accessing their credit reports? If so, how can these barriers be addressed for individuals while ensuring that CRBs only provide credit reports to the intended recipient?

Equifax **believes** that the need for identity verification provides a barrier to individuals accessing their credit reports in an offline process. Such a process requires certified documents which can be difficult for individuals to obtain and cause delay. Equifax **does not verify** individuals over the phone as it is not able to identify or collect phone numbers as part of an identification process.

Amend CR Code to enable correction of multiple instances of incorrect information stemming from one event (Proposal 37):

Equifax **notes** ARCA's intention to amend paragraph 20 to introduce a mechanism to facilitate correction of multiple instances of incorrect information and **welcomes** the opportunity to share its view on the challenges attending this initiative.

What types of information 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? Please provide reasons for your views.

Equifax **suggests** that only fraud/ identity events be included in this amendment. Information stemming from domestic violence or natural disasters should be managed under normal corrections processes. (i.e 20.5). The consumer can choose what needs to be corrected. Equifax **considers** an improvement could be the ability to include a statement of claim or evidence to be shared with the CP when requesting a correction/ request for assistance.

How can such a response to Proposal 37 reduce burden on individuals seeking corrections while remaining workable for CRBs and CPs?

For this to be workable, Equifax **believes** that the individual must identify the fraudulent elements in question and provide enough information which can be passed onto the CP to make a determination if the credit information is fraudulent or not. This will enable a CP to determine a considered decision to remove the erroneous entry. This will help streamline the process across the 3 CRBs. Notification to other CRBs should sit with the original CP who has made the determination to remove the erroneous entry as they would be in the best position to know to which CRB the information was disclosed.

Who should make a decision about whether the multiple enquiries are fraudulent – the entity the individual first approaches (e.g. a CRB), or the CPs to which the applications were made?

- ***If it is the former, what information would be needed in order to make the decision(s)?***
- ***If it is the latter, how would this constitute an easier/simpler process for the individual?***

Equifax **strongly believes** that CPs are still the only entity who has enough information to determine if fraud is present or not. A CRB is a data repository, with specific and defined credit information collected from CPs or the individual. A CRB will only have information from the consumer, which is unlikely to provide sufficient information to determine if fraud is present or not. Equifax **would also question** the type of

information a CRB could obtain from an individual that a CP would be comfortable relying on, particularly when it is not privy to the information that it already holds in relation to a potential fraud matter. We also **stress** the following additional point. If a CRB were able to decide if an enquiry was fraudulent or not, what happens to the debt if a CRB says that an enquiry is fraudulent? Is the CP compelled to write that debt off?

Equifax **believes** that to make the process easier, CPs should advise the minimum amount of additional information they require to make a determination. The CRB can ask for that information upfront and pass that to each CP the individual has identified as being fraudulent when a normal correction request has been made. It is noted that an individual will need to advise the CRB which enquiries they believe to be fraudulent.

Equifax **strongly believes** that it should not be up to the CRB or CP to determine which ones are fraudulent. The consumer is the only person in the position to confirm whether they have or have not applied for, or obtained, credit. This proposal would not only create additional work on the CRB and CP for no additional value, but may also result in correct information being removed or incorrect information remaining.

Equifax **also reiterates** that a CRB is a 'data repository'. It collects the information from the CP. Credit information is limited and it is not possible, based on the information on file, to make a determination as to whether something is fraudulent or not.

In what situations should CPs/CRBs accept the fact that another entity has decided that the consumer has 'made out' the case for a correction stemming from a certain event and also correct their own information? What sort of factors should an entity making the first decision take into account?

Equifax **strongly believes** that responsibility for "making out" the case for a correction stemming from a certain event resides entirely with the CP who disclosed the information to the CRB.

As stated, Equifax **considers** that CRBs/ CPs need to be notified by the consumer what information they consider to be incorrect.

What issues do you foresee with a CRB-coordinated process such as the one outlined above? How could these be addressed – either through amendments to the potential process or design of a new process?

Equifax **believes** that timeframes are extremely important. Currently there is a 30 day period to take reasonable steps to determine if information is inaccurate, out-of-date, incomplete, irrelevant or misleading with the ability to request for an extension. When requesting for assistance there is a shorter time frame to allow the first responder to get back to the individual. Equifax **raises** the following questions:

- Is 30 days an appropriate time frame for this correction type?
- How long does a CP need to make a fraud assessment?
- Are there instances where CPs may be dependent on third parties (such as the police) to make a fraud assessment?
- How many times should a CRB be able to extend the correction request before a CRB must be required to make a decision?
- What will be the impact to those decisions if a liability has been created?

Amend CR Code mechanism for corrections due to circumstances beyond the individual's control to:

- **include domestic abuse as an example (Proposal 39)**
- **extend correction requests to include CPs (Proposal 40)**
- **expand the correctable categories of information (Proposal 41)**

Equifax **notes** that ARCA intends to:

- include domestic abuse as an example of a circumstance beyond the individual's control;
- allow CPs to make these corrections; and
- seek feedback on the types of information that should be able to be corrected under this mechanism, noting the existence of other mechanisms for correcting information that is incorrect on its face, and the potential options for RHI reporting if such information is to be corrected under what is now paragraph 20.5 of the CR Code.

Equifax **supports** expanding the definitions of 'beyond the individual's control' to include domestic abuse and not restrict its exhaustive list. Equifax **also agrees** that this provision should be extended to CPs being able to receive the request and process a correction. However, Equifax **does not support** the expansion of correctable categories under paragraph 20.5. Paragraph 20.5 is historically intended for negative elements which have been placed on the individual's credit file correctly, been repaid or have had an arrangement in place and the cause was outside the individual's control.

Including situations of domestic abuse in the example list of circumstances outside the individual's control (Proposal 39).

Do you agree with ARCA's intended approach to this proposal? Why or why not?

Equifax **supports** expanding the definitions of 'beyond the individual's control' to include domestic abuse and not restrict its exhaustive list.

Allowing for the individual's request to be made to the CP, and not the CRB (Proposal 40).

Equifax **agrees** that this provision should be extended to CPs being able to receive the request and process a correction.

Do you foresee any issues with CPs receiving requests of this nature from consumers?

Equifax **does not foresee** any issues with CPs receiving requests of the nature of Proposal 40, as long as the CP has updated the default as paid before requesting the removal.

Should CPs also be required to consult with CRBs (noting that paragraph 20.5 requires CRBs to consult with the relevant CP) when making a decision about whether the information should be corrected?

Equifax **does not consider** that a CP should also be required to consult with CRBs when making a decision about whether the information should be corrected. As stated previously, a CRB is a 'data repository'. Credit information is limited and it is not possible, based on the information on file, to make a determination based on the information it holds. It would therefore add no value for a CP to consult with CRBs, particularly if the CP was the same CP that placed the default on the file as they already have information available to it to make the assessment.

Expanding the types of data that can be removed on the basis that their existence was due to circumstances beyond the individual's control (Proposal 41).

Equifax **notes** the importance of consistency across the corrections process.

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

- ***If so, what types of data should be capable of being corrected and on what basis should this be possible?***
- ***If not, why should information that exists due to circumstances out of the individual's control remain in the credit reporting system?***

Equifax **does not support** the expansion of correctable categories under paragraph 20.5. Paragraph 20.5 is historically intended for negative elements which have been placed on the individual's credit file correctly, been repaid or have had an arrangement in place and the cause was outside the individual's control. Adding additional categories does not align with the purpose of paragraph 20.5, in that a negative event has occurred, been rectified and because the event was outside of the individual's control the default can be removed. Equifax has concerns that if 20.5 was extended to additional data elements without a qualifying starting point, then it can see 20.5 being taken advantage of by credit repair agencies and even be used as a way for a CP to remove valid negative information from a credit report to resolve a dispute therefore compromising the integrity of the credit reporting system. Notwithstanding the above, there may be an opportunity to expand 20.5 to repayment history information where the individual has rectified the missed payment.

Equifax **also stresses** that CRBs are not positioned to make a decision about circumstances beyond an individual's control in isolation without the CP. Such an assessment would need to come from the CP as there could be broader instances that need to be considered to deal with the DV situation for example, financial hardship assessments and loan restructures.

What complications could arise from correcting the following types of credit information under paragraph 20.5:

- ***additional kinds of default data beyond that currently covered;***
- ***RHI;***
- ***CCLI; and***
- ***enquiries data?***

Equifax **strongly challenges** the position that paragraph 20.5 of the CR Code can be extended to other categories apart from RHI. Equifax has concerns that if 20.5 was extended to additional data elements, then it can see 20.5 being taken advantage of by credit repair agencies and even be used as a way for a CP to remove valid negative information from a credit report to resolve a dispute therefore compromising the integrity of the credit reporting system. Equifax **supports** guidance for CPs and CRB on reasons corrections can occur.

Amend CR Code 'capacity information' definition to include an individual in their capacity as a trustee (Proposal 44):

Equifax **notes** ARCA's intention to amend the definition of 'capacity information' in paragraph 1.2(c) to include an individual acting in their capacity as a trustee. Equifax also **notes** that ARCA seeks feedback on the potential hierarchy of different capacity information (e.g. if the individual took out a loan as a trustee but also provided a guarantee) as well as the effect that 'trustee' information should have on the individual's credit worthiness. Equifax **believes** there are a number of practical matters yet to be canvassed and addressed before an amendment of this nature is made.

Do you have any feedback about this Proposal or ARCA's intended response? Does ARCA's response appropriately deal with situations where trustees are liable for the credit?

Equifax **considers** that it is not clear how ARCA intends trustee information to be used in the consumer credit report and how CPs will use the information. Equifax **believes** that this would be very challenging as there are many different types of trustee arrangements and personal liability for the loans entered into. The question would be how accurate is reflecting this information on the individual's credit report and how would CPs assess that the information is a fair reflection of an individual's credit worthiness?

Are there any risks we should be aware of or consequences we should seek to avoid when considering how to draft a variation to the definition of capacity information?

Equifax **raises** a number of risk issues and questions that need to be sorted before this initiative is progressed, including:

- What credit information will trustee information be permitted to include? Enquiry data? CCLI? RHI? Defaults?
- Is it intended that the variation of the definition of 'capacity information' mimics 'guarantor information' ?

If you are a CRB, would information that an individual is a non-liable trustee affect the calculation of any CRB-derived information? If so, how?

Equifax **questions** why a trustee who is not liable for the debt should affect the calculation of any CRB-derived information.