

Privacy (Credit Reporting) Code 2014 (CR Code) – Consultation Statement – Proposed variation to paragraph 12.2 (serious credit infringement)

- The consultation was conducted between 19 June and 3 July 2019.
- Stakeholders were contacted direct by email and provided with a short note providing details of the proposed variation and explaining the reasons for the variation (Annexure A below).
- The contacted stakeholders were:
 - Industry associations: Australian Bankers' Association (ABA), Australian Collectors and Debt Buyers Association (ACDBA), Australian Finance Industry Association (AFIA), Australian Institute of Credit Management (AICM), Communications Alliance, Data Governance Australia, Insurance Council of Australia (ICA), Mortgage and Finance Association Australia (MFAA), National Credit Providers Association (NCPA).
 - External dispute resolution schemes: Australian Financial Complaints Authority (AFCA), Energy and Water Ombudsman New South Wales (EWON), Energy and Water Ombudsman Victoria (EWOV), Telecommunications Industry Ombudsman (TIO).
 - Consumer advocates groups: Consumer Action Law Centre, Financial Rights Legal Centre, Financial Counselling Australia, Legal Aid Queensland.
 - Government and regulatory bodies: Attorney General's Department, Australian Securities and Investments Commission.
 - Miscellaneous stakeholders: Law Council of Australia, IDCARE, My CRA Lawyers (now Legal Practice Holdings Pty Ltd), CreditWise, Newcastle Permanent Building Society.
- Three stakeholders provided submissions: Telecommunications Industry Ombudsman, Legal Aid Queensland and Legal Practice Holdings Pty Ltd. Copies of these submissions are set out in Annexure B.
- ARCA separately contacted Financial Rights Legal Centre (FRLC) to confirm their position on the proposed variation. FRLC advised it had no objection to the variation and written feedback would be provided direct to the OAIC.

ANNEXURE A – CONSULTATION NOTE PROVIDED TO STAKEHOLDERS

Privacy (Credit Reporting) Code (CR Code) – Variation to paragraph 12 (serious credit infringement)

ARCA's variation application provided to the Office of the Australian Information Commissioner (OAIC) on 18 April 2019 included a variation to paragraph 12.2 (serious credit infringement), which was a late inclusion arising from the variation to paragraph 10.1 (payment information). A copy of the variation application, which explains both variations is available here: https://www.oaic.gov.au/resources/privacy-law/privacy-act/credit-reporting/arca-2019-04/Variation_application_including_Annexures_B_and_C.pdf (pp11 - 12).

The OAIC has noted that this provision has not been addressed as part of the consultation process. ARCA has undertaken to conduct a separate consultation on this proposed variation.

Background & purpose of variation to paragraph 12.2

The proposed variation to paragraph 10.1 (payment information) was to remove new arrangement information as a type of payment information. This variation was necessitated by an OAIC view that paragraph 10.1 of the CR Code lists circumstances in which an overdue payment is taken to be paid (within the meaning of 'payment information' in the Privacy Act). Given 'new arrangement information' is a separate type of credit information, it therefore became necessary that paragraph 10.1 be amended so as not 'deem' it to be a type of payment information.

When drafting the variation application document, it was subsequently identified by ARCA that removing 'new arrangement information' as a type of payment information in paragraph 10.1 had flow-on effects for paragraph 12.2.

Paragraph 12.2 currently requires that a serious credit infringement is destroyed where payment information for the overdue amount is disclosed. Given that new arrangement information (the existing paragraph 10.1(e)) would no longer be deemed a type of payment information, it became necessary to amend paragraph 12.2 to explicitly extend the SCI destruction obligation to circumstances where new arrangement information is also disclosed.

This variation is purely a consequential variation, with the intention that the current SCI destruction obligations under the CR Code remain unchanged as a result of the variation.

Wording of proposed variation

The proposed variation in paragraph 12.2 is:

*12.2 If a CP discloses **payment information or new arrangement information** to a CRB that relates to an overdue amount that is the subject of a **serious credit infringement** disclosure (based on paragraph(c) of the Section 6(1) definition of that*

*term), the CRB must destroy the information relating to the **serious credit infringement.**”*

(For context, the proposed variation in paragraph 10.1 is:

- 10.1 *For the purposes of the definition of **payment information** in Section 6T of the Privacy Act, the amount of the overdue payment to which the information relates is taken to be paid when:*
- (a) *payment is received in cleared funds of the full amount of the overdue payment, including all interest, fees and other amounts that are included in the amount specified as overdue in the **default information**;*
 - (b) *payment is received in cleared funds of part of the amount of the overdue payment and the CP accepts this amount in full settlement of the overdue payment; or*
 - (c) *the CP waives the overdue payment; or*
 - (d) *~~the CP agrees to terminate the **consumer credit** provided to the individual to which the overdue payment relates and replace it with new **consumer credit.**~~*

ANNEXURE B – STAKEHOLDER SUBMISSIONS

- Legal Practice Holdings Pty Ltd email dated 24 June 2019
- Legal Aid Queensland email dated 25 June 2019
- Telecommunications Industry Ombudsman email dated 2 July 2019