



CR Code Consultation - Soft Enquiry Framework 2023

Equifax Submission

Date: Jun 22, 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, 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 (CR 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).

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

Proposal A. Define the circumstances that amount to a soft enquiry: Equifax **supports** ARCA's proposal to amend section 7 of the CR Code to define what amounts to a soft enquiry. Equifax **also supports** defining that a soft enquiry can be used prior to an application being made (i.e before the applicant presses submit on an application for credit). However Equifax **also expresses concern** that without the appropriate definition or controls that soft enquiries will replace hard enquiries and not reflect individuals applying for credit and not being offered the product.

Proposal B. Specify when enquiry information will need to be reported by a CP: Equifax **does not support** Proposal B mandating a timeframe in which a CP is required to follow up with a hard enquiry once the decision has been made to progress an application to the next stage. Equifax's view is that a mandated time frame would increase compliance monitoring obligations for both the CRB and CPs to no positive result and would also increase data continuity issues and impact the integrity of the credit reporting system. It should be up to the CP to choose the length of time the quote would be valid for, prior to the formal application being made.

Proposal C. Require CPs to use the CR Code framework to access credit reporting information in response to a soft enquiry: Equifax **supports** the proposal to update the CR Code to require a CP to access soft enquiry data only via the Credit Reporting System to ensure that all CPs who do so are subject to the provisions of Part IIIA.

Proposal D. Limiting the type of information which can be provided by a CRB to a CP in response to a soft enquiry: Equifax **supports** limiting the data returned in a soft enquiry. This will provide CPs with information to assist with making a preliminary indicative quote but of course will be insufficient basis for a fully informed lending/ credit decision as required by RG 209, reflecting the intention of the soft enquiry framework. We believe this protects the consumer's information in the event they do not proceed to a full application.

Proposal E. Require CRBs to make a written note of the soft enquiry: Equifax **supports** requiring a CRB to make a written note when a soft enquiry is made. This maintains consistency with the current hard enquiry framework.

DETAILED POSITIONS

Proposal A. Define the circumstances that amount to a soft enquiry:

Equifax **supports** ARCA's proposal to amend section 7 of the CR Code to define what amounts to a soft enquiry. Equifax **also supports** defining that a soft enquiry can be used prior to an application being made (i.e before the applicant presses submit on an application for credit).

Equifax proposes the following changes to the definition of soft enquiries to reflect that a soft enquiry doesn't necessarily need to be in conjunction with a specific type of product within a product category:

A soft enquiry refers to an enquiry made by an individual to a CP in connection with a consumer or commercial credit product which is capable of being the **subsequent** subject of a complete application for credit in respect of a specific product.

For the purposes of section 6R of the Privacy Act and paragraph 7 of the CR Code, a soft enquiry made to the CP is to be deemed an incomplete application for credit.

An incomplete application is not intended to, and should not be interpreted as, representing the making of an application of credit by the individual to the CP, other than for the purposes of paragraph 7 of the CR Code and section 6R of the Privacy Act.

Equifax also expresses concern that without the appropriate controls,

- a soft enquiry will replace a hard enquiry, and
- the credit enquiry data currently used in CRB derived information and returned to CPs will no longer have integrity as it will not capture all types of credit applications.

Equifax understands that soft enquiry data is not to be included in CRB Derived Information and accordingly, individual soft enquiry data will not be provided to a CP as part of a credit report.

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

Equifax **does not support** Proposal B mandating a timeframe in which a CP is required to follow up with a hard enquiry once the decision has been made to progress an application to the next stage.

Equifax's view is that a mandated time frame would increase compliance monitoring obligations for both the CRB and CPs to no positive result and would also increase data continuity issues and impact the integrity of the credit reporting system. It should be up to the CP to choose the length of time the quote would be valid for, prior to the formal application being made.

Equifax notes that the NZ Quotation framework involves providing all the credit data available to a CP upfront as part of what is called a "quotation enquiry". Should a consumer continue to a credit application, the CP will then pass back the hard enquiry via a batch exception process. The key issues identified with this approach are:

- Inaccurate Credit Data:
 - CPs providing incorrect, incomplete and untimely hard enquiry information within the batch exception file process. Therefore, impacting the accuracy of consumer credit files. Furthermore, the less data we have available on the bureau - the less accurate both Equifax and the CP can be in predicting the likelihood of a consumer going into arrears within the next 90 days.
- Implementation Costs for CRBs & CPs:
 - There would be considerable cost involved in adopting the NZ Quotation framework. It would mean that Equifax and its CPs would need to completely rework the technical integrations currently in place to send and receive consumer credit data.
- Improper use of credit data:

- Based on feedback from the market, if we provide all consumer credit data as part of the quotation enquiry it is increasingly likely CPs will use the data in a way that is not intended by the 'soft-enquiry' framework.
- CPs are wanting to use the 'file access'/'soft enquiry' information within their lending decisions, which circumvents the purpose of creating a 'soft enquiry' framework.
- Innovative lenders are likely to use the 'soft-enquiry' data provided upfront to understand the customers recent shopping history. They will then use this data to tailor offers or direct market, which again circumvents the purpose of creating a 'soft-enquiry' framework and breaches direct marketing regulations.

Equifax's **suggestion** is rather than a mandatory reporting obligation once the individual makes an application, is to have a prohibition on a CP from making a lending/ credit decision on the information returned in a soft enquiry therefore requiring a hard enquiry once the application is to be progressed.

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

Equifax **supports** the proposal to update the CR Code to require a CP to access Soft Enquiry data only via the Credit Reporting System to ensure that all CPs who do so are subject to the provisions of Part IIIA. This proposal, in restricting how a CP can access the soft enquiry data, will ensure compliance with the provisions of Part IIIA and the PRDE. Equifax sees this proposal as guarding against a non-participant CP in Part IIIA from obtaining data from an Access Seeker Entity for the purpose of making a credit assessment.

In terms of drafting, Equifax **supports** option (i):

A CP who is able to seek credit reporting information directly from a CRB in response to a soft enquiry, must do so irrespective of any credit reporting information otherwise held by the CP or provided to the CP by another party, including (but not limited to) a related body corporate, credit assistance provider, broker, or a consumer (or their authorised representative) directly.

We **support** the suggested inclusion to limit the disclosure of soft enquiries for the purpose of assessing credit but do **raise concerns** with the potential for the current wording of the limitation to have a negative impact on or restrict the ability of a CP who collected Credit Reporting Information from an individual (such as a Credit Report) to show a correction has been processed or to resolve a complaint or legitimate access seekers who provide credit assistance to the individuals such as brokers.

Equifax also notes that the current wording may be interpreted as a CP must complete a soft enquiry in all circumstances which is not the intention of the soft enquiry framework.

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

Equifax **supports** limiting the data returned in a soft enquiry. This will provide CPs with information to assist with making a preliminary indicative quote but will be insufficient to make a fully informed lending/ credit decision as required by RG 209, reflecting the intention of the soft enquiry framework. Equifax believes that this approach protects the consumer's information in the event they do not proceed to a full application.

Equifax **supports** the level of detail contained in option 2 with some minor adjustments. The maximum information allowed in a soft enquiry should be:

- CRB derived information (credit score)
- Hardship indicator flag (hardship information present in the past 12 months)
- Defaults and Bankruptcy flag (default or personal insolvency information is present on the file)
- Enquiries
- Open CCLI (limited to open accounts)

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

Equifax **supports** requiring a CRB to make a written note when a soft enquiry is made. This maintains consistency with the current hard enquiry framework. We recommend that the soft enquiry be given a reference number by the CP which can then be replicated in the subsequent hard enquiry if the application processes to that point. Equifax **agrees** that option 2 contains enough information for the individual to understand what the soft enquiry was for and differentiates the soft enquiry record from the current "File Access" note. The additional level of detail will assist the CRB in answering queries from individuals and access seekers about the soft enquiry data.

Equifax is of the understanding that the CR Code will include a prohibition for a CRB to disclose this written note to a CP.

Additional matters

It is noted that ARCA is seeking to engage with Members in relation to the Reviewer's recommendation that *"Industry should take steps to inform individuals about the impact credit enquiries have on their overall credit report and how this is considered in lending decisions"*.

Equifax **acknowledges** the need for additional information regarding the impact of credit enquiries on individual credit reports. With the introduction of the credit ratings explanatory statement, the CRBs already produce material on the credit elements that impact a credit score depending on the rating. Equifax also has information available on our website that individuals can review to understand what impacts their score and credit report. Given the relationship is normally between the individual and the CP, it would make sense that additional steps are taken by the CP to educate the individual about the impact of credit enquiries before they make an application.