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PO Box Q170
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16 November 2023

By submission via [REDACTED]

Dear Richard

CONSULTATION ON VARIATIONS TO THE PRIVACY (CREDIT REPORTING) CODE

The Mortgage & Finance Association of Australia (**MFAA**) welcomes the opportunity to respond to ARCA's consultation on the variations to the Privacy (Credit Reporting) Code 2014 (**CR Code**) in response to the proposals outlined in the 2021 Independent Review of the CR Code (**Independent Review**). We also appreciate the opportunity to participate in the roundtable held by ARCA in relation to this consultation earlier this month.

The MFAA is Australia's peak body for the mortgage and finance broking industry, with over 14,500 members. Our members include mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage and finance broking industry.

Brokers are the initial point for contact for consumers, playing a critical role in intermediated lending, providing access to credit, and promoting choice in both consumer and business finance. Brokers facilitate more than two thirds of all new residential home loans and four in ten small business loans in Australia.¹

The MFAA's role, as an industry association, is to provide leadership and to represent its members' views. We do this through engagement with governments, financial regulators and other key stakeholders on issues that are important to our members and their customers. This includes advocating for balanced legislation, policy and regulation and encouraging policies that drive competition and improve access to credit products and credit assistance for all Australians.

OUR SUBMISSION

The MFAA is generally supportive of the proposed variations to the CR Code. We see the CR Code as an important regulatory framework to govern credit reporting, and to that end supports consumers to access finance. While the CR Code is not binding on mortgage and finance brokers, changes to the Code will impact on our members' customers. For this reason, we are also taking the opportunity to make several recommendations below on how the Code can be improved for the benefit of consumers. Our responses to consultation specific questions can be found in **Annexure A**.

¹ [MFAA | Mortgage broker market share reaches new December quarter record](#)

RECOMMENDATION 1: INCLUSION OF BUY NOW PAY LATER (BNPL) IN CR CODE

Fundamentally and as noted in previous submissions,² our view is that BNPL liabilities should be included in a consumer's credit reporting data. As credit providers, BNPL providers will be able to engage more meaningfully with the credit reporting regime, including to choose to provide repayment history information (**RHI**) and hardship information in accordance with the Principles of Reciprocity and Data Exchange.

Australia's comprehensive credit reporting system allows the reporting of both 'negative' data (for example defaults) as well as 'positive' data, which includes, notably, RHI. RHI allows consumers to demonstrate positive behaviour with their existing credit products, which can in turn help those consumers to access further credit and on better terms. For example, first home buyers will benefit from being able to demonstrate to their prospective home loan provider a strong repayment history in relation to their existing credit.

In line therefore with Proposal 8 of the Independent Review and the proposed regulation of BNPL as credit,³ we suggest that the current review underway by the Commonwealth Department of Attorney General in relation to the Privacy Act⁴ presents an opportunity to clarify whether the 'non-participating credit provider' definition within the Code is sufficient to capture these products, or whether further changes to the Code are necessary to include reporting by BNPL providers.

We also welcome the work ARCA is doing to allow BNPL to be represented in a consumer's credit report in a clear way (i.e., by grouping multiple BNPL transactions).

RECOMMENDATION 2: CONTINUE TO ENSURE CONSUMERS ARE PROVIDED WITH CONSUMER EDUCATION IN RELATION TO CREDIT REPORTING

We note the observations made within the Independent Review Report with respect to consumer education. The MFAA is supportive of continuing consumer education with respect to credit reporting. In our view, identifying the right time to provide that valuable information to consumers is critical, especially considering when it comes to a consumer's interaction with credit reporting bureaus. Our observations are that consumers generally engage with credit reporting in times of need – for example when seeking credit, in dealing with potential identity theft (for example as a result of a cybersecurity event), or in times of financial hardship.

While under Proposal 43, ARCA is seeking feedback on how to better achieve consumer education with respect to the proposed soft enquiries framework, we suggest there is a broader opportunity to consider improvements to consumer education and understanding of credit reporting. Brokers facilitate 70% of all home loans in Australia and act as the first point of contact for many consumers looking for a loan. Critical also to note is that brokers (as well as licensed debt management firms) provide significant financial literacy and budgeting support to their clients. In particular, for certain consumers (for example those who are vulnerable or experiencing hardship) both brokers and (some) debt management firms provide critical services to support these consumers with respect to their credit history, including understanding their credit reports as well as, in the case of debt management firms, to make corrections to credit reports if the consumer chooses not to undertake that activity themselves.

² [MFAA Submission to Regulating Buy Now Pay Later \(BNPL\) In Australia Options Paper, December 2022.](#)

³ The Hon Stephen Jones MP, Assistant Treasurer and Minister for Financial Services, [Address to the Responsible Lending & Borrowing Summit](#), 22 May 2023.

⁴ [Privacy Act Review Report | Attorney-General's Department \(ag.gov.au\).](#)

To that end and appreciating that ARCA's CreditSmart website is an extremely valuable and useful resource for consumers, we suggest that there continues to be opportunities for ARCA and the MFAA to partner to deliver credit reporting education to consumers.

RECOMMENDATION 3: GUIDANCE SHOULD BE CLEAR ABOUT HOW TO ENGAGE WITH A SOFT ENQUIRY FRAMEWORK

The MFAA is generally supportive of the introduction of a 'soft enquiry' framework. The introduction of a framework for soft enquiries will allow credit providers to provide potential customers with preliminary product information and an indication as to whether the customer would be considered for credit with that credit provider.

As noted in our earlier submission⁵ to ARCA on this matter, the information that can be provided to a credit provider must be sufficient for a credit provider to be able to give the customer a genuine indication as to whether the lender is likely to make a loan, and at what interest rate.

However, a soft enquiry should not be used by credit providers as a replacement for obtaining a 'hard enquiry' report once an application is lodged. It should also not be used to replace the role that hard enquiries play in indicating a consumer's credit behaviour (good or otherwise) and as an indicator of potential financial vulnerability.

RECOMMENDATION 4: ENSURE THE CR CODE COMPLEMENTS THE CDR FRAMEWORK

The Consumer Data Right gives borrowers the ability to consent to the sharing data with the trusted and accredited third party data recipient(s) of their choice.⁶

In its Home Loan Price Inquiry Final Report, the ACCC identifies refinancing a home loan supports competition in the home loan market but that there are impediments to switching lenders.⁷ As the Consumer Data Right framework continues to mature and expand to different sectors of the economy, we see opportunities to ensure that the CR Code and CDR framework complement each other with the aim to deliver more streamlined processes for obtaining credit or with respect to refinancing or switching products.

Closing Remarks

We extend our thanks to ARCA for the opportunity to provide this submission. If you wish to discuss this submission or require further information, please contact me at

██████████ or Stefania Riotto at ██████████.

Yours sincerely,

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⁵ [MFAA Submission to ARCA 16 June 2023](#)

⁶ The ACCC is responsible for accrediting the entities that can receive data under the Consumer Data Right regime.

⁷ ACCC Home Loan Price Inquiry – Final Report, pg 7.

ANNEXURE A – CONSULTATION QUESTIONS

Consumer Credit Liability Information (CCLI) Definitions (Proposals 6, 15 and other issues)

Clarifying the definition of ‘account close date’ in respect of CCLI (Proposal 15)

Are there any issues with how the Consultation CR Code would implement this proposal? If so, what are they?

The proposed change to the definition of account close date is supported. However, in instances where a consumer is still obligated to repay a debt, and the ownership of that debt has transferred from credit provider A to credit provider B (a debt buyer), then a consumer’s credit report should reflect that the debt with credit provider A is closed, but there should be a new entry to identify that a debt with credit provider B now exists.

Importantly and for context, mortgage brokers are required by law to comply with both responsible lending and best interest duty obligations. What this means is that mortgage brokers need to collect information about their customers for the purposes of assessing their customer’s requirements, objectives, and financial position to both enable them to meet their regulatory obligations and to provide a recommendation to their customer for a loan that is in their best interest. Through the access seeker framework, brokers obtain a copy of the consumer’s credit report to assist them in gathering the information about a consumer’s current debt obligations to assist in assessing the suitability of a new credit product.

Positive obligations about statute barred debts (Proposal 19)

We support disclosure of default information within a reasonable timeframe. The Telecommunications Industry Ombudsman provides guidance for reporting of default information – that it be disclosed within one year of the debt becoming overdue.⁸ We recommend this approach be applied across all types of debts (not just telecommunications). Having a consistent approach across industries to which credit reporting applies will help consumers better understand how information about their credit repayment behaviour is reported. Having time-limits to report defaults, will also help improve the accuracy of information held by credit reporting bureaus and which brokers and lenders use when assessing the suitability of future credit.

We support ARCA in its view that reform is best pursued through the upcoming review of Part IIIA of the Privacy Act.

Standalone notices given under s21D(3)(d) of the Privacy Act (Proposal 21)

Does the drafting of paragraph 9(3)(d) of Schedule 2 to the Consultation CR Code align with our intention described above?

Yes.

Would there be a better way to draft the prohibition on sending other correspondence with a s21D(3)(d) notice? If so, what is that way?

No comment.

⁸ [Credit information and credit reporting | The Telecommunications Industry Ombudsman](#)

Notification obligations in the credit reporting framework (Proposal 24)

Does the drafting of paragraph 4(3)(a) of Schedule 2 to the Consultation CR Code align with our intention described above?

Consumers are already required to receive a number of disclosures when seeking to enter a credit contract with the assistance of a broker. With regards to Proposal 24, consideration must be given to at what stage the consumer will receive the credit provider's disclosure, if it is to be separate to the credit provider's privacy statement, ahead of when the application for credit is lodged or at a different point in time.

The role of the broker as educator provides the opportunity for consumers to learn more broadly about the credit reporting system and how their data is captured and used. We see this as the opportune time on a consumer's finance-related journey to help raise overall understanding and awareness of credit reporting data and processes.

If you are a CP, what cost and impost on your operational processes would result from this variation?

We do not have comment.

What are the most important things for an individual to be told when their information is disclosed to a CRB?

We see there are a few key messages to advise a consumer:

- That there are multiple credit reporting bureaus – and which one(s) will have their data.
- The importance of their credit score – what does it mean to prospective credit providers.
- Who ultimately owns the data.
- What to do if any of the information on their report is incorrect.

Is there anything else we should consider when working with members on what information should be provided under paragraph 4(3)(a)?

No comment.

Is there anything else that can be done to make obligations to notify individuals more effective? If so, what are those steps?

No comment.

'Automatic' requests for credit ban extensions (Proposal 28)

We acknowledge ARCA does not intend to make changes to the CR Code in respect of 'automatic' extensions at this time. We welcome an opportunity to provide our feedback to ARCA as and when it pursues changes as part of the upcoming review of Part IIIA of the Privacy Act.

The evidence needed to put in place or extend a credit ban (Proposal 29)

Does the drafting of subsection 17(10) of Schedule 2 to the Consultation CR Code align with our intention described above?

The drafting supports the intention that if the individual's responses appear reasonable, there would then be grounds for credit reporting bureaus to form the requisite view to extend the credit ban. However, as forming the opinion that the responses appear reasonable relies on the understanding

of credit reporting bureaus of the situation, we would expect bureau staff to be sufficiently trained to perform this role effectively.

Is there a better way to put beyond doubt that, in most cases, additional evidence should not be needed for a CRB to form a reasonable belief about extending a ban request? If so, how should such a requirement be drafted?

No comment.

Alerting individuals of attempts to access their information when a ban is in place (Proposal 31)

We support the introduction of a free notification service and believe it to be a great value for consumers where a ban is in place. However, it would be more welcomed if the service was available to all consumers, not just those with a ban. This could help to identify fraudulent activity for victims who do not know their information has been compromised and could help protect consumers much earlier by limiting their exposure to fraudulent activity.

Does the drafting of the new provisions in section 17 of the Consultation CR Code align with our intention described above?

No comment.

Are there any issues with the offering or operation of ban notification services that we do not appear to have considered? If so, what are those issues?

Yes. We note there are multiple credit reporting bureaus, given a consumer may receive multiple alerts, the message should be short and clear, and provide the consumer with clear information about next steps.

How soon should CRBs be required to offer a ban notification service?

As soon as practicable, following a reasonable notice period to implement the service.

Information about how to access credit reports (Proposal 32) and access to physical copies of credit reports (Proposal 33)

Any information provided to a consumer on how to access their credit reports or to receive physical copies of them will be welcomed, and we note that it should be easy for consumer to understand and action.

Does the drafting of the new provisions in paragraph 19(3)(a) and subparagraph 19(8)(d)(ii) [or for proposal 33: 19(3)(b) and 19(6)(e)] of Schedule 2 to the Consultation CR Code align with our intention described above?

Yes, we consider the drafting to be clear.

Would there be a better way to draft these obligations? If so, what approach would be better?

See above.

Would there be any issues with CPs also providing contact details of CRBs as proposed in sub-paragraph 19(8)(d)(ii)?

No, the more information that is available to consumers, the more able consumers are able to understand who holds their data.

Introducing a soft enquiries framework (Proposal 43)

Are there any practical challenges to implementing the proposed framework? How could these challenges be addressed?

We do not have comment.

Do you foresee that ARCA's intended approach to the proposed framework will not achieve the policy intent or have unintended consequences? If so, please describe how and what alternative approach would achieve a better outcome or avoid these unintended consequences?

Reducing potential for confusion is important and we believe education is key for consumers to understand the difference between a soft and hard inquiry. As we have noted in our previous submission on this topic, any changes to the Code to establish a soft enquiries framework must not in any way affect the access seeker provisions on which brokers rely to conduct enquiries on behalf of their customers when supporting their customers to access credit.

Does the drafting of the various new and amended provisions in the Consultation CR Code align with our intention described above?

Yes. We also note the information that can be provided to a credit provider must be sufficient for a credit provider to be able to give the consumer a genuine indication as to whether the lender is likely to make a loan, and at what interest rate, but should not be used by credit providers as a replacement for obtaining a 'hard enquiry' report once an application is lodged. It should also not be used to replace the role that hard enquiries play in indicating a consumer's credit behaviour (good or otherwise) and as an indicator of potential financial vulnerability. Further to this, because a lender still may decline to provide a loan after a soft enquiry is obtained, or change the rate which applies, it is important that consumers are educated about the information contained in a hard enquiry that may change any indicative information provided by the lender. This will assist both consumers – and by extension the brokers who are assisting them – manage expectations.

The consumer education requirement has not yet been subject to extensive feedback. With this in mind, do you consider such a requirement is workable, and, if not, how would you propose that consumer education be achieved?

With circa 70% of all consumers choosing to use a broker for their home lending needs, we suggest that it would make sense to partner with the broking industry to educate consumers in relation to their credit report and credit reporting in general. We would therefore be pleased to support ARCA with consumer education initiatives around credit reporting and in particular credit enquiries.