

Ms Angelene Falk  
Acting Information Commissioner and Privacy Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

**BY POST AND BY EMAIL**

16 May 2018

Dear Ms Falk,

**APPLICATION TO VARY PRIVACY (CREDIT REPORTING) CODE 2014 (CR CODE) – RESPONSE TO FOS SUBMISSION**

I refer to the Financial Ombudsman Service's (FOS's) submission to the OAIC, dated 8 May 2018.

The submission largely concerned the drafting of the variation to paragraph 6.2(c) ('the day credit is terminated or otherwise ceases to be in force').

ARCA's response to the matters raised in this submission is as follows (adopting the headings used in the submission):

***Clarification required about the start dates***

The reference to 1 July 2018 in paragraph 6.2(d) was intentional.

This means that for the period between 1 July 2018 and 30 June 2019, CPs will have the ability to disclose 'account close' under either the 'old' definition, or the 'new' definition.

This means that CPs who are currently building data systems to enable disclosure of comprehensive credit reporting (CCR) information, need only enable disclosure under the 'new' definition (rather than requiring the system to be capable of disclosing under the 'old' definition up until 30 June 2019, and switching over to the new form of disclosure on 1 July 2019).

For CPs who have already built their data systems to enable disclosure under the 'old' definition, this allows a 12-month timeframe in which to upgrade this system, to phase out the existing disclosure and enable the 'new' definition disclosure.

ARCA does agree that a CP should, however, make its disclosures under either (c) or (d), rather than both definitions potentially applying to a single disclosure. For that reason, ARCA has included an 'or' at the end of paragraph 6.2(c)(ii).

It should also be noted that, as at 1 July 2019, there will be no ongoing inconsistency between these two definitions. Any accounts that had not been closed under the 'old' definition, but met the requirements of the 'new' definition (for instance, charged off accounts) would then need to be disclosed as closed.

### **Concerns about definitions**

ARCA understands on advice from its Members that the terms 'write off' and 'charge off' are commonly understood terms within the credit industry.

However, ARCA appreciates the FOS concerns about these definitions and the prospect that they may not be readily understood by all within the credit industry.

To address this concern, ARCA has removed the defined terms 'write off' and 'charge off', and instead incorporated these concepts into a more detailed subparagraph 6.2(d)(ii). It should be noted the term 'write off' is also no longer used; in its place the terms 'waived or otherwise discharged' have been used.

While these amendments allay the FOS concerns, they do not change the intended operational effect of this provision.

### **Do the proposed definitions meet the needs of a responsible lender?**

ARCA does not agree with FOS's view that disclosure of a charged off debt as closed, could mislead a new lender about the extent of a customer's liability.

- The proposed new 'account close' definition provides a better responsible lending outcome than the existing definition

The change from the existing account closed definition (credit no longer available) to only enabling disclosure of account closed at 'charge off' supports responsible lending obligations.

Under the existing account closed definition (credit no longer available), an account can be disclosed as 'closed' at a time where default notices have issued, and the consumer's arrears may not be significant (for instance, the RHI entry may be a '3' only). The existing account closed definition also enables the account to be re-opened on new terms.

In comparison, under the 'charge off' closed definition, an account will be disclosed as closed at a point of charge off – which will mean that arrears will be significant (likely an RHI of '6' or higher), and default information for the outstanding arrears will also then be disclosed. This is further supported by the Principles of Reciprocity and Data Exchange (PRDE) which require signatory credit providers to disclose default information within a reasonable timeframe of an account being overdue<sup>1</sup>. This 'reasonable timeframe' will correlate to account charge off in most instances.

As such, the disclosure of both significant negative RHI and default information provides context for account closure (charge off) information which would prompt a responsible

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<sup>1</sup> It is noted with the passage of the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018* it is expected that a significant portion of credit providers will sign the PRDE and be subject to its requirements for their data contribution (including default information)

regulated lender to make further inquiries at to the status of any outstanding liabilities under the account<sup>2</sup>.

- Removing the ability to disclose account close date at 'charge off' would have significant unintended consequences

As set out in ARCA's variation application, an account which is 'charged off' will be transferred to a credit provider's recoveries systems. These systems are separate to a credit provider's core banking system. These systems do not support either ongoing consumer credit liability information (CCLI) or repayment history information (RHI) reporting.

If accounts were required to remain 'open' until termination, this would necessitate regular monthly RHI reporting for 'charged off' accounts. The costs of enabling credit reporting as part of a credit provider's recoveries system would be significant.

Moreover, there are limited (and arguably, no) benefits of ongoing RHI disclosure for 'charged off' accounts. This disclosure is likely to be a repeated '7' until such time as the full balance of the account is paid or the credit provider writes off the outstanding balance (noting that 'charged off' accounts are also more likely to have had the entire account balance outstanding).

- Restricting the ability to disclose account close date at 'charge off' may cause consumer detriment

As noted in ARCA's variation application, consumer advocates have raised concern with the practice of an accelerated, collections account being subject to repeated RHI disclosure.

Moreover, where an account remains open in the recoveries system, this then enables any acquiring credit provider (in most cases, a debt buyer – who will be a credit provider for the purposes of the Privacy Act) to continue CCLI and RHI disclosures for that account. Consumer advocates have recently raised with ARCA concerns about debt buyer participation in CCR, particularly where disclosure is in respect to assigned open accounts (as opposed to disclosure in respect to new consumer credit opened by the debt buyer).

If you have any questions or concerns please contact ARCA's Legal & Regulatory Affairs Manager, Elsa Markula, on [REDACTED] or via email [REDACTED].

Yours sincerely

[REDACTED]

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<sup>2</sup> In addition, where default information is disclosed, a responsible lender will assume the default is unpaid unless payment information or new arrangement information is disclosed in respect to that default information.

**Mike Laing**

**Executive Chair**

**cc. Ms Melanie Drayton, Assistant Commissioner, OAIC**

**Ms Sophie Higgins, Director, Regulation and Strategy Branch, OAIC**

**Mr Steven Robertson, Assistant Director, Regulation and Strategy Branch, OAIC**