

Note accompanying consultation version - Privacy (Credit Reporting) Code (CR Code) (version 2)

This note provides background to the proposed CR Code version 2 and identifies:

- The context for each variation with reference to the CR Code Independent Reviewer's (Pricewaterhouse Coopers [PWC]) Report, dated 8 December 2017.
- The intent of each variation.
- Any additional drafting included to address issues raised in the PWC Report.
- Any further consultation recommended by PWC.

Paragraph 1.2 (i) – "Month" definition

The proposed variation corresponds to the PWC issue 29 "definition of 'month' for purposes of reporting repayment history information (RHI)" (PWC Final Report, page 18).

The variation partly adopts the existing definition of 'month' under the *Acts Interpretation Act* (subparagraphs (i), (ii)(1) and (ii)(4) of the proposed variation draft). The 'new' elements which would be introduced by the variation are subparagraphs (ii)(2) and (ii)(3). The effect of these subparagraphs would be to enable a 'month' which would otherwise end on a non-business day to be calculated to end either on the following business day (subparagraph (ii)(2)) or the prior business day (subparagraph (ii)(3)).

The intent of this variation is to ensure alignment between RHI reporting requirements and current credit provider (CP) practice, which currently adjusts reporting to allow for non-business days.

It is noted that PWC had recommended further consultation include the applicability and appropriateness of the existing adjustment mechanism under section 36(2) of the *Acts Interpretation Act*. ARCA considers such a mechanism is not applicable in the context of the CR Code, given the CR Code is a legislative instrument (not an 'Act' as required by s36(2)). Further, the CR Code provisions do not appear to 'require or allow a thing [RHI reporting] to be done' (again, as required by s36(2)) but instead set out rules which explain how RHI reporting should occur.

Paragraph 6.2(b) – "Maximum amount of credit available"

The proposed variation corresponds to the PWC's issue 15 "determining the 'maximum amount of credit available'" (PWC Final Report, page 27).

The intent of this variation is to remove two categories of the existing 'maximum amount of credit available' as they may be redundant, and CPs may more accurately make this disclosure under the remaining four categories. The two categories removed pertain to limits for credit provided for the purposes of the acquisition of particular goods or services, and for credit provided by a supplier of goods or services.

The variation also includes a 12-month transition period (expiring 30 June 2019) during which a CP will be able to continue to use all six categories to disclose 'maximum amount of credit available'. The intent of the transition period is to ensure any CP currently using the two categories proposed to be removed has sufficient time to change their current systems and practices to disclose under another of the applicable alternative categories.

PWC recommended further consultation to assess the extent of any overlap between the categories of 'maximum amount of credit available', and an assessment of the impact of removing the two categories on specialised CPs.

Paragraph 6.2(c) – “The day the credit is terminated or otherwise ceases to be in force”

The proposed variation corresponds to the PWC's issue 16 “determining the ‘day credit is terminated or otherwise ceases to be in force’” (PWC Final Report, pages 27 - 28).

The intent of this variation is to remove the ability for a CP to disclose the credit close date any earlier than the day the credit has been terminated.

The variation also includes a 12-month transition period (expiring 30 June 2019) during which a CP will be able to continue to disclose the credit close day either at the time of termination, or the time that the 'credit is no longer available to the individual under the terms of the contract, arrangement or understanding and the CP has irrevocably determined that the credit cannot be reinstated on those terms' (also known as the 'second limb' of the credit close date definition). The intent of the transition period is to ensure any CP currently disclosing credit close date under the second limb, has sufficient time to change their current systems and practices. These systems changes would include the ability to disclose RHI for the credit up until the time of termination.

PWC recommended further investigation of this possible variation to ensure any unintended consequences are addressed. PWC further recommended considering alternatives to removing the second limb of the credit close date definition, including whether a new mechanism for accounting for inactive but not yet terminated accounts, could be investigated.

Paragraph 8.2(c)(ii) – RHI disclosure

The proposed variation corresponds to the PWC's issue 33 “Application of ‘grace period’ for RHI disclosure” (PWC Final Report, pages 19 - 20).

The intent of this variation is to clarify operation of the 14-day RHI grace period, namely that prevents disclosure of an overdue payment as being overdue until day 15.

The variation also further provides that the 14-day RHI grace period is only required to be applied to the first month an account is overdue (although a CP may choose to apply a grace period to subsequent months, but that is a matter for a CP and not a requirement of the CR Code). This means that when a consumer makes a series of catch-up payments of old overdue amounts, the final overdue payment will not include allowance for the 14-day RHI grace period. That is, the RHI record will reduce from '2' to '1' to '0', not from '2' to '0'.

PWC recommended this variation be made to the CR Code.

Paragraph 9.3(d) – The individual's last known address

The proposed variation corresponds to the PWC's issue 1(b) “Method of delivery of section 21D notices” (PWC Final Report, pages 12 - 13).

PWC recommended this variation be made to the CR Code and suggested that consideration should be given to any formal consent requirements that may need to be adhered to as part of this process.

The intent of this variation is to permit, but not prescribe, that the 'individual's last known address' for delivery of Section 6Q and Section 21D notices may be an email address.

It is noted that section 88 of the National Credit Code currently requires delivery of notices to a physical address. As such, the variation is intended to reflect that the use of an electronic address will only occur if it is enabled under the law pertaining to the consumer credit. The consent requirements for use of an electronic address should also be set out in the relevant law.

Paragraph 9.3(f) – Timing of disclosure of default information

The proposed variation corresponds to the PWC's issue 1(a) "Timing of issuance of section 21D notices" (PWC Final Report, page 12).

PWC recommended that paragraph 9.3(f)(i) be amended to conform to the language of section 21D(3) of the Act.

The proposed variation seeks to align 9.3(f)(i) and s21D(3), although noting because of the differences in context between these provisions, minor differences in wording remain. However, these minor wording differences cause no operational mis-alignment between the two provisions.

Paragraph 18.1 – Use by a CRB of credit reporting information to facilitate a CP's direct marketing

The proposed variation corresponds to the PWC's issue 17 "Scope of prohibition of developing a 'tool' to facilitate a CP's direct marketing" (PWC Final Report, page 46).

PWC recommended that paragraph 18.1 be amended to include a reference to 'services' in addition to 'tool'.

The proposed variation gives effect to this recommendation.

Paragraph 20.9 – Correction notification

The proposed variation corresponds to the PWC's issue 18 "Correction of information mechanism" (PWC Final Report, pages 35 - 36). Although the correction issue included a number of suggested changes, the proposed variation relates only to the 'including identification information in paragraph 20.9 notices' suggestion.

The proposed variation seeks to ensure, when a CRB provides a CP with a correction notification, it does so in a manner that the CP can action that correction within its own system records for the individual and their consumer credit.

PWC suggested further understanding of consumer views would be required prior to actioning this change.