



17 April 2018

Ms Elsa Markula
Legal & Regulatory Affairs Manager
Australian Retail Credit Association (ARCA)
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Melbourne VIC 3001

Email: CRCode@arca.asn.au

Dear Ms Markula

The proposed variations to the Privacy (Credit Reporting) Code 2014

Thank you for the opportunity to provide feedback on your proposed variations to the Privacy (Credit Reporting) Code 2014.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by these complaints, and also from our community outreach and stakeholder engagement activities.

EWON has responded only to the specific issues that have relevance through our casework, outreach experience and expertise.

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

In EWON’s experience, credit providers, in our case energy retailers and water providers, often send notices to customers relating to an overdue bill after the customer has moved away from the premise where they incurred the bill, despite the fact that in many instances the customer has provided an email address. Sending that notice to the customer’s email address, when known, is critical.

EWON notes that in practice there is no barrier preventing credit providers from sending notices to both a last known residential address and a nominated electronic address.

PwC’s final report on the review of the Code stated *“The divergent views of stakeholders can be resolved by amendment to the Code that formally permits, rather than prescribes, use of electronic delivery of notices. This would formalise the existing OAIC guidance and be consistent with section 11 of the Electronic Transactions Act 1999 (Cth).”*

The current guidance from the Office of the Australian Information Commissioner (OAIC) about this issue is outlined in 'Privacy fact sheet 35' which states that sending notices to a last known address might involve:

- sending the notices via post to a physical address, such as the customer's place of residence; or
- sending the notices electronically to an email address¹.

This OAIC guidance also states:

"That said, when deciding whether to use a postal or email address, a credit provider should consider how it usually communicates with you. For example, if your credit provider usually sends your bill or account statement via email, the provider should, where possible and if the law allows, use that email address to notify you about an overdue payment."

The OAIC guidance creates a positive obligation on credit providers to send electronic communication for notices, where nominated by the customer. Therefore the wording of paragraph 9.3(d) should be aligned with the above guidance from the OAIC. For example, the proposed variation to 9.3(d) could be amended to delete the word 'may' and replace it with the word 'should':

If, under the law applying to the consumer credit, the individual has nominated an electronic address for that consumer credit, then the CP **[delete word 'may'] should** treat that electronic address as the individual's last known address subject to complying with those other laws;

We consider that this wording would more closely align with the current guidance from the OAIC.

The \$150 threshold for disclosing a customer's credit default information

In our submission to the Review the Code in October 2017, we voiced our support for a minimum amount being prescribed, but we suggested that a more realistic amount is \$300.

In response to this issue, the PwC final report noted that:

"Given the threshold is prescribed under section 6Q(1)(d) of the Act, resolution of this issue is beyond the scope of this Review, however it is considered that further consultation should be undertaken across the broader range of stakeholders to investigate and assess the costs and benefits of any increase to this threshold amount."

EWON acknowledges that the \$150 threshold for disclosing a customer's credit default information is established in section 6Q(1)(d) of the Privacy Act 1988 and therefore cannot be increased by amending the Code. However, EWON calls on ARCA, and the OAIC, to consider consultation on this issue.

¹ <https://www.oaic.gov.au/resources/individuals/privacy-fact-sheets/credit-reporting/privacy-fact-sheet-35-when-can-a-default-be-included-in-your-credit-report.pdf>

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on [REDACTED].

Yours sincerely



Janine Young
Ombudsman
Energy & Water Ombudsman NSW