

CR Code Variations – Second Tranche – BRIEFING DOCUMENT

#	Provision	Background	Suggested changes	Considerations/Comments
1	Further review of the CR Code, through variation to para 24.3 (PwC recommendation 1)	<p>It is proposed to consider a variation to paragraph 24.3 of the CR Code, to allow for a further review of the CR Code given there is currently no further review provided for.</p> <p>The key focus of the variation will be the timing of the further review. It is noted that such a review will need to align with the implementation of mandatory comprehensive credit reporting (CCR) [or significant voluntary uptake of CCR, noting that it is unclear whether mandatory CCR will be implemented].</p>	<p>24.3 The Commissioner will initiate an independent review of the operation of this CR code within 3 years of the date of the commencement of this CR code.</p>	<p>This is a relatively straightforward change, although do need to consider whether the review period be set to every 'x' number of years, or should the provision simply identify the time period for the next review (i.e. within 'x' years of the completion of the initial independent review.)?</p>
2	Paragraph 19 Direct marketing practices relating to the use of pre-ticked consent boxes and consumer information about free and paid credit	<p>It is proposed to consider a variation to paragraph 19 of the CR Code which would:</p> <ul style="list-style-type: none"> • Restrict the use of pre-ticked marketing consents for free credit report applications • Require CRBs to inform consumers of the differences between free and paid credit reports <p>This variation relates, in part, to PWCs' issue 8 (Marketing to consumers who have requested</p>	<p>19.3If a CRB has a service whereby an individual (whether personally or through another access seeker) may for a fee obtain their credit reporting information (fee-based service):</p> <p>(a) the information made available by the CRB about the fee-based service must prominently state that individuals have a right under Part IIIA to obtain their credit</p>	<p>ARCA Member feedback is supportive of suggested variations to paragraph 19 – although do need to confirm such a variation is within scope of section 26N of the Act.</p> <p>Previous consumer advocate feedback:</p>

<p>reports (arising in part from PwC issue 8)</p>	<p>a free credit report). We note that PwC did not recommend a change to the CR Code, on the basis that any such change was outside the scope of the CR Code (and ought to be dealt with under the Australian Privacy Principles or the Australian Consumer Law).</p> <p>However, we understand from our discussions with the Financial Rights Legal Centre (FRLC), that PwCs' position is not accepted by consumer advocates. Moreover, ARCA's Members have indicated a willingness to consider a variation on the basis outlined above. For that reason, this variation ought to be included within the scope of the second tranche. It is noted that, as part of the consultation, ARCA will examine the question as to whether such a variation is within the scope of section 26N of the Privacy Act.</p>	<p>reporting information free of charge in the following circumstances:</p> <ul style="list-style-type: none"> (i) if the access request relates to a CP's decision to refuse the individual's consumer credit application; (ii) if the access request relates to a decision by a CRB or CP to correct credit reporting information or credit eligibility information about the individual; and (iii) once every 12 months (this is in addition to any access given in accordance with paragraphs 19.3(i) or (ii)). <p>(b) the CRB must take reasonable steps to ensure that its service, whereby individuals may obtain their credit reporting information free of charge, is as available and easy to identify and access as its fee-based service.</p> <p>(c) <u>the information made available by the CRB about the fee-based service must also identify the difference between the information or service available to the individual as part of its fee-based service compared to that information or</u></p>	<ul style="list-style-type: none"> • Code variation should provide in paragraph 19.4 a CRB is unable to 'pre-tick' the marketing consent box. • However, PwC report doesn't solve the problem of aggressive marketing. FRLC would like OAIC guidance – that it is inappropriate to direct market to someone who goes to get a free credit report. • FRLC also to consider further re paragraph 19.3 – whether there is a need for a CRB to identify what the difference is between its free and paid services.
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			(g) if the CRB does not provide the information to the access seeker in the manner requested by the access seeker , the CRB must take reasonable steps to provide access in a way that meets the needs of the CRB and the individual.	
3	Paragraph 11 Inclusion of writs and summons in credit reports (PwC issue 14b)	<p>A possible variation to paragraph 11 of the CR Code could provide that originating process material should not be treated as publicly available information.</p> <p>This proposed variation corresponds to PWC's issue 14b. PWC did not recommend a change to the CR Code, on the basis that imposing a restriction on the reporting of writs and summons information may require a change to the Privacy Act and would represent an effective policy switch.</p> <p>Again, ARCA's discussions with FRLC indicate that the PWC position is not accepted, and the view is that a restriction on publicly available information to exclude originating process is within the scope of the CR Code. ARCA Members are also willing to investigate whether such a restriction is appropriate and can be achieved through CR Code variation. As such, this proposed variation ought to be included within the scope of the second tranche. Although, again, ARCA will examine the question as to whether such a variation is within the scope of section 26N of the Privacy Act.</p>	<i>To be confirmed</i>	<p>ARCA Member feedback has identified a concern with exclusion of types of information as publicly available information and whether that is consistent with the policy intent of publicly available information. Further consideration to be given to this policy intent and to scope of section 26N.</p> <p>Previous consumer advocate feedback:</p> <ul style="list-style-type: none"> • Code variation should add an additional 11.2 which states that originating process cannot be included as publicly available information. Note the need to ensure the correct term is used (process vs writ and summons to capture all possible ways that originating proceedings are defined).

				<ul style="list-style-type: none"> • FRLC noted an issue with the inclusion of non-credit related judgements (for instance insurance judgments) on credit reports. It was noted that the meaning of court proceedings information in the Privacy Act excludes non-credit related judgements. FRLC will take on notice whether any change to the CR Code is required, given the Privacy Act provisions. • FRLC would still like it to be emphasised in CR Code paragraph 11.1(c) that the information has to relate to an individual's creditworthiness.
4	<p>Paragraph 17</p> <p>Notification where allegations of fraud in para 17 (PwC issue 21)</p>	<p>It is proposed to consider a variation to paragraph 17 of the CR Code which would consider variations to improve the procedures for dealing with victims of fraud.</p> <p>This proposed variation corresponds to PWC's issue 21. While PWC did not issue a recommendation to vary the CR Code to address this issue, it did recommend further consultation. It was suggested that the further consultation focus on the appropriateness of</p>	<i>To be confirmed</i>	<p>Drafting to consider what can be done from a practical perspective to improve fraud procedures – and in a manner which manages any unintended consequences (which may be a risk of a blanket notification obligation) – note considerable concern raised</p>

		<p>the ban period process, and the prospect of imposing obligations on CPs and CRBs (to relieve the burden on consumers).</p> <p>The FRLC have indicated to ARCA that it considers the CR Code ought to be varied to impose greater obligations on CRBs (particularly) in cases of fraud. ARCA Members have raised some concern with the need to ensure any such variation does not lead to unintended consequences for consumers. ARCA Members have, however, indicated that a variation to the operation of ban periods (across CRBs) should be considered.</p> <p>Although the precise details of any variation cannot yet be identified, a variation which broadly deals with these fraud issues should be in the scope of the second tranche.</p>		<p>by industry about risk of unintended consequences. Previous ARCA Member feedback:</p> <ul style="list-style-type: none"> • Concern re possible unintended consequences <p>Any variation should be limited to co-ordination of ban periods information only.</p> <p>Previous consumer advocate feedback:</p> <ul style="list-style-type: none"> • FRLC would like to see: <ul style="list-style-type: none"> ○ CRB acting as the hub of information – for a period of 90 days/ 6 months. Where fraud has occurred the CRB can alert the consumer’s current CPs. Require CRB to contact customer to confirm whether information on credit report is correct or not, then each CP will need to confirm to the CRB whether the information has been removed or not. ○ Take the burden off the consumer to initiate conversation, means they don’t
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				<p>have to then provide the same evidentiary material over and over.</p> <ul style="list-style-type: none"> • Noted need to consider any privacy/liability issues that may arise from a central fraud type hub.
5	<p>Variation to the definition of 'account open' clear in para 6.2(a) to enable CPs to identify the account open date for credit cards (additional issue since the PwC report)</p>	<p>It is proposed to consider a variation to paragraph 6.2(a) of the CR Code. The scope of the variation will be to consider whether the current account open definition provides sufficient detail for credit providers to identify the account open date for credit cards (and to do so in such a consistent manner). We understand the definition, 'the day that, under the terms and conditions of the consumer credit, the credit is made available to the individual' is difficult to apply in the context of credit card products (where credit is both approved, and activated, often at different times).</p> <p>This issue was not raised at the time of the PWC review, but has been identified as an issue for credit providers who are now transitioning to comprehensive credit reporting (CCR). Consistent disclosure of credit information, and particularly CCR information, will support data accuracy and completeness. As such, this proposed variation ought to be included within the scope of the second tranche of variations.</p>	<p><i>To be confirmed</i></p>	<p>Drafting to consider whether it is necessary to clarify 'the day credit is made available' further in wording specifically for credit cards – which indicates it is the day of approval of the credit card, rather than card activation. Note this ties in with ASIC Credit (Unsuitability – Credit Cards) Instrument 2018/753</p>
6	<p>Variation to para 8 of the CR Code</p>	<p>It is proposed to consider a variation to paragraph 8 of the CR Code. The scope of the</p>	<p><i>To be confirmed</i></p>	<p>Drafting to consider current interpretations of paragraph 8</p>

	<p>to provide clarity as to when RHI should be assessed (e.g. at the beginning of the month or the 'worst' RHI for the month) (additional issue since the PwC report).</p>	<p>variation will be to consider whether there is an inconsistency in how repayment history information (RHI) is assessed, when comparing the requirements of subparagraphs 8.1(a) and 8.2(c).</p> <p>From discussions with ARCA Members, we understand that there are currently two approaches utilised for RHI assessment. The first approach relies on the wording of 8.1(a) to assess the RHI reported based upon the 'worst' RHI position during the month (allowing for the grace period). The second approach relies on the wording of 8.2(c) (and the view that 8.1(a) is consistent with this wording) to assess the RHI based on the 'point in time' RHI position at the time of the reporting period (again, allowing for the grace period).</p> <p>The purpose of including this variation in the second tranche is to seek stakeholder feedback on these two approaches, and whether it is necessary to vary the wording of paragraph 8 to provide any further clarity in RHI assessment.</p> <p>This issue was not considered by PWC, as it is an issue which has arisen since the PWC review.</p>		<p>being applied by CPs, and whether any inconsistencies can be resolved by changing CR Code – or if guidance around operation of CR Code would be more appropriate.</p>
7	<p>Updating references to ISO 10002-2006 in para 21.2 to reflect more</p>	<p>ISO 10002-2006 has been superseded by new standard (s) released in 2014. The references in paragraph 21.2 need to be updated to cross-reference the new standards correctly.</p>	<p>[Drafting to simply replace old ISO references with new ISO references]</p>	<p>Administrative variation only.</p>

	recent versions of this standard (additional issue since the PwC report).	[This is largely an administrative type change – not looking to change the substance of the requirements in paragraph 21].		
8	The mechanisms for correction of information in para 20 (PwC issue 18)	<p>PwC identified further issues for consideration:</p> <ul style="list-style-type: none"> • Review of correction timeframe – ability to shorten 30-day timeframe in certain circumstances • Separating obligations of CPs and CRBs to ensure necessary communication occur • Including identification information in paragraph 20.9 notices [ALREADY VARIED] • Imposing responsibility for correction on the original CP – following debt transfer • Requiring better IDR procedures for CRBs 	<i>[Substantial feedback required from stakeholders]</i>	<p>Stakeholders will be asked to identify any issues currently experienced with operation of the corrections provisions – and how these issues could be resolved through CR Code changes.</p> <p>Previous consumer advocate feedback:</p> <ul style="list-style-type: none"> • Variation: reduce 30-day correction timeframe <ul style="list-style-type: none"> ○ FRLC consider CR Code can set a higher standard than the Act (Paragraph 10.2 – expedited update of payment information, could be the precedent) ○ Shorter timeframe should be available for cases where: <ul style="list-style-type: none"> ▪ CP input is not required or is irrelevant ▪ CP is no longer operating – and

				<p>the judgement against someone else.</p> <ul style="list-style-type: none"> • Variation: notification requirements <ul style="list-style-type: none"> ○ Query whether 20.9 can also include an individual nominating CRBs to be notified of correction – if multiple CRBs hold the same information. • Variation: imposing correction obligations on original CP (where there has been a debt assignment, but the original CP still has that information) <ul style="list-style-type: none"> ○ Debt buyer has the option to go back to the CP and force them to buy back, although this is not automatic. ○ Otherwise – when sell debt, the original CP should have to provide original contract documents? Best practice? ○ Could possibly amend paragraph 13 – include obligation to
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				<p>provide original information at that time, or an ongoing obligation? Query whether this moves beyond Privacy Act obligations.</p> <ul style="list-style-type: none"> • Paragraph 20.7 – with a settlement, quite often the CPs agree to remove something as part of the settlement, but then doesn't. ARCA queried whether there is non-compliance with 20.7 which requires them to provide access to corrected information. FRLC to consider further. • Variation: IDR processes for CRBs <ul style="list-style-type: none"> ○ Not easy to deal with – will always use maximum timeframe for responding or not respond, will request unnecessary information. ○ FRLC consider the issue is that IDR requirements aren't well developed or understood by CRBs.
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				<ul style="list-style-type: none"> ○ Should have basic IDR rules for CRBs imbedded in the CR Code. ● Variation: separating obligations of CPs and CRBs: <ul style="list-style-type: none"> ○ How first responder provisions work needs to be reflected in the CR Code. FRLC have seen in practice that CRBs won't act as first responder but will pass obligation to CPs. ○ There is a gap between what CPs are doing, and what CRBs are doing. While the CRB/CP relationship is more streamlined, the CRB/consumer relationship isn't.
9	The complaint handling requirements in para 21 (PwC issues 18 and 36).	<p>PWC identified the issue as the process and timing of escalation of disputes between CRB and consumer – not being clear.</p> <p>PWC's evaluation indicated that existing mechanisms were in place in the Code and Act to ensure consumers were aware of their rights to escalate complaints to EDR schemes – and if that this was not being adhered to, this could</p>	<i>[Substantial feedback required from stakeholders]</i>	Stakeholders will be asked to identify any issue in the existing Act/CR Code requirements for escalation of complaints to EDR schemes – and how these issues could be resolved through CR Code changes.

		be resolved through monitoring/enforcement activity rather than CR Code amendment. PWC also pointed to a need for enhanced consumer education and awareness.		
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