

CR Code Variation – Consumer advocate consultation

13 February 2019

Attendees:

- Holly Brooke, Financial Rights Legal Centre (FRLC)
- Loretta Krett, Legal Aid Queensland (LAQ)
- Elsa Markula, ARCA

Paragraph 24.3 – CR Code review

- FRLC were concerned at length of review process – it has been over 2 years, including current change process. ARCA clarified the review process itself was the PWC review, which commenced in March 2017, concluded December 2017. The current changes aren't part of the review process.
- LAQ are still considering their feedback. Not opposed to a longer review process if there was the possibility of variations occurring outside the review process. Responding to a review required a lot of resources.
- FRLC considered that timeframe should be tied to the day of commencement of review, not its conclusion – but rather than time period being 3 years, should be 4 years. (This means that the time period doesn't vary depending upon how long the review takes).

Paragraph 19 – Direct marketing practices

- FRLC are concerned that the variation to paragraph 19.4 may serve as a licence to upsell. Instead suggest a provision which prohibits a CRB from misleading about right to free access, or any negative consequences which arise from asserting that right.
- LAQ says CRBs should be required to clearly explain why paid credit reports are better.
- FRLC also consider that paid credit reports shouldn't exist at all – in that regard, there remains an outstanding question regarding access to credit scores.
- Regarding 19.4(c), FRLC like this proposed variation, although they suggest adding that a pre-ticked consent box doesn't constitute opting in.

Paragraph 11 – writ and summons information

- FRLC suggest extensive changes to this clause, so that it reads as follows:

*11.1 A CRB must only **collect publicly available information** about an individual:*

- a) from an **agency** or a **state or territory authority**; and*
- b) if the content of the information that is **collected** is generally available to members of the public (whether in the form provided to the CRB or another form and whether or not a fee must be paid to obtain that information); and*
- c) if it relates to activities conducted within Australia or its external territories; and*
- d) if it related to the individual's credit worthiness.*

*11.2 For the avoidance of doubt **Publicly available information** does not include:*

- (a) originating process issued by a Court or Tribunal; or*
- (b) any judgment or proceedings where the individual's rights have been subrogated to an insurer; or*
- (c) any judgment or proceedings that is otherwise unrelated to credit;
because this information does not relate to the individual's creditworthiness."*

- LAQ agree with suggested change.

Paragraph 17 – protection for victims of fraud

- LAQ suggest ARCA contact ID Care – organisation dealing with victims of fraud and where police will now send people impacted by identity fraud. They're very good – and would have direct experience of ban periods. LAQ has never met a client who needed a ban period – instead, LAQ experience has been with clients dealing with the consequences of identity theft on their credit report. LAQ had one client who had 26 loans taken out in their name, went through CIO. Found that nothing with CRBs or CPs was co-ordinated – and some lenders accepted the information was incorrect due to identity theft, yet others wouldn't. One CRB took the view that information should stay on because the CP in question had considered the information was accurate at the time it was entered (even though information was subsequently provided showing it was fraudulent). Having a ban period alone is not very helpful in dealing with these sorts of problems. LAQ will check with client whether they will agree to share specific details of responses from CPs and CRBs on a de-identified basis.
- ARCA suggested the issue here may not necessarily about ban periods, but instead about understanding and application of correction obligations. Is there a role for a corrections guide?
- FRLC noted it would be useful to have a specific set of steps laid out. The CRB has to act as a hub of information to fix things – they deal with CPs and keep individuals up-to-date.
- LAQ agreed the issue appears to be that CRBs are not following through with their first responder obligations but instead referring individuals through to CPs to have corrections made.

Paragraph 6.2(a) – account open date

- FRLC consider it would be best to keep it simple, and across the board for all products – have the open date as the approval date. It is important for responsible lending purposes that this information is disclosed on credit reports. LAQ concur.

Paragraph 8 – RHI assessment

- FRLC agree with need to only have a point-in-time assessment. Have a concern with the change in RHI code from '7' to 'X'. FRLC is concerned that this demonstrates non-compliance with the Code, and changing the Code to enable compliance (is this an appropriate response to non-compliance?). FRLC also consider 'X' is more confusing to consumers than '7'.
- ARCA noted that the use of the 'X' is already in place on credit reports. ARCA also note this isn't a deliberate flaunting of the law – the 'X' was included as the RHI code in the Data Standard before the CR Code was written, and well-established as practice – and having consistency between CR Code and industry practice had been over-looked. ARCA saw the CR Code variation as a good opportunity to align the two.

Paragraph 21 – complaints

- FRLC had previously provided the following feedback on paragraph 21:

The ISO standard is very expensive to access in full – it is unreasonable to assume that a consumer wishing to understand the standards to which their CRB is presumed to be held must first find the ISO standard online and then spend a large sum of money to

download it. The commitments laid out in the CR Code should be accessible to consumers, so that they can effectively hold their CRBs to account for wrongdoing. Even aside from accessibility issues, in our view the ISO standard is weak and non-specific.

Our preferred way forward for amendments to paragraph 21 relating to complaints handling is as follows:

- *There should be a separate, specific standard written up for complaints handling by CRBs, similar to RG 165. The CR Code should refer to this.*
- *The CR Code should also itself explicitly set out basic principles for IDR processes for CRBs, similar to how the Code of Banking Practice and the Life Insurance Code of Practice set out basic IDR commitments for their subscribers.*

We understand the drafting of a complaint handling standard specific to CRBs may take several months, and would suggest that in the interim the CR Code should include some basic principles for IDR processes for CRBs and can refer to the updated ISO standard.

- ARCA noted that it will provide this feedback to its Board for further discussion and feedback.
- FRLC noted one minor amendment – and that is that the ISO standard is available in state libraries.
- LAQ agreed with FRLC feedback.

Paragraph 20.2 – corrections (consultation requirements)

- FRLC support this variation, although propose the time period be 5 business days rather than 3 business days.

Paragraph 20.4 – corrections (timeframes)

- FRLC would prefer a timeframe be imposed for correction – i.e. if you have all available information to make a correction, 5 business days is a reasonable time period in which to process a correction.
- LAQ has no specific feedback other than noting that ‘as soon as practicable’ could mean anything. LAQ’s issue is that for a consumer getting a home loan and prevented from doing so because of incorrect information on their credit report, these timeframes won’t help at all. The reason you want a correction dealt with in a timely manner is because you’ve got a lending application on foot. How can you get it moving more quickly, especially if you’ve been a victim of fraud? Perhaps rather than Code provision there needs to be more of a Guide around it – a clear way to deal with urgent requests. For instance, what does it mean where a CP has to access archive facilities to confirm if information is correct or not? There are potentially serious consequences for consumers where this is not done right. LAQ will look to provide examples as well.

Paragraph 10.1 – payment information

- FRLC sought clarification as to how Privacy Act already deals with new arrangement information. ARCA will provide copies of the relevant sections of the Act as well as a link to the CreditSmart blog on the change to payment information.

Additional issues

- FRLC note there are still 2 corrections issues not addressed:
 - Separating CP and CRB corrections obligations

- Joint responsibility for corrections between acquiring and original CP
- ARCA noted reasons why changes to CR Code weren't made to address these issues:
 - Re separating CP/CRB obligations – it is unclear precisely what issues arise in practice from the current wording, and what the intended effect would be of a change to the drafting i.e. what problem is being solved?
 - Joint responsibility for corrections – the issue is that the law of assignment will prevent assignment of liability on original CP, given the effect of assignment is that liability has been assigned. So it isn't clear how the CR Code can overcome this. Instead the intention is for the timeframe for consultations to act to improve processes.
- FRLC will consider both further – and what ought to be addressed via CR Code change vs what might be able to be addressed via guidance.