Submission by the

Financial Rights Legal Centre

Consumer Action Law Centre

Consumer Credit Legal Service (WA) Inc.

Financial Counselling Australia (FCA)

Uniting Communities Law Centre (CCLCSA)

Care (Consumer Law Program, ACT)

Redfern Legal Centre

Consumer Policy Research Centre

OAIC

Review of the Privacy (Credit Reporting) Code 2014 (Version 2.1)

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Financial Rights Legal Centre |PO BOX 538, Surry Hills 2010 | Tel (02) 9212 4216 |Fax (02) 9212 4711 |
info@financialrights.org.au | www.financialrights.org.au | @Fin_Rights_CLC | ABN: 40 506 635 273

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or disadvantaged consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues.

Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally about insurance claims and debts, and Mob Strong Debt Help which assists Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance problems.

Financial Rights conducts extensive research and data collection using our extensive contact with consumers and engagement with the legal consumer protection framework. We use this to lobby for changes to the law and industry practices for the benefit of consumers. We provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how community legal centres use their expertise to give a voice to clients and enable their experiences to contribute to improving laws and legal processes, and prevent some problems from arising altogether.

Introduction

Thank you for the opportunity to comment on the review of the Privacy (Credit Reporting) Code 2014 (Version 2.1) (**the CR Code**). The Financial Rights Legal Centre has drafted this joint consumer submission with input and endorsement from:

- Financial Counselling Australia
- Consumer Action Law Centre
- Consumer Credit Legal Service (WA) Inc
- Uniting Communities Law Centre (CCLCSA)
- Care (Consumer Law Program, ACT)
- Redfern Legal Centre
- Consumer Policy Research Centre

This joint submission will address the questions set out in the Consultation Paper below.

Recommendations

1. We recommend that the OAIC breaks up the CR Code into principles-based consumer-facing provisions and the technical industry-facing provisions. It would be critical that the consumer-facing principles take precedence in any conflict with the technical provisions and are consumer-tested before being finalised.
2. The CR Code could set minimum standards for readability and accessibility of credit reports.
3. The CR Code should make it clear that CPs can be flexible about removing or amending credit information as a result of the settlement of a liability dispute or because the information was listed as a result of circumstances beyond the individual's control. This should not be confined to default information, but also will include any of the categories of credit information relevant to the circumstances.
4. The CR Code should be amended to clarify that no credit information should remain on a credit report, or be permitted to be listed, in relation to a statute barred debt,
5. The credit reporting rules should clarify that the only credit products ACL holders can report repayment history information or financial hardship information about are those products which are subject to responsible lending obligations.

6. ARCA should be replaced as CR Code developer by an independent entity or panel with equal industry and consumer representation.
7. Independent code governance, including a CR Code Compliance Committee should be established under the CR Code.
8. The Code needs to be re-written in clearer and simpler language.
9. Any new investment in information resources should be directed at advocates such as community lawyers, domestic violence advocates and financial counsellors who advise and advocate for people experiencing financial challenges.
10. Effective education needs to be timely and relevant to the person's life situation and current decision-making. Giving people real time information about what is being listed on their credit report and why is the most effective way to educate consumer and influence behaviour.
11. The CR Code should require CRBs to make the audits required under 20N and 20Q of the Privacy Act to be made public, even if on a de-identified basis and in periodic tranches. Any steps CPs have taken to rectify issues identified in the course of CRB audits should also be de-identified and made public.
12. The CR Code should include a mechanism for an independent governance body to audit and report on CRB Code Compliance.
13. The provisions under Paragraph 6 should set out in plain language the most common points at which consumer credit is terminated or otherwise ceases to be in force. This includes:
    a) Paragraph 6 should explicitly state that the sale of a debt is a termination event and clearly state that a termination event is the earlier of the listed possibilities. The current drafting of 6.2d. with the term "earlier" used in the sub-clause ii but not before sub-clause i is potentially confusing.
    b) Paragraph 6 should state that an account is terminated or otherwise ceases to be in force once judgment has been obtained and when a judgment is listed on a credit report, all other credit information pertaining to the same debt (CCLI, defaults, RHI etc) should be removed consistent with the doctrine of merger. At the very least, there can be no fresh listing of any other information and any existing information should be removed at the end of the relevant retention period.
14. For the purposes of CCLI relating to telecommunications or utilities, paragraph 6 needs to be clear about when those accounts are "terminated or otherwise cease to be in force".
15. The CR Code should include a provision that allows a consumer to request the removal of CCLI if the debt is statute barred.
16. The CR Code must require CRBs to list the current credit provider and the current credit limit only and destroy information about previous credit limits and previous CCLI no longer listed on the report.
17. Provisions should be included for the correction or backdating of RHI.

18. Provisions should be included requiring timely disclosure to individuals when negative RHI is disclosed to CRBs.
19. The CR Code should create a positive obligation on the listed CP to request the removal of default information that has become statute barred.
20. Paragraph 9.3 of the CR Code should be amended to require CPs to deliver the section 21D(3)(d) notice separately from other types of correspondence with the customer. It must be clear and distinct.
21. Paragraph 10 of the CR Code should be amended to resolve the uncertainty about how to report 'new arrangement information'.
22. Paragraph 11.2 of the CR Code should make it clear that CRB should not have a section on consumer credit reports that reference originating processes.
23. The CR Code should also require CRB to include a notice on credit reports that not all publicly available information is necessarily recorded.
24. Clause 11.2c should be amended to provide more clarity around the types of judgment which do not go to creditworthiness.
25. The CR Code should require CRBs to give an individual the option to automatically extend the ban period when they first request the CRB not to use or disclose their credit reporting information.
26. The CR Code should require CRBs to certify that certain credit reporting information is result of abuse or fraud if it was reported in the same time period and assist the individual to remove it en masse.
27. The CR Code should require free alerting to the individual during a ban period.
28. Paragraph 18 should explicitly forbid CPs from nominating and CRBs from using FHI in pre-screening activities.
29. The CR Code should require that CRBs make it simple and easy for a vulnerable consumer to get a free copy of their credit report over the phone or by filling out a printable form and sending it by post.
30. Credit reports should be accessible from all CRBs following a request to any one CRB.
31. The CR Code should require CRBs to recognise standard authorities which are regularly used by financial counsellors and consumer advocates.
32. The CR Code should impose stronger rules preventing real estate agents/landlords asking consumers to supply a credit report in order to apply for rental accommodation.
    a) Alternatively industry could work towards a solution with consumer representatives where consumers requesting access for the purposes of a rental application could get a 'simple' copy of their credit report which does not include RHI or FHI.
33. Provisions in paragraph 20 should be completely re-written to be principled-based and in plain English.

34. The CR Code could set much tighter timeframes for simple corrections requests, making it clear that the 30 day timeframe in the Act is for more complex correction requests.
35. The corrections provisions in the CR Code should be adjusted to take a 'no wrong door' approach to corrections requests to CRBs and CPs.
36. Paragraph 20.5 should either be expanded to include situations of domestic and family violence, or it should be left completely open without any examples listed in the CR Code, so that it can be used for a much broader set of circumstances.
37. Consumer representatives submit Paragraph 21 should be re-written to align with ASIC's RG 271, or alternatively be re-written as a consumer-focused provision.
38. An independent code compliance body or the OAIC should collect, analyse and publish CRB complaints data.
39. The CR Code should have an entirely new paragraph for individuals experiencing or fleeing violence which creates special rules addressing the following issues:
    b) Giving CPs the flexibility to not list or to correct past credit reporting information for victim survivors;
    c) A mechanism for correcting a large tranche of abuse-related credit records;
    d) A mechanism for splitting joint accounts in discrete economic abuse situations when the CP and the individual agree it is the best option.
    e) Recognition of the potential effect of credit reporting on an individual's ability to re-establish financial independence and that credit reporting information that is the product of economic abuse does not necessarily reflect an individual's creditworthiness.
40. The CR Code should impose explicit restrictions around sharing contact information of consumers when they request access to their free credit report.
41. ARCA should develop a best practice guideline for CRBs and non-bank CPs on preventing and responding to economic abuse in credit reporting.
42. Industry should issue some information and guidance to consumers about how different information requests are viewed and how their presence on a credit report influences a credit rating or a CP's decision to lend.
43. The CR Code should create a mechanism for certain information requests to be either not recorded or flagged as a shopping around exercise if an individual is simply trying to compare finance rates for a major purchase.
44. The CR Code should restrict debt buyers from being able to access RHI and FHI notwithstanding their credit transfer rights under Part IIIA.

Overarching issues

Effectiveness of the CR Code

1. What provisions in the CR Code work well and should remain as they are or with minimal changes?

There are important protections in the Code that are directly enforceable by consumers through external dispute resolution schemes, and are not contained anywhere else in the law.

These rights need to preserved, or in some cases strengthened or clarified:

- Cl 8.1 provides for the 14 day grace period in relation to the disclosure of repayment history;
- Cl 9.1 limits a credit provider from listing default information pending a credit provider's decision about a hardship request;
- Cl 9.3 specifies further requirements in relation to the timing and separation of notices;
- Cl 9.4 prevents double listings about the same default;
- Cl 10.1 includes settlements and waivers in the definition of payment information;
- Cl 10.2 imposes an important 3 day time limit for disclosing payment information (noting that this also is not an absolute right and contains a reasonable grounds exception);
- Cl 11.2 puts further parameters on what can be disclosed as publicly available information;
- Cl 12.1 d. to f. and 12.2 place further parameters on the circumstances in which serious credit infringements can be listed and when they must be destroyed;
- Cl 19 includes important detail concerning access rights and specifically the prominence of information in relation to free access services and an explicit ban on pre-ticked marketing consent boxes (updates to this section to comply with amendments to the law are pending with the hardship information changes);
- Cl 20.1 (and 21.3) requires an individual to be notified of their rights to complain to an external dispute resolution scheme when the 30 days provided for the correction of a record, or the resolution of a complaint, cannot be met;
- 20.5 requires the provision of CRBs and CPs with the flexibility to remove default information that results from circumstances beyond the individual's control;
- 20.6 provides that default information must be removed where it relates to a payment that could not be enforced due to the statute of limitations;
- Cl 17 stipulates a ban period for victims of fraud that are important but, could be more effective.

We have included in the body of this submission many examples where these rights could be expressed more clearly, updated to better suit the current credit reporting environment, or amended to address an identified problem.

As to whether they should "remain as they are or with minimal changes" we have serious concerns about the Code's overall readability and fitness for purposes in its current form which are set out in more detail below. These rights are not prominent to a layperson with no expertise in the area and need to be extracted from a lot of extraneous material of no immediate relevance to a general member of the public, or indeed a consumer advocate seeking to advise or assist a member of the public. There is also a lot of important contextual information and process information that is of relevance to the public that is missing.

The Code also contains other obligations that are important to consumers in an indirect sense, because they go to consistency, record keeping, direct marketing limitations and audit trails, but cannot be enforced by consumers because they do not have a line of sight over compliance. It is important that these obligations are maintained, subject to more rigorous reporting and oversight, and that they are robustly enforced. These need to be contained in a different section of the Code, or presented in a format where they can easily be distinguished from the consumer facing provisions.

2. What provisions in the CR Code are no longer fit-for-purpose? Why?

Many of the reporting rules and consumer protections in the CR Code have their origins in the pre-CCR world. Much of the CR Code reads as if default information is the only type of information someone would want corrected. The lack of corrections information around CCLI, RHI and enquiries is extremely inadequate in a world where scams and fraud affect hundreds of thousands of people every year. The CR Code has not kept pace with industry best practice in relation to complaints handling or in relation to important issues like family violence and financial abuse.

The CR Code has also been developed primarily by, and for, industry stakeholders. It has been written to meet the needs of CPs and CRBs rather than the needs of consumers. Consumer representatives acknowledge that much of the detail in the CR Code is necessary for consistent reporting and background systems, but these currently dominate to the exclusion of all else.

3. Does the CR Code get the balance right between the protection of privacy on the one hand and use of credit-related personal information on the other? Why or why not?

The fact that the current drafting of the CR Code is not understandable to the average consumer, as well as consumer advocates, suggests the balance is not right. A key benchmark should be ensuring that the CR Code is accessible and understandable to consumers and their advocates.

The objects of the Privacy Act are to promote the protection of the privacy of individuals, to promote responsible and transparent handling of personal information, and to facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected. These objectives mean that the CR Code needs to do more than just ensure information is kept confidential. It follows that if information is disclosed, it must be correct and accurate. The

current technical drafting of the CR Code creates too many barriers for consumers to raise complaints or request corrections to their personal information in a timely and efficient manner.

The CR Code is also out-of-step with modern consumer protection in that it doesn't cover fairness. Fairness is a key component of most industry codes of practice in the financial services space, as well as a critical part of AFCA's rules. The CR code should be consistent with those standards and incorporate a standard of fairness across all of its provisions. We note the industry's concerns in relation to fairness detracting from clarity, but we submit that fairness does not change the law, or negate other explicit provisions of the Code. Instead it is a lens through which any remaining discretion should be exercised or ambiguity interpreted.

Form and readability of the CR Code

4. Does the CR Code need to be amended for clarity or readability? If so, in what way?

Consumer representatives strongly submit that the CR Code needs to be amended to make it more clear, readable and accessible. The purpose of this review is to ensure that the CR Code, in its current form, achieves its purpose and is easy to read, understand and apply in practice. The CR Code is not meeting this standard.

For credit reporting rules to be implemented in a fair and consistent way, they must be comprehensible. Unfortunately, from a consumer-perspective much of the CR Code is not. In its current state, it is very difficult for consumers (and their advocates) to use the CR Code to hold lenders accountable for their reporting or use of credit reporting information. Many of the provisions are dense, ambiguous, overly complicated and confusing. Consumer representatives recognise that one of the roles of the CR Code is to further particularise the relevant provisions of the *Privacy Act* (and various amending legislation) and so requires a level of detail that might not be accessible to average consumers. Nevertheless, the CR Code is a consumer facing code and at a minimum it needs to be accessible to advocates like financial counsellors, consumer lawyers and case managers at AFCA. Consumer groups strongly submit that the current CR Code does not meet this minimum standard.

To engage constructively with the CR Code a reader needs to look at the legislation, the regulations, the CR Code and the explanatory memorandum in order to make sense of these rules. The CR Code itself (para 8) says it should be read in conjunction with:

a) the Privacy Act (including the Australian Privacy Principles);

b) the Privacy Regulations 2013;

c) the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law); and

d) the Acts Interpretation Act 1901 (Cth).

This is not just an accessibility issue but also goes to the effectiveness of the Code. If CPs, CRBs and their staff are not clear about what is expected, or if there is room for ambiguous interpretation, then the effectiveness of the CR Code is diminished. What is even more concerning is that consumer advocates such as those in our organisations (community lawyers and financial counsellors) struggle to comprehend and use the CR Code in a meaningful way. If

trained lawyers and experienced consumer advocates struggle to understand (or resolve ambiguity in) the rules set out in the CR Code, we cannot advise consumers on their credit reporting rights or their prospects in making a complaint to AFCA. If CPs and CRBs are not held to account for CR Code compliance through consumer complaints, then the CR Code is failing to deliver on its purpose as a regulatory instrument. Consumers need accessible, principles-based provisions to enable them to make complaints to external dispute resolution schemes.

An entire industry of credit repair businesses has flourished because of their ability to exploit the complexity and inaccessibility of the credit reporting rules. While this is not entirely the fault of the CR Code, if consumers were better able to understand how credit reporting in Australia works and what their rights are to have their credit reports corrected, there would be significantly less demand for companies which often trade on misinformation.

Consumer representatives support the concept in the Consultation Paper that the CR Code should incorporate overarching principles which align with Part IIIA requirements but give individuals or their advocates greater certainty about individual rights under the Code. These principles could provide a lens by which the technical provisions are interpreted. For example, the AFCA fairness principle is already applied to decisions concerning credit reporting disputes and this warrants formalisation in the CR Code. We also support changing the structure of the CR Code in addition to incorporating overarching principles.

Consumer representatives believe the best solution to the general inaccessibility of the CR Code is to split it up into principles-based consumer-facing provisions and the technical industry-facing provisions. It would be critical that the consumer-facing principles take precedence in any conflict with the technical provisions.

The structure and format of the CR Code comes from Part IIIA and are issues-based. However, the CR Code is not a legislative instrument (section 26N(5) of the Privacy Act). Consumer organisations consider that the CR Code can be drafted to aid readability in a format that does not need to formally mirror the Privacy Act. It would be better to have the issues we know matter to consumers up front in a format that is easy to read, understand and apply. Related technical sections of the CR Code can be referenced and if a reader needs to understand all of the rules relating to an issue (say defaults), they can continue on and read the technical provisions in conjunction with all the related legislation, regulations, standards, determinations OAIC guidance and factsheets. For most consumers or consumer advocates however, there will only be a selection of CR Code provisions which are relevant to understanding their rights or which are relevant in a dispute.

As a start, below is a list of some of the consumer-facing issues we believe should be included.

- What is the purpose of credit reporting information
- What types of information can be reported about you (CCLI, Payment Information, New payment arrangement information, RHI, Public information, etc.)
- What are the time limits for keeping and reporting information
- Who can access your report and for what purposes
- What to do if you have been a victim of fraud or economic abuse

- What if you are in financial hardship
- Getting a copy of your report
- Disputing inaccurate information on your report
- Making a complaint

Alternatively these critical consumer-facing provisions could also be set out in the order of the average lifecycle of a loan, although many of the sections above would also be needed as stand-alone sections.

- **Getting a loan** - what can be reported about my loan application, what are the consequences of enquiries being recorded on my credit file, what if my application is rejected because of my credit file?
- **Once you are approved for a loan** – CCLI
- **Paying your loan**– RHI, hardship, default, payment information,
- **Ending your loan** – paid in full – what happens to the above information, if not paid what can be listed -accelerated default, RHI, CCLI, when is it terminated etc, what can a debt collector who buys my debt list on my credit report, serious credit infringements.

Consumer representatives would expect to be thoroughly consulted in the creation of this new structure to the CR Code, and the language should be consumer-tested before it is finalised.

Finally, a related issue is the readability of credit reports themselves. The CR Code could set minimum standards for readability and accessibility of credit reports.

Recommendations

1. **We recommend that the OAIC breaks up the CR Code into principles-based consumer-facing provisions and the technical industry-facing provisions. It would be critical that the consumer-facing principles take precedence in any conflict with the technical provisions and are consumer-tested before being finalised.**
2. **The CR Code could set minimum standards for readability and accessibility of credit reports.**

5. Are there any CR Code provisions that are open to interpretation or prone to misinterpretation? Which provisions and how could they be improved?

There are many provisions that consumer representatives believe are prone to misinterpretation. These are discussed in response to the questions below.

Interaction with the CCR system

6. What has been the effect of mandatory CCR on compliance with the CR Code?

Consumer representatives have little to no visibility of industry compliance with the CR Code, so we are not in a position to comment on the effect of mandatory CCR.

Consumer representatives strongly support the OAIC publicly reporting on compliance activity as is done in other jurisdictions. For example, in January this year the Consumer Financial Protection Bureau in the US published a report detailing consumer complaint response deficiencies in the big three CRBs in that jurisdiction. The CFPB found that in 2021, Equifax, Experian, and TransUnion together reported relief in response to less than 2% of covered complaints, down from nearly 25% of covered complaints in 2019.

"America's credit reporting oligopoly has little incentive to treat consumers fairly when their credit reports have errors," said CFPB Director Rohit Chopra. "Today's report is further evidence of the serious harms stemming from their faulty financial surveillance business model."[1]

We also note that solicitors, financial counsellors and other caseworkers who assist consumers are experiencing greater inflexibility in removing or amending credit reporting information as part of the resolution of a dispute. They often cite the mandatory reporting obligations as a reason for this inflexibility, even in circumstances where we would argue the records are no longer accurate or up-to-date. This is discussed in more detail below.

7. Are there inconsistencies between CCR requirements and CR Code requirements that could be addressed via an amendment to the CR Code? How could the CR Code be amended in this context?

As noted in the Consultation Paper, consumer organisations have previously raised concerns that the CCR obligations (and PRDE requirements) will result in entities being inflexible when negotiating a resolution to a financial dispute, including decisions around the removal, delay or withholding from listing defaults or other credit information on credit reports.

Consumer advocates (including solicitors, financial counsellors and other caseworkers) regularly include the contents of credit reports in consumer disputes and settlements with industry. When we are assisting clients to resolve financial disputes it is standard practice for us to request that credit providers, debt collectors or utilities companies refrain from listing negative information while negotiations are ongoing and to refrain from listing, or removing a listing, as part of the settlement of a dispute. The majority of industry members will work with advocates to come to a fair outcome for their customers. However the CCR legislation and the CR Code does not always permit this type of best practice flexibility.

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[1] Consumer Financial Protection Bureau (CFPB), 5 January 2022; *CFPB Releases Report Detailing Consumer Complaint Response Deficiencies of the Big Three Credit Bureaus: Equifax, Experian, and TransUnion routinely failed to fully respond to consumers with errors*: https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-report-detailing-consumer-complaint-response-deficiencies-of-the-big-three-credit-bureaus/

The mandatory provisions of the CCR legislation only apply to large ADIs, which as defined currently only include the big four banks and possibly also Macquarie Bank. There are many other smaller lenders which will not need to comply with the mandatory provisions of the legislation, but they will need to comply with the CR Code. The CR Code should make it clear that CPs can be flexible about removing or not reporting defaults while negotiating the resolution of a financial dispute with a consumer, or as part of a settlement. If confusion remains regarding the CCR obligations, it can be resolved by ASIC determination under 133CQ(2) of the *National Consumer Credit Protection Act*, as amended by the *Mandatory Credit Reporting Bill* in 2021.

The CR Code can, and should, protect consumers from having information disclosed on their credit files that does not reflect their creditworthiness or is a result of misconduct on the part of a credit provider or other relevant entity. Comprehensive credit reporting in Australia should not interfere with legitimate settlement negotiations. It is a matter between the parties to determine how a dispute is settled and interference with settlement negotiations to remove, delay or withhold the listing of consumer credit information on credit reports is contrary to the public interest as it hinders the ability of the parties to comprehensively settle a dispute.

Until recently, the comprehensive credit reporting system has been a voluntary system, meaning the relevant legislation has not needed to address the voluntary removal of default listings. It is common for a lender to refuse to formally admit that negative information is inaccurate (for example, due to breaches of responsible lending laws), but nevertheless agree to remove credit information as part of a legitimate settlement agreement. If the law is interpreted so that only an AFCA determination or explicit admission of liability under a relevant law can result in the amendment of credit information, then many more disputes will be fully prosecuted all the way through AFCA, rather than settled in a timely and efficient manner.

Consumer groups believe this flexibility could be achieved by an amendment to clause 20.5 in the CR Code to ensure that it is comprehensive in its purview, in line with the CCR regime:

20.5

a. If:

i. an individual enters into a new arrangement with a CP of the kind referred to in Section 6S(1)(c) or a CP has disclosed ***payment information*** *in relation to the individual; and*

ii. the individual requests a CRB or CP to correct the ***credit reporting information*** *held by the CRB about the individual by removing* ***default information or SCI,*** *and/or amending* ***repayment history information*** *and/or* ***hardship information,*** *that relates to an overdue payment that is the subject of that new arrangement or* ***payment information****; and*

iii. the request is made on the basis that the overdue payment occurred because of the unavoidable consequences of circumstances beyond the individual's control, such as natural disaster, bank error in processing a direct debit or fraud,

the CRB must, in consultation with the CP that disclosed the relevant ***default information****, consider whether the* ***default information or SCI,*** *and/or* ***repayment history information***

*and/or **hardship information**, is inaccurate, out-of-date, incomplete, irrelevant or misleading, having regard to the purpose for which the information is held by the CRB.*

b. *Where, under paragraph 20.5(a), the CRB and CP are satisfied that the **default information or SCI**, and/or amending **repayment history information** and/or **hardship information**, is inaccurate, out-of-date, incomplete, irrelevant or misleading, having regard to the purpose for which the information is held by the CRB, the CRB must agree to correct the **credit reporting information** about the individual by destroying the **default information** and/or **SCI** and/or amending the **repayment history information** and /or **hardship information**.*

20.5A

a. *Where a CP has disclosed **credit information** in relation to an individual and a settlement is entered as a result of a dispute about the individual's liability for that debt, the CP that disclosed the information must consider whether the relevant **credit information** is inaccurate, out-of-date, incomplete, irrelevant or misleading, having regards to the circumstances of the dispute and the purpose for which the information is held by the CRB.*

b. *Where, under paragraph 20.5A (a), the CP is satisfied that the **credit information**, is inaccurate, out-of-date, incomplete, irrelevant or misleading, having regard to the purpose for which the information is held by the CRB, the CP must agree to correct the **credit reporting information** about the individual in lines with any agreed terms of settlement.*

Statute barred debts

Clause 20.6 allows a consumer to seek the correction of their report to remove default information that has been listed in circumstances where the payment could not be enforced as a result of the operation of a relevant statute of limitation. The same principles apply to other types of information, including for example CCLI and RHI. For completeness, this provision needs to be amended to be inclusive of all credit information pertaining to a statute barred debt. Most of this information should be excluded under the relevant retention periods in any event, but for clarity, clause 20.6 should be amended.

Recommendations

3. **The CR Code should make it clear that CPs can be flexible about removing or amending credit information as a result of the settlement of a liability dispute or because the information was listed as a result of circumstances beyond the individual's control. This should not be confined to default information, but also will include any of the categories of credit information relevant to the circumstances.**
4. **The CR Code should be amended to clarify that no credit information should remain on a credit report, or be permitted to be listed, in relation to a statute barred debt.**

Participation of other entities

8. How might the CR Code need to be updated to accommodate other entities?

Consumer representatives have serious concerns relating to the use of CCR (specifically RHI) by certain credit providers or for credit products which are not subject to responsible lending obligations under the NCCP. These include utilities, telecommunications, Buy Now Pay Later (BNPL) products, small business lenders and agents of credit providers (debt collectors). Consumer representatives strongly oppose any increase to the types of entities that are able to report or access consumer RHI.

To access the full CCR regime, lenders must hold an Australian Credit Licence (ACL) applicable to consumer lending and provide consumer lending data to credit bureaus and other credit providers. In a recent submission to the ongoing parliamentary inquiry into housing affordability, the Australian Finance Industry Association (AFIA) suggested expanding the categories of lenders that can contribute to, and access data from, the CCR scheme. We know this position is also supported by the banking industry. The proposal that BNPL providers should be able to report and access CCR raises concerns about whether having an ACL should be the only requirement for access.

The ability to contribute to, and access, full CCR data should only be available to licensed service providers in relation to credit products that are subject to responsible lending obligations (RLOs). These obligations require providers to assess whether the credit is affordable and whether it meets the consumer's requirements and objectives. These are vital consumer protections. Consumers care deeply about their credit reports and the threat that negative RHI might be listed on a credit report will be a real one. However, if the original credit was not subject to a proper affordability check as required by RLOs, this will distort the credit reporting system, resulting in an uneven playing field and disadvantaging consumers.

Currently BNPL providers do not need to comply with responsible lending obligations due to the unregulated nature of their products, but some providers do have an ACL. Many of Australia's ADIs are contemplating offering BNPL services,[2] or already do, but those services will not be subject to the same lending rules as even payday lenders. Consumer representatives believe credit providers should have an ACL and comply with responsible lending obligations before they can gain access to CCR data.

In 2010, the NCCP imposed responsible lending obligations on entities providing regulated loans. This resulted in a recommendation by the Australian Law Reform Commission that Australia should move to a positive credit reporting system, but that RHI could only be collected and accessed by those entities who had an ACL and were subject to legislated responsible lending obligations. In 2012 when the legislation was drafted, there were no unregulated credit products being sold by licenced credit providers, only by marginal fringe lenders.

Consumer representatives submit it was the intention of parliament that only regulated products would have RHI reported against them, and only credit providers considering

[2] The Commonwealth Bank for example has recently introduced a BNPL product called StepPay.

applications for regulated credit products could access consumer RHI. In fact, the Explanatory Memorandum from the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 clearly stated:

> *"The fifth kind of personal information, repayment history information, is only available to credit providers who are licensees under Chapter 3 of the National Consumer Credit Protection Act and subject to responsible lending obligations under that Chapter."*[3]

With respect to utilities providers having access to CCR, many people do pay their bills late given winter and summer bill spikes, but most will get back on top of any financial hardship after a period. Expanding CCR to allow utilities providers to list RHI would act as a further penalty for being on a low income, and is not necessarily an indicator creditworthiness. Research has shown that expanding credit reporting to different types of data sources exacerbates inequality. "People with a fair or poor credit score become stuck in cycle of high interest rates and costly loan terms, large required down payments, and are denied applications for rentals, cell phone plans, and employment."[4] Consumer representatives fear that enabling greater access to CCR by energy, utilities and telecommunications providers will only make it harder for low income consumers to access fair market prices for essential services.

Recommendations

5. **The credit reporting rules should clarify that the only credit products ACL holders can report repayment history information or financial hardship information about are those products which are subject to responsible lending obligations.**

Governance of the CR Code

Code development and ongoing monitoring of compliance

9. Is the current process for developing variations to the registered CR Code appropriate?

Consumer representatives submit that the CR Code developer needs to be independent. The CR Code is a legally enforceable code and it is wrong in principle for an industry body to be writing its own binding rules.

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[3] Explanatory Memorandum from the Privacy Amendment (Enhancing Privacy Protection) Bill 2012,https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4813_ems_00948d06-092b-447e-9191-5706fdfa0728%22

[4] Pamela Foohey, Sara Sternberg Greene; "Credit Scoring Duality" *Duke Law School Public Law & Legal Theory Series No. 2022-03;* 28 Dec 2021; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3992749

Consumer representatives have been actively consulted by ARCA since the inception of the 2014 CR Code, and ARCA makes a genuine effort to ensure that consumer groups are apprised of draft revisions to the CR Code and that we have input to the variation process. That being said, it is clear from the current state of the CR Code that industry needs and interests have taken precedence over those of consumers, and that is a natural result of having an industry advocacy body in the role of code developer.

What is required is a Code developer with:

- Deep knowledge of the industry, history and context in which the Code is operating;
- Independence;
- A reputation that is well regarded by consumers and industry stakeholders; and
- Experience developing Codes and regulatory documents.

This person or entity should then tap into the knowledge and experience of both industry and consumer representatives in developing a truly independent Code. Alternatively the code developer should be an independent panel with equal numbers of industry and consumer representatives.

We recognise that the Code development provisions are set out in the Act. We submit that these provisions should be revisited as part of the 2024 review. Further, the OAIC should take the above concerns into account in the exercise of its powers in relation to approving Code variations.

Recommendations

6. **ARCA should be replaced as CR Code developer by an independent entity or panel with equal industry and consumer representation.**

10. Should additional compliance monitoring and governance arrangements be stipulated in the CR Code?

There is inadequate oversight of CP and CRB compliance with the CR Code, systemic non-compliance issues are not being identified, and industry and consumer awareness of the code is very low. The CR Code should have its own independent governance arrangements. Independent code monitoring bodies are common and are considered best practice when it comes to financial services codes of practice. The current monitoring and governance arrangements for the CR Code are not transparent, and they provide no reassurance to consumer organisations that CRBs or CPs are being held accountable for CR Code compliance.

Before the 2014 CR Code was drafted, there was agreement between the OAIC as well as industry and consumer representatives that the CR Code should have independent governance arrangements. The current CR Code does not include an independent Code Governance Administrator, or a code compliance committee, and we strongly support creating one in the

next variation of the Code. Our understanding is that independent code governance has not been put in place because of concerns that it may duplicate the role of the OAIC.

In 2011, when the *Exposure Drafts of Australian Privacy Amendment Legislation* were introduced, industry representatives supported the idea that an independent committee should be established to 'drive compliance with the Code'. The Australian Retail Credit Association's (**ARCA's**) submission to the Senate's Finance and Public Administration Legislation Committee concluded:

> *While we would expect to finalise arrangements in consultation with industry and the regulator, ARCA proposes that this committee would support the work of the regulator, maintain industry focus on compliance with the Code, and to undertake compliance tasks associated with the Code.*[5]

In 2013, the OAIC published its *Guidelines for developing codes – issued under Part IIIB of the Privacy Act 1988*. One of the purposes of the Guidelines was to assist the CR Code developer (ARCA) in the development of the CR Code. The Guidelines specified requirements as to Code governance.

> *Given that codes effect a co-regulatory approach to privacy regulation, the establishment of a code administrator is considered to be a practical and important method for code developers to demonstrate that the relevant industry sector has a commitment to maintain the effectiveness of the code over time.*[6]

The key benefits of having an independent governance body are that it allows for increased, proactive monitoring and enforcement activity without impacting on the resources or activities currently being undertaken by the OAIC. While there are costs associated with establishing and operating an independent governance body, which should be adequately funded by industry, we believe the benefits of better CR Code compliance and more transparent monitoring and enforcement would outweigh those costs. The committees which monitor and enforce the other codes in the financial services sector don't duplicate the role of ASIC. Instead they can support ASIC's work by passing important information to ASIC about systemic issues and emerging trends in non-compliance, and provide a level of transparency and public accountability in relation to Code compliance and Code effectiveness that is unlikely to be achieved reliant on the regulators resource and remit alone.

In the 2017 CR Code Review, it was recommended that the OAIC internally review its regulatory activities in respect of the CR Code, and consider options for increasing its proactive monitoring and enforcement activities having regard to its available resources or ability to seek further funding if required. From the perspective of consumer advocates, this has not transpired. There has been no public reporting of any code compliance monitoring activities and

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[5] ARCA Submission to the Exposure Drafts of Australian Privacy Amendment Legislation – Senate Finance and Public Administration Committees, p. 4 available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2010-13/privexpdrafts/index

[6] *Guidelines for developing codes. 27 September 2013.* See Part 3 - https://www.oaic.gov.au/privacy/guidance-and-advice/guidelines-for-developing-codes

certainly no public enforcement action based on OAIC proactive compliance activities. A recent report released by the CFPB detailed the lack of CRB compliance with American credit reporting laws.[7] ASIC's Financial Reporting Surveillance Program is another example of the kind of proactive and public compliance reporting consumer representatives expect from Australian regulators. At the end of each reporting season, ASIC publishes the findings of their surveillance program with the goal of improving financial reporting quality.[8]

Forming an independent CR Code governance body

If a Code governance body is established, the following information sets out how it should be constituted, what the body's responsibilities should be, and how it should be funded and operated.

First, an independent CR Code Compliance Committee should be established under the CR Code. This Committee should:

- Be transparent and accountable;
- Act with integrity and impartiality;
- Act in a fair, reasonable, independent and effective way;
- Provide guidance to industry to promote best practice code compliance;
- Prioritise issues that are industry-wide, serious or systemic;
- Promote its work and provide community assurance by regularly publishing its work;
- Be independent of the credit reporting industry (with a balance of industry representatives, consumer representatives, and an independent chair); and
- Have adequate resources to fulfil the relevant functions and to ensure that code objectives are not compromised.

The independent CR Code Compliance Committee should be made up of:

- 1 person with relevant experience at a senior level in a Credit Provider organisation as an industry representative, to be appointed by ARCA, on the industry's behalf;
- 1 person with relevant experience at a senior level in a Credit Reporting Body as an industry representative, to be appointed by ARCA, on the industry's behalf ;
- 2 people with relevant experience and knowledge as consumer representative, to be appointed by a consumer representative body like the Consumers' Federation of Australia; and

[7] https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-report-detailing-consumer-complaint-response-deficiencies-of-the-big-three-credit-bureaus/

[8] https://asic.gov.au/regulatory-resources/financial-reporting-and-audit/directors-and-financial-reporting/asics-financial-reporting-surveillance-program/

- 1 person with experience in industry, commerce, public administration or government service to be appointed as the Independent Chairperson of the CR Code Compliance Committee, chosen jointly by the OAIC and ARCA on behalf of the community.

The CR Code Compliance Committee should be responsible for (among other things):

a) Establishing appropriate data reporting and collection procedures for CPs, CRBs and itself;

b) Monitoring compliance with the code;

c) Publicly reporting annually on code compliance;

d) Hearing complaints about breaches of the code[9];

e) Own-motion investigations;

f) Investigating and making determinations on any allegation from any person about industry breaches of the code;

g) Imposing sanctions and remedial measures as appropriate for determinations of non-compliance;

h) Reporting systemic code breaches and serious misconduct to the OAIC;

i) Recommending amendments to the code in response to emerging industry or consumer issues, or other issues identified in the monitoring process;

j) Ensuring that the code is adequately promoted, including but not limited to:

   i. Providing training for community sector case workers on code provisions;
   ii. Ensuring that all subscribers have copies of the code at public offices;
   iii. Communicating code information via call centre hold messages or in Product Disclosure Statements; and

k) Ensuring that staff are appropriately trained in the code and that subscribers make provision for this training.

The Committee must arrange a regular independent review of its activities and ensure a report of that review is lodged with the OAIC. This review should coincide with the periodic reviews of the CR Code.

There must be clear communication channels between the industry, Committee and the OAIC. CRBs should regularly inform the Committee about incidents of CPs' non-compliance with the Code and the CR Code Compliance Committee should report regularly to the OAIC about those issues.

There is also an important role for the OAIC to play in administering and monitoring the CR Code. The OAIC must be an active regulator that regularly follows up on issues of Code non-compliance that are reported by the Committee, CRBs, CPs or consumers. Without an active

[9] Primary responsibility for settling disputes with consumers would remain with CPs, CRBs and the EDR schemes. Both consumers and the EDR schemes could nonetheless report breaches of the Code to the Compliance Committee to inform their work and promote compliance.

regulator that is able and willing to enforce sanctions for non-compliance, stakeholders will not have confidence in the CR Code.

The Committee should be funded by CRBs and any CPs (as defined by the Privacy Act) participating in credit reporting. Industry must ensure that the CR Code Compliance Committee has sufficient resources and funding to carry out its functions satisfactorily and efficiently. Given the CR Code is a legally enforceable code, consideration should be given to providing more resourcing than other types of industry self-regulatory codes.

Recommendations

7. **Independent code governance, including a CR Code Compliance Committee should be established under the CR Code.**

Education and awareness of the CR Code

11. Do industry and individuals have access to the information they need to understand and/or apply the CR Code in practice? If not, what amendments could be made to the CR Code to improve this?

Consumer representatives are sceptical that more information or consumer education is going to solve the problems the CR Code has with accessibility or practical applicability. Generally it is better to have fairer products and systems in the first place, rather than access to more information that is likely to confuse consumers.

If this review is going to recommend more investment in educational resources it should be directed at advocates such as community lawyers, domestic violence advocates or financial counsellors. It is unlikely to assist average consumers who need access to timely legal information, advice, financial counselling or effective dispute resolution to assist them.

There are some good resources for consumers on the Credit Smart website, but we are concerned few people find and read them. Improving the resources available on the ASIC Money Smart website, as a known and trusted source of financial information, could be a way of getting more visibility.

For those sophisticated consumers who are capable of self-advocating and enforcing their own credit reporting rights, access to information needs to be timely and of immediate relevance to their dispute. Static credit reporting information resources on a website might be useful educational tools for advocates, but they are rarely going to be very useful to a consumer with an urgent dispute. Lenders and CRBs need to have front line staff that are trained to give consistent and clear information about credit reports when consumers make complaints or are deciding whether to enter into a hardship arrangement. There is no point someone finding out they have poor RHI when they apply for a loan 3 months down the track. They should be told every month when the RHI code is reported (for example, on their statement, by SMS) so they have an opportunity to complain if the information is wrong, learn why it may be correct, and if

there are issues, understand how to change their behaviour. Finding out later when there are things at stake only makes people angry and can lead to financial loss.

It would also be a lot easier to educate people about their rights if those rights were clearer in the first place. The CR Code needs to be re-written in clearer and simpler language.

Recommendations

8. **The Code needs to be re-written in clearer and simpler language.**
9. **Any new investment in information resources should be directed at advocates such as community lawyers, domestic violence advocates and financial counsellors who advise and advocate for people experiencing financial challenges.**
10. **Effective education needs to be timely and relevant to the person's life situation and current decision-making. Giving people real time information about what is being listed on their credit report and why, is the most effective way to educate consumers and influence behaviour.**

Governance obligations applying to CRBs and CPs - Credit reporting agreements, audits, training and policies

12. Are the provisions on credit reporting agreements, audits, training and policies appropriate? Should they be amended in any way? If yes, how?

The current governance structure relies almost entirely on CRBs monitoring CPs' compliance with their *Part IIIA* obligations, incorporated in their agreements with the CRBs. This structure is an unacceptable conflict of interest. CPs are the paying clients of CRBs, and CRBs will necessarily be dis-incentivised to report any incidents of non-compliance under the Code. Even if each CRB establishes a documented, risk based program to monitor CPs' compliance, there will inevitably be less thorough reporting of all non-compliant activity than there would be under an independent administrative body. Less thorough reporting means that systemic problems will either not be identified or will continue for longer.

The CRB audits required under 20N and 20Q of the Privacy Act should also be made public, even if on a de-identified basis and in periodic tranches. Any steps CPs have taken to rectify issues identified in the course of CRB audits, should also be made public. Without any public reporting there is no transparency or accountability for CP compliance with credit reporting obligations. There is also no transparency of the audits themselves. Are CRB audits ensuring CP compliance with all CR Code obligations, or only the ones related to information integrity? There are also no public reports regarding CRB compliance with the CR Code.

Section 23 of the CR Code could have an additional provision requiring CRBs to make the results of regular independent audits of CP compliance with credit reporting rules public. Ideally these results would be given to an independent CR Code governance body to analyse and publicly

report on, focusing on trends across the industry and making recommendations for compliance improvements. The CR Code should also include a mechanism for an independent governance body to audit and report on CRB Code Compliance.

Case study – Gerald's story - C219014

Gerald phoned the National Debt Helpline in 2021, unsure of why a Debt Agreement he had entered into in 2014, and had stopped making payments by 2015, was still listed on his credit report as "Not discharged or complete". A financial counsellor helped Gerald write to the debt agreement administrator requesting all documents, and they promptly wrote back advising they had proceeded to ask the CRB to remove the listing. The administrator also relayed the CRB confirmation once the listing amendment had been actioned.

Gerald checked his NPII record, as well as his credit reports with the other two agencies. All of them were clean, suggesting it might just have been an error with the one CRB. There was no explanation as to why the CRBs had been inconsistently reporting his credit history or how the error had occurred.

Recommendations

11. **The CR Code should require CRBs to make the audits required under 20N and 20Q of the Privacy Act to be made public, even if on a de-identified basis and in periodic tranches. Any steps CPs have taken to rectify issues identified in the course of CRB audits should also be de-identified and made public.**
12. **The CR Code should include a mechanism for an independent governance body to audit and report on CRB Code Compliance.**

Internal CRB & CP practices and recordkeeping

13. Are the provisions related to internal practices and recordkeeping appropriate? Should they be amended in any way? If yes, how?

As explained above, there are no public transparency or accountability mechanisms incorporated into paragraphs 5.3, 5.4, 15 or 22 of the CR Code. The value in requiring CPs and CRBs to maintain extensive records that evidence their compliance with the CR Code is enhanced in circumstances where:

- There is transparency; and
- There is a review mechanism, preferably by an independent governance body.

Without this, there is limited value in forcing industry to maintain these records. Even if those records are called upon for random audits by CRBs or even the OAIC, there is no evidence that any organisation is collecting regular records across the industry in order to spot trends or changes in compliance levels. There is no public reporting about CR Code compliance or about rectification activities CPs are taking after an identified breach.

Provisions applying to certain types of information

Consumer credit liability information

14. Are the CCLI provisions appropriate? Should the CCLI provisions contained in paragraph 6 be amended in any way? If yes, how?

15. Are the definitions / interpretations contained in paragraph 6 appropriate? Should they be amended in any way? If yes, how?

Like much of the CR Code, the provisions contained in paragraph 6 are overly complex and completely inaccessible for the average consumer. In our experience in assisting consumers, the question of when CCLI falls off a credit report is common. While the answer should be straightforward (2 years after account is closed) the explanation in the CR Code as to when a credit account is "closed" is long and confusing. Adding to the confusion, the explanation changes depending on when the account was disclosed to a CRB, whether it was after 1 July 2018 or up to 30 June 2019. Even the most obvious points at which a credit account might be closed (i.e. the debt is repaid in full; the debt is statute barred; the debt has been waived) are not set out clearly or in plain language. A reader has to go through the provisions multiple times to assess even when the most common account closures might meet the definition of "terminated or otherwise ceases to be in force".

The provisions contained in paragraph 6 should at the very least set out in plain language the most common points at which consumer credit is terminated or otherwise ceases to be in force:

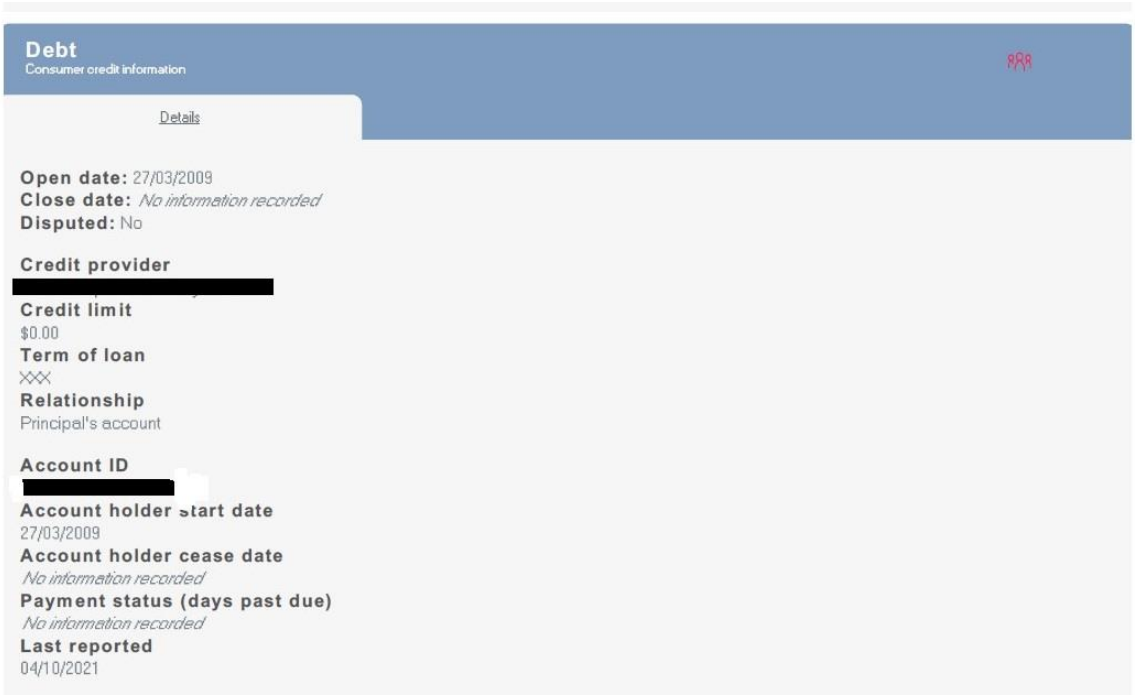
- When a debt is repaid in full;
- When a debt is statute barred;
- When a debt has been waived in full;
- When a debt has been charged off or sold to another entity;
- When judgment has been obtained;
- When a CP and individual have come to an agreement that the CP will no longer take enforcement action.

For the purposes of CCLI relating to telecommunications or utilities, paragraph 6 needs to be clear about when those accounts are "terminated or otherwise cease to be in force". Consumer representatives believe these accounts should be terminated where the service has been disconnected or when there is no longer an active account. If an account has been disconnected but the telco or utility provider is still collecting arrears, the account should still have been terminated for CCLI purposes.

Consumer representatives are also very concerned about debt buyers submitting CCLI for credit accounts that are no longer active with the original CP. Where debt buyers purchase debts from the original CP, we have seen multiple examples where the debt buyer discloses new CCLI to CRBs where the original account has been charged off but not reported as closed. Not only does this mean that debts can potentially live on indefinitely in CCLI, but it is at odds with the data retention provisions in the Privacy Act and is very confusing to consumers.

Under existing rules debt collectors have the right to list information on credit reports once they have been legally assigned the debt, and they can list CCLI up to two years after the account has been 'closed'. We have seen an example where a debt collector listed CCLI years after the account was arguably "terminated or otherwise ceased to be in force", and where there had also been a judgment obtained.

In the example below the individual obtained a credit card from a Bank in 2009, he later defaulted and the debt was then sold off to a debt buyer, which obtained a judgment in 2011. The individual never made any payments to the debt buyer and the judgment listing fell off his credit reports after 5 years. However, in his reports from two CRBs, CCLI has been listed by the debt buyer in 2021. The third CRB report does not have CCLI from the debt buyer. This consumer (and his community lawyer) were very confused about why CCLI would be listed so many years after the judgment was obtained, and why the listsings were inconsistent across the CRBs. While the name of the debt buyer is disclosed under "credit provider", there is no credit limit listed, and no account close date.



Consumer representatives believe this example demonstrates four systemic issues:

a. Retention period for CCLI

The retention period for CCLI is clearly set out in the Act. The purpose of retention periods is to strike a balance between providing accurate information for the purposes of assessing credit worthiness and promoting efficiency in the credit market, and the public interest in ensuring creditors exercise their rights in a timely manner while records and memories are fresh. This then allows people to move on with their lives rather than be pursued indefinitely by potential claims arising from past contracts and events. The CR Code provisions are merely intended to provide some clarity about the application of the retention periods in practice. Currently, there is little clarity as outlined above.

In this example it can be argued persuasively that the account was closed when it was sold to the original debt buyer, and that the retention period for CCLI ended two years after that date. However it would be much clearer if the relevant clauses of the CR Code:

i. More explicitly stated that the sale of a debt was a termination event (along with the other possibilities outlined above); and

ii. Clearly stated that the termination event is the earlier of the listed possibilities. The current drafting of 6.2d, with the term "earlier" used in the sub-clause ii, but not before sub-clause I, is confusing.

b. Listing of CCLI after obtaining a judgment – doctrine of merger

In the example above there was also a judgment. It is a clear principle of law that when a claim is established in court and a judgment is obtained, the original cause of action on which the claim is founded is merged in the judgment and ceases to exist in its own right. As such, there is no doubt that once a judgment has been obtained, the original contract has been terminated. Further, to list the CCLI, or indeed any other credit information about a debt which is the subject

of a judgment, is both misleading and a double listing about the same debt. The CR Code should make a clear statement, consistent with the law, that:

i. an account is terminated or otherwise ceases to be in force once judgment has been obtained; and

ii. that when a judgment is listed on a credit report, all other credit information pertaining to the same debt (CCLI, defaults, RHI etc) should be removed consistent with the doctrine of merger. At the very least, there can be no fresh listing of any other information, and any existing information should be removed at the end of the relevant retention period.

c. **Judgments as court proceedings information vs publicly available information**

In this example, the judgment obtained related to a credit contract applied for by the debtor and is therefore court proceedings information. As such it is not "publicly available information" that can be included in a credit report (6N of the Act, see also s6 Interpretation). The retention period for court proceedings information is 5 years from which the relevant judgment is made or given (s20W). This information is therefore no longer permitted to be on the CR. To permit the CCLI to be listed is therefore contrary to both the doctrine of merger, the retention period for CCLI, and the retention period for judgments. The fact that the credit provider may still be able to maintain enforcement action based on the judgment is irrelevant. The CR Code provisions should spell this out.

d. Limited CCLI – confusing effect of cl 6.3b as executed in the example

Provision 6.3 of the CR Code permits credit providers to take two different approaches to listing CCLI, either:

i. Listing all of the CCLI attributes that are reasonably available at the time; or

ii. Listing only the credit provider's name and the day the consumer credit was entered into, the latter being to signal the relationship with the credit provider (presumably to allow other credit providers the option to seek further information directly from the applicant.)

Leaving aside that we do not consider the debt collector in this case is permitted to list CCLI for all the reasons above, the execution of this provision is confusing and potentially misleading. The inclusion of the credit limit as 0, and the term as Xs is confusing. This is an implementation issue, but it would be preferable if credit providers who opt to take advantage of option ii were displayed without the other fields.

As noted above in answer to question 7, Cl 20.6 of the CR Code should also be amended to allow a consumer to request the removal of CCLI if the debt is statute barred and for some reason the original CP never disclosed to the CRB when the debt was charged off.

Finally, the CR Code Review Consultation Paper says there is uncertainty about the treatment of historic CCLI. The definition of CCLI in the Act and the Code provisions are clear – it talks about the maximum amount of credit available under the contract. That is a single amount that is current at the point where it is updated. There is no inclusion of the capacity to include previous credit limits, and certainly not to list the dates during which they applied. The Act is

quite strict about what information can be included and the Code cannot add to the definitive list.

Similarly, the Act and Code also say the "credit provider" or "provider", both of which are singular. While we appreciate that there could be some value in listing past credit providers under the same contract so that consumers can recognise the debt, we submit that this would require an amendment to the Act. We would consider supporting such an amendment at the appropriate time if it was clear these were different credit providers for the same debt, and it did not undermine or effect any applicable retention period.

Case study – Gina's story - C217192

Gina stopped paying a $20,000 personal loan with a bank back almost 7 years ago when she lost her job, and then had to relocate to another country to care for a dying relative. Since returning to Australia and starting a family, Gina worked in aged care to pay the rent and put food on the table. Gina rang us because she had unexpectedly received a default notice from a debt collector seeking payment of twice the original debt due to accumulating interest. She had no prospect of paying this on her income. She also suddenly had a "current account listing" for a debt collection account in that amount on her credit report.

A Financial Rights lawyer offered to assist Gina work out if the debt was owing and uncovered that the debt was in fact statute barred within the meaning of the Limitation Act NSW and was statute-barred at the time of the CCLI listing. The debt collector eventually agreed to drop their pursuit of the debt on a no admissions basis, and remove the account listing from Gina's report.

Recommendations

13. **The provisions under Paragraph 6 should set out in plain language the most common points at which consumer credit is terminated or otherwise ceases to be in force. This includes:**
    a) **Paragraph 6 should explicitly state that the sale of a debt is a termination event and clearly state that a termination event is the earlier of the listed possibilities. The current drafting of 6.2d. with the term "earlier" used in the sub-clause ii but not before sub-clause i is potentially confusing.**

b) **Paragraph 6 should state that an account is terminated or otherwise ceases to be in force once judgment has been obtained and when a judgment is listed on a credit report, all other credit information pertaining to the same debt (CCLI, defaults, RHI etc) should be removed consistent with the doctrine of merger. At the very least, there can be no fresh listing of any other information and any existing information should be removed at the end of the relevant retention period.**

14. **For the purposes of CCLI relating to telecommunications or utilities, paragraph 6 needs to be clear about when those accounts are "terminated or otherwise cease to be in force".**
15. **The CR Code should include a provision that allows a consumer to request the removal of CCLI if the debt is statute barred.**
16. **The CR Code must require CRBs to list the current credit provider and the current credit limit only and destroy information about previous credit limits and previous CCLI no longer listed on the report.**

Repayment history information

16. Are the RHI provisions appropriate? Should RHI provisions contained in paragraph 8 be amended in any way? If yes, how?

There are two issues that should be addressed in the CR Code relating to RHI. Provisions should be included for the correction or backdating of RHI, and provisions should be included requiring timely disclosure to individuals when negative RHI is disclosed to CRBs.

Correcting or backdating Repayment History Information

Provisions relating to the correction or backdating of RHI could be included in paragraph 8 but might be more appropriately included in paragraph 20 along with other corrections information.

Section 20 of the CR Code contains detailed information relating to the correction of default listings, but there are no specific rules relating to the correction or backdating of RHI. For example, Section 20.5 explains that default information can be corrected if it relates to an overdue payment which occurred because of the "unavoidable consequences of circumstances beyond the individual's control". This section should also apply to the correction of negative RHI if it relates to missed payments that occurred because of circumstances beyond the individual's control, as noted above in answer to question 7. Such correction may in some circumstances consist of replacing negative RHI with Financial Hardship Information.

Timely disclosure of RHI to consumers

The CR Code should also require credit providers who are reporting missed payments (or negative RHI) about their customers, to notify those customers on their regular account statements or by SMS, about the information reported to the CRB and its meaning. We submit that there are advantages to CPs, consumers and CRBs:

For CPs:

- Consumers will have greater confidence that the credit provider is being open and transparent if they are notified in a timely fashion about adverse information being reported rather than finding out about it later when they are either refused other credit, or charged at a higher rate of interest than otherwise would be the case; and
- It will encourage consumers who can pay on time to do so. Consumers are extremely protective of their credit report/score and will not want to pay higher interest on credit in the future, or risk credit refusals. If they have the ability to pay on time, they will do so to avoid negative information being shared with other credit providers more readily than in response to late fees.
- It will take the heat out of complaints by alerting consumers to problems before they enter into contracts, such as for the purchase of real estate, which may cause them to incur financial loss as a result of being rejected for credit.

For consumers:

- They will receive timely notification of the consequences of their actions so that they can change their behaviour accordingly if it is within their power; and
- They will be able to dispute any adverse listing they disagree with in a timely fashion while memories are fresh and evidence can be easily located – it would be quite a forensic exercise to check the accuracy of repayment information up to 2 years down the track.
- They will be less likely to incur financial loss as a result of entering contracts without being aware of negative information on their credit report.

For CRBs:

- The information they hold will be much more likely to be accurate if consumers are informed and given an opportunity to raise errors and other complaints in a timely manner.

Case study – Sean's story - C225055

5 years ago, Sean and his brother Paul entered into a joint mortgage with a Bank for a property where Paul lives. Sean's name was on the mortgage to help Paul, and is only listed on the title as a 1% owner and jointly liable for the mortgage.

In 2021 Sean obtained a copy of his credit report and is shows in his RHI that there have been no payments on the joint mortgage for 11 months and a default notice had been issued. Paul was supposed to be making the mortgage repayments but during COVID had not done so. Sean has no dispute with Paul, he wants to help him. Sean wants to know if he can rectify his RHI if he addresses the mortgage arrears as he wants to purchase his own home in 1-2 years and that will be impossible with so much negative information on his report.

Sean says the Bank did not contact him regarding the mortgage. He did not receive the default notice and his recollection was he provided his address as a different address to Paul's when the loan was originally taken. Sean feels if the Bank had let him know earlier, he could have stepped in much sooner to rectify the problem before his credit report was impacted.

Case study – Jill's story - C224849

In the spring of 2020, Jill called her bank to close her credit card account. She transferred a lump sum to pay the entire amount owing and believed the account had been closed. Unknown to her, a few direct debits linked to apps continued to be processed against her credit card account. She did not know this would happen. She thought that because she had closed the account, any updates she had missed would bounce and they would seek updated payment information.

In Autumn of 2021, she received notification from the bank that there was a few hundred dollars outstanding on the account. She was surprised and annoyed. It turns out that the bank had been sending her e-mails saying a new statement was available that would have shown her the amounts accumulating, but these e-mails do not have the statement attached, or any identifying details to indicate which account it is referring to, or even what type of account. At the time she had more than 5 accounts with the same bank, and never thought to go looking for a statement attached to an account she believed was closed. She complained and they eventually agreed to refund the fees and charges and she paid the amounts she had actually incurred.

At no time did anyone mention her credit report, or that negative RHI was being reported throughout this period. At the time she was completely up to date with her investment property loan with the same bank and had deposit accounts with tens of thousands of dollars available. She would have paid the amounts immediately if she had known. The bank did not notify her of the outstanding amount, apart from sending the bland, unidentifiable notices about the availability of statements.

In late 2020 she had spoken to 3 mortgage brokers who had all said she would have no trouble securing a home loan, but that she would need to sell her investment property first. She was renting at the time and wanted to buy a house to live in. She sold her investment property in December 2020. She has been trying to get a home loan approved ever since.

Negative Repayment History Information had been reported to the credit reporting bureaux in the period between when she thought she had closed the account and when

she eventually paid the debt 6 months later. The amount outstanding was less than $300. She discovered this when her bank knocked her back for a home loan, citing problems with her credit report. She has since spoken to mortgage brokers and two other mainstream banks and has now been advised to look at the non-conforming loan sector, where she will be required to pay a significantly higher interest rate. She has offered to provide information about the context in which situation arose, and provide evidence about the small amount involved, but they are not moved.

Jill says: "I've missed out on being able to purchase property in a rising market. I've spent countless hours on the phone/email to [the bank], AFCA, Debt Helpline, Credit Repair Companies, Financial Counsellor, FRLC, mortgage brokers etc. It has been one of the most stressful things I've had to deal with, I haven't been able to sleep properly, waking up thinking about it etc. This is partly because I had to work so dam hard being self-employed to get to a position where I could get a loan in the first place, to have this happen has been really difficult."

Jill is currently disputing the RHI on her credit report in AFCA.

This new notification requirement could be included in Paragraph 8.2:

> *8.2 Where a CP discloses repayment history information about consumer credit provided to an individual, the CP must take reasonable steps to ensure that:*
> …
>
> *(d) where there is an amount overdue in relation to the consumer credit, the individual to whom the repayment history information relates to is given notice of the disclosure within 30 days of the disclosure being made.*

Recommendations

17. **Provisions should be included for the correction or backdating of RHI.**
18. **Provisions should be included requiring timely disclosure to individuals when negative RHI is disclosed to CRBs.**

Default information and payment information

17. Are the default information and payment information provisions appropriate? Should the provisions contained in paragraphs 9 and 10 be updated in any way? If yes, how?

Consumer representatives strongly support establishing a positive obligation on CPs to request the removal of default information that has become statute barred. We have seen examples where defaults are listed just prior to the statute of limitations taking effect and the defaults are then not removed once that date is reached. The default continues to stay on the report, bringing down the individual's credit score and possibly preventing them from accessing credit or telco/utilities services. Many consumers would have no idea that the debt is statute barred even if they get a copy of their credit report and see the default. The vast majority of consumers want to pay their debts and upon seeing a default they might proactively call the listed CP and offer to pay, even if the overdue amount was a result of something beyond their control at the time, such as economic abuse. Statute barred debts should be removed from the credit file as soon as the statute of limitations has expired for recovery of the overdue amount.

Consumer representatives also support requiring a stand-alone section 21D(3)(d) notice. CPs should not be able to bundle this notice stating their intention to list default information with other correspondence to the customer. Default notices need to be clear and distinct from other types of written correspondence or the risk is very high that consumers will not read them in time to resolve, or dispute, the overdue payment.

Finally consumer representatives strongly support resolving the uncertainty in the CR Code about how to report payment information in cases where a default is resolved through the establishment of a 'new arrangement' with the individual and the new arrangement does not involve full payment of the original overdue amount. Consumers and their advocates should have the flexibility to resolve disputes with CPs regarding overdue amounts by making any number of overdue payment arrangements to resolve a default. All types of 'new arrangements' should be able to be reflected on the credit report as payment information if the CP and the consumer agree the default has been resolved.

Consumer representatives strongly support simplifying arrangements for the removal of default information in cases of economic abuse, and we discuss this in more detail later in the submission.

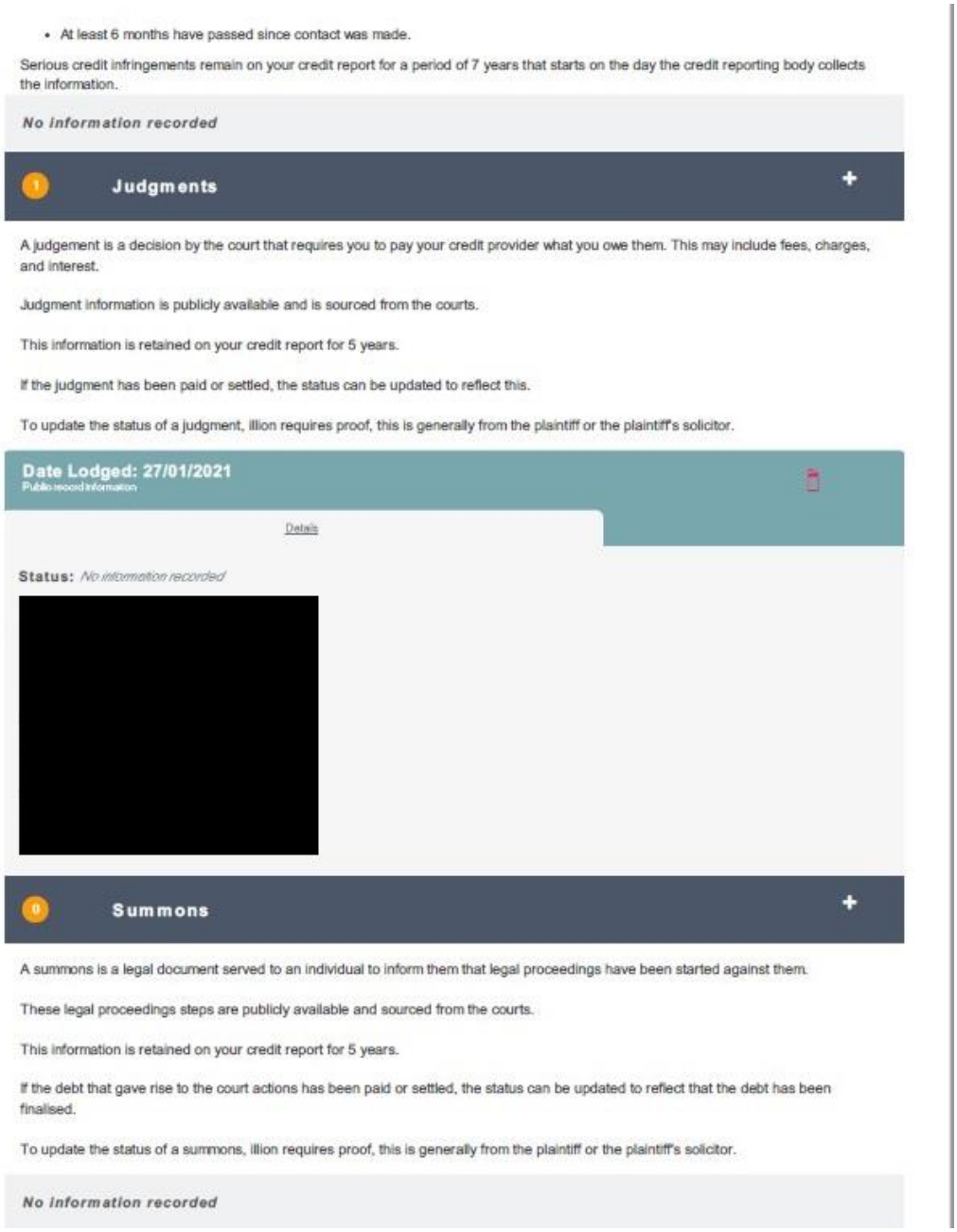
Recommendations

19. **The CR Code should create a positive obligation on the listed CP to request the removal of default information that has become statute barred.**
20. **Paragraph 9.3 of the CR Code should be amended to require CPs to deliver the section 21D(3)(d) notice separately from other types of correspondence with the customer. It must be clear and distinct.**
21. **Paragraph 10 of the CR Code should be amended to resolve the uncertainty about how to report 'new arrangement information'.**

Publicly available information

18. Are the provisions regulating use of publicly available information appropriate? Should they be amended in any way? If yes, how? Is the meaning of publicly available information adequately clear?

Some CRBs still have a section on consumer credit reports devoted to originating processes even though this type of information is excluded in paragraph 11 of the CR Code. The examples we have seen (see below) does not actually have any originating process information recorded, but instead gives the consumer the misleading idea that if no summons or writs are recorded on their report, there must not be any in existence. CRBs should not have a section on credit reports relating to originating processes and the CR Code should make that clear.



- At least 6 months have passed since contact was made.

Serious credit infringements remain on your credit report for a period of 7 years that starts on the day the credit reporting body collects the information.

No information recorded

1 Judgments +

A judgement is a decision by the court that requires you to pay your credit provider what you owe them. This may include fees, charges, and interest.

Judgment information is publicly available and is sourced from the courts.

This information is retained on your credit report for 5 years.

If the judgment has been paid or settled, the status can be updated to reflect this.

To update the status of a judgment, illion requires proof, this is generally from the plaintiff or the plaintiff's solicitor.

Date Lodged: 27/01/2021
Public record information

Details

Status: *No information recorded*

[redacted]

0 Summons +

A summons is a legal document served to an individual to inform them that legal proceedings have been started against them.

These legal proceedings steps are publicly available and sourced from the courts.

This information is retained on your credit report for 5 years.

If the debt that gave rise to the court actions has been paid or settled, the status can be updated to reflect that the debt has been finalised.

To update the status of a summons, illion requires proof, this is generally from the plaintiff or the plaintiff's solicitor.

No information recorded

A related issue which leads to consumer confusion is that CRBs are not required to include all (or any) publicly available information on consumer credit reports, so there is inconsistency between the CRBs as to which information is recorded. Consumers often call us for advice about why a judgment is listed on one of their credit reports but not on another, causing their CRB-generated credit scores to vary significantly. Consumers may also rely on the fact that a judgment is not listed on one credit report to mean there is no judgment against them at all.

The CR Code could require CRBs to insert a notice on consumer credit reports which explains that not all publicly available information is necessarily recorded, and consumers should not rely on the absence of publicly available information on a credit file to mean that type of information does not exist. The only failsafe way for a consumer to ensure there is no judgment against them is to contact the relevant court.

The listing of judgments can also be a source of complaint and controversy. The CR Code provisions were currently drafted to address this point but a lack of clarity remains.

Court proceedings information

The wording of CR Code provision 11.2c. is confusing. It says that any judgment or proceedings that is otherwise unrelated to credit is not publicly available information. However any judgment that relates to credit the consumer has applied for, is not publicly available information by virtue of the definition of publicly available information in s6N(k)(ii), read in conjunction with the definition of court proceedings information in s6. Any judgment recorded on consumer credit reports which relate to credit that a consumer has applied for is therefore governed by the rules and retention period applicable to court proceedings information and not publicly available information.

Other judgments

In relation to other judgments, it is their relevance to creditworthiness that is key. If the section is to add any clarification to the Act it would be better to unpack the concept of creditworthiness, beyond the confusing cross reference to "credit". At the level of principle, it is important that people are not deterred from raising a defence in court by the fact that if a judgment goes against them, it will impact on their ability to obtain credit in the future, regardless of how promptly they pay it. This is the objective of the creditworthiness requirement – to ensure that this does not happen.

For example, a person who disputes the quality or extent of building work could end up with a judgment for an amount owing, albeit substantially less than claimed, even if they were successful in maintaining the bulk of their claim. Similarly, family law proceedings could result in a judgment for payment of a specified amount simply as a result of a disputed property settlement application. These examples are not exhaustive.

Case study –Esther's story –WEstjustice Case Study

Esther fled the family home due to family violence. Subsequently there was an agreement between her and her ex-partner that he would continue to pay the mortgage and live in the house. Without the client's knowledge, the ex-partner stopped making the repayments and the property was repossessed by the bank. The client was unaware of the repossession or judgment order.

WEstjustice contacted the bank and explained their client's circumstances. The bank consented to having the judgment set aside.

However, the bank explained that they could not remove the judgment from the client's credit report. WEsjustice assumed this was because it was information that was obtained from the Court records, and not reported by the bank. It is unclear who is responsible for removing this record, and WEsjustice's lawyer didn't feel comfortable sharing the client's family violence information with a general contact at the credit reporting agency.

Recommendations

22. **Paragraph 11.2 of the CR Code should make it clear that CRB should not have a section on consumer credit reports that reference originating processes.**
23. **The CR Code should also require CRB to include a notice on credit reports that not all publicly available information is necessarily recorded.**
24. **Clause 11.2c should be amended to provide more clarity around the types judgment which do not go to creditworthiness.**

Serious credit infringements

19. Are the provisions on serious credit infringements appropriate? Should they be amended in any way? If yes, how?

Consumer representatives have no concerns with paragraph 12 of the CR Code.

Protections and rights for individuals

Notice to individuals

20. Are the provisions regulating how individuals are notified that their information will be provided to a CRB appropriate? Should they be amended in any way? If yes, how?

Consumers get very confused and vexed about credit enquiries, especially if there are a lot of them from debt collectors or a lot of them which are the result of economic abuse. Most consumers do not understand that most of the time they will not get any notice about access to their credit reports by CPs, and that their consent is not necessary. The only power consumers have is not to provide the information and not proceed with the transaction. When it comes to enquiries a consumer may realise too late, or not at all, that the interaction with a possible service provider would be listed. We are also aware of consumers who complain they did not receive any notice. In the energy sector there are reports from EWON of people having enquiries listed as a result of a simple and seemingly irrelevant exchange, such as updating their address details with their current energy provider.

There needs to be a lot more information from industry about how enquiry information is viewed and scored in a lending decision process. If consumers knew that enquiries do not cause a lot of harm to credit scores then they wouldn't be so vexed by them, and the consent versus notice issue would not lead to as many disputes.

There should also be a review of the extent to which consumers are penalised for shopping around for the best deal against balancing the usefulness of credit enquiries for assessing creditworthiness. It is a perverse outcome if credit enquiries lead to a dampening of desirable consumer behaviour aimed at getting the best price and product, thereby reducing competition.

Protections for victims of fraud

21. Are the protections for victims of fraud appropriate? Should the provisions contained in paragraph 17 be updated in any way? If yes, how?

We agree with the concerns raised in the Consultation Paper that the 21-day ban period in Australia is too short for cases of fraud to be resolved by the individual and places a burden on the individual to apply for extensions. While the length of time for the ban period is set by the Act, the mechanism for requesting an extension could be refined by the CR Code. The CR Code could require CRBs to give an individual the option to automatically extend the ban period when they first request the CRB not to use or disclose their credit reporting information.

Part IIIA of the Privacy Act at 20K(4) says:

(4) If:

(a) there is a ban period for credit reporting information about an individual that is held by a credit reporting body; and

(b) before the ban period ends, the individual requests the body to extend that period; and

(c) *the body believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud (including identity fraud);*

the body must:

(d) *extend the ban period by such period as the body considers is reasonable in the circumstances...*

The law requires an individual to request an extension *before the ban period ends*, meaning that this request could be made at the very beginning of the ban period - perhaps as a tick box in the initial request. If the CRB does not (in the first 21 days) form the view that the individual has been a victim of fraud, then the CRB can give notice to the individual that the extension will not automatically take place. This would take the pressure off the individual to ask for the extension only a few weeks after the first request.

There also needs to be a solution where multiple credit enquiries can be removed in one go when economic abuse or fraud is involved. It can be extremely difficult, and even re-traumatising for a victim of economic abuse or fraud, to try to remove many credit enquiries relating to different credit providers from their report. This results in considerable harm, including time and resources, mental health deficits, and financial loss (where for example a consumer cannot complete a contract for purchase of real estate). The CR Code could require CRBs to certify that numerous enquiries or other credit reporting information are a result of abuse or fraud if they were in the same time period and assist the individual to remove them en masse. The CR Code should require CRBs to notify all affected CPs of an allegation of fraud, ask lenders to provide the documentation on which they relied on to establish the identity of the person, track responses and then CRBs can report back to the consumer.

This amendment could be made in paragraph 17: *Where a CRB believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud the CRB must notify the listed CP for all of the credit reporting information that it believes is a result of the fraud and request that the CP consent to its destruction.*

Case study – Benjamin's story - C222659

Benjamin was a victim of identity fraud which he had reported to the police. When Benjamin called Financial Rights he had already dealt with several other loans and enquiries which were a result of the identity theft that were removed and resolved. He was frustrated by two matters he was struggling to resolve himself. The first related to someone who bought goods using his details and paid for it with a Buy Now Pay Later account. He was being chased by a debt collector. Secondly, he also had an enquiry on his credit report related to a telco service.

He was frustrated by the BNPL who had now taken over 30 days to investigate the matter. The BNPL provider requested more time to look into it, but didn't say how long they needed. Benjamin was concerned that he will need to spend money on a lawyer to resolve the dispute.

Benjamin requested a CRB remove the enquiry because it was a result of the fraud, but the CRB says they won't. They say he needs to speak to the telco, which he did at the local branch of the telco provider and all they did was note the fraud on their file, they did not give him anything in writing. The CRB still has the enquiry listed and will not remove it.

Case study – Liam's story - C222538

In early 2021 someone fraudulently took out a bank credit card in Liam's name. Liam found out about it when he saw an enquiry for a $6,000 card on his credit report. Liam went into a branch of the bank and gave them a statutory declaration about the fraud and proof of his ID. The bank's fraud team investigated and wrote to Liam confirming they would take the enquiry off his credit report and cleared him of liability for the $6,000.

Three months later Liam applied for home loan and was told there was a new default on his credit report from the same bank from the same time period for $60,000. The bank where Liam was trying to get a home loan told him that they cannot proceed unless the default is cleared up. Liam showed them the letter confirming the fraud from a few months before but he was told they need a new letter confirming he does not owe the $60,000.

Liam went back to the branch of the first bank and spoke to a manager and a fraud team member who told him they would escalate the issue. Liam was told the default would be removed as soon as possible and that they would provide him a letter confirming he did not owe the debt the next day. Several days later he still had no letter and the default was not removed. Then he received an email from the bank's complaints department saying his case was closed. He called the bank again and asked to speak to the fraud team and he was told there was nothing he could do except start the process again including providing a new statutory declaration.

Liam is trying to purchase a home. He has a short time frame to resolve the matter, before he will lose the property and his deposit.

22. Should there be further obligations on CRBs to alert individuals of enquiries received on a credit report during a ban period?

Consumer representatives support the CR Code requiring a free alert to individuals during a ban period. Individuals should be notified about any attempts made to access the individual's credit reporting information.

Recommendations

25. **The CR Code should require CRBs to give an individual the option to automatically extend the ban period when they first request the CRB not to use or disclose their credit reporting information.**
26. **The CR Code should require CRBs to certify that certain credit reporting information is result of abuse or fraud if it was reported in the same time period and assist the individual to remove it en masse.**
27. **The CR Code should require free alerting to the individual during a ban period.**

Use of credit reporting information for direct marketing

23. Are the existing direct marketing provisions appropriate? Should they be amended in any way? If yes, how?

Consumer representatives have historically opposed credit pre-screening on the basis that it is just as likely to be used to target consumers in financial stress with higher cost products, or to give lenders comfort to dispense with more personal and tailored responsible lending processes, as it is to promote responsible lending.

Consumer representatives support the current restrictions in paragraph 18, especially 18.2 which stops CPs from nominating eligibility requirements to be used by a CRB to assess whether or not an individual is eligible to receive direct marketing indicating that the individual is in financial difficulty. This provision should prevent financial hardship information (FHI) from being used in pre-screening activities but it would also be preferable if the prohibition against the use of FHI in pre-screening tools was explicitly incorporated into the CR Code.

Recommendations

28. **Paragraph 18 should explicitly forbid CPs from nominating and CRBs from using FHI in pre-screening activities.**

Access rights

24. Are the access provisions appropriate? Should the provisions in paragraph 19 be updated in any way? If yes, how?

Consumer representatives still see ongoing problems with consumers trying to access their free credit reports. For vulnerable consumers that do not have access to the internet, or don't have an email account, it is still very difficult to get a free copy of their credit report. The CR Code should require that CRBs make it simple and easy for a vulnerable consumer to get a free copy of their credit report over the phone or by filling out a printable form and sending it by post.

Consumer representatives also strongly support introducing a mechanism in the CR Code through which credit reports could be accessible from all CRBs following a request to any one CRB. Currently, credit providers report information separately to the three credit reporting bodies (Equifax, Illion, Experian). Consumer advocates' experience has been that we need to go through three separate processes to gain all credit records as different information has been reported on each of them. This is both time consuming and sometimes administratively difficult. Furthermore, as we have a number of vulnerable clients, the amount of time it takes to obtain all three reports can be detrimental to the client's case and personal wellbeing.

Case study – Miranda's story - C186139

Miranda is an Aboriginal mother of 2, living out in regional NSW. Miranda has an intellectual disability and also psychological disability stemming from a violent and abusive relationship. Miranda had several debts that she was struggling to repay which were the result of economic abuse by her ex-partner. One large debt was for a car loan even though Miranda could not drive, and she never had possession of the car. The car was involved in an at-fault, total loss event. Her partner made payments up until he was jailed after he viciously attacked her. Miranda made payments until she could no longer afford it as she raised her two children. The other debt was a telephone debt in her name, which he had her set up and promised to pay.

When Miranda reached out for help she was not interested in disputing the debts, or reviewing what happened, even though her liability was questionable and she may have been entitled to some money back – her ex was in jail and she just wanted to clear her credit report to help her chances with securing affordable finance and not have debt collectors ring her and focus on her kids and being safe. She didn't have any details as to who had the telephone debt.

Financial Rights assisted getting a copy of her credit report which was challenging as she did not have a computer or phone that could set up the account or the digital skills to create an account with the credit reporting bureau. It required uploading several forms of identification to verify her identity. Once we helped her get her credit report

we were able to identify the second default. Financial Rights' helped Miranda by contacting the debt collector, supplying evidence of the domestic violence and of the assault and her partner's jailing. Eventually each debt was resolved and her credit score improved from "below average" to "average". There is no way Miranda could have achieved this outcome without casework assistance.

Consumers do not understand that their credit reports from each CRB might differ, making it important to get a copy of each when going through a dispute or corrections process. It is also important for victims of fraud or financial abuse to keep an eye on all three CRB reports. This process would be much simpler and more reliable if in the same way that an individual may request a ban period with all CRBs through a single CRB, an individual could get all three of their credit reports after seeking access from one. Having one process to obtain their credit reports is also a trauma informed approach for consumers experiencing financial abuse as they are often living in crisis, which makes even the most simple administrative tasks impossible.

Consumer representatives have also found there is an issue of consumer organisations' authorities to act on behalf of clients not being accepted by CRBs. Financial counsellors and community lawyers have reported difficulties accessing credit reports for their clients even when they have an authority in place. The CR Code should require CRBs to recognise standard authorities which are regularly used by financial counsellors and consumer advocates.

The final access-related issue is about landlords requesting credit reports in rental applications. There is currently a common problem where real estate agents or landlords request that consumers supply a copy of their credit report as a part of any rental application. This is a common work-around of the rules preventing real estate agents or landlords from accessing the credit reporting system. The CR Code should impose stronger rules preventing real estate agents/landlords asking consumers to supply a credit report in order to apply for rental accommodation. Alternatively industry could work towards a solution with consumer representatives where consumers requesting access for the purposes of a rental application could get a 'simple' copy of their credit report which does not include RHI or FHI.

Recommendations

29. **The CR Code should require that CRBs make it simple and easy for a vulnerable consumer to get a free copy of their credit report over the phone or by filling out a printable form and sending it by post.**
30. **Credit reports should be accessible from all CRBs following a request to any one CRB.**
31. **The CR Code should require CRBs to recognise standard authorities which are regularly used by financial counsellors and consumer advocates.**

32. **The CR Code should impose stronger rules preventing real estate agents/landlords asking consumers to supply a credit report in order to apply for rental accommodation.**

    f) **Alternatively industry could work towards a solution with consumer representatives where consumers requesting access for the purposes of a rental application could get a 'simple' copy of their credit report which does not include RHI or FHI.**

Correction of information

25. Are the correction provisions appropriate? Should the provisions in paragraph 20 be updated in any way? If yes, how?

Correction of information is one of the most important issues for consumers and their advocates. The commitments in the CR Code regarding the correction of information are inadequate and need to be extensively amended. These commitments are not best practice when it comes to dispute resolution in financial services. The provisions in paragraph 20 are complex and confusing, which undermines the ability of individuals to advocate for themselves and pursue correction of credit-related personal information. The credit repair industry is able to exploit this unnecessary complexity, selling overpriced correction services that consumers should be able to do themselves. The CR Code should commit CRBs to best practice in dispute resolution, not simply to meeting the minimum requirements set by Part IIIA of the Act.

The correction of information mechanism is inefficient and ineffective in practice. The provisions in paragraph 20 of the CR Code are impossible for consumers to read and understand. Provisions in paragraph 20 should be principle-based and in plain English:

- Individuals have a right to request correction of any credit reporting information they believe is not accurate, up-to-date, complete or relevant to their creditworthiness;
- If a CRB or CP receives a correction request from an individual it must determine whether the credit-related personal information needs to be corrected as soon as practicable;
- CRBs and CPs must investigate all correction requests to determine whether the credit reporting information is accurate, up-to-date and complete and ask the individual for any additional information it needs to resolve the request within 10 days;
- Unless extraordinary circumstances exist a CRB or CP will resolve all correction requests within 30 days;
- If a CRB or CP cannot resolve a correction request within 30 days or decides not to correct the information it must advise the individual that they may complain to a recognised external dispute resolution scheme (this is not currently included in the Code).

A related issue is that the correction timeframes are weak. CPs and CRBs have 30 days under the Privacy Act to correct the information listed, but in many cases this timeframe is not commercially reasonable (for example, where the individual is seeking approval for a new line of credit in order to purchase a house or vehicle). The CR Code should set much tighter timeframes for simple correction requests, making it clear that the 30 day timeframe in the Act is for more complex correction requests only.

Consumer representatives strongly support there being a simple method for disputing credit report entries and requesting corrections when a number of entries need to be corrected across various credit accounts (such as occurs in situations of domestic violence or fraud). It can be extremely difficult, and even re-traumatising for a victim of economic abuse or fraud to try to remove many credit enquiries relating to different credit providers from their report. The CR Code should require CRBs to have a process by which they can certify that several records of credit reporting information are a result of abuse or fraud if they were in the same time period and remove them en masse.

Consumer representatives also strongly support a "no wrong door" approach to corrections. Both CRBs and CPs have correction obligations under Part IIIA of the Privacy Act. This often results in a CRB or CP referring an individual to another CRB or CP rather than completing the correction request itself. In cases of fraud or financial abuse an individual may have no knowledge of which CPs were involved in the fraudulent requests (or which were the original CPs if the account has now been sold to a debt collector). Even if CRBs are not in a position to know the details of the original credit contract, they know which CP reported the information, and they should be able to progress the correction request without the consumer needing to approach the CP separately. This is best practice, in particular for consumers who have experienced financial abuse, as it will avoid re-traumatising the consumer through forcing them to re-tell their experience of family and domestic violence to the CP. It also protects the CP's staff from receiving potentially distressing information unnecessarily.

Finally, as flagged at question 16 above, consumer representatives submit that 20.5 should be amended to include other circumstances beyond the individual's control. Currently the CR Code gives three examples of circumstances 'beyond the individual's control' when a default can be removed: natural disasters, bank errors or fraud. This provision should either be expanded to include situations of domestic and family violence, or it should be left completely open without any examples listed in the CR Code, so that it can be used for a much broader set of circumstances.

Recommendations

33. **Provisions in paragraph 20 should be completely re-written to be principled-based and in plain English.**

34. **The CR Code could set much tighter timeframes for simple corrections requests, making it clear that the 30 day timeframe in the Act is for more complex correction requests.**

35. **The corrections provisions in the CR Code should be adjusted to take a 'no wrong door' approach to corrections requests to CRBs and CPs.**

36. **Paragraph 20.5 should either be expanded to include situations of domestic and family violence, or it should be left completely open without any examples listed in the CR Code, so that it can be used for a much broader set of circumstances.**

Complaint handling

26. Are the provisions on complaint handling appropriate? Should the provisions in paragraph 21 be amended in any way? If yes, how?

An independent CR Code compliance committee or the OAIC should be tasked with collecting and analysing CRB complaints data, looking for trends and giving feedback to the industry on improvements they could make. In Australia ASIC collects complaints data from financial institutions, and all regulated entities need to comply with ASIC's new guide on complaints handling (RG 271). In the US, credit reporting laws require the CRBs to conduct a review of complaints sent to them where consumers allege there is incomplete or inaccurate information in their consumer reports and the consumer appears to have previously attempted to fix the problem with the company. The companies must then report their determinations and actions for these covered complaints to the regulator.

Currently in Australia there is very little incentive for CRBs to invest in and improve their complaints handling. Our experience is CRB complaints handling teams are understaffed and lack appropriate training and expertise. CRBs invest in credit provider-facing systems to ensure that their most profitable arms of the business run smoothly and reliably, but the same is not the case for consumer-facing services like complaints handling. Consumers should be able to make a complaint to a CRB and have it resolved within the required timeframes without needing the support of a lawyer or financial counsellor. Unfortunately, until there is public reporting on CRB complaints handling, it is unlikely there will be any improvements in this space.

We also agree with the Legal Aid Queensland submission that this section of the CR Code (like many others) is confusing and industry-focused. If paragraph 21 was consumer-focused it would clearly set out

- How consumers can make a complaint
- The minimum content requirements for CRB complaint responses
- The maximum timeframes for providing a complaint response
- Requirements for identifying and escalating systemic issues
- Requirements for responding to urgent amendment requests when an individual is seeking to purchase a property, and

- That all CRBs and CPs are required to belong to an approved external dispute resolution (EDR) scheme.
- That when a complaint it not upheld, the consumer must be told about the reasons for this and about their right to complain to the EDR scheme.

Paragraph 21 instead deals primarily with how the CPs and CRBs deal with each other, and contains nothing about what would be important to consumers.

Case study – Oliver's story - C198273

Oliver called Financial Rights about a default listing on his credit report. Oliver's credit card was stolen in mid-2021. He immediately notified the lender but they sent a replacement card to the wrong address. They tried twice more but both went to wrong addresses, as a result of their own internal error. During this period Oliver couldn't access his online portal with the lender. He couldn't see what purchases were on the card and he was not making payments.

Oliver called the lender several times about the missing card and at no point did they tell him the card was in arrears and needed payments, that his RHI was impacted or that a default notice would be issued. He doesn't recall receiving any default notices under the National Credit Code or privacy legislation.

Oliver later checked his credit report and found a default listing and negative RHI information. He raised a complaint about the default notice and RHI. He asked the lender to remove this information. They refused on the basis he should have been using BPAY or direct debit payments to pay his account if he was unable to access the portal. He received an apology about the delay in the re-issuing of the card. The lender would not provide copies of the alleged default notices sent.

Oliver was very anxious to get the default removed as he wanted to apply for a home loan and his credit score had dropped significantly. He proceeded with escalating the matter to an AFCA complaint and it was only then that the lender finally offered to remove the default.

Recommendations

37. Consumer representatives submit Paragraph 21 should be re-written to align with ASIC's RG 271, or alternatively be re-written as a consumer-focused provision.

38. An independent code compliance body or the OAIC should collect, analyse and publish CRB complaints data.

Dispute resolution processes for individuals

27. Are arrangements for dispute resolution appropriate? Should the arrangements be changed in any way? If yes, how?

We support the various EDR schemes that operate in the credit reporting space. We do not have any other comments about arrangements for dispute resolution.

Other options to protect individuals affected by domestic abuse

28. How could the CR Code be amended to enhance protections for individuals?

29. How could the CR Code be amended to better support people affected by domestic abuse?

[In developing this part of our response we consulted with the Economic Abuse Reference Group, a network of community organisations that engages with industry regarding responses to customers experiencing family violence.]

Family violence and financial abuse can have a serious impact on a person's financial independence, safety and well-being. There are numerous ways in which a victim/survivor may experience credit reporting impacts as a result of abuse. Loans and credit facilities can be opened fraudulently, without the victim's knowledge or consent using the person's details and devices, both during the relationship and after separation. The victim can be coerced into taking out loans and credit facilities, either jointly or in their own name, but largely or entirely for the abuser's benefit as a result of a spectrum of controlling and threatening conduct or actual violence. A loan may have been taken out with full knowledge and consent, but the victim is thrust into hardship as a result of being prevented from working, or having no control over his or her income, or experiencing physical or mental illness as a result of the abuse. In some cases the victim/survivor may have been forced to flee with little or no preparation, leaving behind a job, home and other assets or belongings. Sometimes many or all of these factors may be at play.

The difficulty of obtaining financial independence is often the most significant barrier for a victim survivor to leaving a violent relationship, and a lack of financial independence often results in a person returning to that relationship. Joint finances become a tool of control, particularly if the perpetrator can no longer harm their victim in the form of physical or psychological abuse. Even though it may not be in the abuser's best interests to stop payment or default on the debt, they may do so knowing that it will cause further pain for their victim.

Since the Code was developed in 2014, there have been significant developments in the understanding of family violence and financial abuse, and most financial institutions and utility or telco businesses have processes to identify and respond to customers who have incurred debt, and/or defaulted on payments, as a result.

The CR Code needs to consider any specific obligations that should be included to guide CRBs and CPs in dealing with economic abuse. There are a number of credit reporting issues that could be addressed to support victim survivors who are experiencing or escaping abusive relationships.

The CR Code should use the terminology 'financial abuse' or 'economic abuse' and define it to make it clear that any special credit reporting rules apply to victim survivors of family and domestic abuse, intimate partner abuse and elder abuse. A good definition of financial abuse is the following:

> Financial abuse is a pattern of control, exploitation or sabotage of money and finances affecting an individual's capacity to acquire, use and maintain financial resources and threatening their financial security and self-sufficiency.[10]

The CR Code could have an entirely new section for individuals experiencing or fleeing violence or abuse. New CR Code provisions could create special rules for CPs that provide the flexibility to not list or correct past credit reporting information for victim survivors. These new provisions should include a preamble or a note recognising the potential effect of credit reporting on an individual's ability to re-establish financial independence and that credit reporting information that is the product of economic abuse does not necessarily reflect an individual's creditworthiness.

Case study – Leisha's story - C213313

Leisha is a single mum of three kids. She was born overseas and English is her second language. She lives in public housing and her main income is Centrelink benefits with some income from casual cleaning jobs. Leisha was the victim of domestic violence from her former partner. The police took out a protection order on her behalf several times in the last 10 years.

Leisha had taken out a Bank credit card while she was living with her ex to pay for emergency expenses. The card was in her name only. However, her ex used most of the funds to pay for his own expenses. He never paid her back as promised and was violent when she asked him to pay her back. The credit card debt was then assigned to a debt collector. Leisha had absolutely no capacity to pay.

Financial Rights wrote to the debt collector about the credit card and requested a waiver on the basis of her financial circumstances and her experience with DV. The debt collector informed us it also had another account in her name from the same period which our client had no recollection of. After providing evidence of the DV and

[10] Breckenridge, J., Singh, S., Lyons, G., Suchting, M., (2021) Understanding Economic and Financial Abuse Across Cultural Contexts. Sydney: Gendered Violence Research Network, UNSW Sydney.

Leisha's inability to pay the debt collector agreed to waive the debts and remove any defaults from her credit report.

Case study – Sarabi's story - C218648

Sarabi is a victim of domestic violence and has 2 dependent children with autism. Her mortgagee has granted her a hardship arrangement and frozen her payments during the pandemic, so she has not made any payments for a year. There is about $300,000 equity in the property, but this is a joint mortgage with her abusive ex-husband. They have done a final separation document in court and Sarabi has an AVO against him.

When her ex moved out he stopped contributing to the mortgage. As a part of his continuing economic abuse he keeps calling the bank and reinstating the mortgage payments. Sarabi believes her ex wants her to lose the house. By removing the hardship arrangement, RHI is reported on her credit report again. He tells the bank that they are in the process of selling but Sarabi says that is not true. She wants to remain in the house with her children. Sarabi wants to refinance but the missed payments now on her credit report are making that impossible. She has called several lenders and they have all said she cannot secure a loan with her current credit score.

There is a court order that Sarabi's ex should be removed from the title and the mortgage but her credit report is now too poor. The poor handling of the situation has triggered her trauma anxiety from the domestic violence and left her scared that she and her children will end up homeless.

Flexibility in corrections

The most important issue for advocates supporting victim survivors is the need for greater flexibility for CPs not to list or to remove negative information from credit reports. In practice CPs regularly agree to waive a debt or not pursue payment against one account holder due to the debt being incurred in connection with domestic abuse. The ABA issued an updated industry guideline on Financial Abuse and Family and Domestic Violence in April 2021. Best practice for banks is to **not** enter negative credit information if a customer is affected by family and domestic violence. Under this guideline, banks should not reflect missed repayments or list defaults if the bank is aware that family and domestic violence has affected the consumer's ability to pay, or may be relevant to their liability to pay the debt. Of course, there will be many times when a victim survivor is not able to communicate about their situation to the credit provider because they are either experiencing or fleeing violence, or otherwise incapacitated. If those individuals

later reach out to a CP for assistance, the CP should be able to update and correct past RHI, or remove defaults that have already been listed.

The CR Code should clarify that in cases of financial abuse, CPs can supress or correct past credit reporting information where the circumstances of the negative information were beyond the individual's control and the CP believes it is necessary to protect the safety of an individual or where the credit reporting information would be inaccurate, irrelevant or misleading. This could be done by specifically listing financial abuse and family violence as reasons in the amendments to other sections, such as 20.5, or by having a separate section dedicated to this purpose or both.

Dealing with multiple records – bulk corrections

The CR Code should develop a mechanism which simplifies the corrections process when there are numerous debts and enquiries on the victim survivor's credit report which are a result of economic abuse. Needing to go through separate disputes to remove each one can be re-traumatising for a victim of economic abuse and an enormous drain on the resources of advice and advocacy organisations who could otherwise direct their attention to assisting more people.

The most appropriate solution would be one where credit information related to a number of different credit accounts, and credit enquiries, can be removed through one centrally coordinated process when economic abuse or fraud is involved. This should include CCLI, RHI, default information and SCIs where appropriate. Having to approach every credit provider individually and establish the case over and over again, meeting different information and evidence requirements is gruelling for experienced advocates and requires time, knowledge, confidence and persistence rarely available to members of the public, let along victims of abuse who may already be damaged by their experience and at serious risk of being re-traumatised. There should be a clear process whereby the relevant facts can be established once only and the baton passes to a CRB to liaise with creditors and purge inappropriate listings from the report. While some cases will continue to have nuance and different responses may be needed for different accounts, these should be dealt with by exception.

As discussed in the fraud section above, the CR Code could require CRBs (after sufficient evidence has been provided) to certify that numerous enquiries and listings are a result of abuse or fraud if they were in the same time period and remove them en masse.

Case study – Emma's story - C221006

Emma was in an abusive marriage for several years. After separating from her husband Emma had to take out an ADVO. He was later incarcerated for the abuse. During her relationship Emma's husband exerted coercive behaviour over her. He was unemployed and had a very bad credit history and he pressured her to take out loans to pay for his addiction.

When Emma reached out to Financial Rights for help she had no assets apart from a vehicle and she was renting in private accommodation. In late 2021 she became aware of a number of default listings on her credit report by different lenders and debt collectors. Emma wants these defaults removed so she can move on with her life.

Emma did not receive any benefit from these loans and was experiencing domestic violence at the time the loans were issued. Financial Rights has had to help her apply to each of the 6 creditors to show evidence of the domestic violence, resolve the debts and remove the default listings.

Case study – Sophia's story - C201939

Sophia is a young single parent of a new baby and her sole source of income when she contacted us was Centrelink. Sophia had just recently taken out an AVO and separated from her partner of 7 years due to prolonged domestic violence including financial abuse. Sophia and her baby had to leave her rental and move to regional NSW to live with her parents because of her ex-partner's continued threatening behaviour. Sophia advised Financial Rights that her ex-partner has always been abusive physically and financially, that he did not contribute to household expenses so she had to manage all the bills herself – often when she was only working part-time.

When Financial Rights first started working with Sophia she had seven unsecured debts totalling around $10,000. Financial Rights helped Sophia contact her creditors one by one to request the removal of default listings from her credit report. Financial Rights was continuously met with barriers to communicating or getting a response from some of the creditors but in the end we were successful at helping Sophia clear her credit report. Sophia's life is now turning around, she seems happy and is back working with her previous employer before she had to flee her home.

Security concerns

Victim survivors that have fled violence can be particularly reticent to request a copy of their credit report out of concern that the contact details they use to get a copy of their report will be shared with third parties, such as debt collectors or joint account holders who may be perpetrators of abuse. This can be a matter of life and death. Consumer representatives have been told anecdotally by CRBs that they do not share contact details which are entered solely

to obtain access to a credit report with third parties when an access seeker uses new contact information.

The CR Code should therefore impose explicit restrictions on sharing the contact information of consumers when they request a copy of their free credit report. CRB should also make a clear note of this restriction when an individual is requesting access to a credit file. We recognise that CRBs might alert debt collectors about updated contact information that is publicly available or comes from a new credit application. The restriction we are requesting here is simply about contact details used when requesting a copy of a credit report. Women who are experiencing or fleeing violence may be in hiding, using a new email address or using a temporary phone number. They should be able to get copies of their credit report without fear that those details will be shared.

Customer-based vs account-based reporting

CPs and AFCA accept that there are circumstances where one joint borrower should not have been a borrower, should not be liable for payment, and/or should be granted a variation without notice to the other borrower due to safety concerns. These approaches should be supported by the CR Code.

Consumer representatives have raised concerns in a recent submission to the OAIC that account-based reporting is inappropriate, and that individual based reporting is the optimal way to meet both privacy and safety objectives for at risk borrowers. Account-based reporting necessarily includes weighing up the privacy rights of one joint account holder against the safety and privacy rights of the other. Safety should trump privacy in these circumstances.

The assumption that account-based reporting is fundamental to the credit reporting system is not correct. While we recognise that converting the entire system to individual reporting would entail costs, individual reporting is possible in discrete cases. Our anecdotal experience is that credit providers can manually report different repayment histories for different joint account holders. In the context of victim survivors of economic abuse, this change can be critical.

The Code should allow the information of joint accounts to be split in discrete economic abuse situations where the CP and the individual agree it is the best option.

Best practice guideline

Finally, consumer representatives support the development of a best practice economic abuse guideline for CRBs and CPs developed by ARCA for individuals experiencing or fleeing violence. The ABA guideline on Financial Abuse and Family and Domestic Violence sets an excellent industry standard including recognition of a trauma informed approach (and is recognised by AFCA), but not all lenders are ABA members. CRBs also need guidance on best practice when a victim survivor reaches out with a security or correction request.

Case study – Saskia's story - C25708

In mid-2021 Saskia was refused credit for a small loan to cover her pet's surgery. She was told this was because of a problem with her credit report from a specific CRB. She requested a copy of her report. Even though Saskia supplied all the information requested and uploaded a copy of her current license, passport, Medicare Card and Pension Card she was refused access to her report. She was told she had not sufficiently identified herself in order to obtain access to her credit file.

Saskia called the CRB and offered to supply further documentation (such as a birth certificate or marriage certificate to her former husband) but she was told this would not assist. She was asked by the representative on the phone if her ex-husband could contact them to confirm her identity. Saskia told the representative that her ex-husband was abusive, they are divorced and she does not have any contact with him but the representative still suggested he could confirm her identity.

When Saskia reached out to Financial Rights for assistance she was still not able to get a copy of her report, still did not know why she had been refused credit and did not know if there was incorrect information on her report which needed correction. The situation was causing Saskia significant distress.

Case study – Financial Counselling story – From the Economic Abuse Reference Group

I requested a debt waiver and removal of a default listing for a family violence victim-survivor from a rent to buy company (consumer lease provider). In response to my request the creditor said they would not remove the default for the following reason:

The default to be marked as PAID

Note: Equifax has very specific guidelines for default removal, with "compassionate grounds" - in this case related to domestic violence not included.

Recommendations

39. The CR Code should have an entirely new paragraph for individuals experiencing or fleeing violence which creates special rules addressing the following issues:

g) **Giving CPs the flexibility to not list or to correct past credit reporting information for victim survivors;**

h) **A mechanism for correcting a large tranche of abuse-related credit records;**

i) **A mechanism for splitting joint accounts in discrete economic abuse situations when the CP and the individual agree it is the best option.**

j) **Recognition of the potential effect of credit reporting on an individual's ability to re-establish financial independence and that credit reporting information that is the product of economic abuse does not necessarily reflect an individual's creditworthiness.**

40. **The CR Code should impose explicit restrictions around sharing contact information of consumers when they request access to their free credit report.**

41. **ARCA should develop a best practice guideline for CRBs and non-bank CPs on preventing and responding to economic abuse in credit reporting.**

Permitted activities of CRBs and CPs

Information requests

30. Is the provision regulating information requests appropriate? Should it be amended in any way? If yes, how?

Consumers can and do find information requests or 'credit enquiries' confusing. It is not clear what effect information requests have on a person's credit rating or how another lender might view their overall creditworthiness. For a start, the industry could issue some information and guidance to consumers about how different information requests are viewed and how their presence on a credit report influences a credit rating or a CP's decision to lend. Consumers need to know if the type of information request is what matters (telco vs payday lender vs major bank) or the amount of information requests. If consumers had more information about the importance of information requests (or lack thereof) they would be less likely to turn to a credit repair agency or need to run a dispute through AFCA, with all of the time and costs this entails.

As discussed above, information requests which result from a period of economic abuse or fraud are particularly distressing for victim survivors. Unfortunately, under the current corrections rules it is very difficult for a victim survivor to have a large batch of enquiries removed from their credit report.

Consumers also want to be able to shop around for major finance (like a home loan) without each CP they approach for a quote making an information request on their credit report. It would be better if the CR Code created a mechanism for CPs to do a preliminary check of an

applicant's credit report without that check resulting in a 'credit enquiry'. Or as an alternative, such a preliminary check could be flagged as a shopping around exercise which could then hold less weight in a credit rating algorithm.

Recommendations

42. **Industry should issue some information and guidance to consumers about how different information requests are viewed and how their presence on a credit report influences a credit rating or a CP's decision to lend.**
43. **The CR Code should create a mechanism for certain information requests to be either not recorded or flagged as a shopping around exercise if an individual is simply trying to compare finance rates for a major purchase.**

Transfer of rights of CP

31. Are the provisions regulating transfer of rights of CP appropriate? Should they be amended in any way? If yes, how?

Consumer representatives agree that there is an issue when credit is transferred from a fully participating CP to an entity with restricted participation in CCR. Debt buyers should not be able to work around the reciprocity and consistency principles which underpin CCR by relying on the rights transfer rules in Part IIIA. The strict rules around which entities can access repayment history information (and soon financial hardship information) were put in place to ensure only entities with an ACL were able to provide and access RHI. Debt buyers should not be able to access this sensitive information.

Recommendations

44. **The CR Code should restrict debt buyers from being able to access RHI and FHI notwithstanding their credit transfer rights under Part IIIA.**

Use and disclosure

32. Are the provisions regulating use and disclosure appropriate? Should they be amended in any way? If yes, how?

Consumer representatives have no comments on these provisions.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Julia Davis at Financial Rights on (02) 8204 1384.

Kind Regards,

Karen Cox
Chief Executive Officer
Financial Rights Legal Centre
Direct: (02) 8204 1340
E-mail: Karen.Cox@financialrights.org.au