



11 February 2022

Ms Sarah Ghali
Acting Assistant Commissioner
Regulation and Strategy Branch
Office of the Australian Information Commissioner

Via email: consultation@oaic.gov.au

Dear Ms Ghali

Review of the Privacy (Credit Report) Code 2014

The Australian Banking Association (**ABA**) welcomes the opportunity to provide feedback to the Review of the *Privacy (Credit Reporting Code) 2014 (CR Code)* conducted by the Office of the Australian Information Commissioners (**OAIC**).

The comprehensive credit reporting regime (**CCR**) in Australia seeks to balance the interests of individuals in protecting their personal information, with the need to ensure that there is sufficient personal information available for a credit provider to determine an individual's eligibility for credit.

This is a delicate and considered balance due to the sensitivity of a person's credit history and the impact it can have on an individual, including influencing the price and availability of credit. At a macro-level, credit information is a key enabler of efficient and sustainable lending in the Australian economy.

The ABA generally considers that the CR Code works well to meet the competing objectives of privacy versus economic effectiveness. We note that the comprehensive credit reporting regime is still relatively new in Australia, with mandatory reporting for large credit providers in effect from 1 July 2021. The next few years are likely to reveal further insights about the operation of the regime as a greater volume and scope of information is included.

Key recommendations

The broader review of the credit regime (scheduled to be completed by October 2024) will be a valuable opportunity to address broader insights about the credit regime. In the meantime, the ABA has put forward the following recommendations and observations regarding the effectiveness of the CR Code in the current environment:

- 1. Effectiveness, form and readability of the CR Code:** The CR Code is generally effective in giving operational effect to the principles found in Part IIIA of the *Privacy Act 1988 (Privacy Act)*. However, there is room to improve the application of Code obligations across the industry. For the purposes of uplifting industry practice, the ABA recommends that ARCA develop and regularly update industry guidelines that articulate and illustrate best practice implementation of Code obligations.
- 2. Interaction with the CCR system:** The ABA requests that the CR Code be amended to clarify that consumer credit liability information about credit guaranteed by an individual (but for which the individual is not the borrower) should not be disclosed on the guarantor's credit report.
- 3. Participation of other entities in credit reporting:** The ABA is supportive of efforts to both broaden and deepen the amount of consumer data that is collected by the comprehensive credit reporting regime in Australia. We support amendments to the CR Code that increase the availability



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and accuracy of the data collected from entities other than traditional credit providers, such as telecommunications companies and Buy Now Pay Later (**BNPL**) firms.

4. **Education and awareness of the CR code:** The ABA is supportive of endeavours to make credit reporting obligations more accessible to consumers and their representatives. We suggest that the OAIC should produce plain English guidance that can accompany the CR Code. This guidance should outline the key rights and obligations of consumers under the credit reporting framework.
5. **Consumer credit liability (CCLI) and repayment history information (RHI):** Even with the introduction of mandatory reporting, there is a lower level of data available for credit origination in Australia than in other equivalent economies, such as the United Kingdom or Singapore. The ABA asks the OAIC to recommend reconsideration of CCLI and RHI as part of the broader review of the credit regime (scheduled to be completed by October 2024).
6. **Options to protect individuals from financial abuse:** The ABA suggests that ARCA should be tasked with developing a credit-reporting guideline that outlines the minimum expectations for credit providers, bureaus and other industry participant when dealing with matters related to economic abuse. This guideline should take into account the different obligations may apply to credit providers depending on whether they are subject to Mandatory Credit Reporting legislation.
7. **Interaction between the CR Code and legislation:** The practical operation of the Code may be improved to ensure consistency between the Code, the Privacy Act and *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)*.

Further commentary on the above issues and others are outlined in Appendix A to this letter. We look forward to remaining involved in the CR Code review as it progresses.

Kind regards

Jessica Boddington
Policy Director, ABA

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers.

We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.



Appendix A: Commentary on consultation paper

The ABA provides the following commentary on several key issues outlined in the consultation paper.

Effectiveness, form and readability of the CR Code

Q 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 ABA considers that the CR Code is generally effective in giving operational effect to the principles found in Part IIIA of the Privacy Act. However, we consider there is room to improve the application of Code obligations across the industry.

It is important to note that the Australian credit reporting regime is still relatively new when compared to international jurisdictions. In line with its nascence, there remains a level of inconsistency and variability in how certain Code obligations are enacted by credit reporting bodies, non-bank credit providers and affected information recipients.

In order to uplift industry practice, the ABA recommends that the OAIC:

- encourage ARCA to develop and regularly update industry guidelines that articulate and illustrate best practice implementation of Code obligations. Initial topics should cover:
 - treatment of access and correction requests
 - complaint handling and dispute resolution
 - protections for victims of fraud
 - treatment of financial hardship reporting
 - how to best support customers experiencing economic abuse.
- consider inserting a column of 'explanatory notes' into the CR Code that explain how the CR Code links to and fulfills the obligations set out in Australian privacy regulation and legislation. The ABA understands that this option was considered in the initial development of the CR Code in 2013.¹

These measures would help ensure greater consistency of practice across the financial industry and assist industry participants such as credit reporting bodies and non-bank credit providers to implement valuable consumer protections.

Interaction with the CCR system

Q 6. Are there any CR Code provisions that are open to interpretation or prone to misinterpretation? Which provisions and how could they be improved?

The ABA requests that the CR Code be amended to clarify that consumer credit liability information about credit guaranteed by an individual (but for which the individual is not the borrower) should not be disclosed on the guarantor's credit report.

This is on the basis that the information disclosed may be misleading, as it would not identify information specific to the guarantee. For instance, the guaranteed amount may differ to the credit limit or be in place for a period far shorter than the overall loan term. In addition, default information is already listed on guarantors' credit reports. Arguably, this provides the best insight into the individual's financial state, given that a guarantee is a contingent liability and therefore will only become actionable where there has been a default.

¹ Version 5 of the Draft CR Code, June 2013.



Participation of other entities in credit reporting

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

The ABA is supportive of efforts to both broaden and deepen the amount of consumer data that is collected by the comprehensive credit reporting regime in Australia. We support amendments to the CR Code that increase the availability and accuracy of the data collected from entities other than traditional credit providers, such as telecommunications companies and BNPL firms.

Amending CCLI information to accommodate other sectors

There is merit to considering how the category of consumer credit liability information could be expanded within the CR Code to ensure that accurate and relevant data is recorded by each sector.

For example, it may be appropriate to adjust the credit limit:

- for the telecommunications provider context, to represent monthly repayment for services and handset payment, and
- for some BNPL contracts, to represent the sum of relevant consumer transactions.

In addition, the account open and closure date may better align to the physical connection and disconnection of the service for telecommunications and other utilities services.

Participation in the credit reporting system by non-ACL entities

Although nominally outside the scope of the review, the consultation paper raised a question as to whether credit providers should be required to have an ACL and comply with responsible lending obligations before they be allowed to access credit reporting information.² The ABA is of the view that, on the contrary, the Privacy Act should be amended to allow non-ACL holders to participate in reporting repayment history information.

This is because, before many Australians have a mortgage or business loan with their bank, they have:

- a mobile or internet account with a telecommunications company
- an account for electricity or gas with a utilities company,
- a contract with a real estate agent to deposit rental expenses and
- increasingly, an account with a lender that does not hold an Australian Credit Licence (such as a BNPL provider) for a consumer purchase.

Allowing the entry of such data into the credit reporting regime would enable consumers with little to no credit history to easily demonstrate their ability to repay bills and meet other payment obligations. This should result in younger and lower-income consumers being able to access credit from reliable providers easier and at a lower price if they can demonstrate positive credit-related behavioural traits.

Education and awareness of the CR Code

Q 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?

The ABA has heard feedback that the credit reporting framework can be difficult for consumers and their representatives (such as financial counsellors and advisors) to understand and to navigate. We are supportive of endeavours to make credit reporting obligations more accessible to these parties.

The current format of the CR Code reflects the detailed and prescriptive nature of the credit reporting requirements outlined in the Privacy Act and accompanying regulations. Rather than endeavouring to streamline the content of the Code itself, the ABA suggests that the OAIC should endeavour to produce

² The Privacy Act currently makes a key distinction between credit providers that hold an ACL and those that do not. Non-ACL holders are restricted from exchanging repayment history information but may participate and exchange consumer credit liability information and negative information.



plain English guidance that can accompany the CR Code. This guidance should outline the key rights and obligations of consumers under the credit reporting framework.

Consumer credit liability and repayment history information

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

Even with the introduction of mandatory reporting, there is a lower level of data available for credit origination in Australia than in other equivalent economies, such as the United Kingdom or Singapore. There are compelling reasons to expand the amount and type of data collected by entities that participate in comprehensive credit reporting. Amongst others, these reasons include that a greater availability of accurate data should improve the amount, pricing and types of credit available to individuals and businesses.

The ABA asks the OAIC to recommend reconsideration of CCLI and RHI as part of the broader review of the credit regime (scheduled to be completed by October 2024). At minimum, the regime should be amended to allow collection of the following data fields:

1. the periodic repayment amount specified under a fixed contract
2. the current balance of the credit contract, and
3. the actual payment made as a proportion of the contractual payment required (expressed as a ratio).

Other options to protect individuals affected by economic abuse

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

Economic abuse describes behaviour that is coercive, deceptive, or unreasonably controlling:

- in a way that denies the victim-survivor their economic or financial autonomy, or
- by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the victim-survivor or their dependents.

The abuser could be a partner, a family member, carer, guardian, or friend. Where the abuser is a partner or family member, the abuse constitutes family violence.

Economic abuse is a whole community issue that requires the collective efforts of government, communities, and the corporate sector - including banks, credit reporting bodies and non-bank credit providers - to respond to the challenges.

The ABA has industry guidelines for matters involving economic abuse

At an industry level, the ABA has worked closely with its members to develop several guidelines that describe good industry practice for credit providers when dealing with customers experiencing economic abuse.³ These guidelines outline a framework for banks to implement consistent arrangements to deal with suspected and confirmed cases of abuse.

ABA members have specially trained hardship staff who can provide special support in situations of economic abuse. Examples of support that banks can and do provide customers impacted by economic abuse include:

- Working with the customer to identify safe ways to communicate; for example, by asking the customer to nominate a safe time to talk or a way for the bank to get in touch (such as by phone, email, SMS, or a phone message).

³ <https://www.ausbanking.org.au/wp-content/uploads/2021/05/ABA-Family-Domestic-Violence-Industry-Guideline.pdf> and <https://www.ausbanking.org.au/wp-content/uploads/2021/07/ABA-Financial-Abuse-Industry-Guideline.pdf>



- Minimising the information that a customer is required to provide and the number of times a customer discloses the same information. In complex situations, banks may aim to provide customers with consistency in speaking to one staff member or a single contact point.
- Identifying what accounts may require changed arrangements, such as:
 - Removing the victim-survivor's bank account from the perpetrator's internet banking.
 - Amending the operating instructions for joint accounts. For example, to change the account authorities to require all account holders to approve withdrawals, or to suspend certain features such as a redraw function.
 - Recording customer information (such as email, address, phone numbers) separate and hidden from the perpetrator in the case of joint accounts or for a child's account.
- Offering referrals to free support services, such as financial or psychological counselling.
- Providing one-off emergency grants or support payments to customers.
- Providing recommendations to customers to seek advice and plan to enable formal arrangements to be put in place when it appears appropriate, such as an enduring power of attorney with clear instructions, so a trusted person/s can help them manage their finances.
- Enabling secure options to allow properly authorised third parties e.g., carers, to carry out banking functions for an authorised person without breaching the terms and conditions of accounts.
- In some circumstance, forgiving debts. For example, this may occur where the victim-survivor was found not to receive a substantial benefit from the joint credit arrangement.

The ABA supports development of a credit reporting industry guideline

There are many types of credit reporting issues that may emerge when a customer is seeking to exit an economically abusive situation. For example, a victim-survivor may:

- find debts on their credit report that were taken out by a perpetrator without their consent
- have been coerced into taking out a loan or signing on as a guarantor despite receiving no benefit from the loan (e.g., the funds paid out the perpetrator's debts or paid for an asset in their name)
- become aware that the perpetrator is not making payments on joint debt as a pattern of economic abuse.

These issues are complex yet require consistent and fair outcomes from industry participants. The ABA suggests that ARCA should be charged with developing a credit-reporting guideline that outlines the minimum expectations for credit providers, credit reporting bodies and other industry participants when dealing with matters related to economic abuse.

This guideline should outline consistent industry treatment as to:

- how participants process access and corrections requests from customers experiencing abuse
- how relevant personal information for these customers is recorded and shared within and between credit providers, credit reporting bodies and other industry providers
- when default listings and other adverse reporting information can and should be removed
- facilitating flexibility in amendments in certain scenarios, such as economic abuse, without putting unreasonable burden of proof on the customer
- issues relating to joint credit accounts, including when such accounts might be split
- the expectation for representatives of an individual to act in the interest of their client.

As a result of this process, it may be that the CR Code or certain legislation (e.g., Privacy Act) requires certain amendments to embed protections for these customers.



The ABA does not support a move towards customer-based reporting

The ABA does not support a general move towards customer-based reporting for the reasons articulated in the consultation paper. That is, the current approach ensures a higher level of accuracy of reporting and minimises errors that might otherwise occur in identification of individuals.

However, we are of the view that appropriate protections and solutions can be implemented to support customers experiencing economic abuse without a wider industry move to individual reporting. For example, it may be beneficial to allow case-by-case customer-based reporting or for entities to have the ability to split information regarding a joint account where individuals are aware of the consequences and consent.

These types of solutions would allow for the victim's credit report to be updated and for the potential perpetrator, who is the recipient of the benefit of the credit, to have accurate reporting and not benefit from the update to the victim's credit information.

Interaction between the CR Code and legislation

We recommend the review of the CR Code be conducted with due consideration for the interaction with Part IIIA of the Privacy Act. For example, the practical operation of the Code may be improved to ensure consistency between the Code, the Privacy Act and the AML/CTF Act.

The ABA notes the following inconsistencies that may require clarification:

- **Notification requirements for guarantors regarding refusal of a consumer credit application**

Provisions s21P of the Privacy Act and paragraph 16 of the CR Code refer to an 'individual' in a way that suggests this term may be limited to credit applicants and exclude guarantors. The ABA suggests an amendment to the CR Code could clarify the notification requirements extend to guarantors in the case where an applicant or borrower is refused credit because of the guarantor's credit information. This would be a consistent extension of the principle to allow individuals the opportunity to review and correct credit information.

- **Disclosure requirements under s21G Privacy Act and paragraph 16 of the CR Code**

The provisions refer to 'person' and 'individual' and restrict the disclosures that can be made. Amendments should enable the disclosure of credit information to entities or organisations assisting with the application. This would facilitate the varied arrangements which exist to provide credit to consumers, e.g., where the credit arrangement is being conducted through a third-party provider, such as a partner offering white labelled banking service or an automotive dealership.

- **Notification and collection requirements of personal information**

The relevant provisions include paragraph 4.1 of the CR Code, 21C and 21D of the Privacy Act and ss35D and 35E of the AML/CTF Act. Amendments should clarify the notifications required to be provided to an individual having regard to the AML/CTF provisions for identity verification processes. In these circumstances, the personal information disclosed between credit providers and credit reporting bodies is limited to identity information (also known as 'header information') for the purpose of electronic verification of identity.

For example, the notification provisions under subsection 21C(1) of the Privacy Act should not apply to credit reporting entities as they are not relevant in the context of a verification request and are therefore not matters that an individual needs to be made aware of (under CR Code para 4.1(b)).⁴ Notifying an individual of these matters in the context of a verification request is likely to cause confusion.

⁴ Section 21C of the Privacy Act applies to the collection of personal information that a reporting entity may disclose to a credit reporting body under Division 5A of Part 2 of the AML/CTF Act. The requirement to notify an individual of matters under the CR Code is inconsistent with s35D of the AML/CTF Act which provides that a credit reporting body must not collect or hold personal information about an individual that relates to a verification request or an assessment in relation to the individual other than the verification information required to be retained by the credit reporting body under s35E.



We recommend amendment to s21C to add ss21C(4) of the Privacy Act:

'If a credit provider is a reporting entity, subsections (1), (2), and (3) do not apply to the collection of personal information which is identification information that the entity may disclose to a credit reporting body under Div 5A of Part 2 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006'.

- **Disclosure of credit reporting information to a credit reporting body**

Under ss 35A(3) AML/CTF Act, a disclosure of personal information under subsection 35A(1)(a) is taken to be authorised by the AML/CTF ACT 2006 for the purposes of paragraph 6.2(b) of Australian Privacy Principles. However, there is no provision in either the AML/CTF Act 2006 or the Privacy Act that authorises a disclosure of personal information under subsection 35A(1)(a) as an exception to the general prohibition on disclosure of credit information about an individual to a credit reporting body under subsection 21D(1) of the Privacy Act.

We recommend amendment to s21D to add a subsection 21D(2)(2A):

'subsection (1) does not apply to the disclosure of identification information about the individual if the disclosure is required or authorised by or under an Australian law (other than the Consumer Data Rules) or a court/tribunal order.