

# **Consultation on application to vary the Privacy (Credit Reporting) Code 2014**

**May 2024**



## **Executive summary**

Identity Care Australia and New Zealand (IDCARE) welcomes the OAIC consultation to vary the Privacy (Credit Reporting) Code 2014 (CR Code) and improve overall education and awareness regarding credit reports.

This submission draws on our experience of directly assisting people to address their identity compromise and misuse as it relates to credit, to better protect consumers' rights and interests while facilitating an efficient credit reporting system in Australia.

IDCARE will address the following proposals from the [final report](#) of the most recent independent review of the CR Code (OAIC Report):

Proposal 1: OAIC to review and update existing credit guidance with a particular focus on guidance for individuals and their advocates.

Proposal 2: OAIC to consider mechanisms to promote its credit reporting resources.

Proposal 28: Amend CR Code to allow CRBs to offer individuals an automatic extension to the ban period when they make their initial request, where appropriate.

Proposal 29: Amend CR Code to provide further clarity on the expected level of evidence that a CRB needs to implement a ban and/or extension.

Proposal 31: Amend CR Code to require a CRB to record and alert an individual of access requests during a ban period.

Proposal 32: Amend CR Code to require CRBs to provide information to individuals on how they can access their credit reports held by other CRBs.

Proposal 41: Amend CR Code to expand the categories of information that can be corrected.

Proposal 43: Amend CR Code to introduce soft enquiries framework.

Resolution 4: CRBs must provide access seekers with a copy of credit reports free of charge, once every three months.

## **About IDCARE and our clients**

IDCARE is Australia's only specialist identity and cybercrime support service for individuals. IDCARE performs a critical role in supporting people to correct and prevent misuse of their identity, personal information, credentials, and accounts. An IDCARE client's remediation process often requires engagement with a credit reporting body ('CRB') to obtain a credit report and, if necessary, request a credit ban.

- In Australia, between 1 January and 31 December 2023, IDCARE managed approximately 82,330 cases in Australia, and advised 25,662 clients to obtain their credit reports to detect credit-related misuse.
  - Approximately 3% of all Australian IDCARE clients in this period had engaged with a credit reporting bureau ('CRB') prior to contacting IDCARE. Among these clients, 54% accessed their credit report and 51% sought to establish a credit ban. 7% had also indicated that they purchased or subscribed to a paid monitoring service offered by one of the CRBs.
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## **Education regarding credit reporting**

*Proposal 1: OAIC to review and update existing credit guidance with a particular focus on guidance for individuals and their advocates.*

*Proposal 2: OAIC to consider mechanisms to promote its credit reporting resources.*

IDCARE welcomes these proposals: according to our data, individuals lack awareness of CRBs and what they can offer. They also report difficulties in navigating Australian CRB processes. According to a sample of 650 IDCARE Australian community members between 1 January 2023 and 31 October 2023<sup>1</sup>, only 3% had engaged a CRB to either obtain access to their credit report to investigate any potential credit-misuse or apply for credit bans to prevent such misuse. Frequently, clients also had false expectations regarding the ability of CRBs to protect people from credit-misuse.

Of this cohort, 85% reflected upon their experience with a CRB with some negativity or apprehension. They reported finding the online forms complex, and, especially for those who had experienced misuse, were concerned about the extent of personal information they were required to share. One client relayed: "[I] attempted to apply for a ban and found their website too difficult." These sentiments appear to be amplified for community members from non-English-speaking backgrounds.

### ***Recommendations:***

- ***Public awareness and education campaigns about CRBs should be implemented without delay, focused on consumer rights, credit report interpretation, credit bans and their scope, and rights and processes around credit corrections.***
- ***CRBs should update their websites, application processes and credit reports from a consumer perspective.***
- ***Credit reports should be available in other languages or in an 'easy read' version. Trained staff should be available to assist if needed. Providing additional communication channels, such as via telephone, may be particularly important for individuals with lower levels of technological literacy.***

## **Ban extension requests**

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<sup>1</sup> IDCARE Monthly Insights Report, November 2023.

*Proposal 28: Amend CR Code to allow CRBs to offer individuals an automatic extension to the ban period when they make their initial request, where appropriate.*

*Proposal 29: Amend CR Code to provide further clarity on the expected level of evidence that a CRB needs to implement a ban and/or extension.*

While IDCARE welcomes the proposed ability of CRBs to offer individuals an automatic extension to the ban period, the requirement that a CRB “form a view about whether there are reasonable grounds that an individual has been, or is likely to be, a victim of fraud” before allowing this remains potentially problematic.<sup>2</sup> A CRB may not necessarily be well placed to determine whether an individual has reasonable grounds to believe that an individual is, has been, or is likely to be, a victim of fraud. An impacted individual is likely to be better placed to determine whether they may be at risk of fraud being committed in their name. Moreover, an individual may not wish to share personal details regarding their suspicion of fraud with a CRB.

By comparison, international jurisdictions such as the United States allow consumers to place a permanent ban on their credit file and lift such a ban when they choose.<sup>3</sup>

Furthermore, a requirement to establish that an individual is at risk of fraud to obtain a credit ban is fundamentally reactive, rather than proactive. This can effectively mean an individual must experience credit misuse before they can protect themselves with a credit ban.

***Recommendation: The initial credit ban period should be extended beyond 21 days, with an ability for a person to opt-in to an automatic extension. The burden of demonstrating a risk of misuse should be reduced, allowing credit bans to be used proactively.***

## **Ban notification service**

*Proposal 31: Amend CR Code to require a CRB to record and alert an individual of access requests during a ban period.*

IDCARE supports the development of a free-of-charge notification service to alert individuals of inquiries made while the individual’s credit ban is in progress. Where an individual is notified of attempted access to credit information during the credit ban period, they may be able to take a more informed approach when deciding whether to extend a credit ban.

The opportunity for an individual to provide written consent to the use of credit reporting information for the provision of notifications may also resolve concerns of bothering consumers who do not have a pre-existing relationship with the organisation. Such notifications may also provide an opportunity for individuals to establish a greater awareness and understanding of the role of CRBs.

***Recommendation: Individuals should be able to opt-in to receive alerts of access requests during the ban period.***

## **Streamline credit reporting requests**

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<sup>2</sup> *Privacy (Credit Reporting) Code 2024 (Version 3.0)* at 17 (10).

<sup>3</sup> [How to Place a Credit Freeze On Your Credit Report | TransUnion](#)

*Proposal 32: Amend CR Code to require CRBs to provide information to individuals on how they can access their credit reports held by other CRBs.*

IDCARE believes proposal 32 is limiting: instead of providing information on how individuals can access other credit reports, IDCARE suggests CRBs should provide an option for individuals to request their credit report across all three CRBs simultaneously. Where an individual fears or knows that they have experienced credit misuse, they are likely to be distressed. Victims of identity theft and subsequent credit misuse should not be required to request their report three times across several agencies, most of which are likely unfamiliar to the individual.

Whilst the current Code provides options for consumers to request corrections from either the CRB or the credit provider direct, in practice the CRBs will typically require the consumer to take the matter up with the credit provider. For many community members, this approach is very time consuming and difficult. The CRBs are the ones with the relationship with the credit providers, and better mechanisms should be in place to streamline this correction journey rather than leave it up to the individual to work it out themselves.

We have found over the years that there is a growing reliance on advocates and/or charitable organisations, such as IDCARE, to assist vulnerable people in navigating CRB processes or initiating requests on their behalf. Developing a specific request channel for community organisations that act on behalf of vulnerable people would be a dramatic improvement on current arrangements. This approach would present opportunities for both cost and practical efficiencies for CRBs, community organisations, and vulnerable people.

***Recommendation: CRBs should increase collaboration, not just in relation to the provision of credit reports, but also to provide streamlined, automated processes to initiate bans, alerts and extensions and a 'no wrong door' approach to corrections. The Code should maintain a specific requirement for CRBs to host dedicated response channels and industry response standards for advocates and/or charitable organisations acting on behalf of vulnerable persons, such as identity theft victims, as a separate class of access seeker.***

## **Soft and hard enquiries**

*Proposal 41: Amend CR Code to expand the categories of information that can be corrected.*

*Proposal 43: Amend CR Code to introduce soft enquiries framework.*

While IDCARE welcomes the proposal to expand the categories of information that can be corrected in the CR Code, the proposed expansion<sup>4</sup> does not account for the correction of soft enquiries made via fraud. For example, we are aware of instances where access seekers have been exploited by criminals who received updates on a victim's credit file. CRBs and access seekers in these cases have refused to correct the notations of these instances as they did not impact the victim's credit score and they were deemed 'soft enquiries'.

Though such enquiries may not impact an individual's credit score, they are fraudulent and therefore should not be reflected on an individual's record. Further, IDCARE clients report distress when CRBs do not remove fraudulent enquiries that are classified as soft enquiries.

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<sup>4</sup> *Privacy (Credit Reporting) Code 2024 (Version 3.0) at 13 (20).*

Moreover, IDCARE welcomes the addition of the regulation of soft enquiries, including the requirement that credit providers notify an individual prior to making a soft enquiry with CRBs, and that credit providers confirm it is a soft enquiry.

We further endorse the proposal that a written note of a soft enquiry is required on a record related to an individual credit report. This will help individuals recognise fraudulent activity and stymie it before any misuse occurs.

To illustrate, almost half of IDCARE's clients reporting credit-related misuse indicate they do not know how their identity was compromised. Therefore, having access to soft enquiries on their credit records could assist in timely identification of the source of the fraud.

**Recommendations:**

- ***Soft enquiries made via fraud should be added to the categories of information that can be corrected.***
- ***A soft enquiries framework is a welcome addition to the CR Code.***

**Access seeker fees**

*OAIC Report at 5.3.3: In accordance with the Privacy Act and the CR Code, CRBs must not charge an access seeker to access a credit report on behalf of an individual if that individual has not received a copy of their credit report in the last three months. For more frequent access, the CRB must not impose an excessive charge for the access seeker.*

While IDCARE acknowledges the general rationale for the proposed pricing structure (a free credit report every three months, with additional reports attracting a fee), more reasonable accommodations should be provided to advocates and/or charitable organisations to seek access on behalf of vulnerable clients, including with those with English as a second language (ESL), a disability, and the elderly. For example, clients with ESL have asked IDCARE to act on their behalf due to concerns about not being understood properly.

Furthermore, individuals facing urgent extreme misuse, domestic violence and/or economic abuse warrant a fast-track process to access reports, bans, alerts, and corrections. This could potentially be acquired through barrier-free third-party seeker access.

IDCARE submits that if, as proposed, all access seekers must negotiate with CRBs on price, this may result in an inability to access credit reports on behalf of vulnerable clients on an as-needed basis.

***Recommendation: Authorised advocates and charitable organisations such as IDCARE should either be exempt from fees for credit reports or should pay a heavily discounted rate.***

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**Concluding remarks**

There are many aspects of Credit Code revision that IDCARE could contribute to, but we have selected only those we believe are most relevant to our community work and experiences. We applaud the OAIC for opening the Code to consultation and would welcome the opportunity to engage further.