AUSTRALIAN
RETAIL
CREDIT
ASSOCIATION

Ms Angelene Falk
Information Commission and Privacy Commissioner
GPO Box 5288
SYDNEY NSW 2001

19 December 2023

By email only: [redacted]

Dear Ms Falk,

Application to vary the Privacy (Credit Reporting) Code 2014

The Australian Retail Credit Association (**ARCA**) applies under paragraph 26T(1)(c) of the *Privacy Act 1988* to vary the *Privacy (Credit Reporting) Code 2014* (**CR Code**). The proposed changes are intended to address the following proposals from the final report of the most recent independent review of the CR Code (the **Review**):

- Proposal 4 – Amend CR Code source notes column and blue row lines
- Proposal 6 – Amend CR code to accommodate other entities reporting CCLI
- Proposal 13 – Amend CR Code to require CRBs to publish their CP audits and submit these to the OAIC
- Proposal 15 – Amend CR Code to clarify the definition of 'account close' in respect of CCLI
- Proposal 17 – Amend CR Code to clarify definition of 'month' to more flexibly accommodate CP reporting practices
- Proposal 21 – Amend CR Code to specify that s 21D(3)(d) notice must be a standalone notice
- Proposal 24 – Amend CR Code regarding notification obligations
- 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
- Proposal 33 – Amend CR Code to specify that CRBs must provide physical copies of credit reports upon request
- Proposal 37 – Amend CR Code to introduce a mechanism to correct multiple instances of incorrect information stemming from one event
- Proposal 39 – Amend CR Code to include domestic abuse as an example of circumstances beyond the individual's control
- Proposal 40 – Amend CR Code to extend correction requests to include CPs
- Proposal 41 – Amend CR Code to expand the categories of information that can be corrected (paragraph 20.5)
- Proposal 43 – Amend CR Code to introduce soft enquiries framework
- Proposal 44 – Amend definition of 'capacity information' to include an individual in their capacity as a trustee

The application also includes proposed changes to address an issue ARCA has identified with the meaning of 'maximum amount of credit available' (a term which is defined in paragraph 6 of the current CR Code). The application does not propose changes in response to two Review proposals (Proposals 19 and 28); ARCA intends to make submissions in support of law reform on these issues through the upcoming review of Part IIIA of the Privacy Act.

Consistent with paragraph 5.7 of the OAIC's *Guidelines for developing codes* (the **Guidelines**), this application includes:

- A description of the background to this application, the issues prompting variations to the Code, as well as the rationale for the variations we are seeking – at Part A
- A Consultation Statement consistent with the Guidelines – at Part B
- A copy of the CR Code containing the variations we have sought (the **Proposed CR Code**) – at Annexure 1
- A copy of the Proposed CR Code with substantive changes clearly marked – at Annexure 2.
- A document comparing the subsections of the Proposed CR Code with the paragraph numbering of the current CR Code (the **Comparison document**) – at Annexure 3.
- A draft Explanatory Statement (covering the entirety of the CR Code, not just the variations) – at Annexure 4.
- A copy of our first-stage consultation documents on the soft enquiries framework and the submissions received in response – packaged together as Annexure 5.
- A copy of our first-stage consultation document and the submissions received in response – packaged together at Annexure 6.
- A copy of our second-stage consultation pack of documents, the submissions received in response and confirmed notes from meetings with external stakeholders – packaged together at Annexure 7.
- Confidential information in support of our rationale for not making changes in respect of Proposal 28 – at Annexure 8.

If you have any questions about this application, please contact Richard McMahon at [redacted] or on [redacted].

Yours faithfully,

[redacted]

Elsa Markula
Chief Executive Officer
Australian Retail Credit Association

Part A: Background, issues and rationale

Background to this application

Under paragraph 24.3 of the CR Code, the Commissioner will initiate an independent review of the code every four years. The Review was the second such independent review of the CR Code, and the Review's final report included 20 proposals for variations to the code.

Following the release of the Review's final report in September 2022, ARCA commenced a policy development and consultation process to respond to the proposals for variations. This process was developed after consultation with the OAIC, and informed by:

- Proposal 10 of the Review, which suggested amendments to the Guidelines to require stakeholder input at an earlier stage of the development of variations to the CR Code; and
- The updated Guidelines, including amendments to give effect to Proposal 10.

As part of that process, ARCA:

- held initial discussions with industry participants, Government, EDR schemes, consumer advocates and other interested stakeholders;
- established a 'CR Code Working Group' of credit reporting bodies (**CRBs**) and credit providers (**CPs**) from within ARCA's membership, to provide feedback on operational challenges with the proposals.
- conducted a 'first-stage' of formal consultation, prior to the drafting of any code provisions, seeking feedback on policy settings and implementation options for all the relevant Review proposals;[1]
- considered the feedback received during the first-stage consultation, and used that feedback and subsequent engagement with ARCA Members to draft a second-stage consultation document and draft CR Code variations
- Conducted a second-stage of public consultation consistent with the Privacy Act and the Guidelines
- considered the feedback received during the second-stage consultation, and used that feedback and subsequent engagement with ARCA Members to update our proposed CR Code variations and prepare this application.

We are satisfied that the process we have used to develop the variations aligns with the requirements in the Guidelines and the OAIC's expectations. The consultation summary at Part B, along with the comparison of the OAIC's expectations and the steps we have taken at Part C, set out the reasons for this view in detail.

After the commencement of ARCA's process, the OAIC wrote to ARCA on 6 July 2023 inviting us, as code developer to submit an application to vary the CR Code to give effect to the relevant Review proposals.

The remainder of this section describes:

- the context behind each of those proposals
- ARCA's consultation on each proposal and the feedback we received

[1] For Proposal 43 (Introducing a soft enquiries framework), there were two separate phases of the first-stage consultation.

- The variations we are applying for to address the proposal (informed by consultation), including the rationale for, and objectives of those variations.

Similar material is provided for two other issues on which we consulted on varying the CR Code.

The material set out in this section is summarised in the Table A below.

Table A: High-level overview of proposals, variations, rationale and feedback received

Proposal	Variations	Rationale and other context	Feedback during consultation
Proposal 4 – Amend CR Code source notes column and blue row lines The source notes column and the blue rows of the CR Code should be reviewed to ensure that they clearly outline the purpose of the paragraph to which it relates and the applicable provision of the Privacy Act or Privacy Regulation.	The Proposed CR Code is on a new template (the same as other legislative instruments) and signposts what sections of the Privacy Act or Privacy Regulation are relevant to each set of provisions. As a result, there have been cosmetic (non-substantive) changes to many provisions to fit within the new template. These changes do not affect what needs to occur to comply with the Proposed CR Code (i.e. there is little practical effect for CPs and CRBs, beyond the need to update their internal documentation)	The Guidelines require that Code developers follow Government drafting and publishing standards. The feedback from the OAIC is that the next version of the CR Code must use the Government drafting template. This is what we have done. To minimise the amount of change all stakeholders, we have retained the current paragraph-level numbering, prepared tracker/comparison documents to help with the transition and explicitly sought feedback on the burden associated with using the new template. We consider that some of the feedback from other stakeholders can be addressed by other documents (such as the explanatory statement that accompanies the CR Code, and/or other guidance).	We received limited feedback from CPs and CRBs in submissions. Equifax noted a degree of support for our approach to the Proposal, while in written comments one large CP noted they had no concerns with the format. Another large CP noted that minimising the changes would also reduce unintended consequences. The main stakeholder with reservations about the new template was the FRLC, who noted that they found the new template 'legalistic' and more difficult to navigate without the blue notes. The drafting reflects the OPC template and the fact that the CR Code is, if OAIC-approved, delegated legislation. We have added in additional notes, but more generally consider that the Explanatory Statement which accompanies the Code could address the desire for a single document which explains in detail how the CR Code interacts with/supports the Privacy Act and Privacy Regulation.
Proposal 6 – Amend the CR Code to accommodate other entities reporting CCLI The CR Code should clarify how 'account open date' and 'account close date' definitions apply to telco/utility providers. Targeted consultation should be undertaken to understand how the 'credit limit' and 'credit term' definitions can apply to these products, taking into account how industry delivers, and how individuals use, these products.	The Proposed CR Code sets out definitions of 'account open date' and 'account close date' specific to credit in the telecommunications and electricity context. Those definitions are based on the concept of service connection and service disconnection, and will apply to CCLU disclosed on or after six months after the Proposed CR Code commences.	The existing definitions in the CR Code reflect credit offered by financial services businesses, do not include options tailored to other stakeholders. We have prepared variations to the most relevant definitions to address this gap, informed by detailed feedback from stakeholders such as EWON and the consumer sector. In doing so we have attempted to reflect the different nature of those credit products (such as the existence of one or more services to which the credit relates).	CRBs and CPs who commented on this proposal generally saw it as a matter for the affected CPs (e.g. energy and telecommunications stakeholders). EWON and consumer advocates did provide comments. Based on those comments, we made some minor changes to: • ensure that the 'account open date' reflects when the provision of a telecommunication or utility service actually starts, while reflecting the nature of ongoing service provision in e.g. the energy context; and • address rights that a consumer may have to have the relevant service switched back on (i.e. so an account is closed when service connection ceases and, for energy contracts, rights to re-energise have ceased) – this should align better with those utility providers' systems.
Proposal 13 – Amend the CR Code to require CRBs to publish their CP audits and submit these to the OAIC The CR Code should require CRBs to publish their CP audits and submit these to the OAIC. These reports can be redacted as needed for publication to ensure they do not include personal or commercially sensitive information.	The Proposed CR Code requires CRBs to publish a composite report on their audit program, including how they identify risks of CP non-compliance, how the audits help manage those risks and how they determine how many/which audits to conduct. This report will also include the kind of de-identified information currently in the CRB annual reports. The OAIC will be able to request copies of the reports of CP audits; CRBs will be required to provide the reports following such a request.	The Review's primary concern was that the lack of transparency in current CRB-CP agreements and CRB audit programs affects both confidence in, and the effectiveness of, those programs and their objectives (i.e. the material required to be published about audits in CRB annual reports is not sufficiently specific to provide the transparency the Review sought). We consider that a composite report – focused on the design of a CRB's audit program and how they monitor and address risks – is the most appropriate way to provide the transparency sought. This approach also avoids the complexities and challenges with publishing individual audit reports that CRBs and CPs raised with us. Allowing the OAIC to request copies of the reports (for instance, if they wish to undertake compliance activities) addresses the substance of that aspect of the proposal without requiring each audit report to be provided (which could be burdensome). It also aligns with paragraph 3.21 of the Guidelines.	During our first-stage consultation, CPs and CRBs expressed concern with the proposal to publish audit reports with CPs named, noting the confidential nature of the CRB-CP relationship made redacting "commercially sensitive" information difficult, the fact that findings may be contested and the fact that publishing reports in this form may not address the Review's overarching concern. There was more comfort with the approach taken in the second round of consultation (a composite, de-identified report). Consumer advocates did not raise concerns with the proposed approach. ARCA's members noted the overlap between that report and the current CRB annual report – we have addressed this by ensuring all the material in the current annual reports about audit is included in the new report. Equifax did not support submitting audit reports to the OAIC, on the basis that it was not clear what they would do with such information. After discussion with the OAIC (who noted the importance of ensuring regulatory oversight remained) we have proposed that they have a power to request these reports. More generally we expect that, if the OAIC wanted information about an audit and its findings, a CRB would be willing to provide it.

Proposal	Variations	Rationale and other context	Feedback during consultation
Proposal 15 – Amend the CR Code to clarify the definition of 'account close' in respect of CCLI The CR Code should ensure that consumer credit is reported as closed on the earlier of these events occurring – credit is terminated, credit is charged off, or credit is repaid.	The Proposed CR Code requires that consumer credit must be reported as closed on the earlier of the date of termination, date of charge-off or repayment of credit. The meaning of these three terms will remain the same; the only change is that it will no longer be possible to report charged-off but not repaid credit as 'open'.	The current drafting in the CR Code provided an unintended loophole for some CPs to continue to report charged-off but not repaid accounts as 'open' – as such the CCLI for these accounts is retained indefinitely. This variation is intended to address this practice. The Review was specific about the change that should be made and we have adopted that approach, as it is the simplest way to remove the loophole.	One CRB (in verbal comments) and the ACBDA noted the effect that this change would have on debt purchasers – specifically, the new definition would require a change in behaviour. While we acknowledge this is the case, we consider that this is the intended outcome from the proposal. The ACBDA also noted that, once the CCLI associated with the account expired, visibility of that closed account would be lost to the credit reporting system. However, we note that current practices (where the information remains in the system indefinitely) are suboptimal, and that current practice is contrary to the ordinary meaning of credit that is 'terminated or otherwise ceases to be in force'. CPs retain the option to disclose default information, which would remain in the credit reporting system for a longer period of time.
Proposal 17 – Amend CR Code to clarify definition of 'month' to more flexibly accommodate CP reporting practices Further consideration should be given to amending the CR Code to clarify the definition of 'month'. Any amendments to the CR Code should be guided by the principles that reporting should reflect an individual's expectations around their repayment obligations and reflect their repayment behaviour.	The Proposed CR Code provides that a 'month', for RHI reporting period purposes, includes any period of time from 28 to 31 days, as well as 26 and 27 day periods in specific situations. The current drafting is also retained to ensure that all currently compliant practices remain compliant.	The current definition of month – which is based on the definition in the general law – means that some RHI reporting periods from CP systems are technically non-compliant. We proposed to address this by adding simple, expansive limbs to the month definition. This approach ensures all currently compliant practices are still compliant while minimising the risk of future issues and aligning the definition of 'month' with the period people would generally consider to be a month (i.e. 28-31 days). The effect of these changes aligns with the Review's intent – for instance it means that practices that might reflect an individual's understandings, obligations and behaviours (e.g. consistent payment due/RHI reporting dates each calendar month) would always be permitted under the CR Code.	There was limited feedback on this proposal. Feedback from CRBs and CPs strongly supported ensuring that all currently compliant practices remained compliant – this is the approach we have taken. AFCA expressed a slight preference for an expansive definition of 'month' – we consider the drafting we have adopted to be expansive in nature. They also raised concerns about differences in practices/RHI reporting dates between CPs, and that this can lead to the same consumer behaviour being treated differently in terms of RHI reporting. ARCA is taking steps through its Best Practice Workgroup to address inconsistency. Those steps, along with consideration through the Part IIIA Review, is likely to be a better approach than wholesale change to the definition beyond that envisaged by the Review.
Proposal 19 – Amend CR Code to introduce positive obligations related to statute barred debts The CR Code should require: • CRBs to remove statute barred debts from individuals' credit reports where it is reasonable for them to have been aware of the statute of limitations • CPs to take reasonable steps to inform CRBs when a debt has or will become statute barred • CPs to provide CRBs with the date the debt became overdue (at the time they disclosing default information).	The Proposed CR Code does not include changes to introduce the obligations proposed by the Review. This reflects discussions between we have had with stakeholders, including the OAIC and the Reviewer, in which we raised the impracticality of these obligations.	We agree that the status-quo (where late default listings by some debt buyers means default information may be retained once a debt is statute-barred, with the onus on the individual to remove it) is not the ideal outcome. However, the obligations the Review proposed are impractical, given the substantial difficultly of determining when every single debt would be statute-barred. There are simpler ways to address this problem, which focus more on preventing or disincentivising late default listings. However, these solutions are best achieved by law reform rather than through the CR Code. Additionally, there is a technical issue with the definition of default information (as it relates to statute-barred debts) which means that law reform is necessary in any event. It makes sense for both of these issues to be addressed holistically through the Part IIIA Review.	In our first-stage consultation, stakeholders generally agreed with the Review's conclusion that the status quo presents problems, especially where defaults are listed a long time after the payment(s) were missed. However, as noted in this table, they supported our view that implementing the obligations the Review proposed would almost impossible. In any event stakeholders – both ARCA Members and the FRLC – preferred other solutions, many of which required law reform. We engaged with the Reviewer who, upon understanding the challenges, agreed that law reform could be an appropriate response. During the second round of consultation, FRLC and EWON raised concerns that this issue is ongoing and warrants a prompt interim solution before law reform, such as a ban on listing default information after a specified date/period of time. However, the lack of clear concepts in the Privacy Act about when a debt first becomes 'overdue' make this challenging to achieve in the short term, and it would be preferable and more practical to pursue a single solution through law reform.
Proposal 21 – Amend CR Code to specify that s 21D(3)(d) notice must be a standalone notice	The Proposed CR Code provides that a s21D(3)(d) notice – the notice stating the CP's intention to default list – must not be accompanied by other correspondence which a reasonable person would conclude materially	We have developed variations to give effect to the Review's concern that sending other information with a s21D(3)(d) notice could detract from the effect of that communication. CPs	There was limited feedback about this proposal in submissions. In discussion at the ARCA's CR Code Workgroup, Members noted the risk of a very broad prohibition creating scope for additional disputes. We have taken that feedback on board and chosen a drafting approach that

Proposal	Variations	Rationale and other context	Feedback during consultation
The CR Code should specify that the s21D(3)(d) notice must not bundled with any other correspondence.	reduces the prominence of the notice. A s21D(3)(d) notice can include information like how to seek hardship assistance or contact the National Debt Helpline.	do not currently send other information with these documents, so the practical effect of this change should be negligible. From a drafting perspective, it would be simpler to prohibit any other document being sent with a s21D(3)(d) notice. However, we have not taken that approach because of the risk of opening up otherwise valid notices to technical disputes. The drafting chosen addresses this risk and makes clear that helpful information can be provided to individuals.	focuses on the problem (other information detracting from the notice) without giving rise to such risks.
Proposal 24 – Amend the CR Code regarding notification obligations The CR Code should be reviewed and amended to provide further clarity around notification obligations. These amendments should ensure that the notification obligations in the CR Code remain fit for purpose taking account of the Privacy Act.	The Proposed CR Code states that, for the avoidance of doubt, compliance with the requirement to notify an individual of the likely disclosure of their information to a CRB under section 21C of the Privacy Act does not require the individual to consent to the disclosure. These notifications are typically made at the time of an enquiry. The Proposed CR Code will updates the list of matters which consumers must be notified/otherwise made aware of, and tailor those requirements based on whether the enquiry is a hard or soft enquiry. Individuals will receive notifications that are more relevant to the disclosure, and the way in which that information can be used. In early 2024 ARCA will also consider whether there is scope to improve consumer messaging via CreditSmart on these disclosures (specifically that the individual does not have to consent before an enquiry can be made).	There appears to be a lack of clarity amongst some consumers, and other stakeholders, about the fact that the notification obligation in s21C of the Privacy Act only requires the consumer to be notified at/ before an enquiry is made. Each aspect of our proposal addresses this lack of clarity. For those who engage closely with the legal settings, the variations set out explicitly that consent is not needed. For those individuals that engage with CP disclosures, those disclosures will be more tailored to the type of enquiry being made (and, in this way, also reflect the educative/disclosure component of the soft enquiry framework – see Proposal 43 below). For other individuals, any improvements to ARCA's consumer messaging will help address their confusion. Improved clarity – both in the CR Code and other statements from ARCA – should help empower CPs to speak clearly to their customers about the disclosure of their information to CRBs and what that means. Additionally, this clarity may avoid, or make it easier to quickly address, complaints and correction requests based on erroneous beliefs about consent. More generally, we will continue to encourage and assist CPs to ensure their disclosures are as simple and effective as possible.	During the second-stage consultation, we sought feedback on requiring CPs to provide a simple statement alongside their notifications to consumers of the summary of notifiable matters permitted under paragraph 4.2 of the CR Code. There was negative feedback about this approach at the CR Code Workgroup, with many CPs highlighting that this would be a costly exercise to update the full suite of documents and scripts, likely for limited benefit (i.e. there was a general view that this disclosure would not be effective). Verbal feedback from FRLC also indicated that this wasn't likely to be a fully effective approach. Concerns about cost and effectiveness were also made by the ACBDA. EWON supported the approach, but did note the numerous different ways such a statement would need to be given. Based on the feedback received, we concluded that the costs of providing such a notification would not be warranted in the circumstances. More generally we received feedback from AFCA that some of the disclosures and information CPs provide to their customers is too complex and legalistic. We will provide this feedback to CPs but do not consider that it can be addressed through variations to the CR Code.
Proposal 28 – Amend the CR Code to allow CRBs to offer individuals an automatic extension to the ban period The CR Code should allow CRBs to offer individuals with an automatic extension to the ban period at the time they initially request a ban, where appropriate.	The Proposes CR Code does not include changes to require CRBs to offer up-front or automatic extensions of credit bans at the time the bans are placed. The CR Code does not, and the new CR Code will not, prevent such practices should CRBs want to offer them.	This Proposal was made in 2022 before large-scale data breaches. Since that time awareness of the ability to extend a ban has grown, and the information we have suggests that means this interim step (before wider law reform around bans) is not as necessary as it previously was. Additionally, large scale data breaches since the Review was finalised have highlighted shortcomings with the credit ban system, which increase the likelihood of law reform after the Part IIIA Review. Our assessment is that automatic ban extensions, while not harmful, are less critical than previously and likely to be redundant in the medium term. With that in mind we do not consider that the cost and burden of establishing this regime is warranted.	In the first-stage consultation, stakeholders were generally supportive of up-front ban extensions, but some stakeholders noted the issues for consumers who apply for credit without removing a ban, as well as the volume and work associated with removing bans. These issues suggest that significant law reform is needed. During the second-stage consultation, consumer advocates continued to suggest that the CR Code include an automatic ban extension process. However, given the change in the environment (and consumer practices around extending bans) since the Proposal was made, and the likelihood of significant law reform, we do not consider that the CR Code should require up-front extensions at this time.
Proposal 29 – Amend the CR Code to clarify the evidence that a CRB	The Proposed CR Code states that, when considering whether they may extend a credit ban, a CRB may ask the individual why they	This approach reduces the burden on individuals associated with proving they have suffered fraud in order to have a credit ban extended, while also providing more certainty to CRBs	The limited feedback we received supported the proposed drafting for addressing this proposal. This support included feedback from Equifax.

Proposal	Variations	Rationale and other context	Feedback during consultation
needs to implement a ban period and/or extension The CR Code should provide more detail about the expected level of evidence a CRB can require from an individual in implementing a ban period, and extending the ban.	believe they are a victim of fraud and why they have sought an extension. They may only request additional information if those answers suggest there are reasonable grounds to believe the individual has **not** been a victim of fraud.	about the limited situations when more detailed inquiries might be warranted. These were both matters of concern for the Review. We understand some CRBs do not make inquiries in order to conclude that there are reasonable grounds to extend a ban. This practice will be able to continue under this approach.	
Proposal 31 – Amend CR Code to require a CRB to record and alert an individual of access requests during a ban period The CR Code should require CRBs to make a record of access requests during a ban period and alert individuals of any attempts to access this information during that period.	The Proposed CR Code require CRBs to offer a ban notification service free of charge to individuals who place a credit ban. If the individual opts into receiving notifications, the CRB must notify them of information requests that are unsuccessful because of the prohibition on use or disclosure of credit information when a credit ban is in effect. Individuals who wish to receive notifications will need to satisfy the CRB's identity verification requirements, provide their contact details and consent in writing to the use of their credit reporting information to provide the notifications. There will be a 12-month transition period before CRBs are required to offer a ban notification service.	There is significant consumer benefit associated with the offering of ban notification services – a notification will provide evidence to the consumer about whether the risk of fraud is being realised. This information could inform whether a ban extension is needed. Although these notifications may be valuable to all individuals placing a credit ban, it does involve difficulties and systems changes for CRBs. For that reason, the requirements in the Proposed CR Code operate on an opt-in basis (i.e. the individual must opt in to receive notifications). This decision reflects that there is information and steps that a CRB will need an individual to complete in order to offer notifications. Specifically, an individual will need to provide the contact details where they want to receive notices, to opt in to the use of their information for the provision of notices (as unsuccessful information requests may involve credit information) and to have their identity verified by the CRB (either when the ban is placed or before the detail of a notification is provided). Considering the need for systems changes, the requirement to offer a ban notification service will start twelve months from the commencement of the Proposed CR Code.	In our first-stage consultation, stakeholders advised that notifications would help consumers determine whether they had an ongoing risk of identity theft/fraud, and could inform decisions about whether to extend a credit ban. During the second-stage consultation, Equifax raised concerns about the ban notification process, such as the administrative burden and issues with the potential user experience (both associated with the need to identity verify the individual, and also the fact that the best point of contact in respect of the access attempt is the relevant CP). While we agree that this service would involve costs and effort for CRBs, we consider that the significant consumer benefit warrants the implementation of the Proposal. We propose a delayed commencement of the relevant provisions so that this work can occur. Some of the user experience concerns may be capable of being addressed through careful service design (i.e. making clear the importance of contacting the CP if the individual has questions about the attempt to access their credit information).
Proposal 32 – Amend CR Code to require CRBs to provide information on accessing other CRBs' credit reports The CR Code should specify that when an individual seeks access to their credit report from a CRB, the CRB must tell the individual about how they can access other CRBs' credit reports.	The Proposed CR Code requires CRBs to, when offering a service to access credit reporting information, provide information about how to access credit reporting information from other CRBs. This requirement applies to both free and paid services. CPs will have to give this type of disclosure when providing access to credit eligibility information under s21T of the Privacy Act.	Providing information to consumer about how to access all their credit information should make navigating Australia's multi-bureau credit reporting system easier for individuals. This proposal should not impose significant costs on CRBs to implement. It would be sufficient to a CRB to advise consumers that to see all their information, they may need to also requests reports from the other CRBs, and linking to those CRBs websites.	There was limited feedback about this proposal. Equifax submission, and comments from ARCA's Members, indicated that there is support for this proposal. In discussions the other CRBs indicated that this should not be a significant issue.
Proposal 33 – Amend CR Code to specify that CRBs must provide physical copies of credit reports upon request The CR Code should specify that CRBs must provide individuals with physical copies of their credit reports on request	The Proposed CR Code will require CRBs to, upon request, provide physical copies of credit reports. This requirement applies to both free and paid services for accessing credit reports. CRBs must also provide a means of requesting access to credit reporting information other than through their website.	We understand all CRBs currently provide access to hard copies of credit report on request, so the central aspect of this requirement should not require practical change. We have added a requirement that CRBs allow individuals and access seekers to request credit reports through a non-online channel (e.g. by mail or telephone). Without this requirement, the individuals who need hard copies of their credit report on the basis that e.g. they have no access to the internet will not be able to request those documents in the first place. Non-	There was limited feedback about this proposal – we understand CRBs can do this now. There was support for our approach across the CR Code Workgroup and in Equifax's submission.

Proposal	Variations	Rationale and other context	Feedback during consultation
		online channels are **not** intended to be the default (i.e. the default may still be via a website), and may impose identity verification steps such as sending physical copies of documents.	
Proposal 37 – Amend CR Code to enable correction of multiple instances of incorrect information stemming from one event The CR Code should contain a mechanism to correction of multiple instances of incorrect information. The code developer should consult to determine the best approach.	The Proposed CR Code makes clear that a correction request can relate to single piece of information, or multiple pieces of information. The normal rules about timing, consultation and the 'no wrong door' approach apply to both kinds of correction request. For correction requests about multiple credit enquiries stemming from one identity theft/fraud event, the new CR Code will include matters that the recipient of the request (the first responder) and any CPs consulted will need to consider when collecting/before asking for more information from the individual. This includes the burden on the individual, the availability of other information, what will be needed for the consultation and any views of the first responder about whether fraud has occurred. This is intended to reduce the need to for the individual to re-tell their story. In early 2024 ARCA will develop best practice standards about what information should be sought in this context.	We previously sought feedback on two other approaches: • Simplifying the process by centralising decision making (e.g. with the CRBs who may receive the 'multiple' requests); and • Attempting to address the burden on individuals of retelling their story or making separate requests by aligning evidence requirements across CPs However, each of these other approaches has shortcomings. All stakeholders were of the view that the CP that made the potentially fraudulent enquiry is best placed to express a view on whether that enquiry should be corrected. Both the Review and consumer stakeholders considered that a new mechanism is needed i.e. it is not sufficient to align evidence requirements alone. There was also some confusion that, in the absence of an explicit mechanism for multiple corrections, the normal rules (e.g. 'no wrong door') may not apply. The variations in the Proposed CR Code address these issues. It makes clear that multiple requests are possible, and are the responsibility of the CP or CRB that receives them. That first responder may need to consult under the normal rules (and may be reliant on e.g. the CPs they consult for their views). However, for these requests, thought must be given to the burden on the individual to reduce the need to retell their story or resupply information. ARCA's best practice standards should provide certainty for first responders about what information to collect up-front.	During the first-stage consultation, consumer advocates noted the importance of minimising the need for individuals to retell their story. The consistent feedback from CPs and CRBs was that CPs should continue to have significant input about whether enquiries (stemming from a single identity theft event) should be corrected. During the second-stage consultation (where we proposed the evidence requirements aspect but no explicit mechanism), consumer advocates provided negative feedback that the proposal did not adequately respond to the Review and that an explicit mechanism for multiple corrections was needed. Upon considering this feedback and the Review's commentary further, we agree. Equifax expressed concerns about the proposal (but were supportive of an explicit mechanism). They considered: • The individual should specify what information needs correcting – this has been incorporated in the tailored requirements for certain multiple requests • A CRB should not decide what information should be requested from the individual – we don't think this is consistent with the 'no wrong door' approach, but believe our best practice standards should help provide more certainty about what information will be needed • The evidence that can be requested should be specified in the Code – we haven't taken this step as the specific evidence needed may change over time and, if hard-coded, could reduce flexibility and impose burdens on all stakeholders.
Proposals 39-41 – Amend CR Code mechanism for corrections due to circumstances beyond the individual's control to: • **include domestic abuse as an example** • **extend correction requests to include CPs** • **expand the correctable categories of information**	The Proposed CR Code expands the current mechanism for correcting information that exists due to the unavoidable consequences of circumstances beyond the individual's control. Domestic abuse is listed as an example circumstance, correction requests can be made to CPs and relate to a wider range of default information as well as certain particular types of RHI (i.e. where missed payments have subsequently been made) and FHI. In early 2024 ARCA will develop a guideline around the meaning of the central term in this mechanism (i.e. 'circumstances beyond the individual's control').	Proposal 39: Ensuring the credit reporting system appropriately supports victims and victim survivors of domestic abuse is an important area of focus, and making clear that domestic abuse may be a circumstance beyond the individual's control should assist CPs and CRBs to assist individuals. Proposal 40: Extending this correction mechanism to CPs reflects the broader correction rights in the Privacy Act, as well as the fact that many individuals may first contact their CP (with whom they have an ongoing relationship) in the event of a difficulty. Proposal 41: This mechanism exists for information that is factually correct, but which the individual could do absolutely nothing about. It follows that there are not strong policy grounds for restricting the mechanism to certain types of defaults. For that reason, we propose to expand the right to apply to all defaults, as well as some RHI. We do not propose to extend the right to other types of information because:	The majority of stakeholders were supportive of these proposals, especially the inclusion of domestic abuse as an example set of circumstances. CPs and CRBs stakeholders generally expressed concern about expanded correction mechanisms being abused by unscrupulous third parties. There were also queries about when information can be corrected (i.e. what constitutes "the unavoidable consequences of circumstances beyond the individual's control"). We will respond to those comments by producing guidance on what this test means, seeking feedback from stakeholders when we do so. Equifax noted that while unpaid defaults may be corrected under the expansion, missed payments would need to be rectified in order for the relevant RHI to be corrected, and stated that the rationale for the RHI correction could apply more broadly. While we considered this option, the more restrictive approach to correcting RHI primarily reflects the additional challenges of correcting this data (i.e. the difficulty in determining what to correct it to in a given case).

Proposal	Variations	Rationale and other context	Feedback during consultation
		• We consider that if data like CCLI or enquiries require correction, it is very likely that that information is wrong on its face (i.e. other correction rights exists that are better suited to those other types of information) • It is difficult to determine what to correct RHI in respect of still-unpaid payments *to*. Additionally, CPs may be able to take pragmatic approaches to e.g. backdating FHAs which can address some issues in this space.	
Proposal 43 – Amend CR Code to introduce soft enquiries framework The CR Code should set out a framework for soft enquiries, including defining a soft enquiry and requiring that the written note of a soft enquiry must be on a record related to an individual, but not included on the individual's credit report	**Use cases for soft enquiries** The Proposed CR Code defines soft enquiries as information requests by CPs for the purpose of providing a pricing quote or conducting an ineligibility check (e.g. knock-out style criteria) in relation to commercial or consumer credit. The CP must disclose to the CRB that the enquiry is a soft enquiry. CPs will need to conduct a hard enquiry if they wish to use the information obtained in response to a soft enquiry for any other purpose.	We propose to expand the use cases for soft enquiries relative to the consultation version (which was restricted to pricing quotes only), while still preserving the ability of hard enquiries to reflect both approved and rejected credit assessments. Enabling soft enquiries for indicative quotes and pricing checks is consistent with the policy goals identified in the Review, i.e., tailoring of offerings, consumer shopping around, competition, consistency across industry; and system integrity (i.e. leaving retaining data about hard enquiries within the credit reporting system). Enabling soft enquiries for ineligibility checks manages the risk that could arise if individuals whose soft enquiry data identifies as being clearly ineligible for credit are unable to be discouraged from continuing to apply to that CP (with the result that the individual complains that the CP misled them). Further, the expansion of the meaning to allow for a CP to provide a product option to an individual (where this also adheres to the direct marketing ban in paragraph 16 – which ensures the provision of an alternative product option only occur where the initial product is unsuitable) responds to the risk that individuals are not directed to appropriate products.	Key concerns raised in response to the second-stage consultation include that: • the scope of the definition (i.e. pricing quotes only) is too narrow • additional use cases should be included to cover checks for eligibility, pre-filling of applications, product choice selections and indicative approvals • in the absence of eligibility checks, prospective customers would need to be priced out as a de facto eligibility assessment outcome • pre-filling of appliations and indicative approvals reduce frictions in the sales process. Feedback from CPs and CRBs highlighted the need for the scope to cover eligibility assessments. We also received feedback about indicative approvals and pre-filling of (full) applications for credit. While we have allowed for a form of eligibility checks (i.e. ineligibility checks) and product options in response to the feedback we received, we have not adopted the remaining use cases because: • Allowing soft enquiries for prefilling applications would not fit within the legal framework. Such a change also goes beyond the scope of what the Proposal is intended to achieve. Further consideration under the Part IIIA Review may be warranted. • Indicative approvals should be excluded as they would lead to significant loss of data relating to hard enquiries. Separately, we have excluded use cases relating to guarantors, mortgage insurers and trade insurers. These arrangements occur once a firm decision has been made to apply for credit with a particular CP and therefore do not align to the policy intent of supporting a consumer 'shopping around' for credit.
	What information is supplied response to a soft enquiry? The Proposed CR Code limits the types of information that can be disclosed in response to a soft enquiry to: • credit score or rating • consumer credit liability information • personal insolvency information • CP's opinion that individual has committed serious credit infringements • default information	The dataset we have proposed will allow CPs to provide reasonably accurate pricing quotes and eligibility checks, while still creating a real incentive for a CP to subsequently conduct a hard enquiry to obtain additional information for its credit assessment process. The inclusion of CCLI will make pricing quotes etc more accurate, while the exclusion of RHI and hard enquiry data means information which will have a material impact on the eventual credit assessment made by the CP is only provided at that later time in the process.	When we consulted publicly on not providing CCLI, RHI or enquiry data in response to a soft enquiry, stakeholders told us that this approach: • reduces the accuracy of pricing decisions; • can delay the sales process because of unaddressed frictions (e.g., relevant information is not ready to hand); and • dampens competition due to the poor customer experience from inaccurate pricing and these frictions. We have responded to these concerns by allowing CCLI to be disclosed following a soft enquiry. We have retained restrictions RHI and hard enquiry data. We believe noting that those datasets may be more relevant to credit assessment, versus a pricing decision. The absence of limitations on the data provided in response to a soft enquiry would lead

Proposal	Variations	Rationale and other context	Feedback during consultation
	• statement as to whether CRB holds financial hardship information about the individual		to a greater loss of hard enquiry data (e.g. very few hard enquiries leading to declines), which is data that continues to have value for CPs.
	Other components of the soft enquiry framework The Proposed CR Code: • contains integrity provisions which prohibits CPs, CRBs and other parties from acting inconsistently with the purpose of the soft enquiries regime or using the access seeker framework as de facto method of making soft enquiries; • requires CRBs to make a written note of the soft enquiry which is only visible to the individual or their access seekers (i.e. not CPs) or in other limited situations • includes tailored notification requirements for soft enquiries, through which the CP must explain the nature and effect of the soft enquiry (see Proposal 24). All aspects of the soft enquiries regime will commence 6 months after the commencement of the Proposed CR Code.	The additional components of the soft enquiry framework create rules to facilitate its operation, support the integrity of the framework and improve understanding of credit enquiries. • The Review proposals that records should be kept of soft enquiries, but that these records should not be generally visible (e.g. appear generally on an individual's credit report). The variations give effect to that proposal. • The statement of the purpose of the soft enquiries framework, the restrictions relating to the access seeker framework and the prohibition on using soft enquiries data for other purposes ensure the integrity of the soft enquiries framework and support the subsequent making of hard enquiries in the context of credit assessments. These restrictions do not prevent appropriate reliance on the access seeker provisions such as financial education programs or distribution agreements with mortgage brokers. • The notification requirements should help consumers who wish to obtain more information to understand the effect of the soft enquiry, while also tailoring existing notification requirements for CPs (so only relevant information is given when a soft enquiry is being made). Allowing 6 months to implement reduces the risk that CRBs and CPs will rush to market, making mistakes that threaten the trustworthiness of the soft enquiries framework and the broader credit reporting system. In turn, this measure underpins the successful rollout of the soft enquiries framework.	Stakeholders have told us that note-making should not require unnecessary system changes. We have drafted the provisions with that in mind, noting that the Proposal was clear on this point. We received feedback that restrictions on use could be circumvented if poorly drafted, and that compliance may be difficult to monitor. This informed our second-stage consultation in which we proposed use restrictions and integrity measures to prevent reliance on the access seeker regime. In that second consultation, stakeholders from within the credit industry told us that, as drafted, those restrictions could have unintended consequences of restricting distribution arrangements between CPs and mortgage brokers and where CPs are encouraging individuals to access their credit report for self-education purposes. We subsequently re-worked these integrity measures to ensure such activities would be permissible, while still prohibiting: • arrangements relying on the access seeker regime to obtain information for credit applications (i.e. as a de facto 'soft enquiry'); and • using data obtained in response to a soft enquiry for other purposes such as application assessment (unless a hard enquiry is conducted) We removed an additional restriction on the use of credit reporting information not provided by a CRB, as the other integrity provisions made that provision less necessary. Removal of this provision also simplified the drafting of the relevant provisions and reduced the risk of unintended consequences highlighted by the feedback received in the second-stage consultation. Time will be needed to implement the soft enquiries framework. Engagement with CRBs indicated that the regime should be phased in because of the system and process changes required and suggested that a minimum window of 6 months was required. We have redrafted the commencement provisions accordingly. We have redrafted the education requirements so that they rely on the existing notification provisions in the Code, which clarifies how information may be given to the individual (i.e. through a well-understood mechanism) and removes redundant information from notifications prompted by a likely soft enquiry.
Proposal 44 – Amend CR Code 'capacity information' definition to include an individual in their capacity as a trustee Amend definition of 'capacity information' in paragraph 1.2(c) include an individual acting in their capacity as a trustee.	The Proposed CR Code includes 'acting in the capacity of a trustee' as a type of capacity information. CPs will only be required to disclose this information from 12 months after the commencement of the Proposed CR Code, and then only in respect of credit accounts for which credit information is disclosed for the first time (i.e. existing accounts will be grandfathered).	At present, if a CP chooses to disclose information about a loan that an individual enters into as trustee for a trust, there is no way in the credit reporting system to differentiate that loan from loans taken out in their personal capacity. This could unreasonably affect the trustee's ability to get further (personal) credit, even where they are indemnified by the trust (and there are sufficient assets to support the indemnity). This approach addresses that risk by providing a "flag" for further inquiries by prospective CPs to fully understand that individual's obligations under the trustee loan. As such, this	Some CPs told us that they do not disclose information about these loans. Others did not support the change, noting that they do not have consistent, reportable data about whether a loan is entered into as a trustee. Laborious manual processes would be needed to create this data for some CPs' existing loans. We have sought to address this feedback by making the change prospective only and through a transition period. Some issues were also raised through the CR Code Workgroup about the proposed 'hierarchy', especially that it could require some

Proposal	Variations	Rationale and other context	Feedback during consultation
	There is no explicit requirement in the Proposed CR Code for CPs to disclose information about credit to trustees. Where a CP chooses to disclose information, if the individual has entered into credit as a trustee, the capacity information that is disclosed should reflect that status.	variation supports better consumption of credit reporting data and better consumer outcomes. We acknowledge that this will require systems changes for CPs. We have sought to minimise those changes by: • not imposing a requirement that CPs disclose information about trustee loans. If a CP chooses not to disclose information about these loans at present, they will not have to do so after this change • applying the status as a 'flag' – i.e. the reporting CP does not need to identify the nature of the individual's indebtedness/explore the trust indemnities, simply reporting that it was entered into as a trustee is enough • only applying the changes to new credit, after a transition period – to provide time for systems changes and avoid the need for manual review of existing credit accounts.	information about guarantors to be reported where the CP does not have a systematic way of capturing/reporting the guarantor's exposure (i.e. it is a partial guarantee, and in the absence of additional clarity, the credit report could erroneously suggest the guarantee was for the whole loan). We have adjusted our approach and will leave considerations about when/how to disclose information about guarantees to CPs to determine based on their systems. The effect is that: • CPs who do not currently disclose information about credit taken out by individual trustees will be able to continue this practice (i.e. there is no new requirement to disclose in the Proposed CR Code) • Where an individual enters into credit in a trustee capacity, this should be the capacity information that is disclosed (subject to the prospective nature of the change) – i.e. 'trustee' should be reported instead of 'debtor' or 'guarantor' in that instance. The normal CCLI/RHI should also then be reported if relevant. This approach to using the trustee capacity information as a 'flag' reflects feedback from the consultation process, and avoids the need for CPs to determine in a systematic/reportable way the extent of the individual's liability/indemnity.
Maximum amount of credit available – revolving credit facilities and $0 limits Clarify the meaning of 'maximum amount of credit available' for revolving products where the limit is set to $0 as part of the account closure process	The Proposed CR Code does not adjust the definition of 'maximum amount of credit available' to provide a special rule for closed accounts. The issue ARCA previously identified (about whether a closed account should have a limit of "$0" or the pre-closure limit) is better resolved through seeking clarity about the status of previously disclosed CCLI.	Based on the feedback received, making this change would impose substantial costs on CPs for negligible benefit, and may also create a risk of consumer confusion associated with limits appearing on their credit reports for closed accounts. CPs have advised that changing practices across their systems and teams is likely to be complex, costly and difficult to completely standardise. Part of the rationale for the change was providing evidence of the previous limit as an indication to future CPs who may wish to lend to the individual. However CPs confirmed that they do not seek to use this information in their lending decisions. A pre-closure credit limit is, in effect, a piece of historic CCLI. The Part IIIA review will consider whether historic CCLI should be allowed to be used (and, if so, when). This presents a better opportunity to develop a holistic solution to this issue without imposing costs on CPs.	There was mixed feedback about this topic on our first-stage consultation, but more substantial negative feedback during the second consultation (where we proposed requiring all CPs to disclose the limit before account closure i.e. generally a non-zero limit). The CR Code Workgroup highlighted the cost and challenge of making this change, as well as the limited benefit of seeing the pre-closure limit. Multiple CPs also noted the consumer confusion associated with seeing such a limit on a credit report. We have also received verbal feedback from CPs that they are receiving correction requests about non-zero limits on closed accounts, especially as these limits are sometimes described as "current" even where the account is listed as "closed".
Maximum amount of credit available – reverse mortgages Clarify the meaning of 'maximum amount of credit available' for reverse mortgages by varying CR Code to include a specific definition	The Proposed CR code state that the maximum amount of credit for a reverse mortgage is the principal amount of credit, whether fully drawn down or not, even when this may differ from the amount owing under the credit.	At present, it is not clear what amount should be reported as the credit limit for a reverse mortgage. This definition provides certainty, using similar drafting to other definitions e.g. 'principal amount of credit' for consistency reasons. While some stakeholders would have preferred a definition that referred to the debtor's total liability, such an approach would not be consistent with the wording of the Privacy Act. Total liability is akin to balance: a datapoint the Part IIIA Review may consider adding to the regime.	We received limited feedback on this proposal. During the first round of consultations, stakeholders generally supported a definition specific to reverse mortgages. This change can be made ahead of the Part IIIA Review, as the precise definitions of 'maximum amount of credit available' is clearly within the scope of the CR Code. A transition period will apply to give CPs time to update their systems to disclose limits in line with the specific definition.

Format of CR Code (Proposal 4)

Background

The Review considered the form and readability of the CR Code. Some stakeholders provided feedback that the readability of the CR Code is a significant issue and that a plain English redraft should be considered, while others noted that the CR Code is delegated legislation whose structure and provisions are intended to facilitate compliance with the Privacy Act rather than to act as a document for consumers.

The Review proposed additional guidance to address stakeholder concerns about readability. Additionally, Proposal 4 was for a review of the source notes and 'blue rows' within the CR Code, to ensure that the CR Code adequately explains the purpose and effect of each paragraph and the relevant provision(s) of the law are clear. The Proposal's intent is to help map intersections between the CR Code, the Privacy Act and Privacy Regulation.

However, a CR Code that is registered by the OAIC is a legislative instrument: s26M(2) of the Privacy Act. The present form of the CR Code is substantially different from other legislative instruments, which:

- are generally drafted in a similar style to legislation, with express references to the relevant sections of the primary legislation; and
- use drafting templates prepared by the Office of Parliamentary Counsel (OPC), which manages the Federal Register of Legislation.

Paragraph 2.32 of the Guidelines makes clear that Code developers should comply with the drafting and publishing standards for legislative instruments prepared by the OPC.

Consultation and feedback received

During our first-stage consultation, we received mixed feedback on Proposal 4. Some entities bound by the CR Code expressed concern about the degree of change that would occur as a result of changing templates and ensuring alignment with OPC's drafting standards. Others were less concerned, but noted the need to review the detail of any changes.

Given that the Proposal required us to use the OPC template, during the second-stage consultation we sought feedback on a version of the CR Code which was drafted in this manner. We also provided a range of ancillary and support documents to help compare the current template to the new template. In response, entities bound by the Code (CPs and CRBs) did not raise significant concerns with the use of the new template. Equifax noted a degree of support for our approach to the Proposal, while one large CP noted they had no concerns with the format. Another large CP noted that minimising the flow-on changes would also reduce unintended consequences.

The main stakeholder with reservations about the new template was the FRLC, who noted that they found the new template 'legalistic' and more difficult to navigate without the blue notes in the current CR Code.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code is drafting using the OPC template. We do not consider that the feedback receives justifies the significant departure from paragraph 2.32 of the Guidelines which retaining the old template would require. Additionally, we consider that using the OPC template ensures that the Proposed CR Code

better aligns with the drafting and publishing standards for legislative instruments, and helps to ensure that the provisions in that code are clear and legally effective.

In order to use the OPC template and reflect legislative drafting standards, we have had to make minor, non-substantive changes to the provisions of the CR Code.[2] As these changes are non-substantive, there is limited practical effect for CPs and CRBs, beyond the need to update their internal documentation.

In preparing the Proposed CR Code, we have taken the following steps:

- We sought to minimise the non-substantive changes wherever possible, as we are cognisant that non-substantive change may nonetheless add cost and complexity for entities bound by the CR Code.
- We have retained the 'paragraph level' numbering from the previous template. For example, the entirety of Paragraph 8A of the CR Code is in Section 8A of Schedule 2 to the Proposed CR Code. This has necessitated placing the operative provisions of the Proposed CR Code in a schedule, but should make the Code easier to use and navigate for stakeholders who are familiar with it.
- We have produced the Comparison Document, to help stakeholders engage with the Proposed CR Code and, should our application be approved, manage any changes to internal documentation
- Based on the feedback from FRLC, we have added additional notes to the Proposed CR Code in places and simplified the drafting of some provisions. We have also taken this feedback into account for the drafting of the explanatory statement, as this document presents an opportunity to explain the provisions of the code in simpler language and alongside explanations of the relevant provisions of the Privacy Act (and may be of use to the stakeholders they thought might find the Proposed CR Code legalistic). However, we did not make the other changes they sought and retain the previous template as:
    - We consider that the general template and drafting style used ensure that the Proposed CR Code is fully effective and reflects its status as part of the legal regime (should it be registered);
    - There are other more appropriate ways – such as through the explanatory statement – we can respond to the key aspects of their feedback.

Consumer Credit Liability Information (CCLI) Definitions (Proposals 6, 15 and other issues)

Background

CCLI is a kind of credit information (and therefore can be used and disclosed in the credit reporting system), but is only described in the law in general terms. For instance, the Privacy Act and Privacy Regulation define CCLI to include information such as:

- 'the day on which the credit is entered into' (i.e. the account open date); and
- 'the day on which the credit is terminated or otherwise ceases to be in force' (i.e. the account close date);
- 'the maximum amount of credit available' (i.e. the credit limit); and

[2] These changes are not marked in the version of the Proposed CR Code at Annexure 2. Doing so would detract from the substantive variations we are seeking to address the other Proposals. The Comparison Document at Annexure 3 should help navigate between the existing CR Code and the Proposed CR Code.

- ‘the term’ of the credit.

To ensure that CPs take consistent approaches, the CR Code provides additional clarity about what some terms mean. At present, the terms are defined as follows.

- **Account open date:** the current definition in the CR Code is that the day on which the credit is entered into is the day on which the individual has been unconditionally approved and the account has been generated on the CP’s systems.
- **Account close date:** The meaning of this term is affected by Proposal 15. The day on which the credit is terminated/ceases to be in force is intended to be earliest of the dates on which the credit is repaid (with no further credit available), waived or charged off.
- **Credit limit:** This term has a different meaning for different types of contracts:
    - For revolving credit with no limit, a charge card contract or the sale of goods or supply of services where credit is provided – no fixed limit;
    - For revolving credit with a limit – the limit at the time of disclosure;
    - For interest-only loans – the principal amount of credit; and
    - For principal and interest loans – the amortised maximum principal amount of credit.
- **Credit term**: This term is not defined in the CR Code – the Privacy Regulation provides that information about whether the credit is fixed or revolving is CCLI, as is ‘the length of the term’ for fixed-term credit contracts.

Some issues have been identified with these terms, specifically:

- how they apply to credit provided by telecommunications and utility businesses (Proposal 6);
- unintended consequences from the drafting of ‘account close date’ (Proposal 15); and
- uncertainty identified by ARCA and CPs about the meaning of ‘the maximum amount of credit’ for reverse mortgages and revolving arrangements (‘Other Issues’).

CCLI for telecommunications and utilities credit (Proposal 6)

Many of the definitions in the CR Code have been drafted, primarily, with financial services credit in mind. However, telecommunications and utilities businesses often provide ‘credit’ within the definition of the Privacy Act, and therefore can participate within the credit reporting system.

In this context, the Review received feedback that it is unclear how certain elements of CCLI data relating to account open date, account close date, credit limit and credit term should be reported by telco and utility providers.

Many of the issues in relation to these terms appear to arise from differences between the overall account (e.g. the telephone service) and the credit provided by the telco/utility provider. For example, a phone service exists from the time the service is connected until disconnection occurs, but can involve multiple credit contracts across that period if the arrangements ‘roll over’. Where that occurs, it is not clear what should be reported as the account open date, account close date or the credit term.

The Review proposed that the definitions of account open date and account close date be clarified.

Consultation and feedback received

In our first-stage consultation, we sought feedback and information in order to form a view about how to best proceed, noting that definitions related to service connection and disconnection may have advantages.

Stakeholders outside the telecommunications and utilities industries generally supported the concept of definitions based on service connection and disconnection, but noted the need to engage closely with affected businesses. We received detailed feedback from one ombudsman scheme about service provision in the energy and water sectors, which suggested that 'service provision' may be a more appropriate starting point as switching between retailers may not involve a hard disconnection of e.g. energy service. A submission from the Communications Alliance also highlighted challenges with e.g. separately reporting account open and close dates for month-to-month customers.

Based on that feedback, in the second-stage consultation we proposed definitions of account open date and account close date specific to the telecommunications and utilities sectors based on the overall provision of service.

We received limited feedback in response; the feedback we did receive was mostly about the specific drafting and how those definitions apply shortly before or after the underlying service is provided. Specifically:

- EWON suggested that the definitions should relate to each separate service
- EWON also noted that an account is generally considered 'active' for the purposes of the National Energy Retail Rules for a short period after supply ceases, as individuals can have re-energisation rights
- FRLC suggested that the account open date should be the first date the telecommunications/utility service is provided, as subsequent to a service being established (e.g. a consumer setting up an electricity connection to happen in the future), events could change so ultimately no service is provided by that retailer. There was similar feedback from stakeholders in the telecommunications industry.

Proposed variations, rationale, and responses to feedback

Based on the feedback received, the Proposed CR Code contains variations to the definition of account open date and account close date to give effect to this proposal: see the definitions section – specifically the definitions of *day on which the consumer credit is entered into* and *day on which the consumer credit is terminated or otherwise ceases to be in force* in section 5 of the Proposed CR Code – as well as subsection 6(4) of Schedule 2.

In effect, these variations provide:

- The account open date is the date a service is first provided (and where the CP has an active account in its systems); and
- The account close date is the date that service provision ceases (and where there is no longer a right under an existing contract to have a service reconnected).

We have made a minor change to the variation to the definition of account open date, in response to feedback from FRLC and the telecommunications industry about the importance of the service actually being provided. We have however, based on EWON's feedback from the first-stage consultation, retained the active account concept in the definition to reflect the energy context where underlying service can be continuous even though the retailer/CP

changes. The reference to active account will help make clear for energy CPs that the key date in question is the date the retailer change is effective.

The reference to a right to have a service reconnected reflects EWON's feedback about re-energisation rights in the energy context, as well as comments from the Communications Alliance submission on our first-stage consultation. Our expectation is that this definition will better align with, for instance, when energy retailers are required to keep their accounts 'active' under the relevant law. The reference to an existing contract is intended to avoid confusion about where an individual may have some other right – i.e. the potential to obtain a different service from the one previously provided by the CP. As noted in our consultation processes, the intention of this definition is that if a telecommunications/utility service is disconnected/ceases but credit remains unpaid, the account is to be considered 'closed' for CCLI purposes.

We have not adopted EWON's suggestion of a reference to 'each' service in the definition. This is based on feedback from stakeholders about the burden and confusion associated with reporting each piece of credit 'separately'. Such reporting could significantly increase the amount of information e.g. a telecommunications credit provider would need to disclose, while also making the overall information set more difficult for other CPs to interpret.

We propose that the definitions will apply to CCLI disclosed on or after a specified date – we propose that that date be six months after the Proposed CR Code commences. This will provide relevant CPs with time to update their systems to comply with the new definitions. Existing CCLI will remain as-is, so there will be no need for CPs to re-supply information. Previous variations to CCLI definitions have also been prospective only, so this approach is consistent with previous practices.[3]

The effect of these variations is that affected CPs will need to update their practices for disclosing account open date and account close date.

Clarifying the definition of 'account close date' in respect of CCLI (Proposal 15)

Paragraph 6.2(d) of the CR Code defines 'the day on which the consumer credit is terminated or otherwise ceases to be in force', commonly known as the account close date. That definition states that the account close date means the date the credit is repaid, or the earlier of the date on which the credit is waived and the date on which the credit is charged off.[4]

The intention behind the wording used in the CR Code is that:

- the three situations are non-optional (i.e. if an account has been charged off, a CP cannot choose to wait until it is repaid or waived to report it as closed); and
- where a credit account has been charged off but a debt remains outstanding, the credit should be reported as closed.

The Review found that in some instances, debt buyers appear to have purchased charged-off (but not repaid) debts from an original CP, but continued to report CCLI and no account close date. Although this practice is permitted by the current definition, it can mean that information about charged-off credit can potentially remain in the credit reporting system

[3] For example, see paragraph 6.2(a) of the CR Code in respect of the definition of account open date.
[4] This definition applies for CCLI disclosed from 1 July 2018. A different definition applies for CCLI disclosed earlier.

indefinitely, which is at odds with the data retention provisions in the Privacy Act. The Review proposed addressing this by changing the definition of account closure so that accounts are treated as closed on the earliest date one of these events occurs: credit is terminated, credit is charged off, or credit is repaid.

Consultation and feedback received

During our first-stage consultation, we consulted on amending the definition of account close date in this manner. The feedback we received supported amending the definition to address the issue the Review identified. One CRB did verbally note the potential effect on individuals should a change incentivise debt buyers to disclose default information instead.

During our second-stage consultation we sought feedback on variations to the CR Code which would amend the definition in the manner proposed by the Review. We received limited feedback, but there was a degree of comfort with the proposal within ARCA's Membership. In their submission, one CRB advised that they supported the amendment. The ACBDA welcomed the clarity the variation would provide, but noted that it would lead to less CCLI within the credit reporting system, which could affect the visibility of amounts owing or lead to less accurate assessments of individuals' credit worthiness.

Proposed variations, rationale, and responses to feedback

Based on the feedback received, the Proposed CR Code contains a variation to the definition of account close date to give effect to this proposal: see the definitions section – specifically the definition of *day on which the consumer credit is terminated or otherwise ceases to be in force* in section 5 of the Proposed CR Code – as well as subsection 6(4) of Schedule 2. The variation is the same as the one we consulted on in the second-stage consultation.

The way in which the three options in the definition (credit is terminated, credit is charged off, credit is repaid) are worded has not been changed, as the intention of the variation is not to alter what it means for credit to be terminated, charged off or repaid.

Although we sought feedback on whether a transitional period should apply, no stakeholders suggested such a period would be appropriate. We continue to consider that the new definition should apply as soon as possible, given the issues raised by the Review. The Proposed CR Code is drafted on this basis.

Although some stakeholders noted the effects of the Proposal (and associated variation) on debt buyers and the visibility of closed accounts within the credit reporting system, we consider that:

- without the variation, the intended operation of the law and definitions is not being realised;
- the CCLI being disclosed does not reflect an open account under which the consumer can obtain credit – so it is not accurate and is likely to confuse;
- the period of time for which CCLI for closed accounts is retained under the Privacy Act is set in the legislation and reflects the balancing of policy objectives supporting the credit reporting regime;
- without the variation, the relevant information could remain in the credit reporting system indefinitely (or until the credit was repaid, notwithstanding the fact that it has been charged off).

Other issues – 'maximum amount of credit' and revolving credit (CCLI Issue A)

For revolving credit contracts, the CR Code defines the 'maximum amount of credit available' to mean the credit limit that applies at the time the information is disclosed to a CRB. This definition causes can cause uncertainty where a revolving credit contract has been closed, and the CP is subsequently disclosing the final set of information. If, as part of the closure process, the credit limit of the contract has been set to zero, the previous limit would be replaced by a zero.

Consultation and feedback received

In our first-stage consultation, we sought feedback on whether we should seek to vary the CR Code to clarify that the amount that should be reported is the credit limit at the time of disclosure or, for closed accounts where the limit is set to zero as part of the closure process, the last non-zero limit. We received limited, but mixed feedback. At least one CP supported making the change, while another was not supportive, noting that past limits may not be directly relevant to considerations about servicing further/future credit.

Based on that feedback, we proceeded to draft a variation to the CR Code for our second-stage consultation. At this stage, we received consistent negative feedback from CPs. Their concerns included:

- There would be significant costs associated with either amending systems to store and disclosure previous credit limits, or changing their practices across multiple products and channels to ensure that when an account is closed, the credit limit of that account is unchanged
- The information in question (previous limits on accounts that have now closed) is not useful from a data consumption perspective. The information does not directly relate to the individual's ability to service new credit in the future, and CPs in our CR Code Workgroup told us that they do not use this information when assessing an application for credit
- Making this change would increase scope for individual confusion and complaints. One CP told us they already receive complaints and correction requests where they continue to disclose a non-zero limit once an account has been closed, as this can appear on a credit report obtained from a CRB as a "current limit".

There was no feedback on this proposal from consumer stakeholders in support of addressing this issue.

Rationale and responses to feedback

Based on the feedback received, we have not included any changes in the Proposed CR Code to address this issue. The feedback we received suggested that at present, the cost and potential downsides of this proposal are more significant than the benefits that would accrue from increased visibility of previous credit limits from a subset of CPs in respect of a subset of products.

We note that, fundamentally, a previous credit limit is a piece of 'historic' CCLI (i.e. CCLI that has been previously disclosed but which, in and of itself, may still be within the retention period within the Privacy Act). The treatment of historic CCLI, and whether CPs should disclose historic CCLI, was considered by the Review. Not proceeding with changes at this time is broadly consistent with Resolution of Practice 2 from the Review (through which the OAIC indicated that CPs should not disclose historic CCLI). The Review also indicated that the treatment of historic CCLI should be considered by the Part IIIA Review. A solution to the

ambiguity associated with historic CCLI could address the lack of visibility of previous limits in a more holistic manner than a specific CR Code amendment for this issue.

Other issues – 'maximum amount of credit' and reverse mortgages (CCLI Issue B)

As noted above, the CR Code sets out specific definitions for 'the maximum amount of credit available' under a contract (commonly known as the credit limit) for different kinds of consumer credit. However, it is not obvious what figure should be reported for a reverse mortgage. For the purposes of regulation under the *National Consumer Credit Protection Act* 2009 (**National Credit Act**), a reverse mortgage is a credit contract where the debtor's total liability may exceed the maximum amount of credit that may be provided under the contract without the debtor being obliged to reduce that liability. The extent to which the total liability exceeds the maximum amount the CP is willing to lend when the contract is entered into depends on factors such as the amount of credit which the individual accesses, the prevailing interest rate, the contract's duration and the value of the mortgaged property.[5] This is not ascertainable until the reverse mortgage comes to an end.

Consultation and feedback received

Because of this uncertainty, during the first-stage consultation we sought feedback on amending the CR Code to include a specific definition for reverse mortgages. Stakeholders generally supported amending the CR Code including a specific definition for the maximum amount of credit under a reverse mortgage. The majority of comments received preferred a definition based on the greater of the maximum amount of credit and the debtor's total liability.

We then proceeded to draft a variation to the CR Code for our second-stage consultation, based on the largest amount of debt the CP would allow the debtor to defer (i.e. the principal amount of credit). We took this approach as we concluded that the type of definition stakeholders preferred in the first round of consultation – with a reference to total liability – was not sufficiently consistent with the definition of *amount of credit* in section 6M of the Privacy Act.

We received limited feedback. One large CP did note that a transition period may be appropriate, and that this issue could be instead considered in the Part IIIA Review.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code includes a variation to the definition of maximum amount of credit available to include a specific definition for reverse mortgages: see the definitions section – specifically paragraph (f) of the definition of *maximum amount of credit available* in section 5 of the Proposed CR Code – as well as subsection 6(4) of Schedule 2. We have also included a definition of reverse mortgages which refers to the definition in the National Credit Act –given the specific regulatory obligations which apply to these products, it should not be difficult for CPs to determine what constitutes a reverse mortgage.

As noted above, although stakeholders generally preferred a definition that incorporated the concept of the debtor's total liability, we do not believe that this would be sufficiently consistent with the meaning of 'amount of credit' in section 6M of the Privacy Act. Total

[5] Reverse mortgages are subject to a 'no negative equity guarantee' – a CP cannot recover more than the adjusted market value of the property.

liability is more akin to the 'balance' of the credit account – a datapoint which is not currently included in the credit reporting system. While we believe that balance would be a beneficial addition to the CCLI dataset, a change of that nature would require law reform.

We acknowledge that one CP has indicated that some time might be needed to transition to a new definition, and for that definition to apply prospectively. For this reason, we have made clear that the new definition applies to CCLI after a specified date – we consider that six months from the commencement of the Proposed CR Code be an appropriate period. This approach means:

- CPs who offer reverse mortgages will have some time to make changes to their systems to ensure they can comply with the new definition; and
- CCLI that was disclosed before that date continues to be valid even after the new definition commences (i.e. in line with the suggestions we received from one CP).

Although a large CP did note that this issue could be suited to resolution through the Part IIIA Review, we consider that this is clearly within the scope of the CR Code, as the code defines what a 'maximum amount of credit' is for specific products. Law change is not needed to provide certainty for CPs who provide reverse mortgages, and in light of the benefits associated with that clarity, we consider that the preferable approach is to proceed now.

Publication of CRB Audit reports (Proposal 13)

Background

The Privacy Act and the CR Code impose obligations intended to ensure the quality and security of information within the credit reporting system. To this end, the Privacy Act requires CRBs and CPs to enter into agreements requiring CPs to ensure that information reported is accurate and that information is protected from disclosure and misuse. CPs must also obtain independent audits to ensure their compliance with the agreements: s20N(2) and 20Q(2) of the Privacy Act.

Paragraph 23 of the CR Code sets out who may conduct audits and requires CRBs to publish information each year, including the number of audits conducted, any systemic issues identified and action taken in response.

The Review considered the framework in the CR Code relating to agreements and audits, as well as obligations relating to training and policies. The Review noted the limited visibility of current processes and considered that a lack of transparency affects both confidence in, and the effectiveness of, the audit programs and their objectives. The material required to be published about audits under paragraph 23.11(o) of the CR Code is not sufficiently specific to provide the transparency the Review sought.

For that reason, the Review proposed that reports of CRBs' audits of CPs be published alongside the CRB's credit reporting policies and annual website reports (Proposal 13). Any publication would be subject to redactions to exclude personal or commercially sensitive information. The Review also proposed that these reports be provided to the OAIC.

Consultation and feedback received

During the first-stage consultation, we sought feedback on a new obligation to publish audit reports, as well as identifying that a consolidated report (by each CRB, of all audits conducted that year) might have some advantages. Entities that were bound by the CR Code expressed concern with the proposal; this included comments to the effect that:

- The relationships between CRBs and CPs and their terms (enforcement rights, dispute resolution, audits) are all confidential. In this context reports on audits could pertain to this information, which could be extremely difficult to effectively redact for public release.
- Findings of audit reports may be contested, so any new requirement would need to allow for disagreements to be resolved before publication occurs.
- Publication of named audit reports is not necessary to achieve the objectives of the proposal (to provide more transparency into audit processes, thereby increasing confidence that the current framework is appropriate).

We also received one suggestion for the publication of additional statistical information under a CRB's annual report. However, the majority of the feedback received favoured, or was open to, a consolidated publication.

With that in mind, during the second-stage consultation we consulted on an obligation on CRBs to publish on a consolidated report, with content focused on providing transparency around a CRB's obligations under the Privacy Act and CR Code. We also sought feedback on whether or not the actual audit reports should be provided to the OAIC.

Among ARCA's Members there was significantly more comfort with a consolidated report, as well as the content proposed for inclusion. One CRB did note that there may be some overlap between the new report and the obligation to publish statistics in the paragraph 23.11 of the CR Code. In their submission Equifax noted that their preference was the CRBs not be required to automatically provide audit reports to the OAIC.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code includes both:

- a new obligation on CRBs to publish information each year about their audit programs: see subsection 23(14) of Schedule 2; and
- a power for the OAIC to request copies of audit reports from CRBs: see subsection 23(10) of Schedule 2.

The content of the new consolidated report required by subsection 23(14) is the same as the one we sought feedback on in our second-stage consultation. As we noted during that consultation, we do not consider that additional statistical information alone (as was suggested by one CRB after our first consultation) is sufficient to address the Review's concerns. Also, we do not believe that the publication of individual audit reports is a necessary step to providing transparency. In fact, such an approach has drawbacks, such as:

- discrepancies across CRBs in the consistency and volume of what may be published;
- the lack of scope to publish broader material, such as information about the types of factors that influence the number and nature of audits that are conducted; and
- the need to address concerns in cases where audit findings are disputed.

Based on these issues and the feedback received, we consider that a consolidated report is the preferable response to the issues identified by the Review.

In light of the feedback received, we reviewed the existing obligation to publish an annual report and concluded that the information about audits specified in paragraph 23.11(o) of the CR Code would need to be included in the new report. To avoid duplication, in the Proposed

CR Code, the equivalent of paragraph 23.11 (subsection 23(15) of Schedule 2) does not include this information. We note:

- All information that is currently published about audits would continue to be published (as well as the additional information required by the new obligation); and
- There were no other changes to the annual report obligation in paragraph 23.11/subsection 23(15) of Schedule 2.

In respect of whether audit reports should be provided to the OAIC, we discussed this issue with OAIC staff and reviewed the Guidelines. Paragraph 3.21 of the Guidelines specifies:

> *The CR code should include an obligation on CRBs to provide the Information Commissioner, on request, with access to the results of the compliance monitoring activities, including the results of any audits undertaken by or on behalf of the CRB.*

On that basis, we consider that a power for the Commissioner to request audit reports is a better approach than automatic provision or no specific power for the OAIC. Such an approach also:

- Reduces the burden on CRBs and the OAIC associated with providing reports that the OAIC does not require in order to administer Part IIIA of the Privacy Act (e.g. the burden of providing the report, but also of considering and responding to what is provided)
- avoids uncertainty for the relevant CRB and CP, who will not know if the OAIC wishes to further consider a report that is automatically provided.

The practical effect of these changes is that CRBs will need to publish a new annual report of the kind required in subsection 23(14) of Schedule 2 to the Proposed CR Code. They may also choose to update their existing annual publications to remove content about audits due to the overlap in requirements. CRBs would also need to respond to requests by the OAIC for actual copies of audit reports.

Flexibility around the definition of 'month' (Proposal 17)

Background

For credit reporting purposes, the term 'month' is used in the Privacy Act in the context of repayment history information (**RHI**), financial hardship information (**FHI**) and financial hardship agreements (**FHAs**). While there are no express requirements in the law about how frequently repayments must be made, the provisions around RHI, FHI and FHAs often refer to 'monthly payments' or 'monthly payment obligations'. Some CPs' 'months' for RHI reporting purposes end on the date the individual's payment is due.

There is a definition of month in the CR Code, which displaces the definition in section 2G of the *Acts Interpretation Act 2001*.[6] The CR Code definition provides that a month means a period:

> (i) starting at the start of any day of one of the calendar months; and
>
> (ii) ending on any of the following days, as determined by the CP:

[6] The CR Code is a legislative instrument once included on the Codes register, and as such, in the absence of a contrary intention the Acts Interpretation Act would apply to it as though it were an Act: see s13(1) of the *Legislation Act 2003*.

1) immediately before the start of the corresponding day of the next calendar month; or

2) where the day before the corresponding day of the next calendar month is a non-business day, the end of the next business day following that day; or

3) if there is no such day – at the end of the next calendar month.

ARCA has identified three scenarios where there may be issues with this definition. The effect of the issues is that in some cases, common or preferable 'months' for RHI reporting purposes do not align with the definition of 'month' in the CR Code. The three examples are below.

Example 1: CP 'months' ending on the 29th, 30th or 31st day of the month can be out of alignment with 'months' permitted by CR Code definition

If a CP wishes to end the month on 29th, 30th or 31st of a calendar month there may be times when the month used by CP systems does not meet the CR Code 'month' definition.

Payment due date	Month based on CP systems	Possible Month CR Code	Issues
30 April	31 Mar – 30 Apr (31 days)	31 Mar – 30 Apr	Period meets 'month' definition
30 May	1 May – 30 May (30 days)	1 May – 31 May	Period **too short** for the 'month' definition
30 June	31 May – 30 Jun (31 days)	31 May – 30 June (or, if carried forward from the previous month, 1 Jun – 30 Jun)	Period meets 'month' definition
30 Jul	1 Jul – 30 Jul (30 days)	1 Jul – 31 Jul	Period **too short** for the 'month' definition
30 Aug	31 Jul – 30 Aug (31 days)	31 Jul – 30 Aug (or, if carried forward from the previous month, 1 Aug – 31 Aug)	Period meets month definition

These discrepancies largely arise from the different number of 'days' in every calendar month.

Example 2: Further example of issues with CP 'months' ending near the end of a calendar month

In this example, a CP generally sets payments as being due on the 29th of each month, so that individuals have a consistent understanding of when their payments must be made. In most years, there will not be a 29 February. Where a CP has systems that automatically move the payment date back rather than forward (as is generally what the law requires), this can mean the 'month' for the purposes of RHI reporting is not consistent with the CR Code definition. This issue can be exacerbated by non-business days, such as weekend days;. In the example below, there is no 29 February, and the weekend falls on 1 and 2 March.

Payment due date	Month based on CP systems	Possible Month (CR Code)	Issues
29 December	30 Nov – 29 Dec (30 days)	30 Nov – 29 Dec	Period meets 'month' definition
29 January	30 Dec – 29 Jan (31 days)	30 Dec – 29 Jan	Period meets 'month' definition
1 March (no 29 February, and 1 March not a business day)	30 Jan – 3 Mar (33 days)	30 Jan – 28 Feb	Period **too long** for the 'month' definition
29 March	3 Mar – 29 Mar (26 days)	2 Mar – 1 Apr (or, if carried forward from the previous month, 1 Mar – 31 Mar)	Period **too short** for the 'month' definition
29 April	30 Mar – 29 Apr (31 days)	30 Mar – 29 April (or, if carried forward from the previous month. 1 Apr – 30 Apr)	The period 30 Mar – 29 Apr meets the month definition in the CR Code, but is out of alignment with the month that would apply if the earlier months were compliant (1 Apr – 30 Apr')
29 May	30 Apr – 29 May (30 days)	30 Apr – 29 May (or, if carried forward from the previous month, 1 May – 31 May)	The period 30 Apr – 29 May meets the month definition in the CR Code, but is out of alignment with the month that would apply if the earlier months were compliant (1 May – 30 May)

Example 3: Revolving products with different payment dates each calendar month can also cause problems

The CR Code 'month' definition may not adequately cater for some revolving products, such as where the payment due date and the cycle date is not the same date each month. This occurs even if there are relatively consistent 30 or 31 days between payment due dates; CPs may use such dates to create equivalence to a typical calendar month while ensuring that twelve months equates to 365-366 days. If the payment due date or cycle date is used to establish the period to assess RHI, the month may not comply with the CR Code 'month' definition.

Payment due date	Month based on CP systems	Possible Month (Acts Interpretation Act / CR Code)	Issues
5 December	7 Nov – 7 Dec (31 days)	7 Nov – 6 Dec	Period **too long** for the 'month' definition
4 January	8 Dec – 6 Jan (30 days)	8 Dec – 7 Jan (or, if carried forward from the previous month, 7 Dec – 6 Jan)	Period **too short** for the 'month' definition
4 February	7 Jan – 6 Feb (31 days)	7 Jan – 6 Feb	Period meets 'month' definition
6 March	7 Feb – 8 Mar (29 days)	7 Feb – 6 Mar	Period **too long** for the 'month' definition

The Review considered examples such as these, and concluded that the definition of 'month' in the CR Code may need to be amended to:

- provide flexibility in reporting information such as RHI; and
- resolve situations where a strict interpretation of the meaning of a 'month' would result in a poor outcome for individuals.

A guiding principle for any variations in response to the Review's proposal was that RHI reporting should reflect an individual's expectations around their repayment obligations and their repayment behaviour.

Consultation and feedback received

During the first-stage consultation, we sought feedback on the potential for changes that responded to the review but which were:

- carefully considered, to avoid unintended consequences due to the variety of different situations that may arise; and
- optional in nature (i.e. such that a CP retains discretion about 'when' the month ends), in order to provide the flexibility envisaged by the Review, reduce the need for systems changes and reflect the different number of days, and non-business days, that may fall in each month.

All stakeholders who provided feedback supported changes being made, so long as current practices that are compliant with the CR Code definition of month remain compliant. As such, during the second-stage consultation we consulted on adding two extra limbs to the definition of 'month', which would permit a 'month' a period of between 26 days and 31 days, with restrictions on when a month could be 26 or 27 days in length.

Feedback from CPs and CRBs through ARCA's CR Code Working Group was supportive of the change, and one large CP and Equifax provided support for the proposed variation in writing. In verbal discussions AFCA indicated a degree of support for a broad variation, but also queried whether, instead of the variations proposed, ARCA could or should consider

more significant change to the definition which made RHI reporting practices of CPs more consistent.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code definition of month (contained in section 5) contains two new limbs. The drafting is the same as that we consulted on in the second-stage consultation.

Specifically, this approach ensures that any period which is currently a 'month' would continue to comply with the definition. However, under the new definition CPs could treat the following periods as 'months':

- any period of between 28 and 31 days (i.e. the month ends on a day between 27 and 30 days after the day the month starts); and
- periods of 26 or 27 days, where the start of the month could be delayed due to the previous month otherwise ending on a non-business day.

This drafting approach is simple and intuitive, while responding the feedback from CPs and CRBs about the importance of not disrupting existing systems or creating further confusion, We consider that periods of 28 to 31 days would be generally acceptable as 'months' given that there are calendar months of these lengths within a standard year (although, as the examples above highlight, sometimes the length of a month for CR Code purposes is unrelated to the length of the relevant calendar months).

There are limited instances where a shorter period is needed. These arise when the 'end' of a previous month is effectively delayed due to non-business days. In that scenario, such as the RHI reporting 'month' from 3 March to 29 March in example 2, is further shortened. With this in mind, the proposed definition permits 'months' of 26 or 27 days, but only where preceding non-business days are the cause. We intend for the revised definition to resolve the issues identified and facilitate the type of conduct which could promote consumer understanding (such as consistent 'end days'), while limiting the situations where 'month' may depart from a period of time people would commonly associate with 'month'.

While we acknowledge AFCA's suggestion that more significant change could be considered, we believe the proposed approach is preferable because:

- the intention of the Review was to provide CPs with additional flexibility, whereas what was proposed implicitly requires less flexibility (i.e. achieving consistency by having CPs move to reporting RHI at more similar times)
- Based on the other feedback received, a mandatory change to RHI reporting times would involve significant costs for many CPs
- ARCA already has work underway to promote consistency of data supply through our Best Practice Working Group, which is attended by both CRBs and CPs
- Issues of data supply and consistency are likely to be considered by the Part IIIA Review, which would be a more appropriate forum for addressing change of that magnitude.

Positive obligations about statute barred debts (Proposal 19)

Background

Paragraph 20.6 of the CR Code requires CRBs to, on request by an individual, correct credit information by destroying default information for statute-barred debts (i.e. where the CP is

prevented by a statute of limitations from recovering the amount owning). The Review considered the operation of paragraph 20.6 and accepted evidence that few individuals make use of that provision. Additionally, the Review received evidence of defaults which were disclosed to CRBs shortly before the debts became statute-barred. In those situations, evidence of the missed payments would have been on the individuals' credit reports, and therefore affecting their ability to obtain further credit, for substantially more than the five-year retention period (including when the debt could not be enforced).

The Review concluded that the current arrangements involve a substantial imbalance of power that ought to be corrected. To that end, the Review proposed obligations on:

- CRBs to remove statute-barred debts from individuals' credit reports where it is reasonable for them to have been aware of the statute of limitations;
- CPs to take reasonable steps to inform CRBs when a debt has or will become statute-barred;
- when disclosing default information, CPs to provide CRBs with the date that the debt became overdue.

However, it can be very difficult to determine whether a given debt is statute-barred. The statute of limitations period varies depending upon the nature of the debt and the laws which apply to the underlying contract. Whether the individual has last acknowledged the debt will determine when the statute of limitations period starts; it is not always clear whether an individual's conduct amounts to an acknowledgement for the purposes of the various limitations Acts.

Consultation and feedback received

During our first-stage consultation, we sought feedback from stakeholders on the challenges of implementing the proposed obligations, and other options to address the power imbalance – and in particular the risk of late disclosure of defaults – that led to Proposal 19. The feedback we received included:

- General support for addressing the problems identified by the Review.
- CPs provided input which suggested that it would be extremely difficult to supply the information a CRB would require. CRB feedback suggests they would be highly reliant on the information received from CPs.
- Many stakeholders either noted, or supported other options for addressing the underlying issues (see below).

The options noted by ARCA and/or proposed by stakeholders included:

- A general obligation to require CPs to, if they intend to disclose default information, do so within a reasonable period;
- The development of a time period beyond which default information cannot be disclosed;
- A requirement that, if a CP has disclosed default information to a CRB, that same default cannot be listed with another CRB at a materially later time; or
- Changes to the retention period for default information which would link retention of default information to the date on which the debt first became overdue (i.e. so delays with disclosing default information would reduce the amount of time the information is retained).

A further complication is some legal uncertainty about whether default information remains credit information once a debt becomes statute-barred. This uncertainty could only be addressed through law reform; law reform is also needed for some of the options suggested by stakeholders above.

We discussed these issues and options with the OAIC and the person who conducted the Review. The Reviewer expressed support for the problem underpinning Proposal 19 being addressed through law reform, as well as noting that other solutions could avoid the complexity associated with determining whether certain debt(s) are statute-barred. The OAIC indicated that consider a pragmatic way forward would be for this issue to be explored further in the Part IIIA Review and for ARCA apply to vary the CR Code without amendments relating to Proposal 19.

These views aligned with our approach to the second-stage consultation, where we did not seek feedback on draft variations to the CR Code to give effect to Proposal 19, but rather suggested that the Part IIIA Review would be a better mechanism for addressing these issues.

FRLC and other consumer stakeholders provided feedback that law reform after the Part IIIA Review could take some time, and that the issues giving rise to the Proposal were such that an interim step (such as a prohibition in the Code on disclosing default information more than two years after the default) was warranted. EWON also expressed concern about the delay in changes in this area and favour a similar restriction in credit related to energy.

Rationale and responses to feedback

We acknowledge that reform is needed in this area. We agree with the feedback of stakeholders who prefer solutions other than the new obligations suggested in Proposal 19. The types of options canvassed in our first stage consultation would generally be easier to implement than Proposal 19, as they do not involve CRBs or CPs seeking to determine whether certain debts are statute-barred. Rather, they rely on limiting the extent to which default information is disclosed late (for options 1-3) or reducing the retention period if late disclosure occurs (Option 4). We support these options being explored as an appropriate through the Part IIIA Review as an appropriate means of addressing the Review's concerns.

We considered whether there was scope for an interim solution, such as the one suggested by FRLC. Ultimately we concluded that such a solution could not be achieved for the following reasons:

- The relevant date for the interim solution (i.e. the 'date of default') poses challenges. The issues with default reporting and the concept of default date are well-established and have long been identified by ARCA as issues which require law reform. Without reform to Part IIIA to introduce a clear, distinguishable concept of 'default date' which sits separate to 'default disclosure date' and 'default collection date', it is arguable any provision in the CR Code which seeks to require reporting of default information tied to the day the debt first became overdue will be ineffectual. The better approach would be to reform Part IIIA to introduce the concept of 'default date', and introduce the obligations suggested by FRLC and EWON aligned to that concept. In the absence of this explicit legislative provision, ARCA considers that it is not possible to achieve the approach sought.
- In any event, the appropriate period beyond which default information could not be disclosed would require careful consideration – including the effect of hardship

assistance and complaints on that period. These are matters that may be better considered through law reform.
- Given the complexities and need for law reform to clarify the treatment of information about debts which are statute-barred in any event, we believe it would be preferable to address this issue holistically through the Part IIIA Review.

Standalone notices given under s21D(3)(d) of the Privacy Act (Proposal 21)

Background

CPs cannot disclose default information to a CRB unless 14 days have passed since they have given the individual a written notice (a **s21D(3) notice**) of their intention to do so. Paragraph 9.3 of the CR Code provides additional detail about s21D(3) notices, including the addresses they must be sent to and their timing relative to other notices about an individual's default.[7]

The Review proposed that s21D(3) notices should be given without other correspondence, as it may improve consumer awareness of the impending listing of the default.

Consultation and feedback received

In our first-stage consultation, we consulted on the appropriateness of changes to paragraph 9.3 of the CR Code to give effect to this proposal. The majority of stakeholder feedback was supportive of the change. The two main issues raised were:

- The new requirement should not prevent the provision of information about matters which are genuinely helpful to the individual: e.g. information about contacting the CP to discuss hardship assistance, or details of the National Debt Helpline
- The potential lack of clarity about the meaning of 'standalone'.

In our second-stage consultation, we sought feedback on changes to the CR Code to include a requirement that s21D(3) notices not be accompanied by other correspondence that would have the effect of reducing the prominence of the notice's messages.

There was support for this approach across ARCA's Membership, as well as in writing from one large CP. We also received:

- A comment from EWON about also making clear that information about the availability of hardship assistance (the draft provisions already specified that how to contact a CP about hardship assistance was information that could be included in the notice)
- A query from one large CP about whether the restriction relates to the content of the s21D(3)(d) notice or the presence of other inserted documents.

We did not receive any feedback which suggested the change should not be made, or that there were significant current issues with CPs providing other documents with a s21D(3) notice.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code includes a requirement that a s21D(3) notice not be accompanied by other correspondence that would have the effect of

[7] Section 6Q requires the individual to receive a written notice about the default earlier in the process; the CR Code requires that 30 days elapse between the sending of this notice and a s21D(3)(d) notice.

reducing the prominence of the messages of the notice: see paragraph 9(3)(d) of Schedule 2. This is the same wording that was the subject of the second-stage consultation.

There are also two notes under the definition of s21D(3) notice in section 5 of the Proposed CR Code. We have updated the wording of the second note to address the feedback from EWON, and also ensure that the wording makes clear that e.g. information about the National Debt Helpline would be permitted within the notice.

Consistent with Proposal 21, the new requirement relates to 'other correspondence' that would accompany a s21D(3) notice. The wording relating to reducing the prominence of the messages of the notice is intended to address the feedback we received and provide scope for e.g. information about hardship assistance to be provided (including in a separate document if necessary), but not for other, more general correspondence. It is also for this reason that we have included the second note underneath the definition of s21D(3) notice to clarify that information about seeking support for hardship is permitted. This is explained in additional detail in the draft Explanatory Statement.

Notification obligations in the credit reporting framework (Proposal 24)

Background

Section 21C of the Privacy Act requires CPs to notify an individual that they are likely to disclose their information to a CRB. Paragraph 4 of the CR Code expands on this obligation to also require CPs to notify individuals:

- that the CRB may include the information in reports provided to other CPs to assist them to assess the individual's creditworthiness;
- that failures to repay the loan and/or serious credit infringements may be disclosed to the CRB;
- of how they can access the CP and CRB's policies about managing their information;
- of their various rights, including to seek corrections, complain, and to opt-out their information being used by a CRB to pre-screen for direct marketing purposes.

Paragraph 4.2 makes clear that CPs can comply with these obligations by publishing a statement on its website, bringing that statement (and the website) to the individual's attention and informing them of the key issues (and that a hard copy may be provided on request).

The Review heard that that there has been an increase in the number of complaints based on individuals not having consented to the disclosure of their credit information. The potential cause identified by the Review was the risk that 'individuals are not appropriately informed about when information is going to be disclosed'. With that in mind the Review proposed:

- a holistic review of the notification regime within the credit reporting framework;
- reviewing the notification requirements in paragraph 4 of the CR Code to ensure they are achieving their objectives: i.e. to appropriately inform individuals about the circumstances in which their information will be used and disclosed
- that consideration be given to mechanisms that ensure that notifications are meaningful.

Consultation and feedback received

In our first-stage consultation, we sought feedback from stakeholders on the causes of confusion and complaints, when complaints about not consenting to the disclosure of information commonly arise, current practices relating to the mechanism in paragraph 4.2 of the CR Code and potential solutions.

We received wide-ranging feedback from stakeholders on this topic, including:

- Reservations about the quality of disclosures that individuals receive, which could lead to confusion.
- Recognition that individuals may not engage with all the disclosures that they are given, noting that the disclosure is given at a time when they receive a large number of other documents that may be higher priority.
- Suppositions that limited understanding of credit reporting generally could drive some of the confusion.
- Confusion about enquiries is a key issue – one CRB noted that 33% of their complaints about disputed enquiries related to claims that the individual did not consent (when no consent is generally required). The potential for confusion is heightened by the fact that an enquiry may relate to an application that was unsuccessful, or not show the brand name the individual may have expected due to white labelling arrangements.

Based on this feedback, in our second-stage consultation we sought feedback on including a new requirement in the CR Code such that, before a CP could rely on the mechanism currently in paragraph 4.2, they would need to provide a short, prominent statement about credit reporting and enquiries.

We received mixed feedback about this proposal. ARCA's Members generally considered that an additional disclosure was unlikely to be fully effective, especially for the reasons identified through the first-stage consultation process. In verbal comments FRLC did also indicate that although there could be some marginal benefit from additional up-front disclosure, real time notifications would be far more effective. We also received negative feedback, especially from larger CPs, about the cost and complexity of updating their existing disclosures (across various products and distribution channels) to include an additional statement, particularly given the view that this would be unlikely to be effective in the first place. Feedback of this nature was also reflected in written comments from ACBDA and two large CPs.

EWON's submission broadly supported the proposed new obligation, and comments from AFCA indicated that there could be some benefit, particularly if there was a new disclosure rather than changes to the existing statements of notifiable matters made available under Paragraph 4.2 of the Code. More generally AFCA provided feedback that CP disclosures can be complex and legalistic, and there was scope to improve CP disclosures so that they were simpler and more likely to achieve their overarching policy objectives.

Proposed variations, rationale and responses to feedback

Based on the feedback the costs of a new disclosure and substantial concerns about its effectiveness, we have concluded that a different approach would be preferable. To that end, the Proposed CR Code includes three changes:

- A new provision which states that, in order to comply with section 21C of the Privacy Act, a CP does not need to obtain the individual's consent to the likely disclosure: see subsection 4(2) of Schedule 2;
- A new version of the matters that a CP must notify, or otherwise make the individual aware of, tailored to disclosures which are soft enquiries: see subsection 4(3) of Schedule 2;
- Changes to the standard set of notifiable matters in subsection 4(4) of Schedule 2 to:
    - ensure that list does not apply to soft enquiries; and
    - add a requirement to notify or otherwise make the individual aware of the fact that their consent is not required for the disclosure of information.

The Proposed CR Code also includes a provision that puts beyond doubt that if a CP has an obligation to notify an individual under the new subsection 4(3) (i.e. because the CP is likely to make a soft enquiry in respect of the individual) and then it subsequently becomes likely that the CP will disclose personal information about the individual to a CRB for any other purpose, the CP must also notify the individual of the standard set of matters in subsection 4(4) of Schedule 2. That new provision is at subsection 4(5) of Schedule 2.

Consent is not required

Subsection 4(2) of Schedule 2 is a clear statement that the notification obligation in section 21C of the Privacy Act does not require the CP to obtain the individual's consent to the disclosure of information to CRB. This provision is intended to empower CPs to make clear disclosures to their customers, and in this way may indirectly help to resolve the issues identified by the Review. The new subsection may also:

- make it easier for CPs to address complaints or correction requests about enquiries that are based on assertions that the individual did not consent to the disclosure of their information; and
- resolve any uncertainty amongst stakeholders who engage closely with the CR Code about what subsection 21C(1) of the Privacy Act requires.

In respect of disclosures to individuals, feedback from CPs indicated that the obligation to give a new disclosure proposed in our second-stage consultation would be costly, while many stakeholders had reservation about its likely effectiveness. For those reasons, we have concluded it would be better not to proceed with a new disclosure, but instead include a statement that consent is not required in the standard list of notifiable matters in subsection 4(4) of Schedule 2 of the Proposed CR Code. ARCA's Members advised that this would be a less costly and burdensome change than the new disclosure proposed in the second-stage consultation (although as the ACBDA's submission notes, the change is not without costs).

We acknowledge that the feedback we received suggested that additional disclosure may not be a full solution to the Review's concerns, and particularly note the feedback from AFCA in the context of the list of notifiable matters. However, we still believe that there may be some limited benefit to improving existing disclosures – particularly for engaged individuals or those seeking more information either at the time of the disclosure or after the fact.

As not all individuals engage with notifications under the CR Code and the Privacy Act, in 2024 we will review our consumer education materials on the CreditSmart website about enquiries to see whether improvements can be made. Any enhancement we can make will work alongside the changes to add clarity to the CR Code. Collectively these pieces of work

have the potential to reach existing users of the system, engaged individuals as well as less engaged (but curious) individuals who visit CreditSmart or are directed there by their CP.

In respect of the other feedback we received about disclosures from AFCA and FRLC:

- ARCA will continue to encourage and assist its Members to improve their disclosures and notifications, in particular to make them simpler and more likely to be effective.
- Some third-party providers already offer services where consumers can be notified of changes to their credit report, and we expect that our response to Proposal 31 will also partially address their feedback for additional real-time notifications.

Disclosures for soft enquiries

Additionally, a tailored list of notifiable matters for soft enquiries has been included in section 4 of the Proposed CR Code to ensure that the individual is aware of the soft enquiry and its effects; more details about the feedback we received on the soft enquiries framework (and earlier proposed notifications) is available below. During our second-stage consultation, this was included as a separate disclosure obligation in section 7 of that code. However, in finalising the drafting, we opted to instead include this provision as part of the existing notification process. This approach:

- avoids overlap with the existing disclosure obligations in subsection 21C(1) of the Privacy Act and under the CR Code;
- allows CPs to leverage their existing processes for notifying, or otherwise making individuals aware of important matters; and
- ensures that the notifications the individual receives better reflect the nature of the disclosure for a soft enquiry, as well as the potential use of their information by the CRB and other CPs[8].

The creation of the tailored list in subsection 4(3) of Schedule 2 necessitates other flow-on changes in section 4. In particular, the standard list of notifiable matters (in subsection 4(4) of Schedule 2) must apply in all other situations. Additionally, if a CP makes a soft enquiry and it then becomes likely that they will make a hard enquiry, the individual will need to receive notifications about, or otherwise be made aware of, the additional matters that are now relevant. Subsection 4(5) of Schedule 2 has been included to clarify that the CP must make the notifications before the hard enquiry occurs.

'Automatic' requests for credit ban extensions (Proposal 28)

Background

Section 20K of the Privacy Act establishes a framework for individuals to request that credit reporting information about them not be used or disclosed. This functionality, known as a credit ban, is available where the individual, or the relevant CRB, has reasonable grounds to believe that the individual has been affected by fraud. At first instance a credit ban is in place for 21 days, although upon a request from the individual the CRB may extend the ban for any

[8] For instance, notifications about information related to missed payments or serious credit infringements being disclosed are not relevant in the soft enquiry context. In that situation, an individual has not even made a firm decision to make a full application for credit.

period it considers appropriate.[9] Current practice amongst CRBs is for extensions to be 12 months long.

Paragraph 17 of the CR Code provides additional requirements for CRBs about the operation of credit bans, including the steps that the CRB must take immediately after receiving a request for a ban, and requirements to advise the individual about the upcoming end of a credit ban period.

The Review considered the operation of the credit ban provisions. There was consistent feedback from stakeholders that the initial ban period of 21 days is insufficient to protect victims of fraud from data misuse and harm, but as this is set out in the Privacy Act it cannot be altered by the CR Code. The Review concluded that there was evidence that individuals were not electing to extend their credit bans, and that an interim solution is needed before the 21 day period in the Privacy Act is considered by the Part IIIA Review.

To that end, the Review proposed enabling CRBs to provide an option to individuals, when they request a ban, to 'automatically' extend the ban period where warranted by the circumstances. Acceptance of this option would constitute a credit ban extension request under s20K(4) of the Privacy Act.

Consultation and feedback received

In our first-stage consultation, we sought feedback on whether amendments to the CR Code would be necessary to provide for automatic ban extensions, as well as whether there were any other issues with the provisions relating to credit bans.

A majority of stakeholders supported steps to implement the proposal, with a general preference for consistency across CRBs and an 'automatic' extension period of less than 12 months. Some stakeholders however did note some of the risks associated with automatic extensions, including the potential for individuals to not recall the ban when they subsequently apply for credit.

When considering that feedback, we also considered the following:

- Practices around ban requests, co-ordination across CRBs and ban extensions (including the move to a 12 month extension period) have been adjusted in response to the volume of bans taken out as a result of the large-scale data breaches. While these practices have improved the overall efficiency of the ban system, they have also highlighted the issues with the current legal framework. In particular, credit ban framework is a blunt instrument at best, which does not offer adequate protection to individual, nor does it allow the legitimate operation of the system to continue unimpeded. Significant law reform is needed– at a minimum to change the 21 day period for credit banks, but possibly also wider reform to address the numerous shortcomings with the credit ban framework, as well as identity theft and data breaches more holistically.
- ARCA's view that significant law reform is preferable – such as through the use of a 'fraud flag' to provide automatic protection to individuals affected by large data breach events (removing the burden of placing/extending a ban from affected

[9] When a ban is placed, the law requires the individual to hold the belief about the presence of fraud. For an extension, it is the CRB who must believe on reasonable grounds that the individual may have been affected by fraud: see s20K(4)(c) and Proposal 29.

consumers, as well as much of the harmful friction current practices impose on helpful uses of the individual's information by existing CPs).
- The fact that any law reform is likely make interim measures to respond to Proposal 28 redundant (possibly soon after completion, as CRBs indicated systems changes would be needed to give effect to upfront or automatic extensions).

For those reasons, our second-stage consultation did not propose changes to the CR Code to give effect to a consistent up-front ban extension process across CRBs. FRLC provided feedback that we should nonetheless proceed, because an interim solution before law reform is still needed and could be implemented alongside a ban notification service (see Proposal 31).

Rationale and responses to feedback

We have not included any changes in the Proposed CR Code to require CRBs to offer up-front ban extensions.

Based on the feedback we received from FRLC, we reviewed the rationale for Proposal 28, which refers to concerns about individuals not to extend bans. We sought additional information from CRBs about the effect of changes since the Review was finalised. Although the information provided is Commercial in Confidence, those statistics show:

- A large increase in the number of credit bans being placed since September 2022 (which coincides with high profile data breach events)
- Very significant increases in both the number and proportion of individuals who are extending a credit ban rather than letting the ban lapse after 21 days
- Very significant increases in both the number and proportion of individuals who have manually removed a ban – both within the original 21 day period, and once a ban has been extended.

Additional details of this information is provided to the OAIC on a confidential basis in **Annexure 8**.

Based on this information, as well as the rationale above set out in our second-stage consultation, we continue to consider that the preferable approach is for protections for consumers at risk of fraud to be considered by the Part IIIA Review. We note:

- The evidence we have received suggests more bans are being extended – consistent practices amongst CRBs combined with greater public awareness means the Proposal 28 is less critical than at the time it was made.
- The significant number of ban extensions also supports the view that the extension process itself is straightforward – and there may be little practical benefit achieved in introducing a burdensome interim requirement for up-front extensions;
- The increase in ban removals – including shortly after a ban is placed – also speaks to the potential unintended burden on individuals of allowing up-front extensions. Removing a ban is a more difficult process for individuals than placing a ban– due to identity verification requirements, it is not possible for this to be coordinated through a single CRB; the consumer must contact each CRB separately and verify their identity. Individuals may want to remove bans for numerous reasons, including the realisation that they are in fact not at serious risk of identity theft or the desire to obtain more credit. The fact that a material (and growing) proportion of credit bans are being manually removed suggests that a longer initial ban period – given effect to

through an up-front ban extension process – would lead to more individuals needing to take this step rather than allowing an initial 21 day credit ban to expire.
- As noted above, we continue to consider that law reform to the credit ban process is likely through the Part IIIA Review, and in that context consider that the systems work to give effect to a mandatory up-front ban extension offering would soon be redundant.

We note, consistent with our first-stage consultation, that there is nothing in section 20K of the Privacy Act or the CR Code which prevents CRBs choosing to offer an up-front ban extension if they wish.

The evidence needed to put in place or extend a credit ban (Proposal 29)

Background

Under the Privacy Act, in order to request a credit ban, an individual must have reasonable grounds to believe they have been, or will be, a victim of fraud (including identity fraud). The Explanatory Memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 (the **Explanatory Memorandum**) states that generally '… an individual who is able to explain why they believe they have been, or are likely to be, the victim of fraud would satisfy this requirement'.

However, for extensions to a credit ban, this belief must be formed by the relevant CRB in order for an extension to be put in place. The Explanatory Memorandum provides some context about what a CRB may do/consider when deciding whether to form such a belief:

> A credit reporting body could ask the individual to demonstrate the basis for their belief that they are, or may be, the victim of fraud. This would depend on the circumstances of each case, but would not necessarily require any court based evidence (such as the arrest of a person who is alleged to have committed the fraud). In some cases, the risk of fraud may continue for a significant period and the credit reporting body should make a judgement in the circumstances of the appropriate period of time for the extension. It is not intended that an individual would be placed under additional stress by the imposition of short extension periods that have to be regularly renewed if the circumstances do not warrant this approach.[10]

The Review received feedback from stakeholders that the current requirements for individuals to support an allegation of fraud are too high. One stakeholder stated that individuals may not be able to extend a ban until they gain a police report number, which they can only do if they prove misuse has occurred. This would in effect mean that individuals must wait for data misuse to occur, rather than being able to prevent that misuse.

The Review concluded that the Explanatory Memorandum is clear that the ban extension process should not be unduly onerous or cause additional stress for individuals. To that end the Review proposed amendments to the CR Code which:

- in respect of extensions, recognise that CRBs must make a case-by-case assessment about whether there are reasonable grounds to believe that fraud has occurred; but
- clarifies that CRBs do not require individuals to provide detailed, documentary evidence to support their belief that they have been a victim of fraud.

[10] See page 143 of the Explanatory Memorandum.

Consultation and feedback received

In our first-stage consultation, we sought feedback on developing a new provision to give effect to the proposal. In doing so, we set out our view that a CRB could ask the individual about why they are seeking the extension and/or their beliefs in respect of fraud, and that further evidence or inquiries are more likely to be needed where the individual's responses give rise to reasonable grounds to consider that they have *not* been affected by fraud.

We received limited but supportive feedback. One CRB noted that the need to ask for documents as evidence could make the process more complicated for individuals (which we consider was the issue the Review was trying to address).

Based on that feedback, in our second-stage consultation we consulted on a new provision which clarified when additional evidence would be needed to extend a credit ban. That provision would allow CRBs to ask the individual why they believe they have been, or are likely to, be a victim of fraud, as well as why they have asked for the ban to be extended, but then only allow them to request further information if the responses, or the circumstances of individual's extension request, indicate that there are reasonable grounds to believe they have *not* been the victim of fraud.

There was general support for this approach through ARCA's CR Code Working Group, as well as in a submission from Equifax. We did not receive feedback that suggested our approach should be changed.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code includes a new provision to clarify when additional evidence would be required to extend a credit ban: see subsection 17(10) of Schedule 2. This provision, which is the same as the one that was the subject of our second-stage consultation, makes clear that:

- a CRB could ask the individual why they believe they have been, or are likely to, be a victim of fraud, as well as why they have asked for the ban to be extended;
- The CRB can only then request additional information if the responses, or the circumstances of individual's extension request, indicate that there are reasonable grounds to believe they have *not* been the victim of fraud.

This provision is intended to clarify that, if the individual's responses appear reasonable in all the circumstances, there would be grounds for the CRB to form the view necessary to allow them to extend the credit ban. The reference to "the circumstances of the individual's request" (in the second dot point above and paragraph 17(10)(b) in the Consultation CR Code) is added for consistency with the requirement for the CRB to make a case-by-case assessment; it is **not** anticipated that this could support a general approach of requesting additional material such as an email confirming the occurrence of a data breach, a police report number or an Australian Cyber Security Centre (ACSC) incident number.

In our view, the feedback received does not justify a departure from the approach we proposed in our second-stage consultation.

Alerting individuals of attempts to access their information when a ban is in place (Proposal 31)

Background

Where a credit ban is in place, the relevant CRB must not disclose the individual's credit reporting information. Additionally, if a CP requests that information, paragraph 17.2 of the CR Code requires the CRB to inform the CP of the ban period and its effect.

CRBs are not currently required to advise the individual that there has been a request for their credit reporting information during a ban period. The Review sought feedback on a possible option to support victims of fraud by allowing free alerts to the individual where there has been an attempt to access their credit reporting information during a ban period. The rationale for this option was that alerts would assist individuals to know that someone is still trying to access their report, and may support any fraud proceedings, or support an application for an extension to the ban period. The Review concluded that it was worth exploring the possibility of this functionality further in consultation with CRBs.

Consultation and feedback received

In our first-stage consultation, we sought feedback from stakeholders about the potential value of such alerts, noting that there may not be an immediate call to action following an alert, as the effect of the disclosure under paragraph 17.2 is almost certainly that any subsequent credit applied for would be rejected. We also sought feedback about whether such a service to notify individuals of access attempts could or should be offered on an opt-in basis.

The feedback we received indicated that many stakeholders saw value in a notification, such as providing possible evidence for a ban extension or in proceedings against a perpetrator of the fraud or identity theft. At least one stakeholder noted that the notification service should be free of charge. One CRB provided information about some of the technical challenges which would need to be overcome in order to offer such a service.

Based on the feedback received, in our second-stage consultation we proposed changes to the CR Code to require CRBs to offer a ban notification service on an opt-in basis. This included provisions making clear when and how the service must be offered, that contact details could be collected and when and where notifications must be provided.

There was support for this approach from one large CP, noting that the service was likely to keep the customer informed in the context of fraud and scams. Equifax expressed concerns, including:

- Alerts could dissatisfy individuals as the CRB cannot assist the individual to address/remediate the fraudulent activity
- The administrative burden on the CRB of providing detailed information with the notification (e.g. how to contact the relevant CP)
- The notifications may contain credit information, and as such there may be a need to verify the identity of the individuals who receive notifications (unless the CR Code says this is not the case);
- How the ban notification service operates if a ban request is submitted by a third party
- Whether the ban notification service should be given effect to by law reform

- Whether notifications would confuse the individual as the relevant access requests will not appear on their credit report
- The potential need to retain notifications for a long period of time

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code include series of changes to require CRBs to offer a notification service free-of-charge on an opt-in basis. The changes include:

- A definition of the service – known as a **ban notification service** – as a free of charge service where the CRB will notify an individual of requests from a credit provider, mortgage insurer or trade insurer for credit reporting information relating to that individual when a ban period is in effect (section 5)
- A requirement that, from 12 months after the commencement of the Proposed CR Code, CRBs offer a ban notification service: paragraph 17(2)(a) of Schedule 2
- A provision that allows CRBs to require that the relevant individual consent to the use of their credit reporting information in order to provide notifications under the ban notification service: paragraph 17(2)(b) of Schedule 2
- A clarification that the CRB can collect contact information for the individual for the purposes of operating the ban notification service: paragraph 17(2)(c) of Schedule 2;
- A requirement to explain to the individual, when a ban is put in place, that they may opt into the ban notification service: subparagraph 17(3)(b)(ii) of Schedule 2;
- A requirement to notify an individual who has opted in in the same circumstances where currently CRBs notify CPs and insurers under paragraph 17.2 of the CR Code: subsection 17(6) of Schedule 2.

This series of changes is broadly similar to that which was the subject of our second-stage consultation, with some minor changes in response to the feedback received from Equifax.

The feedback we received across both stages of consultation indicated that many stakeholders saw value in a notification, such as providing possible evidence for a ban extension or in proceedings against a perpetrator of the fraud or identity theft. At least one stakeholder noted that the notification service should be free of charge. We are inclined to agree with this feedback, and have drafted the Proposed CR Code on that basis.

We have attempted to incorporate feedback from CRBs into the design of the Proposed CR Code provisions. In doing so we have nonetheless sought to ensure that we address the Review's intention that CRBs be required to record and alert an individual of access requests during a ban period. Some of the design decisions and amendments which reflect the feedback received include:

- A requirement that individual have to opt-in to receive notifications under a ban notification service (as otherwise the CRB may not have contact details for the individual, and if unwanted the notifications may cause confusion or concern).
- The provision in subsection 17(2) which makes clear that the CRB can collect the individual's contact details and must provide any notifications using those contact details. If the individual has provided the wrong details, the CRB would have still met their CR Code obligations.
- Making clear how the requirement to offer a ban notification service interacts with obligations to pass on ban requests. When a ban request is made, the CR Code requires a CRB to explain to the individual that they can consent to the CRB notifying

other CRBs of the request. Those CRBs are then required to treat the notification as if the individual had contacted them directly – see paragraph 17.1 of the CR Code / subsections 17(3) and (4) of the Proposed CR Code. The intention of the provisions about ban notification services is that where an individual consents to the original CRB notifying other CRBs of the ban request, they could also consent to the original CRB notifying other CRBs of their desire for a ban notification service (and providing their contact information for that purpose). Where that occurred, those other CRBs would need to provide notifications.

- Proposing a transition period before the ban notification services must be offered. As material systems changes are needed (i.e. to systematically record unsuccessful access requests, to notify individuals of those requests and to update existing processes around consents at the time that a credit ban is placed), we consider that a twelve month transition period is warranted.

In response to Equifax's feedback in our second-stage consultation:

- We acknowledge that the ban notification services will involve a degree of administrative effort for CRBs. We will work with all our Members to reduce this effort where possible, including by ensuring our CP members promptly provide CRBs with contact details and information to support individuals who receive a notification and may wish to take steps to understand potentially fraudulent conduct.
- Upon further consideration, we acknowledge that it may be possible that the details of requests for access that are the subject of a notification could include credit information as defined in section 6N of the Privacy Act. For that reason:
    - We have included a new provision that allows CRBs to require the individual to consent to the use of their credit reporting information for offering notifications, in case CRBs consider they need to take this step to comply with section 20K of the Privacy Act (the prohibition on use and disclosure of information when a ban period is in place)
    - We have not specified the exact form that a notification must take, or the steps that must be taken to verify the individual. If a CRB considers that providing the relevant details to the individual would include credit reporting information, they will be subject to the obligation in paragraph 19.1 of the CR Code/subsection 19(2) of the Proposed CR Code relating to obtaining evidence of the person's identity. However, we note that this requirement expressly references what is reasonable in the circumstances, and a CRB could conclude that providing information about unsuccessful access requests in the context of a ban notification service warrants different evidence to a request for other pieces of credit reporting information. We also note that there is flexibility in the design of the ban notification service. CRBs could take the steps they considered necessary when the notifications are first requested, or before the substance of a notification is first provided (i.e. by advising the consumer to contact them, and when they do so, establishing their identity and then providing the details of the request for access).
- The drafting of the provisions about the ban notification service aligns with the drafting of the other provisions in paragraph 17 of the CR Code / section 17 of the Proposed CR Code, which refer explicitly to the individual. The intention of the changes is that CRBs will incorporate the ban notification service into their existing processes for placing bans on that basis.

- While these changes could be given effect to via law reform, it is also possible to create a ban notification service framework within the CR Code. Given the benefit to consumers which would result from notifications being offered, we consider it appropriate to put this regime in place as soon as practicable.
- Although Equifax has suggested a two year retention period for notifications, CRBs could conclude that information that the individuals will wish to receive is credit information under subsection 6N(d) of the Privacy Act. Such information has a retention period under the Privacy Act of 5 years. Also, the record keeping obligations in Paragraph 22.3 of the CR Code / subsections 22(3) and (4) of the Proposed CR Code generally require evidence of compliance with the CR Code to be kept for 5 years. We consider that the normal rules about record keeping should apply to the ban notification service.

Information about how to access credit reports (Proposal 32)

Background

Individuals can access their credit information that has been disclosed to CRBs under s20R of the Privacy Act. The document the individual receives in response is their credit report. Access to a credit report must be free of charge if the individual has not requested access within the previous three months. The obligations in s20R are supplemented by paragraph 19.4 of the CR Code, which specifies what must be included in the report and adds restrictions on direct marketing.

However, as a CP may choose which CRBs it discloses information to, different CRBs hold different information about the same individual. As a result, an individual must request multiple credit reports to obtain full visibility of the credit information that is held about them.

The Review considered whether individuals should be able to receive their credit reports by making just one access request to any of the CRBs. Although some stakeholders suggested such a requirement, a coordinated access regime would cause problems for CRBs, each of which have their own identity verification processes. The Review ultimately proposed when an individual seeks access to their credit report from a CRB, the CRB be required by the CR Code to also provide the individual with information on how they can access their credit reports held by other CRBs.

Consultation and feedback received

In our first-stage consultation, we sought feedback on varying paragraph 19 of the CR Code to give effect to this proposal. All of the stakeholders who responded to our questions on this proposal supported the potential amendments.

As a result, in our second-stage consultation we proposed changes to the CR Code to require:

- CRBs to provide individuals with a brief description of the need to contact other CRBs in order to obtain all their credit reporting information, as well as the contact details of the other CRBs
- CPs to update their disclosures when providing credit eligibility information; CPs already required to advise individuals that they should request access to credit reporting information held by CRBs, but would also be required to provide general contact details.

There was support for this proposal across ARCA's CR Code Working Group, as well as in writing by Equifax and one large CP. There was no feedback to the effect that the proposed changes should not proceed.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code includes variations that require:

- CRBs to, when offering a service to access credit reporting information, provide information about how to access credit reporting information from other CRBs: see subsection 19(3) of Schedule 2; and
- CPs, when providing an individual with access to credit eligibility information, must include information about how to request credit reporting information from CRBs: see subparagraph 19(8)(d)(ii) of Schedule 2.

These variations are almost identical to those in our second-stage consultation; a minor typographical correction is the only change.

These changes are intended to address the Review's proposal and make it easier for individuals to take steps to obtain all their credit reporting information, so they have a full understanding of their credit health and the information CPs may see about them. The intention is that it would be sufficient for:

- a CRB to provide a brief description of the need to contact other CRBs in order to obtain all their credit reporting information, as well as the contact details of the other CRBs; and
- CPs would only need to update their existing disclosures about requesting credit reporting information to include the contact details of the three CRBs.

This variation will require CRBs and CPs to update their practices to include this additional information. Individuals who request either their credit report or credit eligibility information will see the contact details and may choose to request additional information from CRBs.

Access to physical copies of credit reports (Proposal 33)

Background

As noted above, individuals can access their credit information (e.g. a credit report) from CRBs under s20R of the Privacy Act. However, the law and the CR Code are silent about the form in which this access occurs.

The Review received feedback from some stakeholders which noted that accessing reports can be difficult for vulnerable individuals who do not have an email account or access to the Internet. In response, the Review proposed an obligation on CRBs under paragraph 19 of the CR Code to require them to provide a physical copy of a credit report on request.

Consultation and feedback received

In our first-stage consultation, we sought feedback on implementing this proposal, as well as complementary changes to ensure that there is a non-online means of requesting a credit report (as the barriers to accessing information that the Proposal intends to solve will not be fully addressed if the only means of requesting a credit report is through a CRB's website). The stakeholders who provided feedback generally supported our approach, although one CRB noted that any changes should not make hard copy the preferred or default way to request a credit report.

Based on that feedback, in our second-stage consultation we proposed draft changes to require CRBs to offer hard copy credit reports on request, as well as a requirement that CRBs offer a means other than their website for offering credit reports.

There was support for our approach to this proposal across ARCA's Membership, and in writing from one large CP. There was no feedback to the effect that the proposed changes should not proceed.

Proposed variations, rationale and responses to feedback

In light of the feedback received, the Proposed CR Code includes variations to address the Proposal. These changes are that a CRB must provide:

- a hard copy of a credit report on request: see paragraph 19(6)(e) and (7)(c) of Schedule 2; and
- a means of requesting a credit report other than through their website: see paragraph 19(3)(b) of Schedule 2.

Following the second-stage consultation process, we identified that the changes we sought feedback on would only apply to free credit reports. We have addressed that oversight by adding the requirement in subsection 19(7) of Schedule 2; the intention is that an individual should have a right to a hard copy credit report even where they used a paid service. Otherwise, the variations have not changed since our second-stage consultation.

The requirement to offer a non-online means of requesting a credit report is not intended to preclude CRBs from allowing individuals to request access online, or to make non-online the 'primary' or default method of requesting a credit report. We have sought to have this clear with a note under the relevant provision of the Proposed CR Code. Consistent with the CR Code, we also envisage that CRBs will also impose identity verification requirements for non-online requests; nonetheless we consider it important that a non-online means of requesting information is available for individuals who may struggle to request their information through the CRB's website.

The practical effect of these changes is that:

- CRBs will need to ensure they offer the hard copy credit reports – as well as a non-online means of requesting a credit report. As noted in our first-stage consultation, our engagement with CRBs indicates they already offer hard copy credit reports on request
- Individuals will have confidence that they can request their credit reports through a non-online channel, and receive a hard copy if that is their preference.

A simpler process for correcting multiple pieces of incorrect information (Proposal 37)

Background

The Privacy Act contains a number of obligations on CRBs and CPs requiring them to correct information. Generally, both CRBs and CPs must take reasonable steps to correct information:

- if they are satisfied that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading for a purpose for which it is held (i.e. correction on their own volition or following notification from a CRB or CP): see s20S and s21U; and

- in similar situations as above but upon the request of the individual: see s20T and s21V.

Paragraph 20 of the CR Code provides additional detail about these obligations and the various steps that need to be taken. This includes paragraph 20.4, which imposes a requirement on CRBs and CPs to determine whether the information needs to be corrected as soon as practicable. Where they determine that information needs to be corrected, the reasonable steps requirements in the Privacy Act are satisfied if they:

- correct the information within 5 days (if in response to an individual's request) or otherwise as soon as practicable;
- take reasonable steps to ensure that any future derived information is based on the corrected information; and
- take reasonable steps to ensure that any derived information based on the uncorrected information is not disclosed or used to assess creditworthiness.

There is no specific mechanism, or additional set of requirements, for instances where one event or set of circumstances mean that multiple pieces of information require correction. For example, this means that individuals who are the victim of fraud or identity theft, and have numerous credit enquiries made in their name by a third party, could need to separately request the correction/removal of each enquiry, providing evidence each time about the same underlying set of factual circumstances.

The Review considered whether processes could be simpler where multiple pieces of information require correction. There was universal support for this proposition, with some stakeholders noting the difficulty for individuals to try to remove many credit enquiries relating to different CPs from their report, including where they may not be aware of which CPs have been approached. The Review concluded that a simpler process should be available to correct multiple instances of incorrect information stemming from a single event, and that CRBs may be best placed to coordinate such requests.

Consultation and feedback received

In our first-stage consultation, we sought feedback on what types of 'information' and 'events' any simpler process should apply to, as well as how decision making should work in the context of a simplified process (including one coordinated by CRBs). In doing so we noted that:

- numerous enquiries resulting from a single fraud/identity theft event could be a useful situation for any process to focus on; and
- A CRB coordination role that involved the CRB making decisions about whether the enquiries were fraudulent would be a significant change, but could drive consistent decision making relating to the underlying event in question.

We received a significant amount of feedback from a wide range of stakeholders on this proposal. In general:

- Consumer stakeholders strongly supported the proposal, noting the difficulties with the current approach (and the resulting harm and burden for individuals), as well as the importance of minimising the need for the individual to retell their story.
- CPs generally favoured retaining responsibility for making decisions about whether enquiries made to them were fraudulent. This was also the strong view of one CRB.

The clear inference from these submissions is that CPs are best placed – and have more available information at-hand – to assess whether an enquiry was fraudulent.
- CPs and CRBs also noted that complex processes could be challenging to complete within the 30 day timeframe imposed by the Privacy Act

Based on that feedback, during our second-stage consultation we proposed a new obligation on CRBs. That obligation would require those parties, when determining what evidence to request from individuals who have sought to have one or more unsuccessful enquiries corrected, to have regard to the burden on the individual of providing that evidence, as well as the existence of other information which could be relevant to a decision to correct information. The intention of the obligation was to promote more consistent evidence needs by CPs and CRBs, and thereby reduce the need for an individual to retell their story. The obligations would be supported by ARCA-developed best practice guidelines about the information needed to consider a correction in this context.

We received negative feedback from consumer stakeholders, who considered that the new obligation did not adequately respond to the Review and that an explicit mechanism for multiple corrections was needed. They noted than an explicit mechanism would make clear that the general requirements around timeframes and the 'no wrong door' approach would also apply to these requests.

Although the feedback from ARCA Members was that moving away from a more centralised approach to decision making was positive, we also received feedback that:

- the individual should have to specify which pieces of information require correction – this was set out in Equifax's submission;
- CPs should be able to request additional/other information, and/or that the information that could be requested should be set out in the CR Code – see written comments from Equifax and one large CP; and
- That, in the case of multiple correction requests made to CRBs, the CRB should not be responsible for determining what information the individual should have to provide to support their correction request – see Equifax's submission.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code contains several new provisions about requesting correction of multiple pieces of information.

Subsection 20(6) of Schedule 2 to the Proposed CR Code makes clear that a correction request can relate to one piece of information (i.e. a 'one-piece request') or multiple pieces of information (i.e. a 'multiple request). The requirements in the Privacy Act about timeframes, as well as the 'no wrong door approach', apply to both one-piece requests and multiple requests. Notes beneath Subsection 20(6) of Schedule 2 make this status clear.

The Proposed CR Code also includes additional tailored requirements for requests to correct one or more enquiries (where credit was not ultimately provided) stemming from an event of fraud or identity theft: see subsections 20(9), (10) and (11) of Schedule 2. In that case, the CRB or CP that receives the request must consider, when determining what information to collect:

- the burden on the individual of providing the evidence
- the availability of other information which could be used to make a decision on the correction request; and

- the information they will need in order to consult on the request.

If a CRB or CP is consulted on a multiple request of this kind, they must consider the following matters before they request additional evidence:

- the evidence the individual already provided;
- the burden on the individual of providing any more evidence;
- the availability of other information which could be used to make a decision on the correction request; and
- any views from the CP or CRB that received the request about whether a fraud event has occurred.

The effect of these obligations is that CPs and CRBs will have to update their practices to ensure that they can receive multiple requests, and follow the tailored requirement around evidence for certain multiple requests. Those requirements will, as foreshadowed in our second-stage consultation, be supported by best practice guidelines ARCA will develop with its Members and other stakeholders. This work will continue in early 2024.

We have considered the consumer advocate feedback and concluded that we agree with their assessment that an express reference to a multiple request is needed to fully respond to the Review. This also has the advantage of putting beyond doubt that the normal rules about corrections continue to apply. There was support within ARCA's Membership for this approach.

We have incorporated Equifax's suggestion that the individual making the correction request should specify what information requires correction. The most appropriate location for this requirement is in the tailored rules in subsections 20(9), (10) and (11) of Schedule 2. As a result, the individual only gets the benefit of the simpler process if they set out what information needs correcting. In choosing this drafting approach, we concluded that it would not be appropriate to attempt to impose an obligation on the individual through the CR Code (i.e. to specify the information in a certain way). We note that the FRLC submission also considers that the individual should have to identify what information needs correction.

In respect of determining what information should be needed to consider a multiple request of the kind set out in subsection 20(9) of Schedule 2, the CRB or CP that receives the correction request will need to decide about what evidence to collect at the time the request is made. Departing from this approach would be inconsistent with the no wrong door approach. It would also be inconsistent with the wording in the Privacy Act, which effectively provides that it is the CRB or CP that is ultimately making the decision about correcting the information (even if that decision is heavily reliant on consultation; our understanding is that this is often the case).

We consider that it would not be desirable to set out what evidence is needed for a multiple correction request in the CR Code itself. Although this approach would be clear for CPs and CRBs, it:

- could require CRBs or CPs to collect more information than the relevant parties would need to make a decision on the particular request;
- would make the correction process inflexible – for instance if new and better sources of information became available (e.g. of fraud or data breach events), they would not be able to be requested until the CR Code was updated, having a negative effect on the relevant individuals in the interim;

- would completely restrict additional evidence being provided, even where there was a legitimate case for such evidence to be provided (and doing so would not be unduly burdensome on the individual)
- would put detailed information about how CRBs and CPs respond to fraud in the public sphere, in a way which could help cyber criminals to commit fraud.

We have attempted to balance the policy objectives of Proposal 37 against the desire of CPs and CRBs for certainty by drafting the obligations, supported by best practice guidelines to:

- ensure that individuals and other stakeholders have the benefit of new obligations on CRBs and CP about the evidence needed for relevant multiple requests; and
- retain flexibility for CPs and CRBs to ensure they collect the evidence that best reflects the specific request, while acknowledging the need for that process to be as simple as possible.

Changes to the process for correcting information that arises out of circumstances beyond the individual's control (Proposals 39, 40 and 41).

Background

The Privacy Act contains a number of obligations for CRBs and CPs to correct information. Generally, both CRBs and CPs are required to take reasonable steps to correct information:

- If they are satisfied that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading for a purpose for which it is held (I.e. correction on their own volition or following notification from a CRB or CP): see s20S and s21U; and
- In similar situations as above but upon the request of the individual: see s20T and s21V.

Paragraph 20 of the CR Code provides additional detail about these obligations and the various steps that need to be taken. Paragraph 20.5 is part of this framework, and outlines a mechanism through which certain default information is to be corrected where, the event giving rise to the default was outside the individual's control. Paragraph 20.4 includes a mechanism for using the powers in the Privacy Act to amend information that is manifestly incorrect on its face (e.g. arises due to error, fraudulent behaviour or identity theft)

This mechanism in paragraph 20.5 is available where:

- the default in question has led to a new arrangement (see s6S(1)(c) of the Privacy Act) or has been paid off and payment information has been disclosed; and
- the individual requests the CRB correct the relevant default information, on the basis that the overdue payment occurred because of unavoidable consequences of circumstances beyond the individual's control.

In these situations, where the information is inaccurate, out-of-date, incomplete, irrelevant or misleading, it must be destroyed.[11]

The Review proposed three distinct improvements to paragraph 20.5:

- **Including situations of domestic abuse in the example list of circumstances outside the individual's control (Proposal 39).** This change would put beyond

[11] The CRB must consult with the CP that disclosed the information when making this assessment: see paragraph 20.5(a).

doubt that information about defaults that were the unavoidable consequences of domestic abuse could be removed from credit reports.

- **Allowing for the individual's request to be made to the CP, and not the CRB (Proposal 40).** At present requests under paragraph 20.5 must be made to the CRB.

- **Expanding the types of data that can be removed on the basis that their existence was due to circumstances beyond the individual's control (Proposal 41).**

Consultation and feedback received

In our first-stage consultation, we sought feedback on our intention to implement Proposals 39 and 40, as well as feedback on the approach we should take to Proposal 41.

All the feedback we received was supportive of including domestic abuse as an example of circumstances beyond the individual's control. Most of the feedback we received supported allowing correction requests of this type to be made to a CP, with one explicitly non-supportive response noting that cases could be disputed through external dispute resolution. Feedback was more mixed on expanding the types of data that could be corrected. Some stakeholders were supportive; others noted the historical basis of paragraph 20.5 as well as the risk of a rise of spurious correction requests.

Based on that feedback, in our second-stage consultation we proposed a re-written version of paragraph 20.5 which addressed all three proposals. Under that provision:

- domestic abuse was included as an example of circumstances outside the individual's control;
- correction requests could be made to a CP as well as a CRB; and
- the correction requests could relate to default information, FHI and certain kinds of RHI.

There was generally support for our approach, although we did receive the following comments:

- EWON noted in their submission that 'family violence' could be a superior form of words (rather than 'domestic abuse');
- a lack of clarity about how CPs could form a view about making corrections relating to domestic abuse;
- that, in the context of the wider changes, additional guidance and clarity for all stakeholders on when information exists "because of unavoidable consequences of circumstances beyond the individual's control" would be important – this was noted in writing by one large CP;
- some suggestions, including in Equifax's submission, that the mechanism shouldn't be available for correcting default information that relates to defaults which have not been remedied; and
- some comments about whether suppression of RHI could be a possible way to address the challenges of correcting RHI.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code includes a re-written mechanism for correcting information that exists because of unavoidable consequences of

circumstances beyond the individual's control: see subsections 20(12) and (13) of Schedule 2. This provision is substantially the same as the version we consulted on in our second-stage consultation.

We acknowledge that, as the mechanism expands (both in terms of the information that can be corrected, as well as the parties that can make the corrections), guidance around the scope of when information will be corrected will be critical. ARCA will work with its Members, and other stakeholders, in early 2024 to develop this guidance. In doing so we will seek to leverage when CRBs currently make corrections under paragraph 20.5, as the intention of the variations is not to change the threshold test for whether information should be corrected. That guidance will also reflect that the intention of this mechanism is not for a 'catch-all correction reason'. ARCA's guidance, as well as our ongoing work around domestic abuse, should also help CPs determine what evidence they need to consider a correction request.

Although we considered using the term 'family violence', we concluded that this terminology would be more narrow, and potentially not cover the full breadth of relevant conduct, including coercive control which occurs in an absence of physical violence. The broader term 'domestic abuse' is intended to encourage victims of all forms of abuse (including financial abuse) to identify their situation as abusive, even though there may be an absence of violence (or violence is threatened but the threat is yet to be acted upon).

In response to Equifax's feedback about correcting information relating to unpaid defaults or missed payment, the approach taken reflects both:

- the fact that if the default information only exists because of unavoidable consequences of circumstances beyond the individual's control, then whether or not the default has been remedied should not determine whether the information can be corrected; and
- the additional practical challenges with correcting RHI, as it is not always apparent what the RHI should be corrected to.

Although we acknowledge the feedback about suppression of RHI as a correction option, this is generally a sub-optimal approach to credit reporting. The 2021 hardship reporting reforms allow for more meaningful approaches to reporting RHI, with suppression strictly limited to certain domestic abuse situations. We consider that encouraging or facilitating wider use of the suppression of RHI would be out of step with the intention of the 2021 hardship reforms. We note that paragraph 8A.1(e) of the CR Code / subsection 8A(9) of the Proposed CR Code allows CPs some flexibility to back-date the commencement of financial hardship agreements (FHAs); this kind of option could provide CPs with an option they can consider in the context of certain circumstances beyond the individual's control.

In terms of the overall operation of the corrections framework, the variations would have the following effect:

- requests to correct information that exists because of unavoidable consequences of circumstances beyond the individual's control could be made to both CPs and CRBs;
- the normal rules relating to timeframes and consultation will apply to those requests (which aligns with the wording in the Proposed CR Code that CRBs, and CPs other than the CP who originally disclosed the information, will need to consult); and

- if the request relates to RHI in respect of which the payments have not been made, the relevant CP/CRB will need to consider whether there is any other reason for correction (i.e. under paragraph 20.4 / subsection 20(8)). Where this is the case, the RHI should be corrected; where the information is *not* inaccurate, out-of-date, incomplete, irrelevant or misleading, no correction should be made.

Introducing a soft enquiries framework (Proposal 43)

Background

The Privacy Act makes specific provision for CPs, mortgage insurers and trader insurers to obtain information from a CRB in relation to a credit application. The mechanism in the Privacy Act for this access is an 'information request'; a statement that an information request has been made is a kind of credit information.

Colloquially, the term 'hard enquiry' is used where an information request appears on an individual's credit report. By contrast, a 'soft enquiry' is commonly used to refer to CP accessing information in a way that does not appear on an individual's credit report. The Privacy Act and the current CR Code do not expressly refer to hard enquiries or soft enquiries.

Practices have emerged which have become known as 'soft enquiries' whereby CPs and other entities access an individual's credit reporting information. These practices can involve access mechanisms other than information requests. These practices have partly arisen due to a perception that hard enquiries may have a negative effect on how CPs view an individual's creditworthiness. In some instances, CPs are asked to remove records of hard enquiries that are legitimately recorded on a credit file.

The Review considered whether and how the CR Code should be amended to introduce a soft enquiries framework. Stakeholder feedback was supportive of introducing such a framework. The Review concluded that there would be clear competition and consumer benefits from introducing a soft enquiries framework, and that such a framework did not require amendment to the Privacy Act (i.e. could be established within the CR Code). The Review suggested that any such framework be supported by greater clarity about the effect of records of information requests on an individual's credit report and creditworthiness.

Consultation and feedback received

We have received significant industry feedback on the introduction of a soft enquiries framework. This feedback has highlighted competing tensions:

- CPs consider that making it easy for individuals to obtain an indication of the price and availability of credit can promote competition.
- On the other hand, some CPs are concerned that soft enquiries would mean a loss of hard enquiry data which is useful for considering creditworthiness. In particular the concern is that if hard enquiries are only made in limited circumstances or in a situation where the CP is very likely to approve an application for credit, the hard enquiry data that remains will have less utility.

Our consultation was complicated by the previous emergence of informal soft enquiry practices (in the absence of the formal framework now set out in the Proposed CR Code). Some CPs are concerned about access mechanisms other than information requests being used to undermine the Privacy Act and enabling access to information without an information request that can be included in the credit report. Alongside this concern, many CPs

(including many smaller ones) that have developed or used alternative mechanisms to information requests are concerned about what tighter restrictions would mean. It was argued that these processes have promoted greater competition and unwinding of these processes may be seen as having a greater effect on CPs who lack the internal data of a large CP.

Given the significance of this issue, as well as the competing tensions, we conducted a more thorough consultation on the soft enquiries framework than any other Proposal. Our first-stage consultation was conducted over two rounds, and similarly the second-stage consultation required numerous bilateral discussions with CPs and CRBs in addition to the usual public consultation process.

In the first-stage consultation sought feedback from ARCA Members, industry groups, consumers advocates and Government bodies on the following key issues:

- The circumstances that should amount to a soft enquiry;
- If/when a hard enquiry should need to be made;
- Whether there should be limits on other means of accessing information (e.g. the informal practices that have emerged);
- What information should be disclosed in response to a soft enquiry; and
- What information should be included in the CRB's records of the soft enquiry.

There was disagreement between stakeholder views, especially in relation to:

- Restricting how information can be disclosed and used; and
- Limiting the type of information that can be provided in response to a soft enquiry.

The initial consultation feedback identified some key design features for the soft enquiries framework as follows:

- Soft enquiries should operate through requests for information submitted by the CP to the CRB. It was recognised that individuals may still provide information direct to a CP in some cases, however, a Government body suggested that an exception allowing this to occur should only cover unprompted disclosure of credit reporting information to the credit provider by the individual. These settings would prohibit CPs from soliciting information obtained through other means, such as via access seekers. Some stakeholders, especially smaller credit providers, expressed concern that this approach would be disruptive as processes would need to be changed and that the cost of soft enquiries may be an impediment to competition.
- Generally, stakeholders supported a requirement to make a hard enquiry where a full/complete application is made by the individual (i.e. later in the process than a soft enquiry). However, some stakeholders, especially smaller credit providers, expressed concern that this approach would be unduly restrictive.
- Generally, stakeholders also supported limiting the type of information that can be disclosed in response to a soft enquiry. However, some small CPs disagreed with this approach, including because it may make it harder for these lenders to compete with larger CPs. Essentially, the feedback from these small CPs suggests that they want to receive all information that is necessary to assess the application through the soft enquiry.

Following this feedback, in our second-stage consultation we proposed a framework for soft enquiries that would have operated as follows:

- Soft enquiries would be restricted to use for risk-based pricing (i.e. to support a CP providing an indicative price for credit to an individual)
- Restrictions would prevent a CP using soft enquiry information to assess a credit application, or from using mechanisms other than information requests to obtain credit reporting information;
- The soft enquiry information would be restricted to an individual's credit score or rating, negative information (bankruptcy information, serious credit infringement and default information) and whether financial hardship information has been reported for the consumer; and
- To facilitate consumer education, individuals are provided information by credit providers about the type of enquiry, how it will be recorded and the potential consequences of the enquiry.

These settings were intended to ensure that the following policy objectives envisaged by the Review were met:

- Soft enquiries are available to help consumers shop around (e.g. on price);
- There is more consistency in respect of when and how hard enquiries are made and appear on credit reports, due to:
    - incentives to conduct hard enquiries (e.g. to obtain additional information)
    - restrictions on using information received in response to a soft enquiry; and
    - provisions to ensure the soft enquiries framework is one mechanism through which soft enquiries can occur.

These policy objectives were highlighted by the Review. We sought to balance them in a way that retained some value in hard enquiries, reflecting feedback from some CPs about the value of this information.

We received considerable feedback in response to the second-stage consultation. Feedback centred on the following key issues:

- **Use cases for soft enquiries**: Restricting the soft enquiry to use in risk-based pricing quotes only would limit the utility of this framework. There were a range of additional use cases identified.
- **Data available in response to soft enquiries**: concerns about whether the more limited soft enquiry dataset was appropriate and sufficient for the use cases identified.
- **Unintended consequences of integrity provisions**: whether the integrity provisions may create unintended consequences which would undermine consumer education efforts.
- **Commencement timing**: concerns about amount of time available for CRBs to develop the new soft enquiry framework.

Outside these key issues, there was also some limited feedback received about the education requirement, including that requiring CPs and certain others to explain information requests may be impractical.

We primarily received feedback from the credit industry on this proposal. Other stakeholders provided more limited feedback, and FRLC submission did not provide feedback on the soft enquiries framework.

The feedback set out below highlights the objections provided by stakeholders to the proposed framework. While much of the feedback centred on the desire to ensure the framework go further and open up broader use and application of soft enquiries, some industry participants expressed concerns about the extent to which the opening/ extension of the soft enquiry framework would erode the integrity of the system (i.e. permitting data leakage without an appropriate record being kept as credit information) and further would erode the meaning of 'hard enquiry' data.

Use cases for soft enquiries

A number of industry participants argued that the restricted use of soft enquiries would significantly limit the utility of the framework. Additional use cases identified included checks for eligibility, the ability to pre-populate full application forms ('pre-fill'), completeness checks of full applications, product choice and indicative approvals for credit.

The eligibility use case was identified by CPs as necessary to allow them to deal with situations where they would not lend to the individual at any price. Without such a use case, we heard concerns that they would need to 'price out' these prospective customers (i.e. return a price quote at a maximum interest rate) as a de facto assessment of ineligibility. Alongside this, it was identified that CPs ought to have the ability to re-direct consumers to suitable products, which would align with existing processes (and, it should be noted, would remain subject to the direct marketing restrictions in paragraph 16 of the CR Code / section 16 of the Proposed CR Code). For example, Equifax's submission highlighted the need for the scope to cover eligibility assessments.

Feedback suggested that what constitutes 'eligibility' seemed to be different for different participants, and that apparent ineligibility is likely to stop an application proceeding. This suggested that the meaning of eligibility should be clarified in the CR Code rather than relying on the ordinary, somewhat loose meaning of the term.

Stakeholders who supported the completeness, pre-fill, indicative approvals use cases identified how these use cases reduce frictions in the sales process, which in turn facilitated improved consumer experience and supported competition. References to competition in this context tended to refer to either:

- the scope for smaller lenders to compete against larger, established CPs; or
- the scope for CPs to on-board customers directly, as opposed to customer acquisition through e.g. mortgage brokers.

Data available in response to soft enquiries

Key concerns raised in relation to limiting the information received in response to soft enquiries were that such restrictions would:

- reduce the accuracy of pricing quotes;
- delay the sales process because of unaddressed frictions (relevant information would not be ready to hand); and
- dampens competition due to the poor customer experience from inaccurate pricing and these frictions.

For example, concerns were expressed about the quality of eligibility checks and pricing quotes based on a dataset which excludes CCLI (see Equifax's submission) and RHI.

Unintended consequences of integrity provisions

Stakeholders raised a concern that the proposed integrity measure (which would restrict the use of access seeker provisions to circumvent the soft enquiry framework) may have unintended consequences of restricting arrangements between CPs and mortgage brokers, and CPs encouraging individuals to access their credit report for self-education purposes (Equifax).

The feedback we received about the integrity provisions suggested that the need to seek information directly from CRBs under the new framework may mean industry participants feel pressure to identify ways to work around the new framework, or to adopt arrangements to use mechanisms other than information requests to assess creditworthiness. It is important that all industry participants:

- have a role to play in maintaining the integrity of the credit reporting system; and
- act consistently with the purpose of the soft enquiries framework.

Commencement timing

Industry stakeholder feedback highlighted the need for sufficient time to establish the soft enquiry framework. Feedback from CRBs suggested that time would be needed to develop soft enquiry products for CPs; in the absence of an appropriate period to design, test and develop these products, there is a risk that competitive pressures to offer soft enquiries products means the safeguards around the framework, and the overarching objectives of soft enquiries, would be unduly jeopardised by a rushed implementation.

CRBs generally told us that they would require sufficient time for:

- Identification and scoping of business and function requirements
- Development of test cases, and undertaking of data testing (noting as a matter of good practice, a minimum of three rounds of testing undertaken over a period of between 4 to 8 weeks is necessary to identify any data quality issues or processes which would inhibit the proper operation of the soft enquiries framework). Such testing would, for instance, ensure that CRBs also tested their own processes to check that records of the soft enquiry entry were available on the individual's report only.
- Implementing appropriate controls and checks of the framework, including what checks are necessary to ensure the requirements around use of hard enquiry (following a soft enquiry) are observed. This would also include updates to the existing audit process.

CRB feedback suggested that a minimum window of 6 months following commencement of the Proposed CR Code provisions may be required.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code contains a series of provisions which work together to establish a framework for soft enquiries. We have made substantial amendments to our second-stage consultation draft to address the feedback we received, but have still sought to ensure that the framework:

- supports individual choice and greater ability to shop around for credit; and

- leads to more consistency about when hard enquiries are made (thereby preserving some value in this data, which provides transparency about full applications for credit).

Use cases for soft enquiries

The definition of **soft enquiry** in section 5 of the Proposed CR Code sets out the situations where a soft enquiry may be made (i.e. the permitted use cases for soft enquiries). Specifically, a soft enquiry may be made to conduct an indicative assessment of:

- whether a person is ineligible for particular consumer credit or commercial credit, based on the credit provider's ineligibility criteria;
- whether a person is ineligible for particular consumer credit or commercial credit within a range of consumer credit of a similar nature offered by the credit provider, based on the credit provider's ineligibility criteria; or
- the price for consumer credit or commercial credit the person would be charged, based on the relevant individual's creditworthiness.

Based on the feedback received about restricting soft enquiries only to pricing quotes, we have added the potential for soft enquiries to be used for ineligibility assessments and to facilitate product choice.

Ineligibility assessments

By adding this use case, CPs can accurately and appropriately respond to individuals they would not be willing to provide credit to. As noted above, the feedback received suggested that different parties had different views about what 'eligibility assessments' meant; for that reason we have chosen to define the relevant concept (**ineligibility criteria**) in section 5 of the Proposed CR Code. A definition will help promote consistency of practice amongst CPs.

There is a risk that some CPs could consider 'indicative eligibility assessments' allowed a very detailed assessment, which all-but involved a final decision about whether to provide credit to the individuals involved. In these cases, very few hard enquiries would be made, or if they were made it would tend to only be where credit was subsequently entered to. As such, this risk would lead to inconsistencies in practices, as well as a loss of valuable data about hard enquiries from the credit reporting system. Additionally, very detailed assessments are not necessary to achieve the Review's policy objectives (i.e. to allow consumers to more easily shop around).

For these reasons, the definition of ineligibility criteria is narrow. These criteria must be documented by the CP. They would allow a CP to determine, based on a specific piece of information returned from the soft enquiry (or derived from that information), that the individual would ordinarily be ineligible for the relevant credit. For example, if the individual's CRB-derived credit score was below a certain threshold, or there was default information in relation to the individual, the CP could determine that they would be ineligible.

The ineligibility use case and pricing use case are intended to work together.

For example, we expect many credits provider will undertake a soft enquiry to first consider whether there is any credit reporting information (such as default information or a low CRB-derived credit score) that would mean the customer was not eligible for the credit (based on the credit provider's standard credit policy). If the customer passes that ineligibility check, the credit provider may then assess the price that will be offered to the customer.

The pricing assessment may use information from both the credit reporting body and other information held by the credit provider. On that basis, there may be situations in which the customer passes the initial ineligibility check (using CRB disclosed information only) but, due to a more holistic consideration of the customer's overall financial situation, the credit provider identifies it is reluctant to offer credit to the customer (even at their maximum risk-based price).

Credit providers will need to have processes to address this situation. Including, for example, ensuring their price quote practices make clear the nature of the price quote and don't mislead the consumer to believe that they have unconditional approval. Where the customer has passed the initial ineligibility test, but the credit provider identifies that it may not be willing to offer credit at any price, the provider could, for example, advise the customer that their price, if they were to apply for the credit, would be 'no less than' the maximum risk-based price offered by the credit provider and emphasise that the price indication was no guarantee that they would be approved at that price.

Product choice

By adding a product choice use case, CPs will be able to use the soft enquiries framework to determine which of a range of similar credit products the individual would be ineligible for. This use case may allow for more nuanced responses by CPs, such as where an individual is ineligible for one product but would be eligible for another similar product. For example, a CP may offer a range of credit card products, which have differing eligibility criteria (such as different minimum CRB-derived credit scores). This use case would allow the CP to inform the customer which of those products the customer is ineligible for. This use case is subject to the restrictions in paragraph 16 of the CR Code / section 16 of the Proposed CR Code about marketing of products.

Pre-filling of applications

The Proposed CR Code does not permit soft enquiries to be made 'pre-fill' applications. We have adopted this position because we have very significant concerns about this use cases would sit within the scope of an 'information request'. In particular:

- We do not consider it would be possible for to have pre-fill as a 'primary' use case (i.e. a soft enquiry to pre-fill the "application for credit"). At the time the soft enquiry information is sought in connection with the full application, that application has not been *made*.
- Some stakeholders suggested that a 'secondary' use case may be possible – for information obtained for the assessment of the first "initial" application could then be used to pre-fill the subsequent "full" application. However, the information obtained from the soft enquiry is credit eligibility information, which is subject to use restrictions under the Privacy Act. In this context, it would only be possible to use the information already received to pre-fill an application if that was 'to assess the [full] application'. We don't think this conduct has a strong enough link with "assessment". Instead, it is about making it easier or more efficient to *fill out* or *make* an application.[12] As a result, we do not believe think it's legally possible to enable "pre-fill" functionality under the regime proposed by the Review.

[12] We note that CPs likely wouldn't consider it possible to make a hard enquiry for this purpose at this early stage of the full application either.

We also consider that there are policy reasons for not including the pre-fill uses within the current proposed soft enquiry framework, and that it would be better that these policy reasons were considered more holistically in the context of the Part IIIA Review. In further detail:

- **Competition amongst CPs**: The proposed pre-fill functionality would only be available to CPs whose product suite allows them to otherwise make use of the soft enquiry regime (e.g. those who do risk-based pricing). This creates an inconsistency of treatment amongst CPs and unfair advantage for certain parts of the market.
- **Competition with other channels:** Although we received feedback about a soft enquiries (including pre-fill functionality) creating a level playing field with, for example, the broker channel, we don't believe this supports the use case sought. Brokers are acting on behalf of the individual (like an advisor or advocate) – and mortgage brokers have a duty to act in the individual's best interests. Their use of the individual's data to help them select and apply for credit is consistent with that role and expressly permitted under the law; neither of those matters is true for pre-fill by the credit provider.
- **Outside the Review's policy intent:** The Review proposed that a soft enquiries framework operate to facilitate consumer choice and shopping around for credit.[13] Increasing efficiencies – or removing 'friction' – was not an explicit aim of the process. Pre-filling an application does not obviously facilitate choice or shopping around, as it occurs at a point when a consumer has already made a choice (and simply creates less friction in the subsequent process).
- **Stakeholder concerns with, and unintended consequences of, removing friction:** The removal of friction does not have universal support. For example, in respect of the Consumer Data Right, FRLC has expressed concern that 'efficiency and convenience should not be seen as ends in themselves' and that, if not done safely, those outcomes can 'aggravate consumer harms'. In the context of using CCLI to pre-fill a "full" application, this means the individual will have less need to consider their current liabilities when applying for new credit and, potentially, less need to consider whether they should take on more liability. There is also a risk that the individual may be tempted to not disclose any liabilities that do not appear in the pre-filled dataset. While these matters don't necessarily mean pre-fill using credit reporting data should be prohibited, they do suggest that the consequences need additional consideration. As these issues are not specific to soft enquiries, the best forum is the Part IIIA Review.

Indicative approvals

The Proposed CR Code does not include 'indicative approvals' as a use case for soft enquiries. As noted above, the soft enquiries framework balances facilitating shopping around and competition amongst CPs against the benefits from ensuring that some value is retained in information pertaining to hard enquiries.

Hard enquiry data remains a valuable dataset for CPs, especially where the individual does not have a significant credit history or where the provider does not have access to positive credit information.

[13] The Review called out soft enquiries as being for "*here an individual is only seeking a quote, or to understand if they qualify for a certain product or offer.*

Although indicative approvals are not a guarantee of approval at a later stage in the application process, they nevertheless send a strong signal about whether particular credit is likely to be provided. There is a real risk that allowing an indicative approval process to occur using soft enquiries would mean a significant loss of value in hard enquiry data, which in turn affects CPs' ability to make assessments on credit applications that lead to good consumer outcomes.

We received feedback that allowing indicative approvals would improve customer experience and generally be pro-competitive – for instance, because individuals would need a reasonable assurance about their prospects for approval in order to compare their options. However, we do not believe that making this use case available is justified; in forming this view we note the matters above about hard enquiries, and also the following:

- It is not the purpose of the soft enquiries framework proposed by the Review to provide a high degree of certainty about approvals for credit.[14] Individuals after this degree of certainty can make a full application (and the relevant CP can then make a hard enquiry). Nonetheless, the soft enquiries framework allows comparison on a key metric – indicative price. An indicative price may still provide a useful starting point for deciding which CP to make a full application with, particularly when combined with commentary about ineligibility (based on the ineligibility assessment use case).
- The soft enquiries framework will have substantial benefits for those seeking credit even without an indicative approval use case – for instance, the ability to shop around for indicative price quotes without being perceived by CPs in a potentially negative light may be of interest to many. The disclosures required under section 4 of the Proposed CR Code should help those seeking price quotes/ineligibility checks to understand the role, limits and benefits of soft enquiries.

Restrictions on use for other purposes

To support the definition of soft enquiries, subsection 16(7) of Schedule 2 to the Proposed CR Code contains restrictions that limit when and how the information received in response to a soft enquiry may be used or disclosed. Under this subsection, unless the CP subsequently conducts a hard enquiry, the information received in response to a soft enquiry (or information derived from that information) can only be used for:

- The specific indicative assessments for which it was requested; and
- The internal management purposes of the CP (that do not involve a consumer credit purpose – such as assessing a credit application).

These restrictions reflect that the information should only be used for the specific purpose of the soft enquiry, such as giving a price quote or testing the person's ineligibility.

The restrictions also apply to information derived from the response to a soft enquiry. In this context, derived information would include the price quoted to the person or the statement that the person has passed the ineligibility check. As an illustration of how this would operate in practice, CP1 undertakes a soft enquiry to provide a price quote to Customer1. CP1 quotes an indicative interest rate of 12%pa. Customer1 then proceeds to apply for the credit with CP1. CP1 may not have reference to that quoted interest rate of 12%pa when assessing

[14] The Review referred to quotes (i.e. pricing) and "qualifications", which aligns with initial eligibility/ineligibility assessments.

or offering credit to Customer1 unless and until CP1 has undertaken a hard enquiry (at which point the additional use and disclosure restrictions no longer apply).

Who can make soft enquiries?

The definition of soft enquiries in the Proposed CR Code does not allow soft enquiries to be made in respect of guarantees, or by mortgage or trade insurers.

Consideration of these types of insurance tends to occur once a firm decision has been made to obtain credit with a particular CP. Similarly, in relation to guarantees, we understand that conversations about including a guarantor would typically happen once a decision is already made to apply for particular credit. It follows that facilitating shopping is unlikely to be beneficial.

These cases contrast with consumer and commercial credit, where it is expected that individuals may seek to understand their options before making a firm decision to make a fulsome application with a particular provider.

Information available in response to soft enquiries

Subsection 14(6) of the Proposed CR Code limits the types of information that can be disclosed in response to a soft enquiry to:

- personal insolvency information
- credit providers' opinions that individual has committed serious credit infringement
- default information
- statement as to whether credit reporting body holds financial hardship information about the individual
- CCLI
- credit reporting information that is a summary or aggregated record derived only from the information listed above
- credit score or rating derived from information that the CRB holds that does not identify any other particular credit information held by the body

Based on the feedback received, we have added CCLI to the draft provisions in our second-stage consultation. This addition is intended to facilitate CPs offering more accurate indicative pricing quotes – the feedback we received was that CCLI is particularly useful for this purpose.

We understand that CRBs will often disclose summary data to a CP, rather than the 'raw' credit information. For example, rather than returning details of each instance of default information, the CRB may simply disclose to the CP that default information exists and, potentially, the number of instances of default information. Such disclosure is permissible under subsection 14(6) of Schedule 2.

While some stakeholders argued that it is necessary to include RHI and hard enquiry data as part of a soft enquiry (as they consider this information necessary to provide the most accurate risk-based pricing quote), our approach excludes this information in its raw or near-raw form.[15]

These restrictions reflect the importance of preserving some value in information about hard enquiries, and to lessen the temptation to circumvent that process by relying on soft enquiry

[15] This information may be reflected in an overall credit score or credit rating that a CP receives.

data only to support a full credit assessment. That is, it is necessary that some limitation exists (alongside the integrity provisions). Without this, ARCA's view is that there is a greater likelihood that hard enquiry data would become largely redundant, as it would only ever reflect approved credit applications (if disclosed at all).

Information about hard enquiries is intended to reflect both approved and rejected credit applications, and can provide an insight into an individual's credit behaviour. Hard enquiry data is particularly useful where an individual may be seeking to rely on credit to address payment difficulties. In that context, a repeated series of rejected credit applications on an individual's credit file may suggest issues with the individual's behaviour and provide a signal to other CPs to ascertain that the individual is not facing payment difficulties. This data assumes greater importance where there is limited information about the individual (e.g. such as no RHI) and also where the CP participates at negative-tier only.

As such, the information returned in response to a soft enquiry reflects a balancing between:

- providing a good range of information to CPs on which they can base indicative price and ineligibly assessments; and
- ensuring that there is still some useful information about hard enquiries visible to CPs assessing full applications for credit (i.e. the 'soft' up-front process does not fully subsume the assessment of the complete application)

Integrity provisions

In line with the matters described above, the Proposed CR Code includes "integrity provisions" intended to ensure that the soft enquiries framework is not circumvented. In our view, these provisions are critical to achieving the consistency of practices in respect of enquiries that the Review sought, and also to preserving value in information about hard enquiries.

The integrity provisions:

- Prohibit CRBs, CPs and insurers from being involved in schemes or arrangements that rely on the access seeker provisions to obtain credit reporting information, where it is reasonably likely the information would be disclosed to a CP to assess an individual's creditworthiness. The prohibition for CRBs is in subsection 14(8) of Schedule 2; the corresponding provision for CPs and insurers is in subsection 16(6) of Schedule 2.
- Set out the purpose of the soft enquiries framework – to provide the only means for CPs to obtain credit reporting information to make assessments in relation to credit, where those information requests are not widely visible. A statement of the purpose of the framework is in subsection 7(3) of Schedule 2.
- Prohibit CRBs, CPs and insurers from being involved in schemes or arrangements that have a purpose or effect inconsistent with the purpose of the soft enquiries framework: see subsection 7(4) of Schedule 2.

The integrity provisions address concerns that the need to seek information directly from credit reporting bodies under the new framework may mean industry participants feel pressure to identify ways to work around the new framework, and the drafting seeks to restrict such 'work arounds' to operate.

The integrity provisions were supported by industry stakeholders as being a necessary part of the soft enquiry framework. Overall, these provisions help to give certainty to industry

participants that the new soft enquiry process is the only way that credit providers should be accessing credit reporting information for credit assessment purposes. This helps to ensure consistency across industry and helps to maintain the integrity of the credit reporting system (by ensuring the continued meaningfulness of enquiries is the system).

There was some concern expressed that these provisions do not lead to unintended consequences, for instance restricting activity of mortgage brokers in facilitating consumer access to credit reports. In response to feedback, the drafting has been updated to clarify that the integrity provision does not automatically apply where credit provider encourages individuals to access their credit reports to self-educate; or where credit providers partner with mortgage brokers (subject to purpose or effect of that encouragement).

Commencement

Based on feedback from CRBs and the risks of rushed implementation of the soft enquiries framework, the Proposed CR Code provisions relating to soft enquiries commence six months after the other provisions in the code: see subsection 2(2). We consider that this additional time is necessary to allow for proper implementation of the framework including ensuring product offerings align with the integrity provisions.

Education requirements

The education requirements have been incorporated into the notification provisions, and are set out under the discussion of Proposal 24 above. As noted in the discussion above, these provisions require if an information request is to be made in relation to an individual, the provider that makes the request must, at or before the request is made, make the individual aware of information that states the type of enquiry; whether or not record of information request can reflect in subsequent credit reports; and explains potential consequences of the enquiry.

Requiring credit providers to explain information requests will help address negative perceptions about the impact of credit enquiries. For technical reasons, the proposal is now to make the individual aware of the relevant matters at or before the time the information request is made. However, concerns raised about the practicality of implementation are addressed through a flexible approach. It is intended, for example, that the credit provider could make the individual aware of the information by alerting them to resources delivered, e.g., online. Scoping out mortgage and trade insurers from the soft enquiry framework addresses separate feedback that the education measure should not apply to insurers as they do not typically deal directly with customers.

Other components of the soft enquiry framework [Schedule 2, Section 22]

The soft enquiries framework in the Proposed CR Code includes other provisions to ensure soft enquiries operate as intended. These are:

- A requirement to make a written note of the enquiry: see paragraph 22(2)(g) of Schedule 2. For simplicity, the record-keeping requirement has been included with the other recordkeeping obligations on CRBs and CPs in paragraph 22 /section 22. A specific obligation reflects the wording of Proposal 43, and was not a contentious matter in our consultation process
- Limiting the visibility of the soft enquiry, so that the relevant individual and their access seekers can see it, but not other CPs, CRBs or insurers. This is achieved by subsection 14(7) of Schedule 2 to the Proposed CR Code, which limits when CRBs can disclose information about a soft enquiry to a CP, CRB or insurer. In effect, those

disclosures can only be of deidentified information. The restrictions also apply to information derived from a record of a soft enquiry (e.g. a soft enquiry cannot affect a credit score that a CRB discloses to CPs). This element of the framework is self-explanatory, consistent with the operation of soft enquiries in other jurisdictions outside of Australia, and otherwise did not raise any notable feedback or concerns by stakeholders.

- A requirement that CPs provide certain specified information with a soft enquiry, and that for an information request to be a soft enquiry, it must be identified as such by the CRB (see the definition of soft enquiry in section 5, and also subsection 7(5) of Schedule 2). These requirements ensure clarity for CRBs about the nature of the information requests they receive, and make it easier for CRBs to comply with their record keeping obligations. These were not contentious topics in our consultation process.

Expanding capacity information to include trustee status (Proposal 44)

Background

Paragraph 5.1 of the CR Code restricts the ability of CRBs to collect and use personal information about individuals that is **not** credit information as defined in the Privacy Act. One exception to this rule is 'capacity information', which is defined in the CR Code as information about whether the relevant individual is solely or jointly liable for the credit account or a guarantor in respect of that account. CRBs may collect this capacity information, use it to derive information of their own and disclose it alongside credit information.

However, the three categories do not cover all situations. For instance, it is potentially possible for an individual to enter into consumer credit in their capacity as a trustee for a trust, but currently there is no means to identify them as a trustee. In such cases, the individual would likely be shown as liable for the credit, even where the trust is liable (or has indemnified the trustee). This difference in treatment could affect the ability of the individual to obtain further credit in their personal capacity.

The Review considered that the CR Code should be amended to allow such that 'capacity information' includes an information about whether an individual is acting in their capacity as a trustee. ARCA has subsequently included dormant changes in Version 4 of the Australian Credit Reporting Data Standards to allow for the reporting of this information in the future.

Consultation and feedback received

In our first-stage consultation, we sought feedback on including trustee status as a type of capacity situation, as well as what should occur if an individual satisfies more than one kind of capacity information (i.e. is a trustee but liable for the credit, or a trustee who has also provided a personal guarantee).

We received mixed feedback. Of the stakeholders who supported making this change, most preferred a different hierarchy from the one we originally proposed. Some stakeholders noted other solutions, such as not reporting information on trustee loans at all. Others raised the fact that changes to capacity information could involve systems changes to facilitate correct reporting.

With this feedback in mind, in our second-stage consultation we proposed expanding the definition of capacity information, and consulted on a hierarchy of reporting where CPs

would only disclose capacity information relating to trustees where neither of the other categories were appropriate.

In response, CPs generally told us through ARCA's CR Code Working Group that the approach proposed would cause additional challenges for them; a description of some the issues was also provided by one large CP. Key concerns included:

- the burden of systems changes – at present CP systems generally do not capture whether credit is entered into by a person in their capacity as a trustee, which means that changes would require both systems builds (and a manual review of documents relating to existing credit);
- uncertainty about whether this change would *require* all CPs to disclose information about loans entered into by individuals as trustees to CRBs (and resulting concerns if that were the case);
- concern about disclosing trustee information as a last resort, as:
    - This could require CPs to disclose other types of capacity information in situations where it could be misleading to do so (e.g. an individual has provided a guarantee in respect of part of an amount of credit; disclosing guarantor information without an ability to contextualise the limit of the guarantee could mislead those to receive the information); and
    - the rules associated with what type of capacity information to disclose would need to reflect the liability status of the individual, which can be complex and depend upon the precise terms of the loan and any supporting indemnities; and
- confusion about whether or not other types of credit information, such as CCLI or RHI, should be disclosed about credit with associated trustee capacity information.

Proposed variations, rationale and responses to feedback

Based on the feedback received, the Proposed CR Code includes a revised definition of capacity information in section 5. That revised definition information about whether the individual is acting in their capacity as a trustee, but only in respect of credit where credit information is first disclosed 12 months or more after the Proposed CR Code commences.

Although we acknowledge that work will be required from CPs in order to implement changes associated with this Proposal, we note that at present, there is a significant risk that the apparent creditworthiness of individuals who take out credit as trustees is unduly affected by the current system. In many cases the trustee will be indemnified by the trust, but prospective CPs may erroneously conclude that the individual is fully liable based on the currently available capacity information fields.

The limit on what constitutes capacity information is intended to address concerns from CPs about the systems changes needed to give effect to this Proposal. In effect, it means that a CP will have 12 months from the date of commencement of the Proposed CR Code to build systems to record and disclose whether an individual has entered into credit in their capacity as trustee. The system will only need to capture this information in respect of *new* credit – feedback from CPs suggests that manual review may be needed to determine trustee status in respect of existing credit. Given the size of CP credit portfolios, we consider that the significant cost and effort associated with a manual review is not warranted.

The Proposed CR Code does not include a requirement to disclose information about trustee credit. Some CPs told us that they do not disclose information about these types of credit.

Where CPs form a view they do not have to disclose information, and then choose not to do so, their existing practices can continue. The Proposed CR Code includes a new provision which puts this beyond doubt – see subsection 5(5) of Schedule 2.

Based on the feedback received, we have changed our views on when trustee capacity information should be disclosed. If an individual has entered into credit as a trustee, then trustee capacity information is what should be disclosed, irrespective of whether the individual is liable for the credit and/or has given a guarantee. The reason for this approach is as follows:

- it addresses the concerns raised about guarantees, which we accept would cause confusion;
- CPs will no longer need to consider the individual's liability – which can be a complicated matter – when deciding what capacity information to disclose;
- The trustee capacity information will act as a 'flag' for further enquiries by prospective future CPs, who can then seek to understand the trustee's level of liability in their credit assessment processes.

Our intention is that where trustee capacity information is disclosed, CPs should also disclose the other credit information they would typically disclose (e.g. CCLI and RHI). We will work with CPs to ensure these approaches are reflected in implementation efforts.

Part B: Consultation Statement

The consultation for the variations in the Proposed CR Code occurred in two stages:

- An informal, 'first-stage' consultation seeking feedback on policy settings and implementation options for all the relevant Review proposals. For Proposal 43 (Introducing a soft enquiries framework), this consultation occurred in two phases: between 24 November 2022 and 1 May 2023, and 16 May 2023 and 11 July 2023. For the other Review Proposals, this consultation occurred between 9 June 2023 and 7 July 2023. Consultation material distributed by ARCA as part of the informal consultation process, along with written submissions received in response, is contained in: **Annexure 5 – first-stage consultation material** (for soft enquiries) and **Annexure 6 – first stage consultation material** (for all other Proposals).
- A formal, 'second-stage' consultation on the proposed variations between 18 October and 16 November 2023. ARCA placed a prominent link on its public website (www.arca.asn.au) to the CR Code Variation. Consultation material distributed by ARCA and made available on its public website as part of the second-stage consultation process, along with written submissions received in response, is contained in **Annexure 7 – second-stage consultation material**.

External Stakeholder Engagement

The table below sets out consultation with external stakeholders which occurred as part of both stages of the consultation process.

Industry Association Stakeholders			
Stakeholder	**Date**	**Nature of Engagement**	**Outcome/Feedback provided**
Australian Banking Association (ABA)	23 February 2023	Invite to attend ARCA first-stage consultation workshop on soft enquiries on 27 March	ABA did not attend
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided

	27 June 2023	ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received
	30 October 2023	Invite to ARCA briefing/roundtable on the second-stage consultation	ABA did not attend
Australian Collectors and Debt Buyers' Association (ACBDA)	27 March 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	27 April 2023	Request for meeting to discuss current practices from ACBDA members relating to disclosing default information on debts that are, or will soon be, statute barred	Meeting set up for 4 May 2023
	4 May 2023	Meeting – Proposal 19 re statute-barred debts	Discussion about intent of Proposal 19, as well as the challenges ACBDA members face in identifying when credit is statute-barred
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	Provided brief written comments on 13 June – see below

	9 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received
	13 June 2023	Feedback on first-stage consultation for soft enquiries	Provided brief written comments that they supported the proposed introduction of the soft enquiries framework, with a suggestion that their members will not make use of the regime so others were better placed to make specific comments
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	Submission received on 20 November 2023 – see **Annexure 7**
	6 November 2023	ACBDA attended an ARCA briefing/roundtable on the second-stage consultation	Brief comments made in meeting about proposals 6, 21 and 39, as well as a request for a follow-up conversation
	6 November 2023	ACBDA requested a one-on-one meeting to learn more about three CR Code Variation proposals (15, 21, 39)	Meeting scheduled for 9 November; ARCA provided written information to relevant parts of the Review final report for context
	9 November 2023	One-on-one meeting about CR Code Variation proposals	Comments were made in this meeting about Proposals 15 and 24, which were ultimately

			reflected in the ACBDA submission
	20 November 2023	Submission	ACBDA provided a written submission addressing Proposals 15 and 24 – see **Annexure 7**
Australian Finance Industry Association (AFIA)	27 March 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received
	27 June 2023	ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals)	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided.
	7 July 2023	AFIA requested that ARCA brief their members about first-stage consultation (for non-soft enquiries proposals	Briefing provided on 12 July 2023
	12 July 2023	ARCA briefing/roundtable for AFIA members on first-stage consultation (for non-soft enquiries proposals)	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided.
	25 July 2023	AFIA advised ARCA it would not be making a submission on ARCA's first-	n/a

		stage consultation (for non-soft enquiries proposals)	
	5 September 2023	AFIA requested update from ARCA via email on the upcoming second-stage consultation, and whether that would include a summary of earlier feedback	Response provided on 6 September 2023, advising when second-stage consultation would start and what it would cover
	6 November 2023	AFIA attended an ARCA briefing/roundtable on the second-stage consultation	No feedback from AFIA in meeting
Australian Institute of Credit Management (AICM)	27 March 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received
	13 June 2023	Invite to ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals	Our records indicate AICM did not attend
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received

	30 October 2023	Invite to ARCA briefing/roundtable on the second-stage consultation	Our records indicate AICM did not attend
Communications Alliance	27 March 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	26 April 2023	ARCA request to meet with Comms Alliance to discuss Proposal 6 of CR Code Review	Meeting held on 1 May 2023
	27 April 2023`	ARCA provided Comms Alliance with background information via email about Proposal 6 and CCLI generally	
	1 May 2023	Meeting relating to CR Code update process and Proposal 6	ARCA described the process it was undertaking re CR Code updates, as well as the intention of Proposal 6
	23 May 2023	Emails between ARCA and Comms Alliance about a briefing session for Comms Alliance members on the CR Code update process and proposal 6	Briefing session held on 30 May 2023.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided
	30 May 2023	Briefing session on: • CR Code and its role in credit reporting regulatory framework	Briefing provided

		• CR Code update process • Proposal 6 in particular ARCA also asked questions about common telecommunications products, whether they involve multiple pieces of credit etc	Discussion related to the credit reporting system generally, particularly the benefits and drawbacks of participation by telecommunications entities.
	9 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	Submission received on 10 July 2023 – see **Annexure 6**
	10 July 2023	Submission	Comms Alliance provided a submission on Proposal 6 – see **Annexure 6**
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received
	30 October 2023	Invite to ARCA briefing/roundtable on the second-stage consultation	Our records indicate Comms Alliance did not attend – a separate roundtable for Comms Alliance and their members was held on 9 November 2023
	9 November 2023	Roundtable on second-stage consultation	Comments were made in the meeting on Proposals 6, 15, 19, 37 and 43

Customer Owned Banking Association (COBA)	27 March 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received
	27 June 2023	ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided.
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received
	6 November 2023	COBA attended an ARCA briefing/roundtable on the second-stage consultation	No feedback from COBA in meeting
Finance Brokers Association of Australia (FBAA)	27 March 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	Submission received – see Annexure 5.

	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	Submission received – see Annexure 6
	16 June 2023	Submission (first-stage soft enquiries)	Submission received – see Annexure 5
	27 June 2023	ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided.
	7 July 2023	Submission (first-stage)	FBAA provided a submission on Proposals 13, 24 and 39-41 – see **Annexure 6**
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received
	6 November 2023	FBAA attended an ARCA briefing/roundtable on the second-stage consultation	No feedback from FBAA in meeting
Insurance Council Australia (ICA)	27 March 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided

	31 October 2023	Email from ARCA advising of second-stage consultation and invite to briefing session	
	6 November 2023	ICA attended an ARCA briefing/roundtable on the second-stage consultation	No feedback from ICA in meeting
	9 November 2023	ICA requested a targeted roundtable on CR Code variations	Roundtable held on 14 November 2023
	14 November 2023	Roundtable between ARCA and ICA members (mortgage insurers)	ARCA outlined proposal for public consultation. Verbal feedback re challenges for insurers, who do not typically deal directly with credit applicants, of education requirements.
Mortgage and Finance Association of Australia (MFAA)	27 March 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	Submission received – see Annexure 5
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received
	16 June 2023	Submission (first-stage soft enquiries)	Submission received – see Annexure 5

	27 June 2023	ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided.
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	Submission received – see **Annexure 7**
	6 November 2023	MFAA attended an ARCA briefing/roundtable on the second-stage consultation	No substantive comments received, but MFAA did indicate an interest in working with ARCA on aspects of Proposal 43
	20 November 2023	Submission	MFAA provided a Submission on Proposal 43 – see **Annexure 7**
External Dispute Resolution Schemes			
Stakeholder	**Date**	**Nature of Engagement**	**Outcome/Feedback provided**
Australian Financial Complaints Authority (AFCA)	9 March 2023	AFCA/ARCA initial discussion about CR Code Review and update process	No substantive comments received
	1 May 2023	Initial ARCA/AFCA discussion about first-stage consultation on a soft enquiries framework	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided.

	9 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	Submission received – see **Annexure 6**
	29 June 2023	ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals)	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided.
	14 July 2023	Submission	AFCA provided a Submission on Proposals 19, 24 and 39-41 – see **Annexure 6**
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No written submission received, but verbal feedback provided
	13 November 2023	AFCA/ARCA 1:1 meeting to discuss second-stage consultation	ARCA provided verbal feedback on the following proposals • Proposal 17 • Proposal 24 • Proposals 39-41
Energy and Water Ombudsman NSW (EWON)	26 April 2023	Initial email from ARCA to EWON requesting CR Code discussion	Discussion ultimately held on 4 May 2023
	4 May 2023	Initial ARCA/EWON discussion about CR Code update process	ARCA provided an overview of CR Code update process. General comments from EWON about: • Issues where they may have input (default information, CCLI

			definitions pertaining to utility credit, some law reform matters)
	9 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	Submission received – see **Annexure 6**
	29 June 2023	ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals)	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided.
	7 July 2023	Submission	EWON provided a Submission primarily focused on Proposals 6, 19 and 39 – see Annexure 6
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	Submission received – see **Annexure 7**
	16 November 2023	Submission	EWON provided a Submission on Proposals 6, 19, 21, 24, 39 and 43 – see **Annexure 7**
Energy and Water Ombudsman Victoria (EWOV)	26 April 2023	Initial email from ARCA to EWON requesting CR Code discussion	No response
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No response
Government or Regulators			
Stakeholder	**Date**	**Nature of Engagement**	**Outcome/Feedback provided**

Attorney-General's Department	6 March 2023	Invite to ARCA first-stage consultation workshop on 3 April 2023 re soft enquiries	Did not attend workshop
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received.
	28 June 2023	ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals)	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided.
	11 July 2023	Written comments provided (first-stage consultation on soft enquiries)	Provided feedback on all components of framework, in response to discussion paper
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received.
Australian Prudential Regulation Authority (APRA)	3 April 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided

	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received.
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received.
Australian Securities and Investments Commission (ASIC)	3 April 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received.
	28 June 2023	ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals)	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received.
Treasury	3 April 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.

	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received.
	28 June 2023	ARCA briefing/roundtable on first-stage consultation (for non-soft enquiries proposals)	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received.
Consumer advocates			
Stakeholder	**Date**	**Nature of Engagement**	**Outcome/Feedback provided**
Choice	30 October 2023	Invite to ARCA briefing/roundtable on second-stage consultation on 7 November	Choice advised in writing that they would not attend and do not typically get involved in industry code processes.
Consumer Credit Legal Service of WA (CCLSWA)	16 February 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No individual feedback provided, but were consulted on FRLC submission – see Annexure 5

	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No individual submission received, but signed on to FRLC-authored submission – see **Annexure 6**
	30 June 2023	ARCA briefing on first-stage consultation (for non-soft enquiries proposals)	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided that was not subsequently covered in FRLC/CCLSWA submission
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No individual submission received, but signed on to FRLC-authored submission – see **Annexure 7**
	7 November 2023	ARCA briefing/roundtable on second-stage consultation on 7 November	Comments were made in this meeting about Proposals 6, 19, 24, 28, 31, 37 and 39-41.
Financial Counselling Australia (FCA)	16 January 2023	Invite to ARCA first-stage consultation workshop on soft enquiries on 16 February 2023	Did not attend
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No individual feedback provided, but were consulted on FRLC submission – see Annexure 5
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No individual submission received, but signed on to FRLC-

			authored submission – see Annexure 6
	27 June 2023	Invite to ARCA briefing on first-stage consultation (for non-soft enquiries proposals)	Our records indicate that FCA did not attend
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received.
	30 October 2023	Invite to ARCA briefing/roundtable on second-stage consultation on 7 November	FCA did not attend
Financial Rights Legal Centre (FRLC)	16 February 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	23 Feb 2023	Email from ARCA requesting initial discussion about CR Code update process	Meeting subsequently held on 7 March 2023
	7 March 2023	Initial discussion about CR Code Update process	FRLC identified the following proposals as priorities: • Proposal 37 • Proposal 15 • Proposal 19 • Proposals 28 and 31
	27 May 2023	FRLC request for update on CR Code process timing	Update provided on 29 May 2023
	29 May 2023	ARCA updated FRLC on timing for CR Code consultation	

	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	Submission received – see Annexure 5
	9 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	Submission received – see Annexure 6
	20 June 2023	Submission (first-stage consultation on soft enquiries)	Submission received – see Annexure 5
	30 June 2023	ARCA briefing on first-stage consultation (for non-soft enquiries proposals)	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided that was not subsequently covered in FRLC submission
	17 July 2023	Submission	FRLC provided a written submission, CCSLWA and FCA co-signed, other consumer stakeholders (ACCAN, PIAC, Legal Aid and Consumer Action) were consulted. Submission covered: • Proposal 6 • Proposal 19 • Proposal 24 • Proposal 31 • Proposal 37 • Proposals 39-41

			See **Annexure 6**
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	Submission received – see **Annexure 7**
	7 November 2023	ARCA briefing/roundtable on second-stage consultation on 7 November	Comments were made in this meeting about Proposals 6, 19, 24, 28, 31, 37 and 39-41
	23 November 2023	Submission	FRLC provided a written submission, CCSLWA co-signed, other consumer stakeholders (energy specialists, DV advocates, financial counsellors and Legal Aid) were consulted. Submission covered: • Proposal 4 • Proposal 6 • Proposal 19 • Proposal 24 • Proposal 28 • Proposal 37 See **Annexure 7**
	1 December 2023	ARCA/FRLC discussion about Proposal 37	ARCA advised FRLC that we intended to make changes to our approach to Proposal 37 to address FRLC's feedback, including a specific provision relating to multiple correction

			requests, and making clear the normal rules about corrections apply to multiple requests.
Legal Aid Queensland	16 January 2023	Invite to ARCA first-stage consultation workshop on soft enquiries on 16 February 2023	Did not attend
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No individual feedback provided, but were consulted on FRLC submission – see Annexure 5
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received
	27 June 2023	Invite to ARCA briefing on first-stage consultation (for non-soft enquiries proposals)	Our records indicate that LAQ did not attend
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received.
	30 October 2023	Invite to ARCA briefing/roundtable on second-stage consultation on 7 November	LAQ did not attend
Redfern Legal Centre (RLC)	16 February 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including	No feedback provided

		discussion paper) and invite to provide feedback	
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received.
	30 June 2023	ARCA briefing on first-stage consultation (for non-soft enquiries proposals)	ARCA outlined the contents of the first-stage consultation. No substantive feedback provided by RLC.
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received
	7 November 2023	ARCA briefing/roundtable on second-stage consultation on 7 November	Comments were made in this meeting about Proposals 6, 19, 24, 28, 31, 37 and 39-41.
Uniting Communities	16 January 2023	Invite to ARCA first-stage consultation workshop on soft enquiries on 16 February 2023	Did not attend
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No individual feedback provided, but were consulted on FRLC submission – see Annexure 5
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received

	27 June 2023	Invite to ARCA briefing on first-stage consultation (for non-soft enquiries proposals)	Our records indicate that Uniting Communities did not attend
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received.
	30 October 2023	Invite to ARCA briefing/roundtable on second-stage consultation on 7 November	Uniting Communities did not attend
Women's Legal Service Victoria (WLSV)	16 January 2023	Invite to ARCA first-stage consultation workshop on soft enquiries on 16 February 2023	Did not attend
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received
	27 June 2023	Invite to ARCA briefing on first-stage consultation (for non-soft enquiries proposals)	Our records indicate that WLSV did not attend
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received.
	30 October 2023	Invite to ARCA briefing/roundtable on second-stage consultation on 7 November	WLSV did not attend

Other stakeholders			
Stakeholder	**Date**	**Nature of Engagement**	**Outcome/Feedback provided**
Australian Privacy Foundation (APF)	16 February 2023	Attendance at ARCA first-stage consultation workshop on soft enquiries	ARCA outlined the background to soft enquiries and engaged in preliminary discussions.
	29 May 2023	Email from ARCA about first-stage consultation for soft enquiries (including discussion paper) and invite to provide feedback	No feedback provided
	13 June 2023	Email from ARCA announcing first-stage consultation (for non-soft enquiries proposals) and invite to make submission	No submission received
	27 June 2023	Invite to ARCA briefing on first-stage consultation (for non-soft enquiries proposals)	Our records indicate that APF did not attend
	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received.
	30 October 2023	Invite to ARCA briefing/roundtable on second-stage consultation on 7 November	APF did not attend
IDCARE	20 October 2023	Email from ARCA advising of second-stage consultation and invite to make a submission	No submission received.
IIS Partners (the Reviewer)	18 August 2023	Email from ARCA requesting meeting about Proposal 19	Meeting held on 24 August 2023

	24 August 2023	ARCA/IIS meeting about Proposal 19	ARCA sought Reviewer's feedback on concerns raised through first-stage consultation about Proposal 19, as well other options for addressing the Review's concerns
Optus	17 July 2023	ARCA request for meeting with Optus to discuss CR Code update process and Proposal 6	Meeting held on 21 July 2023
	21 July 2023	ARCA/Optus meeting	ARCA described the CR Code update process. Optus described their current credit reporting practices, and indicated a general preference for 'overall service provision' level reporting rather than e.g. separate reporting on each distinct piece of credit

ARCA Member Engagement

ARCA has provided its Members information about the CR Code variation through its monthly Member update newsletter (the CReditorial).

ARCA has also formed a 'CR Code Working Group' to provide feedback on both the CR Code Review, and the now the CR Code variations. This working group includes attendees from the following Member organisations: AFG Securities, American Express Australia, AMP Bank, Australia and New Zealand Banking Group, Athena Home Loans, Bank Australia, Bank First, Bank of Queensland, Bendigo and Adelaide Bank, Commonwealth Bank of Australia, Equifax, Experian Australia, First Federal Home Loans, Heritage and People's Choice, HSBC Bank Australia, illion Australia, ING Bank, Latitude Financial Services, Macquarie Bank, MoneyMe Financial, National Australia Bank, Newcastle Greater Mutual Group, Nissan Financial, NOW Finance, P&N Bank, Plenti, Police Bank, Regional Australia Bank, Suncorp, Taurus Finance, Teachers Mutual Bank, Toyota Finance Australia Limited, Westpac Banking Corporation and Wisr Finance.

ARCA held numerous CR Code Working Group meetings to seek Member feedback on Review proposals and CR Code variations.

- Meetings relating to the first-stage consultation on the soft enquiries framework were held on 24 November 2022 and 13 June 2023
- Meetings relating to the other aspects of ARCA's process (before, during and after the first-stage consultation on other Proposals, as well as the second-stage consultation) were held on: 9 February 2023, 8 March 2023, 30 March 2023, 27 April 2023, 26 June 2023, 3 August 2023, 23 October 2023, 2 November 2023, 10 November 2023 and 8 December 2023.
- Meetings of significant subsets of the CR Code Workgroup were held on 22 June 2023, 13 July 2023 and 8 November 2023

ARCA also conducted a significant number of 1:1 meetings with Members and received feedback through our engagement with Members which is described in this application in general terms.

Two ARCA Members – Equifax and Illion – provided formal submissions on the first-stage consultation for soft enquiries – see **Annexure 5**.

One ARCA Member – Equifax – provided a formal submission on the first-stage consultation for proposals other than soft enquiries – see **Annexure 6**.

One ARCA Member – Equifax – provided a formal submission on the second-stage consultation – see **Annexure 7**.

Other Consultation Statement material

Consistent with paragraph 2.30 of the Guidelines, we also provide the following material to help evidence ARCA's view that we have conducted adequate consultation around the variations in the Proposed CR Code

The period that the draft code was available for public consultation

The Proposed CR Code was available for public consultation on ARCA's website from 18 October 2023 to 22 November 2023. The second-stage consultation page is still available to those with a direct URL link.

The entities likely to be affected by the Code

The entities bound by the Proposed CR Code have not changed from the current version of the CR Code. However, we note that the variations in the CR Code may be of particular interest to:

- Telecommunications and utility credit providers that participate in credit reporting (especially Proposal 6)
- Credit reporting bodies (see Proposals 13, 19, 28, 29, 31, 32, 33, 37, 39-41, 43 and 44)
- Credit providers that participate in credit reporting (see proposals 6, 13, 15, 21, 24, 31, 32, 33, 37, 39-41, 43, 44, and CCLI Issues A and B)
- Credit providers that acquire debts from other credit providers (especially proposals 15, 19, 21, 37 and 39-41)

The methods that were employed by ARCA to consult with entities and the public

We engaged in the consultation outlined above. To ensure that interested stakeholders were aware of our work and had the opportunity to provide input, we:

- Reached out widely to entities we believed would be interested in the CR Code
- Offered initial discussions to advise of our work, seek views on priority issues and general feedback
- Ran online webinar-format briefing sessions in respect of both stages of consultation, to help stakeholders navigate the consultation documents
- Offered 1:1 meetings with stakeholders who wanted to discuss issues in more detail
- Ran online, webinar-format roundtables for groups of stakeholders who wanted to provide feedback verbally in that format (as well as, or instead of, providing written comments)
- Provided extensions to our consultation deadlines wherever possible to give entities enough time to consider the issues and provide their views
- Promoted our work on the CR Code on our Website, through Linkedin, as well as partner organisations like our strategic partner Thriving Communities Partnership: see blog post here
- Published a media release in November 2023 to about our CR Code consultation

A list of entities who made submissions to the draft of the Code

We received formal submissions from the following entities on our first-stage consultation:

- AFCA
- Comms Alliance
- Equifax
- EWON
- FBAA
- FRLC
- Illion
- MFAA

These submissions are set out in Annexure 5 and 6.

We received formal submissions from the following entities on our second-stage consultation:

- ACBDA
- Equifax
- EWON
- FRLC
- MFAA

These submissions are set out in Annexure 7.

Confidential submissions are not included in the lists above, or referred to elsewhere in our application. We have taken this approach to preserve the confidentiality of the relevant submissions. We have nonetheless considered this feedback, and have attempted to articulate our reasons for adopting, or not adopting, the feedback in the application. Formal confidential submissions have been provided to the OAIC, but clearly marked as confidential (along with a description of our expectation that they will not be made public).

Details of the changes made to the code following public consultation

These changes are set out in Part A, under each proposal. However, more significant changes made after the second-stage consultation include:

- Proposal 6: Refinements to the definitions of account open date and account close date for telecommunications and utilities credit to respond to focus those definitions more directly on service provision (while also reflecting rights to have a service reconnected in the e.g. energy context).
- Proposal 13: A power for the OAIC to request CP audit reports from CRBs.
- Proposal 24: Removing the requirement proposed in the second-stage consultation for an additional disclosure, and instead including:
    - a provision which clarifies that a notification under subsection 21C(1) of the Privacy Act does not require an individual to consent to disclosure of information about them to a CRB;
    - tailored notification requirements for soft enquiries and hard enquiries.
- Proposal 31: Allowing CRBs to require written consent from individuals in order to provide notifications under a ban notification service.
- Proposal 33: Ensuring that a right to request a hard copy of a credit report applies to both free and paid services offered by CRBs.
- Proposal 37: Including a specific provision which makes clear that a correction request can relate to one or more pieces of credit information, as well as enhancements to the list of factors a correction request recipient, or party consulted on a correction request, must consider when asking for evidence from the individual.
- Proposal 44: Limiting the expanded definition of capacity information to new credit, and including provisions which provide clarity to CPs on when trustee capacity information should be disclosed.
- CCLI issue A: Not proceeding with changes to the CR Code based on the feedback received.

A summary of any issues raised by the consultation that remain unresolved

The issues raised in our consultation are set out in Part A, under each proposal. Some stakeholders may consider that feedback that we have not taken feedback on board is unresolved. Where this has occurred, we explain our reasons for that decision in Part A.

There were some issues raised during consultation which relate to matters for law reform (e.g. changes to the 21-day ban period set out in section 20K of the Act, changes to the $150 threshold for default information, as well as issues identified in the Review as requiring consideration by the Part IIIA Review). There have also been some issues raised which we consider are best addressed through the Part IIIA review; these include:

- The treatment of default information about statute-barred debts (Proposal 19) – specifically:
    - Whether default information about a statute-barred debt remains credit information; and
    - What requirements are appropriate to ensure that default information is disclosed promptly, so that the retention period for that information in the Privacy Act is more likely to have expired by the time the debt is statute-barred.
- Issues pertaining to the credit ban framework in section 20K of the Privacy Act (Proposal 28) – specifically:
    - Whether credit bans – where the onus is on the individual to take action and almost all uses of credit reporting information are prohibited – are the most appropriate response to risks of fraud;
    - Whether other options, such as the development of a fraud flag – could:
        - Reduce the burden on individuals of protecting themselves from fraud;
        - Reduce the burden on CRBs of having complex processes for placing, passing on, extending and removing credit bans;
        - Allow existing CPs to use credit reporting information in a way that does not expose the individual to an inappropriate risk of fraud
- The extent to which previously disclosed CCLI should be retained, visible and usable within the credit reporting system (CCLI Issue A)

The reasons why any other feedback was not incorporated into the final document

The reasons why particular pieces of feedback were not incorporated into the Proposed CR Code are set out in Part A, under the discussion of each proposal. However, a general list of some of the reasons why particular feedback was not adopted include:

- The feedback was contrary to the intent of the relevant Proposal.
- The feedback was beyond the scope of what could be achieved through the CR Code, or is better achieved through some other means (e.g. best practice guidance, law reform, consumer education initiatives or ARCA working with its Members).
- If implemented, the feedback would have imposed costs on CPs or CRBs that, in ARCA's view, outweighed the benefit of proceeding with the change suggested.
- The feedback was inconsistent with the provisions of the Privacy Act.