

14 July 2023

Mr Richard McMahon  
General Manager – Government & Regulatory  
Australian Retail Credit Association  
60 Martin Place  
Sydney NSW 2000

By email: [REDACTED]

Dear Mr McMahon

## **Privacy (Credit Reporting) Code 2014 (Version 2.3) Consultation on variations**

Thank you for inviting AFCA<sup>1</sup> to contribute to the ongoing development of the Privacy (Credit Reporting) Code 2014 through this consultation.

While it is not AFCA's role to create policy or develop regulatory approaches, we are very willing to assist with projects such as this consultation by providing complaint information and observations based on our experience as an independent external dispute resolution scheme. Key objectives in this context are to address issues that may give rise to complaints to ultimately reduce the number of complaints and to improve consumer understanding of, and confidence in, the credit reporting regime and financial services.

Detailed complaint information is available on our website. We publish material including:

- complaint statistics, for example, in the [Datacube](#) and our [Annual Reviews](#)

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<sup>1</sup> For comprehensive information about AFCA, see our website [www.afca.org.au](http://www.afca.org.au).

- individual determinations that can be [searched](#) using keywords and filters based on complaint types and issues
- approach documents that deal with particular issues, including issues in relation to credit reporting, and
- EDR guides for members setting out the information we expect financial firms to provide in response to specific types of complaints including certain credit reporting complaints.

Please contact us if ARCA needs assistance with locating relevant information on our website.

AFCA has previously provided more specific feedback to ARCA relevant to many aspects of the issues canvassed in the consultation document emailed to us on 9 June 2023.

Several of the proposals in the consultation document mention steps to improve accessibility and clarity for consumers to ensure a better understanding of the credit reporting regime and how data is managed and can be corrected. There are also proposals that seek to enhance consistency of reporting for credit providers (CPs) and credit reporting bodies (CRBs). We support such proposals.

We have also set out below some specific comments relating to Proposals 19, 24 and 39 to 41.

### **Proposal 19 – Statute-barred debts**

From time to time, AFCA receives complaints about information appearing on consumer credit reports where the debt reported on was either statute-barred at the time of the reporting or became statute-barred after the information was reported.

Examples of determinations we have issued on this topic are available on our website. They can be found by searching, using ‘statute barred debts’ as keywords.

While we see complaints on the topic, we also recognise that a consumer may be unaware of their rights in this regard.

AFCA supports measures requiring CPs and CRBs to develop processes to ensure statute-barred debts are not reported and/or credit reports are updated in a timely manner.

### **Proposal 24 – Notification obligations**

We receive many complaints about information appearing on a credit report where the complainant says there has been a breach of a CP’s notification obligations meaning the information should not have been reported.

In many such complaints, a complainant may say they did not consent to the disclosure of information which appears on their credit report.

In our experience, such complaints often show that a complainant may be confused about when and if their consent is required before information may be disclosed to a CP and included in the complainant's credit report.

Consistent with previous feedback we have provided, we consider complainants generally appear to obtain much of their information about credit reporting, and what information CPs may disclose to CRBs, through their CP.

We would support proposals designed to help CPs to clearly inform a consumer about when and what information may be disclosed to a CRB and appear on their credit file.

### **Proposals 39 to 41 – Code paragraph 20.5: circumstances beyond the individual's control**

As we have indicated to ARCA previously, AFCA supports Proposals 39 to 41 which are to amend the code's mechanism for corrections due to circumstances beyond the individual's control.

We support the inclusion of domestic/family violence as an example of the reasons a correction may be sought. We also support enabling CPs to make corrections and expanding the correctable categories of information to include Reporting History Information and other credit information.

### **Further input or discussions**

Please do not hesitate to contact us if ARCA would like further input for this consultation or to discuss any of the matters addressed above.

ARCA has indicated that further consultations will be conducted as the proposed variations to the code are developed and refined. AFCA would be willing to also participate in these future consultations.

Our contact for this matter is Carolyn Dea, Ombudsman at [REDACTED] or on [REDACTED].

Yours sincerely

[REDACTED]

**Natalie Cameron**  
**Lead Ombudsman – Banking & Finance**  
**Australian Financial Complaints Authority**