

Office of the Australian Information Commissioner  
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*Via email: [consultation@oaic.gov.au](mailto:consultation@oaic.gov.au)*

***RE: Consultation on application to vary the Credit Reporting Code***

Thank you for the opportunity to comment on the Australian Retail Credit Association (ARCA) application (the application) to vary the *Privacy (Credit Reporting) Code 2014* (the CR Code).

**About FinTech Australia**

FinTech Australia is the not-for-profit peak industry body for the Australian fintech sector, representing over 400 fintech companies and startups across Australia. As part of this, we advocate for a range of small businesses in Australia's fintech ecosystem, including fintechs engaging in payments, consumer and SME lending, wealthtech and neobanking, the consumer data right and the crypto, blockchain and Web3 space. Many of our members are fintech lenders which will be impacted by the proposed changes to the CR Code.

**Concerns with the new soft enquiries framework**

Our submission focuses on Proposal 43 to amend the CDR code to introduce a soft enquiries framework. We note the CR Code developer, ARCA, conducted additional consultation on this aspect throughout 2023 and some of our members made submissions to this process. FinTech Australia members are concerned that key feedback and concerns raised about the soft enquiries framework from these processes have not been addressed. We recommend delaying the implementation of the soft enquiries framework, as it currently stands, so it can be further considered through the recently commenced Part IIIA independent review of Australia's credit reporting framework (Independent Review).<sup>1</sup> We note the Independent Review is specifically considering the types of credit information

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<sup>1</sup> See: [Review of Australia's Credit Reporting Framework, April 2024](#).

exchanged by credit providers (CPs) and Credit Reporting Bodies (CRBs) and whether the types of information should be expanded or changed. We make this recommendation because our members are deeply concerned that the changes proposed in the application will have the substantive effect of crippling the soft credit inquiry regime.

As it currently stands, the proposed soft enquiries framework is too focused on risks to system/data integrity and maintaining hard enquiry volumes, at the expense of competition, consumer choice, access to finance and financial inclusion. The limitations and restrictions of the new framework mean it will be a downgrade from the status quo and it is unlikely to fulfill its objective of allowing customers to search across providers and be presented with accurate rate quotes.

In our members' view, limiting the information types and use cases permitted under the soft enquiry framework and using it to circumvent the way in which lenders are currently using the existing Access Seeker framework will have an adverse impact on the ability of smaller lenders and neobanks to compete with large credit providers.

FinTech Australia members raise three key areas of concern with the proposed framework:

1. Limitations on use cases;
2. Limitations of types of information available; and
3. Timing.

### ***Use cases***

The current proposal would limit the soft enquiries framework use cases to "indicative quotes and pricing checks" and now, as a result of the additional consultation, "ineligibility checks". Our members remain concerned the scope of these use cases, and their definitions, are too narrow and will limit the effectiveness of the framework.

In particular, pre-filling of applications, eligibility assessments and indicative approvals are important additional use cases which reduce friction and improve the consumer experience. In our members' opinion, allowing these use cases do not run contrary to the policy goal of 'system integrity' nor would they result in *significant* loss of hard enquiry data, relative to the status quo.

Rather, not allowing these use cases is likely to inhibit the policy goals identified during the CR Review of tailoring offerings, consumer shopping around and competition consistency across industry. Our members report that restricting these use cases will put smaller fintech lenders at a

competitive disadvantage, as they are less able to price accurately and this will lead to worsening consumer experiences.

We understand concerns were raised in the application that if limits were not placed on how the data provided in response to a soft enquiry could be used, then this would result in very few hard enquiries and perhaps skew data around declines. In the view of our members, this is yet to be evidenced and presents more of a manufactured issue generated for the benefit of larger incumbents. As the application notes, allowing soft enquiries for prefilling applications may go beyond the legal framework. As a result, consideration should be given to including this use case during the Part IIIA Review.

### *Types of information*

FinTech Australia members remain concerned about retaining restrictions on providing repayment history (**RHI**) or enquiry data in response to a soft enquiry, particularly as lenders will no longer be able to utilise the Access Seeker framework in the ways they have to date.

We support consumer credit liability information (**CCLI**) now being disclosed as part of the latest proposal but do not agree this is an adequate response to the concerns raised during previous consultations about how these restrictions would reduce the accuracy of pricing decisions, delay and add friction to the consumer experience, and dampen competition due more inaccurate pricing.

FinTech Australia recommends going further to address these significant concerns and include the provision of RHI and enquiry data as part of the soft enquiries framework. These datasets are crucial to pricing decisions for fintech lenders. A bureau score alone is not sufficient to provide accurate pricing to customers and is likely to result in repricing and a poor consumer experience.

Members report that bureau scores are built on industry level data and, as a result, many credit providers will build their own models for pricing or decisioning purposes which incorporates bureau and other data. Currently, some members report they have their own pricing and eligibility models which utilise the more detailed data fields available from Access Seeker requests. The inclusion of the additional fields, like RHI and enquiry data, is reported to uplift the accuracy of pricing for around 20% more customers and only around 57% of customers would receive the same rate if the lender relied on bureau scores alone.

Larger banking lenders have access to other account and transaction information and, as a result, are not as impacted by restrictions. This creates greater disparity between our members and the larger banking lenders, putting fintech lenders at a competitive disadvantage which will result in worse outcomes for consumers.

Our members do not agree with the position raised in the application that there will be a significant loss of hard enquiry data if these datasets are provided in response to soft enquiries. This concept of maintaining 'system integrity' or hard enquiry data should not come at the expense of the clear benefits of competition.

Simply put, if consumers cannot get an accurate price quote (based on RHI data) from a variety of lenders, or they cannot do so without leaving a hard inquiry on their credit file, which will impact their credit score, they will be less willing to engage with fintech lenders. This will dampen competition within the industry and leave these lenders at an even greater data disadvantage to large banks.

In our view, other approaches should be taken to encourage and enforce compliance to ensure bureau data integrity. For example, bureaus should:

- Enforce existing commercial agreements which require credit providers to submit credit enquiries on completion of an application;
- Audit liability and hardship data to understand where credit contracts have been entered without a corresponding enquiry being lodged;
- Audit Access Seeker enquiries and address non-compliance with enquiry obligations – e.g. where decisioning is being based on Access Seeker data alone and enquiries are not being submitted.

Our members also note the approach taken in other jurisdictions, like the UK and United States, where more information is available to lenders through comparable frameworks. The risks outlined in the application to the integrity of credit reporting information have not been an issue in these jurisdictions, and CRBs and the utility of their datasets have not suffered.

### ***Timing***

We agree with the application's comments that time will be needed to implement the soft enquiries framework and we appreciate that a 6-month period commencement provision has been added. However, our members remain concerned that soft enquiries products might not be available by the end of this 6-month period and there is a real risk lenders may be left with no access framework if there are further delays from CRBs.

Concerns around timing and availability of soft enquiries products further support our recommendation to delay the framework until it has been further considered by the Part IIIA Review

or it has been amended to remove remaining use case and information restrictions.

Several of our members have also raised concerns about the previous ARCA consultation processes being insufficient and not adequately representing the views of fintechs and non-banks. The result of these consultation processes has been significant weight being given to the perspectives of large banks and other entities not currently using Access Seeker processes.

We look forward to working with the OAIC, ARCA and the Part IIIA Review Secretariat on next steps and further consideration of the soft enquiries framework through the Part IIIA Review.