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Catherine Carpenter
Office of the Australian Information Commissioner
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Dear Catherine

AFIA SUBMISSION TO OAIC REVIEW OF THE PRIVACY (CREDIT REPORTING) CODE 2014

The Australian Finance Industry Association (AFIA) appreciates the opportunity to provide feedback to the Office of the Australian Information Commissioner (OAIC) in relation to the Privacy (Credit Reporting) Code 2014 (Version 2.1) (the CR Code). We understand the consultation has the purpose to find out what is working well and what can be improved in order to to decide whether and how the Code could be updated.

AFIA is a leading advocate for the Australian financial services industry[1]. We support our members to finance Australia's future. We believe that our industry can best support Australia's economy by promoting choice in and access to consumer and business finance, driving competition and innovation in financial services, and supporting greater financial, and therefore social, participation across our community.

AFIA represents over 130 providers of consumer, commercial and wholesale finance across Australia. These banks, finance companies, fleet and car rental providers and fintechs provide traditional and more specialised finance to help businesses mobilise working capital, cashflow and investment. They are also at the forefront of financial innovation in consumer finance.

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[1] Australian Finance Industry Association (afia.asn.au)

INTRODUCTION

The Australian financial services industry has been fertile ground for the introduction of new credit and payments products and services in recent years, driven by rapid developments in technology and changing consumer expectations. The COVID-19 global pandemic accelerated these trends.

These new products and services use technology to deliver benefits to consumers in terms of faster application and approval times, more convenient online application, flexible repayment options and cashflow management. Many of these products and services make use of customer information obtained directly or indirectly through the Consumer Data Right (CDR) regime.

When it commenced, the CR Code was fit for purpose. However, the regulatory framework governing credit reporting has not been able to keep pace with the degree of change, and traditional credit reporting agencies have found it increasingly difficult to meet the expectations of financiers and consumers.

AFIA believes there is an opportunity to revisit how the CR Code operates to ensure it is fit for the future and delivers value to financiers and consumers. We see an opportunity to revisit the adequacy of the positive and negative compliance framework attached to the CR Code to ensure it delivers sufficiently rigorous oversight and encourages stakeholder, financier, and consumer confidence in the CR Code's operation.

We acknowledge the importance of a modern, comprehensive credit reporting regime in Australia that is fit for purpose both now and in the future and can cater to the requirements of all financiers whether they are large or small, diversified or specialised, technology-enabled or traditional.

AFIA welcomes the opportunity to participate in this review and we would be happy to participate in ongoing discussions or to facilitate bilateral discussions with our members on their current experiences and their views about future needs. This submission focuses on providing responses to specific questions that are of the most significant and immediate concern to our members.

OUR SUBMISSION

Q1. What provisions in the CR Code work well and should remain as they are or with minimal changes?

Broadly, the CR Code seems to work well for one-off, long-term traditional lending products that have a regular, monthly repayment schedule, such as home loans or credit cards. However, it hasn't adapted to new and emerging finance products, in particular those with high frequency transactions and/or using flexible payment arrangements (i.e. weekly, fortnightly or other frequency or combination of frequencies).

Q2. What provisions in the CR Code are no longer fit-for-purpose? Why?

As indicated above, new and emerging finance products do not easily fit within the CR Code or the monthly repayment hierarchies attached to it. More importantly, the innovation in technology channels and the speed with which data is collected and then made available does not allow for real-time insights to be provided to financiers and/or decisions to be made by financiers or borrowers, and therefore, delivers a sub-scale customer experience, which reflects poorly on the financier.

As a result, a number of financiers who have the option to do so have elected not to include credit reporting bodies (CRB) in their credit assessment processes. This has translated to a decline in CRB inquiries at a time of significant increases in credit applications.

In this context, AFIA initially draws your attention to two major provisions that are outdated and no longer fit for purpose. To ensure the CR Code is fit for the future these issues need to be addressed.

The first provision relates to the number of inquiries continuing to negatively influence a consumer's credit score. This is an issue for financiers with high transaction volumes, for example, those BNPL providers using CRBs (noting BNPL providers are exempt from the CCR regime). Our data shows us that over 75% of consumers using BNPL do so approximately 12 times per annum[2] and this number of inquiries would have a significantly detrimental effect on their future borrowing capacity.

The second provision relates to how the CR Code manages credit repair firms and to a lesser extent the influence of the Australian Financial Complaints Authority (AFCA). At present many different types of financiers, including those with high transaction volumes, are being negatively impacted by credit repair firms and/or AFCA continuing to challenge default listings that have been made accurately and in accordance with the current framework.

Importantly, financiers rely on other financiers having listed all defaults when making their creditworthiness assessments, in fact, the CCR regime relies on this the accuracy of this information. When a credit repair firm challenges a default listing and/or uses the AFCA process to prosecute removal of it, often for their own profit, it results in escalating AFCA costs for the financier and can undermine data integrity with CRBs. In some instances, financiers will remove contractually correct defaults because of the operational risks, including compliance costs and reputational risks associated with challenging the result, especially for low value transaction amounts.

AFIA also believes including the current balance of a credit obligation could be useful information moving forward.

Q3. Does the CR Code get the balance right between the protection of privacy on the one hand and use of credit-related personal information on the other? Why or why not

The interplay between the Privacy Act and the CR Code also adds complexity. Consumers will already find it difficult to navigate the complexity and interaction of the current privacy laws and regulations.

AFIA strongly supports consumer privacy safeguards. These safeguards should be applied consistently across all organisations that seek to collect consumer data. Therefore, we believe the CR Code should be constructed from the perspective of what makes sense to a consumer. In other words, it is important not to create unnecessary complexity for consumers and the application of any future standards in the CR Code should be consistent across all entities regardless of their size or the nature of their business or the products and services they supply.

Financial institutions already operate within a heavily regulated and legally complex environment, with legal and regulatory complexity in the finance sector significantly increasing over the past few years, including the new rules for capture, use and transfer of consumer data. All entities providing financial products and services are already required to abide by the existing privacy laws, including the National Privacy Principles, and comply with various standards on consumer data, including the Online Privacy

[2] RFI Global Australian BNPL Council – December 2021

Code, Open Banking regime and the Consumer Data Right. These laws exist to ensure consumer safeguards are in place and financial system stability is maintained.

AFIA is specifically concerned with the potential for any changes that significantly impact on competition and innovation in the financial services industry because of their use of data and technology to deliver product innovations and service solutions to their customers.

Many of our members collect personal and financial information in order to tailor and provide financial products and services to their customers and to assist their customers manage their finances and money, including through customer-centric account alerts, etc. Data and technology is core to the provision of financial services – and customer data is embedded in financial services and is regularly relied on in the design, distribution, compliance, and management of financial products and services across all business models.

It is important that the privacy laws do not to create unnecessary legal complexity and regulatory duplication for financial services providers and/or stifle the legitimate activities of financial services providers, which could result in less innovation and competition in the market, prevent transition to our digital economy, and/or cause consumer harm, where consumer data is unable to be accessed or appropriately used.

Q4. Does the CR Code need to be amended for clarity or readability? If so, in what way?

The CR Code is still complex from the consumer's perspective. While ARCA has made various language versions of the Code, more could be done to improve awareness and understanding of the CRR regime. In particular, it could be made more accessible for school leavers, first homebuyers, and new entrants to the country.

Financial literacy is a recognised issue in Australia and we believe ARCA could be more proactive in ensuring consumers, especially those likely to be unaware of the CR Code and its implications for them and their credit file, have timely access to it in plain English (in this context meaning simple uncomplicated and jargon free language), and in a language and medium that suits them.

The CR Code should be constructed in a way that puts the customer in the centre and considers the benefits of access to innovation and choice as well as the clarity and consistency of a privacy framework across all organisations with whom they share data and information.

This approach would be consistent with the Federal Government's various economic policies and strategies seeking to balance customer choice and consumer safeguards with innovation and competition as well as to create Australia as a financial and technology centre. This would also allow for the development and introduction of new products and services to the CCR regime in manner that ensures consumers are appropriately protected, while providing customers with access to and choice in technology, product innovations, and service solutions.

Q8. How might the CR Code need to be updated to accommodate other entities.

Please refer to our response to question 2.

Q9. Is the current process for developing variations to the registered CR Code appropriate?

When the CR Code was initially established, the financial services industry was not experiencing much change in terms of competitive pressure and disruption by new entrants with innovative technology-based products and services. At that time, ARCA was a suitable representative body and represented a good cross section of the industry.

However, the environment is now significantly different. The cohort of market participants is larger and more diverse, and many are not represented through ARCA or enabled to contribute to developments on credit reporting.

In this context, while AFIA recognises ARCA's achievements in designing and implementing a new credit reporting system, we believe that further investment in ARCA is needed to address some areas of frustration and to ensure their governance framework and processes reflect a dynamic and evolving credit industry with full participation within Australia.

This is highlighted by:

- The delayed implementation of comprehensive credit reporting in Australia relative to the rest of the world
- Unnecessarily complicated implementation processes
- The difficulty in agreeing and implementing approaches to identifying financial hardship and the appropriate treatment of data – the hardship regulations were introduced 12 months ago and are only now being rolled out, despite requiring only very minor adjustments to the CR Code
- The difficulty in agreeing and implementing principles of reciprocity between traditional financiers with large amounts of data and new entrants who have very little – this is perpetuating an information asymmetry and has effectively disincentivised many in the industry from engaging in comprehensive credit reporting and instead developing their own proprietary mechanisms to assess creditworthiness that make extensive use of data (not all of which is specific to the individual).

Q10. Should additional compliance monitoring and governance arrangements be stipulated in the CR Code?

Despite good efforts, in the context of a rapidly evolving financial services industry, the needs and expectations of many industry participants and their customers are not being met.

AFIA is specifically concerned that there are no governance processes, or consequences for signatories to the CR Code who do not abide by it. For example, a Code Compliance Committee - or similar - to oversee compliance and report findings to participating lenders and/or the broader community would improve governance, build awareness of, and trust in, the CR Code by all stakeholders, financiers, and consumers, and drive faster change and better outcomes.

Instead of the current CR Code being redeveloped to support a broader cohort of credit providers and consumers, we suggest a new approach should be taken - to build a simple accessible CR Code that is flexible, proportionate and fit for the future. A new approach could deliver a more sustainable code that delivers value to consumers and participants. This process should seek input from industry bodies representing financiers across the spectrum, to ensure engagement from the broader financial services industry.

Furthermore, we suggest consideration be given to value-added data. For example, there are emerging assessment tools that will provide flexible and effective responses to the risk of vulnerable consumers. These include the CDR and Open Banking regime and the "Indebtedness Indicater" being developed in for the NZ BNPL industry, which will operate on a daily feed from each participating provider and will enable upfront affordability assessments and awareness of missed payments within 7

days. A similar tool would be beneficial for all participating lenders in Australia, especially as real-time information and decision-making for financiers and borrowers is fast becoming a basic expectation in our digital economy.

Q11. Do industry and individuals have access to the information they need to understand and/or apply the CR Code in practice? If not, what amendments could be made to the CR Code to improve this?

AFIA does not believe so. The lack of information about the CCR regime and the CR Code has led to some undesirable outcomes. For example, the development of a 'credit repair' industry that exploits the lack of consumer understanding about credit reporting has led exploitative companies stepping in and generating profits when free, financial support is available from financial institutions, financial counsellors, and others. As previously noted, the activities of credit repair firms result in financiers experiencing expensive complaints and disuptes management processes including through AFCA, where they are asked to remove and suppress credit bureau information – despite its validity. This undermines the efficacy of the CCR regime and has resulted in fewer credit providers are engaging with the credit reporting industry.

This also leads to the erosion of relevant credit data and compromises data integrity, with large segments of industry making credit decisions using data that does not fairly represent the consumer. Credit checks are also a lagging customer indicator and increasingly unhelpful for younger adults with no credit bureau history. Ultimately, borrowers pay for these decisions through higher interest rates – or by potentially sound consumers being unable to access credit.

Q16. Are the RHI provisions appropriate? Should RHI provisions contained in paragraph 8 be amended in any way? If yes, how?

AFIA believes repayment history information is critical to the CCR regime, including the hardship flag. The hardship flag is intended to ensure a customer experiencing hardship and difficulties with existing debt doesn't end up with more/unmanageable debt. This is not about discriminating against consumers, it is about protecting consumers and doesn't prevent a lender extending further credit, but provides the opportunity to discuss a consumer's financial and personal circumstances to make sure additional credit is suitable.

The requirements to sign up to all terms in the principles of reciprocity and data exchange (PRDE) to both provide and reference comprehensive credit data has resulted in an unnecessarily onerous process where many credit providers are either unwilling or incapable of submitting and referencing comprehensive credit data. Many financiers are unclear whether they are operating diligently within the confines of the Act, the Code the PRDE, AFCA and credit repair challenges and credit reporting agency requirements.

Conceptually, two broad changes should be considered:

1. repayment histories should be representative of actual repayment obligations and not restricted to an arbitrary calendar month – batching them to a monthly process will only accommodate traditional credit products and not those with higher velocity. Trying to consolidate repayments to conform to a monthly calendar cycle when many repayment cycles are fortnightly (to coincide with salary payments) or weekly generate complexity in provision of data and in terms of interpretation of the information. Reporting cycles under comprehensive credit reporting need to reflect actual events and cycles as they present in the market, in other words, as close to real time as possible. Repayment updates should be

immediate, and applied as and when they occur, equally, should be corrected as and when they are discovered.

2. representing each repayment when it is due will provide a clear path for consumers and credit providers to understand the report and remediate the issues if there are any. It also allows those issues to be quickly resolved as and when they are identified.

CLOSING REMARKS

AFIA acknowledges the need for a modern, comprehensive credit reporting regime that delivers the appropriate balance between consumer protections, strong consumer outcomes, appropriate lending standards, and financial inclusion.

AFIA looks forward to working with the Office of the Australian Information Commissioner and contributing further information and data to support the development of settings that keep pace with evolving industry developments and customer expectations, strengthen our economic recovery, and supporting the shift to a digitised economy.

We hope our submission assists the OAIC with its consideration of the most practical and effective model to safeguard consumer privacy and promote choice, competition and innovation. I would welcome the opportunity to provide further information if that would be helpful.

Should you wish to discuss our submission or require additional information, please contact me or Anna Fitzgerald, Executive Director, Communication & Strategy at anna.fitzgerald@afia.asn.au or 02 9231 5877.

Yours sincerely

Diane Tate
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