**Submission by the Financial Rights Legal Centre**

Attorney-General's Department

# Review of Australia's Credit Reporting Framework

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# About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates part of the National Debt Helpline, helping NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

For Financial Rights Legal Centre submissions and publications go to

www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

**The Financial Rights Legal Centre has drafted this joint consumer submission with input and endorsement from:**

- Australian Communications Consumer Action Network
- Australian Privacy Foundation
- Care (Consumer Law Program, ACT)
- CHOICE
- Consumer Action Law Centre
- Consumer Credit Legal Service (WA) Inc.
- Consumer Policy Research Centre
- Financial Counselling Australia (FCA)
- Mob Strong Debt Help
- Mortgage Stress Victoria
- Public Interest Advocacy Centre- Energy and Water Consumers' Advocacy Program
- Redfern Legal Centre
- Uniting Communities Law Centre (SA)

This joint submission will address the questions set out in the Consultation Paper below.

# Executive Summary

Australia's credit reporting framework is a fundamental aspect of the financial infrastructure, enabling lenders to assess the creditworthiness of individuals and businesses. However, it is essential to review and adapt this framework to reflect technological, economic, and cultural changes; policy objectives; and consumer expectations. There have been major regulatory and commercial changes in the credit and debt space since the current credit reporting framework was put into place including since the last comprehensive review. The current regime is no longer aligned with Australia's consumer credit arrangements or with consumer expectations.

The Australian credit reporting framework is overly complex and generally inaccessible for consumers. Consumers must be at the heart of the credit reporting framework as it is their personal information over which it has been built. If consumers are unable to easily access their own information and make corrections when necessary, the integrity of the entire framework falls apart.

There needs to be a much higher degree of regulatory scrutiny in the credit reporting framework. Rather than the privacy regulator, we need to have a regulator with a consumer protection focus that can conduct close surveillances of credit providers and credit reporting bodies to ensure that they manage consumer risks associated with holding, use and

disclosure of consumer's credit data. Changing credit reporting oversight to ASIC and the ACCC would enhance the regulatory scrutiny as well as better align the credit reporting framework with consumer credit laws. We should also be regulating credit reporting bodies more akin to public utilities given their role as a utility for the financial and lending system.

This submission makes several recommendations for new consumer protections including real time notification when missed payments are being reported. Missed payments of less than $30 should not be reported as missed. Initial ban periods on credit reports should be 90 days and consumers should have a right to register for free alerts from credit reporting bodies when a lender requests access to a their credit report.

Consumer representatives support the development of a five-year countdown method for default listings where the time limit for defaults on credit reports runs from the date of the default rather than the date of the default being listed on the credit report. We also believe debts should be over $500 before a default can be listed.

This submission discusses financial hardship information in some detail. Credit providers need to collect robust data on how they are using financial hardship information in lending decisions and develop an industry wide communique that can be used by consumer representatives to explain to consumers what having financial hardship information on their credit report will mean for their future finance options. Only credit providers assessing new credit applications, including refinancing applications, should be able to see and access financial hardship information and credit providers should not be able to set alerts with credit reporting bodies relating to existing customers in hardship arrangements with other lenders.

Dispute resolution and corrections procedures must be improved and become better aligned with dispute resolution obligations for other financial services providers. The credit reporting framework must give lenders the flexibility to not list or to correct past credit reporting information, especially for victim survivors of family violence or fraud.

Importantly, consumer representatives do not support expanding repayment history information to telecommunications or utility industries. Credit reporting regulation must balance the competing public policy objectives of supporting a sustainable credit industry with protecting individuals' privacy. Without compelling evidence that comprehensive credit reporting has led to lower interest rates or financial inclusion for those with good repayment history, expanding credit reporting to even more industries cannot be justified.

Finally, consumer representatives strongly recommend a move away from enquiry information and towards compulsory CCLI over time (despite the recent BNPL changes). These are systemic changes that would support a stronger, fairer, more coherent system.

# List of Recommendations

1. The CR Code should be broken into principles-based consumer-facing provisions and the technical industry-facing provisions. It would be critical that the consumer-facing principles take precedence in any conflict with the technical provisions and are consumer-tested before being finalised.
2. The credit reporting framework should set minimum standards for readability and accessibility of credit reports.
3. Fairness should be an explicit overarching principle in Australia's credit reporting legislation.
4. The entire credit reporting framework should be independently reviewed every 5 years.
5. The entire credit reporting framework should be moved out of the Privacy Act and either into the National Consumer Credit Protection Act or into a standalone Credit Reporting Act with oversight managed jointly by the Australian Securities and Investments Commission and the Australian Competition and Consumer Commission.
6. CRBs should be regulated like public utilities with much more stringent regulatory oversight and rigorous and publicly reported audits of data accuracy.
7. The CR Code needs to be developed, periodically reviewed and varied by an independent body made up of representatives from relevant regulators, industry and consumer groups.
8. Independent code governance, including a CR Code Compliance Committee should be established under the CR Code.
9. The CR Code should require lenders to develop any automated and algorithmic lending programs in accordance with Australia's 8 Artificial Intelligence (AI) Ethics Principles.
10. Mandate stricter reporting standards for credit reporting bodies, including requirements for robust verification processes and regular audits to ensure the accuracy and consistency of credit information.
11. CRBs should be required to share all of their data sets with the other CRBs to promote accuracy and consistency in credit reports.
12. Procedural aspects of credit reporting definitions should be moved out of the legislation and into the CR Code. They should be developed by an independent body with deep knowledge of the industry as well as consumer representation and they should be administered by an independent code monitoring body.
13. Consumer representatives do not support additional information (such as balance, repayment or guarantee information) being reported as part of Australia's credit reporting framework.

14. Enquiries should be excluded from Australia's credit reporting information and replaced by the expansion of mandatory CCLI. Access information would still form part of the audit trail for consumers to view.
15. Credit providers need to collect robust data on how they are using financial hardship information in lending decisions and develop an industry wide communique that can be used by consumer representatives to explain to consumers what having financial hardship information on their credit report will mean for their future finance options.
16. The credit reporting frameworks should be amended to ensure that only credit providers assessing new credit applications, including refinancing applications, are able to see and access financial hardship information.
17. Credit providers should not be able to set alerts with CRBs relating to existing customer with FHI from other lenders.
18. ASIC should be tasked with conducting regular audits on credit providers to ensure they can show they were in fact assessing a new credit application when they accessed a consumer's financial hardship information.
19. Partial credit checks (including listing CCLI) should be mandatory for all BNPL providers, not just those with products over $2000.
20. Consumer representatives support the development of a five-year countdown method for default listings where the time limit for defaults on credit reports runs from the date of the default rather than the date of the default being listed on the credit report.
21. The minimum default listing threshold should be raised from $150 to $500 and should be indexed.
22. Lenders should be restricted to 180 days' worth of transaction information if they want to use open banking data to assess a credit application (i.e. for responsible lending purposes).
23. Any new investment in information resources should include an investment directed at advocates such as community lawyers, domestic violence advocates and financial counsellors who advise and advocate for people experiencing financial challenges. This should not take precedence over making the rules clearer and fairer in the first place.
24. Effective education needs to be timely and relevant to the person's life situation and current decision-making. Giving people real time information about what is being listed on their credit report and why, is the most effective way to educate consumers and influence behaviour.
25. The Government should invest in user-testing a single standardised credit report template that could be replicated across the three CRBs.

26. The Government should also investigate operating a service which consolidates all three credit reports into one accessible report for consumers.
27. Dispute resolution and corrections procedures must become better aligned with IDR obligations for other financial services providers.
28. Provisions in paragraph 20 of the CR Code should be completely re-written to be principled-based and in plain English.
29. The CR Code could set much tighter timeframes for simple corrections requests, making it clear that the 30 day timeframe in the Act is for more complex correction requests.
30. The initial credit report ban period should be extended to a minimum of ninety (90) days. During the initial ban period a consumer should be able to receive alerts if a lender attempted to access their credit report.
31. The ability to register for free enquiry alerts should be a right enshrined in law in the same way access to free credit reports is a right for all Australian consumers.
32. Alternatively, victims of major data breaches should be able to opt in for free alerts from all three CRBs for a minimum of three years.
33. Consumers should be notified in real time and in plain language when missed payments are being reported after a period of on time payments. A consumer should be able to sign up for these notifications free of charge.
34. There should be a minimum threshold of $30 before a CP can report a missed or late payment. This amount should be indexed.
35. The credit reporting framework must give CPs the flexibility to not list or to correct past credit reporting information, especially for victim survivors of family violence.
36. Consumer representatives also submit that where FDV arises, credit providers have a positive obligation to inform a survivor/victim of the options available.
37. The credit reporting framework should include a mechanism for splitting joint accounts in discrete economic abuse situations when the CP and the individual agree it is the best option.
38. Introduce a requirement that all action and advice by DMFs be in the customer's best interests, appropriate to their individual circumstances, and based on a sufficiently full assessment of their financial circumstances.
39. Introduce specific conduct obligations into the DMF licensing regime which include:
    (a) A ban of upfront fees.
    (b) Require DMFs to meaningfully sign post the availability of free services in their advertising and during the firm's early contact with consumers.
    (c) Extend the ban on unsolicited selling in financial services to DMFs.

(d) Require minimum training standards for all DMFs.

(e) Clarify that advice and action by licenced DMFs must have regard to the consumer's overall financial position and individual circumstances, including on products beyond those regulated by the NCCP Act.

40. CRB frontline staff must have sufficient cultural and trauma informed training to engage with First Nations consumers.

41. Credit Reporting Bodies should be required to use best practice for Identification in line with the Austrac Guidelines.

42. There must be easy and accessible phone-based methods for requesting access to a credit report.

43. Credit reports should not be able to be used for other purposes beyond a 'credit purpose'.

44. Credit reports should not be accessible to a broader range of commercial entities, such as real estate agents.

45. Non-financial participants such as telecommunications and utility providers should not be able to contribute repayment history and other positive reporting data.

46. The credit reporting framework should require that CRBs make it simple and easy for a vulnerable consumer to get a free copy of their credit report over the phone or by filling out a printable form and sending it by post.

47. Credit reports should be accessible from all CRBs following a request to any one CRB.

48. The credit reporting framework should require CRBs to recognise standard authorities which are regularly used by financial counsellors and consumer advocates.

49. The CR Code should impose stronger rules preventing real estate agents/landlords asking consumers to supply a credit report in order to apply for rental accommodation.

50. The credit reporting framework should make it clear that CPs can be flexible about removing or amending credit information as a result of the settlement of a liability dispute or because the information was listed as a result of circumstances beyond the individual's control. This should not be confined to default information, but also will include any of the categories of credit information relevant to the circumstances.

51. Mandatory partial comprehensive reporting (CCLI) should be expanded to all Australian credit providers that hold an Australian Credit License and are subject to responsible lending obligations.

52. Mandatory full comprehensive credit reporting (RHI & FHI) should not be expanded to other credit providers.

# Part One Question: The what and why of credit reporting

## How important is Australia's credit reporting framework?

Australia's credit reporting framework is very important.

### Facilitation of access to credit:

Importantly the framework attempts to facilitate] fair access to credit. The framework provides a standardised way for lenders to assess the creditworthiness of individuals and businesses. In theory, this helps financial institutions make informed decisions about granting loans, credit cards, mortgages, and other financial products. By offering a comprehensive view of an individual's credit history, lenders can better manage risks and set appropriate interest rates and credit limits based on the assessed risk level.

Specifically, in Australia, the credit reporting framework is an important part of responsible lending assessments, which are a critical feature of Australia's consumer credit laws. Responsible lending laws were implemented following many years of consultation and negotiation, as well as a long history of varied state-based reforms across Australia before credit laws were introduced at the Commonwealth level. The introduction of responsible lending laws in 2009 helped to address a wide range of improper, lax and predatory lending practices that were becoming increasingly common during the early 2000s. While reliance on credit reports alone or credit scoring is not effective in ensuring responsible lending outcomes, without a reliable and credible credit reporting framework, consumers could not trust that lenders were assessing credit applications using relevant, accurate and up to date information about their creditworthiness.

### Empowerment and Financial Inclusion:

Access to credit allows individuals to make significant life purchases, such as homes and cars, invest in education, or manage financial emergencies. A robust credit reporting system can promote financial inclusion by helping more people access these opportunities at the same time as keeping lending decisions responsible and sustainable for borrowers.

### Adherence to Standards:

In theory, a structured credit reporting framework should ensure that credit reporting agencies and financial institutions adhere to regulatory standards and guidelines, promoting

consistency and fairness in credit reporting practices and striking the right balance in achieving competing public policy objectives.

The standardisation and consistency of data is important for consumers, so that they can feel confident they will be treated fairly by current and future lenders. The current credit reporting framework has been refined over the years to strengthen consumer protections and data accuracy requirements. The framework includes measures to protect consumer rights, such as the ability to dispute incorrect information and ensuring data privacy

These protections when they operate appropriately are very important. A good example of what credit reporting might look like without this robust framework is the Insurance Reference Service (IRS). The Insurance Reference Service Ltd operated a shared insurance industry database. It was incorporated in 1989 and both Illion and Equifax from the credit bureau have hosted and managed the IRS at various points.[1] The IRS has some similarity to a credit reporting database service, however it was never subject to the very detailed regulatory regime we have for credit reporting. In 2022 the Financial Rights Legal Centre published a report into privacy in insurance which demonstrated the inadequacy of consumer insurance reporting.[2]

Our Privacy Practices in General Insurance report found insurers were failing consumers with "shoddy" data practices, such as relying on erroneous historical information to assess new claims. The report also found a series of problems including a lack of transparency over the sharing of policyholders' data. A field study found at least one material error in every My Insurance Claims Report document obtained by participants in the Financial Rights research. The claim reports were provided by the IRS for a $22 fee. Incorrect or misleading claim status descriptions, old claims not being removed, missing claims, incorrect claim descriptions and wrong address are among the errors found.

After Financial Rights published its report the IRS was shut down.[3]

## Economic Health Indicator:

Credit reporting data can serve as an indicator of the broader economic health, providing insights into consumer behaviour, borrowing trends, and financial stability.

[1] The Internet archive first records the site in March 2017. The sample report provided is dated August 2016:
https://insurancereferenceservices.com.au/assets/DNBi%20IRS%20Individual%20Insurance%20Enquiry.pdf
[2] https://financialrights.org.au/wp-content/uploads/2022/04/2204_PrivacyGIReport_FINAL.pdf
[3] https://www.insurancenews.com.au/daily/insurers-wind-up-claims-history-database

### Identity Verification and protection against identity theft and fraud:

The credit reporting framework can help in verifying identities and detecting fraudulent activities. By monitoring their credit reports, consumers can flag and identify suspicious or unauthorised transactions. With the right policy settings, the credit reporting framework has the potential to be part of line of defence against fraud. By connecting consumers more effectively with activity on their records, fraudulent loan applications, including those facilitated by large scale data security breaches, could be prevented, saving lenders money and preventing consumers from suffering considerable harm.

# Part Two Question: Strategic, historical and international context

## Has the policy rationale for regulating credit reporting changed or remained the same since the legislative framework was first adopted?

Overall, the policy rationale for regulating credit reporting **has** changed over time:

- We now have national regulation of consumer credit, instead of the mix of state government regulation and self-regulation that was in place in the 1980s;
- We now exist in a digital-first lending environment, where data consistency and security is paramount for both consumers and financial service providers, along with increased expectations of high speed transacting and attendant risks;
- Expectations of data security and privacy are high among consumers, especially in an environment where scams data breaches are ever-present risks for most people;
- Responsible lending is now a key feature of Australia's consumer credit arrangements;
- The value and effectiveness of hardship rights, policies and procedures have increased considerably, along with awareness of the interactions between hardship protections and the credit reporting framework; and
- Awareness of the insidious nature and extent of family violence and financial abuse has increased.

While the need for regulatory oversight and strong consumer protections frameworks around consumer credit data has not changed, the original sole focus on privacy has expanded. There has not been a comprehensive review of the framework for over 15 years (since 2008), which has led to legislation and regulation not updating to economic and societal change. The current credit reporting frameworks are no longer aligned with the needs and expectations of Australian consumers.

Periodic reviews of existing legislative and regulatory frameworks governing credit reporting are critical to assess their effectiveness, identify emerging issues, and incorporate best practices and lessons learned from other jurisdictions. Reviews like this one will help ensure that regulations remain adaptive and responsive to evolving technological, economic, and social trends. Ongoing review and refinement of the legislations are necessary to ensure its efficiency and effectiveness.

# Part Three Questions: Australia's credit reporting framework

## What are the main harms that the regulatory framework should seek to address today?

### Errors in Credit Reports

The credit reporting framework should strive to ensure that that credit reports are accurate, up to date and relevant to a person's creditworthiness. When errors are discovered, the framework should ensure there are accessible and easy correction mechanisms.

Mistakes in credit reports, such as incorrect personal details, erroneous account information, or outdated data, can negatively impact an individual's credit score. This can lead to unfair denials of credit, higher interest rates, or unfavourable loan terms. Consumers are often unaware of these errors until they have been rejected for credit. The Australian Retail Credit Association (ARCA) released data in December 2023 showing 37% of Australians have never checked their credit report and only a third are even aware that their credit report shows a 24-month breakdown of their account payment history.[4]

Consumer representatives strongly support public reporting on credit reporting compliance activity as is done in other jurisdictions. For example, in 2021 the Consumer Financial Protection Bureau (CFPB) in the United States (US) published a report detailing consumer complaint response deficiencies in the big three Credit Reporting Bodies (CRBs) in that jurisdiction. The CFPB found that in 2021, Equifax, Experian, and TransUnion together reported relief in response to less than 2% of covered complaints, down from nearly 25% of covered complaints in 2019.

"America's credit reporting oligopoly has little incentive to treat consumers fairly when their credit reports have errors," said CFPB Director Rohit Chopra. "Today's report is further

[4] https://www.arca.asn.au/media-release-creditsmart-dec-2023

evidence of the serious harms stemming from their faulty financial surveillance business model."[5]

Rectifying errors in credit reports in Australia is a cumbersome and time-consuming process, causing frustration and stress for individuals trying to correct inaccuracies. The same can be said for cleaning up fraudulent enquiries and account information that stem from criminal activity.

## Case study 1 – Harvey's story

Harvey became aware that he had the same name and date-of-birth as another customer of the same bank. The other customer opened a new account with the bank and the bank merged the two customers. Harvey told the bank on numerous occasions of the error, but the bank kept contacting Harvey about the other person's banking. Additionally, the other person had a poor credit rating that negatively impacted Harvey's credit rating.

While Harvey can contact the credit reporting body and inform them of the error, they will likely just go back to the bank to confirm. Harvey can also make an internal complaint with the bank since it has been repeatedly told of the issue and yet has made no effort to rectify it. Neither option is guaranteed to solve Harvey's problem and will take time and effort. If the bank or CRB don't help, he will need to take the issue to AFCA.

*Financial Rights, S295841*

**Financial counsellor comments**

"My client was refused a loan, and on checking his credit report, it was discovered an application had been made for a personal loan, (of which he had no knowledge) but nothing had eventuated. When I rang Latitude Finance at the time and asked how much he owed, the reply was "zero" as nothing had eventuated from an old application – which he knew nothing about. I asked them to delete the information, which they did, and he was able to go ahead with his loan application. There is a lack of financial companies having any sense of responsibility as to their actions as well."

*Comments from Financial Counsellor NSW*

[5] Consumer Financial Protection Bureau (CFPB), 5 January 2022; *CFPB Releases Report Detailing Consumer Complaint Response Deficiencies of the Big Three Credit Bureaus: Equifax, Experian, and TransUnion routinely failed to fully respond to consumers with errors*: https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-report-detailing-consumer-complaint-response-deficiencies-of-the-big-three-credit-bureaus/

## Case study 2 – Hercule's story

Hercule's company closed during covid. His personal finances were affected, and he missed the due date on some bills, but he ultimately settled those debts. He recently applied for personal finance and was told by his broker that a default was listed on his credit report.

Hercule traced the default listing to his energy provider. It was an account taken out by his now closed company. He contacted the provider who acknowledged that the debt had been paid and the listing "ought in error" - we assume this means it ought **not** to have been listed on his personal credit report. In any event, the energy provider agreed to remove the listing.

*Financial Rights, S292283*

## Case Study 3 – Felicity's story

Felicity is in the process of applying for a car loan. The lender she applied to told her she has a default on her credit report. Felicity got a copy of her credit file and there is a credit card default for over $300 listed by a bank five years ago.

Felicity has never had a credit card with that bank and she does not recognise this default at all. She has never received any notices or calls about payments for this debt. She is worried this credit card belongs to someone else. Felicity says her mother and cousin both have the same first and last names as she does. Felicity has lived in same address for 13 years.

*Financial Rights, S308040*

## Case Study 4 – Franklin's story

Franklin has recently been rejected for a home loan multiple times. When Franklin reached out to a CRB for his credit report he found out that one of the big banks had reported he was deceased.

Franklin paid $1500 to a credit repair company to get this error on his credit report fixed and now he has been able to get approved for a home loan. Franklin lodged a complaint with the bank about the fact he was listed as deceased, and the bank offered to cover the costs of the credit repair company but Franklin is not satisfied with this result. Franklin is frustrated about the houses he missed out on because of this inexplicable error.

*Financial Rights, S308455*

## Negative Impact on Credit Scores

Consumer representatives have seen numerous examples of mistakes made by consumers having outsized impacts on their credit rating. Transposed digits in a repayment, miscommunication between joint borrowers as to who is making the repayment, or a failed direct debit should not be able to affect a person's creditworthiness for years.

Similarly, events like short-term financial hardships, medical emergencies, or job loss can lead to missed payments which dramatically lower credit scores. This can have long-term consequences, making it harder for individuals to access credit when they need it most.

Credit scores often do not capture the full context of an individual's financial situation. They are also a misunderstood and unstandardised rating system which is relatively new to Australia. Consumers often confuse their credit bureau credit score with their full credit report and don't know why their score is going down. Consumers need better notification regarding missed payments being reported. This is discussed in more detail below.

### Case study 5 – Sean's story

In 2018, Sean and his brother Paul entered a joint mortgage with a Bank for a property where Paul lives. Sean's name was on the mortgage to help Paul and is only listed on the title as a 1% owner and jointly liable for the mortgage.

In 2021 Sean obtained a copy of his credit report and it shows in his RHI that there have been no payments on the joint mortgage for 11 months and a default notice had been issued. Paul was supposed to be making the mortgage repayments but during COVID had not done so. Sean has no dispute with Paul, he wants to help him. Sean wants to know if he can rectify his RHI if he addresses the mortgage arrears as he wants to purchase his own home in 1-2 years and that will be impossible with so much negative information on his report.

Sean says the Bank did not contact him regarding the mortgage. He did not receive the default notice and his recollection was he provided his address as a different address to Paul's when the loan was originally taken. Sean feels if the Bank had let him know earlier, he could have stepped in much sooner to rectify the problem before his credit report was impacted.

*Financial Rights, C225055*

## Discrimination and Inequality

The credit reporting framework can perpetuate existing inequalities. Disadvantaged and vulnerable people, or those with limited access to credit, may have lower credit scores further restricting their ability to access financial services and opportunities.

In September 2023 Anglicare Australia released a report entitled *The Poverty Premium: The High Cost of Poverty in Australia*.[6] The report found that borrowers on lower incomes are often forced into higher cost credit products (like payday loans) and end up paying about 45% more than those people who can access mainstream lending.

> *"To get the best financial offers, you need a good credit history. Credit history can be impacted by low financial literacy, late bill payments, overdrawn accounts or actions of partners or family members. Banks can also be reluctant to lend to people who have moved around a lot or have a history of temporary or insecure employment. All of which are common among people on low incomes. People on low incomes or those with poor credit history are likely to have fewer choices about where to access credit, leaving them vulnerable to predatory lenders or those with higher interest rates or late payment penalties."*[7]

This then in turn puts people at even greater risk of defaulting, creating a vicious self-perpetuating cycle of adversity. It is an inevitable result of a credit reporting system that vulnerability and disadvantage are magnified in this way. Making sure this impact is no greater than necessary to maintain the integrity of the system is important.

One of the current issues is that there is a two-speed credit system, mainstream lending which uses credit reporting, and other lenders who do not. This means that people are not only pushed out of the mainstream into expensive credit options, but they are also able to borrow more than they can manage because each lender can claim ignorance of the borrower's other liabilities. In this way, rather than improving access to affordable credit and supporting responsible lending, the credit reporting system is pushing people into expensive credit and failing to support responsible lending in a part of the market known to cause considerable harm.

## Mental and Emotional Stress

Negative information on credit reports and low credit scores can cause significant stress and anxiety for consumers, impacting mental health. The pressure to maintain a good credit score can be overwhelming for some individuals.

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[6] https://www.anglicare.asn.au/publications/the-poverty-premium/
[7] ID, pg 16

Individuals with poor credit scores may feel stigmatised or judged, which can affect their self-esteem and confidence in managing their financial affairs. This is compounded if a person is experiencing or fleeing family violence.

Australia's credit reporting framework needs to ensure credit providers have sufficient flexibility in reporting rules to support customers experiencing financial stress (including those experiencing financial abuse, or an extreme weather event).

## Impact on Employment and Housing

While Australia's credit reporting framework does not currently allow real estate agents or employers to access consumer credit reports, we note Part Seven of the consultation paper specifically asks if access should be expanded. Consumer representatives strongly oppose expanding access to and use of credit reports to a broader range of commercial entities.

In the US some employers check credit reports as part of their hiring process. A poor credit history can adversely affect job prospects, particularly in roles that require financial responsibility. Similarly, landlords often use credit reports in the US to screen potential tenants. Individuals with poor credit scores may find it difficult to secure rental housing, compounding their financial challenges. These are not results that should be extended to the Australian credit reporting framework. There is already some evidence in Australia of consumers with poor credit scores finding it difficult to secure affordable contracts with telecommunications or utility companies.

These issues are discussed in more detail below.

## Limited Recourse and Support

Many consumers are not fully aware of their rights regarding credit reporting or how to dispute inaccuracies. This lack of knowledge can prevent them from effectively addressing issues in their credit reports.

The process for disputing credit report errors can be complex and consumers may lack adequate support, leaving them to navigate the system on their own. It also leaves them vulnerable to exploitation by for-profit credit repair agencies that charge significant amounts to exercise the consumer rights on their behalf, and over-promise in relation to what can be achieved.

## Privacy Concerns

The collection and storage of vast amounts of personal and financial data by credit reporting agencies pose significant risks. Data breaches can lead to identity theft and financial fraud. Data security is a critical feature of Australia's credit reporting framework.

The extensive data collected, including borrowing and repayment histories, can feel intrusive to individuals, raising concerns about how this information is used and who has access to it. Consumer representatives have seen many examples of the credit reporting system being misused for debt collection and by credit repair companies.

Australia needs more modern and accessible options for credit reporting bans and alerts when a consumer has been the victim of a major data breach or a scam. This is discussed in more detail below.

## Perpetuation of financial abuse

Another harm the credit reporting framework should seek to address is the perpetuation of financial abuse through the credit reporting system. Credit reporting problems relating to domestic and family violence include:

- an abusive partner using, or threatening to use, credit reporting as a form of abuse.
- a victim survivor who has left a relationship but doesn't know what debts are in their name only or in joint names.
- a victim survivor who has fled domestic and family violence years ago but is being rejected for credit due to negative information on their credit report which was due to the domestic and family violence.
- a victim survivor who has left a relationship but there are credit applications appearing on their credit report as credit enquiries and/or continuing credit facilities which they did not apply for or have no knowledge of.

This submission discusses financial abuse issues and recommendations in more detail below.

## Lost opportunities for changing behaviour

The credit reporting framework in Australia currently serves to count against people after the fact rather than nudge them in the direction of more desirable behaviour. As noted above, people rarely engage with the credit reporting system until forced to by the need to apply for a loan. This means that they are not aware of the implications of their missed payments or other relevant conduct until it is too late. Notifying people of negative information on their credit report in a timely manner would allow them to correct their behaviour (where this is within their power), which benefits lenders also and prevents unnecessary disruption to economic activity when property sales fall through due to rejected finance applications.

# How could the legislative framework for credit reporting be improved or simplified?

## Better alignment between the regulatory oversight of credit reporting and that of consumer credit laws

The regulatory oversight of credit reporting needs to be rationalised and streamlined. There are too many overlapping areas of law and too many regulators responsible for part but not all of the credit reporting framework. Consumer representatives recommend that more unified legislation needs to be developed. Australia needs a comprehensive legislative framework that integrates credit reporting regulations with broader financial services and consumer credit regulations. This framework should address all aspects of consumer interactions with credit reporting, from data collection to dispute resolution.

This recommendation is discussed in more detail below.

## Better accessibility of consumer-facing credit reporting rules

For credit reporting rules to be implemented in a fair and consistent way, they must be comprehensible. Unfortunately, from a consumer-perspective much of the credit reporting framework is not. In its current state, it is very difficult for consumers (and their representatives) to use the credit reporting framework to hold lenders accountable for their reporting or use of credit reporting information. Many of the provisions in the consumer-facing CR Code are dense, ambiguous, overly complicated, and confusing.

Consumer representatives recognise that one of the roles of the credit reporting framework is to particularise the relevant provisions of the legislation and so requires a level of detail that might not be accessible to average consumers. Nevertheless, the consumer facing elements of the framework (like the CR Code) at a minimum it needs to be accessible to consumer representatives like financial counsellors, consumer lawyers and case managers at AFCA. Consumer representatives strongly submit that the framework currently does not meet this minimum standard.

This is not just an accessibility issue but also goes to the effectiveness of the credit reporting framework. If Credit Providers (CPs), CRBs and their staff are not clear about what is expected, or if there is room for ambiguous interpretation, then the effectiveness of the credit reporting framework is diminished. What is even more concerning is that consumer representatives such as those in our organisations (community lawyers and financial counsellors) struggle to comprehend and use the relevant laws and the CR Code in a meaningful way. If trained lawyers and experienced consumer advocates struggle to understand (or resolve ambiguity in) the rules set out in the credit reporting framework, we cannot advise consumers on their credit reporting rights or their prospects in making a

complaint to AFCA. If CPs and CRBs are not held to account for legal compliance through consumer complaints, then the framework is failing to deliver on its purpose. Consumers need accessible, principles-based provisions to enable them to make complaints to external dispute resolution schemes.

An entire industry of credit repair businesses has flourished because of their ability to exploit the complexity and inaccessibility of the credit reporting framework. While this is not entirely the fault of the framework, if consumers were better able to understand how credit reporting in Australia works and what their rights are to have their credit reports corrected, there would be significantly less demand for companies which often trade on misinformation.

Consumer representatives supported the concept in the 2021 CR Code Review that the CR Code should incorporate overarching principles which align with Part IIIA requirements but give individuals or their representatives greater certainty about their individual rights. These principles could provide a lens by which the technical provisions are interpreted. For example, the AFCA fairness principle is already applied to decisions concerning credit reporting disputes and this warrants formalisation in the CR Code. In 2022 the OAIC concluded that the introduction of more direct overarching principles would be desirable but would need to be placed in the principal legislation rather than the CR Code.[8]

Consumer representatives believe the best solution to the general inaccessibility of the credit reporting framework (specifically the CR Code) is to split it up into principles-based consumer-facing provisions and the technical industry-facing provisions. It would be critical that the consumer-facing principles take precedence in any conflict with the technical provisions.

The structure and format of the CR Code comes from Part IIIA and are issues-based. However, consumer representatives consider that the CR Code can be drafted to aid readability in a format that does not need to formally mirror the Privacy Act. It would be better to have the issues we know matter to consumers up front in a format that is easy to read, understand and apply. Related technical sections of the CR Code can be referenced and if a reader needs to understand all the rules relating to an issue (say defaults), they can continue and read the technical provisions in conjunction with all the related legislation, regulations, standards, determinations OAIC guidance and factsheets. For most consumers or consumer representatives however, there will only be a selection of CR Code provisions which are relevant to understanding their rights or which are relevant in a dispute.

As a start, below is a list of some of the consumer-facing issues we believe should be included.

- What is the purpose of credit reporting information

[8] 2021 Independent review of the Privacy (Credit Reporting) Code – Final Report September 2022. Page 30

- What types of information can be reported about you (CCLI, Payment Information, New payment arrangement information, RHI, Public information, etc.)
- What are the time limits for keeping and reporting information
- Who can access your report and for what purposes
- What to do if you have been a victim of fraud or economic abuse
- What if you are in financial hardship
- Getting a copy of your report
- Disputing inaccurate information on your report
- Making a complaint

Consumer representatives would expect to be thoroughly consulted in the creation of this new structure to the CR Code, and the language should be consumer-tested before it is finalised.

Finally, a related issue is the readability of credit reports themselves. The credit reporting framework could set minimum standards for readability and accessibility of credit reports.

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# Recommendations

1. **The CR Code should be broken into principles-based consumer-facing provisions and the technical industry-facing provisions. It would be critical that the consumer-facing principles take precedence in any conflict with the technical provisions and are consumer-tested before being finalised.**
2. **The credit reporting framework should set minimum standards for readability and accessibility of credit reports.**

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## Enhanced Consumer Protections and Fairness

The credit reporting framework is out-of-step with modern consumer protection in that it doesn't cover fairness. Fairness is a key component of most industry codes of practice in the financial services space, as well as a critical part of AFCA's rules. There needs to be an over-arching obligation of fair treatment, both in relation to collection of data, but also disclosure by CRBs and use by lenders. Unlike financial firms regulated by ASIC, there is no 'fair efficient honest' standard. Fairness is important also in use so that people cannot be unfairly treated in terms of price of credit based on non-transparent use of credit reporting data.

We note in the recent CR Code review the industry's concerns in relation to fairness detracting from clarity, but we submit that fairness does not change the law or negate other

explicit provisions in the credit reporting framework. Instead, it is a lens through which any remaining discretion should be exercised, or ambiguity interpreted.

Australia's credit reporting framework should simplify and expedite the process for consumers to dispute errors in their credit reports. Internal dispute resolution processes should be aligned with those in other financial service industries and should be monitored and reported on by ASIC. Credit reporting agencies should provide more detailed explanations of credit scores and the factors influencing them. Consumers should have clear information on how their data is being used and who has accessed their credit reports.

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# Recommendation

3. **Fairness should be an explicit overarching principle in Australia's credit reporting legislation.**

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## Regular Review and Adaptation

Mandating regular reviews of the credit reporting framework is critical to ensure it remains effective and responsive to changes in the financial landscape. It should not be another 15 years before these frameworks are comprehensively reviewed. Regular reviews should involve stakeholders from government, industry, and consumer advocacy groups.

Australia's credit reporting framework needs a regulatory approach that can quickly adapt to new challenges and opportunities in the credit reporting industry, such as the rise of fintech and new data analytics techniques. More flexibility needs to be baked into the framework and more definitions should move into the CR Code to make them easier to amend in a timely manner. This is discussed in more detail below.

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# Recommendation

4. **The entire credit reporting framework should be independently reviewed every 5 years.**

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## Should credit reporting legislation be more aligned with financial services regulation, including the regulation of consumer credit, and the Consumer Data Right?

Yes.

Consumer representatives propose moving the entire credit reporting framework out of the *Privacy Act* and either into the *Consumer Credit Protection Act* or into a standalone *Credit Reporting Act* with oversight managed jointly by the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC).

We think a more active regulator that already has close engagement with the regulated entities using the credit reporting system would greatly enhance Australia's credit reporting framework. Some of the benefits to this change include:

- **Specialised Expertise**: ASIC's and ACCC's expertise in financial services regulation and related non-financial goods (like telecommunications and utilities) could lead to more effective regulation and enforcement in the credit reporting sector.
- **Streamlined Regulation**: Consolidating regulatory oversight under ASIC and ACCC could lead to a more streamlined and coordinated approach to regulating credit reporting, affordable credit provision and sales, misuse of credit reporting by debt collectors and the emergency of new harmful debt management businesses. Consolidating oversight in this way would also help reduce duplication and potential regulatory gaps.
- **Enhanced Consumer Protection**: ASIC and ACCC have strong mandates for consumer protection. Their involvement could result in stronger safeguards for consumer data privacy and more effective mechanisms for addressing consumer complaints and disputes related to credit reporting.
- **Increased Accountability**: As independent statutory bodies, ASIC and ACCC are subject to rigorous accountability mechanisms, including parliamentary oversight. This could enhance transparency and accountability in the regulation of credit reporting practices.

There needs to be a much higher degree of regulatory scrutiny in the credit reporting framework. Rather than the Privacy regulator, we need to have a regulator with a consumer protection focus conduct close surveillances of CRBs to ensure that they manage consumer risks associated with holding, use and disclosure of consumer's credit data. Ongoing and close audits and embedded supervision is needed and currently missing.

Both the ACCC and ASIC enforce Commonwealth consumer protection laws (including laws relevant to credit and debt collection). Under a new *Credit Reporting Act* ASIC would have oversight of its regulated entities and the ACCC would have oversight of other deferred

credit products participating in credit reporting like telecommunications and utilities. Each regulator would be responsible for dealing with misconduct associated with credit reporting activity when the debt relates to goods and services either within the financial services industry or those other than a financial service or product.

While the ACCC and ASIC do not mediate between parties or perform other dispute resolution activities to resolve private disputes, there are already a range of agencies that can provide assistance with dispute resolution across the industries using credit reporting, for example, banking and insurance, energy and water, or telecommunications.[9]

ASIC and the ACCC have a long history of regulatory cooperation, including a formal MOU which facilitates liaison, co-operation, assistance, joint enquiries and the exchange of confidential information between the agencies.[10] In some situations, a complaint may relate to a range of credit reporting listings, including those for financial services and others for a good or non-financial service. The ACCC and ASIC would be able to coordinate their regulation and litigation activities when credit reporting misconduct involves overlapping jurisdiction and may delegate authority to each other as required.

It would be critical that ASIC and ACCC are afforded at least the same powers and responsibilities as the OAIC currently holds in relation to regulating the credit reporting framework. Consumer representatives also recognise there would be a number of other challenges arising from this change.

## Moving away from the Privacy Act

Consumers of course will continue to have concerns about the privacy of their credit reporting information. Even if the OAIC is no longer the regulator with direct oversight of the credit reporting framework, Australia should strengthen privacy laws specifically related to credit reporting information to ensure they keep pace with technological advancements and evolving data security threats.

There is a lack of transparency regarding the collection, retention, and sharing of sensitive personal information by CRBs. Individuals may not be aware of what information is collected, how it is used, and who it is shared with, undermining their ability to make informed decisions about financial services products. Some of the reforms to the *Privacy Act* recommended by the

[9] Australian Financial Complaints Authority: www.afca.org.au; Energy and water ombudsman schemes–the contact details for the relevant ombudsman in each state and territory can be found at: www.aer.gov.au/consumers/useful-contacts-for-customers; Telecommunications Industry Ombudsman: www.tio.com.au.

[10] https://www.accc.gov.au/media-release/asic-and-accc-sign-new-mou

AG commissioned Independent Review[11] would help improve data protection obligations on private businesses including CRBs.

### Complexity of Transition

Consumer representatives recognise such a regulatory transition would come with great complexity. Transitioning regulatory responsibility from OAIC to ASIC and ACCC would likely involve some legislative changes. Consumer representatives want to emphasise we do not recommend re-drafting our entire credit reporting framework from scratch. The bones of our credit reporting legislation in Part IIIA of the Privacy Act would not need to change.

### Potential Fragmentation

Dividing regulatory oversight between multiple agencies could potentially lead to fragmentation and coordination challenges. This could result in inconsistencies in regulatory approach and enforcement across different aspects of credit reporting. However, as described above, ASIC and ACCC have a long history of collaboration and cooperation across other consumer protection laws. Also this potential fragmentation would be modest compared to the dearth in credit reporting oversight Australia is experiencing now.

### Resource Constraints

ASIC and ACCC already have extensive regulatory responsibilities across various sectors. Adding credit reporting to their remit could stretch their resources and capacity, potentially impacting their ability to effectively regulate other areas within their mandate. It would be critical that these regulators are adequately resourced to provide proactive monitoring and oversight of the credit reporting framework.

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## Recommendation

5. **The entire credit reporting framework should be moved out of the Privacy Act and either into the National Consumer Credit Protection Act or into a standalone Credit Reporting Act with oversight managed jointly by the Australian Securities and Investments Commission and the Australian Competition and Consumer Commission.**

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[11] https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report

## Is the purpose and scope of CR Code appropriate? What provisions in the Act should be referred to the Code, and vice versa?

The CR Code is a mandatory code of practice that provides operational guidance for the credit reporting sections of the Privacy Act, ensuring the law can be easily understood and applied to business operations. There are important protections in the Code that are directly enforceable by consumers through external dispute resolution schemes and are not contained anywhere else in the law. While the purpose and scope of the CR Code remain appropriate, consumer representatives believe it would be appropriate that some provisions in the Code should be referred to legislation and vice versa.

### Detailed Procedural Guidance:

**From Act to Code:** Specific procedural details that require regular updates and operational specificity should be moved to the CR Code. For example, detailed requirements on how to handle disputes and correct errors in credit reports can be better managed in the CR Code, allowing for more flexibility and timely updates.

**From Code to Act:** Fundamental principles and key consumer rights should remain in the Act to ensure they are enshrined in law and subject to parliamentary oversight. These include basic rights to access, correct, and dispute credit information.

### Data Security and Privacy:

**From Act to Code:** Detailed technical and procedural requirements for data security measures can be placed in the CR Code. This allows for adaptation to technological advancements and evolving best practices in data protection.

**From Code to Act:** The overarching obligation to protect consumer privacy and ensure data security should be firmly established in the Act.

### Consumer Rights and Protections:

**From Act to Code:** Specific processes for how consumers can exercise their rights (e.g., the steps to request corrections or the specific format of disclosures) can be outlined in the CR Code.

**From Code to Act:** Core consumer rights, such as the right to access credit information and the right to be informed of adverse actions based on credit reports, should be codified in the Act.

## Regulatory and Enforcement Provisions:

**From Act to Code:** Detailed enforcement procedures, including specific penalties for minor infractions and the procedural aspects of audits, can be more effectively managed in the CR Code.

**From Code to Act:** The overall framework for regulatory oversight and the imposition of significant penalties for major breaches should remain in the Act to ensure they have the full force of law.

## Readability and Accessibility of the CR Code

As a consumer-facing document consumer representatives have serious concerns about the CR Code's overall readability and fitness for purposes in its current form which are set out in more detail below. These rights are not prominent to a layperson with no expertise in the area and need to be extracted from a lot of extraneous material of no immediate relevance to a general member of the public, or indeed a consumer advocate seeking to advise or assist a member of the public. There is also a lot of important contextual information and process information that is of relevance to the public that is missing.

There are also many provisions in the CR Code that are important to consumers in an indirect sense, because they go to consistency, record keeping, direct marketing limitations and audit trails, but cannot be enforced by consumers because they do not have a line of sight over compliance. It is important that these obligations are maintained, subject to more rigorous reporting and oversight, and that they are robustly enforced. These need to be contained in a different section of the Code, or presented in a format where they can easily be distinguished from the consumer facing provisions.

The CR Code has also been developed primarily by, and for, industry stakeholders. It has been written to meet the needs of CPs and CRBs rather than the needs of consumers. Consumer representatives acknowledge that much of the detail in the CR Code is necessary for consistent reporting and background systems, but these currently dominate to the exclusion of all else.

**See Recommendation 1 above.**

# How can the regulatory oversight arrangements for credit reporting be improved?

As we have detailed above, consumer representatives propose moving the entire credit reporting framework out of the Privacy Act and either into the Consumer Credit Protection

Act or into a standalone Credit Reporting Act with oversight managed jointly by ASIC and the ACCC.

Since most of the entities that provide and receive credit reporting information are financial services ASIC would be the predominant regulator. The ACCC would simply have oversight of regulated goods and services that are not financial services (namely telecommunication services and utilities). When it comes to oversight of CRBs, that would fall to ASIC. CRBs might need to be licensed for ASIC to have sufficient authority to investigate and enforce compliance when it comes to consumer complaints, internal dispute resolution, corrections and access seeker arrangements.

Additionally, we should be regulating CRBs more akin to public utilities given their role as a utility for the financial and lending system. Consumers do not "purchase" credit reporting services, and therefore there is not the same market discipline on these firms. Rather their customers are the lenders, so that is where they will place their loyalty. Given this dynamic, there is a strong case for much more stringent regulatory system.

There should be more rigorous and publicly reported audits of accuracy in the credit reporting data held and shared by CRBs. Credit reporting legislation may also need to include new offences which can be enforced by a strong regulator such as reporting inaccurate information or delaying investigations into consumer disputes.

## Recommendation

6. **CRBs should be regulated like public utilities with much more stringent regulatory oversight and rigorous and publicly reported audits of data accuracy.**

## Do the regulators have sufficient powers, resources and expertise to regulate credit reporting effectively?

Consumer representatives do not believe the OAIC has sufficient understanding of consumer credit arrangements to provide effective oversight of Australia's credit reporting framework.

Whichever regulator has oversight of credit reporting – the need for more adequate resourcing is critical. Very little proactive regulatory oversight takes place in the credit reporting space. Most compliance mechanisms rely on self-regulation, internal auditing and business to business monitoring. There needs to be proactive auditing and public reporting to increase accountability and public confidence.

If this Review does not support moving regulatory oversight to ASIC and the ACCC, as an alternative, Australia needs much more regular inter-agency collaboration. There must be regular meetings and joint initiatives between ASIC, ACCC, and OAIC to share insights, align regulatory actions, and address emerging issues in a cohesive manner. The Government must also establish a central regulatory body (i.e. an Australian Credit Reporting Authority) or a coordinated oversight framework that brings together ASIC, ACCC, and OAIC. This body could streamline regulatory functions, reduce overlap, and ensure a unified approach to credit reporting.

ASIC also needs access to credit reporting data from the CRB in order to inform its current regulatory responsibilities.

## Is ARCA's role in developing industry-wide credit reporting rules and standards appropriate?

No.

While we have a constructive and collaborative relationship with ARCA, in principle we do not believe it is appropriate for an industry body to have such a comprehensive role in developing the CR Code. As a quasi-legislative instrument, the CR Code is different from other industry-owned codes in the financial services sector. CR Code is a legally enforceable code and it is wrong in principle for an industry body to be writing its own binding rules.

Consumer representatives have been actively consulted by ARCA since the inception of the 2014 CR Code, and ARCA makes a genuine effort to ensure that consumer groups are apprised of draft revisions to the CR Code and that we have input to the variation process. That being said, it is clear from the current state of the CR Code that industry needs and interests have taken precedence over those of consumers, and that is a natural result of having an industry advocacy body in the role of code developer.

What is required is a Code developer with:

- Deep knowledge of the industry, history and context in which the Code is operating;
- Independence;
- A reputation that is well regarded by consumers and industry stakeholders; and
- Experience developing Codes and regulatory documents.

This independent body should then tap into the knowledge and experience of both industry and consumer representatives in developing a truly independent CR Code. Alternatively, the code developer should be an independent panel with equal numbers of industry and consumer representatives.

## Recommendation

7. **The CR Code needs to be developed, periodically reviewed and varied by an independent body made up of representatives from relevant regulators, industry and consumer groups.**

## Can any improvements be made to the governance of industry-led codes and standards to ensure all relevant stakeholders are represented?

There is inadequate oversight of CP and CRB compliance with the CR Code, systemic non-compliance issues are not being identified, and industry and consumer awareness of the code is very low. The CR Code should have its own independent governance arrangements. Independent code monitoring bodies are common and are considered best practice when it comes to financial services codes of practice. The current monitoring and governance arrangements for the CR Code are not transparent, and they provide no reassurance to consumer organisations that CRBs or CPs are being held accountable for CR Code compliance.

Before the 2014 CR Code was drafted, there was agreement between the OAIC as well as industry and consumer representatives that the CR Code should have independent governance arrangements. The current CR Code does not include an independent Code Governance Administrator, or a code compliance committee, and we strongly support creating one in this review of the credit reporting framework. Our understanding is that independent code governance has not been put in place because of concerns that it may duplicate the role of the OAIC.

In 2011, when the *Exposure Drafts of Australian Privacy Amendment Legislation* were introduced, industry representatives supported the idea that an independent committee should be established to 'drive compliance with the Code'. The Australian Retail Credit Association's (**ARCA's**) submission to the Senate's Finance and Public Administration Legislation Committee concluded:

> *While we would expect to finalise arrangements in consultation with industry and the regulator, ARCA proposes that this committee would support the work of the regulator,*

> *maintain industry focus on compliance with the Code, and to undertake compliance tasks associated with the Code*[12].

In 2013, the OAIC published its Guidelines for developing codes – issued under Part IIIB of the Privacy Act 1988. One of the purposes of the Guidelines was to assist the CR Code developer (ARCA) in the development of the CR Code. The Guidelines specified requirements as to Code governance.

> *Given that codes effect a co-regulatory approach to privacy regulation, the establishment of a code administrator is considered to be a practical and important method for code developers to demonstrate that the relevant industry sector has a commitment to maintain the effectiveness of the code over time.*[13]

The key benefits of having an independent governance body are that it allows for increased, proactive monitoring and enforcement activity without impacting on the resources or activities currently being undertaken by the OAIC. While there are costs associated with establishing and operating an independent governance body, which should be adequately funded by industry, we believe the benefits of better CR Code compliance and more transparent monitoring and enforcement would outweigh those costs. The committees which monitor and enforce the other codes in the financial services sector don't duplicate the role of ASIC. Instead, they can support ASIC's work by passing important information to ASIC about systemic issues and emerging trends in non-compliance, and provide a level of transparency and public accountability in relation to Code compliance and Code effectiveness that is unlikely to be achieved reliant on the regulators resource and remit alone.

In the 2017 CR Code Review, it was recommended that the OAIC internally review its regulatory activities in respect of the CR Code and consider options for increasing its proactive monitoring and enforcement activities having regard to its available resources or ability to seek further funding if required. From the perspective of consumer representatives, this did not transpire. There has been no public reporting of any code compliance monitoring activities and certainly no public enforcement action based on OAIC proactive compliance activities. After the 2021 CR Code review when consumer representatives raised

[12] ARCA Submission to the Exposure Drafts of Australian Privacy Amendment Legislation – Senate Finance and Public Administration Committees, p. 4 available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2010-13/privexpdrafts/index

[13] Guidelines for developing codes. 27 September 2013. See Part 3 - https://www.oaic.gov.au/privacy/guidance-and-advice/guidelines-for-developing-codes

all these same issues the OAIC concluded it simply needed to "raise visibility of its credit reporting compliance and monitoring activities."[14]

A 2022 report released by the CFPB in the US detailed the lack of CRB compliance with American credit reporting laws.[15] ASIC's Financial Reporting Surveillance Program is another example of the kind of proactive and public compliance reporting consumer representatives expect from Australian regulators. At the end of each reporting season, ASIC publishes the findings of their surveillance program with the goal of improving financial reporting quality.[16]

## Forming an independent CR Code governance body

If a CR Code governance body is established, the following information sets out how it should be constituted, what the body's responsibilities should be, and how it should be funded and operated.

First, an independent CR Code Compliance Committee should be established under the CR Code. This Committee should:

- Be transparent and accountable;
- Act with integrity and impartiality;
- Act in a fair, reasonable, independent and effective way;
- Provide guidance to industry to promote best practice code compliance;
- Prioritise issues that are industry-wide, serious or systemic;
- Promote its work and provide community assurance by regularly publishing its work;
- Be independent of the credit reporting industry (with a balance of industry representatives, consumer representatives, and an independent chair); and
- Have adequate resources to fulfil the relevant functions and to ensure that code objectives are not compromised.

The independent CR Code Compliance Committee should be made up of:

- 1 person with relevant experience at a senior level in a Credit Provider organisation as an industry representative, to be appointed by ARCA, on the industry's behalf;
- 1 person with relevant experience at a senior level in a Credit Reporting Body as an industry representative, to be appointed by ARCA, on the industry's behalf;

[14] 2021 Independent review of the Privacy (Credit Reporting) Code. September 2022. Proposal 11

[15] https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-report-detailing-consumer-complaint-response-deficiencies-of-the-big-three-credit-bureaus/

[16] https://asic.gov.au/regulatory-resources/financial-reporting-and-audit/directors-and-financial-reporting/asics-financial-reporting-surveillance-program/

- 2 people with relevant experience and knowledge as consumer representative, to be appointed by a consumer representative body like the Consumers' Federation of Australia; and
- 1 person with experiencein industry, commerce, public administration or government service to be appointed as the Independent Chairperson of the CR Code Compliance Committee, chosen jointly by the OAIC and ARCA on behalf of the community.

The CR Code Compliance Committee should be responsible for (among other things):

a) Establishing appropriate data reporting and collection procedures for CPs, CRBs and itself;
b) Monitoring compliance with the code;
c) Publicly reporting annually on code compliance;
d) Hearing complaints about breaches of the code ;[17]
e) Own-motion investigations;
f) Investigating and making determinations on any allegation from any person about industry breaches of the code;
g) Imposing sanctions and remedial measures as appropriate for determinations of non-compliance;
h) Reporting systemic code breaches and serious misconduct to the OAIC;
i) Recommending amendments to the code in response to emerging industry or consumer issues, or other issues identified in the monitoring process;
j) Ensuring that the code is adequately promoted, including but not limited to:
    I. Providing training for community sector case workers on code provisions;
    II. Ensuring that all subscribers have copies of the code at public offices;
    III. Communicating code information via call centre hold messages or in Product Disclosure Statements; and
k) Ensuring that staff are appropriately trained in the code and that subscribers make provision for this training.

The Committee must arrange a regular independent review of its activities and ensure a report of that review is lodged with the OAIC. This review should coincide with the periodic reviews of the CR Code.

There must be clear communication channels between the industry, Committee and the OAIC. CRBs should regularly inform the Committee about incidents of CPs' non-compliance with the Code and the CR Code Compliance Committee should report regularly to the OAIC about those issues.

[17] Primary responsibility for settling disputes with consumers would remain with CPs, CRBs and the EDR schemes. Both consumers and the EDR schemes could nonetheless report breaches of the Code to the Compliance Committee to inform their work and promote compliance.

There is also an important role for the OAIC to play in administering and monitoring the CR Code. The OAIC must be an active regulator that regularly follows up on issues of Code non-compliance that are reported by the Committee, CRBs, CPs or consumers. Without an active regulator that is able and willing to enforce sanctions for non-compliance, stakeholders will not have confidence in the CR Code.

The Committee should be funded by CRBs and any CPs (as defined by the Privacy Act) participating in credit reporting. Industry must ensure that the CR Code Compliance Committee has sufficient resources and funding to carry out its functions satisfactorily and efficiently. Given the CR Code is a legally enforceable code, consideration should be given to providing more resourcing than other types of industry self-regulatory codes.

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## Recommendation

8. **Independent code governance, including a CR Code Compliance Committee should be established under the CR Code.**

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# Part Four Questions: Impact of the credit reporting framework

## What evidence is available to demonstrate whether comprehensive credit reporting has met its policy objectives, such as:

- **improved lending decisions, including loan performance and suitability, risk-based pricing and access to credit;**

Consumer representatives do not have quantitative evidence about changed lending decisions since the implementation of CCR. If CRBs or CPs have data showcasing a decline in high risk lending and an increase in low risk lending as a result of the implementation of CCR they have not shared this publicly.

Unfortunately, consumer representatives and financial counsellors still support many people who are struggling with the financial stress of unsuitable loans. While it is difficult for our organisations to produce quantitative analysis, many of the unaffordable loans we identify (though not all) are in the sectors that are not regularly using credit reporting, such as small

amount credit contracts (SACCs) or payday loans, medium amount credit contracts (MACCs), and buy now pay later products (BNPL).

Even for those CPs that do use credit reports in lending decisions, without a full view of a borrower's liabilities (and regular expenses) a lender will not be able to always determine the suitability of extending additional credit. Checking a borrower's credit reports alone is not sufficient to fulfill Australia's responsible lending obligations but it is a good step to complement other types of information.

There is evidence that mortgage indebtedness in Australia is higher than it was pre-pandemic while the squeeze on household budgets is tightening (due to sharp interest rate rises and inflation, falling household savings and the rising cost of living). Financial counsellors regularly report talking to people who have never previously had financial difficulty but are now experiencing financial stress.

- **improved financial inclusion and access to finance in Australia;**

Access to credit allows individuals to make significant life purchases, such as homes and cars, invest in education, or manage financial emergencies. A robust credit reporting system can promote financial inclusion by helping more people access these opportunities. The Explanatory Memorandum for the CCR Bill did state that including additional datasets to Australian credit reports may create greater access to credit for consumers who may not have been able to otherwise demonstrate an adequate credit history. However, the Explanatory Memorandum also warned of the flipside of CCR, namely that borrowers "*who have poor credit histories may have difficulty in obtaining credit or be required to obtain more costly credit (for example, from providers who lend at higher rates)*."[18]

Unfortunately, consumer representatives have seen no evidence of enhanced financial inclusion or increased access to mainstream finance in Australia since the implementation of CCR.

Research overseas indicates that low-income individuals, including those from disadvantaged socio-economic backgrounds, are less likely to have a positive credit history. This lack of credit history can hinder their ability to access mainstream financial services and products, such as loans and credit cards, as lenders often rely on automated lending decisions based on comprehensive data from credit reports to assess creditworthiness. Academic research in these issues in Australia is limited, probably because CCR is still relatively new. Nevertheless, consumer representatives know anecdotally from working with people in financial stress, for individuals with poor credit histories or past financial difficulties, accessing affordable credit and rebuilding creditworthiness can be challenging. Negative information on credit reports,

[18] Explanatory Memorandum, Privacy Amendment (Enhancing Privacy Protection) Bill 2012, p. 25

such as defaults and late payments, will hinder their ability to qualify for loans and other credit products, perpetuating financial exclusion.

In 2018 the New Zealand Privacy Commissioner reviewed the operation of comprehensive credit reporting in New Zealand six years after its implementation. The NZ Privacy Commissioner concluded that it had not found any compelling evidence of CCR:

- *Bringing additional competition or economic benefits.*
- *Contributing to financial inclusion by bringing mainstream credit to markets traditionally under-served by the lending system.*
- *Making a substantial contribution to responsible lending practice.* [19]

After reviewing evidence supplied by credit providers, all of the major credit reporting bodies, and consumer groups, the NZ Privacy Commissioner concluded that "*Overall, the picture is of initial CCR benefits accruing principally to industry participants rather than to individuals, their communities and the economy generally*" and that "*Until substantial evidence of benefits to individuals, their communities and the economy is available, the case does not exist to intrude further into individual privacy by adding additional classes of personal information.*"[20]

Consumer representatives hoped that by the time this review was underway there would be some quantitative evidence as to whether Australians were experiencing better access to credit, particularly for those consumers who are younger or on lower incomes. There was evidence presented to the Australian Senate in 2018 that similar benefits to consumers eventuated in the US, Hong Kong and Japan after the introduction of CCR in those jurisdictions.[21] We are not aware of any such evidence. On the contrary, younger people have flocked to new products which have not to date been significant users of the credit reporting system.[22] There is no evidence that this has assisted them in accessing other forms of credit. On the contrary, banks have reported to us that some banks treat significant use of BNPL

[19] New Zealand Privacy Commissioner, *Comprehensive Credit Reporting Six Years On Review of the operation of Amendments No 4 and No 5 to the Credit Reporting Privacy Code*, 10 April 2018. Available at: https://www.privacy.org.nz/assets/Uploads/Report-on-Review-of-CRPC-Amendments-No-4-and-No-5-PDF.pdf

[20] ID pgs 36-37.

[21] Senate Economics Legislation Committee Review of the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018* [Provisions]. June Mr Steven Brown, Director, Bureau Engagement, illion, Committee Hansard, 15 May 2018, p. 37. See also Mr Michael Laing, Executive Chairman, Australian Retail Credit Association, Committee Hansard, 15 May 2018, p. 48.

[22] https://www.smh.com.au/national/nsw/dental-check-ups-and-food-young-people-relying-on-bnpl-for-the-basics-20231205-p5ep6u.html

products, for example, as an indicator of higher risk and therefore a contra-indicator of creditworthiness.

- **improved competition and efficiency in the lending market;**

No comment.

- **reduced the cost of consumer credit?**

Generally, we have no comment here, but note that it is difficult to determine whether prices for consumer credit have reduced because there are so many other factors which influence the cost of credit. There is no effective control group to compare what credit prices would have been in the absence of CCR. Home loans have been at historical lows and then much higher following RBA cash rate rises and driven by significant competition. Credit card rates however have remained as high as they were before CCR (from what we can tell) and don't seem to move with the cash rate.

## How do lenders mitigate against inappropriate bias in automated and algorithmic lending decisions using credit scores or other credit reporting information?

Consumer representatives cannot comment on how lenders mitigate against inappropriate bias in automated and algorithmic lending decisions using credit scores or other credit reporting information except to say these processes are highly opaque. Without transparency into the development of automated in lending decisions or credit score development there are no checks and balances to ensure inappropriate bias is not being incorporated into algorithms. These problems will only be exacerbated by AI.

This is an issue that consumer representatives have long been concerned about and it was one of the main reasons we opposed the mandatory recording of repayment history information. We know from working with our clients that algorithmic bias will most often occur against people who are experiencing the most vulnerability and disadvantaged, thus exacerbating financial exclusion.

Lenders must be developing automated and algorithmic lending programs in accordance with Australia's 8 Artificial Intelligence (AI) Ethics Principles, to ensure they are safe, secure and reliable.[23] While these AI Ethics Principles are currently only voluntary, we recommend CPs be required to follow them through the CR Code. The Principles at a glance are:

- **Human, societal and environmental wellbeing**: AI systems should benefit individuals, society and the environment.

[23] https://www.industry.gov.au/publications/australias-artificial-intelligence-ethics-framework/australias-ai-ethics-principles

- **Human-centred values**: AI systems should respect human rights, diversity, and the autonomy of individuals.
- **Fairness**: AI systems should be inclusive and accessible and should not involve or result in unfair discrimination against individuals, communities or groups.
- **Privacy protection and security**: AI systems should respect and uphold privacy rights and data protection and ensure the security of data.
- **Reliability and safety**: AI systems should reliably operate in accordance with their intended purpose.
- **Transparency and explainability**: There should be transparency and responsible disclosure so people can understand when they are being significantly impacted by AI and can find out when an AI system is engaging with them.
- **Contestability**: When an AI system significantly impacts a person, community, group or environment, there should be a timely process to allow people to challenge the use or outcomes of the AI system.
- **Accountability**: People responsible for the different phases of the AI system lifecycle should be identifiable and accountable for the outcomes of the AI systems, and human oversight of AI systems should be enabled.

Finally, without regular, proactive and public monitoring of CRB complaints and corrections data it is impossible to recognise trends in lending decisions or credit score calculations that might indicate inappropriate bias in algorithms. The credit reporting framework must require more robust steps taken by CRBs to ensure the credit reporting information they collect and share is in fact accurate and relevant to a person's creditworthiness.

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## Recommendation

9. **The CR Code should require lenders to develop any automated and algorithmic lending programs in accordance with Australia's 8 Artificial Intelligence (AI) Ethics Principles.**
10. **Mandate stricter reporting standards for credit reporting bodies, including requirements for robust verification processes and regular audits to ensure the accuracy and consistency of credit information.**

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## What has been the impact of Australia's concentrated credit reporting industry on the price of credit enquiries, reliability of service, and innovation?

No comment.

## Does the current regulatory framework provide sufficient incentives for innovation and competition in the CRB industry, including new entrants?

While consumer representatives cannot comment on the current regulatory framework's effect on incentives for innovation and competition in the CRB industry, we will say that consumers need one reliable source of quality, consistent information on their credit reports. It is unclear how competition in the CRB industry assists this aim, especially when there are inconsistencies between services and cost-cutting can lead to errors.

Consumer representatives recognise that high concentration in the CRB industry likely has negative impacts in terms of higher prices for credit enquiries for credit providers, which will get passed on to consumers. But our understanding is that CPs (at least mainstream CPs) pay for enquiries from all three CRBs. If more CRBs enter the market, even if the price of enquiries goes down, many lenders will just need to purchase more credit reports from more sources, meaning the cost of assessing a credit application only goes up. This phenomenon has been recently explained in detail by the CFPB in relation to the US, which also only has three CRBs.[24]

In the US where comprehensive credit reporting has been in place for much longer than in Australia, competition in the CRB market is not bringing any benefits to consumers. In fact, the CFPB sees open banking and the consumer data right as the solution to check the power of fee harvesters or data monopolists like the three big CRB. An example of where 'innovation' in the CRB industry in the US has led to even worse consumer outcomes is in corrections mechanisms:

> *Making matters worse, credit reports are often rife with inaccuracies discovered by borrowers and lenders. Credit reporting conglomerates are required to have procedures in place to assure maximum possible accuracy, but the CFPB is inundated with consumer complaints regarding these problems.*
>
> *The credit reporting industry has actually devised a way to profit from those problems – it's called the "rapid rescore." It's a pay-to-play service where mortgage loan officers can, for an extra fee, get consumer credit files reviewed and updated quickly.*
>
> *When there is a dispute about the information contained in a credit report, rapid rescores help resolve the dispute quickly – but for a price. Fees can run anywhere from*

[24] In prepared remarks for a speech at a Mortgage Bankers Association conference, CFPB Director Rohit Chopra said in May 2024 that the agency is currently looking to improve competition, choice and affordability in credit reporting costs. Available at: https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-at-the-mortgage-bankers-association/

> *$25-$40 per credit file, per credit reporting company. A report full of junk data is another opportunity for these companies to leverage their position as indispensable market actors, and extract yet more money from consumers who have no other options.*[25]

In Australia what may benefit consumers more than greater competition in the CRB industry is to treat credit reporting as an essential service. Like in the US, the cost for a consumer to access their own credit report from one of these conglomerates is subject to price regulation given the structure of this market is like a utility.

**See Recommendation 6 above.**

## Should CRBs be required to share some or all of their data sets with the other CRBs to promote competition?

As discussed above, consumer representatives are not interested in greater competition between CRBs, but we do strongly support accuracy and consistency of consumer credit reporting data on credit reports. Consumers should not have to get three separate reports every time they want to check their credit file and inconsistencies in reports from different CRBs is confusing and frustrating for consumers.

The fact that CRBs compete with each other based on which data sets they have that the others might not leads to some industry members checking the credit reporting of an individual consumer from one CRB and not the others. Not only might the data in that one credit report be limited, but now there is enquiry information from that CP that other future lenders won't be able to see unless they request a credit report from the same CRB. Consumer representatives have recently raised this problem in their submission on the BNPL legislation regarding the new proposed requirement that BNPL providers will only be required to perform a negative credit check on a borrower, not provide CCLI.

> *Another major problem is that negative credit checks are not currently reported across credit bureaus. If one credit provider undertakes a negative credit check on one credit bureau (eg Equifax), it will only be visible to providers undertaking future checks on the same bureau, and not on others (eg Illion or Experian). This is a huge flaw that means for loans under $2,000, BNPL providers will not necessarily even be aware of where another BNPL provider has undertaken a check. It presents the real possibility that a person can take out multiple BNPL loans which quickly add up and cause the harms we have been seeing on our frontline services for years. It also presents an obvious incentive for BNPL providers to avoid the intended goal of the credit check (identifying*

[25] Id.

*other potential BNPL loans) by trying to use the credit bureau used the least by other BNPL providers.*

Consumer representatives support requiring CRBs to share their data sets with other CRBs. It would lead to more comprehensive credit reports, as each CRB would have access to a broader set of information. This can improve the accuracy of credit assessments and reduce errors.

By having more comprehensive data on the credit reports from all three CRBs, consumers as well as CPs could access any one of the three and have faith that the information is accurate, up-to-date, and relevant to the individual's creditworthiness. CPs would still be able to accurately assess credit risk without needing to pass on the cost of three credit reporting enquiries to the borrower. Collecting a credit report from each of the three CRBs is also a drain on resources for consumer representatives.

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## Recommendation

11. **CRBs should be required to share all of their data sets with the other CRBs to promote accuracy and consistency in credit reports.**

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## Are the PRDE reciprocity arrangements supporting competition and innovation?

No comment.

# Part Five Questions: Credit data

## How should credit reporting data definitions be established and administered to allow evolution and modernisation over time?

Consumer groups would support moving the procedural elements of credit reporting data definitions into the CR Code and out of the legislation as long as the CR Code is developed and varied by an independent body. Moving the procedural detail of credit reporting definitions to the CR Code would mean they are still legally enforceable but provide more flexibility for updating them to ensure they stay in line with community expectations.

For example, in this review we are submitting that the definition of 'default' needs to be changed in a few ways. This is an issue we have tried to resolve through subsequent reviews of the CR Code but have been told it will require a change of the Act.

We believe the threshold amount that much be reached before a default can be listed should be increased as well as indexed going forward. In the future the amount of time a debt has gone unpaid before it is considered a default might change. These procedural details belong in the CR Code.

However, fundamental principles and key consumer rights should remain in the Act to ensure they are enshrined in law and subject to parliamentary oversight. Below we will discuss in detail how we believe the retention period for default information on credit reports should be changed. This retention calculation would be a critical new protection for consumers and should remain in the Act.

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## Recommendation

12. **Procedural aspects of credit reporting definitions should be moved out of the legislation and into the CR Code. They should be developed by an independent body with deep knowledge of the industry as well as consumer representation and they should be administered by an independent code monitoring body.**

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## What other types of credit-related information should be reported, or excluded, as part of Australia's credit reporting framework?

### Additional credit-related information

Consumer representatives do not support additional information (such as balance, repayment or guarantee information) being reported as part of Australia's credit reporting framework. As was concluded by the NZ Privacy Commissioner, until substantial evidence of benefits to individuals, their communities and the economy is available, the case does not exist to intrude further into individual privacy by adding additional classes of personal information to credit reports.

### Excluding credit-related information

Consumer representatives recommend excluding enquiries from credit reports.

Consumers should be shopping around to get the best price for credit or the best terms, but it can be very difficult to do this without building up enquiries on your credit report, impairing your creditworthiness in the process. With some online lenders it is very difficult to establish what price they would actually offer you without completing part of an online application, often leading to an enquiry being recorded. It is in recognition of this problem, and the desirability of promoting competition, that ARCA has been consulting about a soft-enquiries framework. Unfortunately, the soft-enquiries framework has brought its own challenges for a fintech industry that has built a business around loopholes in the access regime. [26] We suggest it would be more effective to simply dispense with enquiry information being recorded at all, except on the internal audit trail that is accessible only to the bureau and the consumer. Records of credit provider access to a consumer's credit report should not be visible to prospective lenders nor used to calculate a credit score.

Enquiry information played an important role in a negative credit reporting environment but now should be replaced by expanding mandatory CCLI. This would mean prospective lenders can see all open accounts rather than needing to seek further information about whether an enquiry translated into a liability. Consumers could shop around without fear of impacting their credit report. This would allow consumers to access appropriate credit contracts rather than feeling like they need to accept the first one to protect their credit report.

Other benefits from excluding enquiries from credit-related information include eliminating the need for complex rules around hard and soft enquiries. As is mentioned above, the newly developed soft enquiries framework is proving to be controversial among fintechs. The existence of enquiries also drives misleading activity by credit repair companies. Consumers get very confused and vexed about credit enquiries, especially if there are a lot of them from debt collectors or a lot of them which are the result of economic abuse. Many of these consumers end up going to debt management firms to have them removed from their credit reports, when they have a right to remove inaccurate information for free, or removing an enquiry is not going to help their overall creditworthiness anyway.

There may still be some predictive value in enquiry information, but we would argue is outweighed by the considerations above. We know consumer advocates sometimes use enquiries to show how a loan was unsuitable at the time, but these arguments would be stronger if advocates could instead point to more comprehensive CCLI. If prospective lenders had a clear view of a borrowers current liabilities they would not need to rely on imperfect and possibly misleading enquiry information. We discuss this in more detail below.

We should not always be adding data to credit reports. We submit enquiries are no longer the most useful form of information and should be removed.

[26] https://www.afr.com/companies/financial-services/four-listed-fintechs-say-they-ll-be-smashed-by-credit-report-rules-20240520-p5jezt

**Consumer Comments**

"Pre-covid, my credit rating with Equifax dropped suddenly from a very good to poor. Nothing had changed for my credit, nor was I late on any repayments. In fact, I had closed off 2 credit cards. I reached out to Equifax as I was a paid member and was looking to consolidate further debts and mortgage and was rejected.

What had happened is because I had made "multiple credit enquiries" in my attempt to consolidate, suddenly Equifax decided that enquires, NOT actual credit contracts affected my score. Those enquiries were not rejected by the financial bodies I was speaking to, only one was a denial; the rest were rejected by me as their interest offers were too high.

I raised a complaint to Equifax, heard nothing back. Raised another and reached out to Equifax on LinkedIn. Got a response, and they took 3 months to investigate only to come back and say they stood by their score. I asked they be transparent what activity caused the drop in rating, and they refused saying it was a combination of "things" and that their algorithm was "secret". I raised a case with financial ombudsman, and they came back 3 months later to say they did not cover Credit Companies only Financial ones."

*Consumer response to Financial Rights Credit Reporting Survey, May 2024*

## Case study 6 – Marlow's story

Marlow called Financial Rights to get a better understanding of his credit score. Marlow has never defaulted on any loans, been behind on payments or even had accounts with other lenders besides his current bank. He has recently been shopping around for balance transfer offers through several comparison websites and now his credit score has dropped to low (about 600). Marlow says his finances, tax record and repayment history is untarnished and he earns a good income, but now his credit report says his score has dropped because of the "credit enquiries" he has made.

Marlow filled in some personal information though the credit comparison website, but he doesn't think he was formally assessed by any other lenders. He was never contacted by any of the lenders and none of them asked for proof of earnings. Marlow feels it is unfair that his credit record has been damaged by just shopping around.

*Financial Rights, S303360*

## Recommendations

13. **Consumer representatives do not support additional information (such as balance, repayment or guarantee information) being reported as part of Australia's credit reporting framework.**
14. **Enquiries should be excluded from Australia's credit reporting information and replaced by the expansion of mandatory CCLI. Access information would still form part of the audit trail for consumers to view.**

## Are the definitions of the different types of credit information detailed in Part II of the Privacy Act fit for purpose?

No comment.

## Has financial hardship reporting improved the quality of lending decisions and the suitability of loans?

Consumer representatives have not been able to see how financial hardship reporting is being used by credit providers in making lending decisions, so we cannot comment on whether the quality or suitability of loans has changed. Consumer representatives have been asking credit providers to collect and share data about how they use financial hardship information (FHI) in lending decisions, but even though this data has been live for almost two years we have been unable to get any firm information about how lenders treat prospective borrowers with FHI on their credit reports.

## Is financial hardship reporting dissuading some consumers from requesting financial hardship relief?

Yes.

The financial hardship provisions in the *NCCP Act* is a critical protection for consumers in Australia. It gives them the opportunity to work constructively with their lender to resolve their financial hardship, potentially avoiding both the need to sell their home and the associated financial costs, stress, and disruption.

Financial counsellors and community lawyers have reported widespread concern about consumers not being willing to access hardship relief because of concerns regarding their

credit reports. Consumers in hardship are stressed, frantic and often rushed when they reach out to their lenders for assistance. They can struggle to absorb information and are 'primed' to distrust their lender and the credit reporting system. In our experience as consumer representatives, it is common for a consumer to reach out to their lender for assistance, be told that FHI will go on their credit report if they proceed to an arrangement, then hang up on their lender and call the National Debt Helpline for a second opinion or assistance.

Consumer representatives have had some anecdotal feedback from lenders that FHI on a credit report is not a black mark when it comes to future lending, but the industry has not communicated this in any formal or united capacity. We have been told that lenders will generally refer out a credit application for a manual assessment if the credit report for the borrower has FHI, and lenders have not incorporated FHI into their lending algorithms yet. We have been told FHI will not necessarily prevent a consumer from refinancing, but if the borrower is actively in hardship at the time he or she will probably struggle to refinance. We appreciate that it is important that people are not placed in greater hardship because of further borrowing, but there are circumstances where refinancing might actually address the problem. Even in the common circumstances where people should not be getting further credit because they are already in hardship, they need to have confidence that they will not continue to be penalised once they are back on track.

It is critical that credit providers are collecting data on how they are using FHI in lending decisions. Consumers want reassurance that when they enter a hardship arrangement with their lender it is not going to be seen as a black mark in any future credit applications. Consumer representatives are unfortunately now seeing people going to extraordinary lengths to maintain minimum payments (i.e. taking emergency food hampers, taking out payday loans, foregoing essentials). We regularly speak to people who are eligible for hardship assistance but they are afraid of credit reporting implications, so they cut back on food or rely on emergency support in order to keep making minimum repayments.

We know from ASIC's recent review into hardship (Report 783) [27] that lenders are currently falling short in their hardship responsibilities:

> *Lenders need to do more to ensure that customers are consistently and appropriately supported. An inadequate focus on customers underlies many of the poor practices we observed. These are:*
>
> - *Lenders didn't make it easy for customers to give a hardship notice*
> - *Assessment processes were often difficult for customers*
> - *Lenders didn't communicate effectively with customers*

[27] https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-783-hardship-hard-to-get-help-lenders-fall-short-in-financial-hardship-support/

- *Vulnerable customers often weren't well supported*

In this context it is critical that the credit reporting framework does not create additional hurtles for effective practices.

**Caseworker Comments**

"Having hardship information recorded on credit reports is a very real impediment to client accessing the hardship support they require. Many will not enter into a hardship agreement simply because it will be recorded on their credit report. It seems that many banks also present this information to their customers without explaining it fully and in such a way that it is seen as entirely negative."

"Clients don't understand financial hardship reporting even after we explain it. They hate things being on their credit reports."

"I find that hardship depts heavily emphasise the rulings around the new reporting obligations almost to the point of trying to scare you off doing it, If an FC can feel this pressure, it would be tenfold directly to the client"

"Creditors are "warning" clients that a hardship variation will be recorded on their credit files and this can frighten clients away from using it or just confuse them. I have had clients report this to me when I start talking about hardship variations and they respond with a sense of 'but aren't those bad for your credit?'. I think the 'script' needs a review as the current framing always leads with a sense of warning first, which can be hard for clients to shake, even as more information is provided."

*Various responses by caseworkers to Financial Rights Credit Reporting Survey, May 2024*

Consumer representatives also think the credit reporting framework should include stronger rules around the visibility and use of FHI. Stronger rules would make it easier to combat consumer hesitancy in entering hardship arrangements.

**Caseworker Comments**

"Financial Hardship info is definitely having an impact on the ability to borrow. I have also had one client where RHI was withheld due to DV (recorded as 'R' on the credit report) and this was viewed as adverse reporting by creditors - I think this is a real concern."

*Caseworker response to Financial Rights Credit Reporting Survey, May 2024*

## Visibility of financial hardship information

FHI should only be visible to CPs that are making a responsible lending assessment on applications for new or extended credit. FHI should not be visible in the same way as RHI, which is to say to all CPs that are participating in CCR at any time and CPs should not be able to set alerts with CRBs relating to FHI.

Some banks have reported to consumer representatives that they are monitoring their client's credit report for any FHI, and reaching out to clients proactively to ask about financial hardship for accounts they hold. Consumer representatives are concerned this will make consumers believe that future dealings with banks will be impacted by their FHI in situations where they haven't explicitly asked for the bank to contact them.

By limiting visibility of FHI to lenders conducting a responsible lending assessment on a new credit application, the framework will still ensure that the CRBs and CPs relying on the RHI will have a more accurate picture of a consumer's repayment obligations and whether they are meeting those obligations, but only in the context of assessing whether additional credit is not unsuitable. CRBs and CPs should not be able to view this new information for direct marketing, pre-screening or credit management purposes. This is consistent with the policy objective of this information being required for responsible lending purposes only and would substantially reduce the risks of deterring consumers from enacting their legal right to seek a hardship variation, and of a small hardship event cascading into a more serious one.

Finally, ASIC must be tasked with conducting regular audits of CPs to ensure they are only gaining access to financial hardship information when they are accessing an application for new or extended credit. CPs must be required to keep records of their assessment, including the customer's credit application, in order to prove they were accessing financial hardship information appropriately.

## Credit Scores

We strongly support the credit reporting framework's prohibition on CRBs from incorporating FHI into a consumer's credit score. This has been a very useful consumer protection when talking to hesitant consumers about whether or not to enter into a financial hardship arrangement.

However, we note that all CPs have their own internal credit scoring mechanism which will of course incorporate FHI. This is probably a good thing in the context of responsible lending assessments while a consumer is in actual hardship, but there is nothing in the law to prevent CPs from continuing to incorporate FHI into a consumer's CP-specific credit score long after the hardship indicators have disappeared from their credit reports.

## Case study 7 – Cathy's Story

Cathy had recently left a relationship and was experiencing financial hardship after this breakdown of relationship. She worked casually and was not working as many hours as she was managing a number of stressors. She had a number of debts that she was managing, including a mortgage, utilities, strata levies and a credit card. She obtained advice from RLC and was aware of the fact that FHI would be displayed on her credit report. She was planning on refinancing her mortgage in the next 6-12 months, so despite the fact that a financial hardship arrangement in relation to her mortgage and credit card would have made the biggest difference in terms of her financial hardship, she instructed us that she instead would seek hardship with her utilities providers and potentially her strata levies as they did not report RHI and FHI and she did not want her chance of refinancing to be negatively impacted or the interest rate offered impacted by FHI being on her credit report.

*Redfern Legal Centre*

**Financial counsellor comments**

"While I don't have any case studies relating to incorrect info on credit reports, my feedback is related to the way credit reporting is explained by banks to clients and that the mention of it tends to create fear/anxiety and results in clients making decisions based on their fear of the impact on their credit report rather than based on the reality of their situation. A case in point is a DV victim/survivor who is in the midst of AVO/trauma/trying to sort out finances/etc and has been maintaining mortgage payments (on a joint named loan) despite the difficulty of doing so, because she is afraid of the impact on her credit report because of what the lender said to her when she called to ask for hardship.

I have seen a number of clients who are very concerned about their credit reports due to what a financial institution has said to them – which I know they must. However there needs to be a broader conversation about the relevance of the info in a credit report several years down the track when the victim/survivor is back on their feet and their financial situation has dramatically changed. Could such a message be included in the spiel from the financial institutions?"

*Comments by financial counsellor at credit reporting training, NSW March 2023*

## Recommendations

15. **Credit providers need to collect robust data on how they are using financial hardship information in lending decisions and develop an industry wide communique that can be used by consumer representatives to explain to consumers what having financial hardship information on their credit report will mean for their future finance options.**
16. **The credit reporting frameworks should be amended to ensure that only credit providers assessing new credit applications, including refinancing applications, are able to see and access financial hardship information.**
17. **Credit providers should not be able to set alerts with CRBs relating to existing customer with FHI from other lenders.**
18. **ASIC should be tasked with conducting regular audits on credit providers to ensure they can show they were in fact assessing a new credit application when they accessed a consumer's financial hardship information.**

## What are the potential implications of the proposed BNPL regulations on the credit reporting framework?

Our understanding of the structure of the Modified RLOs is that the obligation to reasonably verify the expenses of a prospective borrower will generally be satisfied by undertaking a credit check- a negative credit check for LCCC/BNPL loans under $2,000, and a partial credit check for loans above $2,000.

As set out in the submission by consumer representatives (the Close Lending Loopholes alliance) to Treasury's options paper in 2022[28], using credit checks (regardless of the level of inquiry) for unsuitability assessments is a process with obvious flaws. Reliance on credit reports alone or credit scoring is neither appropriate nor effective in ensuring responsible lending outcomes. Credit reports and credit scores are not designed to assess whether loan repayments will cause hardship. Credit reporting is designed to give creditors an indication of the likelihood of a person repaying a debt (that is, to help assess the lender's credit risk) and to identify any undisclosed accounts that may not be apparent on the face of an application or bank statement. A system reliant on credit checks as a safeguard to identify consumer expenses will always be limited.

[28] See https://treasury.gov.au/sites/default/files/2023-02/c2022-338372-joint_consumer_group.pdf, page 51

Consumer representatives believe a better regulatory option would be to mandate partial credit reporting (CCLI) for all forms of credit. Currently, only a small number of credit providers are required to participate in credit reporting and mostly only mainstream lenders voluntarily participate. This means that many credit products are not visible via any kind of credit check, and this includes high-cost credit like payday loans and consumer leases. Participation in credit reporting needs to be mandated for all forms of regulated credit for responsible lending (including the Modified RLOs for BNPL products) to work as intended.

Incomplete credit reporting paints only a partial picture of someone's credit history and situation, and this can unfairly harm the terms on which consumers access credit. A more complete credit reporting system would be fairer and would make reliance on partial credit checks to verify expenses more possible.

The negative credit check the proposed BNPL regulations mandate for LCCCs under $2,000 will not be an effective safeguard because of the significant limits on the information it provides. A negative credit check will only inform a credit provider about enquiries made by other creditors and listed defaults. Crucially, it will never confirm:

- whether enquiries made (including by other LCCC/BNPL providers) have actually resulted in an account being opened; or
- The value or limit of any existing credit products.

These are vital pieces of information necessary for verification to have any material value at all. This approach suggests that credit under $2,000 is immaterial- a position that makes little sense considering the extra safeguards deemed necessary to reduce the harm small amount credit contracts can cause. Many of the clients we see in difficulty are juggling multiple small accounts, each individually below $2,000.

By comparison, BNPL providers issuing loans above $2,000 and obtaining consumer credit liability information via partial credit checks will be able to see any information on the system about the subject's listed liabilities. Due to current reciprocity obligations in credit reporting, these BNPL providers will also be required to list the value/limit of any existing BNPL (or other credit) products issued by them as well, so others can also see the outcome of those BNPL applications. Having all BNPL loans report CCLI detail would make credit reports provide a clearer picture of a person's true liabilities- which is a vital part of making an unsuitability assessment reliable.

As discussed above, another major problem with the proposed BNPL regulations is that negative credit checks are not currently reported across credit bureaus. If one credit provider undertakes a negative credit check on one CRB (eg Equifax), it will only be visible to providers undertaking future checks on the same CRB, and not on others (eg Illion or Experian). This means for loans under $2,000, BNPL providers will not necessarily even be aware of where another BNPL provider has undertaken a check.

## Recommendation

**19. Partial credit checks (including listing CCLI) should be mandatory for all BNPL providers, not just those with products over $2000.**

## How can the current retention period arrangements be improved?

Consumer representatives support reforming the retention period for defaults so that defaults cannot be listed close to the time that they become statute barred.

Consumer representatives have seen examples where defaults are listed just prior to the statute of limitations taking effect and the defaults are then not removed once that date is reached. The default continues to stay on the report, bringing down the individual's credit score and possibly preventing them from accessing credit or telecommunications/utilities services. While consumers have the right to ask for statute barred defaults to be removed from their credit reports, many consumers would have no idea that the debt is statute barred even if they get a copy of their credit report and see the default.

In the 2021 Independent Review of the CR Code the OAIC recommended a new positive obligation on CRBs to remove statute barred debts from the credit file as soon as it is reasonable for them to have been aware of the statute of limitations. ARCA, as the CR Code developer agreed 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. Unfortunately, this recommendation has not been realised in the recent CR Code variations because ARCA determined it to be impractical, given the substantial difficulty of determining when every single debt would be statute-barred.

ARCA believed there to be simpler ways to address this problem, which focus more on preventing or disincentivising late default listings. Consumer representatives appreciate that implementing a proactive obligation to remove statute barred debts from credit files would be complex. The date that a debt becomes statute barred depends on the jurisdiction of the credit contract and whether a consumer has acknowledged the debt or made payments recently.

## Five-year countdown clock

Our preferred option for proactively dealing with statute barred defaults is that the five-year retention period for defaults on credit reports should run from the date the consumer first defaulted on the debt, rather than the date of the default being listed on the credit report. Under the current credit reporting framework this option requires legislative change. The idea is that a countdown clock starts when the debt first becomes more than 60 days overdue. The CP or any debt buyer that legally acquires the debt can list at any point in that five-year period, but at the five-year mark the default comes off. This might mean that a default is only listed for one year if a debt buyer lists it at year 4.

This is the second arm of what the OAIC suggested they will raise in this review. The first arm is for CPs to list within a reasonable time. Consumer representatives support the second arm but not the first. We are not concerned with when CPs list a default, but we do care when it drops off. This option preserves flexibility but prevents statute barred defaults from lingering on consumer reports.

To be clear, nothing we are proposing would change a creditor's rights to collect a debt longer than 5 years after the default if the statute of limitations has not been met. A debtor could still reset the debt in various Australian jurisdictions by acknowledging it in writing or making a payment. Such actions would not however, reset the countdown clock for credit report retention.

## A general obligation requiring CPs to take steps to list defaults within a reasonable time

We want to point out that most of the examples we have seen where a default is listed late are examples where the default has been listed by a debt buyer. So, an obligation on CPs to list defaults within a reasonable time will not solve the problem of debt buyers who might acquire the debt and as a debt collection tactic list the default years after the debt first becomes due.

We also note that CPs already have an obligation to list defaults within a reasonable time under the PRDE. Consumer representatives have previously raised concerns that the CCR obligations (and PRDE requirements) will result in entities being inflexible when negotiating a resolution to a financial dispute, including decisions around the removal, delay or withholding from listing defaults or other credit information on credit reports.

Consumer advocates (including solicitors, financial counsellors and other caseworkers) regularly include the contents of credit reports in consumer disputes and settlements with industry. When we are assisting clients to resolve financial disputes it is standard practice for us to request that credit providers, debt collectors or utilities companies refrain from listing

negative information while negotiations are ongoing and to refrain from listing, or removing a listing, as part of the settlement of a dispute. Most industry members will work with advocates to come to a fair outcome for their customers. A new provision in the Privacy Act of the CR Code which requires CPs to list defaults, including a requirement to list a default within a reasonable time after the default, would not be something we support.

### Case study 8 – Harrison's story

In 2013 and 2014, Harrison was approved for some credit cards and accrued debts of approximately $40,000 total including interest. His debts were bought and consolidated by a third-party debt collector, and by 2017 Harrison had paid the debt down to around $18,000. At that time, Harrison was told by the debt collector that he didn't have to pay the remaining debt, but the debt's listing would not be removed from his credit report while the account was open.

Harrison made no repayments or acknowledged the debt after 2017. In 2023, 6 years after the last payment, Harrison checked his credit report and saw that the debt was still listed despite his understanding that the debt was now statute-barred. Harrison contacted the debt collector who confirmed that the account is closed and that they are not pursuing the debt but the listing had not been removed.

*Financial Rights, S293497*

### Case study – Kate's story 9

Kate was in her late 30s, was the full-time carer for her mother, and suffered from depression and social anxiety. Kate reached out for help because of a payday loan dispute. While helping Kate with her payday loan issue the financial counsellor discovered he also had a default listing from a debt collector that was listed on her credit report in 2020.

The original debt of the listed default was from a telco account Kate had settled in full via a payment arrangement in 2010. The debt collector agreed the account had reached the statute of limitations and had it removed from Kate's credit file.

*Financial Rights, S294431*

### Case study 10 – Consuela's story

Consuela defaulted on a personal loan from a bank 7 years ago. She confirmed that she had not made any payments or acknowledged the debt since the first date of default. Consuela recently checked her credit report and found that the debt was listed on the report despite being outside the statutory limitation period.

Consuela wrote to the bank about the 'alleged debt' and requested documents associated with the loan. The bank responded with a one-page letter stating that they could not find any such documents. Consuela can write to the bank to ask for the 'alleged debt' to be removed from the credit report as it fell outside the limitation period and the bank has no documentary evidence of the loan. If Consuela does not get a response within the set timeframes she can contact AFCA.

*Financial Rights, S295343*

### Case study 11 – Aoibhe's story

Aoibhe has been finding it difficult to obtain a loan recently and so she got a copy of her credit report. The report lists a default with a debt collector for over $3000. Aoibhe had a credit card years ago, but she thought she paid it off around 7-8 years ago. She has never received any correspondence about the alleged default or any default notices.

Aoibhe sent a letter to the debt collector asking about the alleged default, but they have not provided any documents and instead just came back with more questions for Aoibhe about her residential address and contact detail. She does not know what to do now.

*Financial Rights, S302699*

## Default threshold amount

While this is not related to retention times consumer representatives also support increasing the minimum default listing threshold from $150 to $500 and this amount should be indexed.

## Recommendations

20. **Consumer representatives support the development of a five-year countdown method for default listings where the time limit for defaults on credit reports runs from the date of the default rather than the date of the default being listed on the credit report.**
21. **The minimum default listing threshold should be raised from $150 to $500 and should be indexed.**

## Should limitations be placed on listing of defaults long after the debt was due?

No. See above.

## How should the credit reporting framework be adjusted in light of other financial data sharing arrangements such as the CDR?

Consumer representatives believe the new financial data sharing arrangements should be adjusted so that they do not undermine the credit reporting framework. The current credit reporting framework has been developed after decades of consultation and reforms to ensure it strikes the right balance between protecting the privacy of individuals' sensitive information while enabling effective lending decisions by credit providers.

Consumer representatives have raised concerns with the OAIC, Treasury and various governments that access to the CDR will provide both banks and the non-bank sector (and potentially all other CDR participants) with the ability to circumvent the long-negotiated limitations of the CCR regime. This can occur by CDR providing greater access to a consumer's entire financial history, such that lenders will be able to undertake analysis that provides insights in line or equivalent to that captured under the credit reporting system. This includes those licensees who are required to participate in the mandatory credit regime and those who are currently not required to (including pay day lenders).

Through our engagements with the OAIC on this issue we have concluded that CDR does not limit the application of the CCR. Some CDR participants who have chosen not to take part in CCR but do end up collecting, using or disclosing credit reporting info with a CRB via CDR will be subject to the CCR rules. Nevertheless, where the same CCR info is inferred there should be privacy safeguards put in place under the CDR to ensure the CCR is not

circumvented. In other words, privacy safeguards are currently not in place to prevent this, but they should be.

One solution consumer representatives propose is a set of restrictions on the amount of open banking data a lender can receive depending on what they are using it for. If a lender wants to use open banking data to assess a credit application (i.e. for responsible lending purposes) they should be limited to 180 days' worth of transaction information. This limitation would mean that the careful timeframes built around FHI and RHI retention are not undermined by a lender downloading years' worth of transactions.

While we understand that CDR is a consent-based regime, there is no true consent in a loan application process. If the consumer has to say yes to handing over years of data in order to get the loan, they will not feel like they have a choice but to consent. Other CDR uses may not need to be similarly limited (seeking advice from a financial counsellor, for example) because they are operating in a genuine consent environment rather than on a take it or leave basis.

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## Recommendation

22. **Lenders should be restricted to 180 days' worth of transaction information if they want to use open banking data to assess a credit application (i.e. for responsible lending purposes).**

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# Part Six Questions – Consumer protection and awareness

## How can consumer understanding about credit reporting be improved?

Credit reporting is a very complex and confusing area of financial services. The complexity of the consumer facing CR Code is a prime example of this problem. Many of the rules which have been put in place to protect consumers are very technical and should not be rules that are reliant on a consumer having to understand what they are and how to trigger them, for them to operate (like how joint account holders experiencing family violence can get their repayment history information suppressed). So, while in an ideal world consumers would know more about credit reporting, their state of knowledge should not be determinative of whether protections are afforded to them.

Consumer representatives are sceptical that more information or consumer education is going to solve the problems the credit reporting framework has with accessibility or practical applicability. Generally, it is better to have fairer products and systems in the first place, rather than access to more information that is likely to confuse consumers.

Consumers need reliable, independent and accessible information about credit reporting at specific points in time. For example: when shopping for credit; when being refused credit; when negative information is reported to their credit file; and when requesting a correction or raising a dispute over a credit reporting issue. Consumers should be notified in real time and in plain language about where to get reliable and accessible information when critical events take place.

If this review is going to recommend more investment in educational resources it should also include an investment directed at advocates such as community lawyers, domestic violence advocates or financial counsellors. An investment in consumer education alone is unlikely to assist average consumers who need access to timely legal information, advice, financial counselling or effective dispute resolution to assist them.

There are some good resources for consumers on the Credit Smart website, but we are concerned few people find and read them. Improving the resources available on the ASIC Money Smart website, as a known and trusted source of financial information, could be a way of getting more visibility.

For those sophisticated consumers who are capable of self-advocating and enforcing their own credit reporting rights, access to information needs to be timely and of immediate relevance to their dispute. Static credit reporting information resources on a website might be useful educational tools for advocates, but they are rarely going to be very useful to a consumer with an urgent dispute. Lenders and CRBs need to have front line staff that are trained to give consistent and clear information about credit reports when consumers make complaints or are deciding whether to enter into a hardship arrangement.

## Recommendations

**23. Any new investment in information resources should include an investment directed at advocates such as community lawyers, domestic violence advocates and financial counsellors who advise and advocate for people experiencing financial challenges. This should not take precedence over making the rules clearer and fairer in the first place.**

24. **Effective education needs to be timely and relevant to the person's life situation and current decision-making. Giving people real time information about what is being listed on their credit report and why, is the most effective way to educate consumers and influence behaviour.**

## How can credit reports be made more user friendly, accessible and easy to understand for the typical consumer?

Consumers get very confused and frustrated about inconsistent information that is on their credit reports from the three different CRBs. It would be more user-friendly and accessible if credit reports were consistent and standardised.

The Government should invest in user-testing a single standardised credit report template that could be replicated across the three CRBs. The Government should also investigate operating a service which consolidates all three credit reports into one accessible report for consumers. In the US consumers can request a 'tri-merge' credit report where data from each CRB—including credit accounts, payment history, outstanding debts and any negative information—are compiled into a single report. Tri-merge reports in that jurisdiction are usually compiled by a third-party service independent of the CRBs, and the fees for such a service vary. [29]

## Recommendations

25. **The Government should invest in user-testing a single standardised credit report template that could be replicated across the three CRBs.**
26. **The Government should also investigate operating a service which consolidates all three credit reports into one accessible report for consumers.**

[29] https://www.chase.com/personal/credit-cards/education/build-credit/tri-merge-credit-report#:~:text=A%20tri%2Dmerge%20credit%20report%2C%20also%20known%20as%20a%203,Equifax%C2%AE%20and%20TransUnion%C2%AE.

## Can the following arrangements be improved to better protect consumers at reasonable cost:

- **correcting a credit report;**

Yes. Corrections could be easier and more accessible to consumers. The current technical drafting of the corrections provisions in the CR Code, and the lack of proactive regulator monitoring creates many barriers for consumers who may have complaints or want to request corrections to their personal information in a timely and efficient manner.

Correction of information is one of the most important issues for consumers and their advocates. The obligations regarding the correction of information in the credit reporting framework are inadequate and need to be extensively amended. These obligations are not best practice when it comes to dispute resolution in financial services.

The provisions in paragraph 20 of the CR Code which relate to corrections are complex and confusing, which undermines the ability of individuals to advocate for themselves and pursue correction of credit-related personal information. The credit repair industry is able to exploit this unnecessary complexity, selling overpriced correction services that consumers should be able to do themselves. The credit reporting framework should commit CRBs and CPs to best practice in dispute resolution, not simply to meeting the minimum requirements set by Part IIIA of the Act.

Should regulatory oversight be moved to ASIC/ACCC we would expect dispute resolution and corrections procedures to become better aligned with other financial services providers. We would also expect ASIC to be able to investigate and publish aggregated data relating to CRB corrections requests and outcomes.

The correction of information mechanism in the CR Code is inefficient and ineffective in practice. The provisions in paragraph 20 of the CR Code are impossible for consumers to read and understand. This issue was raised in the recent 2021 CR Code Review but the OAIC determined that amendments to the CR Code were not necessary since:

> *"a central object of the CR Code is to set out how regulated entities are to apply or comply with specific provisions of Part IIIA. This necessarily has an operational focus regarding industry compliance. The Review considers that the current specificity of paragraph 20 is required to ensure consistent application across regulated entities."*[30]

[30] 2021 Independent review of the Privacy (Credit Reporting) Code. September 2022. Proposal 36, pg 98.

Consumer representatives maintain that provisions in paragraph 20 should be re-written to be principle-based and in plain English:

- Individuals have a right to request correction of any credit reporting information they believe is not accurate, up-to-date, complete or relevant to their creditworthiness;
- If a CRB or CP receives a correction request from an individual it must determine whether the credit-related personal information needs to be corrected as soon as practicable;
- CRBs and CPs must investigate all correction requests to determine whether the credit reporting information is accurate, up-to-date and complete and ask the individual for any additional information it needs to resolve the request within 10 days;
- Unless extraordinary circumstances exist a CRB or CP will resolve all correction requests within 30 days;
- If a CRB or CP cannot resolve a correction request within 30 days or decides not to correct the information it must advise the individual that they may complain to a recognised external dispute resolution scheme (this is not currently included in the Code).

A related issue is that the correction timeframes are weak. CPs and CRBs have 30 days under the Privacy Act to correct the information listed, but in many cases this timeframe is not commercially reasonable (for example, where the individual is seeking approval for a new line of credit in order to purchase a house or vehicle).

**Caseworker comments**

"Problematic cases tend to be when the listing adjustment or removal is related to compassion or domestic violence or maladministration. These have to be asked of the creditor, who sometimes seem resistant to changing credit file listings (or even deny that it's possible at all, initially - especially for DV). This response can be variable even within the same creditor.

Probably the worst experience I had was a one-off attitude of 'it may take 30 days to advise the creditor to make the change, and it could take them up to 30 days to action the change and we don't send you a copy or double-check that it was processed - it's on you to do that, and then follow up with us/the credit file provider if there's any issue'. Since the client is only entitled to a free check every 90 days - and in this case, the matter hadn't been resolved by the time he got that report, so it was reported to the creditor who confirmed that they had sent the instruction and that the credit file provider had confirmed it was received, just not processed yet and client should check again in a couple of months.

My client was looking at a very long 'mental load' of worrying about it as well as potential actual financial harm caused by delays if he had been trying to get a loan at the time/was waiting on an updated credit file for that."

*Caseworker response to Financial Rights Credit Reporting Survey, May 2024*

In the 2021 CR Code review consumer representatives recommended that the CR Code set tighter timeframes than 30 days for 'simple' correction requests

Examples of 'simple' correction requests include:

- when the prima facie evidence provided to the CRB shows the default belongs to a different person and was listed in error
- when the lender and consumer have already come to an agreement in writing that the credit reporting information needs to be changed/updated/erased
- when a client has evidence of a prior listing for the same debt
- when the listing has been made by a company with no power to list
- when the debt has become statute barred
- where the person produces a 'commonwealth victims' certificate' as evidence that the listing is fraudulent.

In that review ARCA noted that the CR Code currently provides for corrections to be made in a shorter timeframe, and the OAIC agreed to issue guidance to the industry that CRBs and CPs should actively resolve correction requests as soon as practicable. Unfortunately, without transparent reporting about complaints, correction requests and correction outcomes, consumer representatives have no visibility over any changes or improvements in this area.

## Case study 12 – Benjamin's story

Benjamin was a victim of identity fraud which he had reported to the police. When Benjamin called Financial Rights he had already dealt with several other loans and enquiries which were a result of the identity theft that were removed and resolved. He was frustrated by two matters he was struggling to resolve himself. The first related to someone who bought goods using his details and paid for it with a Buy Now Pay Later account. He was being chased by a debt collector. Secondly, he also had an enquiry on his credit report related to a telco service.

He was frustrated by the BNPL who had now taken over 30 days to investigate the matter. The BNPL provider requested more time to look into it but didn't say how long they needed. Benjamin was concerned that he will need to spend money on a lawyer to resolve the dispute.

Benjamin requested a CRB remove the enquiry because it was a result of the fraud, but the CRB says they won't. They say he needs to speak to the telco, which he did at the local branch of the telco provider and all they did was note the fraud on their file, they did not give him anything in writing. The CRB still has the enquiry listed and will not remove it.

*Financial Rights, C222659*

Consumer representatives strongly support ARCA's efforts to implement a new mechanism in the CR Code for correcting multiple credit report entries across various credit accounts in the same individual's credit report (such as occurs in situations of domestic violence or fraud). These variations to the CR Code are being approved by the OAIC in 2024.

Consumer representatives also strongly support the OAIC's recent Guidance about the "no wrong door" approach to corrections. Both CRBs and CPs have correction obligations under Part IIIA of the Privacy Act. This often results in a CRB or CP referring an individual to another CRB or CP rather than completing the correction request itself. In cases of fraud or financial abuse an individual may have no knowledge of which CPs were involved in the fraudulent requests (or which were the original CPs if the account has now been sold to a debt collector). Even if CRBs are not able to know the details of the original credit contract, they know which CP reported the information, and they should be able to progress the correction request without the consumer needing to approach the CP separately. This is best practice for consumers who have experienced financial abuse as it will avoid re-traumatising the consumer through forcing them to re-tell their experience of family and domestic violence to the CP. It also protects the CP's staff from receiving potentially distressing information unnecessarily.

**Financial counsellor comments**

"The problem with credit reporting companies is their lack of communication when reporting errors. After a client was the victim of a scam, she is extremely wary and wants her credit report to reflect what is happening. The client has explained to the credit reporting companies that she has never applied for a credit card – as one example, and can they remove this information from her report – along with an application for a personal loan, which again is incorrect. This has taken 6 months, and the report is still incorrect. I have given the companies 3 months to correct information, but it seems like I have to keep chasing them. The fact that reporting companies are all overseas companies, who admit they have thousands of staff collecting information, there appears to be no check that this information is correct."

*Comments after legal training from financial counsellor NSW, March 2024*

**Consumer comments**

"I applied for a loan for a car and was refused, but they didn't tell me why. I then tried a second lender and again was refused, they also would not tell me why. I then applied through a bank they also refused. I was totally confused as I had always paid my bills and never defaulted on any loans or credit cards. Two weeks later I received a letter in the mail from the bank telling me to check my Illion credit rating. On it I found a default to a telco company. I went to the local telco store and showed them the default and amount of over $1000. I explained this was not my debt. I have never lived in NSW or know anyone that does. They issued a complaint to the fraud area. I had to complete a Stat Dec, get it witnessed by a JP, provide identification including a photo of myself holding ID with my signature, which I find ironic as the JP witnessed my signature on the stat Dec. I had to put a lot of information in the stat Dec to satisfy the telco's requirements. I received a phone call from the telco asking if I had a daughter with the same surname, if I knew anyone in NSW. I advised them no. I have never had, arranged myself or authorised anyone else to obtain services from their company. This is ongoing at the moment. If the bank had not sent me the letter, I would be none the wiser as to why my loan application was refused."

"I applied for a balance transfer card through Citibank. Internet issues meant my application was duplicated three times. Citibank recorded all three duplications as separate applications. They declined my card due to excessive applications for credit and put three hard searches on my record. When I called them, I could only access a recorded menu giving the status of my application. When I complained, they called from such a bad line I was unable to hear a word. They promised to call back but never did. I had to file a complaint with AFCA to have the searches removed."

*Consumer responses to Credit Reporting Survey by Financial Rights, May 2024*

**Caseworker comments**

"A client who had been the victim of a scam requested a correction to her file - and is still waiting even though the three companies have been contacted twice in 6 months."

"A client who was the victim of fraud. They had their id used while they were incarcerated. The clients incarceration period had to be proven to each creditor and eventually removed. Also in the case of dv victims - each creditor has to be approached individually and agree to remove a listing. It would be great if the credit reporting body could be able to directly remove a listing where dv is the reason for the listing."

"We had evidence and receipts that the client had paid off a debt but the credit reporting Equifax would not accept this evidence and then we had to go back to the creditor and ask them for a letter and then go back to Equifax but the creditor was not being helpful with the client so had to make a complaint to get the letter. Equifax also would not remove any enquiries and stated the creditor had to do this. This was a long process for simple changes."

*Caseworker responses to Financial Rights Credit Reporting Survey, May 2024*

## Case Study 13

In March 2024 I made an application for a credit card. That application was rejected, apparently on the basis of my consumer credit history, as provided by Equifax. I then ordered an Equifax Credit Report, to find out why I should have less than a perfect credit score. There were no adverse events listed on any account listed in the report.

My "Score History" was shown as uniformly "excellent" from 2023-2024, when it slipped to "very good" because of a decline due to "Contributing Factors" "Recent household or employment changes" (my employment hasn't changed in seven years; as to household, see below) and "Applications for commercial credit or loans" (the only application being the relevant credit card application). I could not find my reason why the rating would then have slipped from "excellent" to "very good", so I carefully read the report again.

[Background: I am old and semi-retired, so I have no mortgage and no bank or credit card debt, a few credit cards paid monthly, a few debit cards, and significant bank balances. Before my semi-retirement, I was a partner of a firm for over 36 years. I am about as boring a positive credit card applicant as one could imagine.]

I then discovered that Equifax had listed my as current address "1 High Street, *XXX* [my suburb]". My current (real) address (of the last 24 years) had become a previous address. This must have been the reason for my credit report changing: I has used my correct residential address on the application for the credit card, and that address would have conflicted with Equifax's made-up address for me.

Equifax's made-up address is odd, for a number of reasons.

First, any online address search will find that "1 High Street, *XXX* [my suburb]" does not exist. Indeed, when I tried to use it to check whether any system would accept that address, automated systems would not accept this address as a valid address. Second, and as already noted, my current address has been my current address for 23 years for business communications, and domestic (household) communications, with me.

So, I then request a correction, informing Equifax that Equifax had made up an address for me. The Credit Report was then 'corrected' to show my current address, but also showed Equifax's made-up address as a previous address.

I sighed, decided that getting Equifax to correct previous addresses was too hard and that previous addresses should not be an issue, so I made a fresh application for a credit card. That new application was again refused by the credit card company, apparently on the basis of my consumer credit history, as provided by Equifax. I can only assume that because the correction had been entered as a change of address, and I was not residing at my new [address of 24 years] address long enough to satisfy whatever home stability metric criteria the credit card company uses (as compared to my real stability of 23 years).

So, in summary:

1. Equifax has arbitrarily given me a lower credit score due to Equifax's own error which should never have occurred (address made up by Equifax, their automated address verification should have exposed this, and the correction wasn't done properly by Equifax).

2. Equifax have now nixed my credit card application with AMEX twice, and will continue to adversely affect any credit review that anyone may make of me, apparently without any ability of me to fix Equifax's own error.

3. I'm forensic enough to work out what Equifax did wrong here and how it has caused me credit harm. Many consumers would not have any idea where to start.

*Personal story from long-standing consumer and privacy law expert, May 2024*

## Recommendations

27. **Dispute resolution and corrections procedures must become better aligned with IDR obligations for other financial services providers.**
28. **Provisions in paragraph 20 of the CR Code should be completely re-written to be principled-based and in plain English.**
29. **The CR Code could set much tighter timeframes for simple corrections requests, making it clear that the 30 day timeframe in the Act is for more complex correction requests.**

- **placing a ban on accessing a credit report;**

Yes.

### Length of time

The 21-day ban period in Australia is too short for cases of fraud to be resolved by the individual and places a burden on the individual to apply for extensions. This initial time period should be extended to a minimum of ninety (90) days. During the initial ban period a consumer should be able to receive alerts if a lender attempted to access their credit report, and applying for an extension of the ban period should be easier. We acknowledge that the CR Code is currently being amended to require CRBs to record and alert an individual of access requests during a ban period.

### Getting an extension

Consumer representatives acknowledge that ARCA has proposed some amendments to the CR Code which it believes will reduce 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 about the limited situations when more detailed inquiries might be warranted. It is not yet known if these amendments will create meaningful improvements for consumers who are struggling with the stress and uncertainty of identity theft. Individuals attempting to extend credit bans can find themselves in a bind if their identity credentials are lost. They 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 process is reactive and means that individuals must wait for misuse to occur, rather than proactively preventing that misuse.

### New system of free alerts

In addition to strengthening the existing ban system, consumer representatives submit that people should be able to opt in to being sent free alerts when enquiries are made on their credit reports at any time. Even when a consumer may have no indication they have been the subject of fraud or abuse, a system of free alerts would give them the opportunity to confirm the legitimacy of any enquiry made on their credit report about potential new or extended credit.

We acknowledge this new alert mechanism will need to be on an opt-in basis. 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. This may require registering to receive such alerts and confirming contact details annually or when they change, but this would be a small price to pay for peace of mind, while still being able to access credit.  The ability to register for free enquiry alerts should be a right enshrined in law in the same way access to

free credit reports is a right for all Australian consumers. This would result in better outcomes for lenders and consumers, by potentially preventing fraudulent loans rather than responding after the fact.

At the very least victims of major data breaches should be able to opt in for free alerts from all three CRBs for a minimum of three years.

### Case study 14 – Liam's story

In early 2021 someone fraudulently took out a bank credit card in Liam's name. Liam found out about it when he saw an enquiry for a $6,000 card on his credit report. Liam went into a branch of the bank and gave them a statutory declaration about the fraud and proof of his ID. The bank's fraud team investigated and wrote to Liam confirming they would take the enquiry off his credit report and cleared him of liability for the $6,000.

Three months later Liam applied for home loan and was told there was a new default on his credit report from the same bank from the same time period for $60,000. The bank where Liam was trying to get a home loan told him that they cannot proceed unless the default is cleared up. Liam showed them the letter confirming the fraud from a few months before but he was told they need a new letter confirming he does not owe the $60,000.

Liam went back to the branch of the first bank and spoke to a manager and a fraud team member who told him they would escalate the issue. Liam was told the default would be removed as soon as possible and that they would provide him a letter confirming he did not owe the debt the next day. Several days later he still had no letter and the default was not removed. Then he received an email from the bank's complaints department saying his case was closed. He called the bank again and asked to speak to the fraud team and he was told there was nothing he could do except start the process again including providing a new statutory declaration.

Liam is trying to purchase a home. He has a short time frame to resolve the matter, before he will lose the property and his deposit.

*Financial Rights, C222538*

## Recommendation

30. **The initial credit report ban period should be extended to a minimum of ninety (90) days. During the initial ban period a consumer should be able to receive alerts if a lender attempted to access their credit report.**
31. **The ability to register for free enquiry alerts should be a right enshrined in law in the same way access to free credit reports is a right for all Australian consumers.**
32. **Alternatively, victims of major data breaches should be able to opt in for free alerts from all three CRBs for a minimum of three years.**

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- **making and addressing a complaint;**

Yes.

Consumers still report frustrations to our services about making complaints. This is especially a problem when a consumer finds out there is an error on their credit report while they are in the process of buying property. The complaints process is too slow and inefficient, even for simple straight-forward complaints.

As discussed above, should regulatory oversight be moved to ASIC/ACCC we would expect complaint procedures to become better aligned with other financial services providers. We would expect ASIC to be able to investigate and publish aggregated data relating to credit reporting complaints handling from all its regulated entities.

### Case study 15 – Oliver's story

Oliver called Financial Rights about a default listing on his credit report. Oliver's credit card was stolen in mid-2021. He immediately notified the lender but they sent a replacement card to the wrong address. They tried twice more but both went to wrong addresses, as a result of their own internal error. During this period Oliver couldn't access his online portal with the lender. He couldn't see what purchases were on the card and he was not making payments.

Oliver called the lender several times about the missing card and at no point did they tell him the card was in arrears and needed payments, that his RHI was impacted or that a default notice would be issued. He doesn't recall receiving any default notices under the National Credit Code or privacy legislation.

Oliver later checked his credit report and found a default listing and negative RHI information. He raised a complaint about the default notice and RHI. He asked the lender to

remove this information. They refused on the basis he should have been using BPAY or direct debit payments to pay his account if he was unable to access the portal. He received an apology about the delay in the re-issuing of the card. The lender would not provide copies of the alleged default notices sent.

Oliver was very anxious to get the default removed as he wanted to apply for a home loan and his credit score had dropped significantly. He proceeded with escalating the matter to an AFCA complaint and it was only then that the lender finally offered to remove the default.

*Financial Rights, C198273*

- **credit reporting notification framework;**

Yes, consumer groups strongly support reforming the credit reporting notification framework. Consumers should be notified in real time and in plain language when missed payments are being reported after a period of on time payments. As discussed above, consumers should also be notified when an enquiry has been made and recorded on their report.

These notifications should be done through SMS, email or the post depending of the consumer's preference. A consumer should be able to sign up for these notifications free of charge.

For many years consumer representatives have been advocating for the credit reporting framework to require credit providers who are reporting missed payments (or negative RHI) about their customers, to notify those customers on their regular account statements or by SMS, about the information reported to the CRB and its meaning. We submit that this new requirement would bring benefits to CPs, consumers and CRBs:

For CPs:

- Consumers will have greater confidence that the credit provider is being open and transparent if they are notified in a timely fashion about adverse information being reported rather than finding out about it later when they are either refused other credit, or charged at a higher rate of interest than otherwise would be the case;
- It will encourage consumers who can pay on time to do so. Consumers are extremely protective of their credit report/score and will not want to pay higher interest on credit in the future, or risk credit refusals. If they can pay on time, they will do so to avoid negative information being shared with other credit providers more readily than in response to late fees; and

- It will take the heat out of complaints by alerting consumers to problems before they enter contracts, such as for the purchase of real estate, which may cause them to incur financial loss as a result of being rejected for credit.

For consumers:

- They will receive timely notification of the consequences of their actions so that they can change their behaviour accordingly if it is within their power;
- They will be able to dispute any adverse listing they disagree with in a timely fashion while memories are fresh and evidence can be easily located – it would be quite a forensic exercise to check the accuracy of repayment information up to 2 years down the track; and
- They will be less likely to incur financial loss as a result of entering contracts without being aware of negative information on their credit report.

For CRBs:

- The information they hold will be more likely to be accurate if consumers are informed and given an opportunity to raise errors and other complaints in a timely manner.

## Case study 16 – Jill's story

In the spring of 2020, Jill called her bank to close her credit card account. She transferred a lump sum to pay the entire amount owing and believed the account had been closed. Unknown to her, a few direct debits linked to apps continued to be processed against her credit card account. She did not know this would happen. She thought that because she had closed the account, any updates she had missed would bounce and they would seek updated payment information.

In Autumn of 2021, she received notification from the bank that there was a few hundred dollars outstanding on the account. She was surprised and annoyed. It turns out that the bank had been sending her e-mails saying a new statement was available that would have shown her the amounts accumulating, but these e-mails do not have the statement attached, or any identifying details to indicate which account it is referring to, or even what type of account. At the time she had more than 5 accounts with the same bank, and never thought to go looking for a statement related to an account she believed was closed. She complained and they eventually agreed to refund the fees and charges and she paid the amounts she had actually incurred.

At no time did anyone mention her credit report, or that negative RHI was being reported throughout this period. At the time she was completely up to date with her investment

property loan with the same bank and had deposit accounts with tens of thousands of dollars available. She would have paid the amounts immediately if she had known. The bank did not notify her of the outstanding amount, apart from sending the bland, unidentifiable notices about the availability of statements.

In late 2020 she had spoken to 3 mortgage brokers who had all said she would have no trouble securing a home loan, but that she would need to sell her investment property first. She was renting at the time and wanted to buy a house to live in. She sold her investment property in December 2020. She has been trying to get a home loan approved ever since.

Negative Repayment History Information had been reported to the credit reporting bureaux in the period between when she thought she had closed the account and when she eventually paid the debt 6 months later. The amount outstanding was less than $300. She discovered this when her bank knocked her back for a home loan, citing problems with her credit report. She has since spoken to mortgage brokers and two other mainstream banks and has now been advised to look at the non-conforming loan sector, where she will be required to pay a significantly higher interest rate. She has offered to provide information about the context in which situation arose, and provide evidence about the small amount involved, but they are not moved.

Jill says: "I've missed out on being able to purchase property in a rising market.  I've spent countless hours on the phone/email to [the bank], AFCA, Debt Helpline, Credit Repair Companies, Financial Counsellor, FRLC, mortgage brokers etc.  It has been one of the most stressful things I've had to deal with, I haven't been able to sleep properly, waking up thinking about it etc. This is partly because I had to work so dam hard being self-employed to get to a position where I could get a loan in the first place, to have this happen has been really difficult."

Jill is currently disputing the RHI on her credit report in AFCA.

*Financial Rights, C224849*

## Case study 17 – Horatio's story

Horatio was paying off a personal loan he had secured with a finance company. The finance company was targeted by a cyber-attack. All direct debits stopped being processed, including Horatio's, but the company failed to notify Horatio. Horatio missed several months of repayments, his debt increased, and his credit score plummeted. Horatio contacted the finance company several times to get a statement outlining how much he currently owed, but they never sent one to him. They were very difficult to contact after the cyber-attack.

Horatio said he can pay the arrears and the whole of the loan. He wants his repayment history fixed so that he can get a business loan to buy equipment.

Horatio lodged a dispute with AFCA. After Horatio did just that, the finance company sent him a statement and he paid out the loan in full. However, Horatio wants the repayment history information removed from his credit report as it is impeding his ability to secure a business loan.

*Financial Rights, S293705*

## Case study 18 – Tim's story

Tim set up automatic payments for his mortgage online, however when the interest rates changed Tim forgot to update his payments. Even though Tim was still making payments on his mortgage they were being recorded as partial payments and being listed as missed payments on his credit report. He has four months where a "1" has been recorded.

Tim is employed and has savings and wants to refinance his home loan, but his mortgage broker said a loan will not be approved unless he gets the repayment history fixed up.

*Financial Rights, S298518*

### Threshold amount for reporting RHI

A related issue to timely notification of missed repayments is the threshold amount for reporting missing payments. There is currently a dollar threshold for listing defaults (which we advocate should be raised) but no threshold at all for reporting a missed or late payment. We are aware of cases where the amount missed has been a $2 paper account statement fee on an otherwise nil balance account.

Consumer representatives submit there should be a sensible threshold for tiny amounts of missed payments. If a payment is missed by less than $30 we don't believe it should be recorded as late. We have seen examples where the missed payment was so tiny it was clearly an error and not relevant to a person's creditworthiness (see the recent story about Sam by CHOICE magazine).[31] When a consumer misses the same tiny payment for many months their credit score can be severely affected, making it difficult for them to access finance.

[31] https://www.choice.com.au/money/credit-cards-and-loans/home-loans/articles/credit-reporting-reforms-needed

## Recommendation

**33. Consumers should be notified in real time and in plain language when missed payments are being reported after a period of on time payments. A consumer should be able to sign up for these notifications free of charge.**

**34. There should be a minimum threshold of $30 before a CP can report a missed or late payment. This amount should be indexed.**

- **protections for victims of financial abuse and family violence?**

A lot has changed since the credit reporting framework was last reviewed. In addition to the implementation of responsible lending laws, the digitalisation of lending, and increased scams; awareness of the insidious nature and extent of family violence and financial abuse has increased, along with greater community expectations that governments and industry will contribute to combatting its devastating impacts.

Family violence and financial abuse can have a serious impact on a person's financial independence, safety and well-being. There are numerous ways in which a victim/survivor may experience credit reporting impacts because of abuse. Loans and credit facilities can be opened fraudulently, without the victim's knowledge or consent using the person's details and devices, both during the relationship and after separation. The victim can be coerced into taking out loans and credit facilities, either jointly or in their own name, but largely or entirely for the abuser's benefit because of a spectrum of controlling and threatening conduct or actual violence. A loan may have been taken out with full knowledge and consent, but the victim is thrust into hardship because of being prevented from working, or having no control over his or her income, or experiencing physical or mental illness because of the abuse. In some cases, the victim/survivor may have been forced to flee with little or no preparation, leaving behind a job, home and other assets or belongings. Sometimes many or all these factors may be at play.

The difficulty of obtaining financial independence is often the most significant barrier for a victim survivor to leaving a violent relationship, and a lack of financial independence often results in a person returning to that relationship. Joint finances become a tool of control, particularly if the perpetrator no longer has physical proximity to directly inflict harm or intimidation. Even though it may not be in the abuser's best interests to stop payment or default on the debt, they may do so knowing that it will cause further pain for their victim.

Since the last review of the credit reporting framework there have been significant developments in the understanding of family violence and financial abuse, and most financial

institutions and utility or telco businesses have processes to identify and respond to customers who have incurred debt, and/or defaulted on payments, as a result.

## Case study 19 – Leisha's story

Leisha is a single mum of three kids. She was born overseas and English is her second language. She lives in public housing and her main income is Centrelink benefits with some income from casual cleaning jobs. Leisha was the victim of domestic violence from her former partner. The police took out a protection order on her behalf several times in the last 10 years.

Leisha had taken out a Bank credit card while she was living with her ex to pay for emergency expenses. The card was in her name only. However, her ex used most of the funds to pay for his own expenses. He never paid her back as promised and was violent when she asked him to pay her back. The credit card debt was then assigned to a debt collector. Leisha had absolutely no capacity to pay.

Financial Rights wrote to the debt collector about the credit card and requested a waiver on the basis of her financial circumstances and her experience with DV. The debt collector informed us it also had another account in her name from the same period which our client had no recollection of. After providing evidence of the DV and Leisha's inability to pay the debt collector agreed to waive the debts and remove any defaults from her credit report.

*Financial Rights, C213313*

## Case study 20 – Sarabi's story

Sarabi is a victim of domestic violence and has 2 dependent children with autism. Her mortgagee has granted her a hardship arrangement and frozen her payments during the pandemic, so she has not made any payments for a year. There is about $300,000 equity in the property, but this is a joint mortgage with her abusive ex-husband. They have done a final separation document in court and Sarabi has an AVO against him.

When her ex moved out he stopped contributing to the mortgage. As a part of his continuing economic abuse he keeps calling the bank and reinstating the mortgage payments. Sarabi believes her ex wants her to lose the house. By removing the hardship arrangement, RHI is reported on her credit report again. He tells the bank that they are in the process of selling but Sarabi says that is not true. She wants to remain in the house with her children. Sarabi wants to refinance but the missed payments now on her credit report are making that impossible. She has called several lenders and they have all said she cannot secure a loan with her current credit score.

There is a court order that Sarabi's ex should be removed from the title and the mortgage but her credit report is now too poor. The poor handling of the situation has triggered her trauma anxiety from the domestic violence and left her scared that she and her children will end up homeless.

*Financial Rights, C218648*

After the 2021 Independent review of the CR Code ARCA made a number of amendments to better protect victims of financial abuse and family violence. Consumer representatives support these changes and will continue to work with ARCA to ensure protections in the CR Code keep evolving.

**Caseworker comments**

Currently working with a client who was a victim of DV - numerous loans were listed on her credit report that were a result of financial abuse. Most lenders were happy to remove defaults, however, one lender is being very difficult. No policies around DV and very limited understanding of the issues involved.

*Caseworker response to Financial Rights Credit Reporting Survey, May 2024*

### Flexibility in corrections

In addition to the amendments being made in the CR Code, the most important changes that could be made to the credit reporting framework to ensure victims of financial abuse are protected would be to ensure there is flexibility built into the reporting frameworks. No two financial abuse situations are the same and credit providers need to have the flexibility to support their customers without being hamstrung by mandatory or strict reporting rules.

There needs to be greater flexibility for CPs not to list or to remove negative information from credit reports. In practice CPs regularly agree to waive a debt or not pursue payment against one account holder due to the debt being incurred in connection with domestic abuse. The ABA issued an updated industry guideline on Financial Abuse and Family and Domestic Violence in April 2021[32]. Best practice for banks is to not enter negative credit information if a customer is affected by family and domestic violence. Under this guideline, banks should not reflect missed repayments or list defaults if the bank is aware that family and domestic violence has affected the consumer's ability to pay or may be relevant to their liability to pay the debt. Of course, there will be many times when a victim survivor is not able to communicate about their situation to the credit provider because they are either experiencing or fleeing violence, unaware of the financial abuse or otherwise incapacitated. If

[32] https://www.ausbanking.org.au/financial-abuse-and-family-and-domestic-violence-policies/

those individuals later reach out to a CP for assistance, the CP should be able to update and correct past RHI or remove defaults that have already been listed. This type of flexibility to correct is also important for victims of scams and identity theft.

ARCA has been working on industry guidance which confirms the CR Code and PRDE allow lenders (in cases of financial abuse) to supress or correct past credit reporting information where the circumstances of the negative information were beyond the individual's control and the CP believes it is necessary to protect the safety of an individual or where the credit reporting information would be inaccurate, irrelevant or misleading.

Nevertheless, ASIC's 2022 No Action letter demonstrates an issue associated with the inflexibility of the existing mandatory reporting rules. ASIC's letter relates to the requirement for CPs to notify joint account holders about hardship variations, however when there is family violence involved there were concerns for the safety of victim survivors if a perpetrator was given notice about a hardship variation. ASIC is essentially making a promise not to enforce a breach of the law but has included a number of caveats in the letter.[33] We also note that while the No Action letter has been implemented, it is only temporary to allow time for a more detailed policy consideration to occur. So, it is critical that this be addressed.

Greater flexibility in the credit reporting framework would mean that CPs could do idiosyncratic things, like temporarily supress RHI when family violence is involved or not notify a known perpetrator when there is a joint account without fear of civil penalty.

Consumer representatives also submit that where FDV arises, credit providers have a positive obligation to inform a survivor/victim of the options available.

**Financial counsellor comments**

I have had conversations with CBA hardship team regarding the reporting of hardship on a credit file of a woman impacted by DFV. CBA granted a debt waiver, and closed the account, but also reported a hardship.

I gave CBA varies documents from ASIC and EARG supporting the non-reporting of hardship on the file. They advised they are required to do this.

I see from an accounting perspective that this action doesn't follow accounting retreatment.

[33] https://download.asic.gov.au/media/d32pemom/no-action-letter-to-credit-providers-and-consumer-lessors-8-july-2022.pdf

As the debt is no longer managed by the hardship team, and is no longer reported in the accounts payable, like all other hardship options offered by the bank are. I believe a debt waiver should not be included in the hardship reporting of CBA.

As this debt is written off against the provision for doubtful debts and the account is closed.

*Comments from QLD financial counsellor*

## Case study 21 – Emma's story

Emma was in an abusive marriage for several years. After separating from her husband Emma had to take out an ADVO. He was later incarcerated for the abuse. During her relationship Emma's husband exerted coercive behaviour over her. He was unemployed and had a very bad credit history and he pressured her to take out loans to pay for his addiction.

When Emma reached out to Financial Rights for help she had no assets apart from a vehicle and she was renting in private accommodation. In late 2021 she became aware of a number of default listings on her credit report by different lenders and debt collectors. Emma wants these defaults removed so she can move on with her life.

Emma did not receive any benefit from these loans and was experiencing domestic violence at the time the loans were issued. Financial Rights has had to help her apply to each of the 6 creditors to show evidence of the domestic violence, resolve the debts and remove the default listings.

*Financial Rights, C221006*

## Case study 22 – Sophia's story

Sophia is a young single parent of a new baby and her sole source of income when she contacted us was Centrelink. Sophia had just recently taken out an AVO and separated from her partner of 7 years due to prolonged domestic violence including financial abuse. Sophia and her baby had to leave her rental and move to regional NSW to live with her parents because of her ex-partner's continued threatening behaviour. Sophia advised Financial Rights that her ex-partner has always been abusive physically and financially, that he did not contribute to household expenses so she had to manage all the bills herself – often when she was only working part-time.

When Financial Rights first started working with Sophia she had seven unsecured debts totalling around $10,000. Financial Rights helped Sophia contact her creditors one by one to request the removal of default listings from her credit report. Financial Rights was continuously met with barriers to communicating or getting a response from some of the creditors but in the end we were successful at helping Sophia clear her credit report. Sophia's life is now turning around, she seems happy and is back working with her previous employer before she had to flee her home.

*Financial Rights, C201939*

## Case study 23 – Rebecca's story

Rebecca's boyfriend pressured her into buying a new smartphone for him by promising to pay her back. Rebecca's means were quite limited, so she and the boyfriend went to a major retailer where she got a credit card and bought the phone. The sales representative was aware of their circumstances but happily processed the credit card application anyway.

Rebecca's boyfriend didn't make any payments towards the purchase as promised, even though he said he would, and in fact pressured Rebecca to use the card to buy a new TV and bed. He then signed her up for other loans, which he spent on food delivery for himself. Rebecca found herself unable to pay the loans and had a mental breakdown due to the stress.

We spoke to the finance company and raised that they had engaged in irresponsible lending and had entered into an unjust contract. The finance company denied this but offered to waive the debt on compassionate grounds. They also agreed to amend the Repayment History Information on Rebecca's credit rating to show financial hardship, but it took the finance company over 2 months to decide how to proceed with this.

*Financial Rights, S280231*

### Customer-based vs account-based reporting

CPs and AFCA accept that there are circumstances where one joint borrower should not have been a borrower, should not be liable for payment, and/or should be granted a variation without notice to the other borrower due to safety concerns. These approaches should be supported by the credit reporting framework.

Consumer representatives raised concerns in a submission to the OAIC in April 2021 with regards to how the new Mandatory Legislation was going to be interpreted and implemented into the CR Code. In that submission we argued that account-based reporting

is inappropriate, and that individual based reporting is the optimal way to meet both privacy and safety objectives for at risk borrowers. Account-based reporting necessarily includes weighing up the privacy rights of one joint account holder against the safety and privacy rights of the other. Safety should trump privacy in these circumstances.

The assumption that account-based reporting is fundamental to the credit reporting system is not correct. While we recognise that converting the entire system to individual reporting would entail costs, individual reporting is possible in discrete cases. Our anecdotal experience is that credit providers can manually report different repayment histories for different joint account holders. In the context of victim survivors of economic abuse, this change can be critical.

The credit reporting framework should allow the credit information on joint accounts to be split in discrete economic abuse situations where the CP and the individual agree it is the best option.

### Case study 24 – Josephine's story

In 2015 Josephine took out a joint mortgage with her two siblings over an investment property. They have an agreement about how much each sibling will pay towards the loan. Unfortunately, one of her siblings struggles with mental health issues and can be very controlling and abusive. When he does not get what he wants he stops making payments on the mortgage. The joint loan is now three months in arrears and Josephine's credit report is beginning to show missed payments in her RHI even though she and her sister pay their portion each month.

Josephine's relationship with her unwell sibling has now broken down. He is taking the rental income directly from the tenants in the property and not making any payments on the loan. Josephine and her sister cannot service the loan on their own. They have hired a solicitor to go to court to sell the property but in the meantime Josephine's credit history is getting ruined. She wants to purchase her own property once this one is sold but she won't be able to with a poor credit history. She has asked the bank about a hardship arrangement but was told she needs her brother's agreement to put that in place. Even when she pushed back and told them this is an abusive situation the bank still said they would try to contact her brother for the next 2-3 months before actioning the hardship arrangement.

*Financial Rights, S305012*

#### Best practice guideline

Finally, consumer representatives support the development of a best practice economic abuse guideline for CRBs and CPs developed by ARCA for individuals experiencing or fleeing

violence. The ABA guideline on Financial Abuse and Family and Domestic Violence sets an excellent industry standard including recognition of a trauma informed approach (and is recognised by AFCA), but not all lenders are ABA members. CRBs also need guidance on best practice when a victim survivor reaches out with a security or correction request.

## Case study 25 – Saskia's story

In mid-2021 Saskia was refused credit for a small loan to cover her pet's surgery. She was told this was because of a problem with her credit report from a specific CRB. She requested a copy of her report. Even though Saskia supplied all the information requested and uploaded a copy of her current license, passport, Medicare Card and Pension Card she was refused access to her report. She was told she had not sufficiently identified herself in order to obtain access to her credit file.

Saskia called the CRB and offered to supply further documentation (such as a birth certificate or marriage certificate to her former husband) but she was told this would not assist. She was asked by the representative on the phone if her ex-husband could contact them to confirm her identity. Saskia told the representative that her ex-husband was abusive, they are divorced and she does not have any contact with him but the representative still suggested he could confirm her identity.

When Saskia reached out to Financial Rights for assistance she was still not able to get a copy of her report, still did not know why she had been refused credit and did not know if there was incorrect information on her report which needed correction. The situation was causing Saskia significant distress.

*Financial Rights, C25708*

## Case study 26 – Financial Counselling story

I requested a debt waiver and removal of a default listing for a family violence victim-survivor from a rent to buy company (consumer lease provider). In response to my request the creditor said they would not remove the default for the following reason:

*The default to be marked as PAID*

*Note: Equifax has very specific guidelines for default removal, with "compassionate grounds" - in this case related to domestic violence not included.*

*Economic Abuse Reference Group*

### Case study 27 – Wendy's story

Wendy had escaped an abusive relationship and was beginning to put her life back together. She applied for a car loan and was rejected because, unbeknownst to her, Wendy had a commercial listing on her credit report. Wendy contacted the company with which the listing was associated and discovered that her ex-partner had put her down as a 'manager' of that company on a credit application. Wendy explained this to the company, and the company said that they would remove the listing if she sent them a considerable volume of personal information about her circumstances.

Wendy came to us for advice on how to limit the information she gave to the company. Much of the information the company requested related to the period during which she was in an abusive relationship. Wendy would find it challenging and re-traumatising to find and submit some of her personal information from that time.

Wendy wanted to protect mental health and her personal information, but she also wanted to have this problem rectified quickly. If she was comfortable, Wendy could give the company a copy of the Apprehended Domestic Violence Order which she had handy, and which related to that period. That should satisfy the company with most of the information they needed that Wendy did not declare herself a manager. Disputing the listing herself may be a quicker solution to the alternative of lodging a complaint with the Office of Australian Information Commissioner (OAIC). As this was a commercial credit report the credit provider was not a member of AFCA.

*Financial Rights, S291610*

## Recommendations

35. **The credit reporting framework must give CPs the flexibility to not list or to correct past credit reporting information, especially for victim survivors of family violence.**
36. **Consumer representatives also submit that where FDV arises, credit providers have a positive obligation to inform a survivor/victim of the options available.**
37. **The credit reporting framework should include a mechanism for splitting joint accounts in discrete economic abuse situations when the CP and the individual agree it is the best option.**

## Should additional consumer protections or other regulatory provisions be applied to credit repair services?

Licensing debt management firms (including credit repair services) was an important first step. These firms are now all in AFCA which makes complaints much easier for consumers. ASIC also has ongoing oversight of these businesses. However, licensing alone has not fixed all the problems that consumer representatives saw for years and still see even after the Government took legislative action in 2021. Licensing alone has not ensured that people now get high quality, competent advice they can trust. Time and again, our services saw problems with DMFs *that already held an Australian Credit Licence*.

Consumer representatives still support specific conduct rules to be put in place, including making DMFs subject to a best interest' duty, minimum education and training requirements and a ban on advanced fees. We have also called for a ban on unsolicited selling, and requirements to signpost to the free services that can help instead, such as financial counselling services. [34]

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## Recommendations

**38. Introduce a requirement that all action and advice by DMFs be in the customer's best interests, appropriate to their individual circumstances, and based on a sufficiently full assessment of their financial circumstances.**

**39. Introduce specific conduct obligations into the DMF licensing regime which include:**

- **a. A ban of upfront fees.**
- **b. Require DMFs to meaningfully sign post the availability of free services in their advertising and during the firm's early contact with consumers.**
- **c. Extend the ban on unsolicited selling in financial services to DMFs.**
- **d. Require minimum training standards for all DMFs.**
- **e. Clarify that advice and action by licenced DMFs must have regard to the consumer's overall financial position and individual circumstances, including on products beyond those regulated by the NCCP Act.**

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[34] The full Joint Consumer Submission to the Treasury can be read here: https://consumeraction.org.au/licensing-debt-management-firms-exposure-draft-regulations/

## How can the credit reporting complaints framework be improved?

In almost all other areas of financial services, complaints data is proactively monitored and regulated by ASIC. The regulator for credit reporting should be collecting and analysing CRB complaints data, looking for trends and giving feedback to the industry on improvements they could make. If ASIC was the regulator it could also apply its Regulatory Guidance 271 to CRBs.

Currently in Australia there is very little incentive for CRBs to invest in and improve their complaints handling. Our experience is CRB complaints handling teams are understaffed and lack appropriate training and expertise. CRBs invest in credit provider-facing systems to ensure that their most profitable arms of the business run smoothly and reliably, but the same is not the case for consumer-facing services like complaints handling.

## Is the credit reporting corrections process leading to adverse implications for the credit reporting framework (e.g. data reliability)?

Yes. Poor complaints handling in credit reporting contributes to consumer demand for credit repair services. It also leads to wasted time, effort, cost and frustration for consumers and impairs economic activity when loans are refused and sales transactions fall through.

## What is the experience of Indigenous Australians with the credit reporting framework?

*Mob Strong Debt Help was consulted closely in response to this question. Mob Strong is a free national Aboriginal and Torres Strait Islander-led legal advice and financial counselling service. The program specialises in financial counselling and legal advice about consumer loans (such as credit cards, pay day loans, car loans, rent to buy, and unregulated credit like buy now pay later), banking, debt recovery and insurance (including car, home, life and funeral insurance).*

As with many other consumers, many First Nations consumers struggle with the complexity of the credit reporting framework. All the same issues raised above apply to First Nations consumers including a misunderstanding of FHI. They think FHI will be bad for them and that impacts their willingness or understanding of the short-term benefit of entering a hardship arrangement. First Nations people also do not understand the relationships between the credit reporting industry and credit repair businesses (which usually come up first in a Google search).

First Nations people can find it difficult to get access to their free credit report. They may find the right links to get them to the websites for Equifax, Experian and Illion, but navigating from those home pages to the free reports is more complicated. CRB frontline staff, from our experience, do not often demonstrate cultural, vulnerable or trauma informed training when engaging First Nations consumers.

However, the most important challenges facing First Nations consumers when engaging with the credit reporting framework are identification and digital exclusion issues.

## Identification issues

Consumer lending in Australia relies on credit providers and credit reporting bodies having reliable identity information for consumers. With the increase in frequency and scale of mass data breaches and identity theft there is a growing risk that cyber criminals will use stolen identify information to open transaction accounts and apply for credit in a legitimate consumer's name. The importance of identification in credit reporting can cause problems for First Nations communities for a number of reasons.

Some First Nations people cannot access traditional forms of documentation to prove their identity. This can be for:

- emergency reasons following natural disaster,
- personal circumstances such as those fleeing domestic violence,
- reasons of location such as living in a remote, regional and rural area or
- structural barriers, such as being incarcerated or not being provided with standard identification at birth.

But even when identification has been sourced and accepted, financial counsellors and other consumer representatives working with First Nations clients sometimes need to support community members to re-verify their identity when contacting a credit reporting body to get access to a credit report or when things go wrong.

This process gets more complex when the client's identification details do not marry up with the records held by the CRB, such as name misspelling, change in gender, a change in name after marriage or sorry business, incorrect date of birth or no exact or updated residential address.

Supporting our First Nations clients through the complexities of obtaining and providing identification with financial services firms can be challenging.  Moves to further embed digital forms of identification into the functioning of our economy will have disproportionate impacts on our client base.

### First Nations digital exclusion

First Nations people face a digital exclusion. The Australian Digital Inclusion Index uses survey data to measure digital inclusion across three dimensions of Access, Affordability and Digital Ability. The most recent Australian Digital Inclusion Index released in July 2023, found that there was an overall Index Score of 73.4 for non-First Nations Australians but only 65.9 for First Nations Australians, reflecting a national gap of 7.5 points for First Nations people. This only increases when examining cohorts in regional, remote and very remote areas. First Nations people living in remote and very remote areas had particularly low levels of digital inclusion, respectively 24.4 and 25.3 points below the national non-First Nations average.

Closing the digital inclusion gap and improving access to digital services for First Nations people has been acknowledged by government and it a key part of the National Agreement on Closing the Gap. The National Agreement on Closing the Gap includes digital inclusion as part of the Access to Information target (Target 17) – by 2026, Aboriginal and Torres Strait Islander people have equal levels of digital inclusion.

The digital inclusion gap is complex and involves overlapping issues of access, affordability and digital ability. If not addressed now, First Nations people are likely to fall further and further behind as the economy and government inexorably moves towards a digitally dependency – one that, in practice, will require digital access to basic interactions with corporations and government bodies.

### Key issues facing First Nations communities and identification

First Nations communities have had a fraught history with accessing and using identification documentation. Many Aboriginal and Torres Strait Islander people do not have conventional identification documents, such as a driver's licence or a birth certificate. For others there may be conflicting information on different documents, for example, the name they commonly use is different to that which appears on their birth certificate. Names may have been poorly recorded or spelt incorrectly on their birth certificate. Others still, use their traditional name, their English name and a commonly used nickname in different circumstances.

This has led many community members facing barriers to meeting standard requirements for identification, which can lead them to being excluded from accessing services – particularly essential financial services like credit reporting.

For example, bank lending processes requiring the production of mainstream identification documents are not readily available to many members of the community – this can marginalise First Nations people by making low documentation, high-cost payday lending, buy now pay later and wage advance products more readily accessible and available. This exposes them to increased risk of financial harm.

Culturally, Aboriginal and Torres Strait Islander people have a preference for face-to-face engagement and service delivery. There is an importance placed on relationships, and building trust and accountability that can only take place in person. Requiring use of digital means to engage with a service undermines trust and acceptance.

Digital literacy levels are low with a particular divide between young community members and Elders. There are few resources available to assist First Nations people to work their way through the complexities of identifying themselves for a commercial or government service. While banks and insurers have made some commitments to supporting First Nations people with identification issues under their Codes of Practice[35] and industry guidance[36] these have yet to go far enough to proactively assist customers. In the meantime, First Nations people are reliant on assistance from social services and financial counselling organisations to help them through this process, organisations that are rarely if ever explicitly funded to provide this much needed support.

Given the connectedness of families and the collectiveness of Aboriginal culture, sharing of digital devices and data is also common. The sharing of devices and data can also result in conflict and at times lead to forms of financial abuse.[37] This can involve the use of digital technologies to access resources (like data and bank accounts) without the owner' - often Elders like parents or grandparents - knowledge or using bank details or debit cards to transfer money, leaving people without money for necessities.

There are also significant language barriers, in both oral and written form, and where English is often not people's first language. The use of Aboriginal-English by First Nations consumers is often not detected by service providers, appropriate interpreter services not provided or made available resulting in significant barriers to understanding on both the side of the consumer and the financial service provider.

## Recommendation

**40. CRB frontline staff must have sufficient cultural and trauma informed training to engage with First Nations consumers.**

[35] Clause 35(c) Banking Code of Practice, Clause 100. General Insurance Code of Practice, Clause 6.14 Life Insurance Code of Practice

[36] ABA Industry Statement: Supporting Aboriginal and Torres Strait Islander peoples

[37] Rogers, J., Marshall, M., Osman, K., & Pham, T. (2023). Connecting in the Gulf: Digital Inclusion of Indigenous Families Living on Mornington Island Report. Brisbane: Queensland University of Technology, https://research.qut.edu.au/dmrc/wp-content/uploads/sites/5/2023/03/Connecting-inthe-Gulf-Final-Report_March2023-1.pdf P

41. **Credit Reporting Bodies should be required to use best practice for Identification in line with the Austrac Guidelines.**

42. **There must be easy and accessible phone-based methods for requesting access to a credit report.**

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# Part Seven Questions – Access to and use of credit reports

## Should credit reports be able to be used for other purposes beyond a 'credit purpose'?

No. Credit reports should only be used for credit purposes. The fundamental principles underlying credit reporting information is that information must be relevant to a person's creditworthiness. This is why initiating proceedings and Court judgments not related to a client's creditworthiness are not allowed to be listed by CRBs.

If credit reports begin to be used for other purposes beyond a 'credit purpose' CRBs might begin listing public information on credit reports relating to things beyond creditworthiness. CRBs are data brokers, and already trade in other forms of consumer information beyond credit related information. The example of insurance reports is described above. The public interest trade off of allowing sensitive credit related consumer information to be used and disclosed by the credit reporting industry was that it would be used for the narrow purpose of assessing creditworthiness and assisting in consumer credit risk assessments.

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## Recommendation

43. **Credit reports should not be able to be used for other purposes beyond a 'credit purpose'.**

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## Should credit reports be accessible to a broader range of commercial entities, such as real estate agents?

No.

## Real estate agents

Some real estate agents already try to circumvent the law in Australia by requiring people to access and provide their own credit reports in rental applications. This was an issue canvassed by the OAIC in its 2021 CR Code Review final report. When people are in financial difficulty, they are quite rightly advised to prioritise payment of their housing, whether that be a mortgage or rent. This is to ensure they are able to maintain a roof over their heads, and that of their family. It would be very ironic, and poor public policy, if this very act of prioritisation meant a person could not secure housing in future because in prioritising their rent, they failed to pay their consumer credit accounts on time.

Anyone, no matter what their background or payment propensity, can fall into financial hardship. Anyone can become seriously ill, or suffer injury in an accident, or experience family breakdown. This can impact on capacity to pay loans and other debts. To ensure access to housing for as many people and families as possible, it preferable to exclude real estate agents from the credit reporting system and to shore up the current prohibition rather than remove it.

The only issues that should be relevant to accessing housing should be one's record as a tenant. National rental vacancy rates in April were only 1.21 per cent— a figure experts say is half the level considered a healthy rate of vacancy.[38] Consumers with less than perfect repayment history information, or with any FHI will surely be turned away by real estate agents if there are other perspective tenants with no missed payments.

## Employers

A similar argument applies to employers. A person's fitness for a particular job should be predicated on their capacity to do the job effectively. To judge a person's fitness for employment on their credit history is both irrelevant, and also inequitable. If an episode of financial difficulty could jeopardise a person's ability to find employment at the time or in the future it would seriously curtail their ability to recover from financial hardship, leading to a vicious cycle of disadvantage.

## If so, what consumer protections should apply to these entities' use of credit information and how could this be enforced?

If real estate agents or employers were to be given access to credit reports (which we would strongly oppose) they should only be able to access negative reporting information, not

[38] https://www.sbs.com.au/news/article/renting-in-a-cost-of-living-crisis-four-key-things-tenants-should-know/2rxlnk0ur

comprehensive credit reporting information like repayment history or financial hardship information.

### What would be the costs and benefits of expanding access?

The costs of making credit reports accessible to a broader range of commercial entities would be borne by those people who have experienced periods of financial hardship in the last twelve months or who have had periods of erratic repayment histories in the last two years. The cost would be a less equitable nation with more homelessness, less social mobility and less financial resilience.

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## Recommendation

**44. Credit reports should not be accessible to a broader range of commercial entities, such as real estate agents.**

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## Should non-financial participants such as telecommunications and utility providers be able to contribute repayment history and other positive reporting data?

No.

Consumer representatives have serious concerns relating to the use of CCR (specifically RHI/FHI) by certain credit providers or for credit products which are not subject to responsible lending obligations under the NCCP. The ALRC recommended repayment history information only be permitted once credit providers are subject to responsible lending obligations.[39] These obligations require providers to assess whether the credit is affordable and whether it meets the consumer's requirements and objectives.

These include utilities, telecommunications, BNPL products, small business lenders and agents of credit providers (debt collectors). Consumer representatives strongly oppose any increase to the types of entities that can report or access consumer RHI/FHI.

To access the full CCR regime, lenders must hold an Australian Credit Licence (ACL) applicable to consumer lending and provide consumer lending data to credit bureaus and other credit providers. We know many members of the credit provider and credit reporting

[39] Explanatory Memorandum, Privacy Amendment (Enhancing Privacy Protection) Bill 2012, p. 25

industries support expanding the categories of lenders that can contribute to, and access data from, the CCR scheme. The ability to contribute to, and access, full CCR data should only be available to licensed service providers in relation to credit products that are subject to responsible lending obligations (RLOs). These obligations require providers to assess whether the credit is affordable and whether it meets the consumer's requirements and objectives. These are vital consumer protections. Consumers care deeply about their credit reports and the threat that negative RHI might be listed on a credit report will be a real one. However, if the original credit was not subject to a proper affordability check as required by RLOs, this will distort the credit reporting system, resulting in an uneven playing field and disadvantaging consumers.

In 2010, the NCCP imposed responsible lending obligations on entities providing regulated loans. This resulted in a recommendation by the Australian Law Reform Commission that Australia should move to a positive credit reporting system, but that RHI could only be collected and accessed by those entities who had an ACL and were subject to legislated responsible lending obligations. In 2012 when the legislation was drafted, there were no unregulated credit products being sold by licenced credit providers, only by marginal fringe lenders.

In fact, the Explanatory Memorandum from the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 clearly stated:

*"The fifth kind of personal information, repayment history information, is only available to credit providers who are licensees under Chapter 3 of the National Consumer Credit Protection Act and subject to responsible lending obligations under that Chapter."*[40]

## It is common for telco consumers to miss repayments

It is very common for consumers to miss telecommunications bills and fail to make repayments due to experiencing broader financial hardship and prioritising other essentials over their telecommunications bills. Research by the Australian Communications and Media Authority (**ACMA**) research indicated that:

- '25% of Australians had experienced payment difficulty or concerns in the previous 12 months for at least one of their essential services bills (telco, energy, water) and 48% of those had difficulty with their telco bills'[41]. The ACMA noted that 'this represents

[40] Explanatory Memorandum from the Privacy Amendment (Enhancing Privacy Protection) Bill 2012,https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4813_ems_00948d06-092b-447e-9191-5706fdfa0728%22

[41] ACMA. 2023. Financial Hardship in the telco sector – Keeping the customer connected (2)

just under 2.4 million Australian adults in financial difficulty or concern for their telco bills in that period'[42].

- Telco services were most likely to be paid last, after home loans and electricity[43].
- It was very common for consumers to cut back and make sacrifices elsewhere to be able to afford to pay their telco bills.[44] This most often involved cutting back on their groceries.[45]
- '80% of people who experienced recent bill payment difficulty had problems paying multiple bills at the same time'.[46]

As telecommunications expenses are of a lower priority than other essential bills, telecommunications debt and consumers' inability to pay telecommunications bills is often noted by financial counsellors as a symptom of broader financial hardship rather than a customer's lack of responsible financial management.

This is further supported by the following ACMA research which notes that:

- Those in difficulty with telco bills were more likely to be in difficulty for 'most/all of the past 12 months' (32%), compared to those who were in difficulty with non-telco bills only (9%).[47]
- Telco bills are likely to be an ongoing concern for customers who have to prioritise other bills.[48]

## Vulnerable cohorts of people tend to have more erratic repayment histories

ACMA research in 2023 noted that financial difficulties do not affect all age groups in the same way. Difficulty paying telco bills was most common for:

- Surveyed participants aged: 18–34 (58%).
- Surveyed participants reliant on government payments (62%).
- Surveyed participants living with disability (58%).

[42] ACMA. 2023. Financial Hardship in the telco sector – Keeping the customer connected (2)
[43] ACMA. 2023. Financial Hardship in the telco sector – Keeping the customer connected (36)
[44] ACMA. 2023. Financial Hardship in the telco sector – Keeping the customer connected (36)
[45] ACMA. 2023. Financial Hardship in the telco sector – Keeping the customer connected (36)
[46] The importance of the service to the household was a very important factor in deciding which bill to pay first, but a large majority would pay higher-value bills first (68% compared with 32% who would not)'. ACMA. 2023. Financial Hardship in the telco sector – Keeping the customer connected (2)
[47] ACMA. 2023. Financial Hardship in the telco sector – Keeping the customer connected (19)
[48] ACMA. 2023. Financial Hardship in the telco sector – Keeping the customer connected (20)

- People having difficulty with telco bills were twice as likely (44%) to cite physical or mental illness or injury as a factor than those having difficulty with non-telco bills (20%).[49]

According to the 2023 Australian Digital Inclusion Index, substantial numbers of Australians continue to experience affordability stress, meaning they would need to pay more than 5% of household income to maintain quality, reliable connectivity. The cohorts particularly impacted include:

- People with disability (55.1%, down from 72.0% in 2021)
- People living in public housing (64.1%, down from 80.2% in 2021)
- People over the age of 75 (65.2%, down from 80.7% in 2021),
- People who are currently unemployed (69.4%, up from 62.0% in 2021).[50]

Difficulty paying telecommunications bills is most acutely experienced by vulnerable or disadvantaged consumer cohorts. The data above demonstrates that telecommunications debt is an expected outcome of the experience of financial hardship as consumers often have other, more expensive bills to pay first. Telecommunications debt should not be treated as an indicator of irresponsible spending as it is more often an indicator of a consumer experiencing broader financial hardship. Consumers are more likely to miss or default on telecommunications payments because they are likely to be prioritising other essential expenses.

## Expanding positive credit reporting to non-financial providers risks further entrenching poverty

Telecommunications debts may be attributable to several factors, including:

- Consumers experiencing broader financial hardship and having to prioritise other essential expenses such as housing, electricity and groceries over telecommunications expenses.
- Consumers being irresponsibly sold telecommunications products and services and incurring telecommunications debt they may not be able to reasonably repay.
- Economic abuse, resulting in consumers possibly being unaware of the true state of their finances and having perpetrators of economic abuse wrongfully originate debts on the victim survivors' behalf.

Considering these factors, telecommunications debt cannot be always attributed to financial mismanagement and should not reflect a consumer's creditworthiness. Requiring granular telecommunications debt reporting in revised credit reporting requirements would

[49] ACMA. 2023. Financial Hardship in the telco sector – Keeping the customer connected (18)
[50] ADII. 2023. Measuring Australia's Digital Divide. (5)

contribute to further entrenching disadvantage in vulnerable consumer cohorts who are experiencing multiple, often overlapping disadvantages.

## Poverty premium: the poor end up paying more for credit products

Allowing credit providers access to telecommunications repayment information would have the effect of further entrenching disadvantage as telecommunications debt may also be attributed to irresponsible credit practices by telecommunications companies.

Providing credit providers with access to this information would likely only exacerbate financial exclusion. Telecommunications repayment information should be hidden from credit providers to reflect the established public policies which prioritise consumers' connectivity and only allow service providers subject to responsible lending laws to list RHI.

## Utilities

Many people pay their bills late given winter and summer bill spikes, but most will get back on top of any financial hardship after a period of time. Expanding CCR to allow utilities providers to list RHI would act as a further penalty for being on a low income and is not necessarily an indicator creditworthiness (for suitable amounts of credit).

Research has shown that expanding credit reporting to different types of data sources exacerbates inequality. "People with a fair or poor credit score become stuck in cycle of high interest rates and costly loan terms, large required down payments, and are denied applications for rentals, phone plans, and employment."[51] Consumer representatives fear that enabling greater access to CCR by energy, utilities and telecommunications providers will only make it harder for low income consumers to access fair market prices for essential services.

Utilities (like energy, gas and water) are essential services with characteristics (such as significant fixed elements) which mean there is not a link between what people can afford and what they use. This places them in a position of accumulating bills (credit) with little or no agency. This fundamental fact is recognised in the protections frameworks in energy - ensuring that protection is available to everyone. Consumer protections around utilities recognise there are common circumstances which may lead to substantial arrears and should not prejudice people's ongoing access to energy services. We believe allowing energy payments to be credit reportable would overturn these protection frameworks and lead to a

[51] Pamela Foohey, Sara Sternberg Greene; "Credit Scoring Duality" *Duke Law School Public Law & Legal Theory Series No. 2022-03;* 28 Dec 2021*;* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3992749

potential ripple effect of people's energy history not only impacting their access to energy - but impacting their access to other essential financial services.

Expanding repayment history reporting to utility providers would not just impact people with 'poor credit' but would have potential impacts on a significant proportion of the population (i.e. anyone who might experience periods of arrears and debt).

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## Recommendation

**45. Non-financial participants such as telecommunications and utility providers should not be able to contribute repayment history and other positive reporting data.**

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## Do current access seeker arrangements adequately enable people to obtain appropriate assistance to gain access to their credit reporting information?

While access seeker arrangements have improved greatly in the last 10 years, there will always be cohorts of people who experience vulnerability that struggle to access their credit reporting information. Digital exclusion is the biggest concern we have. Groups of people who live remotely and have limited access to reliable internet, or older people who are not comfortable in a completely digital environment still struggle to access their credit reporting information.

**Financial Counsellor Comments**

There are issues with prisoner access to credit reports. I have a supervisee who does outreach services at a regional NSW Correctional Centre. She currently has 6 clients who she has been trying to get a credit report for but as Equifax does not accept paper requests anymore and for some reason can't understand why they wouldn't have internet access. It is basically impossible for a prisoner to get online access to set up an email and to then get their report. She has resorted to getting reports from Illion which of course means she is restricted in the level of info retrieved and therefore restricted in the ways she can assist them.

As discussed above, there are also issues with being able to provide sufficient identification documents for First Nations people and migrants.

Consumer representatives still see ongoing problems with consumers trying to access their free credit reports. For vulnerable consumers that do not have access to the internet, or don't

have an email account, it is still very difficult to get a free copy of their credit report. The CR Code should require that CRBs make it simple and easy for a vulnerable consumer to get a free copy of their credit report over the phone or by filling out a printable form and sending it by post.

In the 2021 CR Code Review consumer representatives strongly supported introducing a mechanism in the CR Code through which credit reports could be accessible from all CRBs following a request to any one CRB. Unfortunately, the OAIC concluded that the requirement for CRBs to conduct identity verification make it impractical for an individual to make one request to all three CRBs while also ensuring that each CRB has met those requirements.

## Case study 28 – Miranda's story

Miranda is an Aboriginal mother of 2, living out in regional NSW. Miranda has an intellectual disability and also psychological disability stemming from a violent and abusive relationship. Miranda had several debts that she was struggling to repay which were the result of economic abuse by her ex-partner. One large debt was for a car loan even though Miranda could not drive, and she never had possession of the car. The car was involved in an at-fault, total loss event. Her partner made payments up until he was jailed after he viciously attacked her. Miranda made payments until she could no longer afford it as she raised her two children. The other debt was a telephone debt in her name, which he had her set up and promised to pay.

When Miranda reached out for help she was not interested in disputing the debts, or reviewing what happened, even though her liability was questionable and she may have been entitled to some money back – her ex was in jail and she just wanted to clear her credit report to help her chances with securing affordable finance and not have debt collectors ring her and focus on her kids and being safe. She didn't have any details as to who had the telephone debt.

Financial Rights assisted getting a copy of her credit report which was challenging as she did not have a computer or phone that could set up the account or the digital skills to create an account with the credit reporting bureau. It required uploading several forms of identification to verify her identity. Once we helped her get her credit report we were able to identify the second default. Financial Rights' helped Miranda by contacting the debt collector, supplying evidence of the domestic violence and of the assault and her partner's jailing. Eventually each debt was resolved and her credit score improved from "below average" to "average". There is no way Miranda could have achieved this outcome without casework assistance.

*Financial Rights, C186139*

Consumers do not understand that their credit reports from each CRB might differ, making it important to get a copy of each when going through a dispute or corrections process. It is also important for victims of fraud or financial abuse to keep an eye on all three CRB reports. This process would be much simpler and more reliable if in the same way that an individual may request a ban period with all CRBs through a single CRB, an individual could get all three of their credit reports after seeking access from one. Having one process to obtain their credit reports is also a trauma informed approach for consumers experiencing financial abuse as they are often living in crisis, which makes even the most simple administrative tasks impossible.

Consumer representatives have also found there is an issue of consumer organisations' authorities to act on behalf of clients not being accepted by CRBs. Financial counsellors and community lawyers have reported difficulties accessing credit reports for their clients even when they have an authority in place. The credit reporting framework should require CRBs to recognise standard authorities which are regularly used by financial counsellors and consumer advocates. Financial counsellors have reported that Equifax is the only CRB has allows FCs to submit a request for a copy of their client's credit report online. Even so, the provision of the report in a timely manner is inconsistent and often requires escalation.

The final access-related issue is about landlords requesting credit reports in rental applications. There is currently a common problem where real estate agents or landlords request that consumers supply a copy of their credit report as a part of any rental application. This is a common work-around of the rules preventing real estate agents or landlords from accessing the credit reporting system. The credit reporting framework should impose stronger rules preventing real estate agents/landlords asking consumers to supply a credit report in order to apply for rental accommodation.

## Recommendation

**46. The credit reporting framework should require that CRBs make it simple and easy for a vulnerable consumer to get a free copy of their credit report over the phone or by filling out a printable form and sending it by post.**

**47. Credit reports should be accessible from all CRBs following a request to any one CRB.**

**48. The credit reporting framework should require CRBs to recognise standard authorities which are regularly used by financial counsellors and consumer advocates.**

**49. The CR Code should impose stronger rules preventing real estate agents/landlords asking consumers to supply a credit report in order to apply for rental accommodation.**

## How is the consumer framework used to support business or commercial considerations and is this appropriate?

No comment.

## Should Australians be able to permit foreign credit providers and CRBs to access their Australian credit reports? If so, how should this arrangement work?

If information security arrangements can be put in place so that international sharing arrangements do not put consumer data at risk, then yes, consumers should be able to consent to having foreign credit providers and CRBs access their Australian credit reports.

We cannot comment on how this arrangement should work, but there need to be sufficient safeguards in place to ensure Australian consumers are not exposed to international credit scams or have their data put at more risk of a security breach.

## Should foreign credit information from foreign credit providers be able to be included in an Australian credit report?

No comment.

# Part Eight Questions: Privacy, information security and regulatory oversight

## What improvements can be made to the privacy and security of all information in the credit reporting framework?

No comment.

## Should CRBs and entities accessing credit reports be subject to more explicit information security requirements and oversight?

Yes. Greater information security requirements and oversight is of increasing value - particularly given the risk of data breaches.

## Is the definition of a CRB still fit for purpose?

No comment.

## Are there any other categories of activities that should be exempted from the definition of CRB?

No comment.

## Should CRBs be required to register or obtain a licence?

Yes. This would bring them more into line with other financial services providers.

## Should CRBs be required to report data on their activity or compliance to the regulator?

Yes, absolutely. Compliance reports should also be public and transparent.

## Is the level of compliance enforcement with regulatory obligations of credit reporting participants and the enforcement powers of regulatory authorities sufficient?

No.

There is little transparency or oversight when it comes to compliance enforcement of credit reporting participants. The entire framework relies on consumers raising complaints and credit providers and CRBs monitoring each other. Consumers struggle with the first because of the complexity of the rules around credit reporting and there are commercial conflicts when it comes to the second.

The regulatory enforcement regime needs to be completely reworked. ASIC/ACCC should be given oversight of credit reporting and be provided the resources to proactively monitor compliance with the credit reporting framework and investigate trends that come from consumer complaints. The CR Code should have a well-resourced code compliance committee.

The current governance structure relies almost entirely on CRBs monitoring CPs' compliance with their *Part IIIA* obligations, incorporated in their agreements with the CRBs. This structure is an unacceptable conflict of interest. CPs are the paying clients of CRBs, and CRBs will necessarily be dis-incentivised to report any incidents of non-compliance under the CR Code or PRDE. Even if each CRB establishes a documented, risk based program to monitor CPs' compliance, there will inevitably be less thorough reporting of all non-compliant activity than there would be under an independent administrative body or a proactive regulator. Less thorough reporting means that systemic problems will either not be identified or will continue for longer.

In the 2021 CR Code Review the OAIC concluded:

> *The Review did not find evidence of serious, systemic breaches by CPs involving the quality or security of credit report information. However, it is difficult to conclude that there are no issues with CPs complying with their obligations given the limited visibility over the current processes.*

The OAIC did agree with consumer representatives that the CRB audits required under 20N and 20Q of the Privacy Act should also be made public. Unfortunately the amendments ARCA has proposed to make to the CR Code only include a new obligation on CRBs to publish **information** each year about their audit programs; and a power for the OAIC to **request** copies of audit reports. This will not result in a measurable increase in compliance transparency.

We also submit that any steps CPs have taken to rectify issues identified in the course of CRB audits, should also be made public. Without any public reporting there is no transparency or accountability for CP compliance with credit reporting obligations. There is also no transparency of the audits themselves. Are CRB audits ensuring CP compliance with all CR Code obligations, or only the ones related to information integrity? There are also no public reports regarding CRB compliance with the CR Code.

Ideally these results would be given to an independent CR Code governance body to analyse and publicly report on, focusing on trends across the industry and making recommendations for compliance improvements. The CR Code should also include a mechanism for an independent governance body to audit and report on CRB Code Compliance.

### Case study 29 – Gerald's story

Gerald phoned the National Debt Helpline in 2021, unsure of why a Debt Agreement he had entered into in 2014, and had stopped making payments by 2015, was still listed on his credit report as "Not discharged or complete". A financial counsellor helped Gerald write to the debt agreement administrator requesting all documents, and they promptly wrote back advising they had proceeded to ask the CRB to remove the listing. The administrator also relayed the CRB confirmation once the listing amendment had been actioned.

Gerald checked his NPII record, as well as his credit reports with the other two agencies. All of them were clean, suggesting it might just have been an error with the one CRB. There was no explanation as to why the CRBs had been inconsistently reporting his credit history or how the error had occurred.

*Financial Rights, C219014*

# Part Nine Questions: Mandatory credit reporting

## Has mandatory comprehensive credit reporting increased the voluntary participation of credit providers and the voluntary supply of credit information in the credit reporting system?

No comment.

## What are the additional benefits to consumers, small businesses and credit providers from mandatory credit reporting?

Consumer representatives have long supported the mandatory provision of CCLI, especially account information, on credit reports. This is the easiest and most accurate way for a credit provider that is assessing a new application for credit to get an idea about a consumer's liabilities. While there are still many lenders who do not supply CCLI (payday lenders, BNPL, wage advance, etc.) most mainstream consumer credit accounts are now being reported. While we do not have quantitative data to demonstrate it, in theory there are benefits to

consumers through improved responsible lending now that there is more CCLI being provided.

We cannot comment on benefits to small businesses. As to benefits for credit providers they can now price consumer credit at a very granular level because of the predictive value of repayment history information. However, since the surge in increased data availability through CCR coincided with steep interest rate rises, it might be hard to tell how the implementation of CCR alone has affected consumer credit pricing.

## What have been the costs to implement mandatory credit reporting?

While consumer representatives cannot comment on the resourcing required to implement mandatory credit reporting, we can clearly identify one of the costs for consumers is the **loss of flexibility** in how credit providers respond to customers experiencing financial hardship, financial abuse and other temporary vulnerabilities.

We also note that solicitors, financial counsellors and other caseworkers who assist consumers are experiencing greater inflexibility in removing or amending credit reporting information as part of the resolution of a dispute. They often cite the mandatory reporting obligations as a reason for this inflexibility, even in circumstances where we would argue the records are no longer accurate or up-to-date. This is discussed in more detail below.

Consumer representatives have previously raised concerns that the CCR obligations (and PRDE requirements) will result in entities being inflexible when negotiating a resolution to a financial dispute, including decisions around the removal, delay or withholding from listing defaults or other credit information on credit reports.

Consumer representatives (including solicitors, financial counsellors and other caseworkers) regularly include the contents of credit reports in consumer disputes and settlements with industry. When we are assisting clients to resolve financial disputes it is standard practice for us to request that credit providers, debt collectors or utilities companies refrain from listing negative information while negotiations are ongoing and to refrain from listing, or removing a listing, as part of the settlement of a dispute. The majority of industry members will work with advocates to come to a fair outcome for their customers. However, the mandatory CCR legislation and the CR Code does not always permit this type of best practice flexibility.

The mandatory provisions of the CCR legislation only apply to large ADIs, which as defined currently only include the big four banks and possibly also Macquarie Bank. There are many other smaller lenders which will not need to comply with the mandatory provisions of the legislation, but they will need to comply with the CR Code and PRDE. The credit reporting framework should allow CPs to be flexible about removing or not reporting defaults or

missed repayments while negotiating the resolution of a financial dispute with a consumer, or as part of a settlement. If confusion remains regarding the CCR obligations, it can be resolved by ASIC determination under 133CQ(2) of the *National Consumer Credit Protection Act*, as amended by the *Mandatory Credit Reporting Bill* in 2021.

The credit reporting framework can, and should, protect consumers from having information disclosed on their credit files that does not reflect their creditworthiness or is a result of misconduct on the part of a credit provider or other relevant entity. Comprehensive credit reporting in Australia should not interfere with legitimate settlement negotiations. It is a matter between the parties to determine how a dispute is settled and interference with settlement negotiations to remove, delay or withhold the listing of consumer credit information on credit reports is contrary to the public interest as it hinders the ability of the parties to comprehensively settle a dispute.

Until 2021, the comprehensive credit reporting system has been a voluntary system, meaning the relevant legislation has not needed to address the voluntary removal of default listings. It is common for a lender to refuse to formally admit that negative information is inaccurate (for example, due to breaches of responsible lending laws), but nevertheless agree to remove credit information as part of a legitimate settlement agreement. If the law is interpreted so that only an AFCA determination or explicit admission of liability under a relevant law can result in the amendment of credit information, then many more disputes will be fully prosecuted all the way through AFCA, rather than settled in a timely and efficient manner.

## Recommendation

**50. The credit reporting framework should make it clear that CPs can be flexible about removing or amending credit information as a result of the settlement of a liability dispute or because the information was listed as a result of circumstances beyond the individual's control. This should not be confined to default information, but also will include any of the categories of credit information relevant to the circumstances.**

## Have there been any unintended consequences of mandatory credit reporting?

As is discussed in detail above, consumer representatives do not believe the financial hardship provisions of the mandatory credit reporting have struck the right balance between responsible lending and responding to financial hardship.

Financial counsellors as well as hardship teams in the major banks report that borrowers are reluctant to enter into financial hardship arrangements when they are told the arrangement will be reflected on their credit report. This limits the ability of lenders to respond appropriately to hardship and makes it more likely that borrowers will turn to other forms of credit to meet their income deficit.

## Should the scope of mandatory credit reporting be expanded to include other credit providers or other types of information?

Consumer representatives would support mandatory partial comprehensive reporting (CCLI) being expanded to all Australian credit providers that hold an Australian Credit License and are subject to responsible lending obligations. We believe all credit accounts should be listed on a person's credit report to facilitate better responsible lending.

Consumer representatives would **not** support expanding mandatory full comprehensive credit reporting (RHI & FHI). There is significant use of the credit reporting system by mainstream consumer credit providers, but patchy use by BNPL providers and almost none by pay day lenders and other fringe providers. This creates a situation where lenders are making decisions without complete information about a borrower's liabilities, contrary to the intentions of the responsible lending laws. It also means that those consumers who are most likely to be marginal borrowers, are the most likely to be overcommitted. We want to see the supply of account information made compulsory so that all lenders have a clear understanding of the borrower's financial position. While bank statements or 90 days of open banking data are useful, there can be accounts which are open but have not been used for the previous 3 months, or the borrower may have additional undisclosed transaction accounts. The credit reporting system provides a one stop overview of a person's liabilities in an easily accessible format.

Mandatory CCLI for all credit providers would also be useful for family violence advocates who are trying to help a victim survivor unravel financial abuse harm. Having all open accounts listed in the credit report would allow advocates to identify loans which have been taken out by a perpetrator that the victim survivor might not have been aware of.

In order to tie this into submission made above, consumer representatives strongly recommend a move away from enquiries and towards compulsory CCLI over time (despite the recent BNPL changes). These are big picture moves that would support a stronger, fairer, more coherent system that should not be abandoned because of the idiosyncrasies of one legislative proposal.

We note in this context that financial inclusion means access to safe, affordable products, not any product at any cost. Allowing consumers to enter loans they cannot afford because of

gaps in credit reporting engagement does not promote financial inclusion. In fact it is contrary to this objective.

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## Recommendation

51. **Mandatory partial comprehensive reporting (CCLI) should be expanded to all Australian credit providers that hold an Australian Credit License and are subject to responsible lending obligations.**
52. **Mandatory full comprehensive credit reporting (RHI & FHI) should not be expanded to other credit providers.**

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## Are the Part 3-2CA legislative provisions fit for purpose, and if not, what improvements should be made to ensure the legislation is working effectively? Are any of the Part 3-2CA provisions obsolete and can be removed?

No comment.

# Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,

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