AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

16 October 2017

The Office of the Australian Information Commissioner
C/- PricewaterhouseCoopers

By email: AU_2017CRCodeReview@pwc.com

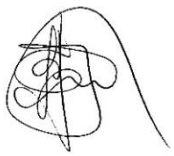
Dear Sir/Madam,

Review of Privacy (Credit Reporting) Code 2014

We refer to the Consultation Issues Paper dated 20 September 2017 in respect to the Review of the Privacy (Credit Reporting) Code 2014(V1.2) being conducted by PriceWaterhouseCoopers (PwC).

Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide the attached Submission for consideration by PwC in respect to this review.

Yours sincerely,
AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION



Alan Harries
CEO
M: 0412 686997
E: akh@acdba.com

SUBMISSION IN RESPONSE TO CONSULTATION ISSUES PAPER

Review of the Privacy (Credit Reporting) Code 2014 (V1.2)

October 2017

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Introduction

Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide this submission for consideration by PriceWaterhouseCoopers (PwC) in respect to the Independent Review of the Privacy (Credit Reporting) Code 2014.

About ACDBA

Australian Collectors & Debt Buyers Association (ACDBA) was established in 2009 for the benefit of companies who collect, buy and/or sell debt. Our members represent the majority of the collection market in Australia[1]. Membership is voluntary and open to all collectors, debt buyers and sellers.

The objectives of ACDBA are to:

- represent the interests of members involved in debt collection and debt buying;
- establish and maintain a Code of Practice for the business activities of members;
- encourage best practice of members in their professional activities;
- provide opportunity for members to discuss and deliberate on matters affecting them professionally; and
- facilitate representation to further the professions of members.

Members are engaged in debt collection and debt purchase activities and may use legal action where appropriate as a means of obtaining payment from debtors. Members act on behalf of themselves (where they own the debt) or on behalf of a diverse client base, which includes the Australian government and large corporations through to small businesses.

In all cases our members commit to collection activity which is legal, professional, complies with the ACDBA Code of Practice (Code) and otherwise takes into account consumers' unique financial and personal circumstances.

The Australian collection industry is large and growing. ACDBA members report the cumulative value of debt they had under collection at 30 June 2017 exceeded $19.4 billion represented by 6.5 million files under management. Debt files by value were handled 37.5% on a contingent collection basis (i.e. on behalf of clients) and 62.5% as debt purchase collections.

Cumulatively, ACDBA members made more than 96.4 million debtor contacts in FY2017 - telephone calls, SMS, emails, non-statutory and statutory letters. For the same period, members report collecting $2.1 billion from accounts under management and writing off over $51.4 million debt in response to genuine long term hardship situations affecting Australian consumers.

Member statistics indicate a very low level of complaints against industry members. Despite the high volume of contacts detailed above, complaints reported against the industry amounted to 1 per 10,746 contacts or 724 accounts under management – this is less than 0.01% per total contacts per annum!

Debt buyers each hold an Australian Credit Licence (ACL) as they assume the role of Financial Service Provider (FSP) upon acquisition of consumer debts from the originating FSP. Pursuant to the obligations of holding an ACL, members currently belong to an ASIC approved EDR scheme.

[1] Refer Annexure A: Listing of members of Australian Collectors & Debt Buyers Association

Complaints recorded as part of Internal Dispute Resolution processes of ACDBA members are considered as any matter related to alleged unsatisfactory professional conduct and lodged as requiring investigation. Complaints should not be confused with genuine requests made by consumers for additional information to understand the terms of an account, the balance outstanding or the history of payments made.

ACDBA members deal largely with consumers who had or are currently experiencing financial difficulties (including financial distress) and as such consumer responses to demands for payment are often emotionally charged. However, as noted above, a complaint rate of 0.01% per total contacts made each year is exceptionally low by any standard and particularly with regard to the financial circumstances of the consumers members engage with. This low complaint rate reflects the high level of professionalism and compassion adopted by all ACDBA members.

ACDBA launched its Code on 16 March 2016 as a mandatory binding condition for ongoing membership. In the period 16 March 2016 to 30 June 2017, no complaints were lodged by consumers alleging any member had breached the ACDBA Code.

In this submission we have adopted the question structure set out in the Selected Issues for Consideration as detailed in the PwC Consultation Issues Paper dated 20 September 2017 and noted our responses.

Selected Issues for Consideration

3.1 Interaction between the Code and the Act

Issue # 1 - Timing and delivery of section 21D notice [Code: para 9.3,(d), 9.3(f), Act: s 21D(3)]

- **What practical issues have you faced, if any, as a result of this inconsistency in timing?**

  Some members have reported occasionally being compelled to have a credit default removed due to wording differences, for example some have listed on the 14th day, when it is clear that the CP needs to wait 14 days and then list.

  Working out this timing is a painful exercise in the situation of an account which has been sold off, due to fact that sometimes key date information is not readily to hand subsequent to the debt assignment. Such issues can result in a delay and unwittingly exposes the debt purchaser to the risk of maintaining a misleading/incorrect listing.

- **What changes to the Code, if any, would you suggest to address this inconsistency?**

  The Code should reflect wording of Act so as to remove any ambiguity and refer to a credit default not being listed before '14 days have passed'.

- **What would be the costs and benefits of any such change?**

  We submit this would impose minimal cost but would significantly benefit through greater integrity of information and in turn reduce the potential for contention over erroneous listings.

- **Should the Code specifically include reference to the electronic delivery of notices to an email address in this context? What would be the costs and benefits of such a change?**

  Yes but CPs and assignees should only be able to rely upon the delivery of electronic notices where the consumer has specified in the originating contract that notices may be sent electronically to the consumers supplied email address and any updated email address supplied by the consumer.

  For evidentiary purposes, a copy of the issued electronic notice should be kept as part of the normal record keeping requirements of the CP.

Issue # 2 - Inconsistency in amounts listed in section 6Q and section 21D notices [Code: para 9.3, Act: s 6Q, s 21D]

- **What experiences have you had in practice with respect to different amounts being listed on the section 6Q and section 21D notices?**

  Our members as the assignees of accounts have reported no issues have been encountered.

- **Has this inconsistency caused confusion in practice, or are consumers made aware that the section 21D notice might be adjusted for interest, fees and other amounts?**

  Members have reported experiencing some issues in circumstances where the CP did not understand when a s88 Notice accelerates the debt and the s88 Notice also contains the s6Q Notice, that the CP was required to issue a further s6Q Notice after acceleration of the debt if they intended to list a default for the accelerated debt. In this case, the original s6Q Notice only pertains to the payment default that caused the issuance of the s88 Notice.

- **What change to the Code, if any, would you suggest to address any inconsistency in the amounts disclosed in the section 6Q and section 21D notices? What would be the costs and benefits of any such change?**

  We would recommend that for clarity, the s6Q Notice should also state that the amount to be listed may increase as a result of interest, fees and other (permitted) amounts. Similarly, the s6Q Notice should also provide that the amount to be listed may be decreased proportionally to any payment made by the consumer.

  The s21D Notice should then be broken down into its constituent parts – the amount as per s6Q Notice, the amount for interest, the amount for fees and other (permitted) amounts, less any amounts paid by the consumer.

  These changes will ensure consistent amounts are contained in the notices plus or minus any adjustments.

Issue # 3 - Other

- **Are there any other issues relating to the interaction of the Code and the Act which should be considered as part of the Review?**

  We recommend the Code should be amended to clearly identify that a s6Q Notice cannot be adjusted to the accelerated amount.

3.2 Practical operation of the Code

Issue # 4 – Notification of accelerated debts on section 6Q and section 21D notices [Code: para 9.3, Act: s 6Q, s 21D]

- **Is the disclosure of 'foreshadowed' accelerated debts clear?**
- **What change to the Code, if any, would you suggest to address any ambiguity? What would be the costs and benefits of any such change?**

  Foreshadowing accelerated debts will only add to consumer confusion.

  We suggest clarification as detailed in our response to Issue 3 above.

  Resolving the ambiguity may potentially reduce CP/Assignee EDR scheme fees which are far greater than the cost of implementing an automated s6Q Notice for an accelerated amount.

  It should be noted that the replacement s6Q Notice should clearly identify that the CP/Assignee is replacing the original s6Q Notice (dated xx/xx/xxxx) with the further s6Q Notice. We would recommend the adoption of a prescribed content and format so as to improve consistency and reduce the potential for consumer confusion.

Issue # 5 - Definition and recording of 'repayment history information' [Code: para 8, Act: s 6V]

- **What are your experiences with the operation of paragraph 8 of the Code with respect to the reporting of RHI in circumstances where new repayment terms have been agreed between the individual borrower and the CP?**

  Our members report no interaction with the operation of paragraph 8 of the Code.

  We note the situation our members encounter as the assignee of accounts is that the debts (full balance) as at the assignment date are due, payable and owing immediately by the consumer to the assignee. Further, at assignment the obligation of the consumer to make a monthly payment under the credit contract has been extinguished.

  Typically, the consumers continued default of the payment obligation, leads the CP to terminate the credit facility and the payment obligation in exchange for the immediate repayment of the credit facility.

  We respectfully submit for the sake of clarity that where an assignee of defaulted debt decides to enter into a repayment arrangement, this is not a variation of the credit contract, but rather it is an indulgence provided by the assignee to allow the consumer to repay the outstanding debt over a period of time.

- **What change to the Code, if any, would you suggest to address the reporting of RHI in circumstances where new repayment terms have been agreed between the individual borrower and the CP? What would be the costs and benefits of any such change?**

  In respect of RHI, we submit it would be up to the individual assignee to determine if the CP wants to opt in and thus deeming the repayment arrangement to be reportable RHI.

  Debt buyers are keen to more fully participate in positive credit reporting and are aware of the principle of reciprocity which underpins access.

We acknowledge that repayments under an arrangement may not qualify as RHI since the original credit contract is in default, but equally when considering the intent of positive credit reporting in giving financially vulnerable consumers the benefit of recording their efforts to repay defaulted debts, the repayment history held solely by debt buyers represents a vast unique source of data which it would be in the interests of both consumers and CPs to expose through CRBs. If not, the behaviour of consumers post default remains the "credit black hole" it has been to date.

Perhaps for a debt buyer as an assignee of the account, no information should be reportable until such time as say either 3 or 6 months continuous payments have been receipted since the commencement of the repayment arrangement to the assignee.

Reporting history could be applied retrospectively in this scenario as we understand currently Equifax is only looking to update quarterly. This will increase the stickiness of repayment arrangements for an assignee and reduce incidents of stop-start repayment arrangements being recorded on the consumer credit file (for example, 8 attempts at repaying the debt with mean average payments for each arrangement of say 1 to 2 payments, with extended periods of no payment in between).

- **What is the most appropriate way, if any, to recognise that new repayment terms have been determined between an individual borrower and a CP?**

  In relation to CPs we understand they are already required to provide written terms of new repayment obligations under the NCC. Perhaps, similar to the proposed hardship flag, this should be reportable to the CRB to show that the date, timing and payment frequency has changed.

Issue # 6 - Inclusion of credit scores on free credit reports [Code: para 19.4(a), Act: s 20R(1)]

- **Have you encountered divergence in practice in provision of credit scores?**
- **Should the Code clarify the requirement for CRBs to provide credit scoring information to the extent they are 'held' by CRBs? What would be the costs and benefits of any such change?**

  No comment

Issue # 7 - Access to free credit reports [Code: para 19.4, Act: s 20R]

- **Are there systemic barriers to members of the community accessing free credit reports?**
- **If so, are there identifiable segments of the community who are particularly impacted?**
- **What changes to the Code would you suggest to address this? What would be the costs and benefits of any such change?**

  We submit that there are no practical systemic barriers given internet access is often available at Centrelink offices and also at public libraries for any affected consumer.

Issue # 8 - Marketing to consumers who have requested a free credit report [Code: para 19, Act: s 20R]

- **Are the requirements of the Code regulating communication with customers who request free credit reports sufficient? If not, what changes to the Code would you suggest to address this? What would be the costs and benefits of any such change?**
- **Are the requirements of the Code regulating the manner in which consumer consent is obtained to receive marketing from CRBs sufficient? If not, what changes to the Code would you suggest to address this? What would be the costs and benefits of any such change?**

We recommend that CRBs be required to automatically opt out any consumer in these scenarios from receiving any marketing material – that is, the consumer must tick 'Yes, I want to receive marketing material' before the CRB can commence to send such material.

Issue # 9 - Timely disclosure of RHI to consumers

- **Do you agree that timely notification of RHI to consumers would improve the system?**
- **Would you support changes to the Code that require a CP to notify consumers of their RHI via their regular account statements? Is there a better approach? What other costs and benefits might introduction of this regular notification have?**

Undoubtedly, automatic notification of RHI would result in consumers being better educated about positive credit reporting.

As a suggestion, if this were adopted, the requirement should be contained and disclosed in the contractual material supporting the creation of the credit facility. Consumers should then be advised, within 5 business days of when they miss a payment, that they have 7 days from the date of the notification to remedy the missed payment or alternatively to discuss the matter with the CP, before the missed payment affects their Credit Score.

Issue # 10 - Inconsistent listing of the same default information by different CRBs [Act: s 20W]

- **Is there a systemic issue in respect of inconsistent listing of default information between CRBs?**

While we submit there have been systemic issues, subsequent changes in the disclosure of which CRB a CP/assignee uses, has attempted to rectify those issues.

Inconsistencies arise where the original CP does not use the same CRBs an assignee uses. Where an assignee is required (both at law and under the assignment contract) to update the CRB of the assignment and ownership of the debt, some CRBs will create new listings at that point in time, but the CRB does not seek, nor are they compelled to create an identical listing to that of their competitor CRB's listing.

We recommend to reduce such inconsistencies, that CRBs when creating new listings upon the assignment and change of ownership of a debt be compelled to create an identical listing for that debt to that of their competitor CRB's listing.

- **Should the Code require processes to be implemented to bring consistency in the timing of listing default information between CRBs? What would be the costs and benefits of any such change?**

  We recommend where a CRB creates a new default listing relating to a consumer, the CRB should be compelled to ensure that a consumer listing is not materially different to any listing placed with another CRB.

  Where a listing is materially different, the onus to rectify (and potentially compensate) we submit should reside with the CRB that created the new listing.

  Imposing such an onus will, we submit, ultimately result in the responsible CRB reverting to the other CRBs to obtain accurate default information (dates, amounts, updates etc) – this will drive consistency in the listings.

Issue # 11 - Identifying breaches of the requirement for CPs to provide refusal notices [Code: para 16.3]

- **Is there evidence to suggest systemic non-compliance with paragraph 16.3 of the Code?**
- **What changes to the Code could be made to promote compliance with paragraph 16.3? What would be the costs and benefits of any such change?**

  No comment.

Issue # 12 - Independent governance of the Code

- **Is there evidence of systemic deficiencies in the administration of the Code that would warrant the appointment of an independent administrative body? If so, what form and powers would such a body have?**
- **What would be the costs and benefits of now introducing a Code administrative body in practice?**

  Most inconsistencies that our members encounter are a result of interpretation by regulators and different EDR schemes and not necessarily by OAIC.

  To overcome this, OAIC could provide state and federal regulators and the EDR schemes with OAIC's best practice/preferred procedure to eliminate such inconsistencies.

  OAIC should also, as part of their delegation to the EDR schemes be the ultimate adjudicator for Code interpretations and procedure – this would result in consistent findings and provide clarity for consumers.

Issue # 13 - Mandatory reporting of default information [Code: para 9.1]

- **Should default information continue to be reported by a CP where it has either entered into a binding settlement agreement with the consumer with respect to the debt, entered into legitimate settlement negotiations with the consumer or acted in accordance with a recommendation or determination by an EDR scheme with respect to a dispute?**
- **Would expansion of the prohibitions in paragraph 9.1 to cover the above situations be an appropriate mechanism to address any concerns in this respect? What would be the costs and benefits of expanding these prohibitions?**

No comment

Issue # 14 - Reporting of Court judgements unrelated to creditworthiness [Code: para 11.1(c), Act: s 6N]

- **Is there a systemic issue of reporting court judgements which do not bear upon creditworthiness to CRBs?**
- **In your experience, is there a consistent practice across Courts in all jurisdictions with respect to the disclosure of only default judgements to CRBs?**
- **What changes to the Code would you suggest to better address the disclosure of Court judgements where they do not reflect an individual's creditworthiness? What would be the costs and benefits of any such change?**

We submit CRBs should be able to report Judgments that relate to liquidated claims. However only Judgments and not other Court Documents should be reported - for example, the recording of a Judgment and an Order setting aside a Judgment would be incorrect, as at law, the Judgment is *void ab initio* (that is, the Parties are yet to have the matter adjudicated by the Court) and so continuing to report both the Judgment and the Order to set aside the Judgment (before the Court's re-adjudication) would be misleading.

The recording of Judgments evidences a consumer's creditworthiness in respect to recoverability of any credit provided. In this respect we have been made aware of a CRB placing the Writ / Statement of Claim on consumers' public files. It is noted however that the allegations contained in a Writ/Statement of Claim are just that – allegations only – we respectfully submit the CRB involved in that practice may be exposing themselves to defamation claims in respect to such reporting.

We understand CRBs purchase public information from the Courts and as such they would have the ability to request the Court only to provide information in relation to liquidated claim Judgments. What appears to be consistent is that the CRBs request information from the Courts, but possibly do not effectively evaluate the received information before placing it on a consumer's public credit file.

The Code should mandate what information is reportable and as discussed above, what is misleading and who is responsible for updating such information. For example, where a CRB purchases the information from the Courts and then reports the information on the consumer's public file, without notice to the CP/assignee, a CP/assignee should not be held responsible for the accuracy of that information.

Issue # 15 - Determining the 'maximum amount of credit available' [Code: para 6.2(b), Act: s 6(1) definition of 'consumer credit liability information']

- **What experiences have you had, if any, with an overlap in the types of credit and a resulting impact on the determination of the 'maximum amount of credit available'?**
- **Should the Code include a mechanism for dealing with the manner in which CPs determine the 'maximum amount of credit available' in situations where there is overlap in the types of credit being provided?**

No comment

Issue # 16 - Determining 'the day credit is terminated or otherwise ceases to be in force' [Code: para 6.2(c)(ii), Act: s 6(1) definition of 'consumer credit liability information']

- **Is there evidence of inaccurate disclosures caused by the ability for consumer credit accounts to be disclosed as closed when they have not been formally terminated?**
- **Should the Code clarify the definition under paragraph 6.2(c)(ii) to avoid any inaccuracy in the disclosure of consumer credit liability information?**
- **What implications might limiting the definition under paragraph 6.2(c)(ii) have on the requirement to continue disclosing information with respect to accounts that have not been terminated but otherwise continue to be in force?**

We note that the date credit is terminated should be recorded correctly as this would allow CP/assignees to rely upon the reported termination date to suppress unscrupulous persons from requesting all notices, statements, etc, after a two year period has elapsed (see NCC s185(3)).

Issue # 17 - Scope of prohibition for developing a 'tool' to facilitate a CP's direct marketing [Code: para 18.1, Act: s 20G]

- **What uncertainties have you faced in practice, if any, caused by the interpretation of 'tools' in this context?**
- **What changes to the Code, if any, would you suggest to address these uncertainties? What would be the costs and benefits of any such change?**

No comment

Issue # 18 - Correction of information mechanism [Code: para 20]

- **What experiences have you had, if any, that suggest the mechanism enshrined in paragraph 20 of the Code is unclear or not operating as intended in practice?**
- **What changes to the Code, if any, would you suggest to address any deficiencies in the adherence to timeframes, clarity of obligations and reasonable steps taken to correct information in practice? What would be the costs and benefits of any such change?**

  Our members report difficulties arise for assignees in obtaining the relevant information from the original CP in a timely fashion so as to support or correct a listing challenged by a consumer.

  Given such practical timing difficulties, we recommend changes to the Code should be made in relation to original listings. That is, where a consumer disputes a listing (via either the CRB or EDR schemes), notification should be required to be sent to both the original CP and any assignee[s] of that credit facility. Further, the original CP should then be required to respond ensuring that correction/relevant information is provided in a timely fashion so as to expedite the correction.

  We submit, it is impractical for debt buyers as assignees to remain responsible for listings created prior to the sale/assignment of an account. The current process which requires the assignee to procure documentation in support of such listings causes extensive delays and complication in resolving disputed listings.

  Additionally there is evidence the current process has contributed to profiteering by 'credit repairers' who leverage the complexity of the process for financial gain, as has been investigated by ASIC in recent years. We submit this change as to where the responsibility for correction lies would be a very effective way of starving 'credit repairers' from profiteering compared to the opportunity as is facilitated under the current correction responsibilities.

  Therefore, as is the case for other regulated obligations, such as compliance with APPs, we believe the original CP should retain responsibility for listing activities prior to assignment.

  We recommend the Code should be amended to support this approach and the OAIC should mandate in its delegation to the EDR schemes that they must follow this approach.

- **Should the Code impose additional requirements on CRBs regarding their complaints handling and internal dispute resolution practices? What would be the costs and benefits of introducing these additional requirements?**

  No comment

Issue # 19 - Listing of statute barred debts [Code: para 22, Act: s 6Q, s 20W]

- **Is there evidence of systemic late reporting of default information?**

  We are unaware of any such evidence.

  Where a debt becomes statute barred under legislation, the CP/assignee has no legal entitlement to recover the outstanding balances. The right can only be refreshed in accordance with the Limitations Act of the relevant jurisdiction. Notwithstanding a refreshment of the right, we note that once the listing has been removed, a CP/assignee is prohibited from relisting the default.

- **Should default information be immediately removed once a consumer has asserted a debt has become statute barred, with the onus on the CP to prove that it is not?**

  We submit an assertion of a debt being statute barred by a consumer on a listing should result in the listing being updated to a status of 'contested'. The onus should then fall upon the CP/assignee to evidence that the listing and debt are not statute barred.

- **What changes to the Code, if any, would you suggest to address the listing of statute barred debts? What would be the costs and benefits of any such change?**

  We recommend the Code should be amended to assert that once a debt becomes statute barred, any listing exceeding 5 business days past the statute barred date be automatically considered as misleading. This will place the onus on the CP/assignee to ensure that such listings are updated at the time of the accounts becoming statute barred.

Issue # 20 - Date applied when listing defaults

- **What changes to the Code, if any, would you suggest to address any ambiguity in the date on which defaults should be listed? What would be the costs and benefits of any such change?**

  We recommend that both dates (default date and listing date) should be included so as to ensure that listings cannot exceed the limitation period.

  We respectfully submit that no ambiguity should exist in relation to a s6Q Notice as such a notice can only be provided once the credit facility is in default.

Issue # 21 - Notification where allegations of fraud [Code: para 17, Act: s 20K]

- **Should the Code include additional obligations on CRBs to notify affected CPs where there has been allegation of fraud? What would be the costs and benefits of imposing these additional obligations?**

  Yes – there would be minimal cost involved in CRBs sending electronic notification to the CP/assignee and the fraud impacted consumer would obtain the benefit of such a one-step notification process.

Issue # 22 - Insufficient range of sanctions available to CRBs [Code: para 23.9]

- **What experiences have you had, if any, with the enforcement or lack of enforcement of sanctions by CRBs against CPs?**

  Our member report no experiences.

- **Should the Code specify additional sanctions available to CRBs to enforce against CPs where they fail to meet their contractual obligations to CRBs? What would be the costs and benefits of introducing these additional specified sanctions?**

  As the terms and conditions of CRB contracts are universally non-negotiable for the party required to utilise the CRB services (i.e. if a CP/assignee is compelled at law to maintain a listing – they are required to become a subscriber to the CRB on the terms and conditions offered) the introduction of additional sanctions may permit CRBs to enforce other obligations contained in their contracts without any degree of reasonableness (for example, payment terms).

  We therefore submit no new sanctions should be introduced which are linked to contractual obligations. Sanctions should be introduced only where they are linked to Code requirements.

Issue # 23 - Disclosure of information regarding access to credit reports [Act: s 6N(d)]

- **What uncertainties have you faced in practice, if any, caused by the lack of clarity around the nature and implications of the access audit trail on a credit report?**
- **What changes to the Code would you suggest to address this? What would be the costs and benefits of any such change?**

  Our members find generally, consumers do not understand the credit report they obtain directly from a CRB is markedly different to the credit report which a CP would obtain in relation to a consumer credit application. Consumers who requests their credit report will be provided with all accesses to their credit file including the audit trail, while a CP would not.

  While, the provision of this information is commendable and promotes transparency for CRBs and CPs/assignees, the provision of the audit trail information only adds complexity and confusion to the report a consumer receives.

  It is noted that as a rule credit reports are not broken down into accessible data (with privacy consent of consumer) and non-accessible data such as the audit trail. We submit credit reports should be separated as such with an explanation that non-accessible data is only provided to the consumer, OAIC and the CRB.

  Additionally we suggest the audit trail information should be further grouped into separate audit trails: applications for credit, listings (inclusive of updates) and access. Application data and listings (inclusive of updates) should then be provided to the consumer with any access only being available to OAIC, the CRB and where permitted an EDR Scheme.

Finally, the report should also be required to include a specific warning for the consumer not to provide the full credit report to a CP or an agent (mortgage broker – most commonly) when applying for credit. This should not be a problem as, at the time of a credit application, the CP is required to obtain a credit report and to meet certain responsible lending criteria under the Act.

Ultimately, the above suggestions are effectively of a format and information nature only. The Code should impose standardisation of the format and content of the credit reports for CRBs to reduce the complexity and confusion reportedly being experienced by consumers.

Issue # 24 - General drafting of the Code

- **Are there specific areas in which the drafting of the Code may lead to difficulty in interpreting and applying the Code in practice?**

  Where interpretation inconsistencies exist, it is recommended that the Code should specify OAIC as providing final and binding interpretations.

Issue # 25 - Other

- **Are there any other issues relating to the practical operation of the Code which should be considered as part of the Review?**

  As mentioned above, all inconsistencies and interpretation issues should be required to be submitted to OAIC.

  This would ensure industry will obtain consistent interpretations. As an example, compare this outcome to the situation which is often encountered with the EDR schemes and their interpretation of legislation: the EDR Schemes are not bound by their own decisions, thus routinely interpretation issues arise where EDR determines inconsistently to its previous interpretations.

3.3 Non-compliance with provisions of the Code

Issue # 26 - Meaning of 'prominently' when advertising the right for individual to access a free credit report [Code: para 19.3]

- **Does the Code provide sufficient guidance on what is required by CRBs to satisfy the obligation under paragraph 19.3 of the Code?**
- **If not, what further guidance is required? What would be the costs and benefits of any changes to the Code?**

See response to Issue 24 above.

Where OAIC makes a determination on an interpretation issues, such as "prominently" (which we agree could only take on its ordinary meaning within the Code and paragraph 19) such interpretation should be published on the OAIC website for all CRB, CPs and assignees to obtain, digest and maintain compliance.

Issue # 27 – CRBs keeping credit information accurate, up to date, complete and relevant [Code: para 5.3]

- **Is there evidence of systemic non-compliance with this requirement imposed on CRBs?**
- **How can the Code better guide CRBs to achieve compliance? What would be the costs and benefits of doing so?**

It is a challenge for both CRBs and CPs/assignees to keep consumer information up to date and accurate. Ultimately, each party is reliant on information being provided by the consumer, and the reality is in some cases (predominantly seen by assignees given the cycle of the account) the consumer has relocated and intentionally not advised the CP/assignee.

It is difficult to envisage any Code amendments that will improve accuracy, apart from a consumer portal that allows a consumer to easily update their information online with the CRB – once again, ultimately the accuracy of the information is dependent upon the consumer.

Issue # 28 - Information requests for an unknown amount of credit [Code: para 7.1]

- **Are there any situations in practice in which a consumer would apply for credit for an unknown amount?**
- **If these situations are unlikely to arise in practice, should paragraph 7.1 be removed from the Code?**

No comment

Issue # 29 - Inconsistency between the definition of 'month' and practices of CPs [Code: para 1.2(i)]

- **What experiences have you had, if any, with this misalignment between the reporting timeframes of CPs and the reporting of RHI required by the Code?**
- **What has been the general effect of this misalignment in practice?**
- **Should the definition of 'month' in the Code be amended to address this misalignment?**

  We recommend a method to rectify this would be for RHI to be required to be submitted on the 15th calendar day of each month for the previous period (i.e. 15/01/xx to 14/02/xx). This would result in consistent application and reporting. Reporting requirements should be that such information be submitted within 5 business days of the 15th of each calendar month.

Issue # 30 - Compliance with transfer of rights requirements [Code: para 13, Act: s 6K]

- **In your experience, does the current drafting of paragraph 13 lead to non-compliance with the requirement notify CRBs of transfer events in practice?**

  No – these requirements reflect current legislation pertaining to assignment and current contractual obligations that are understood and embedded with CPs and assignees.

- **Should the Code be amended to clarify the requirements of the original CP and acquirer in situations of a debt transfer?**

  Yes, we submit the Code should be changed such that the listing record continues to show the original CP which initialised the listing together with the date of transfer/assignment and the details of the assignee.

  Also the Code should be changed to reflect current practices in relation to notification to the CRB – in most cases it is the assignee who is contractually compelled to notify the CRB of the assignment – accordingly the word "both" should be replaced with "either".

Issue # 31 - Other

- **Are there any other issues relating to non-compliance with provisions of the Code which should be considered as part of the Review?**

  No comment

Contact

Enquiries in respect to this submission should be directed in the first instance to:

Mr Alan Harries
CEO
Australian Collectors & Debt Buyers Association
PO Box 295
WARATAH NSW 2298

Telephone: 02 4925 2099
Email: akh@acdba.com

Annexure A - Listing of Members of Australian Debt Buyers & Collectors Association

- ACM Group Ltd
- Australian Receivables Ltd
- Axess Australia Pty Ltd
- Baycorp (Aust) Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- Collection House Limited (ASX: CLH)
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Credit Four Pty Ltd
- Dun & Bradstreet (Australia) Pty Ltd
- National Credit Management Limited
- Panthera Finance Pty Ltd
- Prushka Fast Debt Recovery
- Shield Mercantile Pty Ltd