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Dear Sirs

DraftCreditReportingCodeofConduct

ANZ is pleased to provide a submission in response to the public consultation on the draft Credit Reporting Code (CR Code) that will replace the existing Credit Reporting Code of Conduct.

ANZ has previously provided feedback on earlier iterations of the draft CR Code during consultation with ARCA members. We note that our feedback on certain clauses of the draft CR Code, as set out below, is to a large extent consistent with our earlier comments to ARCA and the CR Code drafters.

Clause 4.1(a)

Clause 4.1(a) of the draft CR Code will require a credit provider (CP) to notify or otherwise ensure that an individual from whom it collects personal information is aware of how that information will be held by the CP.

ANZ's view is that this provision lacks clarity. It is not sufficiently clear to CPs what is required by way of explanation to an individual as to how information will be held. For example, will a CP meet this obligation by notifying the individual that their personal information is held on a server?

ANZ suggests this clause be redrafted so it is more specific to the information required to be disclosed by the credit provider.

Clause 5.1(b)

As currently drafted, clause 5.1(b) refers to s.21D of the amended Privacy Act 1988 (Cth) (the Act) prohibiting CPs from disclosing personal information in relation to consumer credit to a credit reporting body (CRB) if that personal information is not credit information. The CR Code drafters appear to have proceeded on the basis that this is the intended outcome of the Act.

ANZ submits that this is not a correct representation of the new provisions of the Act as the legislation does cover the disclosure of personal information that is not credit information.

Our view is that, unless the Government has indicated its intent to amend the legislation, the CR Code should reflect the legislation as drafted and should not attempt to amend the legislation.

Clause 6.2(b)(iv)

Proposed clause 6.2(b)(iv) suggests that the maximum amount of credit is a static figure for principal and interest loans when in fact the amount of credit falls over time.

In our view, the maximum amount of credit should be a dynamic field reported 'monthly'. This is because the maximum amount of credit available changes over time for a principal and interest loan and it should be updated as part of the general 'complete, accurate and up-to-date' obligations.

Reporting the maximum amount of credit on such a basis is not the same as reporting the day to day balance of the loan. This is because the maximum amount of credit for these types of loans is the outstanding loan balance assuming minimum payments were made during the course of the loan. Accordingly, if the loan is in advance of the scheduled payments, the actual balance of the loan will not be reported.

Clause 6.2 (c)

The effect of clause 6.2(c) of the draft CR Code is that credit will be 'terminated' when the debtor pays it out, the CP writes it off, or the CP terminates the credit 'contract', 'arrangement' or 'understanding'.

ANZ submits this clause should be redrafted as it does not clearly cover the scenario (described in the explanatory notes column) where a credit provider has permanently terminated a customer's access to credit in advance of terminating the underlying credit contract.

CPs will withdraw a customer's access to further credit while the contract is still on foot so that outstanding amounts can still be recovered from the debtor. Only when all outstanding amounts are recovered or the CP decides to write off all or part of the outstanding amount will a contract be terminated. We believe the legislative intention was for consumer credit liability information to be updated with information that the credit is terminated at an earlier point in time.

ANZ has suggested the following alternative wording – in particular under the second bullet point - that more clearly describes where credit will be considered terminated in advance of the underlying credit contract coming to an end. Note: the explanations contained in the proposed drafting below are intended to be included in guidance notes:

Consumer credit is terminated or otherwise ceases to be in force when the credit is no longer available to the consumer. The day consumer credit is terminated or otherwise ceases to be in force and credit is no longer available to the consumer is:

- the day the credit contract is terminated; or [Explanation: this is intended to capture circumstances where the consumer has made all repayments required under the credit contract and the contract has therefore come to an end; or where the credit provider unilaterally 'writes off' the credit and as a result terminates the credit contract]
- the day credit is no longer available to the consumer under the terms of the original credit contract and the credit provider has determined that the credit can not be reinstated to those original terms [Explanation: this is intended to describe the circumstances where amounts are still owing under the credit contract but

access to credit under the original terms has been permanently removed by the credit provider. Examples are where the CP has made the credit immediately payable under an acceleration clause (within the meaning of the National Credit Code) or where a credit card has been permanently cancelled].

This drafting ensures that credit is not terminated until a CP has determined definitively that a customer is not able to return to the original terms of the credit contract and credit eligibility information continues to be reported until that time. While a consumer could conceivably return to the original terms, there should be information reported in respect of those high risk accounts for as long as possible.

Clause 8

Clause 8 of the draft CR Code is predicated on repayment history information only relating to 'monthly' payment arrangements.

Many credit arrangements are based on different repayment periods, such as weekly or fortnightly.

This clause does not deal with how a CP is to communicate repayment history information if repayments are not made monthly. In our view, this clause presents an opportunity to clearly set out how a CP is to report repayment history information when the repayment cycle is something other than monthly and the clause should be redrafted to address this.

Clause 9.1

The objective of clause 9.1 is to preclude a CP from reporting default information to a CRB where an individual has made a hardship request and either:

- The CP has not yet decided whether to allow the request; or
- The CP has not given the individual 14 days to respond to its refusal of the request.

While we understand the intent of clause 9.1, our view is that the drafting of the clause is complicated and it would benefit from a review and simplification.

Clause 21.6(a)

Under proposed clause 21.6(a), where a CP or CRB makes a decision to correct information pursuant to a correction request by an individual, the CP or CRB's notification to the individual must include all credit reporting information or credit eligibility information held by it.

In our view, the drafting of clause 21.6(a) is too wide and places an unnecessary burden on CPs and CRBs to include in a notification every piece of credit reporting information or credit eligibility information held. Accordingly, we submit that clause 21.6(a) should be amended so that it limits the notification requirement to credit reporting information or credit eligibility information that is relevant to the individual's correction request. In our view this would still meet the objective of providing sufficient detail about the correction to check what has been done.

Clause 21.6(c)(ii)

Where a CP corrects credit reporting data which requires notification to a CRB, CP or affected information recipient, the notification obligations are taken to be met if, amongst other things:

- The CP gives notification to any other CP or affected information recipient that has been nominated by the individual; and
- To which it disclosed the pre-corrected information more than 3 months previously: see clause 21.8(a)(iii).

Under proposed clause 21.6(c)(ii) a CP that agrees to a correction request and is relying on clause 21.8 of the CR Code must ask the individual if there are any other CPs or affected information recipients they want the CP to notify of the correction.

On its current drafting, it is not clear that clause 21.6(c)(ii) is subject to 21.8(a)(iii). That is, clause 21.6(c)(ii) seems to suggest that the CP must notify any other CP or affected information recipient the individual nominates, including those to whom the CP has not previously disclosed the pre-corrected information.

In our view, clause 21.6(c)(ii) needs to clarify that, regardless of what the consumer requests, a CP only needs to give notice to CPs or affected information recipients to which it has disclosed the pre-corrected information previously. This clarification will ensure consistency with clause 21.8(a)(iii) of the CR Code.

Clause 23.1(c)

Clause 23.1 imposes record keeping obligations on CRBs and CPs. This includes an obligation in sub-paragraph (c) to keep a record of certain details in relation to each disclosure of 'credit reporting data'.

The Act as amended does not require CPs to record each disclosure of 'credit reporting data'. By definition, 'credit reporting data' includes 'credit information'. The Act only requires CPs to make written notes of disclosures of 'credit information' made to a CRB. Elsewhere in the Act, requirements to make written notes only apply to use and disclosure of credit eligibility information. The Act does not otherwise require a CP to record uses or disclosures of credit information (e.g. disclosures of credit information to another CP).

We therefore submit that clause 23.1(c) must be corrected so that it is consistent with a CP's record keeping obligations under the amended Act

ANZ would be pleased to provide any further information on this submission. I can be contacted

Yours sincerely

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