

• **National Australia Bank**

National Australia Bank
800 Bourke Street
Docklands, VIC
3008

www.nabgroup.com

ABN 12 044 937

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Attention: Mr Damien Paull, ARCA CEO

Re: Credit Reporting (CR) Code of Conduct public consultation

Dear Mr Paull

As an ARCA member, NAB thanks you and ARCA for the work undertaken on the CR Code to date. We also appreciate the opportunity to provide comments on the draft CR Code through this public consultation process.

This submission (attached as an appendix) covers two high level areas, for which NAB has concerns and/or suggested improvements to the CR Code. These include:

1. Challenges relating to its governance by administering bodies;
2. Suggested changes to specific provisions of the CR Code.

NAB is aware of the complexities associated with developing a binding CR Code, which delivers expected benefits to both consumers and industry. Despite this, we are committed to the success of this initiative and trust that our submission will assist in the further development of a functional and effective CR Code.

We look forward to working with ARCA in achieving further maturation of the CR Code and its ultimate implementation in 2014.

It is also acknowledged that some of NAB's concerns in relation to the broader credit reporting framework rest in the Industry Code currently being developed in parallel by ARCA. Central to this is the regulatory suitability of this industry model to the ACCC. NAB awaits the draft of this Industry Code in the near future.

Kind regards



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Appendix

1. Governance- administration of the CR Code

The Privacy Commissioner has flagged in recently drafted guidelines for developing codes that he assumes industry will administer (and fund the administration of) the CR Code. We agree with submissions about the administration of the CR Code made by ARCA (in letter to the Privacy Commissioner dated 12 April 2013). In summary, it is NAB's view that:

- The CR Code is akin to regulation and should not be covered by a guideline intended to address the development and administration of voluntary codes;
- The Privacy Commissioner (rather than the industry) should administer the CR Code as it has legislative force;

Industry will in any case need to fund the administration of the industry code and potentially another administrator to control the audit process. The industry should not have to fund three administrators, which would ultimately be costly and unwieldy.

If the Commissioner does not administer the CR Code, the most preferable alternative model would be to have one industry based administrator. This function would administer the CR Code, audit activities and the industry code; avoiding the inefficiency of having multiple administrators. Challenges relating to the funding of this administrator would remain unclear however, as there is no subscription to the CR Code.

As ARCA has pointed out in its letter, dated 12 April, it is unclear:

- How industry would fund a CR Code administrator, given that it is a compulsory code, rather than one calling for subscribers;
- How industry would share information with a code administrator.

NAB's understanding is that, whether or not a code administrator is appointed, enforcement functions would remain with the Commissioner and that any CR Code administrator would only have a review function. Given this, the CR Code administrator would need to conduct annual reviews on the code's function and effectiveness to know whether it needs to be revised. For this purpose, we envisage that the code administrator will need to see the results of the CRB audits and be able to demand information from credit providers (CPs) and credit reporting bureaus (CRBs). That being the case, legislation will need to be changed to permit CPs and CRBs to share information with the code administrator.

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2. Key provisions of the CR Code

2.1 inefficient management of correction requests

The legislation and the CR code calls on CPs to manage correction requests made in relation to another CP. The assumption that one CP can manage another CP within a 30 day timeframe (or get a customer to consent in writing to an extension of time) is unrealistic.

We think the CR Code could and should provide that the CP can address its management obligations by referring the matter to the relevant CRB, with a view to the CRB becoming the coordinator between the relevant CPs. CRBs have the means to liaise more quickly with the impacted CPs. Additionally, the relationship between the CRBs and CPs is likely to facilitate a greater level of cooperation when responding to a query from a CRB than from another CP.

In our view this additional obligation on CRBs would not be inconsistent with the CP obligations in the legislation. It is augmenting what is in Part IIA to make the correction process work more efficiently. This works in the interests of the consumer as it will ensure that the consumer receives their correction faster.

2.2 Uncertainty about the impact of repayment history information (RHI) on hardship

There is uncertainty about how RHI works where there are hardship arrangements in place. If a hardship arrangement involves a customer not having to make a payment for a period, our RHI related obligation will be to show the repayment is not due. This does not give an accurate picture of the customer's circumstances, and has the potential to contribute to inappropriate future lending decisions; a poor outcome for both credit providers and the consumer.

2.3 Record keeping/written statements

There remain onerous record keeping obligations in clause (cl) 23 of the CR Code, which do not reflect the ordinary record keeping processes of CPs. In addition to these requirements, cl 17.4 of the CR Code provides that CPs must provide written statements when receiving information from another CP with a view to substantiate that they are permitted to do this.

We think that the requirements for written statements and at least some of the record keeping obligations will be extremely difficult to operationalise. This is due to exchanges between some entities being system driven. For example, when exchanges occur between CPs in a securitisation structure or with service providers who process application data for the CPs, the majority of information is exchanged automatically; leaving no room for the provision of file notes and written statements.

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2.3.1 The written statement

The policy rationale for providing a written statement is to track that a third party CP is suitably authorised to have the information. If the CP has contractual controls over the recipient of the information, a written statement should not additionally be required.

We think that the CR Code should be updated to provide that a written statement is not required, where the receiving CP is getting the information:

- For securitisation purposes;
- Where there is an ongoing contractual relationship with the disclosing CP and the disclosure is subject to contractual controls, which ensure it is in accordance with the legislation.

As additional assurance in these circumstances, the CR Code could provide that if required by an auditor, the disclosing CP could be called on to evidence the contractual and procedural controls on the receiving CP/agent/service provider to use the information for the relevant permitted purposes.

2.3.2 Record keeping

We feel that cl 23 should be reconsidered so that it better reflects how credit providers function. We suggest that:

- Cl 23 should contain a simple principles based statement, outlining that the CP should retain adequate records to evidence how CP handles credit information;
- There should be guidance notes/explanatory notes which indicate how CPs may do this;
- The guidance notes should have regard to the systems that most CPs currently operate.

Of the specific matters called out in cl 23, we agree that a CP would need to keep specific records in the system of:

- A destruction of credit information;
- Correspondence about exceptional issues such as bans, corrections, complaints, pre screening, and audits.

However, in relation to CPs receiving information, disclosing it, or consenting to it, we think that it should be adequate evidence to show:

- The information that came into or was sent out through the system;
- A system record that a privacy consent was held;
- The form of consent that we would have obtained in the circumstances.

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We also assert that in relation to a decline letter/refusal notice, it should be sufficient to have a system record that the letter was sent and be able to show the form of letter that would have been sent.

2.4 listing of defaults

CI 9.2 and 9.3 of the CR Code (v3.1) have been amended to allow :

- The listing notice (under s21D(3)) to be included in the s6Q notice of demand;
- The CP to list an amount that is different from that stated in the demand notice.

CI 9.2 and 9.3 may be regarded as inconsistent with s6Q which requires the CP to only list an amount that:

- Is at least 60 days overdue;
- Has been demanded under s6Q.

If CI 9.2 and 9.3 are to remain, we believe that the Privacy Commissioner should issue a guidance note, clarifying how early lenders can list.

2.5 New restrictions on marketing analytics

CI17.1 was altered to provide that CEI cannot be used by the CP:

- To assess the likelihood of the individual accepting an offer of credit or insurance relating to mortgage credit or commercial credit;
- To target or invite an individual to apply for this sort of offer.

CI 19.1 was altered to provide that the CRB cannot provide the CP with a tool, which can use CEI in this way. This restriction is not in the legislation. It seems unnecessary overreach.

We believe that if this restriction is to be retained, CI 17 and 19 should be updated to clarify that CEI can be used to *exclude* customers from marketing offers. For responsible lending purposes, it is vital that CPs are able to use the information available to them in order to ensure that they do not send marketing offers to high risk customers. This approach is consistent with the pre-screening provisions.

2.6 Maintaining an agreement with the CRB

The CR Code includes a new clause {2.2}, which provides that where a CP has listed Consumer Credit Liability Information {CCLI} or RHI, the CP must not terminate the agreement with the CRB until the end of the retention period for the information that applies to the CRB.

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This is justified on the basis that s20N requires the CRBs to have agreements with the CPs to ensure that data is accurate and that CRBs can audit CPs.

We believe that it would be more appropriate to address this issue in the industry code. The industry code should provide that if the CP's relationship with the CRB will terminate, the arrangement will move to transitional provisions which:

- Limit the fees that can be charged;
- Ensure that the CP cooperates with audit/correction requirements ;
- Ensure that the CP lists payment information as required by the Act if the CP has previously listed a default.

These industry code provisions should also specify that the CP should not be required to continue to provide the CRB with information. Our preference would be for the approach contemplated in cl 8.2 of the CR Code, where the CP can stop providing information and the CRB annotates any disclosure to explain that the information is only current up to a particular date.

2.7 'Current Credit Provider' reporting capability

Clause 6.3 provides that if a CP wishes to report *any* CCLI to a CRB, then they must report *all* CCLI. We are concerned that the practical effect of this is that credit providers, who elect to remain on the existing 'negative only' reporting tier , will be precluded from the existing practice of reporting that they are a 'current credit provider' to CRBs. This implication would effectively outlaw today's practice of a CRB 'alerting' a CP (who remains on the negative tier) to a default being loaded (by a different CP) against an existing customer .

We understand that regulations will provide further clarity around CCLI. Therefore we will postpone further comment about this issue until draft regulations are released.

2.8 Audit obligations

While integrity of the system is of utmost importance, audit powers of CRBs are seen to be extensive. This potentially results in a CP being obligated to regularly comply with multiple audits (i.e. for multiple CRBs), each with differing processes and requirements .

We believe that the CR Code should seek to provide for a single, consistent audit process for CPs that can be applied across multiple CRBs. An alternate approach would be for this to be provided within the Industry Code.