



GE Capital

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Australasian Retail Credit Association ("ARCA")
BY EMAIL- CRCode@arca.asn.au

RESPONSE TO ARCA VERSION 3.1 CREDIT REPORTING CODE

GE Capital Finance Australasia Pty Ltd ("**GE Capital**") welcomes the opportunity to make this submission in response to version 3.1 of the Credit Reporting Code ("CR Code").

About GE Capital

GE Capital has several financial services businesses operating in Australia, including the consumer finance business. GE Capital has a significant and distinctive interest in proposed reforms affecting privacy, and specifically credit reporting.

GE Capital is a division of the General Electric Company, a company that has provided financial services for 70 years. GE Capital is one of Australia's leading consumer finance companies, offering an extensive range of consumer finance products, including personal loans, credit cards, insurance and promotional retail finance.

COMMENTS ON THE CR CODE

On the whole, GE Capital supports the concept of the CR Code; however GE Capital has a number of material concerns with the content and drafting of the CR Code. GE Capital has only addressed areas which it believes it will be able to provide most value for the purposes of this review.

1. Drafting errors

- (a) Section 1.2(g) contains a reference to paragraph 5.4. This paragraph does not exist within the CR Code.
- (b) The word debt should be replaced with credit in section 6.2(cl) so that the phrase reads "credit is no longer available."

(c) Section 6(e) does not appear to be a complete extract of what is in the amended *Privacy Act* 1988. It should read "the terms or conditions of the consumer credit relating to repayment of the amount of credit that are prescribed by the Regulations."

ldl In section 8.1, the word 'take' is missing at the end of the first line. The first sentence should read "When disclosing repayment history information to a CRB, a CP must take reasonable steps to ensure that the...."

lei The reference in 9.3 to CRB should be replaced with CP so that it reads "Provided the CP meets the pre-conditions for disclosing default information set out in Part IIA and this CR Code, including giving the individual a section 6Q notice. the CP may, when disclosing default information to a CRB, specify, as the amount of the overdue payment, the amount that is owing to the CP on the date of disclosure to the CRB of the default information."

2. CP- CRB Contractual arrangements

Section 2.2 prohibits credit providers ("CP") and credit reporting bureaus ("CRB") from terminating (but not varying) any agreements they have through which CPs have previously disclosed CCLI and/or default information. until the end of the retention period. GE Capital believes that this is an onerous requirement and may lead to unintended consequences. For example. where the agreement itself permits termination for reasons of default, the CR Code overrides that contractual arrangement and disallows the contract to come to an end. This would result in the parties being forced to make relevant disclosures pursuant to the agreement even though not required under the contract.

GE Capital believes that this may be remedied if the CR Code did not interfere in the contractual arrangements between CPs and CRBs and instead placed a responsibility on CPs to make continuous disclosures until the end of the retention period for that CCLI or default information.

3. "The day credit is terminated or otherwise ceases to be in force"- section 6.2(c)

GE Capital appreciates that the final drafting of this section has come about as a result of numerous discussions amongst industry participants with the aim of landing at an industry preferred approach to defining exactly when a contract has been terminated or otherwise ceases to be in force.

6.2(c)(i) appears to be ambiguous and should be revised so that there is conformity in the understanding of its meaning. The words "*the CP irrevocably terminating the relevant contract. arrangement or understanding*" could be inferred as the point where the repayment of the debt has been accelerated as after that, there is no going back and the CP has effectively ended the contract with the individual. Even if the full amount owing is paid by the individual to the CP. the CP will not resume the contract based on the original terms and conditions and instead will require the individual to re-apply for new credit. There could also be an alternative interpretation whereby the contract is irrevocably terminated at the point where the account is 'charged-off'.

The difficulty in deeming that an account is 'closed' when the debt is accelerated lies within the listing of the default. If a CP chooses to default list at the point of acceleration or after, it will find the process difficult. if not impossible, because under section 6.2(c)(i). the account has effectively been 'closed'.

Further, if at the point of acceleration an account is deemed to be closed. this would limit the provision of repayment history information ("RHI") from CPs to CRBs. That is, while an account's early

delinquency may be derived from RHI, post acceleration, an account's later stage delinquency status would be unavailable. Nor would we be able to determine if a customer paid the outstanding debt. As consumers of positive data, CPs would have to contend with a more restrictive view of a customer's repayment behaviour as well as less predictive information.

It would be beneficial to industry and to GE Capital if this section was re-drafted to allow for accounts to be 'closed' at the latest possible point, preferably at the point of 'charge off'.

4. Default information- section 9

Section 9.1 does not appear to conform to the recently revised hardship rules where individuals need not explicitly request new payment terms; there now simply needs to be an inability to meet payment obligations. Therefore, GE Capital suggests section 9.1(a) be amended to read

- (a) "If the individual has advised CP of an inability to meet payment obligations which could give rise to new payment terms (whether via a variation of the terms and conditions of the consumer credit or new consumer credit).

5. Serious credit infringements- section 13

GE Capital believes that the requirement under section 13.2 to remove the serious credit infringement disclosure from credit information is at odds with the underlying policy purpose of section 13. Given that one of the intents of the CR Code is to ensure the integrity of the data, rather than requiring a removal of the disclosure, a change in status may be more appropriate.

6. Permitted uses of CEI- section 17

GE Capital believes that section 17.2 has added additional obligations over and above what is expected under Item 5 of the table within section 21H of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*. In the Act, CEI may be used by the CP for the purpose of assisting the individual to avoid defaulting on his or her obligations in relation to consumer credit provided by the CP to the individual. In the CR Code, the CP needs to now have a 'reasonable basis' for believing that the individual may be at 'significant risk' of defaulting on his or her obligations to the CP. Both the 'reasonable basis' and 'significant risk' are added obligations and together with the guidance provided in the explanation column raises the bar on the use of CEI significantly.

In order for CPs to be able to manage portfolios and provide a genuine holistic service to its customers, CP should be allowed to request CRBs for alerts on CP-specified indicators of default risk. This bar (as described within the explanatory notes to the section) should not be set so high that only accounts at the late stage of default risk are caught (for example, where an individual is 90 days overdue on his payment to another CP). It would be more appropriate for the CP-specified indicators to be based on risk modelling and applicable due diligence so that it captures individuals who are earlier in the default risk stage so that action can be taken to assist that individual to avoid defaulting. This would reflect true management of that person's account at an earlier stage.

The explanation given for this section is unhelpful in achieving the holistic service which is expected from CPs. As a result, the explanation should either be revised to lower the bar, or removed completely which would allow for the CP to set its own standards of default risk. If the explanation is removed, then this section adds no value to what is already within the Act and should also be removed.

7. Free credit report- section 20.2

GE Capital does not believe there is any benefit in requiring the individual to provide the CRB with evidence that not more than 90 days previously, a CP refused a credit application made by the individual. The CRB will have the benefit of its own evidence which would support an application being made and a decline having occurred.

8. Correction requests- section 21

- (a) Section 21.1 requires a CP who does not participate in the credit reporting system who has received a correction request to inform the individual within 30 days that it will be unable to assist the individual. If the CP does not participate in the credit reporting system, it will not be bound by the CR Code and therefore will be unlikely to adhere to this section. Therefore, this requirement appears to be redundant.
- (b) GE Capital believes that the phrase "or in the case of a CP that is not a member of one" within section 21.3(c) should be removed so that CPs have the option of referring the matter to an external dispute resolution scheme or the Office of the Australia Information Commissioner rather than prescribing external dispute resolution schemes as the primary requirement. The lack of choice proposed in the CR Code here is not supported in the amended *Privacy Act* 1988.
- (c) The set of circumstances within section 21.5(c) which may give rise to the removal of defaults where a new arrangement is agreed after a natural disaster or any event that is "beyond the individual's control" is too broad. Whilst GE Capital appreciates the consumer benefit of natural disasters, we argue that the flexibility demanded here is too wide and will be open to misuse.
- (d) Section 216 requires that an individual who has made a correction request to a CRB or a CP must *receive* the decision within 7 days of the decision date. Given that the CRB or the CP has no control over when the individual actually receives the decision, GE Capital believes that the requirement should be amended to a metric which can be controlled by the CRB or CP, for example when the decision should be sent by the CRB or the CP.

Section 216 could be amended to read "A decision by a CRB or CP about a correction request made by an individual under section 20T or section 21V must be notified to the individual promptly. The decision should be sent to the individual within 5 days from when the decision was made. Where the decision is to correct the information...."

We thank you for the opportunity to provide a formal written submission on the CR Code.

If you would like to discuss any of the matters raised in our submission, please do not hesitate to call Marcus Oakley on.

Sincerely,

Marcus Oakley

Chief Risk Officer

GE Capital Australia & New Zealand

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747 trading as GE Capital