

Submission  
by  
the  
Credit Ombudsman Service Limited  
to  
Consultation  
on  
Draft Credit Reporting Code

## **1. Introduction**

The Credit Ombudsman Service Limited (COSL) appreciates this opportunity to respond to the Draft Credit Reporting Code produced by Cameron Ralph Navigator for the Australian Retail Credit Association (the Draft Code).

COSL is largely supportive of the provisions of the Draft Code. While some more specific comment follows, COSL is particularly concerned, however, with the growth of the so-called 'credit repair' industry. The Draft Code does not address this issue and COSL sees this as a lost opportunity.

## **2. Credit repair**

### **2.1 The problem**

COSL has become increasingly aware of so-called 'credit repair' agencies which offer to 'fix' consumer's credit records for a not inconsiderable fee.

The agencies obtain the authority of the consumer to access the relevant credit records and then make a complaint to the credit reporting bureau (CRB) or the credit provider (CP) that certain credit entries are incorrect and should be removed.

The credit agencies often also approach the various Ombudsmen, whose services are available to consumers free of charge, to have the entries removed. Indeed, about a third of all complaints COSL receives about alleged incorrectly listed credit defaults are from credit repair agents. Similarly, 25% of credit listing cases received by the Energy and Water Ombudsman NSW (EWON) between 1 January and 20 July 2012 were lodged by a credit repair agent.<sup>1</sup>

The minimum average fee per listing is around \$1,000 despite the fact that in the overwhelming majority of cases the debt amount for which the consumer was credit listed is under \$500 and sometimes as little as \$120.<sup>2</sup> Consumers are also likely to have multiple credit listings and typically these include telecommunications and/or additional energy or water listings.<sup>3</sup>

There is little or no specific regulation of this "industry" whose market may include vulnerable consumers who are experiencing financial hardship. Such a consumer may want to rehabilitate their credit status to refinance their loan to purchase a more affordable property. Often they are not aware of their existing rights. As the EWON survey found, credit repair agencies tended not to inform consumers that, alternatively, they could, at no charge, approach the various Ombudsmen schemes (such as COSL, FOS, TIO, EWON and EWONV) to investigate incorrect listings, rather

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<sup>1</sup> Page 4, Research survey Report: Consumers' use and experience of 'credit fix' agents, September 2012, published by the Energy and Water Ombudsman NSW

<sup>2</sup> Ibid

<sup>3</sup> Ibid, page 3

than having to wait five years, or that the credit agencies themselves might be using these free Ombudsmen services despite charging consumers a fee.<sup>4</sup>

Further, in COSL's experience, pressure is placed by credit agencies on debt purchasers who have purchased debt and, therefore, do not have direct knowledge of the correctness of the relevant credit record entry. Considerable time and resources, therefore, must be devoted by these debt purchasers in making inquiries of the original CP and assessing or, where necessary, contesting, the allegation that the entry is not valid. It often makes good commercial sense for these debt purchasers, regardless of the merits of the case, to simply concede the point and allow the proposed amendment. This presents a threat to the integrity of the information on credit records and is detrimental to consumers, CPs and CRBs.

## 2.2 Proposed solution

CRBs and CPS should not deal with any agent of a consumer who is charging a fee to the consumer for access/repairing their credit record. Of course, the credit repair agents could then simply charge consumers a fee for preparing documents and letters and put the consumer's own name as the originator of such correspondence. CRBs and CPs should, therefore, also require certain assurances from consumers themselves when they make correction requests. It would still be possible for such assurances to be falsely obtained, at the urging of a credit repair agents, but we submit that it will be more difficult for these agents to persuade a consumer to sign an obviously false document than if no question was asked about the issue of payment.

There should, however, be an exception for legal practitioners with current practising certificates as they are already heavily regulated and accountable. The correction of a credit record may well be a necessary step to be taken as part of the lawyers' work of representing a client in litigation about a disputed debt.

As the proposed provision below relates to persons who are being paid to represent or assist consumers in relation to correction requests, it will not impact negatively on community based financial counsellors or community legal services.

While the Draft Code can only bind its subscribers, the CRBs and the CPs, they can be bound by its provisions so as to substantially limit the activities of credit repair agents. COSL submits that a clause along the following lines could be inserted in Paragraph 21:

*21.10 If a CRB or CP receives a correction request, whether from the individual to whose credit record the correction request relates or from another person purporting to act on their behalf, the CRP or CP must:*

- (a) seek confirmation in writing from the individual to whose record the correction request relates that:*
  - (i) no fee, charge or other payment is being made by the individual to any person for advice, assistance or representation in relation to that request; and*

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<sup>4</sup> Ibid, page 5

- (ii) *if another person is making the correction request on their behalf, that they have authorised them to do so; and*
- (b) *not accept the correction request from any individual or other person unless the request is accompanied by the written confirmations described at 2.10(a) above.*

*21.11 Paragraph 21.10 does not apply when the person making the correction request on behalf of another or to whom an individual has paid a fee, charge or other payment for advice, assistance or representation in relation to that request, is a legal practitioner with a current practising certificate.*

Further, in order to specifically address the issue of the integrity of credit records, COSL proposes the following additional clause:

*21.12 If a CRB receives a correction request, they must not make the correction requested unless they have a reasonable basis for doing so.*

*2.13 If a CP receives a correction request they must not accede to that request or communicate it to a CRB unless they have a reasonable basis for doing so.*

### **3. EDR issues**

#### **3.1 CRB membership of EDR**

COSL supports the provision in Paragraph 22.2 that all CRBs must be members of "recognised external dispute resolution scheme." It would seem logical that this is confined to those schemes "recognised" by ASIC as appropriate for financial services, namely, COSL and FOS. There is no definition of this in the Code and, therefore, it could, possibly, include the TIO and the utilities schemes. These schemes are covered by the Code in relation to CPs who are also their members. It may be useful to clarify this point by including an appropriate entry in the "Definitions" in Paragraph 1.2

#### **3.2 CP membership of EDR**

This Draft Code does not take the issue of CP membership of EDR any further in relation to credit reporting than is currently the case. CPs who are not currently required to be in EDR schemes, such as those covered by COSL, FOS, the TIO and the utilities schemes, are required by paragraph 21.3 to refer a complainant consumer to the Office of the Australian Information Commissioner.

COSL has already made a submission to the current review by the Commonwealth Treasury on the Point of Sale Exemption under the *National Consumer Credit Protection Act 2009 ("NCCP")*. It is COSL's position that this exemption should be largely abandoned except for some low value transactions (less than \$2,000).

If adopted, this policy would bring a larger number of CPs into full regulation under the *NCCP*. They would have to be licensed and become members of a

recognised EDR scheme, either COSL or FOS. Their credit reporting complaints, therefore, would be covered by this Code.

### 3.3 Display of EDR details on credit reports

As discussed above, paragraph 21.3 requires a CRB or CP, when it forms the view that it will not be able to resolve a correction request within 30 days, to advise the consumer of the relevant EDR scheme or (if not a member) of the consumer's right to complain to the Australian Information Commissioner.

COSL is of the view that this standard information could also be provided by CRB's with any credit records supplied to consumers.

## 4. Other consumer issues

### 4.1 Acceleration notices

Regardless of the alleged policy benefits of the proposed paragraphs 9.2 and 9.3, and COSL does not take a firm view at this stage, it appears that these provisions are inconsistent with the provisions of Part IIIA of the *Privacy Act*. The effect of the application of an acceleration clause is to create a new amount which, if the CP wants to list it on the record, must be notified to the consumer with 60 days notice. Allowing a CP to deliver one section 6Q notice which includes provision for the effect of any acceleration on the amount of the debt clearly defeats the intention and the express provisions of Part IIIA.

If the desired policy outcome is for a single notice and only one period of 60 days leading to a single listing which includes any accelerated amounts, then in COSL's view, this cannot be achieved by the Code alone without statutory support.

There may well, also, be policy arguments against this outcome as some consumers may be temporarily disadvantaged by the earlier listing of accelerated amounts given that this may be a time where they are seeking refinance.

### 4.2 Notice of corrections or failures

Paragraphs 22.5 and 22.6 require CRBs and CPs to give notice of any corrections or failures in the credit reporting information held or notified by them about a consumer 'as soon as practicable'. There is no guidance in the Explanatory Notes as to what this might mean. As this phrase is used in a lot of legislation and regulation, this may not need clarification in the provisions of the Code itself, but some guidance could be provided with 10 business days being a useful standard in the Explanatory Notes.