

## Summary of outcomes from meeting with OAIC, Dated 30 August 2013

### *Outstanding issues*

Clause	Issue raised by OAIC with current drafting	Additional information required
4.2	OAIC has raised issue with simply directing an individual to a website. OAIC has recommended that 4.2 be amended to incorporate a mechanism by which a CP can be satisfied that a particular individual has in fact been made aware of the notifiable matters. OAIC stated they did not necessarily require a piece of paper to be provided upon collection. Suggested a short form of words consistent with guidance provided for APP5.	ARCA to consider amended wording, consistent with approach to APP5.  <b>Members and industry stakeholders to advise:</b> <ul style="list-style-type: none"> <li>• <b>What will be an appropriate mechanism to notify individuals?</b></li> <li>• <b>Are there any issues that arise from amending this to be consistent with APP5 and, if so, what are those issues? Provide examples where possible.</b></li> </ul>
5.1(c)(ii)	OAIC recommends that defaults less than \$150 should not be permitted to be held.  OAIC had no other issue with treatment of pre-commencement information.	Provide further information to support argument that this information cannot readily be removed from the reporting system. In the absence of further information, ARCA will need to amend clause 5.1(c)(ii) to exclude defaults less than \$150

		<p>from pre-commencement clauses.</p> <p><b>Members and industry stakeholders to advise:</b></p> <ul style="list-style-type: none"> <li>• <b>What further information can be provided to the OAIC to demonstrate the inability to exclude defaults less than \$150 from credit information?</b></li> </ul>
5.3 & 5.4	<p>OAIC considered the provisions are lengthy and complex and recommends ARCA consider whether these paragraphs can be simplified to make their purpose and privacy benefit clearer. Suggested that the provisions be prefaced with the expression, "to cover obligations under Part IIIA, and in particular.."</p>	<p><b>Members and industry stakeholders to advise any suggested amendments to address this concern.</b></p>
6.2(b)(ii)	<p>OAIC recommends that words 'applicable to that credit from time to time' be replaced with 'that applies at the time the CCLI is disclosed to a CRB'.</p>	<p>ARCA raised previous feedback about needing to ensure this adequately captured credit card limits and changes to limits. Proposed amendment be raised to receive further feedback.</p> <p><b>Members and industry stakeholders to advise whether there are operational issues that arise from the proposed amendment, and in particular, whether there remains an issue with proper disclosure of credit card limits, or whether this is captured by the provision of CCLI.</b></p>

8.2	OAIC recommends incorporating the explanatory notes into the text of clause 8.2 but have suggested removing reference to 'tracking period' and using easy-to-understand and accessible terminology.	Obtain feedback on alternative wording.  <b>Members and industry stakeholders to consider amended RHI wording, to address concern about reference to 'tracking period'. It should be noted that previous wording of the explanatory notes for RHI was dealt with by an ARCA work group, which may again be a means of resolving this issue.</b>
9.1 (& 20.5)	OAIC recommends expanding provision to cover situations when misleading but factually correct information has been listed on a credit file.	ARCA objected strongly to this proposed amendment, on the basis that the situations for removal of default information are adequately covered in clauses 9.1 and 20.5 and to create a catch all provision for 'misleading' information could create considerable uncertainty. ARCA asked the OAIC to provide examples of situations where misleading but factually correct information would remain on file and would not otherwise be removed by reason of clauses 9.1 and 20.5. OAIC also to consider whether 20.5 adequately covers situations where default information is entered because of circumstances beyond an individual's control.
9.3	OAIC recommends additional	Further feedback sought

	<p>requirement that section 21D notice must not be issued until at least 45 days after the date that the full amount becomes overdue.</p>	<p>to ascertain how difficult this provision will be to incorporate.</p> <p><b>Members and industry stakeholders to advise on any operational difficulty arising from incorporating this requirement.</b></p>
16.1	<p>OAIC recommends that clause 16.1 be amended to prohibit a credit provider or an AIR from using credit eligibility information or credit information for the purpose of direct marketing, except where that information is a pre-screening assessment disclosed by a CRB in accordance with section 20H.</p>	<p><b>Members and industry stakeholders to provide feedback about this proposed amendment.</b></p>
19.5	<p>OAIC recommends that words “unless unusual circumstances apply” be removed.</p>	<p><b>Members and industry stakeholders to provide feedback about this proposed amendment.</b></p>
20.1	<p>OAIC seeking internal legal advice to confirm whether this provision is contrary to, or inconsistent with, the correction obligations in Part IIIA.</p>	<p>Awaiting further OAIC response.</p>
20.3	<p>OAIC have sought to have this provision removed on the basis that, if a CRB or CP cannot satisfy itself within 30 days as to the correctness of credit-related personal information that it holds, it should not be permitted to use and disclose that information for the purposes of participating in the credit reporting system.</p>	<p>ARCA raised concern with the abuse of this provision, particularly by credit repair organisations, given 30 days is a relatively short period to provide a substantive response to a correction request if the ‘first responder’ CP has limited resources, and the proper response is reliant on reporting to the CRB, and the provision of information by the responsible CP. Further submissions required on this point.</p>

		<b>Members and industry stakeholders to provide feedback about this proposed amendment.</b>
23.11 & 24.2	<p>OAIC suggest removing 24.2 and instead expanding scope of public annual reporting (clause 23.11) to include much of the 24.2 information including:</p> <ul style="list-style-type: none"> <li>• Information about complaints (number of complaints, average time taken to resolve, aggregated statistics on outcomes and remedies)</li> <li>• Information about correction requests (number of correction requests, number of times information was corrected, types of correction requests)</li> <li>• Number of serious credit infringements</li> <li>• Information about use of new types of credit related personal information (percentage of total number of CPs disclosing CCLI and RHI)</li> <li>• Number of individuals provided with access to their credit reporting information including number provided with free access, and number provided with fee access.</li> <li>• Overview of CRB's monitoring and auditing activity including number of audits conducted and aggregated statistics about issues identified and rectification action.</li> <li>• Any other information requested by the Commissioner.</li> </ul>	<b>Members and industry stakeholders to provide feedback about this proposed amendment, particularly to address any issues that will arise from publication of this range of material on websites, rather than direct to the Privacy Commissioner.</b>

### ***Agreed amendments***

<b>Clause</b>	<b>Issue raised by OAIC with current drafting</b>	<b>Amendment</b>
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1.2	<p>De-identify is used in Part IIIA of the Act as an alternative to 'destroying' the information. Accordingly, the definition of 'destroy' in the CR Code should not include 'de-identify' as an alternative.</p> <p>In response, it was noted by ARCA that, once information is de-identified, it is no longer personal information. As such, it is destroyed.</p>	Remove 1.2(f)(i) from the CR Code
2.1	OAIC recommends the words "to comply to the extent applicable from time to time" be replaced with words "to comply with the relevant provisions in", as the former is somewhat vague and inconsistent with the language used throughout the CR Code and Privacy Act	Clause 2.1 to be amended to read: "An agreement entered into by a CRB with a CP to meet the requirements of Section 20N(3) and Section 20Q(2) must oblige both parties to comply with the relevant provisions in Part IIIA and the CR Code"
5.1(c)	OAIC recommends the words "credit information" be replaced with "credit reporting information"	Clause 5.1(c) to be amended to read: "A CRB must not disclose to a CP or affected information recipient personal information, in relation to consumer credit, that does not constitute credit reporting information, unless:"
6.2(b)(iv)	OAIC recommends that the wording of the consultation draft of the CR Code be used, or alternatively that the wording be amended to reflect that the amortised amount should be based on the assumption that minimum payments are made, not calculated using actual payments made.	Clause 6.2(b)(iv) be amended to read, "in the case of credit where payments of the principal amount must be made throughout the term of the credit – the amortised maximum principal amount of the credit applicable from time to time, calculated on the basis that the individual makes the minimum only principal repayments

		throughout the term of the credit".
10.2	OAIC have requested the requirement for the consumer to specify the request to disclose payment information is 'urgent' be removed, and instead be replaced with a requirement where, the individual simply has to request the disclosure of payment information, to trigger the obligation for the CP to update this information within 3 business days.	Clause 10.2 be amended to remove the word "urgently"
18.2	OAIC have requested the provision be amended to incorporate the explanatory notes.	Clause 18.2 be amended to read: "A credit provider must not nominate eligibility requirements to be used by a CRB to assess in accordance with section 20G whether or not an individual is eligible to receive the direct marketing communications of the credit provider, that indicate that the individual is experiencing or may in the future experience difficulty in meeting repayments under their existing credit unless it is to exclude such individuals from the direct market communication."
19.2	OAIC suggest the fact that individual has right to free access to credit reporting information both on refusal of credit and once every 12 months needs to be made clear.	Amend clause 19.2 to insert the following words at the end, "This is the case whether or not the CRB has provided the individual with credit reporting information free of charge at any time during the previous 12 months"
20.2	OAIC suggest that clarity be added by saying the maximum	Amend clause 20.2 to make it subject to 20.1.

	timeframe is 30 days.	
20.4	OAIC have requested provision be amended to make it clear that uncorrected historical derived information cannot be used for assessing credit worthiness	<p>Amend 20.4 to read:</p> <p>"If a CRB or credit provider is satisfied that credit-related personal information needs to be corrected, the CRB or credit provider's obligation to take reasonable steps to correct the information is satisfied where the body or provider:</p> <ul style="list-style-type: none"> <li>a) Corrects the credit information</li> <li>b) Takes reasonable steps to ensure that any future derived information is based on the corrected credit information; and</li> <li>c) Takes reasonable steps to ensure that any derived information that is based on the uncorrected information is not disclosed or used for the purpose of assessing the credit worthiness of the individual to whom the information relates." </li></ul>
21.1	OAIC suggests that wording encourage compliance with industry standards as a matter of best practice only.	<p>Amend 21.1 to read:</p> <p>"Where a CRB or CP is required by Australian law, a condition of a licence issued by a regulatory authority or an enforceable Industry Code requirement to meet complaints handling requirements, as a matter of best practice, the CRB or CP should comply with those requirements for the purposes of a complaint under Part IIIA. Any other CRB or CP should comply,</p>



		as a matter of best practice, with the following sections of ISO 10002-2006 Customer satisfaction, Guidelines for complaints handling in organisations for the purposes of a complaint under Part IIIA: Section 4 Guiding Principles; Section 5.1 Commitment; Section 6.4 Resources; Section 8.1 Collection of information; and Section 8.2 Analysis and evaluation of complaints”
23.1 & 23.2(d)	OAIC suggests amending the provisions to reflect material currently contained within Explanatory Notes.	Amend clause 23.1 by premising it with the following words: “To ensure that CRBs are able to tailor the frequency and extent of audits required by section 20N and 20Q to the credit providers that present the greatest risk of non-compliance”. Remove 23.2(d).

The OAIC is no longer pursuing amendments to the following provisions:

Clause	Proposal from OAIC
7.1	Need to identify specified amount of credit at application
9.1 and 9.2	Removal of provision precluding hardship request within four months
16.2	Objective indicators for use in alert services to be identified in the CR Code