



10 May 2013

Australasian Retail Credit Association
Credit Reporting Code Consultation Draft 2013
By email: CRCode@arca.asn.au

Thank you for the opportunity to provide comments on the *Credit Reporting Code (CR Code) Consultation Draft 2013*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. We regularly investigate complaints from customers disputing a credit default listing with a credit reporting body based on a utility debt, often for relatively small amounts.

EWON has reviewed the Draft CR Code and our comments will mainly address the issues that impact on our work around resolving credit disputes between customers and energy retailers. Our comments draw on customers' experiences of the credit default listing practices of credit providers and credit reporting bodies. In our context credit providers are energy retailers¹, therefore we have used this term where appropriate in this submission.

Preconditions to default listing – notification requirements

EWON notes that under clause 9.2 of the Draft CR Code, energy retailers must not disclose default information about a customer to a credit reporting body unless a written notice has been given to the customer under section 6Q of the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012*. We welcome the new requirement for energy retailers to notify customers of their intention to disclose information about overdue payment to the credit reporting body, provided the amount has been overdue for 60 days or more.

A common complaint to EWON comes from customers who find they have been listed with a credit reporting agency for an unpaid utility bill that issued after they moved out of their premises. In these cases, customers may not have been aware of the final bill. We consider that this statement of intention to disclose will put customers on notice about unpaid accounts and improve customer awareness that they are to be credit default listed. However, we suggest that the credit provider's statement of intention to disclose be

¹ While the water retailer members of EWON would also be considered as credit providers, they generally do not use debt collection and credit default listing in the same way as energy retailers.



clearly stated in a section 6Q notice. If this statement is relegated to fine print, the purpose of drawing customers' attention to a potential credit default listing may be lost.

We suggest that the Draft Code be amended to require a clear statement of intention to disclose in the main body of the notice.

EWON is concerned that the requirement for energy retailers to simply 'give' a section 6Q notice to customers (clause 9.2) is a step back from the current CR Code. The current Code (clause 2.7) requires energy retailers to send a written notice to the customer's last known address to request payment of an overdue amount. The Draft CR Code lacks clear guidance on where the 6Q notice should be sent, and whether energy retailers are responsible for attempting to contact the customer to obtain a current postal address.

When investigating credit default listing complaints, EWON's approach is to request energy retailers to provide details and copies of written notices sent to customers. We check these notices against the retailer's customer contact records to identify if they were sent to the correct last known address. We consider that we may not be able to adequately review complaints without further requirements being incorporated under clause 9.2 of the Draft CR Code. On this point, we recommend that the Draft CR Code be amended to include further details of what is required of credit providers in issuing a 6Q notice to customers. As noted in our previous submissions² around amendments to the Privacy Law and CR Code of Conduct, we support clear guidance on the customer notification requirements.

Timeframe for listing a debt

EWON is concerned that the Draft CR Code does not specify a timeframe for listing a debt, with only reference to section 6Q which contains a reference to the statute of limitations.

Based on EWON's experience, some customers are credit default listed but there is a delay in the listing, sometimes up to several years after the subject debt arose. This means that the negative impact on a customer's credit report will continue well beyond the usual five year period of a credit default listing. It may also run over the standard period of time an energy retailer has to take legal action to recover a debt. It seems unreasonable for the effects of a debt to be prolonged in this way. It appears that this unsatisfactory scenario may continue under the Draft CR Code as it does not require the credit default listing to occur in reasonable proximity to a section 6Q notice.

The Telecommunications Industry Ombudsman has adopted the approach that an overdue account should not be credit listed more than one year after the account due date.³

² 2012 review of the credit reporting code of conduct

³ See TIO position paper on Credit Default Listing:



EWON would support further provisions in the CR Code on the time period for when a debt can be listed. We have raised this issue in previous submissions, including our submission to the *Review of the Credit Reporting Code of Conduct 2012 Issues Paper*⁴ to encourage clearer guidance on the requirements.

Obligation not to disclose while Credit Provider is considering individual's request for new payment terms

In EWON's experience, customers in financial hardship often contact their retailers to vary a payment arrangement after receiving an unexpected high bill. Some customers find it difficult to budget for an upcoming electricity bill as consumption varies seasonally, and they may miss some payments because they are also paying rent and other bills. The new obligation on energy retailers not to disclose overdue payment while new payment terms are being considered (clause 9.1) is a welcome protection for customers. It ensures that customers in financial hardship are not credit listed whilst they negotiate a more affordable payment arrangement with their energy retailer.

Period of 30 days for correction of information

EWON is concerned about the period of time to correct credit reports being prolonged from the current requirement of 5 working days (clause 3.8 of the current Code) to 30 days (clause 21.3 of the Draft CR Code). In our experience, some customers find out about a credit default listing when they apply for a loan. If we find that they have been incorrectly listed, or listed for an incorrect amount, it may be unreasonable that they would then need to wait 30 days for an amendment to their credit report before they can obtain finance.

EWON is also concerned that, unlike the current CR Code, the Draft CR Code does not encourage credit providers to notate a pending correction request on the customer's file. Considering that customers may now need to wait 30 days for a correction request to be completed, their financing needs may be adversely affected if their credit report does not note a pending correction.

Complaints management

EWON considers that the Draft CR Code's complaints management provisions in clauses 22.3 and 22.4 are a step forward from the current CR Code. The Draft CR Code provides a timeframe for energy retailers or credit reporting bodies to respond to customer

http://www.tio.com.au/data/assets/pdf_file/0014/9032/DISPUTED-DEFAULT-LISTINGS.pdf

⁴ Available at <http://www.ewon.com.au/index.cfm/news/submissions/>



complaints. We support the proposed timeframe of 7 days for credit providers to acknowledge a customer's complaint.

EWON currently receives many complaints from energy customers who dispute a credit default listing. We support the Draft CR Code's formal acknowledgment of a customer's right to complain to an external dispute resolution (EDR) scheme such as EWON. The Draft CR Code brings the current CR Code up to date with complaints handling frameworks that are currently in place between industry Ombudsman schemes, credit providers and customers.

Clause 22.3 also includes an obligation on energy retailers or credit reporting bodies, whoever is approached first, to investigate a complaint in prompt consultation with other retailers or credit reporting bodies where necessary.

EWON supports the consultative and information sharing approach to complaints handling between credit providers and credit reporting bodies. In EWON's experience, some customers have expressed frustration at being referred back and forth between their energy retailer and the credit reporting body when disputing a credit default listing. The proposed approach means that the obligation to consult with the other credit reporting body or energy retailer is automatically triggered once the customer has raised a complaint. We consider that this will considerably improve the customer's experience when a complaint is lodged.

However, EWON considers that the EDR structure proposed in clause 22.4 may be problematic for complaint referrals. In EWON's context, clause 22.4 obliges energy retailers and credit reporting bodies to advise customers of their right to complain to a recognised EDR scheme of which the energy retailer or the relevant credit reporting body is a member, where the complaint is not resolved in the first instance.

Under the proposed EDR structure, a customer may have contacted a credit reporting body in relation to a credit default listing and they may have been referred to an EDR scheme of which the credit reporting body is a member. However, the credit default listing pertains to an unpaid energy bill and EWON is the recognised EDR scheme for energy retailers licensed to operate in NSW. The EDR scheme of which the credit reporting body is a member may not have formal contact and information sharing arrangements with energy retailers. The EDR scheme also may not have the jurisdiction to investigate the unpaid bill if the dispute over the bill itself led to non-payment and, therefore, credit default listing. In such a situation, EWON would be the more appropriate forum to resolve such a complaint.

It may be useful for the credit industry to develop a complaints handling charter to clarify and establish B2B rules about complaint referrals. It may also be worth considering the drafting of MOUs between credit reporting bodies and relevant industry ombudsman



schemes to ensure that customers have access to EDR schemes that already have complaints handling procedures in place to resolve complaints arising within that industry.

To ensure the effectiveness of clause 22.4, EWON also recommends that credit providers and credit reporting bodies identify the name of the relevant EDR scheme when referring customers, instead of providing generic advice to customers to contact 'the external dispute resolution scheme'.

Transfer of rights of credit providers

EWON is currently not aware of energy retailers assigning or selling debts owed by customers to third party debt collection agencies who would acquire the rights of repayment. EWON understands that energy retailers outsource the collection of debts to these agencies, who may receive a commission on successful recovery of debts. However, we welcome the proposed obligation on energy retailers to notify affected customers of the debt transfer event (clause 14.1).

Credit Repair and Credit Fix Agents

EWON is concerned about the rise of enquiries from credit fix and credit repair services who contact EWON for assistance on behalf of their clients⁵. Like other ombudsman offices, EWON's dispute resolution services are free to consumers. It is a concern that many consumers, often already financially vulnerable, incur unnecessary expenses by engaging a credit repair/fix agency to undertake a service that EWON provides free of charge. EWON's report on credit repair agents is available at www.ewon.com.au.

Some customers who we contact choose to deal with EWON directly rather than stay with a paid agent. However, they have generally already signed a contract with the credit repair agent and paid substantial fees upfront.

EWON welcomes ARCA's acknowledgment of this issue and we support any initiative that may increase customers' awareness of free services provided by ombudsman schemes. We note that, under clause 20 of the Draft CR Code, customers are entitled to request a free copy of their credit report once every 12 months. We consider that a statement of referral to the free services of EDRs on credit reports will be of benefit to raising customer awareness.

⁵ Agencies contacting EWON include: Clean Credit, MTA Credit Partners, Credit Repair Australia, Princeville Credit Advocates, Fix Credit Australia, Visage Credit Solutions, We Fix Credit.



Governance structure and auditing arrangements

EWON is supportive of the governance structure and auditing arrangements in sections 24 and 25 of the Draft CR Code to monitor compliance with the Code. As discussed above, we would welcome the opportunity to discuss arrangements such as MOUs with credit reporting bodies in the interests of information sharing, which will assist in identifying and monitoring systemic issues.

If you would like to discuss this matter further, please contact me or Emma Keene, Manager Policy.

Yours sincerely

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