



Australasian Retail Credit Association
(ARCA)

Credit Reporting Code of Conduct
[Revised Draft v7.2 18 March 2009]

This document is the DRAFT (v7.2) *Credit Reporting Code of Conduct*. The Code has been developed by members of the Australasian Retail Credit Association (ARCA) - an industry representative body established to further develop and enhance retail credit responsible lending practices and to also lead the development and management of standards in relation to credit reporting. ARCA members are comprised of Credit Providers and Credit Reporting Businesses.

Stakeholder organisations and members of the public are invited to make submissions on the content of the draft Code. Detailed written submissions or brief email comments are welcome.

The closing date for submissions is **Wednesday 15 April 2009**. Please send submissions to:

— Email: arca-submissions@galexia.com; or

— Fax: 02 9660 7611

Submissions will be made public on the ARCA website unless you request the submission to remain confidential.

ARCA plans to issue a revised draft of the Code and engage in further consultation with stakeholder organisations prior to finalising the Code. For further information, or to monitor the progress of the Code, please visit: <http://www.arca.net.au/>.

Code of Conduct

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1. Title

- 1.1. This document is the Australasian Retail Credit Association (ARCA) Credit Reporting Code of Conduct (the Code).
- 1.2. The short title is the Credit Reporting Code of Conduct.

2. Scope

- 2.1. The Code has been developed by members of the Australasian Retail Credit Association (ARCA), an industry representative body established to further develop and enhance retail credit responsible lending practices and to also lead the development and management of standards in relation to credit reporting. ARCA members are comprised of Credit Providers and Credit Reporting Businesses.
- 2.2. This Code is for the policy and operations for managing consumer rights and obligations. ARCA will also develop rules and standards to govern the credit reporting technical operations of industry, including a Data Exchange Standard.
- 2.3. The Code applies to operations and activities in Australia.
- 2.4. It is the intention of ARCA that the provisions of the Code should be binding on all industry participants in credit reporting. This will be achieved by:
 - 2.4.1. Requiring all organisations that seek access to Credit Reporting Information to demonstrate that they are members of the Code or are otherwise bound by the Code provisions (e.g. via contract with a Code Subscriber); and
 - 2.4.2. Allowing regulators to require organisations to be bound by the Code (for example as a condition of obtaining a licence).

For consideration:

This last requirement requires legislative change and will be the subject of separate discussions with Government.

See also: ALRC R108

Recommendation 54-9

Credit reporting agencies and credit providers, in consultation with consumer groups and regulators, including the Office of the Privacy Commissioner, should develop a credit reporting code providing detailed guidance within the framework provided by the Privacy Act and the new Privacy (Credit Reporting Information) Regulations. The credit reporting code should deal with a range of operational matters relevant to compliance.

3. Objectives

3.1. The objectives of this Code are to:

- 3.1.1. Ensure that credit data is shared only for the prevention of over-commitment, bad debt and fraud as well as supporting debt recovery and debtor tracing;
- 3.1.2. Protect the rights of consumers;
- 3.1.3. Provide an avenue for consumers to address grievances;
- 3.1.4. Promote responsible lending; and
- 3.1.5. Enable the members of ARCA to collaborate for the benefit of the public to further develop and enhance responsible lending and credit reporting practices.

4. Definitions

Important note on definitions:

These definitions will be aligned with the definitions used in revised privacy and credit legislation following the current reform process.

— **Code Subscriber**

An organisation that has agreed to be bound by the Code.

— **Credit**

Credit is provided if under a contract:

- (a) payment of a debt owed by one person (the debtor) to another (the credit provider) is deferred; or
- (b) one person (the debtor) incurs a deferred debt to another (the credit provider).

— **Credit Provider**

An organisation that carries on a business involving the provision of credit to an individual, including ADIs, finance corporations, telecommunications providers, and electricity, gas and water utilities and providers, and other classes of organisations or organisations, named in a Schedule to the Credit Reporting regulations.

For consideration:

Is it desirable / possible to exclude 'credit repair' organisations from the definition of credit providers?

— **Credit Reporting Business**

A business or undertaking that has the dominant purpose of the preparation or maintenance of records containing personal information relating to individuals (other than records in which the only personal information relating to individuals is publicly available information), for a credit reporting purpose or for purposes that include as the dominant purpose a credit reporting purpose.

— **Credit Reporting Information**

Personal information that is:

- (a) maintained by a Credit Reporting Business in the course of carrying on a credit reporting business or is held by a credit provider;
- (b) has been prepared by a Credit Reporting Business; and
- (c) is used, has been used or has the capacity to be used in establishing an individual's eligibility for credit.

— **Personal Information**

Information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an identified or reasonably identifiable individual.

5. Code membership

- 5.1. ARCA is the sponsor of the Credit Reporting Code of Conduct.
- 5.2. Membership of the Code is open to any organisation. An organisation becomes a Code Subscriber by agreeing to be bound to the provisions of the Code.
- 5.3. Membership of the Code is mandatory for any Credit Reporting Business with operations in Australia;
- 5.4. Membership of the Code is mandatory for any Credit Provider that wishes to use or disclose Credit Reporting Information in Australia.

For consideration:

ARCA supports the OPC having the power to direct organisations to comply with the credit reporting code of conduct. This section will also have to describe the exact mechanism for binding organisations - a potential solution is to include a requirement that all subscribers to Credit Reporting Agencies must be contractually bound to the Code, but this requires further discussion.

6. Code Advisory Committee

ASIC Regulatory Guide RG 183.73:

A code applicant must establish that the code is effectively administered. For a code to work effectively, there needs to be an administrative body charged with overseeing the operation of the code that:

- (a) is independent of the industry or the industries that subscribe to the code and provide the body's funding (e.g. with a balance of industry representative and consumer representatives and an independent Chair); and
- (b) has adequate resources to fulfil its functions and to ensure that code objectives are not compromised.

- 6.1. The Code is administered by a Code Advisory Committee, comprising:
 - 6.1.1. One independent chairperson – a person with experience in industry, commerce, public administration or government service. This person may serve a maximum three-year term, renewable for a maximum of two terms. The chairperson may not be currently engaged, either as an employee or a consultant, by an industry member.
 - 6.1.2. Two industry representatives from ARCA – persons with relevant experience at a senior level in the credit industry. These persons may serve a maximum two-year term, renewable for a maximum of three consecutive terms.
 - 6.1.3. Two consumer representatives – persons with relevant experience in consumer protection and / or privacy, nominated by the Consumers' Federation of Australia. These persons may serve a maximum two-year term, renewable for a maximum of three consecutive terms.
 - 6.1.4. ARCA observers may participate to best facilitate and support the code advisory committee

- 6.2. The Code and the Code Advisory Committee will be funded by levying membership fees and / or administration fees on all or some Code Subscribers.
- 6.3. Changes to the Code are made by ARCA on advice from the Code Advisory Committee
- 6.4. The roles of the Code Advisory Committee shall include:
 - 6.4.1. To manage the registration of Code Subscribers and maintain an accurate and up to date Register of Code Subscribers;
 - 6.4.2. To publish and promote up-to-date versions of the Code;
 - 6.4.3. To monitor compliance under the Code;
 - 6.4.4. To report on serious or systemic compliance issues to the regulator;
 - 6.4.5. To impose sanctions on Code Subscribers who breach the Code;
 - 6.4.6. To prepare and publish an annual report on Code administration and compliance;
 - 6.4.7. To commission, manage and publish an independent review of the Code every three years;
 - 6.4.8. To perform such other tasks necessary or desirable for the effective operation of the Code; and
 - 6.4.9. Publish voting records of the Code Advisory Committee.
- 6.5. Further detailed Terms of Reference for the Code Advisory Committee, including rules on quorum, voting etc. may be developed by the Code Advisory Committee in consultation with Code Subscribers and published as required

For consideration:

ASIC may require reporting arrangements for serious and systemic breaches of the Code. Some of this may occur through EDR schemes, but the Code Advisory Committee may wish to have the ability to report serious and systemic breaches where they become aware of those breaches through general compliance monitoring.

7. Use of Credit Reporting Information for Marketing is not permitted

- 7.1. Credit Providers will not use Credit Reporting Information as the source of Personal Information to facilitate marketing.

8. Responsible marketing of credit

Note:

Further detailed consultation will be undertaken regarding responsible marketing of credit with stakeholders, including affected industry groups (Telecommunications, Utilities)

- 8.1. Code Subscribers agree to take reasonable steps to identify individuals who may not be appropriate targets of credit marketing and to refrain from targeting direct marketing offers of credit to consumers who may:
- 8.1.1. Be on low fixed incomes; or
 - 8.1.2. Have poor past credit performance; and
 - 8.1.3. Have difficulty repaying the credit without hardship.
- 8.2. Clause 8.1 will not apply where it is appropriate to target particular individuals for the purposes of:
- 8.2.1. Complying with industry legislation or regulation (for example Community Service Obligations in the telecommunications and utilities sector or similar regulations); or
 - 8.2.2. Assisting in a community program to provide financial services to disadvantaged consumers (for example micro-credit programs, community no-interest loan schemes, emergency relief or similar community programs).
- 8.3. Credit Providers may provide their marketing lists to one or more Credit Reporting Businesses for screening purposes and request that some records are removed for a particular marketing exercise, subject to the following conditions:
- 8.3.1. No Personal Information will be disclosed by the Credit Reporting Business to the Credit Provider during this process (the amended marketing list may be provided to a third party mailing house for use);
 - 8.3.2. The Credit Reporting Businesses must only use specific types of Credit Reporting Information to remove records, limited to a court summons, court judgment or an act of bankruptcy made against the individual or payment default; and
 - 8.3.3. Each use of Credit Reporting Information for this screening process should be noted by the Credit Reporting Business for the purpose of disclosing the use on an individual's Credit Report where access to a Credit Report is sought by the individual.
- 8.4. Credit Providers and Credit Reporting Businesses should ensure that any direct credit marketing respects the wishes of individuals including those who have requested not to receive direct credit marketing. Credit Providers and Credit Reporting Businesses should take the following steps :
- 8.4.1. Credit Providers should provide notice to individuals regarding the potential direct marketing of credit and provide the ability to opt-out of such direct marketing;
 - 8.4.2. Credit Providers should provide notice to individuals regarding the potential use of specific types of Credit Reporting Information for the purpose of screening direct credit marketing, and provide information about processes for opting-out of direct credit marketing;

- 8.4.3. Credit Reporting Businesses should provide public information about processes for opting out of direct credit-marketing;
- 8.4.4. Credit Providers will remove any individuals who have exercised their opt-out rights from direct credit marketing lists (e.g. via the Australian Direct Marketing Association); and
- 8.4.5. Where a Credit Reporting Business provides screening services for a Credit Provider this service should include the removal of individuals who have exercised their opt-out rights with the Credit Reporting Business.

8.5. Code Subscribers will comply with any relevant regulatory guidelines regarding credit reporting.

9. Responsible lending

- 9.1. In considering whether to provide a credit product or service to a customer or prospective customer, a Credit Provider will take into account sufficient relevant information to establish, in the Credit Provider's view, that the customer has the ability to repay the debt without hardship. Code Subscribers must ensure compliance with the following responsible lending provisions *or* compliance with their own industry sector standards on responsible lending, where such standards are equal to or higher than the provisions of this Code.
- 9.2. Credit assessment methods will vary depending on a range of factors including the Credit product, the customer relationship, the information provided to the Credit Provider and the information available to the Credit Provider from other sources. Credit assessment methodologies will include, as appropriate to individual circumstances, consideration of at least two of the following factors:
 - 9.2.1. Information the individual has provided on their income and financial commitments;
 - 9.2.2. How the individual has handled their finances in the past;
 - 9.2.3. Internal credit scoring techniques; or
 - 9.2.4. Information from one or more Credit Reporting Business.
- 9.3. If credit providers decide to make an unsolicited offer of an increase in the credit limit of an individual's credit facility, the credit provider will take into account the following criteria:
 - 9.3.1. Recent Credit product repayments history, including whether the individual has been able to meet repayments or whether they have a history of missed or late payment;
 - 9.3.2. Income, if in the course of dealing personally with the individual the Credit Provider becomes aware that the individual is in receipt of a welfare payment that is the sole source of income;
 - 9.3.3. Recent Credit product history, including whether the individual has a history of consistently reaching or exceeding the credit limit while making only the minimum monthly repayments, and/or whether the Credit Provider is aware of other information that suggests the individual may be likely to be experiencing financial stress;

- 9.3.4. The customer relationship with the Credit Provider, including whether the individual is a new customer and/or whether they have acquired any other products from the Credit Provider; and
- 9.3.5. A request not to receive unsolicited offers of credit limit increases, if such a request has been made.
- 9.4. If the Credit Provider decides to make the individual an offer to increase the credit limit on an existing credit product, the Credit Provider will provide information on:
- 9.4.1. The new minimum monthly payment and repayment period if the individual accepts the offer and the Credit Product is fully drawn on;
- 9.4.2. How to request a lower credit facility limit than the one that has been offered;
- 9.4.3. How and when to reject the offer, for example, if an individual is having difficulties meeting current repayments, or if the individual's financial circumstances have changed or are likely to change such that they cannot afford to meet increased repayments; and
- 9.4.4. Easy and efficient ways to reduce a Credit Product limit and how long it will take to process a request for a reduction in a Credit Product limit.
- 9.5. Credit Providers will take care to ensure that debt consolidation loans are granted to appropriate customers who are not likely to suffer hardship as a result.

10. Data management

- 10.1. Credit Providers and Credit Reporting Businesses in meeting their data quality requirements under legislation will comply with the credit reporting data standards determined by ARCA, including a Data Exchange Standard.
- 10.2. Credit Providers must ensure that, in addition to meeting the requirements of the Privacy Act, all Credit Reporting Information supplied to a Credit Reporting Business will be submitted only after the Credit Provider has determined that:
- 10.2.1. The Credit Reporting Information accords with the Data Exchange Standard;
- Note:**
ARCA is committed to developing a single Data Exchange Standard and work has commenced on the content of the standard.
- 10.2.2. The Credit Reporting Information is accurate and complete;
- 10.2.3. Generally accepted standards have been used to verify the identity of the data subject; and
- 10.2.4. The Credit Reporting Information complies with agreed Credit Reporting Information standards, formats and frequency.

11. Access and correction

- 11.1. A Credit Reporting Business will provide access to relevant Credit Reporting Information to individuals promptly, subject to reasonable steps required to confirm the identity of the individual.
- 11.2. A Credit Reporting Business will provide access to relevant Credit Reporting Information to individuals free of charge, although reasonable fees may be charged for additional services such as express delivery, ongoing alerts or monitoring services.

Note:

The current *Credit reporting code of conduct* Issued by the Privacy Commissioner under section 18A of the *Privacy Act* requires a free report to be provided within 10 working days (Paragraph 1.11).

- 11.3. Where a consumer wishes to query the information that is held about them as Credit Reporting Information they may contact either the Credit Reporting Business or the Credit Provider with which they have a relationship. The Credit Reporting Business and/or Credit Provider will refer the consumer to the agreed individual or place of contact. The Credit Reporting Business and/or Credit Provider will investigate the issue and update the information that is held about the consumer as Credit Reporting Information where necessary.

12. Code compliance

- 12.1. Credit Providers will incorporate the principles contained in this Code in lending policy and will extend these requirements to loans introduced by third parties.
- 12.2. Credit Providers will ensure staff in the following departments have an understanding of credit reporting, and compliance with this Code:
- 12.2.1. Credit and Collections;
 - 12.2.2. Marketing (for credit purposes) and Product Management;
 - 12.2.3. Operations and Customer Service; and
 - 12.2.4. Legal, Compliance and Audit
- 12.3. Credit Providers and Credit Reporting Businesses will support industry initiatives aimed at explaining credit reporting to consumers and the community. Credit Providers and Credit Reporting Businesses will make readily available to consumers and the community:
- 12.3.1. Up-to-date information on credit reporting; and
 - 12.3.2. Information about this Code and its operation.

13. Referral of complaints

- 13.1. Code Subscribers will nominate an individual or place of contact within their institutions to manage customer enquiries and/or complaints, and establish internal complaint handling processes that, as a minimum, comply with applicable industry standards.
- 13.2. Where a complaint is received directly by the Code Advisory Committee it will first be referred to the relevant Code Subscriber for the purpose of resolution through the internal complaints process. The complainant must be informed immediately regarding this referral.

- 13.3. Where a complaint is received by a Code Subscriber that would clearly be more appropriately directed to another Code Subscriber it will be referred to the relevant Code Subscriber for the purpose of resolution through their internal complaints process. The complainant must be informed immediately regarding this referral.

14. Internal complaints

- 14.1. A Code Subscriber must provide an internal complaints process for Consumers. The internal complaints process must be free of charge.
- 14.2. Upon receipt of an internal complaint (either directly from a Consumer or by referral from the Code Advisory Committee or another Code Subscriber), the following information must be provided to the complainant:
- 14.2.1. A copy of the Code (if it has not already been provided);
 - 14.2.2. Full contact details for the management of the complaint; and
 - 14.2.3. An acknowledgment that the complaint has been accepted and notification that the Code Subscriber has 30 days to resolve the complaint.
- 14.3. A Code Subscriber must endeavour to resolve all internal complaints promptly, but at least within 30 days of receipt.
- 14.4. If unable to resolve the complaint within 30 days, the record will be removed from the consumer's Credit Reporting Information or amended appropriately. The timeframe may be extended in the following cases:
- 14.4.1. Where the Credit Provider is waiting for a response from the consumer;
 - 14.4.2. Where inappropriate credit repair agencies, fraudulent activity, or other abuse is believed to be in operation; or
 - 14.4.3. Where multiple Credit Providers are involved in a single complaint.
- 14.5. Complainants must be provided with written reasons for any decisions made under the internal complaints process.
- 14.6. Remedies and sanctions for the internal complaints process include at least the following:
- 14.6.1. Require the Code Subscriber to undertake immediate remedial action including, but not limited to: changes to documentation; changes to business processes; and / or corrective advertising;
 - 14.6.2. Require the Code Subscriber to remove Credit Reporting Information from its data and /or require the Code Subscriber to amend Credit Reporting Information;
 - 14.6.3. Require the Code Subscriber to remove specified Personal Information from its data; and / or require the Code Subscriber to amend specified Personal Information;
 - 14.6.4. Require the Code Subscriber to apologise to affected parties; and/or
 - 14.6.5. Require the Code Subscriber to undertake training.

- 14.7. Where a complaint is not resolved to the satisfaction of the Consumer or where the 30 day period is exceeded, a Code Subscriber must inform the complainant immediately of the availability of an appropriate External Dispute Resolution service, including the provision of contact details.

15. External complaints

- 15.1. The external complaints process under the Code will apply in the following circumstances:
- 15.1.1. Where a complaint cannot be resolved through the internal complaints process of a Code Subscriber;
 - 15.1.2. Where a complaint cannot be resolved within 30 days of receipt by a Code Subscriber;
 - 15.1.3. Where a complaint has been received and / or referred but it is unclear which Code Subscriber should be responsible for management of the complaint;
 - 15.1.4. Where a complaint involves a dispute between Code Subscriber s.
- 15.2. External complaints must be made to an appropriate External Dispute Resolution service. Where a Code Subscriber is not a member of an External Dispute Resolution service complaints can be made to the Office of the Privacy Commissioner.

For consideration:

This section may require further discussion. It is likely that credit providers will belong to an ASIC approved EDR service as a licence condition. Also, complaints to the OPC will only be within jurisdiction if the Code is registered by the OPC or if the breach involves a breach of the Privacy Act or regulations – this will exclude complaints regarding responsible lending.

- 15.3. The external complaints process will be free of charge to Consumers.

16. Breaches

- 16.1. The following actions constitute a breach of the Code:
- 16.1.1. The Code Subscriber fails to comply with its obligations under the Code;
 - 16.1.2. The Code Subscriber engages or repeats a practice that is contrary to or inconsistent with the Code or its associated operational procedures; or
 - 16.1.3. The Code Subscriber fails to respond to a complaint by a Consumer.

17. Serious or systemic breaches

- 17.1. A serious or systemic breach of the Code can be found by the Code Advisory Committee following the assessment of an external complaint, or following their own investigation.. A determination that a serious or systemic breach has occurred must be provided to the Code Subscriber in writing (electronic communication is acceptable).
- 17.2. The following actions constitute a serious or systemic breach of the Code:
- 17.2.1. The Code Subscriber is responsible for a breach of the Code resulting in a real risk of serious harm to Consumers and / or damage to the reputation of the industry;

Note:

A proposed definition of serious harm is discussed in the ALRC final report at paragraph 51.83 to 51.90.

- 17.2.2. The Code Subscriber has engaged in repetitive or ongoing non-compliance;
- 17.2.3. The Code Subscriber has ignored the finding of an External Dispute Resolution service that requires the Code Subscriber to remedy a breach or has failed to do so within a reasonable time; or
- 17.2.4. The Code Subscriber has breached an undertaking given to the Code Advisory Committee.

18. Sanctions

ASIC Regulatory Guide 183.69:

It is important that code subscribers are also subject to a range of sanctions for code breaches that go beyond providing compensation or rectification to individual consumers. These sanctions might include:

- (a) formal warnings;
- (b) public naming of the non-complying organisations;
- (c) corrective advertising orders;
- (d) fines; and/or
- (e) suspension or expulsion from the industry association.
- (f) suspension or expulsion from the use of credit reporting information

- 18.1. Where an internal complaints process or an External Dispute Resolution service or the Code Advisory Committee has made a finding that there has been a breach by a Code Subscriber of the Code, they may impose any of the following sanctions:
 - 18.1.1. Require the Code Subscriber to undertake immediate remedial action including, but not limited to: changes to documentation; changes to business processes; and / or corrective advertising;
 - 18.1.2. Require the Code Subscriber to remove Credit Reporting Information from its data; and/or require the Code Subscriber to amend Credit Reporting Information;
 - 18.1.3. Require the Code Subscriber to remove specified Personal Information from its data; and/or require the Code Subscriber to amend specified Personal Information;
 - 18.1.4. Require the Code Subscriber to apologise to affected parties; and/or
 - 18.1.5. Require the Code Subscriber to undertake training.

For consideration:

This list may have to be amended to cover a range of alternative financial sanctions relevant to responsible lending (e.g. compensation, waiving interest, waiving debts etc.)

- 18.2. Where the Code Advisory Committee has made a finding that there has been a serious or systemic breach (see Clause 17) by a Code Subscriber of the Code, or where the Code Advisory Committee has been informed of a serious or systemic breach by an External Dispute Resolution service, they may impose any of the following sanctions:
 - 18.2.1. Issue a warning to a Code Subscriber regarding the impact of any further breaches on future sanctions.

- 18.2.2. Publication of the name of the Code Subscriber and the nature of the serious or systemic breach in the annual code compliance report or in other publications;
- 18.2.3. Suspension from membership of the Code for a period of between one and six months, at the discretion of the Code Advisory Committee; and / or
- 18.2.4. Referral of the matter to an appropriate regulator (e.g. the Office of the Privacy Commissioner for privacy matters or the Australian Securities and Investments Commission for responsible lending matters).

19. Code review and amendment

ASIC Regulatory Guide 183.79:

As a condition of approval, a code must be independently reviewed at intervals of no more than 3 years.

- 19.1. As Code owner, ARCA may amend the Code from time to time. Except in relation to purely technical changes, ARCA will consult with industry and external stakeholders before amending the Code.
- 19.2. Within three years after publication of the Code, and once every three years thereafter, the Code Advisory Committee must commission and publish an independent review on the operation and effectiveness of the Code. The review may include an analysis of changes in industry practice, privacy regulation, credit regulation and best practice. The review may recommend necessary changes and amendments to the Code.
- 19.3. The review must be conducted by an impartial, independent third party, with expertise in best practice self-regulation.
- 19.4. ARCA will provide sufficient resources for the review process.
- 19.5. Where major changes and amendments to the Code are proposed, the Code Advisory Committee must undertake adequate consultation with the Government, public, Code Subscriber s and other interested parties and provide a report on the result of the consultation process, before finalising any proposed amendments.
- 19.6. The agreement of ARCA per its internal policy must be sought before making any changes and amendments to the Code.

For consideration:

Where the Code is authorised or approved by a regulator additional review requirements may be necessary – e.g. re-authorisation if there are major changes.