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ARCA consultation on CR Code Review and potential variations

We welcome the opportunity to provide feedback to ARCA on this consultation. We appreciate ARCA's ongoing work to consider addressing credit reporting problems faced by consumers experiencing domestic and family violence (DFV).

We have responded to some specific questions below but make some initial general comments.

Economic Abuse Reference Group

The Economic Abuse Reference Group (EARG) is an informal group of community organisations across Australia which work collectively with government and industry to reduce the financial impact of family violence. Members include domestic and family violence (DFV) services, community legal services and financial counselling services.

Our work takes into account the experience of our members (as lawyers or financial counsellors) who assist clients who have experienced economic abuse. See more about EARG [here](#).

Economic abuse and credit reporting

Economic abuse, also described as financial abuse, is a form of family, domestic and sexual violence. It has significant and devastating impacts at an individual, community and societal level. Economic abuse can take various forms, including accruing debt or other liabilities in the other person's name, not contributing to joint loans, coercion to apply for credit, and fraudulently applying for credit in the victim survivor's name. A victim survivor's credit report can be affected due to family violence and economic abuse. Credit reports can be used as a tool of abuse by some perpetrators who intentionally harm a partner or ex-partner's credit report.

No wrong door and need for seamless processes and staff training

We support the OAIC's proposal for guidance on the 'no wrong door' approach to corrections. We note ARCA's expectation that credit providers (CPs) or credit reporting bureaus (CRBs) should respond appropriately to requests.

Credit reporting rules are complex for consumer advocates, even more so for consumers. In particular, consumers who are in vulnerable circumstances (including victims of fraud and those experiencing family violence) need a simple pathway to having problems resolved, which requires staff who can understand and address the issue at first contact.

While some credit providers have trained staff who can respond to vulnerable consumers (including those experiencing family violence), many need better processes, and we are not confident that CRBs are able to respond appropriately to all consumers.

As well as having an understanding of various cohorts of consumers and areas of vulnerability, the assistance shouldn't require the consumer to have any understanding of the complex provisions of the Code, therefore staff must be able to identify the issue and apply the Code appropriately.

Domestic and Family Violence and correction of errors – Proposal 39

We generally agree with ARCA's approach. Any types of negative data which are beyond the consumer's control, due to DFV, should be suppressed or corrected. Whether this is under 20.5 or 20.4 is likely to be irrelevant to the consumer.

While we are pleased to see that DFV will be added to the example list of circumstances outside the individual's control in 20.5 (Proposal 39), we note there are a range of reasons that DFV circumstances can cause inaccurate, irrelevant, or misleading information (as well as data that exists due to circumstances beyond the individual's control). The Code should consider DFV more broadly in relation to Clause 20, not just 20.5. As noted in the Consultation Paper 20.5 currently applies only to default information, whereas DFV can also cause a credit enquiry and/or application which is beyond the individual's control.

Limitations of 20.5 for DFV

We note limitations of 20.5 (as does ARCA on page 33, where ARCA notes that "paragraph 20.5 is not intended to cover the field and deal with all situations where information should

be corrected”). ARCA notes that other options are available for correction of other kinds of information (other than defaults), however the Code should make it clear that DFV could be a cause of other inaccurate information so that CPs and CRBs don’t only offer limited options for DFV victim survivors.

20.5 is also limited to circumstances where the default has led to a new arrangement or has been paid off. It should be made clear that a waiver by a CP, or an informal agreement not to pursue the consumer for a joint debt (but instead pursue the co-borrower) are classified as a new arrangement, but also that there are circumstances where there is no arrangement, but it is appropriate to change the record.

Evidence

Many victim survivors of DFV face barriers in obtaining court orders, intervention orders and even police reports, and industry and regulators in the financial services space have generally agreed that asking for evidence of DFV is inappropriate. If some evidence is required, we believe there may be a range of options in relation to credit reporting, including accepting the judgment of a CP (particularly where they have DFV specialists), or a statement by a range of professionals such as social workers and financial counsellors or accepting a statutory declaration. We understand the issue of evidence would not be covered in the Code and look forward to having further input to this issue.

Proposal 37

We support a simplified process for correcting multiple pieces of information stemming from a single event. DFV should be one of the circumstances in scope.

This is consistent with growing recognition by many businesses that industry can better assist consumers by collaborating so that the consumer doesn’t need to repeat their story.¹ If a victim survivor contacts one CRB and discloses incorrect/false enquiries or defaults on their credit report, the CRB should seek consent to contact other CRBs to pass on the information, in case the same defaults/enquiries are listed by those CRBs.

A CP or CRB should consider whether the multiple enquiries are a result of DFV (either fraud or coercion). Some clients are victims of fraud by a partner or ex-partner who has access to their personal details. While in some cases this could be dealt with as any other fraud, there can be complications, for example difficulty proving the fraud, or fear of retaliation if required to prove fraud. There are many reasons a victim of fraud may not be able to report this fraud to the police or other authorities, or such reports may not be met with appropriate responses, particularly if the perpetrator of fraud is the victim's partner or ex-partner. Therefore, this process should also apply to some DFV circumstances and DFV should be referred to in 20.4.

¹ For example, see Thriving Communities Partnership’s One Stop One Story Hub <https://thriving.org.au/what-we-do/the-one-stop-one-story-hub>

Proposal 40

- Do you foresee any issues with CPs receiving requests of this nature from individuals?
- Should CPs also be required to consult with CRBs (noting that paragraph 20.5 requires CRBs to consult with the relevant CP) when making a decision about whether the information should be corrected?

We don't foresee any issues arising with CPs receiving requests that wouldn't also arise with CRBs. In many cases the consumer, or their advocate, is already engaged with the CP and requiring them to contact the CRB would be unreasonable. As we've said above, we highlight the need for improvements in processes and staff training.

We don't see why the CP should be required to consult with the CRB. Our understanding is that the CP is usually more aware of the circumstances than the CRB.

Proposal 41

- Do you support a potential expansion of the mechanism in paragraph 20.5?
 - o If so, what types of data should be capable of being corrected and on what basis should this be possible?
 - o If not, why should information that exists due to circumstances out of the individual's control remain in the credit reporting system?

We support an expansion so that all types of data are capable of correction in circumstances of DFV. We acknowledge some challenges in amending RHI, however we generally support ARCA's option (top of page 34) to amend RHI data to paid on time if the payments have been made, and to correct the RHI where there are grounds to correct it.

It would be appropriate for ARCA to seek a No-action letter from ASIC (RG108) to confirm that it would take no action where CRBs fail to report financial hardship information in DFV circumstances.

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