

Professor John McMillan AO
Australian Information Commissioner
GPO Box 5218
Sydney
NSW 2001

By email and post: Redacted

31 March 2014

Dear Professor McMillian,

In accordance with Section 26T (1)(c) of the *Privacy Act 1988*, (the Act") I am writing to request that the Office of the Australian Information Commissioner ("OAIC") consider an application to vary the Credit Reporting Privacy Code, ("CR code") which was registered on the 22 January 2014.

As you are aware the Australian Retail Credit Association ("ARCA") was appointed by the OAIC to develop the CR code pursuant to Section 26P of the Act. In addition to being the code developer, ARCA is an industry association that represents entities that are bound by the CR code and therefore satisfies the criteria relevant to making an application.¹

Application To Vary – Clause 8.1 (b) of the CR code

ARCA is applying to have the grace period relating to repayment history information amended from "5" to "14" days.

¹ Section 26 T (1)(c)

If the OAIC accepts the application to vary the CR code the new provision would appear as:

Clause 8.1

(b) the grace period allowed by the CP for an overdue payment must be at least 14 days, beginning on the date that the CP's systems first classified the payment as being in arrears.

This application to vary the grace period follows growing consumer concerns raised through the media, which in turn have been the focus of Government discussion.

In particular, in a radio interview conducted on 14 March 2014, Alan Jones of 2GB Radio discussed this issue with the Attorney-General, Senator the Hon George Brandis QC. During the course of this interview, Mr Jones noted he had received considerable feedback about the credit reforms, including feedback raising issue with the 5 day grace period.

The Attorney-General committed to investigating this issue further. To assist the Attorney-General, on 18 March 2014, ARCA provided a detailed briefing note on repayment history information (RHI) and grace periods. A copy of this correspondence has previously been provided to your office.

On 25 March 2014, the Attorney-General responded to ARCA's correspondence, requesting that ARCA consider a variation to the CR code to change the grace period for reporting of repayment history information from a minimum of 5 days to a minimum of 14 days.

ARCA does not make this application lightly and we have considered the impacts on both consumers and the Industry. In light of these impacts and based on the feedback of our Members, we have agreed with the Attorney General's request to make an application to vary the CR code.

We set out additional detail about the impact of this variation on both consumers and the Industry below.

Impact on Consumers

As the CR code developer, we consulted broadly with both Industry and Consumer Advocates. During the consultation, it was evident that there were some different views and perspectives on a range of issues including the then proposed 5 day grace period.

Meetings were held with the Consumer Advocates, during which initial support and in principle agreement was reached in relation to the 5 day grace period being a suitable option.

Subsequent to those discussions and as outlined in the Joint Consumer Submission dated May 2013, the Consumer Advocates, after further consideration, stated that the period of 5 days was not sufficient.

The reason given was that:

"The 5 days will definitely prevent a large number of disputes but it will not cover a number of disputes that would genuinely be over 5 days. We contend that 14 days is a fairer amount of days. In particular, this reflects the most common pay period which means the consumer could rectify the missed payment by their next pay to avoid a RHI negative listing"

Consumer advocates have never proposed a period longer than 14 days.

In considering this application we have liaised with the Consumer Action Law Centre in Victoria. They have canvassed the views of a number of consumer advocates whose views were represented in the Joint Consumer Submission and they have today confirmed that the following groups and/or individuals continue to support a 14 day grace period.

Consumer Groups/Individuals

- Consumer Action Law Centre (Vic)
- Consumer Credit Legal Centre (NSW)
- Consumer Legal Service (WA)
- Financial Counselling Australia
- Nigel Waters
- Australian Communications Consumer Action Network (ACCAN)

A 14 day grace period would still enable the regular reporting of RHI. There are clear consumer benefits in reporting RHI in a regular manner, which properly reflects account cycles.

The benefits are twofold:

- Those consumers in difficulty will be identified earlier, and either not be lent money they cannot afford to repay or, alternatively, will have an opportunity to work with their credit provider to resolve financial difficulties before their account becomes seriously delinquent.
- Those consumers who pay regularly on time will be identified as good payers.

We appreciate based on feedback that consumers have considerable concern about the grace period remaining at 5 days. Our view is the concerns about grace periods reflect lack of knowledge about the reforms. Generally, consumers (when provided fulsome information about the reforms) are positive about them.

ARCA commissioned research house Vision Critical to assess consumer attitudes towards the credit reporting changes via a national study involving six qualitative live chats followed by a quantitative online survey of 470 people, completed over the period October to November 2013.

This research found that when the changes to credit reporting are explained, support for the credit reporting system rises, as the new system is seen as more consumer centric and fairer. Lower income consumers in particular believe that the credit reporting changes will make things better for them. Importantly, “not so good payers” believe that the changes will benefit them, whereas good payers do not expect much impact.

However, what is apparent is that the credit reporting changes raise consumer questions including where the information comes from, who can access it, what additional information will go to credit providers, how it will be used, how to access their credit report and how to fix any errors on it. These concerns require consumer education. This is underscored by the Vision Critical research which also showed that four in five consumers believe that it is important that people understand how credit reports are used, and one in four feel stressed about managing their finances.

For these reasons, it is apparent the impact of a change to grace periods from a consumer perspective would:

- Be consistent with Consumer Advocate submissions for 14 days; and
- Alleviate concerns about the credit reforms, and enable further education about these reforms.

Impact on Industry

In terms of composition of the Industry, we understand that the top 100 credit provider companies supply approximately 90% of data in the credit reporting system. Of those companies, 16 are ARCA Members. Those 16 credit providers are likely to initially contribute 80 to 90% of RHI by volume.

Although we understand that the bulk of RHI disclosure will not commenced until at least the end of the third quarter of 2014, or the start fourth quarter of 2014, the systems necessary to implement this disclosure have already been developed. ARCA Members and the Industry generally have invested considerable capital in developing systems and procedures to reflect the current reforms, particularly a 5 day grace period for RHI. We note that this application to vary the grace period may result in additional cost and delay.

In addition to the cost and potential rework, ARCA Members have identified a number of concerns that might arise from extending the days grace period.

In its simplest form extending the days for the grace period may make it more difficult for a credit provider to distinguish between individuals that:

- Typically make repayments on time, but have forgotten to pay; and
- Are showing signs of financial difficulty across a number of credit products.

This reduces a credit provider's ability to make more accurate and better-informed lending decisions, which may:

- Restrict some individuals from being able to access to credit; and/or
- Increase the risk that individuals commit to repay more credit than they can afford.

It also may restrict a credit provider's ability to identify fraud, indicated by individuals that miss their first repayment. This exposes individuals to increased risk of fraud and the cost and inconvenience of resolving such issues.

However, balancing these concerns, Industry is mindful that the success of the credit reforms is, in part, dependent on consumers understanding and having confidence in these reforms. To that end, Industry has considered what an appropriate extension to the grace period might be which would still deliver the benefits of regular up-to-date RHI reporting, and address the consumer concerns.

The information provided by our Members indicates that while the 5 day grace period as currently stated in code is the preference, a period not greater than 14 days is an appropriate period given the current circumstances.

It should be noted that the majority of our Members consider that a period longer than 14 days would impair credit providers' ability to identify high risk customers, which in turn would result in poor credit decisions. It would also mean that customers who do pay in time are not clearly identified and rewarded for this good payment behavior.

Furthermore, extending the grace period beyond 14 days means that credit providers will not be able to appropriately work with an individual to assist them in avoiding defaulting on his or her obligations in relation to consumer credit, as required by Item 5 of the table in section 21H of the Privacy Act.

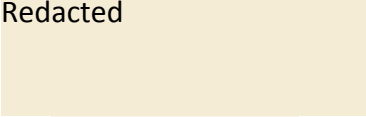
Recommendation

ARCA's recommendation is that the variation to the CR code should be approved.

Having raised this issue with ARCA Members, we have identified that in order to satisfy the consumer concerns, and given the magnitude of the changes to the way credit information will be reported and the general low awareness of the reforms, they would support a change not greater than 14 days.

Given the request from the Attorney General to reconsider the number of grace days and to make an application to vary the CR code, we respectfully seek your consideration of this application to vary the CR code as outlined above.

Redacted



Damian Paull
Chief Executive Officer