



## CR code variation approval 2014 (No.2)

### Decision and reasons for decision of Australian Information Commissioner, Professor John McMillan

---

#### Decision on variation under s 26T of the *Privacy Act 1988*

1. In accordance with s 26T(1) of the *Privacy Act 1988* (the Privacy Act), I approve the variations of the registered Credit Reporting Privacy Code (CR code) v1.1 specified in the Schedule to this approval.
2. I also direct that, in accordance with s 26T(5), the existing CR code v1.1 on the [Codes Register](#) be removed and the CR code, as varied by this approval, be included on the [Codes Register](#) and subsequently registered on the Federal Register of Legislative Instruments.
3. In making this decision to vary the registered CR code v1.1 I have taken into account the requirements set out in s 26T of the Privacy Act, including relevant matters specified in the [Guidelines for developing codes](#) issued under s 26V.
4. The variations in the Schedule attached to this approval are minor in nature and do not affect in any way the Code obligations outlined in the existing CR code v1.1.
5. The CR code as varied by this approval commences when it is included on the Codes Register kept under s 26U(1) of the Privacy Act 1988.

Signed:

[signed]

Professor John McMillan  
Australian Information Commissioner

24 April 2014

# **Schedule — Variations to the Credit Reporting Privacy Code (CR code) (version 1.1) included on the Codes register under s26T(5) of the *Privacy Act 1988* on 3 April 2014**

## **1 Title (heading)**

Repeal the title (heading) on page 1 and in the header on each other page and substitute with: **Privacy (Credit Reporting) Code 2014 (Version 1.2)**

## **2 Page 1, text below the title and before contents**

Omit all the text on page 1 below the title and before the heading ‘Contents’ on page 2 and substitute the following:

### **1 Name of CR code**

- (1) This CR code is the *Privacy (Credit Reporting) Code 2014 (Version 1.2)*.
- (2) This CR code may also be cited as CR code v1.2.

### **2 Commencement**

This CR code v1.2 commences when it is included on the Codes Register kept under s 26U(1) of the *Privacy Act 1988* (Privacy Act).

### **3 Authority**

This CR code v1.2 is the CR code that is included on the Codes Register under paragraph 26T(5)(b) of the Privacy Act, thereby being the ‘registered CR code’ under section 26M of that Act.

### **4 Repeal**

(1) The Credit Reporting Privacy Code (CR code) included on the Codes Register under subsection 26S(1) of the Privacy Act on 22 January 2014 (Federal Register of Legislative Instruments No. F2014L00170) is repealed when this CR code v1.2 commences.

(2) The Credit Reporting Privacy Code (CR code) v1.1 included on the Codes Register under subsection 26T(5)(b) of the Privacy Act on 3 April 2014 is repealed when this CR code v1.2 commences.

### **5 Overview**

This CR code is a written code of practice about credit reporting under s 26N(1) of the Privacy Act as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (reform Act). The CR code is an important part of the regulatory framework for the comprehensive credit reporting system in Australia introduced by the reform Act. That system is intended to increase the efficiency of Australia’s consumer credit market. However, more comprehensive reporting necessitates improved privacy protections. This CR code adds to aspects of the credit reporting obligations imposed by Part IIIA of the Privacy Act and the Privacy Regulation 2013. This CR code does not

encompass all aspects of Part IIIA and so compliance with this CR code alone will not achieve full compliance with Part IIIA.

## **6 Reading the table**

(1) The white rows in the table that follows are the mandatory CR code obligations. The blue rows in the table constitute a high level summary of the provisions of Part IIIA of the Privacy Act that provide the context for the CR code obligations. While the summary is intended to assist readers and serve to link the CR code obligations to the Privacy Act provisions, the summary should not be relied upon as a comprehensive statement of those provisions.

(2) Terms in bold are defined in the Privacy Act or in this CR code (for ease of reading the often used defined terms CRB, CP and individual are not in bold).

(3) The terms “Explanatory Memorandum” or “Ex Mem” mean the Explanatory Memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012.

(4) The term “pre-reform code” means the repealed Credit Reporting Code of Conduct (Federal Register of Legislative Instruments F2009B00170) which was in force until 12 March 2014.

## **7 Referencing**

The numbering in the table below, after ‘CONTENTS’, should be referred to as ‘paragraph 1’, ‘paragraph 1.1’ etc. The provisions above, and before ‘CONTENTS’, should be referred to as ‘section 1, subsection 1(1) etc’.

## **3 Substitution of ‘current Code’ and ‘existing Code’**

Delete all instances of the terms “existing Code” and “current Code” throughout and substitute “the pre-reform code”.

## Reasons for decision

### Background

1. The first Credit Reporting Privacy Code (CR code), approved under the new Part IIIA of the *Privacy Act 1988* (Privacy Act) which commenced on 12 March 2014, was registered by my direction on the Codes Register on 22 January 2014 and took effect on 12 March 2014. That first CR code, designated a legislative instrument by s 26M(2) of the Privacy Act, was registered on the Federal Register of Legislative Instruments on 21 February 2014.
2. On 31 March 2014 the OAIC received an application for variation of the first registered CR code from the Australian Retail Credit Association (ARCA), the same organisation that developed and applied for registration of the first registered CR code.
3. On 3 April 2014 I approved the 31 March 2014 application for variation and the CR code as varied was registered on the Codes Register on the same day and commenced on that day. The only variation, which was made to paragraph 8.1(b), was to change the minimum grace period, before an overdue payment is classified as overdue for the purposes of a credit provider disclosing repayment history information to a credit reporting body, from 5 days to 14 days.
4. The provisions of Division 3 of Part IIIB of the Privacy Act dealing with the development and registration of the CR code and any varied CR code are unusual in respect to how they deal with the CR code registration process. Firstly they require that there be one and only one registered CR code at any time on the Codes Register after 12 March 2014 (s26S(4)). Secondly they effectively require that a varied CR code must be registered on the Codes Register in its entirety and the previously registered CR code be removed in its entirety (s 26T(5)). Thirdly, the registered CR code is designated as a legislative instrument (s 26M(2)) and an approval to register a varied CR code by the Information Commissioner is specifically stated not to be a legislative instrument (s 26T(7)). Lastly, the registered CR code when registered on the Federal Register of Legislative Instruments (FRLI) (as it must be under s 24 of the *Legislative Instruments Act 2003*) can have a commencement date preceding that registration (s 26M(3)).
5. This is quite a different approach to how most 'legislative instruments' are dealt with in relation to their registration on the FRLI, particularly in regard to variations. Normally legislative instruments can be amended by another instrument rather than having to be replaced in their entirety (and therefore registered as an entirely new legislative instrument both on the Code Register and on the FRLI).

6. Following registration of the varied CR code (v1.1) on the Codes Register on 3 April the OAIC sought advice from the Office of Parliamentary Counsel in relation to registration on the FRLI. The advice indicated that registration of the varied CR code would not repeal the first CR code on the FRLI as there was no statement to that effect in the varied CR code. This would have resulted in two CR codes potentially being 'active' on the FRLI and may have led to confusion in relation to which instrument was in effect.
7. Consequently, after consultation between the OAIC and the developer of the CR code, the Australian Retail Credit Association, I have, on my own initiative under s 26T(1)(a), approved a second varied CR code which simply includes minor amendments to effect the repeal of the first CR code on the FRLI and the 3 April variation on the Codes Register and to add a few usual provisions for legislative instruments on the title page, for example to name the instrument and to have a commencement provision. The original text on the front page of the CR code has been slightly amended for clarity and re-inserted under headings titled 'Overview' and 'Reading the table' in numbered sections. A couple of additional definitions have been added under 'Reading the table' and the terms 'current Code' and 'existing Code' have been replaced by the term 'the pre-reform code' to clarify which code those terms referred to. As well, how to reference the code provisions has been inserted and I have brought the title closer into line with best practice in legislative instrument naming.
8. All these variations are minor in nature and aid referencing and reading the CR code. There are absolutely no changes to the CR code obligations in the registered CR code v1.1.
9. Any further varied CR code will need to include a provision repealing the previously registered CR code.

## **Consultation**

10. I do not consider that it is necessary to undertake consultation for the purposes of s 26T(3) of the Privacy Act and s 17 of the *Legislative Instruments Act 2003* (LIA Act) because the effect of the proposed variations are minor in nature and do not affect the obligations or rights of individuals or organisations (see s 18 of the LIA Act).
11. Notwithstanding that I do not consider it necessary to undertake consultation, the proposed variation was added to the OAIC's Codes Register webpage on 22 April 2014 pursuant to s 26T(3)(a) and I have consulted with ARCA, the original code developer in relation to these minor variations.

## **Conclusion**

12. In order to make sure that the FRLI accurately reflects the Codes Register and that there is only one active CR code on the FRLI, and further to insert a few minor procedural elements and some text clarification I have approved these minor variations to the CR code.