



Telecommunications
Industry
Ombudsman

Submission to OAIC's
Independent Review of
the Credit Reporting
Code

February 2022

Introduction from Ombudsman, Judi Jones

We welcome the opportunity to comment on the OAIC's Independent Review of the Privacy (Credit Reporting) Code 2014 (CR Code).

As an external dispute resolution scheme recognised by the OAIC, the Telecommunications Industry Ombudsman (TIO) handles complaints about credit related personal information, including credit default reports. In financial year 2020-21, we handled 1,679 complaints about credit default reports.

We also investigate systemic issues covered by the CR Code that are areas of interest in this Independent Review. We have published two systemic investigation reports that highlight privacy issues arising from fraudsters accessing telecommunications accounts¹ and the impact of family violence on telecommunications consumers.²

In resolving and making decisions on complaints about credit related personal information, we regularly consider the obligations and requirements set out in the CR Code. We support the CR Code being restructured to make it easier for consumers to understand. We also support restructuring the CR Code to provide clearer delineation between expectations of consumers, credit providers, and credit reporting bodies.

This submission offers recommendations to enhance the CR Code and ensure its provisions achieve the right balance between protecting consumers and maintaining an efficient credit reporting system.

We look forward to the outcome of the Independent Review.

¹ *Defending phone and internet accounts from fraudsters* (November 2021).

² *Meeting the needs of consumers impacted by family violence* (December 2020).

1. The CR Code could require credit providers to make consumers aware of the impact of a credit inquiry and have them removed

It is important to balance protecting consumers from overcommitment and empowering consumers to confidently purchase products and services on credit. Credit inquiries play an important role in achieving this balance, but we see a general lack of understanding from consumers about how credit inquiries and credit files may impact them.

We recommend a requirement to notify consumers about the impacts of credit inquiries. This requirement would improve consumer awareness about how credit inquiries and credit scores work. It would also enhance consumer trust and empower consumers to make informed decisions.

We also recommend giving consumers the ability to request the removal of credit inquiries. Consumers should have this ability where incorrect advice was provided about the impact of the credit inquiry, or they were not notified whether a credit inquiry would be made.

Consumers often contact us to request the removal of credit inquiries from their credit file. We are sometimes unable to assist consumers with this outcome. This is because telecommunications providers must obtain an external credit check before providing a post-paid service to a new customer,³ so the inquiries are usually valid.

We often hear from consumers that they did not understand a credit inquiry would appear on their credit file, or that a credit inquiry could affect their credit score.

The case studies on the next page provide an example of:

- where a consumer relied on incorrect advice about credit inquiries, and
- a systemic investigation that demonstrates what can happen when credit inquiries are not conducted correctly. When system wide problems occur and impact a consumer's credit file, not all consumers will be aware and able to address the problem in a timely manner.

³ *Telecommunications Consumer Protections Code C628:2019*, clause 6.1.1(b)(ii).

Case study – Faye was given the wrong advice and her credit score dropped

Faye* wanted a new mobile phone and service, but did not want a credit inquiry lodged. She didn't want to take any chances with her credit score because she was in the process of getting a home loan approved.

Faye purchased a new mobile phone outright from an electronics store. After doing this, Faye visited a Mode Telco* store to ask about signing up to a contract for mobile services. Faye told a Mode Telco team member about her credit inquiry concerns. Mode Telco gave Faye instructions to sign up online and Faye understood that this would mean Mode Telco would not complete a credit inquiry.

Faye signed up online with Mode Telco and then learned that a credit inquiry had been lodged. This resulted in Faye's credit score falling by several points and she was concerned about the impact this may have on her loan being approved.

During our conciliation of Faye's complaint, Mode Telco told us that during the online sign up process, Faye was notified that Mode Telco would need to run a credit inquiry. Mode Telco also noted it was obligated to perform the credit inquiry. We explained to Faye that although she may have received incorrect advice before signing up, the credit inquiry was valid. For this reason, we could not compel Mode Telco to remove it.

We spoke to Faye about her concerns about the home loan, noting that a credit score is only one part of the home loan process. We also directed Faye to online information about credit scores. Faye remained disappointed about her reduced credit score but agreed to close the complaint after we provided her with this explanation and a path to more information.

*Names of all parties have been changed

Systemic investigation – PinkTel's system automatically ran multiple credit inquiries for a single transactions

In 2019, we notified PinkTel* about a possible systemic issue with the way PinkTel was running credit inquiries. PinkTel's customers were telling us that after ordering a single phone service from PinkTel and experiencing delays on their order, multiple credit inquiries had appeared on their credit files.

During our investigation, we found that PinkTel's system was automatically making credit inquiries whenever it reprocessed a delayed order. This meant that an order for a single service (typically requiring one credit enquiry) could result in additional credit inquiries being listed each month until the order was finalised. Since the delays were outside of the customer's control, these multiple credit inquiries did not fairly or accurately reflect customer interactions with PinkTel.

We worked with PinkTel on the issues and PinkTel agreed to stop automatic credit enquiries occurring where orders were delayed. As part of the resolution to this systemic issue, PinkTel agreed to identify affected customers and have duplicate credit inquiries removed. PinkTel ultimately identified nearly 1,500 duplicate inquiries made across three credit reporting agencies over a period of nearly three years.

Only a small number of affected consumers complained to us about this issue. Many affected consumers may not have been aware of the multiple credit inquiries or the impact on their credit file. They may have only become aware of the impact when they applied for credit, at which point their credit score may have already been affected.

*Names of all parties have been changed

2. We support a 'no wrong door' approach for accessing and correcting credit reporting information

The CR Code could be improved by taking a 'no wrong door' approach to credit reporting information access and corrections. We see complaints where consumers must make requests to multiple bodies to access or correct their credit reporting information.

A consumer should only need to make an access or correction request once for it to activate access to or correction of credit reporting information held by all credit reporting bodies. Updating the CR Code to require this would decrease the stress and unnecessary inconvenience some consumers currently experience.

As illustrated in the case study below, we see instances where telecommunications providers take the initiative to make correction requests to multiple credit reporting bodies. The CR Code should formalise this approach to enhance efficiency and reduce potential consumer detriment.

Case study – Brite Talk makes sure two credit reporting bodies remove a default listing

In 2017, Brite Talk* contacted Farhad* about a debt. Farhad noted that although the debt was listed for someone with the same name as Farhad, the address and other details were different. Farhad said it was a case of mistaken identity. Brite Talk accepted that an error had been made, and told Farhad it would waive the debt.

In 2021, Farhad purchased a property, subject to finance, and started going through the process of applying for loan approval. He learned that Brite Talk had listed a default on his credit file for the 2017 debt that he thought had been waived. Farhad contacted Brite Talk, but Brite Talk said they were unable to assist as he did not have a reference or account number.

We conciliated Farhad's complaint as an urgent matter because the settlement date was approaching and Farhad was at risk of losing the property and his deposit. During our conciliation, Brite Talk confirmed that Farhad was not liable for the debt.

Farhad was only aware that the credit default appeared on his credit file with Credit Reporting Body A. However, because Brite Talk had sold the debt at some stage, it was also on a credit file with Credit Reporting Body B. Brite Talk requested both bodies to remove the defaults. The complaint was resolved when it was confirmed both defaults had been removed – just under a week before Farhad's settlement.

*Names of all parties have been changed

3. Additional CR Code obligations could reduce complaints about default information and payment information

We find the CR Code provisions about default information and payment information generally work well but could be strengthened.

We recommend amending the CR Code to include:

- a requirement for stand-alone notices for intention to disclose default information
- a positive obligation to remove statute barred default information
- an obligation for original credit providers who on-sell debt to ensure the information provided by the debt collection agency is correct before listing a default
- clearer debt and default notice timeframes to prevent repeated notice cycles drawing out the life of a debt and default unnecessarily
- a requirement to list defaults within a reasonable period unless exceptional circumstances apply.

It is generally standard practice for telecommunications providers to send stand-alone notices to consumers where the provider intends to disclose default information. This is helpful for the consumer, and also assists us in resolving complaints. We consider sending stand-alone notices to be best practice and it should be a formalised requirement for all credit providers.

We receive complaints about aged default listings and about debt repayments not being recorded. These complaints could be reduced if credit providers and credit reporting bodies were required to take earlier action in listing or removing defaults. This is because consumers often do not learn about default listings until they apply for credit, which can be many years after the default has been listed. At this stage, it may be more difficult to dispute the default listing and too late to avoid the detriment of being default listed.

As demonstrated by the case studies below, we see complaints where defaults remain on credit files for many years, leading to unnecessary stress and harm.

Case study – Preeti is chased by a debt collection agency for a nine year old debt

In 2012, Preeti* had a mobile service with ScoopTel*. Preeti had problems with mobile coverage and stopped using the services after four months but did not cancel the service for another four months.

Preeti told us she disputed the remainder of the bill because she did not use the services for much of the remaining period. After we handled Preeti's complaint, ScoopTel and Preeti agreed that the remainder of the bill would be waived.

In 2021, nine years later, Preeti contacted us to say a debt collection agency had contacted her about the ScoopTel bill that was supposed to have been waived.

*Names of all parties have been changed

Case study – After six years and many tries, Larissa still can't get a default removed

In 2015, Larissa* went into a Marble Telco* store to talk about getting a new internet service. Marble Telco said they could not provide an internet service to Larissa because there was not sufficient capacity at the exchange near her address.

In the following months, Larissa received bills from Marble Telco. Larissa contacted Marble Telco, who said the account had accidentally been activated and they would fix the error. Larissa continued receiving bills and overdue notices, but each time she contacted Marble Telco, Marble Telco said to ignore them because they had fixed the error.

Several months later, Larissa started receiving letters from a debt collection agency saying that Larissa had not settled her debt with Marble Telco. Larissa contacted Marble Telco again and Marble Telco provided Larissa with an email saying Larissa did not owe them any money. Larissa forwarded this to the debt collection agency who said the matter was resolved.

In 2018, Larissa applied to refinance her mortgage but her application was rejected. She discovered it was because a default listing by Marble Telco remained on her credit file. Larissa continued to communicate with Marble Telco who continued to say they would resolve the problem.

Larissa told us she went through this cycle twice more when she applied for finance in 2020 and again in 2021.

*Names of all parties have been changed

4. Adding flexibility to the CR Code will allow credit providers to better support those who experience family violence

We welcome the Independent Review's focus on how the CR Code could better support those who experience family violence.

Our experience shows that credit providers, including telecommunications providers, need to be empowered to take a flexible approach to resolving complaints from consumers experiencing family violence. In our systemic investigation report, Meeting the needs of consumers impacted by family violence, we observe:

*'A bad credit rating can prevent a consumer from taking back control of their financial situation for many years. We have received complaints from consumers who said when they could not afford to continue paying for a service or debt, their provider sold the debt to a debt collection agency and listed a default on their credit file. Consumers may not be aware of a default listing on their credit file until years later when they are refused credit because of their bad credit history.'*⁴

We recommend expressly adding to the CR Code:

- family violence as an example of circumstances beyond the consumer's control for destruction of default information, and
- flexibility for credit providers to not list a default or to remove a default listing where a consumer is experiencing or recovering from family violence in the relevant period of time.

Our complaints about credit defaults listed against consumers experiencing family violence show credit providers would be assisted by the CR Code expressly allowing flexible responses.

In our report, our suggested improvements included providers allowing their staff to offer tailored solutions and authorising staff to offer highly flexible options. It is also important that consumers who experience family violence are not subject to strict evidentiary requirements. Consumers experiencing family violence may have limited access to other documentation substantiating their situation because of, for example, actions of the perpetrator or needing to flee at short notice. And not every person in this situation will report family violence to the police.

⁴ Meeting the needs of consumers impacted by family violence (November 2020) p 26.

5. The CR Code could facilitate preventative measures where identity theft or fraud occurs

We see many complaints about debts and credit default listings flowing from fraud and identity theft. Our experience suggests that enabling affected consumers to take preventative action would go a long way toward reducing the overall detriment and the time taken to recover from identity theft.

We recommend the OAIC consider enabling the CR Code to play a greater preventative function by requiring credit reporting bodies to:

- give free 'alerts' to consumers during ban periods, and
- accept the word of a consumer who requests a ban period without further evidence.

Our recent systemic investigation report, *Defending phone and internet accounts from fraudsters*, found that consumers may only find out about being a victim of fraud through resulting credit default listings. We observed:

*'Some consumers said they only realised they were a victim of fraud when they applied for a home loan, which was rejected because they had a default recorded on their credit file. Fraudsters may take steps to ensure all correspondence is sent to an address they control, meaning bills or other account notices never reach the consumer.'*⁵

We receive complaints where consumers tell us they became aware that their identity was stolen but were unable to prevent credit inquiries being made and debts being incurred. In some cases, this is because the credit reporting body requires extensive evidence of the fraud (such as police reports numbers) before a ban period can be activated.

There would be minimal risk in allowing a ban period to be activated simply by the consumer requesting it. This is because when a ban period is in place, a consumer cannot be approved for credit or otherwise obtain a benefit from the ban period. Activating a ban period upon request would mean it could be implemented more quickly, giving the consumer time to put measures in place and gather evidence showing identity theft or fraud.

⁵ *Defending phone and internet accounts from fraudsters* (November 2021) p 3.