



18 October 2017

PricewaterhouseCoopers (PwC)
via email: AU_2017CRCodeReview@pwc.com

Dear Sir/Madam

Consultation Issues Paper, Review of Privacy (Credit Reporting) Code 2014 (V1.2)

Thank you for the opportunity to provide feedback to the *PwC Review of the Privacy (Credit Reporting) Code 2014 (V1.2) Consultation Issues Paper*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by our investigations into these complaints as well as via our Community Outreach program.

EWON has responded only to the specific issues that have relevance through our casework, outreach experience and expertise.

In our context, credit providers are energy retailers and, therefore we have used this term where appropriate in this submission.

3.1. Interaction between the Code and the Act

Issue #1: Timing and delivery of section 21D notice

Q. Should the Code specifically include reference to the electronic delivery of notices to an email address in this context? What would be the costs and benefits of such a change?

We consider that the *Code* should specifically include reference to the electronic delivery of notices to an email address.

It is our experience that a failure in customers receiving notification of unpaid balances on their energy accounts is a common underlying cause of the credit listing complaints that we receive. We have received complaints from customers who have been default listed for a final bill following the closing of their energy account when they have moved house. The customers have called to close their account and provided an email address to receive their final bill. However, the energy retailer has still sent the final bill to their postal address and the customers do not receive it, or receive subsequent notices. Whilst the *Privacy Fact Sheet 35* states that a 'last known address' could be an email address, it would be useful if the *Code* stated this.

In support of this issue, EWON recently conducted a review of the credit reporting complaints received for one of our members (an energy retailer) received in the 2016/2017 financial year. The

review revealed that of the complaints that were investigated by EWON, 8% were resolved with the default listing being removed because the required notices were not sent to an email address as requested when the customers moved out of the supply address. EWON believes this is significant, particularly considering that complaints to us are generally a low proportion of complaints made to energy retailers directly. Further, many affected consumers may have paid credit repair companies a fee to have this incorrect default listings removed.

Consideration of the inclusion in the *Code* of the requirement to utilise other forms of electronic communication would also be beneficial. For example, this could include SMS text messaging, or other smartphone text notifications to notify customers either of the debt, or that a notice had been mailed or emailed to them. Energy retailers already provide text notifications to customers, so it does not appear that a requirement for using such communications would be a significant burden.

Issue #19: Listing of statute-barred debts

Q. Is there evidence of systemic late reporting of default information?

Q. What changes to the Code, if any, would you suggest to address the listing of statute-barred debts? What would be the costs and benefits of any such change?

EWON receives complaints from customers who have been default listed more than 12 months after the debt was due. As discussed earlier, complaints to us are generally a low proportion of complaints made to energy retailers directly. As such, EWON believes that systemic late reporting of default information is occurring, to the detriment of customers.

Recent Case studies

Case Study: *Listing a credit default more than 12 months after the debt became due makes it more difficult for a customer to dispute the debt or the process that the credit provider has taken to collect the amount owing.*

A customer received notice from her energy retailer in October 2015 notifying her of an energy debt of \$418.44 for a bill due 3 years earlier. The customer was confused over the notice, as she had a letter from a debt collection agent confirming that she had already paid a very similar amount for a debt with the same retailer. The customer contacted the retailer to obtain a review of the amount owing but did not receive an adequate response. The retailer did advise her that the debt she had already paid was managed by a second debt collection agency for another amount, and that she must pay the retailer directly for the debt outlined in the latest notice. The customer paid the amount owing.

The customer contacted EWON after she discovered that a credit default had been listed on her credit file for the amount owed.

EWON contacted the retailer to obtain further information about the listing. EWON's review of the retailer's records indicated that the customer's credit default was listed 466 days after the date on which the debt became due. Whilst the retailer maintained there was no legal requirement to disclose the information within 12 months, the listing was removed as a gesture of goodwill to the customer.

Case Study: *The customer was listed for a credit default relating to an energy account that he thought he had closed 6 years earlier.*

A customer contacted EWON after obtaining his credit report showing a debt of \$463 listed on 17 December 2015, relating to an electricity debt at a property he had not resided in since June 2010. The customer advised EWON that he informed his electricity retailer when he moved out of the property and that he had been subsequently billed for energy consumption for 12 months after this time.

EWON contacted the retailer to obtain their records relating to the billing of the account and the disclosure of the credit default. The records revealed that the default listing related to an electricity account in the customer's name that was closed in June 2011 and that a payment had been made towards the debt in December 2012. The complaint was resolved after the provider agreed to remove the default listing from the customer's credit file.

These case studies indicate that the negative impact on customers' credit reports continues well beyond the date after which recovery of the debt would be statute-barred. They also show that customers will have a much lesser ability to dispute the amount owing. For an energy consumer with a debt from a single final bill, which may only be small amount, allowing the default to be listed five years after the debt became due is a disproportionate penalty compared to any benefit obtained by other credit providers having access to this information. We consider that debts should be credit default listed within 12 months of their due date.

However we acknowledge that, while this may be appropriate for energy accounts, for debts such as mortgages a 12 month period would be inappropriate as it would result in loans being foreclosed on prematurely.

An approach that may be appropriate would be to include the date that the debt fell overdue on the credit file. Then the credit reporting body could have systems in place to ensure the credit listing is removed at the point when it exceeds the statute-barred period. Alternatively, a threshold on the amount (for example debts under \$1,000) could be introduced to help protect small statute-barred debts from being listed.

3.1. Non-compliance with provisions of the Code

Issue #31: Other

Minimum amount for credit listing

Under the *Code*, the unpaid amount must not be less than \$150 before a default listing can occur. EWON supports a minimum amount being prescribed, but suggests that a more realistic amount is \$300. This would exclude small utility bills from the adverse consequences of credit listing. \$300 is also the amount the Australian Energy Regulator sets as the minimum threshold below which a customer cannot be disconnected for non-payment. The AER sets this amount to give customers protection against being disconnected for the non-payment of one quarterly bill and EWON believes this same principle should apply for credit listing.¹

¹ AER, *Review of the Minimum Disconnection Amount*, March 2017

As discussed above, many unpaid utility debts arise when a final bill is issued after the customer has moved out of their premises. These debts tend to be based on usage for one quarter, or less if the customer moved out mid billing cycle, and are usually for a small amount. In circumstances where the debt is paid as soon as the customer becomes aware of it, and the credit listing is updated as paid, customers are often still denied credit. The adverse consequence for these customers is out of proportion to the debt.

Length of default listing is the same regardless of the amount of the debt

A credit default listing is for a period of five years regardless of whether the listing is for a debt of \$300 or \$30,000. While it might be expected that credit providers would take this into account, it appears from customer reports to EWON that this is not the case and credit is denied to customers regardless of the amount of the debt.

In EWON's submission to the 2012 Review of the Credit Reporting Code of Conduct we supported the introduction of a sliding scale where the credit default listing is for a period relative to the amount of the debt. For example, a debt of \$100 or less would result in a one year listing, a debt of between \$1,001 and \$5,000 would incur a two year listing, a debt of between \$5,001 and \$10,000 a three year listing, and debts above that amount being listed for 5 years.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely



Janine Young
Ombudsman
Energy & Water Ombudsman NSW