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Ms Julie Dennett
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Senate Legal and Constitutional Affairs Committee
Parliament House
CANBERRA ACT 2600
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Inquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012

About GE Capital

GE Capital welcomes the opportunity to make this submission to the Senate Legal and Constitutional Affairs Committee (the "Committee") Inquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 (the "Bill").

GE Capital commenced operations in Australia in 1995 and is now one of Australia's leading financiers. We provide a range of commercial and consumer lending products that are offered both directly to customers and via intermediaries, such as our major retail partners. Credit risk is fundamental to GE Capital's business. We have a significant and distinctive interest in proposed reforms affecting the regulation of the credit reporting system in Australia.

We have actively participated in the development of reforms to the credit reporting system in Australia, and we support the passage of the Bill as soon as possible.

GE Capital is a member of the Australasian Retail Credit Association (ARCA). We have had input to ARCA's submission to the Committee and we support and endorse the recommendations made by ARCA in that submission.

The purpose of this submission is to underscore particular concerns we have about the Bill and to recommend some minor changes to the Bill to facilitate the achievement of the government's policy objectives, namely, enhancing privacy protection for individuals while enabling a more comprehensive credit reporting system that will result in a net public benefit.

1. Reciprocity

In order to maintain the ongoing commitment to report full and accurate data on all accounts, our view is that a comprehensive credit reporting regime should be based on principles of reciprocity. That is to say, participants in the credit reporting system accessing credit bureaux should only be entitled to receive data at a level that is commensurate with their level of contribution. The only

exception to this should be limited access for legitimate purposes other than credit risk assessment (for example, identity verification by a prospective employer) for accessing data where there is no corresponding data contribution – and the data disclosed is limited to that which is necessary to achieve the purpose (that is, no credit performance data would be necessary for identity verification by an employer).

Lack of reciprocity will create disincentives to provide data, which will reduce the overall value of the regime to credit providers and may undermine the achievement of the full economic and societal benefits of the reforms.

The Explanatory Memorandum to the Bill states that reciprocity may be achieved through commercial arrangements. In our view, it is not feasible to expect commercial arrangements to achieve a credit reporting system that will result in the full and accurate reporting of data on all accounts.

We do not have a specific recommendation for a change to the Bill in this regard. However, we would welcome and commend a regulatory framework for the credit reporting system that includes principles of reciprocity.

2. Meaning of Credit Provider – unintended consequences

As noted by ARCA in its submission, the definition of credit provider in section 6G of the Bill is unreasonably wide such that it catches businesses who do not participate in the credit reporting system. One example given by ARCA is of retail stores where employees take applications for credit products from customers at point of sale. Those retail stores may be “credit providers” under the Bill, even though the credit is not in fact provided by the store itself. Typically, retailers are merely introducers of credit for a credit provider entity. In the course of introducing credit products, retailers merely pass customer information between the credit provider and the customer. All credit decision making, which may include accessing the customer’s consumer credit file, is undertaken only by the credit provider.

GE Capital is concerned about the breadth of this definition. Distribution of our credit products through retail partners (including major retailers and small business retailers) is fundamental to us. While we support a privacy regime that requires us to have controls in place to ensure our retail partners deal appropriately with their customers’ personal information while taking applications for credit products, it is inappropriate and unnecessary to impose the same obligations on retailers as those that are imposed on participants in the credit reporting system.

GE Capital’s Recommendation 1

The definition of “credit provider” is amended to apply only to those who provide credit and access the credit reporting system.

3. Australian link – unintended consequences

GE Capital is also concerned about the Bill's proposed changes to section 5B, which together with section 21G will prohibit a credit provider from disclosure of credit eligibility information to an overseas recipient that does not have an Australian link. APP 8 will regulate disclosure of personal information (other than credit eligibility information) to overseas recipients.

The resulting prohibition will be operationally difficult to manage, requiring different data sets to be segregated (those that do include credit eligibility information and those that do not) and managed under different disclosure regimes. Moreover, a credit provider's flexibility to conduct certain routine business activities through overseas agents will be severely inhibited.

There is no stated policy basis for imposing more restrictive requirements on cross-border disclosure of credit eligibility information. In our view, there are sufficient protections for all cross-border disclosures in APP 8.

GE Capital's Recommendation 2

APP 8 should apply to all disclosures to overseas recipients, including disclosures of credit eligibility information.

We would be happy to discuss our submission further with the Committee. GE Capital requests the opportunity to continue to be represented at any forum that is part of the consultation process with respect to the Bill.

Sincerely

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