Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

29 August 2012

Dear Ms Dennett

Inquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 - Written questions on notice

We refer to the Committee's request for ANZ to provide further information in relation to some additional questions. Our responses to these additional matters are set out below.

Does the Bill strike the right balance between protecting an individual's personal information and ensuring that sufficient information is available to assist a credit provider to determine an individual's eligibility for credit? (Explanatory Memorandum, p. 90)

In general the Bill strikes the right balance between protecting an individual's personal information and ensuring that sufficient information is available to assist credit providers in determining an individual's eligibility for credit. However, as noted in our submission to the Committee dated 9 July 2012, at pages 5 -6, ANZ is concerned that the permitted disclosures of new arrangement information is not in the best interests of consumers or credit providers.

As currently drafted, the Bill only permits the disclosure of new arrangement information to a credit reporting body (CRB) if default information has already been disclosed to the CRB by the credit provider. In our opinion, this is a prohibitive view of the provision of new arrangement information as borrowers and credit providers often enter into temporary repayment arrangements prior to default occurring, to assist borrowers in the management of their finances and to overcome short term difficulties.

If credit providers are unable to disclose hardship arrangements that are entered into prior to default to CRBs (and therefore if CRBs are unable to provide that information to credit providers participating in the credit reporting system), it will result in adverse repayment history being reported for the individual in the intervening period.

Where a temporary arrangement is in place, and even though an individual is meeting the terms of that arrangement, a credit provider will be required to disclose that the individual did not make their required monthly payment. The consequence is that an individual who is complying with a temporary arrangement will be treated in the same

way as an individual who has simply failed to make required payments. Consequently, we think that the Bill should be amended to:

- Facilitate the use of a *temporary* indicator of an individual's hardship arrangement; and
- The meaning of new arrangement information should be amended to allow a credit provider to report to a CRB a new arrangement that is agreed to prior to default.

Alternatively, the definition of repayment history information should be amended to allow hardship arrangements to be reported.

We believe this will benefit both credit providers and consumers as it will result in more accurate reporting of an individual's circumstances and credit providers will be able to identify customers who are currently under a temporary arrangement from those who are in default. A temporary flag will ensure that customers who comply with the temporary arrangements and return to normal repayments will not be disadvantaged when they apply for credit in the future.

The Explanatory Memorandum states that the 'credit reporting provisions have been completely revised…with the intention to ensure greater logical consistency, simplicity and clarity throughout the Privacy Act' (p. 92). In your view, will the amendments to the credit reporting framework proposed in the Bill meet these goals?

ANZ is generally pleased with the credit reporting provisions although we have raised a number of issues of concern in our submission.

ANZ considers that there is one aspect in particular in which the credit reporting provisions, as currently drafted, will not deliver consistency with other provisions of the Privacy Act. Namely:

- The credit reporting provisions of the Bill will prohibit a credit provider from disclosing credit eligibility information to a recipient that does not have an Australian link;
- This prohibition applies even where, consistent with new Australian Privacy Principle (APP) 8, the disclosing organisation takes steps to ensure the offshore entity is subject to the same standards of conduct and controls in relation to the credit eligibility information;
- This restriction is in excess of the cross border protections applied to the disclosure of information other than credit eligibility information to overseas recipients. As currently drafted the Bill will, for example, allow an organisation to disclose health information to the same offshore entity without an Australian link as long as it has complied with APP 8;
- The 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; and
- The restriction will impact on ANZ's current business structure and will interfere with the ability of a credit provider to structure its business operations and information sharing practices in a way which promotes efficiency, by utilising overseas service providers.

In ANZ's view, greater consistency between the credit reporting provisions and other parts of the Bill may be achieved by removing the requirement for a recipient of credit eligibility information to have an Australian link:

- Where the offshore recipient of the credit eligibility information conducts activities on behalf of the credit provider in respect of the credit provider's *Australian-based* credit business; and
- Provided that the credit provider complies with new APP 8.

Applying APP 8 in these circumstances would mean that, in the event of any breach of privacy by the offshore service provider, the consumer would have recourse against the Australian credit provider for that breach, as if it were the credit provider that committed the breach.

ANZ appreciates that the various classifications of information under Part IIIA of the Bill means that the law in this area is necessarily complex. To that extent, we are of the view that the introduction of the credit reporting reforms (including the introduction of more comprehensive credit reporting) should be complemented by appropriate education for both consumers and credit providers, such that they can be well informed of their rights and obligations. The requirement that credit providers have clear policies on the treatment of credit information will go some way to assisting with this.

A number of submitters commented on the complaints mechanisms set out in the Bill (proposed section 23B; item 72 of Schedule 2). Is the new regime impracticable as suggested by the Financial Services Ombudsman (*Submission 12*, p. 7) or is there a better way in which to deal with complaints?

ANZ considers that there are aspects of the complaints mechanisms set out in the Bill that make the new complaints regime impracticable for licensed credit providers.

We consider that there are issues with the Bill, as currently drafted, requiring whichever organisation a consumer first make a complaint to regarding a credit reporting matter being responsible for resolving that complaint. If the Bill is not amended, ANZ considers that credit providers and CRBs will be required to develop complex systems to manage customer complaints.

Furthermore, we consider that this will have flow on consequences for credit providers in the management of disputes referred to their external dispute resolution (EDR) scheme. In ANZ's view, credit providers will be faced with dealing with an increased number of complaints to their EDR scheme which may be more appropriately dealt with by the EDR scheme of the organisation that has purportedly disclosed the incorrect information which, in many instances, may be a different EDR scheme.

In our view, the Bill should be amended to allow the first point of contact to refer the consumer to the relevant organisation that has disclosed the potentially incorrect information. Escalation to EDR should then be to the relevant scheme of that organisation.

In our written submission of 9 July 2012, ANZ noted, at pages 9 – 10, a number of other concerns with the complaints regime set out in the Bill. Namely, ANZ considers that:

1. The complaints handling requirements as set out in the Bill are inconsistent with the *Australian Standard AS ISO 10002-2006 Customer satisfaction- guidelines for complaints handling in organisations* and the Australian Securities and Investments Commission's *Regulatory Guide 165* (RG 165) which applies to credit licensees.

   For a licensed credit provider, a complaint under section 23A is likely to also be a complaint for the purposes of RG 165. It will be difficult for licensed credit providers

to comply with both sets of requirements. For example, subsection 23B(5) provides for a maximum timeframe of 30 days for resolution, or longer if the complainant agrees in writing. RG 165.94 provides for a maximum timeframe of 45 days with no possibility of extension.

In our view, the Bill should be amended so that credit providers who are licensees are under the same obligations for handling customer complaints as they are under AS ISO 10002-2006 and RG 165.

2. As currently drafted, the complaint provisions will be practically difficult to comply with for both credit providers and CRBs. For example, under section 23C, a credit provider (recipient) who receives a complaint regarding incorrect credit information is required to notify all CRBs and other credit providers who hold the credit information of both the complaint and the outcome. The recipient will not be able to identify all holders of the information. The recipient will only be able to identify the CRB from which it obtained the information and the credit provider that initially disclosed the information.

   We consider that subsection 23C(3) be amended so that the receiving credit provider is only required to notify the CRB from which it received the information and the credit provider who initially disclosed the information.

3. Paragraph 1.14 of the current Credit Reporting Code of Conduct requires a CRB to provide information about the correction of credit information to entities nominated by an individual as having received the incorrect information from the CRB within the last three months. This paragraph of the Code ensures the costs associated with maintaining correct information are minimised whilst also ensuring the adverse impact to affected individuals is minimised. Providing the correction to entities who received the initial information more than three months ago, and who are not nominated by the individual, is unlikely to alter the credit decisions made for the individual and therefore unlikely to benefit them.

   We recommend that the Bill is amended so that entities only have to be notified of a correction to credit information if they received the information within the last three months (or other suitable period) or are nominated by the individual to receive the correction.

ANZ would be pleased to provide any further information about these responses as required. I can be contacted on

Yours sincerely

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