Communications Alliance response to Senate Legal and Constitutional Affairs Legislation Committee

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

Q1 – 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)

Response:

Communications Alliance believes that the Bill does strike a 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. The telecommunications industry supports the introduction of comprehensive reporting and the associated benefits to consumers and industry.

However, as we stated in our submission to the Senate inquiry, with regards to the repayment history information (the Fifth Data Set), we propose that telecommunications providers have an "opt in" option – this approach would provide a lead indicator to other financial service providers and also allow telecommunications providers to have a better understanding of a customer's capacity to pay before finalising the sale of products and services to them. That is, we recommend following the New Zealand approach.

In addition, our submission also highlighted our concern with the provisions restricting the ability of credit providers to disclose credit eligibility to entities that do not have an 'Australian link' (in sections 21G, 21J, 21K, 21M and 21N). To that end we encourage the government to consider removing the Australian link requirement from those provisions which do not involve disclosure to other credit providers.

Q2 – 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?

Response:

Despite the intentions of the amendment to 'ensure greater logical consistency, simplicity and clarity throughout the Privacy Act', we believe that amendments to the credit reporting framework will fall short of meeting these goals.

Some examples are:

- The complexity and circularity of definitions, e.g. credit eligibility information, credit reporting information and CP derived information;

- Australian link requirements – we do not believe that provisions relating to these requirements are simple or clear, and are not consistent with the Australian link / cross-border data transfer requirements of the rest of the Privacy Act. They are also difficult to reconcile with ALRC and Australian government comments regarding disclosure of credit reporting information to foreign entities, and with current practice and OAIC advice regarding the use of service providers.

Even the aim of clarity 'throughout the Privacy Act' may itself be too narrow, given the overlapping regulatory regimes that apply to many credit providers, e.g. for our sector the Telecommunications Consumer Protections Code and Telecommunications Industry Ombudsman scheme. Page 4 of our submission to the Senate inquiry commented on the fact that the Bill does not take into account existing credit-related obligations.

Q3 – 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?

Response:

Communications Alliance members agree with the position of the FOS that the complaints' mechanisms are impractical. We also assert that they are overly prescriptive, not in keeping with the way customers engage with their credit providers in the current day, not future-proof, and (most importantly) they do not take into account the existing regulated complaint handling obligations that each credit provider sector is already subject to.

Further, we agree with FOS' concerns about the "first contact has to resolve the complaint" issue. Carolyn Bond commented on this in the Senate hearings and said that although she's pushed for many years to stop the merry-go-round consumers have to deal with, this proposal will not help as the complaint may be received by a party who has nothing to do with the problem and therefore cannot assist. She cites an example of a mobile phone company having to try and resolve a complaint about a default listing made by the Commonwealth Bank.

On this issue, we note that the TIO (*Submission 45*, p. 9) supports an Australasian Retail Credit Association (ARCA) suggestion that industry should take responsibility for an effective referral process to ensure the complaint is acknowledged, managed and resolved by the relevant supplier of the disputed credit reporting information, rather than by the first point of contact. This view was supported by other EDR schemes, including the Financial Ombudsman Service (FOS), and the Energy and Water Ombudsman NSW (EWON). We also endorse this view.

The TIO expressed the view that such a referral mechanism could appropriately be included in the Bill, to make clear the responsibilities of CRBs and credit providers in circumstances where the most appropriate manner of handling a complaint is to refer it to another respondent for investigation and decision. This would allow the detail of the referral mechanism to be detailed in the proposed credit reporting code.

The issue is not only with the initial customer contact but also with escalated complaint handling schemes. We note that the Energy and Water Ombudsman NSW (*Submission 38*, p. 6) also supports this approach and note in their submission that *21W(3)(c)(i)* may inadvertently result in customer referrals to the wrong external dispute resolution scheme for their particular issue. They suggest that the Senate Committee reviews the wording of this Subdivision to ensure that individuals are referred to the most appropriate external dispute resolution scheme for their particular complaint.

As noted in our submission, the Bill does not appear to take into account the different sectors that are deemed 'credit providers' nor the legislative or regulatory obligations that already apply to each of those different sectors.

The inclusion in the Bill of legislative obligations which relate to how complaints should be handled is a prime example of this.

As stated in our submission to the Senate inquiry:

> Communications Alliance strongly suggests that the complaint handling obligations for credit providers be removed from the Bill and instead be dealt with via the industry Credit Reporting Code which is to be developed, to allow different industries to manage such complaints within their existing regulatory frameworks.
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> Telecommunications providers are already subject to a well-established regulatory scheme which includes specific obligations on complaint handling under our registered Telecommunications Consumer Protections (TCP) Code, breaches of which can result in enforcement action by the Australian Communications and Media Authority (ACMA). In addition, telecommunications providers are required to be members of the Telecommunications Industry Ombudsman (TIO) Scheme, which we understand to be the largest ombudsman scheme in the country.
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> It is our view that complaints from telecommunications customers about credit issues should be handled in accordance with the standards required for handling all types of telecommunications complaints. The Bill seeks to implement different obligations solely for this type of complaint, which will lead to customer confusion and an impost on telecommunications providers who will have to upgrade systems, change processes and retrain staff all so that credit complaints can be dealt with in a different manner to all other telecommunications complaints. This simply does not make sense and is not a beneficial outcome for consumers, who will get different responses in different timeframes via different mechanisms for their complaints to their telecommunications provider.
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> The TCP Code already contains thorough complaint handling rules for the telecommunications industry and is consistent with the Australian Standard on Complaint Handling. (The requirements in the Complaint Handling chapter of the TCP Code, which has recently been revised, have been determined having regard to the Australian Standard – Complaint Handling AS ISO 100002-2006.) The rules in the TCP Code are more far-reaching than those in the Bill, including matters such as:
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> - how telecommunications providers must handle complaints
> - that they must have documented complaint handling policies
> - customers receive a unique reference number/identifier to track their complaint and an indicative timeframe for resolution
> - immediate acknowledgement of a telephone or in-person complaint and all other complaints to be acknowledged within 2 working days
> - complaints will be resolved within 15 working days from receipt of the complaint or as soon as practicable in all circumstances
> - faster handling of urgent complaints
> - more explicit advice to consumers on external avenues of recourse, including the TIO
> - that credit action must be ceased whilst complaints about disputed charges are being investigated
> - that written complaints must be acknowledged within 5 working days of receipt
> - that complaints should be resolved upon first contact if possible, but within 30 days if not
> - that complaints should be escalated internally or to the TIO if the customer remains dissatisfied

One of the benefits of the TCP Code rules are that they allow telecommunications providers to take into account the manner in which the customer wishes to be communicated with. As the companies providing these very services directly to the customer, telecommunications customers often prefer to deal with their telecommunications providers via the telephone or via email, and increasingly via social media – such as on Twitter or Facebook.

The Bill does not even contemplate the option that a customer may not want to enter into a formal, drawn out, exchange of correspondence. It simply insists that credit providers who receive a complaint must write to customers, both after receipt of the complaint and after investigating a complaint. It also requires that complaints be resolved within 30 days unless the customer has agreed to a longer period in writing. In our view, such requirements neither provide a good customer experience nor do they reflect the current communication technologies available to consumers. In fact, it would appear that a reliance on such a formal process actually makes it more difficult for consumers to receive a prompt response to their complaints.

It is for these reasons that the members of Communications Alliance propose that the complaint handling obligations for credit providers be removed from the Bill and instead be dealt with in the industry Code, whereby complaints can be dealt with in accordance with:

(a) pre-existing rules that apply to different industries, and
(b) in a manner that is more realistic and reflective of how customers communicate with their providers.

In taking this approach, it will also remove some of the inconsistencies between the Bill and existing legislative and regulatory obligations in the non-banking sectors, and remove issues of conflict whereby providers may be caught under their existing industry obligations and new, different obligations under the Bill requirements.