

The Secretary

PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

5 July 2012

BY ELECTRONIC SUBMISSION

Dear Secretary,

This submission is made by Diners Club Pty Limited (Diners Club). We are grateful for the opportunity to give comments on the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 (“the Bill”). In addition to the comments made herein we support the submission made by the Australian Retail Credit Association. This submission therefore relates only to those elements of the proposed amendment legislation that disproportionately impact our business.

#### **Repayment History Information and Diners Club**

A number of provisions limit the use and/or disclosure of certain credit reporting information to “licensees”. Licensees are defined as holders of an Australian Credit Licence under the National Consumer Credit Protection Act 2009.

Diners Club is an issuer of charge cards. Charge cards operate in a similar manner to credit cards except that the liabilities under a charge card must be repaid in full each month. Pursuant to Regulation 62(1) of the National Consumer Credit Regulations 2010, as an issuer of charge cards, Diners Club is exempted from the obligation to maintain an Australian Credit Licence.

Section 20E(4) of the Bill prohibits a credit reporting agency from disclosing credit reporting information that is, or was derived from repayment history information, unless the disclosure is to a credit provider that is a licensee under the National Consumer Credit Protection Act (NCCPA).

Sections 20G(1) and (2) prohibits a credit reporting body from using credit reporting information for the purpose of carrying out direct marketing on behalf of a credit provider unless that credit provider is a licensee.

Section 21D prevents a credit provider from disclosing repayment history information to a credit reporting agency unless the credit provider is a licensee.

Section 21G(1)(3)(4) and (5) have the effect of permitting the disclosure of repayment history information to other credit providers but only those credit providers that are licensees.

As an exemptee under the licensing requirements of the NCCPA, Diners Club would therefore be excluded from receiving or providing repayment history information either from or to a credit reporting agency; or from or to other credit providers, including its related bodies corporate. The current definition of the term “licensee” and its use in the revised Part IIIA means that Diners Club is

at a competitive disadvantage against its major competitor in the charge card market, American Express Australia Limited (Amex Australia). As an issuer of credit cards and therefore a licensee, Amex Australia is able to obtain repayment history information about charge card applicants, even though the provision of such credit is exempt from National Consumer Credit Protection Act 2009 (NCCP) regulation - e.g. it is not covered by responsible lending or general conduct obligations.

We assume that this is an unintended consequence of the legislation as the effect to exclude charge card providers from the benefits of enhanced reporting appears illogical. That a business is structured in such a way so as to not require an Australian Credit Licence should not in itself mean that it is inappropriate for that business to have access to repayment history information. We propose therefore that:

- i. references in the exposure draft to “licensee” be replaced by “permitted credit provider”;  
and
- ii. a new definition of “permitted consumer credit provider” be inserted into the Act as follows:

***permitted consumer credit provider*** means:

- (a) a licensee under the National Consumer Credit Protection Act 2009; or
- (b) a credit provider who is exempt from holding an Australian Credit Licence because of regulation 62 of the National Consumer Credit Protection Regulations 2010 (charge card issuers).

Please contact me should you wish to discuss any of the comments in this letter.

Yours sincerely,

Daniel Richmond  
Counsel  
Diners Club Pty Limited