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

Dear Ms Dennett,

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

We appreciate the opportunity to provide further information for the Committee's consideration in response to its three questions on notice and thank you for the additional time to provide these responses.

We understand that the three questions have been submitted to certain other witnesses who participated in the Committee's hearings. We anticipate that our responses will be generally consistent with the responses of those other parties.

However, we would be pleased to clarify any of our responses should that be necessary in the event of any inconsistency.

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 its submission to the Committee, the Australian Bankers' Association (ABA) provided its support for the submissions of the Australian Retail Credit Association (ARCA).

The ABA confirms its general support for the more comprehensive credit reporting regime that is proposed in the Bill.

The ABA believes that there are strong protections enshrined in the Bill for the protection of an individual's personal information under the proposed credit reporting regime, but agrees with other submitters that the penalties regime appears to be disproportionately onerous in the event of an act non-compliance.

It is important to point out that the proposed comprehensive credit reporting regime will provide an additional tool to assist a credit provider to determine an individual's eligibility for credit and is not likely to be the sole determinant for a credit applicant's eligibility for credit.

This tool will enable the credit provider to more reliably verify certain aspects of a credit applicant's financial circumstances where this is necessary to do. Under the current negative credit reporting

regime, information to determine the extent of an applicant's other credit facilities and commitments is not readily available. The more comprehensive credit reporting regime will assist in this regard.

While in appropriate cases this information will enhance the quality of lending decisions, the ABA invites the Committee's support for the view that accessing a credit reporting body's credit reporting database should not be mandatory for all credit providers. Rather, utilising this tool should be on a case by case basis as determined by the credit provider. Not all customers will need this additional scrutiny or the additional information may be of little value which could lead to additional costs being incurred by credit providers for no real benefit.

This will ensure that there is an appropriate balance between the protection of the individual's privacy and the credit provider's need to access a credit reporting database.

One further matter raised in the ABA's earlier submission to the Committee concerns the direct marketing prohibition in subsection 20(G)(1) which is supported by the ABA.

For the avoidance of doubt, it should be clear that the prohibition on the use of the new more comprehensive data sets should expressly cover both direct and indirect use in a pre-screening process.

Indirect use means using the new data sets as model inputs to derive an outcome. For example, a credit reporting agency may blend the data sets into a model to derive a credit propensity score that predicts a customer's likelihood to be receptive to an offer of credit. This predictor could then be used for pre-screening or direct marketing.

The ABA is supportive of the intent of these prohibitions which should be reflected clearly in revised Credit Reporting Code of Conduct and in the provisions of the Bill.

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?

In its submission to the Committee the ABA questioned whether the Bill's intention to simplify the law so as to achieve greater logical consistency, simplicity and clarity would be achieved by removing the requirement for an "Australian link" for offshore disclosures of credit eligibility information and applying the broader Australian Privacy Principle 8 concerning the cross-border disclosure of personal information to this form of disclosure. In this particular instance the achievement of the objective of "greater logical consistency, simplicity and clarity" is questionable given the current Bill applies two differing and overlapping legislative requirements to offshore disclosure of personal information.

In the ABA's view this inter-relationship between the credit reporting provisions and the broader application of the Australian Privacy Principle 8 (subject to certain qualifications) are likely to increase the complexity of the Privacy Act. Treatment of the disclosure of any personal information to an overseas recipient should be treated consistently under the Bill.

Further, the ARCA submission provided the Committee with a range of definitional issues. The ABA supports the steps proposed by ARCA to address these issues.

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?

ARCA has raised a concern which appears to be shared by the Financial Ombudsman Service (FOS).

Briefly, the concern is that under the sections of the Bill dealing with an individual's request to correct certain information relating to credit (21U and 21V)) the recipient of the request bears the obligation to

seek to resolve the request where the information concerned originated from another party. This is an onerous obligation imposed on an entity that was not responsible for the alleged error.

FOS correctly points out the consequence if the source of the information held by the respondent to the complaint has been provided by another entity.

The ABA agrees with FOS that the responsible entity for resolving the complaint should be the entity that was the source of the information held by the credit reporting agency or the credit provider as the case may be. The nature of any credit reporting system is that it is a shared system where the subscribers that provide information for sharing with the other participants have the knowledge or the means of knowing the accuracy of the information.

In these instances, if the credit reporting agency or the credit provider (as the case may be) is to be the party responsible for the due handling and resolution of the complaint simply because it received the complaint, the relevant recipient would be required to enquire of the original provider of the information whether the information is correct or not and await any response, if any. This double handling would impose a delay in the time taken to resolve the complaint and the cost of completing the matter. This could detrimentally and unreasonably affect that recipient's relationship with its customer through no fault of its own.

The same difficulties will arise if the individual wishes to raise the matter with the relevant EDR scheme of the relevant credit reporting body or the credit provider because that EDR scheme will find itself in the same position as the relevant credit reporting body or the credit provider that first received the complaint. Faced with this situation the EDR scheme of which the responsible party is a member would have to resolve the dispute despite the fact that the relevant scheme member had no responsibility or knowledge of the accuracy or otherwise of the information complained of.

The proper place for resolving the matter would be the EDR scheme of the original provider of the relevant information. Where the EDR scheme of the credit reporting body, or the credit provider as the case may be, is the same as the EDR scheme of the original provider, that scheme could handle the matter at the cost of that original provider.

For complaints handling more generally, it will be important for the Bill to draw a clear distinction between the correction of information processes and the general complaints process. It is unlikely that consumers will understand the subtle differences between making a request for the correction of their information and a complaint.

ABA members (and we understand as are energy and telecommunications firms) are subject to complaint handling regulation. These requirements arise for banks under financial services and credit legislation and the ABA's Code of Banking Practice. These mandatory complaint handling processes should be taken into account to ease the administrative burden for organisations managing differing complaints handling processes and to avoid customer confusion. The Bill should apply its complaint handling requirements to those organisations that do not have these obligatory complaints handling standards in place.

If we are able to provide further assistance to the Committee please contact the writer.

Yours sincerely,