

Comments from Coalition Senators

Introductory comment

It should be noted that the membership of this committee has changed along with the change in the composition of the Senate on July 1, 2011. Neither of the Coalition Senators currently members of this committee were members at the time of the public hearings held into this exposure draft in May, 2011.

These comments are based on a consideration of the submissions made to the Committee.

Coalition concerns

Coalition Senators understand that the policies enacted by this legislation stand to substantially benefit consumers and businesses operating in the credit provision market – in terms of better pricing of credit as well as increased protections for consumers. The move to positive credit reporting is not a particularly contentious one.

Coalition Senators also concede that there has been an extensive period of consultation regarding this legislation. However, the consideration of exposure drafts of such substantial pieces of legislation is made more challenging by the lack of an Explanatory Memorandum to assist with deliberation – although this is not an uncommon challenge when dealing with draft legislation.

Coalition Senators are particularly concerned about two issues arising from this inquiry:

- The complexity and prescriptive nature of the legislation
- The inclusion of de-identified data under the provisions of the Privacy Act for the first time.

1. Complexity

Many submitters commented that the exposure draft relies on a prescriptive approach to regulation in this area, in particular submissions from those directly involved in the provision of credit or credit information.

These concerns are recorded at length in the Chair's report (Chapter 3).

This reflects a concern that rather than legislating principles or desired outcomes, the proposed bill legislates actual behaviour and business processes. Submitters argued that regulations or codes of practice would be more suitable for detailed implementation of the new regime. This would provide both flexibility to deal with future developments as well as room for innovation in the market.

Submitters also expressed concern that the prescriptive nature of the legislation would lead to unintentional breaches through the sheer complexity of the provisions. This is a valid concern as one of the objectives of this regime needs to be the ease of compliance, particularly as it relates to genuine human error.

An example that illustrates this concern is the fact that the exposure draft contains 60 new definitions, as opposed to the seven key definitions in the current Privacy Act. The number of new definitions is compounded by their complexity. Again, submitters expressed concern about this.

Coalition Senators concede that there are good reasons that the bill should be progressed rather than delayed. However, we are concerned at the response of the Department to the concerns regarding complexity.

The fact that redrafting legislation to take account of these would be time-consuming is not a sufficient response to these legitimate concerns.

While the exposure draft may implement the policies of the Government in this regard, the number of concerns raised indicates that alternative approaches in some of these areas may also achieve this, although with less complexity and a lower compliance burden.

2. De-identified data

A second issue of concern to Coalition Senators is the issue of bringing depersonalised data into the ambit of the Act.

By its very nature, depersonalised information does not contain identifiable personal data. It is, however, particularly useful for research purposes – and Coalition Senators note that the Government is occasionally the beneficiary of such research.

While the ALRC originally recommended against such a prescriptive approach on the use of depersonalised data, Coalition Senators also note that there has been no case put by the Government that it should be included in the bill.

There are clear costs to imposing restrictions on the use of depersonalised data – some of which will counteract the intentions of this bill (in particular the ability to use more information to more efficiently price credit).

Coalition Senators are not convinced that depersonalised data should be included in the provisions of this bill.

Concluding comments

Conscious that consideration of an Exposure Draft has its limitations, Coalition Senators do not wish to delay progress and passage of this bill. However, we believe that the Government has sufficient time to address the two concerns outlined above and should do so as a priority. This is a significant opportunity to get this legislation right. Where possible, all changes that simplify and streamline reporting should be undertaken.

Senator Scott Ryan
Deputy Chair

Senator Sean Edwards