



SENATE FINANCE AND PUBLIC ADMINISTRATION

LEGISLATION COMMITTEE

Exposure Drafts of Australian Privacy Amendment Legislation: Part II Credit Reporting

SUPPLEMENTARY SUBMISSION

Submission Number: 8a

Submitter Details: Australian Institute of Credit Management



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Senate Finance & Public Administration Committee
PO Box 6100
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Canberra ACT 2600

Australian Institute of Credit Management Submission to the

**Senate Standing Committee on Finance and Public Administration
Legislation Committee**

**Inquiry into Exposure Draft of the Australian Privacy Amendment
Legislation - Credit Reporting**

The Australian Institute of Credit Management (AICM) welcomes the opportunity to provide this submission in relation to the Exposure Draft of the Australian Privacy Amendment Legislation Credit Reporting.

AICM strongly supports the introduction of reforms to Part III A of the *Privacy Act 1988* (Cth) which will enable the introduction of what is commonly referred to as 'positive credit reporting'.

However AICM would state that the Exposure Draft seems to have been drafted in a manner that is unduly complex and prescriptive.

AICM's specific comments are as follows.

Permitted disclosure

It is pleasing to note that the Exposure Draft continues to provide for the permitted disclosure by a credit reporting agency (CRA) to a credit provider information for a commercial credit related purpose of the provider in relation to a person provided the individual has expressly consents to the disclosure of the information to the provider for that purpose. Such permission must be in writing.

The interaction between consumer and commercial credit provision is often complex for a variety of reasons for example when seeking to assess credit worthiness in relation to sole traders who unfortunately often operate with imprecise separation of personal and business financial structures, in this situation knowledge of their consumer credit history will be vital.

Equally a large proportion of private companies are small businesses often with one director, in this situation access to consumer credit information may be critical in determining appropriate credit levels and if security arrangements may be required.

Interaction with the *National Consumer Credit Protection Act 2009* (Cth)

AICM strongly supports the Exposure Draft as it will support and facilitate decisions made in accordance with the *National Consumer Credit Protection Act 2009* (Cth). Indeed, AICM has previously submitted that it has been unfortunate that there has been a delay in the introduction of the *Privacy Act* reforms given that the *National Consumer Credit Protection Act 2009* is already operational.

Dominant Purpose Test

AICM notes the exposure draft bill removes the dominant purpose test in the definition of a credit reporting business.

The Institute is concerned that removal of the dominant purpose test may lead to other organisations being unintentionally captured by the definition of a credit reporting business. On a day-to-day basis, credit reporting currently functions within an industry code of conduct, governed by specific industry legislation and overseen by privacy regulators. It is an activity that has a unique set of obligations and remedies, and non-compliance carries substantial penalty. AICM is concerned that organisations which provide credit may unintentionally come within the definition of a credit reporting agency and as previously indicated be obliged to meet additional regulatory and compliance burdens.

Reasonable mistake of fact

AICM is also concerned that Section 117 dealing with use or disclosure of information does not provide for a defence of “reasonable mistake of fact” –

effectively introducing strict liability on credit reporting agencies and potentially credit providers should a credit provider unintentionally come within the meaning of credit reporting agency.

The legislative framework

AICM accepts that credit reporting, needs to be managed with considerable care and requires clear direction and guidance as to the operation and management of this function. The handling of sensitive personal information places considerable responsibility on both the providers of the information and the users of this information.

In keeping with other recent legislative drafting practice AICM recommends that the Exposure Draft should be reviewed so that it will more closely align with the concept of 'principles based' legislation as for example occurred in the drafting of the *Personal Property Securities Act 2009* (Cth).

This approach would remove the need for the current prescriptive and complex drafting contained in the Exposure Draft. It is AICM's recommendation that the regulations and/or a code of practice would be the more appropriate place to contain detailed measures regarding the implementation and ongoing management of the proposed amendments. Such an approach would also facilitate any possible amendments that may be required. This would contribute to the ongoing relevance and application the legislation.

Repayment history and grace periods

AICM recommends that the provisions relating to repayment history and grace periods be reviewed to take into account the following issues:

- Circumstances where no payment is required
- Account cycles which may weekly, fortnightly, quarterly as well as monthly
- Part payments and multiple payments to bring an account in line with the terms and conditions of the agreement between the consumer and credit provider

Recognition of these variations from the monthly billing cycle would ensure that a consumer is not disadvantaged as well as providing a more accurate reflection of the consumer's payment history.

Categories of credit providers

The Exposure Draft provides for two categories of credit provider and the principle differentiation is with regard to which type of provider will have access to positive credit reporting as against those who will not have access to positive credit reporting.

It would appear that this differentiation is premised on whether or not the credit provider comes within the ambit of the *National Consumer Credit Protection Act 2009* (Cth) thus financial institutions will have access but other providers of consumer credit will not. AICM believes that this exclusion will be detrimental to the overall objective and policy intentions of the proposed legislation and could undermine its utility.

AICM would recommend that provided the credit provider is willing to adhere to the relevant legislative requirements then access to positive credit reporting information should not be denied. Equally credit providers which may not have access to positive credit reporting would seem to also be precluded from contributing to the consumer's credit history, thus creating potentially incomplete and imprecise consumer credit history. Again should a credit provider who is currently excluded be able to provide input then this would need to be subject to the same rules and restrictions as proposed will apply to financial institutions.

Conclusion

Whilst AICM supports the overall intention and direction of the Exposure Draft there are several issues which AICM believes would benefit from clarification.

Yours sincerely

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