

## **Attorney-General's Department**

### **Response to Senate Standing Committee on Legal and Constitutional Affairs Question on Notice provided by Committee Secretariat on 13 September 2012**

#### **Question:**

**The Communications Alliance and others have submitted that the complaints procedures proposed in the Bill do not align with procedures in other credit-related regulatory regimes (Submission 30, p. 4). Has the Australian Government considered this inconsistency and if so, on what basis has the approach taken in the Bill been adopted?**

#### **Answer:**

The Government considers that there should be a single corrections and complaints process for personal information in the credit reporting system, rather than different processes depending on the industry.

The Senate Finance and Public Administration Legislation Committee considered the exposure draft of the credit reporting provisions. The report ([http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=fapa\\_ctte/priv\\_exp\\_drafts/report\\_part2/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fapa_ctte/priv_exp_drafts/report_part2/index.htm)) discusses the corrections and complaints handling processes. The issue of inconsistency with other standards was considered at paragraphs 5.23 to 5.35. The Committee did not make any recommendations to change the approach taken in the Bill.

The Department notes that the Bill contains obligations in relation to both requests for correction and credit reporting complaints. The Department's view is that a billing complaint, for the purposes of credit reporting, should be seen as a correction request rather than a complaint, and this is the intention of the provisions. The reasons are as follows.

The correction process is intended to deal with situations where a person queries the information held in the credit reporting system. The correction process set out in clause 21V is used where a person is concerned that their personal information is 'inaccurate, out-of-date, incomplete, irrelevant or misleading'. There are minimal formal requirements for a correction request. The credit provider has 30 days, or such longer period as agreed with the individual, to consider the correction request. There are no writing requirements (except in relation to extending the 30 day period).

However, the Government considers that three specific matters that have been included in the process for correction requests are significant improvements for individuals and should be available to every individual who wishes to make a correction request, as follows:

- First contact obligations - the Government determined that an individual should be able to request any credit provider that holds personal information from the credit reporting system about the individual to correct the information. The credit provider that receives the correction request will be required to consult as necessary with other credit providers or credit reporting bodies in the course of making a decision about a correction request – see clause 21V.

- Notice requirements – the Government considers that obligations in relation to providing adequate notice are essential given the significance to an individual of any inaccuracies in relation to their personal information in the credit reporting system - see clause 21W, which sets out specific notice requirements where a correction is, or is not, made.
- Substantiation - the Government agreed with ALRC recommendation 59-8 that a credit provider should provide substantiating evidence – see paragraph 21W(3)(b), which requires a credit provider to provide evidence substantiating the correctness of an individual's information where the credit provider has refused a correction request.

It is expected that an individual would be taken to use the simpler process of requesting a correction if they were disputing a bill rather than take the path of making a complaint (see paragraph 5.35 of the Senate Finance and Public Administration Committee report on this point). The complaint provisions in the Bill would only apply where the individual is alleging the credit provider has done an act or practice that breaches the Act.

Where a credit provider has refused a request for correction, the next step is not for the individual to make a complaint about that refusal to the credit provider – the individual then complains about the refusal to an EDR service or the Information Commissioner. The credit provider only has to deal with the issue once, they don't have to deal with it again through the individual making a complaint with them about the refusal to correct (see paragraph 23A(2)(a) of the Bill). This simplified process was inserted into the Bill in direct response to concerns expressed by the Senate Finance and Public Administration Committee about the corrections and complaints process (see Government response to Committee recommendation 12).

Complaints about credit or billing issues within an organisation that do not involve credit reporting information should continue to be addressed by industry sector codes. It is only when the correction request relates to personal information in the credit reporting system that the corrections request procedures in the Bill would apply. Similarly, the complaint provisions set out in Division 5 of Part IIIA in the Bill only apply where the complaint relates to an act or practice that breaches the Privacy Act. An alleged breach of the Act is a serious matter and the complaint procedures are intended to provide appropriate consumer protections.

The Department has not reviewed relevant industry codes in detail but notes that industry codes may also deal with other credit related matters, such as the process for notifying consumer credit defaults or serious credit infringements, or providing information to debt collectors to collect a debt on behalf of a credit provider. The Government has imposed specific obligations in relation to these matters and expects that industry codes would be consistent with these obligations.