30 March 2011

By email: fpa.sen@aph.gov.au

Senate Finance and Public Administration Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Senators

Submission regarding Exposure Drafts of Australian Privacy Amendment Legislation

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Exposure Drafts of Australian Privacy Amendment Legislation. Our submission relates only to the Credit Reporting Exposure Draft ("the exposure draft") We apologise for the delay in providing this submission.

This submission sets out a number of specific concerns, the most significant regarding:

- **Pre-screening:** While we acknowledge that the exposure draft goes some way to limiting the potential harm of pre-screening, we fail to see that pre-screening has any benefit, except that it allows credit providers to market their products more aggressively. We recommend that pre-screening be prohibited.

  In the event that the Government chooses to continue to permit pre-screening, we recommend restrictions on pre-screening could be tightened by:
  - limiting pre-screening to only exclude consumers where their credit file contains bankruptcy, court judgments, serious credit infringements and/or defaults;
  - amending either 110(2) or 110(3) to prevent pre-screening being used to select individuals on the basis that those individuals have defaults; and
  - amending section 110(2) to be clear that certain identifying information cannot be used for the purposes of selecting who will receive marketing information.

- **Serious Credit Infringements -** we feel that the exposure draft will allow Serious Credit Infringements (SCIs) to be listed against consumers unjustly, leading to very serious detriment for those consumers. We have recommended that the exposure draft be amended to:

  - prevent debts for utilities which are provided to a particular address from being listed as SCIs;

- mandate a "grace" period (we suggest 6 months) at the end of which the credit provider must confirm a SCI based on information available to the credit provider at that time;
- prevent SCIs being listed by a credit provider that holds any security over the debtor's home; and
- providing that a SCI should be removed if it is later determined that had all the facts been known, it would not have been reasonable for the credit provider to form the view that it was the individual's intention to no longer comply with his/her obligations.

- **Requests to correct information -** despite accepting recommendation 59-8 of the ALRC's *For Your Information* report (with regards to request to correct information), the exposure draft fails entirely to implement that recommendation. We recommend that sections 121, 122, 149 and 150 are amended to implement recommendation 59-8 by:
  - requiring credit providers and CRAs to provide evidence to substantiate disputed information or refer a dispute to EDR within 30 days of a request for correction being received; and
  - requiring credit providers and CRAs to correct or delete information as requested if the obligation above is not met.

- **Complaints handling:** The complaints process envisaged by the draft is likely to be onerous and confusing in practice. We have recommended that:
  - a request to correct information is considered to be a complaint (unless the request relates to an inaccuracy that is not due to the action of the credit provider or credit reporting agency, such as a change of name following marriage); and
  - credit reporting agencies be required to belong to an approved external dispute resolution scheme.

- **Managing Credit (s 136):** We have recommend that:
  - "internal management purposes" needs to be defined to be clear that those purposes do not include adding information to customer relationship databases (or similar databases), or marketing credit.
  - the term “managing credit” (see section 180) should be defined in more detail to avoid any confusion with “internal management purposes”.
  - item five in the table at section 136 is amended to specify that an offer of further credit or additional credit products, including debt consolidation instruments is not considered to be "assisting the individual to avoid defaulting".

- **Default information (s 182):** We recommend that the wording of 182(2)(e) needs to be amended to ensure that no statute barred debts are listed.

In addition, we have stated some more general concerns at the beginning of this submission, and have made a number of recommendations regarding specific definitions and provisions at the end.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

Since September 2009 we have also operated a new service, MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

General concerns

Before discussing specific concerns with the exposure draft, we would like to take the opportunity to make some general remarks.

Complexity

The exposure draft is drafted in a way that is complex, and we believe unnecessarily so. One striking example is the multiple different types of information - for example, Credit Information, Credit Reporting Agency Derived Information, Credit Reporting Information, Credit Eligibility Information, et cetera. The sheer number of different classes of information, and the ways they overlap with each other mean that the Act is made less accessible than it should be.

We accept that to a certain extent this results from the aim to protect individual privacy by the application of different rules to different types of information. However, we believe this could be achieved with less complexity.

While the multiple different types of information is probably the most significant example, there are others (for example, the apparently unintentional double-negative in section 149 that we have mentioned below). We suggest the exposure draft needs to be comprehensively reviewed to correct minor errors, and consideration needs to be given to rationalizing some of the classes of information to improve accessibility.

Use of Regulations

We note that the Exposure Draft proposes that a number of important aspects of the credit reporting reforms will be contained in regulations, rather than the Act. Without access to the regulations, it is impossible to gain a proper understanding of the operation of these amendments or their impact on consumers. For this reason, we endorse the comments in submissions by the Australian Privacy Foundation and Legal Aid Queensland, that Parliament must have access to draft regulations while it debates the bill.

More comprehensive reporting

The main change to be brought about by these reforms is the introduction of additional categories of information that can be disclosed to credit reporting agencies, and by those

agencies to credit providers. As the Companion Guide notes: “Under the exposure draft provisions, five new positive data sets will be included in the credit reporting system: the type of each active credit account, date of opening and closure of account, account credit limits and credit repayment history.”

We accept that the Government has decided to allow more information to be exchanged between credit providers (through credit reporting agencies). We continue to question whether this change will enhance responsible lending, and note that overseas research[1] shows that access to more personal data leads to an overall increase in the level of consumer credit.

We believe that even in combination with the new responsible lending provisions in the National Consumer Credit Protection Act (2009) this additional information is likely to lead to an overall increase in credit over commitment. We have detailed these concerns in the past [2] and do not intend to repeat our arguments in this submission,

Pre-screening

While the use of credit reporting information for the purposes of direct marketing is prohibited under subsection 110(1) of the exposure draft, pre-screening is not.

The ALRC's *For Your Information* report recommended the prohibition of

> the use or disclosure of credit reporting information for the purposes of direct marketing, including the pre-screening of direct marketing lists (Recommendation 57-3).

The Government's response was to agree in part to this recommendation, stating that

> on balance, the use or disclosure of credit reporting information for the purposes of pre-screening should be expressly permitted, but only for the purpose of excluding adverse credit risks from marketing lists.

The response then went on to list a number of specific limits on pre-screening, including that "only negative credit reporting information can be used or disclosed for the purpose of pre-screening"

We fail to understand the Government’s response to this issue.

We understand why industry wants to use credit reporting information to pre-screen marketing offers. With direct marketing costing billions of dollars each year, all types of businesses would like to be able to better target their direct marketing campaigns to consumers who are more likely to take up the offers and be profitable to the business. In most cases the Government doesn’t allow access to otherwise protected personal information for this purpose.

However, the credit industry has argued that pre-screening is an aid to responsible lending, but the argument is nonsense.

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[1] Prof. John Barron. Prof. Michael Staten. “The Value of Comprehensive Credit Reports: Lessons from the US Experience” p 8

[2] Consumer Action Law Centre, Credit Reporting and Responsible Lending. September 2008. http://www.consumeraction.org.au/downloads/FactSheet-creditreportingandresponsiblelendingDec08.pdf

Once an individual receives direct marketing material about a credit product (or sees an advertisement on television or in the newspaper for a credit product) the individual must make a credit application. At that time, the credit provider can obtain application information from the individual and access the individual's complete credit report and make a lending decision.

We don't accept that sending marketing material to some individuals who may later be rejected for credit is a risk to responsible lending – although we accept that it may reduce the effectiveness of a marketing campaign.

In fact, we believe that being able to better target consumers for direct marketing (where there is a greater chance that applicants will be approved) can enable credit providers to be more aggressive with their marketing message.

We recommend that pre-screening should be prohibited.

While we still fail to see any benefit (other than to credit providers) in pre-screening, we accept that the Government may not share that view and the final version of this amendment is likely to permit pre-screening under certain circumstances. In that event, we believe restrictions on pre-screening in section 110 could be tightened to prevent some of the potential harm.

We approve of the limits in paragraph 110(2)(c) preventing consumer credit liability information and repayment history information from being used in pre-screening. However, this still leaves lenders considerable freedom to tailor the use of pre-screening to target marketing and the limits in 110(2) need to go further. By having the flexibility to choose the pieces of information that can be applied to "screen" individuals out depending on the marketing campaign, the information is in fact being used to profile the customers to be included in each specific marketing campaign. This is quite different to setting in advance the information considered relevant to determining whether a customer should be excluded from any given marketing campaign, and always requiring that this be the information screened for if pre-screening is applied.

In addition, lenders could argue that a wide range of information is "negative", including the number of addresses a person has had, the person's date of birth, the suburb the consumer lives in and the types of businesses that the consumer has borrowed money from. We don't believe that these factors should be able to be screened in, or out, through pre-screening.

If the intention is that pre-screening is not simply a tool to profile consumers for marketing purposes, it should be limited to one specific group of negative data. ***If pre-screening is not prohibited, we recommend that it be limited to only exclude consumers where their credit file contains one or more of the four main negative pieces of information - bankruptcy, court judgments serious credit infringements and defaults.*** This could be achieved through an amendment of section 110(2) and would be consistent with the view that pre-screening should only be used for "excluding adverse credit risks from marketing lists".

Further, even if pre-screening is limited to excluding customers based on bankruptcy, court judgements, serious credit infringements and defaults, it could still be possible to screen out those customers *without* defaults in order to target individuals with them. While this may be useful as a marketing tool it almost certainly lead to inappropriate marketing of credit to the most

vulnerable consumers. It would also run contrary to the Government's aim of limiting pre-screening to "excluding adverse credit risks from marketing lists". ***If pre-screening is not prohibited, we recommend that either 110(2) or 110(3) is amended to prevent pre-screening being used to select individuals on the basis of having defaults.***

Finally, we suggest subsection 110(2) would implicitly allow identifying information such as gender, date of birth and prior addresses to be accessed in the pre-screening process in order to identify the individuals to be removed from a marketing list. While this may be necessary to identify individuals, it should not be used to "screen out" individuals (for example based on age or address). , ***If pre-screening is not prohibited, we recommend that section 110(2) should be clear that this identifying information cannot be used for the purposes of selecting who will receive marketing information.***

Serious Credit Infringements (SCI)

As well as banks, finance companies and similar lenders, utilities companies are considered "credit providers" for the purposes of the current Privacy Act. This is due to a Determination made by the Federal Privacy Commissioner in 2006[3] but we do not believe that there was any intention that the coverage of the legislation would be so broad at the time the Act was drafted. We believe that some provisions of the Privacy Act are inappropriate when applied to utility debts - in particular the provisions relating to listing of SCIs. The definition of SCI in the Exposure Draft is very similar to that in the current Privacy Act, and we therefore believe this continues to be inappropriate for utility bills. Circumstances arise in relation to utility bills that don't generally arise in relation to finance debts.

In the context where lenders are banks and finance companies, the application of "serious credit infringement" (usually to consumers who fail to respond to contact by the credit provider at their last known address) makes some sense. Most consumers who move address without providing new contact details to such creditors, and fail to pay a bank loan or car loan would expect that they have committed a serious act.

The definition of SCI in the Exposure Draft is based on the current law, although there is an additional requirement that the credit provider take reasonable steps to contact the individual. While this clarification is an improvement, it simply confirms the process that we understand has been used in the application of SCI to date.

However, given the seriousness of an SCI listing, and the fact that it remains on a credit report for 7 years, we have significant concerns about the SCI provisions. It is important to note that a SCI is the only information that can be included in a credit report that is based on the credit providers opinion regarding the individual's conduct.

Unless an emergency arises (being hospitalized, or needing to travel urgently) most consumers would be aware that they had not notified a finance provider about a change of address - or even if there was a delay in notification, would continue to pay their loan. However, there are a range of circumstances in which consumers may fail to advise a utility provider of a change of address or may be unaware that they owe any money to that provider.

It is not uncommon, for example, for one person in a group house to sign up for the electricity or land-line telephone (in fact some of these accounts do not allow more than one name). The

[3] Privacy Commissioner, *Credit Provider Determination No. 2006–4 (Classes of Credit Providers)*, 21 August 2006.

person may leave the house but fail to change the name on the account. If at a later date the other residents leave without paying a final bill, the person whose name is on the account may be listed as a SCI. While the individual should have ensured that the account was changed over, we don't believe this individual's actions constitute the type of action that should be considered a SCI.

Residents who move address where they are using a new supplier for electricity and gas may not remember to provide their new address to their provider. In some cases they may remember a few months later, but too late to avoid the listing of a SCI. In some cases where the energy provider does not properly record the change of address, and the bill is not received, a SCI may be listed.

We understand that one "benefit" for potential credit providers is that a SCI can be listed immediately (without waiting for 60 days arrears) so that if a borrower is committing fraud, credit providers may be able to prevent suffering losses. However, the ability to list a SCI so quickly can mean that consumers have little time to show there is a reasonable excuse for failing to respond to correspondence. This benefit to creditors must be balanced with appropriate protections for consumers. We suggest that the interests of industry and consumers could be met by allowing credit provider to list a SCI in the circumstances outlined in the Exposure Draft, but requiring the credit provider to confirm the SCI listing in six months.

We propose that debts for utilities which are provided, or have been provided, to the individual's home should not be able to list SCIs. While the consumer's intentions may not be known, in these circumstances it is possible (and we don't believe uncommon) that the consumer may forget, or not be aware, that money is owing rather than be consciously avoiding their obligations. Again, the individual may not be without blame, but we don't believe their actions constitute the type of action implied by a SCI which focuses on fraudulent conduct or conduct that is very likely to be fraudulent.

We understand from industry that there are concerns in relation to fraud and mobile phones, and it may be appropriate to allow SCI listings for mobile phone debts, as long as the six month "grace period" applies as proposed above.

Finally, individuals should be able to have a SCI removed if it is later shown that, had all the circumstances been known, it would not have been reasonable for the credit provider to list a SCI.

One example of such circumstances which has occasionally been seen by our service involves a person who seeks to payout debts before they go overseas for an extended period. They payout an amount based on information provided by the credit provider, and then travel overseas. If the balance information was incorrect, they risk being listed as a SCI.

Under the current law (and the exposure draft) the listing is made on the basis of whether the credit provider's opinion was reasonable at the time. While we believe the six month period would address some of our concerns, it is simply unfair that a SCI listing remain in a situation where there is a reasonable explanation for the individual's conduct. In addition to the example above, this could include long term hospitalisation for serious illness, or errors on the part of the credit provider.

To summarise the discussion above, ***we recommend that the Act should stipulate:***

- ***Debts for utilities which are provided to a particular address (that is, excluding mobile phones) should not be able to list as SCIs. Alternatively, the Act could***

allow such debts to be listed if they are over a threshold amount, for example, $1,000;

- ***There should be a "grace" period (we suggest 6 months) at the end of which the credit provider must confirm a SCI based on information available to the credit provider at that time. If the SCI is not confirmed by the credit provider, it should be removed. This would meet the industry's desire to have access to information about potential fraud (or genuinely serious conduct) as soon as possible, but treat consumers more fairly;***
- ***A SCI should not be able to be listed by a credit provider that holds any security over the debtor's home;***
- ***A SCI should be removed if it is later determined that had all the facts been known, it would not have been reasonable for the credit provider to form the view that it was the individual's intention to no longer comply with his/her obligations.***

Requests to correct credit information - reversal of the onus of proof

The Australian Law Reform Commission's *For Your Information* report recommended that:

> The new *Privacy (Credit Reporting Information) Regulations* should provide that, within 30 days, evidence to substantiate disputed credit reporting information must be provided to the individual, or the matter referred to an external dispute resolution scheme recognised by the Privacy Commissioner. If these requirements are not met, the credit reporting agency must delete or correct the information on the request of the individual concerned (Recommendation 59-8).

The Government in its first stage response to *For Your Information* accepted recommendation 59-8[4].

However, the Exposure Draft fails to reflect this recommendation in two ways:

1. Credit providers and CRAs are not required to substantiate disputed credit reporting information (that is, the onus of proof is reversed); and
2. There are two, rather than one, stages in the complaints process. Failure or refusal to correct information does not lead to the individual being advised that he or she can take the matter to a dispute resolution scheme - in fact the individual must go through a second complaints process before the matter can be referred to a dispute resolution scheme.

Substantiation of disputed credit information
As was stated in the Government's first stage response, recommendation 59-8 sought to ensure that

> the onus of proving the accuracy or appropriateness of a listing in an individual's credit reporting information lies with credit providers and credit reporting agencies. It is also likely to assist in encouraging the credit reporting industry to resolve disputes as quickly and efficiently as possible.

[4]Australian Government (2009) *Australian Government First Stage Response to the Australian Law Reform Commission Report 108*, p 128. Accessed on 22 March 2011 from http://www.dpmc.gov.au/privacy/alrc_docs/stage1_aus_govt_response.pdf.

Sections 149 and 150 of the draft amendments deal with disputed credit information held by a credit provider and the relevant parts are reproduced below. Sections 121 and 122 mirror these provisions with regard to CRAs. The discussion below should be read to apply to both sets of provisions, and both to credit providers and CRAs.

> **149 Individual may request the correction of credit information etc.**
>
> ...
>
> *Correction*
> (2) If:
> (a) an individual requests a credit provider to correct personal information under subsection (1); and
> (b) the provider is satisfied that the information is inaccurate, out-of-date, incomplete or irrelevant;
> the provider must take such steps (if any) as are reasonable in the circumstances to correct the information within:
> (c) the period of 30 days that starts on the day on which the request is made; or
> (d) such longer period as the individual has agreed to in writing.
>
> *Consultation*
> (3) If the credit provider considers that the provider cannot be satisfied of the matter referred to in paragraph (2)(b) in relation to the personal information without consulting either or both of the following (the ***interested party***):
>
> (a) a credit reporting agency that holds or held the information;
>
> (b) another credit provider that holds or held the information;
>
> the provider must consult that interested party, or those interested parties, about the individual's request.
>
> ...
>
> **150 Notice of correction etc. must be given**
>
> ...
>
> (3) If the credit provider does not correct the personal information under subsection 149(2), the provider must, within a reasonable 7 period, give the individual written notice that:
> (a) states that the correction has not been made; and
> (b) sets out the provider's reasons for not correcting the information; and
> (c) sets out the effect of sections 157 and 158 (which deal with complaints).

Recommendation 59-8 would place two separate obligations on credit providers when requested to correct information:

- to provide evidence to substantiate the information, or refer the dispute to EDR within 30 days; and
- to correct the information as requested if they fail to meet the first obligation.

The draft amendment does not create either of those obligations and so entirely fails to implement recommendation 59-8.

The first obligation under recommendation 59-8 implicitly requires credit providers to actively investigate the accuracy of the information and provide substantiating evidence. However section 149(2) merely requires that credit providers consider whether or not they are satisfied that the information is incorrect, without making any effort to investigate or substantiate their decision. As long as a Credit Providers decide at the outset that they are satisfied of the

correctness of the information, they are not required to investigate at all. It appears that the requirement to consult under 149(3) only activates if the credit provider has doubts about the correctness of the information (though the use of a double negative[5] makes interpretation difficult).

If the credit provider is satisfied the information is correct (whether they investigate or not), they need not provide any evidence to substantiate that position. On our reading, a credit provider could satisfy 150(3)(b) simply by saying they have not corrected the information because they are satisfied the information is correct. Nor is the credit provider required to refer the matter to EDR, only to advise the consumer of their rights to complain (by 150(3)(c)).

The second obligation under recommendation 59-8, to correct or delete the information as requested if they fail to meet the first obligation within 30 days, does not seem to be addressed at all in the exposure draft.

This exposure draft, if enacted, will result in very poor outcomes for consumers.

Firstly, through section 149 it will reverse the onus of proof by requiring that consumers prove that disputed information is incorrect rather than requiring credit providers to prove the opposite. Under recommendation 59-8, credit providers would be required to prove that the listed information is correct, and refer the matter to EDR or make the change requested if they cannot meet the evidentiary burden.

Secondly, section 150(3) requires the consumer to go through a two stage complaint process; once to request information is corrected (under sections 121 or 149) and again under sections 157 and 158 if the first complaint is unsuccessful. Under recommendation 59-8, the first complaint is either resolved or referred directly to EDR. Complaint procedure is discussed further below.

Finally, there is no incentive or obligation for credit providers or CRAs to consider requests for correction under sections 149 and 150. Instead, they can simply choose to not to be satisfied that the information is inaccurate.

Individuals often challenge inaccurate listings when they are informed as part of an application for credit that their application was rejected on the basis of information contained in a credit report. An inaccurate listing can prevent, or delay, the individual obtaining credit, for example a housing loan to complete the purchase of a home. In those circumstances it is critical that evidence substantiating the listing is provided in a timely manner or the listing corrected as there is often some urgency.

We recommend that sections 121, 122, 149 and 150 are amended to implement recommendation 59-8 by:

- ***requiring credit providers and CRAs to provide evidence to substantiate the disputed information or refer a dispute to EDR within 30 days; and***
- ***requiring credit providers and CRAs to correct or delete information as requested if the obligation above is not met.***

[5] Subsection 149(3) and 149(2)(b), in conjunction require a credit provider to consult "If the credit provider considers that the provider cannot be satisfied"... "that the information is inaccurate". On a strict reading, the provider is required to consult only if they believe the information to be correct.

Complaints Handling

One of the major areas of concern with the current credit reporting regime is the complaints handling process. Without an effective complaints handling process individual consumers are less likely (and sometimes unable) to enforce their rights, regulators have reduced access to valuable data to identify breaches or systemic issues and the public has less trust in the system.

While we understand that it is the Government's intention to significantly improve the complaints handling process – and we welcome initiatives such as compulsory membership of EDR Schemes – we believe that the two-stage process in the Draft (as discussed above) will fail to achieve this objective.

The complaints process envisaged by the Draft is likely to be onerous and confusing in practice. It may also provide a meaning of complaint that is inconsistent with the *Australian Complaint Handling Standard (ISO AS 10002-2006)* and therefore the meaning adopted by the Australian Securities and Investments Commission (ASIC), ASIC licensees, financial services licensees and others.

The key problem is that "complaints" and "correction of information" are dealt with separately (indeed in separate Divisions) in the Exposure Draft. Most consumers are likely to believe that in requesting that credit information be changed that they are lodging a complaint. In fact, apart from requesting the change of a name due to marriage for example, the vast majority of requests to correct information will be made by consumers who believe that incorrect information has been recorded. Therefore they would consider the request to be a "complaint".

According to the *Australian Complaint Handling Standard*, a complaint is an "expression of dissatisfaction made to an organisation, related to its products, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected". Under this definition, once someone has requested a correction, they had made a complaint and they should not be required to make a further complaint before they are advised about their option to take the matter to an industry dispute resolution scheme.

According to the Draft, the complaints process is a two stage one. The customer first requests the CRA or CP to correct the information (consumers would usually consider this to be a complaint about inaccurate information). If the information is not corrected the Exposure Draft requires the CP or CRA to provide reasons in writing. Unfortunately, even though the consumer would believe that he or she had lodged a complaint, there is no requirement to inform the consumer about External Dispute Resolution Schemes or the Privacy Commissioner.

In practice, our experience shows that the effect of this would be that many consumers who are unsuccessful in seeking a change in their credit information would take no further action – in part because they will be unaware they can complain further, or that there are independent bodies that can deal with their complaint. A two stage process (even if there were additional information requirements at the end of the first stage) leads to a high proportion of consumers "dropping out" of the process. This could also cause some conflict between the law and licensed financial services and EDR schemes (which both use a definition of complaint similar to the Australian Standard definition).

We recommend that the Exposure Draft should be amended so that a request to correct information is considered to be a complaint.

In addition, we recommend that the Exposure Draft be amended to require that credit reporting agencies belong to an approved external dispute resolution scheme. We have had the benefit of reading a submission by our colleagues at Legal Aid Queensland

which has made the same recommendation, and we endorse the reasoning in that submission.

Managing Credit: section 136

"Internal Management Purposes" (s 136 table, items 1, 3 and 4)

Section 136 permits credit providers to use credit eligibility information for "internal management purposes of the provider that are directly related to the provision or management of any credit by the provider".

This reflects the current legislation, however, it is unclear in the current legislation and the Exposure Draft, what "internal management" purposes are. We note that the current Privacy Code gives the building of score cards as an example.

The new laws provide additional information to lenders, which we believe would be of significant value to them in relation to marketing to current customers. While using credit information for marketing purposes is prohibited, we have concerns that the lack of clarity in defining "internal management purposes" could enable credit providers to use credit information to market credit to the individual.

For example, at item one of the table in section 136 (which deals with information provided for the purpose of assessing an application for consumer credit), a credit provider is permitted to use credit eligibility information for

> the internal management purposes of the provider that are directly related to the provision or management of consumer credit by the provider.

On our reading, this provision allows credit providers to use the information for purposes with no connection whatsoever to assessing the individual credit application. A credit provider would presumably comply with this provision if they added the information to a "customer relationship system" (that is, the information is used for an internal information management purpose) which would then assist in marketing credit to any existing customers (a purpose "directly related to the provision or management of consumer credit by the provider").

We recommend that "internal management purposes" need to be more closely defined. We accept that it may be necessary to keep a broad definition in the Act to allow the Privacy Code or other instruments some flexibility to define the term. However, at a minimum, the Act needs to state that as well as excluding debt collection, the term "internal management purposes" excludes adding information to customer relationship databases (or similar databases), and offering, or suggesting, to the customer an increase in credit limit or other credit products.

We also recommend that the term "managing credit" (see section 180) is defined in more detail to avoid any confusion with "internal management purposes".

Assisting individuals to avoid defaults (s 136 table, item 5)
Power to use information to assist "the individual to avoid defaulting" also needs to be more tightly defined. This is both because this gives a credit provider ongoing access to a consumers credit report and it could allow the inappropriate marketing of additional credit. We accept that this power allows the credit provider to use information in positive ways, for example, to reduce a credit limit or offer a repayment plan to a customer who appeared to be in hardship. However, we believe it could also be used in ways that could exacerbate hardship, for example, to offer the individual a credit limit increase, a different type of credit card, or a debt consolidation.

We recommend that column two of item five of section 136 be amended to specify that offers of further credit or additional credit products, including debt consolidation instruments is not considered to be "assisting the individual to avoid defaulting".

Default information: section 182

In section 182(2)(e), the Exposure Draft seeks to prevent statute barred debts being listed on credit reports, following recommendation 58-1 of the ALRC in *For Your Information*. The wording of 182(2)(e) needs to be expanded meet that aim. The current wording prevents the listing of debts if the credit provider would be prevented from bringing proceedings to recover the debt. However, some Australian legislation bars recovery by providing a debtor with a full defence rather than preventing proceedings from the outset, which would escape s 182(2). ***We endorse the recommendation of our colleagues at Legal Aid Queensland that the wording of 182(2)(e) needs to be amended to ensure that no statute barred debts are listed.***

Recommendations regarding other specific provisions

Brief comments in relation to other provisions are provided in the following table.

Section	Response
Throughout	The term "written note" is used throughout the Draft. These references should perhaps be changed to a "record" rather than a "note". It is unclear whether there is a requirement to retain these notes. It is also unclear as to whether these notes will be included in the credit report so that the individual can access them. We believe they should be.
Throughout	The draft makes a number of references to the Credit Reporting Code. We are aware that there has been some discussion in the industry that more than one code could be developed. We strongly advise against this. While it may be necessary for the code to treat some industries differently, two or more codes would add confusion and complexity and be more onerous to monitor, to the detriment of consumers.
110(7)	The "note" in relation to access for pre-screening purposes should be available to the individual when s/he obtains a copy of the credit report
113(4)	The ability of a consumer to stop the use of a credit report to avoid possible fraud is positive. The requirement that the agency must believe on "reasonable grounds" that individual has been, or is likely to be a victim of fraud could cause some disputes. It would be worth considering whether there would be less detriment in placing a "ban" on a report if there was any doubt. We envisage that any potential CP who saw there was a ban would wait until the ban was removed before providing credit.
116	Accuracy and data quality requirements need to be stronger. While there are requirements for a CRA to take reasonable steps to ensure information is accurate, to conduct audits and to "deal" with breaches we believe this could be difficult to enforce in practice. It may be appropriate in some cases for a CRA to prevent a user from having access to the system, and the legislation should be strong enough to ensure that a CRA is prepared to take this action in relation to one of its customers. We believe that once a breach is identified by a CRA that is potentially systemic, the CRA should be held responsible (jointly with the CP) for any further breaches or failure to correct information.

119(6)	The requirement that a charge levied by a CRA "not be excessive" is vague and would be difficult to enforce. We suggest the Exposure Draft be amended to prevent the charge exceeding the cost of providing the information.
126(1)(c)	In relation to fraud the agency must be “satisfied” that the individual has been a victim of fraud. However, there is no obligation for the agency to take steps to satisfy itself of the fact, often leaving the consumer to prove that s/he didn’t apply for credit. Obligations should be placed on CPs and credit reporting agencies to assist in the investigation of a fraud allegation.
135(3)(b)	We do not understand why a CP would need to disclose credit eligibility information to a related body corporate if not for one of the other purposes under s136(b). In that case, such a disclosure is an unnecessary misuse of private information and should not be permitted.
149(1)(b)	In practice almost all consumers who complain to CPs do so because of information that has been reported to a CRA by a credit provider, so it shouldn’t be necessary for the CP to “hold at least one type of personal information” - and it would be unfair if any consumer had to show that the CP did. The key issue is that the CP has reported the information to the CRA. Therefore we recommend that, 149(1)(b) should include the additional words “the provider holds **or has reported to a credit reporting agency** at least one kind of the personal information referred to in paragraph (a)”
188(5)	The exclusions for real estate, general insurers and employers in section 188(5) are welcome but the effect is unclear. Past intention has been to deny these groups access to CRI. We agree real estate agents should not be considered CPs, however, it would be clearer to also exclude the use of credit reporting for assessing potential tenants, as businesses other than real estate agents could undertake the management of rental properties (including landlords).
192	The new concept of ‘access seeker’ appears to work as used in s119, but it is not clear if it is intended to be used throughout the Act more generally. We question the wording of section 192(2) which has the effect of prohibiting an individual from authorising particular categories of people as their access seeker. An individual will not in a position to know that they "must not authorise" such people, and we recommend that the prohibition should apply directly to people listed in section 192(2).

Yours sincerely
CONSUMER ACTION LAW CENTRE

Carolyn Bond
Co-CEO

David Leermakers
Policy Officer