

These notes were taken following a second round of discussion between consumer advocate and Veda.

Further work and discussion is planned on Hardship flags between ARCA and consumers.

In attendance:

- Consumer Action Law Centre – Victoria
- Consumer Credit Legal Centre -NSW
- Australian Privacy Foundation
- Legal Aid Queensland
- ARCA

Agreed actions

- A. Agreed proposal on Serious Credit Infringement, ID theft (following minor amendments see below) and Complaints Handling to be communicated to Senate Committee.
- B. On simplification, agreed in principle position that:
 - i. Veda and consumer advocates support significant simplification of the drafting of the EDB;
 - ii. That there is significant common ground;
 - iii. That the government should sit down with a handful of consumer advocates and industry reps, together with drafters, to agree the exact terms of simplification;
 - iv. That the Cleary report (with additions from the advocates) and Veda proposal should be provided to the Senate Committee and government as evidence of the significant convergence of views, but also to show some areas where consumer advocates have some concerns.

1. Serious Credit Infringement

- a. Delete existing definition of ***serious credit infringement*** , 2 new definitions
- b. ***Un-contactable default*** a default that is listed where the debtor has not responded and cannot be contacted throughout the life of the default.
 - i. Duration on credit bureau – 7 years
 - ii. If at any point the debtor contacts the creditor/default lister, then it is re-categorised as a standard default, duration of 5 years from the date of original listing
- c. ***Never paid flag*** can only be listed by telco or utility credit providers after 60 days when the credit provider has
 - i. never received any payment on the account; and
 - ii. has reasonable grounds to believe that the consumer never had any intention to make a payment on the account.
 - iii. The flag is removed at the end of 6 months and may be converted to an un-contactable default
 - iv. The Code of Conduct will provide guidance on what ‘reasonable grounds’ might be including evidence that the consumer is un-contactable, and/or evidence of a pattern of dishonesty

- v. The Code of Conduct will provide guidance on how to deal with compassionate reasons why some consumers might be un-contactable (eg ill-health, mental health issues, language difficulties)

2. Identity theft

- a. In lieu of the legislation prescribing bans as the solution for identity theft, the EDB should provide for:
 - i. Obligation on CRAs and CPs to take reasonable and practicable steps to
 - 1. Help correct victims of ID theft from further consequences of theft;
 - 2. Correct any inaccurate listings due to the ID theft
 - ii. Obligation on CRA to provide a flag on the file noting the consumer alleges they have been a victim of ID theft (this information must be made available to all CPs accessing the affected information file)
 - iii. More detail provision to be included in the Code
- b. Data exchange standard to provide technical specification for the flag
- c. Statute to oblige credit providers to have appropriate policies and procedures to act on the flag and to appropriately assess credit applications in the name of a consumer that has such an entry

3. Complaint Handling

- i. **Definition of complaint:** the statute should contain a single definition of *complaint* based on the ISO 10002:2004 and RG165
 - a. *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.*
 - b. This should eliminate the '2 step' approach in the Exposure Draft Bill, and lead to a common approach to IDR and EDR that meets international standards across credit reporting in Australia.
- ii. **EDR** should be clearly made compulsory for all credit reporting participants (statute)
- iii. **Codes and timing:** the basic principle should be that where a credit reporting participant is already subject to a complaints-handling requirement in a sectoral Code and EDR, or a statutory scheme, those requirements should apply in credit reporting.
 - a. The Privacy Commissioner should maintain a list of recognised industry codes and standards for complaints handling purposes
 - b. for those with a sectoral Code or other complaints-handling requirement, a breach of that requirement would be an *interference with privacy* under the Privacy Act
 - c. for CRAs and others without a sectoral scheme, the statute should provide for a 30 day requirement for the handling of a non-data correction complaint

- d. a data correction complaint would have a 45 day time limit for resolution; should the Credit provider not provide substantiation, the disputed information is resolved in the consumer's favour.
- iv. **Evidence requirements:** detail to be included in Code of Conduct
 - a. Onus of proof lies with the party that listed the information – standard is *reasonable proof*
 - b. *Reasonable proof* explained in Code to include concrete examples eg a copy of a default notice, proof that the debt owed was 60 days past due, and evidence of notice to consumer listing (specific material evidence – including record of date sent, and or that the system performed as intended to provide notice in the specific instance)
 - c. The development of the Code will draw upon other Code guidelines on evidence, such as FOS guidelines, as well as seeking input from the Privacy Commissioner
 - d. Reasons for decision to be provided to the consumer
 - e. Statutory obligation on parties to respond appropriately to a complaint
- v. Credit providers in liquidation: include in the Code a provision requiring EDR schemes to deal with consumer complaints even when a Credit Provider is in liquidation and no longer a member of an EDR scheme, if necessary charging the costs to the CRA (s) who are also party to the dispute
- vi. **Notification of other parties:** Code to provide that when a CRA makes a correction to a consumer's information, they:
 - a. give notice of the correction to other CRAs; and
 - b. advise the consumer that they may ask the CRA to inform any credit provider who has accessed their file since the erroneous inclusion of the correction;
 - c. if the consumer requests, advise those credit providers
- vii. **EDR Scheme co-ordination:** achieving some consistency in credit reporting dispute outcomes across EDR schemes is important. To that end, ARCA should hold a regular forum of EDR schemes and consumer advocates to report trends, and agree guidelines of resolving complaints.

| Senior Adviser, External Relations |