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Thursday, April 7, 2011

Christine McDonald
Secretary
Standing Committee on Finance and Public Administration
Legislation Committee
Parliament House
Canberra ACT 2600

By Email – fpa.sen@aph.gov.au

Dear Secretary,

INQUIRY INTO EXPOSURE DRAFTS OF THE AUSTRALIAN PRIVACY AMENDMENT LEGISLATION – CREDIT REPORTING

SUBMISSION BY FINANCIAL COUNSELLING ASSOCIATION OF QUEENSLAND (FCAQ)

We now provide the Committee with the FCAQ's comments.

We are grateful for the extension time within which to submit. Sadly time constraints have meant that our submission is somewhat brief.

Information about the FCAQ can be found at the Association's website at http://www.fcqn.asn.au/default.aspx

The FCAQ has 68 members who are financial counsellors working across Queensland. FCAQ members regularly deal with the issues subject of this Inquiry.

We endorse the submissions made by Legal Aid Queensland (22 March 2011), the Consumer Credit Legal Centre NSW (28 March 2011) and the Consumer Action Law Centre (30 March 2011).

The FCAQ's primary concern is the introduction of additional categories of information that can be disclosed to credit reporting agencies, and in turn by those agencies to credit providers.

We note that the Companion Guide provides: "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."

The FCAQ is concerned about the scope/extent of these data sets and the potential for large scale tracking of consumer conduct for marketing and other purposes wholly unrelated to responsible lending or other authorized purposes.

In terms of the recommendations made by the ALRC in Report 108, we raise some points of concern:

- **Recommendation 54-4**: We consider that the simplified definition of credit provider means that agencies that purchase debts should have restricted access to credit reporting information other than access to report that their account, that is the one they purchased, has been finalised. We are aware of cases where debt purchasers use information contained in credit reports to "badger" consumers. This is a simple extension of the need to know approach in personal information privacy.

- **Recommendation 55-1**: With the implementation of this recommendation, credit providers will be able to request further particulars about other accounts from potential borrowers. This is part of the onus on lenders to be responsible in their lending practices. Lenders do not need to have all personal financial details in order to be responsible. Otherwise it may well amount to an invasion of personal privacy when the lender could simply ask for further information if not automatically entitled to receive it as a part of credit reports. Full personal credit history need not be the default position for credit reporting. The need to be responsible places an onus on the lender themselves to request further information if it is needed to make a responsible lending decision.

- **Recommendation 55-2**: We consider that the recommendation does not reflect new electronic banking systems such as BPay. Additionally, where credit reporting includes an individual's repayment performance history, it should be limited to accounts that are a minimum of seven (7) to fourteen (14) days overdue **in fact**.

- **Recommendation 56-2**: We consider that this measure will offer little protection given that the proposed regime effectively allows tracking of all credit accounts.

- **Recommendation 57-2**: We consider that the use in secondary purposes such as pre screening is inappropriate and would be likely to be used for marketing purposes rather than achieving the requirement of responsible lending.

- **Recommendation 58-2**: We are unclear how informal arrangements in relation to hardship, such as those negotiated by our members or consumers with lenders/debt purchasers will be reflected in the proposed credit reporting regime. Will the arrangement be reflected in credit reports as a debt evermore or a remedied default. Additionally, do credit providers have the ability to properly and fairly reflect the arrangement on the their systems and those reportable to others.

- **Recommendation 58-3**: We are concerned that procedures should be clearly

defined including time limits. So for example, default reporting should be listed at a time that it occurs so the report duration accurately reflects the nature of the default and the person's credit history. If a consumer defaults in 2011 and it is not listed until 2013, they are penalised by listing until 2018 – effectively a 2 year extension. We contend that the Bankruptcy legislation takes a rehabilitative approach and that the proposed amendments take a punitive approach in this regard.

Additionally, there needs to be mandatory notification when accounts have been settled or brought to order.

Additionally, double listing or multiple listing of the same debt currently occurs and has a punitive effect on consumers by extending the listing period. In terms of disputes, we contend that it is difficult to dispute listings where to do so would be only be attained by reference to another's private listing or history. There needs to be a mechanism to ensure that privacy barriers can be lifted in cases of identity mistake or fraud such as where a consumer challenges whether they were the borrower or credit recipient.

In our view the name of the draft does not properly describe the actual nature of the new proposed system. It has moved into a credit "tracking" framework rather than a credit reporting framework.

How will the additional and likely substantial costs of this change be borne other than by the consumer through fees and charges?

Our concern is that the large additional credit data tracking and analysis will generate increased fees and charges on credit arrangements and will lead to greater potential for abuse of personal privacy by lenders and debt purchasers.

Where do assigned debts fit into this picture? This tripartite relationship (between lender, borrower and debt purchaser) does not fit easily into tracking framework because the debt purchaser becomes privy to personal credit information where there is no relationship or informed consent from the consumer to release that information.

Additionally for assigned debts, when do they become due and payable under the proposed regime?

Any codes of practice (such as a credit reporting code) must be monitored by a code compliance monitoring committee composed of both stakeholder and consumer representatives. Further it should be mandatory that all providers are signatories to the code and subject to its compliance and enforcement monitoring.

Yours faithfully

SASKIA TEN DAM
President
Financial Counsellors' Association of Queensland