

16 May 2011

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

By E-mail

Dear Committee Members

Exposure Drafts of Australian Privacy Amendment Legislation – Part 2: Credit Reporting

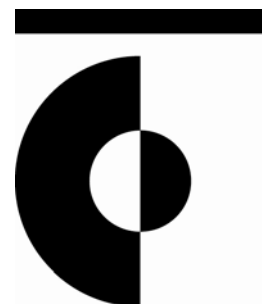
The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to submit comments regarding the Credit Reporting Exposure Draft.

As you may be aware, the TIO receives and investigates complaints from residential consumers and small businesses about their landline, mobile and internet services. These complaints often raise matters associated with actions taken by telephone and internet companies, including the referral of information to credit reporting agencies (CRAs) and subsequent credit default listings. The TIO investigates such complaints against its members, namely telephone and internet companies. The TIO does not exercise jurisdiction over CRAs, but instead looks to its members to work with agencies, including CRAs, to resolve complaints.

Many of the complaints we receive about credit reporting relate to debts that are in dispute. Some of the consumers we hear from indicate that credit default listings cause them financial difficulty because they impede their ability to secure finance for home or car loans.

Notwithstanding these complaints, the TIO recognises the positive role that credit reporting can play. We note that credit reporting, when used in the appropriate circumstances, can serve to prevent financial over-commitment among consumers, particularly those who may be in positions of disadvantage or vulnerability.

We therefore note the importance of a credit reporting framework which accommodates consumer expectations of fair procedures and avenues of redress, as well as credit provider expectations that they should be able to recover money for the supply of services.



**Telecommunications
Industry
Ombudsman**

**Simon Cohen
Ombudsman**

"... providing independent, just, informal and speedy resolution of complaints"

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The TIO's submission focuses on those aspects of the Exposure Draft most pertinent to our dealings with consumers. If there are any questions in respect of the TIO's comments or its statistical data, please contact the TIO Manager Planning & Stakeholder Engagement, David Brockman

Yours sincerely

Simon Cohen
OMBUDSMAN



Telecommunications Industry Ombudsman

Telecommunications Industry Ombudsman – Submission on the Credit Reporting Exposure Draft

May 2011



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TIO Approach to the Exposure draft

The TIO welcomes the opportunity to comment on the Credit Reporting Exposure Draft (the Exposure Draft). Having carefully considered the Exposure Draft and the objectives of the Inquiry more broadly, the TIO is generally in support of the recommendations regarding credit reporting.

Credit reporting is a common practice among telephone and internet companies and, consequently, the TIO does receive consumer complaints about reports made to credit reporting agencies (CRAs). The nature of some of these complaints will be examined in more detail later in this submission.

Notwithstanding the fact that most of the TIO's dealings with credit reporting matters stem from complaints by consumers and small businesses that they have been unfairly disadvantaged, the TIO recognises the positive role that credit reporting can play. In this respect the TIO notes that credit reporting, when used in the appropriate circumstances, can serve to prevent financial over-commitment among consumers, particularly those who may be in positions of disadvantage or vulnerability.

The TIO captures complaint issues about credit reporting in a category called *credit management*. In this submission we have chiefly focused on those sections of the Exposure Draft that are most pertinent to our dealings with consumers. To assist the Committee, we have extracted the text of the relevant subdivisions, followed by our observations or questions.

We set out in this submission:

- background information about the TIO
- a brief overview of the TIO's approach to handling credit reporting complaints
- sections of the Exposure Draft, with associated comments, relevant to the TIO's work.

About the TIO

The Telecommunications Industry Ombudsman (TIO) is a free and independent alternative dispute resolution service for small business and residential consumers in Australia who have a complaint about their telecommunications services.

Complaints are resolved quickly in a fair, independent and informal way, having regard not only to the law and to good industry practice, but also to what is fair and reasonable in all the circumstances. Before the TIO becomes involved in a complaint, the consumer must have given the service provider an opportunity to consider the complaint.

The TIO is the busiest industry Ombudsman Scheme in Australia – we receive an average of 5,000 to 6,000 calls each week and record around 150,000 to 170,000 new complaints each year¹.

Most complaints to the TIO are resolved quickly and effectively through a process of referral to designated contact points within the service providers. Complaints can also be resolved by the TIO conciliating an agreed outcome between the two parties. Complaints that cannot be resolved by conciliation are escalated for formal investigation by the TIO. The TIO can make binding determinations up to a value of \$30,000 and non-binding recommendations up to a value of \$85,000 in respect of each complaint.

The TIO is independent of telecommunications companies, consumer groups and government. However, we provide information and assistance to regulators or other organisations where this is required by law or where this will help the industry and consumers to resolve complaints.

Further information about the TIO is available at www.tio.com.au.

Complaints are recorded according to the types of issues that these complaints present. These include provisioning/connection delays, credit management disputes, contractual disputes, customer service/complaint handling and billing disputes. Every complaint involves at least one complaint issue. Some complaints can involve multiple complaint issues – for example, a complaint about a delay in rectifying a faulty landline service may also involve a claim that the consumer's complaint about this fault was not acknowledged or escalated (a complaint handling issue).

TIO complaints are broadly classified according to service types – internet, mobile, landline and mobile premium services (MPS).

More information about TIO complaints and complaint issues is available at www.tio.com.au.

¹ A 'complaint' is defined as an expression of grievance or dissatisfaction about a matter within the TIO's jurisdiction that the TIO Member concerned has had an opportunity to consider.

TIO approach to credit reporting complaints

Our jurisdiction

The TIO investigates complaints about credit reports against its members, namely telephone and internet companies which are required to belong to the TIO scheme. The TIO does not exercise jurisdiction over CRAs, but instead looks to its members to resolve complaints where their referral of information to CRAs has resulted in disputes with residential consumers or small businesses.

The TIO receives and investigates complaints from consumers about disputed credit default listings, whether these are lodged by the telephone or internet company, or by a company which has been assigned the debt. The TIO can investigate complaints about assigned or factored debts due to an explicit provision in the TIO Constitution².

Credit Default complaint issues

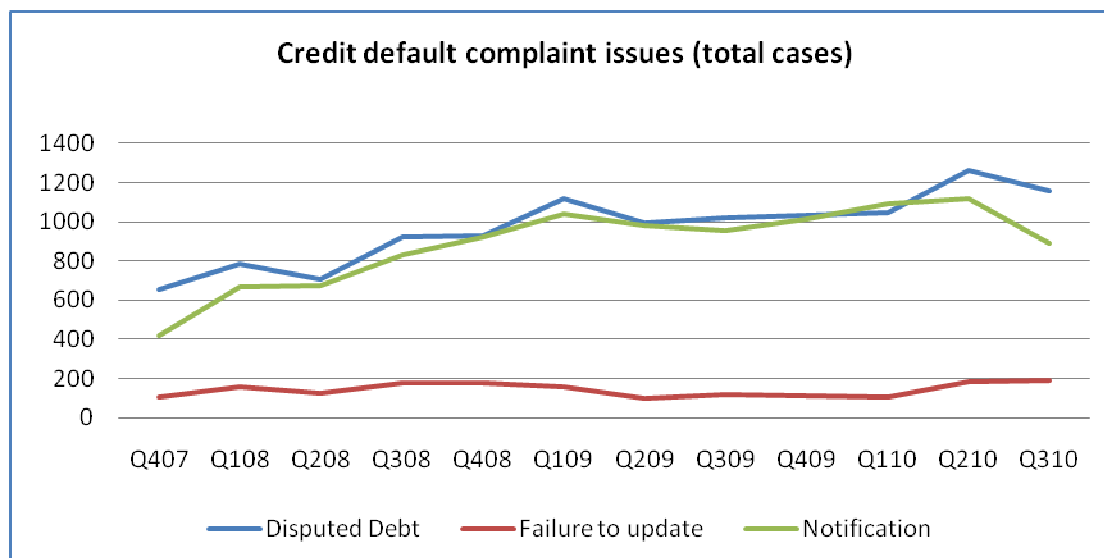
Complaints about credit defaults often raise issues of consequential detriment.

Consumers disputing credit defaults commonly report being in financial difficulty because applications for home loans or car finance have been rejected on the basis of, sometimes insignificant, telecommunications debts.

Generally credit reporting complaints to the TIO relate to:

- (a) credit defaults based on disputed debts.
- (b) failure on the part of a telephone or internet company to notify the consumer of the credit default.
- (c) a failure on the part of a telephone or internet company to update a credit file.

² *Clause 4.1:* the functions of the TIO include, but are not limited to, investigating and facilitating the resolution of complaints, including those regarding ‘the recovery of debts owed or allegedly owed by customers whether by members, their agents or factors’.



Complaints about credit defaults stemming from *disputed debts* are typically the most common complaint issues around credit reporting. During the financial year 2009-10, the TIO recorded 4,171 complaint issues³ about credit defaults relating to disputed debts across all case levels. This compares with 3,345 such complaint issues across all case levels recorded in the financial year 2008-09. Consumers who complain about credit defaults and disputed debts more generally, report the following complaints:

- The age of the debt and the time that has elapsed since the service(s) in question has/have been active
- Lack of clarity around the service(s) the debt and default listing relates to
- Dispute around the identity of the account holder
- Claim by the debtor that the debt was paid
- Claim by the debtor that they signed for a service only as a guarantor and that they did not use the service.

Complaints to the TIO about credit default listings may be closed with the following outcomes:

- The credit default listing may be shown to be correct and the listing remains unchanged
- There is doubt over the identity of the account holder for the service on which the debt was accrued, and the listing is therefore removed
- The credit default was listed contrary to procedural requirements, for example the consumer was not given required notice, and is therefore removed
- The credit default reflects an incorrect amount and is therefore updated

³ The TIO records and reports on issues at each case level. Every case includes at least one issue, and most cases include more than one issue.

Sections of the Exposure Draft relevant to the TIO's work

Use or disclosure during a ban period

113 No use or disclosure of credit reporting information during a ban period

(1) If:

- (a) a credit reporting agency holds credit reporting information about an individual; and
- (b) the individual believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud (including identity fraud); and
- (c) the individual requests the agency not to use or disclose the information under this Division;

then, despite any other provision of this Division, the agency must not use or disclose the information during the ban period for the information.

Ban period

(3) The **ban period** for credit reporting information about an individual is the period that:

(a) starts when the individual makes a request under paragraph (1)(c); and

(b) ends:

- (i) 14 days after the day on which the request is made; or
- (ii) if the period is extended under subsection (4)—on the day after the extended period ends.

The TIO notes that section 113 of the Exposure Draft refers to circumstances where an individual may request that, on the basis that they believe they may have been a victim of fraud, a CRA ceases from disclosing their information for a period of at least 14 days. The TIO's experience of investigating complaints about disputed default listings suggests that 14 days is not an adequate period of time for a consumer to have a complaint:

- a) Considered by the CRA,
- b) Considered by the service provider which listed the debt, or
- c) Considered by an external dispute resolution (EDR) scheme.

While an extension to this period is provided for, it is not clear what the nature of such an extension might be, or in what circumstances it would be granted. Some disputes regarding disputed defaults can take several months to resolve and, in circumstances where such a dispute has been referred to an EDR scheme (including the TIO) which have their own procedural requirements before a case is raised, it is perhaps worth considering:

- Whether 14 days will be adequate enough as a ban period in instances where an external dispute resolution scheme is investigating the complaint?
- Whether a credit provider which is considering a consumer complaint could request a ban period to be applied while it investigates the complaint?
- Whether a recognised EDR scheme such as the TIO could be enabled to request a ban period to be applied and/or request an extension on the 14 days period due to the likely time taken to investigate the complaint?

Having regard to the above questions, in circumstances where an individual believes that, for example, they are a victim of fraud, it may be reasonable for the individual to be able to request a ban period that:

- (a) is consistent with complaint handling guidelines pertinent to the credit provider responsible for investigating the matter, which for telecommunications companies would be 30 days; or
- (b) where the matter is referred to an EDR scheme, lasts until the case is closed.

Correction of credit reporting information

120 Correction of credit reporting information

If:

- (a) a credit reporting agency holds credit reporting information about an individual; and*
- (b) the agency is satisfied that, having regard to a purpose for which the information is held by the agency, the information is inaccurate, out-of-date, incomplete or irrelevant;*

the agency must take such steps (if any) as are reasonable in the circumstances to correct the information to ensure that, having regard to the purpose for which it is held, the information is accurate, up-to-date, complete and relevant.

121 Individual may request the correction of credit information etc.

Correction

- (2) If:*
- (a) an individual requests a credit reporting agency to correct personal information under subsection (1); and*
 - (b) the agency is satisfied that the information is inaccurate, out-of-date, incomplete or irrelevant;*

the agency 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.*

Sections 120 and 121 relate to circumstances where an individual's credit reporting profile is to be corrected, either because the CRA has identified that information may be incorrect, or where the individual has requested that information on their credit file be corrected. Given the significant detriment that can be associated with credit defaults – often the inability to seek finance for homes or cars – the timely removal of incorrect information is critical.

While sections 120 and 121 confer a general responsibility on CRAs to correct information they find to be inaccurate, the TIO suggests that the timeliness in which such corrections should occur is also very important. Section 120 indicates that CRAs should take “such steps (if any) as are reasonable in the circumstances” to correct information on a credit file to ensure it is accurate, however there appears to be no indication of a timeframe in which this must occur. Section 121, applying to circumstances where the individual has identified that personal information needs to be corrected, states that CRAs must take steps to correct the information within 30 days of the day the request is made.

The TIO's view that a period of 30 days to correct information on a credit file is too long when it may have the potential to compound difficulties experienced by consumers, particularly where they need to apply for finance and where incorrect information on their credit file is impeding them from doing so. The TIO notes in the *Telecommunications Consumer Protection (TCP) Code*, the requirement that where a telephone or internet company becomes aware that their customer has been default listed in error, they must inform the CRA within one (1) working day⁴. This requirement, developed by the telecommunications industry, appears to recognise the significant detriment that can be caused by incorrect information on a person's credit file.

Disclosure of credit information

132 Disclosure of credit information to a credit reporting agency

Prohibition on disclosure 16

(1) A credit provider must not disclose credit information about an individual to a credit reporting agency.

Permitted disclosure

(2) Subsection (1) does not apply if:

....

(e) if the information is default information about the individual:

(i) the provider has given the individual a notice in writing stating that the provider intends to disclose the information to the agency; and

(ii) a reasonable period has passed since the giving of the notice.

The TIO understands that there are a number of exceptions to the requirement in section 132(1) that a credit provider must not disclose credit information about an individual to a CRA. One of these exceptions, as outlined in subsection 132(2)(e), is where a credit provider has given written notice to an individual stating that the credit provider intends to disclose information to a CRA.

The underlying cause of many complaints to the TIO is the consumer's view that they were not informed of the default or of the telephone or internet company's intention to make a report to a CRA. Therefore, it would perhaps be preferable for credit providers to be required to give a defined period of notice to the individual in order to encourage that any potential grievances are identified early and are therefore easier to resolve.

The TIO believes that there would be greater certainty for consumers, and consequently fewer complaints, if credit providers were given a specific timeframe after which they can disclose credit information to a CRA. The provision that credit providers must wait "a reasonable period" after having notified the individual could cause confusion for providers, individuals and EDR schemes tasked with assessing complaints. Also, given that credit defaults are noted against a person's credit file for a fixed period, it would seem fair that the listing be placed within a short period of time so as not to disadvantage that person for a longer period of time.

⁴ Clause 7.4.16 of the *Telecommunications Consumer Protection (TCP) Code*.

Credit refusal notification

142 Notification of a refusal of an application for consumer credit

- (1) *The credit provider must, within a reasonable period after refusing the application, give the individual a written notice that:*
- (a) states that the application has been refused; and*
 - (b) states that the refusal is based wholly or partly on credit eligibility information about one or more of the persons referred to in paragraph (1)(b); and*
 - (c) if that information is about the individual:*
 - (i) sets out the name and contact details of the credit reporting agency that disclosed the relevant credit reporting information to the provider; and*
 - (ii) sets out any other matter specified in the Credit Reporting Code.*

In circumstances where an application for consumer credit has been refused, section 142 indicates that the credit provider must inform the individual in writing of the refusal 'within a reasonable period'. Given the circumstances that typically underlie an application for credit, for example the finance of house purchases, the TIO would suggest that the timely notification of individuals where such an application has been refused is important. In this respect, the TIO notes it is often in circumstances where an application for finance is rejected that consumers claim they first become aware of a default on their credit file.

The TIO believes that a specific timeframe during which a credit provider must notify an individual of a refused application would be helpful. A period of seven (7) days may be preferable in order that an individual, in circumstances where they believe they may be a victim of fraud, can more effectively exercise their right to request a ban under section 113.

The TIO also believes that a notification of a refusal to approve consumer credit under section 142 should, where applicable, include details of relevant credit default listing(s), including the name and contact details for the credit provider that requested the listing(s).

This is potentially relevant where the individual subsequently seeks to dispute the information upon which their application has been refused because, as noted in the TIO's comments above, section 121 currently specifies that it may take a CRA up to 30 days to correct an inaccurate listing.

Request for correction of credit information

149 Individual may request the correction of credit information etc.

Request

- (1) *An individual may request a credit provider to correct personal information about the individual if:*
- (a) the personal information is:*
 - (i) credit information about the individual; or*
 - (ii) CRA derived information about the individual; or*
 - (iii) CP derived information about the individual; and*
 - (b) the provider holds at least one kind of the personal information referred to in paragraph (a).*

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.

In the TIO's experience, consumers will typically request the correction of inaccurate information on their credit file in circumstances where that information is impeding their ability to be approved for finance. Accordingly, a period of up to 30 days to correct information which has been identified as inaccurate or out of date has the potential to cause further disadvantage to people who have applied for finance. As mentioned above, the telecommunications industry includes as part of its TCP Code the requirement that where a telephone or internet company becomes aware that their customer has been default listed in error, they must inform the CRA within one (1) working day.

Dealing with complaints

158 Dealing with complaints

(1) If an individual makes a complaint under section 157, the respondent for the complaint:

(a) must, within 7 days after the complaint is made, give the individual a written notice that:

(i) acknowledges the making of the complaint; and

(ii) sets out how the respondent will deal with the complaint; and

(b) must investigate the complaint.

While the TIO agrees that providing minimum acknowledgement timeframes for complaints is necessary, we would query whether a written acknowledgement with an associated seven (7) day timeframe for a complaint that has been made informally over the telephone, will meet the expectations of credit providers, CRAs and consumers. In this respect, it is likely that some simple matters will be able to be dealt with quickly and the requirement to go through a formal process of acknowledgement may present an obstacle to speedy and effective dispute resolution.

Resolving complaints

158 Dealing with complaints

Determination about the complaint

(4) After investigating the complaint, the respondent must, within the period referred to in subsection (5), make a determination about the complaint and give the individual a written notice that:

(a) sets out the determination; and

(b) explains that, if the individual is not satisfied with the determination, the individual may:

(i) access a recognised external dispute resolution scheme of which the respondent is a member; or

(ii) make a complaint to the Information Commissioner under this Act.

(5) The period for the purposes of subsection (4) is:

- (a) the period of 30 days that starts on the day on which the complaint is made; or*
- (b) such longer period as the individual has agreed to in writing.*

Having regard to our previous comments about the often serious consequences of incorrect credit defaults, the TIO believes that timeframes for investigations into such matters need to be examined carefully. While the requirement for a written notice of the respondent's determination is positive in some respects, where an outcome is unfavourable for a consumer, they should be notified as soon as possible in order that they may consider approaching alternative dispute resolution forums.

Referral of unresolved complaints

The TIO also believes that, in circumstances where a consumer remains dissatisfied with the outcome to their complaint, there should be an onus on the respondent to identify the relevant EDR scheme(s) that the consumer may approach, including the relevant contact information. The TIO reiterates that this information should be provided as early as possible in the complaint handling process.