

20 June 2013

Ms Julie Dennett
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600
Via email: legcon.sen@aph.gov.au

Dear Ms Dennett

I write regarding your invitation for ARCA to provide a submission on the *Privacy Amendment (Privacy Alerts) Bill 2013* (the Alerts Bill).

ARCA is the industry association for retail Credit Providers and Credit Reporting Bodies as defined in the *Privacy Act 1988* (Privacy Act). ARCA exists to promote best practice in credit risk assessment and responsible credit, as well as to promote better standards in consumer credit reporting. ARCA takes a leadership role in promoting the sharing of information to enable Credit Providers to better serve their customers.

ARCA is currently finalizing the draft of the Credit Reporting Code of Conduct (CR Code) for submission to the Office of the Australian Information Commissioner (OAIC), after we were invited by the Privacy Commissioner to draft the CR Code in December 2012. The CR Code is a legislative instrument under the amended Privacy Act required as part of the regulatory framework for credit reporting.

ARCA notes the terms of the inquiry relate specifically to the Alerts Bill. Whilst acknowledging the desire of the government to pursue the passage of the Alerts Bill prior to the coming federal election, ARCA believes that this legislative amendment to the Privacy Act should also address the identified concerns that industry has with the implementation of the credit reporting reforms.

Some ARCA Members have raised two operational matters of concern with the implementation of the reforms to credit reporting as part of the *Privacy Amendment (Enhancing Consumer Protection) Act*, the majority of which will commence in March 2014.

These concerns are:

- Concerns regarding Repayment History Information (RHI) and whether there is enough clarity in the Act to ensure RHI operates effectively.
- The inability of industry participants to exchange data in a test environment prior to the commencement of Australia's new credit reporting system in March 2014.

Some ARCA Members believe that both of these matters will require a legislative amendment to the Privacy Act, and we encourage the committee to consider whether an amendment could be made to the legislation prior to the federal election scheduled for September.

Repayment History Information

The current wording of section 6V of the Privacy Act, and particularly subclauses 1(b) and 1(c) require a Credit Provider to be able to report RHI with reference to monthly due dates for payment, and dates overdue with reference to that due date.

However, industry systems work within payment cycles (ie. 30/60/90 day periods). When dealing with a delinquent account, industry systems will identify which period an account falls into. These systems are not designed to identify, with any precision, the date when payment was due to be made, the exact number of days overdue, and the actual date of payment.

The current CR Code draft purports to resolve the legislative issues by effecting RHI reporting based on period based reporting rather than date based reporting. However, we remain concerned that if the CR Code is not registered by the OAIC with these provisions as drafted, then redrafted Code provisions based upon a strict interpretation of the legislative provisions would hamper the ability of credit providers to report RHI.

To adhere to the current legislative provisions would require a complete overhaul of these systems, and a completely different treatment of delinquent accounts. Not only would this be an issue, the further problem that arises is that exact accounting with reference to dates is not a system of reporting which makes adequate allowance for factors such as weekends, public holidays.

ARCA is proposing an amendment to the definition in section 6V which accords with industry practice and enables a reporting of RHI based upon these payment cycles. Not only would this then align with industry systems, it would create a simpler, yet more accurate reporting system. A customer can easily understand whether they fit within a certain overdue payment cycle. A customer will become confused with reporting based on a variety of different dates, and will likely question the accuracy of the RHI.

Testing of data

The Australasian Retail Credit Association (ARCA) is of the view that all new data in the new credit reporting environment, including but not limited to repayment history information (RHI) and consumer credit liability information (CCLI), should be exchanged in a test environment prior to the commencement of the amended Privacy Act. This exchange of data is required to ensure that credit information and credit reporting information data can be suitably disclosed in accordance with the Act upon commencement.

Data accuracy and quality are critical to the successful implementation of the CR Code and the broader revised credit reporting framework. ARCA is of the view that these factors may be compromised if data is not exchanged between credit providers and credit reporting bodies prior to the go-live date – on 12 March 2014.

Technology development lead times in the financial services sector are necessarily long and rigorous, and a failure to share credit information and credit reporting information early will result in insufficient time to ensure systems are appropriately configured to transmit, receive and send both new and existing data (which may change due to a standardisation of values and codes). In addition, the reforms will significantly increase the volume of information that will be exchanged and systems will need to be tested to ensure they can deal with these increased demands.

ARCA Members have expressed concerns about the risks associated with the inability to test data handling processes, rejections, submissions and dispute handling

processes by not obtaining access to the information which is subject to changes brought about by these privacy reforms.

Importantly, ARCA recommends that the provision of this information to CRBs and CPs should be managed in a manner that prevents access to the data by other parties prior to the go-live date. Additionally, we would recommend that all data exchanged during the testing would be destroyed at the conclusion of testing.

The introduction of the Personal Property Securities Register (PPSR) provides a useful benchmark and demonstrates how the early provision of data can assist in effectively transitioning from one system to another. Additionally, the introduction of new data into the New Zealand credit reporting system is an important contrast to how this matter will be resolved in Australia.

We understand that the ability to comprehensively test the new data supply infrastructure and data elements is significantly hindered by the current restrictions in the Australian Privacy Act. In direct contrast, the test strategy for major credit providers that currently operate in both Australia and New Zealand is underpinned by testing with full production data, to ensure that by the time they do go live with data supply, they have tested and remedied as many known issues as possible, thus facilitating a smooth transition to the live data supply environment providing for the best level of data integrity and quality possible taking into account the significant changes which the data is subject to. The CRBs in New Zealand appreciate the value of this process as it helps to ensure the integrity of the data they hold.

In Australia the reforms to credit reporting require the exchange of new information beyond that of the CCLI and RHI. In the case of ban requests and payment information, entirely new data is required that will impact all participants even if they only exchange information based on the current requirements, ("negative data".) In some cases, organisations that are intending to continue to only exchange negative data may be unprepared for the impacts to their technology systems required by these changes.

Should credit providers and CRBs not be permitted to test with live data prior to the commencement date, we will have a "testing in production" environment, which will probably place undue strain on all participants (and consumers) in the credit reporting system, and may potentially compromise the integrity of the credit reporting system. As one of the objectives of the credit reporting reforms is to strengthen the credit reporting system, this could adversely affect, and potentially weaken, the system.

Based on the New Zealand implementation experience, ARCA is advised that testing would take approximately six months from initial testing to reaching a stable state with acceptable and compliant data supply. As mentioned above, it would be a requirement that such 'test data' is deleted and not used by any party for any other purpose.

If this issue is not addressed it is likely to have a detrimental impact for credit providers, credit reporting bodies, consumers, the OAIC as the regulator, and the wider economy as data quality and accuracy may be compromised – factors that are critical to establishing trust in the new system. We are particularly concerned that a general level of distrust, confusion and distress could arise from consumers if a testing environment is not facilitated prior to commencement in March next year.

We acknowledge that these operational matters are outside the scope of the inquiry into the Alerts Bill, but we believe it is important to place on record our concerns with these matters. The reforms to credit reporting will see a fundamental change to the way consumer credit risk operates in Australia, and the Privacy Act is so prescriptive as

to lead to significant operational challenges that will be very expensive to resolve in the above situations.

Whilst ARCA has received an informal undertaking from the government that these matters will be addressed in the next parliament, we believe that the magnitude of changes to the credit reporting system require that they be addressed as a matter of priority to promote confidence in the funding and development of new systems to accommodate the changes.

Yours sincerely

DAMIAN PAULL
Chief Executive Officer