



# **SENATE FINANCE AND PUBLIC ADMINISTRATION**

## **LEGISLATION COMMITTEE**

### **Exposure Drafts of Australian Privacy Amendment Legislation: Part II Credit Reporting**

#### **SUPPLEMENTARY SUBMISSION**

**Submission Number:** 13a

**Submitter Details:** Westpac



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Ms Christine McDonald  
Committee Secretary  
Senate Finance and Public Administration Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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Dear Ms McDonald

## **EXPOSURE DRAFT – CREDIT REPORTING**

The Westpac Group appreciates the opportunity to provide a submission to the Senate Finance and Public Administration Committee (the Committee) with respect to the Credit Reporting Exposure Draft that proposes a number of amendments to Australian privacy law regarding the collection and handling of credit information.

In the context of this submission, the Westpac Group (Westpac) includes the businesses of Westpac, St.George, Bank of Melbourne, BankSA and RAMS.

## **INTRODUCTION**

Westpac congratulates the Government for its recommendations of significant enhancements to disclosure and use of credit reporting information as outlined in the Exposure Draft.

Westpac supports the Government's approach of creating a tiered Act, regulations and industry code. This approach provides legislative flexibility to ensure that both data usage and data/consumer protections can remain appropriate as the operating environment changes.

The introduction of comprehensive credit reporting in Australia will further support enhanced consumer protection. Allowing credit providers to access and assess consumers' complete repayment history and verify consumers' potential and actual credit commitments will further improve credit providers' ability to make responsible lending decisions. This will ultimately have positive outcomes for consumers.

Westpac is a member of the Australian Bankers' Association (ABA) and the Australasian Retail Credit Association (ARCA) and supports their respective submissions.

## **Transitional arrangements**

Given the changes and their impact on Australian consumers, it is important that transitional arrangements are put in place to provide clarification on the differentiation between the treatment of existing and new customers. For example, it is not clear whether previously obtained consent from existing customers would

be sufficient for their information to be shared in a comprehensive credit reporting system. Westpac supports arrangements that allow for and encourage industry to transition to the new credit reporting regime in a timely manner (preferably within 12 months of the new legislation commencing) while maintaining appropriate consumer safeguards.

## **RESPONSE TO SELECTED SECTIONS**

### ***Section 116 – Quality of credit reporting information & Section 118 – Security of credit reporting information***

These sections prescribe certain terms relating to the quality and security of credit reporting information to be included in the agreements between credit reporting agencies (CRAs) and credit providers. We think it is very unusual for legislation to prescribe the specific steps that an entity must take to ensure compliance with such a broad obligation.

More specifically Section 116(3)(a) requires the contract between credit reporting agencies (CRAs) and credit providers to set a higher standard (“ensure credit information is...”) than Australian Privacy Principle (APP) 10 (“take such steps (if any) as are reasonable in the circumstances to ensure the personal information is...”). Similarly, Section 118(2)(a) requires the contract to set a higher standard (“protect credit reporting information ...”) than APP 10 (“take such steps as are reasonable in the circumstances to protect the information....”).

A credit provider should only be required to meet the standards set out in the APPs. It is unable to warrant to third parties that all information is accurate, up-to-date, and complete as it can only make best endeavours to ensure this is the case.

Furthermore to audit the agreements an independent person would need access to the credit reporting agency information. For completeness this should be captured as a “Permitted CRA disclosure”.

We support the ARCA recommendation that data quality and security compliance requirements be included in the industry developed Code of Conduct, rather than rely solely on contracts between CRAs and credit providers.

### ***Section 131 Additional notification requirements for the collection of personal information***

Section 131(1)(a)(i) requires that a credit provider notify an individual, at or before the time of collection of personal information, of the name and contact details of the CRA to which the credit provider will likely disclose this information.

Given there are multiple CRAs and it is not often known at the time of collection which CRA or CRAs will be used, the compliance cost of including all possible CRAs is significant when compared to the limited benefit to the individual (insofar as CRAs are permitted to share this information). Westpac recommends that this requirement be removed.

### ***Section 135 Use or disclosure or credit eligibility information***

Section 135 does not contain an equivalent to Section 18N(1)(gb) of Part IIIA of the current Privacy Act which permits disclosure of the credit report or information to “another person who is authorised by the individual to operate the account”. We recommend that such a permitted disclosure be included.

### ***Section 136 Permitted credit provider uses in relation to individuals***

Section 136 highlights that a credit provider is permitted to utilise credit eligibility information for “a consumer credit related purpose of the provider in relation to the individual” or for “the internal management purposes of the provider that are directly related to the provision or management of consumer credit by the provider.”

Our concern is that the definition of a consumer credit related purpose in Section 180 is currently restricted to assessing an application and collecting overdue payments and does not include the purpose of periodically obtaining an updated credit report for open accounts post-approval. Periodic reviews are important tools to ensure that customers are accessing and managing credit in a responsible manner. We recommend that such a purpose be included in the definition.

Additionally, Section 109 would need to include “internal management purposes of the provider” as a permitted CRA disclosure.

### ***Section 137 Permitted credit provider disclosures between credit providers***

Section 137 highlights that a credit provider can disclose credit eligibility information with other credit providers. We are concerned about the reference to 'credit eligibility information'. Lenders currently operate a 'Banker's Opinion'/reference service, based on consent obtained from applicants, completely outside of the CRA environment. This service discloses information sourced directly from internal systems and does not rely on interaction with a CRA.

As such, it is important to clarify that this service would not be limited to 'credit eligibility information' which brings in a requirement to source information from a CRA, which would introduce additional cost and complexity to what is a relatively straight-forward and transparent process in the current operating environment.

### ***Section 144 False or misleading information or credit eligibility information***

Section 144 details the offence of providing information that is false or misleading in a material particular. Despite lenders' attempts to validate information on an application, it is often after the application has been decided that false or misleading information is identified. For example, victims of identity theft and fraud often only realise details have been stolen and used when they start receiving statements for a product that they did not apply for.

It is therefore recommended that Section 144 be amended to reflect that a credit provider commits an offence if they 'knowingly' provide false or misleading information, or words to this effect.

### ***Section 158 Dealing with complaints***

We recommend that the provisions relating to complaint handling be reviewed to ensure that they align with other regulatory requirements imposed on credit licensees and industry. For example, ASIC's *Regulatory Guide 165 Licensing: Internal and external dispute resolution* (RG165) has a 45 day standard timeframe for providing a final response to complaints, compared with the 30 day timeframe proposed in the Exposure Draft.

Furthermore, the provision that the first party contacted must investigate the complaint could result in an adverse customer outcome in instances where the complaint is unrelated to the first party.

### ***Section 184 Meaning of new arrangement information***

The current definition only allows for new arrangement information to be reported when an account has previously been listed as being in default. Arrangements are typically the result of a customer who is experiencing financial hardship requesting assistance from a credit provider.

Westpac's experience is that the majority of hardship cases occur prior to default, including where hardship has resulted from a natural disaster.

Westpac recommends that the provisions be amended to allow for reporting of 'pre-default' arrangements in this context in order to distinguish a temporary inability to pay from unwillingness to pay.

### ***Section 187 Meaning of repayment history information***

The definition of repayment history information in Section 187(1) is likely to introduce practical complexity given the level of detail required in subsections (a) to (c). As information technology systems used by credit providers to manage accounts are already programmed to determine repayment history (a counter based on the number of repayment periods/cycles overdue), we recommend that this indicator be included in the definition. This will greatly facilitate the resolution of complaints between customers and credit providers/CRA's by being able to refer the same information.

## **CONCLUSION**

Westpac commends the Government's consultative approach, which builds on the approach taken by the Australian Law Reform Commission. We look forward to continuing to work with Government and industry to implement credit reporting reform.

Yours sincerely

**Brett Gale**

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