

Inquiry into Privacy Exposure Draft – Credit Reporting

Response to Veda Advantage Submission

Background

Veda Advantage (Veda) initiated discussions with consumer credit and privacy advocates and the Australian Retail Credit Association on a number of issues in the credit reporting exposure draft. Veda has stated that the purpose of these discussions was to identify areas of common agreement between consumer representatives and credit industry representatives so that proposals for reform of the credit reporting exposure draft could be provided to the Senate Committee for consideration. Veda has subsequently made a submission to the Committee proposing a number of changes to the exposure draft. The documents comprising Veda's submission have been provided by the Committee to the Department. The Department makes the following comments on the five issues raised by the Veda submission.

1. Simplification of the credit reporting exposure draft

The Veda submission proposes that the Government undertake a roundtable process to agree the terms of simplification of the exposure draft. In an accompanying document, Veda's proposals for significant and comprehensive changes to the definitions used in the exposure draft have been analysed by a barrister to determine the implications of the proposals for consumers. The Department notes the barrister's comments on a number of Veda's drafting proposals indicate that the proposed changes would need to be carefully considered to ensure that underlying policy positions are not changed.

The Department considers that the proposal for the complete redrafting of the credit reporting provisions and the definitions would be a significant and time consuming exercise which would also need to ensure that all the Government's policy directions were implemented. The Department's view is that the exposure draft accurately implements the Government's policy on the regulation of credit reporting as set out in the Government's first stage response to the Australian Law Reform Commission (ALRC) report.

2. Hardship flags

The Veda submission notes that further discussion between industry and consumer representatives is required on a proposal for hardship flags prior to default. The submission does not put forward an agreed proposal for change.

The Department notes that the ALRC considered proposals for reform of the listing of schemes of arrangement, including a proposal to list a scheme of arrangement without a default having first been listed. The ALRC was not convinced that such a reform was desirable, especially in the absence of any significant support from consumer groups for such a reform (ALRC report no.108, paragraphs 58.35 to 58.37).

In the absence of an agreed proposal in the Veda submission, the Department's view is that the exposure draft effectively implements the Government's response to ALRC recommendation 58-2.

3. Serious Credit Infringement

The Government response accepted ALRC recommendation 56-6, which was to allow a listing for a serious credit infringement based on the definition currently used in the Privacy Act. The definition of a serious credit infringement is contained in section 180, with a new

requirement in subparagraph (c)(ii) to require a credit provider to take reasonable steps to contact the individual.

The Veda submission proposes replacing the definition of serious credit infringement with two new definitions, ‘un-contactable default’ and ‘never paid flag’, of which the latter category can only be used by utilities and telecommunication credit providers and would be converted into an ‘un-contactable default’ after six months if payment is not received.

The Department considers that the Veda proposal combines the current regulation of serious credit infringements with the regulation of default listings. The ALRC recommended that serious credit infringements should be retained to deal with fraudulent activity or situations in which a reasonable person would consider that the individual does not intend to comply with their consumer credit obligations. The Veda proposal appears to remove any element of fraudulent activity from consideration, apparently reclassifying serious credit infringements into a default that occurs when a person cannot be contacted.

The Department considers that the exposure draft effectively implements the Government’s response to ALRC recommendation 56-6.

4. Identify Theft

The exposure draft establishes a procedure to ‘freeze’ use or disclosure of an individual’s credit reporting information. Section 113 prohibits use or disclosure by a credit reporting agency during a ‘ban period’, and section 134 limits disclosure of credit information by a credit provider during a ban period.

The Veda submission proposes a ‘flag’ system, under which use and disclosure of an individual’s credit reporting information would be permitted but it would be accompanied by a ‘flag’ noting that the consumer alleges they have been a victim of identity fraud. Veda also proposes obligations on credit reporting agencies and credit providers to help protect victims of ID theft from further consequences of the theft, with more details in the credit reporting code of conduct. The Veda proposal does not include a provision based on section 134, which states that a credit provider can’t list credit as part of an individual’s credit information if the credit provider extended the credit to an individual whose information is subject to a ban period without having taken sufficient steps to verify the identity of the individual. Instead, the Veda submission proposes that credit providers would be required to have appropriate policies and procedures in place to appropriately assess credit applications.

The Department notes the extensive discussion in chapter 57 of the ALRC report on the issue of identity theft and credit reporting. The ALRC considered both ‘flag’ and ‘freeze’ models before deciding to propose the ‘freeze’ model in recommendation 57-5. The Department notes that the Government strongly agreed with the need for protective measures for individuals against identify theft, and the Government also specifically agreed with the elements of the ALRC’s recommendation.

The Department considers that the exposure draft effectively implements the Government’s clear policy directions to establish a ‘freeze’ model for use by individuals in the event of fraud and identity theft.

5. Complaint Handling

The exposure draft contains provisions dealing with correction of an individual’s information, whether held by a credit reporting agency or a credit provider, and provisions dealing with complaints. The Veda submission proposes a complete reformulation of the complaint handling provisions in the exposure draft which also appears to encompass the correction provisions. The Department does not consider that the Veda proposal satisfactorily addresses

all the elements of the Government's existing policy on correction and complaints as set out in the exposure draft.

The Veda submission proposes a definition of complaint, on the basis that this will eliminate the '2 step' approach in the exposure draft. It appears that the intention is to combine the correction provisions and the complaint provisions, so that there is no longer a process for correction – an individual will be required to lodge a complaint to seek a correction of their personal information. The Government clearly intended that individuals should, consistent with the current credit reporting provisions in the Privacy Act, have the opportunity to seek a correction to their personal information without lodging a complaint. In addition, the proposed definition of complaint is limited to complaints about an organisation's products. Section 156 of the exposure draft provides a guide to the complaints provisions and makes clear they apply to both failures to provide access to, or to correct, personal information, as well as to complaints about acts or practices that may be a credit reporting infringement. The Department does not consider that a narrow definition of complaint which focuses on the products of an organisation is useful in the context of the credit reporting provisions.

The Veda submission proposes that external dispute resolution should be compulsory for all credit providers and credit reporting agencies. The Government decided that external dispute resolution should only be compulsory for those credit providers who wish to access repayment history information. This implements the Government's response to ALRC recommendation 55-3. However, other credit providers and credit reporting agencies are not prevented from taking part in external dispute resolution schemes, even if they do not wish to access repayment history information.

The Veda proposal for compulsory participation of credit providers in external dispute resolution appears to be intended to facilitate the handling of all complaint resolution under external dispute resolution schemes or mechanisms under other existing industry codes or statutory schemes. The Department notes that this would create a situation where the handling of complaints is dealt with under a wide variety of other mechanisms that may not be consistent in either the timing that is applied, the rights given to individuals, or the remedies that can be obtained. The Department notes that the complaints handling provisions in the exposure draft establish common timeframes and procedures.

The Veda submission proposes a number of elements for inclusion in the credit reporting code of conduct, such as evidence requirements. The Government response to ALRC recommendation 54-9 indicated that a credit reporting code of conduct should be developed subject to satisfactory consultation between the credit reporting industry, advocates and the Commissioner. The Department considers that Veda could propose these matters for inclusion in the code of conduct in the development of the code.