

Office of the Australian Information Commissioner

Senate Finance and Public Administration Committee's inquiry into Australian privacy amendment legislation – answer to question on notice

Clause 132(2)(b) of the exposure draft of the credit reporting provisions has the effect of prohibiting credit providers from disclosing credit information about individuals who are under the age of 18 to credit reporting agencies. In some circumstances, telecommunication organisations will be 'credit providers' for the purposes of the Privacy Act (as that term is defined in the current provisions and in the exposure draft).

The Office of the Australian Information Commissioner (OAIC) understands that the telecommunications industry has raised concerns that compliance with the prohibition in cl 132(2)(b) of the exposure draft would require substantial investment by telecommunications organisations, on the basis that 'credit reporting information provided to the credit reporting agencies occurs on an automated basis, and there is currently no technical capability to exclude the credit reporting information of customers under the age of 18 from data automatically transferred to the credit reporting agencies'.¹

Restrictions on credit providers' disclosure of credit information about persons under the age of 18 do not currently exist in the Privacy Act 1988 (Cth). The OAIC is not aware of any other legislation that currently requires telecommunications companies to deal with information about customers that are under 18 differently from information about other customers.

In its 2007 submissions to the Australian Law Reform Commission's (ALRC) inquiry into Australia's privacy laws, the OAIC (as the former Office of the Privacy Commissioner (OPC)) was concerned that a prohibition on disclosure of credit information about under 18's would adversely affect a young person's ability to obtain credit since those individuals may have difficulty establishing their 'credit worthiness'.²

Instead of the restriction, the then OPC suggested other ways to protect under 18's, such as:

- reducing adverse credit listing timeframes for under 18's, or
- a requirement for credit reporting agencies and credit providers to delete credit reporting information about an individual when the individual reaches the age of 18.

We understand that the rationale behind the restrictions recommended by the ALRC and contained in the exposure draft that prohibit credit providers from disclosing credit information about under 18's is that the credit information may remain on an individual's credit file (subject to listing timeframes) and prejudice a young person's future access to credit.³ In recommending that restrictions apply to the disclosure of credit information about under 18's, the ALRC recognised that the reform may have some undesirable effects, but that those would be relatively rare. The ALRC

¹ Communications Alliance, Submission to the Senate Finance and Public Administration Committee, Exposure draft of Australian Privacy Amendment Legislation – credit reporting, pg 7.

² OPC, Submission to the Australian Law Reform Commission's Review of Privacy – Discussion Paper 72 (December 2007), Volume 2, Chapter 52, paras 59-67.

³ ALRC Report 108, *For Your Information: Privacy Law and Practice* (2008), para 56.89 and Recommendation 56-9.

noted that only 2,137 of the 11 million files held by Veda Advantage (one of three credit reporting agencies operating in Australia) are on people under the age of 18.⁴

We note that Communications Alliance has undertaken to provide the Senate Committee with information on the extent or the cost of the system changes that would be required by telecommunications organisations to segregate the credit information of persons under the age of 18 so that it is not disclosed to credit reporting agencies.⁵

⁴ ALRC Report 108, paras 56.94-56.95.

⁵ See pg 22 of the proof copy of the transcript of the public hearing of the Senate Finance and Public Administration Legislation Committee, Australian privacy amendment legislation, 16 May 2011.