

Optus submission to
Senate Finance and Public Administration Legislation Committee
*Exposure Draft of the Australian Privacy Legislation Amendment –
Credit Reporting*

March 2011

1. Overview

- 1.1 Optus appreciates the invitation to provide comments to the Senate Finance and Public Administration Legislation Committee ('the Committee') on the Credit Reporting Exposure Draft ('the Exposure Draft'), which forms part of the Government's review of Australian privacy legislation.
- 1.2 Optus' interest in this matter lies in the fact that we, like other telecommunications providers, are a class of credit provider, pursuant to a Determination made by the Privacy Commissioner. We access and use credit reporting information in a different manner to the more traditional types of credit providers though, hence our interest in ensuring that the new rules take into account the requirements of different sectors, including consideration of existing obligations that already apply in those sectors.
- 1.3 Communications Alliance, the telecommunications industry association, is also making a submission to the Committee on behalf of its members. Optus is a member of Communications Alliance and endorses its submission.

2. Telecommunications providers are a class of credit provider

- 2.1 Under the *Privacy Act 1988* (Cth) ('the Privacy Act'), the Privacy Commissioner is able to make a Determination that certain classes of corporations are to be regarded as credit providers for the purposes of the Privacy Act.
- 2.2 Telecommunications companies are deemed to be credit providers by virtue of such a Determination: the Credit Provider Determination No. 2006-4 (Classes of Credit Providers)¹. This is due to the fact that telecommunications companies provide goods or services on terms that allow deferral of payment for at least seven days.
- 2.3 Telecommunications companies use credit information in a vastly different way to banks and other financial sector entities. We are not a traditional 'credit provider' – we provide what is sometimes referred to as 'trade credit'. That is, we provide goods and services to our customers.
- 2.4 The 'trade credit' that we provide to our customers is solely for use of those specific telecommunications products and services. It is not discretionary credit which can be spent on anything (like a credit card) or a large loan of money (such as for a mortgage or a car loan). Further, the 'trade credit' is provided on a fixed payment cycle; that is, the customer is required to pay in full each month for the telecommunications services they have used. (There are some exceptions to this – handset or other equipment repayments, for example, which are generally paid in instalments over the term of a contract.)
- 2.5 The distinction between telecommunications companies such as Optus and the more traditional credit providers (such as the banks and other financial

¹ http://www.privacy.gov.au/act/credit/deter4_06.html

lenders) is a critical one to understand. The access to, recording of and use of credit information by telecommunications companies is entirely different to that of traditional credit providers. Optus doesn't need the amount of detail in credit reporting information that the financial sector is seeking – our risk exposure is entirely different, as we are dealing with small amounts of trade credit, not large loans of money. To provide an example, our most popular mobile phone plan costs \$59 per month.

- 2.6 It is critical to us, therefore, to ensure that – just as we do not require additional data sets that are important to other types of credit providers – we are not captured by some of the new obligations requiring us to contribute additional data to the credit reporting agencies.
- 2.7 Any changes to the information we need to provide to the agencies will require upgrades to our computer systems, changes to internal processes and training hundreds of staff members. As the Committee can imagine, the costs of undertaking such tasks are not low – particularly where systems changes are involved.

3. Existing telecommunications regulations regarding credit and complaint handling

- 3.1 The Exposure Draft seeks to implement consistent standards across different sectors and types of credit providers, but unfortunately does not appear to take into account the existing legislative and regulatory obligations in each of those sectors.
- 3.2 The telecommunications industry, for example, is already heavily regulated and we have had enforceable industry codes of practice in place for many years which already deal with some of the matters in the legislation – in some instances with conflicting requirements.
- 3.3 Whilst we support the consistency of approach that the Exposure Draft is aiming for, its unintended consequence is creating inconsistencies in other areas. For example, if the telecommunications industry is required to comply with the complaint handling rules in the Exposure Draft, it would mean that telecommunications complaints relating to matters under this legislation are dealt with in a certain way, yet every other type of telecommunications complaint is handled in a different way – in accordance with the timeframes and requirements under the Telecommunications Consumer Protections Code and our obligations under the Telecommunications Industry Ombudsman Scheme. This will lead to difficulties for providers having to follow different processes for different types of complaints, and confusion for telecommunications customers, who should be able to have a consistent experience with their telecommunications provider regardless of the nature of their complaint.
- 3.4 As noted in the Communications Alliance submission to the Committee, the proposed requirements for complaint handling under the Exposure Draft come across as quite rigid and they do not take into account the multitude of ways in which customers are able to contact their providers. Optus' customers, for example, can contact us in person via our shopfronts, by

telephone, by mail, by email, via our website, by Twitter or by Facebook. Generally, if a customer contacts us via a particular method of communication, they expect a response via that same method. It is therefore disappointing to see obligations in the Exposure Draft that require providers to give written notice to their customers on several occasions during a complaint investigation. In Optus' view, this lack of flexibility does not provide a good customer experience and generally adds to lengthen and complicate the complaint handling process.

- 3.5 It is for the reasons outlined above that we propose that:
- (a) the Exposure Draft be further reviewed to more thoroughly consider the impacts on credit providers outside the banking and financial services sector;
 - (b) consideration be given to matters already dealt with in existing legislation / regulation in those sectors;
 - (c) where there is existing legislation / regulation dealing with such matters (for example in relation to complaint handling requirements) that:
 - i. either an exemption be provided in the Exposure Draft for that class of credit provider and that specific rule; or
 - ii. the matter be removed from the Exposure Draft and instead dealt with via the Credit Reporting Code, which is still to be developed.

4. Credit Reporting Code

- 4.1 Optus supports the development of a Credit Reporting Code ('Code'), given the advice received from representatives of the Department of Prime Minister & Cabinet² that such a code could allow for different obligations on different sectors, to take into account the existing legal and regulatory obligations that apply to those sectors.
- 4.2 In our experience, codes of practice are also more easily future-proofed than legislation, and can be quickly and easily amended over time when needed.
- 4.3 We believe that moving some matters from the Exposure Draft into the Code will address our concerns about the legislation, as it will allow sufficient flexibility for different sectoral requirements and take into account existing obligations, whilst still maintaining minimum and consistent standards of consumer protection for credit reporting information.

5. Conclusion

- 5.1 Optus is therefore keen to ensure that:
- (a) the new requirements are tailored to the use of credit reporting information by different sectors and don't just apply to all providers regardless of whether or how they use or collect that information;

² The advice was provided during discussions at a Credit Reporting Roundtable held in Canberra on 10 February 2011.

- (b) the impacts of the new legislation are minimised, particularly in relation to changes which will impact our IT systems;
- (c) the Exposure Draft doesn't duplicate pre-existing legal or regulatory obligations for the telecommunications industry and place us in a position where we have conflicting obligations;
- (d) rules that require different approaches for different industries (such as complaint handling obligations) are dealt with under the new Credit Reporting Code and not in the new legislation (to allow flexibility and future-proofing); and
- (e) consumer protections are maintained.

Ends.