



Australian Government

**Government Response
to the Senate Finance and Public Administration
Legislation Committee Report:**

*Exposure Drafts of Australian Privacy Amendment
Legislation: Part 2 – Credit Reporting*

May 2012

Australian Government response to recommendations of Senate Finance and Public Administration Committee report on Credit Reporting

Summary table of Government response to recommendations

The following tables summarise the Government's response to the recommendations from the Committee's report.

Of the Committee's thirty recommendations:

- 20 have been accepted in full;
- seven have been accepted in principle; and
- three have been noted.

References in this table to chapters and recommendation numbers generally reflect references used in the Committee's report.

Committee report chapter reference	Rec	Response
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CHAPTER 3 – General issues

Recommendation 1

3.21 The committee recommends that consideration be given to locating the credit reporting provisions in a schedule to the Privacy Act.

Response: Accept

The Government considered the location of the credit reporting provisions and determined they are best located in the same place as the existing provisions. The Australian Privacy Principles (APPs) will be inserted as a schedule to the Privacy Act.

Recommendation 2

3.55 The committee recommends that the Exposure Draft be reviewed to ensure that the provisions are clear and concise

Response: Accept

The Government will review the drafting of the amendments to ensure that the provisions are clear and concise.

Recommendation 3

3.56 The committee recommends that the definitions be reviewed to ensure consistency across the Privacy Act and, to the extent possible, that definitions are standalone provisions.

Response: Accept

The Government will review the amendments to ensure that definitions are consistent across the Privacy Act, and to the extent possible, definitions are standalone provisions.

Recommendation 4

3.67 The committee recommends that the Exposure Draft be amended to incorporate all of the relevant requirements of the Australian Privacy Principles for both credit reporting agencies and credit providers, in addition to the more specific or different requirements for credit reporting.

Response: Accept in principle

The credit reporting provisions will completely replace the APPs for credit reporting bodies.

To the extent this recommendation applies to credit providers, the Act will provide clear guidance in each provision about its relationship to the APPs. Where a more specific rule is provided in the credit reporting provisions, that rule will override the APPs to the extent that an entity is a credit provider and dealing with the relevant information.

Recommendation 5

3.97 The committee recommends that the Department of the Prime Minister and Cabinet undertake consultations to ensure that the needs of industry and consumers are addressed during the lead up to the implementation of the new credit reporting regime.

Response: Accept

The Government has undertaken extensive consultations throughout the development process, including on the Credit Reporting Code of Conduct. Further consultation occurred in developing the Government response in the form of the Exposure Draft, which was released for public comment. The Government will consider appropriate further consultation with stakeholders to ensure effective implementation.

The development of effective education and information resources by stakeholders and for stakeholders will be undertaken during the transition to the new regime. The Government anticipates that both industry and the Office of the Australian Information Commissioner (OAIC) will play a significant role in providing education and assistance.

Recommendation 6

3.98 The committee recommends that the Office of the Australian Information Commissioner consult with industry and consumer advocates to provide guidance on any consumer education campaigns in relation to the new credit reporting system.

Response: Accept in principle

The Government encourages the OAIC to consult with industry and consumer advocates to provide guidance on any consumer education campaigns in relation to the new credit reporting system.

Recommendation 7

3.112 The committee recommends that consideration be given to including a requirement in the provisions for the powers and functions of the Australian Information Commissioner that a regular audit of a randomly selected credit reporting agency and a credit provider in Australia be conducted by the Australian Information Commissioner.

Response: Accept in principle

The Government agrees that it is important that the Commissioner have power to conduct audits of credit reporting bodies and credit providers. The Government considers that it is more appropriate for the Commissioner to retain the current discretion to exercise the performance audit power as required, allowing the Commissioner to determine an audit program consistent with the overall priorities and resources of the OAIC.

CHAPTER 4 – Serious credit infringements, identity theft and hardship

Recommendation 8

4.23 The committee recommends that consideration be given to a change of approach in dealing with serious credit infringements to allow for those listings, not relating to intentional fraud, to be dealt with in a different manner.

Response: Accept

On consideration, the Government will amend the definition of serious credit infringement. An additional requirement will be added to require that six months must have elapsed since the provider last had contact with the individual before an act can be considered to be a serious credit infringement.

This amendment addresses the Committee's concern that an individual may move, for example at the end of a tenancy, and is not contactable simply because the credit provider does not have a forwarding address. The individual may also believe that all bills have been paid and be willing to pay the outstanding amount. The credit provider will continue to have the opportunity to list a default against the individual after at least 60 days has passed and the other default requirements are satisfied.

The correction and/or complaints provisions can be used by an individual to request removal of an incorrect listing of a serious credit infringement.

Recommendation 9

4.49 The committee recommends that the Exposure Draft be reviewed to ensure that the intent of the Government's response to ALRC Recommendation 57–5, that credit reporting agencies be required to advise a credit provider that they are unable to release information due to an individual's concerns about possible fraud, is clearly provided for.

Response: Accept

On review, the Government considers the relevant provision does not prevent credit reporting bodies from providing this information. This will be clarified in the Explanatory Memorandum.

Recommendation 10

4.50 The committee recommends that the time of the initial ban period be extended from 14 days to 21 days.

Response: Accept

The Government agrees that the relevant provision be amended to extend the ban period to 21 days.

Recommendation 11

4.69 The committee recommends that consideration be given to expanding the meaning of new arrangement information to include circumstances where an individual seeks new terms or conditions for their original consumer credit before they default.

Response: Noted

Upon considering the meaning of new arrangement information, the Government determined that this provision will remain unchanged.

The Government response to ALRC recommendation 58-2 clearly states that the listing of new arrangement information 'will only apply to schemes that are as a result of a previous default or serious credit infringement listing'. The definition of new arrangement information reflects this policy decision.

CHAPTER 5 – Complaints Handling

Recommendation 12

5.37 The committee recommends that the time period for the correction of credit information is amended to 15 days.

Response: Accept in principle

The Government considers a reduction in the time period to 15 days is unnecessary due to the improvements to correction and complaint procedures, which will reduce delays. The correction and complaint procedures will be streamlined to remove the “two-step” complaint process where an individual seeks correction of their credit reporting information. This will result in a simpler complaints process, which achieves the Committee’s objective of reducing delays for consumers.

Recommendation 13

5.39 The committee recommends that the issue of extensions of time to respond to requests for correction of records be addressed in the Credit Reporting Code of Conduct.

Response: Accept

The Government agrees that the issue of extensions of time to respond to requests for correction of records be addressed in the Credit Reporting Code of Conduct.

Recommendation 14

5.83 The committee recommends that consideration be given to implementing the recommendations of the Office of the Australian Information Commissioner in relation to the substantiation issue.

Response: Accept

On consideration, the draft legislation will require that if a person requests a correction and it is refused, the credit reporting body or credit provider must provide evidence to substantiate the correctness of the information. If the credit reporting body or credit provider is unable to substantiate the information, the general obligations to maintain accurate, up to date and complete information will operate and the information must be removed as there is no evidence that the information is accurate.

CHAPTER 6 – Australian Privacy Principle 3 – collection of solicited personal information

Recommendation 15

6.61 The committee recommends that the opt-out provisions in section 110 be reviewed to ensure consistency with other consumer credit regulatory regimes.

Response: Accept

The provisions have been reviewed as recommended and the Government considers the opt-out model is consistent with other consumer credit regulatory regimes, noting their different policy objectives, as well as the general rules on direct marketing contained in APP 7.

The Government, in its response to ALRC recommendation 57-3 specifically announced that individuals would be given the opportunity to opt-out of direct marketing, and individuals must be given specific notice at the time of collection of their personal information that it may be used for pre-screening. The consumer credit rule noted by the Committee requiring opt-in only applies to direct marketing of solicited invitations for credit card contracts. There is no general opt-in rule in the consumer credit regulatory regime for credit products. The Government considers that the current opt-out model is appropriate given the other privacy protections established as part of the pre-screening regime.

Recommendation 16

6.65 The committee recommends that section 115 be reviewed in light of the Office of the Australian Information Commissioner's comments relating to disclosure of de-identified information and the rules to be issued.

Response: Accept

The Government considered the OAIC's comments relating to disclosure of de-identified information. The relevant provision will be amended to permit the disclosure of de-identified information in limited circumstances and to clarify that research can only occur in compliance with the rules issued by the Commissioner.

Recommendation 17

6.87 The committee recommends that the Credit Reporting Code of Conduct include requirements in relation to the standard of information provided to a consumer in relation to accessing free credit reports and those for which there is a charge.

Response: Accept

The Government agrees that the issue of the standard of information in free credit reports, and those provided for a charge, should be addressed in the Credit Reporting Code of Conduct.

Recommendation 18

6.108 The committee recommends that consideration be given to providing in subsection 126(4) a general requirement for notification of destruction of credit reporting information to all recipients of credit reporting information in cases of fraud and not only limited to when an individual makes such a request.

Response: Accept

The Government has considered the Committee's recommendation regarding notification of the destruction of credit reporting information in instances of fraud. The relevant provision will be amended to provide that the credit reporting body must, within a reasonable period after the destruction, notify all recipients of the destruction.

CHAPTER 7 – Credit provider provisions**Recommendation 19**

7.23 The committee recommends that section 132 be reviewed to ensure that the disclosure obligations on credit providers in relation to 'credit information' protect all credit information collected by credit providers.

Response: Accept

Upon review of the provisions the Government has determined that no change is necessary.

Any credit information held by credit providers which has not been obtained from a credit reporting body will be protected by the general use and disclosure provisions in the APPs, on the basis that it is also personal information.

This position will be clarified in the Explanatory Memorandum.

Recommendation 20

7.26 The committee recommends that greater clarity be provided as to the timeframes for disclosure of default information pursuant to paragraph 132(2)(e) either in the Credit Reporting Code or in guidance from the Office of the Australian Information Commissioner.

Response: Accept

This Government agrees that the timeframes for disclosure of default information should be addressed in the Credit Reporting Code of Conduct.

CHAPTER 8 – Division 4 and penalty provisions

Recommendation 21

8.6 The committee recommends that a definition of the term 'credit manager' be provided.

Response: Accept in principle

The Government agrees that further explanation of the term 'credit manager' would be useful. The term will be explained in the Explanatory Memorandum, by noting that a credit manager is someone who manages credit, and to whom disclosures are permitted for that purpose (the term managing credit is defined to exclude debt collection, to ensure that debt collectors do not have access to the information, consistent with policy).

Recommendation 22

8.13 The committee recommends that further consideration be given to the regulation of credit eligibility information provided by credit providers to debt collectors that are small business operators.

Response: Noted

The operation of the small business exemption, including in relation to debt collectors, will be considered in the development of the Government's further response to the remainder of the ALRC's recommendations.

Recommendation 23

8.39 The committee recommends that consideration be given to provide increased funding for the Office of the Australian Information Commissioner to effectively and efficiently investigate breaches of the credit reporting provisions.

Response: Noted

Implementation of this recommendation will be considered when the Budget allows.

Recommendation 24

8.43 The committee recommends that consideration be given to the inclusion of consumer remedies, similar to those that exist in the National Consumer Credit Protection Act such as compensation, for consumers adversely affected by contraventions of the credit reporting provisions.

Response: Accept

The Government agrees that the draft legislation should include consumer remedies similar to those in the National Consumer Credit Protection Act. A new provision based on sections 178 and 179 of the *National Consumer Credit Protection Act 2009* (NCCP Act) will ensure that, where a court finds that a credit reporting civil penalty provision has been contravened, the court may also make an order of compensation to any person that has suffered any loss or damage as a result of that contravention. In addition to ordering monetary compensation, the court will also be able to make any other order that it considers appropriate to compensate the person or prevent or reduce the loss or damage suffered.

CHAPTER 9 – Definitions**Recommendation 25**

9.10 The committee recommends that the definition of 'court proceedings information' be reconsidered to ensure that summonses cannot be listed on a consumer's credit information file.

Response: Accept

The Government has considered the definition of 'court proceedings information' and considers any ambiguity can be addressed in the Explanatory Memorandum. It is considered that the definition is clearly expressed to apply to judgments, and an originating summons should not be listed prior to any judgment.

Recommendation 26

9.15 The committee recommends that the definition of 'identification information' be reviewed to ensure that it does not restrict the ability of credit reporting agencies and credit providers from meeting other regulatory requirements.

Response: Accept

The Government has reviewed the definition of 'identification information' and considers it to be appropriate. The identification information available to credit reporting bodies and credit providers under the credit reporting provisions will not restrict their ability to comply with other regulatory requirements, such as the AML/CTF requirements.

Recommendation 27

9.19 The committee recommends that section 181 be reviewed to provide for greater clarity and certainty in the meaning of 'publicly available information' as proposed by the Office of the Australian Information Commissioner.

Response: Accept in principle

The Government considers this issue would be best dealt by providing further explanation of the meaning of 'publicly available information' in the Credit Reporting Code of Conduct. This will ensure that all stakeholders have the opportunity to agree on the appropriate limits to publicly available information that could be collected.

Recommendation 28

9.27 The committee recommends that the meaning of 'default information' be reviewed to ensure that statute barred debts are prohibited from being listed.

Response: Accept

On review, the relevant provision will be amended to ensure that default information does not include any overdue payment collection of which is statute barred, whether by providing a complete defence to the individual under any limitations of actions legislation, or by preventing the commencement of proceedings.

Recommendation 29

9.48 The committee recommends that consideration be given to the inclusion of provisions for grace periods in relation to information in repayment histories.

Response: Accept in principle

The Government agrees that this matter should be addressed by the Credit Reporting Code of Conduct, which will allow all stakeholders to negotiate an appropriate grace period and the circumstances around the use of the grace period.

Recommendation 30

9.70 The committee recommends that section 192 be reviewed to ensure that onerous conditions are not placed on individuals accessing their credit reporting information via the National Relay Service, in particular the need to provide written authorisation. Further, the committee recommends the Department of the Prime Minister and Cabinet, in undertaking the review, consult the National Relay Service and the Office of the Australian Information Commissioner.

Response: Accept

The Government agrees that it is important that the activities and functions of the National Relay Service are not adversely affected by any amendments to the Privacy Act. Section 192 will be redrafted to exclude the National Relay Services from the definition of access seeker.