



16 March, 2005

The Secretary
Senate Legal and Constitutional Reference Committee
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Please find attached Baycorp Advantage's submission to the Committee in response to its Privacy Terms of Reference.

If you require any explanation of any matters contained in the submission, or any other matters that the Committee may be interested in pursuing, please do not hesitate to call either Melissa Stratton 02 9951 7556 or Chris Gratton on 02 9951 7540.

Yours sincerely

M Stratton

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1 Executive summary

Baycorp Advantage is a leading provider of data and analytic services in Australia and New Zealand. One of its major businesses, credit reporting, sees Baycorp Advantage holding personal information on almost 90 per cent of the adult population of Australia.

Baycorp Advantage takes its privacy obligations very seriously. They are at the core of its continued existence. It aims to win and hold the trust of consumers and the public at large as a trusted custodian of data. We recognise that this is an ambitious objective, but we are committed to working with our customers, with consumers, and with their representatives to meet this objective over time.

In considering the Committee's terms of reference, Baycorp Advantage submits that:

a. Baycorp Advantage

As a specialist data collector and business intelligence provider, Baycorp Advantage wishes to set and maintain a high standard for trust in relationships with individuals for whose data it acts as custodian.

b. The Overall Effectiveness of the Privacy Act

The Privacy Act (1988) (“**the Act**”) has been effective in providing a clear framework for information privacy in Australia. The private sector provisions have been effective at extending protection to consumers in a flexible manner. Overall effectiveness could be improved by the provision of additional resources to the Office of the Federal Privacy Commissioner (“**OFPC**”), in particular to assist with complaint handling.

Baycorp Advantage notes that Part IIIA of the Act is now out of step with privacy regulation in other arguably equally sensitive sectors outside government. However, given initiatives underway to improve consumer protection, and to enhance data quality, a formal review of Part IIIA or the related Code at this stage would simply impede the progress of measures underway to enhance effectiveness.

c. Identity, anonymity and privacy

Baycorp Advantage supports a vigorous public debate on anonymity and identity, and the appropriate balance privacy should strike between them. In particular, the public interest in verifying identity should be defined in relation to secondary purpose restrictions. As well there should be consideration of access to public register data for this purpose.

d. Technological neutrality

Privacy regulation should continue to seek technological neutrality as an objective. The privacy impact of new technologies and technological practices should be constantly assessed, but any regulatory measure that seeks to impede developing technology or practice should meet a very stringent test establishing both serious harm and the absence of any alternative, non-regulatory response.

e. Bundled consent

There has not been a sufficient case made for a prohibition on bundled consent given the very significant disruption it would make to business.

There should be no further restriction on consumers' capacity to consent to the secondary use of data. The linking of data 'bits' is the principal means by which value is created in the information economy. Accordingly, while the law recognises an individual's right to exercise some control over the way in which value is created from information concerning themselves, such a right should not be extended to a

prohibition on secondary use or on 'bundled consent'. That would be an unwarranted and intrusive restriction on business.

The balance between individual privacy interest and other interests in the NPP's does not give due weight to the public interest in mitigating identity crime. Baycorp Advantage supports an amendment to the secondary purpose exemption at NPP2.1 (h) to include use or disclosure for the purpose of preventing or detecting identity fraud (for example by an organisation with an Anti-Money Laundering or Customer Due Diligence obligation).

f. International Comparisons

International jurisdictions, including the EC are in some ways considerably more enabling of the needs of the information economy than the older parts of Australia's legislative regime including Part IIIA.

g. Resourcing of the OFPC

Emerging technologies, the issue of identity theft and the need for document verification as well as international developments pose significant challenges.

As the needs and expectations of businesses and consumers evolve, Baycorp Advantage feels that increased emphasis will be placed on the role of the regulator to ensure that the aims of privacy legislation continues to be met. The challenge for the OFPC will be to resolve the emerging issues quickly and objectively in an enabling regulatory environment.

Consumer awareness and exercise of rights will also depend crucially on a well resourced regulator. Baycorp Advantage supports an increase in resources to the regulator to support its functions.

2 About Baycorp Advantage

Baycorp Advantage Limited (“**Baycorp Advantage**”) was established through the merged operations of Baycorp Advantage Holdings (NZ) Limited and Data Advantage Limited (Australia) in December 2001. Prior to the merger, Baycorp Advantage Holdings (NZ) Limited was New Zealand’s largest receivables management company and credit bureau, Data Advantage Limited evolved from being Australia’s leading consumer credit bureau to become the leader in data solutions.

As a merged entity, Baycorp Advantage is the largest single source of business information in Australia and New Zealand, and is expanding into Asia-Pacific and other international markets. As a provider of data and technology, the company is committed to assisting other organisations to maximise their returns by delivering market-leading risk and customer management solutions. These include a complete range of credit and authentication data, decisioning solutions and software, and transaction services to enhance organisations’ customer management strategies and operational processes.

The focus of Baycorp Advantage’s activities is in the Australian and New Zealand markets. In addition, Baycorp Advantage has businesses and investments in several Asian countries, where it offers credit bureau and risk management solutions.

Customers cover a wide range of industries, including banking, telecommunications, finance, retail, utilities, trade credit, government, credit unions and mortgage lenders, among others. The Company’s top-tier customers are major banks, telecommunications and finance companies. Baycorp Advantage has a client base of over 4,500 subscribers in Australia.

Baycorp Advantage is the market leader in consumer data reporting and identity verification in Australia. Business growth has been driven primarily by the banking and finance sectors, which have seen continued growth in the credit card industry and residential mortgage market over the past year. The compound average growth rate of consumer credit enquiry volumes over the past three years has been 7.5% per annum across the New Zealand and Australian markets.

A common objective of Baycorp Advantage and its clients is to ensure accuracy of credit information. Without this objective, the value of Baycorp Advantage’s services is limited.

2.1 Baycorp Advantage and consumers

Baycorp Advantage collects and analyses data on the financial behaviours of individuals and companies in Australia and New Zealand. It is the largest supplier of credit information in Australia and New Zealand to the commercial community. Our clients use this information to manage their decision-making about business risk, including the provision of credit. Baycorp Advantage is also one of the largest and most successful debt recovery companies in Australasia.

For the most part, Baycorp Advantage’s relationships with consumers are indirect. This makes the operation of privacy protection for individuals a more complex matter, as the proximity and intensity of relationship between Baycorp Advantage and consumers is lower than for many organisations that collect data in their own right. This remote, low intensity relationship makes the exercise of rights by individual consumers a challenge.

Despite this, Baycorp Advantage regards the relationship with consumers as absolutely fundamental to its business. As the custodian of very large amounts of personal information held on individuals, retaining the trust of individual consumers and the community at large is fundamental to Baycorp Advantage’s ‘social licence to operate’. Through the service Baycorp Advantage provides using that personal information, it is able to help protect two of

a consumer's most important assets: their identity (from theft and fraud) and their credit history (to support fair access to credit).

For example, Baycorp Advantage currently enables individuals to manage their credit reputation and protect against fraud by providing them with access to their own credit file. In response to a rapid rise in identity fraud, Baycorp Advantage has established a consumer website which assists with this by outlining how consumers can protect themselves against identity fraud and what action to take in the event they fall victim to such fraud.

Baycorp Advantage recognises that it is responsible for the protection of an immense amount of consumer information. Our Board and Management does not underestimate the amount of trust that must therefore be placed in our operations as a result. Baycorp Advantage also acknowledges the concerns of some members of the community regarding the extent of its operations. Internally, great value is placed on building and retaining the trust of the wider community, as that trust underpins our entire service offering, and the ability of Baycorp Advantage to be a trusted corporate citizen.

It is Baycorp Advantage's objective to create a stronger alignment with consumers in the future, so as to increase the confidence they have in us as the custodian of their personal data. Baycorp Advantage believes that the provision of personal information, particularly an accurate credit information file, is a vital service for consumers. We would support initiatives that encourage consumers to take an active role in not just ensuring their own credit file is accurate and up to date, but that all information collected on them is meaningful and relevant. As a result, Baycorp Advantage would welcome increased levels of consumer awareness of their privacy rights.

In the coming years, Baycorp Advantage will also seek to be recognised as a trusted partner of government, working in conjunction with bodies such as the OFPC to enhance consumer rights whilst balancing the needs of business.

The likelihood that consumers will be aware of and able to exercise the rights conveyed by the NPP's will increase with the proximity and intensity of relationship between a consumer and the data collector. For example, where a bank is collecting information from its own customer, and that customer regularly transacts with the bank, it is reasonable to expect that a consumer will be more able to absorb privacy disclosure, and will have a greater interest in exercising privacy rights to protect other interests in the relationship.

On the other hand, where the relationship is weak or indirect, such as with an organisation that collects data indirectly, the context is less conducive to consumers absorbing privacy disclosure and, in some circumstances exercising their rights.

For its part, Baycorp Advantage accepts it has a high level of responsibility for trust to the consumers on whose behalf it holds data. It therefore seeks to strengthen reasonable means by which consumers are made aware of and may exercise their rights (for example in opt-out arrangements for direct marketing, or in relation to credit data, by the fostering of direct relationships that encourage consumers regularly to access their files).

With specialist data collectors such as Baycorp Advantage, where information is often collected indirectly, there may be a case for supplementing the NPP regime of individual rights with other voluntary measures to involve consumers in the protection of privacy and the appropriate handling of data, such as have been developed in the context of codes of conduct.

A. As a specialist data collector and business intelligence provider, Baycorp Advantage wishes to set and maintain a high standard for trust in relationships with individuals for whose data it acts as custodian

2.2 The Role of Baycorp Advantage as a Credit Reporter

As a credit reporter, Baycorp Advantage plays an important role in the Australian economy by enabling large corporates through to small-to-medium businesses to manage their exposure to financial risk by providing comprehensive data about the past credit behaviour of their potential customers.

Credit Reporters collate and enrich data from a wide variety of sources into relevant, applicable business information designed to help their clients select valuable customers and manage credit risk. By providing these services, Baycorp Advantage becomes an important strategic partner in the day-to-day operation of its clients.

Baycorp Advantage provides a single specialised source for this information, and is a sophisticated supplier of on-line access to data, which speeds up the credit application process. This not only results in consumers experiencing faster response times to their applications, but generates efficiencies in the origination process of credit providers, which are then passed onto consumers via lower interest rates and fees.

Credit reports are clearly of benefit to credit providers, but they can provide benefits to consumers as well. The production and provision of credit reports is in the public interest in a modern society which values the possibilities afforded by the easy availability of credit and the free flow of information.

Moreover, the greater ability of businesses to assess and manage risk leads to the reduction of bad debt levels and to improved performance across the economy as a whole.

Frequently, Baycorp Advantage's clients regard the organisation as a business partner to assist in the management their information needs and decision making. Baycorp Advantage has long been regarded by businesses as a trusted source of information as well as an arbiter on privacy matters. As business and consumer needs have evolved, so to has the nature of Baycorp Advantage's operations.

3 Effectiveness of the current legislative regime

3.1 Part IIIA

Part IIIA of the Privacy Act is a significantly more prescriptive legislative regime than applies to other arguably more sensitive sectors of the private sector.

Baycorp Advantage takes its obligations to protect consumers' information privacy very seriously. There is some current public discussion of the amendment of Part IIIA to allow positive credit reporting, however we believe a greater and more immediate priority is to work with credit providers and consumers to:

- Enhance data quality
- Improve consumer engagement, including through development of better dispute resolution mechanisms.

We will pursue these initiatives with a higher priority than any attempt to amend the Act to allow positive credit reporting.

Similarly, we do not support a general review of Part IIIA or the Code at this stage which could divert energy and resources from these developments.

Overall, while Baycorp Advantage has noted elsewhere some minor differences between the NPP's and Part IIIA, enhancing the effectiveness of Part IIIA is more likely to arise from practical measures in data quality and better dispute resolution and consumer engagement than in legislative amendment or review.

3.1.1 Data Quality

Data quality is the critical factor in Baycorp Advantage's business. Errors in data, while frustrating and sometimes harmful for consumers, do real damage to our business. Improving data quality is therefore a major priority and we are working with credit providers and with consumers to improve data quality.

Critical to data quality and selection of the correct file for the identity on the bureau system (Pegasus) is the Matching process.

Current processes include:

- A Data Management and Quality Team of 20 people
- Monthly performance monitoring against 20 major Key Performance Indicators (KPI's) and over 100 granular KPI's
- A Public Access team and Investigations team to resolve consumer queries, and where systemic issues are identified, to refer them for further action
- Data quality improvement and cleansing programs, both automated and manual, which are programmed to run on a regular basis across the data base.

The matching process of the Bureau system was first developed in the mid 1980's and has been refined and enhanced overtime to ensure matching with a high degree of confidence and accuracy.

The Identity matching process uses the following components:

- Name - surname and given names
- Date of Birth
- Driver's licence
- Current residential address
- Previous residential address

Additionally, gender is used as a differentiator when necessary.

There is a degree of error in the data being provided to the bureau from both subscribers and third parties (primarily government agencies). Furthermore there is variance in the completeness of data being supplied. Banks typically provide all components of data where possible whilst third parties often provide only name, current address and date of birth.

Whilst the matching process has a degree of tolerance for data entry errors there is a minimum requirement of 3 matching components (excluding gender) to result in a match. Soundex, Jaro-Winkler weighted string comparison and Ratcliff/Obershelp pattern recognition algorithms are incorporated in the matching process when comparing identity data input to the identity data on a file.

For each of the 5 components of identity data a score between 0 and 9 is applied based on the level of match. A perfect match on all 5 components will result in a score of 45 points. A cut-off score is then applied to eliminate unlikely matches. Finally, for the remaining "possible-match" files, a match-classification of Exact, Near, Absent or Different is given based on the score of each component. The number of permutations of match combinations is 4 to the power of 5 or 1024. Each possible match file is checked against a Match table and further unlikely matches are eliminated until we are left with either 1 matched file or else no matched file. In the case of no matched file the bureau system creates a new file for the subject with the identity data provided on the enquiry.

3.1.2 Future data quality initiatives

In future we are pursuing tighter data quality arrangements with the subscribers who supply credit information to Baycorp Advantage using co-operative arrangements along the lines of the SCOR framework in the United Kingdom.

To this end Baycorp Advantage is working with banks, finance companies and other major credit providers to establish the Australian Standing Committee on Reciprocity. The remit of ASCOR will be improving data quality and reciprocity, including possible sanctions for the provision of poor quality or incomplete data.

3.1.3 Consumer dispute resolution

Baycorp Advantage is seeking to improve the engagement of consumers with their credit history. Consumers can currently access their credit file and monitor it using the www.mycreditfile.com.au and MyCreditAlert to monitor activity on their file.

Baycorp Advantage wishes to significantly increase the number of consumers who regularly access their own credit file. Not only will this assist consumers to have greater control over their own data, but it will improve their capacity to exercise individual privacy rights.

Baycorp also provides a team of staff to assist consumers to access their credit files. The public access team has 22 members. An Investigations team of 6 investigates consumer disputes.

With over 5 million inquiries against the credit bureau database, errors will regrettably emerge. Our task is to keep that number as small as possible.

Each year:

- 420,000 monthly inquiries
- 1178 monthly consumer inquiries that lead to investigations
- Of these approximately 40 per cent require no further action, 40 per cent require a minor change (e.g. to spelling of a first name) and 20 per cent identify possibly material errors.

One means of significantly enhancing the engagement of consumers is to enhance the dispute resolution process. Baycorp Advantage is currently considering the establishment of an external dispute resolution mechanism in addition to its own internal processes and consumer recourse to the Privacy Commissioner.

3.2 Technological neutrality

The Committee's terms of reference point to the capacity of the current legislative regime to respond to new and emerging technologies.

In considering this question, Baycorp Advantage is mindful of the legal antecedents of the information privacy principles embodied in the Act. When first enunciated, the right to privacy was expressed as a 'right to be left alone'¹.

In the context of information privacy, the concept of privacy has been narrowed from this 'right to be left alone' to regulate:

- Where, on a spectrum of anonymity to identity, an individual may sit in a given circumstance;
- what elements of identity (for example, credit history) are required or allowed to be present in a given circumstance;
- what rights the individual has to control the use made of the information elements that make up an identity and which can lead to their partial or complete identification.

Information privacy principles do not deal with personal or physical privacy, or other forms of privacy.

Australia, like other jurisdictions, has weighed carefully the importance of privacy against the equal importance to a democracy and an economy of the free flow of information. As the information economy has developed, it has become very clear that the principal means that value is created in that economy is by the association of previously disparate elements of information. Much of that data relates to individuals. Accordingly, Australia, like other jurisdictions, has restricted its privacy regulation in two important ways:

- it does not confer an absolute or presumed right to anonymity;
- it is limited to the individual's rights over the collection and use of personal information.

These restrictions in scope are fundamental to an enabling, technologically neutral environment. Without them, the privacy regime could easily inhibit the development of an information economy in Australia.

As a specialist data and business intelligence provider, Baycorp Advantage appreciates these issues very keenly.

¹ Warren & Brandeis, Harvard Law Review IV 1890 No 5

We are strongly of the view that the decision to restrict the scope of information privacy is central to the creation of a privacy environment that is enabling of an information economy. An enabling regulatory environment is both technologically neutral and deliberately narrow in the restriction it places on the future development of the information economy.

We believe if there is to be any further extension of scope – for example extending information privacy to include a ‘right to be left alone’ in cyberspace - a very strong case indeed needs to be made.

That case would need to establish:

- that there is significant harm being done by the new technology and the practices surrounding it;
- that harm requires a remedy;
- there is no remedy available other than by creating new legal rights;
- that the cost of the new legal rights to the community does not outweigh the cost to the community of the harm.

While we are not expert in technologies referred to in the paper, we do not believe such a case has been made. Certainly there has not been a case made strong enough to move away from the fundamental principle of technological neutrality that underpins the Act.

Moreover, any move beyond the current approach to information privacy is likely to move Australia out of alignment with other jurisdictions.

- B. Privacy regulation should continue to seek technological neutrality as an objective. The privacy impact of new technologies and technological practices should be constantly assessed, but any regulatory measure that seeks to impede developing technology or practice should meet a very stringent test establishing both serious harm and the absence of any alternative, non-regulatory response. Baycorp Advantage does not consider that the examples given meet this dual test.**

3.3 Future directions – identity, anonymity and privacy

Baycorp Advantage supports continued vigorous public policy debate of the issues associated with identity and anonymity for citizens, and the balance that is struck between them.

It is axiomatic that in an information economy, value is created by the connection of data bits. In many cases, this will require the connection of personal data.

The current privacy regime recognises consumers’ rights to control the circumstances of that process, by the limitations around primary and secondary use, and by the requirement for consent.

As Charles Britton has pointed out

What technology does not do is preserve or deliver the consumer context...²

So maintaining context is important – for consumers and for business. Just as a consumer whose details are taken out of context from one database to another for marketing purposes can be irritated, so a business that has a consumer present with a particular identity at the

² Charles Britton “Privacy and Identity” Choice Magazine 10/03

beginning of a commercial transaction will be irritated if they find that part of the context of credit or other history has been obscured or omitted.

In this sense, while it can be useful to consider identity as a plurality, it is important to remember that in a legal sense, identity is unitary: there is one legal person that can consent.

We believe that in the information economy, identification will be increasingly important, and the public interest in it, may need further definition, particularly in the context of secondary use exemptions in the Privacy Act.

3.3.1 Identity verification

Of particular interest in the context of privacy rights is the question of identity verification using personal information held by a number of organisations and agencies. The question of the circumstances under which a consumer must be identified or may remain anonymous is a central question for information privacy.

In some circumstances, identity fraud can be mitigated without the use of identifying information. In others, however, the use of identifying information is necessary, and even required by law. In such circumstances, there is an expectation that organisations are able to match identity elements with personal information held by other agencies and organisations. The current Act does not provide a sufficient definition of this interest.

As Australia's Anti-Money Laundering regime is amended in 2005, those organisations with an existing customer due diligence (CDD) obligation will have that obligation expanded, while a whole new range of organisations will newly acquire an obligation. The FATF recommendations on which the legislation will be based requires that organisations can perform CDD – that is, verify an individual's identity – by access to independent sources of data or information.

The current NPP's do not adequately reflect the public interest in such verification and would arguably not permit an organisation to verify a document or identity on its records with another organisation. The strong public interest in this process should be put beyond doubt with an amendment to NPP 2. 1(h) that allows use or disclosure for the purpose of verifying identity and mitigating identity fraud, where an institution has a CDD obligation under Anti-Money Laundering laws.

- C. The current balance between individual privacy interest and other interests does not give due weight to the public interest in mitigating identity crime. Baycorp Advantage supports an amendment to the secondary purpose exemption at NPP2.1 (h) to include use or disclosure for the purpose of preventing or detecting identity fraud (for example by an organisation with an Anti-Money Laundering or Customer Due Diligence obligation).**

Baycorp Advantage strongly believes that the availability of a variety of publicly sourced data sets is integral to the efficient operation of the Australian economy. Businesses are able to offer numerous benefits to consumers through their access to such data. Baycorp Advantage believes that this can continue to be achieved and such practices enhance the promotion of the individual's rights to privacy.

BIS proprietary data combined with publicly available information provide significant benefits for the consumer public as a whole. The ability for financial institutions such as banks and finance companies to readily access information when processing a credit application is critical to their ability to assess the risk associated with lending. As financial institutions are

more readily able to assess risk, benefits such as lower interest rates and easier access to credit are passed onto the individual consumer.

In Baycorp Advantage's experience, the range of information available helps to distinguish between different individuals' data. Moreover, Baycorp Advantage submits that identification and information-based document verification services will become more important in the future. Identification theft is a significant problem and it is vital that sufficient systems are in place to protect credit providers and other groups that bear the risk of fraudulent behaviour in respect of identification details.

- D. The range of publicly available information that can be used for business related purposes should be discussed as a separate matter to this review. This discussion should be facilitated by the OFPC.**

3.4 Indirect Collection of Information

There has been some discussion of whether consumers' capacity to exercise rights is limited where information is collected indirectly. Currently all BSG clients make provision for a consumer to opt-out of their direct mail initiatives as per the requirements provided within the ADMA Code of Conduct. Further, there is a procedure for consumers to contact BSG to better understand how their details were sourced, and also to have their details removed from future mailings.

Baycorp Advantage's current practice is to rely on our clients' advice to consumers of their opt-out rights on the first occasion indirectly collected information is used in a marketing initiative. There may be some benefit in codifying this practice with an amendment to NPP1.5 to reflect our current practice. Baycorp Advantage would propose that NPP1.5 be amended to place an obligation on organisations that are indirectly collecting information for direct marketing purposes to ensure that at the time of collection or as soon as possible after collection (i.e. in the first marketing approach by a user of the collected data) the individual is provided an opportunity to opt-out of further direct marketing.

Baycorp Advantage believes that such an amendment would support the protection of the individual's privacy whilst not placing an unreasonable obligation or burdensome costs on business.

- E. In relation to direct marketing, Baycorp Advantage does not believe that there is a case to alter the current opt-out provisions, which are operating effectively. An opt-in regime would be unnecessarily obstructive of business. Based on experience of our own business practice, Baycorp Advantage does support an amendment to NPP 1**
- NPP 1.5 should be amended to increase the obligation on organisations acquiring personal information from third parties to advise consumers of opt-out rights at the first opportunity after acquisition (usually in the context of a direct marketing initiative) in line with current direct marketing industry practice.**

3.5 Bundled Consent

As an organisation that relies on other parties to collect information, Baycorp Advantage is cognisant of the issues associated with indirect collection and with bundled consent. In both its credit reporting business and its marketing solutions business, Baycorp Advantage collects information on individuals from a range of third parties, including Baycorp Advantage customers. In the credit reporting business and to a lesser degree in the marketing solutions

business Baycorp Advantage relies on the consent obtained by our customers from their consumers, and will provide advice to customers on the form of consent sought. This consent will sometimes be bundled, to include for example a credit assessment purpose, as well as a marketing purpose.

In other circumstances, Baycorp Advantage collects information from 'public registers', such as public telephone directories or the Electoral Roll.

It is Baycorp Advantage's position that the NPP's have been effective in protecting the individual's rights to privacy. Practices such as bundled consent indisputably create more efficient processes for a wide range of businesses. Baycorp Advantage's business, as a specialist data processor, depends on its capacity to rely on indirect collection and bundled consent. The ability to cleanse and enhance data against publicly available information further enhances the ability of businesses to improve their knowledge of their customer base. Baycorp Advantage submits that an inability to obtain consent in this manner would have an unnecessarily burdensome impact on the ability of businesses to operate efficiently, and especially their capacity to rely on specialist service providers such as Baycorp Advantage.

The existing protection offered by the NPP's is sufficient to protect individuals. In addition, where specialist service providers are in the market place, their scale makes it possible to develop additional systems to support individuals' exercise of their privacy rights (see for example the discussion below of 'opt-out' arrangements supported by Baycorp Advantage in respect of its marketing solutions business.)

3.6 International Comparisons and Obligations

Increasingly Australian businesses operate in global markets, thereby raising concerns about their ability to meet international standards with regards to individual privacy and data protection. One of the objectives of the private sector provisions of the Act was to ensure that Australia could operate in overseas markets whilst provide adequate protection for Australian citizens, permanent residents and non citizens.

We note that in Europe, the developments in privacy regulation are acknowledging more explicitly the central place that exchange of information and data matching has in the development of a sophisticated, open information economy. Baycorp Advantage supports a similar approach here in Australia, including in consideration of any changes to the NPP regime.

3.7 European Community

In 1995, the European Parliament promulgated a Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data. This Directive recognised that

increasingly frequent recourse is being had in the Community to the processing of personal data in the various spheres of economic and social activity

and that

the progress made in information technology is making the processing and exchange of such data considerably easier.

It set down general principles designed to regulate the use of individuals' personal information so that an individual's privacy was maintained throughout the transaction. For example, the broad terms used within the Directive clearly allow for the possibility of collection and use of positive credit information about an individual. Of particular interest is Article 6 of the Directive which states:

Member States shall provide that personal data must be:

- a. processed fairly and lawfully;*
- b. collected for specified, explicit and legitimate purposes and not further processed in way incompatible with those purposes. Further processing of data for historical,*
- c. statistical or scientific purposes shall not be considered as incompatible provided that Member States provide appropriate safeguards;*
- d. adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;*
- e. accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;*
- f. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use.*

Article 7 provides that:

Member states shall provide that personal data may be processed only if:

- a. the data subject has unambiguously given his consent; or*
- b. processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or*
- c. processing is necessary for compliance with a legal obligation to which the controller is subject; or*
- d. processing is necessary in order to protect the vital interests of the data subject; or*
- e. processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; or*
- f. processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection under Article 1(1). (emphasis added)*

These provisions are substantially more enabling than Australia's provisions and proceed from a framework that is more open to the need to collect, process and augment data in a contemporary economy.

Baycorp Advantage notes that the expression of authority for processing in Article 7 are more open and enabling than the Australian NPP's. As well, the expression of 'purpose' in Article 6 (b) is much more open and enabling than in Australia.

The European regime, for example, permits the collection of positive credit information, and is also much more open to the sharing of data necessary to establish identity and prevent identity fraud, (as discussed elsewhere in this submission) especially in the context of financial services.

4 Resources for the OFPC

Consumer awareness and exercise of rights will also depend crucially on a well resourced regulator. Baycorp Advantage supports an increase in resources to the regulator to support its functions, especially in consumer dispute resolution.

Emerging technologies, the issue of identity theft and the need for document verification as well as international developments pose significant challenges.

As the needs and expectations of businesses and consumers evolve, Baycorp Advantage feels that increased emphasis will be placed on the role of the regulator to ensure that the aims of privacy legislation continues to be met. The challenge for the OFPC will be to resolve the emerging issues quickly and objectively in an enabling regulatory environment.

Consumer awareness and exercise of rights will also depend crucially on a well resourced regulator. Baycorp Advantage supports an increase in resources to the regulator to support its functions.