

RB

Australian Credit Forum

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**PLEASE ADDRESS ALL
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18th December 2007

Professor David Weisbrot
President
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Dear Sir,

**Proposed Reforms to the Privacy Act
Australian Law Reform Commission (ALRC) discussion paper 72**

The Australian Credit Forum (ACF) is an industry forum comprising senior representatives from a wide cross section of business in Australia and New Zealand. Its principle purpose is to review and, where practicable, to participate in legislative changes affecting the credit industry.

The ALRC has published a discussion paper reviewing privacy laws in Australia and outlining proposals for change.

A number of these proposals may impact upon the respective businesses of ACF members.

Accordingly, we address the relative issues, as follows:

Question 50–1 Should organisations be regarded as credit providers if they make loans in respect of the provision of goods or services on terms that allow the deferral of payment, in full or in part, for at least thirty days as compared to seven days, as is currently the case under the OPC's *Credit Provider Determination No. 2006–4 (Classes of Credit Provider)*?

Comment: We believe there should be no restriction on the definition of credit providers based merely on the terms of credit ie any business which supplies an individual with goods or services without requiring immediate payment in exchange for those goods or services should be regarded as providing credit whether that term is a few days, 7 days, 30 days or beyond. Further it should include any business which accepts cheques (other than bank cheques). It is fiscally necessary for a business to assess the credit risk associated with the provision of credit to the customer. We

support a broad definition of credit provider such that it encompasses all businesses which provide credit of any duration.

Proposal 50–8 The proposed *Privacy (Credit Reporting Information) Regulations* should exclude: the reporting of personal information about foreign credit and foreign credit providers; and the disclosure of credit reporting information to foreign credit providers.

Proposal 50–9 The Australian Government should consider including credit reporting regulation in the list of areas identified as possible issues for coordination pursuant to the *Memorandum of Understanding Between the Government of New Zealand and the Government of Australia on Coordination of Business Law (2000)*.

Comment: It is widely recognized that there is a very close link amongst many businesses in Australia and New Zealand and that further there is a substantial movement and migration of individuals and consumers between the two countries. This is facilitated by geographical, language and cultural factors. Given this closeness we believe that New Zealand credit providers should be excluded from the proposed restrictions placed on foreign credit providers. As a minimum a New Zealand credit provider should be allowed access to the credit information of an Australian citizen (from an Australian based credit reporting agency or provider) while the Australian citizen is resident in New Zealand.

Proposal 50–10 The proposed *Privacy (Credit Reporting Information) Regulations* should apply to personal information relating to credit advanced to an individual for any purpose and not limited to 'domestic, family or household' purposes as is currently the case under the definition of 'credit' in the *Privacy Act*.

Comment: We feel the current Act protects the information of an individual in personal situations. Many individuals operate small businesses and to expand the purpose would seriously blur the distinction of consumer and commercial credit. We do not support the expansion of the purpose and believe the existing provisions more than adequately cover the privacy protection of consumer information in a commercial transaction.

Proposal 51–1 The proposed *Privacy (Credit Reporting Information) Regulations* should permit the inclusion in credit reporting files of the following categories of personal information in addition to those currently permitted under s 18E of the *Privacy Act*:

- (a) the type of each current credit account opened (for example, mortgage, personal loan, credit card);
- (b) the date on which each current credit account was opened;
- (c) the limit of each current credit account (for example, initial advance, amount of credit approved, approved limit); and
- (d) the date on which each credit account was closed.

Comment: We support the changes and would ask they be modified further to include not only the limit applicable but also the balance outstanding ie to allow better credit assessment by including in the judgement the credit lines and resources which might be available. This benefit would materialize in the ability to better gauge the ability to meet present and future commitments. Assisting creditor and debtor, alike.

Proposal 51–2 The credit reporting industry code (see Proposal 50–11) should provide for access to information on credit information files according to principles of reciprocity. That is, in general, credit providers only should have access to the same categories of personal information that they provide to the credit reporting agency.

Comment: We believe this has the potential to provide fuller and more meaningful data and support this proposal.

Proposal 51–3 The proposed *Privacy (Credit Reporting Information) Regulations* should provide for a review after five years of operation. The review should focus on the impact of more comprehensive credit reporting on privacy and the credit market.

Comment: We believe any subsequent review should focus on the operation and effectiveness of the Act as a whole and believe 5 years to be a reasonable time.

Proposal 52–1 The proposed *Privacy (Credit Reporting Information) Regulations* should provide for the recording, on the initiative of the relevant individual, of information that the individual has been the subject of identity theft.

Comment: We support the recording of identity theft but wonder what mechanisms will be in place to confirm such theft ie Police reports, court documents etc.

Proposal 52–2 Credit reporting agencies only should be permitted to list overdue payments of more than a minimum amount.

Question 52–1 Should the proposed *Privacy (Credit Reporting Information) Regulations* provide a minimum amount for overdue payments listed by credit reporting agencies? If not, by what mechanism should a minimum amount for overdue payments be set and enforced?

Comment: We support the proposal however believe the reporting agencies should self impose a minimum listing which is reviewed from time to time and driven by market conditions and concerns. Unpaid smaller debts can be a realistic guide of an individuals ability or intention to meet obligations and should be allowed to be taken into account in any credit risk assessment.

Proposal 52–3 The proposed *Privacy (Credit Reporting Information) Regulations* should not permit credit reporting information to include information about presented and dishonoured cheques, as currently permitted under s 18E(1)(b)(vii) of the *Privacy Act*.

Comment: We do not support this proposal. Dishonoured cheques in both quantum and quantity remain a valuable inclusion in credit risk assessment.

Question 52–2 Should the proposed *Privacy (Credit Reporting Information) Regulations* allow for the listing of a 'serious credit infringement' or similar and, if so, how should this concept be defined?

Comment: We support the listing of a serious credit infringement and agree this needs to be clearly defined. Many of our members err heavily on the side of extreme caution and do not list "defaults" or "skips" for fear of crossing the line and facing action at a

later point. The definition should include a provision for acting in good faith and on reasonable grounds.

Proposal 52–10 The proposed *Privacy (Credit Reporting Information) Regulations* should prescribe the specific circumstances in which a credit provider must inform an individual that personal information might be disclosed to a credit reporting agency, for example, in circumstances where the individual defaults in making payments.

Comment: We agree the circumstances should be prescribed however believe this need not be at the time of a default but should instead be allowed to be included at the time of initial granting of credit. This negates the difficulties in skip and fraud situations.

Question 52–3 In what specific circumstances should a credit provider be obliged to inform an individual that personal information might be disclosed to a credit reporting agency; and what information should notices contain? Who should give notice when a debt is assigned—the original credit provider, the assignee or both?

Comment: We would refer to our previous comments regarding proposal 52-10.

Question 53–1 Should the proposed *Privacy (Credit Reporting Information) Regulations* allow credit providers (but not credit reporting agencies) to disclose an individual's credit reporting information to a mortgage or trade insurer, where access to the information is required to assist in the assessment of the individual's credit worthiness?

Comment: We support the disclosure of an individual's credit reporting information to not only a mortgage or trade insurer but also a factoring business or an assignee when a debt is sold or transferred.

Proposal 53–3 The proposed *Privacy (Credit Reporting Information) Regulations* should prohibit the use or disclosure of credit reporting information for the purposes of direct marketing.

Comment: We support this proposal in so far as it relates to provision of the information to third parties.

Proposal 54–6 The proposed review of the *Privacy (Credit Reporting Information) Regulations* after five years' of operation (Proposal 51–3) also should consider whether further regulation is required to ensure the data quality of credit reporting information.

Comment: As stated above regarding proposal 51-3 we believe any subsequent review should focus on the operation and effectiveness of the Act as a whole and believe 5 years to be a reasonable time.

We thank you for the opportunity to review the discussion paper and would be pleased to provide our further input as and when required.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Roger Bates', with a large, sweeping flourish above the name.

Roger Bates
Chairman
Australian Credit Forum