SENATE FINANCE AND PUBLIC ADMINISTRATION

LEGISLATION COMMITTEE

Exposure Drafts of Australian Privacy Amendment Legislation: Part II Credit Reporting

SUPPLEMENTARY SUBMISSION

Submission Number: **19a**

Submitter Details: **Telstra**

Senate Finance and Public Administration Committee
Invitation to provide submissions on the Credit Reporting Exposure Draft ("Exposure Draft")

Submission by Telstra Corporation Limited – March 2011

Telstra welcomes the opportunity to provide comments on the Exposure Draft.

We set out below our responses on specific topics.

We also make this submission on behalf of our wholly owned subsidiary, Sensis Pty Ltd.

1 General comments

We support the Government's policy objective in simplifying the regulation of credit reporting and seeking to better harmonise it with the Australian Privacy Principles ("APPs") which will also apply to credit providers. In this regard we also look forward to the proposed second stage of privacy reforms having a similar effect in harmonising the Telecommunications Act privacy requirements with the APPs. The principle of a more simplified privacy regime in Australia has been rightly praised by both business and consumers alike, and we anticipate being able to provide improved customer service under such a regime.

Like other telecommunications providers, Telstra is not a typical "credit provider" even though it will be regulated by these provisions, as it is currently under Part IIIA of the Privacy Act. We are not in the business of providing credit but allow our customers to defer payment for products and services as a customer benefit. We wish to emphasise the importance of recognising the breadth of credit providers regulated by the Exposure Draft and ensuring that the provisions take account of the very different circumstances in which "credit" may be provided.

We welcome the invitation to provide comments on the Exposure Draft and have included our suggestions in relation to specific provisions below. We would be pleased to provide any further clarification of our position as required.

2 Sections 113 and 134 (ban periods)

We seek clarification as to how credit providers will know how long a ban period is in place for a particular individual.

Section 134 requires credit providers to withhold information from credit reporting agencies where credit is provided "during" a ban period. Section 113 sets up the concept of a ban period, including the ability for the period to be extended by arrangement between the individual and the credit reporting agency. However it is not clear how the credit provider will know when the ban period ends, so that it can comply with section 134(2).

Is the intention for the credit reporting agency to inform the credit provider of the term of the ban period, including where it is extended under section 113(4)? If so, section 134(1)(d) could be amended to only apply where credit is provided during the term of a ban period of which the credit provider has been notified in writing by the credit reporting agency.

3 Sections 118 and 145 (security)

We suggest the removal of the newly inserted concept of "interference".

We also made this point in our submission regarding the Australian Privacy Principles, commenting as follows:

> *The concept of "interference" is a new one and it is not clear what activity it is intended to capture, which is not already satisfactorily covered by the existing words 'misuse', 'loss or 'unauthorised access, modification or disclosure'. It tends to suggest "unlawful interception" which may require degrees of encryption to protect against – this outcome would certainly not maintain the expressed objective of the APPs being technologically neutral and would potentially unfairly impose responsibility for external events or attack.*

In substance, this passage also reflects our view with regard to section 145 of the Exposure Draft and, for consistency, section 118.

We further note that no mention of including the word "interference" in relation to security was made in the Australian Law Reform Commission's ("ALRC") Report 108 or the Australian Government's First Stage Response to that Report.

4 Section 182(1) (consumer credit defaults)

We suggest the removal of section 182(1)(d)(ii) which allows the $100 default listing threshold to be increased by regulations.

We do accept and support the inclusion of section 182(1)(d)(i), which sets the $100 threshold as a new legislative requirement. However, we do not consider regulations are an appropriate mechanism for increases to this threshold to be made. This is widely regarded as an important issue in relation to the credit reporting regime, as evidenced by the extensive commentary, submissions and debate following ALRC Discussion Paper 72. For that reason, any further changes should be made with the full scrutiny of legislation, rather than regulations.

We encourage the Government to consider the position of telecommunications providers and others who provide ongoing services on a deferred payment basis, often involving lower amounts than typical "credit providers" who provide loans and credit cards. The extent to which we can widely offer "post-paid" services and control prices is affected by the availability of effective credit management tools to deal with customers who are very late in paying and have been warned of credit management action. The ability to list those customers with a credit reporting agency assists us in controlling our overall bad debts which benefits the majority of customers who pay in a timely fashion.

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Thank you for the opportunity to provide our feedback on the Exposure Draft. We would be happy to engage in any further discussions on the subject.

Telstra Corporation Limited

24 March 2011

To contact us:

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