

Experian Australia Credit Services Pty Ltd  
ACN 150 305 838



Experian Australia Credit Services Pty Ltd  
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16<sup>th</sup> July, 2012

Attn: Ms Julie Dennett  
Committee Secretary  
Senate Legal and Constitution Affairs Committee  
Parliament House  
Canberra ACT 2600  
[Legcon.sen@aph.gov.au](mailto:Legcon.sen@aph.gov.au)

Dear Committee Members,

### **Inquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012**

As per your email dated 26<sup>th</sup> June, Experian would like to thank the Committee for the invitation to provide feedback to the committee in relation to its enquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012.

In addition to the comments contained herein, as member participants, Experian has also provided input into the ARCA and AFC submissions and largely supports the approach with those submissions. Feedback provided by Experian in the following pages is submitted on its belief that the recommendations will benefit industry participants and the Australian public as Australia looks to adopt a credit reporting regime which aligns with that in other developed economies.

Should the Committee seek further clarification on the contents contained within or would like to discuss the contents further, please feel free to reach out to the writer on the details below.

Yours faithfully

Sharon Booth  
Head of Compliance A/NZ  
Experian Australia Credit Services Pty Ltd

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## About Experian

Experian is the leading global information services company, providing data and analytical tools to clients in more than 90 countries. The company helps businesses to manage credit risk, prevent fraud, target marketing offers and automate decision making. Experian also helps individuals to check their credit report and credit report scores, and protect against identity theft.

Experian plc is listed on the London Stock Exchange (EXPN) and is a constituent of the FTSE 100 index. Experian employs approximately 15,000 people in 40 countries and has its corporate headquarters in Dublin, Ireland, with operational headquarters in Nottingham, UK; Costa Mesa, California; and Sao Paulo; Brazil.

Since entering the Australian market in 1988 with its Decision Analytics business, offering credit analytics, decision support software and fraud solutions, Experian has further extended its footprint with its Marketing Services business and most recently with Credit Services. In August 2011, the ACCC approved the formation of a Joint Venture credit reporting agency. The Joint Venture is owned and operated by Experian, with minority shareholding by the four pillar banks, Citigroup and GE. As the leading information services company and with credit bureaus in 15 countries, holding information on more than 400 million consumers, Experian brings a wealth of information and experience to this market, particularly as it relates to positive reporting, a concept which has been at the core of its business in other markets for over 20 years.

Since receiving approval from the ACCC, Experian has become members of industry groups such as the AFC and ACCC, working with these groups as we look towards privacy reform.

Further information can be found via the following link:

<http://www.experian.com.au/corporate/experian-credit-services.html>

## Executive Summary

As a global leader in information services, including credit reporting, Experian commends the Government for its commitment to enhancing the protection of the Australians through the proposed privacy law reforms as outlined in the Privacy Amendment (enhancing Privacy Protection) Bill 2012, ("Bill").

Experian appreciates the opportunity to contribute to the submission process and thanks the Senate and Legal and Constitutional Affairs Committee for inviting Experian and industry members to make a submission addressing issues in relation to the Bill and the supporting Explanatory Memorandum, ("EM").

Whilst Experian has had input into industry and association submissions and largely agrees with the matters raised, upon review of the abovementioned instruments, Experian would like to highlight a set of unique issues in which we request that further consideration be given with the view to incorporating the suggestions into the legislation. It is anticipated that such amendments would not delay the progress of the Bill and as per the message from industry groups, specifically ARCA and the AFC, Experian remains committed to the passage of the Bill as soon as possible.

Matters identified include:

1. Regular review of contracts/agreements
2. Use of de-identified information
3. Provision of default information
4. Ban periods and identity fraud
5. Commencement arrangements
6. Corrections and complaints

Details of these matters follow.

## Regular Review of Contracts/Agreements

*Subdivision E – Integrity of credit reporting information, s20N(3)(a)(b) requires that a credit reporting body must enter into agreements with credit providers to ensure that information which is provided by the credit provider is accurate, up-to-date and complete, and to ensure compliance with the requirements, the credit reporting body must ensure that regular audits of the contracts are carried out by an independent person and with the view to identify and deal with suspected breaches.*

Experian acknowledges that the quality and accuracy of data is critical to the integrity of the credit reporting system and functions. In fact, in demonstration of its commitment to this matter, Experian supports ARCA's request for the Government to mandate that the credit industry be bound by Principles of Reciprocity and a single input data standard.

Under existing legislation, both credit providers and credit reporting agencies have dual obligations to ensure that information is kept up-to-date and accurate. Such obligations are met as a result of both parties wearing the same obligations to ensure the accuracy of an individual's credit information file. In the case of inaccurate serious credit infringement information received from a credit provider, 1.4 of the Credit Reporting Code of Conduct requires that in situations where a credit reporting agency receives information from a credit provider relating to a *serious credit infringement and the information appears to be inaccurate, and the credit reporting agency reasonably believes the transmitted file may contain similar inaccurate listings, the credit reporting agency, amongst other things, must notify the Privacy Commissioner in writing of the actions taken.*

We note that @20N(3)(b) and (c) of the Bill now requires that a credit reporting body is required to have an independent person, carry out regular audits of contractual arrangements held between the two parties in order to determine if the agreements are being complied with and are further required to identify and deal with suspected breaches of the agreements.

Experian supports the need for all parties to adhere to obligations in relation to the accuracy and currency of an individual's information, however we would argue that the responsibility to ensure such compliance rests with the credit reporting agency via the process of undertaking regular audits of agreements which is *to be undertaken by an 'independent person'*. From a practical standpoint, there are a number of operational impracticalities for a credit reporting body to ensure compliance with Part IIA, e.g. such an obligation would require an audit or review of the collecting bodies processes and mitigating controls to ensure for example, the information collected is not the subject of an identity theft and therefore inaccurate.

### Recommendation

Experian proposes the requirement be amended to require that a credit reporting body implement a process whereby certification is received from users of its services as to their compliance with the Privacy Act, (specifically Part IIIA) and any identified breach reported to the Privacy Commissioner as the governing body of the Regulation.

## Use of De-identified Information

As a member of both the AFC and ARCA, and in line with the joint submission made on behalf of the credit reporting bodies, Experian supports the need for de-identified information to remain unregulated as part of privacy reform. As supported in submissions made by the mentioned bodies, de-identified information is critical to ongoing research and development activities undertaken by (in this case) relevant parties including, but not limited to, credit reporting bodies, and by definition is no longer personal information if it has in fact been 'de-identified'.

### Recommendation

As with the recommendation made by ARCA, Experian recommends that 20M be removed from the Bill and in the event this recommendation is not accepted, prior to determining whether the provision should remain, that the issue be referred to the Productivity Commission for inquiry.

## Provision of Default Information

At a high level and amongst other things, section 6Q of the Bill defines default information as information about a payment that the individual or guarantor **is** overdue in making in relation to consumer credit, where the payment **is** at least 60 days overdue in making that payment and the provider has given written notice to the individual/guarantor requesting payment of the overdue amount.

Listing of default information can vary across each industry sector and members within that sector. For example, some banks list their defaults and manage the debt internally and others sell debt and rely on the debt purchaser to either list or update default information as part of the contractual negotiation. Similarly, as it is not compulsory for default information to be listed with a credit reporting agency, some debt purchasers do not list defaults as they are purchased and others are contractually obligated under the debt purchase agreement to update credit provider information with the credit reporting agency where the listing entity provided or reported the default information.

One of the benefits of positive or more comprehensive reporting provisions is the availability of information held by a credit reporting body for enquiring credit providers when seeking to assess the individuals credit worthiness. Such information helps to ensure that the individual is not provided credit in which they may be unable, or find difficult to service. It is evidenced in other markets where positive reporting has been implemented, that an individual can actually improve their credit performance by only having access to credit which they can affordably meet the repayment requirements. This in turn, directly improves the individual's credit score as their credit history is less likely to reflect late payments which may potentially lead to listed defaults.

With the introduction of comprehensive reporting provisions, it is believed that the benefits provided to credit providers or users of the services provided by credit reporting bodies, (e.g. ability to improve credit risk mitigation strategies,) new users or contributors to the credit reporting regime will increase. For this purpose, Experian is of the view that the Bill must allow for the provision of historical default information, i.e. cured or sold defaults, where the information may not previously have been provided to a credit reporting agency, to not only protect the individual from undue credit risk, but also to ensure a credit licensee can meet its' responsible lending obligations by having all available information to hand when considering whether to provide credit to an individual.

By defining default information in the current tense, Experian believes the definition to be restrictive and inhibitive as it relates to a credit provider being able to meet its' responsible lending obligations under the National Consumer Credit Protection Act and poses a potential financial risk to individuals.

## **Recommendation**

As per s18E(ba) of the existing Act, which relates to default information about an individual who is a guarantor, it is proposed that the definition for default information, as contained within the Bill be amended to reflect that default information relating to an individual or guarantor may be provided to a credit reporting body, where the information is a '*record of an overdue payment*'.

## **Ban periods and Identity Fraud**

In our submission to the Senate Finance and Public Administration Legislation Committee Inquiry into the Credit Reporting Exposure Draft, (copy attached), Experian raised concern with the Governments proposal for a consumer initiated 'ban period'. We note @20K of the Bill, the Government has opted to legislate a 'ban period' which restricts a credit reporting body from disclosing an individual's information, where the individual has advised the credit reporting body that they believe they have or may likely be a victim of fraud. Experian also notes that the initial ban period has been defined as 21 days with the possibility of extension period to be addressed as part of the registered Credit Reporting code.

It has been our experience in other geographies where positive credit reporting has been enacted for many years that the use of 'ban periods' or 'freezes' on the disclosure of an individual's information by credit reporting bodies and credit providers, has been fraught with abuse by individuals and 'debt fixers'. Such mechanisms have been used by these parties to obtain credit where an adverse credit history exists. When credit is obtained under these guises, in many cases there is a direct negative impact on the individual themselves as credit potentially is extended due to the credit provider having no way of determining or ascertaining if in fact the individual has defaults or credit with other credit providers which was not disclosed by the individual at the time of application. Credit obtained under such circumstances often leads to a compromise of the individual's ability to service the additional credit and a direct impact to the credit provider who extended credit to the individual under the belief that they may have been the subject of identity theft.

## **Recommendation**

Management of identity theft or fraud be managed by a 'fraud flag' to be included in an individual's record which can be included as part of the disclosure obligations placed on credit providers and credit reporting bodies.

## **Commencement Arrangements**

Experian is aware of the challenges faced by credit providers and credit reporting bodies alike as they look to implement the changes brought about by this welcomed reform. It is also fair to highlight that the focus or implementation tasks may differ between credit reporting bodies and credit licensees. To this end, Experian notes the Governments intention to apply a 9 month commencement date, commencing on the date the Bill receives Royal Assent and the challenges faced by various parties to comply with such a timeframe as highlighted in industry submissions provided by many including ARCA and the AFC.

As credit reporting bodies perform their own impact analysis to be able to determine the required effort and activities associated with implementation of the reform, it is clear that access to the additional data sets prior to the determined 'commencement date' will be critical to ensure the benefits of such information can be utilized and realized by users of the credit reporting system.

From an implementation perspective, one task which will be unique to the credit reporting bodies is development or refinement of scoring methodology which takes into account the additional data sets. Such activities rely on an accurate representation of the data over a period between the credit application

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and subsequent account performance. As such, there is a significant time delay between access to the data and subsequent availability of credit risk scores which would enable lenders to make accurate and informed underwriting decisions.

It is noted that there are various views and recommendations made by industry participants and one view is that the implementation date should commence on the date the Credit Reporting code is registered. Assuming such a date was adopted, the ability for a credit reporting body to provide data back to a credit licensee could be many months later, thereby reducing one of the benefits of this reform.

## **Recommendation**

Experian proposes that a pre-commencement, transitional provision be made which will allow for credit providers to disclose the additional data sets to a credit reporting agency for the sole purpose of development activities, including scorecard building. Such information would not be included in an individual's credit information file, rather kept separately for this sole purpose.

## **Corrections and Complaints**

The matter of complaints and corrections as currently outlined in @23B of the Bill is a concern shared by many across the industry, including Experian. It is appreciated by all, the Governments intention to limit the impact on individuals of having their information corrected, however as outlined by ARCA in its' submission, the practicalities of operational execution on this could lead to a poor customer experience rather than the original intention.

## **Recommendation**

For all the reasons provided for in ARCA's submission, Experian supports their recommendation of amending this requirement slightly to allow for the first point of contact to refer the consumer to the relevant organization.

Should the Committee seek further clarification on the contents contained within or would like to discuss the contents further, please feel free to reach out to the writer.