A SUBMISSION

to the

Senate Legal and Constitutional Affairs Committee

in regard to the

PRIVACY AMENDMENT (ENHANCING PRIVACY PROTECTION) BILL 2012

from the

Finance Industry Delegation

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A brief submission provided by…

The Finance Industry Delegation (previously called the Financiers' Association of Australia/Industry/Smiles Turner Delegation), which represents some 146 small amount, short term (payday and microloans) lenders around Australia, covering approximately 206 lending outlets and offices.

Retail outlet, telephone, internet and mobile lenders are all represented and the Delegation's policy and editorial committee includes large, medium and small companies and lenders with substantial international lending experience.

In addition, the Delegation represents several major suppliers to the industry sector. These suppliers constantly deal with over 200 other lenders across Australia.

Included among the suppliers are Min-It Software, the industry sector's largest supplier of management systems; Credit 21, a multi-service provider; Easylodge Infrastructure Services, servicing both the credit and insurance industries; and the authors, whose consultancy firm, Smiles Turner, has undertaken 26 major consumer and industry sector surveys since 2003 - far more than any other organisation in the world.

Size of the industry sector

This submission concerning the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 (hereafter referred to as the Amendment Bill), is prepared from the viewpoint of participation in a credit industry sector that involves 750,000 borrowers per year (Smiles Turner research April 2011), borrowing from 640 significant lender outlets by number of loans issued and some 290 other identified lender outlets (Smiles Turner research March 2011). These small amount, short term lenders, who have the whole, or some part, of their loan book in the under $5,000 loan market segment are referred to as "credit providers" in the relevant legislation.

The borrowers, referred to as "consumers" in the relevant legislation, borrow on average 2.4 times per year (Smiles Turner research November 2010).

Smiles Turner's contact with the industry sector in general, and compliance clients in particular, reveals experienced and anecdotal evidence of an increasing attempt to use unfounded allegations as to breaches of privacy, as part of the menu of claims presented by consumer legal centres and, so called, "credit repairers". These attempts are in conjunction with pressure to use avenues of action that will cost the credit provider, no matter what the outcome, in an attempt to achieve a win for the consumer and fees for themselves, no matter how unfounded the claim or how lacking in evidence.

In an environment where the average payday loan is $325 and the average microloan is now around $960 (Smiles Turner research April 2011, April/May 2012), such strategies tend to work.

This is because the downside of attracting a near certain minimum cost of $500 and generally at least $1,000, plus the costs associated with management time - plus the fact that, no matter whether or not the credit provider wins or loses the argument, the consumer is highly unlikely to repay all that is owing - is a very potent disincentive for the credit provider to fight the consumer representatives' allegations.

An increasing number of bogus claims of breaches of privacy and some legitimate claims that pertain to minor breaches that do not cause any demonstrated harm to the consumer, are contributing to this successful and unwelcome strategy. Our society's obsession with privacy is assisting in the destruction of business ethics, the whole edifice of the credit reference service concept and of effective and proper responsible lending.

As discussed later in this submission, the necessary comprehensiveness of consumer credit files is being eroded, due to credit providers being discouraged from including important information, or being pressured into removing it, where the consumer's file

should have prevented further credit being extended. This not only to prevent the credit provider losing money, but also to prevent the consumer being entangled in a debt trap.

Every time a consumer's legal service or credit repairer's effort involving allegations of breaches of privacy works, it is creating another opportunity for the consumer to become involved in a debt trap, by taking on more credit than they can afford. The irony is those who claim to be helping the consumer, are in fact doing the consumer the greatest harm.

The small amount, short term lending environment

Delegation supporters are most concerned at the unintended consequences associated with privacy protection initiatives that frequently seriously inhibit the opportunities for credit providers to ensure consumers honour their contractual obligations, e.g. a creditor chasing a debtor cannot explain why to those who could help locate the debtor who has fled. In other words, discouraging the free flow of information and an appropriate legal resolution. This is an overall regulatory environment where the credit provider is assumed to be able to withstand any loss, because the consumer must be given every opportunity to avoid their legal contractual and moral obligations.

Credit providers are facing ever more stringent lending requirements and obligations under the colossal and costly weight of the Commonwealth Consumer Credit regulatory regime. These are becoming ever more prescriptive under the National Consumer Credit Protection Act 2009 and a forthcoming Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 that, in part, commences on 1st March next year, with the balance of the provisions commencing on 1st July next year.

These are frequently accompanied by penalties for non-compliance including criminal sanction and gaol, or fines of $1.2 million for the company and $220,000 for the individual (note, these are definitive, not "up to"). A range of offences are strict liability in character.

This onerous burden is being delivered in an environment where every opportunity appears to be taken to reduce the obligation of a consumer to honour their credit contracts. Privacy protection is proving a very useful catch-all for the consumer advocates who seem to think that credit providers can withstand any amount of financial loss, while attempting to allow as many borrowers as possible to avoid their credit contract obligations at their convenience.

The provisions under review are now proposing even further cost for the credit provider (as discussed below) in an environment that, from 1st July next year, will include extensive, rigid and commercially unrealistic price controls.

The Smiles Turner research undertaken for the Delegation in September 2011 reveals that at least 92% of all lenders will have to exit the small amount, short term lending sector on 1st July 2013. They cannot break even under the forthcoming price controls. Any costs directly or indirectly imposed on lenders by Privacy Act "Enhancements", such as inappropriately expanding the power of External Dispute Resolution Schemes, will see the remaining 8% of existing lenders under threat and will substantially increase the number of consumers facing credit exclusion.

The Delegation trusts that the Committee will give particular attention to the issue of credit exclusion and the human costs involved, which it can expect one or more of the consumer advocate/legal assistance organisations to cover in one of their submissions.

It is this pervasive environment of growing legislated inequality between the credit provider and the consumer, and the promotion and rewarding of consumer dishonesty and lack of responsibility for credit and money management that prompt the presentation of this submission to the Committee.

Not-For-Profit sector may end up a victim

Consideration of the Delegation's comments should also be undertaken from the view that, as of the 1st July 2013, the Not-For-Profit (NFP) sector will be forced to be far more involved in small amount, short term lending. This will involve a hundred fold increase in the loan applications they currently handle and the requirement to lend 60 times more than they are currently lending (Smiles Turner research March/April 2011).

This lending volume situation will put these organisation right at the interface between excessive privacy requirements and the proper management of an up to $800 million investment in infrastructure, staffing and set up costs and a $1.2 billion loan book.

The issue becomes - will the Committee be recommending increased privacy protection that will have the effect of putting this $2 billion in taxpayers' money, for the 2013 and 2014 period, further at risk, as the NFP lenders face increased restrictions on conducting an effective and efficient lending business. All this while consumers continue to use privacy as a weapon, this time to trick the NFP lender into advancing a loan when they should not, and thereafter avoid repayment.

Adverse further privacy provisions for credit providers will not just impact on the profits of the commercial lenders for several months after their introduction, but will have a major impact on the sustainability of the NFP lenders when, after 1st July 2013, that sector takes over as the biggest provider of legal small amount, short term loans.

It would be unfortunate if, when the NFPs take over the major responsibility for lending and managing up to $1.2 billion of taxpayers money, being their aggregate loan book each year (Smiles Turner industry research April 2011), they were unreasonably inhibited by new privacy requirements, because the taxpayer will be the one to suffer at the hands of unprincipled defaulting borrowers and/or their advisers exploiting privacy provisions against the NFPs.

It might be useful for the Committee to make enquires of Treasury's Consumer Credit Unit, Retail Investor Division, in regard to the progress of the Minister Shorten-endorsed review of "*Strategies for reducing reliance on high cost, short term, small amount lending*". This review will provide information as to the impact any amendments to the Privacy Act will have on the legal alternatives to the commercial lenders. While conducting this inquiry it will also be useful to ask what happened to the process of considering governance arrangements for the NFP sector? Along with a number of others, the Delegation accepted an invitation to present a submission early this year in regard to what future governance arrangements should be introduced in regard to the NFP sector. The issue of the alternatives and governance arrangements should be an issue for the Committee's deliberations.

Request: That the Committee give serious consideration to the impact of the proposed changes to the Privacy Act, from the point of view of the NFP sector being forced to become major lenders of small amount, short term loans from 1st July next year.

Amendment Bill could contribute to credit exclusion

If the Committee encourages the imposition of new and extended privacy protection, their indirect effect on the commercial and NFP lending sectors cannot be overlooked. It may be considered acceptable for government to impose unrealistic privacy protection requirements on the private sector, but imposition on the charities may be a different matter. There will be an unintended consequence of credit exclusion for many people, due to credit exhaustion being faced by commercial lenders in the first months after the Privacy Act amendments are introduced and, thereafter, by the only legal source of small amount, short term loans likely to exist after 1st July next year. This must be viewed by the Committee as a major issue warranting the curtailment of ever-expanding privacy protection provisions.

Credit exhaustion occurs when the opportunities for trading created by legislation and regulation become too narrow and difficult, and when the direct and indirect costs

created by the numerous regulations force the lender, either commercial or charity, to cease their lending activity. This is a real concern, with a number of the major NFP lenders informing Smiles Turner, in March 2012, that they were not prepared to take on the onerous task of lending major amounts of money.

Following the passing of the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 by the House of Representatives, just prior to rising for the winter break, a number of commercial lenders are already preparing to exit the industry sector this year. This because the costs of licenses, mandatory training, other compliance demands, long term building/office leases, staff redundancy packages and the like, demand that they exit sooner than March 1st or July 1st 2013.

Ironically, the first to go has been the South Australian company Summit Loans, with its staff and CEO, being the long serving Chairman of the other industry representative body, the National Financial Services Federation, now out of work. In addition, a number of the more talented staff have started to leave some of the larger lenders.

There are 630,000 borrowers who will have nowhere else legal to go after the commercial lending sector has gone, except to the charities. These people have to be catered for in order to avoid a socioeconomic disaster commencing on the 1st of July and building through to the peak borrowing period in December (Smiles Turner research January 2102 and May/June 2012). Unfortunately, these borrowers do not qualify under the current criteria for NFP loans.

Request: That the Committee recognise that the more barriers there are to the use of critical credit information, by commercial and NFP lenders, the more likely the indirect consequence of major credit exclusion.

International internet lenders could threaten consumer privacy

With the demise of the Australian commercial small amount, short term sector next year, the Delegation expects a massive attempt by international internet lenders to enter the Australian market.

However, the Delegation representatives and others attending a Treasury Industry and Consumer Consultation Group meeting late last year were assured by , a senior ASIC officer, that these companies could and would be stopped if they attempted trading illegally. It is also noted that, under the regulatory conditions that will apply to the provision of small amount, short term credit from 1st July next year, they will not then be able to trade legally.

If ASIC is unsuccessful in its attempts to stop their illegal trading, major problems will arise in regard to consumer privacy that have not been addressed by the Amendment Bill.

Request: That the Committee carefully review the Sections in the Amendment Bill concerning the transfer of privacy protected information offshore, just in case ASIC's confidence in stopping non-compliant international internet lenders is misplaced.

SEVEN SPECIFIC ISSUES OF CONCERN

There are specific elements in the Amendment Bill that cause the Delegation considerable concern. These are outlined in the following commentary.

1. Definition of "credit providers"

The Delegation is concerned that the Amendment Bill has extended the definition of "*credit providers*" to include retailers and the like [Sections 6G(2)(b), 6M(3) and 69].

We believe that this is unwise, because it is in conflict with the National Consumer Credit Protection Act 2009, which is the principal legislation concerning credit. The new breed of Privacy Act "credit providers" will not be included in the demanding Australian Credit Licensee regime supervised by ASIC, but will still be entitled to collect information on the same basis.

Australian Credit Licensees have many provisions in regard to commercial behaviour to which to adhere, as provided in the National Consumer Credit Protection Act and associated Regulations. However, the new breed of credit providers will not face such control and non-compliance will not be as easily discouraged as when the threat of losing a mandatory licence to permit trading can be used.

Request: To avoid confusion and uncertainty, that the definition of "credit provider" should be that provided in Section 6 of the National Consumer Credit Protection Act.

2. Lack of definition of "person"

The Delegation is uncertain whether the importation of the definition of "person" in Section 2C of the Acts Interpretation Act 1901 is to apply, given that the Amendment Bill does not include a definition that clarifies "person" as meaning any legal entity, including a company.

The Delegation notes that there does not appear to be any inhibition on anyone providing personal information to an overseas company, or the subsidiary of an overseas company that is established as a company in Australia, who then transfers it to its overseas-based holding company for intercompany passing on.

In this context, it is important to recognise that there are international companies with subsidiaries involved in Australian small amount, short term lending and a number of international service providers offering services that involve storing Australian consumer data offshore.

Given the massive likely increase in internet lending into Australia from overseas based internet lenders after 1st July 2013, when the Consumer Credit and Corporations Legislation Amendment (Enhancements) (then) Act will commence, it is very important to clarify this issue in regard to cross border disclosure of information. Whether or not ASIC is successful in controlling this new lending source, there will still be a period of many months before it can be stopped. Currently, Australian-based and Commonwealth controlled internet lenders service 21% of the Australian market for small amount, short term loans. In the last five years, the growth in internet lending has nearly doubled the annual growth for all lending in this sector (Smiles Turner research November 2010, March 2011, April/May 2012).

The Committee cannot overlook this issue, given the impact of the provisions in the Consumer Credit legislation that commences on 1st July 2013, as previously discussed.

Request: That the definition of "persons" used in Section 211 of the National Credit Code be adopted in the Amendment Bill.

3. APP 8.1

The Delegation notes that APP 8.1 demands that "*reasonable*" steps be undertaken by the Australian company transferring information overseas, to ensure the overseas recipient does not breach Australian privacy requirements.

We detect the following problems with such a provision:

(a) What is to be regarded as "*reasonable*"?

(b) How will damages be assessed in such cases?

(c) What penalty can be imposed on the overseas company?

(d) How can penalising the Australian company for what the overseas company has done be of assistance, without warning prior to the transfer of information?

(e) How can this be an issue if the foreign laws determine a position of information transfer and use that is different to the Australian legislation?

Request: That greater clarification of what is "*reasonable*" be attempted and issues of responsibility and penalty be further explored.

4. Abuse of access - "credit repairers" are serious exploiters of privacy protection

The potency of these so called "credit repairers" companies, who are "access seekers" under the proposed legislation, is illustrated by the published figures of the EDR service, FOS.

In the year to June, FOS reported 928 credit related complaints being received by that service. During the same period there were 4,586 amendments to credit files, 7,720 credit file entries removed and 2,770 serious credit listing infringements. That is a total of 14,996 occasions when credit files have been altered.

This is NOT something FOS can boast about. In some considerable part it is the result of "credit repairers" pressuring credit providers into submitting and removing an adverse entry from a defaulting client's credit file. Why? Because, with very few exceptions, it does not cost the credit repairer anything to lodge a complaint with the EDR scheme, on behalf of the defaulting debtor who owes the credit provider money. However, it costs the credit provider a minimum of several hundred dollars, plus management time, to fight the complaint. Even if the credit provider wins against the EDR claim - the credit provider still pays all the costs.

This opportunity to "encourage" the credit provider into submitting on costs alone is working - as it is being increasingly frequently used. Credit providers are now constantly receiving virtual letters of demand from "credit repairers" that blatantly demand the removal of an adverse inclusion on their fee paying client's credit file and propose an EDR application if such is not undertaken forthwith. This is no opportunity offered for negotiation. This letter of demand is not about arranging for the overdue repayments, it is about the "credit repairer" being generously rewarded for the successful removal of an adverse credit file inclusions that, in the majority of cases, has every justification for being on the file. In most cases, the client is not keen to pay their outstanding debt, but is attempting to pave the way to borrow from some other company.

That means the integrity and utility of the credit reference agencies' data is being seriously eroded. It will not be long before it will be a waste of time doing a credit check.

Given that "credit repairers" charge from approximately $500 to $990 for a "credit repair", the credit provider faces the added commercial insult of the "credit repairer" being paid no matter what - when the credit provider continues to be entirely or partially unpaid.

With 14,996 cases in the last financial year known to just one of the two finance industry EDR schemes - the aggregate annual turnover of these credit repair companies has to be somewhere towards $20,000,000.

Request: That "credit repairers" not be considered legitimate "access seekers". The Delegation requests that any amendment to the Privacy Act not entail a reward for "credit repairers", or provide any expansion of the current opportunity for them to use financial pressure.

5. Flight and serious credit infringement

Locating debtors is a major issue within the small amount, short term lending industry sector. With the Privacy Act severely limiting what information can be accessed by debt collectors seeking to locate a debtor who has deliberately "skipped" to avoid repayment, there is a serious impact on the cost and effectiveness of searching for a defaulting creditor. In these circumstances, further barriers to the collection and use of information cannot be welcomed.

Consumer advocates are inclined to present the consumer as being unfailingly honest. We note that Veda Australia recently published research showing that at least 10% of

consumers lie on their credit applications. A random selection of 6 lenders, telephoned during the preparation of this submission, reported that at least 1% of small amount, short term loan customers default - not having repaid a single dollar. One very responsible lender reported that 12% of their customers who default, do so on the first repayment. Another major and responsible lender, who goes to considerable trouble to verify what applicants tell the company when applying for a loan, commented that this year 11% of direct debit withdrawals fail every week and require chase up.

While the majority of these defaults are repaired after lender chase ups, the chasing up is at considerable staff and administration costs and cash flows are negatively affected. That means an irresponsible minority, who are already protected by the existing privacy protection regime, are about to be provided with even more protection if the Committee approves the Amendment Bill.

The authors have represented clients before Tribunals on a number of occasions where the consumer has borrowed the money for one purpose, such as a house repair and/or debt consolidation, but then proceeded to spend all the loan on going overseas for a holiday, returning to the old loans not being consolidated and all loans in arrears.

Consumer advocates plead the cases of their clients who have gone overseas for extended periods, leaving loan repayments unattended for 10 weeks or more. The plea is that a serious default infringement listed on their client's credit file while they were away is unwarranted and unfair - yet the client has been away for months, made no contact with the credit provider before going and made no attempt to repay - before going to Legal Aid or the Consumer Action Law Centre for assistance in covering for their very questionable behaviour.

The question has to be asked - why are these people provided with privacy protection to such an extent that, if they have changed address without notifying the credit provider, it makes it almost impossible to find them and/or secure repayments?

Why do they deserve privacy, when they have callously and dishonestly ignored their contractual obligations?

In these circumstances, the Delegation is concerned with Section 63 of the Amendment Bill introducing the element of fraud into the definition of a serious credit infringement, in section 6(1) of the Privacy Act. If the debtor can be found this requires an expensive legal case, in circumstances where police forces have shown very little interest in assisting.

This opportunity should be seen as providing an insurmountable barrier to such a listing.

Section 63 should be considered as being an attempt to protect the defaulting consumer, by making it too expensive and too cumbersome for the credit provider to take action.

This is an extremely serious issue now.

However, it will be an <u>overwhelming</u> issue from 1st July 2013, when the unrealistic price controls included in the Consumer Credit and Corporations Legislation Amendment (Enhancements) (then) Act commence. Margins will be significantly reduced and those few lenders that will attempt to survive in the under $5,000 loan sector will have no choice but to give in. The NFP sector lenders who will have to take over will face the same challenge, as they attempt to preserve their integrity lending taxpayers' money.

There are three results that can only come from such a proposition:

(a) more credit providers losing money and more cost being imposed on the honest borrowers to recover this loss for the credit provider, if credit legislation allows; or

(b) credit providers being driven from the industry because of cost pressure undermining their viability; and

(c) the credit reference services' integrity and utility taking another serious blow, bringing closer the time when a credit check will be a waste of time, due to the corruption of the data being held.

Request: That the existing reasonable assessment of a defaulter who no longer intends to honour their legal commitments be maintained.

6. Serious credit infringement and a 6 month' freedom from notification for serious credit infringement

The Delegation is concerned that providing an opportunity for a 6 month' postponement for listing as a serious credit infringement is unreasonable, encourages consumer irresponsibility and promotes the degradation of the credit reporting system.

It must be remembered that this is always a situation where the consumer has stopped paying back their loan. That means a loss for the credit provider in two ways:

(a) on the relevant loan; and

(b) an extra loss via opportunity forgone to lend that money out again to a responsible borrower.

If the Committee endorses this provision, credit providers will face situations where they may have substantial credible evidence that a debtor is preparing to disappear, or is preparing to go overseas for an extended period, but they will have to refrain from lodging a serious credit infringement for another 6 months, leaving the opportunity open for the rogue borrower to scam other credit providers during that time. Despite honouring their responsible lending duties and making credit reference enquiries - with the particular consumer's file deficient of truthful information that would discourage the provision of a further loan - other lenders will face the possibility of being fleeced.

This Amendment Bill provision seriously impacts on the credit industry's responsible lending obligations under the National Consumer Credit Protection Act. In assessing a loan application, the credit provider has a mandated requirement to make appropriate enquiries before determining suitability/unsuitability.

We emphasise - if there is a serious credit infringement that cannot be listed for 6 months, that is 6 months during which time the defaulting borrower can make numerous other loan applications and the diligent credit providers will not be privy to any information as to the applicant's serious non-performance.

It must be remembered that a serious credit infringement always involves serious non-payment. This being a breach of contractual obligations freely entered into by the adult consumer, who now has his/her representatives seeking a 6 month "holiday" from being found out.

It should be noted that providing a 6 month postponement of serious credit infringement action also opens the door to unaware credit providers providing credit to the already defaulting consumer - thereby pushing that consumer into a debt trap. The latter credit would never have been provided had the second or later credit provider known of the debtor's inability to service the earlier loan.

Request: That Section 63 not be introduced.

7. EDR service being delegated Privacy Commissioner powers

We refer to the likely impact of sections 2OE(3)(c)(i), 2OU(3)(c)(i), 25, 35A and 48.

The Delegation is extremely concerned that these <u>private</u> credit EDR provider companies, who are <u>not</u> an arm of government, may be given more unnecessary and draconian powers than they already possess. They do not come within any direct Ministerial responsibility and are only loosely controlled by ASIC.

Despite being private companies their "membership" - who pay for their existence - are forced to join by legislation and, unlike public company shareholders, do not receive any support or information from the service.

The Delegation is most concerned that a situation may arise where the credit provider has to have a privacy issue “resolved” by an EDR scheme while others, who are not credit providers, will still have the far preferable opportunity to go before the Privacy Commissioner. The Delegation is very far from confident that the same standards would be applied.

The Committee should be aware that, despite credit providers being forced to pay the membership fees in order to be granted an Australian Credit Licence, then having to pay for every complaint received against them - regardless of its veracity or outcome - the small amount, short term lenders do not have any representatives on either EDR company boards and face arbitrary changes to rules and costs.

The "Ombudsman" for the COSL scheme is also the company CEO - this is a fundamental conflict of interest. One task is associated with unbiased assessment and the other is associated with maintaining company revenue. Any claim of being a "non-profit" company is nonsense. The shareholders are simply replaced by management and employees seeking the maximum income possible from the company.

It is the Delegation’s assessment that the second, revenue-related task dominates the former. In addition, the Committee should not assume organisational competence. The schemes have become just another arm of the consumer protection movement and do not provide an unbiased forum.

Opportunity for direct contact with the Privacy Commission must be maintained to ensure an unbiased assessment of any dispute involving privacy. There can be no connection between an APP entity being a member of an EDR scheme - for a very different purpose to that of privacy - and granting a further power to the APP’s EDR scheme involving the consideration of privacy.

The Delegation has made representations to ASIC and raised the issue of EDR scheme power - and the abuse of that power - in the Treasury Industry and Consumer Representatives Consultation Group meetings, which were convened to discuss potential credit legislation provisions. So clear is the Delegation’s adverse view as to the current employment of existing EDR powers, that we must declare our strongest opposition to any plans to effectively expand the powers of EDR schemes.

We also note the substantial cost difference for credit providers in bringing a matter before the Privacy Commission and bringing a matter before an EDR scheme, or defending such a matter. Again, with the EDR concept, we have a substantial opportunity to pressure credit providers with the fear of incurring substantial costs - no matter what the veracity of the basis of the complaint, nor the outcome of the EDR process.

It must be remembered that a loan of $325, $500, or $1,000 can easily attract EDR costs of $1,000, if the issue goes beyond initial consideration by the EDR scheme. Even the initial contact, absolutely regardless of merit, costs the COSL “member”/credit provider $165 every time, in accordance with an arbitrary change of the rules earlier this year.

Responding to the COSL letter following this initial contact will take at least an hour of some manager’s time. This in circumstances where the credit provider’s chasing up of the defaulting borrower, prior to any COSL application by the defaulting borrower, could have consumed another hour to two hours of a staff member’s time. All of this in the context that 71.8% of the loans being considered are for $500 or less and at least some repayment has already been received (Smiles Turner research May/June 2012).

Request: That any opportunity to effectively provide EDR schemes with any involvement in privacy protection compliance must be rejected by the Committee.

CONCLUSION

Alleged concerns about privacy protection have become a useful tool for many unprincipled attempts to create a situation where the consumer does not have to pay back their loan. Included as a sharp edge to this tool is the cost to the lender of defending the allegation, whether vexatious, frivolous or of some substance. This in circumstances where the consumer applies to the EDR Scheme at no cost, regardless of the outcome.

If the forthcoming legislation directly or indirectly imposes further costs on the credit provider that can only be avoided by the credit provider simply giving in to fictitious complaints about privacy, the current opportunity to apply effective pressure by consumer advocates, consumer legal services, EDR schemes and "credit repairers" will be substantially enhanced. The Delegation hopes that any amendment to privacy protection will not create this "pressure" situation.

We ask the Committee to keep in mind that 83% of small amount, short term borrowers (payday and microloans) have nowhere else to go for a loan that is legal (Smiles Turner research May/June 2012). Further, that research showed that 68.7% borrow for emergencies and 85.8% borrow in urgent circumstances.

If amendments to the Privacy Act result in credit providers, whether commercial or NFP, being even more cautious with their lending in a manner that reduces the number of loans available, there is the potential to create major credit exclusion and major anguish for those excluded.

In the alternative, it will open the floodgate to illegal lending, primarily by the major bikie gangs who are already expressing considerable interest in being substantially involved nationally and, in New South Wales, the ethnic Lebanese/Australian and Vietnamese /Australian loan shark gangs who already operate in the casinos. At least initially, these illegal opportunities may be supplemented by illegal internationally-based internet lenders. The Committee should be aware that none of these illegal alternate credit providers will have much interest in preserving consumer privacy.

These are potent unintended consequences that must be avoided.

The Privacy Amendment (Enhancing Privacy Protection) Bill 2012 that is eventually presented to the Parliament for debate and vote must <u>not be</u> the platform that creates the adverse consequences considered above. We trust that the Committee will recommend the appropriate and very necessary amendments and/or the elimination of those current inappropriate sections considered in this submission.

We thank the Committee and its support staff for their attention.

Presented on behalf of the Finance Industry Delegation by Smiles Turner, July 2012.