

9 July 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
By Email: legcon.sen@aph.gov.au

Dear Secretary

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

1. Introduction

Consumer Credit Legal Service (WA) Inc. (**CCLSWA**) is a specialist not-for-profit community legal service advising Western Australians in the area of banking and financial services, and takes an active role in community legal education, law reform and policy issues affecting consumers. CCLSWA aims to provide legal advice, assistance and representation to low income, vulnerable and disadvantaged consumers to help resolve their disputes with banks and financial institutions. CCLSWA also aims to advance public interest by our role in representing our clients or in participating in community legal education and policy and law reform.

2. Summary of submission

CCLSWA welcomes the opportunity to comment on the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012* (the **Bill**), which is currently the subject of a parliamentary inquiry. Our submission focuses on **Schedule 2** of the Bill, which amends the credit reporting provisions in the *Privacy Act 1988* (the **Act**) by moving towards a more comprehensive credit reporting system. In particular, we offer comments on the addition of repayment history information to the credit reporting system, with the ultimate conclusion that such an addition is detrimental to consumers. For ease of reference, the comments are divided into four sections addressing specific issues likely to arise if the Bill becomes an Act of Parliament:

- Comprehensive or “positive” reporting as opposed to “negative” reporting;
- privacy concerns;
- inaccurate records; and
- increase in costs for consumers.

3. Comments on the addition of repayment history information

3.1 Comprehensive or “positive” reporting

CCLSWA recognises the importance of efficient credit reporting in establishing an individual's credit worthiness, and in managing their exposure to financial risk. We also acknowledge the public interest in making certain types of personal information available to assist credit providers in meeting their responsible lending obligations. However, while it is logical to endorse the “negative” reporting system currently facilitated by the credit reporting provisions in the Act,

CCLSWA does not support a “positive” system which may severely and unfairly restrict consumers’ access to credit.

Repayment history

Reporting on an individual’s repayment activity, irrespective of whether it relates to negative data, is unjustified and extreme. This is not to say that credit providers should be denied access to *all* positive information. Indeed, CCLSWA acknowledges there may be benefits for credit providers to access additional information, namely the dates the relevant account was opened and closed; what type of account it is; and the credit limit. However, the extension of the information to debtors’ repayment history is invasive and beyond what is reasonably necessary for credit providers to make an assessment of individuals’ credit worthiness.

Case study 1

One of our clients recently applied for a personal loan to buy a family car. His application was rejected. When he sought help from CCLSWA, we discovered that his credit file contained a default listing and a judgment listing for a previous loan. In fact – as the statements clearly showed - he had been an exemplary debtor for this previous loan as he made every single payment on time, except for a very short period when his father, who was living overseas, needed urgent medical attention. Our client had channelled his finances towards his father’s medical bills and defaulted on the loan. The lender commenced legal action in the local Magistrates Court. As an immigrant with very limited understanding of English or the Australian legal system, our client readily agreed with the lender’s solicitor that he was liable and he would start immediate repayment to fully discharge the debt. Unbeknownst to him, the solicitor entered judgment against him. He faithfully met his repayments until the (judgment) debt was paid up, all the while unaware that there had been a judgment or adverse listings on his credit files. He was never informed by the solicitor that judgment had been entered or that the payment default as well as the judgment would be recorded in his credit files.

Our client’s inability to get credit for a car created undue stress and hardship for his family. Happily for this client, CCLSWA successfully negotiated with the credit provider for the listings to be removed from his credit files to enable him to borrow money.

As the above case study illustrates, a debtor without a pristine repayment history may nevertheless be a very good debtor who makes repayments punctually, except on the odd occasion when personal or other circumstances are drastically changed beyond the debtor’s control.

In the above case study, our client’s repayment history, if it had been available, would have showed his missed repayments. That record would have painted an inaccurate picture of the debtor’s credit worthiness. It would have further and even more unreasonably prejudiced his chances of getting credit for a necessity such as a family car.

Over-indebtedness

Further, CCLSWA rejects the argument that comprehensive reporting benefits consumers by decreasing over-indebtedness and opening up competition, or that it improves the efficiency of

the credit reporting regime. On the contrary, studies have indicated that there is no correlation between positive credit reporting and reduced levels of indebtedness.¹

Nor is there necessarily a correlation between positive reporting and responsible lending practices. For instance, it is common knowledge that the comprehensive reporting systems existing in the US and the UK did not prevent the “sub-prime loans” crisis when lenders abandoned good risk management and responsible lending practices despite their access to potential debtors’ comprehensive credit information.

It seems more likely that the reliance on repayment history information will lead to a rise in the number of consumers being unfairly refused credit where there are no adverse file listings; and their loan applications would otherwise be approved.

3.2 Privacy

In their review of the Act, the Australian Law Reform Commission purported to consider “the need of individuals for privacy protection in an evolving technological environment”.² Despite this, the modifications that were informed by the review will undoubtedly have an impact on individual privacy. With the collection, storage and exchange of increased quantities of sensitive personal information comes increased security risks. In particular, there is a greater capacity for misuse of information which should be a principal concern for the Committee.

3.3 Inaccurate records and lack of procedural fairness

Another cause for concern is that an increase in the volume of information collected by credit reporting agencies (**CRAs**) will heighten the potential for mistakes on credit files. CCLSWA is acquainted with the obligations requiring CRAs to maintain accurate, up-to-date, complete and not misleading personal information in their databases.³ Nonetheless, it is common for records to be inaccurate and misleading. Storage of adverse, but inaccurate, information on CRA databases is harmful to consumers because it limits their ability to obtain credit, and this can lead to substantial flow-on effects, including financial hardship and emotional stress.

Case study 2

One of our clients was refused on his loan application to a bank. In his ignorance, he did not investigate further the reason for the refusal. But he did sign a loan contract with another credit provider for an allegedly higher interest rate. A few years on, he was pursued by a debt collection agency for a credit card debt which he could not recall. When he sought help from CCLSWA, our service requested for supporting documentation to evidence our client’s alleged debt. The debt collection agency showed documents that linked our client to another person of the following characteristics:

1. *the same first name;*
2. *very similar last names;*
3. *the same birthday but different year of birth;*
4. *the exact street address lived at, at different times in their lives.*

¹ The Senate Legal and Constitutional References Committee, *The Real Big Brother: Inquiry into the Privacy Act 1988* (2005) 109.

² Australian Law Reform Commission, *For your Information: Australian Privacy Law and Practice*, Report #108 (2008) 19.

³ *Privacy Act 1988* s18G.



The credit reporting agency had carelessly recorded another person's indebtedness as our client's. That careless mistake caused our client a higher cost of borrowing and undue stress at being wrongly harassed for a debt.

The above case study clearly demonstrates the unfairness that can result from inaccurate records.

3.4 Increase in costs

CRAs are likely to increase their fees in order to offset the foreseeable costs of accessing and maintaining additional credit information. This will ultimately be passed on to consumers, causing credit to be less affordable.

We submit that this increase in the cost of credit is perverse, particularly in relation to the collection and storage of debtors' repayment history. As argued above, we do not believe the repayment history will convey any extra benefit to lenders and in fact is likely to create more prejudice for potential borrowers.

4. Conclusion

In light of the comments outlined above, CCLSWA is critical of the decision to introduce repayment history information into the existing credit reporting system.

Thank you for the opportunity to comment.

If you have any questions or would like to discuss this matter further, please contact
on

Yours sincerely

Consumer Credit Legal Service (WA) Inc.

Per:
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