Consumer Credit
Legal Centre NSW

PO BOX 538 | Tel (02) 9212 4216 | cclc_nsw@clc.net.au
Surry Hills 2010 | Fax (02) 9212 4711 | www.cclcnsw.org.au

28 March 2011

Submission to the Senate Finance and Public Administration Committee

Exposure Drafts of Australian Privacy Amendment Legislation – Part 2 Credit reporting

CCLC welcomes the opportunity to comment on the proposed draft Australian Privacy Amendment Legislation – Credit Reporting ("draft Bill").

Our submissions

CCLC endorses the submission made by Legal Aid QLD and the Australian Privacy Foundation on the draft bill.

Consumer Credit Legal Centre (NSW) Inc ("CCLC") is a community-based consumer advice, advocacy and education service specialising in personal credit, debt, banking and insurance law and practice. CCLC operates the Credit & Debt Hotline, which is the first port of call for NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. We provide legal advice and representation, financial counselling, information and strategies, and referral to face-to-face financial counselling services, and limited direct financial counselling. CCLC took over 17,000 calls for advice or assistance during the 2009/2010 financial year.

A significant part of CCLC's work is in advocating for improvements to advance the interests of consumers, by influencing developments in law, industry practice, dispute resolution processes, government enforcement action, and access to

advice and assistance. CCLC also provides extensive web-based resources, other education resources, workshops, presentations and media comment.

The draft Bill

The draft Bill only forms part of the proposed regulatory framework on credit reporting - still to be reviewed are the Regulations and the Credit Reporting Code (the "Code"). We submit that it is essential that all of the pieces of the legislation are reviewed as a whole. For this reason, it is essential to understand what matters will be covered in the Regulations and Code before the draft Bill is made into law.

It still remains unclear to CCLC what matters will be covered in the Regulations and the Code. Unless this is clear there is a real risk that some critical consumer protections will be incomplete. We have listed a number of matters below we consider should be covered in more detail in the draft Bill.

Credit Reporting Code

We submit that it is essential that there is **one** mandatory Code that applies to **all** credit providers.

Structure of the draft Bill

Consideration should be given to restructuring the draft Bill to make it easier to read and understand. A particular concern is the definitions and the permitted uses. We found them difficult to follow.

Access to credit reporting information

There should be specific provision in the draft Bill for a consumer to access their credit report for free more than once a year when:

1) The consumer has a dispute about information on a credit report; and
2) The consumer alleges that they are victim of fraud

Section 122 and 150 of the draft Bill refer to a "reasonable period". This period of time should be defined to be at maximum 14 days.

Section 119 (6) should set a price for the access to a credit report which reflects the cost of providing the credit report. This cost should be reviewable. Given that there is no effective competition in the Credit Reporting Agency market the price should not be set by market forces.

Complaints process

A complaints process must be simple to access and understand for a consumer. It must also be procedurally fair and require evidence to justify any listing made.

External Dispute Resolution ("EDR")

The obligation of CRAs and CPs to be a member of a recognized external dispute resolution scheme is imposed indirectly by the provisions in sections 158 & 159. We submit that there should be a separate express direct requirement for EDR scheme membership. Access to EDR is one of the key consumer protections introduced by this legislation and it should not be left to implication.

30 day substantiate listing

The ALRC Report recommended the new *Privacy (Credit Reporting Information) Regulations* should provide that, within 30 days, evidence to substantiate disputed credit reporting information must be provided to the individual, or the matter referred to an external dispute resolution scheme recognised by the Privacy Commissioner (Recommendation 59-8) . The Government supported this recommendation but it is not reflected in the draft Bill. We also note that the Government's response noted that the issue would be dealt with in the Act and not the regulations. This recommendation is inextricably related to the complaints process and the individual's right to request a correction to their credit reporting information.

Two Stage process only

As the current draft Bill is drafted making a complaint can be a 3 stage process. The process envisaged in the exposure draft of the legislation whereby consumers need to apply to have information corrected, wait for an investigation potentially involving multiple parties, be told that the information will not be corrected, lodge a written complaint, wait for a further investigation and possible further rejection and then lodge in EDR is needlessly cumbersome and set up to fail.

Complaints handling should be a two-step process only:

Step 1 – complain to the credit provider or credit reporting agency (including a request to correct a record)

Step 2 – if they refuse to correct complain to EDR

This means that section 122(3) is overly onerous as it requires a 3 stage process. Sections 157 and 158 need to take into account that, if a request for correction

has been made, then that **is** the dispute. If the credit provider refuses to correct after the consumer raises a dispute then they can go to EDR and the consumer should be notified of that right immediately in the letter refusing to correct the information.

The current 3 stage process is inconsistent with Recommendation 59-8 as accepted by the government. If an individual disputes a credit report listing and evidence is not produced *to the individual (or their representative)* within 30 days, then either the listing should be removed/corrected or the matter referred to a dispute resolution scheme and the listing marked as disputed.

The Importance of Evidence

It is essential that this provision be in the draft Bill to ensure the accuracy of credit reporting information listed. Credit providers must be prepared to substantiate a listing with evidence. While section 158(5) gives the respondent (either CP or CRA) 30 days to make a decision, it does not specifically require that evidence must be produced to support the listing. This also falls short of the requirement in Recommendation 59-8.

Case study

CCLC has a client that is in dispute with Jack Green (in liquidation) about the listing of a default listing. The dispute was raised in writing with the Energy and Water Ombudsman (EWON). As Jack Green had gone into liquidation EWON referred the matter to CCLC for assistance. Before EWON referred the matter to CCLC it asked for all the information relating to the account. No default notice had been sent or could be produced.

CCLC raised a dispute with Veda on behalf of our client. Veda asserts that Jack Green did have the right to make a listing and they allege they have reviewed the evidence. CCLC has repeatedly asked to see this evidence. Veda refuses to provide this evidence and has referred us to EWON. The dispute has been going for some months and my client is unable to obtain a home loan due to the default listing for $330.

It is worth noting that it is Veda's standard practice to refuse to provide evidence they rely on in making a decision. In CCLC's view this makes the Veda complaints handling fail to meet minimum standards.

The above case study illustrates how dispute resolution fails when there is no requirement to produce evidence to substantiate a listing. This is why the

requirement to produce evidence is so important to ensure adequate consumer protection. It also ensures that evidence is produced within 30 days instead of the consumer having to wait many months (as is happening in the case study above).

It is also critical that the Regulations cover the type of evidence required to substantiate a listing. Examples of evidence that needs to be produced are:

1. A copy of the actual default notice sent
2. Account statements to evidence a default

For example, simply relying on a note in a computer to say a default notice was sent should not be sufficient as default notices contain varying information.

Finally, there needs to be provision in the Draft Bill for the consumer to claim compensation against the credit provider if:

1) The credit provider fails to produce evidence within 30 days and does not remove the listing by day 31
2) The listing proves to be inaccurate after investigation

Extension of the 30 days by consent

Clause 158(5) provides that a respondent to a complaint must make a determination within 30 days or such longer period agreed to by the complainant in writing. We are concerned that this is also contrary to the Recommendation 59-8 requirement to produce evidence to substantiate a complaint within 30 days. Individual complainants may feel pressured into accepting a longer period without any knowledge of their rights under the Act. The spirit of the recommendation is that listing should not remain without substantiation. This provision creates a loop-hole which potentially defeats this requirement.

Noting that a listing is disputed

The government's response to Recommendation 59-8 also stated that: "*To ensure there is sufficient transparency around the fact that the listing is in dispute, it will be a requirement that where a dispute is referred to an EDR scheme, a note to this effect is associated with the disputed listing."* This is not included in the draft legislation.

Credit Providers in liquidation

Once a credit provider is in liquidation it is usually no longer a member of an EDR as it fails to pay the membership fees. This effectively means that the consumer's access to justice in relation to any inaccuracies on their credit report

is severely affected. The consumer can only go to the Information Commissioner to raise their dispute. The Information Commissioner has a very poor track record of resolving credit reporting disputes. In several cases CCLC has run the Commissioner has simply decided to stop investigating, often after a lengthy delay.

Given the enormous detriment suffered by consumers when they do not have access to EDR there should be consideration given that if the liquidator does not maintain membership of an EDR scheme that all default listings must be removed. In other words, a credit provider cannot have access to the credit reporting system unless they are in EDR.

Repayment History

General

CCLC is opposed to the inclusion of repayment history in the credit report at all.

The NAB submission to the ALRC review of the law in this area stated: *"Credit providers are currently only able to rely on information supplied by application, together with negative information provided in a credit report. If an applicant fails to disclose facilities they hold with other financial institutions, the credit provider is unable to make a fully informed credit decision resulting in the possibility of provision of credit to borrowers who are unable to meet their financial obligations."*[1]

We submit that this concern has been **fully met** by the provision of the other information now permitted to be collected, including current accounts, type, open and closing dates, and credit limit.

The ALRC Report also noted that "*any proven economic benefit [of more comprehensive credit reporting] still needs to be balanced against individual privacy rights and the risk of breach of those rights. An appropriate balance needs to be struck between efficiency in credit markets and privacy protection."*[2] In our view no such balance has been struck in relation to repayment history.

On the one hand, before a default can be entered on a credit report, an individual must be 60 days overdue, they must be notified of the fact that their default may be listed on their credit report and they must be given an opportunity to rectify that default and avoid the negative consequences of a default listing. In comparison, the repayment history proposals include no such protections.

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[1] ALRC Report, reported on page 1813, paragraph 55.53
[2] ALRC Report, page 1839, paragraph 55.151

Further, in our view, the introduction of repayment history information will:

- Lead to more potential errors because of the sheer volume of information being exchanged;
- Make it difficult for consumers to keep track of whether their credit report is accurate or not (they would need to compare repayment dates against due dates for every account every month)
- Lead to a proliferation of complaints about timing issues (e.g. I paid on x date but the credit provider claims not to have received until y and has recorded a late payment)
- Lead to more risk-based pricing in the market place - that is consumers who pay late may be not be denied credit but charged more for it, placing self-employed consumers, those with insecure sources of income, and those who are in temporary hardship due to circumstances beyond their control, at a significant disadvantage. Credit providers can already deal with late payers by imposing late payment fees. However, late fees cease being charged once a consumer is back on track, or has entered into a formal hardship arrangement. If these consumers are charged more for credit in future, then a temporary problem becomes entrenched.

The draft Bill

If the repayment history provisions are to remain, then there is insufficient information on the use of repayment history in the draft Bill to adequately address whether the appropriate balance referred to by the ALRC has been struck. The meaning of repayment history information does not cover:

1. What happens after the first month of missing a repayment
2. When an affected individual will be notified about adverse information on their credit report
3. How the information will be recorded
4. How repayments are recorded when paid
5. How this relates to a default notice under the National Credit Code which gives the consumer 30 days to rectify a default and get the contract back on track
6. What will happen in the event of variations to the contract, whether on the grounds of hardship or otherwise.

The answers to the above questions are too important to be left to Regulations they must be dealt with in the legislation.

Note: While we continue to be opposed to the inclusion of this information we **strongly support** the limitation that, if this information is included, it can only be **supplied and accessed by NCCP Act licensees**.

Notice to consumers

Consumers need to be warned about the collection of repayment history information and its use. Credit providers must be obliged to inform their customers about this development both individually and in more general public information. Further, consumers need to be notified when a late repayment has been recorded for two reasons:

1. To ensure they understand the consequences of their late payment and are given the opportunity to rectify this in future, and
2. To give the consumer the opportunity to dispute the negative information if he or she believes it to be inaccurate.

Ideally repayment history information sent to a CRA by a creditor would be included on statements and accessible via online account viewing where this is available.

Grace period

There should be a minimum grace period included in the regulations to ensure that payment system delays and minor oversights are not inadvertently captured leading to an explosion of complaints and potentially inaccurate data. No-one will benefit from a proliferation of complaints from people who are outraged because they were listed after being one day late.

Opponents of grace periods argue that while most industry players apply a grace period in practice, it is pointless to formalise this because consumers quickly learn what the grace period is and start treating the end of the grace period as the due date. While this may be true in some cases, it is not pointless. The due date will remain the same on the consumer's statement and any notice or reminder. It will simply mean that there will be fewer complaints by consumers as a result of payment system delays and minor oversights. Consumers who opt to treat the end of the grace period as the due date will be less likely to have any complaint upheld.

Agreed variations

There is also the issue of an agreed variation of the contract. Under contract law when the parties agree to a variation the contract is so varied. A credit provider cannot list this as "hardship" as it is an agreed variation of the contract.

It is worth considering the recent floods in QLD as an example:

Many lenders offered help to people in QLD affected by flood by providing agreed moratoriums. Some people accepted these moratoriums as it would assist them in coping with the costs of rebuilding. However, it does not follow that the consumer could not meet the loan repayments. It also does not follow that the consumer's credit worthiness is affected given that the consumer could not plan for it.

The difficulty with recording a negative repayment history or introducing a hardship flag in these circumstances is that the lender offered the arrangements unbidden. The credit report would just be misleading. The consumer would also feel that they had been tricked into ruining their credit report.

Hardship variations

Borrowers have the right under the National Credit Code (schedule to the NCCP Act) to apply to vary their contract on the grounds of hardship where they are unable to pay as a result of illness, unemployment or other reasonable cause. The law provides a limited number of variations that can be applied for and states that the contract must still be paid within a reasonable time. We argue that if a consumer approaches the lender prior to defaulting on a repayment, the lender agrees to a variation and the consumer adheres to that arrangement, then the credit report should still reveal an unimpaired repayment record. This is consistent with the concept of a contract variation under the law and with contractual principles. It is also consistent with the right to a hardship variation under the law.

Of course in many instances a consumer will already have missed or late payment once they apply for hardship. We are not seeking to have these reversed unless the consumer has applied for hardship and has been ignored.

The potential harm that may result from a hardship variation being recorded on the consumer's credit report or impacting on their repayment history is considerable:

- The consumer may not seek early assistance from their credit provider for fear of impacting on their credit report, greatly reducing their chances of getting a workable arrangement in place;
- There will be no incentive for consumers to seek early assistance, or to get an arrangement in place after defaulting, because the result for their credit report will be the same whether they make an official arrangement with their credit provider or not;

- The consumer may seek to refinance on less favourable terms (that is turn to predatory loans) in order to avoid unfavourable information being listed on their credit report, ultimately reducing their capacity to recover from financial hardship in the longer term;
- The consumer may be charged a higher interest rate on credit in future as a result of a period of temporary hardship, despite the fact that the loan was ultimately repaid within a reasonable time - this is undesirable from a social equity perspective, and may creates otherwise avoidable financial difficulty in the future as a result of the higher cost of credit. It also defeats the purpose of government initiatives aimed at improving access to temporary hardship arrangements and promoting financial rehabilitation.

Hardship is not an objective decision it is subjective. Accordingly, it is unworkable in privacy legislation. A hardship variation should be treated as an agreed variation and neither should result in a negative repayment history.

Serious credit infringements

We submit that sub-sections (a) and (b) of the definition of serious credit infringement in section 180 should be separated and have different consequences. Over many years of advising consumers, the most common SCI scenario we have encountered involves a misunderstanding consequent upon a consumer moving address. While the "culpability" or lack thereof of the consumer varies greatly, the consequences remain the same in so far as a SCI remains on the person's credit records for seven years (longer than the average bankruptcy) and the loss of other protections in the draft legislation, commission of an SCI leading to a number of exceptions from various prohibitions.

While we understand the utility of CP's being able to identify people to a CRA when they have failed to meet their obligations and cannot for some reason be contacted, there should be some mechanism to allow an "SCI" to be downgraded or removed completely if it is subsequently demonstrated that the debtor has not attempted to defraud the credit provider, or to permanently evade his or her obligations. While a credit provider should not be penalised if they formed the requisite opinion on reasonable grounds, the consumer should not be unfairly penalised if that opinion is shown to be unfounded once all the requisite facts are known. Further, some provisions of the legislation should simply refer to limbs (a) or (b) of the definition and not be triggered at all by sub-section (c) (for example s108(3)(d) providing information to a law enforcement agency).

For example:

- Consumer moves address and overlooks giving their new address to the credit provider. Within a month or two they make contact with the credit provider, pass on new contact details and make arrangements to get up-to-date with their repayments. If the consumer has been 60 days overdue and the CP has otherwise fulfilled the requirements for a default listing, then this could be downgraded to a default.

- Consumer moves address and believes they have finalised their accounts with energy/telecommunications providers. They provide a new address just in case but the provider fails to record it properly in the system. There is an additional amount debited to the account and the consumer only becomes aware of this when they apply for credit and find that they have an SCI on their credit report. They immediately pay the outstanding amount. If the consumer's version of the facts is accepted, the SCI should be removed entirely. (Arguably the same argument applies to a default listed in similar circumstances)

Under the current drafting the credit reporting consequences are exactly the same for a consumer who has taken all reasonable steps to meet their obligations as they are for a consumer who has been moderately careless or blatantly fraudulent.

Recommendations for change to the Draft Bill:

- Debts for utilities which are provided to a particular address should not be able to list as SCIs (alternatively they can only list for a significant amount - e.g. over $1,000);

- There should be a "grace" period (we suggest 6 months) at the end of which the credit provider must confirm a SCI - based on information available to the credit provider at that time. If the SCI is not confirmed by the credit provider, it should be removed. This would meet the industry's desire to have access to information about potential fraud (or genuinely serious misconduct) as soon as possible, but treat consumers more fairly;

- A SCI should not be able to be listed by a credit provider that holds any security over the debtor's home;

- A SCI should be removed if it is later determined that had all the facts been known, it would not have been reasonable for the credit provider to

form the view that it was the individual's intention to no longer comply with his/her obligations.

- That section 108(3) (d) (disclosure to an enforcement body) and other similar provisions should be limited to situations where there is evidence of fraud.

Unfair listings

The legislation needs to cover situations where the consumer was late with a payment due to the actions of a third party or matters out of their control, for example:

- Natural disasters
- Bank error in processing a direct debit or BPay
- Fraud
- They are ill or in hospital
- The mail is stolen

The main point is that there are circumstances where it would be unfair to list on the consumer's credit report any negative information. The draft Bill needs to make provision for this essential right for consumers to get a remedy when it would be unfair to maintain the negative default or repayment history information on the credit report.

Notice

The draft is extremely vague on adequate notice to consumers. Information for consumers about:

- What information will be passed by a CP to a CRA (including the new types of information now allowed) and when
- About the intended listing of a default
- About a consumer's right to obtain a copy of any credit information held by a CRA and to seek correction.

The draft is completely silent in relation to notifying consumers about late repayment information having been listed. We submit that this is totally inadequate and procedurally unfair.

We note that PMC has advised that notice requirements in relation to repayment history are to be dealt with in the regulations. We assume that the other issues above will be fleshed out in the regulations. We submit that these requirements

must be time specific (not just "a reasonable time") and in some cases involve prescribed forms to ensure that this information is given in an easily recognisable and consistent way and cannot be buried in long contracts, marketing material or other correspondence.

We note that there is no consent required for the use and disclosure of material relevant to consumer credit between CPs and CRAs, and in some cases between CPs and other parties. It is therefore absolutely vital that notices are absolutely clear about the extent of this information exchange and the consumer's rights in relation to disputes.

We agree with the APF submission that the Act should require that consumers are notified at the time their personal information is collected (at the time they apply for credit) **and** it should also expressly require notice within a reasonably short time period before any listing, irrespective of what notice has been provided earlier; e.g. when the loan was taken out.

Statute barred debts

We note the following quote from the government's response to the ALRC recommendations under **Recommendation 58–1:**

"Allowing the listing in credit reporting information of a default payment that is otherwise unrecoverable would be inconsistent with the public policy of providing legal protection against the recovery of debt in certain circumstances. It should be made clear that statute-barred debts should not be allowed to be listed in credit reporting information.
Note: In line with the Government's response to recommendation 54-1, this recommendation will be implemented in the Privacy Act, not regulations."

Section 182(1)(c) is the only provision I can find which reflects this section of the response. It stipulates that in order to be "default information" under the draft legislation the provider must not be "prevented by or under any Australian law from bringing proceedings against the individual to recover the amount of the overdue payment".

The problem with this drafting is that plaintiffs are entitled to bring proceedings for statute barred debts and it is up to the defendant to plead the statutory limitations as a defence. As a result the above provision does not appear to be sufficient to meet the Government commitment.

Recommendation:

That section 182(1)(c) is amended to:

"The consumer does not have a complete defence under a relevant statute of limitations or equivalent right arising from legislation if the credit provider commenced proceedings to recover the amount of the overdue payment."

Consumers must also have the right to remove a default listing or repayment history if the consumer becomes entitled to a complete defence (i.e. the debt is statute barred). It should not be possible to have a listing that lasts longer than the day a debt becomes statute barred. This would be inequitable.

Time limits

The Privacy Act needs to be amended to ensure that consumers have adequate time to raise a dispute with the Information Commissioner. This time limit should be consistent with the standard Commonwealth time limits – 6 years from the date the consumer became aware of the credit report listing.

Pre-screening

If pre-screening is to be confined for the purposes described by industry in lobbying for it, then it should be very tightly defined. Specifically, CCLC submits that rather than excluding the specific types of information that can't be used for pre-screening purposes, the legislation should carefully define the only pieces of information that can be used for pre-screening purposes. The information used should be specifically confined to default information, court proceedings information and personal insolvency information.

Identifying information should be used for the purpose of identifying the person, not for setting pre-screening criteria. To allow otherwise opens the door to a range of marketing objectives that are not consistent with the states reasons for allowing pre-screening.

Further, pre-screening should be permitted to be used only to screen out people with a defined number of defaults etc, not screen them in. While it may be considered inconceivable that a CP would want to screen in people with certain types of negative indicators, CCLC is aware of fringe players who target exactly that market with a view extracting exorbitant fees and charges from borrowers in desperate situations.

We also note the absence of complimentary provisions limiting the use of pre-screening processes by credit providers. The only limitations are placed on CRA's meaning that a breach of the provisions by a CRA, at the request of a CP, may have no consequences for the CP.

Default info available to other existing credit providers

Section 109, Item 5 of the permitted CRA disclosure Table provides for CRA's to give any current CP default and payment information they have held for at least 30 days (Section 109(3)). While we are unsure of the point of the 30 day delay, we submit that this information should not be disclosed at all. The potential harm that could arise from this disclosure outweighs the potential benefit. We note that section 136, Item 5 limits credit providers to using the information for "the purpose of assisting the individual to avoid defaulting on his or her obligations in relation to consumer credit provided by the provider to the individual". Nonetheless, this could be interpreted very broadly, and once the disclosure is permitted, then its use may be difficult to monitor in practice.

In the US credit reporting information lead to the universal default clauses whereby the interest rate applicable on account could increase as a result of poor performance on other accounts. This simply entrenches hardship. While this would be clearly inconsistent with assisting an individual to avoid defaulting, there are a number of other uses which may not be inconsistent and yet may be undesirable:

- Offers to refinance/consolidate other credit
- Introducing clauses which make a default on another contract a trigger for enforcement action such as repossession of security.

As a general rule, a person who is not in default on a contract should be permitted to continue with that contract until such time as it is paid, or they initiate an application for a hardship variation or otherwise seek to vary the contract. While some CPs have attempted to identify consumers at risk of hardship and take pro-active steps to work with those consumers, such measures should be offered and accepted on a voluntary basis. CCLC submits that default information should not be available to existing creditors unless it is for the purpose of credit assessment as a result of an application to increase the limit on an existing facility, or open additional facility with the same CP (in other words as already covered under item 1 of the Table in Section 109).

Part A Division 7 – Civil Penalty Orders

We agree with the concerns expressed by the APF that the operation of the civil penalty provisions relies entirely on action by the Information Commissioner: "The track record of the Privacy Commissioner in enforcing the existing credit reporting regime is not good. We understand that it is intended to generally strengthen the Commissioner's functions and powers under the Privacy Act generally in a subsequent tranche of amending legislation, and we hope that Commissioners will in future be both more proactive, and more responsive to complaints, including representative complaints and evidence of systemic failures by CRAs and CPs.

However, we also submit that an alternative route should be provided to obtain civil penalty orders, by providing, in appropriate circumstances, for direct application to the Federal Magistrates Court ....". We agree that individual should have the option to seek a civil penalty through the Courts.

The role of EDR and civil penalties and compensation should be clarified. As most cases go to EDR, there needs to be a mechanism in place for EDR to refer matters to the Information Commissioner for civil penalty investigations. In addition, the legislation should set up a compensation regime for affected consumers that can be awarded by EDR.

Definitions

The definition of consumer credit differs from that contained in the National Consumer Credit Act 2009 ("NCCP Act") and National Consumer Credit Code ("NCC").

The draft legislation (section 180) refers to credit that is intended to be used for wholly or **primarily**:

(i) For personal, **family** or household purposes; or
(ii) To **acquire**, maintain, renovate or improve residential property for investment purposes; or
(iii) To refinance consumer credit that has been provided wholly or **primarily** to **acquire**, maintain, renovate or improve residential property for investment purposes.

Whereas the NCC (section 5) refers to credit that is provided or intended to be provided wholly or **predominantly**:

(i) for personal, **domestic** or household purposes; or
(ii) to **purchase**, renovate or improve residential property for

investment purposes; or
(iii) to refinance credit that has been provided wholly or **predominantly** to **purchase**, renovate or improve residential property for investment purposes.

There seems no justification for using different terms in the two pieces of legislation. Some of these words (e.g. wholly or predominantly) are further defined, or have been the subject of case law. CCLC submits that the definitions should use the same words.

We also note that there are a range of other restrictions, specifications and exemptions in the NCCP Act and NCC and regulations that mean that some credit contracts would not be "consumer credit" for NCCP purposes but would be under the credit reporting legislation.

Court proceedings information

Court proceedings information is defined as judgments in relation to "any credit that has been provided to, or applied for by, the individual". We support that only judgments should be relevant (no other proceedings) and only those relating to "credit". However, as a result of the overly broad definition of credit, this limitation is less useful.

For example, if I enter a contract with a builder and we have dispute over the quality of the work, or the interpretation of the contract, then the fact that I lose that dispute should not be relevant to my credit eligibility unless I fail to pay the judgment debt. To allow otherwise undermines the legal rights of individual to conduct any form of civil dispute. For the same reason, court proceedings information that is publicly available information should not be able to be provided as part of a credit reporting information or CR derived information supplied by a CRA.