Dear Senate,

Thank you for accepting submissions in relation to the Australian Privacy Legislation.

I work in credit repair and both individuals and companies, as well as those who have been given commercial credit, come to the organisation I work for – Princeville Credit Advocates – on a regular basis to have consumer payment defaults, commercial payment defaults and judgments investigated for their accuracy.

While there is a great deal of Privacy protection for consumers (and I applaud the Australian Government for this), there is very little protection for commercial organisations and those individuals who act as guarantor for commercial credit and accounts (usually directors of organisations).

This is of concern because consumer and commercial credit information is available side by side in a credit file which makes it easily accessible to organisations that individuals approach for finance. In other words, despite the seeming separation between the consumer and commercial sections of the credit file, they are accessed together when an application for finance or approached an organisation for any account application which involves a credit check. Commercial listings impact on a consumer's ability to get finance just as much as consumer listings do; however, the rules by which these listings are placed are incredibly different.

It is troubling that there are limited provisions and rules around how a commercial debt can be listed with a credit reporting agency. It is not clear as to why commercial and consumer credit would be treated differently. This is a call to review these provisions, or lack of provisions, and a call for the government to create additional laws regarding the listing of commercial accounts.

As far as I can tell, the only provision that applies to the listing of commercial default listings is:

> **National Privacy Principle (NPP) 3**: Under NPP 3 an organization must take reasonable steps to make sure the information it collects, uses and discloses is accurate, complete and up-to date.

How an Ombudsman or company who is intending to list a company or their guarantor interprets such a principle is purely up to them as there is very limited information contained in this Principle indicating how an organisation should default list those organisations in default. There is no indication of the timeframes in which a listing can be made, what steps must be necessarily followed prior to a listing being made, how overdue a debt must be prior to being listed (specifically, no indication of whether the whole amount that has been listed is a certain amount of days overdue), whether the company or guarantor need to be informed prior to being listed, and what is meant by accurate, complete and up-to-date. In other words, National Privacy Principle (NPP) 3 is a very general statement. It is so broad that it does not even say anything specific about whether it refers to matters of credit reporting for commercial debts, this is something that has been interpreted overtime. While the interpretation of this principle has gone so far, it does not seem it has gone far enough, and developed further.

As you would know, Veda Advantage is the leading credit reporting agency in Australia. They have developed their own guidelines in relation to the provision of information. As they are the leading

credit reporting agency, it would be true to say that guidelines they produce should be classified as 'industry guidelines'. Below is a direct quote from their guidelines.

Section 4 of the Veda Guidelines regarding Information Veda collects from a Credit Provider/Debt Collector applies to both consumer and commercial default listings. It states the following:

4.1 You must give us all "default information", which is all the information we require about:

a. overdue amounts which are overdue for 60 days or more; and

b. acts that reasonably indicate the debtor intends to avoid complying with their credit obligations, where you have made reasonable unsuccessful efforts to contact them

4.2 Before you give us the default information you must take steps to recover the amount and to notify the debtor in writing that the default information is to be given to us and that we will supply it to other customers when they use our information services.

4.6 You agree to make sure that all the information you give us is accurate, up-to-date and complete.

This section of the Veda Guidelines clearly states that overdue amounts must be overdue for 60 days or more and that the debtor must be notified in writing that default information is to be given to them. The section states that these rules apply to both consumer and commercial listings. We have pointed out this discrepancy to Veda Advantage yet they continue to list commercial defaults that are proven to be less than 60 days old and where the consumer has not been contacted about the impending commercial listing.

I am calling for Veda's industry guidelines (as outlined above) to be reflected in the National Privacy Principles in relation to commercial debts. Despite these guidelines, organisations do not follow them, in relation to commercial or consumer debt, but specifically in relation to commercial debts, and neither does Veda Advantage.

It is not fair that organisations and consumers are treated differently and it is unclear as to why this is occurring. It gives finance providers and Veda Advantage all power to list these companies and the individuals that guarantee these accounts for whatever amount they desire and at any time they desire. There are no time frames and no indication that a letter must be sent to the correct address indicating that an adverse listing will be placed. Basically, if the creditor believes a debt is overdue, that is enough. It does not take into account individual company circumstances or the guarantor's personal circumstances. This is not fair and it needs to stop. There is no evidence as to why the law is this way. It contains no grace and no reasonableness and does not give an obligation to a listing company to undertake reasonable or desirable business practice as is referred to in the 'Credit Reporting Advice Summaries' section 9.7.

Below is a recent example and I have numerous others I could show as evidence. If the Senate requires additional examples, please contact me and I will provide them. I have omitted names for privacy sake.

1. Mr G was listed by a finance company for an amount of $6,151 on 13/11/2008. Mr G was a guarantor on this account as the account was entered into by his company. The company

> defaulted due to financial hardship as a result of the global financial crisis and also due to difficult personal circumstances that the director had encountered. Mr G's company defaulted on an amount of $2,050 and continued to default on the following 2 months re-payments. Mr G was listed for $6,151 with Veda Advantage when it was only the initial defaulted amount of $2,050 that was 73 days overdue, so around $4,000 of the amount listed was not even 60 days overdue. Mr G, as guarantor, barely had time to pay this account prior to being defaulted for the $6,151. In addition, while letters were sent to Mr G & his company, there was no mention of a listing by a credit reporting agency, only a general term 'enforcement action' was mentioned. This matter was investigated by a credit industry ombudsman and deemed the finance companies actions to be within the guidelines but did not even ask the finance company for a copy of the contract! As far as they understood Mr G and his company were never informed they might be listed with a credit reporting agency but that the finance company did act correctly in listing this debt. The ombudsman said that there was no obligation on the finance company despite it being desirable business practice to inform the company and the guarantor of the prospect of being default listed.

As you can imagine this is not an optimal outcome, and it seems that the reference to 'desirable business practise' generally means nothing to the organisations making these listings against companies and guarantors or the Ombudsman who check for good practise

I would like desirable business practices like these to be legislated in line with the protections that consumers are currently afforded when placing consumer default and judgment listings.

If you have any questions or would like further comments, please do not hesitate to contact me.

Best,

Carmel Mansfield

Princeville Credit Advocates