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17 August 2012

House of Representatives
Standing Committee on Social Policy and Legal Affairs
Parliament House
CANBERRA ACT 2600 via email: spla.reps@aph.gov.au

Dear Committee Members,

PRIVACY AMENDMENT (ENHANCING PRIVACY PROTECTION) BILL 2012

In the context of submissions received to-date and evidence taken by the Committee at the 16 August hearing, the Australian Finance Conference (AFC) notes the Committee's focus on what has been badged "the Australian link issue" in the context of the credit reporting reform components of the Bill.

This matter was covered in the AFC submission (No. 32) under the heading Cross-Border Prohibition – Credit Reporting Information by CRBs to Foreign Credit Providers – Unintended Consequences. We are pleased that the Committee is considering this issue. With a view to supporting that consideration and to assist the Committee propose a solution to overcome what appears to be an unintended consequence of drafting rather than deliberate Government policy the AFC seeks to reinforce our earlier comments.

In the absence of the credit reporting provisions of the Bill, personal information handled by AFC members in a cross-border sense would be subject to APP 8. When coupled with @16C we submit that (subject to the concerns identified with those provisions in our submission) this framework provides a compliance outcome that appropriately balances the privacy right of the individual against other rights, including the right for business to operate efficiently and effectively.

Turning to the credit reporting provisions, the Government's policy intention with the Australian link inclusion was to make clear that credit reporting bodies cannot maintain information about foreign credit and foreign credit providers; or disclose credit reporting information to foreign credit providers.

As currently drafted, however, these provisions potentially operate not just to regulate the interface of foreign credit providers in the Australian credit reporting system, but go further. In particular they impact on legitimate commercial arrangements between a credit provider and a third party service provider that they may utilise in managing their loans (including in relation to account recovery/debt collection) where that entity may be located outside Australia but is not a credit provider. We understand that this expansion of their operation is unintentional and that consideration is being given of a solution to address this.

We commend this outcome and emphasise the need for any solution to cater for all business models where third party service providers are utilised (eg via related companies, agency arrangements or contractual arrangements where the third party, for prudent commercial reasons is not appointed the agent of the credit provider principal). We also note the need for any proposed solution to cater for all components of a consumer credit transaction where a third party service provider might be utilised (eg including account recovery/debt collection

in addition to account approval/application processing).

For these reasons, the AFC recommends:

- that the default position for regulated entities (including Australian-based credit providers) for personal information handling in a cross-border context under APP 8 is the appropriate compliance standard that should be reflected in the credit reporting provisions for the handling of that sub-set of information regulated under the reformed Part IIIA by credit providers (ie credit eligibility information).

We would be happy to provide additional information to support the Committee's consideration of this issue. Please feel free to contact me via email [redacted] or our Corporate Lawyer, Helen Gordon, via [redacted] or both via phone through [redacted]

Kind regards.

Yours truly,

[redacted]

Ron Hardaker
Executive Director