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Official Committee Hansard

SENATE

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Australian privacy amendment legislation

MONDAY, 16 MAY 2011

SYDNEY

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SENATE

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Monday, 16 May 2011

Senators in attendance: Senators Kroger, Ludlam and Polley.

Terms of reference for the inquiry:

To inquire into and report on:

Australian privacy amendment legislation

WITNESSES

FALK, Ms Angelene, Director, Policy, Office of the Australian Information Commissioner

PILGRIM, Mr Timothy, Australian Privacy Commissioner, Office of the Australian Information Commissioner

Committee met at 08:37

CHAIR (Senator Polley): I declare open this morning's hearings. The committee will now commence its inquiry into the credit reporting exposure draft, which is the second part of the Australian privacy amendment legislation. I welcome representatives of the Office of the Australian Information Commissioner. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission. I now invite you to make an opening statement, and at the conclusion of your remarks I will invite members of the committee to put questions to you.

Mr Pilgrim: We welcome the opportunity to appear before the committee today in relation to the exposure draft of the proposed reforms of the Privacy Act's credit reporting provisions. First, I would like to convey the Information Commissioner's, Professor John McMillan's, keen interest in the committee's inquiry into Australia's privacy amendment legislation, including the credit reporting provision. Unfortunately, Professor McMillan is unable to be here today due to a prior engagement; however, he is fully aware of the key role that he will play both as regulator, in respect of the act's provisions, and as the approver of the proposed new credit reporting code of conduct. He recognises the importance of these functions and looks forward to fulfilling them.

The former Office of the Privacy Commissioner, now integrated into the Office of the Australian Information Commissioner has over 20 years of experience as the national privacy regulator, including in relation to credit reporting. Through that experience, we recognise the significance of the free flow of personal information for organisations. The former Office of the Privacy Commissioner, now integrated into the Office of the Australian Information Commissioner, has over 20 years of experience as the national privacy regulator including in relation to credit reporting. Through that experience we recognise the significance of the free flow of personal information for organisations.

In the credit context, it is appropriate that credit information is available to the credit industry for the purpose of assessing creditworthiness. However, this must be balanced with the need to provide appropriate privacy protection of that information for individuals. Importantly, the protection of financial information remains a key concern for individuals, most commonly due to the potentially serious consequences that may arise through the mishandling of credit information. For these reasons we understand that it is important to have a regulatory regime that sets out clearly the rights and obligations of credit reporting agencies, credit providers and individuals, one that strikes an appropriate balance between their different interests.

The existing credit reporting provisions in part IIIA of the Privacy Act are very complex and we welcome the government's efforts to simplify those provisions in the exposure draft, in particular the reordering of the provisions to systematically set out the obligations on different recipients of credit information and ordering obligations to better reflect the stages of personal information flows consistent with the draft APPs. We also welcome other privacy enhancements to the credit reporting provisions, and we refer to some of these in our submission.

Nevertheless, there are several outstanding issues that we believe would improve the exposure draft of the credit reporting provisions. We outline these in our submissions under four broad headings: simplicity, privacy enhancing regulation, clarity of concepts, and flexibility. I would like to emphasise the importance that the Office of the Australian Information Commissioner places in having provisions that are easy to understand while providing appropriate privacy protection that is capable of lasting into the future, provisions that are clear and enable organisations to understand their obligations, consumers to understand their rights, and the office as the regulator to efficiently and effectively ensure compliance with the credit reporting provisions. We would be happy to answer any questions that the committee has on our submission. Thank you

CHAIR: Thank you very much. In your opening statement you made mention of consumers, obviously, and with this legislation there has been some criticism that it is complex. Could you outline to us the sorts of fundamental changes that are going to take place in relation to the negative and positive reporting and how that is going to be communicated with the public and the consumers to make sure that they understand these changes? What part will your office play in that process?

Mr Pilgrim: The move towards more comprehensive credit information available to the system will include details such as repayment histories, adding those to the list of the information that is already allowed to be reported and recorded. How that is going to be conveyed to the community is going to be a difficult task, I think, and the onus is going to be on a combination of approaches. The approaches will have to come from government, obviously, in advising people on what these changes are. Clearly, our office has a role in education and educating the community, but in doing that we would want to be working very closely with industry, because industry at the end of the day do have the immediate contact with the community, with the people who are utilising the system, and whose credit information they are collecting as part of those processes. So we would see the need to work closely with industry and hope that we would get assistance from them to provide relevant and timely information out to people who are accessing credit through the particular organisations.

CHAIR: If we turn to your submission—and thank you for that—on page 13 you raise concerns about credit information collected from sources other than credit reporting agencies. Have you raised that issue with PM&C?

Mr Pilgrim: Yes. Each of the issues that we have put into our submission have been raised during discussions with Prime Minister and Cabinet as part of the development process.

CHAIR: And the response?

Mr Pilgrim: I might ask Ms Falk if she is aware of the particular response. I think it might be best to say that they have noted our comments and have conveyed those to the drafters. But my understanding is that the decision for how the bill will look is how it appears in the exposure draft.

Senator KROGER: I am interested in understanding whether this legislation takes into account institutional credit providers versus what I call business credit advisers or trade credit providers, such as a Myer or David Jones, that have a credit card facility. Will there be a different basis provided for both of those?

Mr Pilgrim: If an organisation is providing credit as the definition in the provisions sets out and needs to collect personal information as part of that, those types of organisations will fall under these provisions. So the credit provider could be, for example, a large financial institution such as a bank, but it could also be someone in the retail industry who is providing some other sort of credit, such as through the example you gave. It could also be an organisation that is providing credit in terms of allowing someone to purchase a good, say, an electrical appliance or something on some other sort of terms, and they too could be a credit provider in that circumstance.

Senator KROGER: Do you think that the privacy provisions in this protect consumers sufficiently from excessive direct marketing. If you have an organisation selling products but it is also a credit provider, do you think there is sufficient privacy strength in this to protect consumers from what I would call unsolicited, aggressive direct marketing.

Mr Pilgrim: Time will obviously tell about the activities of particular organisations. Regardless of whether you have strong black-and-white-letter law or not there might still be some organisations that want to do, shall we say, the wrong thing. But the credit provisions as they are drafted—and the ones that are currently in force in part III are very clear about what uses credit information can be put to—limit that to the provision of credit and those related aspects.

So, in the terminology of the act, I would suggest that there are some very strong restrictions on what can and cannot be done with that information. Once the credit provisions are put to one side, you then also need to look at what would be the application of the broader Privacy Act in terms of direct marketing and how it would apply. So there are limitations within the provisions to prevent direct marketing in certain circumstances and using personal information for that purpose.

Senator KROGER: Do you think that there is an abuse of credit reporting at the moment.

Mr Pilgrim: I am not quite sure what you mean by abuse. Could you give me an example?

Senator KROGER: Abuse of information that is gleaned through the credit reporting process.

Mr Pilgrim: I would have to say that, from the regulatory and compliance role that we undertake in terms of handling complaints and undertaking some audits of credit reporting agencies, we do see a number of complaints coming through to our organisation. Based on that information it does not indicate a systemic pattern of abuse by any particular organisations. In fact, if you could imagine the transactions—obviously I do not have a number—that would occur with credit information over the vast range of organisations, such as large financial institutions, our office received in the last financial year approximately 230 complaints, I think it was. That in itself—

Senator KROGER: Directly in relation to the reporting.

Mr Pilgrim: Directly in relation to credit reporting under the act. That is out of the total number of complaints of 1,201, so it is some 20 per cent. The point I am making is that, if you start to look at the number of transactions

that would occur in that sector, it would be a very small number. That is not to say, obviously, that they are not important issues that we need to deal with.

I would also suggest that we have undertaken three audits in the last 12 months of the three credit reporting agencies, Dun and Bradstreet, Veda Advantage and a smaller one in Tasmania called the Tasmanian Collection Service, I think it is, and, while we are to finalise a couple of those, generally we have not found any systemic problems within those organisations either.

Senator KROGER: You mentioned that there were four areas that you believed could be improved in terms of simplicity, clarity, flexibility and privacy enhancement. Given that this is an incredibly complex area, I have concerns about the way in which consumers can be effectively advised of the new regime for credit reporting. In what ways do you think it could be simplified so that it was made a little more user friendly for people to understand the changes?

Mr Pilgrim: In terms of simplicity—and I will not go through each of those areas because I think they are probably fairly well covered in our submission and I do not want to take up too much of your time—in answer to one of the earlier questions, the challenge is how you make a community aware of something that is at the end of the day, with all the best intentions, still going to be a relatively complex piece of legislation. I certainly do not deny that. It is much improved on the existing part IIIA of the act, but the challenge will be for us to get that information out to the community as they need it.

We constantly see challenges in the broad area of privacy to begin with. For example, if you look at the requirement of all organisations to have to provide advice to an individual about what is going to happen to their personal information when they enter into a transaction with them, this is often done through privacy statements. We often see those come out when there are changes to an organisation's privacy policies, and they are by their very nature relatively complex. The issue—and this is not going to be a definite answer in any way—will be how we work with industry to get the most easily understood information out to an individual initially at that point of contact where they are going to enter into a transaction. You can provide them with perhaps different types of information that is scaled so that there is a small amount of easy information to be given at the moment that they enter into it and perhaps give them more detailed information to take away to understand. But that is going to be something we will need to work on with the government and also with industry to work out what are going to be the best mechanisms to get that information out.

Senator LUDLAM: The Communications Alliance proposed that complaint handling be taken out of the Privacy Act and dealt with via their credit code, which would be, I think, a substantial departure from what has prevailed so far. Have you got a view on that proposal?

Mr Pilgrim: Yes, we do have a view on that. One of the main aims that we would want to see out of the entire process to reform the Privacy Act is to reduce complexity. We have been talking about that in terms of the actual provisions, but that complexity also extends to how an individual can seek to enforce their rights if they do have an issue. What we want to see is that, to the greatest extent possible, there is one place in which both the individual and organisations that need to comply with the act will go to understand what their obligations are. Our starting point would be that, under the provisions, the provisions themselves set out the basic complaint handling requirements and then those can be extrapolated on within the credit code that will be developed by industry. I can understand that there are some issues that might come up in the telecommunications area; however, I think there are more similarities than differences in the processes we are talking about in resolving complaints. For everyone working within the sector itself, it would probably be preferable to see those requirements all located in the one place—the provisions and the code that sits under them.

Senator LUDLAM: They stay where they are. Okay. My other question relates to debt collectors. On page 15 of your submission you talk about debt collectors using and disclosing information for secondary purposes. You were fairly brief in your submission about the consequences of that. Do you have a proposal for how that could be amended?

Mr Pilgrim: As we set out in the submission, our concern is whether in fact the activities of debt collectors will be sufficiently picked up. From our understanding, they may not be in every circumstance. One example of that is that if they are not covered in terms of the provisions for some of their activities, that is one aspect. They may be covered for receiving some of the information but they may not be covered for how they can use it for secondary purposes. The other issue we raise relates to the small business exemption, which is that if they are a small business operator then there may be no coverage of the information they hold once they have received it, because the Australian privacy principles that are proposed will not apply to them either.

Senator LUDLAM: Okay. We have heard a fair bit of evidence already that maybe that small business exemption needs to be reviewed. I have no other questions.

CHAIR: Thank you. In relation to the concerns that you may have with the draft legislation, do you have anything that you particularly want us to emphasise in our report? This is your opportunity to place on the record those areas where you still may have concerns or believe that there may need to be further investigation.

Mr Pilgrim: I think overall, as I said at the beginning, the new provisions are quite an improvement on the existing part IIIA provisions and the areas where we believe there can be some more enhancement of those are set out in the submission. As I said, I was a bit loathe to work through each of those given the time frame. But there are ones that also go down to a level that is often probably overlooked, which is us as a regulator and how we work with those particular bits of legislation. And it is not just from our perspective either, I would also add. If you look at, just using one example, the first point of simplicity. It may seem a small point, but it is where you sit these provisions. At the moment if you are working with a piece of legislation like the existing Privacy Act, the current part IIIA sits right in the middle of quite a number of different provisions and takes you to an area that is not directly related to the proceeding and the following areas of the act. We are making suggestions, for example, that seeing it is such a focused set of provisions, purely on one area of business activity, it should sit separately to the act, perhaps as a schedule. And we believe that this would not make it easier just for us as an organisation regulating, but also for industry when they are looking at a discrete piece of legislation, so that they do not need to work through pages and pages and reams. It sounds like it might be a minor issue, but all of us understand what it is like when we have to start wading through pieces of legislation to find different provisions. So it is that area of making it as simple as possible and reducing the complexity of other pieces of the provisions.

There are some areas where we have also picked up differences in terminology that overlap in the act, and that is probably another example. The one being referred to, pre-screening determinations, again it may seem like a small issue, but when you are working within a piece of legislation that has several references to determinations and they do have different meanings, it then becomes complex for the regulator to use it and then also other people to understand it. So again, without going through each of those steps, the four key areas we cover in our submissions are the ones we would like the committee to pick up and consider further.

CHAIR: Thank you. There have been suggestions that with the better information, credit providers will be able to take advantage of enhanced information to impose unfavourable terms on the vulnerable consumers. Do you see this as an area of concern? Have you any comments?

Mr Pilgrim: That probably goes more to the area of responsible lending, which I would say is not really within the remit of our office. Our office would want to see the use the information done in accordance with the act and meeting all of the provisions. That would be our key area, to make sure that individuals were not having their information misused. How that then impacts on whether or not a person receives credit or not, if the information is accurate, up to date, collected correctly and being protected correctly, then I would suggest the other area falls under the responsible lending side of the equation.

Senator KROGER: The telecommunications industry have raised concerns about the prohibition of collection of information in relation to under 18s and the difficulty that will provide for them in removing that information given that they are high-end consumers of mobile phones and other such like equipment. Do you have views on that? Do you think that under-18s should be excluded and that will provide a legitimate problem for the telecommunications industry?

Mr Pilgrim: At this point in time we see quite regularly in a number of areas, in terms of regulation, the challenges that we are facing in educating particularly younger people about the use of their personal information and what may happen to it, so any step that goes particularly to helping to educate and giving greater protection to younger people I think is something we would support. I do, though, recognise the challenges that will face the telecommunications industry in that area and the challenges that are already there in numerous online examples. There is work, I believe, going on internationally on how to start to recognise, as best as possible, the age of a person, and I also accept that that is an extraordinarily difficult challenge in the online environment. We would see some of that work, again, having to be done in consultation with the Department of Broadband, Communications and the Digital Environment, and the ACMA, for example, who have been looking at some of those issues. So, when it gets down to the perspective of having to have those particular provisions implemented, we would be looking at expanding on how that would work through the credit code as well, potentially, and then working with those other agencies to work with the telecommunications industry to come up with some workable outcomes. But I am not by any means saying it is not going to be a difficult challenge.

Senator KROGER: So how do they deal with that at the moment administratively, making sure that information is not improperly kept?

Mr Pilgrim: That is an issue I think we would have to take on notice to check with our colleagues in some of the other regulatory roles, because at the moment there is not the same level of restrictions in the Privacy Act as such, but I believe there might be other controls in other bits of legislation. If the committee wanted that, we would need to take that on notice and then get back to the committee.

Senator KROGER: That would be interesting, because I am hearing that clearly it is an area that does need strengthening anyway given the strong increasing purchasing of these products by under-18s.

Mr Pilgrim: We have made a small foray into that area. About 12 months ago we issued a publication aimed at young people which covered a range of areas that they would need to think about in terms of their personal information. Without going into too much detail, it covered areas such as social media, the online environment and protections they can put in place, and we also touched on credit, in particular in relation to accepting credit as part of an arrangement to get, say, a mobile phone or something like that. So we have started to do some work in that area but it is very preliminary work at this stage.

Senator KROGER: An interesting inquiry for another day, I think.

Mr Pilgrim: Yes.

Senator KROGER: Thanks very much.

CHAIR: Thank you both for appearing before us today and for your submission. If you feel as we go through that you would like to comment on any other witnesses' evidence, you have the ability to do that.

Mr Pilgrim: Thank you very much.

BALME, Mr Stephen Wykeham, General Manager, Australasian Retail Credit Association

BLIGNAULT, Ms Ardele, Vice President, Government Affairs and Policy, Australasian Retail Credit Association

CATALDO, Mr Carlo, Chairman, Australasian Retail Credit Association

FODOR, Mr David, Chief Credit Officer, Personal Banking Risk, National Australia Bank

GIJSELMAN, Mr Matt, Chief Industry Adviser, Australasian Retail Credit Association

GILBERT, Mr Ian Bruce, Policy Director, Australian Bankers Association

GRAFTON, Dr David John, Chief Risk Officer, Retail Banking Services, Commonwealth Bank of Australia

[09:04]

CHAIR: I would like to welcome representatives of the Australian Retail Credit Association and the Australian Bankers Association. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you all. The committee has your submissions. I now invite those who have the task of making opening statements to do so. At the conclusion of your remarks, Senator Kroger and I will endeavour to ask some questions.

Ms Blignault: We welcome the opportunity to appear in front of the committee today. We would like to make three opening statements because our panel here is quite broad.

Mr Cataldo: Thank you for the opportunity to appear before the committee today. The Australasian Retail Credit Association—ARCA—is the industry association for Australia's two national credit reporting agencies and 15 major financial services organisations including the major banks, international banks and finance companies. ARCA was formed to promote best practice in credit risk assessment and responsible lending as well as to promote better standards in consumer credit reporting.

Over the past six years ARCA has leveraged the expert skills of its members in consumer risk management and credit reporting and seeks to continue in a leadership role in promoting the sharing of information to enable credit providers to better serve their customers. ARCA contributed to the Australian Law Reform Commission's report 108. We have engaged closely with representatives of the Department of the Prime Minister and Cabinet as they have sought to respond to that report through legislative changes.

ARCA welcomes the reforms to the Privacy Act. It has been a strong supporter of more comprehensive credit reporting because we see benefits for all stakeholders from the implementation of these reforms. For individual consumers it will result in more choice, potentially a lower cost of credit and better financial literacy. For regulators taking the opportunity to give a new foundation to further build trust in the credit reporting system will be supported by substantial spends by ARCA members and other users of the credit reporting system investing in compliance and complaints mechanisms. ARCA offers its members expertise in developing and enhancing these.

Additionally, for credit providers, more comprehensive reporting will improve the ability to lend responsibly not only in efficiently verifying an individual's potential credit commitments but also in assisting in overcoming the cumbersome information asymmetry embedded in Australia's current reporting arrangements. Since 1 January this year many ARCA members have had the obligation under the National Consumer Credit Protection Act to ensure that credit is not extended to consumers who would suffer substantial hardship in complying with repayment commitments. More comprehensive credit reporting would provide credit providers with a key tool to

assist them to meet their responsible lending obligations under this act as is recognised within ASIC's regulatory guide on responsible lending.

ARCA members recognise that data quality is essential to ensuring an effective and accessible credit reporting system. To ensure that data quality is at the heart of credit reporting, ARCA proposes that the update to the credit reporting code of conduct has specifically built-in arrangements to facilitate an ongoing commitment to data quality. ARCA proposes that data quality be addressed in the code via a three-pillar approach consisting of a single data standard for credit reporting, the requirement of reciprocity, and an effective and adequately resourced means of independent oversight. A single data standard will ensure transparency through the credit reporting system and will give a clear understanding of what data is there in credit reports. Consumers will understand exactly what the information on their personal credit report means irrespective of the credit bureau, which credit provider provided it and what the information is that they are receiving. ARCA fully supports a flexible approach that can accommodate a differing of standards between industry sectors but consistency within each sector. A case in point: I use the example of forbearance or in some cases of hardship. In several submissions the treatment of hardship is discussed. A common concern is that listing of hardship will not allow the distinction between circumstances where a debtor is a victim of circumstances beyond their control, such as a natural disaster. One option is to disallow reporting of hardship altogether and protect those who are victims of these circumstances beyond their control, but leave creditors or credit providers blind to the circumstances where a consumer has recognised that they are in difficulty and seek assistance—the exact circumstances that credit providers and ARCA members do not want—and are obligated not to further extend credit. This would seem to be just as unfair, possibly even more so, to those who did contribute to their difficulty in some manner, but may need greater protection.

An alternative is to enable differentiation via a data standard, the means of telling those apart who are victims of circumstances beyond their control versus those who had a part in their financial matters and are not meeting their obligations. This could be simply done by a standard allowing hardship to be reported under different codes: (1), for instance, where the hardship is clearly due to circumstances beyond their control such as a natural disaster and (2) where it is not. That will enable groups to be treated appropriately, which would seem a better outcome than having to choose who gets fair treatment. Academically, it may well be argued by some that this is scope creep versus the Australian Law Reform Commission's recommendations, but rather than debate the point, ARCA advocates an approach that better enables fairer treatment of consumers dependant on their circumstances, something that the NCCP Act on responsible lending obligations already requires. That is just one example, and ARCA expects to consult widely on the operational details as required and work towards updating the current credit reporting code of conduct.

Another pillar is the principle of reciprocity—that is, if you use the credit bureau you must contribute data to ensure a full picture, as full a picture of the individual as possible. ARCA believes this is single most effective way of ensuring data is accurate, up to date, complete and relevant by ensuring reciprocity is a key compliance feature within the credit reporting system and hence part of the proposed update to the credit reporting code of conduct. Reciprocity is required to encourage users of credit reporting to provide their data, which in turn will ensure the most holistic picture of their credit profile as possible. This profile will ensure more responsible lending decisions are made by users of the credit reporting system. Reciprocity is therefore a pro-competitive issue that will support smaller players to gain access to better quality data. It is vital that responsibility for ensuring reciprocity is taken away from the commercial relationship that exists between credit providers and credit reporting agencies. It is instead included in an updated credit reporting code of conduct.

And finally ARCA proposes the establishment of an effective means of compliance through providing the regulator access to industry resources to assist with compliance tasks associated with the code. These three pillars will drive greater data quality and transparency for consumers.

Yet we know sometimes things do not work as planned, so an effective consumer complaints mechanism is another essential aspect of the credit reporting regime. ARCA is working to create an industry framework that drives consistent, timely and fair resolution of consumer complaints in relation to credit reporting and requests for corrections of credit reporting information. ARCA is considering what changes should be made to current practices as part of the reforms.

In summary, ARCA members have invested considerable time, effort and resources in preparing for the introduction of this complex reform. Literally thousands of hours and millions of dollars have gone into the laying of the groundwork of this reform. Given this, ARCA is keen to offer its member expertise, ensure that the ALRC's recommendation that the Privacy Act remain consistent, simple and clear are met and avoid cumbersome and complex law that might cause significant unintended consequences. As noted in our submission, we believe that

principle based approach to regulation can still achieve the desired regulatory outcome and still allow Australia to enjoy what many other advanced economies have that utilise more comprehensive credit reporting. There is much that should be done to improve the credit reporting system so that both consumers and industry are able to know that the data is accurate in the system, is secure and is of high quality. Only quality data can lead to quality lending decisions. The introduction of a more comprehensive credit reporting system is a great opportunity for all stakeholders to improve the regulatory environment and strengthen the existing privacy framework. ARCA members look forward to the introduction of the reforms, are already committed to better handling of consumer complaints, better compliance with the code and more resources to ensure that data quality is improved. We appreciate the opportunity to appear before the committee today, thank you.

Mr Gilbert: Good morning. The Australian Bankers Association thanks the committee for this opportunity to assist with these important reforms of Australia's credit reporting law. Also, I would like to take this opportunity to thank the committee for agreeing to hear both the ABA and ARCA jointly, and I am sure that the committee will benefit from this assembled group of expertise and experience. We appreciate the committee's agreement to hear us all at the same time.

The ABA participated in the Australian Law Reform Commission's review of the privacy laws and we were represented on the advisory committee of the ALRC and also on the credit reporting advisory subcommittee. The recommendations that came forward in the ALRC's report in May 2008 were very timely. Timely because these reforms had originally been planned to coincide with consumer credit reforms enacted in the National Consumer Credit Protection Act 2009. However, this timing has become something of an unbuckled event in that we had the consumer credit law enacted nearly two years ago but we are still looking to see the credit reforms proceed, but on a different time path to the consumer credit law.

The ABA supports the proposed reforms to the credit reporting provisions of the Privacy Act as an important updating and bringing the credit reporting system into the 21st century. It is instructive to consider that with the added ability for credit providers through more comprehensive credit reporting to know with greater certainty what existing credit commitments a consumer applicant for credit has, what those commitments are, when those commitments were created, when they ended and how the consumer has performed with those credit facilities are very important aspects of the government's reform of the consumer credit laws. This is because of the regulatory emphasis on credit providers across the board to have to verify the information that a consumer provides to them in support of a credit application. This emphasis on verification of the consumer's information actually protects the consumer from understating their existing financial commitments, while also providing reliable information for the bank to assess the customer's application.

Australian banks have demonstrated prudent and responsible approaches to consumer lending that is in stark contrast to more recent experiences we have seen in other countries. With this increased certainty in information for banks from a more comprehensive credit reporting system, banks will continue to do this and use this information in the same responsible application of information that they have done up until now. Reliable information applied responsibly is at the heart of prudent lending practice.

The ABA supports an effective privacy regime that underpins the credit reporting reforms with appropriate consumer complaints handling and dispute resolution arrangements, with which banks are very familiar under other legislation and particularly under the new consumer credit protection laws and under chapter 7 of the Corporations Act. However, to avoid inconsistency in approach, these arrangements that banks are currently subject to under those two pieces of legislation could be replicated under the new credit reporting regime for banks. It is important to highlight the differences between the business of credit reporting, which is carried out by a credit-reporting agency, and the business of providing credit. The business of a credit-reporting agency is essentially run along ordinary business principles and business lines; the business of lending is very different because it involves credit risk—that is, the risk that the borrower may not be able to repay the loan.

So, in conclusion, the ABA's submission, which the committee has, supported ARCA's submission and raised some matters of structure regarding the credit-reporting regime and some more technical aspects of the drafting of the proposed credit-reporting provisions. I am pleased that David Fodor to my left and David Grafton from my right, both representing their respective banks, are here with the ABA this morning to assist the committee with the more detailed understanding of this new regime.

Mr Fodor: The National Australia Bank appreciates the opportunity to address the committee regarding the exposure draft of the Privacy Act amendments pertaining to credit reporting. NAB is supportive of the creation of more comprehensive credit reporting, enabled via the inclusion of the five new data elements proposed. The benefits available from access to this incremental data will attach to consumers, the financial industry and the economy at large. Comprehensive credit reporting will increase the transparency of consumer indebtedness,

resulting in improved credit decision making and support the obligations of responsible lending under the recently implemented national consumer credit protection legislation. Following a review of the credit-reporting exposure draft, NAB is concerned that some provisions may be overly prescriptive and complex, particularly regarding the way it is proposed to regulate some aspects of data usage. The legislation as drafted includes a high focus on how outcomes are to be achieved, which may run the risk that the acts may become quickly outdated, hampering innovation and being insufficiently flexible to deal with unforeseen circumstances. NAB acknowledges the need to strike a balance between the protection of privacy, the benefits available to consumers from more responsible lending decisions, and the commercial practicalities of enablement.

NAB would like to outline two particular concerns with the exposure draft; the first is in relation to complaints handling. NAB acknowledges that an effective complaint-handling process is critical to the overall success of the credit-reporting system for both consumers and those that use the credit-reporting information. NAB has existing processes in place to ensure compliance against the relevant Australian standard and ASIC regulatory guide for internal and external dispute resolution. There are several areas of concern with the exposure draft provisions relating to complaint handling, including the requirement to respond to complaints within time frames that differ to existing industry standards, prescriptive requirements with respect to communication mechanisms that do not allow for future innovation and the requirement for the first party contact for the complaint must undertake to notify everyone of the incorrect information, collate the necessary information to respond to the complaint, and then respond of behalf of all relevant parties. NAB recommends that the exposure draft requirement for dealing with complaints are reviewed, to ensure they complement other regulatory and best practice requirements currently imposed on and employed by the industry. Existing external dispute resolution schemes, including the Financial Ombudsman Service and Telecommunications Industry Ombudsman should be consulted to ensure that a simple, effective and consistent complaint-handling process is implemented as part of these reforms. The second area is the regulation of de-identified information. NAB is concerned with the provisions relating to de-identified credit reporting information. De-identified information is not currently regulated by the Privacy Act and the ALRC report did not contain a recommendation to regulate that information. Additionally, the government response to the ALRC report did not require the regulation of de-identified information. De-identified credit reporting information is not personal information and therefore should not be subject to regulation as part of the exposure draft. Restrictions regarding the use of de-identified information would place considerable constraints on the ability of industry to innovate in the form of new risk assessment tools. The ability of credit-reporting agencies to maximise the effectiveness of de-identified data benefits not only credit providers via better decision capability but also consumers through more responsible extension of credit. NAB recommends that the regulation of de-identified credit information be removed from the draft legislation. Thank you.

CHAIR: Thank you very much. Are there any further statements?

Ms Blignault: That is the end of our statements; thank you, Senator.

Senator KROGER: Mr Fodor, could you elaborate—because it is something that seems to be coming up as a common concern—on your statement that the first party contacted about a complaint is required to forward it on? Can you give me an example of such a circumstance, please?

Mr Fodor: We remain concerned that the first party contacted may not necessarily be the relevant party to which the incorrect information may attach. The obligation falls on, for example, a credit provider who happens to be dealing with a customer at that point in time but is not directly responsible for, for example, the submission of the incorrect information to a credit reference agency. Under the legislation as it is drafted today the obligation would fall onto the party dealing with the customer at that time—to basically run with that complaint—rather than to the credit provider who was a party to a submission of the incorrect information or creation of the information at the credit reference agency.

Senator KROGER: Also, the obligation is upon that party to then report back to the credit reporting agency. Is that what you are saying?

Mr Fodor: The obligation falls, today, on the party to whom the complaint is made to go and track down the source of the complaint—for example, correct information lodged on the credit reference agency—and then report back, on behalf of all parties subject to that issue, to the consumer.

Mr Balme: I will clarify by giving you an example. If a consumer walks into the NAB to get a credit card and the NAB does a credit check they may find—having received the report from the bureau—that there is, for example, a default listed by Telstra, and the consumer then complains to the NAB: 'I have never had a Telstra relationship. I work with Optus. I think this is incorrect.' There is no way that the NAB can check that and manage that complaint. It needs to go to the relevant party, which would either be the credit reference agency that supplied the information or Telstra, which had listed the default. We strongly believe that there needs to be a very

good referral system implemented by industry so that we can get the consumer to the right place to answer the question, which is why we are very keen on single points of contact so that the consumer does not have to bounce around 'Who on earth do I speak to at the reference agency?' or 'Who do I speak to at Telstra?' We actually help get them to the right person. The complaint is then managed by that relevant and appropriate entity, which is why we think, as Timothy Pilgrim spoke about earlier, it is also quite important there is one code that can manage these complaints in a consistent and appropriate manner. It is a complex issue.

Senator KROGER: Hence, it strengthens the assertion that there needs to be an independent regulator, as opposed to the agencies themselves, overseeing this. You also made the comment about the time frame that the dispute resolutions take place, in that they are not aligned with industry standards. Is there one industry standard that applies at the moment?

Mr Fodor: I believe that there are two.

Mr Gilbert: Perhaps I could answer that question this way: under both the consumer credit law and under the financial services law in the Corporations Act there is a requirement to have complaint-handling arrangements in place. ASIC has developed a regulatory guide, which sets out what ASIC expects in terms of those internal complaint-handling processes. It sets out quite a detailed exposition of the sorts of things that should be there—the time within which complaints need to be dealt with, information that is provided to the complainant about the outcome of the complaint and so forth. We would prefer to see, given that these arrangements have been in place for some time now, that we do not have yet another set of arrangements to deal with the credit reporting system–subject to what Stephen has said about identifying the right respondent—and that we do not have differing compliance systems in complaint handling, which are very well covered by ASIC at the moment.

Senator KROGER: Do ASIC have a clearly prescribed time frame for this?

Mr Gilbert: Yes.

Senator KROGER: Are there prescriptive times?

Mr Gilbert: Yes, if a complaint is dealt with in five days then certain things would apply. But if it takes 45 days for a complaint to be sorted out, as sometimes it does, then there is another set of arrangements in communications, advising the customer they can go to a dispute resolution service if they are not satisfied with the outcome.

Senator KROGER: Clearly that is an area that is not aligned in the process.

Mr Gilbert: The headline in the act suggests that they will not be aligned. What we are seeking is to ensure that those headlines are sufficiently flexible to allow the existing systems to be brought into the same framework.

Senator KROGER: I think it was you, Mr Cataldo, who talked about lack of definition in hardship. This year provides great examples of why that is so important. I am curious to know more about how you think you could clearly define what hardship is, given the incredibly subjective nature of it. If it were on the basis of natural disaster then there would be many small businesses that would consider themselves to fall under the category of hardship, and yet on the basis of being washed up by a flood they would not fulfil the definition. Can you furnish me with any greater ideas as to how that could be determined?

Mr Cataldo: Australia has been unfortunate enough, as you alluded to, to be subject to a number of natural disasters. ARCA members have extended to their customers affected by bushfires and floods quite a number of arrangements. Typically they are regionally or postcode related and absolutely outside the individual's control. Someone may have an absolutely pristine record in repayment with a financial institution but due to no issue of their own or no financial mismanagement of their own are not able to meet their obligations due to communications not being available or even due to not being able to get to their local branch for payment. Quite often institutions offer forbearance in arrangements reactively and proactively in those circumstances.

The difference with hardship that is related to such unfortunate circumstances with credit providers' customers such as illness, disability, sickness and loss of job would be a different set of circumstances. There needs to be an appropriate balance between where there is financial mismanagement on the part of a customer versus a natural disaster or some forbearance related to natural disaster. ARCA believes that standardisation around this space would allow institutions to develop a definition around those circumstances that would balance the consumer's privacy as well as ensuring the credit providers do not subsequently further extend consumers under hardship situations as it stands right now.

Senator KROGER: This area is certainly not new to financial institutions. I am sure they have been trying to deal with this for many years, and it has been a particularly problematic area in the rural community. I am interested to hear, particularly from the banks, whether attempts have been made to address this area because it is

a continuing problem and clearly would be exacerbated if people were declared a risk and were undergoing short-term difficulties.

Dr Grafton: Perhaps I could offer a few comments. I am sure that NAB, Westpac, ANZ and a lot of other financial institutions offer similar assistance, but, speaking from the Commonwealth Bank's experience, we have provided a mixture of proactive and reactive relief. For example, in the case of the floods and Cyclone Yasi, we quickly identified which postcodes were affected and we suspended any action to recover overdue payments for a while from those areas. We then proactively tried to contact as many of the customers as we could who we knew were in difficulty. On the basis of direct conversations with the customer, we established their financial circumstances and worked out a new set of arrangements for them which, in many cases, would offer deferred payments or lower repayments, perhaps extending the length of time of their home loan, for example. In working with customers, in most cases we are able to come up with a satisfactory resolution.

But the issue for us, particularly if you think about the requirements under the new legislation that we are considering here today, is that it is very difficult for us to distinguish in our reporting between those customers, as Carlo has said, we are dealing with on the basis of difficulties that are outside of their control and those customers who have actually got themselves overcommitted, and therefore we would have a very different set of concerns in relation to those customers.

Mr Fodor: To repeat many of the things David has already said, in the case study of the Queensland floods we took the same measures. We identified those impacted postcodes through the flooding and proactively outbounded those customers where we could, offering payment arrangements and repayment holidays, and we went a further step in our credit card portfolio and offered a two-month repayment holiday for their credit card payments. We have a division within our collections department called NAB Care in which we invested quite heavily over the last two years to establish a stand-alone team to deal with flooding. That has now been disbanded. We are through the peak period for dealing with flood-impacted customers. We have found that 75 per cent of customers are now back to the position that they were in prior to the flooding. They had been through a hardship position. We are winding back into business as usual. But these are well established and well regulated practices.

Senator KROGER: It begs the question of how we improve the definition of hardship for credit reporting purposes.

Mr Fodor: Absolutely.

Senator KROGER: I am sure you are aware of instances where short-term circumstances have been recorded and make a difference in terms of the individual's capacity to access credit.

CHAIR: Could we move to the Australian Bankers Association. In relation to the reporting of histories, do you think that the exposure draft provides sufficient guidelines on what should be included in the repayment history database?

Mr Gilbert: I will ask my colleagues to provide an answer on that.

Mr Fodor: We have no specific issues with the detailed requirements or provision of history. We think it is straightforward. There are examples in other markets that we can take guidance from and we have a fairly robust process underway already in terms of data standards through the ARCA that we are working to to fulfil those obligations.

CHAIR: In relation to this new proposed draft it has been suggested that some consumers who under the current system would not be eligible for credit will now be able to get it. Are there any concerns about any particular groups that are going to be affected and how many consumers will be affected by these changes?

Mr Cataldo: Certainly a number of studies have been done internationally that highlight that historically disenfranchised segments in terms of credit availability would certainly get or have available credit. Credit, as we know, is a key ingredient in home ownership and wealth creation, so certainly, for individuals who historically may not have had credit or credit that is used via services such as utilities or telecommunications, the centralised nature of a more comprehensive credit-reporting system will allow that information to be used by other credit providers in assessing their ability for further credit. More information enables better decisions, especially when there is no negative information reported on the majority of the Australian population right now. So it will help those who have a clean file to get more credit where it is appropriate, subject to responsible-lending obligations, and those who would potentially be overcommitted to see reduced credit.

CHAIR: In this country, I would suggest, credit availability is at a premium compared to, say, 20 or 30 years ago, when it was much harder to get credit. So the outset of this legislation has to be, as well as protecting the industry, protecting consumers, who after all do run the risk in a lot of cases of overextending themselves.

Mr Cataldo: That is absolutely true. Right now, the data symmetry that exists in the credit-reporting system is that a credit provider would need to use the telephone to ring and confirm the current credit commitments that a consumer has. Having more comprehensive information will allow an independent, efficient means of verifying this information and, frankly, using it.

CHAIR: In relation to the new code of conduct, should the industry lead and do the consultation on that? What work, if any, has been done on that, and has there been sufficient consultation thus far?

Mr Cataldo: I will answer that one. The ARCA has put forward itself on behalf of its members to consult widely in terms of providing an update to the current Credit Reporting Code of Conduct, which would then be passed to the Office of the Privacy Commissioner for final review. We have put together a number of streams of work and actually raised significant funds to progress that, including going to the expense of getting an independent reviewer to review not only the process that we go through but also the update of that code of conduct. We have consulted widely and will continue to try and consult more widely. The current credit-reporting system is used substantially beyond financial services, as well as by telecommunications and utilities. We look forward to fund and provide the resources to update that on behalf of the industry.

Senator KROGER: Can I just ask a question in relation to that? In your consultations, do you include consumer groups as well as stakeholders? I consider consumers to be big stakeholders, but consumer groups as opposed to financial institutions or trade organisations?

Mr Balme: Very much so. We have had a consumer advocate forum for almost six years. We let the consumer groups determine who they thought should be represented at that group. We worked very closely with them during the whole of the ALRC review to come up with a draft code, which we included in that ALRC document.

Since that time we have worked with them closely again, and rather than prepare a new draft code we have focused very much on the process of how we get to a code that everyone can agree on. The consumer groups, and also people like the EDR schemes from the various different segments are very key ingredients to make sure that we have covered off all the topics.

I think it is also worth saying that we do believe that the existing code has many very good aspects in it, but it is not delivered to. This is probably partly the responsibility of industry and partly the responsibility of the consumers, the regulator and the bureaus. Our intent is to build a code that all stakeholders are very involved with and that has strong compliance so that it is absolutely delivered and can move Australia, particularly in data quality, up to global practice more than is often occurring.

CHAIR: If we could just move back to de-identification and the issues surrounding that part of the bill: obviously, you have put a lot of thought into it; have you actually raised your concerns with the Department of Prime Minister and Cabinet? And if you have, what was the response?

Mr Fodor: Not specifically. The extent of our concern is only within the existing bounds of a response to the legislation as it is drafted today. We have not yet taken it any further than that. We hope to influence it through this process. De-identified data is critical to the ongoing innovation, update and creation of new risk models that are central to prudent learning practice within an automated decision process across consumer lending. We are concerned that legislation which restricts our ability to provide de-identified information to credit reference agencies to enable that process will be a major issue across all credit providers who use the automated decision tools that we employ today. But we have not yet gone any further than raising it as a concern through the response.

CHAIR: This is the opportunity to put the case forward. Is there anything further on that which you want to add? No?

In the Australasian Retail Credit Association's submission you state:

… full comprehensive credit reporting could and should be made available to all Credit Providers—not just those who are credit licensees …

What are the entities that ARCA believes should be included in the credit-reporting regime, and what are the benefits of broadening the scope of the access to credit-reporting information? Could you just outline that for the benefit of the committee?

Mr Cataldo: Right now, licensed lenders under the responsible lending obligations of NCCP are allowed to report and receive repayment history. International practice has shown that by following the natural credit lifecycle of consumers–which typically starts with a mobile phone and utilities, moves on to unsecured lending such as credit cards and personal loans and then on to home ownership–then only allowing licensed credit

providers to provide repayment history would mean that credit providers do not have a view of the repayment history of utilities, telcos and other credit providers.

Specifically, the industries that would benefit would be utilities, telecommunications and other users, not only in seeing the credit obligations, such as a mortgage–being most Australians largest financial commitment–but, conversely, for people applying for a mortgage. They would be able to see their telecommunication and utilities commitments. As was alluded to earlier, the usage of telecommunications, which historically were a fairly small amount, can these days be fairly substantial in an ongoing commitment. So it is getting that visibility quite broadly. I would refer to the UK example, where it now—I think it is British Water, actually—provides information to the credit-reporting agencies to give a fuller perspective of consumers and their ongoing commitments.

CHAIR: Thank you. Senator Kroger, do you have any further questions?

Senator KROGER: When a consumer does not agree to a disclosure of their credit situation, that currently is advised to the credit reporting authority that passes that information on. Is that correct?

Mr Cataldo: I would have to take that question on notice, Senator, to get the exact detail, but my understanding is that historically, if they do not sign the privacy disclosure—

Senator KROGER: To tick that box to say, 'Yes, it can be passed on'?

Mr Cataldo: Yes, then a credit provider would not be able to use credit reporting information in their decisioning, so it would result in a lower likelihood that a credit provider would be able to, first of all, see their full circumstances, or provide credit.

Senator KROGER: I am just wondering if that situation remains the same here. I presume that is the case, or how that would be dealt with?

Mr Cataldo: It would typically be envisaged that the signing of a credit application would come along with the associated disclosures if there was a requirement for separate disclosures in not using that information or using a ban that would be fairly cumbersome and inefficient, but we would envisage similar circumstances to today, going forward.

Senator KROGER: Just in conclusion, with positive reporting, do you see that there would be a greater use of that by service providers for the purpose of selling more products, whatever they may be?

Mr Cataldo: There is one area that pretty much all stakeholders agree on, including ARCA members and others, and that is that this information is not to be used for marketing purposes, and only for credit-related purposes, whether that be fraud or responsible lending or avoiding over-commitment. We would refer to the UK example, where there is no direct marketing allowed, but in the circumstances where credit providers would be accessing marketing lists, they would have the ability to wash that, or ensure that consumers who would not meet their credit, or not be likely meet their credit obligations, that is passed by the bureau. That is commonly known as 'pre-screening', and as part of our submission we would certainly support pre-screening to be part of the allowable uses going forward.

Senator KROGER: Because I could just see an emerging incidence where consumers, if they did have that concern, would tick the 'no' box if they did not want their information disclosed, only because they did not wish it to be potentially misused in other ways, which would adversely affect them, clearly. I was looking for some assurance that this legislation provided sufficient protection that that would not happen.

Mr Cataldo: We believe it does.

Mr Balme: I could add to that. That is also one of the reasons why we strongly believe in the two pillars of reciprocity, so that everyone plays by the same rules—that is absolutely in the code of conduct—and, secondly, so that there is a very strong compliance process, so that for those who do not play by the rules—for example, they are starting to utilise the information for direct marketing—there would be very strong sanctions, breach processes et cetera imposed. We think that is very important. That will raise the standard from the existing code significantly.

Senator KROGER: Thank you very much.

CHAIR: That concludes our questioning. This is your last opportunity to put anything on the record that we have not covered. Now is your opportunity to put it on the record, bearing in mind that, unless it is on the public record, we cannot consider it when drafting a report. So are there any further comments before I conclude?

Mr Balme: One thing I would say is that there is a huge amount—as I think you have heard today from my colleagues—of technical data.

CHAIR: We have noticed that.

Mr Balme: We have worked very closely, particularly with the Department of the Prime Minister and Cabinet and the OAIC, Timothy Pilgrim's office, to make sure that those technical things are clearly understood. One of the things that is in our mind is whether at the Senate level there needs to be some form of working group so that those technical things can be clearly explained and you can evaluate them.

CHAIR: Thank you very much for that. The committee will take that into consideration. I thank you for your submissions and I particularly thank you for giving up your time. I just put on the record the fact that there are only two senators here in attendance and one on telephone link. That is not a reflection of the serious nature of this legislation; it is just a fact of life in the Senate. There are over 50 committees and so many inquiries and references going on at the moment that it was a matter of having to make a decision to appear today with two of us rather than having to delay it. It is certainly no reflection on the serious nature of this legislation. We thank each of you for appearing before us.

Proceedings suspended from 09:56 to 10:15

BROWN, Mr Steve, Director, Commercial and Consumer Services, Dun and Bradstreet

KARMELICH, Mr Damian, Director, Marketing and Corporate Affairs, Dun and Bradstreet

WILSON, Ms Jane, Director, Information Technology and Data, Dun and Bradstreet

CHAIR: Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission and I now invite you to make some opening comments and at the conclusion of your remarks, I invite the committee to ask some questions.

Mr Karmelich: Dun and Bradstreet are the world's leading provider of credit, marketing and purchasing information. We hold commercial information on more than 195 million companies around the world, including three million credit active entities in Australia. Dun and Bradstreet established our consumer credit bureau in Australia in 2004, introducing competition into the sector for the first time. It was then that we called, first, for an inquiry and, ultimately, reform of Australia's reporting laws. Our support for comprehensive or positive credit reporting is premised on the belief that such a system in Australia has the capacity to reduce default rates, increase lending to poorly served sections of the community, improve pricing for risk, improve outcomes for small business and promote competition within the banking sector. These benefits have accrued to consumers, lenders and the broader economy in many countries where positive credit reporting is in existence.

These benefits arise by reducing the information asymmetry between borrower and lender and the information gap between established and new or small lenders. Reducing these information asymmetries and gaps is the primary reason for information sharing and the core purpose of a credit bureau. Reducing information asymmetry between borrower and lender provides the lender with the most accurate and up-to-date information on which to base a lending decision. This allows them to more accurately assess a borrower's true financial position and make a lending decision accordingly. Reducing the information gap between established and new and smaller lenders encourages new and small lenders into the market by ensuring they have access to the information necessary to make informed and profitable lending decisions. Without this information sharing, established lenders are likely to maintain their dominant position and competition is likely to be curtailed as new and small lenders choose not to enter credit markets due to their inability to make informed and ultimately profitable lending decisions. The result is higher prices for borrowers.

It is also worth noting here that, even with increased information sharing, competition may not be enhanced if industry governance limits access to that information. This means that the rules governing the day-to-day operations of the credit reporting system and the bodies responsible for its oversight are as important as the types of information we are allowed to collect. Any reform that focuses only on the information that can be reported and ignores issues of industry governance is unlikely to meet its full potential in promoting competition and improving prices. Therefore, issues such as the credit reporting code of conduct require close scrutiny.

With a specific regard to the exposure draft bill, Dun and Bradstreet's submission has focused on a few select areas. This narrow focus reflects our belief that the legislation largely achieves what the government said it would. However, it also reflects that some critical issues to be addressed by the legislation have not yet been released. They include details on the scope of regulations and the operation and oversight of the credit reporting code of conduct. In our submission we make the following recommendations:

Remove section 115, which relates to de-identified information. The use of de-identified information is critical in the development of scoring and other models that improve risk assessment and management. Section 115 creates a degree of ambiguity about how and when that information may be used, and we believe its intent, which is to protect personal information, is otherwise achieved elsewhere in the legislation, and by the fact that the information being used is in fact de-identified.

Amend sections 116 and 118 to identify the Office of the Privacy Commissioner as the party responsible for conducting independent audits of data quality and security.

Amend section 117 to differentiate between breaches that occurred knowingly and unknowingly, and establish sanctions for different types of behaviour.

Amend section 119 so as not to limit the number of times a consumer may access their personal credit report for free, with delivery to occur within a reasonable time but no longer than 10 days.

Delete section 123(3), as it relates to disputed information that would otherwise be permanently removed under data retention clauses, and would therefore cause the consumer no harm.

Amend section 124(4), to define the retention period for defaults as five years from the date of default, rather than the date of information collection.

Amend section 132(2), to allow all credit providers, including non-bank credit providers, to report payment information. Non-bank credit information, such as that from telecommunications companies, is highly predictive of future bank credit performance. Our submission speaks extensively to that point. In Dun and Bradstreet's view, the reporting of non-bank repayment data is critical if the intent of this legislation, and other legislation related to responsible lending, is to be achieved. As the legislation currently stands, a consumer who is showing signs of being unable to manage credit, based on their non-bank credit performance, would have an increased chance of receiving bank credit that may cause further harm. The reporting of non-bank data is critical if our intent is to prevent consumers acquiring access to potentially harmful credit. Conversely, non-bank data can assist those consumers who are unable to access mainstream bank credit markets because they have no credit history, rather than a negative credit history. Positive non-bank credit performance is an important tool in demonstrating credit worthiness and providing those consumers with access to mainstream banking products.

I would like to thank you for affording us the opportunity to meet with you today, and we are happy to answer any questions about our submission, but also happy to answer any questions about credit reporting in general. Thank you.

CHAIR: Thank you very much for your submission and for your opening comments. Senator Kroger?

Senator KROGER: I am happy for you to go first.

CHAIR: I am quite interested in your submission on page 4, and you are talking about credit reporting assists in the reduction of fraud, particularly identity fraud: 'At the most basic level the simple recording of accounts opened credit report allows the monitor of whether any unusual credit behaviour is occurring.' As we all would believe and understand that fraud and identity fraud is on the increase, could you elaborate for the committee's benefit on that point?

Mr Karmelich: Sure. Thank you, Senator. It probably seems a little counter-intuitive that having more information could perhaps assist in preventing things like ID fraud, but there has been some research done on this elsewhere, including most recently by Dr Michael Turner in the United States. And it really comes about for two reasons. Firstly, what tends to happen in a comprehensive or positive credit reporting environment is that consumers are interacting with their credit reports much more than they are in a negative-only system. And what that means is that consumers themselves, therefore, are a lot more alert to any changes that may be occurring on their credit file, and are able to act on that if any of those changes are not legitimate.

Secondly, having more information in the system allows models and other automated techniques to be able to identify patterns that may be unusual, and already you see some of that. For example, only a few months ago I was overseas, used the credit card, and I received a call from the bank almost immediately, querying. So that is one example of how more data can actually assist with reducing fraud and identity theft. By allowing it to occur in the credit reporting system as well deepens the ability to be able to identify that type of behaviour, and address and respond to changed patterns of behaviour when they occur.

CHAIR: So, likewise, with the more information that is corrected on consumers—and you are saying that will help prevent identity fraud—the penalties for breaches should represent the same weight.

Mr Karmelich: Are you suggesting that for the people who engage in identity fraud the sanctions should be far greater?

CHAIR: Yes.

Mr Karmelich: I think that is a very reasonable expectation.

CHAIR: Thank you for that. You also suggest on page 7 that comprehensive credit reporting resulted in some individuals who have been given credit under the current system being declined credit under the new regime, while others who are not presently able to access credit will be able to do so. Do you want to launch any case studies? Do you want to make any further comments?

Mr Karmelich: The work that has been done on this has obviously come from those markets that currently have positive or comprehensive credit reporting. A lot of the research has come out of the United States, but there is other research in places like Europe, as well. Essentially more information allows you to be able to determine the absence of adverse things and also to identify methods of positive payment and positive history. What you do have is a situation in negative-only markets whereby people are unable to access credit on some occasions, not

because they have a negative history but because they effectively have no history; therefore the safest lending decision is to make no decision, effectively.

When you bring more information into the credit decision process, it gives a lender greater confidence that they have a much more complete picture and, as a consequence, are able to extend credit where perhaps they may not always have been able to do so. In markets where positive reporting is in effect, this has tended to advantage minority groups, generally women and new arrivals to a country. So, for those who, for one reason or another, may not have had any credit history at all, having more information allows the ability to further confirm the absence of negative information and brings them into that market.

CHAIR: I recommend amendments to section 118 to allow consumers access to their personal credit report more than once a year without incurring a fee. Could you indicate to the committee the rate of access to credit reports by the individuals you are suggesting? How restrictive will the new requirements be for individuals?

Mr Karmelich: The way the existing regime works is that a consumer can certainly come to our bureau as many times as they want and order a copy of their credit report for free. We are required to provide that within 10 working days. We, like our competitor, also offer a fast-track service whereby if they want it immediately we charge a fee for that. But there is absolutely nothing stopping somebody coming as many times as they want to the bureau during the course of the 12-month period and obtaining a copy of their report, and indeed we encourage them to do so. The number of consumers who access their report on a monthly basis is in the tens of thousands across the two bureaus, so there is quite a high level of engagement from consumers at the moment in terms of accessing their credit reports.

Our reading of the exposure draft is that it would limit a consumer's ability to access their report for free to one occasion per year. We do not see any problem with the way the system currently works. Indeed, we believe that, if positive reporting is to be successful, one of the elements of success is that consumers must have a much greater involvement with their credit information, so we see no reason to change the existing structure.

Senator KROGER: I note with interest that we were referred to as a minority group, Chair. It is interesting to see that women in the business of earning money are still considered to be a minority group, which is a bit tragic. I would like to follow up on your comments. You said that the number of people who access their credit information is in the tens of thousands; for instance, if I wish to access the assessment on my credit reporting status I could pick up the phone to access it—is that correct?

Mr Karmelich: You could not do it on the phone because we obviously need to be able to identify you with more than just a voice over the phone. Basically we require a series of pieces of identification, which you can provide in an online environment or, if you do not have access to an online forum, you can use a form and fax it or post it in to us. But essentially, yes, it is as simple as going to an internet site and providing details that allow us to verify that you are who you say you are, and also that we receive some confirmation that you understand the penalty for claiming to be someone that you are not. There are obviously processes around that, but essentially, yes, it is that simple to access your report from us.

Senator KROGER: In your significant experience, most people that seek to access that information are those that may have been knocked back for a loan facility or something like that. Would I be right in assuming that?

Mr Karmelich: Historically that has been the case, that consumers have come to the bureau as a consequence of having credit denied, being informed that that denial is largely a consequence of something that is on their credit report, and they have come to the bureau seeking that information. However, over the last few years there has been a reasonable amount of work done in the public sphere to try and educate consumers about their credit report—the fact that they have one, in the first instance, and then the types of information that it includes. We are seeing a growing number of people come to the bureau to access their file simply because they want to find out what it says about them. In many cases, people are now coming there to see what their circumstances are before they apply for credit. That would still be a minority of people who come to the bureau, but that actually is growing.

Senator KROGER: I presume that is referring to people in Australia.

Mr Karmelich: Correct.

Senator KROGER: I just wanted to make that qualification. In your recommendation 3 you refer to section 117 being amended to differentiate between breaches that occur knowingly and unknowingly. Can you expand on that? What are you referring to by those two terms?

Mr Karmelich: It reflects the reality that we deal with large amounts of information and from time to time there are errors, and I am certainly not going to try and pretend that is not the case. It would most commonly happen when, for example, you are dealing with 'John Smith', with names that are very common, and an absence

of other identification. That is when there are instances where you may see errors. Our view is that at the moment the draft legislation does not really account for errors that are a genuine mistake and that the bureau makes every effort to resolve as quickly as possible and those errors that reflect systemic behaviour. Our view very clearly is that if errors are reflecting systemic behaviour then, quite appropriately, the legislation would seek to deal with that with sanctions.

I guess what we are concerned about is being exposed to that level of sanctions when the error does not reflect systemic behaviour and where we are committed to making sure that, when we are aware of those errors, we deal with them as quickly and prudently as possible. Just on that point, I would refer to the comments make earlier today by the Privacy Commissioner, who himself has said that he has engaged in audits of all the bureaux, as I think I heard him say, and has not identified any systemic behaviour that causes him concern. I think that speaks to the need to differentiate between genuine errors that do occur from time to time and those that are perhaps a consequence of inappropriate behaviour.

Senator KROGER: For the purpose of this committee, could you provide an example of a genuine error?

Mr Karmelich: I think in the first instance it would be when names are very common, and so information may have been placed on a file of a same name but the wrong person. I think that is probably the most common time that that arises, when the names are similar—John Smith, for example. I might ask Steve if he has any other examples.

Mr Brown: The scenario where that could occur would normally be where there would be a series of data points in common, so certainly similar or very similar names at the same address, issues with perhaps twins, or fathers and sons that share have the same name at the same address. Those scenarios in the Australian context can become problematic. That is a function to some degree of the lack of us in this country using a unique identifier. In other countries around the world there may be numbering systems like the social security number, which is used in the US, for example. That is not the practice here in Australia, where government identifiers are not used for this purpose, so we are matching on the available data elements. If they are very similar, and we are talking about a coincidence here, then an error could occur.

Senator KROGER: If a genuine error is made, once that is identified and dealt with we would hope—I understand these things can occasionally take a little more time than they should–that is removed expeditiously from that record for all time. Or does it stay on the record that there was an error which has been corrected currently?

Mr Karmelich: Steve will correct me if I am wrong. If it is a genuine error, it is removed from the file as if it never existed.

Mr Brown: That is correct. In other words, we would not reflect on the file that there was a previous error. If further credit was applied for then the file would show that there was no adverse information on the file previously.

Senator KROGER: We were discussing with a previous witness about the advent of natural disasters and the implications of those in the short term for a number of people. Given the business you are in, do you think that it genuinely reflects long-term loan liability of individuals if they have short-term problems which affect their loan repayment capacity? Should that stay on the record permanently? Are there instances where short-term considerations should be removed once they are historic?

Mr Karmelich: If we are talking about, for want of a better term, acts of God then there is a case there. Obviously the impact that that would have on someone's credit performance is not predictive of their future credit performance. The question becomes what the definition actually is.

Our job as a bureau is to provide data to credit providers to enable them to make a credit decision. The way in which they use that data, either in its entirety or as part of other data that they may have collected–particularly if the person is already a customer–becomes largely a matter for them. Our job is to try and help credit providers identify patterns of behaviour that statistically point to somebody being a higher risk, for whatever reason that may be. In this instance it is obviously not meeting their credit commitments. The question becomes how predictive that event is of future performance. As I said, for acts of God, it is not unreasonable to form the view that that would be an example of an exception. But it does become a challenge of defining those and exactly what they are.

Mr Brown: I will add one point to that comment, and that is the issue of hardship. For many of the credit bureau clients, the credit grant tends to be a definition that they internally understand or define through their various industry associations. Many times those situations of hardship are treated quite differently by the credit

provider and, in turn, that data would sometimes not be reported, given that it is of a hardship nature or reported differently.

Senator KROGER: You mentioned earlier on about improving the credit reporting process in that it would enable and give greater capacity to minority groups. What percentage of people, do you think, would be able to have access to credit that may not be able to access credit at the moment?

Mr Karmelich: The study of financial inclusion in this country is pretty poor. I do not think anyone would be able to give you an exact figure but we know that the fringe-lending markets are growing exponentially.

Senator KROGER: What do you call fringe-lending markets?

Mr Karmelich: They are payday lenders and those types of services. Many people who find themselves in that situation are not there because they have had a negative history and cannot get credit. It may just be that they have no history and have been unable to find their way into the mainstream banking market. Being able to bring those people into the mainstream market and access credit products we obviously see as an advantage. I have not seen any research in Australia that has quantified that number. I think you would describe the growth in that area in other markets around the world as significant, particularly in places like the United States and the United Kingdom. But, quite honestly, it is an area that is lacking research here in Australia.

Senator KROGER: We heard earlier on that at the moment we are not allowed to hold information on minors, people under 18. What you are saying there is that at some stage we have to collect data to provide a history to enable people to borrow. Do you see any avenue whereby that information can be held, not used and accessed once they reach age? For many that is their only experience and I would suggest the majority of them would have very good payment records. Is there any way in which that could be used at a later stage to enable people to open a line of credit somewhere?

Mr Karmelich: I think the short answer is: if the legislation would allow us to do that, it probably could be done. I think you touched on what is perhaps the most important issue here. Credit reporting tends to be looked at from the perspective of who it could harm, who it could deny access to credit. The truth is that only about 10 per cent of Australians have any kind of adverse behaviour on their credit report. That means that the rest of the population effectively get no benefit from their credit history, particularly their good credit history. Whether that be people under 18 years of age or even older, that remains the case.

There is no doubt that the first credit experience of young people almost overwhelmingly tends to be telecommunications credit and then they tend to move into things like utilities credit as they move out of home, rent and start to get those types of products. Being able to record that information, particularly when they have been using that credit well, would certainly make life easier for them when they start to move into the banking market, such as looking for a car loan, a credit card and then ultimately a mortgage. I think it would have benefits. It is not something we are able to do under the proposed legislation, but if the legislation allowed at, I think it could be done and I think it could be done responsibly.

CHAIR: Given that you have a responsibility for the industry as well as consumers, do you have any suggestions on the process for educating the community about these changes? Do you have any comments you would like to share with the committee?

Mr Karmelich: Firstly, we as an organisation have done a lot of work off our own bat in this space. A very simple example is that we launched our own website probably 10 months or so ago which for the first time in Australia allows consumers to go to the site and access a copy of their D&B credit report for free in a process which is just as easy as it is if you were paying for it. We do not differentiate at all between the two. The process is just as simple. We have seen quite a large amount of traffic to that site. As I mentioned before, the number of people using that site to order their credit reports is quite significant and is growing. Bureaus having the infrastructure to facilitate that is the first step, and we have certainly taken a step in that direction.

Secondly, we as a credit-reporting agency have an obligation to be out there in the marketplace helping consumers understand exactly what a credit report is and how it affects them. So I think from the credit-reporting industry's perspective we certainly have a role to play. Obviously, as I heard the Privacy Commissioner mention this morning, the government, given it is proposing this legislation, also has some role to play in helping educate consumers. There is no easy solution. All of us need to be out there trying to make as many consumers as possible aware of just how important this information is and then how simple it is for them to access it.

CHAIR: In relation to your submission, you refer to the fact that consumers respond to their debt by paying off those first that are obliged to report. Can you just outline any evidence that you have of that? I find that quite interesting. When I have had a lot of bills I have looked at them with regard to which ones are going to be reported, so it is quite interesting for me.

Mr Karmelich: Sure. The research comes from the United States and, once again, it comes from Dr Michael Turner from the Policy and Economic Research Council in the US. He did a lot of work, and he has done some research with the Brookings Institute in the United States, which has looked at the way in which firms who report to a bureau are then impacted by consumer payment behaviour. What he found in United States was that in a positive environment where credit reports are being touched a lot more than they are in a negative environment, consumers generally have a higher awareness of their credit report and their credit information and what it means. As part of that, they become very aware of which creditors actually report information to a bureau.

Part of the decision-making that they go through in determining who they are going to pay and when, is based on understanding exactly which entity is reporting to a bureau and which one is not. I would be very happy to forward that report to the committee so that you can have a look at that for yourselves. That research was done particularly with regard to utilities companies, I think, and it basically found that those utilities that reported to a bureau had consumers paying at a better rate than those utilities who were not. Consumers are very smart. They understand what is going on and they use that information to their benefit, as they should.

CHAIR: We would welcome the addition of that report—it would be most helpful. Moving on to some of the areas where you have concerns, like the identification information, have you raised your concerns with the Department of Prime Minister and Cabinet? If you have, what was their response?

Mr Karmelich: Very briefly, we made some very early comments to them about the draft exposure but we have not at this stage engaged with them in a detailed discussion about the legislation. So they have not fed any response back to us.

CHAIR: As there are no further questions, I thank you all for your submission and for appearing before us today. We appreciate it and we look forward to getting that additional information. Thank you.

STANTON, Mr John Leslie, Chief Executive Officer, Communications Alliance

[10:47]

CHAIR: I welcome Mr Stanton of the Communications Alliance. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission and I invite you now to make opening comments and at the conclusion of your remarks we will put questions to you.

Mr Stanton: Thank you, very much, Madam Chair. On the half of the Communications Alliance I would like to thank the committee for the opportunity to make a submission to you and to appear before you at this hearing today. The Communications Alliance is the primary industry association representing the telecommunications sector in Australia and we have about 190 members. These include around 70 carriers and carriage service providers in Australia representing approximately 90 per cent of the market and all of the larger telecommunications providers.

If I could summarise at a very high level the gist of our submission, we are concerned on behalf of the industry to ensure that the legislation that is contemplated here takes account of the characteristics of different industries and different types of credit providers, and also to ensure that it does not bring with it any unintended negative consequences for consumers. Telecommunications providers do provide trade credit in relation to specific goods and services, typically on a fixed-payment cycle. It is not discretionary credit, it is not a loan, and it is not a credit card. At the outset, we are not certain as to how comprehensively telecommunications carriers are captured under the definition of credit providers in the exposure draft. It is true that telecommunications carriers are captured under the Privacy Commissioner's determination, but there is a reference in the exposure draft to organisations that will be deemed not to be credit providers if that is so prescribed by the regulations. Obviously, not knowing yet what the regulations are, we look to clarify that as the regulations drafted.

Our major concern is that the exposure draft appears not to fully take account of the different types of credit and the nature of different industries, nor does it appear to take account of some of the existing and extensive credit related obligations that are in place in industries such as the telecommunications sector. The suggestion in our submission is that the exposure draft be reviewed with the following two objectives: firstly, to determine whether each of the credit provider rules is relevant across all industry sectors and, secondly, if it is found that some of them are not, to remove those from the exposure draft and allow them to be dealt with under the credit code which is to be developed by a cross-sectoral industry group.

We would like to see the draft take account of the credit related obligations already in place in the telecommunications sector. These are contained at present within the Telecommunications Consumer Protections Code, which is a co-regulatory code under the Telecommunications Act 1997 and which is administered by the Communications Alliance. It contains a raft of credit related obligations on the industry which actually go further than is contemplated by the exposure draft. Further, that code is now under revision in cooperation with consumer groups, the industry, the Department of Broadband, Communications and the Digital Economy, the ACCC and the ACMA, and there are some improvements and further strengthening taking place to the credit related provisions of that code. One concern is that, if the credit related complaints that telcos receive need to be dealt with differently to all other complaints, then there is an additional burden on the industry, of course, but there may in fact be no consumer benefit to doing it that way or, potentially, consumer detriment. That is an area of major concern for us.

We have commented in our submission specifically on a number of the elements of the exposure draft. We have looked at the positive-reporting proposal and found that some elements of that can be accommodated with appropriate system changes within telecommunications operations but that some of them—in particular, the information being sought around credit limits and around a date that accounts are closed—are going to prove problematic for the industry to provide, partly because they do not relate all that well to the way that services are provided in our industry sector. There is also some concern around the suggestion that credit information relating to those aged less than 18 be excluded from the data reported to the credit agencies, because at the moment we simply do not have a technical solution to separating out that information, so that is something that will require further work or investigation if it ends up being part of the legislation. There are a number of under-18-year-old Australians who are in a trade credit relationship with their providers and are establishing a good and early credit history. Thank you; I will leave my comments there.

CHAIR: Thank you very much.

Senator KROGER: Mr Stanton, I will just pick up on your last observation in relation to the under 18s, because it is something that we have canvassed a little bit here this morning. I am trying to recollect how I

organised my sons' mobiles when they first had them. I know that for one I directed a bit out of my account. I feel that that was a mandatory requirement—that he could not have his own account—but I cannot remember. You said that the telecommunications industry do not have separate ways in which they currently report the purchases of different consumers. What would it require for them to set up different reporting practices for those under 18, because clearly it is easy to identify whether they are under 18 by what is required when they wish to make a purchase?

Mr Stanton: Thank you for the question, Senator. On the first part of your question, I think there are two primary ways in which the provision of services to under-18s typically happens. The first is by the primary account holder purchasing an additional service and making it available to their child—typically, a mobile phone—and that happens in much the same way as additional credit cards are sometimes issued by parents to their children. So that is probably the most common way. The other way is for the parent or guardian to act as a guarantor on the contract that is provided, and in those circumstances the customer agreement is with the minor.

In terms of the second part of your question, I am not qualified to give you a precise answer on the extent or cost of the system changes that would be required to segregate that information. I can undertake to provide further information to the committee with a bit more detail on that.

Senator KROGER: It would be interesting to know the sorts of considerations that have to be made. That would be really helpful. In your submission, you talk at length about the fact that trade credit providers are quite different and are not captured, essentially, by this draft legislation. Have you taken that to PM&C and discussed the way in which the legislation does not encompass trade credit providers?

Mr Stanton: I am not aware of us having had any specific discussions with PM&C. It is possible that some of the telco reps within the working group have had contact separately, but I have not at this stage.

Senator KROGER: So, if the legislation were passed as it stands, how do you think that would affect the industry?

Mr Stanton: It would be highly problematic for the industry. It would impose a lot of additional costs in terms of the system changes that need to be made. It would mean that the complaint-handling processes that we currently employ would need to be changed and segregated to deal with complaints on credit issues. I believe it would impact on customers and on the ability to serve them well. I cannot see that there is a benefit to having a different set of complaint-handling rules for credit related issues when there is already an extensive framework in place which is subject to review by the ACMA and oversight by the minister for communications.

Senator KROGER: Can you expand on the framework that is in place at the moment?

Mr Stanton: Yes, I can. It falls under the TCP Code, and in the submission we have provided some examples of the requirements in there. The rules cover such matters as—

Senator KROGER: What page of your submission are you going to?

Mr Stanton: I am going to page 4. There are a list of dot points there.

Senator KROGER: Okay. Thank you.

Mr Stanton: I am happy to work through those or leave you to read them.

Senator KROGER: Just for the record, could you point out those that will most significantly impact the telcos, where there is a point of difference?

Mr Stanton: I guess what I am saying is that these obligations today are embedded in the telcos' systems for and methods of handling complaints. If you were required to separate those complaints from this framework, you would need to set up a new system and retrain staff. There could be confusion for customers as to how long it was going to take to have their complaint resolved under the separate system to which they were now subject.

Senator KROGER: So you are suggesting there would be two separate streams of complaints?

Mr Stanton: Exactly so.

Senator KROGER: Okay. Thanks.

CHAIR: I would like to pick up on that point. I am interested to see where you say that any changes would mean that you would not be able to service consumers to the same level. Could you clarify what you mean by that.

Mr Stanton: Primarily that is around the complaint handling problem. We have a set of systems in place at the moment. We are further improving those through the revision that is taking place at the moment. If we were required to do that is separately, it would impact on efficiency. Given that there are relatively high volumes of customers and, therefore, complaints that come to the industry—

CHAIR: How many complaints are we talking about on an annual basis, on average?

Mr Stanton: In terms of the total number of complaints made to carriers, there is no consolidated figure. In terms of the number of complaints made to choose the TIO, there were 167,000 in the previous year. In addition to that, far overwhelming the number of complaints are the number of inquiries—the number of customer contacts for things like changes to services, resetting routers, technical problems and so forth, which all come through the same call centres and add considerably to the burden that the industry needs to service.

CHAIR: What is the major difference, then, between the complaints mechanisms and how they dealt with now as opposed to the exposure draft? Could you just outline what the major differences are.

Mr Stanton: In terms of the deadline reporting for responding to complaints and some areas around the advice that needs to be provided to customers, if it would be helpful to the committee I would be happy to prepare a comparison table, if you like, that highlights that and provide that to you.

CHAIR: It would be helpful if you could. So you have not had any consultation at all with the Department of the Prime Minister and Cabinet in relation to the concerns that you have with this exposure draft legislation?

Mr Stanton: Me personally, no. There may have been some contact through some of the working group members, but I am not aware of it. I can take that on notice and provide you with advice.

CHAIR: Are there any timeframes currently regulated for responding to complaints?

Mr Stanton: In the revised TCP code there are provisions around a time limit for acknowledging the receipt of complaint and a time limit for fulfilling a promise made in relation to resolving that complaint.

CHAIR: What are the timeframes now? Are we talking about 14 days or 28 days?

Mr Stanton: From memory, in the revised code we are talking about a five-working-day period for acknowledging a complaint and, I think, a 20-working-day period—it changed in the drafting—for fulfilling a fix that has been promised.

CHAIR: In relation to complaints to the telecommunication industry, would you say that over the last five years there has been an increase in the amount of complaints? Do you have any figures?

Mr Stanton: Over the past five years, yes, there has been an increase. There was a steep increase in 2008-09. In the last financial year the TIO reported on, there was a six per cent decrease. In the last six months there has been an increase. I stress that this is against a background where services are growing rapidly in number and in complexity. We added an additional 3.3 million telecommunications services in Australia in the past year and that sort of growth is continuing. At the same time, the types of services have become more complex and it has been more difficult at times for customers to understand exactly all of the features of their service and their bill. So there are a number of factors that have contributed to that increase in complaints. A great deal of concerted work is going on across the industry now, in terms of investments in systems and processes and in the strengthening of the consumer protections code to try to redress that situation.

CHAIR: I do not expect you to have this with you today but could you provide to the committee some sort of evidence in relation to the number of complaints, the length of time it has taken to resolve those and the percentage that have been resolved to the consumer's satisfaction—if you could take that on notice that would be helpful?

Mr Stanton: I can. I will certainly answer all of the elements of that question that I can. Some of it will be information that is not publicly available because it is contained within the internal records of 100 different service providers. But I will do all I can to answer that question.

Senator KROGER: I have one final question: have there been any cost projections done for the industry to change over to comply with this new credit reporting regime?

Mr Stanton: No, there have not because the costs will vary from provider to provider. Some will have systems that are able to simply put in place a software fix. Some will require hardware fixes and any operational non-system changes probably have not been costed out at this stage. To generate that sort of figure would be quite difficult at this stage. A bit further down the track it may be possible to make a better estimate.

Senator KROGER: Are you aware of any telco providers that are concerned about the implication of the costs on their businesses that they feel that they may not be able to support it?

Mr Stanton: I have not heard anyone say that it will put them out of business but it certainly would be one more impost on the industry which makes it harder to be competitive within the space.

Senator KROGER: Thank you.

CHAIR: Thank you very much, Mr Stanton, for your organisation's submission and for appearing before us today.

GORDON, Ms Helen Mary, Regional Director and Corporate Lawyer, Australian Finance Conference

HARDAKER, Mr Ronald, Executive Director, Australian Finance Conference

[11:07]

CHAIR: I welcome representatives from the Australian Finance Conference. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission. Would you like to make an opening statement after which Senator Kroger and I will put some questions to you?

Mr Hardaker: AFC has supported the move for greater credit reporting information for the best part of 20 years. We support the current legislation. We have made some reasonably esoteric and technical comments within our submission but, by and large, we support the measures. Our members operate in a highly regulated credit assessment and credit procedural area. We have operated under the privacy regime for many years and we see the changes that are recommended by the Law Reform Commission and then adopted by the government as a major step in the right direction.

CHAIR: Thank you.

Senator KROGER: We have discussed this morning at length the inclusion of I think you refer to them as commercial financiers, they have also been referred to as trade providers. Do you have views on that?

Mr Hardaker: Several of our member companies would be commercial credit providers. We believe they should be included. They have been included for 20-plus years. There is no apparent detriment in that and we would support their continued inclusion.

Senator KROGER: And you believe there would be a benefit for them to be included still.

Mr Hardaker: Definitely, yes.

Senator KROGER: What benefit does that present to the consumer? Does it assist them in giving them a platform for a line of credit?

Mr Hardaker: In the capacity in which they are applying—I myself have had my credit bureau file access for commercial reasons, such as when I was entering into a lease of our premises and we actually committed to some commercial building. The credit providers in those positions are able to assess the credit standing. I cannot think of any detriment apart from trying to work out what the inquiry was on my credit report when I got it. Aside from that there is no detriment.

Senator KROGER: Mr Hardaker, you said in your opening remarks that you have been supportive of strengthening of the process for 20-odd years. What would be the main reasons that you believe that this whole credit-reporting process needed to be strengthened?

Mr Hardaker: I think most people expect a certain amount of information about their credit history and activity to be available to lenders. Most are surprised when they fill in the application form and the credit provider might ask for information, because they do not have details—whether it is credit limit or behavioural usage. That enables a more informed credit assessment, which is both in the interest of the lender but also mitigates against any over commitment on the part of the borrower. As I said, it has been a negative bureau for a long, long time. It has been a long time coming to the addition of some positive information or comprehensive information. That will only lead to better informed decisions.

Senator KROGER: What evidence do you have, though, that consumers and potential consumers of more credit are surprised that information is not available and that they are being asked for it—your suggestion just then that people were surprised when asked for further information that it is not already accessible?

Mr Hardaker: I say that in dealing with over many years that have rung up with an inquiry. They say, 'But surely you know that'—you knew about this account or you knew about his other issue. And the answer is, 'No, not in the context of the current negative reporting framework.' I have no wide statistics on that other than that regularly comes up. Indeed, reporting over the many years when people do get access to their credit report, they are quite often disappointed about the lack of detail on its.

Senator KROGER: So by that I can take it that you believe that this will greatly enhance a significant number of people's ability to be able to access credit by improving the reporting process?

Mr Hardaker: I think those that do access credit will go through a more rigorous and more factual assessment process. At the margin, that greater information will lead to a better decision on whether or not that person should get credit, and indeed how much extra or less credit that person should get.

Senator KROGER: Thank you.

CHAIR: In your submission you say:

… we suggest that the definition of a credit reporting business … may be unintentionally broader than the Government's policy.

Can you explain your concerns and the potential impact as you perceive it?

Ms Gordon: Yes. Essentially, as we understand it, there is meant to be a differentiation, and the application of these provisions depends on whether somebody is categorised as a credit reporting agency or a credit provider, and what the definition of 'credit reporting agency' does is blur that distinction because it is a functional definition. It talks about a person handling information in a certain way for a certain reason, and arguably a credit provider, in its normal activities and interchanges with other credit providers as part of a normal credit assessment process, might suddenly find that it is caught up within that definition.

Now, we had some preliminary discussions with the Department of PM&C just to determine whether that was in fact the government's intention—that a credit provider not actually engaging in what we would say is structural credit reporting is intended to be captured here. We understand the policy is that it is not to be, and that then makes quite clear the differentiation between the law as it applies or will apply to the credit reporting agency and the law as it applies to the credit provider. So it recognises that there are two parties, I guess, involved in the process, rather than blurring the distinction between them.

CHAIR: What was the response from the department?

Ms Gordon: They support it. They said that, as a policy matter, the intention is to try to regulate the credit reporting agencies. It becomes blurred in an additional provision which talks about related companies that are part of a corporate group. Where one member of that group might suddenly find that they are involved in an interchange, they try to clarify that that does not make them a credit reporting agency. But what they have done is the reverse: the definition might actually capture other credit providers who are not part of a related corporate group. So I understand the clear policy intention, that a credit provider that is really not engaging in information-handling with third parties for a commercial purpose is not intended to be captured as a credit reporting agency as such. The government's intention was to look at the entities that are out there operating but do not do so on a dominant or predominant basis, which the current definitions hang off. So they are looking to capture entities that are involved in credit reporting but not just as credit providers.

CHAIR: We have received a lot of submissions and there have been numerous comments about the complexity of this exposure draft. Can you identify for the committee your major areas of concern and how the draft could be streamlined?

Ms Gordon: That is an interesting question, and I am not sure I can answer it simply. Essentially, the law hinges on the definitions—that is how it seems to be structured, and we try to highlight its complexity in the illustration that is attached to our submission. In looking at the definitions, you see that each definition effectively builds on another definition. So you spend your time working your way through—it is a circular, tortuous route—to find that you are back to square one and perhaps still a little unclear as to exactly what is regulated and exactly how it is regulated. It is the definitions that go into that: who is regulated, how it is regulated and what you can do in relation to it. Our point is that, if we do not understand what we are talking about because the definitions are so complex, it is very hard to then overlay the actual functional provisions and know how they are meant to work. Put simply, as a process, credit reporting is fairly simple, and I think the law could reflect that. Essentially there are three parties involved. There are the agencies, which are divorced from the individuals involved—and I am talking about customers there. They have a function of centralising data and allowing people, both customers and industry, to access that data and of maintaining that data to enable customers and industry to benefit from it. Then there are the credit providers, who are out there trying to do the right thing by their customers, lend prudently and not overcommit people. They need a process to be able to verify what their customers are telling them in relation to their credit commitments. And then you have the customers. So there are three parties.

This is about providing an additional layer of regulation over the normal privacy general principles regulation in relation to handling information. It is about recognising that people suffer detriment, potentially, in relation to this information, so an additional layer is required. But the question is: where do you put that additional layer? I guess the entity that you might be focusing on is the credit-reporting agency and then an indirect regulation in relation to the credit providers that have fed in the information to that credit-reporting agency. At the moment we

have a very complex outcome in the exposure draft which really does not make those parties and the information being handled clear.

Mr Hardaker: Perhaps a glossary upfront?

Senator KROGER: Did I hear someone say that the definition is quite simple or can be quite simple?

Ms Gordon: Well, that is it. A definition could be quite simple, and that would certainly be beneficial.

CHAIR: Do you have any comments to make in relation to how, if this legislation is passed, we can ensure that consumers are protected by knowing their rights—and the industry, in terms of an education process? Do you have any comments?

Mr Hardaker: I think that, however complex, we are adding to an existing framework of protections where people have been used to inquiring of or complaining to the Privacy Commissioner and/or the individual participants as and when they feel aggrieved or concerned. We are only adding a little bit to that, so I am not sure how much additional public education would be required. People will inquire of the Privacy Commissioner's complaints line or any number of the EDR schemes. They will ring organisations like ours and indeed will complain to the individual credit-reporting agencies or lenders about specific things. That is not going to change. That is what they have always done. There will be a higher role for EDR schemes, but that will streamline itself, I would think, very quickly once the new obligations and requirements are settled and once we work through the complexity of the definitions to come up with a compliance regime that is simple and workable.

CHAIR: In your submission, you comment on the inclusion of commercial financiers being required in certain circumstances to become members of an approved EDR scheme. What impact would that have on the commercial financiers and, just as importantly, what benefits would there be to consumers?

Mr Hardaker: I am not sure of the benefits to consumers. On the additional compliance cost to the commercial lenders: if it is only a marginal part of their normal operations to draw a credit report, the requirement—depending on which EDR regime it is and depending on its rules—may be for all other complaints or transactions to come within the EDR rule. But I see that at the margin.

Ms Gordon: I will add something by way of clarification too. This law is proposing only to regulate in relation to access to the consumer information relating to that person in business. At present, commercial financiers can access, subject to obtaining appropriate authorities from the individual. A sole trader—a delicatessen owner or a pharmacist—may want to increase the amount of credit to put back into the business. The financier says, 'Well, that's fine, but I want to look at your whole credit circumstance,' so it wants to access the consumer component of the file as well as the commercial component to make a decision about whether it is appropriate to extend that credit further. They currently have access, there is no policy reason the government has given to change that access, but what the government has done here in relation to their access is say, 'We'll put effectively an impediment to your access. You will need to be a subscriber to an external dispute resolution facility in order to be able to just access that consumer complaint on the file.' So, there will be a cost to the business, the commercial credit provider, in becoming a member, both a direct cost by actually taking up membership but also in terms of operating risk, because not only does the commercial financier, by becoming a subscriber to the EDR facility, open up concerns a customer may have in relation to privacy and credit reporting issues and that narrow consumer component of their file. They open it up to their whole portfolio, if you like, in relation to it. So it is a matter of policy; nothing has really changed other than there has been this additional layer imposed to prevent that commercial financier being able to look at the whole picture in relation to that sole trader.

CHAIR: Senator Kroger, any further questions?

Senator KROGER: Just one further one. I noted that you raised observations about the legitimacy of including criminal offence provisions in the draft legislation. Could you just make some comments about that?

Ms Gordon: Certainly. Again, I think there was a history in relation to these provisions and the consideration of them by the Law Reform Commission. I understand, and perhaps Ron is in a better position to talk about the legislation as it currently exists and was originally put in, but I understand the policy then was in order to ensure people behaved correctly the appropriate response was to have in place criminal offence provisions so that the seriousness of complying was reflected with the offence provisions. The legislation and approach to the legislation has moved on over the 15 years, and the question is, is it still appropriate to have criminal offence provisions to try and regulate behaviour in relation to the handling of credit reporting information? Or are civil penalties, which are arguably much more able to be accessed, more appropriate? I understand the Law Reform Commission undertook consultation in relation to that and made a decision that criminal offences probably were not appropriate in the credit reporting context because it is not something familiar in the rest of the Privacy Act. I do not believe there are criminal offences for breaching other provisions in the act. So I understood it was a

reflection of, again, modernising the law, looking at what would be an appropriate way to control behaviour or misbehaviour, and they certainly recommended against continuing criminal offence provisions in these new provisions.

Senator KROGER: Thank you, Ms Gordon.

Mr Hardaker: I am not aware of the criminal provisions being applied in the 20-odd years that it was there.

CHAIR: I think that concludes our questions. Do you have anything further that you want to summarise and put on the record?

Ms Gordon: The only comment I would make is that certainly a lot of the questions seem to be directed at consumers and is this going to be a concern for consumers, are there going to be issues for consumers? I think the response from industry's perspective is this is about giving a customer or consumer the ability to be able to have a facility to provide information that allows the credit provider to make good decisions, decisions that will be to the benefit of that customer. I know there is concern that we are going to overexpose the customer, too much credit, whatever. As an industry, again I would say there is no benefit to the industry in giving money to people where people cannot pay that money back. Certainly from an industry perspective underlying all the submissions is the customer. We are focused on the customer and trying to do the right thing by the customer and we do not want to find what we are finding now, that someone gets into a bankrupt situation and suddenly the information that appears on the bankruptcy statements, in terms of liabilities and assets, is very different to what appeared on the original application for credit.

CHAIR: Thank you very much for your submission and thank you both for appearing before us today. We will need to have a short break until our next witnesses arrive. We are changing the program a little; at one o'clock we will have the Consumer Action Law Centre followed by Veda Advantage.

COX, Ms Karen, Coordinator, Consumer Credit Legal Centre (NSW) Inc.

LANE, Ms Katherine, Principal Solicitor, Consumer Credit Legal Centre (NSW) Inc.

[11:37]

CHAIR: I welcome representatives of the Consumer Credit Legal Centre. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission, and I now invite one of you to make an opening statement. At the conclusion of your remarks, Senator Kroger and I will question you. Ms Cox, are you going to make the opening statement?

Ms Cox: Yes, I will. I have not prepared anything, but I think I can manage to make an opening statement. One of our colleagues from another state will be giving evidence after us, later today, and we know she will be focusing on a number of issues, such as serious credit infringements and complaints handling. I just wanted to take a moment to say that we are not going to spend a lot of time on those because we know that she will be covering them, but we do support her concerns in that regard. Specifically, it bothers us greatly that it makes very little difference as far as your credit report is concerned whether you have, simply through an oversight or even something beyond your control, missed the last payment on an account before moving or you are someone who has intentionally run out on a $20,000 or $30,000 debt. Serious credit infringement is a big deal. It is something that has serious implications for people's ability to get credit and, possibly, the price they pay for credit, and we think that the system that looks only at the credit provider's view of what happened at the time and does not take into account facts that later emerge treats a lot of consumers very harshly. I am sure that Carolyn Bond will talk about that this afternoon along with some possible solutions.

The other issue that we are very concerned about is the way that the legislation as currently drafted creates a multitiered complaint process whereby you have to ask for your credit report to be corrected and then get rejected and then lodge a further complaint before you get told about external dispute resolution processes. We think that there should be one seamless process. If people are asking for a correction to their credit report, a rejection of that should be treated the same as any complaint that has not been satisfied. What we would like to focus on today are three issues. One of them is financial hardship—specifically hardship variations on credit contracts and how that will that impact on credit reports under the new system. The second issue we would like to talk about is the amount of evidence required if someone asks a credit provider to substantiate a listing or the fact that any evidence is required—whether it is and what it should be. The third thing we would like to talk about is simply notice under the new system—what notice will consumers be given, how soon after missing a payment will something be listed, what options will people have and what will they be told?

Starting with the first one—and I think Kat might want to add a few things after I finish—under the current system, if you apply for a hardship variation from your credit provider on your loan and you are granted a variation and you comply with that variation, there are no adverse consequences for your credit report. We think this is very important and it is something that needs to continue and the new system. The reasons it is important include that people are very concerned about approaching their credit provider and telling them that they are having problems. We spend all our working lives talking to people who are in that position. One question they often ask us is, 'If I go to them and tell them I'm in trouble and I need help, will that have adverse consequences for my credit report?' We can currently assure them that it will not, but we would not want that to change in the future. If people are faced with possible adverse consequences, they will not do exactly what credit providers want them to and talk to them early and try to resolve their difficulties. They may even be forced to resort to other lending options that may be worse for them in the long run. We have certainly seen people do that in the past for various reasons and we would not want to see more of that happening.

I would also like to note that people can vary their contracts for a range of reasons. A simple variation that was agreed to by both parties should not result in adverse consequences for a credit report. We cannot see why a hardship variation, if done correctly, should not be exactly the same. I know that there are a lot of people out there who think that they have no problem under this type of credit reporting regime because they are really good payers and they always have been. I can say that, after over a decade of advising people who are in financial difficulty, that it can happen to anyone. We have seen some very high flyers lose their jobs in the last few years particularly—people with enormous loans who thought that they would never have problems. We have also seen, obviously, that anyone can fall ill or be injured and suffer problems in meeting their loan repayments. Sometimes those problems are permanent and it is inevitable that it will impact on their ability to meet their loan commitments long term and on their credit report. In a lot of cases those problems are temporary. We would not

want to move to system where people who had temporary problems were punished indefinitely despite the fact that they have got through that, either through being denied credit in the future or through having to pay a higher price for credit next time around. That is not the sort of country that I would like to consider that we have and I would not like us to see us move in that direction, even inadvertently because of the credit reporting system that we had put in place.

The second issue, on the evidence issue, is that one of the findings of the Law Reform Commission was that credit providers should be required to be able to substantiate their listings. I think within 30 days was the recommendation. We are not sure that has been well reflected in the legislation and we think that is a hugely important thing. Again, a default or some sort of adverse listing on a credit report has serious consequences for people. The very least that credit providers should have to do is be able to keep and produce adequate evidence if they are going to make a move to mar someone's credit rating.

Just before I let Katherine add a few things to that, I just want to talk about the notice period. We have a situation at the moment where, before you get a default listing, you have to have been in default for 60 days, you have to be notified and given an opportunity to correct it. Under the new system, where we are talking about an automatic listing of your repayment history, we have no mirroring of that process at all. Notice serves a couple of purposes. One is to simply give people an opportunity to correct the situation, but the other is to enable people to realise that something is wrong and take timely action to correct it. We are concerned that, although the detail of the repayment history stuff is very sketchy in the legislation, a lot of it is yet to be settled in regulation. We are very concerned at this stage that there is so little detail that we cannot judge how that will work. We are also very concerned about the people who could be only one or two days late as a result of whether it can be anything from oversight to delays in payment systems. We think that would be very silly to have a system that starts recording every single little miss in the payment cycle because of the sheer number of complaints that that would generate—and I think that is not a very good reflection of what is actually going on in terms of repayment histories.

Ms Lane: Just adding to that, the real issue here is procedural fairness. If you are going to put a system in place that will cause detriment to consumers, it is extremely important that there is fairness around that system. There are two issues here: the one Karen has been talking about, which is about lack of notice, which is procedurally unfair; but there is also the overall idea of fairness. I might add that we now have unfair terms legislation for the consumer economy-wide—apart from insurance, which I hope will soon be rectified. There are many, many situations that I come across that are just patently unfair and nobody in their right mind would say that they were fair in those circumstances. A good example is the Queensland floods. It is nothing to do with credit worthiness. It is a massive natural disaster. There is nothing in the legislation to assist those people at all. So if we had had this legislation in place they all would have negative credit reports and they would be all coming and complaining, quite rightly, about how unfair it would be to be a situation where you are a victim of a natural disaster and you are in hardship for a decent reason, none of which is your own doing, and you now have a whole heap of defaults—little ones and twos against your name—simply because of that. One thing this legislation is missing is that concept of fairness. At the moment it is not drafted in there, it was not recommended, but I think is critical to reflect community standards about making sure that things are fair on the face of it.

The other example is people in hospital due to car accidents and that sort of thing. The one I find most worrying is the mail goes missing. The mail does go missing. It just gets eaten by snails or ends up down the road. It happens to all of us. You end up with a one or two or whatever simply because your mail went missing. I do not think anybody would think that is fair or a reflection of your creditworthiness. The system has to be fulfilling its objective in relation to fairness.

The other point that Karen raised was the evidence issue. This is critical. As caseworker, I have a case of the moment where I cannot get the credit provider to provide evidence that they had the right to list. I have been to the Energy & Water Ombudsman in New South Wales, I have been to Veda, I am about to go to the federal Privacy Commissioner; I have lodged in the Financial Ombudsman Service against Veda, because I do not think that is procedurally fair. I cannot get the evidence.

Again, I cannot stress this enough, as a caseworker, the idea of having a fair dispute resolution system is to have that evidence be produced. If they cannot provide the evidence, it cannot be on the file. Our legal system is based on is. The fact that that provision was dropped out of the legislation was a serious matter. It is a serious matter for consumers. The credit-reporting system is really a breach of consumers privacy that is done for a greater good in times of sharing information. It is extremely important that, if that is going to happen, consumers must be provided very cogent evidence of why that could be done. If that evidence cannot be provided, the listing

must be removed. As it currently stands, the legislation does not reflect that, despite the Australian Law Reform Commission recommending that requirement. That is the end of the statement.

CHAIR: Thank you very much.

Senator KROGER: We have heard earlier today from a number of witnesses who have given us an account of how a better credit-reporting system will actually provide a greater assurance for a number that will be able to access credit who currently do not have the capacity to do that—and, in particular, women. Do you have any observations to make on that suggestion?

Ms Lane: I have looked at the evidence and I do not think that the evidence is very good. I have reviewed the evidence on a range of issues. One is on the repayment history; they commissioned their own report to advise on whether—I cannot see that that is very good evidence of anything. Again, there does not seem to be evidence to support these things that they keep saying. We are really concerned that there are going to be a lot of people accessing credit who should not, because it does not necessarily follow that people have a right to access credit; credit can be extremely dangerous and harmful. So we are very concerned about any findings—particularly when the government has brought in unsuitable responsible-lending provisions—if those do not work for whatever reason, the idea that credit reporting can be used to just have another situation where people are given too much credit like what happened in the USA, is not okay, and that would be a poor outcome for consumers. It is not a right to have credit, and I do not see any evidence of women—I do not know where the reports are but all the evidence I have reviewed is not compelling, in my view. It is usually commissioned by them to serve a particular thing that they want. So I do not think it is very independent. So, again, I am not persuaded.

Senator KROGER: The assertion, I guess, is twofold; one is that stronger credit-reporting provisions will ensure that people who do not have access to further credit should not have access to further credit, and the stronger credit-reporting provisions will highlight systemic issues which may not otherwise be picked up at the moment. The second thing is that the positive reporting side of it will provide a record, if you like, of people who have a good history of paying accounts and so on that would perhaps indicate that a line of credit should be opened to them. Both of those seemed to be quite plausible arguments; but I hear you disagree.

Ms Lane: No, it is not a complete disagreement. We actually agree that having full reporting in terms of everybody's outstanding liabilities is very useful and it helps particularly where people could not see people's—you know, you just forget something and you could not put your whole situation. So having creditors have access to that is a great help, because then they are able to not give credit to people who should not be given credit because they have too many outstanding liabilities. My colleague can answer the second bit.

Ms Cox: I just want to make two points. One is that over the years that we have been doing it we have seen far more people come to us who have credit that they should not than the other way around, and that is partly the nature of what we do; we see those who have been granted too much credit. But I have to say from my personal and professional experience that I think the idea of being able to build up a credit report is somewhat overrated. I certainly think that people get credit on the basis of their circumstances in terms of their income and expenditure. Certainly a negative credit report will cut them out, but to date this idea that you had to have a credit history built does not necessarily seem to have played out. Certainly plenty of people we have come across with no credit history whatsoever have been able to access credit, even mainstream credit, so I am not entirely sure that that is—well, maybe it is a factor but I am not sure how big a factor it really is. I think there is benefit from being able to see all a person's outstandings. What I am not convinced of is that there is a net benefit from the repayment history information, because we have seen repayment history used in a way where it puts people over the line for being granted credit in circumstances where they should not get credit as often as it might be used in the other direction. So I am not convinced there is a net benefit that outweighs all the potential problems of being able to list so much data about individuals.

Ms Lane: To give an example of that, in regard to credit cards and unsolicited limit increases—which the government has now acted to put in responsible lending obligation because everybody was getting unsolicited limit increases in their letterboxes and there was no assessment of ability to repay—the banks over and over again relied on repayment history, which was just ridiculous and ludicrous in the circumstances, because people were just borrowing from other sources to pay it. So the repayment history is not a strong indicator or anything on those things. In fact, we have evidence of the past lending practices where that was used in a way that delivered extreme consumer detriment: people on Centrelink ending up with $70,000 limits on their credit cards. And the government has acted to try and sort that out. So, even if there were a positive credit history, the weight that could be given to that is very little, given the context of responsible lending. The responsible lending is really clear. All the asset guidelines say is that you have to look at payslips and what you can afford. The positive repayment

history is just such a small matter in that, so I just cannot see that that is supported in how it would work with responsible lending.

Senator KROGER: I guess that rolls over to the prescreening that you raised. Do you want to take this, because it sort of feeds into what you were saying? What do you think? What are your recommendations in relation to prescreening? How would that enhance it?

Ms Cox: We would rather that they did not do prescreening at all. The reason for that is simply that it makes them feel safer about using that as a marketing strategy, whereas we would rather that people applied for credit than having been selectively marketed to. Therefore we oppose any tool that allows them to better direct that marketing, because we do not think it is an appropriate way of approaching people. We think that people are well aware of the availability of credit, that most credit providers have a lot of general marketing out there and that you do not need the personalised marketing that that sort of tool facilities. We have seen a lot of people over the years who have been lured into borrowing far more than they can through that type of personalised marketing.

Ms Lane: Again, it does not fit very well with responsible lending. It just does not fit with the government's views on those things. You go to do that and it just does not fit well. The idea is that people would apply for credit that they could afford to repay. Part of responsible lending was to address the unsolicited credit, and prescreening just assists that to continue.

Senator KROGER: The other area that we have canvassed a bit this morning is the difficulty that many industries may face in relation to keeping the under 18s out of the reporting process and the difficulty that that involves. Do you consider that continues the mandatory aspect of this?

Ms Cox: Definitely. I think we need to protect our young adults from things that they may do before they are of an age to really understand the consequences of that. I really think that it is very important.

Senator KROGER: Clearly it would have to be provided for with legislation, but do you see any way in which that information can be kept but not accessed until they come of age—at 18 or 21 or whatever the defined age limit is where that information could be used—which would then provide a greater picture of their credit behaviour and be one of the many predictors of their behaviour down the track?

Ms Lane: I deal with a number of under-18-year-olds. I have a couple of clients at the moment. We are talking about telecommunications problems here. We are not talking about credit cards and things like that. That is such a minority compared to telecommunications. Most children now have a mobile phone and the vast majority of defaults that are listed on credit reports are from telecommunications providers. They have basically hijacked the credit reporting system. Consumer credit legal centres have been against telecommunications providers being on the credit reporting system, because it is not credit. It is not regulated as credit; it is not credit. But, obviously, we lost that point. But to allow a situation with our under-18-year-olds, who all need a phone, who absolutely have to have a phone because of socials—I have teenagers and you have teenagers, and they all have phones—and to put them on the credit reporting system because of silly decisions on phones would be a horrendous outcome. It is even a problem for the under-25s, let alone the under-18s.

The idea that young people in our society go into their early adult life with a default listing in relation to a phone that they needed because they wanted to text their friends is a really poor reflection on our society if we let those people go in there. Basically, unknown to them, they are sabotaging their whole their whole credit history as soon as they go into early adulthood. We are not talking about a positive here, because telecommunications do not have access to any repayment history or anything like that. We are talking about straight out negative reporting history being put on our younger people. That is not okay. Not only that, but we also have to couple that with what we all know is some shocking marketing practices from telecommunications companies: sitting in malls, targeting young people and selling them phones—I have lots of them. There are people who have intellectual disabilities or who are young people who have signed up for friends—there are a million stories, they are all out there, and you cannot take that really poor marketing situation and couple it with the really bad default listings on these kids. That is just an appalling outcome. So we are completely opposed.

CHAIR: Thank you. With your evidence you have given this morning, do you believe that credit is too easy to come by?

Ms Cox: It certainly has been. Certainly over the past decade, I think that credit has been far too easy for some people to access.

CHAIR: In your submission you write in relation to consumers being able to claim compensation against credit providers:

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

What sort of penalty are you suggesting needs to be in this legislation or the regulations?

Ms Lane: There is some provision. The Federal Privacy Commissioner—or now the Office of the Information Commissioner—has made decisions on compensation in relation to credit reports previously, or settled them not least on the basis of compensation, and so has the Financial Ombudsman Service, so it is not as if we are asking for something that is not already happening. I just think there needs to be a balance for consumers. I think everybody keeps forgetting that this is our credit history and our credit reports—us as people of Australia—and people are putting that stuff on our credit reports; it needs to be accurate. If it is not, there needs to be a penalty system or a compensation system to compensate you for what is really serious—basically it is saying inaccurate things about you in public, and that is accessible to certain people. In law we have lots of things that account for that: we have libel and defamation and things like that. It is not OK to have inaccuracies on credit reports, so there needs to be a balance. We just need to make clear that those things are—sorry, I think I am ringing! I apologise.

I think we need to make sure that there is a system of accountability—and this is also to drive accuracy. If there is no penalty for being inaccurate and no compensation that is going to flow, what is the motivation for accuracy? At the moment my biggest problem is that there is no motivation for accuracy. Somebody can press a button and it is very unlikely that anybody is going to get anything done about it. Choice did a report on the accuracy of credit reports and found seven out of 10 had mistakes on them. I think it is really important that this legislation drive credit providers to be extremely careful and accurate in their listings, and I think that is an outcome that can be achieved by making sure that there is something to drive that compliance.

Ms Cox: The only other point I would like to make before we move on from there is that the consequences for the consumer can vary greatly. It can be anything from minor inconvenience right through to something like not being able to complete the contract for a home loan on time, which has quite serious financial consequences.

CHAIR: Leading on from that, who would collect the money and how would it be enforced, and what sort of compensation are you suggesting?

Ms Lane: We are talking nominal, so it ranges. At the moment the Financial Ombudsman Service goes up to $3,000; the Credit Ombudsman Service does not do much of that stuff. The Privacy Commissioner has settled some matters on thousands of dollars, but we are not talking hundreds of thousands. But we do need to have a system in place, just as we do in every other situation where accuracy is important, to make sure things are accurate. We are not talking large amounts, but we do need to make sure the legislation drives that accuracy. I think there are two parts of this. One is that the Office of the Office of the Information Commissioner needs to have reasonable powers and exercise them to make sure that the accuracy is kept, and that is one issue that is a large issue, because the Federal Privacy Commissioner and the Office of the Information Commissioner have been very poor on this point up until now. So you have to have a strong regulator but you also need to provide some compensation to consumers that matches their actual loss. They will have been inconvenienced; some of them will be seriously inconvenienced. That should be acknowledged in the legislation.

CHAIR: As there are no further questions, thank you very much for your submission and for appearing before us today and also cooperating on the change of times. We will stand adjourned until one o'clock.

Proceedings suspended from 12:05 to 13:00

BOND, Ms Carolyn Louise, Co-Chief Executive Officer, Consumer Action Law Centre

CHAIR: I would like to welcome Ms Bond of the Consumer Action Law Centre. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission, and I now invite you to make an opening statement. At the conclusion of your remarks, Senator Kroger and I will put some questions to you. If you have some opening comments you would like to make, now is the time to do it.

Ms Bond: Yes, I will make a few comments. Generally, a few of the industry members have talked a bit in glowing terms about comprehensive credit reporting. I do not want to go back and revisit whether we should have that or not, but I think it is important to make the point that economically it makes a lot of sense, but it is likely to lead to an increase in credit. It may well also lead to a decrease in the proportion of defaults, but there is nothing to suggest that it might not lead to an increase in the number of people who are financially overcommitted. I might just leave it there. I am happy to talk more about that if you like, but I think that we are yet to find out exactly how this will be used and, when there is an increase in credit, what sort of credit that will be.

We also have some general concerns about the use of credit reporting in marketing or in targeting consumers. We know that the bill is drafted quite carefully to make sure that it is not allowed to be used for marketing purposes, but institutions have very sophisticated customer relationship management systems—much too complicated for me to understand. Perhaps one example is that, while the Law Reform Commission said that it believed that prescreening was not allowed under the current laws, we found out during the process that quite a number of companies were prescreening marketing material, running the marketing material through credit-reporting agencies to take some people off that list. We did not know they were doing it, the public did not know they were doing it and I doubt that the Privacy Commissioner knew they were doing it. So I am really raising that to suggest that there are some risks and sometimes it is very difficult for even the regulator to know exactly what industry is doing.

To move on to the current bill, there are three concerns that I would raise with this. One is in relation to disputes and complaints. I think this is possibly the most important one for individuals. Have a look at ASIC and how they define a complaint. When you complain about other things, such as when you complain to your bank and say, 'You've got my account wrong,' or, 'You've made a mistake,' if the bank says, 'No, sorry, we don't agree,' or, 'We won't fix that,' that is regarded as a complaint that it has not resolved, and it must tell you you can go to an ombudsman scheme. This bill actually forces people to go through two steps to lodge a complaint. You first have to go to the credit-reporting agency or credit provider and say, 'I think that this record is incorrect.' If they come back and say, 'We don't agree and we think it's accurate,' the bill does not consider that you have already made a complaint, even though most consumers would think they have. The bill then requires you to lodge a complaint with the credit-reporting agency or credit provider and say, 'You did not change my record when I asked you to.' That is two steps. It is actually an additional step if you compare it to complaints that people currently make under the legislation that relates to complaints about insurance companies, banks and everything else. I think that will be a real problem for consumers, who will not understand why they have to lodge a complaint twice. The simple way to deal with that is to regard the consumer saying, 'I think there is an error in my credit report,' as a complaint for the purposes of them being able to go to external dispute resolution if it is not fixed.

The second point is: when people raise issues about accuracy there is a very low obligation on credit providers or credit-reporting agencies to really do something. They have no obligation to investigate. Basically, if I say, 'Can you correct this information,' the bill says that before the credit provider has to do anything else they have to be satisfied that the information is inaccurate. There is no obligation on the credit provider to be even satisfied that it is accurate. There is no obligation to investigate. We are thinking that people will go along to a credit provider and the credit provider can write back and say, 'I am not satisfied that that is inaccurate,' and there is no further obligation on the credit provider. The ALRC actually recommended that the credit provider or credit-reporting agency provide some evidence or prove that the information was accurate. The government accepted that recommendation, but it has not come through in the bill.

Finally, we continue to have concerns about serious credit infringements. We have been talking to some in the industry about that though and I am hoping we will be able to come forward with something that will satisfy a number of parties. But, at the moment if you were in a group flat or something and your name was on the electricity bill and you forget to change it and someone did not pay it, you end up with a serious credit infringement, which stays on your credit report longer than bankruptcy. The main reason for industry using this is

because of fraud. So from some relatively innocent conduct you can end up with something that lasts longer on your credit report than bankruptcy. We think that that is unfair on people who are not actually being fraudulent.

CHAIR: I want to pick up on something that you touched on in your opening remarks. Can you expand on your comments on the extent of the use of prescreening and the groups of consumers who have been disadvantaged by prescreening? Have you raised your concerns with prescreening with Prime Minister and Cabinet?

Ms Bond: We have raised this a number of times and we have talked about it in our submission. I think there are two issues I am trying to address in relation to prescreening. One is I am simply using it as an example of something that the Law Reform Commission and we say is prohibited under the current law but is being done anyway. We need to be careful that the new laws are monitored. It can be very difficult to know exactly what is happening behind the scenes within credit-reporting agencies and credit providers. I will put that bit aside.

Our concerns about prescreening are that it is a marketing use of credit-reporting information. It is difficult to say that someone was screened out of marketing and therefore they are damaged or someone was not and whether an individual suffered. It actually means that credit-reporting information is being used to make marketing campaigns much more efficient. They can target the marketing better. They save on having to send out so many offers. Our concern is: if industry knows that offers are being targeted only to consumers with good credit records, for example, they can also afford to be a lot more aggressive in their marketing. For example, if I know I am sending material out to a limited number of people who have got good credit records, I might say, 'Congratulations, you deserve gold'—I can be much more effusive about my marketing material than if I know I am just sending something out to everybody on my mailing list.

CHAIR: In the submissions we have received, arguments have been put forward that this legislation will bring about better credit reporting and improve access to credit for some individuals who currently cannot access credit but it will also lead to lowering the default rates. Do you have any comments about that and the sorts of benefits that have been argued for the economy and consumers generally?

Ms Bond: I think if you assume that people using credit and repaying credit is good for the economy then I think it will be good for the economy, but I think what is good for individuals and consumers is a bit more complex than that. I do not think anybody disagrees that we will see more credit. It is possible that we will see a reduction in defaults. On the other hand, some lenders might say, 'Instead of reducing defaults we can just lend more and keep our default rate at the same level.' Using this material does help risk assessment, but I might decide: 'I've got a 0.3 default rate at the moment. Rather than trying to reduce that default rate, instead of lending $1 million a year I might try and lend $2 million a year'—I might just try and lend more.

Just lowering a default rate itself does not necessarily make something profitable for a lender. Some lenders have products that are designed for people who are more likely to default and have higher interest rates. So I do not think we can just assume that that necessarily is good. What we do not know is what extra type of credit is going to be offered to these people that cannot get credit now and will get credit in the future. Are they going to be personal loan products or things like that that might help them get a car so they can go to work, or are we going to see more of what we call track-type credit, where you sign up for interest free for three months or six months and then, when you do not pay, the rest of your debt is at 30 per cent or something like that? We just do not know. Industry might have a view. I just do not know what sorts of credit we are going to see. One sort might be good; one sort will not be so good. I just do not think we know until we see it in action.

Senator KROGER: Thank you very much for your submission. Can I go back to your opening statement where you referred to the question of accuracy and that there was, if not no, then low obligation on the accuracy of information. How would you suggest that that could be strengthened?

Ms Bond: I think there should be an obligation on the credit provider or the credit reporting agency to provide some evidence that that listing is accurate. I do not think that means you get the person who delivers the mail to stand up and say they delivered a letter at a certain date. But there needs to be some obligation to put forward some proof, some evidence, some records to actually show that it is appropriate for that to be listed at the time. As the bill stands at the moment there does not even seem to be any obligation on the credit provider or the credit reporting agency to take steps to ensure that they are satisfied themselves, let alone provide any proof to the consumer. So we are a number of steps away from what was recommended and accepted by government.

I will give you an example we see regularly with old debts that are sold. Someone says to me, 'My name is Jane Smith. A debt collector is chasing me—they have put me on a credit report. They say it is for a Telstra bill that was in Victoria. I have never lived in—Victoria in my life.' You think, 'Well, it's old, and they have obviously tracked someone down with very few identification details.' But when that person says, 'I don't owe that money. I

never had a bill in my name. I can show you that I've lived in Queensland all my life–I have never lived in Victoria,' what we get from a credit provider–the purchase–is, 'You send us all the details to prove that you've lived in Queensland. You send us your leases and your electricity bills'.

Now, she is saying, 'That has never been my debt,' so why should she have to take a couple of days off work and actually get years of documentation to prove that she has never lived in Victoria, when the credit provider cannot prove that it was her. The onus should be on the credit provider to prove, first of all, that they have the right person.

Senator KROGER: This morning we heard witnesses suggest that there should be an independent arbiter in this. Do you believe that is the case, that it should not be the credit-reporting authorities themselves that oversee some of this?

Ms Bond: I have not heard that suggested. Certainly, when a complaint is not resolved we support it being able to go to the ombudsman schemes. At the basic level, I think–and I cannot give you the detailed answer–when I contact a credit-reporting agency or a credit provider and say, 'I did not default on this date,' or, 'This isn't my debt,' or, 'You've got something there that is not my record,' the industry has to have a specific responsibility to take some action, even if it is at the minimum to satisfy itself that that is accurate. That needs to be something that can be audited and examined so that if a complaint is made then the regulator can actually say, 'You did not take enough steps to satisfy yourself'. We have had concerns at the current obligation, which is that credit-reporting agencies are responsible to take reasonable steps to ensure information is accurate.

It is totally unhelpful! Someone says, 'I just don't think they're really looking into this, and they're not really responding to my complaint,'–that is a very weak obligation. I think that when someone says, 'That's not accurate; that's not me,' there needs to be some obligation. Ideally, they need to have some proof that that record is correct.

Senator KROGER: Where do you think the obligation lies in expanding this brief to encompass positive reporting? Where do you think the responsibility lies in informing the public of these changes, and the implications for the consumers?

Ms Bond: It is certainly something that consumer organisations really have not got the resources to do. It really is something that needs to be done. I think industry can play a role, but government also needs to play a role; it is quite a major law reform.

Senator KROGER: I am thinking of those who are probably most plugged into consumer groups. It is one thing to run a radio advertisement that people are tuned in to, but where is the most effective level of introduction to it so that we can sufficiently advocate the changes and the implications for the individual, and the opportunities that it presents to them to advance their own particular causes?

Ms Bond: It is a difficult one. Obviously, our organisations tend to see people who are lower income or perhaps more vulnerable, but also people who have disputes and complaints. From our point of view, we put information on our website, have newsletters and things like that. I assume there is also a much bigger group who do not have problems but who really need to know about this. I think that almost everybody has a credit report so, unlike some of the things we deal with where there are only small groups that have an issue, there probably does need to be quite a widespread campaign, I would have thought.

Senator KROGER: We have also talked at length this morning about hardship variations and the need for flexibility to provide for hardship for whatever reason, but the need for that not to be a part of the credit reporting process over the long term. I think you touched on that briefly and you refer to it here. One of the difficulties of course is in the definition of 'hardship'. Do you have any observations on that?

Ms Bond: I was just reading the Credit Ombudsman's submission, I think, suggesting that if variations are made then really the credit report should reflect whether the contract or the variation is being met. I have some support for that, the problem being that sometimes people might ask for a variation when they think that they are about to have a baby and things are changing and they are not necessarily in hardship but their circumstances are changing. The last thing we want is for people to feel that as soon as they approach their lender and discuss their circumstances there is going to be some sort of hardship stamp.

I think that one key thing we want to get out of this is that we want to make sure that somebody who approaches their lender about a variation or even a hardship is not worse off in relation to what is on their credit report than someone who does not do that. We tell people to talk to their credit provider early. What we do not want to see is someone ringing up a credit provider and saying, 'Look, I am not in default at the moment. Things are getting a little bit tough. Can I pay a lower payments for six months?' If that were flagged as hardship automatically, I think that you would find that people just would not do it unless they absolutely had no choice. I think we need to encourage people even before they are in hardship to say, 'Just in case,' or, 'Talk to your credit

provider early.' Clearly, if people default and then they ask for hardship later, there will be a default on their record. But I just have concerns about noting hardship where perhaps somebody is wondering whether they should talk to their credit provider or not. We do not want people to say that they had better not because they might be worse off if they speak to them.

Senator KROGER: Just in closing, it was suggested also earlier on that there are industry standards, such as those in the telecommunications area, that provide for the way in which these matters are handled. Do you believe that it should be left to the industries, as opposed to being separately regulated for, for them to have their own different standards rather than one overarching regulation that in some instances may actually even be in conflict with existing industry regulations?

Ms Bond: That is a loaded question, isn't it? We really need to be careful in that credit reporting covers so many different industries and even though, for example, hardship might be dealt with quite differently from a credit card or a mobile phone or something, we do not want people saying that they have a credit reporting dispute or complaint and then finding out that if it is one sort of bill it is dealt with in one way and if it is another sort of bill it is dealt with another way. I think that is quite difficult. I am concerned that consumers, but also organisations like mine, need to be really clear, if you are dealing with a credit reporting concern, what applies rather than having totally different guides depending on which industry it is.

CHAIR: In your submission under Serious Credit Infringements, you say:

We feel that the exposure draft will allow serious credit infringements to be listed against consumers unjustly, leading to very serious detriment for those consumers.

And then you go on to make recommendations relating to credit providers that have security over, perhaps, a debtor's home. Can you elaborate for us, with a bit more detail, what you mean there?

Ms Bond: Serious credit infringements have often been a problem. I know if you talked to industry they would say this is really to catch people who might be fraudulent early on. I do not know about the guidelines of the other credit reporting agencies but I understand Vida have had a guideline that says to its members, if you cannot contact that person or they have moved address and you cannot contact them, you can list a serious credit infringement. Some years ago now we saw a series of serious credit infringements, which were listed as clear-out—which is interesting, so clear-out suggests you have left without paying your debt—but this lender had put a caveat on their house, and these people were still living in their house, so it is a little bit hard to understand how you could be a clear-out when you are still living in your house, and of course there is a caveat, so you would not have been able to sell your house and move anyway. Another example was we had clients who had not told the credit provider of their change of address, but the credit provider knew where he worked, and they were actually on the phone to the credit provider through his work, so there was a contact. So even though they were negotiating over the phone, of course the mail goes out, comes back to the credit provider saying 'Not known at this address' or they have moved, and of course—bang! A serious credit infringement gets listed.

So I think under the current system, serious credit infringement is being listed in cases where what the person has done is much less serious than a serious credit infringement. I do not know if trying to break a peanut with a mallet or something like that is a good analogy here, but I think industry would say, 'We want a flag whether people are likely to be fraudulent. We do not want to have to prove they are fraudulent, but if someone goes and gets an account and disappears, we really need some sort of flag.' But the problem is that the system they have got for that flag catches a lot more people than are really meant to be caught. And of course if you say, 'I have been overseas for three months, I thought I had paid that credit card off. I did not realise there was $100 owing on it'—sorry, serious credit infringement: that is there now for seven years. 'Sorry, that is it.' You cannot do a thing. So it is based on what the credit provider thinks at the time, even if later on the credit provider might think, 'Oh well, if I had known they were only overseas and they were coming back, or if I had known the person was in hospital,' or something like that, and there was a reasonable excuse, 'I wouldn't have listed it.' But at the moment, once it is listed, it is there for that entire period of time, and it sends out a pretty scary flag to anyone who is likely to lend you money.

CHAIR: Great. In relation to identity fraud, we have had evidence presented to us, and it has been noted in some submissions, that these measures will help alleviate some of the concerns relating to identity fraud. From a consumer's point of view, have you got any comments to add?

Ms Bond: Probably all I would say is, having dealt with a few clients who have had these issues in the past, the problem has often been is that it is left with this individual, who is in this really frightening situation of trying to change records and contacting all these different credit providers. We did have some concerns about if there is a flag and who controls it. We did think that the idea of actually being able to just block the record seemed to make some sense to us. But I probably do not feel confident to argue in detail what exactly should happen there.

CHAIR: I thank you for this submission, and also taking the time to appear before us today.
Ms Bond: Thank you.

CAESAR, Ms Nerida, Chief Executive Officer, Veda Advantage

GRATION, Mr Chris, Head of External Relations, Veda Advantage

MATTHEWS, Mr Rory, Chief Operations Officer, Managing Director International, Veda Advantage

[13:30]

CHAIR: Welcome. I remind you that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission. I will now invite you to make an opening statement at the conclusion of which Senator Kroger and I will put some questions to you.

Ms Caesar: Good afternoon, Senators. Firstly, thank you for allowing us to appear before you today. I have only been with Veda since the end of February. However, I have worked in the digital economy for over 25 years: some 20 years with IBM and the latter years with Telstra. Veda is here to say that we do support the long-awaited legislation and its commitment to better information on credit reports. Our appearance today is to emphasise the support for prompt passage and to suggest ways to create stronger governance and a simpler bill. The bill is three times longer than the existing legislation. Our submission calls for simplification, including streamlining the definitions and ensuring that the use and disclosure of information are clearly aligned and set out. We also have recommendations for achieving stronger and more durable governance including moving some operational detail into the industry code of conduct and making credit reporting agencies responsible for data quality.

The changes to credit reporting are the result of exhaustive process. Between 2006 and 2008, the Australian Law Reform Commission produced an issues paper, an options paper and finally a position paper with some 46 recommendations to reform credit reporting. The government's formal response came in late 2009. In January 2011, draft legislation was released—the same month as new responsible lending laws became mandatory. The government has publicly stated that it wants credit reporting reforms to pass parliament by mid-2012. And, after a six-year process that spanned the credit boom and the global financial crisis, we are very keen that goal of mid-2012 is met.

The proposed reforms are good public policy and an important tool for responsible lending. By making it easier to identify high- and low-risk customers, information asymmetry will be reduced for lenders and consumers. Access Economics estimates the acceptance rate for new-to-lender customers is only half that of existing customers, and the single largest reason for rejection is the quality of information provided. For consumers, the capacity to demonstrate good credit behaviour makes it easier to switch lenders or negotiate a better deal. Where a consumer has defaulted in the past, positive data enables them to show they are once again able to meet credit commitments. The research is definitely consistent: better information leads to better risk assessment. This was the conclusion of the researchers Barron and Staten. They looked at credit applications made under a positive reporting regime and compared that to Australia's current credit reporting system. They modelled approval rates of 40, 60 and 75 per cent and found that, at each point, the default rate was lower under positive reporting. For example, a target acceptance rate of 60 per cent would have a 3.35 per cent default rate under negative reporting but would decline to 1.9 per cent under positive reporting. Similarly, Barron and Staten modelled a target default rate and found acceptance rates were consistently higher under positive reporting. Both show more accurate lending practices under positive reporting. Certainly, that has been the outcome in some of the international markets such as Hong Kong, where the introduction of credit reports led to bankruptcies dropping by 45 per cent in 2004.

So credit reporting is and will remain very tightly controlled. It is bound by Australian privacy principles, overlaid with part IIIA of the Privacy Act, accompanied by regulations, topped by an industry code of conduct, and all of it is subject to audit by the privacy commission. That level of control is quite unlike the breadth and depth of regulation in any other industry in the information economy.

While our recommendations do not seek to alter that structure, we believe some changes are needed to ensure stronger governance and a simpler scheme. Many submissions noted the multitude of definitions. We seek your support to revise that approach and suggest a cornerstone definition, 'credit reporting information'. Use and disclosure requirements can then be built around this. Also, for simplicity, it is highly desirable to align permitted disclosures and uses between credit reporting agencies and lenders, and re-draft them into a single table. Regarding governance, we believe operational detail is typically best left to regulation or a code of conduct. Prescribing operational matters—for example, detailing each step required to implement a ban or a freeze on a

credit report—is, we believe, unnecessary and counterproductive. Give us the obligations and the outcomes you seek; we will make them happen, and the opportunity is then created for us to develop innovative ways of meeting them.

The draft bill allows the collection of more complex data and, with that, proposes a greater obligation with regard to accuracy. We believe the legislation can best achieve that by explicitly making credit reporting agencies responsible for compliance with these data standards. This is particularly important when credit reporting agencies face very substantial penalties—millions of dollars—for breaches. Regarding penalties, Veda are concerned that the bill does not allow for a reasonable mistake of fact. Strict liability offences are not appropriate for credit reporting legislation, and we do seek your support for a more reasonable approach.

Our submission also makes recommendations to improve obligations to consumers. We have a 100-person call centre and investigations team, we are a member of two external dispute resolution schemes and we host regular forums with consumer organisations. We believe membership of external dispute resolution schemes should be made mandatory for all credit reporting agencies. We have also called for tough measures to safeguard the vulnerable against the so-called credit repair industry. Third parties should not charge for a consumer report or for correcting information on a report. Those are activities that credit reporting agencies provide as free services. We seek your support for provisions to that effect.

Today I have with me Rory Matthews, who has a lot of experience in international markets moving to positive reporting environments, and Chris Gration, who has been with Veda for six years and heads up our government relations team. We are happy to take questions. We thought, first, if it is agreeable, we might comment on a couple of matters from this morning.

CHAIR: You have the floor.

Ms Caesar: There are three items we picked up from this morning. Firstly, Senator Polley, you raised the aspect of education, and we just wanted to state that we do believe there should be an education campaign funded by the broad industry, they being the lenders and credit reference associations. We do believe that is very important aspect. Secondly, there was some discussion around the complaint times. We do have sympathy for consumers over complaint times and we believe there should be a general guideline given in terms of getting a response. Thirdly—and I will ask Chris to comment on this—there is an issue around the benefits for currently excluded groups that was commented on earlier this morning.

Mr Gration: Senators, I understand that you had questions this morning about people who had otherwise been credit-excluded in the Australian credit industry, and what research there was showing numbers. Certainly, in the case of women, for example, who may have missed a payment during a relationship break-up, our own evidence shows that women often become very good payers again very quickly; but, because under the current negative system the default sits on their file for five years, it is quite hard for them to get credit. So, under a positive reporting system, those women would find it much easier to establish that they have become good payers. In terms of the evidence of that, we have some data from a Galaxy survey we did some years ago which we could make available to the committee. There is also some research in the United States that does not deal specifically with women but rather with minority groups, and that might be of interest to the committee. Finally, there is a deal of evidence from the United Kingdom about financial exclusion and the importance of more comprehensive credit information to deal with financial exclusion, and if the committee is interested we can make that available as well.

CHAIR: I think all those additional pieces of information would be appreciated by the committee, so thank you.

Senator KROGER: Following on from that is one of those issues where there is a separation, where one of the parties, through implication, is involved in a difficult situation re compliance of payment or whatever and that goes on the record for some time. Is that part of it—where they may not have been directly responsible but their name is on the loan or whatever?

Mr Gration: That does happen, but even if it is more straightforward we know that a lot of overcommitment and default happens when people's life circumstances are disrupted, either by a period of unemployment or illness or, as happens quite frequently, when households and relationships break up. During that comes, obviously, financial disruption for both sides. Bills can go missing; there is some confusion around financial arrangements, and it is not difficult in those circumstances for consumers to lose track of their financial circumstances and find that they have missed payment of a telco bill or a credit card. They have done that over some time, some months.

Senator KROGER: But a short-term consideration.

Mr Gration: That is relatively common. At the moment, if they have not paid them and the law says 60 days, in practice it is actually much longer than that before it will end up on our bureau—much closer to 120. But the problem at the moment with the negative system is that that default sits on a consumer's file for five years, and it makes it quite hard for them to get credit. We know, anecdotally and from our own research and other research done in Australia, that both parties usually establish themselves as good payers again pretty quickly—in particular, women. One of the paradoxes of retail credit is that women are often a better credit risk but, for a whole bunch of reasons, face financial exclusion. So one of the arguments for positive information is that it provides an objective record which women in those circumstances can use with a credit provider to establish that they are a good credit risk and can indeed use that to shop around and argue for a better rate.

Senator KROGER: So when do they go on a list as being reported as a risk? Is it 120 days or less than that?

Mr Gration: The law says 60 days. It is at least 60 days plus 30 days, because the financial institution, under the current guidance will give written notice to a consumer that if they do not pay there will be a default made on the bureau. In practice—and it can vary from institution to institution—it can be much longer than that before it ends up on the bureau.

CHAIR: Are there any further comments? We will continue with questions. In the submission on page 15 you made comments in relation to credit repair organisations. Could you give the committee an indication of the number of these organisations and the number of consumers that are using them?

Mr Gration: That varies from territory to territory and from country to country. When the repair agencies set themselves up, their primary goal is to provide a service which, as Nerida said, is free. A consumer will go to a credit repair agency not familiar with the process, not familiar with a credit bureau generally—the type of data which is available—and request that that agency try to repair their credit or convince the credit bureau to remove that default for whatever reason, and they charge a fee for that process. In reality, a consumer can phone a call centre directly and get exactly the same service, better advice and swifter resolution than going through a repair agency. What we are saying is that these credit repair agencies are an unnecessary addition and confuse the consumer as to what the actual process is that they have, and they charge a sizeable sum in some circumstances. With the addition of positive data it becomes a lot more complex, the level of data which is on the bureau, and perhaps a bit more confusing for the consumer to understand. Therefore, the service that we offer from a call centre perspective is vital to helping the consumers.

CHAIR: So from your experience, are there any overseas jurisdictions that ban these credit repair organisations?

Mr Matthews: No, not banned but they are certainly frowned upon as an organisation which is just taking advantage of consumers who are ill-informed or unsure of the process that they have right to.

CHAIR: The jurisdictions, we are talking about the US?

Mr Matthews: The US, UK: in just about every country which has credit bureaus with positive type data, you do get these repair agencies. The less informed the consumer, or the more ignorant the society is of a credit bureau's activities, the more likely they are to prevail.

Mr Gration: In Australia there is a whole range of organisations that operate in this space from very small, almost garage-type concerns to quite large companies that are involved in assisting consumers to put together, for instance, nine or 10 debt agreements under the Bankruptcy Act. Our submission does not argue that the business should be prohibited. What we are focussing on in particular is the charging by those organisations, with terms that are quite excessive, for services that they have a statutory right to under the Privacy Act and which we and other bureaus provide for free—for example, for access to a credit report or for correction of a credit report. In the United States, the Federal Trade Commission has played a constant game of cat-and-mouse with agencies that advertise free credit reports and then end up charging consumers hundreds of dollars for access to those free credit reports. There is probably widespread agreement amongst industry and consumer and privacy advocates, and probably regulators as well, that if we could avoid that in Australia it would be a very helpful thing indeed.

Mr Matthews: Typically the modus operandi of those organisations is that they will come to organisations such as Veda and request the report which could be for free, pass that on with a bit of advice to the consumer and charge an excessive amount for that, and we have an issue with that.

CHAIR: If we move onto a dominant purpose test, on page 17 of your submission you allude to it not being in the new draft. Can you outline to the committee your concerns and why you have concerns in this area?

Mr Gration: The dominant purpose test was part of the original part IIIA definition. In all of our submissions over the past couple of years to the government we have supported retention of a dominant purpose test. Effectively what that does is say that it is not enough just to have the incidental activity of something that looks

like credit reporting in your business, it needs to be part of the dominant purpose. The government has not chosen to go that way, and our concern is that the effect of that is to make a whole bunch of organisations involved in the credit industry effectively credit reporting agencies. For example, most credit providers in Australia under the current definition would arguably be credit reporting agencies and I think it is the intention of the government that they be excluded by regulation. We think that is an untidy and unnecessary way to go about regulating the industry. We think that if you retained a dominant purpose test there would not be a need then to exclude credit providers from that test and it would mean that the focus of the legislation should be where it best should be—that is, on credit reporting agencies. It is credit reporting agencies that should be the focus of the regulators' attention and the focus of the statute, because credit reporting agencies have most of the data and much of the economic incentive to do the things that the parliament expects in terms of data quality and access and correction and all of those things that are part of the regime.

CHAIR: If we then move onto credit reporting provisions, some of the submissions argued that it should not be included in the act but rather in the schedule or the regulations. Do you have any views on this matter?

Mr Gration: I think it needs to be a lot simpler. The old act has got 20-odd pages of B5 and that has become a hundred pages of A4 and still counting. It seems to us that it must be simpler. Whether provisions appear in statute or regulation does not make all that much difference; we just think the drafting should be a lot simpler. We think the code should have the capacity to deal with some of the operational complexity. I understand the committee has had evidence about the different standards around complaint times in different industry sectors. They need to be resolved. Twenty years ago when the last code was put in place, there weren't that many codes; there now are. The best place to make sure we have got a flexible response time that still gives consumers a right to get speedy resolution of their complaint is in a code of conduct. I think we would say all regulations should avoid heavy prescription where possible. The definition should be simplified, and then if there needs to be prescription of operational detail that is it best left to a code

CHAIR: One more question before I hand over: we have talked throughout the course of the day in relation to whether this new draft legislation is going to assist with preventing identity fraud. You suggest that the fraud flag rather than a banned period be considered for consumers that may be affected by identity fraud. Have you got any further comments on that, or is this an issue that you have taken up with Prime Minister and Cabinet?

Mr Matthews: Yes, we have been talking to PM&C about some of these issues for some time. There are two issues: one is, once they realise they have got a problem, they need help getting that resolved. Our call centre currently, the one that my CEO referred to, will assist consumers in those circumstances. If they ring us, we will make the calls to the credit providers on the consumers' behalf, and it is important that that continues. The second thing that is important is that the consumer can protect themselves from the information being reused in a further credit application. Whether that happens by the CRA taking some action around the credit report or credit providers themselves responding to a flag that tells them they may need to review an application and take extra care does not really matter, but there needs to be a symptomatic response. Our concern with the provision drafted in the legislation is it is one of those examples of incredibly heavy prescription telling CRAs exactly how to carry out a process. Our experience of part 3A is that that is not a very good way of dealing with the information economy; it is better to describe an outcome and then require the parties to meet that.

Senator KROGER: I have one follow-up question because you have really covered it and that is in relation to the second last question that the chair just asked. How enforceable would the regs be if they were taken out of the act and kept in a code of conduct? In other words, in trying to simplify the act to make it more user-friendly, if you like, does that restrict the enforceability of the various regs at all?

Mr Matthews: I think the intention should be to regulate the use of data and ensure that we have the right privacy regime around the use of data. Where it gets to more intricate issues such as what was the leader to the shutting of a file and the opening of a file in the event of potential fraud taking place, that is an attempt, I think, by the drafters to try and make this a perfect bill from day one. This is new territory for Australia, although not for the rest of the world, and we need to, when it comes to certain business issues, be in a position where we could perhaps influence and mould how we are going to take certain actions around certain events. A code of conduct, which is quite normal in most countries where this is actually drafted and put into a code of conduct, gives us the ability to do that. The code of conduct obviously has to then comply with whatever regulations or legislation is in place around the use of data. That is primarily what this bill should be focusing on.

Senator KROGER: Given your experience with other jurisdictions, is it the case that this is an area that is continually evolving, so it does require some forward flexibility down the track as other scenarios present themselves?

Mr Matthews: No, a lot less than one would think. Once the code of conduct has been drafted, very few changes are made to it. Obviously that code of conduct will be ratified by the Privacy Commissioner—whoever is engaged in the process. This is not a moving target. It will be a code of conduct which both industry and lenders are happy with and which meets the terms of the legislation, and any consumer groups who might have concerns around it. Once it has been drafted it is fairly static. To try and put all the nuances into a bill from day 1 is extremely hard to do, I would say.

Senator KROGER: So it is not an area where we have, dare I say, sophisticated fraudsters who are trying to abuse the system through identity fraud and so on?

Mr Matthews: That is a good example. What has been mooted in the bill is the ability to shut down a file, close a file, while under investigation in the event of potential fraud. Once a fraudster understands that that is the process, that is open to abuse. For instance, a file could be shut. During that period the credit referencing agency may not update that file. So in the interim a consumer might have gone bankrupt. We cannot update that file. You can quickly open that file and apply for credit and shut it again. So it can be abused if you know how the system works, and that is a typical example of where you are trying to put together a bill which encompasses all events for fail in an attempt to do that.

Mr Gration: I would like to add to that, back to the original purpose of the drafting. You asked the question about whether a code is enforceable. I think there are two critical parts to that. One is that it is now clear that the code will be mandatory under the act, subject to the jurisdiction of the commissioner. Although we have not seen the powers of the commissioner as drafting it, I think there is pretty widespread agreement that they will be even more extensive than they currently are in this industry—powers of order, powers of direction et cetera. As well as that, one of the inferences in your question is about how you achieve the appropriate degree of intensity, which clearly the parliament wants, on this very sensitive information. Do you get it by detailed prescription and adding even more to it or do you get it by making sure that you have good data governance that is accountable. Our view is the latter. Perhaps the parliament can make clear the framework and the outcomes it wants in statute and then leave the rest to regs and code so that, as Rory said, if things change around identity fraud they can be responded to in the code. The commissioner can hold credit reporting agencies accountable—for instance, through the data standards—in the system, and then you get data that is quite tightly governed but in a framework which has enough flexibility to respond to changing circumstances. One of the difficulties we have with the current drafting is that it does not allow that. We have supported, right from the ALRC, quite strong powers for the commissioner in this area. That is because we think that there needs to be a shift away from detailed prescription and checking of boxes to oversight of the data, by the industry's own standards, by the CRA's and by the commissioner.

CHAIR: Is there anything else that you want to place on the record in terms of the points that you see where there needs to be more emphasis or strengthening in the drafting? Now is the time to put that on the record. That concludes our questions, so, if there is anything else in terms of your priority about any changes, now is your opportunity to place it on the record.

Ms Caesar: Only to support what we have said today, which is for simplification and meeting the timeline, given the extensive history and years that this has been in discussion. Those would be our two key points.

CHAIR: Certainly as a committee we will be doing everything we can to get this off our plate and into the parliament, I can assure you. As there are no further questions, I thank you for the submission and also for taking the time out of your day to attend and give evidence. I thank Hansard and the secretariat for their ongoing work, and I also thank Senator Kroger for coming along. It is a very detailed and complex piece of legislation that will take some time to work through.

Committee adjourned at 14:00