

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

23 – 24 February 2011

Question No: AET 166

Topic: Credit Regulations - Watchdog

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Senator Williams asked:

Senator WILLIAMS—I have been informed that there is no watchdog, no-one overlooking that industry at all—and if they make mistakes, so what. I have a close friend who applied for a credit card many years ago and it was wrongly reported that this person had not paid a \$120 account. And now I am getting information that they are going to not only track whether you pay accounts or have blacklistings but also at what time you pay your accounts and how big the accounts are. There is talk now, I know, in the finance world about getting more information. I am just concerned that we do not have any watchdog over that industry whatsoever—that they are just a free dog, basically.

Mr Samuel—I am not sure that there is no watchdog, Senator, but I would have to say to you that since the carve-out of financial services from the ACCC's jurisdiction which followed on from the Wallis inquiry—I stand to be corrected but I think you will find this—that issue is entirely within the jurisdiction of ASIC.

Senator WILLIAMS—I will put a question on notice to Mr D'Aloisio at ASIC and see if he can help me.

Senator Sherry—Why don't I take the question on notice for the minister and the parliamentary secretary?

Senator WILLIAMS—That would be good, Minister.

Senator Sherry—We will get some advice on this matter as to who oversees the area. It is an interesting point, Senator.

Answer:

There is active regulation of the industry that covers the types of information that the credit industry utilise.

The Office of the Australian Information Commissioner, has scope under the *Australian Information Commissioner Act 2010* (AIC Act) and the *Privacy Act 1988* (Privacy Act) to determine how such information is managed.

For example, section 28A of the Privacy Act confers functions in relation to credit reporting such as investigations of credit infringements by credit providers and credit reporting agencies; audits of credit information files and reports; and advice and guidance to relevant parties.

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Credit reporting is regulated by Part IIIA of the Privacy Act. Part IIIA contains detailed and prescriptive requirements that credit reporting agencies (CRA), credit providers and certain other parties must comply with when handling individuals' credit-related information.

The key requirements of Part IIIA include:

- Limits on the type of information that a CRA can hold on an individual's credit file, and how long it can be held on file (eg 5 years for defaults).
- Limits on who can obtain information from an individual's credit file held by a CRA, and for what purposes. (Generally only credit providers may obtain a credit report in connection with an individual's application for credit.)
- A general prohibition on the disclosure of credit reports and other credit worthiness information by credit providers.
- Rights of access and correction for individuals in relation to personal information in credit files and reports held by CRAs and credit providers.

In addition, when handling that information, those entities must also comply with:

- the Privacy Commissioner's Credit Reporting Code of Conduct, which deals with practical Part IIIA compliance matters (the Current Credit Reporting Code was issued by the Privacy Commissioner under s 18A of the Privacy Act in 1991 (amended 1996) following consultation with industry).
- the existing National Privacy Principles, where those principles are applicable.

Privacy Act reform

The Senate Finance and Public Administration Committee (Senate Committee) is currently conducting an inquiry into Exposure Drafts of Privacy Amendment Legislation. That legislation is based on the Australian Government's proposed reforms to the Privacy Act, as outlined in *Enhancing National Privacy – Australian Government First Stage Response to the Australian Law Reform Commission Report 108* (October 2009) (Government First Stage Response).

The exposure draft legislation currently before the Senate Committee includes amendments to the Privacy Act's credit reporting provisions. This includes amendments that allow 'more comprehensive credit reporting' as foreshadowed in Chapter 55 of the Government First Stage Response.

Submissions to the Senate Committee on the credit reporting provisions closed on 24 March 2011.

More comprehensive credit reporting

At present, only 'negative' information such as defaults and bankruptcies is generally permitted to be included in an individual's credit information file.

As currently drafted, the reforms will permit five new categories of personal information to be included (often described as 'positive' information because it shows the individual's current credit commitments):

- the type of each credit account opened (eg credit card, mortgage)
- the date on which each credit account was opened
- the current limit of each open credit account (but not the current balance)
- the date on which each credit account was closed

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- repayment performance history information (only available to credit providers subject to responsible lending obligations). This includes:
 - o whether an individual has met their loan repayment obligations over the past two years
 - o the number of monthly ‘repayment cycles’ the individual was late for a repayment in that two-year period.

Greater access to the five data sets, as has been proposed by the Australian Law Reform Commission (ALRC), will allow more robust assessment of credit risk, which in turn could lead to lower credit default rates. On balance, comprehensive credit reporting is also likely to improve competition in the credit market, which will result in benefits to both individuals and the credit industry.

The Government understands the strong privacy and consumer credit concerns that arise with the introduction of a comprehensive credit reporting regime. The Government notes that the ALRC has based a number of recommendations for enhanced protection and dispute resolution for credit reporting information on the introduction of comprehensive credit reporting. Privacy protections accompany the five new proposed categories, for example:

- the five new data elements will need to be deleted two years after the date the credit account is closed
- credit providers will be obliged to notify individuals of their intention to list missed payments in the repayment history.

The Government supports the introduction of effective privacy protections to ensure that this data will be handled appropriately by credit providers and credit reporting agencies and continues to carefully consider these reforms.

ENDS