

ATTENTION:
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

Dear Sir/Madam

Please accept this submission by Credit Union Services Corporation to the Privacy Commissioner as a submission to the Committee's current inquiry into the Privacy Act 1988.

Yours sincerely,
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22 December 2004

Ms Karen Curtis
Federal Privacy Commissioner
Office of the Privacy Commissioner
GPO Box 5218
SYDNEY NSW 2001
privatesectorreview@privacy.gov.au

Dear Ms Curtis

Review of the private sector provisions of the Privacy Act 1988

Credit Union Services Corporation (Australia) Limited (CUSCAL) appreciates the opportunity to contribute to your review of the private sector provisions of the Privacy Act 1988.

CUSCAL is the industry body and commercial services provider to 147 of Australia's 170 credit unions. Credit unions have 3.6 million members and total assets of \$31 billion.

Credit unions are member-owned Authorised Deposit-taking Institutions (ADIs) and Australian Financial Services Licensees. As mutuals, operating on the principle of 'one-member, one-vote', credit unions are focused exclusively on their customers, not on maximising returns to a separate group of shareholders.

Credit unions have always acknowledged a general duty of confidentiality to their members. This duty was expressly set out in the privacy provisions of the Credit Union Code of Practice binding credit unions long before enactment of the *Privacy Amendment (Private Sector) Act 2000*.

CUSCAL was a strong supporter of extending national privacy regulation to the private sector in the debates of the late 1990s. We took this position because:

- credit unions are committed to protecting the privacy of their members;
- strengthening privacy protection would improve consumer confidence in new communication and delivery channels;
- the introduction of conflicting State-based privacy regimes would cause major compliance difficulties for the finance industry; and
- international practices and obligations would demand consistent privacy safeguards.

Our assessment in 2004 is that the legislation (Part IIIA excepted) is meeting its objectives of balancing the right to privacy with business efficiency and the general desirability of a free flow of information.

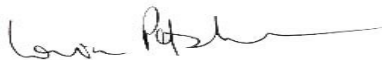
In recent years, credit unions have been forced to divert significant resources away from member service and into regulatory compliance as a heavy schedule of legislative and regulatory change was introduced. In 2005, credit unions face another very significant regulatory compliance challenge in the form of proposed new anti-money laundering laws.

Against this background, we ask that any proposals to further amend the privacy legislation are very carefully weighed against the accompanying compliance costs that are ultimately borne by consumers.

CUSCAL looks forward to further consultation on the outcomes of the review.

Please find attached our submission. If you would like to discuss any of the issues raised, please contact Luke Lawler (Senior Adviser, Policy & Public Affairs) on 02 6232 6666 or llawler@cuscal.com.au or me on 02 8299 9046.

Yours sincerely

A handwritten signature in black ink, appearing to read "Louise Petschler", with a long horizontal flourish extending to the right.

LOUISE PETSCHLER
Head of Public Affairs

ISSUES PAPER

Research by the Office of the Privacy Commissioner indicates a need to improve public knowledge about privacy laws but CUSCAL sees no case for major changes to the private sector provisions as they affect credit unions.

If anything, the October 2004 Issues Paper points to a need to educate the public about their currently legislated rights before considering any new legislative proposals.

Industry generally appears to have become familiar with the NPPs and has developed relevant policies. As the Issues Paper notes, the Office of the Privacy Commissioner's "experience in working with the private sector both in providing advice and when they have been respondents to complaints has been generally positive."

Community trust in financial organisations to protect personal information is relatively high, ahead of government organisations and behind only health service providers.

Privacy protection is built into everyday business practice by credit unions.

Prior to the introduction of the NPPs, members of CUSCAL-affiliated credit unions were (and are) protected by the Credit Union Code of Practice and the Electronic Funds Transfer (EFT) Code of Conduct.

Under the Credit Union Code:

- a credit union acknowledges that it has a general duty of confidentiality towards a member;
- a credit union may not, without the consent of a member, disclose information concerning that member to another person;
- a credit union will, on request, provide a member with information about that member;
- a member of a credit union may request the correction of member information about that member; and
- a credit union will not collect, use or disseminate information about a member's political, social or religious beliefs; race, ethnic origins or national origins; or sexual preferences and practices.

Section 21 of the EFT Code sets out guidelines to assist in interpreting the NPPs and in applying them to EFT transactions.

Credit unions have borne the cost of implementing and developing training and compliance systems to enable privacy protection mandated by codes and legislation. There is no wish to see any significant amendment to the NPPs.

CUSCAL's NPPs Compliance Manual for credit unions has been updated twice since 2001. The Manual includes practical recommended procedures for every NPP. CUSCAL's EFT Code Compliance Manual was recently updated for the fourth time.

Relatively few privacy issues are raised by credit union members, indicating effective implementation of the NPPs. In the past two reporting periods, only 9 complaints

concerning privacy issues have been addressed by the Credit Union Dispute Resolution Centre (CUDRC), during which time the CUDRC closed 347 cases.¹

Credit unions that rely heavily on mail and telephone contact for marketing and member service are concerned about any suggestion of changing the “opt out” arrangements to a much more strict “opt in” regime.

Such a change would provide a significant advantage to larger competitors with extensive branch networks. Broader competitive impacts should be considered in any proposal to tighten privacy regulation.

POSITIVE CREDIT REPORTING

CUSCAL supports efforts to enhance and improve credit reporting data collection, accuracy and maintenance, both to improve decision-making by credit providers and to protect the interests of consumers.

Credit unions routinely use credit reporting systems and the information in credit reporting databases is an important credit management tool. Credit unions have a strong interest in the accuracy of default listings, the quality of the system as a whole, and the nature of organisations that are permitted to list and access the data.

Any credit reporting regime, whether it is ‘negative’ or ‘positive’, should be subject to privacy standards that limit the use of collected information. In our view, many opportunities exist for improvements under the current arrangements.

In principle, CUSCAL supports consideration of an end to the Part IIIA ban on positive credit reporting, subject to necessary quality, privacy and review assurances.

The case for positive credit reporting, in summary, is:

- better rationing of credit, improving the chances of low-income earners gaining access to credit;
- better pricing of credit, as risk is better assessed;
- reduced defaults, leading to lower cost of credit; and
- more competitive markets, as consumers are less reliant on existing institutional relationships to obtain credit.

These benefits are well known and were noted in the Financial System Inquiry’s final report² in 1997.

The case against positive credit reporting, in summary, is concern about the greatly increased amount of personal information held on people, potentially enabling detailed profiles to be drawn about individuals.

Opponents of positive credit reporting also point to the poor data quality in credit reporting databases now, arguing that agencies should not be allowed to hold a wider range of information until they improve their performance.

CUSCAL believes these concerns can and should be addressed. With appropriate consultation of all stakeholders, we believe a positive credit reporting scheme can be introduced that is consistent with the existing National Privacy Principles.

¹ A further 9 complaints relating to credit reporting were recorded over the 2 years.

² FSI Final Report, March 1997, p518.

In a related issue, one of CUSCAL's affiliated credit unions advises that it would be able to provide its popular "no-overdraft" Visa Debit card product to more young people if it was able to carry out a credit check on applicants. However, the Privacy Act prevents such a check, even with the consent of the applicant.

A Visa Debit card has the same payment functionality as a Visa Credit card (i.e. it can be used over the Internet, telephone, by post, and overseas). Even where there is no overdraft, Visa Debit issuers are still exposed to loss due to scheme rules on off-line and below-limit automatic approval transactions.

The credit union believes the capacity to carry out a credit check has considerable merit because it would enable the exclusion of 'poor credit history' applicants and allow access by more students and other low-income applicants to a highly useful payment product.

In the absence of such capacity, the credit union must rely on income-level and internal credit history criteria, excluding many young people.

CONFLICT WITH OTHER LAWS

CUSCAL wishes to focus the attention of policy-makers on conflicts between the right to privacy, underpinning the Privacy Act, and commercial and security considerations that underpin the Corporations Act and proposed new anti-money laundering laws.

Corporations Act

The Corporations Act requires companies to give anyone access to their share registers containing personal information about shareholders. There is no right by shareholders to withhold consent on privacy grounds.

The issue is particularly acute for credit unions due to their structure as mutuals.

A credit union member is both owner and customer of the credit union. A credit union's member register is a list of the credit union's customers/owners. It is at once a share register and a customer list.

This result, an outcome of the mutual structure of credit unions, has received some recognition in the Corporations regulations. Additional protection is provided to credit union member registers. Under Corporations Regulation 12.8.06(3), the right of access to company share registers as set out in s173 of the *Corporations Act 2001* is modified in the case of credit union member registers.

CUSCAL has for some time been pursuing with the Government enhancements to this existing protection. We do not seek to prevent contact with credit union members. Our proposal is to allow for the protection of the confidentiality of addresses of credit union members, and hence the security and privacy of credit union members.

Currently, if a credit union is required to give a person access to the member register, the credit union has limited means to ensure that the person only uses the information for the disclosed or agreed purpose.

Misuse of the register is not an offence under the Corporations Act. The only remedy available to the credit union is to bring legal proceedings, which is slow, expensive and not effective to protect the information prior to its misuse.

In order to remove the risk of inappropriate access to members' addresses, we are seeking a minor amendment to the Corporations regulations. This would allow the credit union to elect to undertake the mail-out to members of meeting notices directly or to use an agreed third party, such as an independent mailing house. CUSCAL would welcome the Commissioner's consideration and support for our proposal.

Proposed AML laws

CUSCAL urges the Office of the Privacy Commissioner to actively participate in the development of new anti-money laundering (AML) laws. The proposed new laws will force credit unions to collect more, not less, information about credit union members.

It is expected the new laws will revamp the 100-point identity check list and, most significantly, will impose new obligations to carry out surveillance of customer activity in the form of ongoing "customer due diligence".

AML Issues Paper 1 released by the Attorney-General's Department says:

"A one-off check is an inadequate means of detecting suspicious activity. As a result, a key recommendation...is for ongoing scrutiny of customer identification data, financial activity and account behaviour. This will involve monitoring customer activity in addition to updating customer information records.

"While financial institutions have implemented record keeping measures meeting the requirements of the [Financial Transaction Reports Act], the new FATF standards will require collection and retention of additional customer due diligence information relevant to ongoing due diligence measures. Such information might include account files, transaction information and business correspondence. Other types of information might reasonably include:

- the purpose of and the reason for opening the account or establishing the business relationship;
- the anticipated level and nature of the activity to be undertaken;
- the relationships between account signatories and underlying beneficial owners; and
- the expected source and origin of the funds to be used in the relationship; details of occupation/employment (for personal bank current accounts), and sources of wealth or income and customer net worth (particularly for private banking relationships)."

CUSCAL is particularly concerned about the need to educate consumers about these obligations and the reasons why privacy rights must yield to security concerns. The privacy implications of the proposed reforms are clearly significant and development of the enhanced AML framework would benefit from engagement with the Office of the Privacy Commissioner. In addition, we strongly urge the Office of the Privacy Commissioner to consider the AML laws when framing its own community education initiatives.

For further information, contact:

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