

Review of Australian Privacy Law - Credit Reporting Provisions

Presentation to the 17th Annual Credit Law
Conference

by

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Focus of Presentation

- Overview of the ALRC Privacy Inquiry
- Dealing with the complexity of privacy regulation
- Approach to reform of the credit reporting provisions
- Complaint handling and default listings
- Comprehensive (positive) credit reporting



Overview of the Privacy Inquiry

- Terms of Reference received 30 January 2006
- Issues Papers and Overview
 - **Review of Privacy**, IP 31, covering all issues with the exception of credit reporting provisions (October 2006)
 - **Review of Privacy-Credit Reporting Provisions**, IP 32 (December 2006)
 - **Reviewing Australia's Privacy Laws: Is Privacy Passé?**
- Discussion Paper released September 2007
- ALRC to report to AG (Cth) by 31 March 2008



Community Concerns

- Impact of technology on privacy
 - **But** enjoy the convenience – GPS, mobile phones, cameras
 - Social Networking sites - *Gen X and Y vs Baby Boomers* – MySpace, Facebook, YouTube, Second Life
- BOPTA – reluctance to share information ‘because of the Privacy Act’
- Telemarketing – home invasions at 6pm
- Offshore personal information – visceral but often uninformed reactions



ALRC Discussion Paper

Consists of 301 proposals in 3 volumes containing 10 parts and 64 chapters

- ❖ Part A - Introduction
- ❖ Part B - Developing Technology
- ❖ Part C - Interaction, Inconsistency and Fragmentation
- ❖ Part D - Unified Privacy Principles
- ❖ Part E - Exemptions
- ❖ Part F - Office of the Privacy Commissioner
- ❖ Part G - Credit Reporting Provisions
- ❖ Part H - Health Information and Research
- ❖ Part I - Children, Young People and Adults Requiring Assistance
- ❖ Part J - Telecommunications



Dealing with Complexity of Privacy Regulation - ALRC Proposals

- ***Privacy Act (Cth)*** to apply to Cth public sector and private sector, to exclusion of state and territory privacy legislation
- **Consolidating the IPPs and NPPs** into one set of privacy principles (UPPs) – apply to Cth, states and territories
- **Uniform definitions** – eg ‘personal information’, ‘sensitive information’, ‘record’
- **Redraft *Privacy Act (Cth)*** – high level principles in Act, detail in specific regs (eg credit reporting, health), codes (binding and industry), OPC guidance



Regulatory Framework

One Set of High Level Privacy Principles

- 1 Anonymity and Pseudonymity
- 2 Collection
- 3 Specific Notification
- 4 Openness
- 5 Use and Disclosure
- 6 Direct Marketing
- 7 Data Quality
- 8 Data Security
- 9 Access and Correction
- 10 Identifiers
- 11 Transborder Data Flows

**OPC
Guidance**

Regulations

- can impose more specific, and more or less stringent, requirements

Industry codes

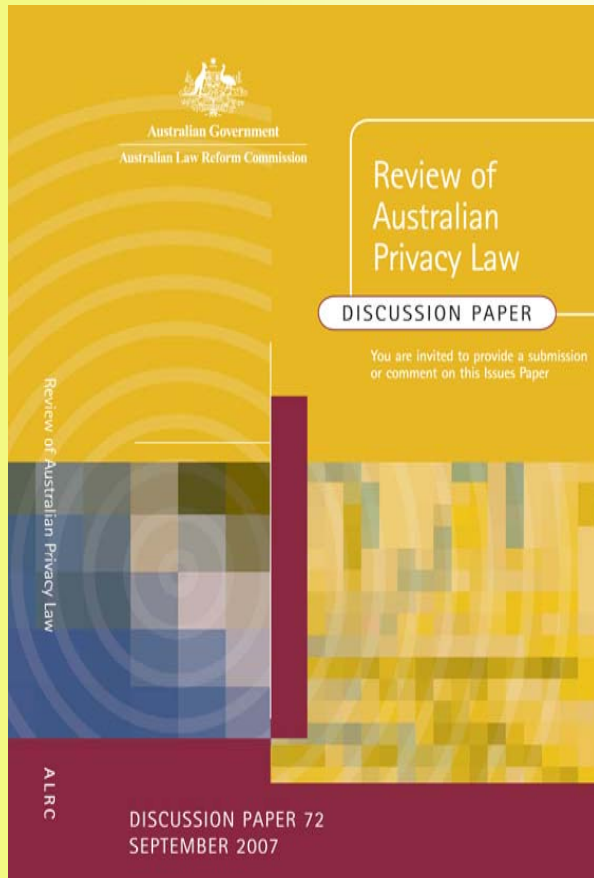
- deals with operational matters



Part G - Credit Reporting Provisions

Chapters in Part G (Vol 3):

- Overview
- The Credit Reporting Provisions
- The Approach to Reform
- More Comprehensive Credit Reporting
- Collection of Credit Reporting Information
- Use and Disclosure of Credit Reporting Information
- Data Quality and Security
- Rights of Access, Complaint Handling and Penalties



Reform of Credit Reporting Provisions - Objectives

- **Streamlining credit reporting provisions**
 - Objective is to streamline and make more efficient the existing system, not substitute a completely new system
 - ALRC is aware that organisations have expended a great deal of money and human resources in systems designed to comply with existing statutory requirements
- **Promote transparency**
 - Provision of more information to customers about the collection and use of their credit information
 - Prohibition on the use of credit information for direct marketing
 - Provision to customers of credit score or ranking if application for credit denied on basis of credit reporting information



Complaint handling and default listings

- **EDR scheme** - Credit providers may only list overdue payment information where credit provider is a member of an OPC approved EDR scheme
- **Evidence to substantiate default** – obligation on credit providers to provide evidence to substantiate disputed credit reporting information (eg default listings). Not provided within 30 days, information to be deleted
- **Civil penalty** – for a serious or repeated breach of the credit reporting regulations (to replace the suite of criminal offences relating to credit reporting currently in the *Privacy Act*)



Comprehensive Credit Reporting - Possible Additional Information

- Information about an individual's current loans or credit facilities, including the limits and balances
- An individual's repayment history
- Further information than is currently permitted under the *Privacy Act* relating to overdue or defaulted payments



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Possible Benefits of More Comprehensive Credit Reporting

- Enhanced accuracy of credit risk assessment, which in turn promotes more responsible lending
- Enhanced competition in credit markets which would in turn encourage lower interest rate for borrowers
- Reduction in the cost of credit for individuals



Possible Disadvantages of More Comprehensive Credit Reporting

- Enhanced accuracy of credit risk assessment will not necessarily reduce over-indebtedness because of the greater availability of credit
- Marginal consumers may be pushed out of formal credit systems into the hands of fringe lenders
- Comprehensive reporting may result in differential pricing of the same product, to the detriment of lower socio-economic groups
- Collection and storage of more data magnifies the potential and impact of data breaches
- Increased opportunity to use data for secondary purposes – eg: direct marketing, pre-screening



ALRC's Proposal for Reform

- Expansion of information currently permitted:
 - Type of each current credit account opened (eg mortgage, personal loan, etc)
 - Date on which each current credit account opened
 - Limit of each current credit account
 - Date on which each current account was closed
- Strikes an appropriate balance between enhanced accuracy of credit risk assessment and an individual's right to privacy



Further Information

ALRC website: consultation papers and past reports available (free) at:

Web: www.alrc.gov.au

Email: info@alrc.gov.au

Post: GPO Box 3708, Sydney, NSW, 2001

Submissions on DP 72 close: **7 December 2007**



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