



Reform of the credit reporting system

The *Privacy Act* regulates the system of credit reporting, allowing information about an individual's credit-worthiness to be collected and disclosed to credit providers, such as banks, finance companies, mortgage companies, and mobile phone service providers. In Australia, this information is collected by a small number of specialist credit reporting companies from credit providers and from publicly available records.

The ALRC recommends that the existing credit reporting provisions of the *Privacy Act* be repealed. Instead, credit reporting should be regulated under the general provisions of the Act and new credit reporting regulations, incorporating significant recommended changes to the current rules.

More comprehensive credit reporting

The Australian credit reporting regime is currently more restrictive than in most comparable countries in relation to the types of information that may be collected and disclosed.

ALRC President, Professor David Weisbrot said that "At the moment, the *Privacy Act* generally allows credit files to include only 'negative' information, such as previous defaults. Unlike the position almost everywhere else, this makes it difficult for Australians to build up a positive record of responsible borrowing behaviour over time."

Professor Les McCrimmon, Commissioner in charge of the Inquiry, stated that "The credit industry argued strongly for a wider range of information—such as current credit balances and loan repayment histories—to be collected and disclosed in reports to lenders, on the basis that such information is required for credit providers to make sound decisions about an applicant's ability to repay.

"The industry supplied the ALRC with the results of studies, surveys, reports and economic modelling suggesting that an increase in information available to lenders would facilitate better risk management practices—which in turn would open up the field to greater competition and drive down the cost of credit, especially for low risk and responsible borrowers.

"On the other hand, consumer groups were not convinced that more information would be used to assist responsible lending—rather than to advance more credit and contribute to higher levels of indebtedness. Privacy and consumer advocates also argued strongly that allowing more personal information on the financial position and credit behaviour of individuals to be collected in private sector databases would pose greater risks to security and privacy."

The ALRC's recommended approach

After extensive consultation, research and consideration, the ALRC recommends that there should be some expansion of the categories of personal information that can be included in credit reporting information held by credit reporting agencies. The four additional items should be:

- the type of each current credit account opened (eg, mortgage, credit card, personal loan);
- the date on which each current credit account was opened;
- the credit limit of each current account; and
- the date on which each credit account was closed.

Professor David Weisbrot stated that “It is hard to justify the present, artificial limitations, which do not accord with standard practice in the rest of the industrial world. The recommended moderate expansion in the types of information that may be recorded on a credit file falls short of the more open US or UK regimes advocated by some credit providers, but that is because the ALRC recognises that there are competing interests at play, and we have sought to place an appropriately high premium on the privacy and security of sensitive personal information.”

The ALRC recognises that there are strong arguments in favour of also including an individual’s repayment history in the categories of personal information that may be held by credit reporting agencies. Questions remain, however, about whether more responsible lending would result from this change, in the absence of new obligations on credit providers.

Professor Weisbrot explained, “That good risk management and responsible lending practices do not inevitably flow out of fully comprehensive credit reporting is borne out by the notorious ‘sub-prime loan crisis’ in the US and the UK.

“In those jurisdictions, lenders who have had access to more comprehensive information about prospective borrowers nevertheless made conspicuously poor decisions for years, based on the pursuit of market share and short-term incentives.

“Consequently, the ALRC recommends that the Australian Government only amend the *Privacy Act* to allow credit reporting to include information about an individual’s repayment history after it is satisfied that there is an adequate framework imposing responsible lending obligations in Commonwealth, state and territory legislation.”

Dispute resolution

The ALRC also identified a number of improvements that should be made to the credit reporting regime in relation to dispute resolution.

“We recommend a greater role for external dispute resolution, by requiring that any credit provider who lists debt defaults on credit information files be part of an external dispute resolution scheme. This will provide a fast, simple process for consumers who wish to dispute a default listing,” said Professor McCrimmon.

For more information on the ALRC’s recommendations for reform of the credit reporting provisions of the *Privacy Act*, see Part G (Chapters 52–59) of *For Your Information: Australian Privacy Law and Practice* (ALRC 108, 2008).

The Report is available electronically from the ALRC website, www.alrc.gov.au.