



Our Reference: \*\*\*\*

Your Reference:

23 February 2018

Via Email only: [ccr.reforms@treasury.gov.au](mailto:ccr.reforms@treasury.gov.au)

Dear Sir/Madam

**Mandatory Comprehensive Credit Reporting**

Dear Colleagues,

We note your request for submissions in relation to the proposed Mandatory Comprehensive Credit Reporting legislation.

**Limitation of mandatory credit information definition**

We would broadly support any limitation on the items that must be mandatorily reported being expanded beyond those currently reported under the provisions of the Privacy Act.

We note that at page 13 of the explanatory materials it states:

*“The definition of credit information also include some types of publicly available information related to an individual’s activities in Australia and the individuals creditworthiness. This may be information external to the licensee. For example, it could include information about writs and summons obtained from courts.*

*For this reason, the definition of “mandatory credit information” is only the credit information that the licensee has collected or has been collected for the licensee. A*



*licensee is not required to actively obtain credit information it has not otherwise collected.”*

We observe that there is controversy about the appropriateness of using the “publicly available information” loophole to obtain information that does not come within the definition of “court proceeding information” set out in the Privacy Act.

Under the s 6 definition of “court proceedings information” about the individual a credit reporting body is limited to reporting on judgments entered against a party.

*"court proceedings information " about an individual means information about a judgment of an Australian court:*

*(a) that is made, or given, against the individual in proceedings (other than criminal proceedings); and*

*(b) that relates to any credit that has been provided to, or applied for by, the individual.*

It is therefore appropriate that information obtained from “publicly available information” is excluded from that information exchanged under the Mandatory comprehensive credit reporting regime.

Please see the comments at page 25 and 26 of the independent review of the Privacy (Credit Reporting) Code 2014. <https://www.oaic.gov.au/resources/engage-with-us/consultations/independent-review-of-the-privacy-credit-reporting-code-2014/pwc-report-review-of-privacy-credit-reporting-code-2014.pdf> , which we note adopted concerns raised in



the submissions we made to the review [https://www.oaic.gov.au/resources/engage-with-us/consultations/independent-review-of-the-privacy-credit-reporting-code-2014/Sub\\_11\\_MyCRA\\_Lawyers.pdf](https://www.oaic.gov.au/resources/engage-with-us/consultations/independent-review-of-the-privacy-credit-reporting-code-2014/Sub_11_MyCRA_Lawyers.pdf)

### **Possible unintended consequences of mandatory comprehensive reporting**

We note that the intention of the proposed changes is to give more information to the Credit Reporting Bodies to enable them to provide a more comprehensive overview of the credit worthiness of an individual.

Our experience has been that any information provided in a credit report will be used as a negative factor by any credit provider and that there may be unintended consequences whereby credit worthiness is reduced by virtue of the greater information made available.

For instance, we have made observations about the effect of the decision by one credit reporting body to change its policy about recording the discontinuance of proceedings on a credit history. In our submission it has had the unintended consequence of worsening the credit reports of individuals unnecessarily. See our article here

<https://www.mycralawyers.com.au/unexpected-consequences-sued-settling>

### **Compliance with new rules**

Our experience with the Privacy Act has left us with the impression that there is widespread failure to comply with the time limits set out in the Privacy Act for complying with obligations. For instance if a request is made for personal information held by a credit



provider they can seemingly disregard the time limits in the Privacy Act with impunity. They can also provide some but not all of the information held by refusing to provide copies of, say, telephone conversations.

In circumstances where credit providers will make telephone services available so that a customer can have their dealings by telephone, it is ridiculous to suggest that they are not required to provide their telephone records when asked to provide all the personal information they hold on a customer. Yet we have had refusals to provide telephone recordings.

In our submission there would be greater likelihood of compliance if penalties attached to the obligations placed upon those disclosing information under the Privacy Act to do so in a timely fashion.

In our submission there would be greater likelihood of compliance if it were made clear that individual representatives of the business as well as, potentially, directors of the business may be liable if employees failed to comply with the obligations imposed by the Privacy Act.

In our submission this would give greater power to OAIC and ASIC to encourage a culture change towards complying with obligations under the Privacy Act completely and in a timely fashion.

In our submission there is an obligation under the Credit Reporting Code for credit providers, credit reporting bodies, mortgage insurers and trade insurers to take reasonable steps to inform employees handling credit reporting information and credit eligibility information



about the requirements of the Privacy Act, Privacy Regulations and CR Code, and to also train them in practices, procedures and systems designed to achieve compliance. CR code at para 2.2 (*See Elsa Markula , Regulation of Credit Reporting information and activities under the Privacy Act 1988, Australian Retail Credit Association*) at page 11.

We are concerned that attempting to discuss matters with call centres (that may be located overseas) means that the representatives we are speaking to and trying to address matters associated with Privacy Act compliance do not appear to have a proper comprehension of the obligations imposed by the Privacy Act.

We are happy to provide any further or more detailed explanation of our submissions if you would like.

With warm regard,  
Armstrong Doessel Stevenson Lawyers

**Patrick Earl**  
Senior Solicitor