

24 March 2011

Ms Christine McDonald  
Secretary  
Senate Finance and Public Administration Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
Email: [fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au)

Dear Ms McDonald

**EXPOSURE DRAFTS OF AUSTRALIAN PRIVACY AMENDMENT LEGISLATION -  
CREDIT REPORTING**

The Insurance Council of Australia (*Insurance Council*)<sup>1</sup>, the representative body of the general insurance industry in Australia, thanks you for the opportunity to comment on the exposure draft of the Australian Privacy Amendment Legislation on Credit Reporting (the Exposure Draft). This legislation is significant for the effective operation of our members that provide lenders' mortgage insurance (LMI)

The Insurance Council welcomes the continued access for mortgage insurers to credit reporting data provided for in the Exposure Draft. An independent credit report from a credit reporting agency is a fundamental factor for a LMI provider in assessing whether or not to underwrite the credit risk of a particular borrower on a residential loan. The timely receipt and review of an individual's entire credit report is an essential element of an LMI provider's risk underwriting process.

We support the inclusion of a provision that would bring an LMI provider within the scope of being a "credit provider" if it acquires, whether by assignment, subrogation or any other means, the rights of a credit provider in relation to the repayment of an amount of credit<sup>2</sup>. The proposal is consistent with the current situation whereby determinations under the *Privacy Act 1988* have been made to this effect by the Privacy Commissioner since 1995<sup>3</sup>.

We note that the Exposure Draft introduces a new obligation on credit providers before they can disclose credit information to a credit reporting agency, this being the requirement to be

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<sup>1</sup> The Insurance Council of Australia's members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. December 2010 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$33.4 billion per annum and has total assets of \$101.7 billion. The industry employs approx 60,000 people and on average pays out about \$87 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

<sup>2</sup> Exposure draft, section 191.

<sup>3</sup> Office of the Privacy Commissioner, *Credit Provider Determination No. 2006-03 (Assignees)*, August 2006.

a member of a recognised external dispute resolution (EDR) scheme<sup>4</sup>. (The ability for individuals to complain to the Information Commissioner (the Commissioner) also remains.) Our members already participate in EDR schemes, the Financial Ombudsman Service (FOS) or the Credit Ombudsman Service Limited (COSL), which have been approved by the Australian Securities and Investments Commission (ASIC) under the *National Consumer Credit Protection Act 2009*.

The Insurance Council notes that the Exposure Draft provides for the Commissioner to “recognise” rather than “approve” EDR schemes. We also note the views of the Australian Law Reform Commission (ALRC) that utilities and finance industry ombudsmen (including FOS and COSL) may already deal with credit reporting complaints and that the Privacy Commissioner can be expected to recognise EDR schemes already approved by ASIC under the Corporations Act and those with another statutory basis<sup>5</sup>.

We strongly support recognition by the Commissioner of EDR schemes approved by ASIC, particularly where those schemes are already adequately equipped to deal with complaints relating to privacy in the context of credit reporting. This will provide a clear process for potential complainants, especially where a credit reporting complaint may be connected to other aspects of a dispute such as debt recovery. This would also ensure that the compliance obligations for LMI providers, which are only credit providers by virtue of acquiring a debt, are commensurate with the level the credit reporting activity being undertaken.

On the same theme of consistency, the Insurance Council would also recommend that the legislation be amended to remove any conflict with existing regulatory requirements on complaints handling. Our LMI members already comply with the requirements of ASIC’s *Regulatory Guide 165: Licensing: Internal and external dispute resolution* (RG 165). However, the Exposure Draft currently proposes timeframes to acknowledge and respond to complaints which are in direct conflict with those in RG 165. We are not aware of any policy reasons for such differences and suggest they be removed.

If you require any further information, please contact Mr Anning on (02) 9253 5121 or [janning@insurancecouncil.com.au](mailto:janning@insurancecouncil.com.au).

Yours sincerely



Robert Whelan  
Chief Executive Officer & Executive Director

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<sup>4</sup> Exposure draft, subsection 132(2)(a).

<sup>5</sup> ALRC, *For Your Information: Australian Privacy Law and Practice* (ALRC Report 108), 12 August 2008, paragraphs 59.94 to 59.96 and 59.141.