

22 May 2009

Manager, Consumer Credit Unit
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: consumercredit@treasury.gov.au

Dear Sir / Madam

The National Consumer Credit Protection Bill 2009

Optus welcomes the opportunity presented by the release on 27 April 2009 of the exposure draft of the *National Consumer Credit Protection Bill 2009* by the Minister for Superannuation and Corporate Law, Senator Nick Sherry, to provide our comments on the proposed legislation.

We note that "Th[e] new package of reforms delivers on [the Government's] commitment to modernise Australia's consumer credit laws. The state-based Uniform Consumer Credit Code (UCCC), which operates inconsistently across the eight jurisdictions will be replaced with single, standard nationally consistent consumer credit regulation and oversight."¹ Optus supports activities which seek to simplify the legislative environment by moving to nationally consistent legislation, reducing the regulatory burden on business and ensuring consistent consumer protections, therefore is supportive of the Government's efforts in simplifying consumer credit protection laws.

Apparent intent of the application of the new legislation

It would appear to Optus that the new legislation is only intended to apply to the more traditional credit providers and associated entities, e.g. banks, credit unions, mortgage brokers, financial advisers, etc. That is, that it will only apply to entities already covered by the UCC (with a few exceptions).

There are no references to telecommunications companies, or other classes of credit providers, however neither are these categories of credit providers specifically exempted.

Optus' interest is due to its status as a 'credit provider' by virtue of a Privacy Commissioner Determination

Under the *Privacy Act 1988* ('the Privacy Act'), the Privacy Commissioner is able to make a Determination that certain classes of corporations are to be regarded as credit providers for the purposes of the Privacy Act.

¹ http://www.treasury.gov.au/consumercredit/content/downloads/Consumer_Credit_Brochure.pdf

Optus, and other telecommunications companies, are deemed to be credit providers by virtue of such a Determination: the Credit Provider Determination No. 2006-4 (Classes of Credit Providers).

We note that the definition of 'credit provider' contained in the exposure draft of the National Consumer Credit Protection Bill 2009 ('the Bill') is sufficiently broad as to (perhaps inadvertently) capture credit providers such as telecommunications companies, who are not currently subject to the UCCC.

It is not clear to Optus whether there is any interaction between the Privacy Act or its Credit Provider Determinations and the rules in the Bill, therefore we seek clarification from the Treasury in this regard.

Exemption for classes of credit providers

It occurs to Optus that one way in which to clarify this matter would be to include a clause in the *National Consumer Credit Protection (National Credit Code) Regulations 2009* ('the Regulations') exempting credit providers who are only credit providers by virtue of a Privacy Commissioner Determination.

This would help provide certainty to both businesses (who would be able to understand whether the Bill applies to them or not) and consumers (who would understand what their rights are when dealing with certain classes of credit providers).

Existing telecommunications regulatory obligations

Although we are seeking clarity via a specific exemption from the draft Bill, we would like to make it clear that telecommunications consumers will still have their rights safeguarded.

Telecommunications companies already have a range of consumer credit obligations with which they are required to comply, which are in force today. In addition to all current legislative obligations, the *Telecommunications Consumer Protections Code of Practice* ('the Code') outlines rules that telecommunications providers must follow in relation to several subject areas, including credit management.

These rules cover matters such as:

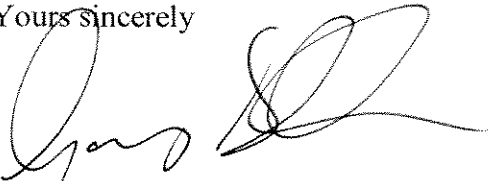
- undertaking credit assessments before supplying a new service;
- providing certain types of information to customers about credit assessments, the risks if the customer will not be the principal end user of the services, acting as a guarantor, etc;
- the provision of credit control tools to assist customers to manage their expenditure levels (e.g. pre-paid service options, call barring options, etc);
- advising customers prior to restricting, suspending or disconnecting their service;
- not taking further credit management action over disputed amounts;
- the behaviour of collections agents;
- updating credit bureau files within certain timeframes; and
- assisting customers who are experiencing financial hardship.

The Code has been registered with the telecommunications industry regulator – the Australian Communications and Media Authority (ACMA) – which means that ACMA can take enforcement action against any provider who does not comply with the Code.

In summary, Optus believes that telecommunications consumers are well safeguarded by existing industry mechanisms, and whilst we understand that the draft Bill is not intended to apply to telecommunications companies, we are unaware of any specific exemption in the Bill. Therefore, we propose that a clause be inserted in the Regulations to specifically exempt those credit providers who are credit providers by virtue of a Privacy Commission Determination from the Bill (specifically, from the National Credit Code).

Optus reserves its right to comment on or seek further clarification on issues arising from the legislation once it has been finalised.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gary Smith', with a large, stylized flourish extending to the right.

Gary Smith

General Manager, Regulatory Compliance and Self Regulation