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Senate Finance and Public Administration Committee
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Thank you for the opportunity to comment on the Credit Reporting Exposure draft.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. We regularly investigate complaints from customers disputing a credit listing with a Credit Reporting Agency based on a utility debt, often for relatively small amounts.

In our context credit providers are energy retailers, therefore we have used this term where appropriate in this submission.

A common complaint comes from customers who find they have been listed with a credit reporting agency for an unpaid utility bill that issued after they moved out of their premises. Other complaints relate to credit listings for accounts whose accuracy was being disputed, and that dispute had not been resolved at the time of listing. Lack of notice prior to the credit listing, and the accuracy of the account information held are the most common issues we investigate.

When investigating complaints, EWON obtains all the relevant records from the retailer. In some cases the records are several years old, as the customers only became aware they had been credit default listed when they applied for a loan or other form of credit.

If our investigation indicates the listing was fair and reasonable and complied with the *Credit Reporting Code of Conduct*, we inform the customer and offer appropriate referrals for assistance. If we find the listing to be unreasonable or non-compliant, we request the retailer to withdraw the listing from the credit reporting agency.

We note that the relatively small amount of some of the utility debts whose credit listing we have investigated, appears to be out of proportion to the consequent denial of a loan for personal or business purposes. This is a source of considerable stress for customers who may have paid the debt as soon as they became aware of it and the credit listing notated to reflect the payment, but are still denied credit.

Like other ombudsman offices, EWON's dispute resolution services are free to consumers. It is a concern that many consumers incur unnecessary expense by engaging a credit repair agency to undertake a service that EWON provides free of charge.

In this submission, we have only responded to selected sections of the Exposure Draft relevant to our handling of customer complaints in this area. For ease of reference, we have included the full text of these sections followed by our comments.

120 Correction of credit reporting information

If:

- (a) a credit reporting agency holds credit reporting information about an individual; and
- (b) the agency is satisfied that, having regard to a purpose for which the information is held by the agency, the information is inaccurate, out-of-date, incomplete or irrelevant;

the agency must take such steps (if any) as are reasonable in the circumstances to correct the information to ensure that, having regard to the purpose for which it is held, the information is accurate, up-to-date, complete and relevant.

121 Individual may request the correction of credit information etc.

Correction

(2) If:

- (a) an individual requests a credit reporting agency to correct personal information under subsection (1); and
- (b) the agency is satisfied that the information is inaccurate, out-of-date, incomplete or irrelevant;

the agency must take such steps (if any) as are reasonable in the circumstances to correct the information within:

- (c) the period of 30 days that starts on the day on which the request is made; or
 - (d) such longer period as the individual has agreed to in writing.
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When an EWON investigation indicates that any aspect of the utility debt that a retailer referred for credit listing was inaccurate, we consider it is fair and reasonable to the customer who has been adversely affected by this, that the incorrect credit information is corrected as soon as possible.

EWON is concerned that a period of 30 days appears excessive in these circumstances, particularly if this is 30 business days (ie equivalent to six weeks). If there is a valid reason for the delay, we suggest that the credit reporting agency makes an annotation to the file to note that a correction is pending.

As this is not a penalty section, there appears to be no incentive for this correction to be carried out in a timely manner. If this issue is not addressed in the Act we suggest that it be addressed in the Credit Reporting Code.

EWON is also concerned that when the time limit of 30 days in s 121 (2) (Correction of credit information) is read in conjunction with the time limit of 30 days in s 158 (4 and 5) (Dealing with complaints), this suggests that an individual with an unresolved issue relating to the accuracy of the information may be faced with waiting for 60 days until they can approach an external dispute resolution agency or the Information Commissioner.

EWON suggests that this is an unreasonable length of time given the financial situation that can be at stake for consumers. We therefore query whether this reflects the intention of the Government's First Stage Response¹ to the ALRC 2008 Report, which recommends the wording:

“ ...within 30 days, evidence to substantiate disputed credit reporting information must be provided to the individual, or the matter referred to an external dispute resolution scheme ”

This suggests that referral to an external dispute resolution body could occur after 30 days, not 60 days, which appears more fair and reasonable for the consumer.

¹ *Enhancing National Privacy, Australian Government First Stage Response to the Australian Law Reform Commission Report 108* (October 2009) (Government Response), Recommendation 59-8, available via www.dpmmc.gov.au/privacy/reforms.cfm

156 Guide to this Division

This Division deals with complaints about credit reporting agencies or credit providers.

Individuals may complain if credit reporting agencies or credit providers do not give access to, or correct, personal information. They may also complain about acts or practices that may be a credit reporting infringement.

If a complaint is made, the respondent for the complaint must investigate the complaint and make a determination about the complaint.

EWON notes that the term ‘the respondent for the complaint’ in the final sentence of this section is defined in s 180 as “*the credit reporting agency or credit provider to which the complaint is made*”.

EWON suggests that the wording used in the Government’s First Stage Response² to the ALRC 2008 report provides additional clarifying information when it states:

“ ... *the obligation for attempting to resolve the dispute should lie with whichever party the individual first makes a complaint (whether it be the credit provider to which the listing relates or the credit reporting agency).*”

We suggest that inclusion of this wording in s 156 would ensure that it is clear who should accept and attempt to resolve the complaint and avoid the consumer having to liaise between the parties.

158 Dealing with complaints

(1) If an individual makes a complaint under section 157, the respondent for the complaint:

- (a) must, within 7 days after the complaint is made, give the individual a written notice that:
 - (i) acknowledges the making of the complaint; and
 - (ii) sets out how the respondent will deal with the 3 complaint; and
 - (b) must investigate the complaint.
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² *Enhancing National Privacy, Australian Government First Stage Response to the Australian Law Reform Commission Report 108* (October 2009) (Government Response), Recommendation 59-5, available via www.dpmpc.gov.au/privacy/reforms.cfm

The requirement for a written notice of acknowledgment may be an unnecessary burden for those credit providers who are able to resolve a consumer's complaint in less than 7 days.

We suggest that when the respondent acknowledges and sets out how they will deal the complaint, either verbally or in writing, they should also make the complainant aware of the existence of the recognised external dispute resolution scheme and the Information Commissioner, should attempts to resolve the complaint fail.

158 Dealing with complaints

(4) After investigating the complaint, the respondent must, within the period referred to in subsection (5), make a determination about the complaint and give the individual a written notice that:

- (a) sets out the determination; and
- (b) explains that, if the individual is not satisfied with the determination, the individual may:
 - (i) access a recognised external dispute resolution scheme of which the respondent is a member; or
 - (ii) make a complaint to the Information Commissioner under this Act.

(5) The period for the purposes of subsection (4) is:

- (a) the period of 30 days that starts on the day on which the complaint is made; or
 - (b) such longer period as the individual has agreed to in writing
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When a customer has a complaint that any aspect of the utility debt that a retailer referred to a credit reporting agency for listing was inaccurate, we consider it is fair and reasonable to the customer who has been adversely affected by this that their complaint is investigated as soon as possible.

In most circumstances we would expect any such investigation to take no more than 10 business days, and that a 30 day limit should be an absolute maximum for a complex case.

Both the ALRC 2008 report³, and the *Government Response*⁴, recommended that if evidence to substantiate a disputed credit listing cannot be provided, or the complaint is not referred to a recognised External Dispute Resolution Scheme within 30 days, then the credit reporting agency must delete or correct the information.

We note this has been omitted from this Exposure Draft. EWON considers that this important provision should be included to strengthen consumer protections and encourage efficient resolution of complaints.

158 Dealing with complaints

Failure to make a determination

(6) If, at the end of the period referred to in subsection (5) that applies in relation to the complaint, the respondent has not made a determination about the complaint, the individual may:

- (a) access a recognised external dispute resolution scheme of which the respondent is a member; or
 - (b) make a complaint to the Information Commissioner under this Act.
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As per our comment at 158 (1) above, best practice suggests that the respondent should make the existence of the recognised external dispute resolution scheme and the Information Commissioner known to the consumer at the beginning of the investigation.

EWON queries whether options (a) and (b) are mutually exclusive. There could be occasions when a customer may want to do both option (a) and (b), so we suggest the removal of ‘or’ in this sub-section.

Two possible examples are:

1. A customer comes to EWON. The complaint is investigated, found to be a non-compliant credit listing, and the listing is removed. The customer may still want to register information about a potential systemic issue related to the credit reporting agency or the credit provider with the Information Commissioner.

³ *For your information: Australian Privacy Law and Practice: Recommendation 59-8 at p 69*

⁴ *Enhancing national Privacy, Australian Government First Stage Response to the Australian Law Reform Commission Report 108 (October 2009) (Government Response), Recommendation 59-8, available via www.dpmpc.gov.au/privacy/reforms.cfm*

2. A customer comes to EWON. The complaint is investigated, found to be compliant and the customer is not satisfied with this resolution. It can be useful to refer this customer to the Information Commissioner's services for further advice about their rights under the Act.

182 Meaning of default information

Consumer credit defaults

(1) Default information about an individual is information about a 5 payment (including a payment that is wholly or partly a payment of 6 interest) that the individual is overdue in making in relation to consumer credit that has been provided by a credit provider to the individual if:

- (d) the amount of the overdue payment is equal to or more than:
 - (i) \$100; or
 - (ii) such higher amount as is prescribed by the regulations.
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Most unpaid utility debts that arise when a final bill issues after the customer has moved out of their premises represent usage over one three-month period, and often less than that if the customer moved out during the billing quarter. While several years ago these bills may have been less than \$100, and therefore excluded from the definition of sub-section (d), this is no longer the case following increases in energy prices.

Failure on the customer's part to provide a forwarding address, or failure on the part of the retailer to send the bill and notices to the forwarding address provided, can result in the customer being credit listed without receiving the appropriate notice. The consequent denial of credit for personal or business purposes appears to be out of all proportion to the size of the debt.

EWON supports a minimum amount being prescribed in the Act but suggests that a more realistic definition of 'the amount of overdue payment' in sub-section (d) would be in the order of \$300. This would exclude small utility bills from the adverse consequences of credit listing.

195 Meaning of recognised external dispute resolution scheme

(1) A credit reporting agency is a member of a recognised external dispute resolution scheme if the agency is a member of one or more external dispute resolution schemes that is, or are, recognised by the Information Commissioner under this Act.

(2) A credit provider is a member of a recognised external dispute resolution scheme if the provider is a member of one or more external dispute resolution schemes that is, or are, recognised by the Information Commissioner under this Act.

Electricity and gas retailers are required by their licence conditions to be a member of an approved ombudsman scheme, and they are bound by, and must comply with, any decision of the electricity or gas industry ombudsman relating to a dispute or complaint involving the licence holder and a small retail customer.

(s. 96C *Electricity Supply Act 1995*, s. 33H *Gas Supply Act 1996*)

This requirement is also a feature of the new *National Energy Retail Law*, proposed to come into effect in New South Wales and other states on 1 July 2012.

We would appreciate confirmation that EWON will be recognised by the Information Commissioner under this Act as we note that the Exposure Draft does not set out how External Dispute Resolution schemes will be recognised.

If you would like to discuss this submission further, please contact me or Prue McLennan, Investigations Policy Officer on 82185250.

Yours sincerely



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