Privacy Amendment Bill 1989

Date Introduced: 16 June 1989
House: Senate
Presented by: Senator the Hon. Nick Bolkus, Minister for Consumer Affairs

Digest of Bill

Purpose
To introduce privacy rules for consumer credit records.

Background
The Bill is directed at the activities of credit reporting agencies. These bodies collect information on people who have been provided with credit and make the information available to other bodies, including some which do not provide credit. Information is usually collected from the applicant for credit, employers and other credit providers. The information currently kept usually relates to such things as previous applications for credit, defaults and the failure to pay bills within 90 days. The users of the agencies argue that the information helps keep costs down by decreasing the number of defaults and also helps prevent people from over-committng themselves. A number of other bodies, such as consumer groups, have expressed concern about the potential for breaches of privacy by the users of the agencies and the inaccuracy of some of the information held by the agencies. The latter usually results from incorrect information being passed to the agency or from a failure to update information, such as when a person has subsequently paid a debt on which they had defaulted.

While the agencies were originally established to serve credit providers, information is now provided to a much wider range of bodies. The Credit Reference Association of Australia (CRAA), which was established in 1968 and is the largest credit reference agency in Australia with approximately 10 million files, has amongst its members banks, other financial institutions, real estate agencies, car dealers, insurance companies, debt collectors and certain government bodies, including the Australian Taxation Office, which uses the information to trace people owing tax. The use of the information for purposes other than checking a person’s creditworthiness is seen by many to be a breach of their privacy.

The activities of credit reporting agencies have come under close attention recently due to a plan by the CRAA to change its method of collecting information. The body currently updates information when a member makes an inquiry about the person or the person commits a negative act which is notified,
such as default, bankruptcy etc. There is no recording of the person's general use of credit. Under the CRAA proposal, known as positive reporting, the agency would record all uses of credit. It is argued that this will assist in preventing people from becoming over-committed and also help contain the growing level of personal debt as the credit providers will have access to a wider range of information regarding the individual's financial situation. A number of consumer groups have argued, on the other hand, that the increased information opens up the potential for greater abuse of the information.

The Australian Consumers Association's views on the positive reporting proposal are contained in the June 1989 issue of their magazine Consuming Interest. The article also gives a number of examples of problems encountered with CRAA, including the improper use of information and inaccuracies in files.

Three States, Queensland, South Australia and Victoria, have legislation dealing with credit reporting. In N.S.W. credit reporting is supervised by the Privacy Committee. While the Commonwealth has no direct power over consumer affairs, this Bill will rely on the corporations, trade, banking and insurance powers to regulate an area previously the prerogative of the States.

Main Provisions

'Credit' is defined in clause 5 as a loan sought or obtained from a credit provider to be used primarily or solely for domestic, family or household purposes. Commercial lending is excluded.

'Credit providers' is defined in proposed section 11B as a bank, a corporate building society or credit union, or a corporation whose principal business is the supply of domestic credit. Also included are corporate retail businesses that issue credit cards in connection with the supply of its services and corporations that supply loans for domestic purposes if they are part of the class of corporations determined to be credit providers. The classes of credit providers are to be notified in the Gazette and this will be subject to Parliamentary disallowance. As well, the regulations may provide that classes of corporations are not to be taken to be credit providers.

Proposed section 12A will make it clear that the Bill does not apply to State banking or insurance. This is to satisfy the Constitutional limits of the banking and insurance powers.

Section 13 of the Privacy Act 1988 (the Principal Act), which defines interferences with privacy, will be amended by clause 10 to include breaches of the Information Privacy Principles by credit reporting agencies or credit providers.
Clause 12 will insert two new sections into the Principle Act which deal with the Code of Conduct. Proposed section 18A will allow the Privacy Commissioner to publish a Code of Conduct regarding the collection, storage and disclosure of credit reports. Before issuing the Code, the Commissioner is to consult with government, commercial, consumer and other interested groups. The Code will be subject to Parliamentary scrutiny. Credit providers and reporting agencies are not to breach the Code (proposed section 18B).

A new Part IIIA, titled Credit Reporting, will be inserted into the Principal Act by clause 13. A person is not to use an eligible communications service (i.e. a communications service over which the Commonwealth has power, such as Telecom services) to carry on a credit reporting service unless they are a corporation. As well, a person is not to be involved in interstate or international trade or commerce that involves running a credit reporting business unless the person is a corporation. A similar restriction will apply to banking and insurance businesses and businesses carried out in a Territory. An intentional or reckless breach of this provision will carry a maximum fine of $30,000 (proposed section 18C). Personal information is not to be supplied to persons conducting a credit reporting business unless they are a corporation. This will be subject to the same limitations (i.e. the body must be involved in interstate trade, banking etc.) mentioned above (proposed section 18D).

The contents of credit information files is dealt with in proposed section 18E. Records may be kept of inquiries by credit providers, payments that are overdue by at least 90 days where the credit provider has sought to recover the amount, court judgements against the person, bankruptcy orders and any statements the person wishes to have included under proposed section 18J (see below). The file may also include material that is reasonably necessary to identify the person. This may be determined by the Privacy Commissioner. Details of political beliefs, criminal or medical records, sexual preference or character are specifically excluded from the information that may be kept. Information is not to be provided by a credit provider to a credit reporting agency if the keeping of that information is prohibited or the person was not informed that the information may be supplied to the credit reporting agency.

Proposed section 18F details the maximum period for which information may be kept. The periods depend on the nature of the information and range from five to seven years.

Credit reporting agencies are to ensure that information is secure and take reasonable steps to ensure that the information is accurate and up to date (proposed section 18G). As well, agencies are to take reasonable steps to ensure that the information is available to the person concerned (proposed section 18H).

A person who disagrees with information on them held by a credit reporting agency may request that the information be altered. If the agency refuses the
request, the person can require the agency to include a statement provided by

the person on the file (proposed section 18J).

Proposed section 18K deals with who may have access to credit files. Information may be provided to a credit provider who requests the information in connection with an application for credit, to a body authorised under a law, or, where the credit reporting agency believes that the person has attempted to obtain credit by fraud, to a credit provider or a law enforcement body. The maximum penalty for an intentional or reckless breach of this provision will be a $150 000 fine. For the purposes of this provision the definition of a credit provider includes persons who are not corporations if they fall within the definition contained in proposed section 11B (except for not being a corporation) and they are in a class determined to be credit providers by the Privacy Commissioner.

Credit providers may use the information only for determining the application or other uses authorised by law. The maximum penalty for an intentional or reckless breach of this provision will be a $150 000 fine (proposed section 18L).

Where an application for credit is refused and the refusal is wholly or partly based on the information provided by a credit reporting agency, the credit provider is to inform the person of this and their right to obtain access to the file (proposed section 18M).

Proposed section 18N deals with the passing on of information in a credit report held by a credit provider. The information may only be disclosed: to a credit reporting agency to create or add to a file; with the person's agreement; if it is authorised by a law; or, where the credit provider believes that the person has attempted to obtain credit by fraud, to another credit provider or a law enforcement body. The maximum penalty for an intentional or reckless breach of this provision will be a $150 000 fine.

It will be an offence, with a maximum fine of $75 000, for a credit reporting agency or a credit provider to knowingly or recklessly provide false or misleading information (proposed section 18P). It will also be an offence to obtain unauthorised access to a credit report (proposed section 18Q) or to use false pretences to obtain access (proposed section 18R). The maximum fine in each case will be $30 000.

The amendments will apply to all information whether collected before or after the commencement of this Bill. However, proposed section 18E, which deals with the type of information that may be held, will not apply until 12 months after commencement (proposed section 18T).

The functions of the Privacy Commissioner in respect of credit reports are listed in proposed section 28A. The main functions will be to prepare the Code of Conduct, investigate acts that may be a breach of the Bill, publish guidelines and to monitor the security and accuracy of credit files.
The Privacy Commissioner's power to enter premises will be widened to include those occupied by a credit reporting agency or credit provider (clause 23).

For further information, if required, contact the Law and Government Group.

27 June 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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