Cyberspace Law and Policy Centre
A Centre for the Public Interest in Networked Transactions

Reform of Credit Reporting Privacy Law

Response to the Australian Law Reform Commission (ALRC) Privacy Report 108 Pt G

Submission to the Australian Government

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This submission takes into account discussions with other NGOs, the Department of Prime Minister and Cabinet's consultation meeting on 9 December 2008, and the submission by Veda Advantage dated 8 January.

This submission complements three other submissions by the Centre – on the UPPs, on Health and Research Privacy, and on the remaining ALRC recommendations.

Acronyms used in this submission:

CR ***Credit Reporting***
CRB ***Credit Reporting Business***
CRI ***Credit Reporting Information***
CRP ***Credit Reporting Purpose***
CP ***Credit Provider***
OPC ***Office of the Privacy Commissioner***
PC ***Privacy Commissioner***
PI ***Personal Information***
PAI ***Publicly Available Information***
PII ***Personal Identifying Information***

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Part G—Credit Reporting Provisions		
54. Approach to Reform		
more prescriptive than UPPs ?		Rules for credit reporting that are more prescriptive than the UPPs can be justified on the basis that a centralised credit reporting system necessarily involves a departure from privacy norms and reasonable expectations.
repeal and new regulations	**Recommendation 54–1** The credit reporting provisions of the *Privacy Act* should be repealed and credit reporting regulated under the general provisions of the *Privacy Act*, the model Unified Privacy Principles, and regulations under the *Privacy Act*—the new *Privacy (Credit Reporting Information) Regulations*—which impose obligations on credit reporting agencies and credit providers with respect to the handling of credit reporting information.	Regulations are too easy to change if left to normal processes. Key aspects of the CR regime should remain in the Act (a pared-back Part IIIA) Other aspects can be left to Regs provided there are statutory consultative processes including public hearings Any CR provisions in the Act or Regs should follow the sequence of the UPPs
only requirements different or more	**Recommendation 54–2** The new *Privacy (Credit Reporting Information) Regulations* should be drafted to contain only those requirements that are different to or more specific than provided for in the model Unified Privacy Principles.	Agree

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specific than UPPs		
'credit reporting information'	**Recommendation 54–3** The new *Privacy (Credit Reporting Information) Regulations* should apply only to 'credit reporting information', defined for the purposes of the new regulations as personal information that is: (a) maintained by a credit reporting agency in the course of carrying on a credit reporting business; or (b) held by a credit provider; and (i) has been prepared by a credit reporting agency; and (ii) is used, has been used or has the capacity to be used in establishing an individual's eligibility for credit.	Any variation from ALRC recommendation would need careful consideration. Veda suggests exclusion of 'personal identifying information' (PII) from the definition of 'credit reporting information' (CRI) but we submit that this is not acceptable as it would mean that CRI was no longer personal information (PI). Controls over the type of PII that can be used in CR (including PC discretion to vary) should remain. The change suggested by Veda might also allow PI collected by CRBs to become to become a more openly accessible ID system, outside the boundaries of the credit reporting system, which we believe would be an unintended and undesirable consequence. We agree with Veda that the regulatory loop should be closed – preventing CRBs and/or CPs from using the same information (as is CRI) for other purposes. We are not convinced that relying on the concepts of CRB, CRP and CRI alone can achieve this closure. See our response to Veda's suggestion at the first item under Chapter 57 – Use & Disclosure, below. Further discussion is required.
	(deliberately out of sequence) **Recommendation 56–1** The new *Privacy (Credit Reporting Information) Regulations* should prescribe an exhaustive list of the categories of personal information that are permitted to be included in credit reporting information. This list should be based on the provisions of s18E of the *Privacy Act*, subject to the changes set out in Recommendations 55–1, 55–2, 56–2 to 56–4, 56–6, 56–8 and 56–9.	Veda suggests an exhaustive list of positive and negative CRI data elements in a Schedule. This may be helpful – particularly in the context of differential control of marketing and pre-screening (subject to our comments on that below). This is acceptable, but any PC discretion to vary the list should be via generic PID processes (Part VI) with their requirement for public consultation.
'Credit reporting business'	Paragraph 54.95 – no effective change to definition in s6	Should avoid 'dominant purpose' test – this is too dependent on corporate structures – CR should be the regulated activity irrespective of whether it is a large or small component of the overall activity of any particular enterprise.
'credit reporting purpose'	Paragraph 57.37 and Recommendation 57-1- are relevant	Veda suggests a new definition to distinguish primary (direct) from secondary (indirect) purpose, in the specific context of CR. We submit that while a new definition may be helpful, the terms 'primary' and 'secondary' should be retained as they are consistent both with the UPPs and with international privacy instruments. If 'Credit reporting purpose' is to be defined it should expressly include building of statistical models (to avoid problems to date). It could also include some other credit related uses and disclosures currently authorised separately in s18K,L,N,NA, P & Q but should not include 'required or authorised by law' which should remain a secondary purpose exception (for consistency with the UPPs).

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		The need for the definition to distinguish between consumer and commercial credit would need further consideration – see immediately below.
definition of 'credit provider'	**Recommendation 54–4** The new *Privacy (Credit Reporting Information) Regulations* should include a simplified definition of 'credit provider' under which those agencies and organisations that are currently credit providers for the purposes of the *Privacy Act* (whether by operation of s 11B or pursuant to determinations of the Privacy Commissioner) should generally continue to be credit providers for the purposes of the regulations.	The classes of organisation that can and cannot be a 'credit provider' (CP) should be listed in a Schedule to the Act. If the PC is to be allowed to amend the Schedule it should be through generic PID processes (Pt VI) with their requirements for public consultation. The Schedule should expressly exclude 'credit repair' businesses. We suggest that a 'one-size fits all' approach is not appropriate – different classes of credit provider may need to be treated differently both for input (listing) and output (access). Consideration should be given to differentiating utilities and essential services (including telcos) as classes of credit provider to which differential obligations should apply, given the significance for individuals of any restrictions on their access to such services. See also our comments in relation to Recommendation 56-2 regarding differential thresholds of loan amount to be listed in CRI, for different classes of CP.
definition of credit (general)		Veda suggests the use of the Uniform Consumer Credit Code definition of 'credit'. Given our preference for amendments to be conditional on responsible lending obligations in the UCCC, we support consistency of definitions. Any desirable limitation on the application of the CR regime should be effected through the definition of 'credit provider' rather than by a different definition of 'credit'.
definition of credit (limited to 'domestic, family or household' purposes)	Paragraph 54.177 – no change to this limitation on coverage is recommended (contrary to Proposal 50-10 in DP72)	Protection should apply to provision of credit to individuals irrespective of purpose – to prevent deliberate evasion of regulation by presenting loans to individuals as for a commercial purpose when they are in fact for private consumption.
Regulations: exclude foreign credit reporting	**Recommendation 54–5** The new *Privacy (Credit Reporting Information) Regulations* should, subject to Recommendation 54–7, exclude the reporting of personal information about foreign credit and the disclosure of credit reporting information to foreign credit providers.	Agree
Regulations: PC approve foreign credit reporting	**Recommendation 54–7** The new *Privacy (Credit Reporting Information) Regulations* should empower the Privacy Commissioner to approve the reporting of personal information about foreign credit, and the disclosure of credit reporting information to foreign credit providers, in defined circumstances. The regulations should set out criteria for approval, including the availability of effective enforcement and complaint handling in the foreign jurisdiction.	This power is not in our view necessary, and its use would undermine the prohibition on foreign credit reporting. If there was to be a PC discretion, it should be through generic public interest determination (Pt VI) processes, with their requirement for public consultation.

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Memo with NZ	**Recommendation 54–6** The Australian Government should include credit reporting regulation in the list of areas identified as possible issues for coordination pursuant to the *Memorandum of Understanding Between the Government of New Zealand and the Government of Australia on Coordination of Business Law* (2000).	Agree, but the merits of any special arrangements for sharing of credit reporting information between Australia and New Zealand should be subject to public consultation.
review	**Recommendation 54–8** The Australian Government should, in five years from the commencement of the new *Privacy* (*Credit Reporting Information*) *Regulations*, initiate a review of the regulations.	Agree – but this commitment should be in the Act itself.
credit reporting code	**Recommendation 54–9** Credit reporting agencies and credit providers, in consultation with consumer groups and regulators, including the Office of the Privacy Commissioner, should develop a credit reporting code providing detailed guidance within the framework provided by the *Privacy Act* and the new *Privacy (Credit Reporting Information) Regulations.* The credit reporting code should deal with a range of operational matters relevant to compliance.	A Code is a suitable instrument for some detailed requirements, but its development and compliance with it should be made mandatory in the Act – compliance with the Code should be a condition of provision of/access to CRI - not just left to contract. Governance arrangements for the Code need to be specified in the Act or Regulations – including provisions for review and compliance monitoring (see existing models in financial services, copyright?). Veda suggests that the Code not be made under the Privacy Act. If this is to accommodate content which is related more closely to lending obligations (see below) than to privacy protection then it may be acceptable provided there is a requirement for not only the Privacy Commissioner, but also other stakeholders including relevant NGOs, to be consulted through an open public process.
55. More Comprehensive Credit Reporting		
categories	**Recommendation 55–1** The new *Privacy (Credit Reporting Information) Regulations* should permit credit reporting information to include the following categories of personal information, in addition to those currently permitted in credit information files under the *Privacy Act*: (a) the type of each credit account opened (for example, mortgage, personal loan, credit card); (b) the date on which each credit account was opened; (c) the current limit of each open credit account; and	Item (b) and arguably item (a) are already possible under the provision for 'current credit provider status' which is rarely used. These additional items of information are acceptable on condition that there is simultaneous enactment of binding responsible lending obligations (including assessment of capacity to repay and 'appropriate product' requirements) - see below re Rec 55-3) Specialist NGOs should be asked to specify more clearly what is needed as this will be in credit legislation not privacy.
'closed'	(d) the date on which each credit account was closed.	The Code should include criteria for when an account is considered to be 'closed'.
repayment performance history	**Recommendation 55–2** Subject to Recommendation 55–3, the new *Privacy (Credit Reporting Information) Regulations* should also permit credit reporting information to include an individual's repayment performance history, comprised of information indicating: (a) whether, over the prior two years, the individual was meeting his or her repayment	Inclusion in CRI of this limited subset of repayment history is acceptable subject to effective implementation of Rec 55-3 (see below). It should be made clear that item (a) would allow only yes/no information about repayments – not any detail of amounts

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	obligations as at each point of the relevant repayment cycle for a credit account; and, if not, (b) the number of repayment cycles the individual was in arrears.	
reciprocity	No recommendation	We submit that the question of reciprocity; i.e. whether input of information should be a condition of access (output) is largely a commercial matter which should not be regulated by privacy law.
responsible lending	**Recommendation 55–3** The Australian Government should implement Recommendation 55–2 only after it is satisfied that there is an adequate framework imposing responsible lending obligations in Commonwealth, state and territory legislation.	This is an essential precondition for any increase in the type and amount of information to be allowed in CRI. Appropriate amendments to credit legislation should be 'locked in' on an integrated timetable. Relevant changes to the Privacy Act should not commence until these requirements are in place and operating
repayment performance history - procedures	**Recommendation 55–4** The credit reporting code should set out procedures for reporting repayment performance history, within the parameters prescribed by the new *Privacy (Credit Reporting Information) Regulations*.	Agree in principle – see other comments on content of Regs
deletion	**Recommendation 55–5** The new Privacy *(Credit Reporting Information) Regulations* should provide for the deletion of the information referred to in Recommendation 55–1 two years after the date on which a credit account is closed.	Agree
Transitional arrangements for more comprehensive reporting	Not expressly considered	The sudden availability of extra CRI could dramatically affect status of individual consumers – and there is a need for safeguards Veda suggests a 3 year transition period, with obligations on CRBs and CPs to have agreements in place about a phased provision of the extra CRI, linked to a public announcement of the changes. This suggestion relates to the conditional passage of responsible lending obligations. Further consultation is desirable about how changes to credit law and privacy law will be co-ordinated. Veda's suggestions seem unobjectionable provided there are specific obligations on CPs and CRBs to notify individuals of the new regime well in advance of its commencement.
Preparation for more comprehensive reporting	Reference to constraints on data studies	Veda and the credit industry understandably want to analyse existing data to help design Code provisions and safeguards, but OPC interpretation of Part IIIA has prevented use of existing CRI for analysis. The OPC interpretation seems very inflexible. We support action, including amendments if necessary, to facilitate analysis of CRI for these purposes. It may be that relevant analysis can be performed on de-identified data, with appropriate transparency, independent governance and audit of the analysis project (see also our response to Rec 58-5)

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56. Collection and Permitted Content of Credit Reporting Information		
		Veda has suggested express authority for CRBs to collect indirectly from CPs – relieving them of the need to justify non-compliance with UPP 2.3. We support this suggestion.
identity theft	[no recommendation?]	See comments on Rec 57-5
exhaustive list of categories of CRI	**Recommendation 56–1**	See comments on this under Chpt 54 above
overdue payments of less than a prescribed amount	**Recommendation 56–2** The new *Privacy (Credit Reporting Information) Regulations* should provide that credit reporting agencies are not permitted to list overdue payments of less than a prescribed amount.	We support the setting of a threshold or thresholds in the Act or Regulations. The thresholds must apply to any new repayment history information as well as to default information, and should be automatically index linked. We submit that it may be appropriate to have different thresholds for different classes of credit provider (e.g. utilities) given the nature of the loan type and the differential consequences of default information. The minimum threshold for any class of credit provider should be $200.
presented and dishonoured cheques	**Recommendation 56–3** The new *Privacy (Credit Reporting Information) Regulations* should not permit credit reporting information to include information about presented and dishonoured cheques.	Agree
personal insolvency	**Recommendation 56–4** The new *Privacy (Credit Reporting Information) Regulations* should permit credit reporting information to include personal insolvency information recorded on the National Personal Insolvency Index administered under the *Bankruptcy Regulations 1966* (Cth).	Agree
adequately differentiate forms of administration	**Recommendation 56–5** Credit reporting agencies should ensure that credit reports adequately differentiate the forms of administration identified on the National Personal Insolvency Index (NPII); and accurately reflect the relevant information recorded on the NPII, as updated from time to time.	Agree - this requirement should be in Regs not Code
serious credit infringement'	**Recommendation 56–6** The new *Privacy (Credit Reporting Information) Regulations* should allow for the listing of a 'serious credit infringement' based on the definition currently set out in s18E(1)(b)(x) of the *Privacy Act*, amended so that the credit provider is required to have taken reasonable steps to contact the individual before reporting a serious credit infringement under s 18E(1)(b)(x)(c).	Agree – guidance on reasonable steps can be left to Code, provided proposed requirements for EDR are made mandatory.
GLs: criteria for serious credit	**Recommendation 56–7** The Office of the Privacy Commissioner should develop and publish guidance on the criteria that need to be satisfied before a serious credit infringement may be	Code should cover these matters – parties involved will have more expertise than the OPC

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infringement	listed, including: (a) how to interpret 'serious' (for example, in terms of the individual's conduct, and the period and amount of overdue payments); (b) how to establish whether reasonable steps to contact the individual have been taken; (c) whether a serious credit infringement should be listed where there is a dispute between the parties that is subject to dispute resolution; and (d) the obligations on credit providers and individuals in proving or disproving that a serious credit infringement has occurred.	alone (subject to general comments on status and process for Code). We favour strong provisions for EDR schemes to be able to issue 'take down' notices on SCI listings found to be inappropriate.
Publicly available information	No recommendation	Where CRI includes publicly available information (PAI) that information should be regulated by the credit reporting provisions of the legislation. Where PAI is held separately but is brought together with other CRI for the purposes of a credit report, it will form part of the CRI at that point and should be regulated by the CR provisions. Care needs to be taken in drafting to ensure the intent of the legislation cannot be evaded by separate storage of PAI, only bringing it together with other CRI momentarily in response to enquiries.
'sensitive information' and 'lifestyle, character or reputation' info	**Recommendation 56–8** The new *Privacy (Credit Reporting Information) Regulations* should prohibit the collection in credit reporting information of 'sensitive information', as defined in the *Privacy Act*.	Agree but prohibition should also cover information about an individual's 'lifestyle, character or reputation'.
under the age of 18	**Recommendation 56–9** The new *Privacy (Credit Reporting Information) Regulations* should prohibit the collection of credit reporting information about individuals who the credit provider or credit reporting agency knows, or reasonably should know, to be under the age of 18.	Agree – guidance on 'reasonable to know' in Code
Notification / 'ensure individual is aware '	**Recommendation 56–10** The new *Privacy (Credit Reporting Information) Regulations* should provide, in addition to the other provisions of the 'Notification' principle, that at or before the time personal information to be disclosed to a credit reporting agency is collected about an individual, a credit provider must take such steps as are reasonable, if any, to of the: (a) identity and contact details of the credit reporting agency; (b) rights of access to, and correction of, credit reporting information provided by the regulations; and (c) actual or types of organisations, agencies, entities or persons to whom the credit reporting	Agree but needs to expressly rule out PC's discretion to interpret as allowing notification much later than time of collection (current PC position) Also needs to expressly provide for notice of any new items of information to be allowed in credit information files (4+1, as recommended by the ALRC in 55-1 and 55-2)) Also needs to require notice of EDR processes.

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	agency usually discloses credit reporting information.	
content and timing of notices	**Recommendation 56–11** The new *Privacy (Credit Reporting Information) Regulations* should provide that a credit provider, before disclosing overdue payment information to a credit reporting agency, must have taken reasonable steps to ensure that the individual concerned is aware of the intention to report the information. Overdue payment information, for these purposes, means the information currently referred to in s18E(b)(1)(vi) of the *Privacy Act*.	Agree
Bundled and true consent	No recommendation either for credit reporting or more generally	Where the CR provisions incorporate 'consent' a review is required to assess whether free and revocable consent is possible in the circumstances. Where it is not, the consent requirement should be replaced with notification requirements; i.e. notice that certain uses and disclosures are a condition of the loan transaction (consent in these circumstances is spurious and misleading).
57. Use and Disclosure of Credit Reporting Information		
		Veda has suggested a new provision – that credit reporting businesses must not disclose personal information for a CR purpose unless that personal information is derived from CRI, or publicly available information, or is PII. This new provision, intended to prevent abuse, would be helpful subject to our previous submission that PAI and PII should be part of CRI where it is used in association with other CRI for CR purposes. The new provision need therefore only say 'derived from CRI'.
list of circumstances / permitted uses	**Recommendation 57–1** The new *Privacy (Credit Reporting Information) Regulations* should provide a simplified list of circumstances in which a credit reporting agency or credit provider may use or disclose credit reporting information. This list should be based on the provisions of Part IIIA of the *Privacy Act*, which currently authorise the use and disclosure by credit reporting agencies and credit providers of personal information contained in credit information files, credit reports and reports relating to credit worthiness (ss 18L, 18K and 18N).	Veda suggest an express authorisation for CRBs and CPs to use CRI for a primary (they suggest 'direct') credit reporting purpose (see suggested definition under Chpt 54 above), together with a discretion for the PC to declare a purpose not consistent, and therefore prohibited. Provided the PC discretion is only to limit and not to permit further purposes, then this is acceptable, if subject to the Pt VI PID process safeguards. The Veda proposal is for a simplification through a newly defined primary purpose for both CRBs and CPs which includes some directly related uses and disclosures. If this route is taken, we see no reason for this authority not ot be in the Act itself rather than in the Regulations. Additional uses or disclosures within the primary purpose could then only be added by amendment of the Act.
secondary purpose	**Recommendation 57–2** The new *Privacy (Credit Reporting Information) Regulations* should provide that a credit reporting agency or credit provider may use or disclose credit reporting information for a secondary purpose related to the assessment of an application for credit or the management of an existing credit account, where the individual concerned would reasonably	Under Veda's proposal, some of the credit related secondary purposes currently authorised by s18K,L,N,NA,P &Q) would now be authorised instead by the provision for a defined primary purpose of credit reporting.

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	expect such use or disclosure.	Veda's suggested principle avoids use of the term 'management of the account' (see below) but is otherwise too permissive, and overly reliant on subjective judgements by CRBs and CPs about individual needs and public benefit. Great care would be needed in drafting either the definition of 'credit reporting purpose' or or the secondary use exceptions to ensure that 'management of account' or other wording does not allow otherwise strictly prohibited purposes such as direct marketing or pre-screening. Particular attention to potential uses of the additional items of CRI (4+1) which could be 'passed off' as for 'account management' or similar purposes. There is also a risk that CPs could access the new fuller CRI *at any time* – not just when triggered by an application or other defined event. What is required is a table (now common in legislation) showing which classes of CRB and CP are authorised to use CRI for the different secondary purposes (this table would also accommodate the different monetary thresholds suggested above in response to Rec 56-2).
mortgage or trade insurer	No recommendation	We support a provision allowing indirect access to credit reporting information to a mortgage or trade insurer, via the credit provider. This could be either incorporated in the primary purpose definition or remain a secondary purpose exception
debt collection	Paragraphs 57.57- 57.62 - No recommendation for change to existing limitations – direct access only where assignees otherwise via credit provider	The existing limitations on direct access to CRI by debt collection businesses, except where they are assignees for the loan, should remain.
direct marketing	**Recommendation 57–3** The new *Privacy (Credit Reporting Information) Regulations* should prohibit the use or disclosure of credit reporting information for the purposes of direct marketing, including the pre-screening of direct marketing lists.	Veda suggest allowing use of only negative CRI for pre-screening, defined as removing individuals with a poor credit history from marketing lists. If drafting can be devised to ensure that this concession could not be used to target those screened out of one list for another different marketing approach, then this would be acceptable, but it is difficult to see how this how this could be ensured. Unless it can be, and adequate audit trails to verify compliance established, then use of CRI for pre-screening should be prohibited. Concern about pre-screening could be alleviated with adequate responsible lending requirements in consumer credit law, and by better implementation of 'opt-out' facilities. Strongly support prohibition of use of CRI for direct marketing, but will require a clear definition of direct marketing to ensure that it doesn't get back in the guise of 'account management' or another permitted purpose. Some of these matters are under consideration by ARCA which is currently developing a Code. While this may be a useful vehicle for progressing discussions, the Code proposed as part of the new regime will not be the appropriate location for controls over direct marketing

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		and/or pre-screening – these need to be in the Act or Regulations.
AML/CTF	**Recommendation 57–4** The use and disclosure of credit reporting information for electronic identity verification purposes to satisfy obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act) should be authorised expressly under the AML/CTF Act.	This recommendation is premature – the issue should be addressed in wider identity management context and through amendment of AML-CTF Act first, if justified.
individual right to prohibit	**Recommendation 57–5** The new *Privacy (Credit Reporting Information) Regulations* should provide individuals with a right to prohibit for a specified period the disclosure by a credit reporting agency of credit reporting information about them without their express authorisation.	A consumer option to freeze access is desirable but need to consider all variations – in some ID crime circumstances individuals may prefer a flag/warning to a freeze? Veda suggests a 'reasonableness' test for acting on requests, to avoid abuse. This is acceptable in principle, but the threshold should not be as high as court issued certificates, as suggested by Veda. Any 'freeze' option would need to be accompanied by an obligation on CRBs to explain the reason for the freeze to users, to avoid adverse inferences., and a corresponding obligation on
use and disclosure limitations apply only to 'credit reporting information' no 18N	**Recommendation 57–6** There should be no equivalent in the new *Privacy (Credit Reporting Information) Regulations* of s18N of the *Privacy Act*, which limits the disclosure by credit providers of personal information in 'reports' related to credit worthiness. The use and disclosure limitations should apply only to 'credit reporting information' as defined for the purposes of the new regulations.	Whether applied through the Act or Regulations, this change would mean that the scope of the CR privacy regime will be more limited that it currently is (potentially) under Part IIIA. We note that the wider scope was not accidental, but acknowledge that, in practice, there has been no enforcement and probably little compliance with the CR provisions in this wider context. We therefore pragmatically accept that the scope should be limited.
58. Data Quality and Security		
unrecoverable debts	**Recommendation 58–1** The new *Privacy (Credit Reporting Information) Regulations* should prohibit expressly the listing of any overdue payment where the credit provider is prevented under any law of the Commonwealth, a state or a territory from bringing proceedings against the individual to recover the amount of the overdue payment; or where any relevant statutory limitation period has expired.	Agree – Code could give further guidance
new arrangements	**Recommendation 58–2** The new *Privacy (Credit Reporting Information) Regulations* should provide that where the individual has entered into a new arrangement with a credit provider to repay an existing debt—such as by entering into a scheme of arrangement with the credit provider—an overdue payment under the new arrangement may be listed and remain part of the individual's credit reporting information for the full five-year period permissible under the regulations.	Agree
data quality procedures	**Recommendation 58–3** The credit reporting code should promote data quality by setting out procedures to ensure consistency and accuracy of credit reporting information. These	Agree – suitable matters for Code

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	procedures should deal with matters including: (a) the timeliness of the reporting of credit reporting information; (b) the calculation of overdue payments for credit reporting purposes; (c) obligations to prevent the multiple listing of the same debt; (d) the updating of credit reporting information; and (e) the linking of credit reporting information relating to individuals who may or may not be the same individual.	Code must also expressly cover definitions of 'overdue', 'default', and provide guidance on reasonable steps in relation to various matters where these are required by the Act or Regs.
data quality and audit	**Recommendation 58–4** The new *Privacy (Credit Reporting Information) Regulations* should provide that credit reporting agencies must: (a) enter into agreements with credit providers that contain obligations to ensure the quality and security of credit reporting information; (b) establish and maintain controls to ensure that only credit reporting information that is accurate, complete and up-to-date is used or disclosed; (c) monitor data quality and audit compliance with the agreements and controls; and (d) identify and investigate possible breaches of the agreements and controls.	Agree, but Regs should also require that access to CRI be conditional on joining and following the Code (i.e. don't just leave requirement to follow Code to contract/ CRA terms and conditions) Veda suggests a qualified requirement to take 'r*easonable steps* to ensure'. This is acceptable An active monitoring role for CRAs is important, and the Act should give CRBs the necessary powers to perform this role.
retention periods 18F	**Recommendation 58–5** The new *Privacy (Credit Reporting Information) Regulations* should provide for the deletion by credit reporting agencies of different categories of credit reporting information after the expiry of maximum permissible periods, based on those currently set out in s18F of the *Privacy Act*.	Agree Veda suggests express provision for retention of information for audit and statistical modelling, but these should not require extended retention of personally identifiable records . The Regulations are the appropriate vehicle for detailed retention periods which can take account of audit and modelling needs, provided there are adequate public consultation requirements for any changes to Regulations.
deletion of voluntary arrangements	**Recommendation 58–6** The new *Privacy (Credit Reporting Information) Regulations* should provide for the deletion by credit reporting agencies of information about voluntary arrangements with creditors under Parts IX and X of the *Bankruptcy Act 1966* (Cth) five years from the date of the arrangement as recorded on the National Personal Insolvency Index.	Agree – see our submission on Rec 56-4 above
security of CRI	No recommendation for separate security requirements – UPP should apply as default	Agree

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18G(b)		
59. Access and Correction, Complaint Handling and Penalties		
	Recommendation 59–1 The new *Privacy (Credit Reporting Information) Regulations* should provide individuals with a right to obtain access to credit reporting information based on the provisions currently set out in s 18H of the *Privacy Act*.	Agree – given that the industry has made no argument for the exceptions in UPP 9.1
one free copy	**Recommendation 59–2** The new *Privacy (Credit Reporting Information) Regulations* should provide that credit reporting agencies must provide individuals, on request, with one free copy of their credit reporting information annually.	Agree with this important variation on UPP 9, provided there is also an express right also to a free copy after any dispute/correction. The Regulations should include time limits – the current 10 days is too long – CRB systems allow much quicker response.
	Recommendation 59–3 The new *Privacy (Credit Reporting Information) Regulations* should provide an equivalent of s18H(3) of the *Privacy Act*, so that an individual's rights of access to credit reporting information may be exercised for a credit-related purpose by a person authorised in writing.	Agree but would like to see some way of preventing abuse by 'forced access' for third party purposes, and by shonky operators e.g. in debt repair. This is a generic issue for the access principle in the UPPs as well.
	Recommendation 59–4 The new *Privacy (Credit Reporting Information) Regulations* should provide that, where a credit provider refuses an application for credit based wholly or partly on credit reporting information, it must notify an individual of that fact. These notification requirements should be based on the provisions currently set out in s18M of the *Privacy Act*.	Agree, but this requirement should be in the Act rather than Regulations. The Code could provide further guidance
rights of access to credit reporting information	Contrary to Proposal 55-3 in DP72, the ALRC concludes that a right of access to detailed credit scoring information is not practicable in Australia. Provision of general explanations about credit scoring could be covered in the Code (Report 108, paragraphs 59.84-59.88)	The ALRC's reasons for departing from its earlier proposal are not convincing. If an individual's application for credit is refused based wholly or partly on credit reporting information, there should be an obligation on the CPs to provide any credit score or ranking used by the credit provider, together with explanatory material on scoring systems, to allow individuals to understand how the risk of the credit application was assessed
complaints	**Recommendation 59–5** The new *Privacy (Credit Reporting Information) Regulations* should provide that: (a) credit reporting agencies and credit providers must establish procedures to deal with a request by an individual for resolution of a credit reporting complaint in a fair, efficient and timely manner; (b) a credit reporting agency should refer to a credit provider for resolution complaints about the content of credit reporting information provided to the agency by that credit provider; and (c) where a credit reporting agency or credit provider establishes that it is unable to resolve a complaint, it must inform the individual concerned that it is unable to resolve the complaint and that the individual may complain to an external dispute resolution scheme or to the Privacy	Agree generally but not with automatic referral by CRB to CP – CRBs should be able to centrally manage complaints where appropriate, to avoid a 'merry go round'. The Act or Regs should impose obligations on CRBs to try to resolve individuals complaints and on CPs to provide CRBs with such information as they reasonably require to facilitate resolution. Further consultation is desirable about the dispute resolution provisions, particularly to make best use of the various EDR schemes. (see response below to Rec 59-7)

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avenues of complaint available	**Recommendation 59–6** The new *Privacy (Credit Reporting Information) Regulations* should provide that the information to be given, if an individual's application for credit is refused based wholly or partly on credit reporting information, should include the avenues of complaint available to the individual if he or she has a complaint about the content of his or her credit reporting information.	Agree but obligation should be on both the CRB and CP to inform the consumer of EDR options.
external dispute resolution scheme	**Recommendation 59–7** The new *Privacy (Credit Reporting Information) Regulations* should provide that credit providers only may list overdue payment or repayment performance history where the credit provider is a member of an external dispute resolution scheme recognised by the Privacy Commissioner.	This should also be a condition of access to CRI as well as for input (can't assume will always be reciprocity) Any external dispute resolution schemes should meet national benchmarks as well as recognised by the Privacy Commissioner See Benchmarks for Industry-Based Customer Dispute Resolution Schemes: http://www.anzoa.com.au/docs/National%20Benchmarks.pdf. ASIC approval may also be a desirable criterion.
evidence to substantiate dispute	**Recommendation 59–8** The new *Privacy (Credit Reporting Information) Regulations* should provide that, 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 recognised by the Privacy Commissioner. If these requirements are not met, the credit reporting agency must delete or correct the information on the request of the individual concerned.	Agree
	Recommendation 59–9 The *Privacy Act* should be amended to remove the credit reporting offences and allow a civil penalty to be imposed as provided for by Recommendation 50–2.	Agree