

29 May 2012

New Zealand Productivity Commission
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Wellington 6143
New Zealand

Australian Productivity Commission
GPO Box 1428
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Dear Productivity Commissions

Strengthening Economic Relations between Australia and New Zealand – consumer credit reporting

I provide this submission in my capacity as New Zealand Privacy Commissioner and, in particular, drawing upon my experience in the regulation of credit reporting.

The purpose of this submission is quite modest. It is simply to draw your attention to consumer credit reporting within the trans-Tasman market as an area that might reward consideration by your commissions. Credit reporting is not a matter explicitly mentioned in your terms of reference or the published issues paper but it would seem to be relevant to the issues you are exploring.

Terms of Reference

Your terms of reference provide that the Commissions are to provide analysis on:

- potential areas of further economic reform and integration, including identification of areas of reform where benefits are likely to be most significant, with particular focus on critical issues for business like investment and productivity;
- the economic impacts in benefits of reform;
- any significant transition and adjustment costs that could be incurred;
- identification of reform where joint net benefits are highest;
- the means by which they might be best actioned; and
- the likely time paths for which benefits are expected to accrue.

I suggest that the commissions consider whether consumer credit reporting has potential for worthwhile economic reform and integration given its relevance both to trans-Tasman trade and the cross-border movement of labour. Cooperation between the two countries in this area might yield economic benefits.

Before turning to the cross-border aspect, I offer brief comments on the state of credit reporting regulation and reform.

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State of credit reporting regulation and reform

Both Australia and New Zealand regulate credit reporting through their privacy legislation. Australia does this by primary legislation in a separate part of the Privacy Act 1988. New Zealand uses delegated legislation - a code of practice issued by the Privacy Commissioner under the Privacy Act 1993.

Both countries currently operate a negative credit reporting system although New Zealand's law was changed to enable positive reporting to begin from 1 April this year. My office is unaware of any major credit providers yet contributing positive data to the system but would expect the position gradually to change later in the year.

Amendments have recently been introduced to the federal parliament to permit positive reporting in Australia.

Both countries are following a reasonably similar track in their credit reporting reform. Several years ago, the Australian Law Reform Commission began a general review of Australian privacy law, including credit reporting, while the New Zealand Office of the Privacy Commissioner began a scheduled review of the Credit Reporting Privacy Code 2004.

Although quite separate reviews, there was some cross fertilisation of ideas. My office studied with care the analysis published by the ALRC and I took the Australian Government's response to the ALRC recommendations into account in issuing amendments to the New Zealand code. In the other direction, I made a submission to the ALRC encouraging it to take account of the trans-Tasman issues in its review, particularly in the area of credit reporting. This resulted in the ALRC's Recommendation 54-6 which provided that '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 Government of Australia on Coordination of Business Law (2000).'

The general direction of reforms in relation to positive reporting is reasonably similar although the differences in regulatory style are notable (with a more prescriptive approach followed in Australia). The current negative reporting system is expected to be replaced in both countries with a positive system allowing, for the first time, the reporting of credit account information and repayment history on a 24 month cycle. Various other reforms linked to this major change seek to protect consumers' interests and maintain public trust in the new arrangements.

Meanwhile, outside Australia and New Zealand, there has been multi-national study of credit reporting regulation. For instance, the World Bank has developed general principles for credit reporting while the Expert Group on Credit Histories was mandated by the European Commission to identify solutions to optimise the circulation of consumers' credit data within the EU. A brief reading list is appended.

Cross-border credit reporting

It might be said that credit lies at the heart of our modern economies. To that might be added that credit reporting is a major foundation of the credit systems and the management of risk.

Notwithstanding free trans-Tasman trade, and the relative mobility of individuals between our two economies, national borders act as a barrier to trans-Tasman credit reporting and accordingly the efficient grant of credit in certain circumstances. This is not a problem

unique to Australia and New Zealand. Even with the close economic integration of the internal market in Europe, barriers to cross-border credit reporting have been hard to break down.

Recently the World Bank adopted a general principle on credit reporting dealing with cross-border data flows that provided:

“Cross-border credit data transfers should be facilitated, where appropriate, provided that adequate requirements are in place.”

The commentary in relation to that principle begins:

“Financial liberalisation has significantly reduced restrictions on the operations of financial institutions in foreign markets. At the same time, businesses initiating activities in a new country and individuals that have changed their country of residence will most likely need to establish a relationship with a local financial entity. New challenges have thus emerged in recent years, including the need to monitor credit exposures of important borrowers outside a financial institution’s home markets, or provided credit and other financial services on a sound basis to businesses and individuals that do not have a credit history in the country where they are applying for credit.”

Individuals crossing the Tasman for work find it hard to obtain credit given the absence of cross-border credit reporting. Potential lenders to such individuals also face uncertainty and therefore risk in relation in the absence of reliable credit reporting. Financial and non-financial credit providers that have lent to individuals who cross the Tasman may be disadvantaged by the inability to use the credit reporting system in pursuing bad debts.

With economies as closely integrated as New Zealand’s and Australia’s, it ought to be feasible to solve the challenges of fair and reliable cross-border transfers of information for a suitable system of trans-Tasman credit reporting. To some extent the difficulties in achieving this may arise from domestic privacy regulation. It should be possible to reconcile expectations for fair and limited use of credit information, and the protection of consumer and business interests, in our respective regulatory systems. Unfortunately, without a broader trans-Tasman perspective, such as might be brought to the topic through the work of your commissions, it is difficult to progress solutions based solely on domestic regulatory powers (in the New Zealand case) or by amendments to domestic privacy law (in the Australian case).

I am not promoting any specific solution to the challenges of trans-Tasman credit reporting. However, I would encourage the finding of solutions which can ensure that businesses operating in the trans-Tasman market can take full advantage of credit reporting and that individuals taking advantage of labour mobility can benefit from having their credit history available to potential lenders. If good solutions can be found to these challenges, benefits are possible for business, consumers and the community.

If the commissions do decide to look into the matter in more detail, my office would be pleased to assist.

Yours sincerely



Marie Shroff
New Zealand Privacy Commissioner

Short reading list***Australia***

Australian Law Commission, *For Your Information: Australian Privacy Law and Practice: Report 108*, May 2008 (Part G and especially 54.138 to 54.159, pages 1781-1787)

Privacy Act 1988 and Privacy Amendment (Enhancing Privacy Protection) Bill 2012

New Zealand

Privacy Act 1993

Credit Reporting Privacy Code 2004 (especially Amendments No 4 and 5)

Europe

DG Internal Market and Services, *Report of the Expert Group on Credit Histories*, May 2009

International

World Bank Group, *General Principles for Credit Reporting*, September 2011