

17 February 2021

The Treasury

CreditReforms@TREASURY.GOV.AU

Dear Ms. McKay,

RE: Treasury Consultation on Licensing Debt Management Firms

Communications Alliance is the primary telecommunications industry body in Australia. Our membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Retail Service Providers (RSPs) provide telecommunications services to consumers, and have had numerous interactions with unlicensed debt management firms. We appreciate the opportunity to provide this submission to the Treasury's proposed *National Consumer Credit Protection Amendment (Debt Management Services) Regulations 2021* on licensing these firms' credit reporting assistance activities.

We acknowledge the role these debt management firms – also referred to as credit repair firms – can play in assisting consumers. However, we have seen negative consumer impacts from some of these firms, and the lack of regulation of these firms has been a significant hurdle in attempting to address these problems.

Background

RSPs are required by the Telecommunications Consumer Protections (TCP) Code to conduct credit assessments for certain services, including obtaining an external credit check for new residential customers seeking to purchase services above a certain price threshold.¹ They may conduct additional credit checks in the interest of responsible sales and provision of products.

Our members have experienced debt management firms contacting RSPs directly and through the Telecommunications Industry Ombudsman (the Ombudsman) to request removals of these legitimate and often mandatory credit enquiries. These contacts are often extremely aggressive towards RSP representatives and take up significant customer service resources.

RSPs have also experienced problems with some firms' behaviours on other related topics, such as inappropriately requesting the removal of defaults which were correctly added to the customer's file.

These problems have been occurring for many years – at times, an RSP will successfully communicate to a firm that the behaviour is inappropriate and will see it cease, but that is often only a temporary solution.

Consumer detriment

In addition to taking up vital TIO and RSP resources, firms who follow these inappropriate practices are typically misleading consumers and charging them significant amounts of money to take actions (which may have little to no impact) on their behalf.

¹ [C628:2019, Telecommunications Consumer Protections Code, Clause 6.1](#)

In our experience, some of these firms approach customers or advertise their services based on inaccurate representations about the impact that credit enquiries at point of sale have on their accounts (and thus what positive impacting removing the enquiries will have) and the possibility of removing legitimate – and in fact legally required – enquiries from a file.

This often creates false hopes for customers about the prospects of accessing future credit or financial products, such as a mortgage. Our members have seen the emotional impact on consumers who hold false hopes while watching these cases move between the firm, the RSP, the Ombudsman, and others.

In addition to this emotional toll, our information is that these firms charge significant fees for this activity – regardless of its success.

For telecommunications, the Ombudsman provides free dispute resolution services to all consumers, including for complaints about credit enquiries that would be able to address any inappropriately conducted credit checks or defaults.²

Despite this existing service – free to all consumers - we do understand that some consumers may prefer to use and pay for a debt management service, and some of these firms do provide appropriate assistance and have resolved a very small number customer queries – however, we have not found that this is the case for all firms. We also find that these firms do not inform customers of the customer's choice to use the free service provided by the Ombudsman – even though these firms are clearly aware of that path, as they at times attempt to bring pressure to bear on RSPs by filing a complaint on behalf of their customer with the Ombudsman.

Current regulatory impediments

Communications Alliance has in the past year engaged with various stakeholders on this matter to attempt to find a solution to the matter, but has been informed that the current regulatory environment – namely that these debt management activities do not require a specific licence – presents significant challenges, as any regulatory activity would need to be pursued via the path of potential breaches of the Australian Consumer Law (ACL). We have been informed that any formal referral alleging a breach of the ACL in these circumstances would require specific evidence of a firm misleading a consumer.

RSPs are also unable to approach AFCA to reach any compromises or other solutions with firms acting inappropriately as they are not required to be members of AFCA for these activities.

Impact of proposed regulations

The proposed addition of 'credit reporting assistance' as a prescribed credit activity (under 'debt management services') would help to resolve these concerns if clarified.

The *National Consumer Credit Protection Act 2009* (NCCPA) and the *Privacy Act 1988* use different definitions for 'credit' and related terms. Although the proposed regulations will amend the *National Consumer Credit Protection Regulations 2010* under the NCCPA, this specific sub-section (the definition of 'credit reporting assistance') is in fact more relevant to the *Privacy Act's* definitions of credit, because that is where the rules regarding credit reporting and credit reporting bodies can be found.

The proposed definition references the *Privacy Act 1988* for the definition of a 'credit reporting body' within the 'credit reporting assistance' definition. As this subsection of the

² [Complaints about credit enquiries | The Telecommunications Industry Ombudsman](#)

regulations is specifically intended to require licences for activities related to credit reports held by credit reporting bodies, it would be appropriate for the definitions of 'credit' and 'credit provider' under 'credit reporting assistance' to also be as within the meaning of the *Privacy Act*.

This clarification is important because not all credit activities reported to/related to credit bodies fall under the definition in the NCCPA – but in order to report to or receive information from the credit reporting bodies, they are all in some way captured under the *Privacy Act*.

Without this clarification, there may be significant confusion by all parties – including the firms themselves – about what parts of credit reports are or are not within scope of licenced activities, and consumers would remain unprotected from approaches about some – but not all – of the activities on their credit report, also creating confusion for consumers.

Conclusion

The consumer detriment, long-standing nature of these problems and barriers to regulatory action make it clear that the current regulatory structure for these firms is not appropriately protecting consumers or other impacted industries.

We strongly support incorporating these firms' credit reporting assistance activities into the existing licencing scheme with the proposed clarification, as these firms are actively engaging in matters relating directly to the provision of credit and credit activities, and often charging consumers a significant amount of money to do so.

If you have any questions or wish to discuss, please contact Jessica Curtis (J.Curtis@commsalliance.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Stanton', written in a cursive style.

John Stanton
Chief Executive Officer