

CONSUMER CREDIT REPORTING - Complaints handling and systemic issues

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1 Introduction

This paper has been prepared for a forum on credit reporting issues to be held on 8 May 2002.

The author has worked with other consumer organizations for some years on a number of consumer finance issues, including credit reporting. While this paper reflects the views of the author and of a number of consumer advocates, no proposals in the paper should be viewed as the final position of consumer advocates.

Consumer organizations throughout Australia that advise and assist consumers with credit and debt problems have concerns regarding the handling of credit reporting disputes. The identification and addressing of systemic issues is also of concern.

This paper considers developments in complaints handling in the finance sector over recent years, and proposes that some of the principles and procedures adopted by industry complaints schemes could be applied to the credit reporting area with benefits for both consumers and industry.

2 Problems

A range of issues have been raised by consumer advocates in relation to consumer credit reporting. An outline of current issues is contained in the Appendix. This paper concentrates on two key issues:

- complaints handling; and
- identification and addressing of systemic issues.

2.1 Complaints Handling

The main concerns in relation to consumer credit reporting complaints handling are:

- unreasonable reliance upon provisions in the *Privacy Act 1988* by the Privacy Commissioner to delay investigation of (or not investigate) a complaint;
- time delays in resolving complaints;
- lack of transparency and fairness in the complaint handling process;

- lack of co-ordination between complaints handling by Baycorp Advantage Limited¹ (*Baycorp*) and the Privacy Commissioner;
- lack of a clear pathway for complaints, causing confusion and, in practice, reducing consumer access to complaints handling;² and
- long distance telephone costs for consumers or their advisors (no 1800 number for Baycorp complaints).

Most consumer complaints relate to inaccurate information in credit reports rather than the unauthorised disclosure of personal information.

Consumers usually become aware of the content of their credit report when they are denied credit on the basis of the report, and they often apply to the credit reporting agency for a copy of the credit report. Baycorp sends a form out with the credit report for the purposes of advising Baycorp if the consumer disputes the content of the report.

On receiving a complaint from a consumer, Baycorp may refer the consumer to the credit provider concerned, but advises that it often contacts the relevant credit provider itself about the disputed listing. When Baycorp advises a consumer that it cannot resolve a dispute, it must advise that the consumer can complain to the Privacy Commissioner.³

When the consumer contacts the Privacy Commissioner's Office, the consumer is usually advised that a written complaint must be sent to the credit provider before the Privacy Commissioner's Office will investigate.

This procedure has a number of problems:

- it is often not possible for a consumer to identify whether the problem arises from the practices of the credit provider, the credit reporting agency or both – therefore the consumer often does not know the most appropriate place to complain;⁴
- requiring complaints to be in writing reduces accessibility for many consumers;⁵

¹ While Dun and Bradstreet and another organization are currently entering into the consumer credit reporting market, until very recently Baycorp Advantage Limited (formerly Credit Advantage Limited, Credit Reference Association of Australia) was the only credit reporting agency. Therefore, Baycorp is mentioned by name in relation to past experiences, but in discussing the future we refer to "credit reporting agencies".

² See John Corker and Carolyn Bond, 'The merry-go-round: credit report complaint handling under the Privacy Act' (2001) 8 *Privacy Law & Policy Reporter* 89.

³ *Credit Reporting Code of Conduct*, Clause 3.7

⁴ For example, incorrect listings by one finance company were partly a result of the company's failure to understand Baycorp's guidelines – possibly indicating that those guidelines were unclear. A consumer was referred to a credit provider by Baycorp, even though the consumer's lawyer believed that the incorrect listing may have resulted from the failure of both the credit provider and Baycorp to ensure that the individual was accurately identified.

⁵ Clause 2.6 of the Australian Standard '*Complaints Handling*' (AS 4269, Standards Australia, 1995) lists access as an essential element of effective complaints handling, while clause 2.5 of that Standard

- many credit providers have inadequate complaints handling procedures, and consumers have difficulties dealing with the credit provider;
- time delays are a problem in complaints handling by credit providers and the Privacy Commissioner;⁶
- there are too many steps involved, and too many points in the process where only the most sophisticated consumer will persevere;
- a determination by the Privacy Commissioner in relation to a consumer complaint can only be enforced by referring the matter to the Federal Court.⁷

The experiences of industry complaints schemes indicate that referral back to industry without monitoring the referral, requiring complaints to be made in writing and a lack of clear time-lines for industry and the complaints body to respond to complaints reduces accessibility and effectiveness. Some schemes have addressed these issues. For example, the ABIO refers complaints to the member bank and follows up if no response is received, accepts telephone complaints by documenting the complaint and forwarding it to the customer to approve, and by establishing time-lines for industry response and reporting the time taken for the ABIO to resolve complaints to its Board (which includes industry and consumer representatives).

2.2 Identification of Systemic Issues

There does not appear to be any clear procedure for identifying and addressing systemic issues in credit reporting. Clearly the Privacy Commissioner plays a role in identifying issues which arise from individual complaints and addressing these issues by consultation with credit reporting agencies or by producing Determinations or Advice Summaries. However, only a small proportion of issues are addressed and there is insufficient emphasis on issues concerning accuracy of reports.

There is some evidence that Baycorp identifies some systemic problems derived from the complaints they have received. However, some systemic problems continue for years, and we don't know whether this is due to a failure to identify the problem or failure to address the issue.

Neither Baycorp nor the Privacy Commissioner has any clear processes for receiving feedback from consumer advocates or reporting back in relation to issues raised. Even when concerns are addressed, there appear to be long delays, for example

requires a complaints handling process to be well publicised to both consumers and staff. Furthermore, clause 3.6(d) states: 'the process of submitting complaints should not be limited to one form of communication'. Benchmark One of *'Benchmarks for industry-based customer dispute resolution schemes'* (Commonwealth Department of Industry, Science & Tourism, August 1997) (*the Federal Benchmarks*) is entitled, and devoted to, 'Accessibility'.

⁶ Clause 2.8 of the Australian Standard *'Complaints Handling'* lists as an essential element of effective complaints handling the requirement that complaints shall be dealt with quickly. Clauses 5.5 and 5.6 of the Federal Benchmarks highlight the importance of reasonable time limits on dispute resolution processes.

⁷ Clause 2.10 of the Australian Standard *'Complaints Handling'* states that a complaints handling process shall have the capacity to determine and implement remedies. Benchmark Six of the Federal Benchmarks highlights the importance of a dispute resolution scheme having the power to make binding decisions. See also ASIC Policy Statement 139 (*PS 139*), 139.50.

concerns about Nomad's practices were raised with the Privacy Commissioner more than three years ago, and have only recently been addressed.

3 The current environment

Industry complaints handling has been the subject of significant policy development in the past 10 years, and has been recognised as a crucial part of industry co-regulation.⁸ A complaints handling standard has been produced by Standards Australia,⁹ and the Consumer Affairs division of the Commonwealth Department of Industry, Science and Tourism has developed benchmarks for industry-based customer dispute resolution schemes¹⁰ (*the Federal Benchmarks*). ASIC has recently produced a policy statement in relation to industry ADR schemes which incorporates and extends the Federal Benchmarks.¹¹ Many industries have developed effective alternative dispute resolution schemes, and subsequent monitoring and research¹² have informed regulators, industry and consumer advocates about the elements which are necessary for such schemes to be effective.

The Federal Benchmarks include factors such as accessibility, accountability and efficiency.¹³ Consumer advocates are familiar with complaints schemes which establish reasonable time-limits to facilitate speedy resolution of complaints,¹⁴ encourage 'one stop shopping' complaints handling,¹⁵ are independently audited and reviewed,¹⁶ encourage (and act on) feedback from consumer groups, report decisions and systemic issues¹⁷ and work with industry to improve industry internal dispute resolution procedures. Many schemes have implemented systems which achieve - or better - the Federal Benchmarks.

There are still gaps in coverage of industry ADR schemes, and some schemes need improvement. While many areas of financial services are covered by ADR schemes - including banking, insurance and financial planners - there are areas that are not covered, such as many non-bank finance companies. Consumer advocates, regulators such as ASIC and some industry members, are working to achieve higher standards and broader coverage - for example only last month the ABIO's jurisdiction was extended to include bank owned finance companies.

⁸ For example, membership of an industry complaints scheme approved by ASIC is a licensing requirement for many financial service providers.

⁹ See above n 5.

¹⁰ Ibid.

¹¹ PS 139.

¹² See "Consumer Redress Study", a report by the Commonwealth Department of the Treasury, June 1999

¹³ See Benchmarks One, Four and Five respectively.

¹⁴ See above n 6.

¹⁵ Clause 6.2(a) of the Federal Benchmarks emphasises the importance of 'a dispute resolution scheme having powers to deal with the 'vast majority of customer complaints in the relevant industry and the whole of each such complaint'.

¹⁶ See clause 2.14 of the Australian Standard '*Complaints Handling*'. See also PS 139, clauses 139.92-94.

¹⁷ See Benchmark Four of the Federal Benchmarks - 'Accountability'. See also PS 139, clauses 139.59-85.

For a large part of the financial services sector, developments over the past 10 years have resulted in:

- consumer access to reliable, efficient, and free dispute resolution;
- industry complaints schemes which comply with the Federal Benchmarks including accessibility and transparency;
- input to industry complaints schemes through consumer representation on the boards and consultation with consumer caseworkers;
- feedback to consumer advocates from industry and the complaints schemes;
- procedures for the identification of systemic problems through formal industry consultation and industry complaints schemes;
- Reporting of these systemic issues to the appropriate regulator.

4 A new approach

We would, of course, like to see a range of issues addressed. However, we believe that these issues, and issues which arise in the future, could be addressed more effectively if there were transparent and accessible procedures established for:

- the resolution of individual consumer complaints and
- the identification and rectification of systemic problems.

This could be done by applying to credit reporting some of the structures and procedures which have worked successfully in other industries to credit reporting.

Without question, the structure of the credit reporting “industry” differs from others we are meeting with this week. Credit providers¹⁸ are a diverse group of organisations: some already belong to their own ADR scheme (eg banks, telecommunications companies); others do not (eg non-bank finance companies). Some have relatively sophisticated internal complaints handling; others appear to have no complaints handling procedures at all. Initially it would appear that the diversity of the group would be a barrier to successful industry based complaints handling.

However, credit reporting Australia-wide involves only one regulator, and one major consumer credit reporting agency (with one or two more entering the market). All relevant credit providers must have an agreement with a credit reporting agency, and these agencies provide a key to addressing some of the problems. We believe that with the co-operation of Baycorp and other credit reporting agencies, some of the principals and practices adopted by other industries in relation to complaint handling and systemic issues could be successfully applied to credit reporting, with positive results for consumers and the industry.

¹⁸ The term “credit providers” is used in this paper to refer to all bodies which are considered to be credit providers by the Privacy Commissioner for the purposes of credit reporting. See *Credit Reporting Determination 1996 No 1*.

5 Options for Change

To be effective, any action taken to address these problems must include greater cooperation between the regulator, consumer groups and credit reporting agencies. It would also require credit reporting agencies to play a key role in dealing with complaints involving their members.

One approach would be to copy some other industries¹⁹ and implement an alternative dispute resolution scheme for credit reporting. All consumer credit reporting agencies would belong to the scheme. The Privacy Commissioner would maintain a role in handling unresolved complaints, but would also play a role in monitoring the alternative dispute resolution scheme (as ASIC does with a number of financial services schemes).

However, as stated before, the structure of the credit reporting “industry” is somewhat unique. Given the small number of credit reporting agencies, it might be possible to apply some alternative dispute resolution principles to the way in which credit reporting agencies deal with complaints. The agencies would, in effect, be dealing with complaints about their own conduct (what is considered to be “internal dispute resolution”) and complaints against the conduct of its members (with some similarities to alternative dispute resolution).

While there is sure to be discussion and debate about whether an alternative dispute resolution scheme should be established for credit reporting, I suggest that the following proposal could be considered as a first step, and as a means of generating discussion.

5.1 Complaints Handling

Credit reporting agencies could have a broader and more defined role in complaints handling. Their role, overseen by an independent board comprising industry and consumer representatives, could include:

- receiving complaints (including by telephone or in writing);²⁰
- advising consumers on time-lines;²¹
- publishing more detailed information on internal guidelines and procedures;²²
- identifying whether the complaint relates to the conduct of the credit provider, credit reporting agency, or both;
- requesting the credit provider’s response to the complaint;
- following up the credit provider’s response if not received in time;²³
- assessing whether the credit provider’s response is appropriate (given the information available to the credit reporting agency);

¹⁹ Such as banking, general insurance, telecommunications.

²⁰ See above n 5.

²¹ See clause 3.6(g) of the Australian Standard ‘*Complaints Handling*’. See above n 6 also.

²² See clause 4.3(a) of the Federal Benchmarks.

²³ See PS 139, 139.88: ‘A scheme should also monitor its members’ compliance with time frames relating to internal dispute resolution.’

- advising the consumer of the outcome in writing;²⁴
- amending the credit report where appropriate, even if the credit provider disagrees with the outcome;²⁵
- ensuring consumer input to complaints handling by having consumer advocates appointed to a decision making panel and/or a committee or board which oversees the complaints handling function.

These procedures would be initiated in addition to other options that are available. Consumers would not be prevented from complaining to the credit provider, or using that industry's dispute resolution scheme (for example the Banking Ombudsman) if they wished. Whether consumers were advised about other alternative dispute resolution schemes, and at what stage, is an issue for further discussion.

The role of credit reporting agencies as complaints handlers would not, in any way, reduce the role of the Privacy Commissioner – however the Privacy Commissioner's role may become more efficient. Due to more thorough investigation by the credit reporting agency, we would not expect the Privacy Commissioner to require the consumer to complain to the credit provider as long as a complaint had been made to the credit reporting agency.

The Privacy Commissioner would:

- investigate consumer complaints which had not been resolved by either the credit reporting agency or the credit provider (a consumer who had complained to the credit reporting agency would not be referred back to the credit provider);
- publish more detailed information about complaints handling procedures;²⁶
- establish time lines for various stages of complaints handling by the Privacy Commissioner;²⁷
- determine standards for complaints handling by credit reporting agencies based on PS139, and monitor complaints handling by credit reporting agencies.²⁸

5.2 Systemic Issues

Procedures should be developed and published by credit reporting agencies in relation to the identification and addressing of systemic issues which arise from:

²⁴ See PS 139, 139.46.

²⁵ Clause 6.10 of the Federal Benchmarks require a determination of the dispute resolution scheme decision-maker to be binding upon a scheme member if the complainant accepts the determination. See above n 7 also.

²⁶ See above n 21.

²⁷ See above n 6.

²⁸ The Credit Reporting Code of Conduct requires credit reporting agencies and credit providers to handle disputes in a "fair, efficient and timely manner" and to establish procedures to deal with complaints (S.3.1 & 3.2). Commissioner's Notes 77B, 78B and 79B provide further guidance on complaints handling, however more detailed guidelines are required.

- individual complaints;
- reports made by consumer advocates; and
- issues raised by the Privacy Commissioner.

Credit reporting agencies should consult regularly with consumer groups to identify concerns. Feedback should be provided to the consumer advocates who have raised the complaints. Details of systemic issues and how they are being addressed should be reported to the Privacy Commissioner by credit reporting agencies.

Feedback from credit reporting agencies, as well as more detailed guidelines and procedures, would help consumer advocates identify whether concerns are due to a possible breach of internal guidelines/procedures, or whether we have an issue with those internal guidelines.

If consumer advocates had confidence in dealing directly with credit reporting agencies about these issues, it is likely that fewer issues would be raised with the Privacy Commissioner (unless the issues concerned Advice Summaries or Determinations of the Commissioner). However, where the issue was not resolved, we would expect the Privacy Commissioner to investigate the issue.

The Privacy Commissioner has recently requested input from consumer organizations in relation to the review of Advice Summaries and Determination No 1. Consumer organizations welcome this positive move, and look forward to continuing consultation with the Privacy Commissioner in relation to these and similar issues.

6 Conclusion

Much has been learned in the financial services sector over recent years about effective complaints handling and identification of systemic issues.

While credit reporting involved many types of organizations, the credit reporting agencies are in a position where they could help to address some of the concerns that are giving credit reporting a bad name.

The above suggestions are very broad, and clearly significant consultation between consumer advocates, credit reporting agencies and the Privacy Commissioner is required.

We hope that, at the forum on 8 May, the credit reporting agencies and the Privacy Commissioner will be able to provide some response to the matters raised, and commit to establishing effective mechanisms for ongoing consultation on these and other credit reporting issues.

APPENDIX: Credit Reporting – Consumer Issues

1 Credit Reporting Determination No 1

Credit Reporting Determination No 1 relates to the definition of “credit provider” and the types of businesses which can access credit reporting. According to the Determination, most utilities (gas, electricity, telephone) and other service providers who are not paid in advance (doctors, lawyers, gardeners) are credit providers for the purposes of credit reporting.

Concerns about this broad coverage were outlined in a submission to the Privacy Commissioner by the Consumer Credit Legal Service. This Determination has now been extended by 12 months to allow for consultation with stakeholders. Specific problems with many utilities which access credit reports include:

- listing defaults for small amounts, eg \$50;
- lack of compliance with relevant credit reporting legislation;
- threats to list for small debts which are disputed by consumer or where company is in liquidation and industry complaints scheme will not determine complaints (eg One-Tel); and
- in some cases, poor - or non-existent - complaints handling procedures;

2 Public Information in Consumer Credit Reports

Consumer advocates do not agree with the Privacy Commissioner that legislation allows the inclusion of public information (such as company directorships or debt agreements entered into under Parts IX and X of the *Bankruptcy Act 1966*) in credit reports issued by credit reporting agencies.

3 Consultation with Consumer Organisations

It is now accepted by many industries that the experience and input of consumer agencies is valuable in monitoring of complaints procedures and the identification of systemic issues. However, consumer representatives expect to be informed about what action is being taken about their concerns, and to see clear evidence that these concerns are being addressed. Unfortunately, this has not been the experience of consumer groups in relation to credit reporting issues.

4 Complaints Handling

Problems include:

- Lack of information about Baycorp’s complaints procedures (for example in what circumstances Baycorp refers the consumer to the credit provider);
- Overly complex and unclear complaints pathways, often requiring the consumer to complain in writing to the credit provider as well as Baycorp before the Privacy Commissioner will investigate; and

- Time delays in investigation of complaints causes ongoing hardship for consumers. Even if the final outcome leads to the amendment of the file, the inaccurate information remains during the investigation – often months or sometimes years.

5 Other Issues

- double listings (particularly after previous listing removed);
- “clearouts” listed without investigation by companies purchasing debts
- inappropriate use of term “clearout”;
- disclosure of credit report by Baycorp when consumer not properly identified;
- Baycorp refusal to investigate/correct information due to identify theft;
- no effective mechanism for reporting systemic problems.