

18 July 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email: legcon.sen@aph.gov.au

Thank you for the opportunity to provide comments to the Senate Committee Inquiry on the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. We regularly investigate complaints from customers disputing a credit listing with a Credit Reporting Agency (CRA) based on a utility debt, often for relatively small amounts.

EWON has provided comments on the *Credit Reporting Exposure Draft* in 2011, and also the *Review of the Credit Reporting Code of Conduct 2012 Issues Paper*¹. This submission outlines similar issues to those raised previously.

In our context credit providers are energy retailers, therefore we have used this term where appropriate in this submission.

Customer complaints to EWON about credit reporting

There has been an increase in the number of customers complaining to EWON about a credit default listing for an energy debt, and we anticipate this upward trend to continue:

¹ EWON Submissions available online at: www.ewon.com.au

	2009/2010	2010/2011	2011/2012
EWON credit default listing cases ²	280	438	710
Total EWON cases	15048	17559	25162
Credit default listing cases as a percentage of all EWON cases	1.86%	2.49%	2.82%

A common complaint to EWON comes from customers who find they have been listed with a credit reporting agency for an unpaid utility bill that issued after they moved out of their premises. Other complaints relate to credit listings for accounts whose accuracy was being disputed, and that dispute had not been resolved at the time of listing. Lack of notice prior to the credit listing, and the accuracy of the account information held are the most common issues we investigate.

When investigating complaints, EWON obtains all the relevant records from the retailer. In some cases the records are several years old, as the customers only became aware they had been credit default listed when they applied for a loan or other form of credit.

If our investigation indicates the listing was fair and reasonable and complied with the *Credit Reporting Code of Conduct (CR Code)*, we inform the customer and offer appropriate referrals for assistance. If we find the listing to be unreasonable or non-compliant, we request the retailer withdraw the listing from the credit reporting agency.

In many of the matters we have investigated it appears that the denial of a loan for personal or business purposes (the consequence of credit listing) appears to be out of proportion to the relatively small amount of the utility debt. This is a source of considerable stress for customers who may have paid the debt as soon as they became aware of it and the credit listing notated to reflect the payment, but are still denied credit. *See Attachment One: EWON credit default listing case studies.*

EWON response to Privacy Amendment Bill 2012

In this submission we have responded to *Schedule 2* and *Schedule 4* of the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012 (the Bill)* relevant to our handling of customer complaints. For ease of reference, we have included the full text of these sections followed by our comments.

² These EWON case numbers consist of customer enquiries, complaints referred back to higher level at the company and investigated complaints.

Schedule 2 – Credit Reporting

Subdivision B – other definitions

6Q Meaning of *Default Information*

Consumer credit defaults

(1) Default information about an individual is information about a payment (including a payment that is wholly or partly a payment of interest) that the individual is overdue in making in relation to consumer credit that has been provided by a credit provider to the individual if:

(c) the provider is not prevented by a statute of limitations from recovering the amount of the overdue payment; and

(d) the amount of the overdue payment is equal to or more than:

(i) \$100; or

(ii) such higher amount as is prescribed by the regulations.

The minimum amount of the overdue payment

Most unpaid utility debts that arise when a final bill issues after the customer has moved out of their premises, represent usage over one three-month period, and often less than that if the customer moved out during the billing quarter. While several years ago these bills may have been less than \$100, and therefore excluded from the definition of *sub-section (d)*, this is no longer the case following increases in energy prices.

Failure on the customer's part to provide a forwarding address, or failure on the part of the retailer to send the bill and notices to the forwarding address provided, can result in the customer being credit listed without receiving the appropriate notice. The consequent denial of credit for personal or business purposes often appears to be out of all proportion to the size of the debt.

EWON supports a minimum amount being prescribed but suggests that a more realistic definition of '*the amount of overdue payment*' in *sub-section (d)* would be in the order of \$300. This would exclude small utility bills from the adverse consequences of credit listing.

It is notable that a credit default listing is for a period of 5 years regardless of whether the listing is for a debt of \$300 or \$30,000. While it might be expected that credit providers might take this into account, it appears from customer reports that this is not the case, and that credit is denied regardless of the level of the debt. It has been suggested that another option could be a 'sliding scale' where the credit default listing is for a period relative to the amount of the debt, e.g. \$1000 or less = 1 year listing; \$1001 to \$5000 = 2 years listing; \$5001 to \$10,000 = 3 years listing etc.

EWON would appreciate consideration of these issues by the Senate Committee. Another option could be an industry or sector approach to address these matters which may be particular to the energy industry.

Time period for a debt to be credit default listed

EWON is concerned that *Schedule 2* and the *CR Code* do not specify a timeframe for listing a debt, with only references to the statute of limitations. Based on EWON's experience, some customers are credit default listed but there is a delay in the listing, sometimes up to several years after the subject debt arose. This means that the negative impact on a customer's credit report will continue well beyond the usual five year period of a credit default listing. It may also run over the standard period of time a provider has to take legal action to recover a debt. It seems unreasonable and unfair for the effects of a debt to be prolonged in this way. See *Attachment Two* for examples of EWON cases where there has been delayed credit listing.

The Telecommunications Industry Ombudsman has adopted the approach that an overdue account should not be credit listed more than one year after the account due date³.

EWON would support further provisions in *the Bill* and the *CR Code* on the time period for when a debt can be listed. We raised this issue in our submission to the *Review of the Credit Reporting Code of Conduct 2012 Issues Paper*⁴ to encourage clearer guidance on the requirements.

Subdivision F – Access to, and correction of, information

20T Individual may request the correction of credit information etc.

Correction

(2) If the credit reporting body is satisfied that the personal information is inaccurate, out-of-date, incomplete, irrelevant or misleading, the body must take such steps (if any) as are reasonable in the circumstances to correct the information within:

- (a) the period of 30 days that starts on the day on which the request is made; or
 - (b) such longer period as the individual has agreed to in writing.
-

³ See TIO position paper on Credit Default Listing [here](#) or www.tio.com.au

⁴ Page 2, EWON Submission Issues Paper: Credit Reporting Code of Conduct – 2012 Review [here](#)

The period of 30 days for correction of information

When an EWON investigation indicates that any aspect of the utility debt that a retailer referred for credit listing was inaccurate, we consider it is fair and reasonable to the customer who has been adversely affected by this, that the incorrect credit information is corrected as soon as possible.

EWON is concerned that a period of 30 days appears excessive in these circumstances, particularly if this is 30 business days (i.e. equivalent to six weeks). If there is a valid reason for the delay, we suggest that the credit reporting agency makes an annotation to the file to note that a correction is pending.

As this is not a penalty section, there appears to be no incentive for this correction to be carried out in a timely manner. If this issue is not addressed in *the Bill* we suggest that it be addressed in the *CR Code*.

The period of 30 days to investigate a complaint

EWON is also concerned that when the time limit of 30 days in *s 20T (2)(a) (Correction of credit information)* is read in conjunction with the time limit of 30 days in *s 23B(5)(a) (Dealing with complaints)*, this suggests that an individual with an unresolved issue relating to the accuracy of the information may be faced with waiting for 60 days until they can approach an external dispute resolution agency or the Information Commissioner.

EWON suggests that this is an unreasonable length of time given the financial situation that can be at stake for consumers. We therefore query whether this reflects the intention of the Government's First Stage Response⁵ to the ALRC 2008 Report, which recommends the wording:

“ ...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 ”

This suggests that referral to an external dispute resolution body could occur after 30 days, not 60 days, which appears more fair and reasonable for the consumer.

Subdivision F – Access to and correction of information

21W Notice of correction etc must be given

⁵ *Enhancing National Privacy, Australian Government First Stage Response to the Australian Law Reform Commission Report 108* (October 2009) (Government Response), Recommendation 59-8, available via www.dpmmc.gov.au/privacy/reforms.cfm

-
- (3) If the credit provider does not correct the personal information under subsection 21V(2), the provider must, within a reasonable period, give the individual written notice that:
- (a) States the correction has not been made; and
 - (b) Sets out the provider's reasons for not correcting the information (including evidence substantiating the correctness of the information); and
 - (c) States that, if the individual is not satisfied with the response to the request, the individual may:
 - (i) Access a recognised external dispute resolution scheme of which the provider is a member; or
 - (ii) Make a complaint to the Commissioner under Part V.
-

Access to recognised external dispute resolution schemes

EWON is concerned that 21W(3)(c)(i) may inadvertently result in customer referrals to the wrong external dispute resolution scheme for their particular issue. For example, a customer may contact their financial institution to dispute their credit listing and the credit listing may be for an old energy debt. If after investigation the financial institution is unable to assist the customer 21W(3)(c)(i) suggests that they must be referred to the "external dispute resolution scheme of which the provider is a member", so the referral would be to the Financial Ombudsman Service, of which the provider is a member. However, as the customer is disputing a listing related to an energy debt the most appropriate external dispute resolution scheme would be EWON.

EWON suggests the Senate Committee reviews the wording of this *Subdivision* to ensure that individuals are referred to the most appropriate external dispute resolution scheme for their particular complaint.

Division 5 – Complaints

23B Dealing with Complaints

- (4) After investigating the complaint, the respondent must, within the period referred to in subsection (5), make a decision about the complaint and give the individual a written notice that:
- (a) Sets out the decision; and
 - (b) States that, if the individual is not satisfied with the decision, the individual may:
 - (i) Access a recognised external dispute resolution scheme of which the respondent is a member; or
 - (ii) Make a complaint to the Commissioner under Part V.
-

Access to recognised external dispute resolution schemes

Similarly, EWON is concerned that (4)(b)(i) may lead to customers being referred to the wrong external dispute resolution scheme if their complaint does not relate to the credit provider or CRA handling the complaint. EWON supports review of the wording and intention of this section to ensure customers are referred to the appropriate external dispute resolution scheme for their complaint.

Division 5 – Complaints

23 Guide to this Division

This Division deals with complaints about credit reporting bodies or credit providers.

Individuals may complain if credit reporting bodies or credit providers about acts or practices that may be a breach of certain provisions of this Part or the registered CR Code.

If a complaint is made, the respondent for the complaint must investigate the complaint and make a decision about the complaint.

Dealing with customer complaints

In the EWON submission to the *Credit Reporting Code of Conduct Issues Paper 2012* we noted our support for clear complaint handling procedures for credit providers and CRAs to ensure customer disputes are handled effectively. It is also important that there is clear information for customers about who to approach if they do have a complaint and which credit provider is best placed to handle their issue.

If a customer is disputing the energy debt listed on their credit report it appears practical that the energy retailer that listed the debt would be the best party to handle the customer's complaint in the first instance, however they may approach the CRA or the financial institution. Robust procedures and guidelines as well as effective contact and information sharing arrangements will need to be in place for this process to work effectively.

In this context it is worth noting the processes of the external dispute resolution services such as EWON. The industry ombudsmen schemes require the customer to have raised their complaint with their provider in the first instance. If a customer contacts EWON and has not spoken to their energy provider we refer them back to the energy company to allow the company the opportunity to resolve the complaint.

EWON recommends careful consideration of the provisions pertaining to the referral pathways for customer complaints. Regardless of the final approach, EWON supports clear complaint handling procedures and information for customers and industry stakeholders in *the Bill* as well as *the CR Code*.

Recognition of external dispute resolution schemes in the Bill

Schedule 4 – Other Amendments includes reference to the Commissioner recognising external dispute resolution schemes⁶ and the power of the Commissioner to transfer matters to an alternative complaint body in certain circumstances⁷.

In NSW EWON is the approved energy and water ombudsman scheme. Electricity and gas retailers are required by their licence conditions to be a member of an approved ombudsman scheme, and they are bound by, and must comply with, any decision of the electricity or gas industry ombudsman relating to a dispute or complaint involving the licence holder and a small retail customer. (For example in NSW this is s. 96C *Electricity Supply Act 1995*, s. 33H *Gas Supply Act 1996*).

EWON is a member of the Australian & New Zealand Ombudsman Association (ANZOA). We recommend the Commissioner liaises with ANZOA and its members on the relevant provisions pertaining to external dispute resolution schemes and appropriate referrals.

Credit Repair / Fix Agencies

EWON is concerned about the rise of enquiries from credit fix and credit repair services who contact EWON for assistance on behalf of their clients. Like other ombudsman offices, EWON's dispute resolution services are free to consumers. It is a concern that many consumers incur unnecessary expenses by engaging a credit repair agency to undertake a service that EWON provides free of charge. (In one case involving credit listing for a debt of less than \$500, the customer advised that they were charged \$1,000 in advance and would be charged another \$1,000 if the credit default listing was removed.)

This is a shared concern with Ombudsman schemes in energy and other jurisdictions. EWON has developed a response which is on our website and is now part of our training for staff. We have also amended the EWON Authority to Act Form. *See Attachment Three: EWON policy on paid advocates*

⁶ Page 172, Division 3B Enforceable Undertakings, 35A Commissioner may recognise external dispute resolution schemes

⁷ Page 174, Part V – Investigations etc.36A Guide to this Part, Schedule 4

Some customers who we contact choose to deal with EWON directly rather than stay with a paid agent once they are informed of our service. However, they have generally already signed a contract with the credit repair agent and paid substantial fees upfront. Some customers who we contact advise that the information provided to EWON by the credit repair service about the customer's situation is not accurate. EWON is concerned by these examples of poor practices and standards of some of these services.

We understand that there is interest to establish an industry association, Credit Repair Industry Association of Australasia (CRIAA), to improve the conduct of the industry and possibly establish a dispute resolution service for consumers. EWON supports this approach. In the context of this Senate Committee Inquiry, and the Independent Review of *the CR Code*, EWON also suggests that there needs to be consideration of ways to regulate and monitor these services.

Credit Repair Case Study

- EWON was initially contacted by a credit repair agency on behalf of a customer who was disputing a credit listing. EWON contacted the customer to confirm some information. The customer had not been told that the agent had approached EWON on her behalf and did not advise her that EWON offers a free service. The customer advised that she wanted to deal with EWON directly. The agent had been unsuccessful liaising with the credit reporting agency prior to contacting EWON, and was not able to have the credit default removed. EWON was able to have the default removed on the basis of an incorrect referred amount for the listing. The customer said she had already paid the agent \$1600. She requested a refund on the basis that EWON was doing their work for them and they failed to inform her that EWON is a free service. The agent offered to refund all but \$500. The customer was not happy about this but decided not to pursue it as she was extremely happy with the result through EWON. The customer made an arrangement to pay the arrears on her account.

If you would like to discuss this submission further, please contact me or Emma Keene, Manager Policy on 02 8218 5250.

Yours sincerely



Clare Petre
Energy & Water Ombudsman NSW

Attachment One – EWON credit default listing case studies

Case study 1

The customer applied for a loan and discovered he had been credit listed for \$440 in May 2010. He advised that he had closed his account in December 2009, as he was moving and gave the retailer a forwarding address. He said that he did not receive the final bill or any further correspondence from the retailer. Once the customer became aware of the debt he said he rang the retailer and confirmed the forwarding address was incorrect and he paid the account in full, however the retailer refused to remove the listing. EWON's investigation identified that there was a spelling error with the forwarding address, and in addition, the notice of credit listing was sent to the wrong address. On this basis the retailer agreed to withdraw the credit listing. EWON reviewed the voice recording of the customer's call to the retailer which highlighted that the customer provided the retailer with the correct forwarding address but this was recorded incorrectly in the retailer's system.

Case study 2

The advocate (a credit repair agency) advised that the customer was credit listed for \$114 and the retailer had refused to provide details of the listing but has advised that \$40 of the amount was a disconnection fee. The customer did not believe the listing is fair and would like the retailer to review. EWON's investigation identified that this listing was non compliant due to the lack of notices to the customer that the debt was overdue and would be sent to a collection agent, and on this basis the retailer agreed to withdraw the listing.

Case study 3

The customer returned to EWON after a Referred to Higher Level (RHL) complaint as she was not satisfied with the retailer's response. She moved in October 2010 and acknowledges she forgot to pay the final bill due to an oversight on her part. In January 2011 she was contacted by a debt collector and paid \$161.40. She applied for a home loan and discovered she had been credit listed. She contacted the retailer and was told the listing could not be removed. EWON's investigation identified that the customer had been credit listed twice, the first time for \$2.78 one month prior to the rest of the outstanding amount. This listing fell within the 60 day time frame from when final bill issued. The retailer had appropriately listed her for an amount of \$158. On the basis of EWON's findings the listing was removed.

Case study 4

In February 2011 the customer discovered she had been credit listed for a debt of \$205 from March 2007. She considered that her bills were paid up until she

moved out of the event address in July 2005. EWON's investigation found that the customer had been credit listed for charges incurred about 12 months after she had left the address. The real estate agent provided certification that the customer had left the address by this time. It appeared that the intervening bills had been paid by the next occupant who did not open an account. The retailer agreed to remove the listing in the circumstances.

Case study 5

The customer applied for a loan in October 2011 and discovered she was credit listed for \$914 incurred after she moved in August 2005. She believes that she closed her account and paid all arrears for the period that she resided at the property. The retailer refused to remove the listing, which appears to have been listed in October 2008. As a result of EWON's investigation the customer provided rental records to show that she had left the address as advised. The retailer removed the listing and advised they will write off the debt.

Case study 6

The customer advised she had an account with Jackgreen and she had an amount owing for \$486 from 2009, which she paid off in instalments. She was not advised that she was at risk of being credit listed. She has recently applied for a credit card and it was denied as this amount has been listed. She paid the amount and wanted the listing removed urgently as she was going overseas and needed a credit card. EWON's investigation identified that the customer was credit listed in 2009 as part of the bulk listing process, without prior notice, while Jackgreen was still in business. The customer had been making regular payments, demonstrating a commitment to pay the arrears on her account, and the account was paid in full. On this basis EWON recommended to the debt collection agency that the listing be removed.

Case study 7

The customer had had a previous incorrect credit listing removed when Jackgreen was still in business. The customer recently tried to refinance his home loan and discovered the credit listing had been reinstated and he could not refinance as a result. In the course of EWON's investigation the mercantile agent agreed that it appeared that they had listed him in error and agreed to remove the listing. Because this would take a few days, in the interim, they would mark the listing as "in dispute" so that if any enquiries were made on his credit history it would be clear there was action being taken.

Case study 8

The customer is a sole parent with a debt of approx \$1100 which was referred to a collection agency, from a final bill in 2009. The customer said she spoke to the

retailer who agreed to withdraw the debt and establish a payment arrangement of \$150 per fortnight. When her husband left 5 months ago she contacted her retailer and they agreed to reduce the payment plan to \$50 per fortnight. Around this time she became unemployed however she said she continued to make payments as the retailer had advised she would not be credit listed so long as she continued making payments. She contacted the retailer when she found she had been credit listed for \$156 and was told by the CSR that she had been “black listed”. She does not recall any advice about the possibility of credit listing. The customer was extremely distressed by this. EWON’s investigation found that it appeared the customer’s account was sent to collections and then credit listed while there was an open billing complaint for the \$156 amount. The retailer agreed to recall the debt from collections and waive the arrears in light of the account charges being disputed prior to being sent to the collection agency and default listed. As well, the retailer advised that in light of the customer’s financial situation, and the default listed in error, they would waive the remaining account balance of \$156.21.

Attachment Two: Case Studies – EWON complaints about delayed credit listing

Case study 9

Customer contacted EWON in May 2011 and advised that he had defaulted on an overdue account in September 2006, however he was not credit listed until April 2008, one year and seven months after the default occurred. The customer said he is being ‘unfairly punished’ and would like the listing removed. The customer was referred back to his retailer as he had not contacted them. The customer subsequently returned to EWON in September 2011 dissatisfied with the retailer’s response. EWON’s investigation confirmed that while the credit listing appeared to be in accordance with the Credit Reporting Code of Conduct, 546 days had passed between the due date of the final bill and the referral for listing and on this basis the retailer agreed to remove the default listing effective from February 2012.

Case study 10

The advocate (credit fix agency) advised that the customer was default listed in April 2008. The customer said he did not receive any reminders or notices about the outstanding amount and would like EWON to review the matter. EWON’s investigation confirmed that the final letter of demand was issued in October 2006, but the customer was not credit listed until April 2008, on this basis the retailer agreed to remove the listing.

Case study 11

The customer advised that he was renting and moved out of a property in May 2005 and he disputed the final bill for \$126, as it had a different supply address. He did not pay the bill and said he did not receive any further contact from the retailer. He recently discovered he was credit listed for two amounts, the \$126 debt and \$228. The \$126 disputed amount has now been removed, as 5 years have elapsed since July 2005, however the second amount was not placed on his credit report until 18 months later in October 2006. The customer is disputing the credit listing and would like it removed. He agreed to have this matter referred back to the retailer at a higher level.

Attachment Three – EWON Policy on paid advocates and Authority to Act form

<http://www.ewon.com.au/index.cfm/making-a-complaint/>

complaint until we receive the Authority to Act form.

Note about representatives or advocates who charge their clients a fee

EWON provides a free service for all energy consumers in NSW and some water consumers. Consumers are not charged for EWON's services when they contact us for assistance with the resolution of complaints.

If EWON is contacted by a representative on behalf of a consumer we require an authority from the consumer, either verbally or in writing. (EWON has an [Authority to Act Form](#) for this purpose.)

Where it appears the representative is charging the consumer in relation to any aspect of the matter referred to EWON, we will contact the consumer directly and advise them that our service is free. If the consumer chooses to continue to be represented by their agent for a fee, the consumer's wishes will be respected and EWON will deal with their agent.

If the consumer advises that they wish to deal directly with EWON to avoid incurring any costs, we will confirm this in writing to the consumer and deal directly with them regarding their energy or water complaint. It is the consumer's responsibility to advise the agent of their decision to deal directly with EWON.

This approach to paid representatives is consistent with other members of ANZEWON, the Australia and New Zealand Energy & Water Ombudsman Network.

EWON Authority to Act form:

http://www.ewon.com.au/ewon/assets/File/Authority_to_Act.pdf