



Executive Director  
Australian Law Reform Commission

By Fax: (02) 8238 6363

7<sup>th</sup> December 2007

**SUBMISSION TO THE ALRC INQUIRY INTO PRIVACY: REVIEW OF THE  
*PRIVACY ACT 1988***

1. This submission is made by The Global Data Company Pty Ltd (“**GDC**”) to the Australian Law Reform Commission in relation to the Inquiry into Privacy: Review of the *Privacy Act 1988* (the “**Inquiry**”). This document follows the release by the ALRC of Discussion Paper 72 – Review of Australian Privacy Law.
2. GDC is an Australian business which assists clients operating within Australia to comply with their identity verification and Know-Your-Customer obligations arising from the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (“**AML/CTF Act**”) and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (No. 1) (“**AML/CTF Rules**”). GDC also provides these services to overseas clients in order to comply with equivalent anti-money laundering around the world.
3. The scope of this submission is to offer a view on the following issues –
  - a. What are the risks and benefits of using credit reporting information for identity verification pursuant to the AML/CTF Act?
  - b. What are the alternative forms of data, other than credit reporting information, which may be used for identity verification pursuant to



the AML/CTF Act (and what are their advantages and disadvantages)?

## Background

4. The AML/CTF Rules require Reporting Entities (as defined in the AML/CTF Act) to collect and verify certain information regarding their customers in order to confirm their identity. The process of *collection* and *verification* are distinct. Furthermore, as a matter of practice, verification requires the assistance of third parties (such as GDC) because the Reporting Entity is unlikely to itself have the necessary sources of trusted and reliable data in order to be able to verify the information collected from its customer.
5. In overseas jurisdictions, the United States for example, the categories of information suitable for verification purposes include name, address, telephone, date of birth, driver's licence and other details from a combination of government-issued identification. Comprehensive, trusted and reliable data in respect of all these categories is available to companies which assist those organisations that are required to comply with the relevant anti-money laundering laws. In contrast, in Australia at the moment, companies such as GDC only have access to data containing name, address and (to a lesser extent) telephone details.
6. The AML/CTF Rules (at 4.2.13) provide that a Reporting Entity may achieve "electronic-based safe harbour" if it can verify the following information via electronic means –
  - a. the customer's name and the customer's residential address using reliable and independent electronic data from at least two separate data sources; and either
  - b. the customer's date of birth using reliable and independent electronic data from at least one data source; or



c. that the customer has a transaction history for at least the past 3 years.

7. The criteria set out above for safe harbour in respect of electronic verification represents the benchmark against which most Reporting Entities (and any organisations seeking to provide Reporting Entities with a verification solution) will assess their customer's identity. Although the AML/CTF Act is expressed to adopt a "risk-based approach", meaning that Reporting Entities are supposed to have sufficient flexibility to assess the relevant risk and implement an appropriate procedure, the safe harbour provisions have the effect of prescribing what is required in order for a Reporting Entity to be satisfied to a high degree of certainty that it has fulfilled its obligations under the legislation. As foreshadowed above, whilst name and address information is generally available in Australia (and telephone numbers not being relevant to the safe harbour provisions), there is currently no ability to access independent date of birth or transaction history data.

### **Credit reporting information**

8. The prospect of accessing individual credit reporting information is relevant because it would enable Reporting Entities to achieve safe harbour for the purpose of the AML/CTF Rules to the extent that such data can demonstrate "that the customer has a transaction history for at least the past 3 years". This purpose is clearly outside of the scope for which the information was originally collected. Accordingly, there are at least three immediate issues which must be addressed before such information can be used for identity verification purposes.
9. First, consideration must be given to the reliability and independence of the credit reporting data. Reporting Entities must be satisfied that the quality of the relevant data complies with the criteria set out at rule 4.10.2 of the AML/CTF Rules. In this context, credit reporting information may require some form of "washing" or further verification before it can be used for identity verification purposes.



10. Secondly, credit reporting information is not currently held nor administered by any government agency. This has a consequence not only for the quality of the data collected, but also the extent to which a Reporting Entity is able to rely upon such data in the course of identity verification. In contrast to name and address information, which is generally provided by a government agency (for example, the Australian Electoral Commission in the case of the Electoral Roll), credit reporting data is collated and, if the current proposal is adopted, released by private entities. In the event that the relevant data is inaccurate or unreliable, issues concerning liability and responsibility are likely to arise. This introduces an additional and unnecessary element (and inevitably cost, to the extent that Reporting Entities will need to factor in the appropriate level of risk) to the identity verification process.
11. Thirdly, and related to the issue raised above, is that if credit reporting information is to be used for identity verification purposes, it must be available to Reporting Entities, or service providers to Reporting Entities, on a relatively free and fair basis. Given that such information is currently held exclusively by private entities with a pecuniary interest in maintaining some degree of control and monopoly over the data, it is unlikely that this fundamental requirement could be achieved. The possibility that certain commercial entities could enjoy a massive financial windfall purely as a consequence of being able to utilise individuals' personal data (which was collected for an entirely unrelated purpose) is fundamentally inconsistent with any proper implementation of the principles underpinning the AML/CTF Act.
12. In summary, whilst it is possible to consider employing credit reporting information for identity verification purposes, the issues identified above must be addressed in a careful and considered manner. It is obvious that once any changes are made, the consequences will be irreversible. In light of all of these matters, it is worthwhile to consider what alternatives are possibly available to fill the current 'gap' in the electronic safe harbour framework.



## **Date of birth information**

13. The alternative to relying on credit reporting information in order to achieve safe harbour is verification of “the customer’s date of birth using reliable and independent electronic data from at least one data source”. It is currently not possible to access date of birth information on individuals in Australia, notwithstanding that such data is collected and stored by a multitude of state and federal government agencies. This is puzzling given the fact that the AML/CTF Rules explicitly contemplate such data as a source for identity verification purposes.
  
14. In GDC’s view, access to date of birth information would be far more preferable than access to credit reporting information. This is based on a number of reasons. First, date of birth information is likely to be more reliable and independent because it would originate from a legitimate government source. In this way, the disadvantages which exist in respect of credit reporting information (set out in the preceding paragraphs) can be avoided. Second, date of birth information is static, in contrast to credit reporting information which necessarily requires ongoing update. Third, access to date of birth information can be easily arranged given that it can be obtained from the Electoral Roll (which is already a current source of name and address information). All of these factors suggest that date of birth information is likely to be far superior, and more practical, for the purposes of compliance with the identity verification obligations imposed by the AML/CTF Act.

## **Conclusion**

15. GDC recognises that the scope of the Inquiry is limited to issues arising from the Privacy Act. In this context, an analysis of the AML/CTF Act and AML/CTF Rules is, although necessary and relevant, nevertheless incidental to the primary focus. Accordingly, in our view these issues need to be carefully considered as part of a review of the AML/CTF Act and the AML/CTF Rules. In the meantime, it is readily apparent that there are some

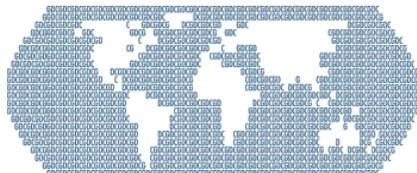


real and significant risks associated with the release of credit reporting information for the purpose of identity verification. In the absence of a comprehensive assessment by Government as to what data is to be acceptable for identity verification requirements, and what data government agencies will therefore be authorised to make available, GDC respectfully urges caution against the release of credit reporting information. It would appear far more logical and sensible to instead facilitate the use of date of birth information which can be accomplished quickly, efficiently and with far less risk.

16. Thankyou for considering our views put forward in this submission.

Yours sincerely,

**Edward Sedgley**  
*Director*



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