



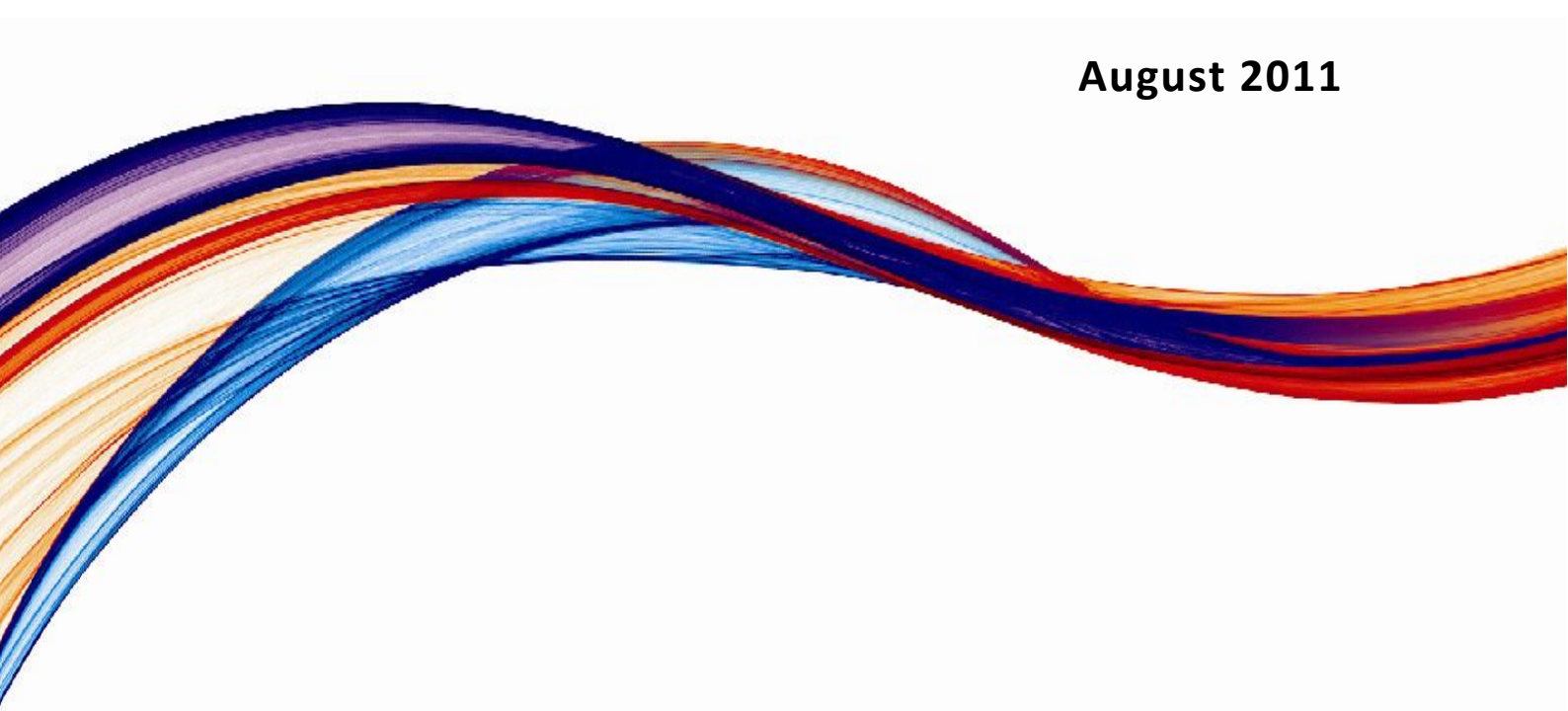
**Australian Government**

**Office of the Australian Information Commissioner**

# **Explanatory Statement Credit Provider Determination**

**No. 2011-1 (Assignees)**

**August 2011**



## Explanatory Statement

### Credit Provider Determination No. 2011-1 (Assignees)

This explanatory statement fulfils the Privacy Commissioner's obligations under section 26(1) of the *Legislative Instruments Act 2003* (Cth).

This explanatory statement refers to Credit Provider Determination No. 2011-1 (Assignees) (the Assignees Determination) made under section 11B(1)(b)(v) of the *Privacy Act 1988* (Cth) (the Privacy Act).

#### Purpose and operation

The Assignees Determination has effect from 1 September 2011 to 31 August 2014. It has the same effect as Credit Provider Determination No. 2006-3 (Assignees) (the 2006 Assignees Determination) which expires on 31 August 2011.

The Assignees Determination provides that a corporation which acquires the rights of a credit provider with respect to the repayment of a loan shall, in relation to that loan, be regarded as the credit provider for the purposes of the Privacy Act. Further, that assignee will be regarded as the credit provider who provided the loan or the credit provider to whom the loan application was submitted.

The purpose of the Assignees Determination is to determine that certain entities are 'credit providers' for the purposes of the Privacy Act. By being determined a 'credit provider' in relation to a particular loan, an entity is permitted to conduct credit reporting in accordance with Part IIIA of the Privacy Act and the *Credit Reporting Code of Conduct* (Code of Conduct)<sup>1</sup>. For example, an entity covered by the Assignees Determination can collect payments on an overdue loan, list an overdue payment or serious infringement in relation to the loan, update as paid an existing default listing on the loan and correct previously reported loan information.

Entities covered by the Assignees Determination must ensure that they understand and comply with their obligations under Part IIIA of the Privacy Act and the Code of Conduct. These instruments impose various obligations and prohibitions on credit providers. This includes the obligation in clause 2.8 of the Code of Conduct which provides that a credit provider must not list a debt with a credit reporting agency where recovery of the debt by the credit provider is barred by a statute of limitations (statutes vary but the period is usually six years).

#### Authority for making the determination

The authority to make the Assignees Determination is contained in sections 11B(1)(b)(v) and 28A(1)(d) of the Privacy Act.

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<sup>1</sup>*Credit Reporting Code of Conduct* and Explanatory notes issued by the Privacy Commissioner under section 18A of the Privacy Act, September 1991 and including all amendments as at March 1996

Section 11B(1)(b)(v) of the Privacy Act states:

- (1) For the purposes of this Act...a person is a credit provider if the person is:
  - (b) a corporation (other than an agency):
    - (v) that:
      - (A) carries on a business or undertaking involving the provision of loans (including the provision of loans by issuing credit cards); and
      - (B) is included in a class of corporations determined by the Commissioner to be credit providers for the purposes of this Act.

Section 28A(1) of the Privacy Act states that the Commissioner has the following function in respect of credit reporting:

- (d) to make such determinations as the Commissioner is empowered to make under section 11B or Part IIIA.

Section 6 of the Privacy Act defines 'Commissioner' to mean 'the Information Commissioner within the meaning of the *Australian Information Commissioner Act 2010*'.

Section 12 of the *Australian Information Commissioner Act 2010* (Cth) (AIC Act) provides that the Privacy Commissioner has the 'privacy functions' (which are defined in section 9(1)). However, section 12(4)(f) of the AIC Act provides that the Privacy Commissioner may only undertake the making, variation or revocation of a determination for the purposes of paragraph 28A(1)(d) of the Privacy Act with the approval of the Australian Information Commissioner.

The Assignees Determination has been made by the Privacy Commissioner. For the purposes of section 12(4)(f) of the AIC Act, the Australian Information Commissioner has approved the Privacy Commissioner making the Assignees Determination.

## **Background to the Assignees Determination**

The first determination in relation to Assignees was made in 1995, following representations from a mortgage insurer who wished to conduct credit reporting in relation to a loan it had acquired upon the borrower's default.

New determinations regarding assignees were made with no substantive changes in 1997, 2002, 2003, February 2006 and August 2006.

At the time of making this Determination, the Senate Finance and Public Administration Committee is conducting an inquiry into exposure drafts of Australian Privacy Amendment Legislation, including an exposure draft of proposed new credit reporting provisions (Senate Committee inquiry).

If the new credit reporting provisions are passed in their current exposure draft form, the Assignees Determination is likely to become redundant because the Australian Government proposes to:

- remove the Australian Information Commissioner's determination power in relation to the 'credit provider' definition, and
- designate as 'credit providers' in the legislation itself (exposure draft section 191) those entities currently covered by the Assignees Determination.

## Consultation

Prior to making the Assignees Determination, the Office of the Australian Information Commissioner (OAIC) undertook a review of the 2006 Assignees Determination which expires on 31 August 2011.

The OAIC released a consultation paper<sup>2</sup> for public comment as part of the review. The purpose of the consultation was to obtain stakeholders' views regarding whether or not a new determination in relation to Assignees should be made, whether the terms of the determination should be amended, and the duration of any such determination.

Comment was invited from industry participants, peak industry bodies, consumer groups and Government departments. The consultation paper was also available on the OAIC's website during the consultation period.

The OAIC received seven written submissions in response to the questions in the consultation paper relating to the Assignees Determination. The submissions are available on the OAIC website<sup>3</sup>.

## Reasons for the decision

In making the Assignees Determination, the Privacy Commissioner took account of:

- the operation of the 2006 Assignees Determination
- the submissions received in response to the consultation paper, and
- the Senate Committee inquiry and the potential impact of the exposure draft of new credit reporting provisions on the Assignees Determination.

The Privacy Commissioner was satisfied that there was no reason not to make a new determination in relation to assignees and no reason to amend the terms of the 2006 Assignee Determination. The Privacy Commissioner therefore decided to make the Assignees Determination, with the same effect as the 2006 Assignees Determination, for a period of three years.

The Privacy Commissioner noted that:

- each submission received by the OAIC supported the making of a new Assignees Determination
- the OAIC received no evidence demonstrating problems with the operation of the 2006 Assignees Determination, and
- a number of submissions referred to the Senate Committee inquiry.

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<sup>2</sup>Review of Credit Provider Determination: Consultation Paper No. 1 – Assignees and Classes of Credit Providers is available at <http://www.oaic.gov.au/publications/papers.html>.

<sup>3</sup>[http://www.oaic.gov.au/news/consultations.html#previous\\_consultations](http://www.oaic.gov.au/news/consultations.html#previous_consultations).