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Regulation and Strategy
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SUBMISSION PAPER:

Consultation Paper Draft Privacy Safeguard Guidelines

This Submission Paper was prepared by Prospa Advance Pty Limited (47 154 775 667). www.prospa.com.au

Prospa Advance Pty Limited (“Prospa”) welcomes the opportunity to provide feedback on the Draft Privacy Safeguard Guidelines.

1. A little about us – “Prospa”

Prospa is currently Australia’s #1 Online Small Business Lender¹, operating out of our Sydney headquarters. Prospa has supported small businesses with funding of more than \$1.35 billion and employs over 250 people in Australia.

Prospa offers Small Business Loans between \$5,000 to \$300,000 and a Line of Credit for up to \$100,000. All customers of Prospa are small businesses with all funding decisions achieved by assessing well over 450 data points, including turnover, profit & loss, business tenure, size and industry sector.

Prospa uses a sophisticated risk-based scoring methodology developed over our more than seven years of

¹ Market position for online balance sheet lenders to Australian small businesses, based on Prospa’s volume as a percentage of total market volume in 2017 as reported in KPMG “The 3rd Asia Pacific Region Alternative Finance Industry Report”, November 2018; USDAUD FX rate of 0.767.



lending to small businesses. We verify the specifics of every small business applicant using data from sources such as (but not limited to): ASIC's website, Equifax, bankstatements.com and the Australian Tax Office.

The use of online small business lenders such as Prospa by Australian small businesses is increasing, due to our ability to provide online application processes, timely credit decisions and funding, unsecured finance, repayment flexibility and an excellent customer experience.

2. Impact Prospa has on the Australian economy

A recent independent study conducted by RFI Group and the Centre for International Economics on behalf of Prospa, revealed the positive economic impact of Prospa's lending to small business in Australia. See full report here: https://howto.prospa.com/rs/317-LRS-411/images/PRO028_EconomicImpactReport_FA03_Digital.pdf.

The research showed Prospa lending between 2013 and 2018 contributed \$3.65 billion to Australian nominal GDP and helped maintain 52,500 annual FTE positions. These findings demonstrate that by providing small business owners with fast, simple access to finance, Prospa is not just directly contributing to its customers' revenue and jobs, but to the wider Australian economy.

3. General observations and feedback

Prospa welcomes the Office of the Information Commissioner's ('OAIC') engagement on the development of guidelines for the application of the Privacy Safeguards ('the Draft Guidelines').

Prospa supports and strongly endorses the need to protect the privacy of consumers. Further, we believe that industry compliance with the Privacy Safeguards will ensure confidence in and consumer uptake of Open Banking.

At a high level, the Draft Guidelines provide greater regulatory certainty for businesses such as Prospa in implementing the Privacy Safeguards. We believe that regulatory certainty is an essential element of an environment that is conducive to competition and innovation. Competition and innovation, in turn, leads to better outcomes for Australian consumers and small businesses.

4. Additional guidance on outsourcing

Prospa's technology platform utilises cloud-based technologies. We use leading third-party software and service providers for the core components of our technology platform, including Microsoft Azure, a cloud storage provider. This provides an agile development environment and enables us to more readily innovate to meet the evolving finance needs of small businesses, in a timely manner.

We recommend that the Draft Guidelines include additional guidance and examples (for instance, in 1.32) on disclosures by accredited persons to cloud storage providers. We believe that this would enhance the clarity and certainty of the Privacy Safeguards.

5. Chapter 2, Paragraph 2.13 – Statement on anonymity and pseudonymity in the banking sector

Chapter 2, Paragraph 2.13 of the Draft Guidelines includes a statement on anonymity and pseudonymity in the banking sector.

We fully support the substance of the statement and welcome the OAIC's recognition of the practical limits of granting customer requests for anonymity and pseudonymity in banking.

Our interpretation of the term "banking sector" is that it refers only to ADIs and excludes non-bank lenders. Prospa, as an online non-bank lender, is not able to deal with a consumer on an anonymous basis, for similar reasons to those reasons set out in paragraph 2.13 with respect to the banking sector.

On this basis, we recommend that the statement in paragraph 2.13 be extended to the financial services sector more broadly, to capture accredited data recipients that are not Authorised Deposit-taking Institutions ('ADIs').

6. Chapter 8 – Privacy Safeguard 8

We advocate additional clarification of the scope of an accredited person's liability under Privacy Safeguard 8, particularly the matters set out below.

We refer to section 56EK (Privacy safeguard 8) of the Treasury Laws Amendment (Consumer Data Right) 2019. Our interpretation of section 56EK is that it applies to disclosures to recipients that are not in Australia. In the example given in 8.27, HelpsHere Pty Ltd is an Australian-based entity. To avoid confusion, we recommend that the OAIC clarify the rationale for KTelco Ltd's liability in the example.

We believe that the scope of an accredited data recipient's liability under section 56EK(2) should be clear and explicit, so that accredited data recipients can appropriately manage their risks and continue to innovate. To this end, we recommend that the Consultation Paper state explicitly that the liability under section 56EK(2) of the Act only applies where none of paragraphs 1(c), (e) and (f) apply.

We refer to 8.26, which notes that the term "on behalf of" may include conduct by employees, directors, officers, consultants or subcontractors. We recommend that the Consultation Paper clarify that liability only extends to conduct that is undertaken with the express authority of the overseas recipient. We are concerned that accredited data recipients could otherwise be liable for the unauthorised conduct of third parties, which they would have no reasonable way of foreseeing.

7. Chapter 12 – Privacy Safeguard 12

We welcome the important recognition in the Draft Guidelines that irretrievable destruction of data from a backup system may not always be possible. We note the difficulties that were reported by businesses trying to implement data deletion under the General Data Protection Regulation 2016/679 of the European Union. We believe that the recognition in the Draft Guidelines is an important element in preventing similar issues in Australia.

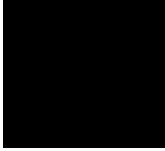
We note that these issues extend to databases, as well as to backups. Many databases are optimized to render records obsolete via "soft deletion". Soft deletion involves setting a flag on an existing database table, which indicates that a record has been deleted. Soft deletion does not destroy the record. That said, when a record is deleted using soft deletion, it is put beyond use. Soft deletion is used because it is efficient and also enables data that is accidentally deleted to be restored.

If an accredited data recipient were required to depart from existing methods of deleting database records, this would be onerous, particularly for smaller accredited data recipients.

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On this basis, we urge the OAIC to extend the comments made in relation to backup systems (in 12.100-12.102) to data deletion (including deletion from databases) generally.

Kind regards,



p.p.

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If you would like more information regarding our submission, please contact:

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