



Privacy Commissioner
Te Mana Matapono Matatapu

Proposed Amendment No 5 to Credit Reporting Privacy Code 2004

17 May 2011

This document sets out a proposed amendment to the Credit Reporting Privacy Code. Reference should be made to the accompanying information paper. Submissions on this proposed amendment may be made by 24 June 2011.

Credit Reporting Privacy Code 2004 Amendment No 5

1. Title

This amendment is the Credit Reporting Privacy Code 2004 Amendment No 5.

2. Commencement

This amendment will come into force on 1 April 2012.

3. Amendment to clause 3 (review of operation of Amendments No 4 and No 5)

Clause 3 is amended in the following manner:

- Delete** : from clause 3 the words ~~to~~ as soon as practicable after 1 April 2008+
- Substitute** : operation of Amendments No 4 and No 5 as soon as practicable after 1 April 2015

4. Amendment to clause 5 (definition of credit)

Clause 5 is amended in the following manner:

- Delete** : the definition of **credit**
- Substitute** : **credit** means a contract, arrangement or understanding to provide property or services before payment or money on loan

5. Amendments to clause 5 (definition of credit information – credit default information)

(1) The definition of ~~credit information~~ (as amended by clause 3(3) of Amendment No 4) is further amended in the following manner:

- Delete** : paragraph (e)
- Substitute** : (e) the following information relating to a credit default:
- (i) capacity of the individual concerned as either debtor or guarantor;
 - (ii) details of the default including dates of default and of notice to individual concerned, type of credit, amount in default and the total amount owing;
 - (iii) status of the default including details of any referral to a debt collector and any payment, part payment, scheme of arrangement or write-off subsequent to the default;
 - (iv) details of the final settlement of an amount of default; and

- (v) details of the subscriber that reported the default and any subscriber reference number;

(2) Clause 5 is amended in the following manner:

Insert : in the appropriate alphabetical order:

credit default means either a debtor credit default or a guarantor credit default

debtor credit default refers to a payment (including a payment that is wholly or partly a payment of interest) that the individual is overdue in making in relation to credit that has been provided by a credit provider to the individual if:

- (a) the individual is at least 30 days overdue in making the payment;
- (b) the credit provider has given a written notice to the individual informing the individual of the overdue payment and requesting that the individual pay the amount of the overdue payment;
- (c) in addition to giving the notice, the credit provider has taken other steps to recover the amount of the overdue payment from the individual;
- (d) the credit provider is not prevented by or under any law from bringing proceedings against the individual to recover the overdue payment; and
- (e) the overdue payment is equal to or more than \$100

guarantor credit default refers to a payment that the individual is overdue in making as a guarantor under a guarantee given against any default by the debtor in repaying any or all of the debt deferred under credit provided by a credit provider to the debtor if:

- (a) the credit provider has given the individual written notice of the debtor's default that gave rise to the individual's obligation to make the overdue payment;
- (b) the notice requests that the individual pay the amount of the overdue payment;

- (c) at least 30 days have passed since the day on which the notice was given;
- (d) in addition to giving the notice, the credit provider has taken other steps to recover the amount of the overdue payment from the individual; and
- (e) the credit provider is not prevented by or under any law from bringing proceedings against the individual to recover the overdue payment

6. Amendments to clause 5 (definition of credit information – repayment history information)

- (1) The definition of ~~credit information~~ (as amended by clause 3(2) of Amendment No 4) is further amended in the following manner:

Delete : ~~and~~ from paragraph (da)(v) and substitute ~~and~~ at the end of paragraph (da)(vi)

Insert : in paragraph (da)

- (vii) repayment history information in relation to the account;

- (2) Clause 5 is amended in the following manner:

Insert : in the appropriate alphabetical order:

repayment history information means, in relation to a credit account for which there are periodic payments:

- (a) whether or not in any given month an individual has met an obligation to make a periodic payment that is due and payable during that month; and
- (b) any other information required to identify the periodic payment

7. Amendments to clause 5 (definition of credit information – manager of personal property information)

- (1) The definition of ~~credit information~~ is amended in the following manner:

Insert : a semi-colon at the end of paragraph (m)

Insert : (n) the following information about a manager of personal property appointed in relation to an individual:

- (i) information about the order appointing the manager, including the dates of commencement and discharge and any variations; and
- (ii) the manager's contact details

(2) Clause 5 is amended in the following manner:

Insert : in the appropriate alphabetical order:

manager of personal property means a person appointed by the Family Court pursuant to section 30 or section 31 of the Protection of Personal and Property Rights Act 1988 to manage the property of an individual

manager of personal property information means the information listed in paragraph (n) of the definition of credit information

8. Amendments to clause 5 (definitions relating to disclosure of credit account information)

Clause 5 is amended in the following manner:

Insert : in the appropriate alphabetical order:

externally regulated credit provider means:

- (a) a registered credit provider;
- (b) an electricity retailer;
- (c) a gas retailer; or
- (d) a telecommunications service provider

electricity retailer means an agency that falls within the definition set out in section 2(1) of the Electricity Act 1992 and that is a member of the Electricity and Gas Complaints Commission

gas retailer means an agency that falls within the definition set out in section 2(1) of the Gas Act 1992 and that is a member of the Electricity and Gas Complaints Commission

registered insurer means an insurer that is registered under Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

telecommunications service provider means an agency that falls within the definition set out in section 5

of the Telecommunications Act 2001 and that is a member of the Telecommunications Carriers Forum

9. Amendment to clause 5 (definition of independent person)

Clause 5 (as amended by clause 4(2) of Amendment No 4) is further amended in the following manner:

- Delete** : from the definition of **independent person** the words
 %ules 5(2A) and 8(3A)+
Substitute : clause 10 and Schedule 6

10. Amendments to clause 5 (definition of serious credit infringement and new definition of credit non-compliance action)

(1) The definition of %credit information+is amended in the following manner:

- Insert** : (fa) credit non-compliance action information
 (including confirmed credit non-compliance
 action information);

(2) Clause 5 is amended in the following manner:

- Delete** : the definition of **serious credit infringement**
Substitute : **serious credit infringement** means an action done by
 an individual:

- (a) that involves fraudulently obtaining credit, or
 attempting fraudulently to obtain credit; or
 (b) that involves fraudulently evading the
 individual's obligations in relation to credit, or
 attempting fraudulently to evade those
 obligations

(3) Clause 5 is amended in the following manner:

- Insert** : in the appropriate alphabetical order:

**confirmed credit non-compliance action
 information** means credit non-compliance action
 information that has been confirmed by a subscriber in
 accordance with clause 3 of Schedule 3.

credit non-compliance action means an action done
 by an individual:

- (a) that a reasonable person would consider
 indicates an intention, on the part of the
 individual, no longer to comply with the
 individual's obligations in relation to credit; and

- (b) where a subscriber has, after taking such steps as are reasonable in the circumstances, been unable to contact the individual about the action

11. Amendment to clause 6: Rule 2 (collection of credit non-compliance action information)

Rule 2 is amended in the following manner:

- Delete** : from paragraph (2)(e) the words ~~or~~ serious credit infringement information; or+
- Substitute** : , serious credit infringement information or credit non-compliance action information (including confirmed credit non-compliance action information);

12. Amendment to clause 6: Rule 2 (collection of manager of personal property information)

Rule 2 is amended in the following manner:

- Insert** : (ea) that the collection is from a manager of personal property appointed in respect of the individual and in respect of whom a subscriber agreement in accordance with the applicable provisions of Schedule 3 is in place; or

13. Amendment to clause 6: Rule 10 (pre-screening)

- (1) Rule 10(1B) (inserted by Amendment No 4) is amended in the following manner:

- Insert** : at the start of rule 10(1B) the words
Subject to subrule (1C),

- (2) Rule 10 is amended in the following manner:

- Insert** : (1C) Notwithstanding subrule (1B), a credit reporter that holds credit information may use the information to remove names from a direct marketing list supplied by a subscriber if:
- (a) the subscriber is an externally regulated credit provider;
- (b) the list:
- (i) is warranted by, or on behalf of, the subscriber to have been compiled in compliance with the Act;

- (ii) omits the names of any individuals who have been registered with the New Zealand Marketing Association indicating that they do not wish to receive unsolicited marketing; and
- (iii) is to be used only for direct marketing related to the provision of credit by the subscriber;
- (c) the removal of names is based upon criteria agreed in advance between the credit reporter and the subscriber with the purpose of excluding individuals who represent an adverse credit risk and would be ineligible to receive the direct marketing; and
- (d) the credit reporter has a process in place to ensure that:
 - (i) the requirements of subrules (1C)(b)(i) and (ii) are met;
 - (ii) information derived from the list is not retained or used by the credit reporter for the purpose of credit reporting; and
 - (ii) the list, after the removal of names, is:
 - (A) used only for the purpose of the direct marketing permitted under subrule (1C)(b)(iii); and
 - (B) not disclosed directly to the subscriber.

14. Amendment to clause 6: Rule 10 (use of information suppressed pursuant to clause 9)

Rule 10 is amended in the following manner:

- Insert** : (3) A credit reporter that holds credit information must not use the information for the purpose of credit reporting when it is suppressed pursuant to clause 9.

15. Amendment to clause 6: Rule 10 (credit scores)

Rule 10 is amended in the following manner:

- Insert** : (4) A credit reporter must not use information derived from an enquiry made by a credit provider pursuant to rule 11(2)(b)(i)(B) to create a credit score.

16. Amendments to clause 6: Rule 11 (disclosure of credit information)

Rule 11(2)(b)(i) is amended in the following manner:

- Delete** : rule 11(2)(b)(i)
Substitute : (i) a credit provider, or that credit provider's agent, for the purpose of:
- (A) making a credit decision affecting that individual (and for directly related purposes including debt collection); or
 - (B) providing that individual with a quotation of the cost of credit;

17. Amendment to clause 6: Rule 11 (disclosure of credit account information)

Rule 11(3) (as amended by clause 11(2) of Amendment No 4) is further amended in the following manner:

- Delete** : rule 11(3)(c)
Substitute : (c) credit account information other than to the following classes of subscriber for the indicated purpose:
- (i) an externally regulated credit provider for the purpose of making a credit decision affecting an individual; or
 - (ii) a prospective insurer that is a registered insurer for the purpose of a decision on the underwriting of insurance in respect of a credit related transaction relating to an individual; or

18. Amendment to clause 6: Rule 11 (disclosure of credit information when it is suppressed)

Rule 11(3) (as amended by clause 11(2) of Amendment No 4) is further amended in the following manner:

- Insert** : (d) credit information for the purpose of credit reporting when it is suppressed pursuant to clause 9 unless:

- (i) the individual concerned has made a release request under clause 9(9); and
- (ii) the credit reporter is, after taking reasonable precautions, satisfied concerning the identity of the individual.

19. Amendments to clause 6: Rule 11 (disclosure of fact of suppression)

Rule 11(4A) (inserted by clause 11(3) of Amendment No 4) is amended in the following manner:

- Delete** : rule 11(4A)
Substitute : (4A) A credit reporter may disclose to a subscriber that credit information held about an individual has been:
- (a) suppressed pursuant to rule 10(1A); or
 - (b) suppressed pursuant to clause 9.

20. Amendments to clause 7 (Charges)

Clause 7 is amended in the following manner:

- Delete** : from paragraph (2)(c) the word "or"
Insert : (e) suppressing an individual's credit information pursuant to clause 9(2); or
 (f) extending the suppression on an individual's credit information pursuant to clause 9(4).

21. Insertion of new clause 9 (victims of fraud may request the suppression of credit information)

Part 3 is amended in the following manner:

- Insert** : **9 Victims of fraud may request suppression of credit information**
- (1) Where a credit reporter holds credit information about an individual, the individual concerned is entitled to make an **initial request** to the credit reporter seeking a suppression of that information from disclosure for the purpose of credit reporting on the basis that the individual believes that he or she has been, or is likely to be, a victim of fraud (including identity fraud).

- (2) Where a credit reporter receives an initial request, the credit reporter must suppress the individual's credit information for 10 working days from the day on which the request is received and notify the individual of:
 - (a) the suppression and its duration; and
 - (b) the process to make an extension request under subclause (3).
- (3) Where an individual has obtained a suppression under any of the provisions of this clause, that individual is entitled to make an **extension request** to the credit reporter seeking an extension of the suppression.
- (4) Where a credit reporter receives an extension request, the credit reporter must, as soon as reasonably practicable, decide whether to extend the suppression and, if so, determine what period it considers is reasonable in the circumstances to extend the suppression.
- (5) Where a credit reporter receives an extension request, the credit reporter must:
 - (a) pending taking a decision on the request . continue to suppress the individual's credit information; and
 - (b) once it has taken a decision on the request . notify the individual of that decision.
- (6) A credit reporter may refuse an extension request if it believes on reasonable grounds that the individual has not been, or is not likely to be, a victim of fraud.
- (7) Where a credit reporter refuses an extension request, the credit reporter must include in its notification of decision:

- (a) the reasons for that refusal; and
 - (b) details of the complaints procedure available under clause 8.
- (8) Where a credit reporter receives an initial request from an individual in respect of whom the credit reporter has previously received an initial request, the credit reporter may treat the request as an extension request.
 - (9) Where a credit reporter has suppressed credit information about an individual, the individual concerned is entitled to make a **release request** to the credit reporter authorising the disclosure of that information to a particular subscriber for the purpose of a particular credit transaction.
 - (10) Where a credit reporter receives a release request, the credit reporter must, as soon as reasonably practicable, notify the individual of its decision on the request.
 - (11) A credit reporter must make available on the credit reporter's website details of the credit reporter's processes to make an initial request, an extension request and a release request.

22. Insertion of new clause 10 (assurance report)

- (1) Part 3 is amended in the following manner:

Insert : 10 Credit reporter must provide assurance report

- (1) A credit reporter must submit to the Commissioner annually an assurance report prepared in accordance with the requirements of Schedule 6.
- (2) The report may be prepared by either:
 - (a) an independent person having expertise in undertaking a systematic review, such as a trained auditor; or

(b) a review committee, established by the credit reporter, that includes an independent person with expertise in relation to matters of compliance with this code; and

(3) The report must:

(a) cover the year to 30 June; and

(b) be submitted to the Commissioner within 3 months of the end of the year.

(2) Rule 5(2A) (inserted by clause 5 of Amendment No 4) is revoked.

(3) Rule 8(3A) (inserted by clause 8(2) of Amendment No 4) is revoked.

23. Amendments to new Schedule 1 (maximum reporting periods)

(1) Schedule 1 (as amended by clause 14 of Amendment No 4) is further amended in the following manner:

Insert : after %Credit account information+

<i>Column 1</i>	<i>Column 2</i>
Repayment history information	2 years from date that periodic payment is due and payable

(2) Schedule 1 (as amended by clause 14 of Amendment No 4) is further amended in the following manner:

Delete : entry relating to %Serious credit infringement information+

Substitute :

<i>Column 1</i>	<i>Column 2</i>
Serious credit infringement information	5 years from date of action
Credit non-compliance action information	6 months from date of action
Confirmed credit non-compliance action information	5 years from date of action

(3) Schedule 1 (as amended by clause 14 of Amendment No 4) is further amended in the following manner:

Insert : after %Credit score+

<i>Column 1</i>	<i>Column 2</i>
Manager of personal property information	Duration of court order appointing manager of personal property

24. Amendments to Schedule 3 (subscriber agreement)

- (1) Schedule 3 (as amended by clause 16 of Amendment No 4) is further amended in the following manner:

Delete : from clause 3 the words ~~or serious credit infringement information+~~

Substitute : , serious credit infringement information or credit non-compliance action information (including confirmed credit non-compliance action information)

Insert : (3A) Where the subscriber has disclosed credit non-compliance action information to the credit reporter, the subscriber must, after 3 months but within 6 months, confirm to the credit reporter whether it remains of the view that the action is an action that a reasonable person would consider indicates an intention, on the part of the individual, no longer to comply with the individual's obligations in relation to credit.

Delete : from clause 5 the words ~~or serious credit infringement information+~~

Substitute : , serious credit infringement information or credit non-compliance action information (including confirmed credit non-compliance action information)

Delete : from clause 6 the words ~~or serious credit infringement information+~~

Substitute : , serious credit infringement information or credit non-compliance action information (including confirmed credit non-compliance action information)

- (2) Schedule 3 (as amended by clause 16 of Amendment No 4) is further amended in the following manner:

Insert : (3B) Where the subscriber is a manager of personal property, the subscriber must, as soon as reasonably practicable, update any manager of personal property information previously disclosed to the credit reporter and ensure that the information remains accurate, up to date, relevant and not misleading.

Insert : in clause 5 after ~~credit default information+~~
manager of personal property information,

Insert : in clause 6 after ~~credit default information+~~
manager of personal property information,

(3) Schedule 3 (as amended by clause 16 of Amendment No 4) is further amended in the following manner:

Insert : (9) Where the subscriber is an externally regulated credit provider, and seeks to have a credit reporter pre-screen a direct marketing list, the subscriber must provide the warranty required by rule 10(1C)(b)(i), ensure that the list meets the requirements of rule 10(1C)(b)(ii) and use the screened list only for the permitted purpose.

25. Amendments to Schedule 4 (summary of rights)

Schedule 4 (as amended by clause 19 of Amendment No 4) is further amended in the following manner:

Delete : the paragraph headed ~~limited information can be reported about you+~~

Substitute :

Some information can be reported about you

Credit reporters can collect only certain types of information for their credit reporting databases. The types of information they can collect are set out in the Code. Some of the information is about:

- the credit accounts you hold, including their credit limits and repayment history;
- any times you have defaulted on credit repayments (where a failure to pay has gone to debt collection);
- any court judgments that have been made against you; and
- any times you have been made bankrupt or entered into an insolvency arrangement.

Delete : the paragraph headed ~~information can only be reported and kept for a certain time+~~

Substitute :

There are time limits for keeping and reporting information

Credit reporters can:

- generally disclose this information for only 4 to 5 years and keep it only one further year;

- disclose information about your current accounts until two years after those accounts have closed;
- keep identification information indefinitely; and
- keep information about multiple bankruptcies indefinitely.

Insert : after the paragraph headed **“Your consent is needed in most situations”**

You can ask a credit reporter to suppress your credit information if you think you’re the victim of fraud

If you believe you are the victim of fraud, including identity fraud, you can ask a credit reporter to suppress your credit information for 10 working days. While your credit information is suppressed, the credit reporter cannot disclose it in the normal way.

If a credit provider asks the credit reporter for your information, the credit reporter can tell them that your credit information is suppressed. The credit provider will know that you may be the victim of fraud and that someone else may be applying for credit in your name.

If you want to apply for credit while your credit information is suppressed, you can ask the credit reporter to release the information to a particular credit provider. The credit reporter must take careful steps to confirm your identity before agreeing to do this.

If you think the fraud is continuing, you can ask the credit reporter to extend the suppression beyond 10 working days. The credit reporter must give you the chance to prove that you are the victim of fraud. They can refuse to suppress your information if they do not think you are the victim of fraud.

26. Insertion of new Schedule 6 (assurance report)

The following Schedule 6 is inserted:

Insert : **Schedule 6
Assurance Report**

Clause 10 requires a credit reporter to provide the Commissioner with a report, prepared with the involvement of an independent person, which is to reflect the outcome of the credit reporter’s systematic reviews undertaken under rules 5(2)(h) and 8(3)(f) and

monitoring activities undertaken under rules 5(2)(e) and 8(3)(c) and to provide other assurances in relation to code compliance, as set out below.

1. The report should include:
 - (a) a summary of the systematic review process and the methodology followed by the reviewer;
 - (b) where the report was prepared by a review committee, a statement identifying the members of that committee, including the independent person; and
 - (c) information about the independent person's expertise; and
 - (d) confirmation that the independent person is not an employee, director, or owner of the credit reporter.
2. The report must provide a reasonable assurance that, in relation to the applicable period, the credit reporter:
 - (a) had policies in place that give effect to the requirements of the code;
 - (b) had internal procedures and controls in place to give effect to the policies and requirements of the code;
 - (c) provided information and training to its staff to ensure compliance with the policies, procedures and controls; and
 - (d) ensured that subscriber agreements that complied with Schedule 3 were in place before disclosing credit information.
3. The report must provide a reasonable assurance that, in relation to the applicable period, the credit reporter undertook monitoring activities to ensure reasonable compliance with the code, including that:
 - (a) the credit reporter followed its own policies, procedures and controls;

- (b) information held by the credit reporter was protected by reasonable security safeguards;
 - (c) the credit reporter processed information privacy requests in accordance with rules 6 and 7 and clause 7;
 - (d) the credit reporter took such measures as were reasonably practicable to avoid the incorrect matching of information held by the credit reporter;
 - (e) information held by the credit reporter was subject to reasonable checks to ensure that it was accurate, up to date, complete, relevant and not misleading;
 - (f) the credit reporter's reporting and retention of credit information was in accordance with rule 9 and Schedule 1;
 - (g) the credit reporter processed direct marketing lists in accordance with rule 10(1C);
 - (h) the credit reporter processed suppression or release requests by individuals in accordance with rules 10(3), 11(3)(d) and 11(4A) and clause 9;
 - (i) the credit reporter processed complaints in accordance with clause 8;
 - (j) the credit reporter's website displayed accurate information that gave effect to rules 6(4)(b), 7(4)(b) and clauses 8(3A) and 9(10); and
 - (k) subscribers complied with agreements and controls.
4. The report must provide a reasonable assurance that, in relation to the applicable period:
- (a) where, during its systematic reviews, monitoring activities or as a result of a complaint, the credit reporter identified a breach of an agreement, policy, procedure, control, or requirement of the code, the credit reporter investigated that

breach and, where appropriate, took prompt remedial action; and

- (b) where a deficiency was identified in the previous year's report, the credit reporter, where appropriate, took prompt remedial action.

PROPOSED AMENDMENT