



Privacy Commissioner  
Te Mana Matapono Matatapu

## Proposed Amendment No 4 to the Credit Reporting Privacy Code 2004

### Information Paper

16 June 2010

The Privacy Commissioner invites submissions on the proposed amendment by **13 August 2010**. Submissions may be emailed to [Code@privacy.org.nz](mailto:Code@privacy.org.nz) or mailed to:

Credit Reporting Privacy Code Amendment  
Office of the Privacy Commissioner  
PO Box 466  
Auckland 1140

Submissions may be made public by the Privacy Commissioner or released under the Official Information Act.

The Privacy Commissioner may hold meetings with submitters at some stage after the closing date for submissions. If you would like the opportunity to attend one of these meetings please indicate that on your submission. Meetings would likely be held in Auckland and Wellington and, if there is sufficient interest, in Christchurch.

Any enquiries may be addressed to Daimhin Warner on 09 302 8680.

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In this paper:

- **the Code** means the current version of the Credit Reporting Privacy Code 2004.
- **the amendment** means the proposed amendment.

# Proposed Amendment No 4 to the Credit Reporting Privacy Code 2004 Information Paper

## Introduction

The Credit Reporting Privacy Code was issued in 2004. Clause 3 of the Code required the Privacy Commissioner to review the Code as soon as practicable after 1 April 2008. The Office of the Privacy Commissioner convened a reference group of stakeholders to assist in confirming how key aspects of the Code had operated, identifying any problems, and exploring promising changes. The reference group met between August 2008 and May 2009 and a report on its discussions was released in June 2009.<sup>1</sup>

The Code was influenced by the Australian credit reporting law set out in the Australian Privacy Act. Many of the provisions were of similar effect. It is therefore significant that, at the same time as this review, the Australian Law Reform Commission ("ALRC") undertook an in-depth review of Australia's privacy legislation.<sup>2</sup> The Australian Government released an initial response to the ALRC's findings and is now in the process of drafting amendments.

## Phase one of a two phase process

A number of proposals for amending the Code have arisen during the review. The Commissioner has decided to propose a number of changes to the Code at this time and plans to propose a further amendment later in the year.

Both the Office of the Privacy Commissioner and the reference group considered the important trans-Tasman dimension. Many of the major NZ credit reporters and banks are owned by, or affiliated to, Australian organisations and so there are advantages in being aware of any planned changes to Australian law. Australian Government decisions in principle have been released on a variety of key credit reporting issues. These announced decisions have featured in the Commissioner's considerations.

While the amendments move forward in advance of the planned Australian changes in a number of respects, there remain some issues on which it will be useful to await the full detail of the proposed Australian law changes. Such details will not be available until later in the year when an "Exposure Draft" on proposed amendments to the Australian Privacy Act is released. Proposed amendments to the Code that may be included in phase two include reporting of repayment history information and the establishment of mechanisms to allow for "credit freezing" for victims of identification fraud.

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<sup>1</sup> The reference group consisted of representatives from the Office of the Privacy Commissioner, the New Zealand Bankers' Association, the Consumers' Institute, Dun & Bradstreet, Veda Advantage, Fisher and Paykel Finance, the Financial Services Federation, an independent privacy advocate, the Law Commission (as an independent observer), the Ministry of Economic Development, the Ministry of Consumer Affairs, the NZ Federation of Family Budgeting Services, and Telecom. The reference group report can be located at <http://www.privacy.org.nz/assets/Uploads/Report-of-CRPC-Review-Reference-Group.doc>.

<sup>2</sup> ALRC *For Your Information: Australian Privacy Law and Practice* 2008. This paper can be located at <http://www.austlii.edu.au/au/other/alrc/publications/reports/108/>.

## Major changes proposed in this amendment

This amendment will make significant changes to credit reporting in New Zealand.

Most notably, the amendment will allow for the collection and reporting of more comprehensive information by credit reporters.

The amendment will also provide credit reporters with the ability to retain and use the driver licence number, impose more explicit restrictions on direct marketing and pre-screening, and require external accountability in relation to credit reporters' compliance checking.

### 1. More comprehensive credit reporting

More comprehensive credit reporting refers to the collection of both negative and positive information about an individual's credit commitments and ability or willingness to meet their repayment obligations. Currently the Code generally limits the type of information that credit reporters may collect to negative information such as defaults, judgments and bankruptcies.

The proposed amendment will expand the types of information permitted to include four new fields or classes of information relating to the current credit accounts held by an individual:

1. type of credit account;
2. the credit limit;
3. the credit provider; and
4. the status of the account as open or closed.

Specific considerations in relation to each field of information are discussed below in the clause-by-clause analysis.<sup>3</sup>

The potential benefits of more comprehensive credit reporting to individuals, credit providers, and the economy may be significant, and are said to include:

- Giving credit providers a more accurate and complete picture of an individual's creditworthiness and allowing them to make better assessments of risk and facilitating more responsible lending decisions.
- Allowing credit products to be tailored to individuals on the basis of their creditworthiness, reducing the costs of credit for some.
- Increasing competition in the credit industry, created by access to better information by smaller credit providers which have not had the capacity to build up their own information.
- Opening mainstream credit to a wider pool of individuals who may otherwise be excluded due to a lack of information about them.
- Providing a stronger base from which to detect identity theft and fraud, as the recording of accounts opened enables the monitoring of unusual credit behaviour.

However, more comprehensive credit reporting changes the traditional expectation of financial confidentiality and carries with it risks to the consumer. It is more privacy intrusive. The collection and reporting of more personal information creates increased risks of

<sup>3</sup> As mentioned above, the Commissioner will likely propose a further amendment later in the year. This will likely include another field identified by the reference group and the ALRC, namely repayment history information.

inaccuracy and misuse. For this reason, we have ensured that there are safeguards in place to control the flow of these new fields of information to registered credit providers (a term explained further below). We have also proposed a number of amendments which are designed to give individuals greater confidence that credit reporters are complying with their obligations under the Code.

## **2. Driver licence number**

The Code generally prohibits the collection and retention of driver licence numbers by credit reporters. By contrast, the Australian Privacy Commissioner has permitted credit reporters in Australia to collect and retain the driver licence number.

The use of the driver licence number by credit reporters to match credit information about individuals may better ensure that the right information is reported about the right individuals. The driver licence number is particularly useful as it does not change with new versions of the licence, it can be verified through the New Zealand Transport Agency and the driver licence is widely carried by adults in New Zealand.

However, the driver licence number is a unique identifier that was not assigned for this particular purpose. Although the Code will enable the use of the driver licence number in credit reporting for the first time, a number of significant safeguards have been proposed to ensure that the driver licence number is not misused or made available to others. The Code will prohibit the setting up of a duplicate national database of driver licence numbers.

## **3. Direct marketing and pre-screening**

Direct marketing and other associated practices such as pre-screening and pre-approval have never been permitted by the Code but the proposed amendment includes an *express* prohibition on the use or disclosure of credit information for direct marketing.

Demand for the use of credit information for marketing purposes may increase when more comprehensive credit information is made available to credit providers.

Pre-approval describes the practice of credit providers approaching individuals and offering them pre-approved credit, often after conducting a credit check without the individual's knowledge. Pre-screening describes the practice of using a credit reporter to profile direct marketing lists prior to use.

Individual authorisation, transparency and a limit to core credit purposes are fundamental to the Code. The practices summarised above are too remote from these purposes. In the context of credit reporting, where individuals have no real control over the passing of their information to credit reporters, it is crucial that control is maintained over the disclosure of that information.

## **4. External accountability requirements**

The Code already requires credit reporters to conduct systematic reviews of the effectiveness of the policies, procedures and controls in place to both keep credit information secure and ensure that it is accurate and up-to-date. Clauses 5 and 8(2) will

amend the Code to require credit reporters to include an external element in these systematic reviews and to report annually on the results.

The effectiveness of the policies, procedures and controls required by rules 5 and 8 will become all the more crucial when the Code permits more comprehensive credit reporting. Requiring credit reporters to be more transparent about the results of their systematic reviews, making them more accountable, will strengthen the monitoring obligations and give both the Commissioner and the public greater confidence in the security and accuracy of the processes.

## Clause-by-clause Comment

### 1. Commencement: Clause 2

*The proposed amendment comes into force on 11 April 2011 with the exception of some changes which come into force either six months or 12 months later.*

There will be a delay in some of the changes coming into force. This is to enable credit reporters and their subscribers to prepare for the changes. While some changes come into force on 1 April 2011 (for example changes relating to the driver licence number and retention) the balance will follow:

- (a) Six months later (for example, changes relating to the Summary of Rights); or
- (b) 12 months later (for example, changes relating to more comprehensive credit reporting and external accountability requirements on credit reporters).

### 2. Driver Licence Number: Clauses 3(1), 4(2)-(4), 8(1), 12, 16 and 19

*These proposed amendments permit credit reporters to collect and retain the driver licence number subject to safeguards.*

*Clauses 3(1), 4(2)-(4)*

The Code will be amended to allow credit reporters to collect driver licence numbers for the purpose of credit reporting. Only New Zealand driver licence numbers are to be collected.

*Clauses 8(1), 12, 16 and 19*

The amendment sets out strict controls on the collection, use and disclosure of the driver licence number in a new Schedule 5. Clauses 8(1), 12 and 16 amend rules 8 and 12 and Schedule 3 to make reference to Schedule 5. Putting all the controls together in one schedule is clearer than scattering them through the separate rules. Clause 19 contains the new Schedule 5. The schedule is ordered to reflect the progress of a driver licence number through the credit reporting system.

Clause 1 of the schedule relates to the steps that subscribers must take. These steps must be imposed on subscribers through the subscriber agreement.

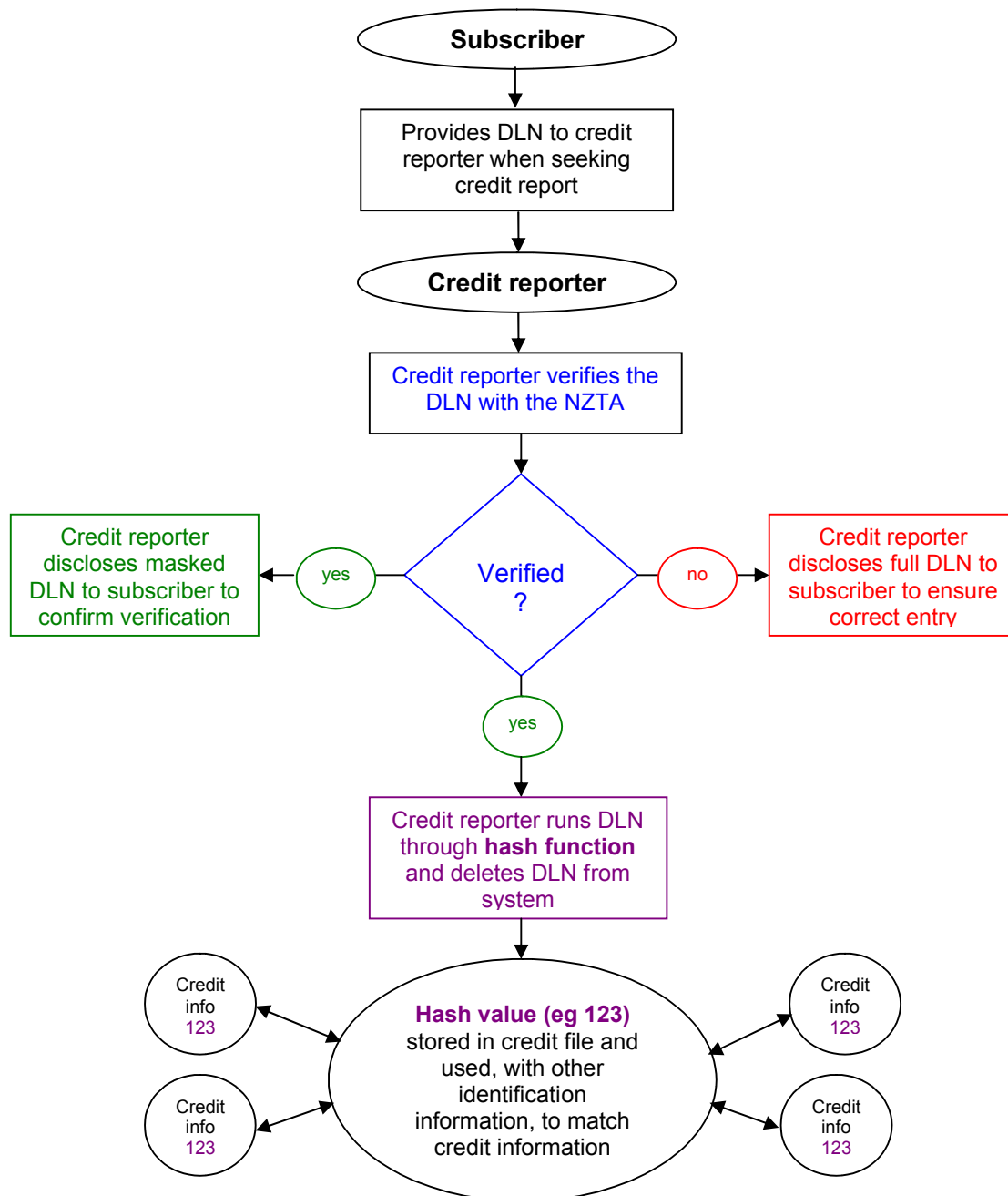
Clauses 2, 3 and 4 relate to verification of the driver licence number. Clause 3 requires the credit reporter to mask the driver licence number when disclosing it back to the subscriber to confirm verification, by removing the last two digits and replacing them with symbols. However, where the verification is unsuccessful, clause 4 allows the credit reporter to disclose the full driver licence number back to the subscriber to make sure that the correct number was verified.

Clauses 5 and 6 relate to the way in which credit reporters can retain the driver licence number and clause 7 regulates its use. Clause 5 requires credit reporters to use a "hash function" to create a "hash value" from the driver licence number. This requirement is intended to prevent credit reporters from storing a recognisable driver licence number,

thereby avoiding the creation of private databases of driver licence numbers and protecting the driver licence numbers from disclosure or misuse.

The use of hashing will provide credit reporters with the improved accuracy they seek from using driver licence numbers while providing maximum protection to the unique identifiers and the individuals to whom those unique identifiers relate. When used in conjunction with other primary identification information, the hash value will provide sufficient further information to more accurately match credit files.

The credit reporter would still need to collect the entire driver licence number from the subscriber to verify with NZTA that it is a valid driver licence number that is not associated with a stolen or superseded licence. The process should work in a number of distinct stages, as follows:



### 3. Credit account information: Clauses 3(2) and 4(1)

*These proposed amendments permit credit reporters to collect and report on an individual's current credit accounts.*

Clause 4(1) defines a new term “credit account information”. This will allow new types of information to be used in credit reporting. Clause 3(2) sets out the types of information that fall within this definition, as follows:

(i) *type of credit account*

This field is essentially the type of credit sought in an application. Examples include a mortgage, personal loan or credit card.

(ii) *amount of credit extended*

This field provides an indication of an individual's level of credit commitment. This can be checked at the time that they apply for further credit. The field allows for limit updates, which reflect a decision by a credit provider to alter the limit on an individual's credit account.

This should be differentiated from current balance information – reflecting the amount of credit that has been drawn down by the individual at any given time – which is not permitted to be reported under this amendment.

(iii) *capacity of individual*

This field identifies the individual's status, for example as a borrower or guarantor.

(iv) *Status of account as open or closed, and relevant dates*

Clause 14 limits the reporting of credit account information to no more than two years after the date that the account is closed.

(v), (vi) *details of the credit provider and credit provider's client reference number*

These mirror subclauses 5(d)(v) and (vi) of the current Code and align the definition of credit account information with the definition of credit application information.

### 4. Disclosure of credit account information: Clauses 4(7) and 11(2)

*These proposed amendments limit the disclosure of credit account information to credit providers registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.*

Clause 11(2) makes a number of changes to rule 11(3) of the Code, which currently sets limits on the disclosure of supplementary identification information. One of these changes is to limit the disclosure of credit account information to “registered credit providers”. Clause 4(7) inserts a new definition of registered credit provider.

The Code currently permits disclosure to subscribers other than credit providers in certain circumstances, including prospective landlords, prospective employers and insurance

companies. However, these other subscribers will not have access to credit account information.

Credit account information is of value to credit providers in assessing an individual's creditworthiness. However, the other subscriber classes do not have a legitimate need to access information about an individual's current accounts. The circle of agencies that have access to this sensitive financial information must be kept tightly controlled to those directly involved in granting or enforcing credit.

The proposed amendment is aligned with the regime being created by the Financial Service Providers (Registration and Dispute Resolution) Act 2008 ("FSPA") and limits disclosure to credit providers registered under this Act. The FSPA regime places further controls on the financial sector and, in particular, provides individuals with a forum to resolve disputes with credit providers. This regime, in conjunction with the safeguards provided by the Credit Contracts and Consumer Finance Act 2003, will provide greater confidence in the proper use of credit account information by credit providers.

The proposed amendment does not address reciprocity (that is, the requirement that a credit provider must put positive information in to get positive information out), but leaves this issue to industry practice to determine.

#### **5. Credit default information: Clause 3(3)**

*This proposed amendment clarifies the definition of an account for the purposes of a credit default.*

The existing commentary to the Code makes it clear that a default must relate to a credit account before it can be listed by a credit reporter. This proposed amendment makes that position plainer.

#### **6. External accountability requirements: Clauses 4(5), 5 and 8(2)**

*These proposed amendments will include an external element in the compliance and monitoring obligations in the Code.*

The Code already requires credit reporters to systematically review the effectiveness of policies and practices they have in place to make sure that they are meeting the standards required by the rules. This is a key requirement for ensuring that credit information is accurate and secure.

A major component of these proposed amendments is the requirement that the results of these reviews are assessed by, or with the involvement of, a person that is independent of the credit reporter. If the person is not an auditor, they must possess relevant expertise. The amendments give the credit reporter some flexibility over how this can be achieved. Clauses 5 and 8(2) allow the credit reporter to contract out the assessment to an independent expert or to conduct the assessment themselves, provided that an independent expert is directly involved in that process.

## 7. Reporting and retention periods: Clauses 4(6), 9(1)-(2), 11(1) and 14

*These proposed amendments set mandatory limits on the reporting and retention of credit information.*

Schedule 1 of the Code contains recommended retention periods. These periods are not mandatory, but Credit reporters generally treat them as mandatory and some public confusion has been created by the fact that they are not.

The proposed amendment creates reporting and retention periods which are mandatory. The distinction between reporting and retention has been made to ensure that credit information is available to credit reporters for a limited period for the purposes of statistical research. Thus, the amendment now sets out mandatory *reporting* periods in Schedule 1 and permits the *retention* of these classes of information for 12 months beyond this period. This will allow credit reporters to use credit information for statistical research purposes for this additional 12 month period.

Some information is not currently included in Schedule 1 of the Code, such as identification information. There are good reasons for the reporting and retention of these types of information not to be regulated.

The new Schedule 1 consolidates existing requirements and also applies to the following new types of information permitted by the amendment.

### *Credit account information*

Clause 14 amends Schedule 1 to limit the reporting of credit account information to two years from the date the credit account is closed. The relatively short period, which is the same as proposed in Australia, reflects the sensitive nature of credit account information. Credit accounts, such as mortgages, could remain open for many years.

### *Summary Instalment Orders*

This proposed amendment changes Schedule 2 to include section 354 of the Insolvency Act 2006, which relates to Summary Instalment Orders (“SIOs”). This change is discussed below. Clause 14 amends schedule 1 to limit the reporting of SIOs to five years from the date of the order.

Unlike bankruptcy, the SIO process is a voluntary arrangement to pay a debt. SIOs create an incentive for debtors to repay rather than enter into bankruptcy. The differences in the limits set by Schedule 1 reflect such distinctions.

SIOs can last for between three and five years. The five year period will ensure that all SIOs will be captured for their duration.

### *Credit Score*

Schedule 1 does not currently set any limits on the retention of credit scores. The amendment limits the reporting of credit scores to two working days from the date they were created, which is the same time limit as specified in a similar code in Hong Kong.

## 8. Credit scores: Clause 6(1)

*This proposed amendment requires credit reporters to provide individuals with an explanation of their credit score when releasing a copy of their credit file.*

The Code currently permits credit reporters to include a credit score in a credit report. More comprehensive credit reporting will likely result in these scores will become more meaningful and more common. It is also likely that smaller credit providers will place increased reliance on credit scores when making decisions on applications for credit.

Credit scoring is a complicated process and the information upon which a credit score is based will not be immediately obvious to individuals. Simply releasing a numerical score or code to an individual may be unhelpful to the individual. The amendment will require credit reporters to provide individuals with a general explanation of their credit score.

Credit reporters in the UK and USA have longstanding experience with credit scores. Their practice is to provide explanations of their credit scoring methods to give individuals a better understanding of their score and the implications of certain behaviours and actions in relation to the scoring of creditworthiness.

## 9. Summary of rights: Clauses 4(8), 6(2)-(3), 7, 13, 17 and 18

*These proposed amendments update the Summary of Rights and make it mandatory for credit reporters to use the precise wording provided in Schedule 4 and display the Summary of Rights and any official translations on their website.*

The Code sets out a summary of the rights provided to individuals by the operation of the Code. Currently, credit reporters must make the summary of rights available to individuals when declining access requests or responding to correction requests, unless a summary is clearly available on their website.

With a move to more comprehensive credit reporting, the Summary of Rights becomes a crucial tool to ensure that the public understands the limitations on what credit reporters can do and their rights to ensure that information is correct.

The current requirements in relation to the summary have not been implemented as well as had been expected. It is, for instance, difficult to find the summary in the intended form on credit reporters' websites. For these reasons, the amendment will require credit reporters to provide individuals with a copy of the Summary of Rights exactly as it is worded in Schedule 4.

New drafts of the Summary of Rights are set out for comment. Clause 17 contains a summary relating to the Code as it will look between 1 October 2011 and 1 April 2012 and clause 18 contains a further amended summary that reflects the changes which will come into force on 1 April 2012.

## 10. Direct marketing: Clauses 10(1) and 11(2)

*Using or disclosing credit information for direct marketing is expressly prohibited.*

These changes will ensure that the existing prohibition on credit reporters using credit information for direct marketing purposes is clear and unambiguous as we transition to more comprehensive credit reporting.

## 11. Deaths information: Clauses 10(2) and 11(3)

*These proposed amendments will permit credit reporters to use information obtained from the Deaths Index to suppress records.*

The Deaths Index is maintained by the Registrar-General of Births, Deaths and Marriages under the Births, Deaths, Marriages and Relationships Registration Act 1995 (“BDMRRA”).

Section 78F of the BDMRRA permits credit reporters to request death information for the purposes of removing or suppressing information about a deceased individual from their database. The amendment will create a corresponding provision in the Code to allow credit reporters to use deaths information for this purpose.

## 12. Public registers: Clause 15

*This proposed amendment expands the list of public registers from which credit reporters may collect and report information.*

Schedule 2 currently permits credit reporters to collect and report information contained in the Bankruptcy Register, the Personal Properties Securities Register, the Companies Register and the No Asset Procedure Register. The amendment will add the Summary Instalment Orders (“SIO”) Register and the Limited Partnerships Register.

### *SIO Register*

The Code already permits credit reporters to collect and report SIOs but these used to be treated as judgments under the Code as they were issued by the District Court. Under the new Insolvency Act, SIOs are now made by the Official Assignee and listed in a public register administered by the Ministry of Economic Development.

### *Limited Partnerships Register*

A limited partnership consists of “general partners” who are liable for the full extent of the partnership’s debts, and “limited partners” who are liable only for the amount they contribute to the partnership. The Limited Partnerships Register, administered by the Ministry of Economic Development, lists the names and addresses of the general partners. An individual’s status as a general partner can be relevant to a decision on granting credit.

**13. Subscriber agreement: Clause 16**

*These proposed amendments alter the wording of the subscriber agreement to align it with other proposed amendments.*

The Code applies indirectly to subscribers through subscriber agreements – contracts between the credit reporter and the subscriber that impose obligations on the subscriber designed to ensure that credit information is accurate, up-to-date, secure, and disclosed in compliance with the Code.

The proposed amendments to the Code will alter some of the obligations that will need to be placed on subscribers through this agreement. Clause 16(1) refers the subscriber to the safeguards set out in the new Schedule 5 relating to the collection of driver licence numbers. Clause 16(2), 16(4) and 16(6) expand the obligations on subscribers to cover the collection and disclosure of new fields of credit account information.

The proposed amendments also clarify existing obligations. Thus, clauses 16(3) and 16(5) insert a requirement that subscribers must cooperate with credit reporters when they conduct checks into compliance with the subscriber agreement itself. Further, clause 16(7) inserts a new clause into the subscriber agreement which requires subscribers to cooperate more generally with credit reporters when conducting their systematic reviews under rules 5 and 8.