

## Credit Reporting Privacy Code Amendment No. 5

I, MARIE SHROFF, Privacy Commissioner, now issue under section 51 of the Privacy Act 1993, this amendment to the Credit Reporting Privacy Code 2004.

Issued by me at Wellington on 30 September 2011.

The SEAL of the Privacy Commissioner was )  
affixed to this amendment to the Credit )  
Reporting Privacy Code 2004 by the )  
Privacy Commissioner )

Marie Shroff  
**Privacy Commissioner**

### 1. Title

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

### 2. Commencement

Except as provided in clause 3.1 of Schedule 8, this amendment will come into force on 1 April 2012.

*Note: Clause 3.1 of Schedule 8 provides that clauses 3.2 and 3.3 will commence on 1 December 2011. The earlier commencement of these clauses is to facilitate systems testing in the four months leading up to changes authorised by the amendment.*

### 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 “code 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 notified the individual of the overdue payment and requested that the individual pay the amount of the overdue payment;
- (c) in addition to notifying the individual, 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 notified the individual of the debtor's default that gave rise to the individual's obligation to make the overdue payment and requested that the individual pay the amount of the overdue payment;
- (b) at least 30 days have passed since the day on which the individual was notified;
- (c) in addition to notifying the individual, 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

**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 a periodic payment is due and payable;

(b) where a periodic payment is due and payable in that month, whether or not the individual concerned has made that payment; and

(c) any other information required to identify or classify the payment

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

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

**Insert** : in the appropriate alphabetical order:

**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

**externally regulated credit provider** means:

(a) a registered credit provider;

(b) an electricity retailer;

(c) a gas retailer; or

(d) a telecommunications service provider

**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 a provider of a “telecommunications service”, as defined in section 5 of the Telecommunications Act 2001, that is a member of the Telecommunications Dispute Resolution Service

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

**Delete** : the definition of **prospective insurer**  
**Substitute** : **prospective insurer**, in relation to an individual, means a person who has offered, or has entered into negotiations for, insurance in respect of a credit related transaction relating to that individual

#### 8. 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 “rules 5(2A) and 8(3A)”  
**Substitute** : clause 9 and Schedule 6

#### 9. 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 3A 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

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

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

**Delete** : from paragraph (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); or

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

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

**Delete** : the words "A credit reporter"

**Substitute** : Subject to subrule (1C), a credit reporter

(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 subrule (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
  - (iii) 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.

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

Rule 10 is amended in the following manner:

- Insert** : (3) A credit reporter must not, in creating a credit score, use:
- (i) credit information that is derived from an enquiry made by a credit provider pursuant to rule 11(2)(b)(i)(B); or
  - (ii) the fact that an individual made a request for suppression, or had their credit information suppressed, pursuant to Schedule 7.

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

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

- Delete** : subparagraph (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 any directly related purpose including debt collection); or
  - (B) providing that individual with a quotation of the cost of credit;

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

- Insert** : in subparagraph (iv) after "underwriting"  
 or continuation

**14. 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 (and for any directly related purpose including debt collection); or
  - (ii) a prospective insurer that is a registered insurer for the purpose of a decision on the underwriting or continuation of



insurance in respect of a credit related transaction relating to an individual; or

**15. Amendment to clause 6: Rule 11 (disclosure of credit information when it is suppressed under Schedule 7)**

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 Schedule 7, unless the disclosure is permitted by the applicable provisions of that Schedule.

**16. 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 the fact that credit information held about an individual has been:

(a) suppressed pursuant to rule 10(1A); or

(b) suppressed pursuant to Schedule 7.

**17. Insertion of new clause 9 (assurance report)**

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

**Insert** : **9 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.

(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.

**18. 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 entry relating to “Credit account information”

<i>Column 1</i>	<i>Column 2</i>
Repayment history information	2 years from month following due date of periodic payment

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

**Delete** : entry relating to “Credit default information”

**Substitute** :

<i>Column 1</i>	<i>Column 2</i>
Credit default information relating to debtor credit default	5 years from date of default
Credit default information relating to guarantor credit default	5 years from date of notification of debtor’s default to guarantor

(3) 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

## 19. 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** : 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.

## 20. Amendments to Schedule 4 (summary of rights)

Schedule 4 (as amended by clause 18 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.

## 21. Insertion of new Schedule 6 (assurance report)

The following Schedule 6 is inserted:

**Insert : Schedule 6  
Assurance Report**

Clause 9 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 must 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, release or cancellation requests in accordance with Schedule 7;
- (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), clause 8(3A) and clause 8.1 of Schedule 7; 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.

**22. Insertion of new Schedule 7 (suppression of credit information for victims of fraud)**

The following Schedule 7 is inserted:

**Insert : Schedule 7  
Suppression of Credit Information where Individual may be a Victim of Fraud**

The purpose of this Schedule is to enable an individual who reasonably believes that he or she may be likely to become a victim of fraud to have a credit reporter suppress a credit report thereby making it less likely that another person might fraudulently obtain new credit in the individual's name.

The Schedule outlines:

- how a suppression may be obtained and lifted;
- the responsibilities of credit reporters; and

- the effect of a suppression.

Suppression is directed towards preventing new credit accounts being opened fraudulently. Accordingly, some ongoing access to credit reports is permitted during suppression. Some ongoing updating of suppressed credit reports is permitted.

### **Initial request**

- 1.1. 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 to have that information suppressed 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).
- 1.2. 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, as soon as reasonably practicable, notify the individual of:
  - (a) the suppression and its duration; and
  - (b) the effect of an initial suppression and the process to make an extension request, release request and cancellation request.
- 1.3. At the same time as notification under clause 1.2, the credit report must issue the requester with a password or Personal Identification Number (**PIN**) to be produced by the individual in conjunction with any associated extension request, release request or cancellation request.

### **Extension request**

- 2.1. Where an individual has had credit information suppressed under any of the provisions of this Schedule, that individual is entitled to make an **extension request** to the credit reporter.
- 2.2. 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;
  - (b) notify any credit providers that have listed credit accounts on a credit reporter's records prior to



the request (**pre-existing credit accounts**) of the fact of the extension request; and

- (c) as soon as reasonably practicable, decide whether or not to extend the duration of the suppression.

**2.3** Where a credit reporter decides to extend the duration of the suppression, the credit reporter must:

- (a) determine whether to extend the suppression for either:
  - (i) a fixed period that it considers is reasonable in the circumstances, being not less than 12 months; or
  - (ii) an indefinite period; and
- (b) notify the individual of that decision, as soon as reasonably practicable, and include in that notification:
  - (i) details of any pre-existing credit accounts that have been verified in accordance with clause 9.2(a);
  - (ii) an explanation of the process for making a release request or cancellation request; and
  - (iii) in any case where the suppression has been extended for a fixed period, the process for making a further extension request.

**2.4.** A credit reporter may refuse an extension request if it believes, on reasonable grounds, that:

- (a) the individual has not been or, as the case may be, is not likely to be, a victim of fraud; or
- (b) the request is vexatious or is not made in good faith.

**2.5.** Where a credit reporter refuses an extension request, the credit reporter must notify the individual of that decision, as soon as reasonably practicable, and include in that notification:

- (a) the reason for that refusal; and

- (b) details of the complaints procedure available under clause 8 of the code.

2.6. Notwithstanding clause 1.2, 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.

### **Release request**

3.1. Where an individual has had credit information suppressed under any of the provisions of this Schedule, that individual is entitled to make a temporary **release request** to the credit reporter authorising the disclosure of credit information for the purpose of credit reporting either:

- (a) to a nominated credit provider or providers; or
- (b) for a set period.

3.2. Where a credit reporter receives a release request, the credit reporter must, as soon as reasonably practicable, either:

- (a) temporarily lift the suppression consistently with the request and notify the individual; or
- (b) notify the individual of a refusal.

### **Cancellation request**

4.1. Where a credit reporter has suppressed credit information under any of the provisions of this Schedule, the individual concerned is entitled to make a **cancellation request** to the credit reporter authorising the permanent cancellation of the suppression.

4.2. Where a credit reporter receives a cancellation request, the credit reporter must, as soon as reasonably practicable, either:

- (a) cancel the suppression and notify the individual; or
- (b) notify the individual of a refusal.

### **Identity verification obligations**

5.1. A credit reporter must not act on any request made under this Schedule unless satisfied concerning the identity of the individual making the request.

- 5.2.** In addition to any other reasonable identification requirements, a credit reporter must require an individual making an extension request, release request or cancellation request to provide the password or PIN issued under clauses 1.3 or 5.3.
- 5.3.** Where an individual has failed to retain the password or PIN issued under clause 1.3, a credit reporter may on request issue a new password or PIN once it is satisfied concerning the identity of the individual.

### **Terminating a suppression**

- 6.1.** A credit reporter may terminate a suppression if the credit reporter believes, on reasonable grounds, that the suppression was obtained as a result of a misrepresentation by the individual concerned of a material fact.
- 6.2.** Where a credit reporter decides to terminate a suppression, it must, as soon as reasonably practicable, notify the individual of its decision and:
- (a) give the reasons for that decision; and
  - (b) provide the individual with details of the complaints procedure available under clause 8 of the code.

### **Charging**

- 7.1.** A credit reporter may not charge an individual for a request made under any of the provisions of this Schedule but may make a reasonable charge to replace a password or PIN under clause 5.3.

### **Credit reporter to make available details of request processes**

- 8.1.** A credit reporter must make available on request and on the credit reporter's website details of the credit reporter's processes to make an initial request, extension request, release request and cancellation request which should include, amongst other matters, guidance on:
- (a) the supporting documentation that might typically be expected;
  - (b) the requirements for agents making applications on behalf of individuals;

- (c) the credit reporter's criteria for deciding on an extension request;
- (d) the likely processing time for requests.

### Meaning of "suppressed" for purposes of Schedule

**9.1.** For the purposes of this Schedule, where credit information is required to be "suppressed" (or is subject to a "suppression") that information may not be:

- (a) updated or added to except in accordance with clause 9.2;
- (b) used except in accordance with clause 9.3; or
- (c) disclosed except in accordance with clause 9.4.

**9.2.** Credit information that is suppressed may be updated or added to in the following circumstances:

- (a) the addition or updating of any credit information:
  - (i) in relation to pre-existing credit accounts – only after reasonable steps have been taken to verify that the accounts appear to be genuine and unaffected by third party fraud;
  - (ii) in relation to credit accounts created after receiving a suppression request (**new credit accounts**) – only accounts with a credit provider nominated by an individual in a release request, and in relation to which the credit reporter disclosed credit information while a release request was in effect, and only after reasonable steps have been taken to verify that such new accounts appear to be genuine and unaffected by third party fraud;
- (b) the addition of the following credit information that is not necessarily related to a particular credit account:
  - (i) public record information of the classes listed in paragraphs (g), (h) or (i) of the definition of credit information;
  - (ii) access log information relating to accesses permitted pursuant to clause 9.4;
  - (iii) a notice of disputed debt; and

(iv) administrative information incidental to credit reporting activities; or

(c) the correction of credit information, or the addition of a statement of correction, in accordance with a correction request under rule 7.

**9.3.** For the avoidance of doubt, credit information that is suppressed may be used by a credit reporter in accordance with rule 10.

**9.4.** Credit information that is suppressed may be disclosed by a credit reporter only in the following circumstances:

(a) in accordance with rule 11(1);

(b) in accordance with rule 11(2), to any subscriber other than a credit provider; or

(c) in accordance with rule 11(2), to a credit provider:

(i) that has listed with the credit reporter a pre-existing credit account or a new credit account – for purposes related only to that account; or

(ii) in accordance with the terms of a release request.

**23. Insertion of new Schedule 8 (transitional arrangements associated with introduction of comprehensive credit reporting)**

The following Schedule 8 is inserted:

**Insert : Schedule 8  
Transitional arrangements associated with introduction of comprehensive credit reporting**

Amendments No 4 and No 5 allow for a more comprehensive credit reporting system than has previously been permitted. The Schedule makes special arrangements that prevail over some general provisions in the code for the four months leading up to and 12 months following commencement of Amendments No 4 and No 5.

**Expiry**

**1.1.** Schedule 8 expires on 31 March 2013.

## Definitions

2.1. In this Schedule **commencement** means 1 April 2012.

## Systems testing

3.1. Clauses 3.2 and 3.3 commence on 1 December 2011.

3.2. A credit reporter may collect personal information from a subscriber and use that information to test its systems for handling the effects of Amendments No 4 and No 5 (for example in relation to the new classes of credit information permitted to be reported after commencement and to the changes to existing classes of information and other code obligations).

3.3. Clause 3.2 is limited in the following ways:

- (a) personal information must not be used for the purpose of testing where de-identified or fictitious information would suffice; and
- (b) information collected:
  - (i) must not be made available for access by subscribers or disclosed in a credit report; or
  - (ii) must not be kept for longer than is required for the purpose of systems testing.

## **Subscribers that propose to rely upon existing authorisations must inform affected individuals of their intention to upload credit account information**

4.1 Clause 4.2 applies where:

- (a) a credit reporter collects credit information from a source other than the individual concerned;
- (b) this information is collected pursuant to rule 2(2)(b) on the basis that the credit reporter believes, on reasonable grounds, that the individual concerned authorised the collection; and
- (c) the authorisation was obtained by a subscriber from the individual concerned prior to commencement.

4.2 The credit reporter must, before collecting credit information in the circumstances set out in clause 4.1, take reasonable steps to ensure that:

- (a) the authorisation meets the requirements of clause 1 of Schedule 3; and
- (b) the subscriber has notified the individual concerned of the changes in practice affecting the individual and the listing of credit information and included in that notification details of:
  - (i) the new classes of information that will be disclosed; and
  - (ii) the practice (where applicable) of monthly reporting of repayment history information.

### **Small defaults**

- 5.1.** From commencement, the new definition of credit default excludes defaults relating to an overdue payment in an amount less than \$100 (**small defaults**).
- 5.2.** From commencement, no further information about a small default may be collected by a credit reporter.
- 5.3.** From commencement, and subject to clause 5.4, a credit reporter must not disclose for the purpose of credit reporting any information it may hold about a small default.
- 5.4.** From commencement until 1 October 2012, a credit reporter may continue to disclose for the purpose of credit reporting any information it may hold about a credit default relating to an overdue payment equal to or more than \$50. This clause is subject to the usual maximum reporting period and any other applicable provision of the code that might prohibit the continued listing of the default.
- 5.5.** A credit reporter must not keep information about a small default for longer than 12 months after the date on which the information is no longer permitted to be reported under the applicable provisions of clauses 5.3, 5.4 or the usual maximum reporting period.
- 5.6.** For the avoidance of doubt, information about a credit default relating to an overdue payment that was originally in an amount equal to or more than \$100 can continue to be reported in accordance with the code, notwithstanding that the total amount owing on the default falls below \$100.

**Assurance report**

- 6.1.** An assurance report submitted under clause 9 of the code, that relates to the period during which this Schedule is in effect, must in addition provide a reasonable assurance that the credit reporter undertook monitoring activities to ensure that:
- (a) any systems testing undertaken by the credit reporter in reliance upon clause 3.2 met the requirements of clause 3.3;
  - (b) where clause 4.1 applies, the credit reporter complied with clause 4.2; and
  - (c) the credit reporter:
    - (i) ceased collecting small defaults from commencement;
    - (ii) subject to clause 5.4, ceased reporting small defaults from commencement; and
    - (iii) if continuing to report small defaults relating to an overdue payment equal to or more than \$50 in reliance upon clause 5.4, met the requirements of clauses 5.4 and 5.5.



**Legislative history:**

30 September 2011 – amendment issued

6 October 2011 – amendment notified in the Gazette

1 April 2012 – amendment commences (except clauses 3.2 and 3.3 of Schedule 8, which commence on 1 December 2011)

**Explanatory note:**

*This note is not part of the amendment, but is intended to indicate its general effect.*

*This amendment, which comes into effect 1 April 2012, amends the Credit Reporting Privacy Code 2004 to make changes to credit reporting regulation, including:*

- *permitting reporting of repayment history information;*
- *enabling victims of fraud to have credit information suppressed;*
- *introducing a \$100 threshold for listing credit defaults;*
- *introducing quotation enquiries and prohibiting the use of these enquiries in the creation of a credit score;*
- *inserting a schedule setting out the requirements for an assurance report; and*
- *providing for transition.*

*The amendment is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.*