

Amendment No 5 to the Credit Reporting Privacy Code 2004

Information Paper

5 October 2011

Amendment No 5 to the Credit Reporting Privacy Code 2004 comes into effect on 1 April 2012. The amendment makes some changes to credit reporting in New Zealand and these are outlined in this paper.

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The amendment

Amendment No 5, which comes into effect on 1 April 2012, makes significant changes to credit reporting in New Zealand.

Most notably, the amendment allows for the ongoing collection and reporting of repayment history information by credit reporters. The amendment also:

- enables victims of fraud to have their credit information suppressed;
- permits credit reporters to pre-screen credit providers' direct marketing lists;
- introduces a \$100 threshold for listing credit defaults;
- provides clearer procedural safeguards for guarantors;
- helps ensure that people shopping around for credit are not penalised for that in their credit score;
- imposes more detailed obligations on credit reporters to demonstrate compliance; and
- provides for the transition from predominantly negative to comprehensive reporting.

More comprehensive credit reporting (repayment history information)

Amendment No 5 allows repayment history information to be collected and reported monthly. Repayment history information is information about whether or not an individual has met their obligations to make periodic payments on credit accounts. Examples include a mortgage or credit card payment.

The inclusion of repayment history, in addition to the new fields of information permitted by Amendment No 4,¹ completes a package of changes that will introduce more comprehensive reporting in New Zealand. These changes are a departure from the traditional expectation of financial privacy. However, they are expected to bring a number of benefits to individuals, credit providers, and the economy, including:

- *Information symmetry* – Giving credit providers a more accurate and complete picture of an individual's creditworthiness, allowing them to make better assessments of risk.
- *Supporting responsible lending* – Giving credit providers the information they need to ensure that they do not offer new credit to those experiencing difficulty in meeting existing obligations.
- *Risk-based pricing* – Allowing credit products to be tailored to individuals on the basis of their creditworthiness, reducing the costs of credit for some.
- *Financial inclusion* – Opening mainstream credit to a wider pool of individuals who may otherwise be excluded due to a lack of information about them.

¹ Type of credit account, credit limit, credit provider and status of account as open or closed.

- *Increased competition* – Increasing competition in the credit industry, by giving smaller credit providers access to better information.

The amendment limits the disclosure of “credit account information” (which now includes repayment history information) to a controlled group of subscribers that are subject to external oversight and consumer complaints processes. These include registered credit providers, telecommunications service providers, utilities and registered insurers.

Case study 1: Geoff has never had any luck with credit

Geoff applied for a personal loan to buy a new car. His old car was beyond repair but he needed to drive for work. Geoff was renting, had a steady income but had never borrowed money before. A previous loan Geoff had applied for was refused on the basis that his income was too low and his credit report was too “thin”. Geoff expected to be refused again. However, since his last application, Geoff had been making regular payments on his power and telephone accounts. He’d never missed a payment. These regular payments now showed on his credit report and the bank accepted his application on the basis that he was clearly able to manage his credit obligations.

Suppression of credit information for victims of fraud

Amendment No 5 establishes a scheme to give individuals the right to ask a credit reporter to suppress their credit information if they think they are, or will be, the victim of fraud.

Suppression is aimed at preventing new credit accounts being opened fraudulently. Identity fraud – which generally involves the obtaining of credit through the use of an alternate, often existing, identity – is reported to be a growing problem worldwide. These amendments seek to lessen the risk of such fraud by allowing an individual at risk to better control the release of their credit information. A credit provider will be unlikely to grant new credit if they know that a credit report has been suppressed due to fraud.

Case study 2: Rangī has his credit record suppressed

After the loss of his wallet and thefts from his letterbox, Rangī became aware from an approach by a debt collector that someone had opened store credit in his name. Although this was eventually sorted out, Rangī feared that the fraudster would try the same trick again. As a victim of identity fraud, Rangī approached several credit reporters and had his credit report suppressed.

Suppression is not intended to affect updating of pre-existing credit accounts, which need to be kept up to date to ensure that any credit information released during the suppression with the authorisation of the individual is accurate. So, some ongoing access to credit reports is permitted during suppression. There is also the ability for some ongoing updating of credit reports while they remain suppressed, to ensure that credit information about accounts that already existed prior to the suppression remains accurate and up-to-date.

While credit information is suppressed, an individual can request that it be released to a nominated credit provider. This ensures that the victims of credit fraud are not further penalised when they need to legitimately seek credit for their own purposes. Of course, identity verification will be a crucial step in these processes. The amendment anticipates the use of a password or PIN to assist with this.

Case study 3: Rangī seeks new credit

Rangī was a victim of identity fraud - store credit was fraudulently opened in his name. He had his credit reports suppressed. Rangī also had two credit cards and a mortgage that were unaffected by fraud. His regular payments to these accounts were updated with the credit reporters. Six months

later he wanted to open a credit account with a mobile telephone company. He arranged with the credit reporter to release his records to the company for this purpose. His credit report was up to date with his regular payments to his other three credit accounts, helping to show he was a good credit risk.

Pre-screening

The amendment permits the limited use of credit information by credit reporters to screen direct marketing lists provided by subscribers, to ensure that credit-related marketing is not sent to people who probably could not afford new credit or are a bad risk. The following limitations apply:

- pre-screening is only available to a credit provider for credit-related marketing;
- the credit provider must be externally regulated (that is, be a registered credit provider, electricity retailer, gas retailer or telecommunications service provider. All of these groups are defined);
- the list must be warranted to be Privacy Act compliant and exclude those that have opted out of direct marketing through the NZ Marketing Association;
- the process is only to remove the names of those that represent a bad risk; and
- the credit reporter must have a process in place to ensure and demonstrate that various obligations are met.

These controls ensure that pre-screening is not used to select attractive prospects for marketing or to screen lists created for purposes other than credit-related marketing.

Other notable changes

1. Definition of credit

The definition of credit is clarified with the addition of the phrase “contract, arrangement or understanding”. The other elements required for the existence of credit – property or services before payment, or money on loan – have not changed.

2. Credit default information

The amendment introduces new, more detailed, definitions relating to credit defaults that more clearly recognise the difference between a default by a debtor and a default by a guarantor. The amendment also introduces clearer safeguards for guarantors, to ensure that the guarantor is aware of the default before it is listed.

The amendment prohibits listing small defaults (of less than \$100) or defaults that the credit provider would be prevented by law from taking court proceedings to recover.

3. Credit non-compliance action information

Where an individual has left their place of residence, leaving accounts unpaid and making no arrangements for forwarding mail, a credit provider might draw the reasonable inference that the individual has abandoned their credit obligations. In such a case, a credit provider might report these actions to a credit reporter as “credit non-compliance actions”.

As this information is often based upon the belief of the subscriber, the subscriber is required to confirm that they remain of that belief after 6 months. The subscriber is required to have attempted to contact the individual about their actions.

Case study 4: Mary's life changes but she doesn't tell her credit card company

Mary had a change of heart and decided to leave her university course. She had been studying in Dunedin but wanted to move back to Auckland to be near her mother. Before settling in Auckland, Mary decided to take a long holiday. In the commotion, Mary forgot to pay her credit card bill. Mary did not think to leave a forwarding address and had lost her mobile phone. Mary's credit card company wrote to her a number of times and was informed that she had moved. The company had no telephone number for Mary and assumed that she had cleared out. The company listed this with a credit reporter as a "credit non-compliance action" but, 4 months later, Mary got back in touch. Mary explained the situation, paid her bill and provided her new address. The company did not reconfirm the entry, which dropped out of the system at 6 months.

4. Quotation enquiries

The amendment introduces the concept of a "quotation enquiry" – an enquiry made by a credit provider in order to give an individual a quote of the cost of credit and that does not result in an offer of credit. Credit reporters must not use information derived from such an enquiry to create a credit score. This will ensure that individuals are not penalised for shopping around for the best credit terms.

Case study 5: Miriama wants the best mortgage conditions she can get

Miriama was planning to renovate her villa and intended to apply to a number of banks to see what interest rates she would qualify for but her friend Sarah thought that this would damage her credit score. When Miriama asked about it, the bank told her it could make a 'quotation enquiry' to a credit reporter which would not affect her credit score. Miriama asked for quotations from a number of banks. One bank said that because she had a good credit score it could offer her a low interest rate. Miriama chose this bank to borrow from and made an application.

5. Assurance reports

Amendment No 5 has strengthened the external accountability requirements introduced by Amendment No 4.

Amendment No 4 requires credit reporters to report annually to the Office of the Privacy Commissioner on their compliance with the code (for example, whether the information was kept secure and checked for accuracy and completeness). This report is intended to ensure that credit reporters are more transparent about the results of their ongoing monitoring activities and more accountable where things go wrong. This will give the Commissioner and the public greater confidence.

Amendment No 5 inserts a new schedule into the code which sets out a detailed list of elements that must be addressed in the credit reporter's annual report.

6. Summary of rights

The Summary of Rights has been updated to reflect the other changes being made to the code, where such changes may affect individual rights. The new summary sets out the new classes of information that will be reported from 1 April 2012 and explains the new suppression scheme. The additional wording has been awarded the WriteMark plain English standard.

7. Transitional schedule

The amendment includes a temporary transitional schedule intended to help the move to more comprehensive credit reporting. In including this temporary schedule, the Privacy Commissioner has recognised:

- some logistic challenges associated with a transition from a predominantly negative credit reporting system to a more comprehensive one;
- the public interest in a smooth transition;
- the desirability of properly testing information systems before they go live;
- the importance, for reasons of accountability, transparency and maintaining public trust, of affected individuals being told of significant changes to practices involving disclosure of their personal information; and
- the case to allow some small defaults to temporarily remain in the system while a body of repayment history information is being built up.

Note: For more information, including some facts on the implications of the amendment on business and consumers, a Questions and Answers document on the amendment is available at www.privacy.org.nz.