

Repeal and Replacement of the Credit Reporting Privacy Code

Information paper on Changes to Notified Code

On 22 July 2020 the Privacy Commissioner publicly notified his intention to repeal and replace the Credit Reporting Privacy Code 2004 and invited public submissions. The changes in the notified code are part of a wider project to align the six privacy codes of practice with the Privacy Act 2020. The information paper summarising the Privacy Commissioner's approach to the revocation and replacement of the codes can be found [here](#).

The Commissioner received seven submissions, which were broadly supportive of the notified Credit Reporting Privacy Code. Following consideration of submissions received and a final review of the code, the Commissioner issued the Credit Reporting Privacy Code 2020 on 28 October 2020. The code comes into force on 1 December 2020. This paper explains the key changes made to the notified Credit Reporting Privacy Code after receiving submissions.

Changes to the notified Credit Reporting Privacy Code

1. New subclause added to the interpretation clause of the code

We asked submitters whether a new subclause should be added to the codes specifying that terms defined in the Privacy Act that are used but not defined in the code have the same meaning as in the Act.

Four submitters directly responded to this question and all supported this change. Accordingly, the Commissioner has added the following new clause 4(3) to the code:

- (3) *A term or expression defined in the Act and used, but not defined, in this code has the same meaning as in the Act.*

This follows drafting practices in regulations (see for instance reg 3(2) of the Privacy Regulations 2020) and will assist those using the codes to find defined terms.

2. References to section 30 authorisations retained in rules 2, 10 – 11 and added to new rule 12

Section 30 (which is now extended to include new principle 12 of the Act) allows agencies to collect, use and disclose information in a way that would otherwise breach the relevant principles, if they have obtained the Commissioner's authorisation. However, section 30 (previously section 54) authorisations are no longer included as express exemptions in information privacy principles 2, 10 and 11.

We asked submitters whether references to section 30 should be retained in the notified code. All submitters who responded to this question supported retaining references to these authorisations.

Accordingly, these references to authorisations under section 30 have been reinstated in rules 2(2), 10(1) and 11(1), and have been added to rule 12(1) of the notified code.

3. Minor amendments to new rule 12 to ensure policy intent of the new cross-border disclosure principle is implemented in the code

Rule 12 is new. It implements information privacy principle 12, which requires agencies to take steps to ensure that personal information disclosed to foreign persons or entities in reliance on listed disclosure exceptions in information privacy principle 11, will be subject to comparable safeguards to New Zealand's privacy laws.

Rule 11(2)(a) of the code, relating to any disclosure of credit information to a debt collector for the purpose of enforcing a debt owed by the individual, has been added to rule 12(1) in response to a submission by a credit reporter. If such cross-border disclosures are necessary, the Commissioner agrees they should be subject to the applicable safeguards in rule 12. Similarly, rule 11(4)(c) has been added to rule 12.

Rule 12 of the notified code also requires credit reporters to ensure that credit information is protected by "comparable safeguards to those in this code". However, credit reporters are also subject to important new requirements in the Privacy Act 2020 that provide privacy safeguards to individuals, such as mandatory privacy breach notification. While these requirements should also be considered safeguards under the code given that credit reporters must comply with them, for clarity, the Commissioner has amended references to "the code" in rule 12 to:

...comparable safeguards to those in the Act, as modified by this code.

Finally, rule 12(3) has been amended to reflect the possibility that a country is prescribed in regulations subject to carve outs, or only for particular sectors. The definition of "prescribed country" in rule 12(3) has been modified to reflect this, and now reads:

Prescribed country means a country specified in regulations made under section 214 of the Act that are made without any qualification or limitation relating to a class of person that includes B, or to a type of information that includes credit information.

4. Amendments to ensure consistency with the Insolvency Act 2006

Summary instalment orders in the Insolvency Act 2006 were renamed "debt repayment orders" by section 69 of the Regulatory Systems (Economic Development) Amendment Act 2019. Therefore, references to "summary instalment orders" have been changed to "debt repayment orders" in clause (i) of the definition of credit information and in schedule 1 of the code.

The New Zealand Insolvency and Trustee Service also submitted that clause (i) should be updated so that it includes the "making, cancellation and completion of" debt repayment orders, reflecting the drafting approach taken to bankruptcies and no asset procedures in clause (j). The Commissioner agrees with this submission as credit reporters should only be reporting summary instalment orders (now debt repayment orders) for as long as they are in effect. Accordingly, clause (i) in the definition of credit information now reads:

(i) *Information relating to the making, cancellation and completion of debt repayment orders or judgments for monies owed that have been entered against an individual.*

The New Zealand Insolvency and Trustee Service also submitted that, for the sake of clarity, the entry in schedule 1 relating to Multiple No Asset Procedures and Bankruptcy should be

reworded to clearly link to section 449A of the Insolvency Act. This is because the Assignee has previously received enquiries and complaints where there has been confusion regarding what is an 'insolvency event', with some credit reporters incorrectly including compositions, proposals and debt repayment orders as detailed in Part 5 of the Insolvency Act. However, section 449A of the Insolvency Act clarifies that only Bankruptcies and No Asset Procedures are included for the purpose of multiple insolvency events that can be reported indefinitely. The Commissioner agrees with this submission and schedule 1 is amended to read:

Multiple No Asset Procedures (NAPs) or Bankruptcy events (as provided in the Insolvency Act 2006, section 449A)

5. Other matters

The language of the code has been amended to ensure it is gender neutral. Additionally, minor drafting changes have been made, which do not involve policy considerations and typographical errors have been corrected.

The Commissioner also acknowledges that some submitters suggested more substantive changes that were outside the scope of this code review. However, these submissions have been recorded and may be addressed in later reviews of the code when new policy matters can be considered. The Commissioner thanks submitters for drawing these matters to his attention.