

19 August 2020

Office of the Privacy Commissioner  
PO Box 466  
Auckland 1140

Via email: [privacy.code@privacy.org.nz](mailto:privacy.code@privacy.org.nz)

## **Revocation and Replacement of the Credit Reporting Privacy Code under the Privacy Act 2020**

1. Thank you for the opportunity to make a submission on the proposed new Credit Reporting Privacy Code 2020.
2. Centrix is a credit reporter subject to the Credit Report Privacy Code 2004.
3. We acknowledge the aim of the project is to revoke and replace the current code to simply align the code with the new Privacy Act, including minor drafting modernisation. It is not proposed to implement any new substantive policies (other than those required under the 2020 Act). On that basis, we provide our comments, first in response to the specific questions you have asked, and then some additional comments we consider may assist the Commissioner.

### **Questions for submitters**

4. Clause 4: Would you find it helpful to add a new subclause, which expressly provides that a term, or expression defined in the Privacy Act and used but not defined in this code has the same meaning as the Act? Yes, we consider this would be helpful for those working with the code and to avoid doubt.
5. Subrule 1(3): Do you think this addition to the code is required in the credit reporting context? Credit reporters do not usually collect credit information directly from the individual. They do, however, collect identifying information directly from an individual when the individual is requesting access to their credit file. In those circumstances, credit reporters are required to collect identifying information to ensure the person is who they say they are. We cannot think of a circumstance where this prohibition would be relevant in the context of carrying out credit reporting activities, however, Centrix does not consider it will restrict its activities and does not oppose the proposed inclusion in the code for consistency purposes.

6. Express reference to section 30 authorisations: Would you prefer express reference to section 54 (now section 30 of the 2020 Act) to be retained in rules 2, 10 and 11, even though it has been removed from information privacy principles 2, 10 and 11? Yes. We consider this would remove any doubt that seeking an authorisation is available to credit reporters and it would be helpful for those working with the code.
7. Subrule 4(1)(b): Do you think this addition to the code is required? As discussed above, in most circumstances, credit reporters do not collect credit information directly from individuals. They do collect information directly when individuals are seeking access to or correction of their credit file. Credit reporters do not collect credit information about individuals who are under 16 years. This is also reflected in the Data Standards for CCR ratified by the Retail Credit Association of New Zealand Inc. which prohibits the reporting of credit accounts for individuals under 16.<sup>1</sup> Credit reporters may collect information from young people aged 16 and 17 if they seek access to or correction of their credit file. Therefore, this new addition is relevant in this context and Centrix does not oppose the proposed inclusion in the code.
8. Rule 12: Do you agree with the way in which we have implemented new information privacy principle 12 into the code? Generally, yes. However, we query why disclosure under Rule 11(2)(a) - disclosure of credit information to a debt collector for the purpose of enforcement of a debt owed by the individual concerned – is not subject to this new Rule 12. This may have been an oversight, however, if this subrule was intended to be omitted, it would be helpful to understand the policy for this. Disclosures to a debt collector that is a foreign person/entity should be subject to the same overseas transfer restrictions as disclosures to a credit provider that is a foreign person/entity.
9. Rule 13: Do you agree that the application of rule 13 to credit reporters should reflect s26 of the Privacy Act 2020? Yes.

### **Other issues**

10. References to Summary of Instalment Orders: The Regulatory Systems (Economic Development) Amendment Act 2019 replaced Summary Instalment Orders with Debt Repayment Orders from 1 January 2020. The Commissioner may want to take this opportunity to update the references to summary instalments orders in the code.
11. Rule 8(1): Proposed Rule 8(1) has not been updated to the new information privacy principle 8. The current IPP 8(1) is:

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<sup>1</sup> Please note that prior to June 2020, the age was under 18 years. The age limit was dropped to under 16 years as 16 and 17 year olds apply for and are granted credit and the credit providers were seeking this change to the Data Standards.

*An agency that holds personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant, and not misleading.*

12. The new Act has removed the following requirement: “having regard to the purpose for which the information is proposed to be used”.
13. The proposed subrule 8(1) appears to seek to retain this requirement – however we are unsure as some words are missing (we repeat the proposed subrule (1) below):

*A credit reporter that holds credit information must not use or disclose that information without taking any steps that are, in the circumstances, reasonable to ensure that the information is proposed to be used or disclosed, the information is accurate, up to date, complete, relevant, and not misleading*

14. If the Commissioner proposes to keep the requirement “having regard to the purposes for which the information is proposed to be used” in subrule 8(1) of the code, it would be helpful to understand the policy for departing from the policy of carrying over the changes to the Act to the codes.
15. Otherwise, we have no further comment to make.
16. We would be happy to provide any further information should this assist the Commissioner

Yours sincerely



Keith McLaughlin  
**Managing Director**