

Retail Credit Association of NZ Inc.

18th August 2020

Office of the Privacy Commissioner
P O Box 466
AUCKLAND 1140

Delivered by email to: privacy.code@privacy.org.nz

Submission to the Office of the Privacy Commissioner on :

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

Members consider the proposed changes beneficial and have not raised any objections to your proposals.

Background information relating to the Retail Credit Association of NZ Inc. is attached, together with specific responses to the questions raised.

We do not wish to make an oral submission.

We have no objection to this submission being published on your website.

For further comment or clarification in relation to this submission please contact:

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Background

These comments are made by the Retail Credit Association of New Zealand Inc. (RCANZ).

RCANZ developed from a series of discussions between credit providers and credit reporters commencing in 2010. These discussions had as their focus the development of comprehensive credit reporting in New Zealand. This development was made possible by proposed amendments to the Credit Reporting Privacy Code.

RCANZ is a specialist industry association set up to create a forum for:

- Providers of credit to individuals (major bank, non-bank and utility service organisations);
- The major credit reporters; and
- Organisations able to access positive credit data under the credit reporting privacy code.

Our members comprise a significant portion of credit provided in the New Zealand.

One major reason for the creation of this forum was the need to establish a practical and workable basis on which comprehensive credit reporting, compliant with new credit reporting privacy regulatory requirements, might be implemented.

RCANZ encourages greater clarity, transparency and efficiency in credit risk assessment and management in order that the benefits gained may be shared by consumers and providers. Further information can be found on our website: <http://www.rcanz.org.nz/>

Some of our members have indicated that they will also be making their own and more detailed submissions.

The comments in this submission are therefore of a more general view from our members and comments may not apply to all members.

Comments made on behalf of the following RCANZ Members:

- ANZ Bank
- ASB Bank
- BNZ Bank
- Centrix Group Limited
- Equifax New Zealand
- Flexicards New Zealand
- Heartland Bank
- Illion Limited
- Kiwibank
- Latitude Financial
- Pepper NZ Limited
- Spark
- Westpac Bank

Responses to the Questions Raised

Page 9- Definitions

A note in the copy of the 2004 Code on our website sets out that words and expressions that are defined in the Privacy Act are used in the relevant code.

Question: *“Would you find it helpful to add a new sub-clause, 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, a new sub-clause would be helpful for clarity.

Suggestion from one member “A term that is used in this CR code and is defined in the Privacy Act has the meaning given to it in the Privacy Act and other grammatical forms of defined words or expressions have corresponding meanings”.

Page 10 –Sub-rule 1(3) is new. It reflects new information privacy principle (12) and makes explicit that identifying information should not be collected by credit reporters if it is not required for the lawful purpose of collection.

Question: *“Do you think this addition to the code is required in the credit reporting context?”*

Yes keep this addition, it should align with the Privacy Act.

Page 11 - Reference to section 54 authorisations (now section 30 of the 2020 Act) has been removed from the information privacy principles in the new Act. However, if granted by the Privacy Commissioner, such authorisation continues to provide an additional exception for collection, using or disclosing personal information that would otherwise breach rules 2, and 9-12 of this Code.

Question: *“Would you prefer express reference to section 54 (now section 30 of the 2020 Act) to be retained in rule 2, even though it has been removed from information privacy principle 2?”*

Yes leave the reference to that section in the Privacy Act

Page 13 – The wording of Rule 4 has been updated to reflect the Privacy Act 2020. Additionally, as in information privacy principle 4, the code now clarifies that the circumstances of collection by a credit reporter, and whether this is fair and not unreasonably intrusive, includes circumstances where credit information is being collected from children or young people.

Question: *“Do you think this addition to the code is required?”*

Yes – it should align with the Privacy Act.

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The exceptions to rule 10(1) have been reordered to reflect the order of information principle 10 in the Privacy Act. Rule 10 has also been renumbered where it was no longer sequential after previous amendments, subrules (2) and (3) of the 2004 Code have been swapped (now subrules (5) and (6)). The wording of rule 10 has also been updated to reflect the wording of the Privacy Act 2020.

Additionally, previous subrule 10(1)(g) , providing an exception to use of information in accordance with an authority granted under section 54 (now section 30) of the Act, has been removed. See the commentary relating to rule 2 above.

Question: *“Would you prefer express reference to section 54 (now section 30 of the 2020 Act) to be retained in rule 10, even though it has been removed from information privacy principle 10?”*

Yes - keep the reference for clarity and completeness. The section dealing with authorised exceptions should be referenced.

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The wording of rule 11 has been amended to reflect the Privacy Act 2020. Additionally, the order of subrules 11(1)(a) and (b) of the 2004 Code have been swapped without amended text. The following subrules have then been renumbered (c) through to (h). The subrules of rule 11 are also sequentially renumbered from (1) through (8).

Previous subrule 11(1)(e) providing an exception to disclosure of information in accordance with an authority granted under section 54 (now section 30 of the Act, has been removed. See the commentary relating to rule 2 above.

Question: *“Would you prefer express reference to section 54 (now section 30 of the 2020 Act) to be retained in rule 11, even though it has been removed from information principle 11?”*

Keep the reference for context – the section dealing with authorised exceptions should be referenced.

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This is a new rule that reflects new information principle 12 in the Privacy Act 2020. This new rule imposes additional obligations on credit reporters when disclosing information overseas to ensure the protection of that information.

Question: *“Do you agree with the way in which we have implemented new information privacy 12 into the code?”*

Yes agree. Multiple references to previous rules make it difficult to read, but it is in line with the new Privacy Act.

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Subrules 13(7) and (8) reflect section 26 of the Privacy Act 2020.

Subrule 13(7) ensures that subrules 13(1) – (4)(a) apply only to the assignment of unique identifiers after the Privacy Act 1993 was in force.

Subrule 13(8) clarifies that a credit reporter cannot, after 1 July 1993, assign a unique identifier previously assigned to that individual, whether the previous assignment was before or after 1 July 1993.

Question: *“Do you agree that the application of rule 13 to credit reporters should reflect section 26 of the Privacy Act 2020?”*

Yes agree.

Comments on other proposed changes to the Code ??

On the Contents page Rule 12 – incorrectly states Disclose of health information outside New Zealand