

## Amendment No 14 to Credit Reporting Privacy Code 2004

### Information paper

This information paper explains Amendment No 14 to the Credit Reporting Privacy Code 2004 which was issued by the Privacy Commissioner on 6 November 2018.

Notable changes to the Credit Reporting Privacy Code made by Amendment No 14 include:

Notable changes to Code made by Amendment No 14	
<b>Enhanced consumer rights</b> <i>Extended individual rights – Quicker – Simpler to exercise</i>	<ul style="list-style-type: none"> <li>❖ New access rights to credit scores</li> <li>❖ Quicker access to credit reports.</li> <li>❖ Allowing use of credit reporting system to return money owed to individuals.</li> <li>❖ Enabling individuals at risk of credit fraud to obtain credit freezes across all credit reporters with a single application</li> </ul>
<b>Keeping system fair for consumers</b>	<ul style="list-style-type: none"> <li>❖ Update threshold for listing very small credit defaults</li> <li>❖ Stop penalising of consumers who shop around for credit by mandating quotation enquiries</li> <li>❖ No longer to report on previous enquiries older than 4 years</li> <li>❖ Prohibit credit reporters from bundling unrelated consents into application processes for access, correction and suppression</li> <li>❖ Tightening prohibition on direct marketing</li> </ul>
<b>Improving enforcement and compliance</b>	<ul style="list-style-type: none"> <li>❖ Prohibiting the use of bundled authorisations or arrangements with related companies to bypass code requirements</li> <li>❖ Enhanced assurance reporting requirements with an emphasis on an independent and experienced reviewer playing an active part</li> </ul>

### Background to the Amendments

Earlier this year, the Office of the Privacy Commissioner completed a major review of the Credit Reporting Privacy Code 2004. The review was principally focused upon changes to the Code made six years earlier to permit the introduction of 'comprehensive credit reporting'. The result was the release of two reports containing a series of findings and recommendations. Amendment No 14 gives effect to many of the recommendations. Brief information on those reports and recommendations is set out at Annex A.

## Clause by Clause comment

The following material briefly explains the changes to the Credit Reporting Privacy Code introduced by the Amendment.

### 1. Title

No comment.

### 2. Commencement

This amendment principally comes into force on 1 April 2019. However, provision is made to allow systems testing commence earlier than that date while there is a delayed start for some of the clauses that require credit reporters or their subscribers to gear up for any changes to their practices.

Summary of commencement dates for clauses in Amendment No 14			
10 December 2018	1 April 2019	1 July 2019	1 October 2019
25	1, 2, 3, 6, 7, 8, 9, 12, 13, 14, 15, 17, 20, 21, 23, 24, 26, 27	10, 11, 16, 22	4, 5, 18, 19

### 3. Amendment to Clause 3 (Review clause now spent)

Clause 3 mandated a review of comprehensive credit reporting that has now been completed. Accordingly, the review clause is deleted.

### 4. Amendment to Clause 5 (NZBN as supplementary identification information)

The NZ Business Number is a government-assigned unique identifier scheme to assist with the identification of business entities. Although that scheme has limited relevance to consumer credit reporting the NZBN has been allowed into the system as 'supplementary identification information' for individuals who are also in business. This would mean that it can be used to confirm information in a subscriber enquiry rather than being disclosed on a credit report.

### 5. Amendment to clause 5 (Updating small overdue payment threshold in definitions of debtor credit default and guarantor credit default)

Prior to the Amendment, small overdue payments under a \$100 threshold were not permitted to be listed in credit reports as credit defaults. The amendment raised this threshold to \$125 both to maintain the real value of the threshold and noting the substantially higher threshold in Australia (approximately NZ\$163). A 'grandfathering' arrangement allows defaults already in the system at commencement to remain until they reach the end of the usual reporting period (i.e. 5 years from date of default).

### 6. Amendment to Clause 5 (New definitions)

Clause 5 introduces definitions of new terms used in the Amendment.

### 7. Amendment to clause 5 (New subclause on related companies)

The new subclause makes it clear that a credit reporter must not be directly or indirectly involved in any understanding, arrangement, structure or agreement with a related company to circumvent the application of the Code.



Credit reporters NOT PERMITTED to use arrangements with related companies to circumvent the Code or to make uses or disclosures of credit information that would breach the Code.

### 8. Amendment to Rule 2 (Collections involved in permitted services)

This machinery provision authorises the collection of credit information for certain purposes allowed for elsewhere in the Code.

### 9. Amendment to Rule 4 (Unrelated authorisations not to be bundled with statutory processes)

This new subrule makes it clear that a credit reporter must not bundle requests for consents to additional unrelated uses or disclosures of credit information into its processes enabling individuals to exercise their statutory rights.

For example, while an individual is obliged to supply identifying details when making a request for access, the subrule prohibits a credit reporter from requesting an individual as part of the access request process to also agree to, say, disclosure of those details to a third party (such as an insurer, debt collector or credit broker). 'Bundled consents' can be an unfair means of collection in many contexts, as they may mislead individuals as to whether consent is voluntary and as to what is being authorised. It is particularly inappropriate for agencies to integrate a commercial side-arrangement into processes giving effect to a statutory right. Obtaining consent for the use of identity details for updating records is expressly provided for.



A formal request by an individual to a credit reporter to exercise Code rights of access, correction or suppression IS NOT an opportunity to cross-sell products or seek consent to marketing, debt collection or other unrelated purposes.

### 10. Amendment to Rule 6 (Access to credit score)

This clause makes clear that the individual concerned is entitled to have access to a credit score from the credit reporter when the credit reporter has the practice of releasing such a score to subscribers. In other words, if the credit reporter is in the business of creating a rating that characterises individual creditworthiness and selling to third parties, the individual concerned is entitled to see that rating. The clause specifies that access would be required to be given in relation to the general credit score or scores usually provided to subscribers of the credit reporter.

#### *If a credit reporter*

*as part of its business of reporting to other agencies on the creditworthiness of individuals usually generates for those other agencies a general credit score or scores from the credit information it holds or has access to ...*



#### *Then that credit reporter*

*must generate a credit score or scores on the same basis for inclusion with information to which the individual concerned is entitled on an access request*

### 11. Amendment to Rule 6 (Outer time limit for access to credit information)

This clause reduces the outer time limit for giving access from 20 to 10 working days. This reflects certain realities in this industry (that the information is already collated and ready to go to a verified individual at the press of a button) and to key objectives of the code (that relate to the facilitation of unimpeded and prompt subject access as a critical measure to promote trust and accuracy).


Access rights to credit information	
✓	Fast
✓	Free
✓	Credit score
✓	No bundled consents

### 12. Amendment to Rule 10 (Correction of error)

This clause corrects an error in a statutory citation.

### 13. Amendment to Rules 10 and 11 (Prohibition on use of credit information for marketing or to facilitate marketing by subscribers)

The clause strengthens and broadens the existing prohibitions on the use of credit information by credit reporters for marketing or the facilitation of marketing by others. Material related to the permitted marketing practice of pre-screening is removed from subrule 10(1C) and replaced in substantially the same form, in a new Schedule 9.

	<b>No marketing use:</b> The Code prohibits credit reporters from using the credit information they hold for marketing and direct marketing	Prohibition extends to enabling marketing use by others or by supplying tools to use credit information for targeting marketing
✓	<b>Sole exception:</b> The only permitted marketing use is to pre-screen subscribers' marketing lists to exclude ineligible borrowers subject to Schedule 9 controls	Schedule 9 contains various safeguards to ensure best privacy practice and to support responsible lending

### 14. Amendment to Rule 10 (Use of credit information for tracing to facilitate return of money owed to individuals)

The clause, together with new Schedule 10, permits the use of the credit reporting system, under strict controls, to trace individuals to facilitate the return of money owed to those individuals.

### 15. Amendment to Rule 11 (Facilitation of suppression across multiple credit providers)

The clause empowers credit reporters to take steps to make it easier for individuals at risk of identity fraud to quickly obtain an initial credit freeze in respect of all three national credit reporters. Once implemented by credit reporters, it may be possible for all three credit reporters to act upon a single application for a credit freeze.

**16. Amendment to clause 7 (Permissible charges for expedited access)**

The Code generally requires subject access to be provided free of charge. However, a small charge has been permitted where a requester demands access within 3 working days (formerly 5 working days). This reduction in working days is approximately in proportion with the reduction in the outer time limited for granting subject access from 20 to 10 working days.

**17. Amendment to clause 9 (Independent person's role in assurance review and report)**

This clause requires additional information to be given in each assurance report confirming an active involvement of the independent person in preparing the report.

**18. Amendment to Schedule 1 (Reducing maximum reporting period for previous enquiries)**

This clause reduces the period for which previous enquiries can remain in a credit report and be used for calculating credit scores from 5 to 4 years. The change draws upon UK analysis which expressed concern at reliance upon previous enquiries in scoring as it may inadvertently have a detrimental effect upon competition and consumer action.

**19. Amendment to Schedule 3 (Subscriber obligation to provide quotation enquiries if offering risk-based pricing for credit products)**

This clause obliges credit providers (through subscriber agreements) to provide quotation enquiries if offering risk-based pricing in a credit product. The price of credit in such a case is not known until a credit check is made. In such cases individuals would be able to obtain a quotation for the cost of the credit (which would involve a credit check against the individual) without leaving a 'previous enquiry' record that may in turn affect their credit score for future borrowing. This would support the prudent and competitive practice of 'shopping around' for a good credit rate.

Previous enquiries, risk-based pricing for credit, quotation enquiries	
Today	In the future
Risk-based pricing for credit <ul style="list-style-type: none"> <li>• very uncommon</li> </ul>	Risk-based pricing for credit <ul style="list-style-type: none"> <li>• Likely to become more common ↑</li> </ul>
Previous enquiries <ul style="list-style-type: none"> <li>• held for 5 years</li> <li>• used in credit scores</li> <li>• used in fraud detection</li> <li>• 'shopping around' enquiries indistinguishable from less favourable credit behavior → factored into credit scores</li> </ul>	Previous enquiries <ul style="list-style-type: none"> <li>• held for 4 years ↓</li> <li>• used in credit scores</li> <li>• used in fraud detection</li> <li>• 'shopping around' for risk-based priced credit products via 'quotation enquiry':               <ul style="list-style-type: none"> <li>→ Quotation enquiries not factored into credit scores</li> <li>→ Quotation enquiries still available for fraud detection</li> </ul> </li> </ul>
Quotation enquiries <ul style="list-style-type: none"> <li>• Not mandatory</li> <li>• Not used by industry</li> </ul>	Quotation enquiries: <ul style="list-style-type: none"> <li>• Mandatory with risk-based priced credit</li> <li>• Likely to become more widespread as a consumer option ↑</li> </ul>

**20. Amendment to Schedule 3 (Subscriber agreement requirements for pre-screening)**

This clause substitutes new code references.

**21. Amendment to Schedule 3 (Subscriber agreement requirements for tracing in relation to unclaimed monies)**

This clause requires the relevant aspects of the new tracing scheme to be imposed upon subscribers.

**22. Amendment to Schedule 4 (Reflecting changes to access entitlements in summary of rights)**

The Summary of Rights in Schedule 4 is updated to reflect the enhanced access rights.

**23. Amendment to Schedule 6 (Reflecting code changes in assurance reporting)**

This clause ensures other aspects of the code's requirements are reflected in the assurance reporting process.

**24. Amendment to Schedule 7 (Suppression of credit information where individual may be a victim of fraud)**

The amendments modify the credit freezing arrangements to allow for:

- A simple process for an initial suppression to be obtained from all 3 credit reporters.
- Notification to the individual of expiry of suppression.

Since 2012, the Credit Reporting Privacy Code has given individuals the right to request that a credit reporter suppress, or freeze, their credit information if they believe they are at risk of identity fraud. The application process has needed to be repeated for each of the three national credit reporters. Amendment No 14 will simplify the process by enabling an initial request for a freeze to be shared between credit reporters and treated as a request to all of them. This should result in a quicker service which will benefit both the affected individuals and the lending industry.

**25. New Schedule 8 (Transitional arrangements)**

This new schedule provides transitional arrangements for the changes to the small credit default threshold and provides for systems testing and assurance monitoring and reporting.

**26. New Schedule 9 (Pre-screening)**

This change consolidates the pre-screening rules into a schedule. There are no substantive changes from those previously contained in Rule 10 but there are some small changes to improve clarity and enhance flexibility.

**27. New Schedule 10 (Use of credit information for tracing to facilitate the return of money owed to individuals)**

This new schedule sets out the rules governing the use of credit reporting systems to trace individuals to enable the return of money to them. The rules:

- Limit who may use the system.
- Limit the purpose for which tracing is permitted.
- Specifies steps to be taken before tracing.
- Sets out matching requirements.
- Regulates the use of new addresses revealed in the trace.
- Requires compliance assurances.

## Annex A: Background to the Amendments: Review reports and recommendations

In 2018 the Office of the Privacy Commissioner completed a major review of the Credit Reporting Privacy Code 2004 that had begun in earnest in 2016. The review was principally focused upon changes to the Code made six years earlier to permit the introduction of 'comprehensive credit reporting'. The opportunity was taken to consider other selected issues. The result was the release of two reports containing a series of findings and recommendations. Amendment No 14 gives effect to many of the recommendations (as well as making some other changes).

The reports are both available online:

- [Comprehensive Credit Reporting Six Years On: Review of the Operation of Amendments No 4 and No 5 to the Credit Reporting Privacy Code](#), April 2018; and
- [Credit Reporting Privacy Code Review: Miscellaneous Issues](#), May 2018.

The review reports contained 19 recommendations some of which called for amendment to the Code. Amendment No 14 is intended to give effect to many of the recommendations. Each recommendation is accompanied in those reports by substantial analysis and explanation. The relevant portions of those reports will help interested persons to better understand the reasoning for some of the provisions included in Amendment No 14.

The following table should assist in finding the relevant passages in the reports:

Cross reference between recommendations in review reports and clauses in Amendment No 14		
Clause in Amendment No 14	<i>Comprehensive Credit Reporting Six Years On</i> Recommendation	<i>Credit Reporting Privacy Code Review: Miscellaneous Issues</i> Recommendation
1.		
2.		
3.		
4.		R2
5.		
6.	R10	R2
7.		
8.		
9.	R10	
10.	R5, R13	
11.		R3
12.		
13.	R5, R10	R6
14.		R5
15.	R8	
16.	R5	R4
17.	R6	
18.	R12	
19.	R11	
20.	R10	
21.		R5
22.	R5	R3
23.	R6	R5

<b>24.</b>	R7, R8	
<b>25.</b>		
<b>26.</b>	R9, R10	
<b>27.</b>		R5

The *Comprehensive Credit Reporting Six Years On* report focused upon whether comprehensive credit reporting regulation was working as intended to achieve certain public interest benefits and that the limits and safeguards were operating effectively to protect privacy. The recommendations in that report therefore tend to relate to aspects where changes were justified to enhance the benefits or strengthen the safeguards or limits.

The *Miscellaneous Issues* report is less concerned with comprehensive credit reporting. It considered a selection of possible new directions for credit reporting information or its use. Recommendations in this report supported changes that offer substantial public benefits or useful improvements without further intruding upon privacy.

Office of the Privacy Commissioner  
6 November 2018