

Questions and answers about the Credit Reporting Privacy Code and amendment

What is a credit reporter?

A credit reporter is a company that collects credit and personal information from credit providers and publicly available sources and then sells the information to third parties. These third parties are commonly but not always credit providers seeking to establish if a potential client is a good or bad credit risk.

Why was a privacy code issued in 2004?

Credit reporters may hold large amounts of personal information, very little of it acquired directly from those being reported on. Most people are not aware of the information that is held about them, yet this information may affect their credit reputation for many years. Individuals have little ability to directly control how the information is held and used. People generally have no opportunity to verify data before it is listed. The Credit Reporting Privacy Code 2004 addressed such issues. It promotes an orderly, fair, transparent and accurate credit reporting system.

Why is the Privacy Commissioner amending the code now?

The code was a major change for credit reporters when it was issued in 2004. The Privacy Commissioner undertook to review the code when it had operated for several years to check that it was working as anticipated. The Office of the Privacy Commissioner commenced reviewing the code in 2008 by establishing an external reference group that brought together credit reporters and business and community representatives. Further research into credit reporting issues and related issues like identity theft, and additional industry consultation, was also undertaken. The proposed amendment results from that review work.

By coincidence, Australia at the same time conducted a major review of its own privacy law including special credit reporting provisions. The Australian Government's resultant announcement of intended changes to its credit reporting law has also been a consideration.

Does the current code allow “positive” credit reports?

No. “Negative” information typically refers to a default in meeting a credit obligation. A default has a clear relevance to subsequent credit decisions and is the kind of fact that may not be volunteered by people seeking credit.

Positive information might be seen as all other information, for example an individual's track record in keeping up credit payments. There is other information that is neutral in itself but may bear upon creditworthiness (such as whether an individual has moved frequently or is long settled in the same place).

A key rationale for the code's current approach, in which positive credit reporting is generally prohibited, is that individuals who have met their legal obligations in respect of credit should not be forced to reveal their private financial dealings into a widely accessible database.

The code does allow the reporting of some non-negative data, such as the amount of credit sought. It also allows, for example, reporting of identification information and previous enquiry record information.

Will the amendment allow 'positive' credit reports?

Yes. The amendment will allow more comprehensive reporting including several new fields or classes of information relating to current credit accounts held by an individual. The key information will include:

- type of credit account;
- credit limit (which may change from time to time);
- the status of the account as open or closed.

The rationale for permitting positive reporting relates to:

- giving credit providers a more accurate and complete picture of individuals' creditworthiness, allowing them to make better assessments of risk and facilitate more responsible lending decisions;
- allowing credit products to be tailored to individuals on the basis of their creditworthiness, reducing the costs of credit for some;
- increasing competition in the credit industry, by reason of access to better information;
- opening mainstream credit to a wider pool of individuals who may otherwise be excluded due to a lack of verifiable information about them.

What does the current code already do for ordinary New Zealanders?

The code requires that credit reporters:

- provide individuals with free copies of any information held about them;
- regularly update credit information;
- have systems to ensure new information is linked to the correct individual;
- have systems and audits to ensure information is accurate;
- flag disputed debts while they are being checked;
- limit the range of agencies to which credit information can be disclosed;
- have clear, fast and effective complaints resolution procedures.

The rights of individuals are spelled out in a Summary of Rights document.

Credit providers (such as banks and retailers offering hire purchase credit) must clearly explain to their customers what happens to personal information when a credit check is done. This is a requirement of subscriber agreements with credit reporters.

What more will the amendment do for ordinary New Zealanders?

The amendment will add additional provisions to the code that will:

- prohibit credit reporters from using credit information for direct marketing purposes;
- require credit reporters to provide individuals with an explanation of their credit score where these are released on an access request;
- require credit reporters to include the Commissioner's official translations of the summary of rights on their website.

The amendment introduces new controls and accountabilities to protect individuals. A few examples include:

- limiting the sharing of credit account information to credit providers (and not, for example, prospective employers or prospective landlords);
- requiring that systematic compliance check processes that credit reporters are obliged to undertake include an independent person (not being an employee, owner or director) and that the process be reported upon to the Privacy Commissioner once a year;
- by permitting the use of the driver licence number, there should be less of a problem of credit reports that contain information relating to the wrong individuals.

What effects will the amendment have on credit reporters?

The code will assist credit reporters by:

- permitting them to report credit account information and provide a more comprehensive credit reporting service;
- allowing the use of driver licence numbers for identification purposes which will substantially assist with accuracy and matching issues;
- clarifying some existing provisions of the code.

There will be new obligations on credit reporters including:

- an obligation to add an independent and external element to their systematic internal compliance review processes;
- more specific obligations to make available summaries of rights to individuals, including to post official translations into other languages that the Privacy Commissioner may provide from time to time.

What effect will the amendment have on business users of credit information?

The two main effects from a business user perspective will come from the introduction of comprehensive reporting and by permitting the use of driver licence numbers.

The amendment will enable New Zealand to develop a more comprehensive credit reporting system. When this is fully operational (which will take some years), credit providers will be empowered to make substantially better informed credit decisions.

The benefits of permitting, under strict controls, the use of the driver licence number relates to better identification of individuals in the system. This should increase the accuracy of credit reports and diminish customer dissatisfaction where information is reported in relation to the wrong individual.

Is the current code compulsory and who is covered?

The code is compulsory and it applies to all credit reporting agencies.

A code of practice issued under the Privacy Act 1993 is delegated legislation that modifies the Privacy Act's information privacy principles where the code applies. The code is legally enforceable in the same way as the Act. The code is subject to review by the Regulations Review Committee of Parliament.

When will the amendment come into force?

It is proposed that the amendment will come into force on 1 April 2011 with some clauses postponed for a further 6 or 12 months. The scheduled commencement dates are

themselves a matter on which people may make submissions. Accordingly, it is possible that these commencement dates might yet change.

Will further changes be made in the future?

This amendment is phase one of a planned two phase process. The Privacy Commissioner plans to notify a further proposed amendment to the code when the full detail of the proposed Australian law changes become available. In particular, amendments to the code that might be included in the second phase include reporting of repayment history information and the establishment of mechanisms to allow for 'credit freezing' for victims of identification fraud.

How does the current code compare with the Australian credit reporting law?

The Australian law was a consideration when developing the code of practice. It is noteworthy that two main New Zealand consumer credit reporting agencies have Australian operations and most of the major banks are Australian-owned.

The Australian law is a complex mix of statute, code of practice and determinations. However, many of the fundamentals of the New Zealand code are similar to the Australian law. The New Zealand code is simpler to understand and less detailed than the Australian law.

How will the amendment compare with Australian credit reporting law?

Australian law prohibits 'positive' credit reporting and so the proposed move to comprehensive reporting in New Zealand represents a difference from existing Australian law. However, the Australian Government has announced that it intends to legislate to allow 'positive' reporting. Accordingly, reform of the law in both countries is heading in the same direction in relation to comprehensive reporting.

Australian law already allows for the use of the driver licence number in credit reporting systems.

Australian credit reporters are liable to mandatory auditing by their privacy commissioner. The independent and external element proposed for the internal compliance reviews will move New Zealand somewhat closer to that existing Australian safeguard.

**Office of the Privacy Commissioner
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