

**Proposed Amendments No 13 and No 14 to  
Credit Reporting Privacy Code 2004:  
*Invitation to make a submission, information paper  
and text of proposed amendments***

This document sets out and explains two proposed amendments to the Credit Reporting Privacy Code. Public submissions are invited on these proposed amendments.

Enquiries: telephone Vanya Vida at 09 302 8658.

**20 July 2018**

This document has 5 parts:

1. Invitation to make a submission
2. Information about Amendment No 13
3. Text of proposed Amendment No 13
4. Information about Amendment No 14
5. Text of proposed Amendment No 14

## 1. Invitation to make a submission on Amendments No 13 and 14

Set out below is the text of two proposed amendments to the Credit Reporting Privacy Code.

**Amendment No 13** is a simple amendment making a permanent 'fix' to an error made by Amendment No 11 and is intended to be issued as soon as possible. **Amendment No 14** is a substantial amendment that gives effect to recommendations from a major code review.

More than 6 weeks is allowed for submissions to be made on proposed Amendment No 14. However, a shorter deadline is given for making submissions on Amendment No 13 as it needs to be finalised and issued quickly to replace a temporary 'fix' due to expire soon.

Submissions on either proposed amendment should be addressed to [code@privacy.org.nz](mailto:code@privacy.org.nz).

The **deadlines** for submissions are:

- Amendment No 13: **30 July 2018**.
- Amendment No 14: **25 August 2018**.

Submissions may be published on the website of the Office by the Privacy Commissioner or be released on request. If you would like the Commissioner to keep your submission, or part of your submission, confidential, please indicate the reasons with your submission and the Commissioner will consider your request in accordance with the Official Information Act 1982.

## **2. Information on proposed Amendment No 13**

This amendment provides a 'permanent fix' to a small error currently corrected by a 'temporary fix'.

### **The error**

Amendment No 11 introduced a new paragraph (cb) to rule 11(1) to allow for a disclosure that is made in accordance with an access agreement. However, the phrase 'that the disclosure is' was omitted from the amendment meaning that the entry did not make grammatical sense.

### **The temporary fix**

The error was discovered after Amendment 11 was made but before it came into force. The Commissioner fixed the error last year by use of a process that permits urgent amendments where there is no time to follow a full process of public submission and public notification. A safeguard for this process is that the urgent amendment must expire within a year. Amendment No 12 (Temporary) was provided to expire on 18 September 2018.

### **The proposed permanent fix**

Amendment No 13 replaces the change made by Amendment No 12 (Temporary) and makes it permanent.

### **Proposed Amendment No 13**

The text of the proposed amendment follows.

### **3. Text of Proposed Amendment No 13**

#### **Credit Reporting Privacy Code 2004**

#### **Amendment No 13**

I, **JOHN EDWARDS**, Privacy Commissioner, now issue under section 51 of the Privacy Act 1993, this amendment to the Credit Reporting Privacy Code 2004.

**1. Title**

This amendment is the Credit Reporting Privacy Code 2004 Amendment No 13.

**2. Commencement**

This amendment will come into force on 18 September 2018.

**3. Amendment to Rule 11 (Limits on Disclosure of Credit Information)**

Subrule 11(1) is amended by omitting paragraph (cb) and inserting the following replacement:

(cb) that the disclosure is in accordance with an access agreement;

## 4. Information on proposed Amendment No 14

Earlier this year, the Office of the Privacy Commissioner completed a major review of the Credit Reporting Privacy Code 2004. While 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 certain other issues that had been identified. The result was the release of two reports several months ago:

- [\*Comprehensive Credit Reporting Six Years On: Review of the Operation of Amendments No 4 and No 5 to the Credit Reporting Privacy Code\*](#), 10 April 2018; and
- [\*Credit Reporting Privacy Code Review: Miscellaneous Issues\*](#), 1 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. Submitters are encouraged to read the relevant portions of those reports to better understand the reasoning for some of the provisions included in proposed Amendment No 14.

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

<b>Cross reference between recommendations in review reports and clauses in Amendment No 14</b>		
<b>Clause in Amendment No 14</b>	<b><i>Comprehensive Credit Reporting Six Years On</i> Recommendation</b>	<b><i>Credit Reporting Privacy Code Review: Miscellaneous Issues</i> Recommendation</b>
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
24.	R7, R8	
25.	R9, R10	
26.		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.

This balance of this part of the information paper will briefly review the amendment clause by clause. The text of the amendment follows in the final part of the paper. The version of the text includes some further explanatory notes against selected clauses.

#### **1. Title**

No comment

#### **2. Commencement**

This amendment is intended to be issued by mid-November year come into force on 1 April 2019. This fairly long lead in time is intended to assist credit reporters to gear up for any changes to their practices.

#### **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 scheme to assist with the identification of business entities. Although that scheme has limited relevance to consumer credit reporting it is proposed that the NZBN be allowed into the system as 'supplementary identification information' for individuals 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. The proposed change is explored in the *Miscellaneous Issues* report.

#### **5. Amendment to clause 5 (Updating small debt threshold in definition of debtor credit default)**

Currently, small debts under a \$100 threshold are not permitted to be listed in credit reports. The amendment proposes to raise this to \$125. The existing \$100 threshold was adopted in September 2011. The Reserve Bank inflation calculator shows that a basket of goods purchased for \$100 in the third quarter of 2011 would, by the first quarter of 2018, cost \$106.67. Put another way, the threshold has dropped to the equivalent of \$94 in 2011 dollars. Accordingly, a \$125 update should ensure that the threshold does not drop below the effective level set in 2011 for some years yet. In Australia the equivalent threshold is A\$150.

#### **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 will make 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. The Code's requirements would be undermined by such arrangements and the effect of such arrangements would be to undermine the expectations of agencies that pool confidential information in the credit reporting system and the trust of individuals.

A definition of 'related company' is introduced taking the meaning given in section 2(3) of the Companies Act 1993.' This provides:

*'In this Act, a company is related to another company if—*

*(a) the other company is its holding company or subsidiary; or*

*(b) more than half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, are held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or*

*(c) more than half of the issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, of each of them are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or*

*(d) the businesses of the companies have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; or*

*(e) there is another company to which both companies are related;—*

*and **related company** has a corresponding meaning.'*

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

This is a machinery provision cross referring to various substantive aspects of the Code. No comment.

## **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.

By way of example, an individual will be obliged to supply identifying details, including name and address, when making a request for access. For example, the clause would prohibit a credit reporter from requesting an individual as part of an access request to also consent to, say, marketing use or the purchase of credit reporter services or for disclosure 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 to what is being consented to. It would be particularly inappropriate for agencies to incorporate a commercial side-arrangement into its processes giving effect to a statutory right. The proposed new clause 5(2) would in addition prohibit arrangements that seek to circumvent the rule through the use of related companies.

## **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, as part of essential transparency, 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 issue is further discussed in the *Comprehensive Credit Reporting Six Years On* report.

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 and not, for instance, a customised score prepared only for a particular subscriber.

#### **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 codes (that relate to the facilitation of unimpeded and prompt subject access as a critical measure to promote trust and accuracy). The proposed change is explored in the *Miscellaneous Issues* report.

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

This clause corrects an error in a statutory citation.

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

A 'no marketing use of credit information' rule is an existing feature of both Australian and NZ credit reporting law. The broad prohibition is supplemented by express references to marketing tools, services, assisting and targeting. These references are drawn from certain prohibitions in existing and proposed Australian law. Elsewhere in the Amendment another change is introduced to prohibit the use of arrangements with related companies to circumvent the 'no marketing use' rule.

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

It is proposed to allow the use of the credit reporting system, under strict controls, to trace individuals to facilitate the return of money owed to those individuals. The proposed change is explored in the *Miscellaneous Issues* report.

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

A proposed change to the code seeks 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. Currently, the individual will need to make 3 separate applications. Under the proposed change it will be possible for all three credit reporters to act upon a single application. The issue is further discussed in the *Comprehensive Credit Reporting Six Years On* report.

#### **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 5 working days. This has been reduced to 3 working days to remain approximately in proportion with the proposed reduction in



the outer time limited for granting subject access from 20 to 10 working days. The proposed change is explored in the *Miscellaneous Issues* report.

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

This change will require additional information to be given in each assurance report relating to the involvement of the independent person. The small change is intended to enhance the assurance process as a means to promote public trust. The issue is further discussed in the *Comprehensive Credit Reporting Six Years On* report.

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

This change will reduce the period for which previous enquiries can remain in a credit report and be used for calculating credit scores. The change draws upon the analysis of a UK parliamentary report 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 credit products)**

This proposed change would oblige subscribers to provide quotation enquiries if offering risk-based credit products. This means that individuals would be able to obtain a quotation for the cost of the credit product (which would involve a credit check against the individual) without leaving a ‘previous enquiry’ record that would in turn affect their credit score. This would support the prudent and competitive practice of ‘shopping around’ for a good credit rate. The issue is further discussed in the *Comprehensive Credit Reporting Six Years On* report.

**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 to be 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)**

These proposed 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.

These matters are discussed in the *Comprehensive Credit Reporting Six Years On* report.

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

This change consolidates the pre-screening rules into a schedule. There are no substantial changes but there are some small changes to improve the flexibility and clarity of the rules.

**26. 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.

The issues are explored in the *Miscellaneous Issues* report.

## 5. Text of proposed Amendment No 14

*Note: The notes in italics are an explanatory aid for the purposes of the submission process and will not form part of the proposed amendment when it is issued.*

### Credit Reporting Privacy Code 2004

#### Amendment No 14

I, **JOHN EDWARDS**, Privacy Commissioner, now issue under section 51 of the Privacy Act 1993, this amendment to the Credit Reporting Privacy Code 2004.

...

#### 1. Title

This amendment is the Credit Reporting Privacy Code 2004 Amendment No 14.

#### 2. Commencement

This amendment will come into force on 1 April 2019.

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

Clause 3 is deleted.

*Note: Clause 3 mandated a review that has now been completed.*

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

The definition of **credit information** in clause 5 is amended by deleting 'and' from subparagraph (b)(iv) and inserting the following subparagraph to follow paragraph (b)(v):

; and  
(vi) NZBN;

*Note: As supplementary identification information the NZBN may be used to confirm information in a subscriber enquiry but would not be disclosed on a credit report.*

#### 5. Amendment to clause 5 (Updating small debt threshold in definition of debtor credit default)

The definition of **debtor credit default** in clause 5 is amended by making the following change in paragraph (e):

Delete:           \$100  
Replace:           \$125

*Note: The existing \$100 threshold was set in September 2011.*

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

Clause 5 is amended by adding the following definitions in the appropriate alphabetical order:

**NZBN** means New Zealand Business Number;

**related company** has the meaning given in section 2(3) of the Companies Act 1993;

*Note: NZBN is the abbreviation used in the New Zealand Business Number Act 2016.*

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

(1) The existing content of clause 5 is to be shown as subclause (1).

(2) The following new subclause is to be inserted into clause 5:

(2) A credit reporter must not be directly or indirectly involved in any understanding, arrangement, structure or agreement with a related company (**Arrangement**) where:

(a) the purpose or effect of the Arrangement is to circumvent the application of the Code on an activity being undertaken by the related company; or

(b) the related company is carrying out an activity facilitated by the Arrangement that would be a breach of the Code if the related company was a credit reporter.

*Note: A definition of 'related company' is inserted in clause 5.*

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

Rule 2(2) is amended by inserting the following paragraph:

(da) that the information collected is necessary for the purposes of:

(i) undertaking pre-screening in accordance with Schedule 9; or

(ii) undertaking tracing in accordance with Schedule 10;

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

(1) The existing content of rule 4 is to be shown as subrule (1).

(2) The following new subrule is to be inserted into rule 4:

(2) A credit reporter must not bundle a request for consent to an additional unrelated use or disclosure of credit information into application processes for:

(a) access to credit information under rule 6;

(b) correction to credit information under rule 7; or

(c) suppression of credit information under rule 11.

*Note: The clause would prohibit, for example, requests for individuals to consent to marketing or for disclosure of details to a third party such as a 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. The proposed new clause 5(2) would in addition prohibit arrangements that seek to circumvent the rule through the use of related companies.*

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

Rule 6 is amended by inserting the following new subrule:

(1A) Where, as part of its business of reporting to other agencies on the creditworthiness of individuals a credit reporter usually generates for those other agencies a general credit score or scores from credit information it holds or has access to, the credit reporter must generate a credit score or scores on the same basis for inclusion with information to which the individual concerned is given access under subrule (1)(b).

*Note: This clause makes clear that if the credit reporter is in the business of creating and selling to third parties a rating that characterises the creditworthiness of the individual concerned the individual is entitled to see that rating.*

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

(1) Subrule 6(5)(b) is amended by inserting at the start of the paragraph the following:

subject to subrule (5A),

(2) Rule 6 is amended by inserting the following new subrule:

(5A) On receiving an access request under rule 6, a credit reporter must, as soon as reasonably practicable, and in any case not later than 10 working days after the day on which the request is received, give or send to the requester a response to the request.

*Note: This clause reduces the outer time limit for giving access from 20 to 10 working days.*

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

In subclause (1A) delete "1996" and replace with "1995".

*Note: The existing reference to the title of the Births, Deaths, Marriages, and Relationships Registration Act cited the wrong year.*

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

(1) Subrule 10(1B) is omitted and replaced with the following:

(1B) Except as provided in Schedule 9, a credit reporter must not use credit information for any purpose related to marketing or direct marketing, including without limitation, any of the following:

(a) facilitating of direct marketing by a subscriber;

(b) developing a tool or service for subscribers, or providing such a tool or service to subscribers, for the purpose of:

(i) assisting subscribers to assess the likelihood that an individual might accept an offer of credit or insurance in relation to credit, or variation of credit or insurance; or

(ii) otherwise to target individuals for offers of credit or insurance.

(2) Subclause (1C) is deleted.

*Note: A 'no marketing use of credit information' rule is a feature of both Australian and NZ credit reporting law. Replacement subclause (1B) combines the existing text of subclause (1B), with its broad prohibition in the principal clause and paragraph (a), with new material in paragraph (b) that is summarised from Australian code requirements. Note that proposed new clause 5(2) also prohibits the use of arrangements with related companies to circumvent the 'no marketing use' rule. Although subclause (1C) is deleted it is replaced, below, in substantially the same form in a new schedule 9.*

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

Rule 10 is amended by inserting the following new subrule:

(1C) A credit reporter may use credit information in accordance with Schedule 10 for tracing purposes to facilitate the return of money owed to individuals.

*Note: The new provision for unclaimed money tracing appears in rule 10, rather than rule 11, as the scheme is structured in such a way that any new address revealed through the process is used by the credit reporter on behalf of the subscriber but not disclosed to the subscriber.*

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

Subrule 11(1) is amended by inserting the following paragraph:

(da) the disclosure is of an initial request by an individual for suppression under Schedule 7 and is to another credit reporter for the purpose of facilitating an initial suppression by that other credit reporter;

*Note: See also proposed amendment to Schedule 7 set out below.*

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

Clause 7(2)(b) is amended in the following way:

Delete: 5 working days  
Replace with: 3 working days

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

Subclause 9(3) is amended by deleting the word 'and' from paragraph (a) and adding the following paragraph:

; and  
(c) include a statement from the independent person confirming their independence, summarising their expertise and outlining their involvement with the assurance process and preparation of the report.

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

In the entry corresponding to **previous enquiry record**:

Delete: 5 years

Replace: 3 years

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

Schedule 3 is amended by inserting after clause 9:

***Subscriber obligation to provide quotation enquiries if offering risk-based credit products***

10. Where the subscriber is offering risk-based pricing for a credit product (including insurance in relation to a credit-related transaction) that involves obtaining a credit report to fix the price offered to particular individuals depending upon their creditworthiness, the subscriber must:

(a) provide the option for the individual to obtain a quotation for the cost of the credit product; and

(b) ensure that it nominates quotation for the cost of credit as the enquiry purpose in accordance with clause 4.

*Note: Rule 11(2)(b)(i)(B) already provides for quotation enquiries. Rule 10(3)(a) prohibits their use in constructing credit reporter created credit scores.*

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

Clause 9 of Schedule 3 is replaced with the following:

***Additional subscriber obligations: pre-screening of direct marketing lists***

9. Where the subscriber seeks to have a credit reporter pre-screen a direct marketing list under Rule 10 (1B), the subscriber must ensure that it both: (1) is eligible under condition 1 of Schedule 9; and (2) meets all applicable requirements under conditions 2 and 3.

*Note: This substitutes new code references.*

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

Insert the following additional clause in Schedule 3:

***Additional subscriber obligations: tracing to facilitate the return of money owed to individuals***

10. Where the subscriber seeks to have a credit reporter use credit reporting information under rule 10(1C) for tracing purposes to facilitate the return of money owed to individuals, the subscriber must ensure that it meets all applicable requirements of Schedule 10.

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

The Summary of Rights in Schedule 4 is amended as follows: In the second sentence under the subheading 'Getting the information':

Delete: If you want the information quickly (within 5 working days) you may need to pay a reasonable charge but otherwise no charge may be made.

Replace with: If you want the information quickly (within 3 working days) you may need to pay a reasonable charge – not exceeding \$10 - but otherwise no charge may be made.

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

(1) Clause 1 of Schedule 6 is amended in the following manner:

Delete: Paragraph (c).

Replace with: (c) a statement from the independent person as required by clause 9(3)(c) above.

(2) Clause 2 of Schedule 6 is amended by deleting 'and' after paragraph (c) and inserting the following new paragraph:

; and

(e) ensured that access agreements under Schedule 3A were in place before disclosing credit information.

(3) Clause 3 of Schedule 6 is amended in the following manner:

(a) In paragraph (g), replace 'rule 10(1C)' with 'Schedule 9'.

(b) Delete 'and' after paragraph (k) and insert the following new paragraph:

and;

(m) the requirements on both the subscribers and the credit reporter under Schedule 10 in relation to tracing individuals were met.

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

Schedule 7 is amended in the following manner:

(a) Insert new clause:

1.4 To simplify the process for individuals, credit reporters may establish and maintain an arrangement for notifying other credit reporters of any initial requests received. Such an arrangement may include agreement to accept that an initial request to one credit reporter will be treated as being an initial request to all credit reporters participating in the arrangement. Such arrangements must remain consistent with this Schedule and be operated in a way that the individual and participating authorities are each clear about their responsibilities, the effect of the arrangement on the request and of the resultant suppressions.

(b) Insert new paragraph into clause 2.3:

(c) provide the individual with the option to opt out of receiving notification from the credit reporter of the imminent expiry of the suppression.

*Note: Individuals may find the reminder useful and it will allow them to review their position with respect to any ongoing risk of fraud. However, not every individual will wish to receive such a notification and so an opt-out is provided.*

(c) Insert new clause:



2.7 Subject to 2.3(c), a credit reporter must notify the individual of the imminent expiry of the suppression not less than 5 working days before the end of the extended suppression period.

(d) Insert new paragraph into clause 8.1:

(e) any arrangement between credit reporters of the type anticipated in clause 1.4 for sharing and acting upon initial requests.

## **25. New Schedule 9 (Pre-screening)**

Insert the following new Schedule 9:

### **Schedule 9**

#### **Pre-screening to remove names from subscriber marketing lists**

*(Rule 10(1B))*

A credit reporter may use credit information to remove names from a direct marketing list supplied by a subscriber if the following 4 conditions are all met:

#### **Condition 1: The subscriber**

The subscriber must be a credit provider that is either:

- a) an externally regulated credit provider; or
- b) a member of a self-regulatory association that binds members to responsible marketing practices.

*Note: The NZ Marketing Association would be an example of an association that would meet the requirements of (b). The inclusion of (b) widens the scope of subscribers that may use the prescreening facility from that currently allowed for in rule 10(1C).*

#### **Condition 2: The list**

The list submitted to the credit reporter for pre-screening must:

- a) be warranted by, or on behalf of, the subscriber to have been compiled in compliance with the Act;
- b) omit the names of any individuals who have been registered with the New Zealand Marketing Association indicating that they do not wish to receive unsolicited marketing; and
- c) be used only for direct marketing related to the provision of credit by the subscriber.

*Note: The NZ Marketing Association operates a list warranty service that provides one means of meeting the requirements of (a). In relation to (b), the NZ Marketing Association's Name Suppression Service is available to both members and non-members.*

#### **Condition 3: Criteria for removal**

The removal of names is based upon criteria agreed in advance between the credit reporter and the subscriber with the purpose of excluding individuals who represent an adverse credit risk and would be ineligible to receive the direct marketing.

#### **Condition 4: Assurance of limitation of use**

The credit reporter has a process in place to ensure that:

- a) the requirements of condition 2(a) and (b) are met;
- b) information derived from the list is not retained or used by the credit reporter for the purpose of credit reporting; and
- c) the list, after the removal of names, is:
  - i. used only for the purpose of the direct marketing permitted under clause 2(c); and
  - ii. not disclosed directly to the subscriber.

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

Insert the following new Schedule:

**Schedule 10**

**Tracing to facilitate the return of money owed to individuals**

*Rule 10(1C)*

A credit reporter may use credit information it holds to seek to trace an individual to facilitate the return by that subscriber of money owed to that individual if the following conditions are met.

**Condition 1: Eligible subscribers**

Any subscriber may request a credit reporter to seek to trace an individual to facilitate the payment by that subscriber of money held by the subscriber and owed to that individual. Intermediaries that do not hold the individual's money, but instead seek to obtain a share of the money owed to the individual, are not eligible to request tracing under this schedule.

*Note: Subscribers must be subject to certain subscriber obligations pursuant to Schedule 3.*

**Condition 2: Permitted purpose**

Tracing permitted under this schedule is for the sole purpose of facilitating the return by a subscriber of money owed by that subscriber to an individual.

**Condition 3: Subscriber to take steps before requesting tracing**

Before submitting any request to a credit reporter to trace an individual under this schedule, the subscriber must have taken all reasonable steps to trace the individual using information held by the subscriber and publicly available information. As a minimum, a subscriber must have written to the individual at the last known address and may not request that a credit reporter trace an individual until at least 3 months after the last contact with that individual.

**Condition 4: Matching of submitted details with credit information**

The request by the subscriber will be accompanied by a name and identifying information held by the subscriber in relation to the individual to be traced. Matching of the details supplied against the information held by the credit reporter will be undertaken by the credit reporter.

*Note: In other words, tracing is not to be undertaken in the same way of a regular credit check is typically now made whereby the subscriber simply enters details at their own premises on a*

*search screen connected to the credit reporter's system. The process involved submission of details by the subscriber and all subsequent steps are entirely under the control of the credit reporter on its premises.*

Any new address produced by the matching process that is likely to relate to the individual is to be handled in accordance with condition 5. In any case that fails to produce a new address, the credit reporter is permitted to report back to the subscriber to confirm that there was no match or that the process confirmed information submitted in full or part.

*Note: Rule 8(2) sets out general obligations on credit reporters to ensure reliability of identity matching.*

**Condition 5: Handling of new or more recent addresses revealed by a useful tracing match**

The credit reporter must not disclose any new or more recent addresses directly to the subscriber but may instead send, or arrange to send, a notice prepared by the subscriber to the address revealed by the match. That notice will explain the situation and invite the recipient to respond directly to the subscriber (i.e. responses should not be routed through the credit reporter). The notice should explain how the individual's contact details have been obtained and confirm that they have not been released directly to the subscriber.

*Note: This condition ensures that individuals' remain in control over release of their new address details.*

**Condition 6: Assurances**

The credit reporter must have a process in place to ensure that the conditions on both subscriber and credit reporter are met.