

## Note highlighting principal changes made to the earlier notified proposed Amendment No 14 to the Credit Reporting Privacy Code as finally issued

Office of the Privacy Commissioner, 6 November 2018

A proposed Amendment No 14 ('the proposed Amendment') to the Credit Reporting Privacy Code 2004 was publicly released on 20 July 2018 for public submission. Changes were made to the proposed Amendment when the Commissioner finally issued the amendment ('the issued Amendment') following the submission process. This note explains the changes.

### Submissions

Twelve written submissions were received by, or shortly after, the closing date of 25 August. Submitters that wished to be heard in person by the Commissioner in relation to their submissions were given the opportunity at public hearings held in October. Four submitters to give oral evidence in support of their submissions. The written submissions and transcripts of the public hearing are available at [www.privacy.org.nz](http://www.privacy.org.nz).

### Principal substantive changes (summary)

Proposed Amendment	Issued Amendment
Single commencement date: 1 April 2019 (Approximately 4 months lead in time)	Commencement in 3 main stages: April, July, October 2019 (Approximately 4-10 months lead in time)
Small credit defaults from \$100-\$125 removed from system on 1 April 2019	Small credit defaults from \$100-\$125 to gradually drop out of the system over 5 years from 2019-2024
3-year maximum reporting period for previous enquiries	4-year maximum reporting period for previous enquiries
Assurance review and reporting strengthened in relation to role of independent person and by requiring reports in relation to: <ul style="list-style-type: none"> <li>• Access agreements</li> <li>• Tracing requirements.</li> </ul>	Assurance review and reporting strengthened in relation to role of independent person and by requiring reports in relation to: <ul style="list-style-type: none"> <li>• Access agreements</li> <li>• Related company arrangements</li> <li>• Access procedures with agents</li> <li>• Tracing requirements</li> <li>• Transitional obligations.</li> </ul>

### Clause by clause changes from notified to issued Amendment (table)

Clause No.	Clause heading Explanation (where change made) Change/No change
1.	<b>Title</b>  <i>No change.</i>
2.	<b>Commencement</b> Industry requested a longer lead in time but expressed comfort with multiple dates for commencement if it meant they could retain data for longer even though multiple dates added complexity. Decision taken to allow an extra 3 months lead in time in relation to clauses that involve notable systems changes by credit reporters (i.e. about 7 months in total) and a further 3 months where systems changes may also be required by subscribers (i.e. about 10 months in total). Provision made for 'grandfathering' of existing small credit defaults and to authorise systems testing in advance of general commencement (see Schedule 8).

	<p><b>Change:</b> General commencement date of 1 April 2019 to be retained but with later commencement for several clauses, namely:</p> <ul style="list-style-type: none"> <li>clauses 10, 11, 16 and 22: postponed to 1 July 2019; and</li> <li>clauses 5, 18 and 19: postponed to 1 October 2019.</li> </ul> <p>New schedule 8 (clause 25) comes into force earlier (10 December 2018) to allow systems testing in advance.</p>
3.	<p><b>Amendment to Clause 3 (Review clause now spent)</b></p> <p><b>No change.</b></p>
4.	<p><b>Amendment to Clause 5 (NZBN as supplementary identification information)</b></p> <p>Several submitters suggested that the NZBN be recategorized as general identification information allowing the information both to be displayed in credit reports and to be used as a factor in assessing creditworthiness. However, such an approach would go beyond the case for inclusion established in the recent review and would require further examination and justification. Such a further change could be considered at a future point with the benefit of experience with operating NZBN as supplementary identification information.</p> <p><b>No change</b> (other than delayed commencement to 1 October 2019).</p>
5.	<p><b>Amendment to clause 5 (Updating small overdue payment threshold in definition of debtor credit default)</b></p> <p>Industry wanted clarity in relation to the effect of the raised threshold and to retain small credit defaults already in the system. Industry also wanted a longer lead in given systems changes to both credit reporters and credit providers. A submitter highlighted that a corresponding change also required for guarantors.</p> <p><b>Changes:</b> (1) Provided that existing small debtor defaults that are already listed at time of commencement that are above the existing threshold but below the new threshold (i.e. \$100-\$125) can continue to be reported until the maximum reporting period is reached (i.e. 5 years). (2) Corresponding changes in relation to guarantor credit defaults. (3) Small clarification to heading. (4) Delayed commencement to 1 October 2019.</p> <p>Note: These changes are implemented in both clause 5 and a new clause 25 (utilising Schedule 8).</p>
6.	<p><b>Amendment to Clause 5 (New definitions)</b></p> <p><b>No change.</b></p>
7.	<p><b>Amendment to clause 5 (New subclause on related companies)</b></p> <p>Small clarifications made to the language in paragraph (b) to: (1) align language to more usual 'use and disclosure' in preference to 'activity'; (2) to add 'credit information sourced from the credit reporter' to clarify the scope. Having heard oral evidence on related companies, it was decided that it was desirable to add express obligations in assurance reporting relating to dealings with related companies and agents acting in access requests (clause 23).</p> <p><b>Change:</b> No substantive change but drafting changes to paragraph (b).</p>
8.	<p><b>Amendment to Rule 2 (Collections involved in permitted services)</b></p> <p><b>No change.</b></p>
9.	<p><b>Amendment to Rule 4 (Unrelated authorisations not to be bundled with statutory processes)</b></p> <p>A submitter suggested that the meaning 'unrelated consents' be clarified to allow credit reporters to update their records on an access request with confirmed identification information.</p> <p><b>Change:</b> (1) Terminology: replace 'consent' with more usual 'authorisation'. (2) Provide that the clause does not prevent a credit reporter from seeking authorisation from a requester to confirm or update their details on the credit reporter's records (but may not make it a condition of access).</p>
10.	<p><b>Amendment to Rule 6 (Access to credit score)</b></p>

	<b>No change:</b> Delayed commencement to 1 July 2019.
11.	<p><b>Amendment to Rule 6 (Outer time limit for access to credit information)</b> Clarified that if an extension of time is justified that notice of the extension be given during the 10-day period for giving access.</p> <p><b>Changes:</b> (1) New subrule (5B) requires that any notice of extension of time must be given within the new 10 working day outer limit for access requests. (2) Delayed commencement to 1 July 2019.</p>
12.	<p><b>Amendment to Rule 10 (Correction of error)</b></p> <p><b>No change.</b></p>
13.	<p><b>Amendments to Rules 10 and 11 (Prohibition on use of credit information for marketing or to facilitate marketing by subscribers)</b> The Code uses the term 'direct marketing' in its current prohibition. The phrase 'marketing or direct marketing' is used in the Amendment. The change gives effect to recommendation 10 in the review report which sought to make the prohibition of any use of credit information by a credit reporter 'to facilitate marketing' even clearer, and recommendation 6 in the miscellaneous issues report, to tighten up on 'tools' provided by credit reporters to facilitate subscribers' direct marketing. Marketing practices in the internet and social media blur the distinctions between direct marketing and advertising and the broader phrase will be helpful in making the prohibition clearer. The full 'marketing or direct marketing' phrase from the primary obligation in subrule 10(1B) is carried into the into the first example at paragraph (a) and, expanding the clause to rule 11, in a corresponding change to rule 11(3)(b).</p> <p>Evidence at the oral hearings suggested that arrangements with credit reporters to facilitate other entities' marketing requirements may potentially go beyond arrangements with related companies and subscribers to include non-subscribers and entities presenting themselves as agents for individuals. To seek to close loopholes that may undermine the effectiveness of the prohibition against facilitating subscribers' marketing the phrase 'or any other agency' is added in both rules 10 and 11.</p> <p><b>Changes:</b> In both rule 10 and 11 prohibitions on direct marketing: (1) Adopt the phrase 'marketing or direct marketing'. (2) Add 'or any other agency' to facilitation clauses.</p>
14.	<p><b>Amendment to Rule 10 (Use of credit information for tracing to facilitate return of money owed to individuals)</b></p> <p><b>No change.</b></p>
15.	<p><b>Amendment to Rule 11 (Facilitation of suppression across multiple credit providers)</b> No substantive change but one grammatical correction.</p> <p><b>Change:</b> Insert 'that' at start of new text.</p>
16.	<p><b>Amendment to clause 7 (Permissible charges for expedited access)</b></p> <p><b>No Change</b> (other than delayed commencement to 1 July 2019).</p>
17.	<p><b>Amendment to clause 9 (Independent person's role in assurance review and report)</b></p> <p><b>Recommendation:</b> No change.</p>
18.	<p><b>Amendment to Schedule 1 (Reducing maximum reporting period for previous enquiries)</b> Industry opposition was focused upon the detrimental effect of reduced information on assessment of credit risk. This is principally an issue for any subscriber dependent upon the 'negative-only' service, particularly in relation to individuals for whom no other information is known. This group continues to diminish as credit providers join the CCR environment when the loss of enquiry information would have comparatively little impact.</p>

	<p>Noting the concerns raised the maximum reporting period will be lowered only to 4 years rather than 3 years. This reflects an ongoing transition to the CCR system. As the comprehensive system matures and participation grows the significance of previous enquiry information will diminish further. It will be useful at a future point to review in depth various aspects of the ongoing negative-only system in the context of an available and mature CCR system. If there were to be such a review the place of enquiry data could be further considered.</p> <p><b>Changes:</b> (1) Maximum reporting period for previous enquiries to be 4 rather than 3 years. (2) Delayed commencement to 1 October 2019.</p>
19.	<p><b>Amendment to Schedule 3 (Subscriber obligation to provide quotation enquiries if offering risk-based credit products)</b></p> <p><b>Non-substantive changes:</b> (1) Clarification to the heading to refer to 'pricing'. (2) Minor clarifications in wording. (3) Delayed commencement to 1 October 2019.</p>
20.	<p><b>Amendment to Schedule 3 (Subscriber agreement requirements for pre-screening)</b></p> <p><b>No change.</b></p>
21.	<p><b>Amendment to Schedule 3 (Subscriber agreement requirements for tracing in relation to unclaimed monies)</b></p> <p><b>No change.</b></p>
22.	<p><b>Amendment to Schedule 4 (Reflecting changes to access entitlements in summary of rights)</b></p> <p><b>No change</b> (other than delayed commencement to 1 July 2019).</p>
23.	<p><b>Amendment to Schedule 6 (Reflecting code changes in assurance reporting)</b></p> <p>Following consideration of the oral evidence in relation to related parties and entities acting as agents in access requests: Add explicit requirements in the assurance review and reporting processes concerning policies and procedures for release of information to those types of entities.</p> <p>The clause also makes clear that procedures in dealing with agents in access requests must seek to ensure that the marketing prohibitions are not circumvented through the use of bundled authorisations.</p> <p><b>Changes:</b> Include new text touching upon assurance obligations relating to (aa) policies on related parties and (bb) procedures regarding release of information on access requests.</p>
24.	<p><b>Amendment to Schedule 7 (Suppression of credit information where individual may be a victim of fraud)</b></p> <p><b>No change.</b></p>
25.	<p><b>New Schedule 8 (transitional arrangements associated with Amendment No 14)</b></p> <p><b>Change:</b> New transitional arrangements focused upon systems testing, small credit defaults and assurance reporting.</p>
26.	<p><b>New Schedule 9 (Pre-screening)</b></p> <p><b>No change.</b></p> <p>Note: Clause renumbered.</p>
27.	<p><b>New Schedule 10 (Use of credit information for tracing to facilitate the return of money owed to individuals)</b></p> <p><b>No change.</b></p>

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