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31 October 2012

Office of the Privacy Commissioner

By email: code@privacy.org.nz

To whom it may concern

PROPOSED AMENDMENT NO 7 TO CREDIT REPORTING PRIVACY CODE 2004

Thank you for the opportunity to comment upon the proposed amendment no 7 to the Credit Reporting Privacy Code ("the Code").

ASB Bank Limited ("ASB") is one of the largest providers of financial services in New Zealand. It is wholly owned by the Commonwealth Bank of Australia in Australia.

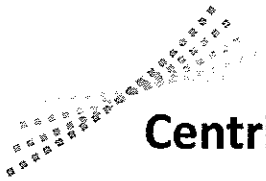
Overall, ASB supports the proposed amendment no 7 to the Code. In particular, we support the proposed amendment to Rule 11 (use of credit information for AML/CFT identity verification) as it will help credit providers meet their new obligations under the AML/CFT legislation. However, we believe that the amendment to Rule 11(2)(b)(i) should specify what credit information may be disclosed for the purposes of verifying the identity of the individual.

Credit information, as defined by the Code in Part 1, section 5 includes both personal identification information (subsections (a) – (c)) and credit history details such as credit applications, accounts, defaults and non-compliance information (subsections (d) – m)). The information contained in subsections (d) – (m) is not required for the purposes of verifying identity. There is a risk that such information, once obtained, could be used directly or indirectly in ways not related to AML/CFT purposes. This risk will be mitigated by limiting the credit information that may be obtained for the purposes of verifying identity to subsections (a) – (c) of the definition of credit information.

One exception to this limitation for the purposes of the AML/CFT identify verification is the date the individual's credit file was first opened. The purpose of obtaining this information would be to match the length of the credit history to what would be expected from the history and profile provided by the individual. This information could be extracted from the credit account information described in subsection (da)(iv)(A) of the definition of credit information.

Yours sincerely

General Manager Regulatory Affairs



31 October 2012

Office of the Privacy Commissioner
Wellington

Via email: code@privacy.org.nz

PROPOSED AMENDMENT NO7 TO THE CREDIT REPORTING PRIVACY CODE 2004

Thank you for providing Centrix Group Ltd with an opportunity to comment on the Proposed Amendment No 7 to the Credit Reporting Privacy Code 2004. We provide our comments below.

Amendments to clause 6: Rules 10 and 11 (serious threat)

We support this amendment to ensure consistency with the Privacy Act, as well as the proposed commencement date of this amendment.

Amendments to clause 6: Rule 11 (disclosure of credit information for Anti-Money Laundering and Countering Financing of Terrorism Act 2009 identity verification)

We support this amendment, which will assist those credit providers who will be governed by the new AML/CFT legislation to meet the requirements of that legislation. We do not consider the privacy interests of individuals to be unduly harmed by this proposed change.

Amendments to clause 6: Rule 10 (use of AML/CFT identity verification enquiry in credit score)

Given the purpose of the disclosure, we consider it is appropriate that this type of enquiry is not used in creating a credit score.

Amendment to schedule 4 (summary of rights)

We support this amendment which clarifies the position.

Amendment to Schedule 8 (transitional arrangements)

Given the delay in the commencement of comprehensive reporting, we understand the reasons for the proposed amendment, however it is the credit providers that will be affected by this proposed amendment.

Please let me know if you have any questions as we are happy to assist further.

Yours sincerely

Executive Director

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Phone: +64 9 9669706 ▫ Fax +64 9 5795096 ▫ Email admin@centrix.co.nz

Financial Markets Authority, Internal Affairs and Reserve Bank joint feedback to Privacy Commission on proposed amendment No 7 to the Credit Reporting Privacy Code

The joint supervisors have considered the proposed amendments and documents. If the proposal is accepted it will permit credit reporters, such as Veda, to disclose credit information to credit providers for the purpose of identity verification under the AML/CFT Act. This is regardless of whether the individual is applying for credit.

In general, the proposed amendments are supported if the purpose is only for CDD required by the AML/CFT Act and is authorised by the individual concerned, consistent with the principle of, and added to the permissible grounds under Rule 11(2)(b). It is also important to ensure that the Credit Reporting Privacy Code does not suggest a level of compliance with the AML/CFT Act that has not been agreed or tested.

At the moment the proposal only applies to credit providers who have a pre-existing relationship with the credit reporters. This will limit the access for many of the organisations captured by the AML/CFT Act. If the amendment were to change from credit providers to reporting entities this would broaden the access to the information, allowing more organisations the option to use the services of credit reporters for the purpose of identity verification under the AML/CFT Act.

There is a need to minimise any potential for misuse of information which could result from increased access to credit information and we would be interested in how this would be managed. Another issue is the affect of the check and whether it would leave a 'footprint' on the individual's credit history that may result in some actual or perceived change to the individual's credit rating.

The joint supervisors would also be interested in the type of communications and messages you will employ to get the information out to the public.

D&B response: Proposed Amendment No 7 to Credit Reporting Privacy Code 2004

Dun & Bradstreet (D&B) welcomes the opportunity to provide its views on the proposed amendment no.7 to the *Credit Reporting Privacy Code 2004*. D&B's submission responds primarily to two issues raised in the Information Paper:

1. disclosure of credit information for AML/CFT Act identity verification; and
2. continuing the obligation on credit providers to notify existing customers.

Disclosure of credit information for AML/CFT Act identity verification

D&B strongly supports initiatives which will achieve better compliance outcomes for reporting entities under the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* (AML / CFT Act), whilst maintaining appropriate safeguards to protect consumer privacy. Accordingly, D&B supports the proposal to permit credit reporters to disclose credit information for the purpose of identity verification and makes three recommendations:

1. That electronic verification (EV) inquiries are listed on an individual's credit file in a manner which is only viewable by the individual;
2. That the result of an inquiry is not noted on an individual's file;
3. That all industries required to comply with the AML / CFT legislation, including non-traditional users such as online gaming, are able to access bureau data for identity verification purposes.

Electronic verification success rates – the value of bureau data for AML / CFT compliance

In June 2011, the Australian AML-CTF Act was amended to allow the use of credit bureau information as an additional data source for AML identity verification purposes. Prior to this amendment, a Privacy Impact Assessment (PIA) was conducted on behalf of the Commonwealth Attorney General's Department, examining how the use of credit reporting information to confirm identity details (including date of birth) would affect the efficiency of electronic verification services. The assessment noted that:

> *While estimates varied, most reporting entities and EV service providers anticipated that access to information held by credit reporting agencies would result in significant increases in confirming identity with the average success rates ranging from 60% - 80% depending on the products and organisations concerned.*

D&B analysis supported the PIA's finding, revealing that credit bureau data (name, date of birth and address details only) can improve AML compliance. The analysis applied the EV data sets that were available for AML compliance at that time to a reporting entity's customers to reveal that:

- 7% were fully compliant
- 34% were largely compliant
- 16% were partially compliant
- 12% were non-compliant
- 32% had no match

When credit bureau data (name, date of birth and address details) was applied to the reporting entity's customer base, an additional 36% of customers achieved a level of AML compliance. This occurred because D&B was able to match:

- 37% of the largely compliant customers
- 41% of the partially compliant customers

- 39% of the non-compliant customers
- 40% of the 'no match' customers

This analysis – which was conducted on a sample of approximately 4,000 customer records – revealed the value of credit reporting data in assisting reporting entities to achieve compliance under the AML / CTF Act. On this small sample alone, an additional 1,500 customers were able to achieve AML compliance through the use of credit bureau data.

In practice, the uplift has been even more significant than initial research suggested. Since the inclusion of credit bureau information in Australia, D&B clients have experienced uplifts of up to 50 percent in the number of customers achieving 'safe harbour' verification levels and match rates of up to 90 percent complying with minimum know-your-customer (KYC) standards. This has resulted in significant efficiency gains for the industry by minimising drop-off rates as well as providing consumers with greater access to online services.

Dun & Bradstreet believes that similar results could be achieved in New Zealand and accordingly supports the proposal to permit credit reporters to disclose credit information for the purpose of identity verification.

Privacy implications associated with the use of credit information for AML / CFT compliance

Recommendation 1: That EV inquiries are listed on an individual's credit file in a manner which is only viewable by the individual.

Recommendation 2: That the result of an inquiry is not noted on an individual's file.

Experience in Australia has demonstrated that a credit bureau-based electronic verification (EV) solution can be managed in a manner that appropriately addresses privacy issues. Accordingly, D&B believes that amending the CRPC to allow for the use of credit bureau data for AML / CFT purposes would have similarly limited, yet manageable impacts on consumer privacy whilst delivering significant public policy benefits.

D&B recommends that EV inquiries are listed on an individual's credit file in a manner which is only viewable by the individual. The result of the inquiry should not be noted on the file. We make this recommendation for two key reasons:

1. Compliance with the AML | CFT legislation is risk based. Accordingly, reporting entities are afforded the flexibility to determine the level of activity required to achieve compliance with the legislation. Therefore, the result of a bureau identity inquiry would not have a standard outcome for every organisation.

   For example, if a non-binary scoring system was used as a matching system for bureau identity data, a score of 100 may equate to compliance for one firm while for another it may indicate that further investigations are required to confirm the individual's identity and meet the obligations set out in the Act. Consequently, the listing on the consumer's credit file as to the outcome of the EV inquiry provides minimal comparability and therefore minimum valuable information (and in fact could lead to a significant level of confusion).

   Therefore, listing the outcome of the inquiry does not improve an individual's control over their personal details nor does it provide them with information that would allow them to follow up any problems.

2. In the instances where an individual's details do not match with a bureau file and other actions are taken to verify that person's identity, listing the result on the file could result in un-due concern for the individual. The listing would appear on the individuals file as a "no match" even though it may have been possible to confirm the person's identity via other means.

The amendment proposes to prohibit the use of EV enquiries in credit scoring – D&B supports this proposal.

Allowing non-traditional channels (i.e. online gaming) to access credit bureau data

> ***Recommendation 3: That all industries required to comply with the AML / CFT legislation, including non-traditional users such as online gaming, are able to access bureau data for identity verification purposes.***

Proposed Amendment No 7 to the *Credit Reporting Privacy Code 2004* suggests limiting the amendment to credit providers.

In Australia, all industries that are required to comply with the AML / CTF legislative requirements, including non-traditional users such as online gaming, are able to access credit bureau data for the purposes of identity verification. A 2011 AUSTRAC study 'Money Laundering in Australia' identified the gaming sector as a significant money laundering channel, with online gaming representing a considerable part of this. Dun & Bradstreet is of the view that the situation in New Zealand would be similar and accordingly, advocates that non-traditional channels are included in the sectors able to access bureau data for identity verification purposes under the AML / CFT Act.

Continuing the obligation on credit providers to notify existing customers

D&B strongly supports initiatives which will aid consumer education and awareness, particularly during the transition to comprehensive reporting. Accordingly, D&B supports the extension of clause 4[1] through to 31 March, 2017 and makes one additional recommendation:

1. That appropriate information is provided to an individual if an application for credit is refused.

Notifying individuals of their right to access their credit report following a credit decline

> ***Recommendation 4: That individuals' are notified of the reason for a credit decline and, of their right to obtain a copy of their credit report.***

Research conducted by D&B reveals that a significant portion of New Zealanders are unaware they have a credit record. In addition, there is a lack of understanding regarding the data elements a credit report contains. Accordingly, D&B believes that moves to encourage individuals to obtain a copy of their credit report will have a positive impact on education and awareness, and a flow on impact to financial literacy.

The Australian Privacy Act 1988 (section 18M) stipulates that when a credit application refusal is based wholly or partly on information derived from a credit report, a credit provider must notify an individual in writing of that fact. In doing so, the credit provider must provide the individual with the following details:

- the name and address of the credit reporting agency; and
- notification that the individual has the right to access to their credit information file from the credit reporting agency.

D&B supports a similar approach in New Zealand to support the Commissioner's intentions to maintain openness and accountability, as well as improving education and awareness of the system.

[1] Clause 4 requires credit providers to notify existing customers of their intention to list credit account information with credit reporters.

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New Zealand

Genesis Power Limited
trading as Genesis Energy

Fax: 04 495 6363

23 October 2012

Office of the Privacy Commissioner
PO Box 466
AUCKLAND

By email: Code@privacy.org.nz

Support proposed amendment

Genesis Power Limited, trading as Genesis Energy, welcomes the opportunity to provide a submission to the Privacy Commissioner on the consultation paper "Proposed Amendment No. 7 to the Credit Reporting Privacy Code 2004" dated 19 September 2012.

We support the proposed amendment to the Credit Reporting Privacy Code 2004 because it permits the disclosure of credit information for the purpose of Anti-Money Laundering (AML) and Countering Financing of Terrorism (CFT) identity verification. The proposed amendment is pragmatic and allows for a more streamlined AML regime between New Zealand and Australia.

If you would like to discuss any of these matters further, please contact me on

Yours sincerely

Senior Regulatory Advisor

From:
Sent: Monday, 29 October 2012 1:55 p.m.
To: Codes Privacy
Subject: Credit Reporting Privacy Code Ammendment # 7 (proposed)

Dear Privacy Commission,

I wish to lodge the following submission regarding Credit Reporting Privacy Code proposed amendment #7.

My concern is that the credit checks done in relation to customer verification under the counter terrorism law, which are not credit related, may risk people being declined credit for having "too many inquiries" on their credit record, something I have been a victim of myself.

Now I am aware that the proposed code amendment has the protection of credit scores can't use such inquiries in their decisions, but in the real world, I am sure that when many firms come to make the decision to spend tens of thousands of dollars in changing their credit scoring software, some firms will just chose to ignore making the changes and save the money instead.

And this is even more likely given the fact that no one will be able to prove they have not done so, as they will undoubtedly claim that their credit scoring system is commercially sensitive information.

Surely the Privacy Commission must accept that this might happen. No doubt the Privacy Commission has upheld complaints against some of the biggest companies in NZ, for breaching even the basics of the privacy law, such as not giving access to records. To then trust these firms to comply with this future law change, that seems impossible to later verify if it has been done, seems to be unwise.

The obvious solution to this problem, and which will give the NZ public 100% protection is simply that these verification inquiries just do not show as an enquiry on subsequent credit checks. In the United States they can do this, by either having a "soft pull" or "hard pull" of a credit record, with a soft pull not showing on one's credit record.

Something I think Veda already can do already, as for example I don't think like police inquiries show on people's credit records. In the unlikely event that Veda claim they don't currently do this, I am sure they can change their systems to do so with little effort and expense.

Surely the Commission should consider implementing an amendment to the Code that gives people 100% protection.

MINISTRY OF JUSTICE
Tāhū o te Ture

Proposed amendments to the Credit Reporting Privacy Code 2004

The Ministry of Justice (the Ministry) has reviewed the proposed amendments to the Credit Reporting Privacy Code (the Code) as outlined in Amendment No 7. Comments are limited to the amendments proposed in clauses 5 and 6 as they relate to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act).

The Ministry of Justice administers the AML/CFT Act. The Act places obligations on financial institutions, casinos and trust and company service providers (collectively referred to as 'reporting entities'). Reporting entities must obtain identity information about their customers (eg. name, date of birth, address) and verify the identity of customers on the basis of documents, data or information issued by reliable and independent sources.

Amendments to clause 6: Rule 10 (use of AML/CFT identity verification enquiry in credit score)

The proposed amendment prevents credit information derived from a customer identity verification enquiry from being used to form an individual's "customer score"; a statistically based rating of the credit default risk of an individual.

The Ministry of Justice supports this amendment. The amendment limits the use of information received through an identity verification enquiry to the purpose for which it was received. The ability for reporting entities to use services provided by credit reporters to meet customer identity verification obligations in the AML/CFT Act should be separate from, and not have the potential to impact on, an individual's credit rating.

Amendments to clause 6: Rule 11 (disclosure of credit information for AML/CFT identity verification)

The proposed amendment creates an additional purpose for which a credit reporter may disclose credit information. The disclosure must be:

- authorised by the individual concerned;
- made to a credit provider, or that credit provider's agent; and
- made for the purpose of verifying the identity of that individual in accordance with the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Authorised disclosure

We note that the proposed amendment provides for disclosure for the purpose of identity verification only where authorised by the individual concerned. We would be interested in further information about how the authorisation is to be obtained and, in particular, whether existing authorisations would be amended to obtain explicit authorisation for the additional disclosure.

Disclosure limited to credit providers or a credit provider's agent

The term "credit provider" in the Code means an agency that carries on a business involving the provision of credit to an individual. According to the proposed amendments, the use of the identity verification services would be limited to either credit providers or their agents. The Ministry supports this amendment.

The Ministry notes that the AML/CFT Act applies to a range of reporting entities including various financial institutions, casinos, and trust and company service providers. Most reporting entities will be required to conduct due diligence on customers.

A reporting entity in the AML/CFT Act that is not a credit provider (or their agent) would not be able to use identity verification services provided by credit reporters. However, the Ministry understands that the Code covers an existing relationship between credit reporters and credit providers. While there may be efficiencies to be gained by extending identity verification services to all reporting entities, this would essentially create a new type of relationship between credit reporters and 'other' reporting entities, which we suggest is beyond the scope of the Credit Reporting Code.

Disclosure of credit information

"Credit information" as defined in the Code, is a broader set of information than identity information required to meet customer due diligence obligations in the AML/CFT Act. The Ministry suggests that for the purpose of Rule 11(2)(b)(i)(C), "credit information" could be limited to information necessary for identity verification purposes. For example, the following identification information:

- full name;
- any alias or previous name;
- date of birth;
- address; and
- any previous address;
- the following supplementary identification information in relation to a driver licence:
    - driver licence number; and
    - driver licence card number.

Commencement of proposed amendments

The amendments in clauses 5 and 6 are proposed to come into force on the same date as obligations in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act). The Ministry supports this approach.

NEW ZEALAND
BANKERS ASSOCIATION

5 November 2012

Office of the Privacy Commissioner
PO Box 446
AUCKLAND 1140

by email: code@privacy.org.nz

Proposed Amendment No 7 to Credit Reporting Privacy Code 2004

Thank you for the opportunity to comment on proposed Amendment No 7 to the Credit Reporting Privacy Code 2004.

NZBA[1] supports the proposal. In particular, we support the proposed amendment to Rule 11, which will assist our members to comply with their new obligations under the AML/CFT legislation by clarifying that it is permissible to use information held by credit reporters for identity verification.

We are pleased that the proposed amendment will align with the approach taken in Australia, which similarly allows for the use of credit reporting data in the manner suggested. NZBA understands that it has been a useful and convenient tool for reporting entities in Australia and members consider it would be equally beneficial in this jurisdiction.

We have two specific submissions to make on the proposed amendment.

First, we consider that the change to Rule 11 should be effective from the date of issue of the proposed amendment, rather than as at 30 June 2013. 30 June 2013 is the effective date under the AML/CFT Act, but credit providers will need to have access to credit reporting data prior to the effective date in order to meet obligations from 30 June 2013.

Secondly, we consider that the proposed amendment to Rule 11 should specify which credit information can be disclosed for identity verification.

"Credit information" is defined broadly in the Credit Reporting Code. It includes both personal identification information (paragraphs (a) to (c) of the definition) and credit history information (paragraphs (d) to (m)). In our view, the information contained in paragraphs (a) to (c) of the definition is all that is required for AML/CFT identity verification. We would suggest that the

[1] See Appendix "About NZBA".

NEW ZEALAND BANKERS ASSOCIATION
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amendment is accordingly limited to credit information to credit information as defined in paragraphs (a) to (c).

Please contact me if you need any additional information.

Yours sincerely

Regulatory Director

Appendix – About NZBA

NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes which contribute to a safe and successful banking system that benefits New Zealanders and the New Zealand economy.

The following thirteen registered banks in New Zealand are members of NZBA:

- ANZ Bank New ZealandLimited
- ASB Bank Limited
- Bank of New Zealand
- Bank of Tokyo-Mitsubishi, UFJ
- Citibank, N.A.
- The Co-operative Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
- JPMorgan Chase Bank, N.A.
- Kiwibank Limited
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited.

RCANZ

Retail Credit Association of New Zealand Inc.

31 October 2012

Credit Reporting Privacy Code Amendment
Office of the Privacy Commissioner
P O Box 466
AUCKLAND 1140

1 Thank you for providing the opportunity to comment on the Proposed Amendment No 7 to the Credit Reporting Privacy Code 2004.

2 The Retail Credit Association of New Zealand Inc (RCANZ) represents the interests of fourteen organisations as detailed on our website www.rcanz.org.nz.

3 Our comments on the issues raised in the paper are as follows.

AML/CFT verification

4 It is proposed that credit providers be permitted to access credit reporting data for the purposes of verifying customers' identity for AML/CFT purposes. This proposal would widen the purpose provisions relating to access, including allowing access where no credit was being sought.

5 We are fully supportive of this change. The ability to use credit reporting data for this purpose assists credit providers, who are reporting entities under this legislation, to meet the new requirements. The benefits for reporting entities relate to possible reduction in legislative compliance costs, they are not centred on pursuit of commercial self interest. We do note that limiting the term used in the amendment to "credit provider", as defined in the Code, does not align with the AML/CFT Act definitions. It is suggested that better alignment should be aimed for in this amendment.

6 The AML/CFT regime essentially imposes law enforcement obligations on financial institutions for reasons that have nothing to do with their core business purpose but rather recognise the pragmatic options for combating money laundering. In this situation it is appropriate for the public good that data that has already been collected and is held by non-reporting entities such as credit reporters might be used for this purpose.

7 Given this we agree that it is fair and reasonable that an electronic footprint of the use of these data bases for AML/CFT ID verification be kept. We also agree that such inquiries should have no connection with credit scoring. They are and should be passive and neutral in terms of the purpose for which credit reports exist and are used.

8 Such an approach would have both the purpose and effect of limiting this wider use of credit reporting data to valid and legitimate law enforcement. It takes nothing else away from the privacy of individuals. The fact that the AML/CFT legislation imposes a risk based approach means that it is up to individual reporting entities to decide the nature and extent of ID verification required as well as the relevance and integrity of the ID data sources available to it for this purpose.

Existing customer notification requirements

9 The current Schedule 8 provisions, that deal with transitional matters relating to the introduction of comprehensive reporting, contain a requirement for credit providers to notify existing customers of their intention to report such data up until 31 March next year. The proposal to extend this requirement until 31 March 2017 is supported by us.

10 It has proved to take longer than expected to complete the business steps needed for make the new regime operational. The extension of time for credit providers to notify existing customers of their intentions to collect and report this information is practical and consistent with the policy intent of this requirement.

Removal of "and imminent" from Rule 10 and 11

11 This proposed change deals with the rewording of an existing exception to the general rules about use and disclosure.

12 We fully support the change that would maintain the "mirror image" of this proposed Privacy Act exception in the Credit Reporting Privacy Code. There is no reason for a different approach to be taken. We note that the change would not come into effect until the Privacy (Information Sharing) Bill is enacted.

Summary of rights

13 The small change proposed to the summary of rights and making the correction permanent is supported by us.

Commencement

14 We are happy with the commencement dates proposed.

Yours sincerely

Chief Executive Officer

29 October 2012

The Privacy Commissioner
P. O. Box 466
Shortland Street
Auckland
Via email: code@privacy.org.nz

Dear Commissioner,

Re: Proposed amendment No 7 to Credit Reporting Privacy Code 2004

TOWER Limited (TOWER) is a company operating within New Zealand in a number of business environments, including Investments; Health and Life and also General Insurance.

This submission is made in relation to TOWER's requirement to comply with the Anti-Money Laundering and Counter Terrorism Financing Act 2009. (AML Act).

As a requirement of this legislation, TOWER must put in place processes enabling the company to perform Customer Due Diligence (CDD) in order to verify the identity of an individual in accordance with the requirements of the AML Act.

We have reviewed the proposed amendment to Rule 10 of the Credit Reporting Privacy Code 2004 (Code) and would like to make the following submissions:

- The amendment as it currently stands is insufficiently broad to incorporate businesses such as TOWER. TOWER, like many others, is a reporting entity under the AML Act but not a credit provider under the Code. We do not consider there to be good grounds for excluding non-credit provider reporting entities from using credit information for AML Act identity verification.

- TOWER proposes an amendment that extends coverage beyond credit providers, which is not a term that is defined or used in the AML Act, to that of "reporting entities" as set out in Section 6 of the AML Act. The reason for this submission is that there does not seem to be a rationale for limiting the use of information for identity verification to credit providers, which are a sub-set of reporting entities.

- TOWER's submission is therefore to:

    - add to Rule 11 a new clause (2)(b)(v) as follows: "a reporting entity, or that reporting entity's agent, for the purpose of verifying the identity of that individual in accordance with the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009"; and

- include a definition of "reporting entity" which links to the definition in the Act.

We are in a position to discuss this matter further and thank you for the opportunity to make this submission.

Yours Faithfully

Group Managing Director
TOWER Limited

veda
applied intelligence

Veda Advantage (NZ) Limited

Submission on

Proposed Amendment No.7
to
the Credit Reporting Privacy Code 2004
(the Code)

For 31 October 2012

Veda Advantage (NZ) Limited
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veda.co.nz

About this Submission

Veda Advantage (NZ) Limited ("**Veda**") makes this submission to:

The Privacy Commissioner
Te Mana Matapono Matatapu

Office of the Privacy Commissioner
PO Box 466
Auckland 1140

By email:
Submissions are emailed to Code@privacy.org.nz.

CONTENTS

This submission is structured as follows:

A -Executive Summary.

B-Veda's detailed submissions regarding the amendment.

C-Conclusion.

A. Executive Summary.

1. Veda submissions regarding the proposed amendment 7 to the Credit Reporting Privacy Code 2004 (the Code) may be summarised as :
    a. On timing-moving the *implementation date* forward for the time limit in clause 2(a).
    b. Seeking the inclusion of a *testing period*.
    c. Commenting on the use of the term - *credit provider* –and suggesting substitution of either of these terms from the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML /CFT Act) - *reporting entity* or *financial institution*. (Broadening usage beyond credit providers)
    d. Amending Schedule 7 ;(Credit suppression).
    e. Amending Schedule 6 ;(Assurance reporting).
    f. Having due regard to the competing interests identified.
2. Incidentally, we have assumed that whatever the enquiry made for the purpose of AML/CFT Act is defined as it will not be within the current definition of *previous enquiry record* but will be access logged.
3. However if this is a matter which requires express statement in the Code (in your view) then we will stand corrected but may seek the ability to comment constructively on that expression if the effect of that drafting may change the way in which we must record and disclose the fact of an enquiry which was made for AML/CFT purposes.
4. We appreciate the prompt way in which the OPC is addressing these important issues and intend that our submissions are viewed as constructive.
5. We hope that our submissions prove helpful in that regard.

B. OUR DETAILED SUBMISSIONS ON THE PROPOSED AMENDMENT

Veda's submissions focus on:
Clause 2(a)
Clause 5
Clause 6
Clause 8.

Clause 2(a)

1. Clause 2(a) sets out the timing for implementation of the clauses of Amendment 7 (the Amendment).
2. On 7 August 2012, and in two subsequent emails, the Office of the Privacy Commissioner, wrote to the credit reporting agencies to *informally test* a proposed amendment to address Anti Money Laundering and Countering the Financing of Terrorism (AML) verification based on credit reporting information. In these emails it was conceded that AML enquiries might be made under Rule 11(2)(b)(i)(A). Some credit providers were also aware of this view.
3. Pending the implementation it is possible that credit providers which are aware of the comments made in the initial consultation which preceded the release of the Amendment may avail themselves of Rule 11(2)(b)(i)(A) to perform customer due diligence(CDD) for AML. Those who cannot come within that Rule will have to wait until the implementation date. Such accesses under Rule 11(2)(b)(i)(A) will be with consent within the wording of that sub rule which says:

   A credit reporter that holds credit information may disclose the information in accordance with a subscriber agreement that complies with Schedule 3 if the credit reporter believes, on reasonable grounds: that the disclosure is authorised by the individual concerned and is made to:

   (i) [a credit provider, or that credit provider's agent, for the purpose of:
   (A) making a credit decision affecting that individual (and for directly related purposes including debt collection);
4. Our customers who are credit providers (and those who are not) have been preparing for the implementation of the AML /CFT Act for quite some time.
5. As part of their preparation they are making changes to their processes in anticipation of the implementation of the AML /CFT Act. Part of that involves assessing their CDD.
6. CDD or *Know Your Customer (KYC)* obligations have always been important to, in particular, banks and financial institutions. It is also relevant that many (possibly most but not all) data sources will be already available before 30 June 2013 for the improved CDD. Unlike those data sources, the use of credit reporting information will be partially dependent upon implementation of clause 6 of the Amendment.
7. The relevance of this to clause 2(a) is that clause 2(a) contemplates implementing the changes to be made to Rules 10 and 11 by clauses 5 and 6 respectively only on the implementation date of the AML/CFT Act.
8. However for some who will be affected by the changes introduced the implementation of their new CDD using credit reporting information must await the 30 June 2013 date but for others the access will precede that date as it will be made under Rule 11(2)(b)(i)(A).
9. Where access is made under the sub rule some consumers may have what appear to be credit enquiries.
10. Credit reporters will not be able to differentiate between a genuine credit enquiry and one made for CDD. Especially if this is done by simply obtaining a credit report in the usual way.
11. Veda is investigating what might be done in advance of the implementation of Amendment 7 to enable a discrete and distinctive kind of enquiry which is made under the aegis of Rule 11(2)(b)(i)(A) but which does not masquerade as an ordinary credit enquiry.

12. So the problem which clause 5 is aimed at addressing in amending Rule 10 may arise in the lead up to 30 June 2013. It is probable that there may be months of such activity.
13. We are not suggesting this be addressed if it is outside of the scope of this consultation but what we do recommend is bringing forward the dates for implementation of clauses 5 and 6.

Transparency and testing

14. We are concerned about doing whatever we can to facilitate the roll out of the new law but we are concerned about the lack of transparency to individuals. It was unclear to us whether your office is aware that the changes to CDD may occur before 30 June 2013.It is useful to understand the business and industry context as well as the legislative timeline. Those affected are caught up in both.
15. Another relevant consideration is that if the implementation date for clauses 5 and 6 is 30 June 2013 a consequence will be that the first real 'test' of accessing the credit reporting information for CDD will be 'live'. Or on 'go live' date. This is not ideal and may prove to be suboptimal.
16. We recommend bringing forward the dates for implementation of clauses 5 and 6 to allow for a testing period.
17. The usual demands of testing are such that leaving live testing to the last minute; literally the same day as the obligations kick in; may not be prudent and is certainly unlikely to meet industry best practice.
18. It is as a general rule more efficient to 'improve' key practices to enable attainment of what will become the compliant standard before compliance is mandated. CDD is an important aspect of doing business prudently and legally in New Zealand.
19. At heart what this is all about is achieving compliance with a standard aimed at meeting key international recommendations on anti-money laundering measures and countering the financing of terrorism. It is also about our government complying with international obligations and acting as a prudent and compliant international citizen. These are worthy objectives but their implementation is reliant upon their having to be achieved in a business context.
20. It is recognised in business that best practice and compliant businesses deserve and attract higher levels of trust. Our customers each compete to be and to be perceived as the 'best' and the most trustworthy. It is in their interests to meet what is required of them regarding anti money laundering measures and prudent CDD. It is also relevant to addressing risk and detection of criminal behaviour.
21. It is unsurprising then that each will wish to lead the way in addressing updating their CDD.
22. The customer experience is another relevant way in which financial institutions compete and are measured by consumers. If one competitor is able to quickly, efficiently and accurately verify a customer who is using their current address and another is not because they cannot access current address data then that is an important consideration for both the consumer and the reporting entity.
23. Most who undergo CDD as consumers and customers of reporting entities will wish to transact safely and effectively but in an efficient and timely manner.
24. By altering the implementation dates for clause 6 in particular both the compliance of business and government will be better enabled and in a way that the individuals affected might benefit from.

"Due regard..."

25. As the Law Commission in their report "Review of the Privacy Act 1993 –Review of the law of Privacy Stage 4."on page 13 at paragraph 1.42 states:
"In carrying out his or her functions, the Privacy Commissioner must, among other things, have due regard for the protection of important human rights and social interests that compete with privacy, including the

general desirability of the free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way.

26. Our submission on this aspect and clause 2(a) is about and in the interest of having due regard to *"...social interests that compete with privacy, including the free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way."*
27. In particular all of these identified interests detailed above; fall within, are relevant to and compete with privacy as or within: *social interests that compete with privacy, including the free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way.*

28. ***Veda Submits that:***

- Clause 2(a) should be amended to change the implementation date for clauses 5 and 6 to an earlier date such as 1 March 2013.
- Alternatively Clause 2(a) is amended to change the implementation date for clause 6 to an earlier date such as 1 March 2013.

And also that -

- Clause 2(a) should be amended regarding clause 6 to permit testing as from 1 April 2013.

Clause 5

29. Veda endorses this amendment which will address a real concern about transparency addressed in our earlier submissions at the stakeholder consultation stage regarding the earlier draft.

Clause 6

30. Veda has several points to make. The first point was made in the earlier consultation and is made again but in the alternative.
31. It is this: The Publication of the Privacy Commissioner, Private Word, issue 82 (with added underlining) states that:
The Privacy Commissioner proposes to make changes to the Credit Reporting Privacy Code to permit lenders to use the credit reporting system to meet their identity verification requirements under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
From 30 June 2013, <u>financial institutions</u> such as banks, finance and credit card companies will be required to verify their customers' identities, to make sure they are trading with real people who have a known history.
Under the proposed changes, <u>financial institutions</u> will be able to run new customers through the credit reporting system to verify their identity
32. However this is not correct. Only *financial institutions* which happen to be *credit providers* will be able to do so. The terms are not synonymous.
33. *Financial institution* is a defined term in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML /CFT Act) but that is not the key term chosen in the proposed Amendment. Instead of that term the Code amendment references 'credit provider'. Whilst this has the utility of being a term for which there is a definition under the Code it is not a term used in the AML/CFT Act and it is not a sufficient reason for choosing to ignore relevant terms which are in that Act.
34. The amendment is a simple solution to a complex issue- which limits the application of the amendment to *credit provider* notwithstanding that the reforms which the amendment seeks to address are not so limited.

35. We submit that an approach which addresses and supports what the AML /CFT Act legislation is contending with will better address the relevant issues and meet the requirements of that legislation. It is the requirements of the other legislation which are the most relevant considerations here. It is those considerations which are driving the change.
36. The rationale for making change is to address the legislation and in that sense it is the same rationale as the one which drives the changes which may be required to address the *Privacy (Information Sharing) Amendment Bill* when it is passed.
37. We explain what we mean by this in more detail below.
38. The proposed amendment to rule 11 would insert into rule 11(2)(b)(i) a new (C): verifying the identity of that individual in accordance with the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
39. So that the sub rule would read:

A credit reporter that holds credit information may disclose the information in accordance with a subscriber agreement that complies with Schedule 3 if the credit reporter believes, on reasonable grounds:

(a) that the disclosure of the information is to a debt collector for the purpose of enforcement of a debt owed by the individual concerned;

(b) that the disclosure is authorised by the individual concerned and is made to:

(ii) [a credit provider, or that credit provider's agent, for the purpose of:

(A) making a credit decision affecting that individual (and for directly related purposes including debt collection); or

(B) providing that individual with a quotation of the cost of credit;]

(C) verifying the identity of that individual in accordance with the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;

40. ***Credit provider is defined under the Code as:*** **credit provider** means an agency that carries on a business involving the provision of credit to an individual.
41. Should one look only to within the Code for a relevant term? If one looks within the Code, one finds that it does apply outside of the bounds of the credit provider relationship and also to a separate purpose of **verification.**

Clause 2 (4) says:
This code:

(a) applies or modifies the application of the information privacy principles and prescribes how the principles are to be applied or complied with;

(b) modifies the application of public register privacy principle 2;

(c) imposes controls in relation to the comparison of personal information with other personal information for the purpose of producing or ***verifying information*** *about an identifiable individual;*

42. This verification contemplates more than simply matching. The Code addresses and 'controls' the verification processes. Rule 8 (2) also refers to the purpose of verifying information in reference to obligations around accuracy.

43. The Code defines what *credit information* is in clause 5. Relevant definitions include:

credit information means the following types of personal information:

(a) the following identification information:

(i) full name;

(ii) any alias or previous name;

(iii) sex;

(iv) date of birth;

(v) address; and

(vi) any previous address;

(b) the following supplementary ***identification*** information:

(i) occupation;

(ii) any previous occupation;

(iii) employer; [...]

(iv) any previous employer; [and

(v) in relation to a driver licence:

(A) driver licence number; and

(B) driver licence card number;]

(b) information relating to ***identification*** documents reported lost or stolen or otherwise compromised;

identification information means the credit information listed in paragraph (a) of the definition of credit information- the following identification information:

(i) full name;

(ii) any alias or previous name;

(iii) sex;

(iv) date of birth;

(v) address; and

(vi) any previous address;

44. ***Credit information*** is not in fact limited by the term *'credit'*. Rule 1 limits the credit reporter to collecting 'credit information'. Clause 5 of the Code defines the permitted classes of *credit information* and in so doing captures a diverse range of information. This term encompasses a disparate range of data including insolvency; fraud and identification information.

45. ***Credit Reporting*** is also not limited to *'credit'* and the 'reporting' encompasses a range of data which is not obviously 'credit' in character. It has a focus of creditworthiness but is about a range of aspects related to 'suitability' or fitness. Credit reporting also includes elements of verification especially in the identification information which is called that because it performs that function in a verification context and in time honoured processes. In contrast the term ***'credit provider'*** appears to be limited by reference to the term 'credit ' and the definition in the Code for that term.
46. The Code permits a range of uses and disclosures related to exceptions where disclosure is necessary for *maintenance of the law* kinds of purposes. These are not limited in the Code by reference to the entity requiring the information. In contrast the AML/CFT Act does apply limits to the entity type. A policy determination has been made in that context and on that point regarding relevant entity type. (Using the term *credit provider* substitutes another term from outside of that context.)
47. The requirement of verification for CDD under the legislation –AML/CFT Act -is derived from a commitment to meet an international obligation to address in part the 'fitness' of those who deal in money and money's worth. In general every affected financial institution and reporting entity must comply with this obligation as from the implementation date in June 2013. The legislation is about maintaining law and order. The limitation to *credit provider* is not relevant in this context. Neither the Code nor the AML/CFT Act requires this to be so. It is therefore seemingly arbitrary.
48. Interestingly, there is in fact at present an overlap between the AML/CFT Act and the Code as worded in a number of senses.
49. The stated purposes of the AML/CFT Act are in section 3:

> *(1) The purposes of this Act are—*
> - *(a) to* ***detect and deter*** *money laundering and the financing of terrorism; and*
> - *(b) to maintain and enhance New Zealand's international reputation by adopting, where appropriate in the New Zealand context, recommendations issued by the Financial Action Task Force; and*
> - *(c) to contribute to public confidence in the financial system.*
>
> *(2) Accordingly, this Act facilitates co-operation amongst reporting entities, AML/CFT supervisors, and various government agencies, in particular law enforcement and regulatory agencies.*

50. Such a purpose marries up well with the *maintenance of the law* purposes already found in the Code and in the Privacy Act 1993.
51. As stated verification too already has a role to play in credit reporting which is within the current Code. Both the consistency of purpose and the function of verification are to be found in the Code and the AML/CFT Act.
52. Verification under the AML/CFT Act is for the purpose of detection and deterrence. As such it is within the exceptions found in the following Rules: 2,3,10 and 11.In particular we are referring to: Rule 2(2)(c)(i)and to Rules 3 (5)(b)(i) ;Rule 10 (1)(c)(i);and Rule 11 ((2)(c)(i).
53. These exceptions use the term: ***to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences.*** In so doing they do not only apply to direct accesses by the public sector agencies themselves.
54. Here the most relevant public sector agencies are those charged with supervision under the AML/CFT Act, namely: the Reserve Bank, the Department of Internal Affairs and the Financial Market Authority. The Financial Market Authority will supervise issuers of securities, brokers, financial advisers, trustee companies, collective investment schemes and futures dealers. The Reserve Bank will supervise banks, life

insurers and non-bank deposit takers. The Department of Internal Affairs[1] will cover casinos, non-deposit-taking lenders, money changers and reporting entities not covered by the other supervisors.[2]

55. The short point is that the Code allows for verification and strays outside of the narrow compass of credit provider relationships. It does so for good reason. There is ample justification for doing so here to enable AML/CFT. Using the defined terms in the AML/CFT Act is warranted and justifiable. This is not 'scope creep' in any relevant sense. On the contrary there are consistent grounds already to be found in the Code for looking beyond both the term *credit provider* and the bounds of relationships with such entities.
56. Significantly and in contrast to the usage of *'credit provider'* in the Code; in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 the obligation to verify is imposed upon *Reporting Entities. Credit provider* is not a defined term.
57. A *Reporting Entity* is defined in that Act as:

> ***reporting entity***—
> *(a) means—*
> *(i) a financial institution; and*
> *(ii) a casino; and*
> *(b) includes—*
> *(i) a person or class of persons declared by regulations to be a reporting entity for the purposes of this Act; and*
> *(ii) any other person that is required by any enactment to comply with this Act as if it were a reporting entity; but*
> (c) *excludes a person or class of persons declared by regulations not to be a reporting entity for the purposes of this Act*

58. The inclusion of the diverse entities in the AML/CFT Act is unified by a common purpose to be implemented by the legislation to maintain law and order by ***detecting and deterring*** money laundering and the financing of terrorism in a manner which is consistent with our international obligations. There is a unity of purpose which brings the diverse group together. The group includes: issuers of securities, brokers, financial advisers, trustee companies, collective investment schemes, futures dealers, life insurers, non-bank deposit takers, casinos, non-deposit-taking lenders, and money changers.
59. The "Guideline: Issuers of securities and participants in issues" released by the Financial Markets Authority (the FMA) has useful information about reporting entities. [3]
60. Difficulties may arise when applying the definition of *credit provider* which has been contextualised to suit the Code.
61. This might be illustrated by using an example of Table 1 taken from the FMA guideline and applying an analysis related to whether the entity is also a credit provider?

Security type	Who is the issuer?	Credit provider?

[1] For more detail http://www.dia.govt.nz/Services-Anti-Money-Laundering-Index?OpenDocument#four -The Department of Internal Affairs supervises casinos, non-deposit taking lenders, money changers, money remitters, payroll remitters, debt collectors, factors, financial leasors, safe deposit box vaults, non-bank credit card providers, stored value card providers and cash transporters, and any other reporting entities not supervised by the Reserve Bank or the Financial Markets Authority.

[2] http://www.fma.govt.nz/about-us/what-we-do/anti-money-laundering-and-countering-financing-of-terrorism/role-of-the-supervisors/

[3] http://www.fma.govt.nz/media/1242602/guideline_-issuers_of_securities_and_participants_in_issues.pdf

Security means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and any renewal or variation of the terms or conditions of any such interest or right. They include:	**An issuer is:**	**credit provider** means an agency that carries on a business involving the provision of credit to an individual **credit** means a contract, arrangement or understanding to provide property or services before payment or money on loan
An equity security	The person on whose behalf any money paid in consideration of the allotment of the security is received	Is this an agency that that carries on a business involving the provision of credit (means a contract, arrangement or understanding to provide property or services before payment or money on loan) to an individual ?
A debt security	The person on whose behalf any money paid in consideration of the allotment of the security is received	Is this an agency that that carries on a business involving the provision of credit (means a contract, arrangement or understanding to provide property or services before payment or money on loan) to an individual ?
A unit in a unit trust	The manager	Is this an agency that that carries on a business involving the provision of credit (means a contract, arrangement or understanding to provide property or services before payment or money on loan) to an individual ?
An interest in a superannuation scheme (includes restricted KiwiSaver schemes)	The superannuation trustee	Is this an agency that that carries on a business involving the provision of credit (means a contract, arrangement or understanding to provide property or services before payment or money on loan) to an individual ?
An interest in a KiwiSaver scheme (other than a restricted KiwiSaver scheme)	The manager	Is this an agency that that carries on a business involving the provision of credit (means a contract, arrangement or understanding to provide property or services before payment or money on loan) to an individual ?
A life insurance policy	The life insurance company that is liable under the policy	Is this an agency that that carries on a business involving the provision of credit (means a contract, arrangement or understanding to provide property or services before payment or money on loan) to an individual ?
Any interest or right that is declared by regulations to be a security for the purposes of this Act	The person declared by regulations to be the issuer	Is this an agency that that carries on a business involving the provision of credit (means a contract, arrangement or understanding to provide property or services before payment or money on loan) to an individual ?
Participatory security (a security that is not one of those listed above)	The manager or contributory mortgage broker	Is this an agency that that carries on a business involving the provision of credit (means a contract, arrangement or understanding to provide property or services before payment or money on loan) to an individual ?

62. Should the entities detailed above(and other reporting entities) be able to access dependent upon

whether they fit within the extra dimension of enquiry required to determine whether they are a credit provider or not?

63. What relevance has that kind of enquiry to the AML/CFT Act? The detailed instructions and guidelines issued address AML specific issues. In order to use credit reporting information a further level of enquiry will be necessary. Whether this undermines a use which is within the well understood *maintenance of the law* drafting in the Privacy Act 1993 and the Code is a relevant enquiry in policy terms.
64. It is submitted that instead the focus should be on the terms used in and the function of the AML/CFT Act and giving effect to the coherent and stated purposes but not on the differences between the groups affected by that legislation. They are pre-selected as being 'risky' and as probable targets. Addressing the risk posed in those entities and the probability of money laundering and financing terrorism is what unifies this group. In giving effect to the AML/CFT it is relevant to consider how the wording used and the groups selected therein might be addressed relevantly.
65. In extending the Code to permit use of credit reporting the enquiry is essentially about how to give effect to the AML/CFT Act in a manner consistent with the Privacy Act 1993 and the Code.
66. Both the privacy legislation and the Code coherently allow for very similar purposes:
avoiding prejudice to the maintenance of the law by any public sector agency, including the ***prevention, detection, investigation, prosecution, and punishment of offences***
sits well with the purpose of the AML/CFT Act and that purpose in turn falls within these consistently repeated purposes.
67. The AML/CFT legislation is aimed at addressing our International obligations and also at *maintenance of the law* kind of use which is within that contemplated by the Privacy Act 1993 and the Code. To cavil at the inclusion of such entities is inconsistent with a contemplated and justified use within the policy of both the Privacy and AML/CFT legislation. It could be seen as inconsistent with a clearly expressed legislative intent.
68. Section 5 (1) of the Interpretation Act 1999 states that :
(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.
69. Applying that Act we submit leads one to an interpretation process which takes into account both 'text' and 'purpose'. We submit that such an approach leads to preferring the actual text of the AML/CFT Act in giving effect to this legislation by amending the Code.
70. The Code is a singularly powerful kind of regulator made law. It has been praised deservedly as flexible[4] but also criticised by the Law Commission [5]as very wide. It has limits and by substituting for the AML/CFT Act terms a phrase (credit provider) which is peculiar to the Code those limits might in a sense be crossed? Does it amount to: *overriding or modifying other enactments* by differentiating between classes of reporting entities in a way not contemplated by the AML/CFT Act?
71. The effect of this may be to make it more difficult for some classes of affected reporting entity to effectively and efficiently perform what the law requires in carrying out CDD for AML/CFT. Individuals who are subjected to the process of CDD for AML have an interest in being fairly treated and efficiently able to carry out their legitimate business. Government has clearly expressed their purpose and their intent in the text of Act and regulation. Arms of government acting to regulate (as Department of

[4] *Review of the Privacy Act 1993 – Review of the law of privacy stage 4 at page 167 paragraph 7.1* –"the open-textured, principles-based approach of the Act means that agencies have a great deal of flexibility when it comes to determining how they will comply with the Act. Codes of practice supplement this flexibility by providing a mechanism through which the specific needs and circumstances of particular agencies, businesses, industries, or professions can be accommodated."

[5] Ibid at page 168 paragraph 7.7:"The power to issue codes of practice is therefore very wide, but there are limits on what a code of practice could do. For example, a code could not extend the ambit of the Act to agencies to which it does not currently apply, or override or modify other enactments. In addition, a code cannot limit or restrict the rights conferred on individuals by principle 6 and principle 7 to access and correct personal information held by public sector agencies."

Internal Affairs does) and other AML regulators should ideally be able to address reporting entities which operate on a level playing field in relevant ways. This is one of them.

72. That is a policy determination in one sense but may also be a question of law. We raise this for your consideration. Will there be a kind of discrimination as a result of preferring the term 'credit provider'? Should this term be substituted for a term found in the AML/CFT Act?
73. A *financial institution* is defined in the AML/CFT Act as :

financial institution—
(a) means a person who, in the ordinary course of business, carries on 1 or more of the following financial activities:
(i) accepting deposits or other repayable funds from the public:
(ii) lending to or for a customer, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions (including forfeiting):
(iii) financial leasing (excluding financial leasing arrangements in relation to consumer products):
(iv) transferring money or value for, or on behalf of, a customer:
(v) issuing or managing the means of payment (for example, credit or debit cards, cheques, traveller's cheques, money orders, bankers' drafts, or electronic money):
(vi) undertaking financial guarantees and commitments:
(vii) trading for the person's own account or for the accounts of customers in any of the following:
(A) money market instruments (for example, cheques, bills, certificates of deposit, or derivatives):
(B) foreign exchange:
(C) exchange, interest rate, or index instruments:
(D) transferable securities:
(E) commodity futures trading:
(viii) participating in securities issues and the provision of financial services related to those issues:
(ix) managing individual or collective portfolios:
(x) safe keeping or administering of cash or liquid securities on behalf of other persons:
(xi) investing, administering, or managing funds or money on behalf of other persons:
(xii) issuing, or undertaking liability under, life insurance policies as an insurer:
(xiii) money or currency changing; and
(b) includes a person or class of persons declared by regulations to be a financial institution for the purposes of this Act; but
(c) excludes a person or class of persons declared by regulations not to be a financial institution for the purposes of this Act

74. Parliament enacted the current AML/CFT legislation after considerable deliberation and consultation including by using working groups over a period of years regarding how to address the FATF recommendations. The aim of amending the regulations should be consistent with the legislation. It is more consistent to use terms defined in that legislation and to look to give effect to the purposes and policies behind the legislation.
75. It is submitted that there may be unfairness and a misalignment with the legislation if some reporting entities are able to carry out their obligations more effectively by accessing credit reporting information and others are not.
76. Credit reporting information has different qualities to other data sources in that it has both breadth and depth over time and references a social footprint which features current and recent addresses which are refreshed by regular enquiries. Every day thousands of credit enquiries occur and every day the address information is refreshed.

77. In contrast other sources of information may reference an address as at a point in time. There are advantages to both reporting entities and consumers in having more current address information available for customer due diligence. The more current the information, the more likely it is that a current address provided to a reporting entity might be matched to. The address match is an important element in the verification required.
78. The data sources which may be used for AML/CFT are not of equal value. Credit reporting information will tend to be more current. This is statistically more probable. Statistical probability is relevant to both the entities performing the CDD and those whose data is to be verified. The greater the likelihood of matching the more likely it is that the process of CDD can be efficient and timely.
79. It is in the interests of individuals who wish to transact with reporting entities that they be afforded the same ease of access to credit and other services provided by reporting entities. Uniformity of access to data and certainty are important in this context.
80. There is an element of unfairness in denying access based upon a distinction which is only to be found in the Code. It is incongruous and might lead to a delay or denial of access to a service or benefit which an individual would be entitled to if they could access that same data source across the board. The free flow of information is therefore impeded.
81. The use of consent as a prerequisite for use of credit reporting information is a sufficient protection in all relevant contexts.
82. It places control in the hands of the consumer affected.
83. It is submitted that there may be unfairness and a misalignment with the legislation if some reporting entities are able to carry out their obligations more effectively by accessing credit reporting information and others are not.
84. Their customers are similarly disadvantaged.

Fairness?

85. Article 1 of the *Universal Declaration of Human Rights*: *"All human beings are born free and equal in dignity and rights."*
86. However those who have some reporting entities check them will not be 'equal' in the sense that their CDD may be less efficient or effective or may simply not work as it otherwise should.
87. It may be useful to consider Article 22: *Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.*
88. Does this border on being a kind of interference with an economic right indispensable to one's dignity?
89. The guise of an interference with human rights may seem improbable but often where there is a perception of unfairness it is not easily characterised as a breach of a human right. This does not make the unfairness any less real for those affected be they individuals or businesses.
90. However one views this disadvantage it is likely to be real and it may be an impediment to timely access to what others can access. An advantage deferred may be an advantage denied in that sense. It is likely to be a statistically measureable disadvantage.

Insurers

91. It is also about the interests of those businesses such as insurers who do not fall within the credit provider definition but have obligations to perform CDD verification under the AML/CFT Act. We have been approached by concerned existing subscribers who are insurers and understand that some may make their own submissions setting out what their competing interests are.
92. Relevantly, insurers also have access to credit reporting information for investigating fraud. This has been recognised in Rule 11 of the Code at Rule 11 (2)(c)(ii):

    A credit reporter that holds credit information may disclose the information in accordance with a subscriber agreement that complies with Schedule 3 if the credit reporter believes, on reasonable grounds: that disclosure is necessary: to enable an insurer to investigate a case of suspected insurance fraud;

93. Should insurers have access for detecting and deterring other criminal behaviour?

Government objectives

94. One should also consider that it is in the interests of government to efficiently give effect to *their objectives* which is what they are trying to do in requiring compliance with the AML/CFT Act.
95. The objectives of government are clearly stated in the AML/CFT Act. (refer to paragraph 49 above).There is compatibility with the Code and Privacy Act 1993[6] references to and focus on ***the prevention, detection, investigation, prosecution, and punishment of offences.*** The aim of amending the regulations should be consistent with the legislation. It is more consistent to use terms defined in that legislation and to look to giving effect to the purposes and policies behind the legislation.

"Due regard..."

96. As referred to earlier, the Law Commission in their report "Review of the Privacy Act 1993 –Review of the Law of Privacy Stage 4."on page 13 at paragraph 1.42 states:
    "In carrying out his or her functions, the Privacy Commissioner must, among other things, have due regard for the protection of important human rights and social interests that compete with privacy, including the general desirability of the free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way.
97. Our submission on this aspect and on clause 6 is also about and in the interest of having due regard to these competing interests identified earlier which fall within:
    "...social interests that compete with privacy, including the free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way."

98. ***Veda Submits that:***
    In the alternative, ***either***:

- The amendment to the Code, should address the obligation to verify identity in the Act, by enabling a *reporting entity* and not merely a *credit provider* to perform the verification.
- Clause 5 be amended to include a definition of *reporting entity* which reflects exactly the term as it is defined in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
- Rule 11 (2)(b) be amended to add as sub-rule 11 (2)(B)(v):

[6] Section 6 Information Privacy Principles 2(d)(i);3(c)(i);10(c)(i) and 11 (e)(i)

(b) that the disclosure is authorised by the individual concerned and is made to:

(i) [a credit provider, or that credit provider's agent, for the purpose of:

(A) making a credit decision affecting that individual (and for directly related purposes including debt collection); or

(B) providing that individual with a quotation of the cost of credit;]

(iii) a prospective landlord, or that prospective landlord's agent, for the purpose of assessing the creditworthiness of that individual as a prospective tenant or as a guarantor of a tenancy;

(iv) a prospective employer, or that prospective employer's agent, for the purpose of a pre-employment check of that individual for a position involving significant financial risk;

(v) a prospective insurer, or that prospective insurer's agent, for the purpose of a decision on the underwriting [or continuation] of insurance in respect of a credit related transaction relating to that individual;

(vi) ***a reporting entity for the purpose of verifying the identity of that individual in accordance with the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;***

Or:

the Amendment should instead of referring to *'credit provider'* refer to ***'financial institution'***.

- the amendment to the Code, should address the obligation to verify identity in the Act, by enabling a ***'financial institution'*** and not merely a credit provider to perform the verification.
- Clause 5 of the Code be amended to include a definition of ***'financial institution'*** which reflects exactly the term as it is defined in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
- Rule 11 (2)(b) be amended to add as sub-rule 11 (2)(B)(v):

(b) that the disclosure is authorised by the individual concerned and is made to:

(i) [a credit provider, or that credit provider's agent, for the purpose of:

(A) making a credit decision affecting that individual (and for directly related purposes including debt collection); or

(B) providing that individual with a quotation of the cost of credit;]

Note: Subparagraph (b)(i) was substituted by Amendment No 5. For limits on the use of information derived from an enquiry made pursuant to paragraph (b)(i)(B), see rule 10(3).

(ii) a prospective landlord, or that prospective landlord's agent, for the purpose of assessing the creditworthiness of that individual as a prospective tenant or as a guarantor of a tenancy;

(iii) a prospective employer, or that prospective employer's agent, for the purpose of a pre-employment check of that individual for a position involving significant financial risk;

(iv) a prospective insurer, or that prospective insurer's agent, for the purpose of a decision on the underwriting [or continuation] of insurance in respect of a credit related transaction relating to that individual;

(v) ***a financial institution for the purpose of verifying the identity of that individual in accordance with the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;***

99. Of these alternatives the broader but comprehensive term *'reporting entity'* is to be preferred on the ground that it gives effect to the AML/CFT Act in a more fair and consistent way. The legislature and regulators have determined that these entities are relevant to AML/CFT. Preferring their determination is appropriate here.

100. Consistency with determined policy is relevant here. As the aim of detection of offences is consistent with the Privacy Act 1993 and the Code- the use is within what is contemplated in the Privacy Act 1993 and the Code as well as the AML/CFT Act. The ambit of the Acts and the Code is not restricted to credit provider relationships and uses.

Credit Suppression

101. The next point is about the need to address credit suppression disclosure in Schedule 7 clause 9.4.

102. Whatever change is made to Rule 11 (2) b)(i) whether it is a new (C) or a new Rule 11 (2)(B)(v) there will need to be a change to clause 9.4 (c) of the Seventh Schedule which currently says:

in accordance with rule 11(2), to a credit provider: that has listed with the credit reporter a pre-existing credit account or a new credit account –(i) for purposes related only to that account; or (ii)`in accordance with the terms of a release request.

103. To add thereto a new 9.4(c)(iii) ***for the purpose of verifying the identity of that individual in accordance with the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009***

104. If Veda's other submissions are adopted, to instead allow verification to reporting entities, or financial institutions then there would need to be a further subclause added to 9.4 addressing that.

Clause 7

105. Veda supports and makes no submission regarding clause 7.

Clause 8:

106. Clause 8 amends Schedule 8 by deleting: clause 1.1 and substituting: *1.1 Schedule 8 will expire on 31 March 2013, except for clauses 2.1, 4.1 and 4.2, which will expire on 31 March 2017.*

107. Veda supports this approach.

Assurance reporting

108. Consideration should also be given to how this Amendment will impact the assurance reporting obligations in Schedule 6.

109. At present the content of the assurance report is dictated by Schedule 8, Schedule 6, clause 9 and Rules 5 and 8.

110. Schedule 6 expressly addresses in some detail the Assurance Report but it is only in a note that the reference to the Transitional Schedule occurs. The note says:

> *Note: During the transition to more comprehensive credit reporting, the assurance report must also include the information set out in clause 6.1 of Schedule 8.*

111. Now that the Transitional period will end in 2017 should the obligations relating to the Assurance report appear in the body of Schedule 6? Or it may be that this issue will be carried forward into

any amendments made in future addressing assurance reporting?

Conclusion

112. We respectfully ask that consideration be given to our submissions. We would welcome an opportunity to appear in support of these to add further context or answer questions regarding our submissions.

VISA

31 October 2012

Ms Marie Shroff
Privacy Commissioner
Office of the Privacy Commissioner
PO Box 466
Auckland 1140

Dear Commissioner

CREDIT REPORTING PRIVACY CODE AMENDMENTS

Visa is pleased to be able to provide this submission to the Office of the Privacy Commissioner's consultation on the proposed Amendment No. 7 to the *Credit Reporting Privacy Code 2004* (Code).

Under Schedule 8 of the current Code, we note that the requirement on credit providers to inform, and seek the consent of, existing customers before sharing their positive credit information with third parties such as credit reporting agencies would expire on 31 March 2013.

Visa believes that this requirement has been worked to support transparency and accountability in the disclosure of customer credit account information under the Code. As such, we submit our support for the proposed amendment to be extended for a further four years.

If you wish to discuss any aspect of the above, please feel free to contact either myself or Manager, Government Relations, Australia, New Zealand and South Pacific on

Yours sincerely

Head of Government Relations
Southeast Asia, Australia, New Zealand and South Pacific

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