

Discussion Paper: Credit Reporting Privacy Code Review

Review of the operation of Amendments No 4 and No 5 and selected other aspects of the Code

Submissions

Address submissions to Office of the Privacy Commissioner at submissions@privacy.org.nz.

Deadline: 16 December 2016

Submissions may be made public by the Privacy Commissioner or released under the Official Information Act.

Enquiries: telephone Tara Reynolds or Vanya Vida at 09 302 8658.

30 September 2016

From the Archives: Statement on release of Amendments No 4 and No 5

Is the Commissioner going to monitor how these amendments play out?

The Commissioner will be carefully checking how well the credit reporters have met their Code responsibilities in the new greatly expanded reporting regime.

From 2012 credit reporters will be required to provide the Commissioner with an annual assurance report. These annual reports will give the Commissioner a clear picture of Code compliance and emerging systemic issues.

When the time comes to review the operation of Amendment No 5 in 3 years, the Commissioner will be looking to the industry to produce credible evidence of demonstrated benefits resulting from more comprehensive credit reporting.

- Extract from Office of the Privacy Commissioner, [Credit Reporting Code Fact Sheet 2, Questions and Answers on Credit Reporting Privacy Code Amendment No 5](#), released in October 2011

Credit Reporting Privacy Code Review

Discussion Paper

CONTENTS

Introduction	4
--------------	---

Part 1: General issues: Have Amendments No 4 and 5 delivered benefits and protected individuals?

1.1 Comprehensive credit reporting: <i>Adding positive elements to NZ's traditional negative reporting system</i>	5
1.2 Credit reporter accountability: <i>Demonstrating compliance</i>	6
1.3 Credit freezing: <i>Suppression of credit information for victims of identity fraud</i>	7
1.4 Pre-screening: <i>Using credit reporting system to support responsible lending practice in marketing of credit offers</i>	8

Part 2: Operational issues: Are amended Code provisions working well?

2.1 Serious credit infringement: <i>Credit reporting system warns of previous fraudulent acts</i>	9
2.2 Credit non-compliance action: <i>Reporting on debtors who simply 'clear out'</i>	9
2.3 Driver licence numbers: <i>Additional information to improve matching of identity details</i>	10
2.4 Reporting and retention periods: <i>Maximum reporting limits for positive information and additional leeway on retention</i>	11
2.5 Quotation enquiries: <i>Consumers should not be penalised in credit scoring for prudently 'shopping around' for a good deal</i>	12
2.6 Credit scores: <i>Are the interests of individuals suitably protected?</i>	13
2.7 Additional comments on the operation of Amendments No 4 and No 5	15

Part 3: Future directions for the Code: Are further changes to credit reporting warranted?

3.1 Account balance information: <i>More fine grained information about utilisation of available credit</i>	16
3.2 Tax debt information: <i>Should Inland Revenue information be added</i>	18
3.3 New Zealand business number: <i>A new identifier for sole traders</i>	21
3.4 Access: <i>Outer time limit</i>	22
3.5 Unclaimed money: <i>Expanding permitted use of credit reporting system</i>	23

Introduction

The Credit Reporting Privacy Code was issued in 2004. Following a major review the Code was amended in 2010 and 2011 to authorise 'positive reporting' and to make other substantial changes. These changes were made in Amendments No 4 and No 5 which came into force in 2011 and 2012. (Since that time Amendments Nos 6-10 have also been made.)

Clause 3 of the Code provides that the Privacy Commissioner is to review the operation of Amendments [No 4](#) and [No 5](#) as soon as practicable after 1 April 2015. The Commissioner is satisfied the changes made by the amendments have now been in place sufficiently long that a review at this time would be both practicable and useful.

The amendments made significant changes to the regulation of credit reporting in New Zealand. In particular they authorised credit reporters to undertake 'positive reporting' through collection and disclosure of credit account repayment history that formerly was prohibited. Other significant changes included:

- Permitting and regulating the use of driver licence numbers as identifiers.
- Imposing new accountability requirements: requiring annual compliance reviews involving an independent element and external reporting.
- Expanding the range of permitted public register information.
- Enabling victims of fraud to have their credit information suppressed.
- Permitting credit reporters to pre-screen credit providers' direct marketing lists.
- Introducing a \$100 threshold for listing credit defaults.
- Providing clearer procedural safeguards for guarantors.

This discussion paper provides an opportunity to explore whether the changes made by Amendments No 4 and No 5 have worked well in operation. The Commissioner is also interested to test whether those changes have both brought benefits to managing credit risk and suitably protected the privacy and personal information of New Zealanders.

The Office of the Privacy Commissioner solicited preliminary views from a selection of stakeholders about which issues to include in this review. Some stakeholders raised issues that went beyond the operation of the amendments and suggested further changes to the Code. A selection of those ideas has been included in this paper, particularly in Part 3.

Part 1: General issues: *Have Amendments No 4 and 5 delivered benefits and protected individuals?*

This part highlights several of the substantial changes introduced by Amendments No 4 and 5 such as comprehensive credit reporting, external accountability, suppression of credit information for victims of fraud and pre-screening and asks whether the changes have delivered the promised benefits (to individuals, commerce, the community and the economy) while safeguarding privacy.

1.1 Comprehensive credit reporting: *Adding positive elements to NZ's traditional negative reporting system*

Prior to the amendments, the Code principally permitted only 'negative' reporting, i.e. the focus was upon accurate reporting of the exceptional cases where an individual failed to meet their credit obligations (e.g. defaults, judgments, bankruptcy).

The amendments authorised a fundamentally different system which included more complete 'positive' information about an individual's credit commitments. (The system containing both negative and positive elements is sometimes referred to as 'comprehensive reporting' or simply 'positive reporting'.) The changes authorised credit reporters to report the type and amount of credit extended to an individual and, every month, to capture information on whether individuals had made the required payments on each credit account (referred to as 'repayment history information').

Under a purely negative system comparatively little information is known about most individuals in the community – the information carrying most weight for assessing creditworthiness is in relation to the small proportion of defaulters. By contrast, a mature comprehensive system still contains useful negative information on defaulters but also has rich information on all credit active individuals. This more intrusive system comes at a cost to everyone's privacy and thus needs substantial countervailing benefits to be worth that privacy cost.

Comprehensive credit reporting was expected to bring various benefits to individuals, credit providers and the economy such as:

- By giving a more complete picture of individuals' credit holdings and behaviour, the system would enable credit providers to make better risk assessments and thus allow an expansion of lending or better control of risk or a mixture of both.

- Allowing credit products to be tailored to individuals on the basis of their creditworthiness, reducing the costs of credit for some, increasing it for others.
- Increasing competition in the credit industry by access to better information by all players and enabling introduction of new products.
- Opening mainstream credit to parts of the community who may otherwise be excluded due to a lack of information about them.

1.1 What benefits for individuals have resulted from the introduction of more comprehensive credit reporting? Please provide specific examples.

The Commissioner is interested in receiving *evidence* of benefits that have been delivered rather than mere assertions of benefits in theory. For example, evidence of an increase in lending or a reduction in a lender’s risk; evidence of new products that include risk pricing or risk rewards that could not otherwise have been introduced; evidence of greater competition building upon the newly available comprehensive information; evidence of marginalised communities obtaining greater access to credit; evidence of ‘responsible lending’ practice supported by positive credit reporting; evidence of lenders proactively managing accounts where borrowers getting into difficulties are identified using the new tools.

1.2 Credit reporter accountability: *Demonstrating compliance*
 Clause 9, schedule 6

Credit reporters are required to externally report on their internal systemic review processes. Annual assurance reports, prepared with the involvement of an independent reviewer, are required to be submitted to the Privacy Commissioner on compliance with the Code. These reports are made [public](#).

1.2 Do the accountability requirements for credit reporters provide a good basis for the public to have confidence that the credit reporters and their subscribers are acting compliantly?

The Commissioner is interested in credit reporters’ experience with the accountability processes. He is also interested in the awareness of stakeholders (such as subscribers to credit reporting services and individuals and consumer groups) of these accountability processes and their views about the effectiveness of assurance reporting and associated requirements.

1.3 Credit freezing: *Suppression of credit information for victims of identity fraud* Schedule 7

Identity fraud involves obtaining goods or services – such as credit – through use of a false identity. Sometimes a criminal will take over a real person’s identity to commit the fraud, perhaps assisted by having tricked someone to reveal their personal information or by stealing or copying their identity documents.

In such cases, the innocent person whose identity has been taken over becomes a victim of the identity fraud and can face problems as a result. For instance, it may not at first be apparent to a creditor that a crime has been committed and it may demand that the victim repay a loan and call in the debt collectors when payment is not forthcoming. The bad actions of the criminal may tarnish the reputation of the innocent person, for example by resulting in defaults being loaded against the identity used in the fraud.

Even where fraud is established and companies try to sort things out, problems can sometimes persist and affect victims. Aspects of the fraud may continue to be recorded in systems against the real identity used. Getting these problems sorted out can be a prolonged process.

Potential victims of identity fraud were given the right under Amendment No 5 to have a credit reporter suppress their credit information to make it less likely that a fraudster can obtain additional credit in the individual’s name. This is informally referred to as a ‘credit freeze’ as lenders are unlikely to extend credit while suppression is in operation. Provision is made for initial and continuing suppression and the temporary or permanent lifting of the suppression at the request of the individual.

The process is based upon a system in operation in the USA and that was recommended for Australia by the Australian Law Reform Commission. The process is further described in an OPC [factsheet](#).

1.3 Have the credit freezing provisions been useful?

The Commissioner is interested to hear of any experiences of individuals in obtaining a credit freeze and the experiences of credit reporters and subscribers in operating or working with the suppression arrangements.

1.4 Pre-screening: Using credit reporting system to support responsible lending practice in marketing of credit offers
Rules 10 (1B) and (1C), Schedule 3 clause 9

The use of credit information by a credit reporter for direct marketing, or to facilitate direct marketing by a subscriber is generally prohibited by the Code. However, the Code does allow a limited use of credit information by credit reporters to 'pre-screen' direct marketing lists provided by subscribers. A credit provider can ask a credit reporter to remove names of individuals who are poor credit risks from marketing lists. The excluded names are not identified to the subscriber.

Although the use of credit reporting information for general marketing purposes could not be reconciled with expectations of privacy, the use permitted by the Code is limited to marketing of credit itself. Furthermore the use is restricted to *excluding* individuals from receiving marketing offers. This is intended to promote responsible lending by preventing new credit being marketed to individuals who would thereby become over-extended.

1.4 Has pre-screening of marketing lists proved to be a beneficial use of information held by credit reporters?

The Commissioner is interested to know whether the authorised use of credit information for this secondary purpose has assisted subscribers to perform 'responsible lending'. The Commissioner is interested to see evidence of the operation of this facility and to know whether it has yielded benefits for responsible lending.

Part 2: Operational issues: *Are amended Code provisions working well?*

This part reviews how selected provisions introduced or amended by Amendments No 4 and No 5 have worked in operation. The Commissioner is particularly interested in this part of the review to have confirmation that provisions have operated satisfactorily or, where problems have been encountered, to hear of those problems and receive suggestions for improvement.

2.1 **Serious credit infringement: *Credit reporting system warns of previous fraudulent acts***

The Code simplified the three paragraph definition of serious credit information by separating off the third paragraph (discussed below in relation to ‘credit non-compliance action’). The substance of the definition did not change and remains focused upon an act that is done by an individual that involves fraudulently seeking or obtaining credit or fraudulently evading credit obligations. Serious credit infringements remain in the system for 5 years.

2.1 Has the provision for reporting serious credit infringements worked well in operation?

Although the provision remains substantively unaltered since 2004, the Commissioner is interested in hearing whether the use of the credit reporting system is operating satisfactorily in relation to fraudulent actions by individuals.

2.2 **Credit non-compliance action: *Reporting on debtors who simply ‘clear out’***

Where an individual has left their place of residence, leaving accounts unpaid and making no arrangements for forwarding mail or notifying creditors of their move, a credit provider might reasonably infer that the individual has abandoned their credit obligations. In such a case, a credit provider might report the actions to a credit reporter as a ‘credit non-compliance action’.

As this information is often based upon the belief of the subscriber, the subscriber is required to confirm that they remain of that belief after 6 months. (For example, the debtor may have left abruptly for reasons of emergency and later re-established contact with the creditor.) If unconfirmed, a report of a ‘credit non-compliance action’ will drop off the system after 6 months. However, if a subscriber lodges

information of a 'confirmed credit non-compliance action' within 6 months this will remain in the credit reporting system for 5 years from the action.

2.2 Have the credit non-compliance action and confirmed credit non-compliance action provisions worked satisfactorily for individuals, subscribers and credit reporters?

The Commissioner is interested to hear of any experiences where these provisions have been used (with or without striking problems). In particular, the Commissioner is interested in knowing whether the measures put in place have enabled prompt warning notice to have been lodged in the system (where appropriate) and also where the provisions have protected the interests of individuals where the initial impression has been dispelled upon further inquiry.

2.3 Driver licence numbers: *Additional information to improve matching of identity details*
Schedule 5

Amendment No 4 allowed credit reporters to collect driver licence information and use it to increase accuracy of matching in the verification of identity. Safeguards seek to ensure a driver licence number is not retained or used by the credit reporter as a unique identifier. The amendment permitted credit reporters, after the use of a driver licence number for matching, to retain information derived from the number for future matching. The retained information was required to be converted using a non-reversible hash function into a number that could not be converted back into a driver licence number.

The amendment also prescribed processes to help ensure that the driver licence number was valid and related to the correct individual.

The amendment sought to reconcile sometimes competing privacy objectives:

- *Accuracy*: The objective was to enable a greater accuracy in the verification of identity through permitting an additional item of information to be used in the matching process. Greater accuracy in identification would improve reliability of results and diminish the risk that incorrect information would be attributed to an individual through misidentification. Care needed to be taken in that adding additional information could itself become a source of error by being attributed to the wrong individual.

- *Avoiding creation of national identifiers and function creep:* Privacy law seeks to limit information held for one purpose – such as traffic law enforcement - being made available for an unrelated purpose – such as assessing credit risk. NZ privacy law also seeks to prevent the creation of a de facto national ID number by prohibiting agencies using common identification numbers.

The Privacy Commissioner is interested to hear how well Schedule 5 has worked in operation to achieving these twin objectives.

2.3 Has Schedule 5 worked well in operation to improve identity matching while appropriately limiting the use and retention of driver licence information?

The Privacy Commissioner is interested in finding out whether the addition of driver licence information to the credit reporting process has improved reliability of information. The Commissioner is also interested to hear of experience in implementing the privacy safeguards such as the requirement that providing driver licence information is voluntary, that numbers be verified as valid and that driver licence information is retained in hashed form only.

2.4 Reporting and retention periods: *Maximum reporting limits for positive information and additional leeway on retention*
Schedule 1

The Code from its inception placed limits on how long information might be retained for inclusion on credit reports. The amendments continued these limits but gave credit reporters greater flexibility by splitting the concepts of ‘reporting’ period (the period during which information could appear on an individual’s credit report) and a ‘retention’ period. Credit reporters were given a 12 months leeway after the date on which information must cease to appear on a credit report to cease to hold the information. Credit reporters could, for example, continue to use the information for statistical analysis during that period.

The amendments introduced mandatory maximum reporting periods for the newly defined concept of ‘credit non-compliance action’ (which was split out from ‘serious credit infringement’) and for the new category at the heart of positive reporting (‘repayment history information’):

Types of credit information	Maximum reporting periods
Credit non-compliance action information	6 months from date of action
Confirmed credit non-compliance action information	5 years from date of action
Repayment history information	2 years from month following due date

2.4 Have the new reporting and retention periods worked satisfactorily in operation?

The Privacy Commissioner is interested to know whether splitting reporting and retention periods has brought benefits for credit reporting. The Commissioner is also interested to hear how well the new maximum reporting periods are working out.

2.5 Quotation enquiries: *Consumers should not be penalised in credit scoring for prudently 'shopping around' for a good deal* **Rules 10(3)(a) and 11(2)(b)(i)(B)**

Credit reporters capture information on the number of enquiries made about an individual and report this information. These 'previous enquiry' records are seen and used by credit managers in making decisions and, in automated systems, contribute to credit scores. They were, and continue to be an important part of a negative reporting system.

Traditionally no distinction was made between enquiries relating to, or resulting in, applications for credit and enquiries made to assist a credit provider to give an individual a quotation for the cost of possible credit. A prudent consumer 'shopping around' different lenders for a good rate will leave a trail of previous enquiry records that may mirror the picture left from a struggling individual searching desperately for credit to shore themselves up.

Based upon UK practice, Amendment No 5 authorised credit reporters to disclose credit information to enable subscribers to provide an individual with a quotation for credit. This approach could ensure that individuals are not penalised for shopping around for the best credit terms. Quotation enquiries are not permitted to be used in setting credit scores.

The amendment allowed for quotation enquiries to be facilitated but did not at that stage require adoption of the practice. It was hoped that the credit industry would embrace a practice that had been proven useful for consumers in the UK, a jurisdiction with a mature positive reporting system. The Commissioner's objective had been to enable the industry to introduce new consumer-friendly practices to go alongside the introduction of positive reporting. The ability for consumers to make quotation enquiries might be especially useful in the event that the industry

delivered individualised risk-based pricing, one of the possible benefits of positive reporting suggested by industry.

2.5 Has the provision for quotation enquiries been utilised and, if not, why not?

The Commissioner is interested to know whether the flexibility created by the Amendments has been put to good effect to ameliorate some identified problematic aspects of the credit reporting system. Is provision for quotation enquiries useful and desirable? Are they unnecessary? Should the Code address the issue differently?

2.6 Credit scores: *Are the interests of individuals suitably protected?*

The Code defines credit score as ‘a statistically based rating of the credit default risk of an individual that is produced by a credit reporter’. In other words, all the relevant information known to the credit reporter about an individual is reduced to a single Code or number by applying a formula or algorithm.

Credit scores were expected to play a bigger part in the NZ credit reporting system with the shift to positive reporting.

Credit scores, while very useful from the perspective of a credit reporter or a subscriber, have certain challenges when viewed from the perspective of an individual or with the objectives of privacy law in mind. Privacy law in this context seeks to promote transparency and to enable the individuals concerned to be able to assure themselves of the accuracy of information on which decisions affecting them are based and if need be to challenge or correct that information.

However, well understood approaches of accuracy, transparency, challenge and correction that are easily applied to information displayed on regular credit reports strike problems when faced with display of credit scores. What is an individual to make of a statistically based rating of, say, 610? What does it mean? Does it help if the individual has access to the information held by the credit reporter if they can't see how the score is derived? What if the individual on a recent occasion had been shown a score of 625? Why has it dropped and is the drop significant? What if another credit reporter shows their score as 500 or B+? If the information displayed on a credit report discloses an error how does this affect the score and how will correcting the error affect the score or, practically speaking, the decisions based upon the score?

There are further complexities. For instance:

- Credit reporters do not use the same algorithms nor necessarily hold the same information and so credit scores will necessarily differ between companies.
- Credit reporters see their precise algorithms as trade secrets.
- Credit scores for a particular credit provider, such as a bank, may sometimes be generated for that bank through a combination of the information held by the credit reporter and information held only by the bank. (These scores are not the focus of this review although comparable issues might arise if an individual were to seek to challenge a bank's internal credit scoring under the information privacy principles – this paper is focused upon scores 'published' by credit reporters in credit reports.)
- Modern credit scores are dynamic and may change, even if the individual's position doesn't materially change, if the algorithm is altered (e.g. to give greater weight to one item) or if the available information changes on a subsequent application of the algorithm.
- Credit scores may potentially be used in different ways and the significance of a particular score might, for example, differ in the grant of new credit or the management of an existing credit account.

The Code deals with credit scores in several different ways. For example:

- The access rights in rule 6 provide that where an individual is given access to a credit score, the individual must be provided with a statement outlining:
 - the general methodology used to create the score, including the types of information used; and
 - the range within which that score is placed.
- There is a prohibition on score being based upon 'quotation enquiries' (discussed above), money-laundering identity checks or the fact of a 'credit freeze'.
- Credit scores can only be reported for 2 working days.

2.6 Have the Code's obligations, limits and processes been sufficient to provide an appropriate level of transparency and to provide meaningful opportunities to challenge accuracy and obtain correction?

The Commissioner is interested in hearing different perspectives on the issue including from individuals, credit providers and credit reporters.

2.7 Additional comments on the operation of Amendments No 4 and No 5

The core purpose of this review is to consider the operation of Amendments No 4 and No 5. In addition to the aspects highlighted in 2.1-2.4, those amendments made many other changes to the Code. This is an opportunity to raise other issues arising out of the operation of the amendments.

2.7 Are there any significant problems with the operation of the amendments that you would like to raise?

The Commissioner would be interested in receiving any evidence that supports concerns raised in response to this question.

Part 3: Future directions for the Code: *Are further changes to credit reporting warranted?*

Although the principal purpose of this review is to check whether changes made to the Code in 2010 and 2011 are working satisfactorily and achieving their objectives, the opportunity exists to consider the case to make additional changes. This part addresses a selection of ideas for possible change several of which have been suggested by interested parties. The Privacy Commissioner has taken no decision in relation to any ideas signalled in this part other than concluding that they are worth testing with public submissions.

The paper first looks at ideas for expanding the authorised categories of credit information and then at ideas for expanding the business uses of credit reporting information.

Additional categories of credit information

The Code lists the categories of information that can be included in credit reports. This listing works to regulate credit reporting and protect privacy in two senses. First, it *authorises* information to be reported. Second, it *limits* the information that can be reported.

In setting the categories, the Privacy Commissioner has sought to find the ‘sweet spot’ that enables a sophisticated system to meet the reasonable needs of commerce in a modern credit-based society while respecting the reasonable privacy expectations of New Zealanders.

In setting categories, the Commissioner also takes account of factors such as stability and predictability in the categories as it is costly to change the systems of credit reporters and subscribers, the need for reliable and undisputed factual information and social considerations such as a desire for responsible lending.

In considering an expansion of the categories of credit information the Commissioner will seek to be satisfied that additional information will significantly improve the system (for measuring creditworthiness and managing risk) and be likely to be taken up by industry. The Commissioner will also seek to be satisfied that any new category information will be reliable and not be likely to be subject to dispute and complaints or be unduly intrusive.

3.1 Account balance information: *More fine grained information about utilisation of available credit*

Amendments No 4 and No 5 authorised credit reporters for the first time to report detailed information about an individual’s credit accounts. The Code limits the

information that can be reported to certain standard categories of information. The categories of credit account information permitted to be reported are:

- type of credit account;
- amount of credit extended;
- capacity of individual (such as account holder, joint account holder or guarantor);
- status of account as open or closed (and the date of opening /closing);
- details of the credit provider;
- credit provider's client reference number;
- repayment history information in relation to the account (i.e. for a rolling 24 month period, a coding showing whether payments due were made each month).

The purpose of including credit account information in the credit reporting system is to provide a more complete and reliable picture than was possible under the negative-only system as to the extent of an individual's borrowings and whether the borrower is able satisfactorily to service those borrowings.

The permitted categories include the "amount of credit extended". However, with revolving credit - such as credit card accounts - where credit is automatically renewed as debts are paid off, focus solely on the full amount of credit extended (or 'credit limit' in credit card parlance) does not give the complete picture of either the extent of an individual's borrowings nor whether the borrower is able satisfactorily to service those borrowings.

For example, two individuals may each have a \$50,000 credit card limit. However, one borrower may consistently use nearly the full amount of the revolving credit while the other utilises just a little each month.

Credit reporters have suggested that the Code should permit the reporting of utilisation of available credit, for example, through monthly reporting of the current or outstanding balance.

The Privacy Commissioner decided not to permit the reporting of outstanding balance information when authorising more comprehensive reporting in 2010 and 2011. The Commissioner is willing to receive submissions as to whether or not that additional category of information should now be authorised. Two considerations for the Commissioner 5 years ago included:

- The Australian Law Reform Commission had conducted a major inquiry and recommended in 2008 against allowing the reporting of current balance information (see ALRC 108 (final report) 55.110-55.182). In essence, the ALRC considered that the reform they proposed (which was broadly similar to what the Privacy Commissioner implemented) would deliver nearly as good results in terms

of its predictive value as a full file system (i.e. one adding current balance information). They also took the view that comprehensive reporting of the type they recommended was already a substantial diminution of privacy for Australians and full file reporting seemed a step too far. The ALRC report was influential not only as the most recent and thorough review of the issues in a jurisdiction having a comparable approach to credit reporting as NZ but also because of the economic integration of the two economies and the perceived advantage of having broadly compatible regulation on both sides of the Tasman.

- Unlike most account information which is static, current balance information would be dynamic – that is, changing month to month as notified by subscribers – and thus difficulties might be encountered in the updating process (as has sometimes been the case with updating the status of defaults). Poor updating would more easily transform into disputes and complaints than with the static categories of account information. It was therefore considered prudent to wait until the public had become comfortable with positive reporting and the industry had a proven track record of reliably updating other dynamic account information (repayment history) before contemplating authorising reporting of account balance.

3.1. Would allowing the reporting of account balance information deliver substantial benefits to the credit reporting system while appropriately respecting individual privacy?

The Commissioner is interested to have evidence of the benefit to the measurement of credit risk that adding account balance information to the system would have. In addition he would be interested to hear views on whether a departure from the approach taken in Australia is now justified. Assurances are sought on the industry's capability reliably to report and update this information are invited. Suggestions as to the best approach to drafting a provision dealing with credit utilisation or current balance are welcomed.

3.2 Tax debt information: *Should Inland Revenue information be added*

Before mentioning a proposal by the Inland Revenue Department concerning taxpayer information it may be useful first to reflect on the existing information included in the credit reporting system.

Out of all the potentially available information that may exist about individuals, the Code seeks to restrict the information permitted to be reported to reliable information that is available and reasonable to report and that is proven to be

relevant to the prediction of credit risk. The permitted categories of information permitted to be reported are termed 'credit information' in the Code.

At the core of the permitted credit information is information sourced from:

- Credit providers.
- Official public records, principally judgments and specified public registers.

These two sources tend naturally to contain information that is reliable and available and the Commissioner has judged the included elements to be reasonable and relevant.

The information supplied by credit providers is *reliable* in the sense that the credit providers are active participants in the credit-cycle and stakeholders in the credit reporting system and must stand behind the information and be responsible for updating, errors, etc. Information from judgments and public registers is reliable in that the public record follows consideration by an independent person (a judge) or the completion of formal statutory processes and by law is deemed correct.

Information supplied by credit providers is obviously *available*: the entire system is premised upon participating credit providers sharing information. Judgments are public on the ancient principle of open justice while public registers are established to make certain elements of official information available in a standardised accessible way.

The Commissioner has assessed each element of credit information to ensure that it is *reasonable* that it be made available into the credit reporting system. This has involved a consideration of a number of factors depending upon context. Generally speaking, the reasonableness of including information sourced from credit providers is based upon the fact that the individual has entered voluntarily into credit arrangements and that there are a series of interdependencies between all players in the credit cycle warranting the sharing of certain details about those credit transactions and the individual's credit-related behaviours. The reasonableness of including information sourced from public registers relates to the fact that Parliament has already taken the decision to make the information a matter of publicly searchable record.

In relation to proven *relevance to the prediction of credit risk*, some of the existing permitted credit information records credit-related facts (e.g. of the extent of credit held, a failure to meet a credit obligation or a legal disability affecting credit). The balance of the information generally has some statistically demonstrated link to the assessment of credit risk.

The credit reporting system does not attempt to capture every single scrap or type of information having any potential relevance to an individual's capacity to maintain credit. It seeks to create an extensive and robust set of reliable information on the credit active population from which risk predictions can be made. The credit reporting system does not, for example, contain information on an individual's income or assets. Nor for example does it have information on criminal convictions, marital status, parking tickets or number of dependants. Nor does the system need to capture every single instance of default or unpaid debt to be effective.

In April 2016 Inland Revenue released an [issues paper](#) proposing, amongst other things, to override the presumption of tax secrecy to authorise Inland Revenue to disclose certain tax debt information about businesses to credit reporters. While the issues paper focusses only on companies, Inland Revenue proposes also to disclose certain tax debt information about individuals to credit reporters.

Inland Revenue's proposal to disclose tax debt information in relation to companies does not raise any issues for privacy or the Code. The Privacy Act is concerned only with information about individuals. Inland Revenue's proposals for companies can proceed regardless of any Privacy Act considerations in the context of individuals.

As set out in its issues paper, Inland Revenue is of the opinion that the disclosure of significant tax debt by the department into the credit reporting system will enable businesses contemplating providing credit to make more informed commercial decisions. Inland Revenue believes the inclusion of significant tax debt information in a credit check would provide a more comprehensive representation of a business' overall position. Inland Revenue believes that this would contribute to economic efficiency. Inland Revenue also believes that this will reduce opportunities for non-compliant taxpayers to continue to build up tax debt.

Inland Revenue proposes to impose upon itself certain hurdles to jump before disclosing tax debt information to credit reporters. It proposes to frame criteria permitting disclosure of taxpayer debt only where:

- The debt is significant;
- The debt is not disputed;
- Reasonable efforts have been made to collect the debt;
- The taxpayer does not qualify for serious financial hardship relief; and
- The taxpayer has been personally served notice of the Commissioner's intention to disclose debt information to credit reporters, and given 30 days to repay the debt or arrange for repayment.

The information that is proposed in Inland Revenue's issues paper to be disclosed will be:

- Identity information – to ensure the correct taxpayer is identified.
- Existence of tax debt – proposed to be a yes/no indicator with the date that the information was provided.
- Information about the tax debt – proposed to include tax types, age of the debt and the total amount represented as a band, for example \$150,000-175,000.

The categories of tax debt information that Inland Revenue would propose to disclose in relation to individuals (sole traders) would include PAYE debt, GST debt and income tax debt.

The proposal by Inland Revenue is therefore that the Code be amended to permit credit reporters to collect and report these types of tax debt information once the tax secrecy provision is amended to permit to allow the information to be disclosed. This is a novel proposal since such information has not previously been available to use and indeed by law is not currently available. We are unaware of the credit reporting system in other countries including such information for individuals.

3.2 Should credit reporters be permitted to include tax debt information in credit reports?

The Commissioner would be interested to receive evidence that including tax debt information in the credit reporting system for individuals would provide a substantial benefit to the assessing creditworthiness. In particular, the Commissioner will be interested to know of the overall marginal benefit of the inclusion assuming that the information is first incorporated into in the credit reporting system for corporate business entities.

The Commissioner would like to know how credit reporters and credit providers view the usefulness of the criteria proposed by Inland Revenue in relation to the purpose of assessing credit risk. Would information supplied in these conditions serve the purposes of a credit reporting system?

The Commissioner seek views on the compatibility of this proposed new class of information with the general approach taken for regulating credit reporting. The information is neither sourced from credit providers nor a public register. Nor is the information derived from credit arrangements that an individual has entered voluntarily into but rather relates to an individual's relationship with the State and responsibilities arising under operation of law.

The Commissioner is also interested in views as to how the Inland Revenue Department and tax debt information are to be viewed under the Code in the event, for example, that the information is disputed by an individual.

3.3 New Zealand business number: *A new identifier for sole traders*

The New Zealand business number has been established since the last major review of the Code. Given the business-focus most individuals will not possess this number.

Would there be advantages in permitting the use of this number in the credit reporting system? If so, what would the appropriate uses and limits in the credit reporting context?

3.3 How useful would the New Zealand Business number be for the credit reporters reporting system?

The Commissioner is also interested to hear if any problems would be anticipated in relation to adding this number into a system mainly focused upon individuals rather than businesses.

3.4 Access: Outer time limit Rule 6

An individual is entitled to request access to information held by a credit reporter. If an individual requests credit information from a credit reporter the credit reporter must provide the information as soon as reasonably practicable, but in any case not later than 20 working days after receiving the request.

A credit reporter cannot charge for access to credit information unless an individual requires the information within 5 working days. In this case a credit reporter may charge no more than \$10.

The credit reporting industry is set up in today's environment to quickly retrieve and disclose credit information to its subscribers. Allowing a maximum timeframe of 20 working days is arguably much longer than necessary in this context. Indeed, the industry generally provides requests that simply include standard credit information more quickly than this outer limit.

Under the Australian Privacy Act 1988 (section 20R) credit reporters in that country are now required to give access to an individual's credit information within a reasonable period and this cannot be longer than 10 days.

3.4 Should the Code require credit reporters to respond more quickly to access

requests than currently is the case?

If the case exists to change the Code, the Commissioner is interested to hear views as to what the appropriate maximum time frame should be.

3.5 Unclaimed money: *Expanding permitted use of credit reporting system*

Sometimes an agency holds money owed to an individual but is unable to pay the money out as they lack current contact details. It has been suggested that credit reporters be bitted to use credit information to provide a service to trace people to enable return of unclaimed monies.

Such a use would involve the use of credit information for a purpose other than the one for which it is held. However, for the individual concerned the the proposed use could be a beneficial one.

3.5. Should credit reporters be permitted to use credit reporting systems to trace individuals to whom money is owed and, if so, in what circumstances?

In addition to hearing views about the appropriateness of this idea, the Commissioner is interested to hear views on:

- Whether this is a role credit reporters are interested in performing;
- The conditions under which such a function might appropriately operate.