



FINANCIAL SERVICES FEDERATION

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Office of the Privacy Commissioner

email: submissions@privacy.org.nz

Discussion Paper: Credit Reporting Privacy Code Review

The Financial Services Federation (“FSF”) is grateful for the opportunity to submit on the review of the Credit Reporting Privacy Code (“the Code”).

By way of background, the FSF is the industry body representing responsible and ethical finance and leasing providers in New Zealand. The FSF has over fifty members and affiliates providing first-class financing, leasing, and credit-related insurance products and services to over 1 million New Zealand consumers and businesses. The FSF’s affiliate members include internationally recognised legal and consulting partners. A list of the current membership is attached to this submission as Appendix “A”.

The FSF provides answers to the questions raised in the Discussion Paper as follows:

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

The FSF submits that this is a difficult question to answer at this stage in the development of comprehensive credit reporting (“CCR”) in New Zealand. The FSF is aware that the adoption of CCR by credit providers has steadily increased since this was allowed when Amendments No 4 and No 5 were made to the Code. Current live participants include major banks, finance companies, utility providers, and telecommunications providers, and several other credit providers have projects in progress.

There are however many credit providers who for various reasons are not yet able to participate in CCR and for this reason, the FSF submits that it is as yet too soon to be able to fully determine the benefits of it for individuals.

Whilst participation in CCR is not yet at optimal levels, the FSF strongly supports the ability to be able to report and receive information on this basis because as more lenders come on board, the FSF believes it will drive better consumer outcomes.

The main reason FSF members report for not yet being a participant in CCR is not an unwillingness to do so – in fact the contrary is the case in that they are keen to be part of it. The key restraint is the time and resource (both human and capital) required to make the necessary changes to their systems to facilitate the exchange of information required. To be part of CCR requires considerable upgrading of IT systems in order to generate, manage and transfer data to CRA's. The reality is that for most FSF members there have been other priorities in their work plan especially around legislative compliance.

The other reason for the delay is the number of comprehensive participants needed to reach a threshold e.g. the majority of trading banks, for comprehensive reporting to become effective. That threshold has only recently been achieved.

Since the Global Financial Crisis, the New Zealand financial services sector has been subject to the most comprehensive legislative and regulatory reform in the country's history. This "once in a lifetime" reform has seen the introduction of a raft of new or revised legislation with which credit providers have had to comply.

This includes (but is not limited to) the Financial Advisers Act 2008, the Financial Services Providers (Registration and Disputes Resolution) Act 2008, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, the Non-Bank Deposit Takers Act 2013, the Financial Markets Conduct Act 2013, the Fair Trading Amendment Act 2013, the Consumer Guarantees Amendment Act 2013 and the Credit Contracts and Consumer Finance Amendment Act 2014.

Every new piece of legislation or regulation has required credit providers to upgrade systems and processes to ensure compliance resulting in significantly increased costs and necessitating work programmes that have been largely compliance based.

In 2014 the FSF surveyed members to gain a more quantitative understanding of the burden this compliance reform had imposed on them. Members were asked to estimate the actual cost of changing their systems and processes and of accessing professional advice in order to ensure they achieved compliance. The estimate from the 18 members who responded at the time was that they had spent between \$23 and \$25 million in this area alone. These figures did not include the human resource cost from within their business and from having to employ extra staff.

This has resulted in little, if any, innovation or changes to systems and processes that are not fully compliance related within the businesses of FSF members. Very few FSF members are currently participating in CCR as a result however many more now have this on their work programmes for the near or not-too-distant future. An FSF member that is now a participant reports that it took them many months for their IT team to implement CCR.

FSF members are keen to be involved in CCR because they believe that it provides for improved responsibility in lending decision-making. It provides a better picture of the individual and gives comfort to lenders that if a consumer has had previous borrowings they better understand their own obligations in a lending contract. It should also be noted that it is more accurate, especially for good credit which ultimately leads to financiers providing rates according to risk profiles. FSF members report that this is starting to emerge already.

Under negative credit reporting a default loaded against an individual remains on their credit file even though it is paid (although it does show as having been paid). CCR gives a fuller view of the individual's credit history so the lender can take into account more than just one negative experience to make a more favourable decision for the consumer.

The FSF believes that on the basis that all responsible lending providers are not yet participating in CCR (even though there is a strong willingness to do so as soon as they can) no significant changes to the current Code should be undertaken at this time.

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?

Given the (to date) limited experience of FSF members in participating in CCR, the FSF is unable to comment in any material way with regard to the accountability requirements for credit reporters and their subscribers.

However as potential subscribers, FSF members would support the current accountability requirements as being sufficient to maintain public confidence and would not recommend any changes to these until CCR is more widely subscribed to. FSF members are compliant under the current regime and the numbers of complaints about the way this is working are limited. The way in which CCR is managed has very similar requirements to the current way credit providers interact with bureaux and the FSF would suggest that this would seem to be sufficient.

1.3 Have the credit freezing provisions been useful?

FSF credit provider members report that they have had no experience of working within the suppression arrangements.

FSF CRA members report that the credit provisions are useful to protect individuals in cases of identity theft and fraud, however they have not been widely used by consumers. This could be due to a general lack of awareness of the availability of this facility.

From a CRA perspective, the operational requirements of the Code for the management of credit file suppressions are perhaps overly complicated. By way of comparison, the corresponding provisions in the Australian regulatory framework are simpler and easier to

administer, without compromising on the security and integrity of consumers' information held by CRAs.

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

The FSF supports pre-screening of proposed marketing lists provided by credit provider subscribers to credit reporting agencies as a means to ensure that direct marketing is targeted only to those individuals with good credit histories which is entirely consistent with responsible lending behaviour.

The FSF emphasises though that this facility should only be available for screening of the credit provider's own lists and only when it has been ensured that correct bureau privacy declarations have been met. This is essential to deterring the wide use of lists and potential mining of CCR data so that individuals do not feel that their credit data is being abused by credit providers.

The FSF submits that where negative credit reporting only is available the benefits of pre-screening to assist with responsible lending practices are negligible. Increased take-up of CCR would make the pre-screening more reliable in terms of allowing credit providers to target only those people who have good repayment histories and who would therefore be considered a good credit risk.

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

FSF members report that the use of the credit reporting system in relation to fraudulent actions by individuals works well for them in avoiding dealing with individuals who might be fraudulently seeking or obtaining credit or fraudulently evading credit obligations.

Incidence of fraudulent behaviour is increasing and becoming more sophisticated and any information that can help lenders to avoid fraudulent dealings with individuals is extremely helpful to credit providers. The use of the credit reporting system in this regard is particularly useful in providing information on aliases used by individuals.

The FSF would also point out that the cost to the lender who becomes a victim of fraudulent behaviour is ultimately passed on to the consumer so any means of avoiding fraud becomes an ultimate benefit to the consumer as well as the credit provider.

It is also worth noting the impact to customers who have been the victim of ID fraud. Refining the information held to show that the identification has been used for fraudulent purposes and being able to record that on the bureau would be useful for the victim's future ability to apply for credit. It is the view of FSF members however that the public is not widely aware that individuals have the ability to report the fact that they have lost or had their identification stolen to a CRA so that it can be flagged if someone posing as that individual tries to obtain credit or other services. It would be of great benefit to the New Zealand public if the Office of

the Privacy Commissioner was to provide some public education that the Code allows for this facility.

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

FSF members report that they find the information on credit non-compliance by an individual helpful in that if this information appears on a credit report, they will not lend to that individual at that time.

FSF CRA members report however that this provision has not been widely used possibly because individuals and subscribers are unaware that the provision exists.

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 addition of this information in Schedule 5 is for the very narrow purpose of matching by the credit reporter. It is most effective when the candidates to match have had their drivers' licence number (DLN) loaded and much of what happens with that information goes on behind the scenes as no disclosure of the DLN to subscribers takes place after the DLN is captured. Accuracy is limited by the availability of DLN's loaded which is not the same as the number of DLNs issued.

The possibility of an increase in accuracy is limited by the extent of the DLNs loaded and it is hard to tell whether an increase in accuracy is directly attributable to this one narrow measure. It is likely to be better than not having this at all but the accuracy afforded by this measure varies depending upon the extent of DLNs captured.

DLNs are however the primary identifier for use by lenders in meeting their anti-money laundering customer due diligence obligations. The utility of having some means of associating an identity claimed with an artefact of identity such as DLNs is demonstrated every day and recognized as a way of partially meeting a requirement to verify for credit providers.

FSF members do report however that they experience problems in achieving the identification matches when the drivers licence presented has expired, if the individual is currently holding a temporary licence (having lost their original licence and awaiting issue of a new one) and with the latest licence version. In this case newer licences have information required in identification matching on the reverse as well as the front of the licence and this information is not able to be captured at this stage.

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

FSF members (including CRA members) report that they have no issue with the operation of the new reporting and retention periods.

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

The FSF submits that most responsible lenders provide consumers with the ability to obtain a lending quote via their websites using calculators to work out repayments etc. On-line access to credit quotations makes it easier for consumers to shop around.

FSF members report that the current way in which quotation enquiries are reported is not always reliable in terms of determining whether it was a quote versus an actual loan application. They feel that it would be more helpful if there was a cross-reference process in the system to allow reporting of whether the quote actually eventuated in a loan.

On the other hand FSF members also believe that it would be useful for responsible lenders to be able to access reporting on whether a quotation eventuated in a loan being declined so cross-referencing to that effect would also be helpful.

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 FSF refers to earlier comments regarding the fact that comprehensive credit reporting is yet to be adopted on an industry-wide basis and therefore all the relevant information about an individual is not yet available to be converted into a reliable credit score. Lenders also have their own credit scoring algorithms within their loan origination system and they also have the ability to use their own judgment in assessing whether an application for credit should be approved or declined.

FSF members report that individual credit scores certainly would be considered as part of the consideration of a loan application but there are many other factors involved in this process including the judgment of the credit application processor.

The value of a good credit score to an individual (or even what a good credit score actually is) is still not widely known in New Zealand to the extent that it is overseas but the FSF supports initiatives to improve this understanding such as the recently launched www.creditsimple.co.nz website which together with providing an indicative credit score also provides information as to how an individual might improve theirs.

The Code provisions for access to, and correction of, credit information by individuals are clear and efficient in their operation. There appears to be little evidence of individuals experiencing undue difficulty in obtaining further information from CRAs with respect to disputed information and in having validly disputed information corrected by CRAs.

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

The FSF has no comment to make on this question.

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

Many FSF members operate in countries other than New Zealand where account balance information is available and they report that this information is very valuable to them in making responsible lending decisions. International credit card companies suggest that where this information is available, the quality of the lending portfolio is better.

FSF members also report that the availability of more real time information on repayment behaviour improves individual credit scores when consumers can demonstrate consistently good repayment history. This then allows lenders to make better decisions.

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

The FSF strongly believes that credit providers should be able to access information about all debt held by individuals in order for them to be able to make better informed (and therefore more responsible) lending decisions. The FSF would go so far as to say that not only IRD debt should be able to be included in credit reports but all Government debt should be reportable.

This should also include student loan, liable parent contribution debt to allow affordability to be more accurately calculated.

It should be noted that in the event of business insolvency, tax debt is ranked higher than secured debt with a credit provider. FSF members would very much value knowing that tax debt exists when lending to businesses as their security position is considerably undermined if there is a debt to the IRD.

The FSF also submits that credit providers currently have access to information provided by the Ministry of Justice with regard to fines owed to them by individuals

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

The FSF submits that many New Zealand businesses are small limited companies, partnerships or operated by sole traders. The directors and owners of these businesses are individuals and are therefore personally liable for any debt held by the business. The use of the New Zealand Business number in the credit reporting would be useful to credit providers in knowing who

they are dealing with and their overall indebtedness and therefore the FSF fully supports the use of these numbers in the credit reporting system.

The FSF does not anticipate any problems in relation to adding this number into the system.

3.4 Should the Code require credit reporters to respond more quickly to access requests than is currently the case?

The FSF submits that notwithstanding the current requirements CRAs can and do exercise discretion in responding to access requests more quickly and would suggest a quicker timeframe than 20 working days is appropriate for simple requests to access an individual's credit file. However they reserve the right to take longer to resolve situations where there is a dispute or an individual is asking for corrections to their credit file as these take time to verify.

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?

The FSF would support permission being granted to credit reporting agencies to trace individuals to whom money is owed. FSF members report that there are circumstances such as when a borrower has omitted to cancel an automatic loan repayment with their bank on the maturity of a loan where they hold money on behalf of an individual and having the ability to use the credit reporting system to trace these people so that the money can be returned to them would be helpful.

S46 of the Credit Contracts and Consumer Finance Act requires credit providers to credit payments to the debtor's account as soon as practicable and this would include the return of overpayments. FSF's debt collection agency members report that they have a big issue with overpayments and it is often difficult to track people down. This facility would be very beneficial to them in finding and returning funds to individuals but the FSF would suggest that the information provided should be restricted to address details only and that no financial information should be shared with debt collection agencies.

Once again, the FSF is grateful for the opportunity to provide their submission on this review. Please do not hesitate to contact me if there is anything further I can help you with.

Lyn McMorran
EXECUTIVE DIRECTOR

Appendix A - FSF Membership List as at 1st November 2016

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting Other	Insurance	Affiliate Members
<p><u>Rated</u></p> <ul style="list-style-type: none"> • Asset Finance (B) • Fisher & Paykel Finance (BB+) <p><u>Non-Rated</u></p> <ul style="list-style-type: none"> • Mutual Credit Finance • Gold Band Finance Limited 	<ul style="list-style-type: none"> • BMW Financial Services • Branded Financial Services • Community Financial Services • Go Cars Finance Ltd • European Financial Services • Mercedes-Benz Financial Services • Motor Trade Finance • Nissan Financial Services NZ Ltd • Onyx Finance Limited • Toyota Finance NZ • Yamaha Motor Finance <p><u>Leasing Providers</u></p> <ul style="list-style-type: none"> • Custom Fleet • Fleet Partners NZ Ltd • LeasePlan NZ Ltd • ORIX NZ • SG Fleet 	<ul style="list-style-type: none"> • Advaro Limited • Avanti Finance • Caterpillar Financial Services NZ Ltd • Centracorp Finance 2000 • Finance Now • Future Finance • Geneva Finance • Home Direct • Instant Finance • John Deere Financial • Latitude Financial • Personal Finance Ltd • South Pacific Loans • The Warehouse Financial Services Group • Thorn Group Financial Services Ltd • Turners Finance Limited 	<ul style="list-style-type: none"> • VEDA Advantage <p><u>Debt Collection Agencies</u></p> <ul style="list-style-type: none"> • Baycorp (NZ) • Consumer Credit Management Limited • Dun & Bradstreet (NZ) Limited 	<ul style="list-style-type: none"> • Autosure • Protecta Insurance • Provident Insurance Corporation Ltd • Southsure Assurance 	<ul style="list-style-type: none"> • American Express International (NZ) Ltd • AML Solutions • Buddle Findlay • Chapman Tripp • EY • Finzsoft • KPMG • PWC • SimpsonWestern <p align="right">(Total : 53 members)</p>