Comprehensive Credit Reporting

Six Years On

Review of the operation of Amendments No 4 and No 5 to the Credit Reporting Privacy Code

10 April 2018

Privacy Commissioner
Te Mana Matapono Matatapu
New Zealand

Credit Reporting Privacy Code 2003, clause 3, as inserted in 2011 by Amendment No 5

3. Review
The Commissioner must review the operation of Amendments No 4 and No 5 as soon as practicable after 1 April 2015.

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

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

… 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

Note: This report frequently quotes credit reporters, principally from their late-2016 submissions. Some credit reporters have since changed their names. For simplicity the report consistently refers to these companies by the names in use at the time of the submissions.

Credit Reporting Privacy Code: Review of the operation of Amendments No 4 and No 5

CONTENTS

Overview of the review

Introduction

This report completes a review begun in 2016 of the operation of Amendments No 4 and No 5 of the Credit Reporting Code.[1] Amongst other things, those amendments authorised the inclusion in New Zealand credit reporting of detail of individuals' credit accounts and repayments history – a practice commonly known internationally as 'positive reporting' although Australia and New Zealand have favoured the title 'Comprehensive Credit Reporting' (CCR). The amendments were fully in effect by April 2012, some 6 years ago.

Positive reporting widens the traditional focus of New Zealand credit reporting from the small proportion of individuals who fail to fulfil their credit obligations ('negative reporting') to the detail and repayment of the credit accounts of all New Zealanders. The widened focus includes information of great sensitivity, including normally confidential details of borrowings, and accumulation of information in much greater volume, principally monthly confirmation as to whether payment on all credit accounts has been made.

CCR therefore entails a much greater impact upon the privacy of all New Zealanders than before. The Privacy Commissioner authorised practices that formerly were prohibited only after being convinced of the potential public benefits. The Code also placed strict limits on the practice and introduced special safeguards.

This review was required as part of the package of amendments introducing CCR. It was intended to be the opportunity to seek demonstration that the potential benefits signalled by industry had actually been delivered and also to ensure that the Code's limits were being respected and that the Code's machinery provisions, including the safeguards, were operating as anticipated.

Significant changes to the regulation of credit reporting

The amendments made significant changes to the regulation of credit reporting. As already noted, they authorised credit reporters to undertake positive reporting through collection, retention and disclosure of credit account repayment history that formerly was prohibited. In addition, Amendments No 4 and No 5 made other changes such as:

- Permitting and regulating the use of driver licence numbers as identifiers.
- Imposing new accountability requirements: annual compliance reviews involving an independent element and external reporting.
- Granting victims of identity fraud a right to have their credit information suppressed.

[1] Amendments No 4 and No 5 are appended to this report. Fact sheets on each of those amendments are available, along with other information, on the Office website at 'Credit reporting: What changed in 2012'.

- Permitting credit reporters to pre-screen credit providers' direct marketing lists using credit reporting information.
- Requiring the publication of clear information about consumers' rights.

Each of those changes is significant in its right and is discussed later in this report. The review sought to check that these provisions had operated satisfactorily.

The Amendments also made several other useful changes not further discussed in this report. Examples include the introduction of a $100 threshold for listing credit defaults, clearer safeguards for listings affecting guarantors and expanding the range of public register information permitted to be used in reporting or, in the case of deaths index information, for improving accuracy.

Submission process

In early-2015 consideration was given to commencing the review of the Code and soundings were taken from the three national credit reporters. It appeared that the implementation of CCR by the major credit providers had been slower than expected. The conclusion drawn by the Office was that it would not be practicable to undertake a useful review at that time and the decision was taken to postpone the review for a year.

In April 2016 the Office of the Privacy Commissioner wrote to stakeholders asking if they had identified any issues they would like highlighted in an issues paper then in preparation. On 30 September 2016 the Office released a discussion paper inviting public submissions by mid-December 2016.[2]

Submissions were invited on the following
Part 1: General issues: Have Amendments No 4 and 5 delivered benefits and protected individuals?
Part 2: Operational issues: Are amended Code provisions working well?
Part 3: Future directions for the Code: Are further changes to credit reporting warranted?

The Commissioner received fourteen written submissions[3] from three credit reporters,[4] two industry groups,[5] four banks,[6] one civil society federation,[7] one telecommunications company,[8] two government departments[9] and two individuals.

[2] Office of the Privacy Commissioner, Discussion Paper: Credit Report Privacy Code Review, 30 September 2016: https://privacy.org.nz/assets/Uploads/Credit-Reporting-Privacy-Code-Review-Issues-Paper-2016-30-September-2016-A463534-A467464.pdf
[3] The submissions are available at: https://privacy.org.nz/the-privacy-act-and-codes/codes-consultation/submissions/
[4] Centrix, Dun & Bradstreet, Veda. Since completion of the submission process two of the credit reporters have changed ownership or name. Dun & Bradstreet is now illion. Veda is now Equifax. For simplicity, this report uses the company names in use at the time of the 2016 submissions rather than the new names.
[5] Financial Services Federation, Retail Credit Association of New Zealand Inc.
[6] ANZ, ASB, Bank of New Zealand, Westpac.
[7] NZ Federation of Family Budgeting Services.
[8] Spark NZ.
[9] Inland Revenue Department, Reserve Bank of New Zealand.

The discussion paper made clear that the Office was seeking evidence of real benefits that had arisen from positive reporting rather than mere assertions or expressions of opinion. In many cases such evidence was missing from submissions and, after analysis of the submissions, staff spent many months seeking what evidence they could obtain by enquiry of submitters and from other sources. The review was also informed by information within the Office such as enquiries, complaints and assurance reviews and external resources, such as new reports.

The discussion paper solicited feedback on aspects of the Code going beyond the operation of Amendments No 4 and No 5 and invited ideas for new directions. Helpful submissions and suggestions have been received. These may be useful in further reform of the Code. Such matters will not be addressed in this report but will be considered separately.

During the period of the review there were significant government reviews in Australia touching upon progress in achieving benefits of CCR in that jurisdiction.[10] The position in Australia has a particular relevance to New Zealand both because of the close industry ties (amongst both credit reporters and credit providers) and because Australia had trodden a similar path in credit reporting regulatory reform. We awaited the announcement of the outcome of the most significant of those reviews in late-2017 before moving to complete this review.[11] While this report was being finalised Australian officials were working towards implementing government decisions on CCR.[12]

In addition, the results of a review of the Australian credit reporting code commissioned by the Australian Privacy Commissioner also became available in mid-December 2017.[13] In turn, ARCA is consulting in April on proposed amendments to the Australian code to give effect to some of that review's recommendations.[14]

---

[10] The Australian Productivity Commission reported on their inquiry into data availability and use in March 2017 following which the Australian Treasury undertook a review resulting in an announcement by the Commonwealth Government in November 2017 that the Government would legislate for mandatory CCR.

[11] Hon Scott Morrison MP Treasurer of the Commonwealth of Australia, 'Mandating comprehensive credit reporting', 2 November 2017: https://sjm.ministers.treasury.gov.au/media-release/110-2017/ Australian developments are further discussed at part 1.7 below.

[12] The Australian Treasury consulted in February 2018 on draft legislation to give effect to the Government decisions, see 'Mandatory Comprehensive Credit Reporting': https://treasury.gov.au/consultation/c2018-t256276/

[13] PricewaterhouseCoopers, *Review of Privacy (Credit Reporting) Code 2014 (V1.2) Report*, 8 December 2017: https://www.oaic.gov.au/resources/engage-with-us/consultations/independent-review-of-the-privacy-credit-reporting-code-2014/pwc-report-review-of-privacy-credit-reporting-code-2014.pdf. This report contains recommendations that are principally of a technical nature (in many cases arising from the complex interrelationship of Australian primary and secondary regulation having no NZ equivalent) although in places it also includes discussion of more fundamental concerns and issues. The discussion of CCR operational issues is of limited value in so far as Australia so far has had virtually no experience of their regulatory scheme for CCR in operation due to miniscule participation rates. The discussion of general policy issues and of public concerns expressed to the reviewers may be of more interest. The report, and the proposed code variation, became available too late to be fully considered in this review but the Office will take the opportunity to discuss the report with the credit reporters during implementation of the recommendations of this review and, if appropriate, further action may result.

[14] See https://www.arca.asn.au/news/privacy-credit-reporting-code-cr-code-variation.html

A note on evidence

A significant effort by the Office in this review, and substantial portion of this report, has been devoted to seeking to confirm or quantify the level of CCR participation and the existence or significance of CCR benefits. We present in the report the most useful evidence presented to us or that we could find ourselves. We often abbreviate material but footnote our sources, including submissions, so that readers can go into the evidence in more depth if they wish. However, in some cases the evidence is quite limited and indicative rather than conclusive. It may be useful to mention some of the challenges in obtaining complete, relevant and reliable evidence.

A few of the challenges included the following:

- *Commercial confidentiality*: A number of the issues we explored raised aspects that were commercially sensitive for either or both credit reporters and credit providers. This was especially the case during this period of implementation. This can be in relation to matters as basic as who is participating through to complex issues like the use that is being made of the data and changes in the practices of companies.[15]
- *Relevant data held by three competing companies*: CCR data is of course amassed in convenient repositories. However, the data is confidential. In addition, while each company gains a rich understanding of CCR through analysis of their own data none holds a complete picture across the three data sets.
- *CCR has not yet matured and is dynamic*: Participation in the system is incomplete and has changed throughout the period of the review. We have done our best to identify participants but have not sought to delve further into the information held within the systems. A fully mature credit history system will not only have high coverage of relevant credit providers but also of most accounts of all types for the permitted 24 month run. Benefits may not full emerge until the data is rich and credit providers are not only contributing information but changing their behaviour in reliance upon the information they extract and analyse. Indicative of the dynamic environment is the fact that on 4 April 2018, when the Office was on the verge of public release of the report, we received confirmation that New Zealand's largest bank had begun participating in CCR just days before.[16]
- *Lack of independently published research*: We have been grateful for the detailed submissions from credit reporters including summaries of research they have undertaken on their own information holdings. We refer to that throughout the report but present it as being indicative rather than conclusive. The credit reporters

[15] By way of typical example, we were told as recently as January 2018 by one source that 6 more finance companies had recently begun participating in CCR but that their identities could not be revealed. Accordingly, this unverified information does not feature in this report.

[16] Given the significance of this development, the tables, graphs and participation rates relating to the banks have accordingly been updated, redrawn or recalculated. We have left the participation figures for telecommunications service providers and electricity retailers as they were at the end of 2017.

are, of course, interested parties and have privileged access to their own data. Their published reports are not peer reviewed academic papers. Their research cannot be replicated by another researcher. The Office is not in a position to test the assumptions that underlie the research or the methodologies.

Australia has been in a parallel process to NZ on CCR and similar difficulties have been encountered in getting accurate information on progress of implementation. The Australian Retail Credit Association (ARCA) – the industry group equivalent to RCANZ in New Zealand – has risen to the challenge by designing the ARCA Credit Data Fact Base into which industry participants contribute data to produce key indicators.[17] ARCA acknowledges that government, regulators and the industry needs such data. There would be merit in NZ industry producing cross-industry statistics.

Take up of CCR has been protracted

There has been a reasonably slow take up by credit providers of positive reporting. The typical reasons offered for the delay by industry players of the resource requirements (both human and capital) which have had to compete in priority with legislative compliance requirements in other areas. It was surprising to hear such reasons being given 5 years after the change was authorised – especially by representatives of the finance industry in relation to a substantial opportunity designed to improve their industry's risk management.

However, if the take up in New Zealand seemed slow it is interesting to look across the Tasman for comparison. Participation has been so poor in Australia that the Commonwealth Government plans to make participation in CCR mandatory for licensed credit providers, starting with the largest in 2018.

The picture that has emerged in the review shows some evidence of benefits to participants in the credit reporting system but, so far, limited evidence of benefits to individuals, the community and the economy. It is difficult yet to say how much this can be attributed to slow uptake of positive reporting, unwillingness for reasons of commercial sensitivity for industry players to share compelling evidence of benefits or because CCR is unlikely to deliver substantial benefits beyond those accruing to CCR participants.

It might be expected that the benefits to the industry of CCR will emerge more fully as the system matures. Ideally, independent research should be undertaken on a cross-industry basis in the next two years to confirm that.

Operation of the Code satisfactory with some remaining issues

Most of the submissions agree that the machinery provisions in the amended Code are working satisfactorily. However, it was disappointing to find that some facilities made

[17] See https://www.arca.asn.au/docs/1535/arca-credit-data-fact-base-april-edition

available by credit reporters as required by the Amendments to serve the public interest have not been taken up by credit providers in any significant way.[18]

In particular:

- The ability for consumers to obtain a 'quotation enquiry' without affecting their credit score is being thwarted by credit providers failing to provide that option.
- The take up of pre-screening to support responsible lending has been low.

Furthermore, industry-related benefits in areas of matching (driver licence numbers) and early warning (serious credit infringement/credit non-compliance action) will only be fully realised if lenders use these facilities to a greater degree than they have done so far.

Submissions highlight the lack of consumer awareness on aspects of the amended Code provisions. This is a recurring issue that crosses into issues of financial literacy and which may require a broader response than simply focus upon privacy rights. While individual industry players have taken useful initiatives this is an area that would benefit from cross-sectoral leadership from industry bodies.

While the Office takes the view that CCR benefits primarily accruing to the industry have emerged and will continue to enlarge as the system matures it is not so optimistic when it comes to the benefits that primarily accrue to the system, individuals and the community.[19] The evidence thus far is that the new provisions focused upon system benefits or benefits to individuals or the community that represent a cost to credit providers without any immediate payback to them have been underutilised. This is not acceptable as the privacy intrusion legitimised by the Code is premised upon benefits accruing to individuals (both as borrowers and as community members).

The intrusion of CCR beyond the negative credit reporting system that has existed for decades cannot be justified simply by the interests of lenders. While reverting to the former negative system - which principally impacted individuals who had failed to meet their credit obligations rather than all credit active New Zealanders – would be one possible response to a failure of CCR to deliver individual and community benefits. A much better outcome would be for the credit industry to act decisively to demonstrate that it can deliver on such issues as consumer choice, competition, responsible lending, improved identification practices,

[18] Examples include pre-screening, hashed driver licence number matching and quotation enquiries. Each of these issues is explored in more depth below.

[19] We use the phrase 'primarily accrue' to acknowledge that direct benefits to, say, banks, may indirectly also benefit individuals. For example, if banks can use CCR more effectively to predict their lending risk this may result simply through lower defaults in greater profits (a benefit solely to the banks). However, instead it might lead to, say, lower interest rates to borrowers with good credit scores (as well as being profitable this could be counted as a benefit to selected individuals) or to a willingness to lower interest rates generally or to lend more money at the same risk level (as well as being profitable, this might be counted as a benefit to the community). One might across the industry and across time see something of a mixture of these benefits although only to the extent that they accord with the banks drive to maximise their profits.

quotation enquiries, lending to under-served communities and public education. A number of the report's recommendations go to these issues.

Key points

- **Protracted uptake:** It has taken years for the majority of the credit industry to begin participating in CCR and this has made it difficult to obtain unequivocal evidence of CCR benefits. A critical mass of participants was reached some time ago. With the largest bank having just joined CCR, NZ appears to be on the cusp of a high participation rate.
- **Credit provider risk management:** CCR has enabled participants to reduce their credit risk and increase their lending capacity. Those benefits are dependent upon CCR uptake.
- **Innovation and competition in credit offerings:** The CCR system has not matured sufficiently to demonstrate a major competitive effect although CCR has enabled some credit offerings to be based on individual's creditworthiness.
- **Community benefits slow to materialise**: We have no evidence that CCR has resulted in marginalised communities obtaining better access to mainstream credit. The potential of CCR to contribute to responsible lending has not been fully realised.
- **Credit freezing:** The process enabling suppression of credit information to counter credit fraud had been used by increasing numbers of individuals although overall consumer awareness may be low.
- **Some provisions under-utilised**: The facility to report serious credit infringement and credit non-compliance action reporting is little used by credit providers. Similarly, the system for using driver licence information to improve matching of identification details is sound but is little used by subscribers.
- **Quotation enquiries**: In an undifferentiated credit scoring system sensible consumers 'shopping around' for the best rate can look a lot like desperate debtors scrambling for credit. Credit providers have not implemented the 'quotation enquiries' solution.

Summary of Comprehensive Credit Reporting roll out and uptake timeline

	2010 and 2011	2012	2013	2014	2015	2016	2017/2018
Regulation and industry standards							
Credit Reporting Privacy Code	Dec 2010: Amendment No 4 issued September 2011: Amendment No 5 issued Dec 2010:Transitional schedule commenced	Apr: Amendment 5 and remainder of Amendment 4 commenced	Amendment 7: transitional schedule extended by 4 years to 2017				March 2017: Transitional schedule expires
RCANZ Standards	Dec 2010: Draft data standards 1.0 introduced ('Industry Requirements') Aug 2011: RCANZ registered.	Mar 2012: Version 2.0 data standards approved July 2012: Version 2.02 data standards.	Mar: Principles of reciprocity (heads of agreement).		Mar: Version 3.0 data standards.		
Participation in comprehensive credit reporting							
Banks				Kiwibank ASB Westpac			2017: Cooperative 2018: ANZ
Other lenders			Finance Now Latitude Financial		Harmoney		
Telcos							2017: Spark Vodafone
Utilities				Genesis Energy Energy Online	Mercury Meridian Energy		

Part 1: Comprehensive credit reporting: Roll out and industry uptake

It is useful to have a picture of the take up of CCR as this provides a context for the issues examined in the review.

At the outset of the review there was no publicly available information indicating CCR participation levels.[20] One preliminary objective has been to use the process to shine a light on participation rates. An understanding of the level of CCR participation is particularly helpful when we come to consider questions of whether CCR is sufficiently mature to reach conclusions about its benefits and prospects.

1.1 Roll out of CCR

The Code was originally issued in 2004. It authorised and regulated the then-prevailing practice in both Australia and New Zealand of negative-only reporting. The Privacy Commissioner undertook to review the Code when it had operated for several years to check that it was working as anticipated. Following a very substantial review – coinciding with detailed research and analysis undertaken by the Australian Law Reform Commission in relation to parallel regulation in Australia - the Code was amended in 2010-11 to allow for comprehensive credit reporting.

The package of code changes to enable CCR was split into two amendments: No 4 and No 5. No 4 was issued in December 2010 with commencement delayed for 10-15 months. Amendment No 5 was issued in September 2011 with commencement of certain provisions in October and December that year with the final provisions of both Amendments No 4 and No 5 commencing in April 2012. The shape of CCR regulation has therefore been known to the credit industry for more than 7 years and the entire set of rules have been in effect for 6 years.

The delayed commencement of Amendment No 4, together with a transitional schedule, was intended to assist credit reporters and subscribers to update their operational systems to ensure a smooth transition to CCR. Schedule 8 ('transitional arrangements associated with introduction of comprehensive credit reporting') (now expired) allowed credit providers to give notice to existing customers to allow them to disclose account information into the system (whereas for new customers individual authorisation would form part of regular credit granting processes).

1.2 Industry uptake of CCR

[20] One source – although limited and indicative of intentions only – was the public listing on the RCANZ website of the member companies that had given notices under Schedule 8 of the Code to participate in reliance on the transitional provisions. See http://rcanz.org.nz/resources/

There are several reasons why it would take some considerable time for the credit industry to fully participate in CCR. Principal reasons include:

- The industry needed to develop common data standards that would be applied by all participants – both credit reporters and credit providers.
- The credit reporters needed to build the systems to give effect to CCR.
- Participating credit providers must change their business processes and systems.[21]
- The network effect means that initially when there are few participants there is little value in participation but as participation rates increases so does the value: accordingly, at the outset it is hard for some banks to make the business case internally to prioritise the necessary investment to participate.
- Competition concerns make major players reluctant to be 'first mover' and dominant players typically participate last as sharing their existing customer information may place other players on a stronger basis to compete with them.

The build up to a mature CCR system remains gradual even after a credit provider begins contributing and accessing information. Account information may take some time to build up to a full 24 month run.[22] Some credit providers have many different types of credit products (such as mortgages, credit cards and personal loans) and they may not be ready to contribute all credit lines at the outset. The system becomes quite useful when there is likely to be account information on all credit active individuals but grows in predictive power as it matures to have multiple or ultimately virtually all active credit accounts included. Credit providers will also take some time to fully understand CCR (when populated with account information) and be sufficiently confident to adapt their lending and account management process take advantage of the power and usefulness of the new system.

Some steps in the march to industry participation are noted in the timeline above.

Agreeing industry standards was a precursor to some of the other steps. This was not a task undertaken by the Office of the Privacy Commissioner but by the industry collectively. Notable milestones included production of a first draft of data standards in December 2010, incorporation of an industry body (RCANZ) in August 2011 and adoption of data standards in July 2012.[23]

Following adoption of the data standards in 2012 the credit reporters were in a position to complete their rollout of services. It has not been possible to obtain a convenient and complete list of participating companies. However, from submissions and enquiries made by

[21] For example, the Australian Retail Credit association describes a 'pipeline of 5 milestones' which a credit provider will typically pass before reaching the 6th milestone of participation. See https://www.arca.asn.au/docs/1535/arca-credit-data-fact-base-april-edition

[22] Although during the transition provision was made for some back-loading of information starting at the point at which notice had been given to customers.

[23] A parallel process has been happening in Australia under the aegis of the Australian Retail Credit Association with its standards issued in December 2015: http://www.arca.asn.au/focus/australian-credit-reporting-data-standard.html

the Office it appears that the first CCR participants (finance companies) began in 2013 to be followed by 3 banks and a utility in 2014.

Initial adoption of CCR by credit providers began later than had anticipated by the Office and the subsequent growth in participation has been much slower than the Office had expected. This created some difficulties for the Office in undertaking public awareness-raising[24] and undertaking this review.[25] It also led to the Commissioner to amend the Code in 2013 to extend the duration of the Transitional Schedule by 4 years.

1.3 Levels of CCR participation

It has not been entirely straightforward to identify participation in CCR. Some information was able to be gleaned from submissions. In other cases we have enquired directly of entities (such as banks and utilities) or obtained information from public sources. The timeline records information that we have confirmed although we have been told that there are at least six finance companies that have recently begun participating that are not shown and it is reasonable to assume that there may be other entities missed where their participation has not been disclosed to us.

We set out some more detailed information in the following charts and tables in relation to banks, telecommunications companies and electricity retailers.

The banks are not, of course, the only credit providers that may utilise CCR but we have focused upon them because they are a finite group undertaking most lending to individuals. There is published data on market shares that we have been able to utilise.

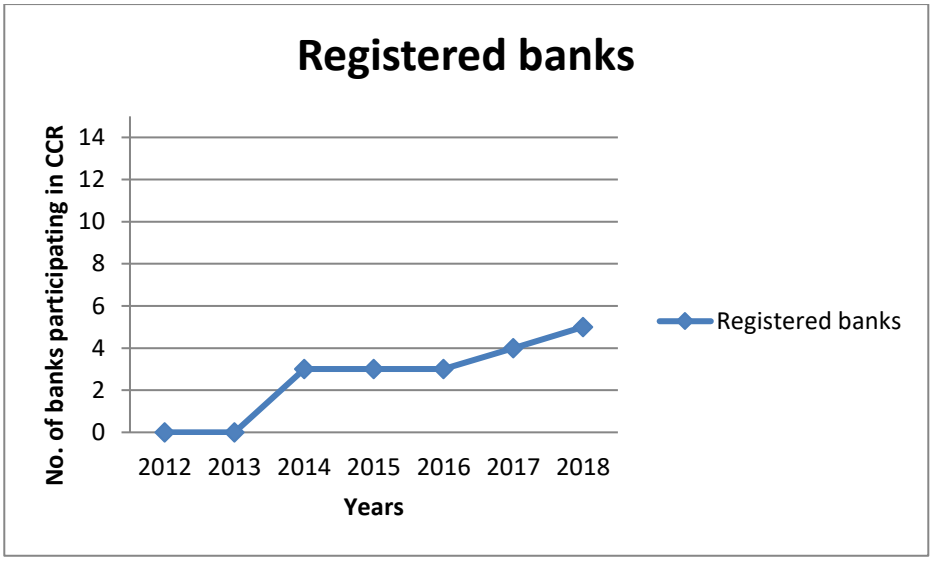
We have added information on telecommunications companies and electricity retailers. Opening a mobile account is perhaps the principal entry into the world of credit for young people. All households will have a utilities account, most presumably being paid in arrears. New Zealand's scheme – in contrast to Australia's – explicitly includes such accounts to seek to ensure that credit active individuals are not rendered invisible in the system simply because they have not yet accessed mainstream bank credit.

1.4 CCR participation by registered banks

We understand that 5 of the 14 banks registered with the Reserve Bank participate in CCR.

[24] The Office devised, in cooperation with industry and civil society, a series of 7 'key messages for consumers' regarding CCR and developed supporting explanatory materials on those 7 themes. In 2012 the Office undertook a nationwide roadshow to inform community and budget advisers. Unfortunately these proactive efforts proved premature. In late-2016, the Office created a consumer-oriented online training module as the primary means for delivering training support which drew upon the agreed key messages and the materials developed for the 2012 roadshow.

[25] As already noted the start of this review was postponed by a year beyond the indicative start date set out in the Code.



The full list is as follows:

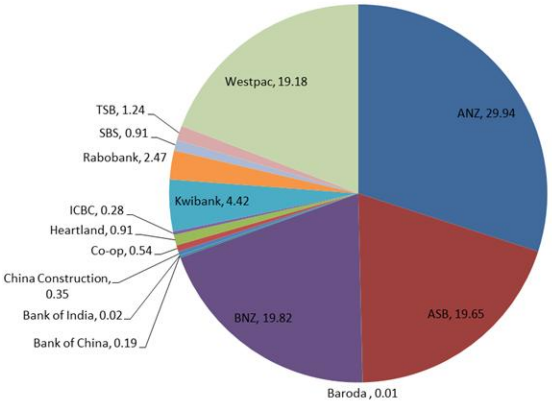
Registered Banks	Participating in CCR	
	Yes ✓	No ×
ANZ Bank New Zealand Ltd	✓ (2018)	
ASB Bank Limited	✓ (2014)	
Bank of Baroda (New Zealand) Limited		×
Bank of China (New Zealand) Limited		×
Bank of India (New Zealand) Limited		×
Bank of New Zealand		×
China Construction Bank (New Zealand) Limited		×
Heartland Bank Limited		×
ICBC		×
Kiwibank	✓ (2014)	
Nelson Building Society		×
NZCU Baywide		×
RaboDirect New Zealand		×
Southland Bank Society		×
The Co-operative Bank Limited	✓ (2017)	
TSB Bank Limited		×
Westpac New Zealand	✓ (2014)	

However not all banks are equal for our purposes. We are interested to understand what proportion of lending to individuals is undertaken by banks participating in CCR. To help us gauge this we have looked to the Reserve Bank's reported figures for the market share of registered banks in relation to 'gross loans'[26] and 'mortgage lending'[27].

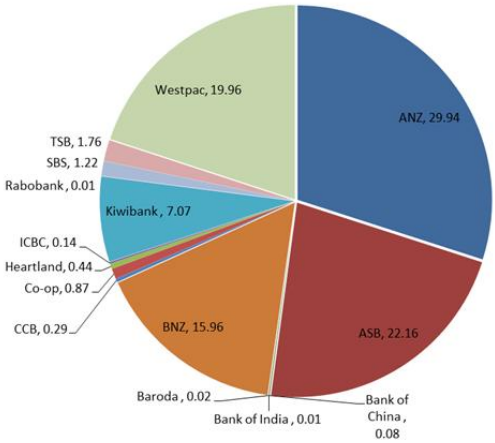
[26] Reserve Bank of New Zealand: summary information for locally incorporated banks http://www.rbnz.govt.nz/statistics/g1 as on 18 January 2018.

[27] Reserve Bank of New Zealand: summary of selected aggregate balance sheet data http://www.rbnz.govt.nz/statistics/g3 as on 18 January 2018. Mortgage lending information is reported to have been obtained from residential mortgages loan-to-value information.

Market share of gross loans (January 2018)

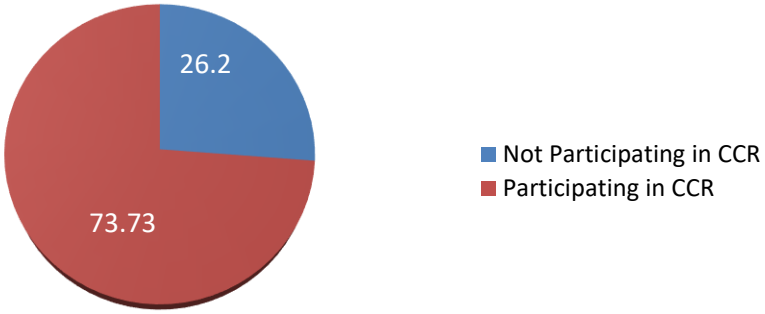


Market share for mortgage lending (January 2018)

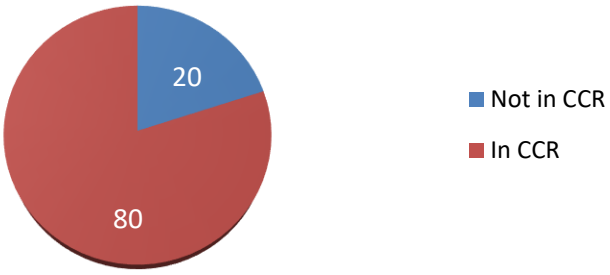


Using the fact that we know that ANZ, ASB, Kiwibank, Westpac and the Cooperative Bank are each participating in CCR, we can use the Reserve Bank figures to generate a picture of the proportion of new registered bank lending that might be undertaken by participating and non-participating banks. This material is presented for indicative purposes only and no reliance should be based on the precise percentages (which will include not only new lending but also former loans given prior to CCR commencing).

Market share of gross loans: registered banks (January 2018)



Market share for mortgage lending: registered banks
(January 2018)



Although only 5 banks are participating in CCR thus far, they include the 3 largest lenders. Together they represent a substantial proportion of the bank lending market and comfortably exceed the 40% target that the Australian Productivity Commission suggested as a necessary critical mass for CCR.

In its submission, Veda asserted that 'critical mass' (which it described as the point at which there is sufficient CCR data loaded to become highly predictive) 'was reached in March 2014 when 40% of open financial accounts were reported under CCR' and that by December 2016 this had now grown to 51%.[28] While we do not know the basis for Veda's calculations they are not dissimilar to the figures we have calculated from the Reserve Bank figures for market share of the participating banks.

BNZ, the last of the large banks yet to participate, has indicated publicly its intention to participate. It has previously aimed to begin in 2017, later revising that target to approximately the end of March 2018. On the figures above, BNZ accounts for ¾ of the remaining 20-26% of lending in the banking sector not yet participating in CCR.

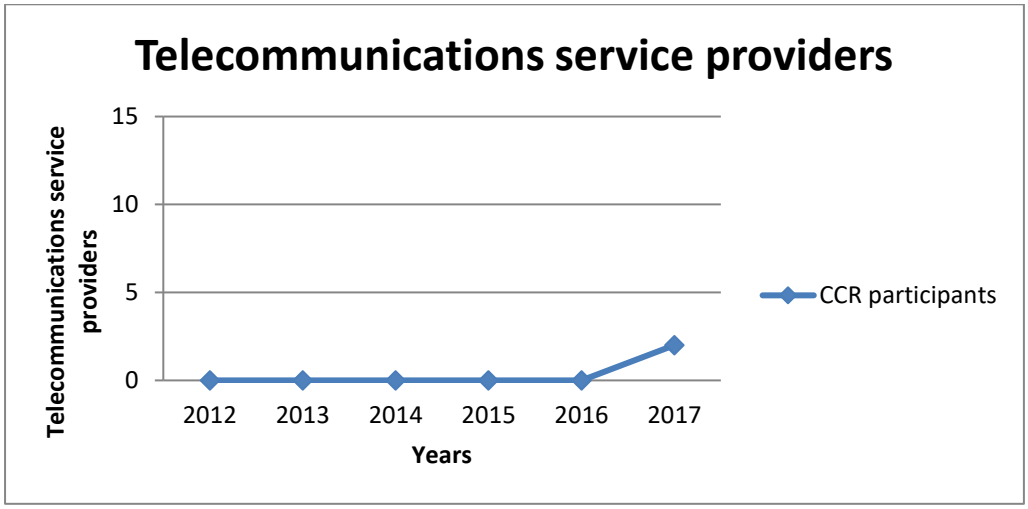
We have not attempted to quantify levels of participation for the non-bank lending sector, including the emerging peer-to-peer providers, but simply note that we have confirmed indications of participation by 4 finance companies and unconfirmed indications of a further 6. One regular industry survey of non-bank lenders identified 23-25 non-bank lenders in their reviews spanning 2015-17.[29] So a minority of non-bank lenders appear to be participating at this stage although we have no figures for market shares.

1.5 CCR participation by telecommunications service providers

[28] Veda submission, page 5: https://privacy.org.nz/assets/Uploads/Veda.pdf
[29] KPMG, Non-Bank Financial Institutions Performance survey, reviews for 2015 (https://assets.kpmg.com/content/dam/kpmg/pdf/2016/01/KPMG-NZ-2015-Non-bank-FIPS-FINAL.PDF), 2016 (https://assets.kpmg.com/content/dam/kpmg/nz/pdf/Dec/non-bank-fips-kpmg-nz-2016.pdf) and 2017 (https://assets.kpmg.com/content/dam/kpmg/nz/pdf/Dec/2017_Non-Bank_FIPS_Web.pdf).

Before setting out what we discovered about participation rates, it may be useful briefly to mention why telecommunications service providers (and utilities) are permitted to participate in CCR and why a good level of participation matters. It has not been traditional overseas to include telecommunications and utility credit account details in positive reporting systems leading some commentators to refer to these classes of information as 'alternative data'.[30] The Commissioner permitted inclusion of these types of alternative data in CCR to mitigate two problems of positive reporting systems that did not exist in New Zealand's traditional negative system. The problems are 'credit invisibility' (where, under a mature positive system, individuals with no credit history are liable to have their credit applications automatically rejected) and a 'credit catch-22' (where the reliance on credit history creates a dynamic whereby to get credit you must already have credit). Including account history from these alternative sources is meant to mitigate these problems by providing a broad coverage of the population including people who may not have established any track record with mainstream lenders (such as youth, immigrants and low income earners).

We understand that 2 of the 20 eligible telecommunications service providers participate in CCR. (To be eligible as an 'externally regulated credit provider' for the purposes of CCR a telecommunications service provider must be a member of the Telecommunications Dispute Resolution Service.)



The full list is as follows:

Telecommunications service providers	Participating in CCR	
	Yes ✓	No ×
2 degrees		×
2 talk		×
O Bigpie		×
Vocus Communications		×

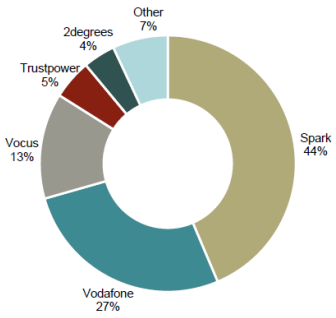
[30] For example, PERC a US-based organisation focused upon this issue refers to 'alternative data' to mean account history sourced from telecommunications companies, utilities and cable-TV providers. It is also the source of the shorthand characterisations of two problems of positive reporting as 'credit invisibles' and 'credit catch 22'. See http://www.perc.net/.

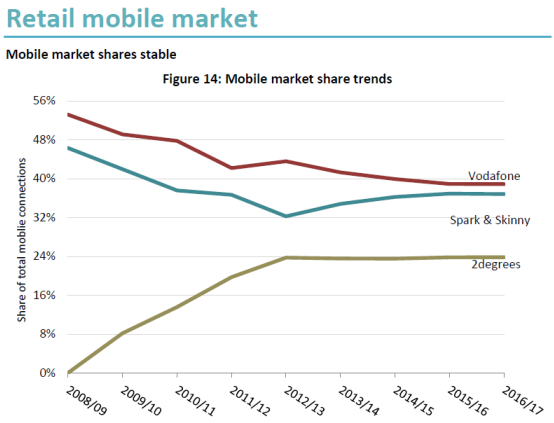
Compass		×
Conversant		×
AWACS		×
DTS		×
Flip		×
Now		×
Orcon		×
Primo wireless		×
Skinny Mobile *(provides prepay accounts)*		
Skinny Direct		×
Slingshot		×
Spark	✓ (2017)[31]	
TNZ *(offers services to businesses only)*		
Trust Power		×
United networks *(now called Cover-More Global SIM. Provides prepay sim cards)*		×
Vodafone	✓ (2017)	
Warehouse mobile *(provides prepay accounts)*		×

CCR in relation to individuals is not relevant to those companies shown as providing business-only or prepaid-only[32] services.

Although we do not have figures on the numbers of individual customer credit accounts of individual telecommunications service providers, the Commerce Commission does publish information on market shares that may be suitable to provide the approximate proportions. The following two graphs are taken from a December 2018 report:[33]

Figure 9: Estimated broadband retailer market share by connections





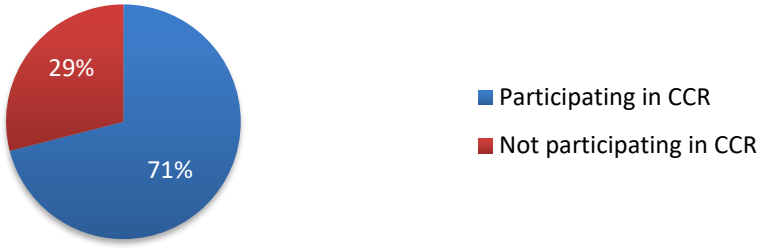
It can be seen that the two participant companies (Spark, Vodafone) are the largest players with about 71% of the broadband and mobile markets between them.

[31] Although we have confirmed information that Spark was participating by 2017 we also have unconfirmed information that it may have been participating as early as 2015. The information displayed shows only the confirmed commencement of participation.

[32] About 60% of mobile services in New Zealand are pre-paid although that percentage has been gradually reducing for the last 10 years, see Commerce Commission, Annual Telecommunications Monitoring Report Key Facts, December 2017: http://www.comcom.govt.nz/regulated-industries/telecommunications/monitoring-reports-and-studies/monitoring-reports/

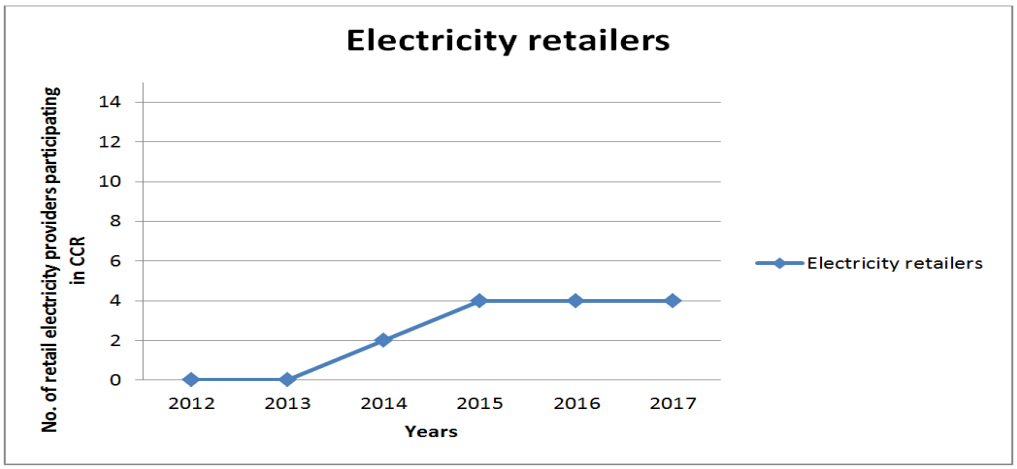
[33] Commerce Commission, Annual Telecommunications Monitoring Report Key Facts, December 2017.

Market share of telecommunications service providers (estm.) (December 2017)



1.6 CCR participation by electricity retailers

We understand that 4 of the 19 eligible utilities participate in CCR. (To be eligible as an 'externally regulated credit provider' for the purposes of CCR an electricity retailer must be a member of the Electricity and Gas Complaints Commission.)



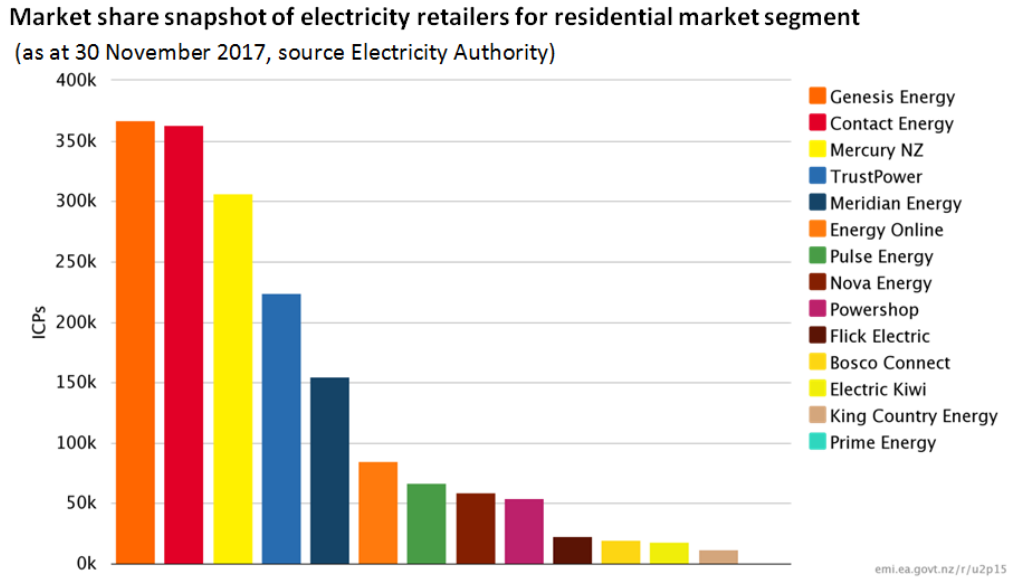
The list is as follows:

Electricity retailers	Participating in CCR	
	Yes ✓	No ×
Bosco (Mercury)		×
Black Box Power (Partnership with Pulse energy)		×
Contact		×
Electra Energy (Pulse energy)		×
Energy Online (a trading name for Genesis Energy)	✓ (2014)	
Flick Electric Co.		×
Genesis Energy	✓ (2014)[34]	
Globug (prepay)		×

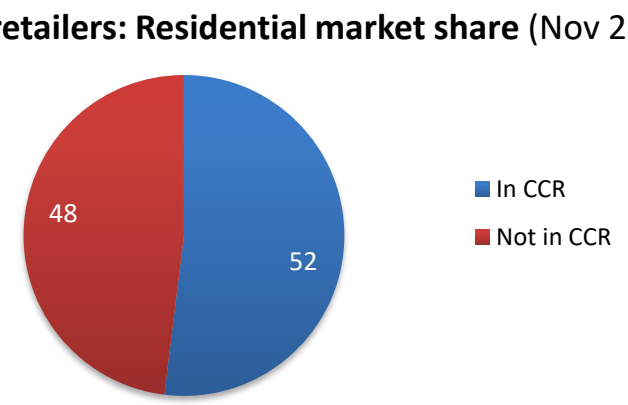
[34] We have confirmed information that Genesis Energy and Energy Online commenced participation in 2013 and unconfirmed information that they commenced in 2013. This may result from different understandings as what constitutes participation.

Grey Power Electricity (Partnership with Pulse energy)		×
Just Energy* (another trading name for Pulse energy)		×
KCE King Country Energy		×
Mercury Energy	✓ (2015)	
Meridian Energy	✓ (2015)	
Nova Energy		×
Prime Energy		×
Pulse Energy		×
Powershop (Meridian Energy)		×
Tiny Mighty (Mercury)		×
Trust Power		×

As with the banks and telecommunications companies, the few participating utilities have an impressive market share.



It might also be added that 4 electricity companies have indicated an intention to begin participating in 2018 (Black Box Power, Electra Energy, Grey Power Electricity, Pulse Energy) after existing customers are notified, etc.



1.7 Developments in CCR participation across the Tasman

Australian legislation allowing for CCR came into effect in March 2014, almost two years after New Zealand. In May 2017 the Australian Productivity Commission recommended a minimum target for voluntary participation in CCR by 30 June 2017 and that if this was not achieved that the Government should make participation by licensed credit providers mandatory.[35] The Productivity Commission's recommendation echoed a 2014 recommendation from a Financial System Inquiry which recommended that 'if, over time, participation is inadequate, Government should consider legislating mandatory participation.'[36]

The Productivity Commission considers CCR to be a compelling case where collating consumer data offers net public benefit in making markets more efficient.[37] However, in its view these benefits can only be achieved where a critical mass is achieved. The Commission asserted that 40% of all active credit accounts would be an appropriate measure.

The Australian Government accepted the Productivity Commission's recommendation. The Treasury sought to quantify Australian participation in CCR and concluded that credit providers would fall short of the 40% target by the end of 2017 (a further 6 months grace from the Productivity Commission's deadline). It found that by November 2017 the industry had reached a mere 1% participation rate. Latest Australian industry reports (April 2018) confirm that Australian CCR participation 'remains small'.[38]

The Australian Treasurer announced on 2 November 2017 that 'the Turnbull Government will legislate for a mandatory comprehensive credit reporting regime to come into effect by 1 July 2018, to ensure good customers are rewarded with better deals.'[39] The National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018 was introduced to the Australian House of Representatives on 28 March 2018.[40]

Voluntary participation rates had reached substantially higher rates in New Zealand at a comparable stage of implementation (i.e. 2 years ago) and have now grown to cover the majority of the banking market.[41] The inclusion of telecommunications companies and

[35] Australian Government Productivity Commission, Inquiry report No 82, *Data Availability and Use*, page 38, recommendation 5.5.
[36] Australian Government Financial System Inquiry, Final Report, 2014, recommendation 20: http://fsi.gov.au/publications/final-report/chapter-3/credit-reporting/ and Government response: https://static.treasury.gov.au/uploads/sites/1/2017/06/Government_response_to_FSI_2015.pdf
[37] Ibid, page 20.
[38] ARCA Credit Data Fact Base - April Edition, https://www.arca.asn.au/docs/1535/arca-credit-data-fact-base-april-edition
[39] Hon Scott Morrison MP Treasurer of the Commonwealth of Australia, 'Mandating comprehensive credit reporting', 2 November 2017: https://sjm.ministers.treasury.gov.au/media-release/110-2017/
[40] See: https://www.legislation.gov.au/Details/C2018B00073
[41] We do not have figures for proportions of 'active credit accounts', the test proposed by the Productivity Commission, but have used the indications of market shares as a substitute measure given the public availability of such data. Although we

utilities in the New Zealand (but not Australian) CCR scheme, with substantial players already participating, is another significant contrast in terms of comprehensiveness.

The mandatory requirement in Australia will not only force the participation of the large banks[42] but will also make the resultant data more useful by reason of its comprehensiveness.

Mandatory participation in Australia may have a flow on effect in New Zealand, e.g.:

- Some credit providers that do not yet participate in CCR may have an Australian-parent. NZ branch operations that could not justify the investment in system changes for a small local market may benefit from head office investment forced by federal government mandates.
- A successful CCR system goes beyond gathering information: institutions must learn to make good use of this rich new data source. Credit providers with Australian links may find that the parent company develops greater capacity for CCR analysis.
- CCR should support new entrants into the credit market (as it places them on a more equal footing with existing players in judging the creditworthiness of prospects and thus in competing for new business). If new international players consider entering the Australian credit market as a result of seeing a viable CCR system they may consider NZ as well.

Mandatory CCR participation by major banks in in Australia is a very significant development. However, the NZ experience suggests that the full effects may not be felt for some years. One difference between the Australian and NZ CCR systems is that the NZ Privacy Commissioner has allowed the inclusion of 'alternative data' (telecommunications and utility account information) to counteract the problems encountered in the US credit reporting system of 'credit invisibles' and 'the credit catch-22')[43] whereas the Australian system does not. There may be scope eventually to compare the systems to study whether those problems emerge and which proves to be the more effective regulatory approach.

The Australian bill having started down the path of compulsory sharing of data has needed to regulate for other matters as well such as obligations of reciprocity (i.e. only entities putting information in can get information out), an issue dealt with in New Zealand under an industry arrangement rather than law. There sharing of credit information is an area that requires adherence to fair sharing rules if public benefits and vigorous competition is to be achieved. That could be at risk if, say, lenders who did not share their data were to get the

---

have no verified information, some submissions do offer figures for the numbers of New Zealanders for whom some CCR information may be held (e.g. Veda submission, page 2: 'An estimated two thirds of New Zealand adults now have CCR information loaded on their credit files').

[42] The requirement to contribute data to the CCR system will initially apply only to a 'large' 'Authorised Deposit taking Institution' (ADI) or its subsidiary. A large ADI is one with total resident assets exceeding A$100 billion. See: https://static.treasury.gov.au/uploads/sites/1/2018/02/Exposure-Draft-EM.pdf

[43] Discussed at paragraph 1.5.

benefit of access to their competitors' data or if, say, arrangements were made to lock credit providers into using only the services of one credit reporter.

A somewhat unexpected development is the inclusion in the bill implementing mandatory CCR of a clause amending the Privacy Act to require credit reporters to store their information in Australia.[44] This is surprising given that the Australian Privacy Act already imposes security requirements and also the recent PWC review considered the security of credit reporting information and made no such recommendation.[45]

Part 1 Findings: Rollout and industry take up

- Initial Office expectations (as represented by the duration of the transitional provisions and timing of the mandated review) that the new system would be largely taken up by industry within 4 years proved unrealistic.
- It has been difficult to obtain a complete picture of CCR participation.
- Participation in the CCR system may have reached a critical mass as early as 2014 but certainly had done so by 2018.
- The banking sector has been slow to follow the lead of three banks that started participating in 2014 but substantial movement has occurred in 2017-18.
- A substantial proportion of the electricity retailers began participating by 2015 but there appears to have been no additional participants since then.
- The two telecommunications companies that were participating by 2017 appear likely to cover the major market share in that sector.
- Overall the picture is of a strong start in 2014, followed by sporadic growth, but emerging by early 2018 at the end of a protracted period with substantial coverage and indications of likely further participation.
- Participation of NZ subsidiaries of Australian credit providers may eventually be boosted by the introduction of mandatory CCR in Australia from 2018 onwards.

Part 1 Recommendation

1. To avoid disrupting the completion of the roll out of CCR to the remainder of the credit sector, a cautious approach should be taken in the short term towards proposals for changes to the fundamentals of CCR in so far as those changes might affect credit provider systems.[46]
2. The industry should consider creating a public data base of CCR participation and related metrics, perhaps using the ARCA Credit Data Fact Base as a model, to continue at least until CCR maturity.

[44] National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018, Schedule 1, clause 11: https://www.legislation.gov.au/Details/C2018B00073

[45] PricewaterhouseCoopers, *Review of Privacy (Credit Reporting) Code 2014 (V1.2) Report*, 8 December 2017, issue #34: https://www.oaic.gov.au/resources/engage-with-us/consultations/independent-review-of-the-privacy-credit-reporting-code-2014/pwc-report-review-of-privacy-credit-reporting-code-2014.pdf

[46] This recommendation is intended to relate to new changes that would require existing or prospective subscribers to change their systems. It is not intended to preclude or postpone changes that are desirable to make CCR work as intended nor to preclude desirable changes that affect only credit reporter systems.

Part 2: Have Amendments No 4 and 5 delivered benefits and protected individuals?

This part of the report considers whether Amendments No 4 and 5 have 'delivered the goods'. More precisely, the review seeks to examine whether the comprehensive credit reporting arrangements in operation have delivered the promised benefits and provided the anticipated safeguards and limits to protect the interest of individuals.

The discussion paper identified the following principal benefits expected from CCR:

THE BENEFITS THAT WERE ANTICIPATED WERE
↑ 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.

This part of the report looks first at whether we have found evidence of those benefits.

The report then turns to the protection of individuals including to consider whether problems have emerged for individuals as a result of the introduction of CCR.

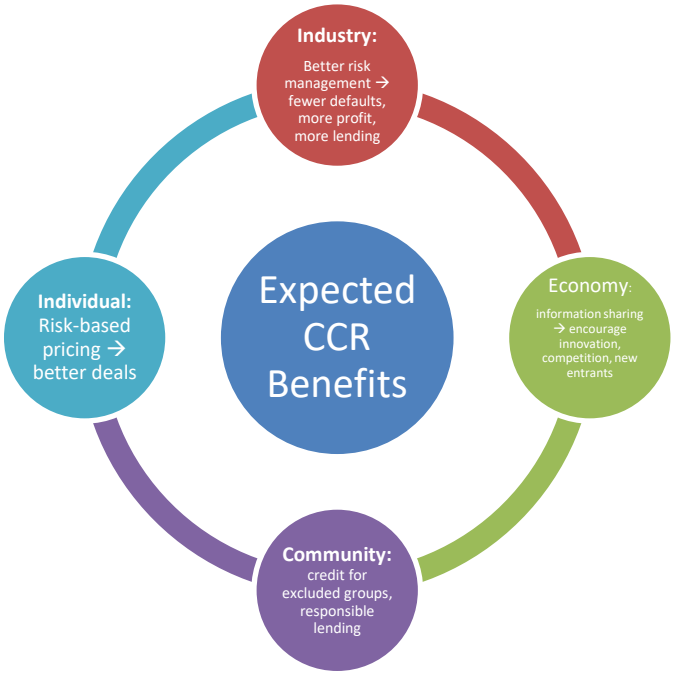
2.1 Have Amendments No 4 and No 5 delivered benefits through CCR?

In terms of the benefits of CCR it is perhaps worth emphasising at the outset the fundamental point that the Privacy Commissioner authorised CCR – notwithstanding its inherently privacy-intrusive character – was based on the anticipated public benefits of that system compared with the then-existing negative reporting system.

The benefits that justify the privacy-cost to individuals are not simply benefits to the lending industry (such as the ability to minimise costs or maximise profits) but are expected to be a comprehensive set of benefits to individuals themselves, their families and communities and the wider national economy.[47] To put things another way, individuals are not required to

[47] This report uses the characterisation of the benefits given above which can be traced back to the review discussion paper which is turn picks up elements of earlier material associated with the Amendments themselves. Other commentators have characterised the benefits differently, emphasising various aspects, although most have much the same core content. One such example can be found in PERC, Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand, 2012, pages 4-5, which characterises 3 key benefits of the change ('Credit reporting reform will

forgo their financial privacy simply to increase the profits of credit reporters and banks. The benefits from the information sharing must accrue to individuals (directly, by way of consumer choices, and indirectly through community and economic benefits).



2.1 Anticipated benefits

Comprehensive credit reporting has been authorised for more than 5 years. As already noted there remain a numerically small number of participants in the scheme.

Three banks began participating relatively early in the roll out of the system (2014) and another in late-2017. However, the three initial participating banks together have about half of the market share of mortgages between them. Additionally there has been participation by finance companies and utilities from 2014 and, more recently, telecommunications services providers.

The expected benefits and where available, evidence supporting them are set out below.

Industry benefits

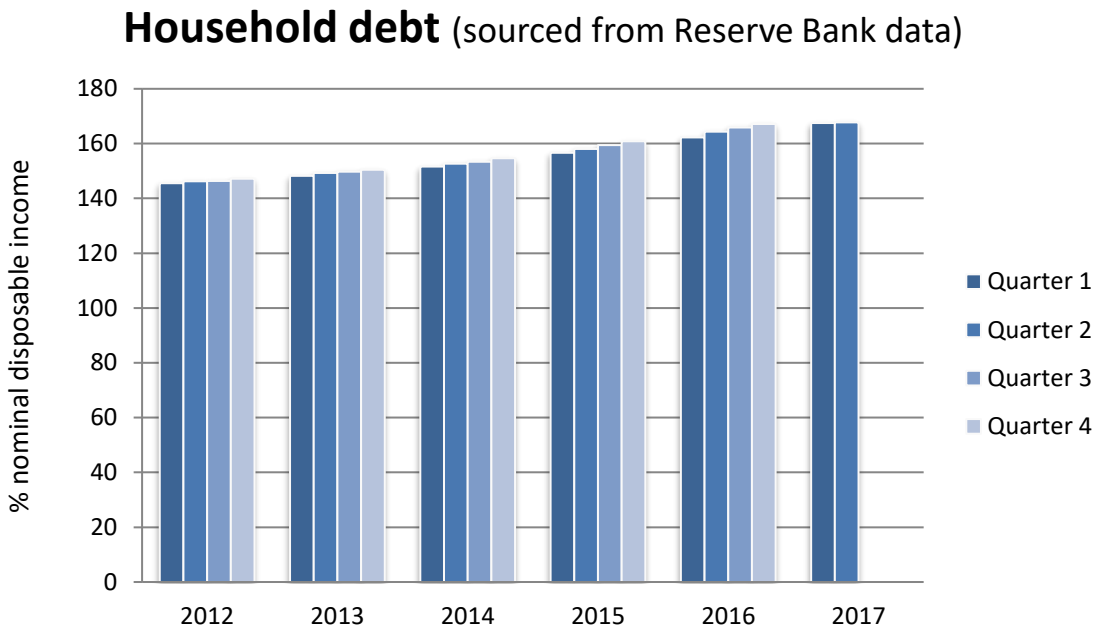
2.3 Better risk assessments leading to better control of risk or an expansion of credit

There has been an increase in the level of New Zealander's household debt relative to income between 2012 and 2017.[48] This increase has primarily been put down to low interest

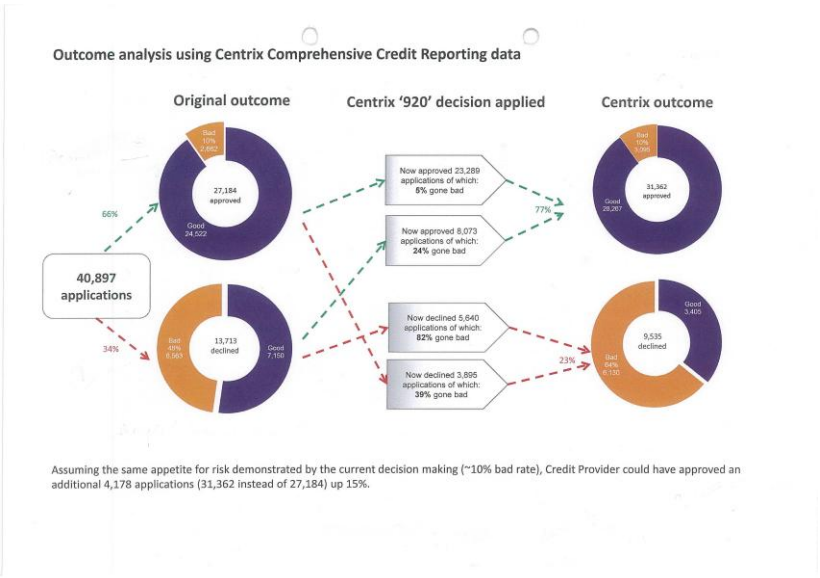
…create growth in lending to the private sector … make lending fairer … help lenders mitigate against risk') and suggests that 'a more comprehensive system is a more forgiving system').

[48] http://www.rbnz.govt.nz/statistics/key-graphs/key-graph-household-debt

rates.[49] Whether CCR would have played any part is not something we would be able to quantify. However, two participating banks advised CCR data allows them to make better risk assessments, leading to an increased capacity to offer more credit.[50]



Several submissions cited studies and models that indicated CCR reduced risk and increased lending. For example, modelling by one submitter was said to demonstrate an ability to increase approval decisions of between 14 and 25%.[51]



[49] http://www.radionz.co.nz/news/business/301988/debt-to-income-ratios-%27at-record-levels%27 The lower interest rates have meant that while overall household indebtedness has risen the proportion of household income spent on debt servicing has actually fallen.

[50] ASB, Westpac submissions (2016): https://privacy.org.nz/the-privacy-act-and-codes/codes-consultation/submissions/

[51] Centrix submission (2016): https://privacy.org.nz/assets/Uploads/Centrix-Group-Limited.pdf

The submitter analysed nearly 41,000 applications using just negative data, and then a year later using negative data and CCR data which demonstrated capacity for offering credit to more individuals or reducing approvals that had 'gone bad'.

Individual benefits

2.4 Credit products tailored to individuals on the basis of their creditworthiness

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 also has relevant information on all credit active individuals and credit accounts.

Accordingly, a negative system is most useful in screening and excluding the least creditworthy individuals when taking the decision to grant or refuse a credit application but has comparatively little to offer in relation to differentiating between the applicants who are granted credit. CCR creates the possibility of tailoring credit and its obligations based upon an individual credit score by, for example, assigning a higher or lower interest rate (risk based pricing).

Given the limited numbers of CCR participants, incomplete coverage of the population and the relatively short period of experience with CCR, we have not found many credit offerings explicitly relying upon CCR (although we do not preclude the possibility of products and offerings having escaped our notice).

We have found the following examples from amongst the known CCR participants:

- Latitude Financial offers Gem personal loans with interest rates vary depending upon applicants' 'credit history'.[52]
- Harmoney refers to the assignment to borrowers of a risk grade (and hence interest rate) based upon 'repayment history'.[53]
- Westpac has risk-based pricing in consumer lending for personal loans.[54]

It appears that even participants that have introduced risk based pricing have not done so over all their credit products.

We had an informal indication from at least one participant that, at the time they last updated their credit decision process, they considered that the then-available CCR data was not sufficiently mature to introduce risk-based pricing for new customers although the CCR data was useful in decisions to grant or decline credit.

---

[52] https://www.gemfinance.co.nz/loans/personal-loans.html
[53] https://www.harmoney.co.nz/how-it-works/interest-rates-and-fees
[54] Its website advises that 'We'll consider things like your financial position and credit history to come up with a suitable rate and loan term that's specific to your needs': https://www.westpac.co.nz/personal-loans/interest-rates-fees/

In summary, it appears that CCR has provided the basis for the introduction of risk-based credit offerings to the New Zealand market but that it has not yet fully matured in this respect.

It should also be noted at this point that CCR has also provided the basis for Dun & Bradstreet to introduce its 'Credit Simple' portal which allows individuals to register and obtain access to a credit score.[55] D&B is not a credit provider and this initiative does not itself appear to constitute the introduction of risk based pricing to the market. However, the portal enables individuals to seek 'targeted offers and insights based on your profile' and thus may amount, depending upon the practices of participating credit providers, to be a CCR-facilitated development to 'allow credit products to be tailored to individuals on the basis of their creditworthiness'.

Economy benefits

2.5 Facilitation of greater competition

The principal general economic benefit that might be expected in this context is increased competition. The availability of the new data to all participants should enable existing credit providers to compete more vigorously in relation to individuals with whom they've had no previous customer relationship. The availability of CCR data should also allow for new credit products to be introduced to market. CCR should also encourage new entrants to the ranks of credit providers.

We did not receive in submissions any evidence of increased competition in the credit industry that can be directly attributed to CCR. Nor did we find such evidence of such ourselves (beyond the examples of the risk-based pricing already mentioned).

We are aware that industry participants have claimed that CCR has already brought substantial economic benefits (through the enhanced activity of participating lenders). One significant recent example is a white paper published by Dun & Bradstreet.[56] While grateful for industry players sharing results of such analysis using their proprietary databases, this and similar reports fall short of being independent academic peer reviewed research and the Office is not in a position to assess or repeat the analysis.

Community benefits

2.6 Financial inclusion

It has been suggested that CCR may provide a way to connect mainstream lenders to individuals in underserved communities.[57] This may benefit such communities given that

[55] https://www.creditsimple.co.nz/
[56] D&B, White paper: Comprehensive Credit Reporting, June 2016: http://dnb.co.nz/_media/documents/DNB_Comprehensive%20Credit%20Reporting_WhitePaper.pdf
[57] By under-served communities we include not only geographical communities (such as predominantly low low-income areas) but any other groups that may generally encounter barriers to obtaining credit from mainstream lenders by reason

access to credit in an individual capacity is often critical to the establishment of small businesses, the engine of growth in most economies, and given also that individuals may otherwise be driven to borrow from unscrupulous moneylenders.

US research has suggested that groups that were most under-served by the lending system might benefit the most from increased information sharing in CCR, especially if telecommunications and utility data were to be included.[58]

One submission analysed the credit scores for individuals living in areas of high deprivation, according to the New Zealand Index of Deprivation.[59] The analysis found 29% of the worst credit scores would be reassessed as reasonable or good using CCR data. This would result in a net gain of 6% of individuals who would be likely to secure mainstream credit.

A recent white paper published by Dun & Bradstreet emphasised the potential of CCR to 'provide opportunities for underbanked consumers'.[60] It noted the existing problems for consumers who are creditworthy but have traditionally been declined for being young or having no track record. It noted that 'by including non-traditional industries in New Zealand's [CCR] regime the pre-bankable and traditionally non-bankable consumer segments now have a significant opportunity to build up a substantial credit track record, maximising their chances of obtaining lower cost credit'. The paper quantified this by pointing out that in the data it had published a larger proportion of New Zealanders would confidently be classified as 'low risk' under CCR as compared with negative reporting (specifically 16% of the population under CCR rather than 12% under the negative system).

The analysis of both Veda and D&B would therefore provide confirming evidence that financial inclusion remains an important *potential* benefit but unfortunately we do not yet have evidence to show that the gates to mainstream credit have in fact been opened to marginalised communities as a result of CCR.

2.7 Responsible lending practice

Credit reporting is particular pertinent to the Responsible Lending Principle 5 which is that in relation to an agreement with a borrower 'A lender must make reasonable inquiries before entering into the agreement so as to make sure that the borrower will make the payments under the agreement without suffering substantial hardship' which includes inquiries into

---

of the absence of existing or long-standing customer-relationship with such lenders (e.g. immigrants, young people, widows).

[58] PERC, Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand, 2012, pages 12-13. http://www.perc.net/wp-content/uploads/2013/09/PERC-Report-Final.pdf

[59] Veda submission (2016): https://privacy.org.nz/assets/Uploads/Veda.pdf

[60] D&B, White paper: Comprehensive Credit Reporting, 2016, page 5: http://dnb.co.nz/_media/documents/DNB_Comprehensive%20Credit%20Reporting_WhitePaper.pdf

the borrower's 'likelihood of payment'. Relevant inquiries are expressly stated to include a borrower's 'credit history'.[61]

In terms of being able to predict default (i.e. an individual's inability to make payments due) there have been many studies over time and in different countries showing the superiority of CCR over negative reporting. CCR will also reveal existing credit accounts that might have been undisclosed by a prospective borrower. Those features alone might suggest CCR as a useful starting point for any lender wishing to demonstrate responsibility in the terms expressed by Responsible Lending Principle 5. Indeed, the Responsible Lending Code's reference to 'credit history' would tend to suggest that CCR, where available, is expected to be consulted since a negative-only report cannot really be said to constitute a credit history.

The other aspect of the changes wrought by Amendment No 4 and No 5 that pertains to responsible lending is the facility for pre-screening direct marketing lists to exclude prospective borrowers who might reasonably be inferred to be unlikely to make the payments without hardship.

It is therefore disappointing to note the quite limited numbers of credit providers either participating in CCR or reported to be pre-screening marketing lists. These would seem to be tailored to the expectations under the Responsible Lending Code.

Modern credit reporting has contributed to a business model that has sped up decision-making in lending in recent years. Quick decision-making also features in the practices of lenders who do appear to fit the 'responsible lender' model (although probably without the benefit of CCR). Respondents to KPMG's 2017 survey of the non-bank lending sector highlighted the proliferation of 'truck-stop'/'payday' lending at excessively high rates of 2% per day or over 700% p.a. and raised the question of how these lenders could understand their customers as envisaged under the Responsible Lending Code when the application approval process ranged between 60 seconds and 20 minutes.[62]

2.8 Have Amendments No 4 and No 5 protected individuals?

This part of the report considers at a high level whether problems have emerged for individuals in the roll out of CCR. The Amendments included a number of provisions intended to anticipate and avoid problems by measures promoting responsible lending, agency accountability, transparency and consumer understanding. (Some of those provisions are discussed in more detail in the next part of the report which looks at the operation of the provisions introduced by the Amendments.)

This part of the report focuses upon three issues:

---

[61] Ministry of Business Innovation and Employment, Responsible Lending Code, March 2015, principle 5, clauses 5.5 and 5.9(a): https://www.consumerprotection.govt.nz/assets/Uploads/Documents/responsible-lending-code.pdf

[62] KPMG, Non-Bank Financial Institutions Performance survey – Review of 2017, page 12: https://assets.kpmg.com/content/dam/kpmg/nz/pdf/Dec/2017_Non-Bank_FIPS_Web.pdf

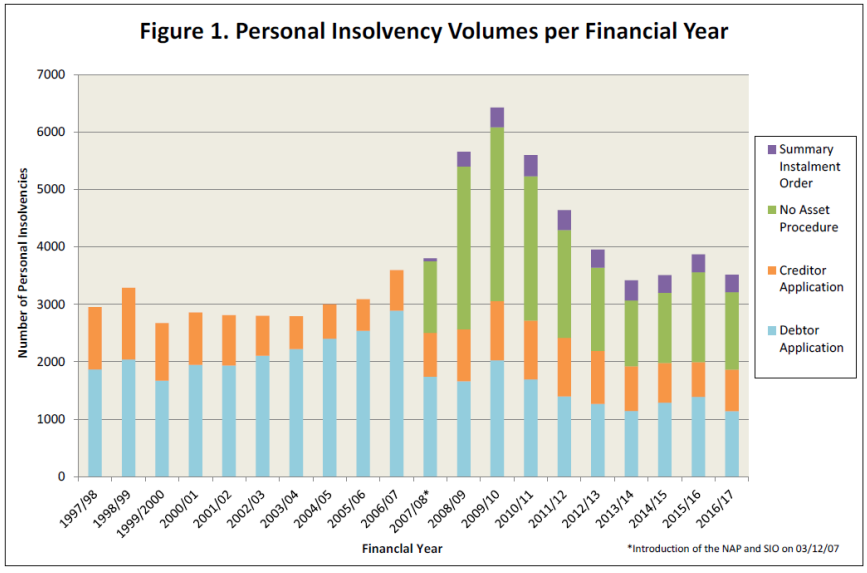
- Has CCR resulted in a spike in bankruptcies?
- Were individuals able to obtain information about the new system?
- Have individuals faced barriers in obtaining access in the new environment?

2.9 CCR leading to individual bankruptcy

CCR would, for the first time, reveal through the credit reporting system precise details of credit accounts opened. Conceivably this might reveal undisclosed indebtedness by some individuals resulting in creditors exercising remedies up to and including bankruptcy proceedings. This apparently was the case in Hong Kong in the early-2000s when that economy transitioned to positive reporting leading to a spike in bankruptcies.

The Hong Kong experience was a cautionary tale about which the industry was well aware. Accordingly, it was hoped that if problems of undeclared indebtedness emerged in New Zealand lenders would take a more measured approach to manage the problem rather than going through such a disruptive transition as happened in Hong Kong.

Accordingly, we sought to examine whether CCR had affected the insolvency statistics. The following graph illustrates the volume of personal insolvencies over the last 20 years:[63]



Unlike Hong Kong there has no single day 'big bang' when all banks switched over to CCR. The nearest that we have experienced to a 'big bang' was 2014 when 3 banks began CCR participation. Although the graph shows a rise for 2 years following 2013/14 we would be hesitant to attribute any CCR significance given both that 2013/14 itself reflected a large drop and the 20 year run frequently shows wide fluctuations for reasons clearly unconnected with CCR (such as changes in levels of unemployment or economic activity).

[63] NZ Insolvency and Trustee Service, Insolvency Statistics and Debtor Profile Report, 2016/17: https://www.insolvency.govt.nz/assets/pdf/Statistical-Data-Reports/ITS-Statistics-and-Debtor-Profile-Report-2016-17.pdf

If we look at the reasons given for creditors to obtain the bankruptcy of individuals we find no evidence to show an upsurge in bankruptcy proceedings in 2014, or since, attributed to 'excessive use of credit facilities' which would seem to be the cause closest to non-disclosure of debt of the type encountered in Hong Kong. If we take the following figures for 2016/17 as an example the cause attracted only 1% of creditor applications.[64]

Table 11. Primary Cause of Bankruptcy			
Cause	Debtor Application	Creditor Application	Total
No response	3%	46%	20%
Unemployment or loss of income	21%	3%	14%
Other	18%	4%	13%
Failure to provide for taxation	6%	18%	11%
Domestic discord or relationship breakdowns	12%	6%	10%
Excessive use of credit facilities	15%	1%	9%
Ill health or absence of health insurance	8%	2%	6%
Adverse legal action	1%	7%	3%
Liabilities due to guarantees	2%	5%	3%
Economic conditions affecting industry	2%	4%	3%
Lack of business ability	3%	1%	2%
Failure to keep proper books and records	3%	0%	2%
Failure of another business organisation	1%	2%	1%
Excessive interest payments and capital losses	2%	0%	1%
Gambling, speculation and extravagance in living	1%	1%	1%
Lack of sufficient working capital	1%	1%	1%

In the period from 2013 this category has typically accounted for either 0% or 1% of creditor applications.

There are published statistics on summary instalment order and no asset procedure insolvencies where the individual can voluntarily declare the primary reason for entering proceedings. We looked at the reasons given for insolvencies to see if the commencement of CCR participation by the banks in 2014 appeared to have an effect.

'Excessive use of credit facilities' has frequently been the the most commonly cited cause in summary instalment order processes only occasionally switching places with the usually fairly closely placed second most cited reason 'unemployment or loss of income'.

By contrast 'unemployment or loss of income' is almost always the most commonly cited reason for no asset procedure processes by a wide margin although usually with 'excessive use of credit facilities' coming in second place (before other reasons such as 'domestic discord or relationship breakdown' and 'ill health or absence of health insurance').

As we can see from the example of the 2016/17 table above, 'excessive use of credit facilities' also features highly in the causes debtors attribute in their applications for bankruptcy.

The data does not suggest any problems of the type encountered in Hong Kong suddenly arose as a result of the roll out of CCR.

It may be interesting for the industry to return to this source of data eventually to see whether the operation of a mature CCR system has any impact on insolvency rates. After all CCR is a powerful tool which ought to assist lenders to minimise the grant of 'excessive'

[64] NZ Insolvency and Trustee Service, Insolvency Statistics and Debtor Profile Report, 2016/17: table 11.

credit to individuals who do not have the means to service it. If CCR were to deliver the promised benefits there should eventually be a substantial drop in insolvencies attributed to excessive credit.

2.10 Consumer information on CCR

The Amendments made a number of changes to the Code to assist individuals to find out about the new system. A few examples included:

- The plain English Statement of rights which was required to be displayed and provided to individuals in certain circumstances.
- Production by OPC, with industry assistance, of the statement of rights into 11 languages.[65]
- A requirement to give notice to existing customers if a credit provider planned to avail itself of the transitional provisions to load information to the system.

Outside the formal provisions of the Code, the Office led a working group of stakeholders to develop 7 'key messages for consumers' in relation to credit reporting. These messages were not limited to privacy rights but necessarily also touched upon relevant matters of financial literacy and best practice for careful consumers. These core messages were supplemented by additional commentary in publications from the Office of the Privacy Commissioner and the core content of a 2012 national road show to inform consumer and budgetary advisers about CCR.

The Office was concerned to have channels to effectively disseminate accurate public information about CCR during its implementation. This concern was principally to ensure that the system worked well and to enable individuals to exercise their rights. However, the Office was also concerned to maintain public trust in the system. Public trust could easily be damaged by the spread of misinformation about the objectives and operation of the system. New Zealanders had long associated the system with delinquent borrowers and debt collection and so it would not be unreasonable or unrealistic to expect ordinary people to react poorly to the prospect of confidential details of their monthly payments being shared by their bank with others when they'd paid all their bills and 'done nothing wrong'.

There were three principal difficulties which complicated any efforts at mass communications or public education regarding CCR:

- The slow roll out made it difficult to judge when it would be best to push messages out – the Office wished to be proactive in its efforts to educate advisers to whom the public would turn if they ran into difficulties and so it ran a nationwide road

[65] See: https://privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code/credit-reporting-consumer-rights/

show for advisers in 2012 but this was in an environment where it could not know whether any banks would be participating in CCR in 2013.

- Negative reporting was running alongside CCR in the transition (and would continue always to be an option for non-participant credit providers) – which meant that educational materials had to be carefully drafted to be suitable to individuals and institutions in different circumstances.
- The public has limited levels of financial literacy – meaning that messages on CCR and privacy rights, which themselves sometimes were complicated, needed first to be preceded by information that explained aspects of credit and credit reporting if they were likely to be understood.[66]

The slow roll out of CCR meant that the Office decided to refrain from any major campaign to raise awareness of credit reporting rights after the completion of the active information programme in 2012. However, it returned to the topic in 2016 to produce an online training module allowing anyone to undertake self-training in aspects of the Credit Reporting Privacy Code free of charge and at their own convenience.

It may also be noted that the credit reporters individually developed information materials targeted at consumers in quite different ways. Veda advised that it has worked with Banqer, a creator of a financial literacy educational tool 'available to 700 classrooms and 20,000 students' in relation to credit information and issues.[67]

2.11 Barriers to subject access

In 2014 following an inquiry into a credit reporter's charging practices, the Commissioner found substantial over-charging for access to credit reports.[68] Having been unable to secure an assurance against repetition, and taking note of the practices of other credit reporters, the Commissioner amended the Code to move away from a general standard ('reasonable') to a specific upper limit ($10) in the very limited circumstances where any charge might be made.[69]

This over-charging was not specifically an Amendment No 4 or No 5 issue as it related to a longstanding consumer entitlement under the Code. However, it was a priority to the Office that in the new CCR environment that credit reporters fully meet their transparency obligations to demonstrate to the public that they were fully trustworthy for the new, substantial and sensitive, holdings of personal information in their custody.

---

[66] For example, a record of a late payment on a credit history may sound a lot like a default. One might try to explain the difference purely by reference to how clauses in the Code refer to the each but a truly meaningful explanation would need to explain how credit reporting works, including credit scoring, and what lenders infer from these different concepts.
[67] Veda submission, page 3: https://privacy.org.nz/assets/Uploads/Veda.pdf. See also https://www.banqer.co/
[68] Report by the Privacy Commissioner into Veda Advantage's charge for urgent requests for personal information, March 2014: https://privacy.org.nz/assets/Files/Reports-to-ParlGovt/Veda-report-2014-03-24.pdf
[69] Credit Reporting Code Amendment No 9 (July 2014): https://privacy.org.nz/assets/Files/Codes-of-Practice-materials/CRPC-Amendment-No-9-Final-Amendment-inc-leg-history-and-notes.pdf

It was disappointing that the assurance reporting process, with the involvement of an independent reviewer participating within the company's processes, had not uncovered and resolved this issue with the need to resort of formal inquiries and ultimately a law change. Free subject access is a central plank of the arrangements set out in the Code to protect individuals' interests while authorising intrusive practices serving wider social and economic needs.

In 2016 the Office arranged for a project of 'spot checks' on the 3 national credit reporters' compliance with subject access requirements.[70] The project was in the nature of a 'secret shopper' exercise. While some issues were uncovered and promptly addressed by the respective credit reporters the overall level of compliance was reasonably good. The Office followed up in the 2017 annual assurance process by asking each credit reporter to specifically reflect upon the methods followed to communicate to individuals their right to a free credit report. These were included in the companies' assurance reports, including mention of upgrades to website and call centres.[71]

Part 2 Findings: Have Amendments No 4 and No 5 delivered benefits and protected individuals

- CCR has reached sufficient critical mass to give an enhanced picture of most individuals' credit holdings and behaviour enabling participating credit providers to make better risk assessments and to introduce risk-based credit products. However, the industry benefits remain limited while a large proportion of lenders and credit accounts remain outside the system.
- We have not found any compelling evidence of CCR:
  - Bringing additional competition or economic benefits.
  - Contributing to financial inclusion by bringing mainstream credit to markets traditionally under-served by the lending system.
  - Making a substantial contribution to responsible lending practice.
- CCR has not led to a spike in bankruptcies.
- Some steps have been taken to promote consumer financial literacy but the slow roll out of CCR has hampered efforts in this area.
- Subject access over the period of the roll-out of CCR has been a mixed bag. On the one hand there has been overcharging and confusing industry messaging over consumer entitlements to free access. Conversely, there have been industry efforts to ease consumer access with on-line mechanisms and to provide prompt access.
- Overall, the picture is of initial CCR benefits accruing principally to industry participants rather than to individuals, their communities and the economy generally.

[70] Office of the Privacy Commissioner, Spot checks on credit reporter compliance, May 2015: https://privacy.org.nz/news-and-publications/commissioner-inquiries/spot-check/

[71] The assurance reports are uploaded each year to: https://privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code/credit-reporting-assurance-reports/

Part 2 Recommendations

3. Until substantial evidence of benefits to individuals, their communities and the economy is available, the case does not exist to intrude further into individual privacy by adding additional classes of personal information.
4. Additional efforts should be taken by stakeholders to promote financial literacy around CCR as the uptake increases and the system matures.
5. Further steps should be taken, possibly including amending the Code, to:
    a) promote subject access; and
    b) support the role of CCR in responsible lending.

Part 3: Operational issues: Are the amended Code provisions working well?

The discussion paper released for the review sought input on how selected provisions introduced or amended by Amendments No 4 and No 5 had worked in operation. Submitters were encouraged to confirm that provisions have operated satisfactorily or to highlight where problems had been encountered.

The areas explored in this part of the report touch upon:

- Credit reporter accountability
- Credit freezing
- Pre-screening
- Serious credit infringement
- Credit non-compliance action
- Driver licence numbers
- Reporting and retention periods
- Quotation enquiries
- Credit scores.

3.1 Credit reporter accountability: *Demonstrating compliance* (clause 9, schedule 6)

The Code requires credit reporters to implement and maintain a sound compliance programme. The credit reporters must demonstrate compliance annually with assurance reports, prepared with the involvement of an independent reviewer, to be submitted to the Privacy Commissioner in September each year.

The process for assurance reporting has now been run 6 times. The credit reporters' assurances reports are posted publicly on the Office website accompanied by a media statement from the Commissioner.[72]

The reporting is comprehensive across all aspects of the compliance programme but by way of variety the Office often asks in advance of each year's report that a particular area of interest be highlighted. For example, in 2016 the Commissioner sought particular assurances around specific topics of interest arising out of the recent privacy case that touched upon the handling of disputed debts.[73] In 2017, three questions were posed seeking additional information in the areas of public communication of rights, accuracy processes and process improvements.

The submissions did not raise any problems with the operation of the provisions. However, the Office notes that the mandated systematic internal review processes did not reveal and

[72] Credit reporting: Assurance reports: https://privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code/credit-reporting-assurance-reports/
[73] Taylor v Orcon Limited [2015] NZHRRT 15 (14 May 2015): http://www.nzlii.org/nz/cases/NZHRRT/2015/15.html

resolve in a timely fashion the serious problem of overcharging for subject access which was ultimately addressed by Amendment No 10 in 2014. The Office considers that there may be merit in specifying in more detail the status and responsibilities of the independent reviewer to enhance that role as a meaningful check in the internal review process and the corresponding external reporting. This might enhance the accountability model as a valid foundation for building public trust.

Finding:

- The processes for demonstrating credit reporter accountability has operated satisfactorily but failed to highlight and address a significant industry non-compliant practice.

Recommendation:

6. Consideration should be given to measures, including amending the Code, to enhance the effectiveness of the independent reviewer component of the accountability model.

3.2 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 will face problems as a result. The fraud may first come to light when a creditor demands that the victim repay a loan. Debt collection proceedings may be started as it may not at first be apparent to a creditor that a crime has been committed. The bad actions of the criminal may tarnish the reputation of the innocent person as a result of 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 and frustrating 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.[74] Obtaining a 'freeze' is free, so too is obtaining a 'thaw' or 'unfreezing'.

Credit freezing was recommended for Australia by the Australian Law Reform Commission in 2008 and the Office accepted the ALRC analysis in developing the New Zealand code's provisions. At the time that Amendment No 5 was finalised Australia had not yet drafted its own provisions to give effect to the ALRC recommendation and so the Office drew to some extent upon US precedent given that credit freezing has operated for a number of years at state level throughout the USA. Australia later enacted its credit freeze provisions in the 2012 amendments to its Privacy Act.[75] This sequence of events explains why there are some differences in detail between the New Zealand and Australian credit freeze laws notwithstanding their common origin in the ALRC recommendation.

Submissions from credit reporters did provide a glimpse into the use of credit freezing by individuals. For example:

- Veda mentions that a small but stream of requests for freezing are received by that company: "on average around 8.1 per month".[76]
- Centrix advises that for the 2015/16 year "around 10% of the initial freeze requests were extended".[77]

Submitters suggest that credit freezing provisions has been underutilised by people who might benefit from suppression due to a lack of awareness by the public or advisers. Nonetheless, submissions suggest that there has been some growth in the use of the suppression provisions since they were first established.

While no serious reservations were expressed with the provisions, which seemed to be working satisfactorily, some submitters accepted the invitation to raise any operational issues and to suggest changes. In some cases businesses with a trans-Tasman connection promoted the case for aspects of the Australian scheme seeing it as less prescriptive than the Code.

Matters of detail raised included:

- *Period of extended suppression*: An individual can request an initial suppression to be extended either indefinitely or for a fixed period of at least 12 months. A submitter

[74] The process is further explained in a factsheet Credit reporting 'freeze' : What you need to know: https://privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code/credit-reporting-consumer-rights/
[75] Privacy Act 1988 (Cth), section
[76] Veda submission, page 20: https://privacy.org.nz/assets/Uploads/Veda.pdf
[77] Centrix submission, page 7: https://privacy.org.nz/assets/Uploads/Centrix-Group-Limited.pdf

noted that in Australia the length of any extension period is at the discretion of the credit reporter and submitted that a minimum 12 month period was needlessly prescriptive and that the matter was best left to the discretion of the credit reporter.[78]

- *Temporarily lifting a freeze*: To enable a credit check on a suppressed credit account so as to allow a new credit application the Code allows the suppression to be overridden either to allow a report to be released to a nominated credit provider or for the suppression to be lifted for a 'set period'. The 'set period' is required to be consistent with the individual's request. The submission suggested that prescribing the 'set period' around the precise instructions of the individual could be problematic for credit reporters to administer and suggested was amending this to instead allow the individual to nominate a '24 hour period' during which the suppression would be lifted.[79]

There does not seem to be a strong case to tinker with the provisions for extension requests given that the system seems generally to work well. Had the Australian model been available earlier it may have been reasonable to consider aligning the Australian and New Zealand provisions but there does not seem to be any significant advantage (for victims of fraud or administrators) in making the change now. Indeed, adopting the less prescriptive Australian approach creates the likelihood of leaving the victim with suppressions of varying lengths across the three companies which could create needless stress or complications. Evidence for this can already be seen in Australia where the suppression ('ban') extension periods vary wildly as shown in this ID Care fact sheet:[80]

Ban Extension Periods:

- Lengths of time a ban may be extended varies:
- **Experian** will allow an individual to extend for any length of time ie: 1 year, 5 years, indefinite.
- **D&B and Equifax** will only allow extensions for 3 months at a time.
- **TASCOL:** Will extend for a further 21days, after which you can apply for a 'notation' on your report for further protection.
- **Please Note:** Some clients have told IDCARE that D&B will allow a longer time period (12 months) however this is not the 'official' advice we have received from D&B.

The idea for nominating a 24 hour period for lifting suppressions may have merit. However, for those credit reporters that favour this approach it seems likely that through the design

[78] D&B submission, page 4: https://privacy.org.nz/assets/Uploads/Dun-Bradstreet2.pdf
[79] Centrix submission, page 7: https://privacy.org.nz/assets/Uploads/Centrix-Group-Limited.pdf
[80] ID Care, Credit Bans Australia Fact Sheet: https://www.idcare.org/_assets/factsheets/IDCARE-FACT-SHEET-CreditBansAustralia-Nov17.pdf

of credit reporters' explanatory materials and forms individuals could be 'nudged' in that direction without any need for a code change.

As an aside, although the New Zealand scheme is prescriptive in places it retains flexibility so long as the core requirements are met. For example, one credit reporter has increased the period it grants the initial suppression for beyond the Code's 10 working days to 20 working days.[81] It increased the initial suppression period as a result of feedback after it had operated the system for a while.

One aspect of the Australian scheme not found in the Code is a requirement upon credit reporters to notify individuals of the imminent expiry of their extended suppressions. This consumer-friendly feature could be added to the scheme without the need to change other provisions.

An individual who will benefit from suppression will need to obtain a credit freeze from all three national credit reporters to fully protect their position. Under the current system the individual will need to make three applications. Now that the credit reporters have considerable experience with operating the credit freeze system, there would be benefit in exploring scope for devising a process that simplifies the process of making multiple applications. Perhaps administrative solutions - such as a common application form or a shared portal - may provide practical improvements without the need to await the Code to be amended.

In the UK once an individual notifies one credit reporter they have been the victim of fraud, and that has been substantiated, the reporter notifies the other two UK credit reporters as part of an information sharing arrangement to assist victims of fraud.[82] This approach may warrant consideration in New Zealand regardless of whether a simplified process for suppression across all three credit reporters is devised.

Finally, the successful implementation of credit freezing for those at risk of identity fraud may suggest the feasibility in the future of enabling a suppression service for any consumer who may wish to lock down their credit records regardless of whether they are at special risk. This could be seen as an example of implementing what is variously referred to in Europe as a 'right to object' and 'right to restriction of processing' in relation to processing based on consent or involving automated decision-making or profiling.[83] The Office does not recommend going down this route at this time but it might be worth considering the merits of such an option at a future date.

---

[81] Centrix https://www.centrix.co.nz/site/centrix/My_Credit_Report_Freeze.pdf

[82] See ICO FAQ 'Someone else has used my details to try to get credit fraudulently and there have been lots of searches carried out in my name. Can I get these removed from my credit file?': https://ico.org.uk/for-the-public/credit/

[83] See, for example, EU General Data Protection Regulation, articles 6(1), 18, 21 and 22.

Finding:

- The provisions for credit freezing have worked satisfactorily.

Recommendations:

7. The Code should provide for individuals to be notified of the imminent expiry of an extended suppression granted in relation to the risk of identity fraud.
8. Steps should be taken to enable individuals more easily to obtain suppression across multiple credit providers.

3.3 Pre-screening: *Using CCR to support responsible lending in marketing of credit*

Rules 10 (1B) and (1C), Schedule 3 clause 9

Pre-screening allows a credit provider to send a marketing list to a credit reporter to remove details of individuals who do not meet the provider's credit risk criteria.

Although the general approach of the Code is to prohibit the use of the credit reporting system for marketing, Amendments No 4 and No 5 allowed pre-screening to assist subscribers to meet their 'responsible lending' obligations. Pre-screening lists should reduce the prospect of credit providers marketing credit to individuals who are unable to service the debt without hardship.[84]

The approach to pre-screening was developed with general concepts of 'responsible lending' in mind. However, the issue of Amendments No 4 and No 5 by the Privacy Commissioner preceded by a couple of years any official New Zealand Government endorsement and codification of the concept. During the implementation of CCR statutory requirements for responsible lending were imposed on lenders by the Credit Contracts and Consumer Finance Amendment Act 2014 which were elaborated by the Responsible Lending Code which came into effect on 6 June 2015.

The Responsible Lending Code generally requires a credit provider to make enquiries before advertising a 'pre-approved' loan.[85] Although the extent of the expected enquiries may vary depending on the circumstances, they would cover an individual's likelihood of repayment.[86] A lender is also required to make reasonable enquiries before entering into a loan agreement to be satisfied, amongst other things, that the borrower will make the payments required without suffering substantial hardship.[87]

[84] In its submission, Veda cited Australian research from 2008/09 suggesting that credit applications resulting pre-screened marketing lists had lower default rates than applications arising from non-screened direct marketing, branch interactions, telemarketing or the Internet: Veda submission, page 9: https://privacy.org.nz/assets/Uploads/Veda.pdf

[85] Responsible Lending Code, 3.4(b).

[86] Responsible Lending Code, 5.5.

[87] Credit Contracts and Consumer Finance Act 2003, section 9C(3).

While pre-screening is a tool available to credit providers to exclude high credit risk individuals from a marketing pool, it would appear that further enquiries may still be required after an individual responds to any advertising. To digress from exploring community benefits to industry benefits momentarily, a recent white paper by one credit reporter suggests that CCR could reduce the time and costs of making enquiries of borrowers and quantifies both the time savings and the economic benefits it believes would be released by such efficiencies.[88]

The NZ Federation of Family Budgeting Services, whose member budgeting services support individuals who have gotten into serious difficulties with credit, noted that may clients with low credit ratings nonetheless have had credit advertising directed to them.[89]

Two of the three national credit reporters provide pre-screening service. Submissions seem to suggest that not all credit providers use pre-screening for any or all of their direct marketing. Indeed, the industry group indicated that pre-screening 'is not being used by most of our members'[90] while one of the two credit reporters offering the service indicated that the tool 'had not been extensively used'.[91]

Pre-screening is used for excluding poor credit risks a task for which negative information is suitable. However, CCR information can also be useful since the objective in the Code is to screen out prospects who would be 'adverse credit risks' and be 'ineligible' (i.e. by reference to criteria established by the provider and whom would not be offered the credit were they to apply). It is understood that some pre-screening currently uses just negative data although one credit reporter submitted that it would be most effective in contributing to responsible lending obligations 'where CCR information is included in the filtering process'.[92] In accordance with industry norms of reciprocity[93] (not direct code requirements) it might be expected that use of CCR information in pre-screening would likely be limited to CCR participants although all credit providers, whether participants or not, could benefit from screening using negative information.[94]

It might be noted in passing that the Australian arrangements for pre-screening are more restrictive than allowed for in the Code in that repayment history information is not permitted to be used in what the Australian Act terms a 'pre-screening assessment'.[95]

---

[88] Dun & Bradstreet, Whitepaper: Comprehensive Credit Reporting, June 2016, page 9: http://dnb.co.nz/_media/documents/DNB_Comprehensive%20Credit%20Reporting_WhitePaper.pdf

[89] NZFFBS submission, page 3: https://privacy.org.nz/assets/Uploads/New-Zealand-Federaton-of-Family-Budgeting-Services-Inc.pdf.

[90] RCANZ submission, page 14: https://privacy.org.nz/assets/Uploads/Retail-Credit-Association-of-New-Zealand.pdf.

[91] D&B submission, page 4: https://privacy.org.nz/assets/Uploads/Dun-Bradstreet2.pdf

[92] D&B submission, page 4: https://privacy.org.nz/assets/Uploads/Dun-Bradstreet2.pdf

[93] See RCANZ principles of reciprocity (although these do not seem to be explicit in relation to pre-screening): http://rcanz.netco.nz.net/wp-content/uploads/HoA-PoRConformedv1.15.pdf.

[94] The Financial Services Federation expressed scepticism about the value of negative-only pre-screening for achieving responsible lending objectives instead encouraging increased CCR participation with marketing targeted to those with good payment histories. FSF submission, 1.4: https://privacy.org.nz/assets/Uploads/Financial-Services-Federation-Inc-.pdf

[95] Privacy Act 1988 (Cth), s20G(2)(c).

The credit reporters in their submissions reported no problems with the operation of the system (although in one case suggesting that complexity and restrictions may have resulted in under-use) and the industry group RCANZ described it as a 'useful tool' and observed that 'the general methodology appears sound'.[96] One bank (a non-participant in CCR) expressed concerns about the restrictions in the system and wanted a freer hand to use credit reporting information for unsolicited and pre-approved credit marketing offers.[97]

While the current pre-screening scheme appears to be soundly constructed and unproblematic in operation, it is of concern that it has been little used notwithstanding the introduction of statutory responsible lender obligations to which the facility seems well suited. There may be value in aligning the Code's provisions more closely with the language and obligations found in the Credit Contracts and Consumer Finance Act and Responsible Lending Code which were not, of course, available when Amendments No 4 and No 5 were issued. While that would not require any reconsideration of the basic structure and policy of the pre-screening arrangements it would be possible, for example, to:

- Differentiate between pre-approved offers and other credit marketing (as does the Responsible Lending Code);
- Use formulations from that other statutory scheme such as 'likelihood of repayment' or 'be likely to make the payments required without suffering substantial hardship'.

Alignment might enable credit providers more clearly to consider pre-screening to be an incident of their obligations as a responsible lender.

The opening observation in this part of the report was that the general approach of the Code is to prohibit the use of the credit reporting system for marketing purposes. Pre-screening is the only permitted exception. Concern has been expressed in Australia about the possibility of credit reporters developing 'tools' and 'services' to seek to get around this clear prohibition. The PWC review commissioned by the Australian Commissioner expressly recommended that their code's requirements be strengthened to guard against this risk.[98] Thee independent reviewer noted that "industry and consumer representatives were aligned on the importance of strengthening consumer protection in relation to direct marketing". The Australian industry Association ARCA is already acting to give effect to that recent report.[99] The Office considers that it is important that the Code's prohibition of use of credit reporting information for secondary businesses such as marketing remain effective and that this may require further elaboration of the Code's prohibition.

[96] RCANZ submission, page 14: https://privacy.org.nz/assets/Uploads/Retail-Credit-Association-of-New-Zealand.pdf.
[97] ANZ submission: https://privacy.org.nz/assets/Uploads/ANZ.pdf
[98] PWC, Review of Privacy (Credit Reporting) Code, issue #17: https://www.oaic.gov.au/resources/engage-with-us/consultations/independent-review-of-the-privacy-credit-reporting-code-2014/pwc-report-review-of-privacy-credit-reporting-code-2014.pdf
[99] See: https://www.arca.asn.au/news/privacy-credit-reporting-code-cr-code-variation.html

Findings:

- The pre-screening provisions in the Code have operated satisfactorily.
- Pre-screening has not been used extensively and accordingly will have made only a limited contribution to responsible lending.

Recommendations:

9. Without changing its fundamental structure and obligations, the Code's pre-screening terminology should be aligned with the Responsible Lending Code.
10. Consideration should be given to making the Code's prohibition on any credit reporter use of credit information to facilitate marketing, other than in respect of pre-screening, even clearer. The prohibition extends to any tools, services or arrangements that might be designed or have the effect of circumventing the prohibition.

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

Amendment No 5 simplified the definition of serious credit infringement by removing the third paragraph (discussed next in relation to 'credit non-compliance action') thereby making it more compact and coherent.

The feedback from submissions indicates that the provision for listing serious credit infringements is currently underutilised and thus not reaching their potential as a warning of previous fraudulent acts.[100] One reason for underutilisation may include a reluctance to make a statement having the potential to severely impact on individual's reputation if there is a risk of error and consequential liability (under either the Code or the laws of defamation).

Revisions contained in version 3 of the RCANZ Data Standards (adopted in March 2015) allow for better placed coding to facilitate reporting of this type of information. In addition, some industry participants are working towards development of a fraud register which may provide clear industry-accepted guidance as to what type of activity should be reported.

Finding:

- The provision for listing serious credit infringements is currently underutilised and thus not reaching its potential as a warning of previous fraudulent acts.

[100] Veda states that while there is provision to log serious credit infringements 'to date this has not been utilised by our subscribers'. Veda, page 20: https://privacy.org.nz/assets/Uploads/Veda.pdf In addition, Centrix apparently does not collect this information: Centrix, 35: https://privacy.org.nz/assets/Uploads/Centrix-Group-Limited.pdf

3.5 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. Informally this is called a 'clear out'. In such a case, a credit provider might report the actions to a credit reporter as a 'credit non-compliance action'.[101]

This concept was unbundled from the 'serious credit infringement' definition by Amendment No 5 to encourage credit providers to be willing to report such behaviour. As noted already, the other aspects of the former 'serious credit infringement definition' concern fraud which credit providers appear reluctant to report.

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 3 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 a 'confirmed credit non-compliance action' this will remain in the credit reporting system for 5 years from the action.

These provisions have been underutilised. Financial Service Federation reports that members find this information useful when they encounter it on credit reports but that the facility is not widely used as it is little known.[102]

One submission suggested changing the 'confirmed credit non-compliance action' provisions to become a simpler 'no-contact for 3 months' rule as sufficient to maintain a listing for 5 years.[103] However, it is difficult to see such a change as either a useful response to the low utilisation problem or an inherent improvement on the current provision.

Finding:

- The provision for listing credit non-compliance action is currently underutilised and thus not reaching its potential as a warning of clear-outs.

[101] There can be other actions that can be reported under this category but this report concentrates upon clear-outs as the clearest and most common instance of an act from which one might reasonably infer an intention no longer to comply with an individual's credit obligations.
[102] FSF submission, 2.2: https://privacy.org.nz/assets/Uploads/Financial-Services-Federation-Inc-.pdf.
[103] D&B, page 6: https://privacy.org.nz/assets/Uploads/Dun-Bradstreet2.pdf.

3.6 Driver licence numbers: *Improving 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.

Both credit reporters that undertook driver licence matching in 2016 (Veda and D&B – Centrix was planning to start in 2017) confirmed that driver licence information has helped to improve matching of identification but that the full benefits were not being realised because subscribers are not consistently entering licence details.[104] D&B submitted that the data element 'is often not supplied' while Veda noted that 'only a small number of credit inquiries provide a driver licence number'.

It was suggested that consumers might not always be willing to provide driver licence information given that it is a voluntary requirement. However, while this may be the case to some degree, it seems more likely that credit providers that have individuals prove their identity using driver licence numbers are simply not entering the information when making a credit inquiry. Veda noted that more work needed to be done with industry to operationalise the requirement.

Finding:

- The provision for credit reporters to collect driver licence information and use it in a controlled way in the verification of identity is operating satisfactorily. However, the facility is currently underutilised and thus not reaching its potential as a means to increase accuracy of matching.

3.7 Reporting and retention periods: *Limits for positive information and leeway on retention* Schedule 1

The Code from its inception placed limits on how long information might be retained for inclusion in credit reports. The Amendments continued these limits but gave credit reporters greater flexibility by splitting the concepts of 'reporting' period (the period during

[104] D&B page 7: https://privacy.org.nz/assets/Uploads/Dun-Bradstreet2.pdf Veda submission, page 10: https://privacy.org.nz/assets/Uploads/Veda.pdf

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 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 of periodic payment

The only submission on the benefits of splitting reporting and retention periods considered the change to be beneficial.[105]

Although the maximum reporting periods were generally supported, some submitters suggested standardising all periods at 5 years. However, no operational reasons were raised to suggest any problems with the current periods or to justify such a change.

In the next section we note that it may be appropriate to revisit the duration of retention of previous enquiries, a class of records unchanged by Amendments No 4 and No 5.

Finding:

- The provisions for reporting and retention periods are operating satisfactorily.

[105] RCANZ https://privacy.org.nz/assets/Uploads/Retail-Credit-Association-of-New-Zealand.pdf

3.8 Quotation enquiries: *Consumers should not be penalised for prudently 'shopping around'* 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.

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 person searching desperately for credit to fend off insolvency.

In 2009 in the wake of a banking crisis and recession, a UK Parliamentary Committee looked into the effect of the use of previous enquiries in credit scoring on consumers who were shopping around. It wrote:

> "[We] are extremely concerned about the effect of the use of credit searches on market mechanisms, since, in principle, we believe the ability to shop around is not only an important means for consumers to assess the market but also provides a key discipline on lenders."[106]

Drawing upon UK experience, Amendment No 5 authorised credit reporters to disclose credit information to enable subscribers to provide an individual with a quotation for credit. These 'quotation enquiries' would not be permitted to be used in setting credit scores. Accordingly, this approach utilises the power of CCR for personalised risk-based credit offers while ensuring that individuals are not penalised for shopping around for the best credit terms.

The amendment allowed for, but did not require, quotation enquiries. 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.

All credit reporters offer this facility but this facility has been underutilised to date. One credit reporter that offers this facility reported these enquiries made up less than 1% of combined quotation and credit application data over a four month period.[107] This may be due to a lack of awareness on the part of consumers.

The UK introduced quotation enquiries following concerns raised by the UK Information Commissioner's Office (the equivalent to the Office of the Privacy Commissioner) in 2001.

---

[106] House of Commons Treasury Committee, Credit Searches: Third Report of 2009-10, 15 December 2010, paragraph 15: https://publications.parliament.uk/pa/cm200910/cmselect/cmtreasy/197/197.pdf

[107] Centrix, page 10: https://privacy.org.nz/assets/Uploads/Centrix-Group-Limited.pdf

Although quotation enquiries have since become widespread for 'priced for risk' mortgages, they are not, as the UK Parliamentary inquiry found, universal nor are they generally used for credit that does not use risk based pricing. Accordingly, even in the UK with a mature CCR system and availability of quotation enquiries for more than 15 years there to 'shop around' for credit still generates previous enquiry records for each application. Evidence was given that these enquiries would particularly penalise borderlines cases or those with a 'thin file' (no credit accounts or just one or two recent accounts).[108] The Parliamentary Committee recommended that the regulator look specifically at this issue. In a supplementary report it also recommended that the Information Commission reduce the retention period for previous enquiries to 12 months.[109]

Apparently the reluctance of UK credit providers voluntarily to embrace quotation enquiries continued after the Parliamentary inquiry. In 2012 a UK credit information site published an article reviewing the availability of quotation enquiries (or 'soft searches') and found only one High Street lender, a peer-to-peer lender and a credit card provider offering the facility.[110] The article suggest that many banks and building societies have a strict rule against quotation searches and speculates that there are three reasons why lenders prefer to avoid the quotation enquiry route and have potential borrowers make a regular application:

- The 'first lender wins' mentality: Once a bank has enticed someone to make an application inertia kicks in and the consumer is unlikely to continue shopping around.
- Cost of searches: Each credit search may cost a couple of dollars which lenders may not want to pay unless assured of pay-back.
- Some concerns at the quotation enquiry process itself as implemented in the UK.

The Office considers that the current situation whereby lenders are making little or no use of quotation enquiries is not satisfactory. It would be desirable for the industry to take steps to fully implement this system as CCR moves to maturity. The desirability of reducing the reporting period for previous enquiries should be considered.

Finding:

The practice of enabling quotation enquiries has not yet been adopted widely by lenders.

[108] House of Commons Treasury Committee, Credit Searches: Third Report of 2009-10, 15 December 2010, paragraph 25.
[109] Credit Searches: Information Commissioner's Office Response to the Committee's Third Report of Session 2009-10 – Treasury, Appendix: Government Response, 16 March 2011: https://publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/865/86504.htm
[110] Choose website, 'Why don't more lenders offer quotation searches?', January 2012: https://www.choose.co.uk/news/should-more-lenders-offer-quotation-searches.html

Recommendation:

11. Steps should be taken by the industry to promote the wider adoption of quotation enquiries.
12. Consideration should be given to reducing the reporting period for previous enquiries.

3.9 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 coding or number by applying a formula or algorithm.

Amendment No 4 introduced to the access right an express requirement to include, along with any access given to a credit score, a statement outlining 'the general methodology used to create the score, including the types of information used'.

Credit scores are expected to play a bigger part in the NZ credit reporting system with the shift to CCR. Accessing and understanding a credit score becomes more important in a mature CCR environment with risk based pricing based upon individualised profiling compared with the former environment where credit reporting was used to identify and exclude poor credit risks but otherwise all approved borrowers tended to be treated alike.

No significant issues emerged from submissions. However, a continuing issue from the perspective of the Office is that credit scoring can act as a barrier to one of the Code's fundamental provisions directed to transparency and accountability: free access by the individual concerned to information held in the credit reporting system. Under current Code provisions different treatment of scores is leading to different treatment of access request that can be (but is not always) accompanied by charges that create a barrier to access.

It is worth repeating several fundamental points that the information in the credit reporting system is often sensitive and in other contexts might be subject to banking secrecy. The information amassed is sold to third parties and that reflects directly on the individual's reputation. It is used in decision-making directly affecting the interests of individuals. The credit industry operates on the basis of industry terms that individuals cannot change – to seek credit means an acceptance that one's personal information will be accessed, recorded, retained and shared. The system is vast and largely automated. Information about an individual can be assembled and retrieved nearly instantaneously and at low cost.

Personal access without the barrier of cost to all the information used in relation to the individual in the credit reporting process is fundamental to a system that is fair, transparent and accountable to the individuals on whose credit reporting information the industry is built. Free access has been a bedrock provision from the outset of the Code in 2004. If the credit reporting system has evolved through CCR toward reliance on a numerical score

derived from the now much larger accessible collections of personal information to differentiate between individuals and enable decisions to be taken in relation to them then it is essential that the individual's prime privacy right of free access evolve to take account of this.

Finding:

- Credit scores are a core feature of CCR but are sometimes being treated as a chargeable 'add on' when individuals seek subject access. This creates barriers to access and undermines the Code's requirement for free subject access.

Recommendation:

13. The Code should be amended to provide a clearer access right to credit scores to which the no-charging requirement clearly applies.

Summary of recommendations

1. To avoid disrupting the completion of the roll out of CCR to the remainder of the credit sector, a cautious approach should be taken in the short term towards proposals for changes to the fundamentals of CCR in so far as those changes might affect credit provider systems.

2. The industry should consider creating a public data base of CCR participation and related metrics, perhaps using the ARCA Credit Data Fact Base as a model, to continue at least until CCR maturity.

3. Until substantial evidence of benefits to individuals, their communities and the economy is available, the case does not exist to intrude further into individual privacy by adding additional classes of personal information.

4. Additional efforts should be taken by stakeholders to promote financial literacy around CCR as the uptake increases and the system matures.

5. Further steps should be taken, which may include amending the Code, to:
    a) promote subject access; and
    b) support the role of CCR in responsible lending.

6. Consideration should be given to measures, including amending the Code, to enhance the effectiveness of the independent reviewer component of the accountability model.

7. The Code should provide for individuals to be notified of the imminent expiry of an extended suppression granted in relation to the risk of identity fraud.

8. Steps should be taken to enable individuals more easily to obtain suppression across multiple credit providers.

9. Without changing its fundamental structure and obligations, the Code's pre-screening terminology should be aligned with the Responsible Lending Code.

10. Consideration should be given to making the Code's prohibition on any credit reporter use of credit information to facilitate marketing, other than in respect of pre-screening, even clearer. The prohibition extends to any tools, services or arrangements that might be designed or have the effect of circumventing the prohibition.

11. Steps should be taken by the industry to promote the wider adoption of quotation enquiries.

12. Consideration should be given to reducing the reporting period for previous enquiries.

13. The Code should be amended to provide a clearer access right to credit scores to which the no-charging requirement clearly applies.

Some of these recommendations have deliberately been written in an open-ended way to allow for implementation by, say, industry action - by credit reporters or lenders or both - or by an amendment to the Code or a combination of the two. The Office will engage with appropriate stakeholders in identifying the most promising means of implementation. Such engagement may also extend to selected findings recorded in this report where there is no associated recommendation.