



Privacy Commissioner
Te Mana Matapono Matatapu

Amendment No 4 to the Credit Reporting Privacy Code 2004

Background Paper on Changes to Notified Amendment

15 December 2010

Proposed Amendment No. 4 to the Credit Reporting Privacy Code 2004 was publicly notified by the Privacy Commissioner on 16 June 2010, with an invitation to make submissions. Having considered the submissions, the Commissioner has issued the amendment with some changes. This paper explains the principal changes.

Table of contents	2
Introduction	3
1. The amendment	3
2. The submissions process	3
Outline of selected points raised by submitters	3
1. Commencement	3
2. Driver licence number	4
3. Disclosure of credit account information	4
4. Credit default information	4
5. External accountability requirements	4
6. Credit scores	5
7. Direct marketing	5
8. Subscriber agreement	5
9. Other important changes	5
Outline of changes made to notified amendment	6
1. Clause 2	6
2. Clause 4	6
3. Clauses 5 and 8(2)	6
4. Clause 6(1)	6
5. Clause 7	6
6. Clause 10	6
7. Clause 11	7
8. Clause 13	7
9. Clause 16	7
10. Clauses 17 and 18	7
11. Clause 19	7

In this paper:

- **the notified amendment** means the version dated 16 June 2010 which was publicly notified on the same date; and
- **the amendment** means the final version issued on ... December 2010.

Amendment No 4 to the Credit Reporting Privacy Code 2004

Background Paper on Changes to Notified Amendment

Introduction

1. The amendment

This amendment, which comes into effect in two stages on 1 October 2011 and 1 April 2012, will make significant changes to credit reporting in New Zealand. Most notably, the amendment will allow for the collection and reporting of more comprehensive information by credit reporters. The amendment will also:

1. permit the retention and use of driver licence numbers by credit reporters;
2. require internal systematic compliance reviews by credit reporters to include an independent element and external report;
3. permit the use of information from additional public registers;
4. regulate the retention of credit information; and
5. make other changes to various parts of the Code.

More information on the effect of this amendment can be found in the Information Paper on the amendment, also dated 15 December 2010, available at www.privacy.org.nz.

2. The submissions process

On 16 June 2010, the Commissioner publicly notified the proposed amendment and invited submissions to be made by 13 August 2010.

Eighty submissions were received. A number of submitters expressed interest in meeting the Commissioner and, during September, the Commissioner met with 24 submitters in Auckland and Wellington. Some follow-up discussions were held with several stakeholders, including major credit reporters.

A number of submissions raised new issues unconnected to the notified amendment. Submissions on issues unrelated to the notified amendment have been helpful to the Commissioner, and may be useful in later phases of the review, but will not be addressed in this paper.

Outline of selected points raised by submitters

1. Commencement

Some submitters noted that sufficient time would be needed to allow for the systems changes required to implement more comprehensive credit reporting.

The Commissioner has deferred commencement to 1 October 2011 and thus combined and simplified commencement. This has been done in part to respond to concerns about implementation.

As the amendments relating to more comprehensive reporting are permissive not mandatory, there is no requirement for stakeholders to commence with more comprehensive credit reporting if they are not ready to do so.

2. Driver licence number

There was support for the inclusion of the driver licence number and the safeguards proposed in the notified amendment. Some small drafting suggestions were made and these have resulted in some changes to the amendment, outlined below.

Some submissions received revealed general concerns that the amendment may encourage the driver licence to be used as a de facto identification card. The Commissioner acknowledges this concern. However, taking into account the existing practice of lenders to seek the driver licence and the safeguards in the notified amendment, together with the apparent benefits following from the change, the Commissioner concluded that the proposed amendment was warranted.

3. Disclosure of credit account information

The notified amendment limits the disclosure of credit account information to registered credit providers. It is not intended that subscriber classes such as general insurers and landlords obtain access to the comprehensive reporting regime. Others – for example lenders' mortgage insurers and utilities companies – put forward a strongly argued case for inclusion.

We will consider the inclusion of mortgage insurers and utilities companies when further proposed amendments are considered in 2011.

4. Credit default information

The commentary to the Code makes clear that a default must relate to a credit account. The proposed amendment makes that explicit in the Code.

During the hearings, the Commissioner asked submitters opposed to this change to identify situations where a default might relate to a non-credit transaction. The only significant example raised was a statutory debt owed to a government agency.

The inclusion of other types of debt, such as statutory debts, may be considered in a later phase. The amendment will proceed as notified.

5. External accountability requirements

A number of submitters supported the imposing of clearer external accountability requirements. At least one industry player that will be subject to the obligations was not so supportive.

One submitter that will be subject to the obligations accepted the proposal but suggested that some further detail on the scope of the new requirements would be helpful. The Commissioner sees merit in that suggestion and will look further into the possibility of inserting a new schedule to the Code setting out the elements of the obligation.

If the Commissioner proceeds along these lines, a proposed schedule will be included in the next set of amendments.

6. Credit scores

Some submitters were concerned that this amendment may require the disclosure of a credit reporter's intellectual property. However, the amendment requires only general information to be provided to individuals.

7. Direct marketing

There was wide support for the explicit prohibition on the use or disclosure of credit information for direct marketing purposes.

However, many submitters suggested that there was merit in permitting the practice of "pre-screening" marketing lists used by credit providers. Pre-screening describes the use of credit information by credit reporters to clean or profile direct marketing lists created by subscribers. Submissions are premised on the argument that such pre-screening assists in responsible lending by removing bad risks from direct marketing lists and preventing the targeting of those unable to manage new credit.

There may be some merit in permitting some limited pre-screening use. Accordingly, the commencement of the amendment to rule 10 – which prohibits the use of credit information for direct marketing purposes – will be delayed to 1 April 2012. This will allow for the consideration of including a limited pre-screening exception in the next set of amendments. A possible approach, drawing upon Australian precedent and submissions, might provide:

1. that pre-screening be used only for direct marketing lists prepared by registered credit providers for credit-related marketing;
2. that pre-screening be permitted only for the exclusion of bad risks from marketing lists; and
3. that provision be made for screening or marketing opt-outs.

The amendment to rule 11, prohibiting the disclosure of credit information to others for direct marketing purposes, will commence at the earlier date.

8. Subscriber agreement

While these amendments were generally supported by submitters, there was some concern raised about the compliance costs the changes may create. The Code can only be effective if relevant obligations are carried through as binding obligations on subscribers. The other changes made to the Code in this amendment mean that corollary changes to the subscriber agreements are essential.

Schedule 5 is not intended to be a template contract. Different subscribers will have different levels of obligation depending on their access rights under the Code. Schedule 5 sets out the information that must be included in a subscriber agreement, where applicable.

9. Other important changes

There was general support for the approach of the amendment to:

- reporting and retention periods;

- summary of rights;
- deaths information; and
- public registers.

Outline of changes made to notified amendment

1. Clause 2 (Commencement)

The amendment was to have commenced on 1 April 2011, with some parts delayed to 1 October 2011 and 1 April 2012. In response to submissions and to simplify implementation, the amendment will now come into force on 1 October 2011, except for those parts of the amendment which will come into force on 1 April 2012.

The commencement of the prohibition on the use of credit information for direct marketing has been delayed to 1 April 2012.

2. Clause 4 (Other amendments to clause 5)

Some ordering changes have been made to clause 4 to reflect the two commencement dates.

Clause 4(1) now contains a definition of “direct marketing” by reference to the definition of direct marketing used in section 9(2) of the Privacy Act.

Some drafting changes have been made to the definition of “driver licence number” for clarification.

3. Clauses 5 and 8(2) (External accountability requirements)

The wording of clauses 5 and 8(2) has been changed to correct an error in the notified amendment. The term “credit provider” has been changed to “credit reporter”.

Some drafting changes have been made to clauses 5 and 8(2) to simplify them and to avoid the impression that a formal audit is required.

4. Clause 6(1) (access)

Some drafting changes have been made to clause 6(1) to address concerns expressed by submitters over the level of detail required by this amendment. The amendment now requires credit reporters to provide a statement *outlining* the general methodology and range for a credit score.

5. Clause 7 (correction)

A new amendment has been added which removes the words “subject to subrule 4” from rule 7(3)(b) of the Code. This makes rule 7 consistent with the amended rule 6.

6. Clause 10 (use)

Some ordering and drafting changes have been made to clause 10 to reflect the two commencement dates and to alter the placement of one amendment in the Code.

7. Clause 11 (disclosure)

A number of small grammatical changes have been made.

8. Clause 13 (complaints)

Two small grammatical changes have been made.

9. Clause 16 (subscriber agreement)

Some ordering changes have been made to Clause 16 to reflect the two commencement dates.

10. Clauses 17 and 18 (summary of rights)

The wording of the Summary of Rights has been changed to meet the requirements of the WriteMark Plain English Standard. This means that the Summary of Rights will now bear the WriteMark quality mark. The substance of the Summary of Rights has not changed.

11. Clause 19 (driver licence numbers)

Clause 1 of the new Schedule 5 has been changed to include a reasonableness element in the requirement on credit reporters to ensure that certain steps are followed by subscribers. This change makes the Schedule consistent with similar requirements in the current Code.

Some drafting changes have been made to clauses 2, 3, 4 and 5 of the new Schedule 5 to ensure consistency with the wording of the Land Transport Act 1998 and to improve clarity.

Clause 7 of the new Schedule 5 has been changed to note the use of the hash value obtained from the driver licence number to retrieve as well as match credit information.