FINANCIAL SERVICES FEDERATION

24 August 2018

Office of the Privacy Commissioner By email: code@privacy.co.nz

Proposed Amendment No 14 to Credit Reporting Privacy Code 2004

The Financial Services Federation ("FSF") is grateful for the opportunity to comment on proposed amendment number 14 to the Credit Reporting Privacy Code 2004 ("CRPC"). The FSF has commented separately on proposed amendment number 13.

By way of background, the FSF is the industry body representing responsible and ethical finance and leasing providers in New Zealand. The FSF has nearly sixty members and affiliates providing first-class financing, leasing, and credit-related insurance products and services to over 2 million New Zealand consumers and businesses. The FSF's affiliate members include internationally recognised legal and consulting partners as well as the three main credit reporting agencies operating in New Zealand. A list of the current membership of the FSF is attached as Appendix A.

As such the FSF is responding to the proposed amendments to the CRPC contained in amendment number 14, on behalf of both credit reporting agency members as well as credit providing members. It should be noted, however, that some members may also be providing their own submissions and in that case, the member's submission represents the views of that member.

Before dealing with each proposed amendment in turn as numbered in the Information Paper provided in support of the proposed amendments, the FSF commends the Office of the Privacy Commissioner ("OPC") for the way in which the review of the CRPC has been conducted, particularly with regard to the opportunities for consultation with affected parties that have been provided.

As a result of this consultation, the FSF notes that most of what is contained in the Information Paper by way of amendment to the CRPC via amendment number 14, has already been flagged with both the three credit reporting agencies and via the FSF with responsible credit providers.

However, there are two material amendments proposed by the OPC, as part of amendment 14, that pose concern to the FSF and further there has been little or no industry consultation on these matters. Specifically, the proposed reduction to the credit enquiry retention period on consumer credit files from 5 years to 3 years and the increase in the minimum credit default amount from $100 to $125. Neither of which are supported by the FSF for a number of valid reasons outlined in the following pages.

However, if these changes are to proceed in spite of this, the FSF submits that a longer lead time for systems changes is required. Also, the changes should be applied going forward (not retrospectively) as this would reduce the development time and effort for both credit reporters and credit providers and retain valuable adverse information on the credit bureau.

Where the FSF has made no comment in relation to a numbered point, it can be taken that the FSF is in full agreement with what is contained in that point.

2. Commencement:
The FSF notes that it is intended that the amendment will be issued by mid-November this year and will come into force on 1 April 2019. The FSF does not agree with the commentary under this point that this is a "fairly long lead time" which will allow credit reporters to gear up for any changes to their practices. The FSF also points out that it is not only credit reporters who would face development time and effort to respond to these changes. So too would credit providers around the proposed retention period, minimum default amount and quotations introduction changes.

The FSF submits that some of the proposed amendments will require quite extensive systems updates and changes and that this timeframe is not long at all to achieve these given the fact that the Christmas/New Year close-down period occurs right in the middle of the lead time. The FSF has made specific comments with regard to the tight timeframe in respect to individual proposed amendments of a more complex nature. Where the FSF has not made such comment, it can be taken that the FSF is in agreement that the 1 April 2019 timeframe will be adequate.

4. Amendment to Clause 5 (NZBN as supplementary identification information):
The FSF is supportive of the move to allow the inclusion of the NZBN into the system for individuals in business and indeed the FSF's credit reporting agency members report that they are already working towards inclusion of this data point in their systems.

However the FSF believes that for such individuals, the NZBN should not be deemed to be "supplementary identification information" but should be treated as identity information to facilitate and validate higher and more confident levels of matching.

5. Amendment to clause 5 (Updating small debt threshold in definition of debtor credit default):
As mentioned in the introduction to this submission above, the FSF is concerned that this proposed amendment has been included without warning to anyone involved and has several reservations about it as a result.

Whilst increasing the small debt threshold from $100 to $125 might not sound on the face of it like a large amount, it may impact significantly on the number of defaults able to be reported. This will reduce the value of any insights into other commitments that may be able to be provided by credit reporting agencies. The FSF submits that it is quite possible that by increasing this threshold, individual credit scores could conceivably change from high to low risk which would have a significant impact for credit providers in assessing individuals' inherent credit risk

For credit providers this would have some potentially serious consequences when meeting their responsible lending obligations under the Credit Contracts & Consumer Finance Act 2003 ("CCCFA"). Also this change could lead to greater numbers of defaults for credit providers which would lead to increased costs of credit to all consumers.

The FSF also submits that no clarity has been provided in the Information Paper with regard to how this change is proposed to be implemented. For example, is it proposed that only defaults of $125 or greater are reported from the date of implementation of this change or will there be some form of transition arrangement allowed for so that those defaults of amounts that fall within the range of $100-$125 are allowed to be retrospectively reported on?

The FSF would not be supportive of current default information of these amounts being lost to credit providers.

Further the FSF questions whether by linking the rationale for this proposed amendment to the rate of inflation, does this mean that the threshold will be reviewed more frequently in future? And if so, what sort of transition arrangements will be provided to accommodate these changes? If, as is stated in point 5 of the Information Paper, the current value of $100 in 2011 is $106.67, the FSF would also question why it is proposed to increase the threshold to as much as $125.

The FSF also notes that it is not proposed to increase the default threshold for Guarantors which appears to be being left at $100 which seems inconsistent.

On the basis of the above, the FSF is not at all supportive of the proposed change to the threshold. However, if it is to proceed in spite of this, the FSF submits that a longer lead time for required systems changes needs to be allowed for and proposes that for this particular change, a timeframe of at least one year from the time of issue of the amendment would be required.

6. Amendment to Clause 5 (New definitions):

The FSF is comfortable with the definition of New Zealand Business Number as proposed in the Information Paper.

7. Amendment to Clause 5 (New subclause on related companies):
The FSF notes that the commentary under point 7 suggests that this proposed amendment is being introduced to prevent a credit reporter using a related company to circumvent the application of the Code. This subclause is another that has been introduced without any prior consultation with the FSF or its credit reporting agency members.

It has to be said that its conclusion has taken the FSF by surprise as the FSF has no knowledge of any attempt by anyone – most particularly the FSF's credit reporting agency members – attempting to circumvent the application of the Code. The FSF therefore strongly questions how this subclause has come about and what particular problem is its proposed inclusion trying to solve.

The FSF does not have any objection to the way in which "related company" has been defined in the Information Paper. Indeed it seems entirely consistent that if this subclause is to be included in the Code, the Companies Act 1993 definition should be applied.

10. Amendment to Rule 6 (Access to credit score):
The FSF has no objection to the proposal that individuals' primary credit score should be disclosed to them. Indeed some credit reporting agencies are already doing this. However the FSF advises caution to ensure that this is restricted to the raw credit score information only and not any further derived data that should remain the intellectual property of the credit reporting agency concerned.

Agencies report however that setting themselves up to be able to provide this information to consumers will require a systems change and will therefore take longer to implement than the proposed amendment timeframe allows for.

13. Amendment to Rule 10 (Prohibition on use of credit information for marketing or to facilitate marketing by subscribers):
The FSF notes that the prohibition against use of credit information for marketing purposes is already referred to in NZ credit reporting law and is therefore broadly supportive of the proposed amendment to expressly reference marketing tools, services, assisting and targeting. The FSF points out however that "marketing" is a very board concept and that any interaction with an individual could be construed as marketing. On this basis the FSF would prefer to see the amendment refer to "direct marketing" rather than "marketing" as such which could be an overreach.

The FSF also notes point 13 refers to the change suggested in point 7 of the Information Paper to introduce a prohibition on the use of related companies to circumvent the "no marketing use" rule. Once again, the FSF is at a loss to understand why this is necessary as it is not aware of any instances where this has been an issue.

14. Amendment to Rule 10 (Use of credit information for tracing to facilitate return of money owed to individuals):
The FSF is fully supportive of this proposed amendment as it would seem to be both entirely sensible and in the wider consumer good.

15. Amendment to Rule 11 (Facilitation of suppression across multiple credit providers):
The FSF notes that credit reporters have already discussed this proposed amendment with the OPC and they are therefore already working on standardising processes to allow this to happen so that when a consumer approaches one agency the information can be passed to the other 2 agencies. Given that the Code currently does not allow for this information to be exchanged, the amendment would again seem to be both entirely sensible and in the wider consumer good.

16. Amendment to clause 7 (Permissible charges for expedited access):
The FSF supports the proposal to reduce the timeframe for providing expedited subject access from 5 days to 3. This would seem to be entirely consistent with the other proposal to reduce the normal subject access timeframe from 20 days to 10.

However the FSF asks for an extended timeframe to implement this where technology changes are necessary to be able to comply.

17. Amendment to clause 9 (Independent person's role in assurance review and report):
Credit reporting agencies are already required to provide an annual report to the OPC which is developed either by a committee or an independent person. These agencies believe it is important that the independent person is appropriate for this role and, on this basis, is comfortable with this change to enhance the assurance process.

18. Amendment to Schedule 1 (Reducing maximum reporting period for previous enquiries):
Firstly with respect to this proposal, the FSF submits that it seems to assume that all users of a credit bureau will be contributing to and receiving comprehensive credit reporting information which is incorrect. There are thousands of users of credit bureau information who will never be part of CCR for a variety of reasons (such as business type, permitted use, Return on Investment, etc.).

The FSF submits that access to enquiries information is key from a credit provider's point of view in determining an individual's creditworthiness as they are important to "credit file depth" which is a core principle in credit scoring. Without this depth the lender user is forced into greater manual due diligence which is bad for customer experience. The FSF also points out that an additional enquiry on a credit report does not always result in a lowering of a credit score. However, where a high volume of credit applications for unsecured credit products (e.g. personal loans, credit cards, personal overdrafts, etc.), over a relatively short space of time are present this would be a strong indicator of credit stress on the part of the applicant. The link between this type of behaviour and likely future credit default has been statistically proven.

Therefore this information is absolutely vital to credit providers to help them to meet their CCCFA responsible lending obligations to not lend to someone who is likely to be put into significant hardship should the loan be approved.

FSF members who are consumer credit providers would view a consumer with a number of enquiries as someone who is potentially a higher credit risk. Rather than viewing this as someone who is "shopping around" for credit products, they would view this as someone seeking the lender of last resort – particularly given that the enquiry data does not specify whether previous lenders who have enquired after the consumer have declined to lend to them.

The FSF believes that all credit information should be held for a period of 5 years whether this be enquiries information, repayment history or default or negative information. This inconsistency creates issues for credit reporting agencies from a systems point of view.

Further, if all negative information about a consumer is held for 5 years but their positive information with regard to their repayment history drops off after 2 years and enquiries information after 3, the consumer is disadvantaged when seeking credit if they have a default older than 3 years.

One final point with regard to enquiries information is that multiple instances of credit enquiry information on a credit file could also be indicative of application fraud – something which FSF credit provider members is becoming considerably more prevalent (which also increases the cost of obtaining credit for responsible borrowers).

19. Amendment to Schedule 3 (Subscriber obligation to provide quotation enquiries if offering risk-based credit products):

The FSF believes that the concept of subscribers providing quotation enquiries if offering risk-based credit products is potentially good for consumers to allow them to negotiate an interest rate or loan terms and conditions etc without a credit enquiry being registered on their credit file. However, from an operational point of view for credit providers and credit reporting agencies, it is problematic and a big piece of systems work for credit providers to be able to do. It certainly requires careful thought and reasonable time needs to be given for the implementation for both credit reporters and providers. It is also not clear whether this provision is optional or not.

Operationally the introduction of such an obligation would require subscribers to make two contacts with credit reporting agencies for the one loan. The first when the consumer is seeking a quotation and the second when the consumer actually proceeds with the loan. This will increase lender overheads and therefore the cost of credit to consumers.

The FSF suggests that if such a requirement is to be introduced it needs careful thought and a considerably longer lead time to implement than is being provided in the current proposed timeframe. It is also vital that consumers are aware of their right to request a "quotation only" credit check from any lender (or for that matter other subscribers such as utilities companies as it is also not uncommon for consumers to shop around looking for the best deal for them from an electricity provider for example).

The FSF points out that the requirements of the CCCFA and the Responsible Lending Code introduced in 2015 are very clear with regard to the fact that lenders must disclose their loan terms and conditions, fees and the range of interest rates available to consumers in their premises and on their websites. The Commerce Commission regularly conducts desk-based reviews of lenders' websites to ensure that appropriate information is being disclosed to consumers in this way specifically to facilitate the shopping around for credit. On this basis the FSF questions whether this provision is even required.

The FSF also strongly believes that the introduction of such a provision would allow consumers to shop around if they are being declined credit by a responsible lender until they find a lender of last resort who may not be acting so responsibly.

24. Amendment to Schedule 7 (Suppression of credit information where individual may be a victim of fraud):
As previously stated in the answer to point 15 above, credit reporters are already working on ways in which they can share information between the 3 reporters so the FSF is fully supportive of this proposed amendment.

26. New Schedule 10 (Use of credit information for tracing to facilitate the return of money owed to individuals):
As previously stated in the answer to point 14 above, the FSF is fully supportive of this proposed amendment.

Thank you once again for the opportunity for the FSF to make this submission. Please do not hesitate to contact me if you require any further information.

Lyn McMorran
EXECUTIVE DIRECTOR

Appendix A

FSF Membership List as at 1 August 2018

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting Other	Insurance	Affiliate Members
<u>Rated</u> Asset Finance (B) <u>Non-Rated</u> Mutual Credit Finance Gold Band Finance ➢ Loan Co	BMW Financial Services ➢ Mini ➢ Alphera Financial Services Branded Financial Services Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➢ Mitsubishi Motors Financial Services ➢ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance <u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd ORIX NZ SG Fleet Lease Plan	L & F Ltd ➢ Speirs Finance ➢ YooGo Avanti Finance Caterpillar Financial Services NZ Ltd CentraCorp Finance 2000 Finance Now ➢ The Warehouse Financial Services Flexi Cards Future Finance Geneva Finance Home Direct Instant Finance ➢ Fair City ➢ My Finance John Deere Financial Latitude Financial Pioneer Finance ➢ Personal Finance South Pacific Loans Thorn Group Financial Services Ltd Turners Automotive Group	Equifax (prev Veda) Centrix <u>Debt Collection Agencies</u> Baycorp (NZ) Illion (prev Dun & Bradstreet (NZ) Limited Receivables Management Limited	Autosure Protecta Insurance Provident Insurance Corporation Ltd Southsure Assurance	American Express International (NZ) Ltd AML Solutions Buddle Findlay Chapman Tripp Experian EY Finzsoft KPMG Paul Davies Law Ltd PWC Simpson Western FinTech NZ HPD Software Ltd