

## **Credit Reporting Privacy Code 2004**

### **Amendment No 14**

I, **JOHN EDWARDS**, Privacy Commissioner, now issue under section 51 of the Privacy Act 1993, this amendment to the Credit Reporting Privacy Code 2004.

Issued by me at Wellington on 6 November 2018.

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affixed to this amendment to the	)	[L.S]
Credit Reporting Privacy Code	)	
2004 by the Privacy Commissioner	)	

John Edwards  
**Privacy Commissioner**

*Note: This version includes some brief explanatory versions in italics. These notes have no legal effect but are to assist readers.*

#### **1. Title**

This amendment is the Credit Reporting Privacy Code 2004 Amendment No 14.

#### **2. Commencement**

(1) Except as provided in subclauses (2), (3) and (4) this amendment will come into force on 1 April 2019.

(2) Clause 25 will come into force on 10 December 2018.

(3) Clauses 10, 11, 16 and 22 will come into force on 1 July 2019.

(4) Clauses 4, 5, 18 and 19 will come into force on 1 October 2019.

*Note: Unless otherwise provided, the Amendment generally commences on 1 April 2019. An extra 3 months lead in time is provided in relation to clauses that may involve systems changes by credit reporters. A further 3 months lead in time is provided where systems changes may also be required by subscribers. A transitional Schedule allows systems testing in advance of the commencement of various Code changes.*

#### **3. Amendment to Clause 3 (Review clause now spent)**

Clause 3 is deleted.

*Note: Clause 3 mandated a review that has now been completed.*

#### 4. Amendment to Clause 5 (NZBN as supplementary identification information)

The definition of **credit information** in clause 5 is amended by deleting 'and' from subparagraph (b)(iv) and inserting the following subparagraph to follow paragraph (b)(v):

- ; and
- (vi) NZBN;

*Note: As supplementary identification information the NZBN may be used to confirm information in a subscriber enquiry but would not be disclosed on a credit report.*

#### 5. Amendment to clause 5 (Updating small overdue payment threshold in definitions of debtor credit default and guarantor credit default)

(1) The definition of **debtor credit default** in clause 5 is amended by making the following change in paragraph (e):

- Delete: \$100
- Replace: \$125

(2) The definition of **guarantor credit default** in clause 5 is amended by making the following change in paragraph (e):

- Delete: \$100
- Replace: \$125

*Note: The Amendment updates \$100 thresholds that were set in September 2011.*

#### 6. Amendment to Clause 5 (New definitions)

Clause 5 is amended by adding the following definitions in the appropriate alphabetical order:

**NZBN** means New Zealand Business Number;

**related company** has the meaning given in section 2(3) of the Companies Act 1993;

*Note: NZBN is the abbreviation used in the New Zealand Business Number Act 2016.*

#### 7. Amendment to clause 5 (New subclause on related companies)

(1) The existing content of clause 5 is to be shown as subclause (1).

(2) The following new subclause is to be inserted into clause 5:

(2) A credit reporter must not be directly or indirectly involved in any understanding, arrangement, structure or agreement with a related company (**Arrangement**) where:

(a) the purpose or effect of the Arrangement is to circumvent the application of the Code on an activity to be undertaken by the related company; or

(b) the purpose or effect of the Arrangement is to enable the related company to use or disclose credit information sourced from the credit reporter that would be a breach of the Code if the use or disclosure had been made directly by the credit reporter.

*Note: **Related company** is defined.*

#### **8. Amendment to Rule 2 (Collections involved in permitted services)**

Rule 2(2) is amended by inserting the following paragraph:

- (da) that the information collected is necessary for the purposes of:
  - (i) undertaking pre-screening in accordance with Schedule 9; or
  - (ii) undertaking tracing in accordance with Schedule 10;

#### **9. Amendment to Rule 4 (Unrelated authorisations not to be bundled with statutory processes)**

(1) The existing content of rule 4 is to be shown as subrule (1).

(2) The following new subrules are to be inserted into rule 4:

- (2) A credit reporter must not bundle a request for authorisation of an additional unrelated use or disclosure of credit information into application processes for:
  - (a) access to credit information under rule 6;
  - (b) correction to credit information under rule 7; or
  - (c) suppression of credit information under rule 11.

(3) Subrule (2) does not prevent a credit reporter from seeking authorisation from an individual to use the identity details submitted as part of an application process to confirm or update the credit reporter's records but a credit reporter must not impose as a condition of the application that such authorisation be given.

*Note: Subrule 4(2) would prohibit, for example, requests for individuals to agree to disclosure of details to a third party such as a debt collector or credit broker or for marketing purposes. 'Bundled consents' can be an unfair means of collection as they may mislead individuals as to whether consent is voluntary.*

#### **10. Amendment to Rule 6 (Access to credit score)**

Rule 6 is amended by inserting the following new subrule:

- (1A) Where, as part of its business of reporting to other agencies on the creditworthiness of individuals a credit reporter usually generates for those other agencies a general credit score or scores from credit information it holds or has access to, the credit reporter must generate a credit score or scores on the same basis for inclusion with information to which the individual concerned is given access under subrule (1)(b).

*Note: This clause makes clear that if the credit reporter is in the business of creating and selling to third parties a rating that characterises the creditworthiness of the individual concerned the individual is entitled to see that rating. **Credit score** is defined in the Code.*

**11. Amendment to Rule 6 (Outer time limit for access to credit information)**

(1) Subrule 6(5)(b) is amended by inserting at the start of the paragraph the following:

subject to subrules (5A) and (5B),

(2) Rule 6 is amended by inserting the following new subrules:

(5A) On receiving an access request under rule 6, a credit reporter must, as soon as reasonably practicable, and in any case not later than 10 working days after the day on which the request is received, give or send to the requester a response to the request.

(5B) Any notice given under section 41(3) of the Act effecting an extension of time must be given to the individual who made the request within 10 working days after the day on which the request is received.

*Note: This clause reduces the outer time limit for giving access from 20 to 10 working days. Any extension of time justified under section 41 of the Act must correspondingly be notified within those 10 working days.*

**12. Amendment to Rule 10 (Correction of error)**

In subclause (1A) delete “1996” and replace with “1995”.

*Note: The existing reference to the title of the Births, Deaths, Marriages, and Relationships Registration Act cited the wrong year.*

**13. Amendment to Rules 10 and 11 (Prohibition on use of credit information for marketing or to facilitate marketing by subscribers)**

(1) Subrule 10(1B) is omitted and replaced with the following:

(1B) Except as provided in Schedule 9, a credit reporter must not use credit information for any purpose related to marketing or direct marketing, including without limitation, any of the following:

(a) facilitating of marketing or direct marketing by a subscriber or any other agency;

(b) developing a tool or service for subscribers, or providing such a tool or service to subscribers, for the purpose of:

(i) assisting subscribers to assess the likelihood that an individual might accept an offer of credit or insurance in relation to credit, or variation of credit or insurance; or

(ii) otherwise to target individuals for offers of credit or insurance.

(2) Subrule 10(1C) is deleted.

(3) Subrule 11(3)(b) is omitted and replaced with the following:

(b) credit information for any purpose related to marketing or direct marketing, including the facilitating of marketing or direct marketing by a subscriber or any other agency;

*Note: The clause strengthens and broadens the existing prohibitions in both rules 10 and 11 on the use of credit information by credit reporters for marketing or the facilitation of marketing by others. Material related to the permitted marketing practice of pre-screening is removed from subrule 10(1C) and replaced, in substantially the same form, in a new Schedule 9.*

#### **14. Amendment to Rule 10 (Use of credit information for tracing to facilitate return of money owed to individuals)**

Rule 10 is amended by inserting the following new subrule:

(1D) A credit reporter may use credit information in accordance with Schedule 10 for tracing purposes to facilitate the return of money owed to individuals.

*Note: The new provision for unclaimed money tracing appears in rule 10, rather than rule 11, as the scheme is structured in such a way that any new address revealed through the process is used by the credit reporter on behalf of the subscriber but not disclosed to the subscriber.*

#### **15. Amendment to Rule 11 (Facilitation of suppression across multiple credit providers)**

Subrule 11(1) is amended by inserting the following paragraph:

(da) that the disclosure is of an initial request by an individual for suppression under Schedule 7 and is to another credit reporter for the purpose of facilitating an initial suppression by that other credit reporter;

*Note: See also amended Schedule 7 set out below.*

#### **16. Amendment to clause 7 (Permissible charges for expedited access)**

Clause 7(2)(b) is amended in the following way:

Delete: 5 working days

Replace with: 3 working days

#### **17. Amendment to clause 9 (Independent person's role in assurance review and report)**

Subclause 9(3) is amended by deleting the word 'and' from paragraph (a) and adding the following paragraph:

; and

(c) include a statement from the independent person confirming their independence, summarising their expertise and outlining their involvement with the assurance process and preparation of the report.

#### **18. Amendment to Schedule 1 (Reducing maximum reporting period for previous enquiries)**

In the entry corresponding to **previous enquiry record**:

Delete: 5 years

Replace: 4 years

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

Schedule 3 is amended by inserting after clause 9:

##### ***Subscriber obligation to provide quotation enquiries if offering risk-based pricing for credit products***

10. Where the subscriber is offering risk-based pricing for a credit product (including insurance in relation to a credit-related transaction) that involves obtaining access to credit information held by a credit reporter to fix the price offered to an individual depending upon his or her creditworthiness, the subscriber must:

- (a) provide the option for the individual to obtain a quotation for the cost of the credit; and
- (b) ensure that it nominates quotation for the cost of credit as the enquiry purpose in accordance with clause 4.

*Note: Rule 11(2)(b)(i)(B) provides for quotation enquiries where the price of credit can only be fixed on the basis of a credit check. Rule 10(3)(a) prohibits the use of quotation enquiries in constructing credit reporter created credit scores although they can be used in fraud detection activities within the credit reporting and lending systems.*

#### **20. Amendment to Schedule 3 (Subscriber agreement requirements for pre-screening)**

Clause 9 of Schedule 3 is replaced with the following:

##### ***Additional subscriber obligations: pre-screening of direct marketing lists***

9. Where the subscriber seeks to have a credit reporter pre-screen a direct marketing list under Rule 10 (1B), the subscriber must ensure that it both: (1) is eligible under condition 1 of Schedule 9; and (2) meets all applicable requirements under conditions 2 and 3.

*Note: This substitutes new code references.*

## **21. Amendment to Schedule 3 (Subscriber agreement requirements for tracing in relation to unclaimed monies)**

Insert the following additional clause in Schedule 3:

### ***Additional subscriber obligations: tracing to facilitate the return of money owed to individuals***

11. Where the subscriber seeks to have a credit reporter use credit reporting information under rule 10(1D) for tracing purposes to facilitate the return of money owed to individuals, the subscriber must ensure that it meets all applicable requirements of Schedule 10.

## **22. Amendment to Schedule 4 (Reflecting changes to access entitlements in summary of rights)**

The Summary of Rights in Schedule 4 is amended as follows: In the second sentence under the subheading 'Getting the information':

Delete:	If you want the information quickly (within 5 working days) you may need to pay a reasonable charge but otherwise no charge may be made.
Replace with:	If you want the information quickly (within 3 working days) you may need to pay a reasonable charge – not exceeding \$10 - but otherwise no charge may be made.

## **23. Amendment to Schedule 6 (Reflecting code changes in assurance reporting)**

(1) Clause 1 of Schedule 6 is amended in the following manner:

Delete:	Paragraph (c).
Replace with:	(c) a statement from the independent person as required by clause 9(3)(c) of the Code.

(2) Clause (2) of Schedule 6 is amended by inserting the following paragraph:

(aa) had policies in place to ensure that any arrangement with a related company accords with clause 5(2) of this Code;

(3) Clause (2) of Schedule 6 is amended by inserting the following paragraph:

(bb) had appropriate procedures in place to ensure that any information requested under rule 6 is received only by that individual or, where the request is made by an agent on behalf of the individual, only by that individual or his or her agent [such procedures must amongst other things ensure, as far as possible, that where information intended for an individual is received by a properly authorised agent that it is not subject to bundled authorisations for other purposes that would have the purpose or effect of circumventing the code's prohibitions on marketing and direct marketing];

*Note: See clauses 9 and 13 of this Amendment and section 45 of the Privacy Act 1993.*

(4) Clause 2 of Schedule 6 is amended by deleting 'and' after paragraph (c) and inserting the following new paragraph:

; and

(e) ensured that access agreements under Schedule 3A were in place before disclosing credit information.

(5) Clause 3 of Schedule 6 is amended in the following manner:

(a) In paragraph (g), replace 'rule 10(1C)' with 'Schedule 9'.

(b) Delete 'and' after paragraph (k) and insert the following new paragraph:

; and

(m) the requirements on both the subscribers and the credit reporter under Schedule 10 in relation to tracing individuals were met.

## **24. Amendment to Schedule 7 (Suppression of credit information where individual may be a victim of fraud)**

Schedule 7 is amended in the following manner:

(a) Insert new clause:

1.4 To simplify the process for individuals, credit reporters may establish and maintain an arrangement for notifying other credit reporters of any initial requests received. Such an arrangement may include agreement to accept that an initial request to one credit reporter will be treated as being an initial request to all credit reporters participating in the arrangement. Such arrangements must remain consistent with this Schedule and be operated in a way that the individual and participating authorities are each clear about their responsibilities, the effect of the arrangement on the request and of the resultant suppressions.

(b) Insert new paragraph into clause 2.3:

; and

(c) provide the individual with the option to opt out of receiving notification from the credit reporter of the imminent expiry of the suppression.

*Note: Individuals may find the reminder useful and it will allow them to review their position with respect to any ongoing risk of fraud. However, not every individual will wish to receive such a notification and so an opt-out is provided.*

(c) Insert new clause:

2.7 Subject to clause 2.3(c), a credit reporter must notify the individual of the imminent expiry of the suppression not less than 5 working days before the end of the extended suppression period.

(d) Insert new paragraph into clause 8.1:

(e) any arrangement between credit reporters of the type anticipated in clause 1.4 for sharing and acting upon initial requests.



## 25. New Schedule 8 (Transitional arrangements)

Insert the following new Schedule 8:

### **Schedule 8** **Transitional arrangements associated with Amendment No 14**

Amendment No 14 affects the categories of credit information permitted to be collected, used, disclosed and retained by credit reporters. In some cases, the Amendment expands the permitted information (e.g. NZBN) or uses (e.g. tracing to return unclaimed money) and, in other cases, is more restrictive (e.g. previous enquiries). The Amendment will require the implementation of changes to credit reporters' systems and, in some cases, to both credit reporters' and subscribers' systems. There is some complexity in the timing of commencement of the changes with approximately 4 months provided between issue and initial commencement and a further 3-6 months before the balance of the changes commence. This Schedule is intended to ease the transition by authorising systems testing in anticipation of commencement and providing clarity on how small debts are to be treated.

#### **Systems testing**

1.1 A credit reporter may collect personal information from a subscriber or another agency and use that information to test its systems, or its subscribers' systems, for handling the affects of Amendment No 14 (e.g. in relation to additional or restricted classes of credit information).

1.2 Clause 1.1 is limited in the following ways:

- (a) personal information must not be used for testing where de-identified or fictitious information would suffice; and
- (b) information collected must not be made available for subscribers or disclosed in a credit report or kept for longer than is required for the purposes of systems testing.

#### **Small defaults**

2.1 From 1 October 2019 (the date of commencement of clause 5 of this amendment) the amended definitions of **debtor credit default** and **guarantor credit default** exclude defaults relating to an overdue payment of less than \$125 (the former threshold was \$100). From that date, no further information may be collected by a credit reporter regarding a credit default of less than \$125.

2.2 A credit reporter may continue to hold, use and disclose for the purpose of credit reporting any information it may hold as at 1 October 2019 about a credit default relating to an overdue payment equal to or more than \$100. This clause is subject to the usual maximum reporting period and any other applicable provision of the Code that might prohibit the continued holding, use and disclosure of the default. For the avoidance of doubt, information about a credit default relating to an overdue payment that was originally in an amount equal to or more than \$100 can continue to be held, used and disclosed in accordance with this clause, notwithstanding that the total amount owing on the credit default is below \$100 as at 1 October 2019.

#### **Assurance report**

3.1 An assurance report submitted under clause 9 of the Code, that relates to a period during which a credit reporter relied upon the provisions of this Schedule to undertake systems

testing or to report credit defaults of less than \$125, must provide a reasonable assurance that the credit reporter undertook monitoring activities to ensure that:

- (a) any systems testing undertaken by the credit reporter in reliance upon clause 1.2 met the requirements of clause 1.2;
- (b) the credit reporter ceased collecting, using and disclosing information on credit defaults of less than \$125 from 1 October 2019 and only continued to report small defaults relating to an overdue payment equal to or more than \$100 in accordance with the requirements of this Schedule.

## **26. New Schedule 9 (Pre-screening)**

Insert the following new Schedule 9:

### **Schedule 9**

#### **Pre-screening to remove names from subscriber marketing lists**

*(Rule 10(1B))*

A credit reporter may use credit information to remove names from a direct marketing list supplied by a subscriber if the following 4 conditions are all met:

#### **Condition 1: The subscriber**

The subscriber must be a credit provider that is either:

- a) an externally regulated credit provider; or
- b) a member of a self-regulatory association that binds members to responsible marketing practices.

*Note: The NZ Marketing Association would be an example of an association that would meet the requirements of (b). The inclusion of (b) widens the scope of subscribers that may use the prescreening facility from that currently allowed for in rule 10(1C).*

#### **Condition 2: The list**

The list submitted to the credit reporter for pre-screening must:

- a) be warranted by, or on behalf of, the subscriber to have been compiled in compliance with the Act;
- b) omit the names of any individuals who have been registered with the New Zealand Marketing Association indicating that they do not wish to receive unsolicited marketing; and
- c) be used only for direct marketing related to the provision of credit by the subscriber.

*Note: The NZ Marketing Association operates a list warranty service that provides one means of meeting the requirements of (a). In relation to (b), the NZ Marketing Association's Name Suppression Service is available to both members and non-members.*

#### **Condition 3: Criteria for removal**

The removal of names is based upon criteria agreed in advance between the credit reporter and the subscriber with the purpose of excluding individuals who represent an adverse credit risk and would be ineligible to receive the direct marketing.

#### **Condition 4: Assurance of limitation of use**

The credit reporter has a process in place to ensure that:

- a) the requirements of condition 2(a) and (b) are met;
- b) information derived from the list is not retained or used by the credit reporter for the purpose of credit reporting; and
- c) the list, after the removal of names, is:
  - i. used only for the purpose of the direct marketing permitted under clause 2(c); and
  - ii. not disclosed directly to the subscriber.

### **27. New Schedule 10 (Use of credit information for tracing to facilitate the return of money owed to individuals)**

Insert the following new Schedule:

#### **Schedule 10**

##### **Tracing to facilitate the return of money owed to individuals**

##### *Rule 10(1C)*

A credit reporter may use credit information it holds to seek to trace an individual to facilitate the return by that subscriber of money owed to that individual if the following conditions are met.

#### **Condition 1: Eligible subscriber**

Any subscriber may request a credit reporter to seek to trace an individual to facilitate the payment by that subscriber of money held by the subscriber and owed to that individual. Intermediaries that do not hold the individual's money, but instead seek to obtain a share of the money owed to the individual, are not eligible to request tracing under this schedule.

*Note: Subscribers must be subject to certain subscriber obligations pursuant to Schedule 3.*

#### **Condition 2: Permitted purpose**

Tracing permitted under this schedule is for the sole purpose of facilitating the return by a subscriber of money owed by that subscriber to an individual.

#### **Condition 3: Subscriber to take steps before requesting tracing**

Before submitting any request to a credit reporter to trace an individual under this schedule, the subscriber must have taken all reasonable steps to trace the individual using information held by the subscriber and publicly available information. As a minimum, a subscriber must have written to the individual at the last known address and may not request that a credit reporter trace an individual until at least 3 months after the last contact with that individual.

#### **Condition 4: Matching of submitted details with credit information**

The request by the subscriber will be accompanied by a name and identifying information held by the subscriber in relation to the individual to be traced. Matching of the details supplied against the information held by the credit reporter will be undertaken by the credit reporter.

*Note: In other words, tracing is not to be undertaken in the same way of a regular credit check is typically now made whereby the subscriber simply enters details at their own premises on a search screen connected to the credit reporter's system. The process involved submission of details by the subscriber and all subsequent steps are entirely under the control of the credit reporter on its premises.*

Any new address produced by the matching process that is likely to relate to the individual is to be handled in accordance with condition 5. In any case that fails to produce a new address, the credit reporter is permitted to report back to the subscriber to confirm that there was no match or that the process confirmed information submitted in full or part.

*Note: Rule 8(2) sets out general obligations on credit reporters to ensure reliability of identity matching.*

**Condition 5: Handling of new or more recent addresses revealed by a useful tracing match**

The credit reporter must not disclose any new or more recent addresses directly to the subscriber but may instead send, or arrange to send, a notice prepared by the subscriber to the address revealed by the match. That notice will explain the situation and invite the recipient to respond directly to the subscriber (i.e. responses should not be routed through the credit reporter). The notice should explain how the individual's contact details have been obtained and confirm that they have not been released directly to the subscriber.

*Note: This condition ensures that individuals' remain in control over release of their new address details.*

**Condition 6: Assurances**

The credit reporter must have a process in place to ensure that the conditions on both subscriber and credit reporter are met.

***Legislative history***

20 July 2018	Public notice of intention to issue Amendment No. 14 (Privacy Act, s 48)
6 November 2018	Amendment No. 14 issued (Privacy Act, s 51)
8 November 2018	Gazette notice concerning issue, commencement and availability (Privacy Act, s 49)
10 December 2018	Clause 25 commences
1 April 2019	Amendment commences (except as otherwise provided)
1 July 2019	Clauses 10, 11, 16 and 22 commence
1 October 2019	Clauses 4, 5, 18 and 19 commence