



Submission to the

Privacy Commissioner

on the

**Proposed Amendment No 4 to the Credit
Reporting Privacy Code 2004**

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SUBMISSION BY THE NEW ZEALAND BANKERS' ASSOCIATION TO THE PRIVACY COMMISSIONER ON THE PROPOSED AMENDMENT No 4 TO THE CREDIT REPORTING PRIVACY CODE 2004

1. Thank you for the opportunity to make a written submission to the proposed amendment No 4 to the Credit Reporting Privacy Code 2004 (Code).
2. This submission is the collective view of the New Zealand Bankers' Association (NZBA) being the following nine member banks:
 - ANZ New Zealand Limited
 - ASB Bank Limited
 - Bank of New Zealand
 - Citibank, N.A.
 - Hongkong and Shanghai Banking Corporation Limited
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - TSB Bank Limited
 - Westpac New Zealand Limited.
3. NZBA supports the direction proposed by the Office of the Privacy Commissioner (OPC) to allow for the collection and reporting of comprehensive credit information by the credit reporters. Introducing comprehensive credit reporting (CCR) would significantly improve the quality of credit information available to credit providers and in turn lead to better lending decisions.
4. The proposed direction is a significant change for the industry. It requires a close examination of the details relating to the implementation of a positive reporting regime. As well as commenting specifically on the draft amendment to the Code in this submission, we have also commented on the need for industry to define further details to achieve a workable regime.

5. NZBA has identified the following key concerns in the proposed regime:
 - The proposal to delay the introduction of repayment history and credit account balance information is not supported – implementation should not be two-phased
 - The need for a governance framework to define the detail of the regime before its introduction
 - The lack of sufficient detail about the requirements for external accountability for both the credit reporter and the credit provider
 - The application of the Code to direct marketing initiatives
 - The need for a transition framework that includes a workable timetable to accommodate the new regime.

RESPONSES TO THE ISSUES RAISED IN THE DISCUSSION PAPER

Two-phased introduction is not supported

6. NZBA does not support a two-phased introduction of CCR. NZBA considers that the changes to the Code should be implemented in one stage, and the industry should manage the transition after these changes have been facilitated.
7. NZBA submits that 24 month repayment history and credit account balance fields should also be included as credit account information from the inception of the regime, so that a two-phase introduction is not required. The introduction of the proposed phase one fields alone, without the repayment history information and credit account balance fields, will not result in sufficiently better lending decisions being made. These fields on their own do not provide adequate information to achieve the potential benefits of CCR discussed in the OPC's Information Paper, such as:
 - *Giving credit providers a more accurate and complete picture of an individual's creditworthiness and allowing them to make a better assessment of risk and facilitating more responsible lending decisions*
 - *Opening mainstream credit to a wider pool of individuals who may otherwise be excluded due to lack of information about them.*

8. One of the reasons advanced for a two-phase introduction to CCR in the Information Paper is the 'trans-Tasman dimension'. NZBA commends the OPC for taking the lead in introducing CCR to New Zealand before Australia, and urges OPC to allow reporting of credit repayment history and credit account balance information, without waiting for the Australian Government to determine its direction in this regard.
9. The value of CCR is in it being comprehensive. NZBA considers repayment history and credit account balance to be key pieces of information necessary for improving lending decisions by credit providers and any decisions to delay the inclusion of that data will undermine the value of CCR.
10. Furthermore, the proposed positive reporting regime has major cost and time implications for NZBA member banks. Banks will need to design and build suitable information technology platforms, implement new operational processes and compliance frameworks and undertake training and education of staff and customers. A two-phase introduction would lead to these processes being repeated. Double-handling will increase the cost of implementation and reduce the efficiencies which would otherwise be gained from a single phase introduction.
11. A single phase introduction of the CCR regime would:
 - give banks certainty about how to design and build their systems and processes, and
 - avoid unnecessary cost and disruption to business processes.
12. With the introduction of new fields, it will be important to define concepts across the industry, to ensure data quality, reporting consistency, and therefore comparability of data across different credit providers. NZBA suggests that this be addressed in the data standards to be developed by the industry under the governance framework discussed below.

Industry governance framework needed

13. NZBA acknowledges and shares OPC's concern to establish safeguards for consumers to ensure confidence in the operation of the credit reporting regime. NZBA considers that to safeguard consumers there should be clear rules within the industry which require participants to operate in a responsible manner. The Code on its own is insufficient to address the many issues that arise from the move towards a positive credit reporting regime.
14. NZBA submits that a detailed governance framework is a necessary prerequisite to the introduction of CCR. The proposed regime would cover a wide range of credit providers and a number of credit reporters who would have access to comprehensive credit information about individuals. NZBA considers that rules must be developed to avoid any abuse of credit information that has the potential to bring the whole regime into disrepute. A governance framework developed by the industry and would be an effective mechanism to manage information flows in a CCR regime.
15. NZBA further submits that the governance framework must address the following:
 - clear definitions and expectation on data standards
 - clearly defined rules on reciprocity issues
 - clearly defined rules on the use of credit account data
 - breach management process, and
 - compliance with these standards.

Use of driver licence numbers

16. NZBA supports the use of driver licence numbers (DLN) for matching and verification to improve the accuracy of the information. The DLN is the most commonly used identification by the banking industry and would therefore be effective in matching data and minimising errors. It also provides customer convenience (as it is the most commonly carried form of ID), so fits with the "what's in your wallet" approach to customer identification.

17. We note that under the new Anti Money Laundering legislation, the DLN may not remain the most commonly used identification by the banking industry and consideration should be given to exploring the use of other unique identifiers in future.

Credit account information and disclosure of credit account information

18. NZBA supports restricted access to credit account information. This information should be available only to those who provide credit to an individual as there is no justification for other parties to have access to such information.

Credit default information

19. The Code provides that the default must relate to the credit account before it can be listed. The term 'credit account' is not defined. NZBA submits this may lead to ambiguities as to what constitutes a credit account as there are many types of accounts in the market. NZBA submits that the term should be defined in the Code. To this end we suggest that elements of the definition of 'consumer credit contract' in the Credit Contracts and Consumer Finance Act 2003 may be a helpful starting point. NZBA would be happy to work with OPC to develop a suitable definition.

External accountability requirements

20. NZBA supports external accountability. Accountability and transparency are essential for the integrity of the CCR regime. However, NZBA would like to understand the proposed nature and scope of the external review in more detail to analyse its impact and relevance on the banks' business operations and the CCR regime as a whole.
21. NZBA submits that further discussions between OPC and the industry should be held to develop in detail a broad framework and the mechanism for external accountability with clear expectations, duties and obligations for credit reporters and credit providers before the commencement of the CCR regime.

22. NZBA would be pleased to work with OPC to develop such a framework for external accountability under the CCR regime.

Reporting and retention periods

23. NZBA has no issue with the recommendations on reporting and retention periods discussed in the proposed amendment.

Credit scores

24. NZBA supports the recommendation to require credit reporters to give a general explanation of their credit score. The explanation should be broad and not specific in nature.
25. NZBA does not support the amendment to clause 6(1)(2A)(a) that requires the credit reporter to “provide a statement explaining the general methodology used to create the score”. This information is commercially sensitive and too detailed to be of any practical benefit.

Summary of rights

26. NZBA supports the amendments relating to the summary of rights.

Direct marketing and pre-screening

27. NZBA supports prohibiting the creation of direct marketing lists using credit account information. NZBA suggests that ‘direct marketing’ be defined in the Code to ensure that there is clarity in what is meant by direct marketing.
28. NZBA supports pre-screening and considers credit reports should be able to use both positive and negative credit information to pre-screen. Pre-screening is not the same as creating a direct marketing list. Pre-screening is a practice that can be used to ‘select out’ individuals from a targeted marketing campaign based on a list prepared by the credit provider. We consider that credit reporters should be able

to pre-screen in order to help credit providers moderate direct marketing campaigns, thereby ensuring that customers do not receive inappropriate correspondence. This practice also aligns with one of the benefits identified in introducing CCR being “allowing credit products to be tailored to individuals on the basis of their creditworthiness, reducing the cost of credit to some.”

29. NZBA supports pre-screening using positive credit account information to ‘select out’ individuals. However, we suggest the introduction of this practice takes place after the governance framework is in place. In the meantime NZBA supports allowing pre-screening on negative data as it would ensure that credit product offers are able to be targeted to individuals on the basis of creditworthiness.
30. NZBA agrees with OPC that credit account information should not be permitted to be used for targeting customers on the basis of their likely profitability or propensity to respond to direct marketing.

Deaths information

31. NZBA is pleased with the inclusion of death register information which would greatly assist in the accuracy and integrity of data held by the banking industry.

Public registers

32. NZBA is pleased to see an expanded list of public registers from which credit reporters can gather information.
33. NZBA submits that the Code should also provide for the inclusion of data from other public registers that may be created in the future. This will eliminate the need to wait for the review of the Code to add new public registers that may be introduced during the intervening period between reviews.

Subscriber Agreement

34. NZBA supports the proposed amendment to align the Subscriber Agreement with the proposed amendment. However, we recommend that changes take effect through:
- an addendum to the Subscriber Agreement for existing subscribers, and
 - a revised Subscriber Agreement for new subscribers.

OTHER ISSUES

Data standards for credit repayment history

35. As submitted above, NZBA supports the inclusion of credit repayment history and credit account balance information. However, we would prefer that repayment history is included as a class or category of data rather than as a field. This would give greater flexibility and more useful information to the credit providers. We would support these data classes being regulated through a governance framework (also as discussed above).

Transitional Provisions

36. The implementation of CCR will require NZBA member banks to re-engineer current systems and processes in order to participate. To ensure that the regime delivers its intended outcomes, we suggest OPC engages with the industry to discuss the details of implementation and determine a transition framework, including a suitable timetable.
37. To minimise the implementation risks, NZBA suggests that the timetable allow sufficient time for participants to test their infrastructure before the proposed amendments come into force. NZBA also submits that transitional provisions should permit the release of positive information between the credit providers and credit reporters in a test environment prior to the code coming into operation. This will enable testing to take place before the go live date.