Privacy Commissioner
Te Mana Matapono Matatapu

# Questions and Answers - Credit Reporting Privacy Code Amendment No 5

This note covers only a selection of topics – also see information paper and the amendment itself

## Key changes

**What are the most significant proposals affecting individuals in this amendment?**

The most fundamental change is that credit reporters will be able to collect and report 'repayment history information'. This affects anyone with credit. So, whether you meet, or miss, your monthly payments on your credit card, mortgage payment or utilities account, this will end up on credit reporters' databases – and be on your credit report.

The second key change will enable consumers to "freeze" their credit reports if they are a victim of fraud. This is also called "suppressing" credit reports. It will protect people at risk from having new credit accounts opened in their name.

**What does this amendment mean for consumers?**

The amendment makes changes that should benefit consumers, not just the credit industry. A number of changes will provide individuals with new rights or protections, such as the ability to have credit information suppressed if they are the victim of identity fraud.

Some changes that appear intrusive also have the potential to bring benefits to individuals. Repayment history information, for example, may lead to more competitive credit offerings – along with better rates for those people who are considered good credit risks. With more information to hand, banks may be more willing to lend to parts of the community that currently may seek credit outside the mainstream banking system, from fringe lenders or "loan sharks".

Some of the changes directly affecting individuals include:

- a protective right for victims of fraud to suppress credit reports;
- prohibiting the listing of small defaults under $100;
- allowing people to shop around for credit without being penalised on their credit score;
- procedural safeguards before listing guarantor defaults (such as parents in relation to a child's cell phone account);
- requiring confirmation before long-term listing of certain actions that might at first appear to be wilful acts of non-compliance (such as vacating a flat without paying the gas bill and without leaving a forwarding address) which might turn out to have a more innocent explanation.

**How will people know about and understand these changes?**

As credit reporting practices are changing significantly, public awareness and education is important. The credit industry – credit reporters, banks, finance companies and consumer groups – have a responsibility to make consumers aware of the changes. During the submission process key industry players and representatives recognised that they had a responsibility to make special efforts to educate the public.

The Commissioner will follow these endeavours carefully, assisting where appropriate. The Office of the Privacy Commissioner will work with the Commission for Financial Literacy and Retirement Income to help ensure that essential information is available.

The Commissioner has published a clear Summary of Rights and has translated it into several languages.

Credit providers must make people aware of the changes before they start sharing information about their repayment practices with credit reporters.

**Did people get the opportunity to comment on these amendments?**

The proposed amendments were released publicly in May with 6 weeks for submissions. Over 70 written submissions were received from industry, government, consumer groups, individuals and specialist groups.

A series of public hearings were held in Auckland and Wellington in July 2011 for those submitters who wished to be heard in person.

## Repayment history information

**Why is the Privacy Commissioner allowing repayment history to be reported?**

There is a strong economic case for amassing and reporting this class of information. Repayment history offers an insight into something that none of the other information that is currently reported shows; it reflects a different aspect of creditworthiness. The Commissioner has concluded that it will improve the credit reporting system.

In addition to the undoubted benefits to the credit industry, the change has the potential to benefit individuals and the community by:

- *supporting responsible lending behaviour* - by helping to reduce, or better monitor, the credit extended to those who may be in difficulties;
- *bringing excluded groups within the mainstream* credit reporting system and thus the mainstream banking system – people who have not previously held credit may still have a good record of, say, paying utilities on time. Including repayment history information might see banks, rather than fringe lenders, being a realistic option;
- *encouraging more competitive credit practices* – with better information on risk, lenders may be able to better compete for business or charge lower interest rates to individuals who are better risks.
- *preventing defaults* – by allowing early action from credit providers where people are getting into credit/debt problems.

The Australian Government also plans to allow repayment history reporting.

***Case study 1: Geoff has never had any luck with credit***
*Geoff applied for a personal loan to buy a new car. His old car was beyond repair but he needed to drive for work. Geoff was renting, had a steady income but had never borrowed money before. A previous loan Geoff had applied for was refused on the basis that his income was too low and his credit report was too "thin". Geoff expected to be refused again. However, since his last application, Geoff had been making regular payments on his power and telephone accounts. He'd never missed a payment. These regular payments now showed on his credit report and the bank accepted his application on the basis that he was clearly able to manage his credit obligations.*

**Reporting monthly repayment history information sounds pretty intrusive; how is privacy protected?**

The amendment contains strict controls. Access to this information is limited to credit providers, including telecommunications and energy providers, and insurers. All these agencies must be subject to an independent dispute resolution scheme that could act on complaints concerning credit practices.

The amendment also strengthens obligations on credit reporters to undertake internal checks and to provide the Privacy Commissioner with assurance assessments to demonstrate full compliance with the code's requirements, which help protect consumers.

**How long will it take for credit reporters to build up repayment history information and how long can they keep it?**

Only the most recent information, up to 24 months, may be reported. After that, repayment history information must be removed from the system. Individuals will provide their authorisation or be informed by credit providers before this information is listed. The change begins to take effect in April 2012. It will take the system at least 24 months, and probably a little longer, to reach its full potential. Backloading of repayment history information is not permitted.

**How does this compare to credit reporting in the United States?**

Credit reporters in the US do what is called "full file" reporting. Amendment No 5 takes us a fair way along the road towards the US approach. However, there remain some significant differences.

In the US, for example, credit reporters are also able to report on how much of an available credit limit is used at a particular time. This is not proposed to be permitted in New Zealand or Australia at this time.

There are also fewer controls in the US over who can access the credit reporting system. For example, US employers make fairly free use of the information – this is something that has become a matter of concern. As a result, American lawmakers are considering restricting employer access.

**What is "comprehensive reporting"?**

A comprehensive credit reporting system is one that has a broad range of information, gathered from a diversity of sources, and is able to give a fairly complete picture of an individual's creditworthiness.

The amendment moves New Zealand from a system that is principally focused on a narrow range of "negative data", that shows where an individual has *failed* to meet obligations, into one that also includes information showing the range of an individual's credit accounts and how they are being managed.

Banks will not be the only agencies adding the new information to the system. A broad range of credit providers, including utility companies, are expected to contribute information. The New Zealand system already captures negative information from a broader range of businesses than some other countries. Accordingly, the comprehensive system New Zealand is moving to will be broad as well as deep.

**What is “repayment history”?**

Repayment history information shows whether a repayment is due on a credit account and, if so, whether or not an individual has paid it.

Most arrangements for credit include a requirement that the borrower repays that credit regularly, over time and on a fixed date. Most people make their payments on time but sometimes they can’t, or won’t.

**What is repayment history used for?**

Financial institutions, such as banks, use this information to more accurately predict an individual’s likelihood to meet their credit obligations. This allows them to make more reliable lending decisions.

Repayment history shows how well individuals are managing to repay their various credit accounts. The new information should help lenders to identify customers that are getting into difficulties before they finally default. This might allow responsible lenders to take appropriate preventive action. It may also allow better credit terms to be offered to some potential customers.

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

The Commissioner is committed to review the operation of the changes made by the amendments after 3 years. By this time, credit reporters, credit providers and consumers will have implemented or experienced the many changes made by the amendments.

The Commissioner will be carefully checking how well the credit reporters have met their code responsibilities in the new greatly expanded reporting regime.

From 2012 credit reporters will be required to provide the Commissioner with an annual assurance report. These annual reports will give the Commissioner a clear picture of code compliance and emerging systemic issues.

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. The Commissioner has been in discussions with the credit industry, and other agencies with economic expertise, that may be well placed to research and assess the amendment's impact on patterns in lending practice and default rates.

## Credit freezing

### What does "freezing" a credit report do?

"Freezing" a person's credit report – called "suppression" in the amendment – is designed to protect the victim (and credit providers) from further attempts to fraudulently obtain credit in that person's name.

### Why is the Privacy Commissioner proposing to enable victims of fraud to have their credit files "frozen"?

Identity fraud is reported to be a growing problem worldwide, and innocent victims may find that credit has been taken out in their name. Getting the resultant problems sorted out can be a long and stressful process. A victim may effectively be precluded from obtaining credit while liabilities and defaults run up by a fraudster remain on the victim's credit report.

Credit freezing would help to prevent a fraudster taking out further credit in a victim's name.

The Commissioner concluded that suppression would be more effective than simply placing a flag or notation on the individual's file. Most states in the US have such a system. The Australian Government also plans to introduce a suppression regime.

***Case study 2: Rangi has his credit record suppressed***
*After the loss of his wallet and thefts from his letterbox, Rangi became aware from an approach by a debt collector that someone had opened store credit in his name. Although this was eventually sorted out Rangi feared that the fraudster would try the same trick again. As a victim of identity fraud, Rangi approached several credit reporters and had his credit report suppressed.*

### How is the suppression process going to work?

The amendment lays out a careful process for obtaining suppression. There are several steps:

1. A rapid **initial request** provides an automatic two week suppression.
2. An **extension request** can be lodged for longer term suppression (a minimum of 12 months).
3. Sometimes, the victim may need the suppression lifted so that they can seek credit. In those cases, they make a **release request**.
4. Where no longer at risk, victims can make a **cancellation request** to permanently lift the suppression.

While a suppression is in place, the credit reporter may still update an individual's pre-existing credit accounts, provided that those accounts are not affected by the fraud. This ensures that the credit information remains complete and up to date.

The credit reporter must take precautions to verify the individual's identity in these processes.

***Case study 3: Rangi seeks new credit***
*Rangi was a victim of identity fraud - store credit was fraudulently opened in his name. He had his credit reports suppressed. Rangi also had two credit cards and a mortgage that were unaffected by fraud. His regular payments to these accounts were updated with the credit reporters. Six months later he wanted to open a credit account with a mobile telephone company. He arranged with the credit reporter to release his records to the company for this purpose. His credit report was up to date with his regular payments to his other three credit accounts, helping to show he was a good credit risk.*

**Why does the suppression have these stages?**

The process is a little complex as it needs carefully to resolve competing interests. For instance, a victim may need to freeze a record if fraud is discovered, but un-freeze it if they plan to seek new credit. While there may be a need to act rapidly to address risks to an individual, care must also be taken to avoid acting upon instructions from a fraudster posing as that individual.

## Using credit reports in direct marketing – "pre-screening"

**What is "pre-screening" and why is it a concern?**

Pre-screening involves running a list of marketing prospects against credit reporting information before it is used for marketing. If left uncontrolled, such a practice could be used in various ways that many people would find objectionable or which would be at variance with the code's objectives.

**How does the amendment limit pre-screening?**

The amendment only allows pre-screening to remove the names of people who a responsible lender considers should not be offered further credit. The Commissioner has accepted this limited use of credit reporting information to support responsible lending practices. Only lenders will be able to use the credit reporting system for pre-screening and then merely to exclude people who might already be financially over-committed.

**How will pre-screening be controlled?**

Pre-screening will be controlled by:

- only being permitted for *credit-related marketing*. It would not be allowed for other unrelated purposes (e.g. to sell non-credit products)
- allowing credit providers to use the service only if they are subject to an independent dispute resolution service
- ensuring that the marketing lists are warranted as compliant with the Privacy Act
- running the marketing lists against the Marketing Association's "do-not-mail" / "do-not-call" lists
- not disclosing credit information directly to credit providers in the process.

## Background

### What is a credit reporter?

A credit reporter is a company that carries on a business collecting and reporting to other agencies, for payment, personal information relevant to the assessment of creditworthiness. These other agencies are commonly, but not always, credit providers seeking to establish if a potential customer is a good credit risk.

### Why was a privacy code issued in 2004?

Credit reporters tend to hold large amounts of personal information, very little of it acquired directly from those being reported on. Most people are not aware of the information that is held about them, yet this information may affect their credit reputation for many years.

Individuals have little ability to directly control how credit information is held and used. People generally have no opportunity to verify data before it is listed. The Credit Reporting Privacy Code 2004 addressed such issues. It promotes an orderly, fair, transparent and accurate credit reporting system.

**Office of the Privacy Commissioner**
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