



FINANCIAL SERVICES FEDERATION

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Credit Reporting Privacy Code Amendment
Office of the Privacy Commissioner
P O Box 466
AUCKLAND

Submissions to the Office of the Privacy Commissioner on Amendment Number 5 to the Credit Reporting Privacy Code

Introduction

The Financial Services Federation (“FSF”) is New Zealand’s largest member based industry organisation for financial institutions. The FSF has 33 members and associates providing financing, investment, banking and insurance services to over 750,000 New Zealanders, and our four affiliate members are internationally recognised legal and consulting providers.

Submissions

The FSF’s submissions are separated into general comments in respect of comprehensive credit reporting, and specific comments suggesting possible changes to the proposals to assist with the making them more workable.

General Comments

The benefits of comprehensive credit reporting are widely recognised and this type of reporting operates as the norm in most countries, with the exception of Australia and New Zealand. As previously noted by the FSF in submissions on both policy and detailed proposals on this subject, the FSF is strongly supportive of the approach taken by the Office of the Privacy Commissioner in addressing this area in the New Zealand context, and the FSF extends that support to the proposals contained in Amendment No.5.

The FSF acknowledges that some privacy advocates will be critical of the moves toward comprehensive reporting, and will be concerned about the wider availability of personal financial information and the potential for misuse of this information. The FSF suggests that these concerns are overstated, and that in the case of comprehensive reporting there are clear and specific benefits from the perspective of consumers, credit providers and credit reporters and that these benefits significantly outweigh the general concerns raised by privacy advocates.

We would note that Amendments 4 and 5 are both entirely consistent with the Privacy Act, which does not prohibit comprehensive reporting, (rather it was the 2004 CRPC which created the current limitations on the collection of information). The Privacy Commissioner is expressly empowered to make and review Codes and to balance privacy and efficiency factors, which is precisely the balance that the FSF sees the amendments to facilitate comprehensive reporting achieving.

One of the most significant obstacles to efficiencies, both in pricing and in allocation of credit in credit markets is asymmetry of information between borrowers and lenders. Information asymmetries that are exacerbated by regulation limit effective risk based pricing, and increase cross subsidisation of bad borrowers by good borrowers. The availability of comprehensive data can help address both of these areas. In particular, the proposals in Amendment No.5 to allow for the collection and reporting of repayment data, and to allow pre screening to assist financial institutions in lending responsibly.

One of the issues affecting many New Zealanders lives is their level of indebtedness. One area where this is prevalent is in the credit card market. Due to the fact that credit cards are offered by a wide range of providers, and only minimum monthly payments are required, unless the card holder defaults, credit reporters and credit providers will not necessarily have visibility over the scope of the full range of the debts of the cardholder. The availability of repayment data and pre screening will better warn of over indebtedness, and that data can help reduce bankruptcies for over indebted individuals, and avoid business losses for financiers – which are better social and economic outcomes.

Specific Comments

The FSF has some comments which specifically relate to the part of the proposed amendments aimed at enabling “victims of fraud to have their credit information suppressed”, which is mainly contained in clause 21.

The process that envisages is basically:

1. When an individual requests their credit information is suppressed as they believe they have been or may be a victim of fraud, the credit reporter must suppress the individual’s information for 10 working days;
2. After that 10 working days, the individual is entitled to seek an extension of the suppression by making an “extension request”;
3. Under proposed clause 9(6) the credit reporter may decline the extension request only if “it believes on reasonable grounds that the individual has not been or is not likely to be a victim of fraud”.

Proposed clause 9(6) sets the bar relatively high for credit reporters, and would essentially require them to have some information about the circumstances on which they could form the view that there were “reasonable grounds” for thinking “that the individual has not been or is not likely to be a victim of fraud”. This seems to put the onus of proving a negative onto the credit reporter.

Proving a negative is difficult for anyone at the best of times, but doing so here seems likely to be especially hard given that there is no requirement placed on the individual concerned to give the credit reporter any information to assist with forming this view – all that proposed clause 9(1) seems to require from an individual in order to oblige the credit reporter to suppress their information is an assertion by the individual that they believe they have been or are likely to be a victim of fraud.

This seems to have some potential to be misused by persons that simply want to have their credit information suppressed for other reasons, which in turn may tend to erode the utility of the credit reporting system.

The FSF suggests that the amendment to the Code ought to require an individual requesting suppression of their credit information to give the credit reporter something which shows that the individual has reasonable grounds for thinking they may be a victim of fraud, and permitting the credit reporter to decline suppression (both initially and at the later “extension request” stage) if they do not do so.

Other than the issue outlined above we do not have any further specific comments.

Thank you for the opportunity to provide feedback on these important proposals.

Yours sincerely



Kirk Hope
Executive Director