

27 August 2018

Office of the Privacy Commissioner
Wellington
New Zealand

By email: code@privacy.org.nz

SUBMISSION on Amendment No 14 to the Credit Reporting Privacy Code 2004

1. Introduction

1.1. Thank you for the opportunity to make a submission on Amendment No 14 to the Credit Reporting Privacy Code 2004 (Code) to the Office of the Privacy Commissioner (the Commissioner). This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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2. Comments

2.1. Our comments on the code relate to Rule 11 and changes proposed to the quotation inquiry provisions.

Disclosure of credit information to landlords

2.2. Rule 11(2)(b)(ii) allows a credit reporter to disclose credit information to a prospective landlord. This includes property managers acting in the capacity of a landlord. However, in Australia prospective landlords are not considered creditors and therefore do not have access to a consumer's credit report.¹

2.3. In our view, the approach taken in Australia better reflects the position of landlords and offers a model more appropriate for New Zealand. We note:

- (a) Landlords are not credit providers. Tenants pay rent in advance and also pay sizeable bonds. Failing to pay rent will be a breach of a tenancy

¹ <https://www.oaic.gov.au/individuals/privacy-fact-sheets/credit-reporting/privacy-fact-sheet-29-who-can-access-your-credit-report>

agreement and the Residential Tenancies Act. The Act sets out what a landlord can do if a tenant is not paying rent on time.

- (b) There are other ways a landlord can seek references for a prospective tenant. For example, a landlord could ask for references from an employer or previous landlord, or seek a guarantor.
 - (c) Although prospective tenants need to consent to credit information being released, in reality this provides little protection because if they refuse consent they are unlikely to be accepted for the rental.
 - (d) Anecdotal evidence suggests property managers are routinely requiring tenants to consent to credit checks as part of the tenancy application process. However, property managers are largely unregulated and we have significant concerns about standards of practice in this industry, including how tenants' personal information may be used.
- 2.4 We therefore recommend the commissioner consider whether rule 11(2)(b)(ii) remains appropriate.
- 2.5 We also recommend the commissioner look at the use of tenants' credit information by tenant vetting companies such as Namecheck, Tenantcheck and Tenancy Information New Zealand and whether they should be subject to specific disclosure obligations.
- 2.6 These agencies provide credit information to landlords and property managers, including details of a tenant's credit score. They may also operate tenant "blacklists". However, tenants may be unaware of the data held on them by these agencies or that their names are on a blacklist.

Negative effects of frequent credit inquiries on credit scores

- 2.7 We are concerned about the negative effects frequent credit inquiries can have on credit scores. Multiple inquiries have the potential to lower a consumer's credit score as these inquiries may be interpreted by credit providers as a sign of credit distress.
- 2.8 Given the ability of non-credit providers (such as landlords) and retailers such as electricity retailers to run credit checks, consumers who regularly move house, switch utility provider, or shop around for credit may have a list of inquiries on their records that look similar to those of a person struggling to obtain credit.
- 2.9 Amendment No 5 authorised credit reporters to disclose credit information to enable companies to provide a quotation inquiry. The intent was that an inquiry would not be used for credit scores. However, as noted in the Comprehensive Credit Reporting paper, quotation inquiries have been underutilised.²
- 2.10 Amendment No 14 proposes further changes to address this. The first change obliges subscribers to provide quotation inquiries if they're offering risk-based credit products. The second change reduces the period for which previous inquiries can remain in a credit report from five to three years.
- 2.11 A drawback of these amendments is that they only require quotation inquiries where the subscriber is offering risk-based pricing. We consider this may be too limiting and does not capture other situations where a consumer may want to opt for a quotation inquiry.

² <https://www.privacy.org.nz/assets/Uploads/Report-on-Review-of-CRPC-Amendments-No-4-and-No-5-PDF.pdf>

- 2.12 We also recommend additional protections be considered to prevent a consumer's credit score being affected when they switch utility provider to obtain a better power or phone deal. At present, switching is likely to result in a credit check being done by the new retailer and the consumer's credit score may be adversely affected as a result.
- 2.13 Lastly, we recommend credit inquiries should only be able to remain in a credit report for 12 months.

Thank you for the opportunity to make a submission. If you require any further information, please do not hesitate to contact me.

Yours sincerely

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Consumer Advocate