



23 June 2011

Marie Shroff  
Privacy Commissioner  
PO Box 466  
Auckland 1140

By email: [code@privacy.org.nz](mailto:code@privacy.org.nz)

Dear Ms Shroff

### **Draft Credit Reporting Privacy Code Amendment No 5**

The New Zealand Law Society (Society) welcomes the opportunity to comment on Draft Amendment No 5 to the Credit Reporting Privacy Code (Code). This submission has been prepared with assistance from the Society's Human Rights and Privacy Committee.

The Society has one substantive comment and two minor textual comments.

#### **Proposed extension of credit reporting and suggested opt-in alternative**

The substantive comment relates to the proposal to extend credit reporting to include non-default information. As is acknowledged in the Information Paper (page 5, paragraph 2), the proposal represents a very considerable extension of the scope of credit reporting and its impact upon existing expectations of confidentiality in financial matters.

The Society acknowledges the anticipated benefits of the extension to individual consumers and more broadly to the provision of credit services. It is clear that the availability of more detailed information, particularly the rounding out of the default-based records currently available, will assist in improving the quality of credit services.

However there is a basic distinction between the reporting of information concerning defaults, in which a consumer has failed to meet contractual obligations, and the disclosure of information relating to routine transactions. In the former, the reporting of such information reflects a general interest in identifying risks of repeated default and of concealment of such defaults by individual consumers. In the latter, a general interest is not readily apparent.

Further, and while noting the prohibition on use of such information for direct marketing purposes, it is likely that at least some consumers will see the reporting and use of such information as an unwelcome intrusion. In particular, while many consumers may derive some tangible benefit, the extension of reporting to, for example, routine payments of household utility bills means that virtually everyone will be affected, regardless of whether they stand to receive any benefit.

Given the scale of the proposed change, on the one hand, and the potential for benefit to individual consumers, on the other, the Society suggests that it would be prudent to adopt an opt-in reporting scheme, at least as an intermediate step. Consumers who perceive a benefit in reporting of their information or are otherwise unconcerned would opt to have their information reported, while

others would remain unaffected. This would provide reassurance to the public as a whole, as well as an opportunity to identify the benefits, and possible risks or complications, of the extended scope of reporting. It would also create a robust incentive to credit providers to ensure that the anticipated benefits eventuate and are communicated to consumers, and to refrain from unwelcome use of information that has been provided.

It may then transpire that the relative benefits of opting-in, or the disadvantages of not doing so, will prove sufficiently substantial in practice that opting-in becomes the norm or that a comprehensive scheme without an opt-in provision could then follow. However, reaching that outcome on the basis of an initial scheme based on individual consent, with the prospect of withdrawal of consent as a safeguard, appears a preferable approach.

### **Textual comments**

The amended definition of “credit” in clause 4 (from “property or services acquired before payment, and money on loan” to “a contract, arrangement or understanding to provide property or services before payment or money on loan”) might be interpreted to narrow the scope of loans presently subject to the Code. If the wording were reordered as “money on loan or a contract, arrangement or understanding to provide property or services before payment”, that does not occur.

The definition of “guarantor credit default” in clause 4 does not include the \$100.00 minimum applicable to debtor credit default. While it may be that, in practice, guarantors are simply not approached in respect of relatively small defaults, it appears appropriate to apply the threshold to both categories.

### **Conclusion**

The Society trusts that these comments are of assistance. If you would like to discuss them further, please do not hesitate to contact the Convenor of the Human Rights and Privacy Committee, Andrew Butler, through the secretary, Julie Smith, on (04) 463 2967 or by email to [Julie.Smith@lawsociety.org.nz](mailto:Julie.Smith@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Temm', written in a cursive style.

Jonathan Temm  
**President**