Credit reporting code of conduct

Issued by the Privacy Commissioner under section 18A of the Privacy Act, September 1991 and including all amendments as at March 1996

Privacy Commissioner, March 1996

 ISBN 0 642 24846 X

Contents

Foreword

In May 1989 following public controversy over the credit industry's intention to introduce a system of routine monitoring of consumers' management of their loans, the federal government announced its intention to regulate credit reporting practices by amending the Privacy Act. These amendments, which received Royal Assent on 24 December 1990, are contained in Part IIIA of the *Privacy Act 1988*. The amendments included section 18A(1) which required that I issue a Code of Conduct on credit reporting.

Consultation process

As required by s.18A(2) of the Act, I consulted with government, commercial, consumer and other relevant bodies and organisations during the development of the Code of Conduct.

I was assisted in developing the Code of Conduct by a Consultative Group which comprised representatives of industry (the Credit Reference Association of Australia, the Australian Association of Permanent Building Societies, the Australian Bankers' Association, the Australian Federation of Credit Unions, the Australian Finance Conference and the Retail Traders' Associations of Australia), representatives of consumers (Australian Federation of Consumer Organisations and the Australian Financial Counselling and Credit Reform Association), government representatives (from the Federal Attorney-General's Department and the Federal Bureau of Consumer Affairs) and a person experienced in privacy issues affecting credit reporting (from the New South Wales Privacy Committee). The Consultative Group was also attended by my representatives (officers of the Privacy Branch of the Human Rights and Equal Opportunity Commission).

Review of the code of conduct

At the time the Code was issued, it was acknowledged that the Code would not cover all aspects of credit reporting practices, and that questions would continue to arise as members of the credit

industry sought to apply it to their particular circumstances. For this reason, I undertook to monitor the operation of the Code closely and conduct a general review of its contents within 18 months of its coming into force. The review commenced in late 1993.

As with the original development of the Code of Conduct, the review of the Code also involved extensive consultation with interested parties. In July 1993 I advertised the review in the national press and invited submissions. I also convened three major meetings with the Credit Reporting Consultative Group. This process of consultation involved the preparation and dissemination by my office of several discussion papers, which identified key issues for consideration in the review, and canvassed options for resolving those issues.

Advice from the Consultative Group and submissions from other interested parties did not indicate any significant dissatisfaction with the Code of Conduct. On the contrary, comments which I received indicated that for the most part the Code was perceived to be working well and that only minor changes were needed. I take this opportunity to thank those organisations and individuals who provided submissions to the development and the further review of the Code of Conduct.

The amendments

Most of the changes resulting from the review of the Code were made in the Explanatory Notes as they involved guidance on technical matters or points of clarification. Very few changes were made to the legally binding requirements of the Code.

The amendments were issued by me on 6 March 1995 and were gazetted on 9 March 1995 in *Special Gazette No. S 82, Thursday 9 March 1995*. They took effect on 27 March 1995. The provisions of the Code which were subject to amendment have been annotated accordingly throughout the revised Code booklet. Appendix 2 lists the amendments and my reasons as to why the amendments were made. The amendments to the Code and Explanatory Notes also take into account changes made to Part IIIA of the Privacy Act by virtue of the following enactments: *Law and Justice Legislation Amendment Act (No. 4) 1992* and *Law and Justice Legislation Amendment Act 1993.*

Further review

As with the original Code of Conduct, I will monitor closely the operation of the amended Code. I will conduct a further review of its contents to commence within three years from the date on which these amendments came into force.

Kevin O'Connor
Privacy Commissioner

Introduction

Together, Part IIIA of the Privacy Act and the Credit Reporting Code of Conduct seek to apply information privacy principles to the specialised area of consumer credit reporting. The information privacy principles aim to protect personal information by emphasising the need for information collectors to be open, fair and accountable in their use of information, to ensure that the individual is given a measure of control over the manner in which personal information about him or her is used and disseminated. The principles cover a number of areas including the following:

- restricting collection of personal information to lawful purposes and fair means

- informing people why information is collected
- ensuring personal information collected is of good quality and not too intrusive
- ensuring that personal information collected is accurate, up to date, complete and not misleading
- ensuring proper security of personal information
- allowing people access to records of personal information held about them
- allowing people to obtain amendments to information about them
- limiting the use of personal information to the purposes for which it was collected
- restricting the disclosure of information to third parties.

These broad principles are reflected in the requirements of Part IIIA of the Act (passed in 1991 and fully operational in February 1992), and the Code of Conduct (issued by the Privacy Commissioner in 1991 and fully operational in February 1992), which together relate specifically to the information handling practices of credit providers and credit reporting agencies.

The Code of Conduct supplements Part IIIA on matters of detail not addressed by the Act. Among other things, it requires credit providers and credit reporting agencies to:

- deal promptly with individual requests for access and amendment of personal credit information
- ensure that only permitted and accurate information is included in an individual's credit information file
- keep adequate records in regard to any disclosure of personal credit information
- adopt specific procedures in settling credit reporting disputes
- provide staff training on the requirements of the Privacy Act.

Part IIIA and the Code of Conduct generally only apply to consumer credit. As such, commercial credit is generally unaffected other than in limited exceptional circumstances. Exceptions include where consumer credit information relating to an individual is disclosed in the context of a commercial credit application.

The Code of Conduct, like Part IIIA of the Act, is legally binding. The Code is accompanied by Explanatory Notes which seek to explain, in a systematic way, how Part IIIA and the Code interact.

Credit reporting: Code of conduct

PRIVACY ACT 1988

SECTION 18A

1. Under section 18A of the Privacy Act 1988, I ISSUE the Code of Conduct for credit reporting.

2. This Code of Conduct shall take effect as from 24 September 1991.

Dated 11 September 1991

Kevin Patrick O'Connor
Privacy Commissioner

Credit reporting: Code of conduct

PRIVACY ACT 1988

SECTION 18A

1. Under section 18A of the Privacy Act 1988, I ISSUE amendments to the Code of Conduct for Credit Reporting.

2. These amendments to the Code of Conduct shall take effect as from 27 March 1995.

Dated 6 March 1995

Kevin Patrick O'Connor
Privacy Commissioner

Part 1 Credit reporting agencies

Credit information files

Permitted content

1.1 A credit reporting agency recording an enquiry made by a credit provider in connection with an application for credit may include, within the record of the enquiry, a general indication of the nature of the credit being sought.

Accuracy of information

1.2 To ensure that personal information included in credit information files and credit reports is accurate, up-to-date, complete and not misleading, a credit reporting agency must issue to credit providers or other persons supplying it with personal information detailed instructions on the types of personal information permitted to be given to a credit reporting agency.

1.3 To ensure that only permitted information is included in a credit information file, a credit reporting agency must take the following steps:

(a) Where a credit reporting agency receives information from a credit provider for creation of, or inclusion in, a credit information file, and it appears to the credit reporting agency that the information being supplied by the credit provider may not be permitted to be included in a credit information file, the credit reporting agency must:

(i) refuse to accept the information; and
(ii) notify the credit provider, in writing, that the inclusion of the information may be in breach of the Act.

(b) Where a credit reporting agency becomes aware that information supplied by a credit provider and included in a credit information file appears to be of a type not permitted to be included in the file, the credit reporting agency must:

(i) remove the information from the credit information file;

(ii) notify the credit provider in writing that the information may not be permitted to be included in the file; and
(iii) make a written record of its actions in relation to (i) and (ii) above.

1.4 Where a credit reporting agency:

(a) becomes aware that information supplied by a credit provider relating to an overdue payment or a serious credit infringement may be inaccurate; and

(b) reasonably believes that other credit information files may contain similar inaccurate listings, the credit reporting agency must, as soon as practicable:

(i) notify the credit provider concerned, in writing, that it may have listed an inaccurate overdue payment or serious credit infringement against the individual concerned;
(ii) request the credit provider to ascertain whether other individuals' credit information files may be similarly affected, and to investigate the accuracy of any overdue payment or serious credit infringement listings in those other individuals' files; and
(iii) advise the Privacy Commissioner in writing of the above actions.

1.5 Where a credit reporting agency becomes aware that it has disclosed personal information from a credit information file, and the personal information relates to an individual other than the individual who was the subject of the enquiry, the credit reporting agency must as soon as practicable:

(a) notify the enquirer that personal information was mistakenly provided about an individual other than the one to whom the enquiry related;

(b) make the necessary amendments to the credit information file which has been disclosed in error;

(c) advise, in writing, any other persons who had been supplied with the incorrect personal information within the previous three months; and

(d) review its operations to ensure that recurrence will be minimised.

Access by an individual or his/her agent

1.6 A credit reporting agency must ensure:

(a) information is freely available to individuals, explaining the procedures by which access to personal credit information files may be obtained; and

(b) adequate facilities are available for responding to requests for access to credit information files in its possession.

1.7 A credit reporting agency must ensure that an individual is given access to his or her personal credit information file in circumstances where the request for access

(a) relates to refusal of the individual’s application for credit, or

(b) is otherwise related to the management of the individual's credit arrangements.

History

Paragraph 1.7 is a new paragraph and was issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

1.8 Where a credit reporting agency receives a request from an individual for access to his or her credit information file, and:

(a) it appears to the credit reporting agency that the access is not related to either of the purposes described in paragraph 1.7, above; and

(b) the processing of the request would impact unreasonably on the ability of the credit reporting agency to process requests made in accordance with paragraph 1.7;

the credit reporting agency may:

(i) refuse the request for access;
(ii) defer the request for access; or
(iii) charge a fee for access to offset the impact of the request on its operation, as described in (b), above.

History

Paragraph 1.8 is a new paragraph and was issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

1.9 Where a credit reporting agency refuses or defers a request by an individual or his/her authorised agent for access to the individual's credit information file, or charges a fee for such access, the individual or his/her authorised agent may complain to the Privacy Commissioner, who may order the credit reporting agency to provide access to that person (including an order that access be provided free of charge).

History

Paragraph 1.9 is a new paragraph and was issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

1.10 In meeting an individual's request for access to his or her credit information file, a credit reporting agency should require such evidence as is reasonable in the circumstances to satisfy itself as to the identity of the individual.

History

Paragraph 1.10 was previously paragraph 1.7 and was renumbered by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

1.11 A credit reporting agency in receipt of a request by an individual for access to his or her credit information file, for purposes described in paragraph 1.7 above, must give access within 10 working days of having received the request for access.

History

Paragraph 1.11 was previously paragraph 1.8 and was renumbered and amended by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

Fees for access

1.12 A credit reporting agency may not charge a fee for access by an authorised agent of an individual unless the agency believes on reasonable grounds that the agent has requested a copy of the individual's credit information file while acting as a business intermediary between the individual and the credit provider.

History

Paragraph 1.12 was previously paragraph 1.11 and was renumbered by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

1.12A Where a credit reporting agency denies access to an individual or his or her authorised agent because the individual or the agent has refused to pay the fee, the agency should advise the individual concerned that he or she may refer the matter to the Privacy Commissioner.

History

Paragraph 1.12A - amendment issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

Inclusion of statements

1.13 Where a credit reporting agency is provided with a statement by an individual of an amendment sought, and the credit reporting agency considers the statement unduly long, the credit reporting agency shall, as soon as possible, but in any event no later than 30 days, refer the statement to the Privacy Commissioner for a reduction as considered appropriate. In referring the statement, the credit reporting agency may include a suggested shortened version prepared by the credit reporting agency for consideration by the Privacy Commissioner. A copy of the suggested shortened version must, at the same time, be given to the individual concerned.

Notification of amendment to third parties

1.14 Where an amendment has been made to, or a statement has been included in, an individual's credit information file, and the amended information or the statement relates to information of a type detailed in any one or more of subparagraphs (i), (v), (vi), (vii), (viii), (ix) or (x) of paragraph 18E(1)(b) of the Act, the credit reporting agency must, within 14 days of amending the information or including the statement:

(a) provide the individual with a copy of the amended credit information file;

(b) advise the individual, in writing, that he or she may nominate any person who had been given information from the file during the previous three months, and whom the individual wishes to be notified of the amendment or of the inclusion of the statement to the file;

(c) notify such persons (if any) of the amendment or inclusion made to the file, within 30 days of the persons being so nominated to the credit reporting agency by the individual; and

(d) advise the individual, in writing, of his or her right to complain to the Privacy Commissioner if dissatisfied with the action taken by the credit reporting agency.

Disclosure

1.15 Before a credit reporting agency discloses personal information contained in a credit information file, the credit reporting agency should ensure that the recipient of the information has been notified of the requirements of the Act governing limitations on use and disclosure of personal information contained in credit reports and credit information files.

1.16 A credit reporting agency should include in a credit report a warning to the effect that overdue payments which were listed prior to 25 February 1992 may need to be verified by the credit providers which listed the overdue payments in order to ensure the currency of the listings. This warning is to be given on all reports for five years after 25 February 1992.

1.17 On each occasion a credit reporting agency discloses personal information contained in an individual's credit information file, a note of the disclosure must be included in the file, setting out:

(a) the date on which the information was disclosed;
(b) to whom the information was disclosed; and
(c) where the disclosure related to only a part of the information on the file, the part that was disclosed.

Reports to Privacy Commissioner on serious credit infringement listings

1.18 Credit reporting agencies must maintain annual records, which must be made available upon request to the Privacy Commissioner, indicating the occurrence of serious credit infringement listings made by individual credit providers where the listings had not been previously reported as overdue payments.

Part 2 Credit providers

Disclosures to credit reporting agencies

Reporting of unspecified credit limits

2.1 Where a credit provider makes an enquiry to a credit reporting agency in connection with an application for credit, and the amount of credit sought is unknown or incapable of being specified, the credit provider may advise the credit reporting agency that the amount of credit being sought is unspecified. The credit reporting agency may then record that an unspecified amount of credit is being sought.

Reporting mistakes as to identity

2.2 Where a credit provider has made an enquiry to a credit reporting agency in connection with an application for credit, and subsequently becomes aware that the credit report given by the credit reporting agency related to an individual other than the one to whom the enquiry related, the credit provider must:

(a) advise the credit reporting agency of the mistake as to identity;

(b) advise any other persons who were given a copy of the credit report, or information derived from the credit report, of the mistake as to identity and of the need to destroy the credit report; and

(c) destroy the credit report.

Reporting discharge of credit commitments

2.3 Where a credit provider has informed a credit reporting agency that it was a current credit provider in relation to an individual, and the credit provider ceases to be a current credit provider in relation to the individual, the credit provider must as soon as practicable, but in any event no later than 45 days after ceasing to be a current credit provider, notify the credit reporting agency that it is no longer a current credit provider in relation to the individual.

Rectifying reporting procedures

2.4 Where a credit provider has been notified by a credit reporting agency in accordance with paragraph 1.3 that it has given the credit reporting agency information which the credit reporting agency is not permitted under the Act to include in an individual's credit information file, the credit provider must take steps to remedy its reporting procedures to ensure that the requirements of the Act may be complied with in future.

2.5 Where a credit provider becomes aware that

(a) it has given to a credit reporting agency personal information which was inaccurate at the time of giving the information, and which may have, or might, adversely affect the decision to grant credit; or

(b) it has given information of a type not permitted to be included in an individual's credit information file by a credit reporting agency,

the credit provider must immediately advise the credit reporting agency of the inaccuracy or the existence of prohibited information.

2.6 Where a credit provider has been notified by a credit reporting agency in accordance with paragraph 1.4 it shall:

(a) alert the agency to any other individuals' credit information files that may be similarly affected, and investigate the accuracy of any overdue payment or serious credit infringement listings in those other individuals' files; and

(b) within 30 days, advise the Privacy Commissioner in writing of the action the credit provider has taken to rectify the problem.

Reporting overdue payments

2.7 A credit provider may report an overdue payment to a credit reporting agency:

(a) once 60 days has elapsed since the day on which the payment was due and payable; and

(b) if the credit provider has sent a written notice to the last known address which:

(i) advises the individual of the overdue payment and requests payment of the amount outstanding; or
(ii) in the case of a joint debt where the parties concerned live at separate addresses and those addresses are known, advises the individuals against whom the overdue payment is to be recorded and requests payment of the amount outstanding.

2.8 A credit provider must not give to a credit reporting agency information about an individual being overdue in making a payment where recovery of the debt by the credit provider is barred by the statute of limitations.

2.9 A credit provider must not report to a credit reporting agency an overdue payment listed against a guarantor:

(a) until 60 days has elapsed since the day on which the borrower's payment was due and payable; and

(b) until steps have been taken to recover either the whole or part of the amount outstanding from the guarantor, including advising the guarantor, by notice in writing, of the overdue payment incurred by the borrower.

2.10 Where a credit provider has previously listed with a credit reporting agency an overdue payment or a serious credit infringement against an individual in respect of an amount outstanding, and the credit provider subsequently enters into an arrangement with the individual for the repayment of the outstanding amount, the credit provider may contact the credit reporting agency to advise that a note should be included in the individual's credit information file to the effect that an arrangement has been entered into with the individual for repayment of the outstanding amount.

History

Paragraph 2.10 - amendment issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

Reporting serious credit infringements

2.11 Where a credit provider has reported a joint serious credit infringement in respect of an amount outstanding, and is subsequently satisfied that one of the individuals was released from the obligation to repay the outstanding amount by an order of a court or by legal agreement, the credit provider should advise the credit reporting agency that the serious credit infringement listing should be removed from that individual's credit information file.

Disclosure between credit providers

2.12 Before a credit provider obtains from another credit provider a report about an individual's consumer credit worthiness, the credit provider obtaining the report must be satisfied that the individual has given his or her specific written agreement to the disclosure (unless the report is requested for the purpose of assessing an application for either consumer credit or commercial credit that was at first made orally, in which case the agreement need not be in writing).

2.13 A credit provider which has been requested by another credit provider to disclose to the latter information about an individual's consumer credit worthiness should be satisfied that the second credit provider has obtained the individual's specific agreement to the disclosure. If the individual's specific agreement has *not* been obtained, the first credit provider may not, unless it had itself obtained the individual's specific agreement to the disclosure for the particular purpose, disclose the personal information to the second credit provider.

2.14 Whenever a credit provider obtains from another credit provider a report about an individual's consumer credit worthiness, the credit provider requesting the report shall make a record of:

(a) the date on which the report was obtained;

(b) the name of the credit provider from whom the report was obtained;

(c) a brief description of the contents of the report; and

(d) where the individual's specific agreement to the disclosure is required, a note to the effect that the individual's specific agreement to the disclosure has been furnished.

2.14A A record which is made by a credit provider in accordance with paragraph 2.14 should be retained for a minimum period of 12 months from the date on which it is made.

History

Paragraph 2.14A is a new paragraph and was issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

2.15 Where a credit provider has obtained from another credit provider information about an individual's credit worthiness, and subsequently becomes aware that the report given by the other credit provider was mistaken because it related to an individual other than the one to whom the enquiry related, the first credit provider must:

(a) advise the second credit provider which gave the report of the mistake as to identity; and
(b) destroy the report.

2.16 A credit provider which is a bank may not disclose to another bank a ‘banker's opinion’ relating to an individual's consumer credit worthiness, unless that individual's specific agreement to the disclosure of such information for the particular purpose has been obtained.

Disclosures to agents of individuals

2.17 Where a credit provider has been requested by an agent of an individual to disclose to the agent personal information relating to the individual's credit arrangements with the credit provider, the credit provider should satisfy itself that the agent is acting under the specific written agreement of the individual before disclosing the information. Where the credit provider is not satisfied that a written agreement exists, the credit provider shall request that the agent of the individual produce evidence of the specific written agreement before making the disclosure.

2.18 A credit provider may furnish to an individual's authorised agent only information permitted by the scope of the individual's written agreement.

Other disclosures

2.19 Where a credit provider provides a report about an individual's credit worthiness to an authorised recipient other than a credit provider, the credit provider should, to the extent practicable, make a record of the disclosure.

Access by an individual to a credit report

2.20 A credit provider must ensure that

(a) it has information available to advise individuals about the procedures by which access can be obtained to credit reports held by the credit provider; and

(b) adequate facilities are available for responding to requests for access to credit reports in its possession.

2.21 A credit provider must, when so requested in writing by an individual, attempt to give that individual access to any of his or her credit reports which are in the possession of the credit provider within 10 working days, and in any event, must give access within 30 calendar days of receipt of the individual's request.

2.22 Where an individual has requested access to a credit report which he or she believes may be in the possession of a credit provider to whom the individual has applied for credit, and the credit provider no longer possesses the report, the credit provider must advise the individual to contact the credit reporting agency from which a copy of the credit information file may be obtained.

Requests for amendment to a credit report

2.23 Where a credit provider receives a request from an individual for an amendment of, or for the inclusion of a statement in, a credit report issued by a credit reporting agency, the credit provider should, within 10 working days of receipt of the request:

(a) refer the request to the relevant credit reporting agency, incorporating any opinion the credit provider has as to the appropriateness of the amendment sought;

(b) inform the individual, in writing, of the referral, including the name and address of the credit reporting agency; and

(c) include in any credit reports in the possession of the credit provider a note to the effect that information on the individual's credit report is subject to a request for amendment by the individual.

Part 3 Dispute settling procedures relating to credit reporting

General requirements

3.1 Credit reporting agencies and credit providers must handle credit reporting disputes in a fair, efficient and timely manner.

3.2 Credit reporting agencies and credit providers must establish procedures to deal with a request, in writing, by an individual for resolution of a dispute relating to credit reporting.

3.3 A credit provider should refer to a credit reporting agency for resolution a dispute between that credit provider and an individual where the dispute concerns the contents of a credit report issued by the credit reporting agency.

3.4 In referring a dispute to a credit reporting agency, a credit provider must inform the individual of the referral and must provide the individual with the name and address of the credit reporting agency.

3.5 Upon receipt, from a credit provider, of a referral of a request for dispute resolution, a credit reporting agency must handle the request as if the request had been made directly to the agency by the individual concerned.

3.6 Where a credit reporting agency is unable to clearly establish the nature of the dispute which has been referred to it for resolution by a credit provider, the agency may write to the individual concerned asking for further information, before proceeding with the request.

3.7 Where a credit reporting agency establishes that it is unable to resolve a dispute it must immediately inform the individual concerned that it is unable to resolve the dispute and that the individual may complain to the Privacy Commissioner.

Amendment to a credit information file or a credit report

3.8 Where an individual has requested an amendment to personal information included in a credit information file or credit report, and the credit reporting agency establishes that an amendment to personal information contained in the credit information file or credit report is necessary, the credit reporting agency must, as soon as practicable, but in any event, within 5 working days, amend the file or report.

3.9 Where a credit reporting agency is informed that an individual is no longer overdue in making a payment or that the individual contends that he or she is not overdue in making the payment, the credit reporting agency must, within 5 working days of being so informed, add to the credit information file or credit report a note to that effect.

Inclusion of statements

3.10 Where a credit reporting agency does not amend a disputed entry in accordance with an individual's request, the credit reporting agency must, within 30 days of having received the individual's request, inform the individual in writing of:

(a) the reason(s) for the requested amendment not having been made;

(b) his or her right, under s.18J(2) of the Privacy Act, to have a statement included in his or her credit information file or credit report, containing details of the amendment sought; and

(c) his or her right to complain to the Privacy Commissioner if dissatisfied with the action of the credit reporting agency.

3.11 Where a credit reporting agency is provided by an individual with a statement for inclusion in his or her credit information file or credit report, and the credit reporting agency considers the statement unduly long, the credit reporting agency may, within 30 days, refer the statement to the Privacy Commissioner for a reduction as considered appropriate.

3.12 In referring the statement, the credit reporting agency may include a suggested shortened version prepared by the credit reporting agency for consideration by the Privacy Commissioner. A copy of the suggested shortened version must, at the same time, be sent to the individual concerned.

3.13 A credit reporting agency must, where so requested by an individual, remove from his or her credit information file or credit report any statement previously provided by the individual for inclusion in his or her credit information file or credit report.

Advice of dispute outcome

3.14 Where an amendment has been made, or a statement provided by the individual has been included by a credit reporting agency in the individual's credit information file or credit report, the credit reporting agency shall, within 14 days of having made the amendment or included the statement:

(a) provide the individual with a copy of the amended credit information file or credit report; and

(b) advise the individual in writing of his or her right to complain to the Privacy Commissioner if he or she is dissatisfied with the action taken by the credit reporting agency.

3.15 Where, as a result of a dispute having been resolved, a credit reporting agency amends information from a credit information file or credit report and that information is of a type detailed in sub-paragraphs 18E(1)(b)(i), (v), (vi), (vii), (viii), (ix) or (x) of the Act, the credit reporting agency must, within 14 days of amending the information:

(a) provide the individual with a copy of the amended credit information file or credit report;

(b) advise the individual, in writing, that he or she may nominate any person:

(i) to whom information from the credit information file or credit report had been given during the previous three months; and
(ii) whom the individual wishes to be notified of the changes made to the file or report;

(c) notify, within 30 days, such persons in writing of the amendment made to the credit information file or credit report; and

(d) advise the individual in writing of his or her right to complain to the Privacy Commissioner, if dissatisfied with the action taken by the credit reporting agency.

Other credit reporting disputes

3.16 Where a credit reporting agency or a credit provider receives a request in writing from an individual seeking resolution of a dispute concerning an act or practice of the credit reporting agency or credit provider in relation to credit reporting, the credit reporting agency or credit provider should, within 30 days of receipt of the request:

(a) investigate the matter;

(b) provide the individual with such response, in writing, as considered appropriate by the credit reporting agency or credit provider; and

(c) advise the individual of his or her right to complain to the Privacy Commissioner if dissatisfied with the action taken by the credit reporting agency or credit provider.

Investigation of complaints by the Privacy Commissioner

3.17 The Privacy Commissioner may decide not to investigate a complaint about a credit reporting dispute if the Commissioner considers that:

(a) the dispute should first be dealt with by a credit reporting agency or credit provider; or
(b) the dispute is being, or has been, dealt with adequately by the credit reporting agency or credit provider.

3.18 Where the Privacy Commissioner decides not to investigate an individual's complaint about a credit reporting dispute, the Commissioner shall advise the individual of the reasons for his or her decision not to investigate the complaint.

Part 4 Other matters

Staff training

4.1 Credit reporting agencies, credit providers and others lawfully involved in the handling of personal information contained in credit information files and credit reports shall take such steps as are reasonable in the circumstances to inform those staff whose duties involve handling of personal information included in credit information files or credit reports of the requirements of the Act and the Code of Conduct, and in particular:

(a) the circumstances in which personal information included in credit information files and credit reports may be accessed, used or disclosed;

(b) the procedures to be followed in response to a request by an individual for access to, or amendment of, personal information included in a credit information file or credit report;

(c) the procedures for handling disputes relating to credit reporting; and

(d) the circumstances in which personal information relating to an individual's credit worthiness may be disclosed by a credit provider.

Modifying time limits

4.2 The time limits set out in Parts 1, 2 and 3 of this Code of Conduct and affecting acts and practices of credit reporting agencies and credit providers may be varied with the approval of the Privacy Commissioner where the parties concerned are unable to comply with the specified time limits due to circumstances such as technological failures or due to other practical or unforeseen difficulties.

Review of the operation of the code of conduct

4.3 The Privacy Commissioner shall review the Code of Conduct after 18 months of its operation, and may, following consultation with affected parties, make amendments to the Code as considered necessary.

Terms used in this code

4.4 Where a term used in this Code of Conduct is defined in the Privacy Act, the term has the meaning given to it by the Privacy Act.

Explanatory notes to the code of conduct

These explanatory notes are provided to assist in understanding the relationship between the Code of Conduct and the Act, and give guidance on what practical steps should be taken to achieve compliance.

The notes first deal in turn with the standards applying to credit reporting agencies and credit providers. The notes then cover the dispute-settling procedures and finally, address other matters such as staff training and the review of the operation of the Code.

The provisions of the Code of Conduct are inserted in the relevant places throughout these notes and are distinguishable by bold typeface, indentation, and separate numbering.

The Code provisions, denoted in bold typeface, have the force of law and must be complied with. The ordinary, unbolded typeface seeks to summarise the requirements of the Act and contains guidance on how compliance with the statutory requirements of the Act and the Code may be achieved.

The Code of Conduct came into effect on 24 September 1991 but none of the provisions of the Code of Conduct were legally-binding until 25 February 1992. In reviewing the Code of Conduct and the

Explanatory Notes, some changes were made and are marked in appropriate areas in the text. The amendments to the Explanatory Notes also reflect changes to the law made by the *Law and Justice Legislation Amendment Act (No. 4) 1992* and the *Law and Justice Legislation Amendment Act 1993* which took effect on 7 December 1992 and 18 January 1994 respectively.

Part 1. Credit reporting agencies

Credit information files

Permitted contents

1 Personal information must not be included in an individual's credit information file unless that information is permitted to be on the file in accordance with s.18E of the Privacy Act. Section 18E(1) of the Privacy Act permits inclusion of the following information:

- information that is reasonably necessary to identify the individual
- a record of an enquiry made by a credit provider in connection with an application by the individual for credit or commercial credit, together with the amount of credit sought
- a record of an enquiry made by a mortgage insurer in connection with mortgage insurance to be provided to a credit provider in respect of the individual's application for mortgage credit
- a record of an enquiry made by a trade insurer in connection with trade insurance to be provided to a credit provider in respect of the individual's application for commercial credit
- a record of an enquiry made by a credit provider about the individual having offered to act as a guarantor to a loan
- the name of a credit provider who is a current credit provider in relation to the individual
- a record of credit in respect of which the individual is more than 60 days overdue and for which steps have been taken by the credit provider to recover all or part of the amount outstanding
- a record of a cheque for at least $100 which has been drawn by the individual and has been presented and dishonoured twice
- court judgments and bankruptcy orders made against the individual
- the opinion of a credit provider that the individual has, in the circumstances specified, committed a serious credit infringement
- a statement provided by the individual describing a correction, deletion or addition he or she sought to have made to personal information contained in his or her credit information file
- a record of any disclosures made by a credit reporting agency of personal information contained in the individual's credit information file

- a note to the effect that the individual is no longer overdue in making the payment, or that the individual contends that he or she is not overdue, as the case may be

- information included in a credit information file before 25 February 1992 which is not covered by one of the above categories but which has been permitted by determination issued by the Privacy Commissioner under s.18K(3)(b) to continue to be disclosed.

1.1 A credit reporting agency recording an enquiry made by a credit provider in connection with an application for credit may include, within the record of the enquiry, a general indication of the nature of the credit being sought.

2 Because of the size of the credit reporting system, and the large number and variety of credit applications recorded every year, it is accepted that an account type indicator should be allowed to be included in the file in order to facilitate speedy and accurate identification and verification by credit providers of the enquiries recorded in credit information files.

3 Credit reporting agencies will advise members as to acceptable forms of account type indicator following consultation with the Privacy Commissioner.

Deletion

4 Credit reporting agencies must ensure that personal information contained in credit information files is deleted in accordance with the requirements of s.18F and s.18V(3) of the Privacy Act.

5 Section 18F provides time limits for the retention of personal information permitted under s.18E to be included in a credit information file. Section 18V(3) provides that these time periods commence on 25 February 1992. Credit reporting agencies must, within one month of the expiry of the permitted time period (referred to as `maximum permissible periods') applying to each category of personal information, delete personal information from the file. The length of time personal information may be retained is as follows:

- enquiries by credit providers, mortgage insurers, trade insurers - 5 years from the date of the enquiry

- a record of a credit provider being a current credit provider - 14 days after the credit reporting agency is notified that the credit provider concerned is no longer a current credit provider in relation to the individual concerned

- information about overdue payments - 5 years from the day the credit reporting agency was notified of the overdue payment

- information about dishonoured cheques - 5 years commencing on the day on which the second dishonouring of the cheque occurred

- information about court judgments - 5 years from the date of judgment

- information about bankruptcy orders - 7 years from the date of the order

- serious credit infringements believed to have been committed by the individual - 7 years from the date of inclusion in the credit information file.

Storage and security

6 Credit reporting agencies must take reasonable steps to ensure that personal information contained in credit information files is protected by security safeguards against loss, unauthorised access, use, modification or disclosure and against other misuse. These requirements are spelt out in section 18G of the Act which requires credit reporting agencies to:

- ensure the file is protected by security safeguards as are reasonable in the circumstances; and

- if it is necessary for the file to be given to a person providing a service to the credit reporting agency, that everything reasonably within the power of the credit reporting agency is done to prevent unauthorised use or disclosure of personal information contained in the file.

Accuracy of information

7 Credit reporting agencies must ensure that personal information contained in credit information files is accurate, up-to-date, complete and not misleading. Where there is doubt as to a credit reporting agency's ability to comply with these standards of accuracy, up-to-dateness, and completeness in respect of any item of information, such items should be removed from the credit information file (see s.18G of the Act).

8 For the purposes of s.18J(1), reasonable steps to amend credit information files created before the commencement of the Act may be considered to have been taken by a credit reporting agency when the credit reporting agency, upon discovering that the contents of any credit information file are not accurate, up-to-date, complete or are misleading, immediately makes any amendments which the agency considers are necessary to render the contents of the credit information file accurate, up-to-date, complete and not misleading.

1.2 To ensure that personal information included in credit information files and credit reports is accurate, up-to-date, complete and not misleading, a credit reporting agency must issue to credit providers or other persons supplying it with personal information detailed instructions on the types of personal information permitted to be given to a credit reporting agency.

1.3 To ensure that only permitted information is included in a credit information file, a credit reporting agency must take the following steps:

(a) Where a credit reporting agency receives information from a credit provider for creation of, or inclusion in, a credit information file, and it appears to the credit reporting agency that the information being supplied by the credit provider may not be permitted to be included in a credit information file, the credit reporting agency must:

(i) refuse to accept the information; and
(ii) notify the credit provider, in writing, that the inclusion of the information may be in breach of the Act.

(b) Where a credit reporting agency becomes aware that information supplied by a credit provider and included in a credit information file appears to be of a type not permitted to be included in the file, the credit reporting agency must:

(i) remove the information from the credit information file;
(ii) notify the credit provider in writing that the information may not be permitted to be included in the file; and
(iii) make a written record of its actions in relation to (i) and (ii) above.

1.4 Where a credit reporting agency:

(a) becomes aware that information supplied by a credit provider relating to an overdue payment or a serious credit infringement may be inaccurate; and

(b) reasonably believes that other credit information files may contain similar inaccurate listings,

the credit reporting agency must, as soon as practicable:

(i) notify the credit provider concerned, in writing, that it may have listed an inaccurate overdue payment or serious credit infringement against the individual concerned;

(ii) request the credit provider to ascertain whether other individuals' credit information files may be similarly affected, and to investigate the accuracy of any overdue payment or serious credit infringement listings in those other individuals' files; and

(iii) advise the Privacy Commissioner in writing of the above actions.

1.5 Where a credit reporting agency becomes aware that it has disclosed personal information from a credit information file, and the personal information relates to an individual other than the individual who was the subject of the enquiry, the credit reporting agency must as soon as practicable:

(a) notify the enquirer that personal information was mistakenly provided about an individual other than the one to whom the enquiry related;

(b) make the necessary amendments to the credit information file which has been disclosed in error;

(c) advise, in writing, any other persons who had been supplied with the incorrect personal information within the previous three months; and

(d) review its operations to ensure that recurrence will be minimised.

9 Where information from an individual's credit information file has been disclosed in error, the credit reporting agency will, in accordance with the requirements of s.18K(5) of the Act, record on the individual's credit information file a note of the disclosure having mistakenly occurred.

10 Once a credit provider has received advice from a credit reporting agency of a kind described in Code provisions 1.3 and 1.4 above, the credit provider is then subject to the requirements of provisions 2.4 and 2.6 of the Code of Conduct that steps be taken to ensure that non-permitted information is not supplied to a credit reporting agency.

Access by an individual or his/her agent

11 A credit reporting agency is required under s.18H of the Act to take reasonable steps to ensure that an individual or his or her authorised agent can obtain access to the individual's credit information file. This provision of the Act comes into force on 24 September 1991.

12 A credit reporting agency giving to an individual or to his or her authorised agent access to the individual's credit information file should take reasonable steps to safeguard delivery of the copy of the file to the individual concerned or to his or her agent, and should ensure that the information is in a form that is readily intelligible.

1.6 A credit reporting agency must ensure:

(a) information is freely available to individuals, explaining the procedures by which access to personal credit information files may be obtained; and

(b) adequate facilities are available for responding to requests for access to credit information files in its possession.

1.7 A credit reporting agency must ensure that an individual is given access to his or her personal credit information file in circumstances where the request for access

(a) relates to refusal of the individual's application for credit, or

(b) is otherwise related to the management of the individual's credit arrangements.

History

Paragraph 1.7 is a new paragraph and was issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

1.8 Where a credit reporting agency receives a request from an individual for access to his or her credit information file, and:

(a) it appears to the credit reporting agency that the access is not related to either of the purposes described in paragraph 1.7, above; and

(b) the processing of the request would impact unreasonably on the ability of the credit reporting agency to process requests made in accordance with paragraph 1.7;

the credit reporting agency may:

(i) refuse the request for access;
(ii) defer the request for access; or
(iii) charge a fee for access to offset the impact of the request on its operation, as described in (b), above.

History

Paragraph 1.8 is a new paragraph and was issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

13 A credit reporting agency may provide a copy of an individual's credit information file to a person who has been authorised in writing to act on the individual's behalf. In accordance with s.18H of the Act, which comes into force on 24 September 1991, such an agent of the individual may exercise the rights on behalf of the individual only in connection with:

(a) an application, or a proposed application, by the individual for a loan; or

(b) the individual having sought advice in relation to a loan.

This provision would typically apply to situations where an individual engages the services of a debt counsellor or a financial advisor.

As a *guide* only some suggested forms of wording to be used by agents when obtaining credit information from credit reporting agencies are provided.

Appointment of agent - access to credit reporting agency records

Authority for agent to obtain access to an individual's credit information file held by a credit reporting agency (*Privacy Act 1988*)

1. Financial counsellors

I/we [name/s] authorise [counsellor's name] or other persons providing financial counselling employed by [counselling agency's name] to:

action
Act as my/our agent in seeking access to my/our consumer credit information file held by [name of credit reporting agency].

limit of authority
This authority only applies to enquiries made by [counsellor's name] or persons employed by [counselling agency's name] in connection with:
- an application, or proposed application, by me/us for credit
- my/our having sought advice in relation to existing credit.

(Signed and dated by the parties).

1.9 Where a credit reporting agency refuses or defers a request by an individual or his/her authorised agent for access to the individual's credit information file, or charges a fee for such access, the individual or his/her authorised agent may complain to the Privacy Commissioner, who may order the credit reporting agency to provide access to that person (including an order that access be provided free of charge).

History

Paragraph 1.9 is a new paragraph and was issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

1.10 In meeting an individual's request for access to his or her credit information file, a credit reporting agency should require such evidence as is reasonable in the circumstances to satisfy itself as to the identity of the individual.

History

Paragraph 1.10 was previously paragraph 1.7 and was renumbered by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

1.11 A credit reporting agency in receipt of a request by an individual for access to his or her credit information file, for purposes described in paragraph 1.7 above, must give access within 10 working days of having received the request for access.

History

Paragraph 1.11 was previously paragraph 1.8 and was renumbered and amended by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

Fees for access

1.12 A credit reporting agency may not charge a fee for access by an authorised agent of an individual unless the agency believes on reasonable grounds that the agent has requested a copy of the individual's credit information file while acting as a business intermediary between the individual and the credit provider.

History

Paragraph 1.12 was previously paragraph 1.11 and was renumbered by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

1.12A Where a credit reporting agency denies access to an individual or his or her authorised agent because the individual or the agent has refused to pay the fee, the agency should advise the individual concerned that he or she may refer the matter to the Privacy Commissioner.

History

Paragraph 1.12A - amendment issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

14 In considering whether or not an agent of the individual should be charged a fee for access, credit reporting agencies should take into account the nature of the service being provided by the agent. For example, where the service is provided by a financial counsellor to assist the individual in meeting his or her credit obligation, a fee should not be charged.

Requests by individuals for amendment

15 Section 18J(1) requires a credit reporting agency to take reasonable steps by way of making appropriate amendments to ensure that the contents of credit information files are 'accurate, up-to-date, complete and not misleading'.

16 Where an individual requests an amendment to his or her credit information file, a credit reporting agency should promptly address the question of whether the amendment sought can be made and, if possible, accommodate the individual's request.

17 Where a credit provider refers to a credit reporting agency an individual's request for amendment or inclusion of a statement to the individual's credit information file, the credit reporting agency should:

(a) treat the request as if it had received the request from the individual direct; and

(b) provide the credit provider which referred the request with details of any amendments or inclusions made to the file as a result of the individual's request, including a copy of amended credit reports as necessary.

Inclusion of statements

18 Where the credit reporting agency does not make the change(s) sought, the agency should advise the individual of his or her rights to have a statement included in the file of the amendment sought by the individual. If the individual requests that a statement be included in the file, the credit reporting agency is then required by s.18J(2) to take reasonable steps to include the statement in the file within 30 days of the individual's request.

1.13 Where a credit reporting agency is provided with a statement by an individual of an amendment sought, and the credit reporting agency considers the statement unduly long, the credit reporting agency shall, as soon as possible, but in any event no later than 30 days, refer the statement to the Privacy Commissioner for a reduction as considered appropriate. In referring the statement, the credit reporting agency may include a suggested shortened version prepared by the credit reporting agency for consideration by the Privacy Commissioner. A copy of the suggested shortened version must, at the same time, be given to the individual concerned.

19 Credit reporting agencies should attempt to accommodate the wishes of an individual in regard to the length of a statement before referring the statement to the Privacy Commissioner. As a guide, credit reporting agencies should generally be prepared to accept statements of up to 150 words in length.

Notification of amendment to third parties

1.14 Where an amendment has been made to, or a statement has been included in, an individual's credit information file, and the amended information or the statement relates to information of a type detailed in any one or more of subparagraphs (i), (v), (vi), (vii), (viii), (ix) or (x) of paragraph 18E(1)(b) of the Act, the credit reporting agency must, within 14 days of amending the information or including the statement:

(a) provide the individual with a copy of the amended credit information file;

(b) advise the individual, in writing, that he or she may nominate any person who had been given information from the file during the previous three months, and whom the individual wishes to be notified of the amendment or of the inclusion of the statement to the file;

(c) notify such persons (if any) of the amendment or inclusion made to the file, within 30 days of the persons being so nominated to the credit reporting agency by the individual; and

(d) advise the individual, in writing, of his or her right to complain to the Privacy Commissioner if dissatisfied with the action taken by the credit reporting agency.

Disclosure

20 A credit reporting agency must not disclose personal information contained in a credit information file unless the disclosure is in accordance with s.18K of the Privacy Act. Generally, disclosure by a credit reporting agency of personal information contained in credit information files is limited to:

- a credit provider
- a current credit provider
- a mortgage insurer
- a trade insurer
- another credit reporting agency
- a person/body to whom disclosure is authorised or required by or under law (this would include disclosure to the individual concerned or to his or her authorised agent as permitted by s.18H of the Act)
- a credit provider or a law enforcement authority in connection with a 'serious credit infringement'.

21 Where a credit reporting agency receives a request by a law enforcement authority for disclosure of information from an individual's credit information file in connection with a serious credit infringement, the credit reporting agency should, wherever practicable, obtain from the law enforcement authority, a notice in writing to the effect that the law enforcement authority believes that the individual concerned has committed a serious credit infringement.

22 A credit reporting agency may, in accordance with s.18K(1)(f), disclose a credit report to a credit provider listed as a current credit provider in relation to the individual where the credit reporting agency had received information about the individual's overdue payments, and held such information on the individual's file for at least 30 days before disclosing the information.

1.15 Before a credit reporting agency discloses personal information contained in a credit information file, the credit reporting agency should ensure that the recipient of the information has been notified of the requirements of the Act governing limitations on use and disclosure of personal information contained in credit reports and credit information files.

23 This may be achieved by way of the credit reporting agency making its membership conditional upon the credit provider observing the requirements of the Privacy Act. The notice may be given at the time membership is granted, or at renewal of membership.

1.16 A credit reporting agency should include in a credit report a warning to the effect that overdue payments which were listed prior to 25 February 1992 may need to be verified by the credit providers which listed the overdue payments in order to ensure the currency of the listings. This warning is to be given on all reports for five years after 25 February 1992.

24 It may be difficult for some credit providers to ascertain whether a report of an overdue payment had been made to a credit reporting agency prior to 25 February 1992. This warning is aimed at assisting credit providers in meeting the requirements under s.18F(3) that a credit provider must inform a credit reporting agency, as soon as practicable, of the fact that an individual has ceased to be overdue in making a payment or contends that he or she is not overdue in making the payment, where the credit provider had previously reported to the credit reporting agency about the overdue payment.

25 In disclosing personal information to a credit provider listed on an individual's credit information file prior to 25 February 1992 as being a current credit provider in relation to the individual, the credit reporting agency should request the credit provider to verify that it is still a current credit provider in relation to the individual. The agency should take reasonable steps to remove from an individual's credit information file names of any credit providers not currently providing credit to the individual.

1.17 On each occasion a credit reporting agency discloses personal information contained in an individual's credit information file, a note of the disclosure must be included in the file, setting out:

(a) the date on which the information was disclosed;

(b) to whom the information was disclosed; and

(c) where the disclosure related to only a part of the information on the file, the part that was disclosed.

Commercial information

26 The Act does not impose restrictions on the disclosure by a credit reporting agency of *commercial* credit information where the disclosure is in response to enquiries by credit providers for purposes associated with the giving of *commercial* credit.

27 In giving a credit report to a credit provider for the purposes of the credit provider assessing an individual's application for consumer credit, a credit reporting agency must observe the requirements of s.18K(6), which prohibits the credit reporting agency from including in the report any information about the individual's commercial activities, other than commercial information that the credit reporting agency is permitted under s.18E to include in the individual's credit information file. Examples of permitted commercial information include:

- enquiries by a commercial credit provider in connection with an application for commercial credit and the amount of credit sought

- enquiries by a trade insurer to assist in assessing whether to give trade insurance to a credit provider giving the individual commercial credit.

Reports to Privacy Commissioner on serious credit infringement listings

1.18 Credit reporting agencies must maintain annual records, which must be made available upon request to the Privacy Commissioner, indicating the occurrence of serious credit infringement listings made by individual credit providers where the listings had not been previously reported as overdue payments.

28 Such records must be capable of detailing specific serious credit infringement reports made by individual credit providers.

Part 2 Credit providers

Applications for credit - notice and agreement requirements

Notice of disclosure to a credit reporting agency

29 Where a credit provider intends to obtain a consumer credit report issued by a credit reporting agency to assess an application for either consumer or commercial credit, the credit provider will first need to notify the individual that items of personal information will be disclosed to a credit reporting agency by the credit provider.

30 There are other occasions during the life of the individual's loan contract with the credit provider where the credit provider may wish to disclose personal information to a credit reporting agency. The credit provider will not be permitted to do this unless the individual has previously been notified of the disclosure. These notices should be given at the time the individual applies for credit with the credit provider. If such a notice was given, credit providers would then not be required to issue a specific notice prior to any subsequent disclosures.

31 The notice may be given orally. However, obtaining a written acknowledgment, where practicable, is advisable for reasons of certainty.

32 The notice should explain clearly what items of the individual's personal information may be disclosed to a credit reporting agency. As a *guide* only to credit providers, the following form of wording is considered to be an appropriate form of notification. It should be noted that not all of the information categories listed below need to be included in the notice.

Notice of disclosure of your credit information to a credit reporting agency (*Privacy Act 1988*)

[Name of credit provider] may give information about you to a credit reporting agency for the following purposes:

- to obtain a consumer credit report about you, and/or
- allow the credit reporting agency to create or maintain a credit information file containing information about you.

This information is limited to:

- identity particulars - your name, sex, address (and the previous two addresses), date of birth, name of employer, and drivers license number
- your application for credit or commercial credit - the fact that you have applied for credit and the amount
- the fact that [name of credit provider] is a current credit provider to you.
- loan repayments which are overdue by more than 60 days, and for which debt collection action has started
- advice that your loan repayments are no longer overdue in respect of any default that has been listed
- information that, in the opinion of [name of credit provider] you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations)
- dishonoured cheques - cheques drawn by you for $100 or more which have been dishonoured more than once

Period to which this understanding applies
This information may be given before, during or after the provision of credit to you.

(Acknowledged by the individual)

Agreements with individuals

33 Specific agreements with individuals are required in a number of circumstances. However, it should be noted that *not all* agreements will be required in most cases. For example, it is not anticipated that in the case of applications for commercial credit, access to consumer credit reports is automatically required, and vice versa.

34 The agreements with credit applicants required to be obtained under the Privacy Act relate to activities engaged in by:

credit providers when:

(a) assessing applications for consumer credit
(b) assessing applications for commercial credit
(c) assessing the credit worthiness of a guarantor in connection with another individual's application for credit
(d) disclosing information to a potential or existing guarantor
(e) collecting overdue payments in respect of commercial credit
(f) exchanging references with other credit providers about an individual's consumer credit worthiness

trade insurers when:

(g) using a consumer credit report to assess the provision of insurance to a credit provider in respect of commercial credit given by the credit provider to an individual.

History

Paragraph 34 updated in March 1995.

35 When entering into agreements with an individual, credit providers will first need to ascertain whether the type of credit being applied for is consumer or commercial credit. If a credit provider is unable to ascertain the nature of the credit being applied for, the individual who is applying for the credit should be requested to advise the credit provider as to the nature of the credit being sought.

36 As a guide to credit providers, the following paragraphs give forms of wording which are considered likely to meet the requirements of the Privacy Act.

(a) Assessment of applications for consumer credit

In assessing an application for consumer credit a credit provider must not use any information concerning an individual's commercial activities or commercial credit worthiness that was obtained from a commercial reporting agency unless the individual has given his or her prior written agreement to the information being obtained by the credit provider for this purpose. The agreement need not be in writing when the application is, in the first instance, made orally.

Seeking commercial credit history information

Agreement to a credit provider using commercial credit information to assess a consumer credit application (*Privacy Act 1988*)

I/we agree that [name of credit provider] may:

action
obtain information about me/us from a business which provides information about the commercial credit worthiness of persons

purpose
for the purpose of assessing my/our application for consumer credit.

(Signed and dated by the individual/s)

(b) Assessment of applications for commercial credit

Where a credit provider in receipt of an individual's application for commercial credit wishes to obtain a consumer credit report from a credit reporting agency in order to assess the individual's application for commercial credit, the credit provider must obtain the specific written agreement (unless the application for commercial credit was in the first instance made orally, in which case the agreement need not be in writing) of the individual to receive information from a credit reporting agency for that purpose.

Assessing commercial credit application

Agreement to a credit provider being given a consumer credit report by a credit reporting agency to assess a commercial credit application (*Privacy Act 1988*)

I/we agree that [name of credit provider] may:

action
obtain a consumer credit report containing information about me/us from a credit reporting agency

purpose
for the purpose of assessing my/our application for commercial credit.

(Signed and dated by the individual/s)

(c) Assessment of a guarantor

Under the Act a credit provider may not obtain a credit report issued by a credit reporting agency in respect of an individual who has offered to act as a guarantor to another individual's loan with the credit provider unless the credit provider has obtained the guarantor's specific agreement to the report being given to the credit provider for that purpose.

Guarantor's agreement

Agreement to a credit provider being given a consumer credit report by a credit reporting agency to assess a guarantor (*Privacy Act 1988*)

I/we agree that [name of credit provider] may:

action
obtain from a credit reporting agency a consumer credit report containing information about me/us

purpose
for the purpose of assessing whether to accept me/us as a guarantor for credit applied for by, or provided to, the borrower(s) [named below].

limit of agreement
I/we agree that this agreement commences from the date of this agreement and continues until the credit covered by the borrower(s) application ceases.

(Signed and dated by the individual/s)

(c) Disclosing information to a potential or existing guarantor

A credit provider must obtain an individual's specific written agreement in order to disclose personal information to a person who is acting as guarantor or who has provided property as security for a loan, unless the following circumstances apply:

- the guarantee or security was given before 7 December 1992
- the disclosure is for the purpose of giving to the person information about the amount or possible amount of the person's liability under the guarantee or security

- the credit provider has, prior to the disclosure, informed the individual that such disclosures may take place.

A credit provider must also obtain an individual's specific written agreement when disclosing personal information to a person who is considering whether to offer to act as guarantor or to offer property or security for the individual's loan.

The agreement need not be written when the application is, in the first instance, made orally.

Disclosure to guarantor

Agreement to a credit provider disclosing a report including a consumer credit report to a potential or existing guarantor (Privacy Act 1988)

I/we agree that [name of credit provider] may:

action
give to a person who is currently a guarantor, or whom I/we have indicated is considering becoming a guarantor, a credit report containing information about me/us

purpose
for the purpose of [name of the prospective guarantor] deciding whether to act as guarantor, or

- to keep [name of the existing guarantor] informed about the guarantee.

- I/we understand that the information disclosed can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act, and includes a credit report.

(Signed and dated by the individual/s)

(e) Collection of overdue payment in respect of commercial credit

Where an individual becomes overdue in making a payment in respect of commercial credit given by a credit provider, that credit provider may only obtain a consumer credit report from a credit reporting agency to assist in collecting overdue payments if:

(a) the individual's written agreement was obtained by the credit provider at the time of application to the use of the individual's consumer credit report for the purposes of the commercial credit application assessment (s.18K(1)(h) of the Act); or

(b) the credit provider provided the commercial credit before 25 February 1992 (in which case no agreement from the individual is required); or

(c) the individual has specifically agreed, in writing, that the report may be obtained for that purpose

Overdue payment - commercial credit

Agreement to credit provider being given a consumer credit report to collect overdue payments on commercial credit (*Privacy Act 1988*)

I/we agree that [name of credit provider] may:

action
obtain a consumer credit report about me/us from a credit reporting agency.

purpose
for the purpose of collecting overdue payments relating to commercial credit owed by me/us.

(Signed and dated by the individual/s)

(f) Exchange of references between credit providers

The exchange of commercial or trade references between credit providers in relation to commercial credit transactions is unaffected by the Privacy Act.

Where a credit provider, in accordance with s.18N(1)(b), wishes to obtain from, or to give to, another credit provider, a report about an individual's consumer credit worthiness for a particular purpose, the individual's specific written agreement will need to be obtained for the particular purpose (unless the report is sought for the purpose of assessing an application for credit or commercial credit that was initially made orally, in which instance the agreement need not be in writing). Ideally, credit providers should draw to the individual's attention, and explain at the time of obtaining the specific agreement, the effect of such an agreement.

It should be noted that, for the purpose of this provision of the Act, a 'report' means a credit report issued by a credit reporting agency, as well as any other record or information which has a bearing on an individual's credit worthiness (see s.18N(9) of the Act).

(g) Assessment by a trade insurer

Trade insurers wishing to obtain a credit report from a credit reporting agency for the purposes of assessing whether to provide insurance to a credit provider in respect of commercial credit provided by the credit provider to the individual must have the individual's specific written agreement to the report being given to the trade insurer for that purpose.

Exchange of credit worthiness information

Agreement to credit provider exchanging with other credit providers a consumer credit report or other information relating to my/our credit *worthiness (Privacy Act 1988*)

I/we agree that [name of credit provider] may:

action
exchange information about me with those credit providers names in this application or named in a consumer credit report issued by a credit reporting agency

for the following purposes
- to assess an application by me/us for credit
- to notify other credit providers of a default by me/us
- to exchange information with other credit providers as to the status of this loan where I am in default with other credit providers
- to assess my/our credit worthiness.

I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

(Signed and dated by the individual/s)

Access to credit reports

37 A credit provider may only obtain access to a credit report issued by a credit reporting agency if the credit provider is permitted by law to be given the information by the credit reporting agency.

38 Access to credit information contained in a credit information file held by a credit reporting agency is generally restricted to those businesses or persons falling within the definition of 'credit provider' given under s.11B of the Act. The Privacy Commissioner has issued a determination (see text of determination at Appendix 1) under sub-paragraph (v) of s.11B(1)(b) to declare to be 'credit providers' those businesses which are not automatically covered by those categories defined in paragraphs (a), or (b)(i) - (iv) of s.11B(1).

Uses of credit reports

39 Credit provider must not use any personal information contained in a credit report issued by a credit reporting agency unless the use is in accordance with s.18L of the Act. Section 18L of the Act permits only the following uses:

- to assess an application for consumer credit
- to assess an application for commercial credit where the individual has consented to such a use
- to assess whether to accept a person as a guarantor to a loan where the person acting as guarantor has consented to such a use

- to assist the individual avoid defaulting on his or her credit obligations, where the credit provider is a current provider in relation to an individual

- to collect overdue payments in respect of credit provided to the individual by the credit provider

- a use for the internal management purposes of the credit provider, being purposes directly related to the provision or management of loans by the credit provider, e.g. building scorecards

- a use required or authorised by or under law

- a use in connection with a serious credit infringement which the credit provider believes on reasonable grounds that the individual has committed.

Notice of refusal of credit

40 A credit provider who has refused an individual's application for credit based on a credit report issued by a credit reporting agency must provide the individual with written notice of refusal, informing the individual:

(a) that refusal was based wholly or partly on the credit report;

(b) of his or her rights to obtain access to his or her credit information file held by the credit reporting agency; and

(c) of the name and address of the credit reporting agency.

History

Paragraph 40 amended in March 1995.

40A A credit provider who refuses an individual's application for credit because of a credit report issued by a credit reporting agency about a proposed guarantor must provide the individual with written notice of the refusal, informing the individual that the refusal was based wholly or partly on the guarantor's credit report.

History

Paragraph 40A added in March 1995.

41 A credit provider must also, in refusing an application for credit made jointly by an individual and one or more other persons and the refusal was based wholly or partly on a credit report relating to one of those other persons, inform the individual of this fact.

42 In advising applicants for credit that the credit has been refused, the following standard statement may be used.

Notice of refusal of credit

Notice of refusal of credit to an individual where the application is refused due to an individual's consumer credit report (*Privacy Act 1988*)

Dear [applicant's name]

Our decision
I am writing to inform you that your application for credit has not been approved.

Basis of decision
Our decision to refuse your application was based wholly/partly on
- information obtained from [credit reporting agency] about you
- information obtained from [credit reporting agency] about your joint applicant/s [name/s].
- information obtained from [credit reporting agency] about your guarantor/s.

(delete as applicable)

Your rights
Under the *Privacy Act 1988*, you have the right to obtain access to your credit information file held by a credit reporting agency. The most convenient way for you to obtain access to your credit information file is to contact [name of credit reporting agency] at [address of credit reporting agency].

When writing to the credit reporting agency, you should print your name and address in full. The credit reporting agency may require you to provide other identifying particulars.

Disclosures to credit reporting agencies

Reporting of unspecified credit limits

2.1 Where a credit provider makes an enquiry to a credit reporting agency in connection with an application for credit, and the amount of credit sought is unknown or incapable of being specified, the credit provider may advise the credit reporting agency that the amount of credit being sought is unspecified. The credit reporting agency may then record that an unspecified amount of credit is being sought.

43 Circumstances where an amount of credit sought in an application for credit is not specified typically involves credit relating to:

- an overdraft
- a line of credit
- a credit card.

Where the amount of credit being sought *is* known, the Act requires, under s.18E(1)(b)(i)(B), that the amount sought must be recorded.

Reporting mistakes as to identity

2.2 Where a credit provider has made an enquiry to a credit reporting agency in connection with an application for credit, and subsequently becomes aware that the

credit report given by the credit reporting agency related to an individual other than the one to whom the enquiry related, the credit provider must:

(a) advise the credit reporting agency of the mistake as to identity;

(b) advise any other persons who were given a copy of the credit report, or information derived from the credit report, of the mistake as to identity and of the need to destroy the credit report; and

(c) destroy the credit report.

44 Upon being informed of the mistake as to identity, the credit reporting agency will, in accordance with s.18K(5) of the Act, record on the individual's credit information file a note of the disclosure having been mistakenly made.

Reporting current credit provider status

45 A credit provider who has approved an individual's application for credit and entered into a credit agreement may notify any credit reporting agency that it is a current credit provider in relation to the individual.

46 The credit provider will then be listed on the individual's credit information file as a 'current credit provider' for the purposes of receiving information about overdue payments owed by that individual to another credit provider.

Reporting that an individual is no longer overdue

47 Where a credit provider has previously notified a credit reporting agency that an individual to whom it provided credit is overdue in making a payment and that individual subsequently fulfils his or her obligations in relation to that payment, or that the individual contends that he or she is not overdue in making the payment, the credit provider must, as soon as practicable, notify the credit reporting agency that the individual concerned is no longer overdue, or that the individual contends that he or she is not overdue in making the payment, as the case may be (s.18F(3)).

48 As it may be difficult for credit providers to ascertain whether a report of an overdue payment had been made to a credit reporting agency before 25 February 1992, it is suggested that in order to fulfil this obligation, credit providers should, as far as practicable, adopt the practice of notifying the credit reporting agency as a matter of course when an individual is no longer overdue in making a payment, or contends that he or she is not overdue, as the case may be. (See also Code provision 1.16 and paragraph 24 on page 45 of Explanatory Notes).

49 In the case of an instalment loan where the individual is overdue in respect of a payment, the individual is considered to remain overdue until all arrears are brought up to date. That is, the credit provider is not required to make a series of reports of overdue payments and reinstatements in respect of the loan while the individual is still behind in payment.

Reporting discharge of credit commitments

2.3 Where a credit provider has informed a credit reporting agency that it was a current credit provider in relation to an individual, and the credit provider ceases to be a

current credit provider in relation to the individual, the credit provider must as soon as practicable, but in any event no later than 45 days after ceasing to be a current credit provider, notify the credit reporting agency that it is no longer a current credit provider in relation to the individual.

50 For the purposes of revolving credit arrangements, the obligation upon a credit provider to notify a credit reporting agency that it is no longer a current credit provider in relation to an individual does not apply until such time as the revolving credit arrangement ceases to exist between the credit provider and the individual. That is, the credit provider ceases to a credit provider only when the account is actually closed, and not when the account is merely inactive (e.g. there is a 'nil' balance on the account).

51 A credit provider ceases to be a current credit provider in relation to an individual where:

(a) the credit provider legally assigns to a third party the debt owed to it by the individual concerned;

(b) the individual's debt is unenforceable by virtue of the statute of limitations.

History

Paragraph 51 amended in March 1995.

52 Where a credit provider is aware that, or would expect that, it notified a credit reporting agency prior to 25 February 1992 that it was providing credit to an individual, and the individual discharges his or her credit obligations after 25 February 1992, the credit provider should take reasonable steps to advise the credit reporting agency that the individual's credit obligations have been discharged. This could be achieved by responding to a request by a credit reporting agency for verification of current credit provider status (see paragraph 25 in the Explanatory Notes).

Rectifying reporting procedures

2.4 Where a credit provider has been notified by a credit reporting agency in accordance with paragraph 1.3 that it has given the credit reporting agency information which the credit reporting agency is not permitted under the Act to include in an individual's credit information file, the credit provider must take steps to remedy its reporting procedures to ensure that the requirements of the Act may be complied with in future.

2.5 Where a credit provider becomes aware that

(a) it has given to a credit reporting agency personal information which was inaccurate at the time of giving the information, and which may have, or might, adversely affect the decision to grant credit; or

(b) it has given information of a type not permitted to be included in an individual's credit information file by a credit reporting agency,

the credit provider must immediately advise the credit reporting agency of the inaccuracy or the existence of prohibited information.

2.6 Where a credit provider has been notified by a credit reporting agency in accordance with paragraph 1.4 it shall:

(a) alert the agency to any other individuals' credit information files that may be similarly affected, and investigate the accuracy of any listings in relation to overdue payment or serious credit infringement listings in those other individuals' files; and

(b) within 30 days, advise the Privacy Commissioner in writing of the action the credit provider has taken to rectify the problem.

Reporting overdue payments

To a credit reporting agency

53 A credit provider must not give to a credit reporting agency personal information about an individual unless the credit provider has reasonable grounds for believing that the information is correct.

54 Where an individual becomes overdue in respect of credit given by a credit provider the credit provider may not report the overdue payment to a credit reporting agency unless the credit provider has first notified the individual that the credit provider may lodge a report about the overdue payment against the individual with a credit reporting agency.

55 A credit provider may report an overdue payment to a credit reporting agency in respect of a savings account, or a similar facility which has been overdrawn, provided that the credit provider has first notified the individual of the disclosure.

55A The prohibition in paragraph 2.8 includes the re-listing of information with the same credit reporting agency after the maximum period permitted for the retention of such information on a credit information file has expired.

History

Paragraph 55A added in March 1995.

55B Care and judgment should be exercised by the credit provider when reporting an overdue payment to a credit reporting agency, to ensure that such reporting accords with the requirement that information contained in credit information files is accurate, up-to-date, complete and not misleading (refer section 18G).

History

Paragraph 55B added in March 1995.

55C An overdue payment reported by a credit provider to a credit reporting agency should generally reflect the amount which, if paid, would result in the individual no longer being overdue in respect of the debt. This may vary according to the terms of the particular loan. For example, with some loans the entire balance of the loan falls due where the individual falls into arrears by a certain amount, or on the occurrence of a particular event. Where this is the case, it should be reflected in the information reported to the credit reporting agency.

The amount to be reported will not necessarily be the amount recoverable at law, which may be affected by other contingencies not foreseen at the time of reporting.

History

Paragraph 55C added in March 1995.

55D A credit provider may seek amendment of overdue payment information previously reported to a credit reporting agency, where legal or other developments have occurred which affect the amount by which the individual is regarded as being overdue. Changes to the credit information file may be needed to ensure that the information remains accurate, up-to-date, complete and not misleading.

History

Paragraph 55D added in March 1995.

55E A credit provider may only report an arrangement for repayment to a credit reporting agency where the arrangement relates to an overdue payment or serious credit infringement which has been reported by the credit provider to the credit reporting agency. An arrangement for repayment may only be reported to a credit reporting agency where it is a formal written arrangement involving a substantial renegotiation of the terms of the loan. An arrangement would normally involve a significant variation of the individual's obligations with regard to one or more of the main elements of the contract such as the period of the loan, or the size and frequency of repayments. For the purposes of paragraph 2.10 an arrangement would not include, for example, a verbal agreement to allow a one-off late payment.

History

Paragraph 55E added in March 1995.

55F Where the arrangement has the effect of rendering the individual no longer overdue in respect of their payments under the loan and the credit provider has reported the overdue payment(s) to a credit reporting agency, then the credit provider is obliged under section 18F(4) of the Act to report to the credit reporting agency that the individual is no longer overdue. A revised schedule of repayments would not normally be regarded as rendering the individual no longer overdue. On the other hand, an arrangement where the overdue amount is 'forgiven' would most probably be regarded as having that effect. This distinction is important because the reporting of arrangements is optional, whereas reporting that the individual is no longer overdue is mandatory. The above examples are intended as general guidance only; in all cases the question of whether the arrangement has the effect of rendering the individual no longer overdue will depend on the intention of the parties as indicated by the terms of the arrangement and any other relevant circumstances.

History

Paragraph 55F added in March 1995.

55G Where information relating to an arrangement for repayment has been reported to a credit reporting agency, the individual is entitled under the Act to request amendment of the information by way of correction, deletion, or addition. The request should be directed to the credit reporting agency in possession of the credit information file.

History

Paragraph 55G added in March 1995.

2.7 A credit provider may report an overdue payment to a credit reporting agency:

(a) once 60 days has elapsed since the day on which the payment was due and payable; and

(b) if the credit provider has sent a written notice to the last known address which:

(i) advises the individual of the overdue payment and requests payment of the amount outstanding; or

(ii) in the case of a joint debt where the parties concerned live at separate addresses and those addresses are known, advises the individuals against whom the overdue payment is to be recorded and requests payment of the amount outstanding.

2.8 A credit provider must not give to a credit reporting agency information about an individual being overdue in making a payment where recovery of the debt by the credit provider is barred by the statute of limitations.

2.9 A credit provider must not report to a credit reporting agency an overdue payment listed against a guarantor:

(a) until 60 days has elapsed since the day on which the borrower's payment was due and payable; and

(b) until steps have been taken to recover either the whole or part of the amount outstanding from the guarantor, including advising the guarantor, by notice in writing, of the overdue payment incurred by the borrower.

2.10 Where a credit provider has previously listed with a credit reporting agency an overdue payment or a serious credit infringement against an individual in respect of an amount outstanding, and the credit provider subsequently enters into an arrangement with the individual for the repayment of the outstanding amount, the credit provider may contact the credit reporting agency to advise that a note should be included in the individual's credit information file to the effect that an arrangement has been entered into with the individual for repayment of the outstanding amount.

History

Paragraph 2.10 - amendment issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

To another credit provider

56 A credit provider may report an overdue payment to another credit provider only where the individual's specific written agreement to the credit provider exchanging such information with the credit provider for this particular purpose has been obtained (unless the disclosure is for the purposes of the other credit provider assessing an application for credit which was at

first instance made orally to that other credit provider, in which case the agreement need not be in writing).

To a debt collection agent

57 A credit provider which has lawfully obtained a credit report for the purposes of collecting overdue payments in respect of either consumer or commercial credit provided by that credit provider may use the entire report only for 'in-house'debt collection activities. That is, where such activities are conducted by a debt recovery department established within the credit provider's organisation, and no outside debt collection agents are involved.

58 Where a credit provider wishes to commence recovery action in respect of either consumer or commercial credit provided and in so doing engages the services of a debt collection agent, the credit provider may provide the debt collection agent with only certain items of information derived from a credit report obtained from a credit reporting agency for this purpose.

59 Section 18N(1)(c) of the Act provides that the only information contained in, or derived from, a credit report issued by a credit reporting agency which a credit provider may pass to a debt collection agent for the purpose of collecting overdue consumer credit payments owed to that credit provider is the following information:

(a) identifying information as permitted to be kept on a credit information file; and

(b) information about overdue payments, other than overdue payments in respect of which a note has been attached to the individual's credit information file to the effect that he or she is no longer overdue in making a payment; and

(c) information about court judgments and bankruptcy orders, being items of publicly available information.

History

Paragraph 59 amended in March 1995.

59A Section 18(1)(ca) of the Act provides an equivalent to section 18N(1)(c), but in relation to commercial credit. It provides that the only information contained in, or derived from, a credit report issued by a credit reporting agency which a credit provider may pass to a debt collection agent engaged in the collection of overdue commercial credit is the following:

(a) identifying information as permitted to be kept on a credit information file; and

(b) information about court judgments and bankruptcy orders, being items of publicly available information.

History

Paragraph 59A added in March 1995.

60 Any other items of information in the possession of the credit provider which are not derived from a credit report issued by a credit reporting agency may also be given to a debt collection

agent, but only for the purposes of the agent collecting overdue payments owed to the credit provider.

Reporting serious credit infringements

61 Under s.6(1) of the Act a 'serious credit infringement' is defined to mean

an act done by a person:

(a) that involves fraudulently obtaining credit, or attempting fraudulently to obtain credit; or

(b) that involves fraudulently evading the person's obligations in relation to credit, or attempting fraudulently to evade those obligations; or

(c) that a reasonable person would consider indicates an intention, on the part of the first-mentioned person, no longer to comply with the first-mentioned person's obligations in relation to credit

62 Where a credit provider has reasonable grounds to believe that an individual to whom it has provided credit has committed a serious credit infringement, that credit provider may notify a credit reporting agency, another credit provider or a law enforcement authority of the infringement.

63 Section 18E(8) requires that a credit provider may not give personal information, including a report of a serious credit infringement, to a credit reporting agency unless the credit provider has reasonable grounds for believing that the information is correct. Further, before a credit provider reports a serious credit infringement to a credit reporting agency, the credit provider must have notified the individual of the disclosure to the agency. For loans which were taken out before 25 February 1992, the requirement to have first notified the individual before disclosure to an agency may be satisfied by writing to the individual at his or her last known address, notifying him or her of the disclosure prior to the disclosure to the agency.

64 A credit provider is not required to notify the individual concerned before reporting a serious credit infringement to another credit provider or to a law enforcement authority.

65 Caution should be exercised in reporting a serious credit infringement. Overdue payment alone is not a sufficient ground for reporting a serious credit infringement. Where a credit provider forms a view in accordance with paragraph (c) of the definition of 'serious credit infringement', a guide as to what could reasonably be considered an intention on the part of an individual no longer to comply with credit obligations may include:

- the individual has stopped making payments under a credit agreement/contract or breached it in some other *serious* way, and the credit provider has made reasonable efforts to contact the individual either in person or in writing, but has been unsuccessful in establishing contact, or

- the credit provider has made contact with the individual and the individual has unlawfully refused to meet his or her credit obligations by resuming payments, or

- the individual does not comply with the terms of a debt judgment.

2.11 Where a credit provider has reported a joint serious credit infringement in respect of an amount outstanding, and is subsequently satisfied that one of the individuals was released from the obligation to repay the outstanding amount by an order of a court or by legal agreement, the credit provider should advise the credit reporting agency that the serious credit infringement listing should be removed from that individual's credit information file.

66 A typical example of the above situation would be cases where a deserted spouse has been left with insufficient means to meet financial obligations incurred during the marriage. A serious credit infringement may have been listed against both spouses by a credit provider. A subsequent settlement is made by an order of the Family Court to absolve the deserted spouse from repayment obligations. Where the credit provider is satisfied that such an order exists, the credit provider should advise the credit reporting agency that the serious credit infringement listing should be removed from the deserted spouse's credit information file.

67 Credit providers should note that credit reporting agencies are required, under provision 1.18 of the Code of Conduct, to report annually to the Privacy Commissioner listings made by credit providers against individuals of serious credit infringements where such listings had not been previously listed by the credit providers concerned as overdue payments.

Disclosure between credit providers

2.12 Before a credit provider obtains from another credit provider a report about an individual's consumer credit worthiness, the credit provider obtaining the report must be satisfied that the individual has given his or her specific written agreement to the disclosure (unless the report is requested for the purpose of assessing an application for either consumer credit or commercial credit that was at first made orally, in which case the agreement need not be in writing).

68 Where a credit provider has received an oral agreement to the disclosure of credit information to another credit provider in the circumstance described in provision 2.12 of the Code, and the individual subsequently puts the application in writing, the credit provider must at that point obtain the agreement, in writing, from the individual for any subsequent disclosures.

2.13 A credit provider which has been requested by another credit provider to disclose to the latter information about an individual's consumer credit worthiness should be satisfied that the second credit provider has obtained the individual's specific agreement to the disclosure. If the individual's specific agreement has <u>not</u> been obtained, the first credit provider may not, unless it had itself obtained the individual's specific agreement to the disclosure for the particular purpose, disclose the personal information to the second credit provider.

69 A credit provider should ensure that personal information relating to an individual's credit worthiness is not disclosed to any person unless that person is permitted under the Act to be given the information.

2.14 Whenever a credit provider obtains from another credit provider a report about an individual's consumer credit worthiness, the credit provider requesting the report shall make a record of:

(a) the date on which the report was obtained;

(b) the name of the credit provider from whom the report was obtained;
(c) a brief description of the contents of the report; and
(d) where the individual's specific agreement to the disclosure is required, a note to the effect that the individual's specific agreement to the disclosure has been furnished.

2.14A A record which is made by a credit provider in accordance with paragraph 2.14 should be retained for a minimum period of 12 months from the date on which it is made.

History

Paragraph 2.14A is a new paragraph and was issued by the Privacy Commissioner (Special Gazette No. S 82, Thursday, 9 March 1995).

70 A credit provider receiving from another credit provider personal information relating to an individual's credit worthiness should restrict the use of the personal information to the particular purpose for which the specific agreement of the individual has been obtained.

2.15 Where a credit provider has obtained from another credit provider information about an individual's credit worthiness, and subsequently becomes aware that the report given by the other credit provider was mistaken because it related to an individual other than the one to whom the enquiry related, the first credit provider must:

(a) advise the second credit provider which gave the report of the mistake as to identity; and

(b) destroy the report.

2.16 A credit provider which is a bank may not disclose to another bank a 'banker's opinion' relating to an individual's consumer credit worthiness, unless that individual's specific agreement to the disclosure of such information for the particular purpose has been obtained.

71 The provision by banks of opinions relating to an individual's *commercial* credit worthiness is unaffected by the provisions of the Code of Conduct or the Privacy Act.

Disclosures to agents of individuals

2.17 Where a credit provider has been requested by an agent of an individual to disclose to the agent personal information relating to the individual's credit arrangements with the credit provider, the credit provider should satisfy itself that the agent is acting under the specific written agreement of the individual before disclosing the information. Where the credit provider is not satisfied that a written agreement exists, the credit provider shall request that the agent produce evidence of the specific written agreement before making the disclosure.

2.18 A credit provider may furnish to an individual's authorised agent only information permitted by the scope of the individual's written agreement.

As a *guide* only some suggested forms of wording to be used by agents when obtaining credit information from credit providers are provided below.

72 In the case of credit providers which are retailers, it is anticipated that most requests for information about an individual's account are made by family members of the individual concerned, and that the information sought relates to the current balance of the account and/or the credit limit.

Appointment of agent

Access to credit provider records Authority for agent to obtain access to information about an individual held by a credit provider (*Privacy Act 1988*)

1. Financial counsellors

I/we [name/s] authorise [counsellor's name] or other persons employed by [counselling agency's name] to:

action
act as my/our agent in seeking access to consumer credit information held by [name of credit provider] about me/us.

limit of authority
This authority continues until the matter which is the subject of the query is resolved, or until I/we otherwise revoke this authority.

This authority only applies to enquiries made by [counsellor's name] or persons employed by [counselling agency's name] in connection with
- an application, or proposed application, by me/us for credit
- my/our having sought advice in relation to existing credit.

(Signed and dated by the parties).

Others (e.g. Accountants, Solicitors or Financial advisers)

I/we [name/s] authorise [name of agent] to:

action
Act as my/our agent in seeking access to consumer credit information held by [name of credit provider] about me/us.

limit of authority
This authority continues until the matter which is the subject of the query is resolved, or until I/we otherwise revoke this authority.

This authority only applies to enquiries made by [agent's name] in connection with:
- an application, or proposed application, by me/us for credit
- my/our having sought advice in relation to existing or previous credit.

(Signed and dated by the parties).

Other disclosures

73 A credit provider must not disclose personal information which has any bearing on an individual's credit worthiness unless the disclosure of personal information is permitted under s.18N of the Act. It is important to note that the type of personal information which is referred to as a 'report' and subject to the limitation on disclosure under this section includes:

(a) a credit report; or

(b) any other record or information (where it has been prepared by or for a corporation), whether in a written, oral or other form, that has any bearing on an individual's credit worthiness, credit standing, credit history or credit capacity;

but does not include information in which the only personal information relating to individuals is publicly available information (see s.18N(9)).

74 Section 18N of the Act governs the limits on disclosure by credit providers of personal information contained in reports relating to an individual's credit worthiness. The following disclosures are permitted.

- To a **credit reporting agency** either to create or to add to information in a credit information file maintained by the credit reporting agency about the individual.

- To **another credit provider**, where the individual concerned has consented to the disclosure for the particular purpose.

- To a **debt collection agency** engaged in the collection of overdue consumer credit, provided that the entire credit report obtained from a credit reporting agency is not disclosed and that disclosure of information derived from a credit report is limited to identifying information, information about overdue payments, and information relating to court judgments and bankruptcy orders. (An equivalent provision relates to debt collectors engaged in the collection of overdue commercial credit, except that the disclosure of information derived from a credit report is limited to identifying information, and information about court judgments and bankruptcy orders.)

- To a **person who has provided a guarantee or security** for a loan to the individual, and
  - the individual has specifically agreed to the disclosure; or
  - the guarantee was given before 7 December 1992 and the individual was given prior notification that such disclosure may take place for the purpose of assessing the individual's liability under the guarantee or security. (Notification may be satisfied by writing to the individual's last known address.)

- To a person considering whether to act as **guarantor** for a loan given or proposed to be given by the credit provider, where the individual concerned has consented to such disclosure.

- To the **guarantor** of a loan provided by the credit provider to the individual concerned, and for any purpose related to the enforcement of the guarantee.

- To a **mortgage insurer** for specified purposes connected with the provisions of mortgage insurance to the credit provider, including for any purpose arising under a contract for mortgage insurance that has been entered into between the credit provider and the mortgage insurer.

- To a person or body generally recognised in the community as a **person or body established for the purpose of settling disputes between credit providers and individuals** (e.g. the Banking Industry Ombudsman) and is disclosed for the purpose of settling a dispute between the credit provider and the individual concerned.

- To a **State or Territory authority** whose functions include giving assistance that facilitates the giving of mortgage credit to individuals and is disclosed for the purpose of enabling the authority to determine the extent of assistance it will give in relation to the giving of mortgage credit to the individual concerned.

- To a **Minister, Department or authority, of a State or Territory,** whose functions or responsibilities include the management or supervision of schemes or arrangements under which assistance is given (directly or indirectly) that facilitates the giving of mortgage credit to individuals; and for the purpose of enabling the Minister, Department or authority to manage or supervise any such scheme or arrangement.

- To a **person supplying goods or services** for the purpose of enabling that person to decide whether to accept payment by means of credit card or electronic transfer of funds and does not contain any information derived from a credit report other than identifying information and information as to whether the individual has a line of credit with the credit provider, or sufficient funds deposited with the credit provider to meet the payment concerned. This refers to the process commonly known as merchant authorisations.

- To persons acting in the capacity of **settlement agents**, or persons considering taking an assignment of, or discharging on the individual's behalf a debt owed by the individual to the credit provider and does not contain any information derived from a credit report other than identifying information and information as to the amount of the debt, or the amount required to be paid in order to discharge the debt. This refers to the situation where a 'pay-out' figure is sought by the settlement agent from the credit provider.

- To **the individual concerned**, or a person *other* than a credit provider, mortgage insurer or trade insurer, who has been authorised in writing by the individual to seek access to the report or information. An example of such a disclosure would be where the disclosure is to a financial advisor or a debt counsellor who has been authorised in writing by the individual to approach the credit provider on the individual's behalf to obtain information as to the individual's overdue payments for the purposes of assisting the individual to renegotiate his or her loan with the credit provider.

- To a **corporation that is related** to the credit provider, but only where the credit provider itself is a corporation.

- To a **corporation** (including the professional legal or professional financial advisers of that corporation) that proposes to use the report or information for considering whether to:

  - accept an assignment of debt owed to the credit provider
  - accept a debt owed to the credit provider as security for a loan to the credit provider
  - purchase an interest in the credit provider

  and, additionally, for a use in connection with exercising rights arising from any acceptance or purchase of a kind referred to above.

- To a **person who manages loans** made by the credit provider, for use in managing those loans.

- Where the disclosure is **required or authorised by or under law**. This applies to both statute law and common law. It is not limited to Commonwealth law but applies also to state law, and laws of other Australian jurisdictions to which credit providers may be subject. It also includes statutory provisions authorising warrants and other instruments for searching premises, obtaining information etc.

- To **another credit provider** or to a **law enforcement authority** in connection with a serious credit infringement which the credit provider believes on reasonable grounds the individual has committed.

- To **another credit provider** where both credit providers have mortgage credit in relation to the same property, and at least one of the mortgagees is 60 days in arrears, for the purpose of deciding what action to take in respect of the overdue payments.

- To a person who is **authorised by the individual** to operate an account maintained with the credit provider, and the information is limited to basic transaction information, or is consistent with the ordinary operation of the account.

History

Paragraph 74 updated in March 1995.

2.19 Where a credit provider provides a report about an individual's credit worthiness to an authorised recipient other than a credit provider, the credit provider should, to the extent practicable, make a record of the disclosure.

75 This provision is designed to encourage the keeping of a record of disclosures by credit providers under s.18N. In the case of merchant authorisation, the provision by a credit provider of a reference number to the merchant is considered to be adequate to meet this requirement.

Access by an individual to a credit report

2.20 A credit provider must ensure that

(a) it has information available to advise individuals about the procedures by which access can be obtained to credit reports held by the credit provider; and

(b) adequate facilities are available for responding to requests for access to credit reports in its possession.

2.21 A credit provider must, when so requested in writing by an individual, attempt to give that individual access to any of his or her credit reports which are in the possession of the credit provider within 10 working days,and in anyevent, must give access within 30 calendar days of receipt of the individual's request.

2.22 Where an individual has requested access to a credit report which he or she believes may be in the possession of a credit provider to whom the individual has applied for credit, and the credit provider no longer possesses the report, the credit provider must advise the individual to contact the credit reporting agency from which a copy of the credit information file may be obtained.

76 When a credit provider gives an individual access to a credit report in its possession, the credit provider must advise the individual that, in order to ensure he or she has access to the most up-to-date information about him or herself, access should additionally be obtained to the individual's credit information file or any credit reports relating to the individual held by the credit reporting agency which issued the credit report being sought. This is designed to minimise any misunderstandings which may arise when an individual is provided with access to a credit report which, although accurate at the time of receipt by the credit provider, may be out-of-date at the time access is given by the credit provider to the individual.

Requests for amendment to a credit report

77 Section 18J(1) requires credit providers to take reasonable steps to make appropriate amendments to ensure that personal information contained in credit reports in their possession is 'accurate, up-to-date, complete and not misleading'.

78 Where a credit provider retains a credit report relating to an individual for the purposes of building scorecards, the credit provider may retain the credit report in its original state. Further, where the credit provider retains a credit report for archival purposes only (i.e. not to be referred to for fresh decision-making purposes) the credit provider may keep the report in its original state. In other cases, where the credit report is retained for other loan administrative purposes, the credit provider must take reasonable steps to ensure that the credit report is accurate, up-to-date, complete and not misleading.

79 A credit provider may be considered to have taken reasonable steps to amend personal information contained in credit reports issued by a credit reporting agency where the credit provider refers an individual's request for amendment to the credit reporting agency which issued the credit report.

2.23 Where a credit provider receives a request from an individual for an amendment of, or for the inclusion of a statement in, a credit report issued by a credit reporting agency, the credit provider should, within 10 working days of receipt of the request:

(a) refer the request to the relevant credit reporting agency, incorporating any opinion the credit provider has as to the appropriateness of the amendment sought;

(b) inform the individual, in writing, of the referral, including the name and address of the credit reporting agency; and

(c) include in any credit reports in the possession of the credit provider a note to the effect that information on the individual's credit report is subject to a request for amendment by the individual.

Part 3 Dispute settling procedures relating to credit reporting

General requirements

3.1 Credit reporting agencies and credit providers must handle credit reporting disputes in a fair, efficient and timely manner.

3.2 Where a credit reporting agency establishes that it is unable to resolve a dispute it must immediately inform the individual concerned that it is unable to resolve the dispute and that the individual may complain to the Privacy Commissioner.

77B Credit reporting agencies and credit providers should ensure that adequate facilities are available to enable them to deal with enquiries, both in writing and over the telephone and in a face-to-face setting, from the general public about their dispute settling procedures.

78B Credit reporting agencies and credit providers should nominate an officer as the first point of contact for the handling of disputes. Where the credit reporting agency or credit provider operates in more than one location, additional contact officers may be required, or procedures should be in place enabling referral of disputes to the nominated officer.

79B A credit provider may be considered to have taken reasonable steps to establish procedures to deal with a request for dispute resolution concerning the contents of a credit report where it refers an individual's request to the credit reporting agency which issued the credit report.

3.3 A credit provider should refer to a credit reporting agency for resolution a dispute between that credit provider and an individual where the dispute concerns the contents of a credit report issued by the credit reporting agency.

3.4 In referring a dispute to a credit reporting agency, a credit provider must inform the individual of the referral and must provide the individual with the name and address of the credit reporting agency.

3.5 Upon receipt, from a credit provider, of a referral of a request for dispute resolution, a credit reporting agency must handle the request as if the request had been made directly to the agency by the individual concerned.

3.6 Where a credit reporting agency is unable to clearly establish the nature of the dispute which has been referred to it for resolution by a credit provider, the agency may write to the individual concerned asking for further information, before proceeding with the request.

3.7 Where a credit reporting agency establishes that it is unable to resolve a dispute it must immediately inform the individual concerned that it is unable to resolve the dispute and that the individual may complain to the Privacy Commissioner.

Amendment of a credit information file or a credit report

80 Where a credit reporting agency receives a request from an individual for an amendment to personal information contained in his or her credit information file or credit report, the credit reporting agency should take the following steps:

(a) place a note of the disputed entry on the credit information file or credit report until the matter is resolved; and

(b) commence an investigation.

3.8 Where an individual has requested an amendment to personal information included in a credit information file or credit report, and the credit reporting agency establishes that an amendment to personal information contained in the credit information file or

credit report is necessary, the credit reporting agency must, as soon as practicable, but in any event, within 5 working days, amend the file or report.

81 Upon being informed that an individual is no longer overdue in making a payment or that he or she disputes the overdue payment, a credit reporting agency must, in accordance with s.18F(4), add to a credit information file a note to that effect. Code provision 3.9 sets the time-limit for compliance with this requirement

3.9 Where a credit reporting agency is informed that an individual is no longer overdue in making a payment or that the individual contends that he or she is not overdue in making the payment, the credit reporting agency must, within 5 working days of being so informed, add to the credit information file or credit report a note to that effect.

82 Where an amendment to personal identifiers is required, the credit reporting agency may require evidence from the individual to verify that the proposed amendments are accurate before making the amendment.

Inclusion of statements

3.10 Where a credit reporting agency does not amend a disputed entry in accordance with an individual's request, the credit reporting agency must, within 30 days of having received the individual's request, inform the individual in writing of:

(a) the reason(s) for the requested amendment not having been made;

(b) his or her right, under s.18J(2) of the Privacy Act, to have a statement included in his or her credit information file or credit report, containing details of the amendment sought; and

(c) his or her right to complain to the Privacy Commissioner if dissatisfied with the action of the credit reporting agency.

3.11 Where a credit reporting agency is provided by an individual with a statement for inclusion in his or her credit information file or credit report, and the credit reporting agency considers the statement unduly long, the credit reporting agency may, within 30 days, refer the statement to the Privacy Commissioner for a reduction as considered appropriate.

3.12 In referring the statement, the credit reporting agency may include a suggested shortened version prepared by the credit reporting agency for consideration by the Privacy Commissioner. A copy of the suggested shortened version must, at the same time, be sent to the individual concerned.

3.13 A credit reporting agency must, where so requested by an individual, remove from his or her credit information file or credit report any statement previously provided by the individual for inclusion in his or her credit information file or credit report.

83 Where an individual is not able to provide to the credit reporting agency a sufficiently clear written explanation of the amendment sought, the credit reporting agency should offer to assist the individual to provide a written statement of the amendment sought.

Advice of dispute outcome

3.14 Where an amendment has been made, or a statement provided by the individual has been included by a credit reporting agency in the individual's credit information file or credit report, the credit reporting agency shall, within 14 days of having made the amendment or included the statement:

(a) provide the individual with a copy of the amended credit information file or credit report; and

(b) advise the individual in writing of his or her right to complain to the Privacy Commissioner if he or she is dissatisfied with the action taken by the credit reporting agency.

3.15 Where, as a result of a dispute having been resolved, a credit reporting agency amends information from a credit information file or credit report and that information is of a type detailed in sub-paragraphs 18E(1)(b)(i), (v), (vi), (vii), (viii), (ix) or (x) of the Act, the credit reporting agency must, within 14 days of amending the information:

(a) provide the individual with a copy of the amended credit information file or credit report;

(b) advise the individual, in writing, that he or she may nominate any person:

(i) to whom information from the credit information file or credit report had been given during the previous three months; and
(ii) whom the individual wishes to be notified of the changes made to the file or report;

(c) notify, within 30 days, such persons in writing of the amendment made to the credit information file or credit report; and

(d) advise the individual in writing of his or her right to complain to the Privacy Commissioner, if dissatisfied with the action taken by the credit reporting agency.

Other credit reporting disputes

3.16 Where a credit reporting agency or a credit provider receives a request in writing from an individual seeking resolution of a dispute concerning an act or practice of the credit reporting agency or credit provider in relation to credit reporting, the credit reporting agency or credit provider should, within 30 days of receipt of the request:

(a) investigate the matter;

(b) provide the individual with such response, in writing, as considered appropriate by the credit reporting agency or credit provider; and

(c) advise the individual of his or her right to complain to the Privacy Commissioner if dissatisfied with the action taken by the credit reporting agency or credit provider.

Maintenance of records

84 Credit reporting agencies and credit providers should maintain records of disputes handled by them for at least 12 months after the individual has been notified of the outcome of the dispute. Such a record should contain:

- correspondence and documentary evidence relating to the dispute
- records of interviews and telephone conversations
- details of the action taken and reasons for the action.

85 Credit reporting agencies and credit providers should maintain statistics in relation to disputes handled to assist the Privacy Commissioner in carrying out his audit responsibilities. The statistics should be provided to the Privacy Commissioner upon request.

Investigation of complaints by the Privacy Commissioner

86 Consumers with complaints should take them up in the first instance with the complaints section of the bank, finance company or other credit provider with whom they have dealt. Where appropriate, existing dispute settling procedures within the relevant industry should be considered before engaging the formal requirements of the Code of Conduct. For example, where the credit provider is a bank, the Banking Industry Ombudsman will often be an appropriate first stage of settlement.

87 Similarly, where a complaint involves a credit reporting agency, the consumer should first take up the complaint with the complaint handling area of the credit reporting agency concerned.

3.16 The Privacy Commissioner may decide not to investigate a complaint about a credit reporting dispute if the Commissioner considers that:

(a) the dispute should first be dealt with by a credit reporting agency or credit provider; or

(b) the dispute is being, or has been, dealt with adequately by the credit reporting agency or credit provider.

88 In addition to the circumstances set out above, section 41 of the Act sets out a range of other circumstances in which the Commissioner may decide not to investigate a complaint.

History

Paragraph 88 added in March 1995.

3.18 Where the Privacy Commissioner decides not to investigate an individual's complaint about a credit reporting dispute, the Commissioner shall advise the individual of the reasons for his or her decision not to investigate the complaint.

Part 4 Other matters

Staff training

4.1 Credit reporting agencies, credit providers and others lawfully involved in the handling of personal information contained in credit information files and credit reports shall take such steps as are reasonable in the circumstances to inform those staff whose duties involve handling of personal information included in credit information files or credit reports of the requirements of the Act and the Code of Conduct, and in particular:

(a) the circumstances in which personal information included in credit information files and credit reports may be accessed, used or disclosed;

(b) the procedures to be followed in response to a request by an individual for access to, or amendment of, personal information included in a credit information file or credit report;

(c) the procedures for handling disputes relating to credit reporting; and

(d) the circumstances in which personal information relating to an individual's credit worthiness may be disclosed by a credit provider.

Modifying time limits

4.2 The time limits set out in Parts 1, 2 and 3 of this Code of Conduct and affecting acts and practices of credit reporting agencies and credit providers may be varied with the approval of the Privacy Commissioner where the parties concerned are unable to comply with the specified time limits due to circumstances such as technological failures or due to other practical or unforeseen difficulties.

Review of the operation of the code of conduct

4.3 The Privacy Commissioner shall review the Code of Conduct after 18 months of its operation, and may, following consultation with affected parties, make amendments to the Code as considered necessary.

Terms used in this code

4.4 Where a term used in this Code of Conduct is defined in the Privacy Act, the term has the meaning given to it by the Privacy Act.

Appendices

1. Determinations and reasons for making the determinations

1.1 Determination No 1 of 1993, made under s.11B(1)(b)(v)(B) concerning classes of credit provider

1.2 Determination 1991 No.1, made under s.11B(1)(b)(v)(B) concerning classes of credit provider

1.3 Determination No.1 of 1995 made under s.11B(1)(b)(v)(B) concerning assignees

1.4 Determination 1991 No. 2, made under s. 18E(3) on identifying particulars

1.5 Determination 1992 No. 1, made under s. 18K(3)(b) on disclosure of non-permitted information by Credit Reference Association of Australia

1.6 Determination 1992 No. 2, made under s. 18K(3)(b) on disclosure of non-permitted information by the Tasmanian Collection Service

2. Amendments to the code of conduct and explanatory notes - reasons for the amendments.

3. Participants in the consultative group on the credit reporting code of conduct

Appendix 1.1

DETERMINATION NO. 1 OF 1993

PRIVACY ACT 1988, s.11B(1)(b)(v)(B) concerning classes of credit providers

Under s.11B(1)(b)(v)(B) of the Privacy Act 1988, I DETERMINE that:

1. All corporations belonging to the following classes are to be regarded as credit providers for the purposes of the Act:

   - a corporation where, in relation to a transaction, it is considering providing or has provided a loan in respect of the provision of goods or services on terms which allow the deferral of payment, in full or in part, for at least 7 days; or

   - a corporation engaged in the hiring, leasing or renting of goods, where, in relation to a transaction, no amount, or an amount less than the value of the goods, is paid as deposit for return of the goods, and the relevant arrangement is one of at least 7 days' duration.

2. This determination affects those businesses which are not already credit providers by virtue of paragraphs (a) or (b)(i) to (iv) of s.11B(1) of the Act.

3. This determination represents a continuation of Determination No.1 of 1991 which expired on 25 August 1993.

4. This determination shall take effect on 26 August 1993 and shall lapse, unless continued by a further determination of the Privacy Commissioner, on 25 August 1996.

Dated 16 August 1993

KEVIN PATRICK O'CONNOR
Privacy Commissioner

DETERMINATION NO.1 of 1993 UNDER s.11B(1)(b)(v)(B) ON CLASSES OF CREDIT PROVIDERS

REASONS FOR DETERMINATION

Background

On 11 September 1991 I issued Determination No.1 of 1991 under section 11B(1)(b)(v)(B) of the Privacy Act which deals with the definition of "credit provider" for the purposes of the Act. Under that determination all corporations belonging to certain classes were to be regarded as credit providers. At the same time I issued a statement of reasons for the determination.

Consultation

Determination No.1 of 1991 is due to lapse on 25 August 1993 unless continued by a further determination. As part of my review of Determination No.1 of 1991 I undertook a process of consultation involving discussions with the Credit Reporting Consultative Group, which consists of representatives of key industry and consumer organisations. I also advertised the review of the determination in the national press on 18 July 1993 and invited wider comment, especially as to any practical difficulties with the determination and the need to vary it. This process of consultation indicated support for the determination in its present form. In addition, I believe that the reasons I gave for the earlier determination continue to apply, and support its continued existence. Accordingly, I have decided to reissue the determination without amendment, as Determination No.1 of 1993.

Duration and Further Review

As to the life of the determination, I have taken the view that it should not be open-ended, but should be the subject of further review once there has been enough sufficient experience of its continued operation. I consider that a period of 3 years commencing on 26 August 1993 is appropriate for this purpose. I have therefore included in the determination that it is to lapse unless continued by a further determination on 25 August 1996. In the meantime, I will monitor the operation of the determination in order to determine whether it should continue after 25 August 1996.

KEVIN O'CONNOR
Privacy Commissioner

August 1993

Appendix 1.2

DETERMINATION 1991 NO. 1

PRIVACY ACT 1988, s.11B(1)(b)(v)(B) concerning classes of credit providers.

Under s.11B(1)(b)(v)(B) of the Privacy Act 1988, I DETERMINE that:

1. All corporations belonging to the following classes are to be regarded as credit providers for the purposes of the Act:

   - a corporation where, in relation to a transaction, it is considering providing or has provided a loan in respect of the provision of goods or services on terms which allow the deferral of payment, in full or in part, for at least 7 days; or

   - a corporation engaged in the hiring, leasing or renting of goods, where, in relation to a transaction, no amount, or an amount less than the value of the goods, is paid as deposit for return of the goods, and the relevant arrangement is one of at least 7 days' duration.

2. This determination only affects those businesses which are not already credit providers by virtue of paragraphs (a) or (b)(i) to (iv) of s.11B(1) of the Act.

3. This determination shall take effect on 24 September 1991 and shall lapse, unless continued by a further determination of the Privacy Commissioner, on 25 August 1993.

Dated 11 September 1991

KEVIN PATRICK O'CONNOR
Privacy Commissioner

DETERMINATION 1991 NO. 1 UNDER s.11B(1)(b)(v)(B) ON CLASSES OF CREDIT PROVIDERS:

REASONS FOR DETERMINATION

Background

1. The Privacy Act 1988 under section 11B(1) lists a range of categories of businesses which are defined as ‘credit providers’ for the purposes of the Act. The principal categories are as follows:

   "(a) a bank; or
   (b) a corporation (other than an agency):
      (i) that is a building society; or
      (ii) that is a credit union; or
      (iii) a substantial part of whose business or undertaking is the provision of loans (including the provision of loans by issuing credit cards); or
      (iv) that carries on a retail business in the course of which it issues credit cards to members of the public in connection with the sale of goods, or the supply of services, by the corporation".

These categories seek to cover all major participants in the credit industry.

2. However a large number of businesses which have an occasional or minor involvement in the provision of credit can only continue to lawfully participate in the consumer credit reference system if they are included within a further category, being category (v) of the list in paragraph (b). The scope of category (v) is a matter for determination by the Privacy Commissioner.

3. Category (v) reads as follows:

> "[a corporation]
> (i) that:
>
> (A) carries on a business or undertaking involving the provision of loans (including the provision of loans by issuing credit cards); and
>
> (B) is included in a class of corporations determined by the Commissioner to be credit providers for the purposes of this Act".

General Approach

4. In preparing the determination, I have sought to ensure that businesses which have a legitimate need for access to the credit referencing system and which genuinely provide credit retain access to it. I therefore consider that, in keeping with the policy intention behind the legislation, my determination should seek to declare as credit providers as wide a range of businesses as is both practicable and permissible whose need to access consumer credit information is similar to that of businesses automatically classed as credit providers under the principal categories of s.11B of the Act.

Business Significance of Definition of `Credit Provider'

5. My consultations with the credit industry highlighted that the scheme of legislation is such that the definition of "credit provider" is critical to the lawfulness of a range of business activities. Only a "credit provider", as defined by s.11B, can:

- give information to, or receive from, a consumer credit reporting agency a credit report on consumer credit transactions
- exchange consumer credit information with other credit providers.

6. Moreover, a trader who gives trade credit must fall within the definition of "credit provider" in order to access consumer credit history. Cross-access of this kind is recognised by the Act as an activity which should be permitted subject to notice being given to, and permission obtained from, the customer. It has, therefore, been necessary for me, in forming a view as to what the final category should embrace, to take into account credit-giving practices among commercial traders.

Wide Variety of Credit Arrangements

7. While the credit arrangements most typically affected by the new law are long-term loans payable by instalments and permanent credit-lines provided by many retail stores and credit card issuers, I am satisfied that the credit referencing system has also been routinely used by many credit providers involved in quite short-term arrangements, for example 7 and 30 day

accounts. The areas of trade where such short credit terms exist include retailers, providers of professional services and wholesale distributors and suppliers. Accordingly, my determination under category (v) seeks to cover these sectors of credit-granting, thereby placing them on the same footing under the law as the categories of persons and organisations which are already automatically designated as credit providers by the Act.

Seven-Day Criterion

8. In my draft of this determination, issued for public comment on 23 July 1991, I proposed a 14 day benchmark. I am satisfied in light of a number of industry submissions received (which endorsed the general thrust of my approach) that a 7 day benchmark would be more appropriate. In that regard I note that:

- There appears to be a large number of situations involving consumer credit where short-term credit on 7 day terms is given.
- Those arrangements often involve small businesses with a need for speedy cash flows or businesses which have a high volume of small amount transactions where there is a custom of allowing payment on account.
- Setting a limit based on a fixed number of days will ensure that there is a practical and reasonably objective criterion available to credit reporting agencies and credit providers to use in making sure that they are dealing with an authorised party when transmitting regulated credit information.

Hiring and Leasing Arrangements

9. It was also drawn to my attention that the draft determination did not address the position of hiring and leasing arrangements where, typically, possession of a valuable item is given to a customer subject to no deposit or one which is well below the actual value of the item. This type of situation is recognised in the definition section of the Act as one of credit provision.

Consequently, I have also determined businesses to be credit providers in relation to transactions where they hire, lease or rent goods for periods of 7 days or more without requiring a deposit equal to or greater than the value of the goods.

Privacy Concerns

10. Concern was expressed by two bodies with an interest in privacy protection (the New South Wales Privacy Committee and the Australian Privacy Foundation) that a broad determination of this sort may allow businesses with only minor involvement in the provision of credit to gain access to credit reports and information, and that this might undermine the intention of the legislation that information of this sort should, in general, only be used in connection with the provision of loans. On the other hand, the view was put to me in the majority of submissions I received on the matter that short-term credit arrangements were common and gave rise to a legitimate need for credit information. I am satisfied that it was not intended by the Government or the Parliament that this sector of legitimate credit-granting be denied access to the credit referencing system.

11. In assessing the risk that this determination will undermine consumer expectations by allowing "back-door" access to credit information, it is important to emphasise that the determination *only* permits a business to use the credit referencing system in connection with *legitimate credit transactions*. This determination does not allow businesses to gain access to the system for purposes unconnected with credit decision making, or to subsequently use

or disclose the information obtained except in the strictly defined circumstances laid down by the Act. Individual complaints and the exercise by me of my audit powers both offer ways for any misconduct to be brought to light. I would expect credit reporting agencies to give significant weight to any recommendation I might make for the removal of an errant member from their system. In addition, significant criminal penalties attach to wilful breach of the legislation.

12. The submissions objecting to the scope of the determination do not give sufficient recognition, I consider, to the diversity of situations to which "credit provider" status is essential. While in 1989 when this legislation was first mooted, the principal role of the definition of "credit provider" was to set a control on membership of credit reporting agencies, it has been the case since the changes to the bill in 1990 and subsequent amendments, that this definition is critical to all aspects of the operation of the scheme both at credit reporting agency level and at the credit provider-to-credit provider level.

Impracticability of `List' Approach to Defining Classes of Credit Providers

13. In preparing this determination, I examined the categories of current membership of credit reporting agencies. I noted that most typically members are involved in long-term consumer financing. If the only effect of this determination was to identify which credit providers could access information held by a credit reporting agency, then a more restrictive determination could possibly have been adopted. However, as I have noted, the scheme of this legislation also regulates credit provider-to-credit provider exchanges of consumer credit information. It seems reasonably clear that a not insignificant number of businesses rely on referencing of this kind, rather than using a central credit bureau. This method of checking tends, understandably, to be quite common among occasional credit givers and those involved in short-term credit arrangements. This determination ensures that the operation of this sector of credit-granting is not impeded.

14. I did consider and rejected a form of determination which listed - trade sector by trade sector - classes of corporations which might be treated as credit providers. In the end I reached the view that *all* "classes of corporations" should have access subject to an objectively assessable criterion based on trading terms practices. This approach has been criticised by the Australian Privacy Foundation as an abdication of discretion. This view fails to take account of the practical difficulties which surround the administration of a trade sector-by-trade sector approach. Inevitably a list-approach would produce its own series of arguments about definition (eg. what is meant by "suppliers of home furnishings", etc.); and tend to lag behind trends in commerce, giving rise to frequent requests for amendment. A list-approach would, I consider, be likely to promote a climate of disrespect for the law, with constant protests from those in business who provide some credit but are not covered by such a determination.

Relevance of Determination to Non-Corporation Traders

15. In making the determination I also had regard to its "flow-on" effect for small businesses which are not run as corporations, eg. sole traders and partnerships. Section 11B(1)(c) treats as a credit provider

"a person:

(i) who is not a corporation; and

(ii) in relation to whom paragraph (b) would apply if the person were a corporation".

My determination under s.11B(1)(b)(v) should ensure that an equally broad range of non-corporation traders will continue to have a right to participate in the consumer credit referencing system, i.e. any trader who gives 7 day credit terms (or more).

Sanctions against Abuse of Credit Provider Status

16. In seeking to bring within the scheme of the Act a wide range of appropriate business settings, I have been mindful of the several sanctions which can apply if a business improperly passes itself off as a credit provider so as to obtain consumer credit report information. These include:

- criminal penalties;
- determinations by the Privacy Commissioner which could involve payment of monetary compensation to a harmed individual; and
- exclusion from the system by regulation.

Clause 2 of Determination

17. A view was put to me during the consultation process that the scope of the determination might be seen as unduly restrictive and might have the effect of redefining the meaning of "credit provider" as provided for under paragraphs (a) or (b)(i)-(iv) of section 11B(1) of the Act. This concern was, I feel, unnecessary, as the intention of Parliament seems clearly to me to be that my determination under s.11B(1)(b)(v) would only cover those businesses which do not fall within one of the categories listed in paragraphs (b)(i)-(iv). However, in order to put the matter beyond any doubt, I have sought to clarify the scope of the determination by indicating in clause 2 of the determination that businesses which are considered to be credit providers by virtue of paragraphs (a) or (b)(i)-(iv) of section 11B(1) will not be affected by the terms of my determination.

Clause 3 of Determination

18. As to the life of the determination, I have taken the view that it should not be open-ended, but should be the subject of review once there has been enough experience of its operation to indicate whether this relatively permissive approach is leading to abuse. I acknowledge that there will be a settling-in period for the industry while it adapts to the new regulation of its activities, but consider that a period of 18 months from the date of commencement of the major provisions of the Act, namely 25 February 1992, should be sufficient to assess how the determination is operating beyond the period of transition. I have accordingly included in the determination that it is to lapse unless continued by a further determination on 25 August 1993. In the meantime I will closely monitor the operation of the determination, and will review its operation in order to determine whether it should continue after 25 August 1993.

KEVIN O'CONNOR
Privacy Commissioner

September 1991

Appendix 1.3

DETERMINATION NO. 1 OF 1995

PRIVACY ACT 1988, S.11B(1)(b)(v)(B) concerning assignees

Under s.11B(1)(b)(v)(B) of the Privacy Act 1988, I DETERMINE that:

1. A corporation which acquires the rights of a credit provider with respect to the repayment of a loan (whether by assignment, subrogation or other means) shall, in relation to that loan, be regarded as the credit provider for the purposes of the Act.

2. A corporation deemed to be a credit provider by virtue of paragraph 1, above, shall, for the purposes of the Act, be regarded as the credit provider to whom application for the loan was made, or who provided the loan.

3. This determination relates to those corporations which are not already credit providers by virtue of paragraphs (a) or (b)(i) to (v) of s. 11B(1) of the Act.

4. This determination shall take effect on 24 February 1995 and shall lapse, unless continued by a further determination of the Privacy Commissioner, on 24 February 1997.

Dated 9 February 1995

KEVIN PATRICK O'CONNOR
Privacy Commissioner

DETERMINATION NO.1 OF 1995 UNDER S.11B(1)(b)(v)(B) CONCERNING ASSIGNEES

REASONS FOR DETERMINATION

Background

On 25 February 1992 Part IIIA of the Privacy Act 1988 came into force. Part IIIA governs the use and disclosure of consumer credit reports and consumer credit information by credit providers and credit reporting agencies.

The definition of "credit provider" is contained in section 11B(1) of the Act. Section 11B(1) lists various categories of businesses which are defined as credit providers for the purposes of the Act. Included in the definition are those corporations for whom a substantial part of their business or undertaking is the provision of loans. The definition of credit provider is significant because it is generally only businesses which are credit providers that are permitted access to consumer credit reports in accordance with the requirements of the Privacy Act.

I have a power under section 11B(1)(b)(v)(B) of the Act to determine certain classes of corporations to be credit providers for the purposes of the Act. Exercising this power, on 11 September 1991 I issued a determination providing for a specific category of businesses to be classified as credit providers under the Act. Under that determination, any corporation which provides goods or services and then allows deferral of payment for 7 days or more is a credit provider in relation to those transactions.

I have received a request for a further determination under section 11B(1)(b)(v)(B) of the Act, to enable a corporation which acquires the rights of a credit provider with respect to the repayment of a loan to be regarded as a credit provider for the purposes of the Act.

Consultation and Decision

The request for a determination was received from a mortgage insurer, and arose from concerns about the situation where a mortgage insurer takes assignment of a loan after the borrower defaults. In these circumstances the mortgage insurer may not be regarded as a credit provider for the purposes of the Act if it does not fall within the definition in section 11B. This is because in many instances the provision of loans would not constitute a substantial part of the mortgage insurer's business or undertaking in accordance with section 11B. Consequently, the mortgage insurer may be prevented from availing itself of those provisions in Part IIIA of the Privacy Act which apply to credit providers, including those which enable credit providers to obtain access to the credit reporting system for the purpose of managing loans or collecting overdue payments.

It was submitted that a mortgage insurer which takes assignment of a loan from a credit provider should thereafter be regarded as the credit provider in respect of that loan. This would entitle the mortgage insurer to obtain access to consumer credit reports and consumer credit information in relation to that loan, as if it had provided the loan in the first instance. The mortgage insurer would, for example, and as noted above, be entitled to obtain a consumer credit report to assist with the collection of overdue payments in certain circumstances.

After receiving the request for a determination I undertook a process of extensive consultation with relevant industry, consumer and government bodies and organisations. In July 1994 I advertised the proposed determination in the national press and invited wider comment, especially with regard to the appropriate scope of the determination.

Comments which I received from interested parties were generally supportive of the proposed determination. There seemed to be wide agreement that there was no logical justification for a business being denied access to the credit reference system simply because it acquired the rights under a loan not as the original credit provider but by assignment from a credit provider. However, the weight of opinion favoured a broader determination than the one originally requested. It was felt that the determination should not be limited to mortgage insurers but should have a general application to businesses which acquire the rights of credit providers. In addition, it was submitted that the determination should cover not just assignment, but also subrogation and other means whereby businesses acquire the rights of credit providers.

Having considered the arguments submitted by the party which requested the determination, and other interested parties, I am of the view that a broad determination in the terms outlined above is justified. As such, I have decided to issue a determination that a corporation which acquires the rights of a credit provider with respect to the repayment of a loan (whether by assignment, subrogation or other means) shall, in relation to that loan, be regarded as a credit provider for the purposes of the Privacy Act.

Notices and consents

With regard to notices given and consents obtained by the credit provider under the terms of the loan, it is envisaged that these would be taken to have been given or obtained by a business deemed to be a credit provider by virtue of the determination. However, this would be subject to the terms of the deed of assignment or other document by which the rights of the credit provider were acquired.

Provision of loans by a business is a pre-requisite

It should be noted that under section 11B(1)(b)(v)(A) one of the conditions which must be satisfied before I can determine a class of corporations to be credit providers is that those corporations carry on a business or undertaking involving the provision of loans. As such, the determination would not extend, for example, to debt collection agents who take assignment of loans, unless they happen to be engaged in the provision of loans. I would be most concerned if debt collection agents sought to use this determination to circumvent the provisions of Part IIIA and obtain access to the credit reference system. With this concern in mind, I will be monitoring closely the operation of the determination.

Non-corporations

Whilst this determination is directed to a certain class of corporations, the application of the determination is extended by virtue of section 11B(1)(c) to non-corporations which meet the criteria which apply to corporations under section 11B(1)(b).

Other relevant rules

When formulating this determination, I acknowledged that existing statutory and common law rules governing assignment and other matters covered in the determination may in some circumstances achieve the same effect. However, given that there appears to be some uncertainty as to the precise scope and effect of these laws, insofar as they relate to the matters described above, I considered it prudent to put the matter beyond doubt by issuing a determination.

Duration and Further Review

As to the life of the determination, I have taken the view that it should not be open-ended but should be the subject of further review once there has been sufficient experience of its operation. I consider that a period of two years commencing on 24 February 1995 is appropriate for this purpose. I have therefore included in the determination that it should lapse unless continued by a further determination on 24 February 1997.

KEVIN O'CONNOR
Privacy Commissioner

February 1995

Appendix 1.4

DETERMINATION 1991 NO 2

PRIVACY ACT 1988, s.18E(3) concerning identifying particulars permitted to be included in a credit information file

Under s.18E(3) of the Privacy Act 1988, I DETERMINE that:

1. The following kinds of information are reasonably necessary to be included in an individual's credit information file in order to identify the individual:

    (i) full name, including any known aliases; sex; and date of birth;

(ii) a maximum of three addresses consisting of a current or last known address and two immediately previous addresses;
(iii) name of current or last known employer; and
(iv) driver's licence number.

2. This determination shall take effect on 24 September 1991.

Dated 11 September 1991

KEVIN PATRICK O'CONNOR
Privacy Commissioner

DETERMINATION 1991 NO 2 UNDER s.18E(3) ON IDENTIFYING PARTICULARS

REASONS FOR DETERMINATION

Background

1. In accordance with s.18E(3) of the Privacy Act 1988, as amended by the Privacy Amendment Act 1990, the Privacy Commissioner may determine the kinds of information that are reasonably necessary to be included in an individual's credit information file in order to identify the individual.

Examination of Practices

2. Prior to formulating this determination, I examined current practices engaged in by the major credit reporting agencies which provide consumer credit reports (Credit Reference Association of Australia, and Tasmanian Collection Service). Account was taken of the types of information which the credit reporting agencies currently use for identification and matching of credit information files.

Minimising Intrusiveness

3. Balanced against the need to ensure maximum accuracy in relation to matching credit information files, I took account of the requirements of s.18E of the Act, which sets strict limits on the permitted contents of credit information files. In accordance with the spirit of that section, I have sought to minimise the possibility of unnecessary personal information being included on an individual's credit information file. The objective was to ensure that the need to hold identifying particulars in a credit information file did not give rise to unnecessary intrusion when information from the credit information file was disclosed in the form of a credit report. As a result, a number of items which are currently collected, such as marital status and spouse's name, have not been included in the determination, and a limit has been placed on the number of previous addresses that can be kept on an individual's credit information file.

4. It should be noted that a credit reporting agency does not have to include all of the permitted identifying particulars in an individual's credit information file. For example, should a credit reporting agency consider that it does not need to rely on a driver's licence number in order to identify an individual from its files, then it is acceptable that this item is not included in the credit information files maintained by the agency.

Permitted Items

5. Listed below are the types of information that I have determined to be reasonably necessary to be included on an individual's credit information file and the reasons for doing so:

(i) **Full name including any known aliases, sex, date of birth:** These are all basic identifiers in common use in the community, and together assist significantly in distinguishing between people with other similar or the same identifiers.

(ii) **Address Information**

Current or last known address: An identifier in common use in the community and routinely gathered in business settings.

Previous addresses: In the light of consultation with credit reporting agencies and the long experience of the New South Wales Privacy Committee in this field, I am satisfied that there is a need for a credit reporting agency to keep an individual's previous address information to assist in ensuring that an enquiry from a credit provider who might, for example, have an old address, is properly matched. In the interests of privacy, reasonable limits should be placed on the possibility of a history of addresses being compiled. Accordingly, this category of information on the file should be limited to only two immediately previous addresses.

During public consultations on the draft of this determination, it was suggested (by the New South Wales Privacy Committee) that a credit reporting agency be allowed to retain previous address information for only five years. The concern, I understand, was related mainly to the possibility that an individual who might have no outstanding credit commitments, or who has not made any new applications for credit over a lengthy period, could still have a file with the credit reporting agency. While I appreciate the point that a time limitation on retention of previous address information might be in keeping with other requirements for deletion of file information after a period, I have taken the view, based on the advice from the CRAA that it automatically deletes files which have been inactive for five years, that a requirement of this sort should not be imposed unless experience shows that retention of this information does have significant privacy implications. This question can be reviewed in the light of any problems or complaints that arise once the Act comes into force.

(iii) **Name of current or last known employer**: A discrepancy between an individual's stated employer and the information included in a credit information file would alert a credit provider to the possibility of an inaccurate match in circumstances where all other identifiers indicated an accurate match. It is accepted that while an individual's employment details do not constitute an important element in the process of a credit reporting agency identifying an individual from the agency's files, such information is a more important identifier for a credit provider and should be permitted to be included in a credit information file. Consideration was given to restricting employment information to a generic description of an individual's occupation, such as `teacher' or `electrician'. However, the view was strongly put to me in consultation that a description of occupation on its own would in many cases be too imprecise for it to be of any value in identifying an individual. In view of this, information on occupation has not been included as permissible contents of a credit information file, but recording the name of the current or last known employer will be permitted.

(iv) **Driver's Licence Number**: This number is generated by State and Territory driver licensing authorities for reasons unconnected with credit granting. Nonetheless the number is widely collected as a routine identifier in connection with credit transactions. It has, for many years, been a routine element of the identifying particulars collected by credit reporting agencies and by credit providers. Under the credit reporting system the CRAA relies upon the driver's licence number to assist with identity problems. The driver's licence number provides the agency with an additional identifier with which to correctly identify and match files. The information provided by the CRAA suggested that this information plays a part in correctly identifying and matching a proportion of credit information files.

It is considered that the practice of credit reporting agencies holding this item of information should continue, especially in light of the many years' experience of the New South Wales Privacy Committee in its monitoring of the credit reporting system.

I acknowledge (as observed by the Australian Privacy Foundation during consultation on the draft determination) that the holding of a driver's licence number is inconsistent with usual privacy principles and tends to encourage its use as a universal identifier. Nonetheless its use in this area is long-established and the New South Wales Privacy Committee advises that it has received very few complaints about misuse of the driver's licence number. It would, I consider, be unfairly disruptive to prevent its continued use, especially in light of the views of the New South Wales Privacy Committee. But I note that there has been considerable recent public controversy over improper accessing of personal information held in connection with a range of official records including driver's licence information. If I detect evidence of abuse of this element of this determination, I will consider revoking it immediately.

Monitoring

6. The question of what personal information is necessary for accurate identification is one which I will continue to look at in the light of experience of the practical operation of the Act. In this connection, I will pay particular attention to assessing whether driver's licence number, previous address information and name of the current or last known employer are essential for identification purposes. I propose to review my position on the inclusion of identifying information in a credit information file when I generally review the operation of the Code of Conduct.

KEVIN O'CONNOR
Privacy Commissioner

September 1991

Appendix 1.5

DETERMINATION 1992 NO 1

PRIVACY ACT 1988, s.18K(3)(b) concerning disclosures by the Credit Reference Association of Australia of information included in a credit information file before 24 September 1991

Under s.18K(3)(b) of the Privacy Act 1988, I DETERMINE that:

1. The Credit Reference Association of Australia (CRAA) may continue to disclose the following types of information included in a credit information file before 24 September 1991:

   (a) information relating to enquiries or overdue payments in cases where the CRAA cannot reasonably ascertain whether the supplier of the information was a credit provider, as defined under the Act, at the time of supply of the information;
   (b) information which indicates that an individual has defaulted in making a payment in respect of commercial credit.

2. The Credit Reference Association of Australia must cease disclosing the above information not later than five years from the date on which the information was first included in the credit information file.

3. This determination shall take effect on 25 February 1992, and shall lapse on 24 September 1996.

Dated 19 February 1992

KEVIN PATRICK O'CONNOR
Privacy Commissioner

DETERMINATION 1992 NO 1 UNDER s.18K(3)(b) ON DISCLOSURE OF NON-PERMITTED INFORMATION BY THE CREDIT REFERENCE ASSOCIATION OF AUSTRALIA

REASONS FOR DETERMINATION

Background

1. Section 18E of the Privacy Act lists all the types of information which a credit reporting agency is permitted to keep on a consumer credit information file. Section 18F requires that a credit reporting agency must delete from an individual's credit information file any personal information in respect of which the maximum permissible period for retaining that information has expired. Section 18K(2) prohibits a credit reporting agency from disclosing personal information contained in a credit information file, or information derived from the file, if the information is information it would be prohibited from including in the file under s.18E, or information it is required to delete from the file by s.18F.

2. The combined effect of the above provisions is to ensure that the information which can be kept on file and disclosed by a credit reporting agency in the form of consumer credit reports is relevant to the individual's credit worthiness and hence relevant in the credit-related situations in which an agency is permitted under the Act to provide a report.

3. However, the Act also recognises that there may be occasions when the nature of past practice makes it impracticable to bring into conformity with the requirements of the Act information compiled by a credit reporting agency before the commencement of the Act. The Act gives the Privacy Commissioner power under s.18K(3)(b) to determine that a type of information which is not permitted contents of a credit information file may be disclosed by a credit reporting agency without breaching the requirement of s.18K(2) if the information was collected before the commencement of the section, that is before 24 September 1991.

Application by the Credit Reference Association of Australia (CRAA)

4. The Credit Reference Association of Australia, which is a credit reporting agency as defined under s.11A of the Act, applied for a determination under s.18K(3) to allow it to continue to disclose the following kinds of information which had been included in its credit information files before 24 September 1991:

   (a) information relating to enquiries or overdue payments, in cases where the CRAA cannot reasonably ascertain whether the supplier of the information was a credit provider, as defined under the Act, at the time of supply of the information; and

   (b) information which indicates that an individual has defaulted in making a payment in respect of commercial credit.

5. The above two kinds of information are not considered to fall within the permitted contents of a credit information file as defined by s.18E.

(a) Information supplied by organisations not defined as credit providers under the Act

6. Prior to the introduction of the legislation CRAA provided consumer credit information to a wide range of businesses, some of which were not involved in the provision of credit. As a result, the credit information files of CRAA now contain some information of a kind which it now cannot lawfully be given or hold. This information basically concerns: *enquiries made by non-credit providers*; and *overdue payments owed to them.*

7. CRAA has been able to isolate many of those businesses whose input data can no longer be lawfully held. These businesses include mercantile agents, real estate agents, and motor vehicle dealers. Information provided by such businesses has been deleted. CRAA has estimated that, as a result of this culling program, over 5 million data items have been removed. However, there may remain in credit information files a number of items provided by other businesses whose status as credit providers cannot be readily ascertained.

8. The CRAA has advised that, even if it were aware of the names of such organisations, its only means of deleting such data would be by searching its credit database of over 24 million items, in an attempt to identify each item based on a match of an abbreviated version of each member's name. In addition, CRAA has advised that it was common for CRAA members to change the name by which they were identified on CRAA records. The CRAA did not to keep a record of such name changes though it will now do so. Any name based search would be unreliable and might, if done, lead to relevant and permitted information being lost.

9. The CRAA has undertaken to delete any non-permitted data as it comes to its attention, which would be primarily through requests for access and amendment.

10. I also note that even though the law will not take full effect until 25 February 1992 the CRAA has, since 24 September 1991, sought to confine its membership to the businesses permitted by the Act.

(b) Default information in respect of commercial credit

11. Prior to the commencement of the Act, CRAA did not, in recording information given by its members, make any distinction as to whether an enquiry or default listing was relating to consumer or commercial credit. Its records thus contain information on both consumer and

commercial defaults. Information about commercial credit defaults is not permitted to be included in a credit information file.

12. In attempting to remove commercial credit default information from its credit information files, CRAA used the industry code of the organisation requesting the report as the basis for discrimination. Hence default information provided by categories of businesses known to give primarily commercial credit was universally deleted. Default information provided by businesses that may give both consumer and commercial credit was retained. CRAA advises that this may have resulted in what appears to be consumer credit default information but which is actually commercial credit information being retained on the consumer credit information file. The information included on individuals' consumer credit files about commercial overdue payments is limited to those instances where a CRAA member incorrectly advised CRAA that a particular credit transaction related to consumer credit when it was in fact of a commercial nature. CRAA believes that the majority of cases of incorrect reporting were caused by human error, and has estimated that the total number remaining in its database to be less than 8,000 items.

13. Again, CRAA has undertaken to delete such data as it comes to its attention, primarily through requests for access and amendment.

Reasons for Decision

14. The purpose of s.18K(3) is, I consider, to ensure that the activities of a credit reporting agency are not unduly hampered in the future because past practices were organised in a way which has no or little similarity to the new arrangements.

15. In respect of item (a), the CRAA has taken reasonable steps to identify and remove information which does not fit within the categories of permitted contents as set out in s.18E of the Privacy Act. The CRAA has indicated in its application that it had conducted an extensive purge of its files to identify and remove data which did not fall within the description of permitted contents as laid out in s.18E. Twenty-five categories of data received from twenty-one separate industry groups were identified as falling outside s.18E. This data, amounting to over 6.5 million items of information, was removed from CRAA's credit information files during September 1991. However, CRAA submitted that it is not able to identify and delete before 25 February 1992, by automatic means, all information which may be considered non-permitted contents.

16. Due to the difficulties in identifying the abbreviated names of organisations no longer defined as credit providers (many of which have over the years changed their names), the only way in which information supplied by these organisations could be excluded from credit information files would be to exclude all pre-Act information. This would severely affect the value of the agency's reporting service.

17. As to item (b), the CRAA has, as of 24 September 1991, ceased recording or has undertaken to remove, information concerning overdue payments in respect of commercial credit included in individuals' consumer credit information files. The CRAA's system also automatically deletes entries of this kind five years after they were recorded. Thus the extent of information subject to this determination and which will be disclosed in consumer credit reports will be progressively reduced between now and 24 September 1996.

18. I accept that the coding system used by CRAA prior to the commencement of the Act does not now enable the agency to accurately distinguish between consumer and commercial

default information. The only way in which information about commercial defaults could be excluded from consumer files and reports would be to exclude all pre-Act default information. As is the case with information currently included in its files which was supplied to it before 24 September 1991 by non-credit providers, to require CRAA to completely delete from its files all default information would greatly reduce the practical and commercial value of its reporting service. I note that this data amounts to approximately 0.04% of total data held by CRAA, and that CRAA already has in place a system to advise credit providers receiving credit reports that the veracity of pre-24 September 1991 default information should be checked with the credit providers which listed the default.

19. In the absence of any effective means of retrospectively identifying all businesses that are no longer credit providers and separating all consumer and commercial default listings, and recognising this as a transitional situation caused by the impact of the new legislation on old practices, I have determined that the CRAA may disclose in credit reports, without breaching the Act, information supplied to it by organisations not defined as credit providers and information about commercial defaults which was collected before 24 September 1991.

20. In order to ensure that consumers are aware of the fact that information of this nature (i.e. non-permitted information) is permitted to be disclosed by CRAA, I have asked the CRAA to include a reference to the content of this determination in information and general publications given by it to consumers, its members and consumer organisations. The CRAA has also undertaken to delete such information as soon as it is brought to its attention, either through an individual's enquiry, or through internal file management activities. These actions should help to minimise the likelihood that information of this type may adversely affect the individual's credit worthiness.

Duration of the determination

21. I have sought, in making this determination, to mirror the requirement of s.18F of the Act that information which is permitted to be included in an individual's credit information file will not be retained by credit reporting agencies beyond a specified period after it is recorded. In most cases, the Act allows for a maximum retention period of five years from the date on which the information is recorded.

22. The CRAA has undertaken to automatically delete information which is the subject of this determination within five years of its collection. As determinations issued by me under s.18K(3) can only apply to information included in a credit information file before the commencement of the section, i.e. 24 September 1991, the maximum retention period of five years will commence from that date. Accordingly, this determination will cease to have effect on 24 September 1996.

Review of the determination

23. While I am not required to publicly consult on determinations of this kind, I did seek the views of the consultative group which assisted me in the development of the Code of Conduct. Membership included representatives of both peak industry bodies and consumer organisations. None of the members consulted indicated any difficulties with the approach taken in this determination. I would, nonetheless, welcome views from any parties who are affected by this determination or other interested parties as to its appropriateness, and if necessary, will review the determination.

KEVIN O'CONNOR
Privacy Commissioner

February 1992

Appendix 1.6

DETERMINATION 1992 NO 2

PRIVACY ACT 1988, s.18K(3)(b) concerning disclosures by the Tasmanian Collection Service of information included in a credit information file before 24 September 1991

Under s.18K(3)(b) of the Privacy Act 1988, I DETERMINE that:

1. The Tasmanian Collection Service may continue to disclose information contained in a credit information file which indicates that an individual has defaulted in making a payment in respect of commercial credit, being information which was included in the credit information file before 24 September 1991.

2. The Tasmanian Collection Service must cease disclosing information of this kind not later than five years from the date on which the information was first included in the credit information file.

3. This determination shall take effect on 25 February 1992, and shall lapse on 24 September 1996.

Dated 19 February 1992

KEVIN PATRICK O'CONNOR
Privacy Commissioner

DETERMINATION 1992 NO 2 UNDER SECTION 18K(3)(b) ON DISCLOSURE OF NON-PERMITTED INFORMATION BY THE TASMANIAN COLLECTION SERVICE

REASONS FOR DETERMINATION

Background

1. Section 18E of the Privacy Act lists all the types of information which a credit reporting agency is permitted to keep on a consumer credit information file. Section 18F requires that a credit reporting agency must delete from an individual's credit information file any personal information in respect of which the maximum permissible period for retaining that information has expired. Section 18K(2) prohibits a credit reporting agency from disclosing personal information contained in a credit information file, or information derived from the file, if the information is information it would be prohibited from including in the file under s.18E, or information it is required to delete from the file by s.18F.

2. The combined effect of the above provisions is to ensure that the information kept on file and disclosed by a credit reporting agency in the form of consumer credit reports is limited to that

which is reasonably relevant to the individual's credit worthiness and hence relevant in the credit-related situations in which an agency is permitted under the Act to provide a report.

3. However, the Act also recognises that there may be occasions when the nature of past practice makes it impractical to bring into conformity with the requirements of s.18E information compiled by a credit reporting agency before the commencement of the Act. The Act gives the Privacy Commissioner a power under s.18K(3)(b) to determine that a type of information which is not permitted contents of a credit information file may be disclosed by a credit reporting agency without breaching the requirement of s.18K(2) if the information was collected before the commencement of the section, that is before 24 September 1991.

Application by the Tasmanian Collection Service

4. The Tasmanian Collection Service, in effect the credit reporting agency for Tasmania, has applied for a determination under s.18K(3) to allow it to include in credit reports which it discloses information concerning defaults on commercial credit which was collected before 24 September 1991. The Tasmanian Collection Service has indicated that the only information it has retained about overdue payments recorded before 24 September 1991 is the date on which the overdue payment was recorded, the amount and the name of the credit provider. No record has been kept of whether a default related to commercial or consumer credit, and the information recorded does not provide a basis for making the distinction retrospectively.

5. Since 24 September 1991 the Tasmanian Collection Service has, as the Act requires, included only default information relating to consumer credit on consumer credit files. However, if it is to provide credit reports which contain information about loan defaults prior to that date, it is inevitable that the reports provided would contain information about commercial as well as consumer defaults, as the two are not able to be distinguished.

Reasons for determination

6. The purpose of s.18K(3) is, I consider, to ensure that the activities of a reporting agency are not unduly hampered in future because past practices were organised in a way which has no or little similarity to the new arrangements.

7. I am satisfied that the manner in which the Tasmanian Collection Service has recorded default information in the past now precludes it from distinguishing consumer from commercial defaults. The only way in which information about commercial defaults could be excluded from consumer files and reports would be to exclude all pre-Act default information. To prevent a credit reporting agency from including default information in credit reports would greatly reduce the practical and commercial value of its reporting service.

8. The information included on individual consumer files about commercial overdue payments is limited to date, amount, and the name of the credit provider, and is also limited to commercial defaults that were listed against individuals rather than companies or other business entities.

9. The Tasmanian Collection Service has, since 24 September 1991, ceased recording commercial default information on consumer files, and as entries are automatically deleted after five years, existing information of this type will be progressively removed from consumer files between now and 24 September 1996. For these reasons, the extent of the commercial default information recorded before 24 September 1991 which will continue to

be disclosed in consumer credit reports should be relatively slight. The Tasmanian Collection Service has undertaken to include on consumer credit files which contain information collected before 24 September 1991 a note that the file may contain some commercial default information collected before that date.

10. In the absence of any means of retrospectively separating consumer and commercial default listings, and recognising this as a transitional situation caused by the impact of the new legislation on old collection practices, I have determined that the Tasmanian Collection Service may disclose in credit reports, without breaching the Act, information about commercial defaults which was collected before 24 September 1991.

11. In order to ensure that consumers are aware of the fact that information of this nature (i.e. commercial default listings collected before 24 September 1991) is permitted to be disclosed by TCS, I have asked the TCS to include a reference to the content of this determination in information and general publications given by it to consumers, its members and consumer organisations. The TCS has also undertaken to delete such information as soon as it is brought to its attention, either through an individual's enquiry, or through internal file management activities. These actions should help to minimise the likelihood that information of this type may adversely affect the individual's credit worthiness.

Duration of the determination

12. I have sought, in making this determination, to mirror the requirement of s.18F of the Act that information which is permitted to be included in an individual's credit information file will not be retained by credit reporting agencies beyond a specified period after it is recorded. In most cases, the Act allows for a maximum retention period of five years from the date on which the information is recorded.

13. The Tasmanian Collection Service has undertaken to automatically delete information which is the subject of this determination within five years of its collection. As determinations issued by me under s.18K(3) can only apply to information included in a credit information file before the commencement of the section, i.e. 24 September 1991, the maximum retention period of five years will commence from that date. Accordingly, this determination will cease to have effect on 24 September 1996.

Review of the determination

14. While I am not required to publicly consult on determinations of this kind, I did seek the views of the Office of Consumer Affairs in Tasmania. That Office did not indicate any difficulties with the approach taken in this determination. I would, nonetheless, welcome views from any parties who are affected by this determination or other interested parties as to its appropriateness, and if necessary, will review the determination.

KEVIN O'CONNOR
Privacy Commissioner

February 1992

Appendix 2

AMENDMENTS TO THE CREDIT REPORTING CODE OF CONDUCT AND EXPLANATORY NOTES

REASONS FOR THE AMENDMENTS

AMENDMENTS TO THE CODE OF CONDUCT

Part 1 - Credit Reporting Agencies

Access by Individuals to their Credit Information File

Paragraphs 1.7 to 1.12 of the original Code contained provisions relating to the right of access of individuals or their authorised agents to their credit information file held by a credit reporting agency. They also included provision for credit reporting agencies to be able to charge a fee for access in certain circumstances.

During the consultation process the chief credit reporting agency in Australia, the Credit Reference Association of Australia (CRAA), expressed concern about what it saw as the increasing incidence of individuals seeking access to their credit information file for purposes unconnected with the provision of credit. As a result, CRAA has been placed under some pressure in meeting its Privacy Act obligations to provide individuals with access to credit reports. To help address this problem it was recommended that credit reporting agencies be given a discretion to refuse or defer access requests made for non-credit purposes, or charge a fee for such requests, where they have an unreasonable impact on the agency's ability to process credit related access requests. Alternatively, the credit reporting agency could charge a fee to offset the administrative impact of non-credit related access requests.

When considering this issue, I was mindful that individuals' rights of access to their information forms one of the central tenets of the credit reporting laws, which should not be compromised. At the same time, I recognised that the operation of credit reporting businesses should not be unduly hampered in meeting Privacy Act obligations. As such, I have restricted the credit reporting agency's discretion to refuse or defer access, or charge a fee, to limited circumstances which could be regarded as peripheral to the main focus of the credit reference system. For those access requests which relate to refusal of credit or management of the credit relationship, I do not favour provisions that would have the effect of hindering the individual's access to his or her credit information file. An individual who feels unfairly treated because of these arrangements may complain to the Privacy Commissioner who can order that access be given.

Part 2 - Credit Providers

Reporting of Schemes of Arrangement

Prior to its amendment, paragraph 2.10 of the Code of Conduct provided that where a credit provider has reported an overdue payment to a credit reported agency, and subsequently enters into an arrangement for repayment of the outstanding amount, a note indicating that this action had been taken was required to be included in the individual's file held by the credit reporting agency.

In discussions with my Consultative Group, the majority favoured the view that the reporting of arrangements to credit reporting agencies should be optional rather than mandatory. This was because of differing views as to what constitutes a scheme of arrangement, and also because the

requirement to report schemes of arrangement was proving to be onerous in some situations. I have amended paragraph 2.10 to give effect to this view, by replacing the word "must" with "may".

Disclosure Between Credit Providers

Paragraph 2.14 of the Code of Conduct requires a credit provider who obtains a report from another credit provider about an individual's consumer credit worthiness, to make a record of the date on which it was obtained, the name of the credit provider from whom it was obtained, a brief description of the contents of the report, and where the individual's agreement to the disclosure is required, the fact that such agreement was obtained.

It was noted that the Code did not prescribe a minimum retention period for the record made under paragraph 2.14. My Consultative Group strongly favoured such a requirement, which would be useful, in the event of a complaint, to verify that the consent and other requirements relating to disclosures between credit providers have been met. Twelve months was considered an appropriate retention period because it creates a parallel with section 41 of the Privacy Act which gives me a discretion not to investigate a complaint made more than 12 months after the complainant became aware of the act or practice being complained about.

I have therefore amended the Code by adding paragraph 2.14A which provides for a minimum retention period of 12 months for records made under paragraph 2.14.

AMENDMENTS TO THE EXPLANATORY NOTES

Part 2 - Credit Providers

Refusal of Credit

Paragraph 40 of the Explanatory Notes is amended to make it clear that notice of refusal of credit must be in writing.

Background: This amendment was made to ensure consistency in credit providers' record handling and to provide for better accountability.

Current Credit Provider Status

Paragraph 51(b) of the Explanatory Notes is amended to ensure that a credit provider ceases to be a current credit provider in relation to an individual in circumstances where the individual's debt is unenforceable by virtue of the Statute of Limitations.

Background: The purpose of this amendment was to broaden the application of paragraph 51(b) to debts which are *unenforceable*. The old paragraph 51(b) referred to debts which have been *discharged*, which is a somewhat narrower concept.

Re-listing of Overdue Payments

Paragraph 55A is added to the Explanatory Notes, to ensure that credit providers do not re-list overdue payments or other information with a credit reporting agency after the maximum retention period for that information has expired.

Background: This amendment arose out of concern about the practice of some credit providers reporting to credit reporting agencies overdue payments which they had already reported previously,

but which had since been deleted from the individual's credit information file following expiration of the maximum period under the Act. This practice was considered contrary to the spirit of the Act.

Reporting of Overdue Payments

Paragraphs 55B, 55C and 55D have been added to the Explanatory Notes to provide guidance on the reporting of overdue payments by credit providers and credit reporting agencies.

Background: This amendment was requested by the industry because of uncertainty about the requirements associated with the reporting of overdue payments, including the appropriate amount to be reported.

Reporting of Schemes of Arrangement

As noted above, the Code of Conduct has been amended to make the reporting of schemes of arrangement by credit providers to credit reporting agencies optional rather than mandatory.

In addition, the Explanatory Notes have been amended to provide guidance on the meaning of an "arrangement" for the purposes of paragraph 2.10 of the Code of Conduct.

Paragraphs 55E, 55F and 55G have been added to the Explanatory Notes to provide this guidance. They indicate, among other things, that paragraph 2.10 is concerned with formal written arrangements involving a substantial renegotiation of the terms of the loan.

The guidelines also clarify the relationship between the Code provisions relating to schemes of arrangement, and other provisions which require credit providers to notify the credit reporting agency where an individual, previously listed as in default, is no longer overdue.

Background: This amendment was requested by members of the industry as a result of confusion concerning the meaning of an "arrangement" and the obligations associated with schemes of arrangement.

Privacy Act Amendments - December 1992

A number of amendments to Part IIIA of the Privacy Act came into effect on 7 December 1992. They include provisions relating to the disclosure of consumer credit worthiness information by credit providers, and refusal of credit.

Changes made to the Explanatory Notes to reflect the 1992 legislative amendments, are set out below:

- Paragraph 74 of the Explanatory Notes is amended to take into account the following disclosures of credit worthiness information by credit providers, which are permitted by virtue of the December 1992 provisions:
  - Disclosure to a person who has provided a guarantee or security for a loan to the individual and the individual has agreed to the disclosure.
  - Disclosure to a person considering whether to act as guarantor for a loan given or proposed to be given by the credit provider, and the individual has consented to the disclosure.
  - Disclosure to another credit provider where both credit providers have provided mortgage credit in relation to the same property, and at least one of the mortgagees is 60 days in arrears.

- Disclosure to a person who is authorised by the individual to operate an account maintained with the credit provider, and the information is limited to basic transaction information or is consistent with the ordinary operation of the account.

- Paragraph 59A is added to the Explanatory Notes, and paragraphs 59 and 74 amended, to reflect accurately the restrictions on disclosure of consumer credit worthiness information by credit providers to debt collection agencies. In particular, they explain the different rules which apply depending on whether the debt collection agency is engaged in the collection of overdue consumer or commercial credit.

- Paragraph 40A is added to the Explanatory Notes to reflect an additional requirement relating to refusal of credit i.e. that a credit provider must inform an individual in writing if his or her credit application is refused wholly or partly due to an adverse credit report about a proposed guarantor.

Disclosures Required or Authorised by or Under Law

Paragraph 74 of the Explanatory Notes is amended to clarify the meaning of disclosures "required or authorised by or under law". (Credit providers are permitted under the Act to disclose consumer credit worthiness information in circumstances where the disclosure is required or authorised by or under law.) It includes both statute law and common law, and is not limited to Commonwealth law but extends to other Australian jurisdictions.

Background: This amendment was requested by members of the industry in order to address the uncertainty surrounding the scope of paragraph 74, and in particular the jurisdictions to which it applies.

Investigation of Complaints

Paragraph 88 is added to the Explanatory Notes to reflect the full range of circumstances in which the Privacy Commissioner may (under section 41 of the Act) decide not to investigate a complaint.

Background: This amendment was considered necessary because of concern that the existing provisions in the Code gave the impression that there were only two grounds on which the Privacy Commissioner could decide not to investigate a complaint relating to a credit reporting dispute.

KEVIN O'CONNOR
Privacy Commissioner

March 1995

Appendix 3

PARTICIPANTS IN THE CONSULTATIVE GROUP ON THE CODE OF CONDUCT FOR CREDIT REPORTING

Australian Association of Permanent Building Societies
Australian Bankers' Association
Consumers' Federation of Australia
Australian Finance Conference
Australian Financial Counselling and Credit Reform Association

Credit Reference Association of Australia
Credit Union Services Corporation (Australia) Limited
Federal Attorney-General's Department
New South Wales Privacy Committee
Retail Traders' Associations of Australia
Privacy Commissioner's Office