



16 December 2016

Office of the Privacy Commissioner  
P O Box 10 094  
The Terrace  
Wellington 6143

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

### **ANZ submission on the Discussion Paper: Credit Reporting Privacy Code Review**

Thank you for the opportunity to respond to the Discussion Paper: Credit Reporting Privacy Code (**Discussion Paper**).

ANZ Bank New Zealand Limited (**ANZ**) is a credit provider and uses the services of credit reporters bound by the Credit Reporting Privacy Code (**Code**). ANZ has a specific interest in the Code to the extent it governs ANZ's interaction with credit reporters, and we've limited our submission to that interest.

We'd like to draw the Privacy Commissioner's attention to our key messages below.

#### **Key messages**

- 1. Credit reporters should be compelled to accurately load and update default listing information regularly.**
- 2. The Code is acting as a barrier and must be updated to help credit providers comply with the responsible lending principles when making offers of credit.**
- 3. Limits on disclosure of credit information in Rules 10(1B), 11(2) and 11(3)(b) are too restrictive and stifle innovation – hindering subscribers' ability to market prudently and comply with legislative or contractual duties.**
- 4. Account balance information should be included in comprehensive credit reporting to support responsible lending and proposed macro-prudential rules.**

We provide more detail on these points in Appendix I and responses to the questions posed in the Discussion Paper in Appendix II.

#### **About ANZ**

ANZ is the largest financial institution in New Zealand. The ANZ group comprises brands such as ANZ, UDC Finance, ANZ Investments New Zealand, OnePath Life, ANZ New Zealand Securities and Bonus Bonds.

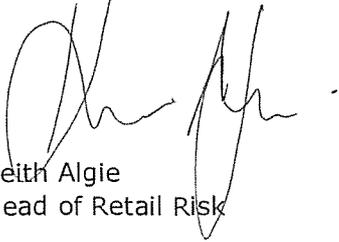
ANZ offers a full range of financial products and services including a significant range of financial advisory services, personal banking, institutional banking and wealth management products and services.

**Contact for submission**

ANZ welcomes discussing our submission directly with Office of the Privacy Commissioner officials. Please contact [redacted], Head of Regulatory Affairs, on [redacted] or at [redacted].

Once again, we thank the Office of the Privacy Commissioner for the opportunity to provide feedback on the Credit Reporting Privacy Code Review.

Yours sincerely



Keith Algie  
Head of Retail Risk

## Appendix I – Key messages

ANZ addresses each of our key messages in turn.

### **1. Credit reporters should be compelled to accurately load and update default listing information regularly.**

ANZ suggests that Rule 8 of the Code should be strengthened so it better aligns with the requirements imposed on subscribers in Schedule 3. We suggest that credit reporters should, within 10 working days of receiving information from a subscriber, update credit default information.

Credit reporters should ensure that credit reporters load credit default information quickly and correctly, and confirm with submitters the default is valid. Credit reporters should also review credit default information regularly so the information remains accurate.

We believe ensuring credit reporters are responsible for accurate and up-to-date credit default information is important to ensure credit reporters' confidence in the information available. We also believe this will help avoid debt collection agencies relisting defaults to improve collections results.

### **2. The Code is acting as a barrier and must be updated to help credit providers comply with the responsible lending principles when making offers of credit.**

ANZ notes the Code was not updated to reflect changes to the Credit Contracts and Consumer Finance Act (CCCFA) and new Responsible Lending Code (RLC).

Under the CCCFA and RLC, credit providers can make unsolicited offers of credit to customers, including pre-approved offers, provided credit providers comply with lender responsibility principles.

Importantly, the principles include a duty on credit providers to make reasonable inquiries into the borrower's ability to repay the lending. The RLC also states that a responsible lender's inquiries may include getting credit information, including through a credit check.

To support and enable compliance with the CCCFA and RLC, we believe credit providers should be able to use the services of credit reporters before offering credit.

We don't believe the Code should prevent credit providers getting credit information before making unsolicited and preapproved offers of credit. We believe this prescreening is prudent and responsible and should be permitted where the credit provider has an existing relationship with the customer and holds consent to get credit reports. We believe this is consistent with the protections under the Privacy Act.

However, ANZ is concerned the Code is a barrier to responsible lenders.

Rules 10(1B) and 11(3)(b) of the Code hinder responsible lending practices around unsolicited offers of credit, by forbidding credit reporters from providing credit

information for 'direct marketing'. Also, the limited ability for credit reporters to screen direct marketing lists under Rule 10(1C) is impractical and of little value to credit providers.

Provided the credit provider has the customer's consent, the Code allows credit providers to get credit information where a customer directly applies for credit.

But the Code restricts the ability of credit providers to get credit information before making unsolicited offers of credit, including preapproved offers of credit, even where the credit provider has the customer's consent. We believe this is inconsistent with the CCCFA and RLC and with prudent and responsible lending practices.

As currently drafted, checking the credit status of existing customers before voluntarily offering credit, is likely to be 'direct marketing' under the Code. As a result, credit reporters cannot use or disclose credit information for that purpose, except as set out in Rule 10(1C).

However, under Rule 10(1C) the credit reporter must not keep any credit information gained from the pre-screening or disclose the credit information to the credit provider.

We believe this limit is impractical and reduces the value of pre-screening for credit providers.

Credit providers need to understand to whom an offer has been made, to provide suitable customer service, including access to online fulfilment channels. A credit provider would have to tell staff that 'some' customers were sent an offer, but not 'which' customers. This risks poor customer service when customers accept offers.

Credit providers could also only 'fulfil' offers through face to face or call centre channels. Digital choices, like accepting through online banking, aren't possible as credit providers won't know who to provide that for, despite customer demand for digital.

We also believe it is consistent with the CCCFA and RLC that credit providers can get information about who has been removed from the direct marketing list. Receiving this information ensures credit providers avoid making future offers of credit where unaffordable or inappropriate.

The requirements in Rule 10(1C) also forces credit providers, at their cost, to use external mail houses or marketing companies if they wish to send prescreened offers of credit. We believe this creates inefficiencies and unnecessary costs for credit providers.

ANZ suggests amending Rule 10(1B), 10(1C) and 11(3)(b) to exclude credit providers who have an existing relationship with a customer and hold consent to getting a credit report. Those credit reporters should be able to get credit information from a credit reporter about the customer's current credit position to use for any offers of credit, including unsolicited and preapproved offers.

We believe this will better enable credit providers to comply with the CCCFA and RLC. We also suggest this is consistent with the primary idea in the Privacy Act that an agency can collect, use, and disclose an individual's personal information for a lawful purpose, with the individual's consent.

**3. Limits on disclosure of credit information in Rules 10(1B), 11(2) and 11(3)(b) are too restrictive and stifle innovation – hindering subscribers’ ability to market prudently and comply with legislative or contractual duties.**

*Direct marketing in Rule 10(1B) and 11(3)(b)*

ANZ suggests the Code should only restrict using credit information for direct marketing where subscribers:

- a. are buying a marketing list,
- b. don’t have an existing relationship with the individual whose information is sought, or
- c. don’t have the individual’s consent to collect or use credit information from a credit reporter.

We also suggest excluding paragraphs (a) to (c) of the definition of ‘credit information’ when used in Rules 10(1B), 11(2), or 11(3)(b).

Rule 10(1B) and 11(3)(b) of the Code forbids credit reporters from using any credit information they hold for *any* purpose related to direct marketing. Neither rule considers whether the individual consented to that use.

‘Credit information’ is widely drafted in clause 5 of the Code, and includes information like names, address, and dates of birth, as well as information about a person’s credit position. The definition’s scope stops subscribers from using credit information, even where information about a person’s credit position won’t be used. For example, a subscriber can’t check customers’ contact details are up to date before offering goods and services, even though the subscriber doesn’t seek or won’t use information about the customer’s credit position.

*Use of credit information in Rule 11(2)*

We strongly recommend widening Rule 11(2). We propose the rule is widened to allow disclosure by a credit provider where the credit reporter has confirmed they have the consent of the individual involved and the credit reporter will use the information to:

- (a) comply with any legislative duties, including legislative duties to disclose information to the individual concerned,
- (b) comply with any continuing contractual duties owed to the individual concerned, including payment of money owing,
- (c) check they hold up-to-date contact information,
- (d) avoid fraud or improve customer experience by checking the identity of an individual where the credit provider reasonably believes they hold multiple records for the same individual.

We’re concerned Rule 11(2) is currently too narrow. Credit reporters can’t provide services to verify the identity of individuals other than for the Anti-Money Laundering and Countering of Financing of Terrorism Act 2009.

Subscribers can't confirm identity or up-to-date contact details for customers they must contact under other legislation. For example, Rule 11(2) prevents use of credit information to help a credit provider make disclosure under the CCCFA, or a subscriber returning or advising of money held under the Unclaimed Money Act.

Subscribers can't check identity to help prevent fraud, particularly where they have multiple records or names for customers. Data checking and data matching are important tools to prevent fraud. If a subscriber holds consent, the Code should not prevent or restrict that use where the purpose is to prevent fraud.

ANZ supports the notion that credit reporters should be permitted to use credit reporting systems to trace individuals to whom money is owed (in the broadest sense and not just within the meaning of the Unclaimed Monies Act). ANZ submits that where an agency owes money to an individual or has duties under a continuing contract with an individual, the agency should be able to seek updated contact information from a credit reporter. Importantly, we submit subscribers should be able to use credit reporters' services to trace individuals to whom money is owed.

To avoid the limits in Rule 11(2), it would appear that credit reporters currently need to seek exemptions under section 54 of the Privacy Act. Credit reporters must justify disclosure on grounds that it 'involves a clear benefit to the individual concerned that outweighs any interference with the privacy of the individual'. We're concerned this is too narrow as the exemption may only be exercised for one-off use of information, not where subscribers need the information to assist with or manage a continuing relationship with the individual.

ANZ submits that information sharing is appropriate where agencies have a legitimate and continuing need to contact their customers, particularly a legal or contractual responsibility to those customers. The Code should not inhibit agencies from seeking information to help them locate their customers, where consent is held to seek that information. We respectfully submit that this information sharing is entirely appropriate where it involves Gone No Address customers for the purpose of informing individuals of their investment(s). In this case it would appear that the protections afforded to an individual under the Code are in fact proving a detriment and that this is an unintended consequence of the Code.

#### *Remove barriers that limit development of new services*

We are also concerned the limits in Rules 10(1B), 11(2), and 11(3)(b) inhibit credit reporters developing new services that would allow subscribers to provide better, targeted services to existing customers. For example, credit providers would be unable to use services like 'health checks' to support offers of credit, even if the credit provider had the consent of the customer. We believe the Code should not prevent innovation in the use of credit information, provided credit reporters or subscribers have consent for use in that way.

We suggest the Code may be better requiring credit reporters and subscribers to be transparent about use of credit information, rather than limiting types of use.

**4. Account balance information should be included in comprehensive credit reporting to support responsible lending and proposed macro-prudential rules.**

Substantial benefits could be delivered by allowing the reporting of account balance information as part of comprehensive credit reporting.

By having access to up-to-date account balance information, credit providers would get a more complete and realistic view of an individual's borrowing.

The information would enable credit providers to make a better informed credit decision, ensuring compliance with the responsible lending principles in the CCCFA and RLC. Like other credit providers, ANZ relies on the customer to disclose all debts, but information may not always be complete or accurate.

We also believe access to this information will benefit customers also — reducing the amount of information credit reporters need to ask customers for.

For mortgage lending, credit providers would also get a more complete and accurate picture of a borrower's loan-to-valuation ratio (LVR).

And ANZ also believes account balance information will be critical to lending decisions, given the Reserve Bank proposed debt-to-income restrictions as part of its macro prudential policy.

Having account balance available as part of comprehensive credit reporting would allow credit providers to verify all the customer's bank debts and adequately measure the customer's total exposure for debt servicing calculations.

Account balance information will ensure that calculations like debt-to-income (DTI) or debt servicing-to-income ratios work effectively. Access to information will ensure all banks use a consistent methodology and can access data needed for the Reserve Bank's proposed calculations.

We note that other countries that use DTI tools (UK, USA, Canada, Hong Kong) also allow credit reporters to collect and disclose account balance information with credit providers.

We would be happy to work with the Office of the Privacy Commission further on this topic.

## Appendix II – Responses to questions in the Discussion Paper: Credit Reporting Privacy Code Review

#	Question	ANZ response
1.1	What benefits for individuals have resulted from the introduction of more comprehensive credit reporting? Please provide specific examples.	<p>ANZ currently only provides and obtains default credit information. ANZ is making changes to systems and processes so we can provide and obtain comprehensive credit information. We strongly believe comprehensive credit reporting will have positive benefits for us and for consumers. Lenders will be able to undertake more robust assessments to ensure they achieve appropriate lending outcomes for customers.</p> <p>Comprehensive credit reporting will only strengthen our ability to make prudent and responsible lending decisions, helping us continue to comply with lender responsibilities under the CCCFA and RLC.</p>
1.2	Do the accountability requirements for credit reporters provide a good basis for the public to have confidence that the credit reporters and their subscribers are acting compliantly?	<p>We suggest strengthening requirements on credit reporters to ensure that credit default information is loaded quickly and is correct. We also recommend requiring credit reporters to review credit default information regularly so it remains accurate.</p> <p>We're concerned that some debt collection agencies appear to continuously relist defaults for their own purposes, namely to improve collections results.</p> <p>ANZ suggests strengthening Rule 8 of the Code to align with the requirements imposed on subscribers in Schedule 3. Credit reporters should, within 10 working days of receiving information, update any credit default information.</p>
1.3	Have the credit freezing provisions been useful?	<p>ANZ has not used these provisions. But ANZ supports keeping the provisions to protect victims of identity fraud.</p>
1.4	Has pre-screening of marketing lists proved to be a beneficial use of information held by credit reporters?	<p>Yes. Pre-screening of marketing lists by credit reporters is useful for credit providers.</p> <p>However, as outlined in our submission, we believe the Code is far too restrictive and is impractical.</p> <p>In particular, we recommend changes to help credit providers comply with responsible lending principles in the CCCFA and RLC when making unsolicited offers of credit, including</p>

		<p>preapproved offers of credit.</p> <p>We suggest amending Rules 10(1B), 10(1C), and 11(3)(b) to only limit direct marketing where the subscribers are buying a marketing list, don't have a relationship with the individual, or don't have the individual's consent.</p> <p>We also suggest amending Rule 11(2) to enable subscribers to obtain information to meet a legislative duty, including disclosure duties under the CCCFA, or contractual duties, including payment of money owing.</p>
2.1	Has the provision for reporting serious credit infringements worked well in operation?	No comment because ANZ does not yet participate in comprehensive credit reporting.
2.2	Have the credit non-compliance action and confirmed credit non-compliance action provisions worked satisfactorily for individuals, subscribers and credit reporters?	No comment because ANZ does not yet participate in the sharing of this information.
2.3	Has Schedule 5 worked well in operation to improve identity matching while appropriately limiting the use and retention of driver licence information?	ANZ submits that it is useful to match using driver licence number and will assist in the move towards biometrics to identify customers. ANZ is of the view this will be a huge benefit for customers, credit providers and operations.
2.4	Have the new reporting and retention periods worked satisfactorily in operation?	ANZ does not yet participate in the new reporting, however ANZ is comfortable with the retention periods.
2.5	Has the provision for quotation enquiries been utilised and, if not, why not?	No. ANZ doesn't use quotation enquiries. ANZ only does a credit check if the customer is applying for credit. This provision might be useful if customers are enquiring about what their interest rate might be, if the lender applies different interest rates based on its credit criteria.
2.6	Have the Code's obligations, limits and processes been sufficient to provide an appropriate level of transparency and to provide meaningful opportunities to challenge accuracy and obtain correction?	No comment.

2.7	Are there any significant problems with the operation of the amendments that you would like to raise?	ANZ does not have any significant problems with the operations that need to be raised.
3.1	Would allowing the reporting of account balance information deliver substantial benefits to the credit reporting system while appropriately respecting individual privacy?	<p>ANZ submits that substantial benefits could be delivered by allowing the reporting of account balance information.</p> <p>Credit providers would be able to obtain a more complete and realistic view of an individual's borrowing, this would enable credit providers to make a more informed credit decision, which is in line with the Responsible Lending Principles in the Credit Contracts and Consumer Finance Act, and the Responsible Lending Code.</p> <p>For mortgage lending, this would assist credit providers with obtaining a more accurate picture of a borrowers Loan to-valuation ratio (LVR) and could become a critical element in making lending decisions if the Reserve Bank decides to implement debt-to-income restriction as part of the toolkit for macro prudential policy.</p> <p>ANZ believes that having the account balance available through comprehensive credit reporting would help verify all the customer's debts, ensuring credit providers adequately measure the customer's total exposure, especially for debt servicing calculations. The information will enhance responsible lending capability. Currently ANZ relies on customers disclosing all debts, which may not be accurate or complete.</p> <p>The information will also ensure that calculations like Debt to Income (DTI) or Debt servicing to Income ratios work effectively. All banks will be able to use a consistent methodology and get information on all debt for the proposed calculations.</p> <p>Other countries that use DTI tools (UK, USA, Canada, Hong Kong) allow credit reporters to collect and disclose account balance information with credit providers.</p> <p>We would be happy to work with the Office of the Privacy Commission further on this topic.</p>
3.2	Should credit reporters be permitted to include tax debt information in credit reports?	ANZ supports the proposal to include tax debt and agrees with the criteria Inland Revenue is looking to impose before disclosing that information. The information is useful for credit providers in terms of being able to make a more informed decision in assessing whether to offer any/further credit.
3.3	How useful would the New Zealand Business number be the credit reporters reporting system?	ANZ submits that this would be useful, and would assist with correctly verifying sole traders. It would enable ANZ to understand our customers better, to provide better information and service to our customers.

3.4	Should the Code require credit reporters to respond more quickly to access requests than currently is the case?	No comment.
3.5	Should credit reporters be permitted to use credit reporting systems to trace individuals to whom money is owed and, if so, in what circumstances?	ANZ submits that where an agency holds money owed to an individual, the agency should be able to seek updated information from the credit reporter to trace that individual. We believe this should apply regardless of the products or services provided by the agency to the individual (eg not just credit). We do not believe using the definition of 'unclaimed monies' in the Unclaimed Money Act is appropriate, as it may not apply to all situations or products and services. For example, Bonus Bonds would not fall within the definition.