2016‑2017‑2018

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| **EXPOSURE DRAFT** |

National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018

No. , 2018

(Treasury)

A Bill for an Act to provide for mandatory comprehensive credit reporting, and for related purposes

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A Bill for an Act to provide for mandatory comprehensive credit reporting, and for related purposes

The Parliament of Australia enacts:

1 Short title

 This Act is the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Act 2018*.

2 Commencement

 (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. |  |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

 (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

National Consumer Credit Protection Act 2009

1 Subsection 5(1)

Insert:

***credit information*** has the same meaning as in the *Privacy Act 1988*.

2 Subsection 5(1) (definition of *credit provider*)

Repeal the definition, substitute:

***credit provider***:

 (a) when used in Part 3‑2CA—has the same meaning as in the *Privacy Act 1988*; and

 (b) otherwise—has the same meaning as in section 204 of the National Credit Code, and includes a person who is a credit provider because of section 10 of this Act.

3 Subsection 5(1)

Insert:

***credit reporting body*** has the same meaning as in the *Privacy Act 1988*.

***eligible credit account***: see section 133CO.

***eligible credit reporting body***: see subsection 133CN(2).

***eligible licensee***: see subsection 133CN(1).

***large ADI*** has the same meaning as in the *Banking Act 1959*.

***mandatory credit information***: see section 133CP.

***Part 3‑2CA body***: see section 133CZC.

***subsidiary*** has the same meaning as in the *Corporations Act 2001*.

***supply requirements***: see section 133CQ.

4 After Part 3‑2C

Insert:

Part 3‑2CA—Licensees supplying credit information to credit reporting bodies etc.

Division 1—Introduction

133CM Guide to this Part

This Part has rules that apply to licensees that are large ADIs, are subsidiaries of large ADIs, or are of a prescribed kind.

These licensees must supply certain information to eligible credit reporting bodies about all of the open credit accounts the licensees hold. The licensees must then supply updated information to these bodies on an ongoing basis.

Conditions must be met before the credit reporting bodies who are supplied with this information can on‑disclose this information to credit providers.

This Part applies in addition to, and does not limit, the *Privacy Act 1988*.

133CN Meaning of eligible licensee and eligible credit reporting body

 (1) A licensee is an ***eligible licensee***, on 1 July 2018 or a later day, if on that day the licensee is:

 (a) a large ADI, a subsidiary of a large ADI, or a person of a kind prescribed by the regulations; and

 (b) a credit provider.

 (2) A credit reporting body is an ***eligible credit reporting body*** for a licensee if:

 (a) the following conditions are met:

 (i) an agreement of the kind referred to in paragraph 20Q(2)(a) of the *Privacy Act 1988* between the body and the licensee was in force on 2 November 2017;

 (ii) the licensee is an eligible licensee on 1 July 2018; or

 (b) the conditions (if any) prescribed by the regulations are met.

133CO Meaning of eligible credit account

 An ***eligible credit account*** is an account that:

 (a) relates to the provision, or possible provision, of consumer credit (within the meaning of the *Privacy Act 1988*); and

 (b) is held by one or more natural persons with a credit provider; and

 (c) is not of a kind prescribed by the regulations.

133CP Meaning of mandatory credit information

 (1) ***Mandatory credit information***, for eligible credit accounts held by natural persons with a credit provider, is any or all of the following information collected by or for the credit provider for those accounts:

 (a) credit information about the natural persons;

 (b) information of a kind prescribed by the regulations that relates to:

 (i) those accounts; or

 (ii) the natural persons who hold those accounts.

 (2) The *Privacy Act 1988*, and legislative instruments made under that Act, apply in relation to mandatory credit information covered by paragraph (1)(b) in a corresponding way to the way that Act and those instruments apply in relation to credit information.

133CQ Meaning of supply requirements

 (1) Information is supplied in accordance with the ***supply requirements*** if the supply is in accordance with:

 (a) the registered CR code (within the meaning of the *Privacy Act 1988*); and

 (b) any determination under subsection (2); and

 (c) any technical standards approved under subsection (4).

 (2) For one or more kinds of information to be supplied under this Part, ASIC may, by legislative instrument, determine particulars of that information that must be included in that supply.

 (3) Despite subsection 14(2) of the *Legislation Act 2003*, a determination under subsection (2) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing as in force or existing from time to time.

 (4) ASIC may, in writing, approve technical standards for supplying one or more kinds of information under this Part.

 (5) If there is an inconsistency between:

 (a) the registered CR code (within the meaning of the *Privacy Act 1988*); and

 (b) a determination under subsection (2) or a technical standard approved under subsection (4);

the registered CR code prevails to the extent of the inconsistency.

Division 2—Supplying credit information to credit reporting bodies etc.

133CR Initial bulk supplies of credit information—requirements

First bulk supply

 (1) An eligible licensee must supply, to each eligible credit reporting body for the licensee, mandatory credit information:

 (a) for at least 50% of the eligible credit accounts held with the licensee on the first 1 July on which the licensee is an eligible licensee; and

 (b) before the end of the later of the following periods:

 (i) the 90‑day period starting on that 1 July;

 (ii) if the licensee reasonably believes that the body is not complying with section 20Q of the *Privacy Act 1988* on that 1 July, but ceases to hold that belief before the end of that 90‑day period—the 14‑day period starting on the day the licensee ceases to hold that belief; and

 (c) in accordance with the supply requirements; and

 (d) to the extent that the licensee is not prevented by the *Privacy Act 1988* from doing so.

Civil penalty: 2,000 penalty units.

 (2) The licensee may choose which eligible credit accounts make up the 50% referred to in paragraph (1)(a).

Bulk supply of remaining information

 (3) An eligible licensee must supply, to each eligible credit reporting body for the licensee, mandatory credit information:

 (a) for the eligible credit accounts that:

 (i) are held with the licensee on the second 1 July on which the licensee is an eligible licensee; and

 (ii) were not covered by a supply under subsection (1) to the body; and

 (b) before the end of the later of the following periods:

 (i) the 90‑day period starting on that 1 July;

 (ii) if the licensee reasonably believes that the body is not complying with section 20Q of the *Privacy Act 1988* on that 1 July, but ceases to hold that belief before the end of that 90‑day period—the 14‑day period starting on the day the licensee ceases to hold that belief; and

 (c) in accordance with the supply requirements; and

 (d) to the extent that the licensee is not prevented by the *Privacy Act 1988* from doing so.

Civil penalty: 2,000 penalty units.

Requirements apply whether the information is kept in or outside this jurisdiction

 (4) Subsection (1) or (3) applies whether the mandatory credit information is kept in or outside this jurisdiction.

133CS Initial bulk supplies of credit information—exceptions

Exception for credit reporting bodies not complying with information security requirements

 (1) Neither subsection 133CR(1) nor (3) applies to a licensee in relation to a credit reporting body if:

 (a) the licensee reasonably believes that the body is not complying with section 20Q of the *Privacy Act 1988*:

 (i) on the 1 July referred to in that subsection; and

 (ii) on the last day of the 90‑day period starting on that 1 July; and

 (b) the licensee satisfies subsection (2) of this section.

 (2) The licensee satisfies this subsection if:

 (a) the licensee prepares a written notice:

 (i) stating that the licensee reasonably believes that the body is not complying with section 20Q of the *Privacy Act 1988* on that 1 July; and

 (ii) setting out the licensee’s reasons for that belief; and

 (iii) stating that the body has until the end of the 90‑day period starting on that 1 July to convince the licensee otherwise; and

 (b) the licensee gives that notice to the credit reporting body, and a copy to the Information Commissioner and ASIC, within 7 days after that 1 July; and

 (c) the licensee prepares a written notice (the ***final notice***):

 (i) stating that the licensee reasonably believes that the body is not complying with section 20Q of the *Privacy Act 1988* on the last day of that 90‑day period; and

 (ii) setting out the licensee’s reasons for that belief; and

 (d) the licensee gives the final notice to the body, and a copy to the Information Commissioner and ASIC, within 7 days after the last day of that 90‑day period.

Requirement to give notice if a credit reporting body later complies with information security requirements

 (3) If:

 (a) an eligible licensee reasonably believes that an eligible credit reporting body for the licensee is not complying with section 20Q of the *Privacy Act 1988* on the first or second 1 July on which the licensee is an eligible licensee; and

 (b) the licensee complies with paragraphs (2)(a) and (b) in relation to that belief; and

 (c) on a day during the 90‑day period starting on that 1 July, the licensee ceases to hold that belief;

the licensee must:

 (d) prepare a written notice:

 (i) stating that the licensee has ceased to hold that belief; and

 (ii) setting out the licensee’s reasons for ceasing to hold that belief; and

 (e) give that notice to the body, and a copy to the Information Commissioner and ASIC, within 7 days after the day the licensee ceased to hold that belief.

Civil penalty: 2,000 penalty units.

Exception for older repayment history information

 (4) Neither subsection 133CR(1) nor (3) applies to information that became repayment history information (within the meaning of the *Privacy Act 1988*) more than 3 months before the first 1 July on which the licensee is an eligible licensee.

Evidential burden

 (5) A licensee who wishes to rely on subsection (1) or (4) in relation to a contravention of subsection 133CR(1) or (3) bears an evidential burden in relation to that matter.

 (6) In this section:

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

133CT Ongoing supplies of credit information

 (1) If:

 (a) a licensee has supplied a credit reporting body with mandatory credit information under this Division; and

 (b) on a later day in a calendar month:

 (i) the conditions (if any) prescribed by the regulations are not met for the licensee and the body; and

 (ii) the licensee would reasonably be expected to have become aware that an event in an item of the following table has happened; and

 (iii) the licensee is still an eligible licensee; and

 (iv) an agreement of the kind referred to in paragraph 20Q(2)(a) of the *Privacy Act 1988* is in force between the licensee and the body;

the licensee must supply to the body the information referred to in that table item:

 (c) within 20 days after the end of that calendar month; and

 (d) in accordance with the supply requirements; and

 (e) to the extent that the licensee is not prevented by the *Privacy Act 1988* from doing so.

| Ongoing supplies of mandatory credit information |
| --- |
| Item | If this event happens: | This information must be supplied: |
| 1 | the need to change any mandatory credit information the licensee has supplied under this Division to ensure that the information is accurate, up‑to‑date and complete | details of the changed information |
| 2 | the payment of an overdue payment about which default information (within the meaning of the *Privacy Act 1988*) has been supplied under this Division | payment information (within the meaning of the *Privacy Act 1988*) relating to the payment |
| 3 | the opening (or re‑opening) of an eligible credit account with the licensee | mandatory credit information for that account |
| 4 | the closing of an eligible credit account with the licensee | details of the closing of that account |
| 5 | an event:(a) of a kind prescribed by the regulations; and(b) that relates to eligible credit accounts or to the natural persons who hold those accounts | mandatory credit information of a kind prescribed by the regulations for that kind of event |

Civil penalty: 2,000 penalty units.

 (2) Subsection (1) applies whether the information referred to in the table is kept in or outside this jurisdiction.

133CU Offences

Offence relating to initial bulk supplies

 (1) A person commits an offence if:

 (a) disregarding section 133CS, the person is subject to a requirement under subsection 133CR(1) or (3) to supply certain information to a credit reporting body for certain accounts held on a particular 1 July; and

 (b) the person engages in conduct; and

 (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

 (2) Subsection (1) does not apply if:

 (a) the person reasonably believes that the credit reporting body is not complying with section 20Q of the *Privacy Act 1988*:

 (i) on that 1 July; and

 (ii) on the last day of the 90‑day period starting on that 1 July; and

 (b) the licensee satisfies subsection 133CS(2).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

 (3) Subsection (1) does not apply to so much of the information as became repayment history information (within the meaning of the *Privacy Act 1988*) more than 3 months before the first 1 July on which the licensee is an eligible licensee.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Offence relating to giving notice or ongoing supplies

 (4) A person commits an offence if:

 (a) the person is subject to a requirement under subsection 133CS(3) or 133CT(1); and

 (b) the person engages in conduct; and

 (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

Geographical jurisdiction

 (5) Section 14.1 of the *Criminal Code* does not apply to:

 (a) an offence against subsection (1); or

 (b) an offence against subsection (4) relating to a requirement under subsection 133CT(1).

Division 3—Conditions on credit reporting bodies on‑disclosing credit information

133CV On‑disclosure of information supplied under Division 2

Information not to be on‑disclosed to a credit provider that has not disclosed half of its credit information

 (1) A credit reporting body that is supplied information under Division 2 must not disclose any of that information to a credit provider if:

 (a) the conditions in subsection (4) are not met for the credit reporting body and the credit provider; and

 (b) all of the disclosures of credit information by the credit provider to the credit reporting body, whether under:

 (i) section 21D of the *Privacy Act 1988*; or

 (ii) Division 2 of this Part;

 relate to less than 50% of the eligible credit accounts held with the credit provider.

Civil penalty: 2,000 penalty units.

On‑disclosing information to a credit provider that has disclosed at least half, but not all, of its credit information

 (2) If:

 (a) the conditions in subsection (4) are not met for a credit reporting body and a credit provider; and

 (b) the credit reporting body is supplied information under Division 2 (the ***Division 2 information***); and

 (c) on a later day (the ***request day***), the credit provider requests the credit reporting body to disclose to it some or all of the Division 2 information; and

 (d) the credit provider satisfies the credit reporting body’s reasonable requirements (including as to fees) for that disclosure; and

 (e) all of the disclosures of credit information by the credit provider to the credit reporting body, whether under:

 (i) section 21D of the *Privacy Act 1988*; or

 (ii) Division 2 of this Part;

 relate to at least 50%, but less than 100%, of the eligible credit accounts held with the credit provider; and

 (f) less than 12 months have passed after the first time all of the disclosures referred to in paragraph (e) related to at least 50% of those eligible credit accounts;

the credit reporting body must, to the extent that it is not prevented by the *Privacy Act 1988* from doing so, make that requested disclosure of Division 2 information to the credit provider within 10 business days after the request day.

Civil penalty: 2,000 penalty units.

On‑disclosing information to a credit provider that has disclosed all of its credit information

 (3) If:

 (a) paragraphs (2)(a) to (d) apply to a credit reporting body, and a credit provider, for a requested disclosure of Division 2 information; and

 (b) all of the disclosures of credit information by the credit provider to the credit reporting body, whether under:

 (i) section 21D of the *Privacy Act 1988*; or

 (ii) Division 2 of this Part;

 relate to 100% of the eligible credit accounts held with the credit provider;

the credit reporting body must, to the extent that it is not prevented by the *Privacy Act 1988* from doing so, make that requested disclosure of Division 2 information to the credit provider within 10 business days after the request day.

Civil penalty: 2,000 penalty units.

Exception for signatories to the PRDE etc.

 (4) The conditions in this subsection are met for a credit reporting body and a credit provider if:

 (a) both:

 (i) the credit reporting body and the credit provider are signatories to the principles titled “Principles of Reciprocity and Data Exchange”, dated 31 May 2017 and published by the Australian Retail Credit Association, as amended from time to time; and

 (ii) a service agreement (within the meaning of those principles) is in force between the credit reporting body and the credit provider; or

 (b) the conditions (if any) prescribed by the regulations are met for the credit reporting body and the credit provider.

Note: The Principles of Reciprocity and Data Exchange could in 2018 be viewed on the Australian Retail Credit Association website (https://www.arca.asn.au/).

133CW Offence

 A person commits an offence if:

 (a) the person is subject to a requirement under subsection 133CV(1), (2) or (3); and

 (b) the person engages in conduct; and

 (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

Division 4—Reporting to the Minister

133CX Reports about initial bulk supplies of credit information

 (1) A licensee who is required under subsection 133CR(1) or (3) to supply mandatory credit information must:

 (a) prepare a written statement containing information of the kinds prescribed by the regulations relating to:

 (i) the mandatory credit information; or

 (ii) the eligible credit accounts to which the mandatory credit information relates; and

 (b) arrange for a person appointed under section 133CZA to audit that statement and prepare a written report of the audit; and

 (c) give the Minister that statement, and that audit report, within 6 months after the 1 July referred to in that subsection.

Civil penalty: 2,000 penalty units.

 (2) A credit reporting body to whom mandatory credit information is required under subsection 133CR(1) or (3) to be supplied must:

 (a) prepare a written statement containing information of the kinds prescribed by the regulations relating to:

 (i) the mandatory credit information; or

 (ii) the eligible credit accounts to which the mandatory credit information relates; and

 (b) arrange for a person appointed under section 133CZA to audit that statement and prepare a written report of the audit; and

 (c) give the Minister that statement, and that audit report, within 6 months after the 1 July referred to in that subsection.

Civil penalty: 2,000 penalty units.

 (3) For the purposes of subsection (1) or (2), disregard section 133CS when working out whether a person is required under subsection 133CR(1) or (3) to supply mandatory credit information to another person.

133CY Reports about ongoing supplies of credit information

 (1) A licensee:

 (a) who is required under subsection 133CT(1) to supply information (the ***ongoing information***); or

 (b) who supplies information (the ***ongoing information***) in accordance with conditions prescribed for the purposes of subparagraph 133CT(1)(b)(i);

for one or more months in a financial year, must:

 (c) prepare a written statement containing information of the kinds prescribed by the regulations relating to:

 (i) the ongoing information; or

 (ii) the eligible credit accounts to which the ongoing information relates; and

 (d) arrange for a person appointed under section 133CZA to audit that statement and prepare a written report of the audit; and

 (e) give the Minister that statement, and that audit report, within 3 months after that financial year.

Civil penalty: 2,000 penalty units.

 (2) A credit reporting body to whom information (the ***ongoing information***):

 (a) is required under subsection 133CT(1) to be supplied; or

 (b) is supplied in accordance with conditions prescribed for the purposes of subparagraph 133CT(1)(b)(i);

for one or more months in a financial year, must:

 (c) prepare a written statement containing information of the kinds prescribed by the regulations relating to:

 (i) the ongoing information; or

 (ii) the eligible credit accounts to which the ongoing information relates; and

 (d) arrange for a person appointed under section 133CZA to audit that statement and prepare a written report of the audit; and

 (e) give the Minister that statement, and that audit report, within 3 months after that financial year.

Civil penalty: 2,000 penalty units.

133CZ Reports about on‑disclosure of credit information

 A credit reporting body who is required under subsection 133CV(2) or (3) to disclose information (the ***Division 2 information***) during a financial year must:

 (a) prepare a written statement containing information of the kinds prescribed by the regulations relating to the Division 2 information; and

 (b) arrange for a person appointed under section 133CZA to audit that statement and prepare a written report of the audit; and

 (c) give the Minister that statement, and that audit report, within 3 months after that financial year.

Civil penalty: 2,000 penalty units.

133CZA Auditors

 (1) ASIC may, by writing, appoint one or more suitably qualified persons as auditors for the purposes of this Division.

 (2) The reasonable fees and expenses of an auditor for preparing an audit report under this Division are payable by the person required to prepare the statement to which the audit report relates.

 (3) The auditor may recover those fees by action against that person.

133CZB Offence

 A person commits an offence if:

 (a) the person is subject to a requirement under subsection 133CX(1) or (2) or 133CY(1) or (2) or section 133CZ; and

 (b) the person engages in conduct; and

 (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

Division 5—Assisting ASIC

133CZC Meaning of Part 3‑2CA body

 A ***Part 3‑2CA body*** is a person that is or has been:

 (a) an eligible licensee; or

 (b) an eligible credit reporting body for a licensee.

133CZD Obligation to provide a statement or obtain an audit report if directed by ASIC

Notice to Part 3‑2CA body to provide a statement

 (1) ASIC may give a Part 3‑2CA body a written notice directing the body to lodge with ASIC a written statement containing specified information about whether the body is complying with this Part (other than Division 4).

 (2) Notices under subsection (1):

 (a) may be given at any time; and

 (b) may be given to one or more particular Part 3‑2CA bodies, or to each Part 3‑2CA body in one or more classes of Part 3‑2CA bodies, or to all Part 3‑2CA bodies; and

 (c) may require all the same information, or may contain differences as to the information they require; and

 (d) may require a statement containing information to be given on a periodic basis, or each time a particular event or circumstance occurs, without ASIC having to give a further written notice.

Notice to Part 3‑2CA body to obtain an audit report

 (3) ASIC may also give a Part 3‑2CA body a written notice directing the body to obtain an audit report, prepared by a suitably qualified person specified in the notice, on a statement, or on each statement in a class of statements, under subsection (1) before the statement is given to ASIC.

 (4) A notice under subsection (3) is not a legislative instrument.

Notice must specify day by which Part 3‑2CA body must comply

 (5) A notice given under this section must specify the day by which the Part 3‑2CA body must comply with the notice (which must be a reasonable period after the notice is given). ASIC may extend the day by giving a written notice to the Part 3‑2CA body.

Requirement to comply with notice

 (6) The Part 3‑2CA body must comply with a notice given under this section within the time specified in the notice.

Civil penalty: 2,000 penalty units.

Offence

 (7) A person commits an offence if:

 (a) the person is subject to a requirement under subsection (6); and

 (b) the person engages in conduct; and

 (c) the conduct contravenes the requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

Strict liability offence

 (8) A person commits an offence if:

 (a) the person is subject to a requirement under subsection (6); and

 (b) the person engages in conduct; and

 (c) the conduct contravenes the requirement.

Criminal penalty: 10 penalty units.

 (9) Subsection (8) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code.*

133CZE Obligation to give ASIC information required by the regulations

Regulations may require Part 3‑2CA body to give information

 (1) The regulations may require a Part 3‑2CA body, or each Part 3‑2CA body in a class of Part 3‑2CA bodies, to give ASIC specified information about whether the body is complying with this Part (other than Division 4).

Requirement to comply with regulations

 (2) If regulations under subsection (1) require a Part 3‑2CA body to give ASIC information, the body must give ASIC that information.

Civil penalty: 2,000 penalty units.

Offence

 (3) A person commits an offence if:

 (a) the person is subject to a requirement to give ASIC information under subsection (2); and

 (b) the person engages in conduct; and

 (c) the conduct contravenes the requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

Strict liability offence

 (4) A person commits an offence if:

 (a) the person is subject to a requirement to give ASIC information under subsection (2); and

 (b) the person engages in conduct; and

 (c) the conduct contravenes the requirement.

Criminal penalty: 10 penalty units.

 (5) Subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code.*

133CZF Obligation to provide ASIC with assistance if reasonably requested

Requirement to provide assistance

 (1) If ASIC, or a person authorised by ASIC, reasonably requests assistance from a Part 3‑2CA body about whether the body is complying with this Part (other than Division 4), the body must give ASIC or the authorised person the requested assistance.

Civil penalty: 2,000 penalty units.

 (2) If the request is in writing, it is not a legislative instrument.

Offence

 (3) A person commits an offence if:

 (a) the person is subject to a requirement to give ASIC or an authorised person assistance under subsection (1); and

 (b) the person engages in conduct; and

 (c) the conduct contravenes the requirement.

Criminal penalty: 25 penalty units, or 6 months imprisonment, or both.

133CZG Extended application of Division 4 of Part 2‑5

 (1) Division 4 of Part 2‑5 also applies in relation to an audit report required under subsection 133CZD(3) as if the substitutions in the following table, and the modification in subsection (2) of this section, were made.

| Substitutions to be made |
| --- |
| Item | For a reference in Division 4 of Part 2‑5 to: | substitute a reference to: |
| 1 | licensee | Part 3‑2CA body |
| 2 | subsection 49(3) | subsection 133CZD(3) |
| 3 | financial records or other credit books | records |

 (2) For the purposes of subsection (1), assume that paragraphs 104(2)(a) and (b) were replaced with the following:

 “(a) constitutes or may constitute a contravention of Part 3‑2CA (other than Division 4); or”.

Division 6—Miscellaneous

133CZH Review of the operation of this Part

 (1) The Minister must cause an independent review to be conducted of the operation of this Part.

 (2) The persons who conduct the review must complete it, and give the Minister a written report of the review, before 1 January 2022.

 (3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

133CZI Alternative constitutional basis

 Without limiting its effect apart from this section, this Part also has the effect it would have if:

 (a) each reference to an eligible licensee were expressly confined to an eligible licensee that is a corporation to which paragraph 51(xx) of the Constitution applies; and

 (b) each reference to an eligible credit reporting body were expressly confined to an eligible credit reporting body that is a corporation to which paragraph 51(xx) of the Constitution applies.

5 At the end of paragraph 265(2)(c)

Add:

 (iii) is of a provision of Part 3‑2CA (about mandatory comprehensive credit reporting); or

6 Section 266 (at the end of the heading)

Add “**or credit reporting**”.

7 Section 266

Before “ASIC may give”, insert “(1)”.

8 At the end of section 266

Add:

 (2) ASIC may give to:

 (a) a Part 3‑2CA body that is, or has been, subject to a requirement under Part 3‑2CA (other than Division 4), either alone or together with any other person or persons; or

 (b) a representative, banker, lawyer or auditor of a person referred to in paragraph (a);

a written notice requiring the production to a specified ASIC member or ASIC staff member, at a specified place and time, of specified books relating to:

 (c) information, or a statement, to which that requirement relates; or

 (d) the character or financial situation of, or a business carried on by, a person who is, or has been, subject to that requirement.

Note 1: Part 3‑2CA is about mandatory comprehensive credit reporting.

Note 2: Failure to comply with a requirement made under this subsection is an offence (see section 290).

9 Paragraph 267(1)(b)

After “paragraph 266(1)(d) or (e)”, insert “or (2)(c) or (d)”.

10 Paragraph 307(1)(b)

After “paragraph 266(1)(d) or (e)”, insert “or (2)(c) or (d)”.

Privacy Act 1988

11 At the end of section 20Q

Add:

 (3) Without limiting subsection (1), if a credit reporting body holds credit reporting information, the body must store the information:

 (a) in Australia or an external Territory; or

 (b) using a service that:

 (i) is listed by theAustralian Signals Directorate of the Defence Departmentas a Certified Cloud Service under the program known as the Information Security Registered Assessors Program; or

 (ii) meets the conditions specified in the registered CR code.