
NATIONAL CONSUMER CREDIT PROTECTION AMENDMENT (MANDATORY COMPREHENSIVE
CREDIT REPORTING AND OTHER MEASURES) BILL 2019

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ADI	Authorised Deposit-taking Institution
ASIC	Australian Securities and Investments Commission
Bill	National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting and Other Measures) Bill 2019
Credit Act	<i>National Consumer Credit Protection Act 2009</i>
OAIC	Office of the Australian Information Commissioner

Chapter 1

Mandatory comprehensive credit reporting

Outline of chapter

1.1 Schedule 1 to this Bill amends the Credit Act to mandate a comprehensive credit reporting regime. Under this mandatory regime, large ADIs must provide comprehensive credit information on consumer credit accounts to certain credit reporting bodies.

1.2 Schedule 1 to this Bill expands ASIC's powers so it can monitor compliance with the mandatory regime. Schedule 1 to the Bill also imposes additional requirements on where data held by a credit reporting body must be stored.

Context of amendments

1.3 Since March 2014, the Privacy Act has allowed credit providers and credit reporting bodies to use and disclose 'comprehensive credit information' about a consumer. This includes information about the maximum amount of credit available to a person and how well the person is meeting their repayment obligations.

1.4 Prior to March 2014, the information that could be shared was limited to 'negative information'. This includes details of a person's overdue payments, defaults, bankruptcy or court judgments against that person.

1.5 The *Privacy Act 1988* does not mandate the disclosure of comprehensive credit information by credit providers to credit reporting bodies.

1.6 The 2014 Financial System Inquiry and the Productivity Commission *Inquiry into Data Availability and Use* recommended that the Government mandate comprehensive credit reporting in the absence of voluntary participation. Comprehensive credit reporting is expected to let credit providers better establish a consumer's credit worthiness and lead to a more competitive and efficient credit market.

1.7 In the 2017-18 Budget, the Government committed to mandating a comprehensive credit reporting regime if credit providers did not meet a threshold of 40 per cent of data reporting by the end of 2017.

1.8 On 2 November 2017, the Treasurer announced that the Government would introduce legislation for a mandatory regime as it was clear the 40 per cent target would not be met.

Summary of new law

1.9 The Bill amends the Credit Act to establish a mandatory comprehensive credit reporting regime which applies from 1 April 2020. The amendments do not require or allow disclosure, use or collection of credit information beyond what is already permitted under the *Privacy Act 1988* and the *Privacy (Credit Reporting) Code 2014*.

1.10 Australia's credit reporting system is characterised by an information asymmetry. A consumer has more information about his or her credit risk than the credit provider. This can result in mis-pricing and mis-allocation of credit.

1.11 Schedule 1 to the Bill seeks to correct this information asymmetry. It lets credit providers obtain a comprehensive view of a consumer's financial situation, enabling a provider to better meet its responsible lending obligations.

1.12 The Government expects that the mandatory regime will also benefit consumers in other ways. Consumers will have better access to consumer credit, with more reliable individuals able to seek more competitive rates when purchasing credit. Consumers that are looking to enter the housing market can better show their credit worthiness.

1.13 Consumers that possess a poor credit rating will also be able demonstrate their credit worthiness through future consistency and reliability.

1.14 The mandatory regime applies to 'eligible licensees' which initially are large ADIs that hold an Australian Credit Licence. An ADI is considered large when its total resident assets are greater than \$100 billion. Other credit providers will be subject to the regime if they are prescribed in regulations.

1.15 In June 2019, large ADIs accounted for more than 80 per cent of household lending. The critical mass of information supplied by these large ADIs and their subsidiaries is expected to encourage other credit providers to also share comprehensive credit information.

1.16 The supply of information under the mandatory regime includes an initial bulk supply of credit information and an ongoing requirement to keep information up-to-date and accurate.

- 1.17 The initial bulk supply is split across two years:
- By 29 June 2020, large ADIs must supply credit information on 50 per cent of the consumer credit accounts within the banking group to all credit reporting bodies the large ADI had a contract with on 2 November 2017.
 - By 29 June 2021, large ADIs must supply credit information on the remaining accounts, including those that open after 1 April 2020 and those held by subsidiaries of the large ADI to the same credit reporting bodies as the first bulk supply.
- 1.18 Supplying the initial bulk supply to credit reporting bodies the large ADI had a contract with on 2 November 2017 recognises the established relationship the licensee has with that credit reporting body including an agreement on the handling of data to ensure it remains confidential and secure.
- 1.19 Following the bulk supply of information, large ADIs must keep the information supplied accurate, complete and up-to-date, including by supplying information on subsequently opened accounts. This information must be supplied to credit reporting bodies that received the initial bulk supply and with whom the licensee continues to have a contract under the *Privacy Act 1988*.
- 1.20 The security and privacy of a consumer's credit information will be preserved and protected. Schedule 1 to the Bill relies on the existing protections established by the *Privacy Act 1988* and *Privacy (Credit Reporting) Code 2014* and the oversight of the Australian Information Commissioner.
- 1.21 ASIC will be responsible for monitoring compliance with the mandatory regime. It has new powers to collect information and require audits to confirm the supply requirements are being met. ASIC can also prescribe the technical standards for the reported credit information.
- 1.22 The Treasurer will receive statements from large ADIs and credit reporting bodies to show that the initial bulk supply requirements have been met.
- 1.23 The mandatory comprehensive credit regime recognises that industry stakeholders have already taken steps to support sharing comprehensive credit information. This includes the *Principles of Reciprocity and Data Exchange* and supporting *Australian Credit Data Reporting – Industry Requirements & Technical Standards*.
- 1.24 To the extent possible, the mandatory comprehensive credit reporting regime operates within the established industry framework but also provides scope for future technological developments.

1.25 The Treasurer must cause an independent review of the mandatory regime to be completed and a written report provided to the Treasurer by 1 October 2023. The Treasurer must table the report in each House of Parliament within 15 sitting days of receiving the report.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Eligible licensees must supply credit information on: <ul style="list-style-type: none"> • 50 per cent of their eligible credit accounts within 90 days of the first 1 April of becoming an eligible licensee. • All remaining eligible credit accounts, including those held by subsidiaries, within 90 days of the following 1 April. 	No equivalent.
A credit provider that has supplied credit information under the mandatory regime must keep the information up to date, complete and accurate, including by supplying information on eligible accounts that are subsequently opened.	No equivalent.
Regulations will set out the circumstances when a credit reporting body can share the credit information supplied through the mandatory regime.	No equivalent.

Detailed explanation of new law

1.26 Before 2014, the credit reporting system, which is regulated by the *Privacy Act 1988*, limited the information that could be collected, used and disclosed by credit providers and credit reporting bodies to ‘negative information’ about an individual. Negative information includes identification information such as a person’s name and address, default history and bankruptcy information about that person.

1.27 The *Privacy Amendment (Enhancing Privacy Protection) Act 2012* amended the *Privacy Act 1988* to let credit providers and credit reporting bodies collect, use and disclose comprehensive credit

information. Comprehensive credit information includes repayment history information, the type of credit a person has and the maximum amount of credit available to a person.

1.28 The explanatory memorandum to the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012* stated:

'Comprehensive credit reporting will give credit providers access to additional personal information to assist them in establishing an individual's credit worthiness. The additional personal information will allow credit providers to make a more robust assessment of credit risk and assist credit providers to meet their responsible lending obligations. It is expected that this will lead to decreased levels of over-indebtedness and lower credit default rates. More comprehensive credit reporting is also expected to improve competition and efficiency in the credit market, which may result in reductions to the cost of credit for individuals.'

1.29 These amendments aligned Australia's credit reporting system with comparable international systems, including in the United States, United Kingdom and New Zealand, which also allow for the disclosure and sharing of more comprehensive credit information.

1.30 Sharing comprehensive credit information under the *Privacy Act 1988* is voluntary. A credit provider is not required to share comprehensive credit information with a credit reporting body.

1.31 The mandatory regime does not alter the existing provisions set out in the *Privacy Act 1988* and the *Privacy (Credit Reporting) Code 2014* governing the use and disclosure of credit information. However, Schedule 1 to the Bill does place a new obligation on credit reporting bodies as to where and how data is stored.

1.32 The *Privacy Act 1988* and *Privacy (Credit Reporting) Code 2014* will continue to:

- set out the permitted uses and disclosure of an individual's personal and credit information by credit providers and credit reporting bodies;
- impose a requirement on credit providers and credit reporting bodies to ensure the accuracy and currency of information in the credit reporting system;
- impose a requirement on a credit reporting body to protect the information it collects from misuse and unauthorised access;
- impose a requirement on a credit reporting body to have a publicly available policy on how it collects, holds, uses and discloses credit information as well as procedures in place to

ensure that the obligations under the *Privacy Act 1988* and *Privacy (Credit Reporting) Code 2014* are met; and

- impose timeframes on both credit providers and credit reporting bodies on how long credit information can be kept before it must be destroyed.

1.33 Within the framework established by the *Privacy Act 1988*, Schedule 1 to the Bill provides that eligible licensees must supply certain credit information to eligible credit reporting bodies on consumer credit accounts the eligible licensee holds. The eligible licensee must supply updated information to these bodies on an ongoing basis.

1.34 Schedule 1 to the Bill requires the Treasurer to cause an independent review of the mandatory regime which must be completed and a report given to the Treasurer before 1 October 2023. The Treasurer must table the report in Parliament within 15 sitting days of receiving the report. [*Schedule 1, item 4, section 133CZL*]

1.35 The report will not be a legislative instrument because of the exemption in table item 12 in 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

1.36 Schedule 1 to the Bill is not specific on the scope of the review so as not to limit the review when it is established. However, the Government expects that the review could consider:

- how the specific objectives of the mandatory regime have been met, including whether sufficient participation by credit providers in the voluntary regime has been achieved;
- the benefits for consumers and small businesses from the mandatory regime;
- options for broadening the scope of the mandatory regime (including access by non-Australian credit licence holders to information supplied under the regime); and
- whether further measures are required to maintain the security of comprehensive credit information (including to facilitate new technological solutions for data exchange).

1.37 All references in this explanatory memorandum are to the Credit Act, unless otherwise stated.

Mandating the supply of credit information

Which credit providers must supply credit information?

1.38 The mandatory regime applies to eligible licensees. An eligible licensee is a credit provider who holds an Australian Credit Licence, and who on 1 April 2020, or a later date is:

- A large ADI; or
- A body corporate of a kind prescribed in the regulations.

[Schedule 1, item 4, subsection 133CN(1)]

1.39 Identifying which credit providers are subject to the mandatory regime relies on a number of existing definitions in the Credit Act and *Privacy Act 1988* and some new definitions.

- Existing subsection 35(1) of the Credit Act defines Australian Credit Licence as a licence that allows the holder to engage in particular credit activities.
- The concept of a ‘large’ ADI relies on the legislative instrument made under the *Banking Act 1959* as amended by the *Treasury Laws Amendment (Banking Executive Accountability Regime) Act 2018*. Broadly, an ADI meets the definition of large where its total resident assets exceed \$100 billion. *[Schedule 1, item 3, subsection 5(1)]*
- The Part of the Credit Act inserted by this Bill relies on the definition of credit provider in sections 6G to 6K of the *Privacy Act 1988*. This definition includes a bank or an organisation for which a substantial part of the organisation’s business is the provision of credit. *[Schedule 1, item 2, subsection 5(1)]*

1.40 The Government expects that regulations would be made if the mandatory regime had been in operation for a period of time and other credit providers were not voluntarily supplying data.

1.41 Where a credit provider is a large ADI on 1 April 2020, it will have 90 days from that date to supply the required information for 50 per cent of its eligible credit accounts. In certain circumstances the large ADI may have longer than 90 days to supply the credit information. This is explained at paragraph 1.77. *[Schedule 1, item 4, subparagraph 133CR(1)(a)(i) and subsection 133CR(2)]*

1.42 A large ADI can meet the requirement to supply credit information for 50 per cent of its eligible accounts from eligible accounts across the banking group for which it is the head company. *[Schedule 1, item 4, subsection 133CR(2)]*

1.43 For example, if the large ADI is the head company across a banking group that has multiple subsidiaries each of which individually or collectively hold an Australian credit licence, the large ADI can supply information for 50 per cent of accounts across the banking group in order to meet its obligations on 1 April 2020.

1.44 How the ADI chooses to make up 50 per cent of accounts is a decision for the ADI. The information may be sourced from the head company or from within the group (its subsidiaries) or both. The information may relate to a particular type of credit while systems are put in place to supply information for more complex accounts in the second tranche. *[Schedule 1, item 4, subsection 133CR(2)]*

1.45 On 1 April 2021, a large ADI has 90 days to supply the required information for all of the remaining eligible credit accounts that have either opened after 1 April 2020 or were not reported in the first tranche. This includes those eligible credit accounts held by other members of the banking group for which the ADI is the head company. *[Schedule 1, item 4, subsections 133CR(3) and 133CR(4)]*

1.46 Generally, the large ADI has 90 days to supply the remaining information. There are circumstances when a longer period may apply which is explained at paragraphs 1.84 to 1.86. *[Schedule 1, item 4, paragraph 133CR(3)(a)]*

1.47 Where a licensee becomes an eligible licensee after 1 April 2020 and is subject to the mandatory regime, the credit provider must supply information about 50 per cent of its eligible credit accounts within 90 days of the first 1 April it became an eligible licensee.

1.48 As explained at paragraph 1.42, if an eligible licensee is part of a banking group, it can meet the requirement to supply credit information for 50 per cent of its eligible accounts from across the banking group for which it is the head company. *[Schedule 1, item 4, subsection 133CR(2)]*

1.49 In respect of its remaining eligible credit accounts, the credit provider must supply the information about those eligible credit accounts within 90 days of the 1 April that falls 12 months later.

1.50 There are circumstances when a longer period to supply the information may apply. This is explained at paragraphs 1.84 to 1.86.

Example 1.1

On 1 April 2020, an ADI has total resident assets less than \$100 billion and as a result is a medium ADI and not subject to the mandatory comprehensive credit reporting regime.

However, on 25 June 2020 the ADI becomes a large ADI.

The ADI must supply mandatory credit information for 50 per cent of its eligible credit accounts within 90 days of 1 April 2021.

Information about the remaining accounts and accounts opened after 1 April 2021 must be supplied within 90 days of 1 April 2022.

How does the mandatory regime operate when a credit reporting body is not complying with the security requirements in the *Privacy Act 1988*?

1.51 The Australian Information Commissioner administers the *Privacy Act 1988* and has oversight of the handling of information, including information disclosed as part of Australia's credit reporting regime. This does not change under Schedule 1 to the Bill.

1.52 The existing protections in the *Privacy Act 1988* reflect that the community expects that the information shared in the credit reporting regime is given a high level of protection.

1.53 These protections include requiring credit reporting bodies to take reasonable steps to protect the information received, including from misuse, interference and unauthorised access (section 20Q of the *Privacy Act 1988*) and having contracts which place similar obligations on a licensee.

1.54 Publications produced by the OAIC such as the *Guide to securing personal information - 'Reasonable steps' to protect personal information* set out the steps that could be taken and how the reasonableness test adjusts based on the amount of information held.

1.55 While the *Privacy Act 1988* places obligations on a credit reporting body, a licensee also typically places its own obligations on a credit reporting body to ensure the security of its customer's information.

1.56 These obligations are set out in the contract between the licensee and credit reporting body and could include requiring audits, reviewing the results of stress tests or requiring that certain procedures are put in place to train staff.

1.57 It is important, in the context of the mandatory regime, that a licensee's ability to have its own security requirements for the information it discloses is not weakened. A licensee is well placed to consider emerging risks and adjust requirements as the threat environment changes.

1.58 Schedule 1 to the Bill recognises this existing relationship between a licensee and credit reporting body by enabling a licensee to withhold the supply of mandatory credit information where a licensee does not reasonably believe that the credit reporting body is meeting its information security obligations under the *Privacy Act 1988*.

1.59 Paragraphs 1.71 to 1.75 explain what an eligible licensee needs to do if, when making the initial bulk supplies, the eligible licensee does not believe the credit reporting body is meeting its information security obligations. This includes notifying the credit reporting body, ASIC and the Australian Information Commissioner.

1.60 The notification obligations give the credit reporting body an opportunity to engage with the credit provider and take steps to meet its obligations in section 20Q of the *Privacy Act 1988*. Giving the notices to ASIC and the Australian Information Commissioner also gives the regulators of the mandatory regime and the *Privacy Act 1988* visibility about broader compliance with those two frameworks.

1.61 If an eligible licensee has an ongoing concern with a credit reporting body's approach to information security, there may be a role for the Australian Information Commissioner to intervene including by providing additional guidance.

1.62 The eligible licensee should have sound justification when it does not supply the mandatory information on the basis that the credit reporting body is not meeting its obligations in section 20Q of the *Privacy Act 1988*.

1.63 The eligible licensee bears an evidential burden where ASIC applies to a court to declare that the supply obligations have not been met (existing section 166) and order a pecuniary penalty to be paid (existing section 167).

1.64 The evidential burden is placed on the eligible licensee because the information that the eligible licensee would use to form its reasonable belief would be peculiarly within the knowledge of the licensee.

1.65 For example, an eligible licensee may hold this belief on the basis of a stress test carried out under the terms of a contract between the eligible licensee and credit reporting body. The results of such a test would only be shared with the eligible licensee.

1.66 It would be significantly more costly and difficult for the prosecution to disprove the reason for the licensee believing the credit reporting body is not meeting its information security obligations under section 20Q of the *Privacy Act 1988* than for the licensee to prove.

1.67 Placing an evidential burden on the licensee also highlights the significance of the exception and the need for the licensee to have sound justification when not supplying the mandatory credit information.

1.68 A definition of 'declaration of contravention' is inserted into the Credit Act. [*Schedule 1, item 3, subsection 5(1)*]

Timeframe to supply data – the first bulk supply

1.69 The requirement to supply information within 90 days of the first 1 April when the obligation applies only operates when the eligible licensee reasonably believes that the eligible credit reporting body meets its obligations under section 20Q of the *Privacy Act 1988*. [*Schedule 1, item 4, subparagraph 133CR(1)(a)(ii) and subsection 133CR(5)*]

1.70 As explained above, section 20Q of the *Privacy Act 1988* requires a credit reporting body to take reasonable steps to protect the information it receives, including from misuse, interference and unauthorised access.

1.71 If, on the first 1 April that the eligible licensee must supply data, the eligible licensee does not reasonably believe that the credit reporting body is meeting its obligations in section 20Q of the *Privacy Act 1988*, and the eligible licensee continues to hold that belief at the end of the 90 day period, the eligible licensee does not need to make the first bulk supply. *[Schedule 1, item 4, subsection 133CS(1)]*

1.72 If the eligible licensee believes the credit reporting body is not meeting its obligations in section 20Q of the *Privacy Act 1988* on the first 1 April, the eligible licensee must notify the credit reporting body, the Australian Information Commissioner and ASIC within 7 days. *[Schedule 1, item 4, paragraphs 133CS(2)(a) and 133CS(2)(b)]*

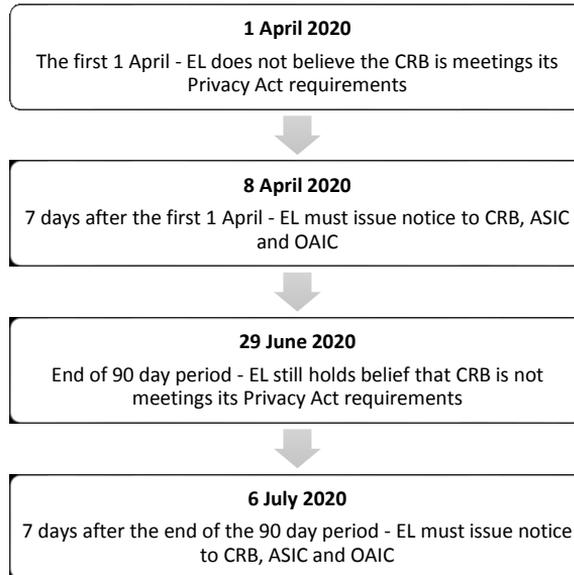
1.73 If the eligible licensee still believes at the end of the 90 day period when the information should have been supplied that the credit reporting body is not meeting its obligations in section 20Q of the *Privacy Act 1988*, the eligible licensee must give the credit reporting body, the Australian Information Commissioner and ASIC a notice within 7 days of the end of the 90 day period. *[Schedule 1, item 4, paragraphs 133CS(2)(c) and 133CS(2)(d)]*

1.74 Both of these notices must explain why the eligible licensee believes that the credit reporting body is not meeting its obligations in section 20Q of the *Privacy Act 1988*. *[Schedule 1, item 4, subparagraphs 133CS(2)(a)(ii) and 133CS(2)(c)(ii)]*

1.75 The first notice must also explain that the credit reporting body may convince the eligible licensee of how it is meeting its obligation in section 20Q of the *Privacy Act 1988*. *[Schedule 1, item 4, subparagraph 133CS(2)(a)(iii)]*

Example 1.2

On 1 April 2020 (the first 1 April), a large ADI does not reasonably believe a credit reporting body is meeting its section 20Q obligations. It still holds this belief at the end of the 90-day period.



Key: EL – eligible licensee
CRB – eligible credit reporting body
OAIC – Information Commissioner

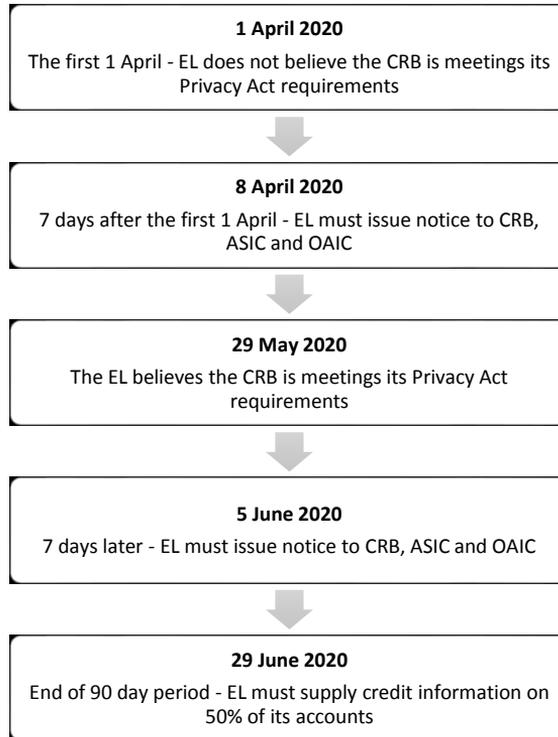
1.76 The notification obligations give the credit reporting body an opportunity to engage with the credit provider and take steps to meet the obligations in section 20Q of the *Privacy Act 1988*. Giving the notices to ASIC and the Australian Information Commissioner also gives the regulators of the mandatory regime and the *Privacy Act 1988* visibility about broader compliance with those two frameworks.

1.77 If, during the 90 day period after the first 1 April the eligible licensee believes that credit reporting body has begun to meet its section 20Q obligations the eligible licensee must supply the mandatory credit information within 14 days of holding this belief, or by the end of the original 90 day period, if this is longer. [Schedule 1, item 4, paragraph 133CR(1)(a) and subsection 133CR(5)]

1.78 The eligible licensee must also notify the credit reporting body, the Information Commissioner and ASIC within 7 days of the eligible licensee believing that the credit reporting body is meeting its obligations in section 20Q of the *Privacy Act 1988*. [Schedule 1, item 4, section 133CT]

Example 1.3

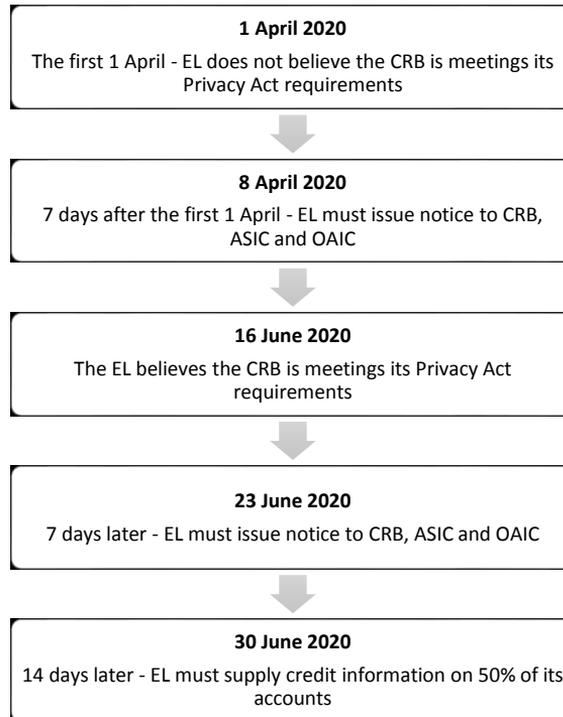
On 1 April 2020 (the first 1 April), a large ADI does not reasonably believe that a credit reporting body is meeting its section 20Q obligations in the Privacy Act. The large ADI stops holding this belief during the 90-day period. The original 90-day period is the longer time to supply the information.



Key: EL – eligible licensee
CRB – eligible credit reporting body
OAIC – Information Commissioner

Example 1.4

The longer period to supply the information is 14 days from the day the large ADI believed the credit reporting body was meeting its section 20Q obligations.



Key: EL – eligible licensee
CRB – eligible credit reporting body
OAIC – Information Commissioner

Timeframe to supply data – the second bulk supply

1.79 The obligation to supply information within 90 days of the second 1 April does not apply while the eligible licensee believes that the eligible credit reporting body does not meet its obligations under section 20Q of the *Privacy Act 1988*. [Schedule 1, item 4, subparagraphs 133CR(3)(a)(ii) and 133CR(3)(a)(iii)]

1.80 Paragraphs 1.55 and 1.57 summarised the requirements in section 20Q of the *Privacy Act 1988* and the steps that an eligible licensee may already be taking in order to be satisfied that the credit reporting body is meeting its obligations regarding the security of information as set out in the *Privacy Act 1988*.

1.81 Similar to the first 1 April bulk supply obligations, if an eligible licensee wants to rely on the exception to not supply on the basis of a credit reporting body not complying with its information security

requirements, the eligible licensee must meet certain notification obligations. *[Schedule 1, item 4, paragraph 133CS(1)(c)]*

1.82 If the eligible licensee believes the credit reporting body is not meeting its obligations under section 20Q of the *Privacy Act 1988* on the second 1 April, the eligible licensee must notify the credit reporting body, the Australian Information Commissioner and ASIC within 7 days. *[Schedule 1, item 4, paragraphs 133CS(2)(a) and 133CS(2)(b)]*

1.83 Once the eligible licensee does believe the credit reporting body is meeting its obligations under section 20Q of the *Privacy Act 1988* the eligible licensee must notify the credit reporting body, ASIC and the Australian Information Commissioner within 7 days of holding that belief. *[Schedule 1, item 4, section 133CT]*

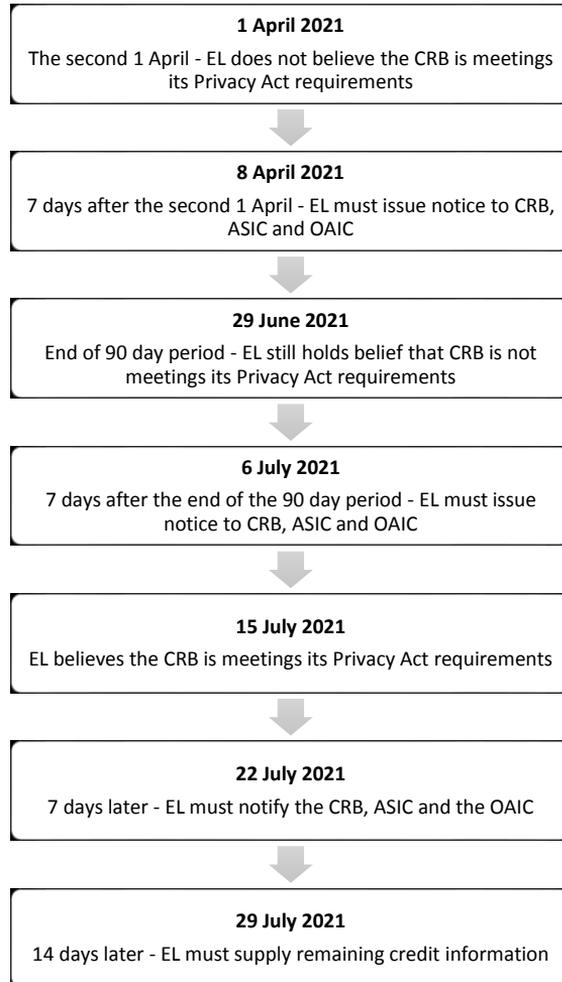
1.84 If, the eligible licensee begins to hold this belief during the 90 day period the eligible licensee must supply the mandatory credit information within 14 days of holding this belief, or by the end of the original 90 day period, if this is longer. *[Schedule 1, item 4, paragraph 133CR(3)(a) and subsection 133CR(5)]*

1.85 If the eligible licensee does not believe the credit reporting body meets its obligations under section 20Q of the *Privacy Act 1988* during the 90 day period the eligible licensee will need to notify the credit reporting body, ASIC and the Australian Information Commissioner. The eligible licensee must issue the notice within 7 days. *[Schedule 1, item 4, paragraphs 133CS(2)(c) and 133CS(2)(d)]*

1.86 However, unlike the initial bulk supply, the eligible licensee will need to supply the mandatory credit information after the 90 day period once it believes the credit reporting body is meeting its obligations under section 20Q of the *Privacy Act 1988*. The eligible licensee will have 7 days to notify the credit reporting body, ASIC and the Australian Information Commissioner and 14 days to supply the mandatory credit information. *[Schedule 1, item 4, subparagraph 133CR(3)(a)(ii) and section 133CT]*

Example 1.5

The eligible licensee does not reasonably believe the credit reporting body is meeting its section 20Q obligations on 1 April 2021 but begins to hold this belief after the 90-day period.



Key: EL – eligible licensee
CRB – eligible credit reporting body
OAIC – Information Commissioner

1.87 All the mandated credit information may be supplied when the second bulk supply is required if the eligible licensee was not satisfied the credit reporting body was meeting its obligations under section 20Q of the *Privacy Act 1988* obligations before the end of the 90 day period for the first 1 April.

Ongoing supply obligations

1.88 The usefulness and efficiency of Australia’s credit reporting system relies on credit information disclosed to a credit reporting body being kept complete, accurate and up-to-date.

- Section 20N of the *Privacy Act 1988* requires credit reporting bodies to enter into agreements with credit providers to ensure that information provided is accurate, up-to-date and complete.
- Section 21U of the *Privacy Act 1988* requires a credit provider, who holds credit information which has been previously disclosed to a credit reporting body, to notify the credit reporting body of a correction when the credit provider has taken steps to make the information it holds, accurate, up-to-date, complete, relevant and not misleading.

1.89 No amendments to the *Privacy Act 1988* or *Privacy (Credit Reporting) Code 2014* are required for the obligations to keep credit information complete, up-to-date and accurate to apply to the credit information supplied under the mandatory regime.

1.90 However, where an obligation under the *Privacy Act 1988* and the *Privacy (Credit Reporting) Code 2014* require a credit provider who has supplied information to a credit reporting body to update that information and no timeframe is specified in the *Privacy Act 1988* or *Privacy (Credit Reporting) Code 2014*, the amendments in Schedule 1 to this Bill provide that the information must generally be supplied within 45 days of the change or update. [*Schedule 1, item 4, subsection 133CU(1)*]

1.91 The table inserted by Schedule 1 to the Bill includes a number of ‘events’, already captured by the broad obligations in the *Privacy Act 1988* and *Privacy (Credit Reporting) Code 2014*, as well as requiring mandatory credit information for new accounts that open.

1.92 The following table lists when a licensee must supply information to a credit reporting body, including where the change occurred to an account held by a subsidiary.

Table 1.1

<i>Event</i>	<i>Description</i>
Changes required to the information supplied to a credit reporting body necessary to keep the information accurate, up-to-date and complete. <i>[Schedule 1, item 4, item 1 in the table in subsection 133CU(1)]</i>	This includes where named account holders change, for example a person ceases to be an account holder, there are corrections or changes in consumer credit liability information or where an account goes into default.

<p>A payment has been made where default information has previously been supplied to a credit reporting body.</p> <p>[Schedule 1, item 4, item 2 in the table in subsection 133CU(1)]</p>	<p>Section 21E of the <i>Privacy Act 1988</i> requires a credit provider that has provided default information to a credit reporting body to update that information once payment has been made. The <i>Privacy Act 1988</i> and <i>Privacy (Credit Reporting) Code 2014</i> set out how to establish when an overdue payment has been made and the day when it has been taken to have been made.</p>
<p>New accounts opened after the two initial bulk supplies of information have been supplied to credit reporting bodies either with the licensee or a member of the banking group.</p> <p>[Schedule 1, item 4, item 3 in the table in subsection 133CU(1)]</p>	<p>Mandatory credit information is required for a new account opened with the licensee that has not previously been submitted to the credit reporting body. There is no requirement in the <i>Privacy Act 1988</i> or <i>Privacy (Credit Reporting) Code 2014</i> to supply information in this circumstance.</p>
<p>Default information for an account where mandatory credit information has already been supplied to a credit reporting body.</p> <p>[Schedule 1, item 4, item 5 in the table in subsection 133CU(1)]</p>	<p>Default information is defined in 6Q of the <i>Privacy Act 1988</i> and section 9 of the <i>Privacy (Credit Reporting) Code 2014</i>. A credit provider remains subject to the restrictions on disclosing this information under the <i>Privacy Act 1988</i>, including the requirement to give a notice under paragraph 21D(3)(d) of the <i>Privacy Act 1988</i>.</p>
<p>Financial hardship information that comes into existence on or after 1 April 2021. [Schedule 2, item 15, item 3 in the table in subsection 133CU(1)]</p>	<p>Hardship information is a new term which will be inserted in the <i>Privacy Act 1988</i> by Schedule 2 to this Bill.</p>

1.93 A regulation making power also allows regulations to prescribe other circumstances for an eligible credit account or the consumer which would require the supply of mandatory credit information, or related information. **[Schedule 1, item 4, item 4 in the table in subsection 133CU(1)]**

1.94 A licensee may supply information in bulk and is not required to separately supply credit information for each event. **[Schedule 1, item 4, subsection 133CU(3)]**

1.95 Where a licensee and credit reporting body meet conditions prescribed in regulations, the licensee may supply information for the

events listed in the table in accordance with those conditions. *[Schedule 1, item 4, subparagraph 133CU(1)(b)(i)]*

1.96 The Government expects that the conditions prescribed in the regulations would recognise alternative IT solutions. For example, an approach under which a credit reporting body could request information from a licensee and receive that information in real-time.

1.97 However, before prescribing an alternative arrangement in the regulations the Government would consider the operability of such an approach and whether it could be reasonably supported by both credit reporting bodies and licensees.

1.98 The Government would also consider the implications of an alternative approach and its impact on the competitiveness and efficiency of the credit market.

1.99 The regulations made under this provision may refer to a published document such as an industry developed standard. Where this is the case, the document would be referred to as in force for time to time. It is important the regulations are dynamic and can automatically capture the changes in a document. This would allow industry to readily respond to changes, such as technological developments, without the need for the Government to remake the regulations. *[Schedule 1, item 4, subsections 133CU(5) and 133CU(6)]*

1.100 In deciding whether to refer to a document, the Government would consider whether the document is publicly available and easily accessible for licensees and those that need to use the documents.

1.101 The table should not be read as narrowing obligations under the *Privacy Act 1988* so that only events listed in the table require updates.

1.102 The *Privacy Act 1988* and *Privacy (Credit Reporting) Code 2014* include some specific timeframes in which a credit provider or credit reporting body must update or correct information. These are generally not disrupted by the amendments in this Bill. *[Schedule 1, item 4, section 133CZK]*

1.103 For example, section 20T and 21V of the *Privacy Act 1988* provide an individual with correction of information rights. The *Privacy (Credit Reporting) Code 2014* sets out how a credit reporting body or credit provider must respond to such a request. Once a request has been made, and the credit reporting body or a credit provider is satisfied that credit-related personal information is inaccurate, out-of-date, incomplete, irrelevant or misleading, the credit reporting body or credit provider must take reasonable steps to correct the information within 30 days of the request.

1.104 Similarly, subsection 13.1 of the *Privacy (Credit Reporting) Code 2014* requires a credit provider (and the receiving credit provider) to

notify a credit reporting body that has received information on a credit account which is subsequently transferred between those credit providers of the transfer within 45 days of it occurring.

1.105 Subsection 6.4 of the *Privacy (Credit Reporting) Code 2014* requires a credit provider to notify a credit reporting body within 45 days where credit is terminated or ceases to be in force and the credit provider has previously disclosed consumer credit liability information.

1.106 However, the obligation to supply information and keep it up-to-date, accurate and complete does not apply while the eligible licensee believes that the eligible credit reporting body does not meet its obligations under section 20Q of the *Privacy Act 1988*. This does not apply where the correction is to an error in information previously supplied and the information was incorrect at the time it was supplied. *[Schedule 1, item 4, subsections 133CV(1) and 133CV(4), and section 133CZK]*

1.107 To rely on this exception the credit provider must meet a number of notification obligations. *[Schedule 1, item 4, paragraph 133CV(1)(c)]*

1.108 If the eligible licensee believes the credit reporting body is not meeting its obligations under section 20Q of the *Privacy Act 1988* on the day that the event which triggers the supply of information occurs, the eligible licensee must notify the credit reporting body, the Australian Information Commissioner and ASIC within 7 days of that day. *[Schedule 1, item 4, paragraphs 133CV(2)(a) and 133CV(2)(b)]*

1.109 If the eligible licensee holds this belief at the end of the 45 day period in which the information should have been supplied, the eligible licensee must give the credit reporting body, the Australian Information Commissioner and ASIC a notice within 7 days of that day. *[Schedule 1, item 4, paragraphs 133CV(2)(c) and 133CV(2)(d)]*

1.110 Both of these notices must explain why the eligible licensee believes that the credit reporting body is not meeting its obligations under section 20Q of the *Privacy Act 1988*. *[Schedule 1, item 4, subparagraphs 133CV(2)(a)(ii) and 133CV(2)(c)(ii)]*

1.111 The first notice must also explain that the credit reporting body may convince the eligible licensee as to how it is meeting its obligations under section 20Q of the *Privacy Act 1988*. *[Schedule 1, item 4, subparagraph 133CV(2)(a)(iii)]*

1.112 Once the eligible licensee believes the credit reporting body is meeting its obligations in section 20Q of the *Privacy Act 1988* the eligible licensee has 7 days to notify the credit reporting body, ASIC and Australian Information Commissioner. *[Schedule 1, item 4, section 133CW]*

1.113 The eligible licensee has the longer of the remaining 45 days since the ‘trigger event’ or 20 days since the eligible licensee believed the credit provider was meeting its obligations under the *Privacy Act 1988* to

supply the required information. *[Schedule 1, item 4, paragraph 133CU(1)(c) and subsection 133CU(2)]*

1.114 An eligible licensee has an evidential burden where the licensee withholds credit information on the basis of the credit reporting body not meeting its section 20Q obligations in the *Privacy Act 1988*.

Paragraphs 1.63 to 1.67 explain why the evidential burden is being placed on the licensee. *[Schedule 1, item 3, subsection 5(1) and item 4, subsection 133CV(3)]*

Which information must be supplied?

1.115 To meet its obligation under the mandatory regime, a credit provider must supply ‘mandatory credit information’ on its ‘eligible credit accounts’ to all ‘eligible credit reporting bodies’. *[Schedule 1, item 4, section 133CR]*

1.116 The definition of ‘eligible credit account’ is included in paragraphs 1.133 to 1.139. The definition of ‘eligible credit reporting body’ is included in paragraphs 1.142 and 1.149.

1.117 ‘Mandatory credit information’ is ‘credit information’ as defined in section 6N of the *Privacy Act 1988* for a natural person that is personal information (other than sensitive information), that is:

- identification information;
- consumer credit liability information;
- repayment history information;
- default information;
- payment information; and
- new arrangement information

[Schedule 1, item 1, subsection 5(1), item 3, subsection 5(1) and item 4, subsection 133CP(1)]

1.118 From 1 April 2021, mandatory credit information will also include financial hardship information. *[Schedule 2, item 13, paragraph 133CP(1)(c)]*

1.119 Each of these terms is defined in the *Privacy Act 1988*.

1.120 The *Privacy (Credit Reporting) Code 2014* supplements and provides further guidance on terms used in the definition of ‘credit information’. For example, the *Privacy (Credit Reporting) Code 2014* requires credit reporting bodies to develop and maintain in conjunction with credit providers, common descriptors for ‘types of consumer credit’.

1.121 The *Privacy (Credit Reporting) Code 2014* also explains how to establish the date when credit was entered into or was terminated. This guidance also applies under the mandatory regime implemented by Schedule 1 to this Bill.

1.122 There may be restrictions on the use and disclosure of credit information under the *Privacy Act 1988 and Privacy (Credit Reporting) Code 2014*.

1.123 For example, default information can only be disclosed to a credit reporting body where the credit provider has notified the consumer that the information will be shared with a credit reporting body (see section 21D of the *Privacy Act 1988*).

1.124 These restrictions remain under the mandatory comprehensive credit reporting regime. That is, a licensee is only mandated to share information to the extent that is it allowed under the *Privacy Act 1988 and Privacy (Credit Reporting) Code 2014*. [*Schedule 1, item 4, paragraphs 133CR(1)(c), 133CR(3)(c) and 133CU(1)(e)*]

1.125 Where these obligations have been met, and the default information can be shared, a credit provider is only required to supply default information that relates to the period from when the eligible licensee is subject to the mandatory regime. For a subsidiary within a banking group, it is the point in time from when the head company became an eligible licensee. [*Schedule 1, item 4, subsection 133CP(3)*]

1.126 Schedule 1 to this Bill also sets out how many months of repayment history must be provided. A person may have many years of repayment history information depending on when a credit account was first opened. A credit provider is able to store repayment history information for up to two years.

1.127 However, under the mandatory credit reporting regime, a licensee will meet its obligation to supply repayment history information where it supplies repayment history information for an account for the three months preceding the 1 April from when the obligation to supply data was first triggered. [*Schedule 1, item 4, subsection 133CP(2)*]

1.128 For example, if a licensee makes its initial bulk supply of data on 2 April 2020, the licensee would include repayment history information for 50 per cent of its eligible credit accounts for the months of January 2020, February 2020 and March 2020.

1.129 Similarly, if the provider did not make its initial bulk supply until May 2020, the first bulk supply would include repayment history information for 50 per cent of its eligible credit accounts for the months of January 2020, February 2020, March 2020 and April 2020.

1.130 For accounts included in the second bulk supply, the licensee would meet its obligations under the mandatory regime by supplying repayment history information:

- For accounts open on 1 April 2020 not included in the initial supply: January 2020, February 2020, March 2020 and the

period between 1 April 2020 and when the bulk supply is made; and

- For accounts opened after 1 April 2020: all repayment history available at the date of the supply.

1.131 In this way, all accounts that are part of the bulk supply of data will include up to 15 months of repayment history information.

1.132 A licensee will meet its obligation to supply financial hardship information where it supplies financial hardship information for an account for the three months preceding the 1 April from when the obligation to supply data is first triggered. However, if the first 1 April is 1 April 2021, financial hardship information will only be supplied from that date onwards. *[Schedule 2, item 14, subsection 133CP(3)]*

What is an ‘eligible credit account’?

1.133 An ‘eligible credit account’ is defined as an account on which consumer credit is or can be taken that is held by a natural person. *[Schedule 1, item 4, section 133CO]*

1.134 Consumer credit is defined in section 6 of the *Privacy Act 1988*. It includes credit for personal, family or household purposes or to purchase or renovate a house including an investment property. It includes mortgage accounts, credit cards, overdraft facilities and personal loans.

1.135 A regulation making power enables the prescription of a type of credit account which is not an eligible credit account. *[Schedule 1, item 4, paragraph 133CO(c)]*

1.136 The Government expects that this regulation making power could be used where the supply of information of some accounts is not necessary to ensure transparency within the mandatory regime and may impose a disproportionate regulatory burden on a credit provider. The Government will also consider the approach adopted by industry.

1.137 For example, the *Principles of Reciprocity and Data Exchange* does not require the supply of information for accounts where that type of credit can no longer be issued, the number of accounts is less than 10,000 and the total number of accounts is less than 3 per cent of the total consumer credit accounts held by that credit provider.

1.138 The *Principles of Reciprocity and Data Exchange*, also lists margin loans, novated leases, flexible payment option accounts, overdrawn accounts that are not formal overdrafts as accounts for which credit information does not need to be supplied.

1.139 As part of its business model a credit provider may store data outside of Australia. However, irrespective of where the data is stored, a credit provider subject to the mandatory regime must supply credit

information to an eligible credit reporting body. *[Schedule 1, item 4, subsections 133CR(6) and 133CU(4)]*

Who must the information be supplied to?

1.140 An eligible licensee will meet its obligations under the initial bulk supply requirements if it supplies ‘mandatory credit information’ for all its ‘eligible credit accounts’ to all ‘eligible credit reporting bodies’. *[Schedule 1, item 4, subsections 133CR(1) and 133CR(3)]*

1.141 Paragraphs 1.117 to 1.132 explain ‘mandatory credit information’ and paragraphs 1.133 to 1.139 explain ‘eligible credit account’.

1.142 An eligible credit reporting body for an eligible licensee that must meet the bulk supply requirements on 1 April 2020 is a body that had a contract with the licensee under paragraph 20Q(2)(a) of the Privacy Act on 2 November 2017. *[Schedule 1, item 3, subsection 5(1) and item 4, paragraph 133CN(2)(a)]*

1.143 In this way the credit provider has an established relationship with the credit reporting body and will have an agreement in place on the handling of data to ensure it remains confidential and secure.

1.144 The requirement that the credit information must be supplied to all credit reporting bodies the licensee had a contract with is intended to reflect the ‘consistency principle’ in the *Principles of Reciprocity and Data Exchange*.

1.145 The ‘consistency principle’ is important. It ensures that all credit reporting bodies have the same information and no credit reporting body has a competitive advantage on the basis of the information it holds. It provides an environment which encourages product innovation and supports competitive pricing of credit reporting information.

1.146 The mandatory regime gives effect to the ‘consistency principle’ by requiring mandatory credit information be supplied to those credit reporting bodies an eligible licensee had a contract with on 2 November 2017. *[Schedule 1, item 4, subsections 133CR(1) and 133CR(3)]*

1.147 Referring to contracts in place on 2 November 2017 does not prevent new entrants to the credit reporting sector. A new credit reporting body can still receive comprehensive credit reporting information from a credit provider subject to the mandatory regime. However, the body will negotiate the receipt of this data outside the mandatory comprehensive credit reporting regime.

1.148 Once the bulk supply of data has been made, a licensee is only required to provide ongoing updates, corrections and information on new accounts to those credit reporting bodies it had a contract with on

2 November 2017 and with whom the licensee continues to have a contract. *[Schedule 1, item 4, paragraph 133CU(1)(a) and subparagraph 133CU(1)(b)(iv)]*

Example 1.6

On 1 April 2020, an eligible licensee must make its initial bulk supply to three eligible credit reporting bodies: CRB-Ich Pty Ltd; CRB-Ni Pty Ltd; and CRB-San Pty Ltd.

A period of time passes and the eligible licensee does not renew its contract with CRB-Ich Pty Ltd but it keeps its contracts with CRB-Ni Pty Ltd and CRB-San Pty Ltd.

Separately a new credit reporting body enters the market (CRB-Shi Pty Ltd) and the eligible licensee enters into a contract with it to supply data.

Under the mandatory regime, the eligible licensee would be required to supply data on new accounts and provide updates on information supplied under the initial bulk supply within 45-days of the event, to CRB-Ni Pty Ltd and CRB-San Pty Ltd.

There may be other obligations in the Privacy Act which would require certain updates to CRB-Ich Pty Ltd.

All data supplied to CRB-Shi Pty Ltd would be subject to the contract it has with the eligible licensee.

1.149 A licensee that becomes an eligible licensee after 1 April 2020 must make its initial bulk supply of data to a credit reporting body that meets conditions prescribed in regulations and on an ongoing basis, to a credit reporting body that it has a current contract with under section 20Q of the Privacy Act. *[Schedule 1, item 4, paragraph 133CN(2)(b), paragraph 133CU(1)(a) and subparagraph 133CU(1)(b)(iv)]*

How the data must be supplied?

1.150 To meet its obligations under the mandatory comprehensive credit reporting regime a licensee must supply data in accordance with the ‘credit information supply requirements’. *[Schedule 1, item 4, section 133CQ]*

1.151 These requirements include supplying data in accordance with the *Privacy (Credit Reporting) Code 2014*. Paragraphs 1.120 and 1.121 provide examples of when the *Privacy (Credit Reporting) Code 2014* clarified the definitions and terms used in the *Privacy Act 1988*. *[Schedule 1, item 4, subsection 133CQ(1)]*

1.152 The requirements also include supplying content or particulars of information in accordance with a determination made by ASIC. *[Schedule 1, item 4, subsection 133CQ(2)]*

1.153 A determination made by ASIC for this purpose is not subject to subsection 14(2) of the *Legislation Act 2003*. [*Schedule 1, item 4, subsection 133CQ(3)*]

1.154 In its determination ASIC may incorporate another administrative document. The Government expects that a determination made by ASIC will refer to the industry developed *Principles of Reciprocity and Data Exchange* which is publicly available on the Australian Retail Credit Association website.

1.155 It is necessary to apply the document as in force from time to time as the *Principles of Reciprocity and Data Exchange* may change and take into account new developments. The approach taken in the Bill will reduce compliance costs and ensure it is not necessary to amend the instrument each time a change is made to the *Principles of Reciprocity and Data Exchange*.

1.156 Finally, under the supply requirements a licensee must supply the data under a technical standard approved by ASIC. [*Schedule 1, item 4, subsection 133CQ(4)*]

1.157 Technical standards ensure simple implementation of the mandatory regime and interoperability between credit providers and credit reporting bodies. Technical standards specify how data is to be described and recorded and enable uniform transfer methods.

1.158 While ASIC has the power to approve technical standards, the Government notes that the sector has already developed a technical standard – the ARCA Technical Standard.

1.159 The ARCA Technical Standard was developed by industry, including those ADIs and credit reporting bodies that will be subject to the mandatory regime. However, its use is only mandatory for those ADIs and credit reporting bodies who are signatories to the *Principles of Reciprocity and Data Exchange*.

1.160 Nonetheless, the Government does not expect to need to intervene and prescribe a technical standard even where an ADI or credit reporting body is not a signatory to the *Principles of Reciprocity and Data Exchange*. The Government expects ASIC would only exercise its power and prescribe a technical standard if it became apparent that the approach adopted by some in the sector was creating inefficiencies or meant that the mandatory regime was inoperable.

1.161 ASIC's power allows it to approve an existing document, or parts of an existing document, including one developed by industry such as the ARCA Technical Standard.

1.162 If there is an inconsistency between a determination made by ASIC or a technical standard and the *Privacy (Credit Reporting)*

Code 2014, the *Privacy (Credit Reporting) Code 2014* prevails. [Schedule 1, item 4, subsection 133CQ(5)]

Obligations on credit reporting bodies

1.163 The *Privacy Act 1988* and *Privacy (Credit Reporting) Code 2014* and the Information Commissioner currently regulate credit reporting bodies. As a result of amendments contained in this Bill, credit reporting bodies who receive mandatory credit information will be regulated by ASIC for the purposes of the mandatory regime.

1.164 A definition of credit reporting body is inserted into the Credit Act which references the *Privacy Act 1988*. [Schedule 1, item 3, subsection 5(1)]

1.165 This ensures there is no difference between the definitions in these two Acts. This is because the mandatory regime is intended to work within the framework established by the *Privacy Act 1988*.

1.166 Schedule 1 to this Bill places restrictions and obligations on a credit reporting body that has received information under the mandatory regime. These restrictions apply both to the information received from the licensee and information derived by the credit reporting body. [Schedule 1, item 4, subsection 133CZA(1)]

1.167 A credit reporting body who has received credit information under the mandatory regime may be restricted in disclosing that information to a credit provider where the credit reporting body and the credit provider meet certain conditions in the regulations. [Schedule 1, item 4, subsections 133CZA(2) and 133CZA(7)]

1.168 The regulations may also include circumstances when a credit reporting body must disclose the information it has received under the mandatory regime. [Schedule 1, item 4, subsections 133CZA(3) and 133CZA(7)]

1.169 Where a credit reporting body is required to disclose information it has received under the mandatory regime, the information must be made in the timeframe and requirements included in regulations. [Schedule 1, item 4, subsection 133CZA(4)]

1.170 The Government expects that regulations would be made which reflect ‘principles of reciprocity’. The mandated regime will only apply to large ADIs and their subsidiaries on the expectation that the critical mass of information supplied by these ADIs will encourage other credit providers to supply comprehensive credit information. However, this relies on the ‘principle of reciprocity’ – a credit provider must contribute information to receive information.

1.171 Industry stakeholders have reflected the principles of reciprocity in the *Principles of Reciprocity and Data Exchange*. The regulations can

set conditions with reference to the *Principles of Reciprocity and Data Exchange*. Despite subsection 14(2) of the *Legislation Act 2003*, where the regulations reference the *Principles of Reciprocity and Data Exchange* or another industry developed standard, the regulations are able to refer to such a document as in force from time to time. *[Schedule 1, item 4, subsections 133CZA(5) and 133CZA(6)]*

1.172 The ability to refer to a document as it exists from time to time is important as it allows industry to respond to changes in the market, including technological changes, without there being a need to amend the regulations.

1.173 In developing the regulations, and deciding whether to refer to an industry developed agreement or standard, the Government would consider whether the document was publicly available. The *Principles of Reciprocity and Data Exchange* is publicly available on the ARCA website.

Statements to the Treasurer

1.174 Schedule 1 to the Bill requires licensees and eligible credit reporting bodies to give the Treasurer statements about the mandatory comprehensive credit regime. *[Schedule 1, item 4, sections 133CZC]*

1.175 Statements that relate to the initial bulk supply need to be provided to the Treasurer within 6 months after the 1 April to which the supply relates. *[Schedule 1, item 4, paragraphs 133CZC(1)(c) and 133CZC(2)(c)]*

1.176 Regulations will specify the information which needs to be included in the statements. The Government expects the regulations would require information that enables the Treasurer to determine that the mandatory supply requirements have been met. *[Schedule 1, item 4, paragraphs 133CZC(1)(a) and 133CZC(2)(a)]*

1.177 For example, the number of consumer credit accounts held by a licensee, the proportion of those accounts supplied to a credit reporting body, the date the data transmission was made and the type of credit accounts included in each supply. For a credit reporting body, the statements may require the number of accounts for which data has been received and the type of credit accounts included in the supply.

1.178 The statements given to the Treasurer must be audited. ASIC may appoint in writing a suitably qualified person, or class of persons to be auditors. An auditor may charge a reasonable fee to produce the report on the statement. *[Schedule 1, item 4, paragraphs 133CZC(1)(b) and 133CZC(2)(b), and section 133CZD]*

1.179 Appointments made under this provision are not legislative instruments because of the exemption in table item 8 in subsection 6(1) of the *Legislation (Exemptions and other matters) Regulation 2015*.

Monitoring and Compliance

1.180 ASIC is responsible for administering the Credit Act. The Credit Act includes a number of powers to assist ASIC in its role, including enforcement, information gathering and investigative powers. These powers will be extended to cover eligible licensees and credit reporting bodies in the mandatory regime.

1.181 It is expected that ASIC will take a sensible approach to ensuring that eligible licensees and credit reporting bodies are complying with the mandatory regime. ASIC can pursue one or several enforcement or non-enforcement remedies.

1.182 ASIC's broad approach to using its powers (and enforcement more generally) is set out in *ASIC's approach to enforcement – Information Sheet 151*, available on the ASIC website.

1.183 In deciding which tools to use, ASIC considers all the relevant facts and circumstances of each matter on a case-by-case basis, with a focus on the seriousness of the alleged contravention and the extent of the consumer harm.

1.184 In line with its broad approach to enforcement, ASIC may take into account factors such as whether the entity has taken reasonable steps to comply with the regime, the compliance record of the subject, and the effect of the misconduct on the market. In the past ASIC has also considered whether a facilitative approach to compliance is required shortly after commencement of new obligations.

1.185 The OAIC is responsible for ensuring compliance with the *Privacy Act 1988*. This Bill does not alter its existing functions.

Penalties under the mandatory regime

1.186 Civil penalties and offence provisions are included in the Credit Act where a licensee or a credit reporting body does not meet the obligations imposed by the mandatory regime. The new provisions reflect the existing penalty framework in the Credit Act as amended by the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*.

- 1.187 ASIC may seek a civil penalty where an eligible licensee:
- fails to supply credit information as required under the mandatory regime. *[Schedule 1, item 4, section 133CR and section 133CU]*;
 - fails to notify the credit reporting body, ASIC and the Information Commissioner once the eligible licensee believes a credit reporting body is meeting its section 20Q obligations in the *Privacy Act 1988*, where the eligible licensee previously believed the credit reporting body was not meeting its obligations. *[Schedule 1, item 4, sections 133CT and 133CW]*; and
 - fails to submit audited statements to the Treasurer following the initial bulk supplies. *[Schedule 1, item 4, subsection 133CZC(1)]*

- 1.188 Similarly, ASIC may seek a civil penalty where a credit reporting body:
- discloses information that it has received under the mandatory regime that it should not disclose. *[Schedule 1, item 4, subsection 133CZA(2)]*
 - fails to disclose information it has received under the mandatory regime, including not in the required timeframe or inconsistent with requirements included in the regulations. *[Schedule 1, item 4, subsections 133CZA(3) and 133CZA(4)]*; and
 - fails to submit audited statements to the Treasurer following the initial bulk supplies. *[Schedule 1, item 4, subsection 133CZC(2)]*

1.189 A civil penalty must be imposed by a court. The maximum penalty that can be applied under the mandatory regime in the circumstances listed above is the greater of 5,000 penalty units if the person is a natural person (currently \$1,050,000), or if the court can determine the benefit gained, three times the benefit gained.

1.190 If the person is a body corporate the maximum penalty is the greater of:

- Ten times the pecuniary penalty;
- If the court can determine the benefit gained or detriment derived – three times that amount; and
- Ten per cent of the annual turn over of the body-corporate or 2.5 million penalty units – if that is less.

1.191 ASIC may also seek a criminal sanction if either a licensee or credit reporting body has breached a requirement under the mandatory

credit reporting regime. [Schedule 1, item 4, sections 133CX, 133CY, 133CZ, 133CZB and 133CZE]

1.192 The circumstances include failing to make the initial bulk supplies or ongoing supply of credit information when the eligible licensee reasonably believes the credit reporting body is meeting its security requirements in the *Privacy Act 1988*, failing to supply statements to the Treasurer or failing to notify the credit reporting body, ASIC and the Australian Information Commissioner when the licensee subsequently believes the credit reporting body is meeting the security requirements.

1.193 The maximum criminal penalty that can be applied is 100 penalty units for an individual (currently \$21,000) and 500 penalty units if the person is a body corporate (currently \$105,000).

1.194 The criminal penalty is a ‘continuing offence’. That is, the person is guilty of a separate offence for each day of non-compliance. For example, for each day that an eligible licensee fails to supply the initial bulk supply of information, the penalty amount will apply. The continuing offence provides a strong incentive to comply.

1.195 The standard geographical jurisdiction set out in section 14.1 of the *Criminal Code* does not apply to an offence for failing to supply information. [Schedule 1, item 4, subsections 133CX(2) and 133CY(2)]

1.196 This is because an eligible licensee may store or hold credit information outside Australia. However, irrespective of where the information is stored or held it must be included in the supplies made by the eligible licensee. If section 14.1 of the *Criminal Code* applied an eligible licensee would not be subject to a penalty for failing to supply information held outside Australia.

1.197 Existing subsection 288K(1) of the Credit Act allows the regulations of the Credit Act allows regulations to be made which prescribe offences and civil penalty provisions for which infringement notices can be given. Regulations will be made to enable infringement notices to be issued for the mandatory credit reporting regime.

Information gathering powers

1.198 ASIC’s existing powers in the Credit Act are extended to the mandatory comprehensive credit reporting regime requirement so that ASIC can monitor and ensure compliance with the supply requirements and on-disclosure restrictions. [Schedule 1, item 4, sections 133CZF, 133CZG, 133CZH, 133CZI and 133CZJ]

1.199 For drafting simplicity a new term, *Part 3-2CA body*, is inserted into the Credit Act. It means an eligible licensee or an eligible credit reporting body for a licensee. [Schedule 1, item 4, section 133CZF]

1.200 Schedule 1 to the Bill amends the Credit Act to provide ASIC with the ability to:

- seek information from an eligible licensee and credit reporting body;
- seek assistance from an eligible licensee and credit reporting body; and
- inspect books or seek information from a third party.

1.201 The penalties that ASIC may seek to apply include civil penalties and criminal penalties (including imprisonment). The penalty regime applied as part of the mandatory regime is consistent with the existing regime in the Credit Act. It is consistent with the penalties that apply for existing offences of a similar kind and of a similar seriousness.

Obligation to provide ASIC with a statement or an audit report

1.202 ASIC may issue a written notice directing an eligible licensee or a credit reporting body, to give it a statement which contains certain information about whether the licensee or body is complying with its obligations under the mandatory comprehensive credit reporting regime. *[Schedule 1, item 4, subsection 133CZG(1)]*

1.203 ASIC can also seek a statement from either a licensee or body to assist it in determining whether another licensee or credit reporting body subject to the mandatory regime is complying with its obligations. *[Schedule 1, item 4, subsection 133CZG(1)]*

1.204 The notice which directs the licensee or credit reporting body can be given at any time and can be given to a licensee or credit reporting body or a class of either. The information which is required may be the same or different and could be required on a periodic basis or when certain events occur. *[Schedule 1, item 4, subsection 133CZG(2)]*

1.205 A written notice from ASIC is not a legislative instrument because of the exemption in table item 17 in 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

1.206 ASIC may also issue a written notice directing an eligible licensee or an eligible credit reporting body to obtain an audit on the statement. *[Schedule 1, item 4, subsection 133CZG(3)]*

1.207 Schedule 1 to the Bill clarifies that a notice directing an eligible licensee or eligible credit reporting body to obtain an audit on a statement is not a legislative instrument. This is because the notice is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*. *[Schedule 1, item 4, subsection 133CZG(4)]*

1.208 The audit report given on the statement is subject to the existing requirements in sections 102, 103, 104, 105 and 106 of the Credit Act including that the auditor:

- has a right to access the records and information that he or she needs for the purpose of conducting the audit;
- may charge reasonable fees; and
- must advise ASIC if it becomes aware that the eligible licensee or eligible credit reporting body is unable to meet its obligations under the mandatory comprehensive credit regime.

[Schedule 1, item 4, section 133CZJ]

1.209 An eligible licensee or eligible credit reporting body may be subject to a maximum civil penalty of 5,000 penalty units if it fails to comply with a direction from ASIC to supply a statement or audit report within the timeframe included in the written notice. *[Schedule 1, item 4, subsection 133CZG(6)]*

1.210 ASIC may extend the day the audit report or statement is due and where it does the written notice giving the extension will not be a legislative instrument because of the exemption in table item 29 in subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*. *[Schedule 1, item 4, subsection 133CZG(5)]*

1.211 A civil penalty must be imposed by a court. The maximum penalty that can be applied under the mandatory regime in the circumstances listed above is the greater of 5,000 penalty units if the person is a natural person (currently \$1,050,000), or if the court can determine the benefit gained, three times the benefit gained.

1.212 If the person is a body corporate the maximum penalty is the greater of:

- Ten times the pecuniary penalty;
- If the court can determine the benefit gained or detriment derived – three times that amount; and
- Ten per cent of the annual turn over of the body-corporate or 2.5 million penalty units – if that is less.

1.213 An eligible licensee or eligible credit reporting body can also be subject to a criminal offence if the person fails to comply with a direction from ASIC to supply a statement or audit report. The maximum criminal penalty that could apply is six months imprisonment for a person who is a natural person or 125 penalty units for a body corporate. *[Schedule 1, item 4, subsection 133CZG(7)]*

Obligation to give ASIC information required by the regulations

1.214 Regulations may prescribe information which an eligible credit provider or eligible credit reporting body, or a class of licensees or bodies, must give to ASIC. *[Schedule 1, item 4, subsection 133CZH(1)]*

1.215 An eligible licensee or credit reporting body may be subject to a civil penalty if it fails to give ASIC this information. *[Schedule 1, item 4, subsection 133CZH(2)]*

1.216 A civil penalty must be imposed by a court. The maximum penalty that can be applied under the mandatory regime in the circumstances listed above is the greater of 5,000 penalty units if the person is a natural person (currently \$1,050,000), or if the court can determine the benefit gained, three times the benefit gained.

1.217 If the person is a body corporate the maximum penalty is the greater of:

- Ten times the pecuniary penalty;
- If the court can determine the benefit gained or detriment derived – three times that amount; and
- Ten per cent of the annual turn over of the body-corporate or 2.5 million penalty units – if that is less.

1.218 An eligible licensee or credit reporting body can also be subject to a criminal offence if the person fails to give ASIC the prescribed information. The maximum criminal penalty that could apply is six months imprisonment for a natural person or 125 penalty units for a body corporate. *[Schedule 1, item 4, subsection 133CZH(3)]*

Obligation to provide ASIC with assistance

1.219 ASIC can request that an eligible licensee or a credit reporting body give it assistance to determine whether the licensee or body, or another licensee or body is complying with its obligations under the mandatory comprehensive credit regime. *[Schedule 1, item 4, subsection 133CZI(1)]*

1.220 The request for assistance may be in writing and where it is the request will not be a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*. The Bill makes clear that a request in writing is not a legislative instrument to assist the reader. *[Schedule 1, item 4, subsection 133CZI(2)]*

1.221 An eligible licensee or eligible credit reporting body may be subject to a civil penalty if it fails to provide ASIC with assistance. *[Schedule 1, item 4, subsection 133CZI(1)]*

1.222 A civil penalty must be imposed by a court. The maximum penalty that can be applied under the mandatory regime in the

circumstances listed above is the greater of 5,000 penalty units if the person is a natural person (currently \$1,050,000), or if the court can determine the benefit gained, three times the benefit gained.

1.223 If the person is a body corporate the maximum penalty is the greater of:

- Ten times the pecuniary penalty;
- If the court can determine the benefit gained or detriment derived – three times that amount; and
- Ten per cent of the annual turn over of the body-corporate or 2.5 million penalty units – if that is less.

1.224 An eligible licensee or eligible credit reporting body may also be subject to a criminal offence if it fails to assist ASIC. The maximum criminal penalty that could apply would be six months imprisonment if the person is a natural person or 125 penalty units if the person is a body corporate. *[Schedule 1, item 4, subsection 133CZI(3)]*

Inspection of books and audit-information gathering powers

1.225 ASIC's existing powers in Chapter 6 of the Credit Act are extended to the enforcement of the mandatory comprehensive credit regime. This includes being able to:

- ask an auditor for information or books; *[Schedule 1, item 5, paragraph 265(2)(c)]*
- ask an eligible licensee or an eligible credit reporting body or a representative, banker, lawyer or auditor of the licensee or body to provide information or statements about the mandatory comprehensive credit regime; *[Schedule 1, items 6, 7 and 8, section 266]*
- ask a person for information in their possession relating to the activities of an eligible licensee or eligible credit reporting body and the mandatory comprehensive credit regime; and *[Schedule 1, item 9, paragraph 267(1)(b)]*
- admit as evidence information collected about the eligible licensee or eligible credit reporting body's compliance with the mandatory comprehensive credit regime. *[Schedule 1, item 10, paragraph 307(1)(b)]*

Consequential amendments

1.226 Schedule 1 to the Bill amends the *Privacy Act 1988* to require that a credit reporting body store credit reporting information in Australia or consistently with requirements determined by the Australian

Information Commissioner. *[Schedule 1, item 11, section 20Q of the Privacy Act 1988]*

1.227 A determination made by the Australian Information Commissioner is a legislative instrument.

1.228 In deciding whether to make a determination, the Australian Information Commissioner must have regard to advice from the Australian Signals Directorate and any other matters the Australian Information Commissioner considers relevant.

Miscellaneous amendments

1.229 Without limiting its effect, Schedule 1 to this Bill makes clear that the amendments also have effect as if references to an eligible licensee or eligible credit reporting body are to a corporation in paragraph 51(xx) of the constitution. *[Schedule 1, item 4, section 133CZM]*

Application and transitional provisions

1.230 The amendments in Schedule 1 to this Bill commence the day after the Bill receives the Royal Assent.

1.231 Financial hardship information can only be reported from 1 April 2021.

Chapter 2 Reporting financial hardship in credit reporting

Outline of chapter

2.1 Schedule 2 to this Bill amends the *Privacy Act 1988* to permit reporting of financial hardship information within the credit reporting framework and to make other minor changes to improve the overall administration of credit reporting.

Context of amendments

2.2 On 28 March 2018, the Attorney-General, the Hon Christian Porter MP, announced that the Attorney-General's Department would lead a review into the operation of financial hardship arrangements. The review considered how hardship arrangements (including hardship arrangements regulated under the Credit Act) intersect with the credit reporting framework. A range of key stakeholders participated in this review, including consumer advocacy groups, regulatory agencies, major banks and credit providers, credit reporting bodies and peak industry bodies.

2.3 Following this review, the Government agreed to the reform model in this Bill for reporting hardship arrangements in the credit reporting system that would improve the comprehensiveness of credit reporting and appropriately balance the interests of consumers, credit providers and credit reporting bodies. These reforms build on amendments to the *Privacy Act 1988* that commenced in 2014 to introduce a more comprehensive credit reporting system that included both 'positive information' such as a consumer's ability to make repayments on time, as well as 'negative information' such as defaults on repayments.

2.4 Although hardship arrangements between consumers and their credit providers can be entered into under the Credit Act, the *Privacy Act 1988* does not currently permit these arrangements to be reported as part of a consumer's credit report. This situation can reduce the efficacy of the credit reporting framework by restricting the visibility of hardship information about a consumer that is relevant to their creditworthiness. This information asymmetry in turn affects the ability of credit providers to meet their responsible lending obligations.

2.5 Hardship arrangements are a statutory mechanism under the Credit Act. Under this mechanism, a credit provider must assess whether to provide a consumer with relief from repayments where a consumer

informs the credit provider they cannot meet their repayment obligations. The relief provided for under the Credit Act involves a change to terms of the contract, such as reducing the monthly repayment by extending the term of the loan. The change to the terms of the contract may be for either a temporary period or a permanent change.

2.6 In circumstances where a credit provider makes a decision to not change a credit contract under the Credit Act on grounds of hardship, a credit provider may give informal relief to a consumer (also referred to as a ‘forbearance’ or ‘indulgence’). In granting this informal relief the credit provider will likely maintain their contractual rights under the original credit contact.

2.7 Under the credit reporting framework, credit providers report ‘repayment history information’ to credit reporting bodies. Repayment history information reflects whether a consumer has been meeting their repayment obligations on a credit product each month. Repayment history information reflects the previous 24 months and is reported on a monthly basis. Repayment history information is recorded as a number: ‘0’ is an on-time payment, ‘1’ is a payment 14–30 days late, ‘2’ is a payment 31–60 days late etc. Under the credit reporting framework, repayment history information allows consumers to demonstrate good credit behaviour through timely repayments.

2.8 In the absence of an explicit hardship arrangement indicator, there has been inconsistent industry practice in how repayment history information is reported—leading to potential distortions in credit assessments. Some credit providers may report a consumer’s repayment history information against the original credit contract, whereas other credit providers report repayment history information in accordance with a hardship arrangement that is in place. Consequently, consumers in otherwise similar financial circumstances can have markedly different repayment history information on their credit reports depending on their credit provider.

Summary of new law

2.9 Schedule 2 to this Bill amends the *Privacy Act 1988* to permit reporting of financial hardship information within the credit reporting framework and to make minor changes to improve the overall administration of credit reporting, including reducing regulation for businesses that do not participate in credit reporting.

2.10 Reporting hardship information gives credit providers information about consumers who are in hardship (or have recently experienced hardship) in order to allow credit providers to make better

informed lending decisions about whether to grant new, or extend existing, credit to a consumer.

2.11 Schedule 2 to the Bill proposes a new category of credit information to accompany repayment history information known as ‘financial hardship information’. This new category would comprise a ‘hardship arrangement indicator’ and a ‘contract variation indicator’.

2.12 In conjunction with the hardship arrangement indicator, repayment history information would reflect a consumer’s ability to make repayments according to a hardship arrangement, rather than their original credit contract. When a consumer exits a hardship arrangement (either through completion of the arrangement, or where the credit provider terminates the arrangement because the consumer does not meet their obligations), the repayment history information would revert to show the consumer’s position against the original credit contract.

2.13 Similarly, in conjunction with the contract variation indicator, the repayment history information would reflect a consumer’s ability to make repayments under their varied contract, rather than the original contract.

2.14 Both indicators would attract the same protections as repayment history information, which can only be accessed in more limited circumstances than other forms of information about a consumer. Credit reporting bodies would be restricted from incorporating hardship into a consumer’s credit score.

2.15 Reporting hardship information in the credit reporting system is not otherwise intended to affect the legal rights of any party to a hardship arrangement, particularly in relation to their original credit contract.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Credit reporting bodies are permitted to collect, use, disclose and retain hardship information. The hardship information disclosed may include an indicator of hardship arrangements and contract variations that were made before or after commencement of Schedule 2 of the Bill.	Credit reporting bodies are not permitted to collect, use, disclose and retain hardship information.
Credit providers are permitted to disclose financial hardship	Credit providers are not permitted to disclose hardship information to credit reporting bodies.

information to credit reporting bodies.	
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Detailed explanation of new law

2.16 Schedule 2 of the Bill amends the credit reporting framework under the *Privacy Act 1988* to permit reporting of consumer financial hardship information and to make other minor amendments to improve the overall administration of credit reporting.

New framework for representing hardship information in the credit reporting system

2.17 Schedule 2 to the Bill introduces a new category of credit information called ‘financial hardship information’, permitting this kind of information to be reported within the credit reporting framework for the first time. *[Schedule 2, items 1 and 2, subsection 6(1) and paragraph 6N(c) of the Privacy Act 1988]*

2.18 If a credit provider is disclosing repayment history information to a credit reporting body and financial hardship information becomes available, the provider is required to also disclose the financial hardship information corresponding to the same month’s repayment history information. Failure to comply with this requirement is subject to a civil penalty of 500 penalty units. The purpose of this provision is to ensure that the credit reporting body and other credit providers relying on the repayment history information will have a more accurate picture of a consumer’s repayment obligations and whether they are meeting those obligations. This allows credit providers to make better decisions in respect of their responsible lending obligations under the Credit Act. *[Schedule 2, item 10, section 21EA of the Privacy Act 1988]*

2.19 Financial hardship information comprises a ‘hardship arrangement indicator’ and a ‘contract variation indicator’. *[Schedule 2, item 3, section 6QA of the Privacy Act 1988]*

2.20 **Hardship arrangement indicator:** this indicator would appear on a consumer’s credit report from the first month that they make a repayment under a temporary hardship arrangement. The indicator would recur every month a hardship arrangement is in place.

2.21 In conjunction with the hardship arrangement indicator, repayment history information reflects a consumer’s ability to make repayments according to a hardship arrangement that is in place, rather than the original credit contract. When a consumer exits a hardship arrangement (either through completion of the arrangement, or where it is terminated by the credit provider through the consumer’s inability to meet

their hardship arrangement obligations), the repayment history information for the subsequent month would revert to show the consumer's position against the original credit contract.

2.22 The introduction of an explicit hardship arrangement indicator addresses potentially inconsistent industry reporting of repayment history information, and ensures that consumers in similar financial situations will have correspondingly similar information in their credit reports.

2.23 **Contract variation indicator:** this indicator would appear on a consumer's credit report in the month that they make the first repayment under a permanently varied contract. This indicator would only appear once in the month that the varied contract takes effect.

2.24 In conjunction with the contract variation indicator, the repayment history information reflects a consumer's ability to make repayments under their varied contract, rather than the original contract.

2.25 Financial hardship information has generally the same protections under the *Privacy Act 1988* as repayment history information, which can only be accessed in more limited circumstances than other forms of information about a consumer. *[Schedule 2, items 4, 5, 7, 9 and 11, paragraph 20C(4)(e), subsection 20E(4), paragraph 20G(2)(c), paragraph 21D(3)(c) and subsection 21G(4) of the Privacy Act 1988]*

2.26 However, unlike repayment history information, financial hardship information would be subject to a retention period of 12 months rather than 24 months. This means, for example, that one year after a consumer exits a hardship arrangement with their credit provider and subsequently makes their monthly repayments, financial hardship information would not appear on their credit report. The Government considers that a shorter retention period than repayment history information appropriately balances the interests of consumers in financial hardship. *[Schedule 2, item 8, section 20W (after table item 2) of the Privacy Act 1988]*

2.27 Credit reporting bodies would be restricted from incorporating financial hardship information into a consumer's credit score. *[Schedule 2, item 6, section 20E of the Privacy Act 1988]*

2.28 The purpose of financial hardship information is to communicate to a credit provider that there is an alternative arrangement in place from the original credit contract. Including hardship information with repayment history information (as opposed to simply reflecting it in a credit score) prompts prospective credit providers to make further enquiries to ensure that a credit product is suitable for an applicant. ASIC, the national regulator of consumer credit, considers that these further enquiries may include:

- details of the consumer's changed circumstances that led to the hardship arrangement;

- whether those circumstances have been addressed or are continuing;
- how long the revised repayment obligations will continue; and
- the likelihood that the circumstances which led to the arrangement will occur again.

2.29 Excluding financial hardship information from credit scores is intended to reinforce understanding in the community that suitability for credit is focussed on the information in a consumer's credit report (and further relevant information that is sought by a credit provider). Although a credit score obtained from a credit reporting body may give preliminary guidance on a consumer's financial position, it is only one factor in a suite of considerations in the credit assessment process.

2.30 By only permitting financial hardship information to be viewed together with repayment history information in its full context, prospective credit providers have greater information to make a proper assessment of a consumer's financial suitability for a credit product, assisting the credit provider to meet their responsible lending obligations.

2.31 Credit reporting bodies do not currently incorporate financial hardship information in the calculation of consumer's credit scores. The restriction on incorporating financial hardship information in the calculation of these scores ensures there is no change to the current position.

2.32 The inclusion of financial hardship information may have both positive and negative impacts on the credit score calculations of consumers with hardship arrangements. Additionally, because credit scores are determined through proprietary algorithms, the same input of credit information will result in different scores depending on the credit reporting body the credit score is requested from. Recognising the community misperception of credit scores, the Government considers that consumers' interests are best served by excluding financial hardship information in credit score calculations by credit reporting bodies. This position maintains incentives for consumers to seek assistance when they are or will be struggling to meet their repayment obligations under a credit contract – that is, experiencing financial hardship.

2.33 Variations to the *Privacy (Credit Reporting) Code 2014* will be progressed with industry and the OAIC to provide detailed guidance on the implementation of new credit reporting obligations in this Bill.

Reducing the regulatory burden for non-participating businesses

2.34 Under section 6G of the *Privacy Act 1988*, a business that provides goods or services where payment is deferred by seven days or more is a ‘credit provider’. A business is captured by this definition irrespective of whether or not that business actively participates in the credit reporting system. Such businesses must then comply with Division 3 of Part IIIA of the *Privacy Act 1988*, which at a minimum requires credit providers to have a policy on the management of credit information and to comply with certain notification and correction requirements.

2.35 Schedule 2 to this Bill excludes businesses from these requirements that have not and are not likely to disclose credit reporting information or credit eligibility information to a credit reporting body or other credit provider, and who have not collected such information from a credit reporting body or other credit provider. This would remove the unnecessary regulatory burden on businesses that do not, and have not, actively participated in the credit reporting system but are captured by the definition of ‘credit provider’. The Australian Privacy Principles will continue to apply to non-participating credit providers who are ‘APP entities’ under section 6 of the *Privacy Act 1988*. [Schedule 2, items 16, 18, 22 and 23, subsection 6(1), subsection 21B(8), subsection 21U(5) and subsection 21V(7) of the *Privacy Act 1988*]

2.36 If at a future point a business decides to participate in the credit reporting system, the exception would cease to apply to that business, and the business would have to comply with all the requirements of the credit reporting provisions.

Expanding the options for credit providers to participate in the credit reporting system

2.37 In order to participate in the credit reporting system, subparagraph 21D(2)(a)(i) of the *Privacy Act 1988* provides that a credit provider must be a member of an external dispute resolution scheme recognised by the Australian Information Commissioner or a scheme prescribed by the regulations. Currently, a credit provider is unable to rely on an external dispute resolution scheme provided by a tribunal as a provider is considered subject to the jurisdiction of a tribunal and not a ‘member’ of a recognised scheme.

2.38 Schedule 2 to this Bill recognises providers that are subject to the jurisdiction of a tribunal as providing access to an external dispute resolution scheme, and enables these providers to participate in the credit reporting system on this basis. This reduces the compliance burden on credit providers such as State and Territory energy and water utilities providers that are subject to the jurisdiction of a tribunal by preventing

them from being required to join multiple dispute resolution mechanisms. *[Schedule 2, items 17 and 19, subparagraphs 20E(3)(c)(ii); and 21D(2)(a)(i) of the Privacy Act 1988]*

2.39 To facilitate the resolution of the issues by the tribunal, Schedule 2 to this Bill allows credit providers to disclose ‘credit eligibility information’ to that tribunal. An explicit permission to disclose this information is necessary because of subsection 21G(1) of the *Privacy Act 1988* which creates a civil penalty for disclosure of such information by a credit provider if not otherwise permitted. *[Schedule 2, item 20, subparagraph 21G(3)(e)(ii) of the Privacy Act 1988]*

2.40 If external dispute resolution is available in a tribunal, Schedule 2 to this Bill requires that the credit provider state this when notifying the individual of a decision to refuse to correct or access credit information, or a provider’s decision following an investigation of a complaint about an act or practice engaged in by the provider. *[Schedule 2, items 21, 24 and 25, subparagraph 21T(7)(b)(i), subparagraph 21W(3)(c)(i), subparagraph 23B(4)(b)(i) of the Privacy Act 1988]*

Application and transitional provisions

2.41 The amendments explained in this part of the explanatory memorandum commence on the later of the day after Royal Assent or 1 April 2021.

2.42 Once the amendments commence, a credit provider must include financial hardship information if it exists and the credit provider is disclosing repayment history information.

