
NATIONAL CONSUMER CREDIT PROTECTION AMENDMENT
(MANDATORY COMPREHENSIVE CREDIT REPORTING) BILL 2018

EXPOSURE DRAFT EXPLANATORY MATERIALS

Table of contents

Glossary.....	1
Chapter 1 Mandatory Comprehensive Credit Reporting.....	3

Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
ACCC	Australian Competition and Consumer Commission
ADI	Authorised Deposit-taking Institution
ARCA Technical Standard	Australian Credit Data Reporting – Industry Requirements & Technical Standards
ASIC	Australian Securities and Investments Commission
Credit Act	<i>National Consumer Credit Protection Act 2009</i>
Murray Inquiry	Financial System Inquiry
OAIC	Office of the Australian Information Commissioner
PRDE	Principles of Reciprocity Data Exchange
Privacy Act	<i>Privacy Act 1988</i>
Privacy Code	<i>Privacy (Credit Reporting) Code 2014 (Version 1.2)</i>

Chapter 1

Mandatory Comprehensive Credit Reporting

Outline of chapter

1.1 This Bill amends the Credit Act to mandate a comprehensive credit reporting regime. Under this mandatory regime, from 1 July 2018 large ADIs and their subsidiaries must provide comprehensive credit information on open and active consumer credit accounts to certain credit reporting bodies.

1.2 The Bill expands ASIC's powers so it can monitor compliance with the mandatory regime. The Bill also imposes requirements on the location where a credit reporting body must store data.

Context of amendments

1.3 Since March 2014, the Privacy Act has allowed credit providers and credit reporting bodies to use and disclose 'positive credit information' or 'comprehensive credit information' about a consumer.

1.4 This includes information about the number of credit accounts a person holds, the maximum amount of credit available to a person and repayment history information.

1.5 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.

1.6 However, the Privacy Act does not mandate the disclosure of comprehensive credit information by credit providers to credit reporting bodies.

1.7 The 2014 Murray 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 enable credit providers to better establish a consumer's credit worthiness and lead to a more competitive and efficient credit market.

1.8 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.

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

Summary of new law

1.10 The Bill amends the Credit Act to establish a mandatory comprehensive credit reporting regime which will apply from 1 July 2018. The amendments do not require or allow disclosure, use or collection of credit information beyond what is already permitted under the Privacy Act and Privacy Code.

1.11 Currently, 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.

1.12 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 and price credit according to a consumer's credit history.

1.13 The Government expects that the mandatory regime will also benefit consumers. Consumers will have better access to consumer credit, with reliable individuals able to seek more competitive rates when purchasing credit. Consumers that are looking to enter the housing market will be better able to demonstrate their credit worthiness. 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 will be large ADIs and their subsidiaries that hold an Australian credit licence. An ADI is considered large where 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 Eligible licensees are required to supply credit information on 50 per cent of their active and open credit accounts by 28 September 2018. The information on the remaining open and active credit accounts, including those that open after 1 July 2018, will need to be supplied by 28 September 2019.

1.16 The bulk supply of information must be given to all credit reporting bodies the eligible licensee had a contract with on 2 November 2017. 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.

1.17 Following the bulk supply of information, large ADIs and their affected subsidiaries must, on a monthly basis, keep the information supplied accurate and up-to-date, including by supplying information on accounts that have subsequently opened. This information must be supplied to credit reporting bodies the credit provider continues to have a contract with.

1.18 Credit providers that are not subject to the mandatory regime will be able to access credit information supplied under the regime by voluntarily supplying comprehensive credit information to a credit reporting body or becoming a signatory to the PRDE.

1.19 The security and privacy of a consumer's credit information will be preserved and protected. The Bill relies on the existing protections established by the Privacy Act and Privacy Code and the oversight of the Australian Information Commissioner. The Bill also places a new obligation on credit reporting bodies on where data is stored. In addition, the Bill places an obligation on credit providers to be satisfied with the security arrangements of the CRBs prior to supplying information.

1.20 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 will also have the ability to expand the content to be supplied under the mandatory regime and prescribe the technical standards for the format of the information.

1.21 The Treasurer will also receive statements from large ADIs, their affected subsidiaries and credit reporting bodies to demonstrate that the initial bulk supply requirements, as well as the ongoing supply requirements, have been met.

1.22 The mandatory comprehensive credit regime, implemented by this Bill, recognises that industry stakeholders have already taken a number of steps to support sharing comprehensive credit information. This includes the PRDE and supporting ARCA Technical Standards.

1.23 The mandatory regime includes the 'principles of reciprocity' and the 'consistency principle' that have been developed by industry. To the extent possible, the mandatory comprehensive credit reporting regime operates within the established industry framework but also provides scope for future technological developments.

1.24 An independent review of the mandatory regime must be completed by 1 January 2022. The review will table its report in Parliament.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Eligible licensees must supply credit information on:</p> <ul style="list-style-type: none"> • 50 per cent of their eligible credit accounts within 90 days of the first 1 July after they become an eligible licensee. • All remaining eligible credit accounts within 90 days of the following 1 July. 	No equivalent.
<p>A credit provider that has supplied credit information under the mandatory regime must keep the information up to date and accurate, including by supplying information on eligible accounts that are subsequently opened.</p>	No equivalent.
<p>Credit reporting bodies must only share credit information collected through the mandatory regime with credit providers who are providing the same level of credit information.</p>	No equivalent.

Detailed explanation of new law

1.25 Before 2014, the credit reporting system, which is regulated by the Privacy Act, 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, and default history and bankruptcy information about that person.

1.26 The *Privacy Amendment (Enhancing Privacy Protection) Act 2012* amended the Privacy Act to enable credit providers and credit reporting bodies to collect, use and disclose comprehensive credit information also known as ‘positive credit information’. Comprehensive credit information includes repayment history information, the maximum amount of credit available to a person and the number of credit accounts a person holds.

1.27 The explanatory memorandum to the *Privacy Amendment (Enhancing Privacy Protection) Act 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.’

1.28 These amendments aligned Australia’s credit reporting system with a number of comparable international systems, including the US, UK and New Zealand, which also allow for the disclosure and sharing of positive credit information.

1.29 The sharing of comprehensive credit information under the Privacy Act is voluntary. A credit provider is not required to share positive credit information with a credit reporting body.

1.30 The mandatory regime does not alter the existing provisions set out in the Privacy Act and the Privacy Code governing the collection and sharing of credit information. However, the Bill does place a new obligation on credit reporting bodies as to where and how data is stored. The Privacy Act and Privacy Code 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 and Privacy Code 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.

1.31 Within the framework established by the Privacy Act, eligible licensees must supply certain information to eligible credit reporting bodies on all of the open and active consumer accounts the licensees hold. The licensees must supply updated information to these bodies on an ongoing basis.

1.32 The Bill requires that the Government complete an independent review of the mandatory regime before 1 January 2022 with the review findings to be tabled in Parliament. *[Schedule 1, item 4, section 133CZH]*

1.33 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?

1.34 The mandatory regime applies to eligible licensees. An eligible licensee is the holder of an Australian credit licence, who on 1 July 2018, or a later date is:

- A large ADI or a subsidiary of that large ADI; or
- A credit provider prescribed in regulations.

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

1.35 Identifying which credit providers are subject to the mandatory regime relies on a number of existing definitions in the Credit Act and Privacy Act 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. 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)]*

- A subsidiary is defined with reference to the definition included in the *Corporations Act 2001*. [Schedule 1, item 3, subsection 5(1)]

1.36 The Government expects that regulations would be made if it becomes apparent, after the mandatory regime has been in operation, that other credit providers are not voluntarily supplying data.

1.37 As at June 2017, large ADIs accounted for more than 80 per cent of household lending. The critical mass of information supplied by large ADIs and their subsidiaries is expected to encourage other credit providers to also share comprehensive credit information in order to access this additional data. In order to create this incentive, the mandatory regime includes the ‘principle of reciprocity’.

1.38 Under the ‘principle of reciprocity’, a credit provider not subject to the mandatory regime and not a signatory to the PRDE (or an equivalent arrangement prescribed in regulations) will only be able to receive information from a credit reporting body if it supplies comprehensive credit information. See paragraphs 1.116 to 1.126.

1.39 Where a credit provider is a large ADI or a subsidiary of a large ADI on 1 July 2018, it will have 90 days from that date to supply the required information for 50 per cent of its eligible credit accounts. [Schedule 1, item 4, subsection 133CR(1)]

1.40 The same credit provider has 90 days from 1 July 2019 to supply the required information for the remaining eligible credit accounts that have either opened after 1 July 2018 or were not reported in the first tranche. [Schedule 1, item 4, subsection 133CR(3)]

1.41 Where a licensee becomes an eligible licensee after 1 July 2018 and therefore 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 1 July when it first became an eligible licensee.

1.42 In respect of its remaining eligible credit accounts, the credit provider must supply the information about those eligible credit accounts, and new accounts that have subsequently opened, within 90 days of the 1 July that occurs 12 months later.

Example 1.1

On 1 July 2018, an ADI has total resident assets less than \$100 billion and as a result is ‘medium’ in size and not subject to the mandatory comprehensive credit reporting regime.

However, on 25 March 2020 the ADI became a ‘large ADI’.

The ADI must supply mandatory credit information in relation to 50 per cent of its eligible credit accounts within 90 days of 1 July 2020.

The remaining accounts and accounts opened after 1 July 2020 must be supplied within 90 days of 1 July 2021.

1.43 Eligible licensees may select which accounts are supplied in the first bulk supply. In this way an ADI could choose the simplest accounts while additional system changes are put in place to report more complicated accounts as part of the second tranche. *[Schedule 1, item 4, subsection 133CR(2)]*

1.44 The obligation to supply information within 90 days of 1 July, only applies where the eligible licensee believes that the eligible credit reporting body meets its obligations under section 20Q of the Privacy Act. Section 20Q of the Privacy Act requires a credit reporting body to take reasonable steps to protect the information it receives, including from misuse, interference and unauthorised access.

1.45 If, on 1 July the eligible licensee must supply data to an eligible credit reporting body but the licensee does not reasonably believe that the body meets its section 20Q obligations, the licensee is not required to supply mandatory credit information to that body. *[Schedule 1, item 4, subsection 133CS(1)]*

1.46 However, if the eligible licensee holds this belief, the eligible licensee must notify the eligible credit reporting body, the Information Commissioner and ASIC. The notification must explain why the licensee believes the credit reporting body is not meeting its obligations. The notice must be given within 7 days of the 1 July from when the supply of information needs to be made. *[Schedule 1, item 4, subsection 133CS(2)]*

1.47 If, during the 90 day period the eligible licensee believes that the credit reporting body has begun to meet its 20Q obligations the eligible licensee must supply the mandatory credit information within 14 days as well as notify the eligible credit reporting body, the Information Commissioner and ASIC that it believes that the section 20Q obligations in the Privacy Act are now being met. *[Schedule 1, item 4, subparagraphs 133CR(1)(b)(ii) and 133CR(3)(b)(ii) and subsection 133CS(3)]*

1.48 An eligible licensee has a burden of proof where it believes that an eligible credit reporting body does not meet its section 20Q obligations. *[Schedule 1, item 4, subsections 133CS(5) and 133CS(6)]*

1.49 Credit providers already have mechanisms in place to satisfy themselves about a credit reporting body's compliance with its section 20Q obligations in the Privacy Act. These include requiring audits, reviewing results of stress tests and requiring certain procedures to be in place for the training of staff.

1.50 The Government expects that eligible licensees will rely on these existing mechanisms to reasonably determine that the credit reporting body is meeting its obligations under the Privacy Act.

1.51 Other than when an eligible licensee believes that an eligible credit reporting body is not meeting its obligations under section 20Q of the Privacy Act, a licensee is not able to provide less information to one credit reporting body than to another, or to supply parts of the information for one account to one credit reporting body and the remaining information for that account to another credit reporting body. *[Schedule 1, item 4, subsections 133CR(1) and 133CR(3)]*

1.52 This ensures that all credit reporting bodies have the same information for an individual covering the time period from the commencement of the comprehensive credit reporting regime. It prevents a fractured data set. Under the PRDE this is referred to as the ‘consistency principle’.

1.53 This approach is intended to provide that no credit reporting body has a competitive advantage on the basis of the amount of information it holds. It is expected that this will encourage credit reporting bodies to develop products that are of use to credit providers and charge competitive prices for credit reporting information.

Ongoing supply obligations

1.54 To ensure its accuracy, the credit information disclosed to a credit reporting body must be kept current and up-to-date. The Privacy Act and Privacy Code include circumstances which would require a credit provider to update information held by a credit reporting body.

1.55 For example, section 21U of the Privacy Act requires a credit provider to take reasonable steps to ensure information it has supplied to a credit reporting body is accurate, up-to-date and complete.

1.56 Section 21E of the Privacy Act requires a credit provider that has provided default information to a credit reporting body to update that information once payment has been made.

1.57 Where an obligation under the Privacy Act and the Privacy Code require a credit provider who has supplied information to a credit reporting body to update that information, the amendments in this Bill provide that the information is supplied within 20 days of the end of the month in which the event occurred. *[Schedule 1, item 4, items, 1, 2 and 4 in the table in subsection 133CT(1)]*

1.58 This timeframe is consistent with the industry developed ARCA Technical Standards.

1.59 A regulation making power also allows regulations to prescribe another circumstance for an eligible credit account or the consumer which would require the supply of mandatory credit information. *[Schedule 1, item 4, item 5 in the table in subsection 133CT(1)]*

1.60 The Bill also imposes an obligation on a licensee who has supplied information under the bulk supply obligations, to supply information on new accounts that are opened after the bulk supply. *[Schedule 1, item 4, item 3 in the table in subsection 133CT(1)]*

1.61 The timeframe in which data must be supplied anticipates that a licensee is most likely to do bulk transfers of data. However, the timeframes also allow industry to provide data more quickly than 20 days after the end of the month.

1.62 In addition, a regulation may be made which prescribes conditions under which a licensee may supply information for the events listed in the table. Where the licensee has arrangements in place that meet the conditions in the regulations, the licensee would no longer need to supply the required information as set out in the Bill. *[Schedule 1, item 4, subparagraph 133CT(1)(b)(i)]*

1.63 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.

1.64 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.

1.65 The Government would also consider the implications of an alternative approach and its impact on the competitiveness and efficiency of the credit market. These factors have already been considered for the PRDE. The ACCC was asked to consider the market impacts of the PRDE and found that overall the PRDE provided a public benefit.

Which information must be supplied?

1.66 To meet its obligation to supply bulk information, an eligible licensee must supply ‘mandatory credit information’ on its ‘eligible credit accounts’ to all ‘eligible credit reporting bodies’. *[Schedule 1, item 4, section 133CR]*

1.67 The definition of ‘eligible credit account’ is included in paragraph 1.85 below. The definition of ‘eligible credit reporting body’ is included in paragraph 1.93 below.

1.68 ‘Mandatory credit information’ is ‘credit information’ as defined in section 6N of the Privacy Act. It includes information about the individual such as:

- identification information;
- repayment history information;
- default information;
- the type of consumer credit held by the individual; and
- the maximum amount of consumer credit held by the individual.

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

1.69 The definition of credit information also includes some types of publicly available information related to an individual’s activities in Australia and the individual’s credit worthiness. This may be information external to the licensee. For example, it could include information about writs and summons obtained from courts.

1.70 For this reason, the definition of ‘mandatory credit information’ is only the credit information that the licensee has collected or has been collected for the licensee. A licensee is not required to actively obtain credit information it has not otherwise collected. *[Schedule 1, item 4, subsection 133CP(1)]*

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

1.72 The Privacy Code also explains how to establish the date when credit was entered into or when credit was terminated. This guidance also applies under the mandatory regime implemented by this Bill.

1.73 There may be restrictions on the use and disclosure of credit information under the Privacy Act and Privacy Code.

1.74 For example, default information can only be disclosed to a credit reporting body where the payment is overdue by at least 60 days, the overdue amount is more than \$150 and the credit provider has notified the consumer that the information will be shared with a credit reporting body (see sections 6Q and 21D of the Privacy Act).

1.75 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 and Privacy Code. *[Schedule 1, item 4, paragraphs 133CR(1)(d), 133CR(3)(d) and 133CT(1)(e)]*

1.76 The Bill states 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.

1.77 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 July from when the obligation to supply data was first triggered. This is consistent with the timeframe for supplying repayment history information under the industry developed PRDE. *[Schedule 1, item 4, subsection 133CS(4)]*

1.78 For example, if a licensee makes its initial bulk supply of data on 2 July 2018, the licensee would include repayment history information for 50 per cent of its eligible credit accounts for the months of April 2018, May 2018 and June 2018.

1.79 Similarly, if the provider did not make its initial bulk supply until August 2018, the first bulk supply would include repayment history information for 50 per cent of its eligible credit accounts for the months of April 2018, May 2018, June 2018 and July 2018.

1.80 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 July 2018 not included in the initial supply: data for April 2018, May 2018 and June 2018 and the period between 1 July 2018 and when the bulk supply is made; and
- For accounts opened after 1 July 2018: all repayment history available at the date of the supply.

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

1.82 The definition of mandatory credit information includes a regulation making power to prescribe information about an eligible credit account or a natural person. *[Schedule 1, item 4, paragraph 133CP(1)(b)]*

1.83 For example, regulations could be made if new types of credit are developed and the information required on these products is not captured within the definition of ‘credit information’.

1.84 However, information prescribed by the regulations will be subject to the Privacy Act as if it was credit information under that Act. *[Schedule 1, item 4, subsection 133CP(2)]*

1.85 An ‘eligible credit account’ is defined as an open and active account that is held by a natural person on which consumer credit is or can be taken. *[Schedule 1, item 3, subsection 5(1); and item 4, section 133CO]*

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

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

1.88 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.

1.89 For example, the PRDE 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.

1.90 As part of its business model, a credit provider may store data outside of Australia. However, irrespective of where the data is stored, an eligible licensee must supply that credit information to a credit reporting body. *[Schedule 1, item 4, subsections 133CR(4) and 133CT(2)]*

Who must the data be supplied to?

1.91 An eligible licensee will meet its obligations under the initial bulk supply requirements if it supplies ‘mandated credit information’ for all its ‘eligible credit accounts’ to all ‘eligible credit reporting bodies’.

1.92 Paragraphs 1.68 to 1.85 above explain ‘mandatory credit information’ and ‘eligible credit account’.

1.93 An eligible credit reporting body for an eligible licensee that must meet the bulk supply requirements on 1 July 2018 is a body that had a contract with the licensee under paragraph 20Q(2)(a) on 2 November 2017. *[Schedule 1, item 3, subsection 5(1) and item 4, paragraph 133CN(2)(a), subsections 133CR(1) and 133CR(3)]*

1.94 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 PRDE (paragraph 16 to the PRDE).

1.95 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.

1.96 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, paragraph 133CN(2)(a), subsections 133CR(1) and 133CR(3)*]

1.97 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.

1.98 Once the bulk supply of data has been made, a licensee is only required to provide ongoing updates and information on new accounts to those credit reporting bodies it had a contract with on 2 November 2017 and with whom it continues to have a contract in place. [*Schedule 1, item 4, subparagraph 133CT(1)(b)(iv)*]

Example 1.2

On 1 July 2018, 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 20-days after the end of the month, to CRB-Ni Pty Ltd and CRB-San Pty Ltd.

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

1.99 A licensee that becomes an eligible licensee after 1 July 2018 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) and paragraph 133CT(1)(iv)*]

How the data must be supplied?

1.100 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]*

1.101 These requirements include supplying data in accordance with the Privacy Code. Paragraphs 1.71 and 1.72 above provide examples of when the Privacy Code clarifies the definitions and terms used in the Privacy Act. *[Schedule 1, item 4, subsection 133CQ(1)]*

1.102 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)]*

1.103 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)]*

1.104 In its determination ASIC may incorporate another administrative document. The Government expects that a determination made by ASIC will refer to the industry developed PRDE which is publicly available on the Australian Retail Credit Association website.

1.105 It is necessary to apply the document as in force from time to time as the PRDE 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 PRDE.

1.106 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)]*

1.107 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.

1.108 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.

1.109 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 PRDE.

1.110 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 PRDE. 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.

1.111 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.

1.112 If there is an inconsistency between a determination made by ASIC or a technical standard and the Privacy Code, the Privacy Code prevails. *[Schedule 1, item 4, subsection 133CQ(5)]*

Obligations on credit reporting bodies

1.113 The Privacy Act and Privacy Code and the Information Commissioner currently regulate credit reporting bodies.

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

1.115 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.

The principle of reciprocity

1.116 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, creating this incentive relies on other credit providers not being able to receive data without participating themselves.

1.117 Credit reporting bodies must not disclose credit information collected under the mandatory comprehensive credit reporting regime to a credit provider unless the credit provider is contributing credit information on its active and open credit accounts. In the PRDE this is referred to as the 'principle of reciprocity'. *[Schedule 1, item 4, section 133CV(1)]*

1.118 During the first 12 months after a credit provider has requested information from an eligible credit reporting body, the credit reporting body must share information it has received under the mandatory regime with a credit provider which has supplied the body with comprehensive credit information on at least 50 per cent of its eligible credit accounts. *[Schedule 1, item 4, subsection 133CV(2)]*

1.119 However, this obligation only applies if the credit provider meets the credit reporting body's requirements, including fees payable. *[Schedule 1, item 4, paragraph 133CV(2)(d)]*

1.120 In order to continue to receive information from the credit reporting body, the credit provider must supply information on all its eligible accounts 12 months after its initial request for information. *[Schedule 1, item 4, subsection 133CV(3)]*

1.121 If the necessary conditions are met, such as fees and reciprocal supply, a credit reporting body has 10 business days after receiving a request, to supply the requested information. *[Schedule 1, item 4, subsections 133CV(2) and 133CV(3)]*

1.122 To the extent possible the mandatory comprehensive credit regime leverages the work already undertaken by industry to facilitate the sharing of comprehensive credit information.

1.123 The restrictions on an eligible credit reporting body sharing information only apply if both the credit provider and eligible credit reporting body are not signatories to the PRDE. *[Schedule 1, item 4, paragraph 133CV(4)(a)]*

1.124 The PRDE includes 'principles of reciprocity' that allow a credit reporting body to share credit information, including a subset of credit information if a credit provider has only shared that subset of data.

1.125 The restrictions on an eligible credit reporting body sharing information also only apply if both the credit provider and eligible credit reporting body do not meet the conditions prescribed in the regulations. *[Schedule 1, item 4, paragraph 133CV(4)(b)]*

1.126 The Government expects that regulations would be made if other arrangements were put in place between a credit provider and credit reporting body that reflected the concept of 'reciprocity'.

Monitoring and Compliance

1.127 ASIC is responsible for regulating the Credit Act. The Credit Act includes a number of powers for ASIC to assist in its role. These include information gathering and investigative powers. Its broad approach to enforcement is set out in *ASIC's approach to enforcement – Information Sheet 151* available on the ASIC website.

1.128 Currently, ASIC considers a number of factors when deciding whether to take enforcement or other action for potential non-compliance. ASIC will consider the extent of the harm or loss (or potential harm or loss) and the seriousness of the conduct. This framework will be applied in the context of the mandatory regime.

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

Penalties under the mandatory regime

1.130 New 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.

1.131 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, subsections 133CR(1), 133CR(3) and 133CT(1)]

1.132 Similarly, ASIC may seek a civil penalty where a credit reporting body does not disclose information (or discloses information when it should not) that it has received under the mandatory regime.

[Schedule 1, item 4, subsections 133CV(1), 133CV(2) and 133CV(3)].

1.133 A civil penalty must be imposed by a court. The maximum penalty that can be applied is 2,000 penalty units if the person is a natural person (currently \$420,000) and 10,000 penalty units if the person is a body corporate (currently \$2.1 million).

1.134 ASIC may also seek criminal offences if either a credit provider or credit reporting body has breached a requirement under the mandatory credit reporting regime. *[Schedule 1, item 4, subsections 133CU(1) and 133CW(1)]*

1.135 The maximum penalty that can be applied is 100 penalty units (currently \$21,000).

1.136 If an eligible licensee fails to give a credit reporting body, the Information Commissioner and ASIC a notice advising that the licensee now believes that the credit reporting body meets its obligations under section 20Q of the Privacy Act (see paragraph 1.47 above), ASIC may seek a civil penalty of 2,000 penalty units.

1.137 The Credit Act currently allows for regulations to be made so that ASIC can issue an infringement notice (see existing section 331 of the Credit Act). A person in breach of an obligation in the Credit Act can pay the amount in the infringement notice as an alternative to civil or criminal proceedings in court. This regulation making power also applies to the mandatory regime without amendments.

1.138 The Government intends to make a regulation under this power for the purposes of the mandatory regime to provide ASIC with the ability to issue an infringement notice.

Information gathering powers

1.139 ASIC's existing powers in the Credit Act are extended to the mandatory comprehensive credit reporting regime requirement so that it can monitor and ensure compliance with the supply requirements and on-disclosure restrictions. *[Schedule 1, item 4, sections 135CZC, 133CZD, 133CZE, 133CZF and 133CZG]*

Obligation to provide ASIC with a statement or an audit report

1.140 ASIC can direct an eligible licensee or an eligible 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 133CZD(1)]*

1.141 ASIC can direct an eligible licensee or an eligible credit reporting body to obtain an audit on a statement about the licensee or body's compliance with the mandatory comprehensive credit reporting regime. *[Schedule 1, item 4, subsection 133CZD(3)]*

1.142 An audit provided under this requirement is subject to the existing requirements in section 102 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 133CZG]

1.143 An eligible licensee or eligible credit reporting body is subject to a civil penalty of 2,000 penalty units if it fails to comply with a direction from ASIC to supply a statement or audit report. *[Schedule 1, item 4, subsection 133CZD(6)]*

1.144 A civil penalty must be imposed by a court. The maximum penalty that can be applied is 2,000 penalty units if the person is a natural person (currently \$420,000) and 10,000 penalty units if the person is a body corporate (currently \$2.1 million).

1.145 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 would be 25 penalty units or six months imprisonment. *[Schedule 1, item 4, subsection 133CZD(7)]*

1.146 An eligible licensee or eligible credit reporting body can also be subject to a strict liability offence if the person fails to comply with a direction from ASIC to supply a statement or audit report. In this instance the maximum penalty that could apply would be 10 penalty units. *[Schedule 1, item 4, subsections 133CZD(8) and 133CZD(9)]*

1.147 Existing section 49 of the Credit Act gives ASIC the same powers in relation to a licensee and the credit activities engaged in by that licensee. The same penalty regime applies in these circumstances.

Obligation to give ASIC information required by the regulations

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

1.149 An eligible licensee or eligible credit reporting body is subject to a civil penalty of 2,000 penalty units if it fails to give ASIC this information. *[Schedule 1, item 4, subsection 133CZE(2)]*

1.150 A civil penalty must be imposed by a court. The maximum penalty that can be applied is 2,000 penalty units if the person is a natural person (currently \$420,000) and 10,000 penalty units if the person is a body corporate (currently \$2.1 million).

1.151 An eligible licensee or eligible 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 would be 25 penalty units or six months imprisonment. *[Schedule 1, item 4, subsection 133CZE(3)]*

1.152 An eligible licensee or eligible credit reporting body can also be subject to a strict liability offence if the person fails to comply with a direction from ASIC to supply a statement or audit report. In this instance the maximum penalty that could apply would be 10 penalty units. *[Schedule 1, item 4, subsections 133CZE(4) and 133CZE(5)]*

1.153 Existing section 50 also includes a regulation making power to enable ASIC to collect information about a licensee's credit activities. The same penalty regime applies in these circumstances.

Obligation to provide ASIC with assistance

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

1.155 An eligible licensee or eligible credit reporting body is subject to a civil penalty of 2,000 penalty units if it fails to provide ASIC with assistance. *[Schedule 1, item 4, subsection 133CZF(1)]*

1.156 A civil penalty must be imposed by a court. The maximum penalty that can be applied is 2,000 penalty units if the person is a natural person (currently \$420,000) and 10,000 penalty units if the person is a body corporate (currently \$2.1 million).

1.157 An eligible licensee or eligible credit reporting body can also be subject to a criminal offence if it fails to assist ASIC. The maximum criminal penalty that could apply would be 25 penalty units or six months imprisonment. *[Schedule 1, item 4, subsection 133CZF(3)]*

1.158 Under existing section 51 a licensee must provide ASIC with assistance when requested to do so about whether the licensee is meeting its obligations under the Credit Act.

Inspection of books and audit-information gathering powers

1.159 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 in possession of information relating to the activities of an eligible licensee or eligible credit reporting body and the mandatory comprehensive credit regime; *[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)]*

Statements to the Treasurer

1.160 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 133CX, 133CY and 133CZ]*

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

1.162 Statements about the ongoing supply of information must be given to the Treasurer within three months after the end of the financial

year. *[Schedule 1, item 4, paragraphs 133CY(1)(e) and 133CY(2)(e) and subsection 133CZ(c)]*

1.163 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 133CX(1)(a), 133CX(2)(a), 133CY(1)(c), 133CY(2)(c) and subsection 133CZ(a)]*

1.164 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.

1.165 The statements given to the Treasurer must be audited. ASIC may appoint in writing a suitably qualified person to be the auditor. An auditor may charge a reasonable fee to produce the report on the statement. *[Schedule 1, item 4, subsections 133CX(1)(b), 133CX(2)(b) 133CY(1)(d), 133CY(2)(d) and 133CZ(b) and section 133CZA]*

1.166 An eligible licensee or eligible credit reporting body who fails to give the Treasurer a required statement may be subject to a penalty of 2,000 penalty units. *[Schedule 1, item 4, subsections 133CY(1), 133CY(2), 133CX(1), 133CX(2) and section 133CZ]*

1.167 A civil penalty must be imposed by a court. The maximum penalty that can be applied is 2,000 penalty units if the person is a natural person (currently \$420,000) and 10,000 penalty units if the person is a body corporate (currently \$2.1 million).

Consequential amendments

1.168 The Privacy Act is amended to require that a credit reporting body store credit reporting information in Australia or with a service that is listed by the Australian Signals Directorate as a certified Cloud Service. *[Schedule 1, item 11, section 20Q of the Privacy Act]*

1.169 This requirement applies to all credit reporting bodies operating in Australia and is not limited to those who meet the definition of eligible credit reporting body.

Application and transitional provisions

1.170 The amendments in this Bill commence the day after the Bill receives the Royal Assent.

