

EXPOSURE DRAFT

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

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

No. , 2018

(Treasury)

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

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1 **A Bill for an Act to provide for mandatory**
2 **comprehensive credit reporting, and for related**
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

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

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

No. , 2018

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

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information

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

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

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

3 Schedules

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12 repealed as set out in the applicable items in the Schedule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

Schedule 1—Amendments

National Consumer Credit Protection Act 2009

1 Subsection 5(1)

Insert:

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

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

Repeal the definition, substitute:

credit provider:

- (a) when used in Part 3-2CA—has the same meaning as in the *Privacy Act 1988*; and
- (b) otherwise—has the same meaning as in section 204 of the National Credit Code, and includes a person who is a credit provider because of section 10 of this Act.

3 Subsection 5(1)

Insert:

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

eligible credit account: see section 133CO.

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

eligible licensee: see subsection 133CN(1).

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

mandatory credit information: see section 133CP.

Part 3-2CA body: see section 133CZC.

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

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Schedule 1 Amendments

1 *supply requirements*: see section 133CQ.

2 **4 After Part 3-2C**

3 Insert:

4 **Part 3-2CA—Licensees supplying credit** 5 **information to credit reporting bodies etc.**

6 **Division 1—Introduction**

7 **133CM Guide to this Part**

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

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

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

17 This Part applies in addition to, and does not limit, the *Privacy Act*
18 *1988*.

19 **133CN Meaning of eligible licensee and eligible credit reporting** 20 **body**

- 21 (1) A licensee is an *eligible licensee*, on 1 July 2018 or a later day, if
22 on that day the licensee is:
23 (a) a large ADI, a subsidiary of a large ADI, or a person of a
24 kind prescribed by the regulations; and
25 (b) a credit provider.

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Amendments Schedule 1

-
- 1 (2) A credit reporting body is an *eligible credit reporting body* for a
2 licensee if:
3 (a) the following conditions are met:
4 (i) an agreement of the kind referred to in
5 paragraph 20Q(2)(a) of the *Privacy Act 1988* between
6 the body and the licensee was in force on 2 November
7 2017;
8 (ii) the licensee is an eligible licensee on 1 July 2018; or
9 (b) the conditions (if any) prescribed by the regulations are met.

10 133CO Meaning of eligible credit account

- 11 An *eligible credit account* is an account that:
12 (a) relates to the provision, or possible provision, of consumer
13 credit (within the meaning of the *Privacy Act 1988*); and
14 (b) is held by one or more natural persons with a credit provider;
15 and
16 (c) is not of a kind prescribed by the regulations.

17 133CP Meaning of mandatory credit information

- 18 (1) *Mandatory credit information*, for eligible credit accounts held by
19 natural persons with a credit provider, is any or all of the following
20 information collected by or for the credit provider for those
21 accounts:
22 (a) credit information about the natural persons;
23 (b) information of a kind prescribed by the regulations that
24 relates to:
25 (i) those accounts; or
26 (ii) the natural persons who hold those accounts.
- 27 (2) The *Privacy Act 1988*, and legislative instruments made under that
28 Act, apply in relation to mandatory credit information covered by
29 paragraph (1)(b) in a corresponding way to the way that Act and
30 those instruments apply in relation to credit information.

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Schedule 1 Amendments

133CQ Meaning of supply requirements

- 1 (1) Information is supplied in accordance with the *supply*
2 *requirements* if the supply is in accordance with:
3 (a) the registered CR code (within the meaning of the *Privacy*
4 *Act 1988*); and
5 (b) any determination under subsection (2); and
6 (c) any technical standards approved under subsection (4).
7
- 8 (2) For one or more kinds of information to be supplied under this
9 Part, ASIC may, by legislative instrument, determine particulars of
10 that information that must be included in that supply.
- 11 (3) Despite subsection 14(2) of the *Legislation Act 2003*, a
12 determination under subsection (2) may make provision in relation
13 to a matter by applying, adopting or incorporating, with or without
14 modification, any matter contained in any other instrument or
15 writing as in force or existing from time to time.
- 16 (4) ASIC may, in writing, approve technical standards for supplying
17 one or more kinds of information under this Part.
- 18 (5) If there is an inconsistency between:
19 (a) the registered CR code (within the meaning of the *Privacy*
20 *Act 1988*); and
21 (b) a determination under subsection (2) or a technical standard
22 approved under subsection (4);
23 the registered CR code prevails to the extent of the inconsistency.

24 Division 2—Supplying credit information to credit 25 reporting bodies etc.

26 133CR Initial bulk supplies of credit information—requirements

27 *First bulk supply*

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

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- 1 (a) for at least 50% of the eligible credit accounts held with the
2 licensee on the first 1 July on which the licensee is an eligible
3 licensee; and
4 (b) before the end of the later of the following periods:
5 (i) the 90-day period starting on that 1 July;
6 (ii) if the licensee reasonably believes that the body is not
7 complying with section 20Q of the *Privacy Act 1988* on
8 that 1 July, but ceases to hold that belief before the end
9 of that 90-day period—the 14-day period starting on the
10 day the licensee ceases to hold that belief; and
11 (c) in accordance with the supply requirements; and
12 (d) to the extent that the licensee is not prevented by the *Privacy*
13 *Act 1988* from doing so.

14 Civil penalty: 2,000 penalty units.

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

17 *Bulk supply of remaining information*

- 18 (3) An eligible licensee must supply, to each eligible credit reporting
19 body for the licensee, mandatory credit information:
20 (a) for the eligible credit accounts that:
21 (i) are held with the licensee on the second 1 July on which
22 the licensee is an eligible licensee; and
23 (ii) were not covered by a supply under subsection (1) to the
24 body; and
25 (b) before the end of the later of the following periods:
26 (i) the 90-day period starting on that 1 July;
27 (ii) if the licensee reasonably believes that the body is not
28 complying with section 20Q of the *Privacy Act 1988* on
29 that 1 July, but ceases to hold that belief before the end
30 of that 90-day period—the 14-day period starting on the
31 day the licensee ceases to hold that belief; and
32 (c) in accordance with the supply requirements; and
33 (d) to the extent that the licensee is not prevented by the *Privacy*
34 *Act 1988* from doing so.
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Schedule 1 Amendments

1 Civil penalty: 2,000 penalty units.

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

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

6 **133CS Initial bulk supplies of credit information—exceptions**

7 *Exception for credit reporting bodies not complying with*
8 *information security requirements*

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

- 11 (a) the licensee reasonably believes that the body is not
12 complying with section 20Q of the *Privacy Act 1988*:
13 (i) on the 1 July referred to in that subsection; and
14 (ii) on the last day of the 90-day period starting on that
15 1 July; and
16 (b) the licensee satisfies subsection (2) of this section.

17 (2) The licensee satisfies this subsection if:

- 18 (a) the licensee prepares a written notice:
19 (i) stating that the licensee reasonably believes that the
20 body is not complying with section 20Q of the *Privacy*
21 *Act 1988* on that 1 July; and
22 (ii) setting out the licensee's reasons for that belief; and
23 (iii) stating that the body has until the end of the 90-day
24 period starting on that 1 July to convince the licensee
25 otherwise; and
26 (b) the licensee gives that notice to the credit reporting body, and
27 a copy to the Information Commissioner and ASIC, within 7
28 days after that 1 July; and
29 (c) the licensee prepares a written notice (the *final notice*):
30 (i) stating that the licensee reasonably believes that the
31 body is not complying with section 20Q of the *Privacy*
32 *Act 1988* on the last day of that 90-day period; and

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- 1 (ii) setting out the licensee's reasons for that belief; and
2 (d) the licensee gives the final notice to the body, and a copy to
3 the Information Commissioner and ASIC, within 7 days after
4 the last day of that 90-day period.

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

7 (3) If:

- 8 (a) an eligible licensee reasonably believes that an eligible credit
9 reporting body for the licensee is not complying with
10 section 20Q of the *Privacy Act 1988* on the first or second
11 1 July on which the licensee is an eligible licensee; and
12 (b) the licensee complies with paragraphs (2)(a) and (b) in
13 relation to that belief; and
14 (c) on a day during the 90-day period starting on that 1 July, the
15 licensee ceases to hold that belief;
16 the licensee must:
17 (d) prepare a written notice:
18 (i) stating that the licensee has ceased to hold that belief;
19 and
20 (ii) setting out the licensee's reasons for ceasing to hold that
21 belief; and
22 (e) give that notice to the body, and a copy to the Information
23 Commissioner and ASIC, within 7 days after the day the
24 licensee ceased to hold that belief.

25 Civil penalty: 2,000 penalty units.

26 *Exception for older repayment history information*

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

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Schedule 1 Amendments

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Evidential burden

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

(6) In this section:

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

133CT Ongoing supplies of credit information

(1) If:

- (a) a licensee has supplied a credit reporting body with mandatory credit information under this Division; and
- (b) on a later day in a calendar month:
 - (i) the conditions (if any) prescribed by the regulations are not met for the licensee and the body; and
 - (ii) the licensee would reasonably be expected to have become aware that an event in an item of the following table has happened; and
 - (iii) the licensee is still an eligible licensee; and
 - (iv) an agreement of the kind referred to in paragraph 20Q(2)(a) of the *Privacy Act 1988* is in force between the licensee and the body;

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

- (c) within 20 days after the end of that calendar month; and
- (d) in accordance with the supply requirements; and
- (e) to the extent that the licensee is not prevented by the *Privacy Act 1988* from doing so.

Ongoing supplies of mandatory credit information

Item	If this event happens:	This information must be supplied:
1	the need to change any mandatory	details of the changed information

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Ongoing supplies of mandatory credit information

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

1 Civil penalty: 2,000 penalty units.

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

4 133CU Offences

5 *Offence relating to initial bulk supplies*

6 (1) A person commits an offence if:

- 7 (a) disregarding section 133CS, the person is subject to a
8 requirement under subsection 133CR(1) or (3) to supply
9 certain information to a credit reporting body for certain
10 accounts held on a particular 1 July; and
11 (b) the person engages in conduct; and
12 (c) the conduct contravenes the requirement.
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Schedule 1 Amendments

- 1 Criminal penalty: 100 penalty units.
- 2 (2) Subsection (1) does not apply if:
- 3 (a) the person reasonably believes that the credit reporting body
- 4 is not complying with section 20Q of the *Privacy Act 1988*:
- 5 (i) on that 1 July; and
- 6 (ii) on the last day of the 90-day period starting on that
- 7 1 July; and
- 8 (b) the licensee satisfies subsection 133CS(2).
- 9 Note: A defendant bears an evidential burden in relation to the matter in
- 10 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 11 (3) Subsection (1) does not apply to so much of the information as
- 12 became repayment history information (within the meaning of the
- 13 *Privacy Act 1988*) more than 3 months before the first 1 July on
- 14 which the licensee is an eligible licensee.
- 15 Note: A defendant bears an evidential burden in relation to the matter in
- 16 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).
- 17 *Offence relating to giving notice or ongoing supplies*
- 18 (4) A person commits an offence if:
- 19 (a) the person is subject to a requirement under
- 20 subsection 133CS(3) or 133CT(1); and
- 21 (b) the person engages in conduct; and
- 22 (c) the conduct contravenes the requirement.
- 23 Criminal penalty: 100 penalty units.
- 24 *Geographical jurisdiction*
- 25 (5) Section 14.1 of the *Criminal Code* does not apply to:
- 26 (a) an offence against subsection (1); or
- 27 (b) an offence against subsection (4) relating to a requirement
- 28 under subsection 133CT(1).

1 **Division 3—Conditions on credit reporting bodies**
2 **on-disclosing credit information**

3 **133CV On-disclosure of information supplied under Division 2**

4 *Information not to be on-disclosed to a credit provider that has not*
5 *disclosed half of its credit information*

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

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

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

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

14 (ii) Division 2 of this Part;

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

17 Civil penalty: 2,000 penalty units.

18 *On-disclosing information to a credit provider that has disclosed*
19 *at least half, but not all, of its credit information*

20 (2) If:

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

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

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

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

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

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- 1 (i) section 21D of the *Privacy Act 1988*; or
2 (ii) Division 2 of this Part;
3 relate to at least 50%, but less than 100%, of the eligible
4 credit accounts held with the credit provider; and
5 (f) less than 12 months have passed after the first time all of the
6 disclosures referred to in paragraph (e) related to at least 50%
7 of those eligible credit accounts;
8 the credit reporting body must, to the extent that it is not prevented
9 by the *Privacy Act 1988* from doing so, make that requested
10 disclosure of Division 2 information to the credit provider within
11 10 business days after the request day.

12 Civil penalty: 2,000 penalty units.

13 *On-disclosing information to a credit provider that has disclosed*
14 *all of its credit information*

15 (3) If:

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

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

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

22 (ii) Division 2 of this Part;

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

25 the credit reporting body must, to the extent that it is not prevented
26 by the *Privacy Act 1988* from doing so, make that requested
27 disclosure of Division 2 information to the credit provider within
28 10 business days after the request day.

29 Civil penalty: 2,000 penalty units.

30 *Exception for signatories to the PRDE etc.*

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

33 (a) both:

- 1 (i) the credit reporting body and the credit provider are
2 signatories to the principles titled “Principles of
3 Reciprocity and Data Exchange”, dated 31 May 2017
4 and published by the Australian Retail Credit
5 Association, as amended from time to time; and
6 (ii) a service agreement (within the meaning of those
7 principles) is in force between the credit reporting body
8 and the credit provider; or
9 (b) the conditions (if any) prescribed by the regulations are met
10 for the credit reporting body and the credit provider.

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

14 **133CW Offence**

- 15 A person commits an offence if:
16 (a) the person is subject to a requirement under
17 subsection 133CV(1), (2) or (3); and
18 (b) the person engages in conduct; and
19 (c) the conduct contravenes the requirement.

20 Criminal penalty: 100 penalty units.

21 **Division 4—Reporting to the Minister**

22 **133CX Reports about initial bulk supplies of credit information**

- 23 (1) A licensee who is required under subsection 133CR(1) or (3) to
24 supply mandatory credit information must:
25 (a) prepare a written statement containing information of the
26 kinds prescribed by the regulations relating to:
27 (i) the mandatory credit information; or
28 (ii) the eligible credit accounts to which the mandatory
29 credit information relates; and
30 (b) arrange for a person appointed under section 133CZA to
31 audit that statement and prepare a written report of the audit;
32 and

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1 (c) give the Minister that statement, and that audit report, within
2 6 months after the 1 July referred to in that subsection.

3 Civil penalty: 2,000 penalty units.

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

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

8 (i) the mandatory credit information; or

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

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

14 (c) give the Minister that statement, and that audit report, within
15 6 months after the 1 July referred to in that subsection.

16 Civil penalty: 2,000 penalty units.

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

21 **133CY Reports about ongoing supplies of credit information**

22 (1) A licensee:

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

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

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

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

31 (i) the ongoing information; or

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

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- 1 (d) arrange for a person appointed under section 133CZA to
2 audit that statement and prepare a written report of the audit;
3 and
4 (e) give the Minister that statement, and that audit report, within
5 3 months after that financial year.

6 Civil penalty: 2,000 penalty units.

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

- 9 (a) is required under subsection 133CT(1) to be supplied; or
10 (b) is supplied in accordance with conditions prescribed for the
11 purposes of subparagraph 133CT(1)(b)(i);
12 for one or more months in a financial year, must:
13 (c) prepare a written statement containing information of the
14 kinds prescribed by the regulations relating to:
15 (i) the ongoing information; or
16 (ii) the eligible credit accounts to which the ongoing
17 information relates; and
18 (d) arrange for a person appointed under section 133CZA to
19 audit that statement and prepare a written report of the audit;
20 and
21 (e) give the Minister that statement, and that audit report, within
22 3 months after that financial year.

23 Civil penalty: 2,000 penalty units.

24 **133CZ Reports about on-disclosure of credit information**

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

- 28 (a) prepare a written statement containing information of the
29 kinds prescribed by the regulations relating to the Division 2
30 information; and
31 (b) arrange for a person appointed under section 133CZA to
32 audit that statement and prepare a written report of the audit;
33 and

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Schedule 1 Amendments

1 (c) give the Minister that statement, and that audit report, within
2 3 months after that financial year.

3 Civil penalty: 2,000 penalty units.

4 **133CZA Auditors**

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

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

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

11 **133CZB Offence**

12 A person commits an offence if:

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

16 (b) the person engages in conduct; and

17 (c) the conduct contravenes the requirement.

18 Criminal penalty: 100 penalty units.

19 **Division 5—Assisting ASIC**

20 **133CZC Meaning of Part 3-2CA body**

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

22 (a) an eligible licensee; or

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

1 **133CZD Obligation to provide a statement or obtain an audit report**
2 **if directed by ASIC**

3 *Notice to Part 3-2CA body to provide a statement*

- 4 (1) ASIC may give a Part 3-2CA body a written notice directing the
5 body to lodge with ASIC a written statement containing specified
6 information about whether the body is complying with this Part
7 (other than Division 4).
- 8 (2) Notices under subsection (1):
- 9 (a) may be given at any time; and
 - 10 (b) may be given to one or more particular Part 3-2CA bodies, or
11 to each Part 3-2CA body in one or more classes of
12 Part 3-2CA bodies, or to all Part 3-2CA bodies; and
 - 13 (c) may require all the same information, or may contain
14 differences as to the information they require; and
 - 15 (d) may require a statement containing information to be given
16 on a periodic basis, or each time a particular event or
17 circumstance occurs, without ASIC having to give a further
18 written notice.

19 *Notice to Part 3-2CA body to obtain an audit report*

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

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

26 *Notice must specify day by which Part 3-2CA body must comply*

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

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Schedule 1 Amendments

- 1 *Requirement to comply with notice*
- 2 (6) The Part 3-2CA body must comply with a notice given under this
- 3 section within the time specified in the notice.
- 4 Civil penalty: 2,000 penalty units.
- 5 *Offence*
- 6 (7) A person commits an offence if:
- 7 (a) the person is subject to a requirement under subsection (6);
- 8 and
- 9 (b) the person engages in conduct; and
- 10 (c) the conduct contravenes the requirement.
- 11 Criminal penalty: 25 penalty units, or 6 months imprisonment,
- 12 or both.
- 13 *Strict liability offence*
- 14 (8) A person commits an offence if:
- 15 (a) the person is subject to a requirement under subsection (6);
- 16 and
- 17 (b) the person engages in conduct; and
- 18 (c) the conduct contravenes the requirement.
- 19 Criminal penalty: 10 penalty units.
- 20 (9) Subsection (8) is an offence of strict liability.
- 21 Note: For strict liability, see section 6.1 of the *Criminal Code*.

22 **133CZE Obligation to give ASIC information required by the**

23 **regulations**

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

EXPOSURE DRAFT

Amendments **Schedule 1**

- 1 *Requirement to comply with regulations*
- 2 (2) If regulations under subsection (1) require a Part 3-2CA body to
3 give ASIC information, the body must give ASIC that information.
- 4 Civil penalty: 2,000 penalty units.
- 5 *Offence*
- 6 (3) A person commits an offence if:
- 7 (a) the person is subject to a requirement to give ASIC
8 information under subsection (2); and
9 (b) the person engages in conduct; and
10 (c) the conduct contravenes the requirement.
- 11 Criminal penalty: 25 penalty units, or 6 months imprisonment,
12 or both.
- 13 *Strict liability offence*
- 14 (4) A person commits an offence if:
- 15 (a) the person is subject to a requirement to give ASIC
16 information under subsection (2); and
17 (b) the person engages in conduct; and
18 (c) the conduct contravenes the requirement.
- 19 Criminal penalty: 10 penalty units.
- 20 (5) Subsection (4) is an offence of strict liability.
- 21 Note: For strict liability, see section 6.1 of the *Criminal Code*.

133CZF Obligation to provide ASIC with assistance if reasonably requested

- 24 *Requirement to provide assistance*
- 25 (1) If ASIC, or a person authorised by ASIC, reasonably requests
26 assistance from a Part 3-2CA body about whether the body is
27 complying with this Part (other than Division 4), the body must
28 give ASIC or the authorised person the requested assistance.

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 Civil penalty: 2,000 penalty units.
- 2 (2) If the request is in writing, it is not a legislative instrument.
- 3 *Offence*
- 4 (3) A person commits an offence if:
- 5 (a) the person is subject to a requirement to give ASIC or an
- 6 authorised person assistance under subsection (1); and
- 7 (b) the person engages in conduct; and
- 8 (c) the conduct contravenes the requirement.
- 9 Criminal penalty: 25 penalty units, or 6 months imprisonment,
- 10 or both.

11 133CZG Extended application of Division 4 of Part 2-5

- 12 (1) Division 4 of Part 2-5 also applies in relation to an audit report
- 13 required under subsection 133CZD(3) as if the substitutions in the
- 14 following table, and the modification in subsection (2) of this
- 15 section, were made.
- 16

Substitutions to be made

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

- 17 (2) For the purposes of subsection (1), assume that paragraphs
- 18 104(2)(a) and (b) were replaced with the following:
- 19 “(a) constitutes or may constitute a contravention of Part 3-2CA
- 20 (other than Division 4); or”.

1 **Division 6—Miscellaneous**

2 **133CZH Review of the operation of this Part**

- 3 (1) The Minister must cause an independent review to be conducted of
4 the operation of this Part.
- 5 (2) The persons who conduct the review must complete it, and give the
6 Minister a written report of the review, before 1 January 2022.
- 7 (3) The Minister must cause copies of the report to be tabled in each
8 House of the Parliament within 15 sitting days of that House after
9 the report is given to the Minister.

10 **133CZI Alternative constitutional basis**

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

- 13 (a) each reference to an eligible licensee were expressly confined
14 to an eligible licensee that is a corporation to which
15 paragraph 51(xx) of the Constitution applies; and
- 16 (b) each reference to an eligible credit reporting body were
17 expressly confined to an eligible credit reporting body that is
18 a corporation to which paragraph 51(xx) of the Constitution
19 applies.

20 **5 At the end of paragraph 265(2)(c)**

21 Add:

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

24 **6 Section 266 (at the end of the heading)**

25 Add “or credit reporting”.

26 **7 Section 266**

27 Before “ASIC may give”, insert “(1)”.

EXPOSURE DRAFT

Schedule 1 Amendments

1 **8 At the end of section 266**

2 Add:

3 (2) ASIC may give to:

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

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

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

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

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

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

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

19 **9 Paragraph 267(1)(b)**

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

21 **10 Paragraph 307(1)(b)**

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

23 ***Privacy Act 1988***

24 **11 At the end of section 20Q**

25 Add:

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

28 (a) in Australia or an external Territory; or

29 (b) using a service that:

30 (i) is listed by the Australian Signals Directorate of the
31 Defence Department as a Certified Cloud Service under

EXPOSURE DRAFT

Amendments **Schedule 1**

1
2
3
4
5

the program known as the Information Security
Registered Assessors Program; or
(ii) meets the conditions specified in the registered CR
code.