

EXPOSURE DRAFT

2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019

No. , 2019

(Treasury)

**A Bill for an Act to amend the law relating to credit
reporting, and for other purposes**

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Amendments		3
	<i>National Consumer Credit Protection Act 2009</i>	3
	<i>Privacy Act 1988</i>	27
Schedule 2—Financial hardship and other amendments		28
Part 1—Financial hardship amendments		28
	<i>Privacy Act 1988</i>	28
Part 2—Related amendments		32
	<i>National Consumer Credit Protection Act 2009</i>	32
Part 3—Other amendments		33
	<i>Privacy Act 1988</i>	33

EXPOSURE DRAFT

1

2 **A Bill for an Act to amend the law relating to credit**
3 **reporting, and for other purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *National Consumer Credit Protection Amendment*
7 *(Mandatory Credit Reporting and Other Measures) Act 2019.*

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. , 2019 *National Consumer Credit Protection Amendment (Mandatory Credit* 1
Reporting and Other Measures) Bill 2019

EXPOSURE DRAFT

EXPOSURE DRAFT

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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after this Act receives the Royal Assent.	
3. Schedule 2, Part 1	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 April 2021.	
4. Schedule 2, Part 2	Immediately after the commencement of the provisions covered by table item 3.	
5. Schedule 2, Part 3	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 April 2021.	

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.

10 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.

2 *National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019* No. , 2019

EXPOSURE DRAFT

Schedule 1—Amendments

National Consumer Credit Protection Act 2009

1 Subsection 5(1)

Insert:

banking group means a relevant group of bodies corporate (within the meaning of the *Banking Act 1959*) that includes a body corporate covered by paragraph 133CN(1)(a) (about large ADIs).

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*.

declaration of contravention means a declaration made under section 166.

eligible credit account: see section 133CO.

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

eligible licensee: see subsection 133CN(1).

EXPOSURE DRAFT

Schedule 1 Amendments

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

4 *head company*, of a banking group, means the member of the
5 group covered by paragraph 133CN(1)(a) (about large ADIs).

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

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

8 *Part 3-2CA body*: see section 133CZF.

9 *personal information* has the same meaning as in the *Privacy Act*
10 *1988*.

11 *sensitive information* has the same meaning as in the *Privacy Act*
12 *1988*.

13 *supply requirements*: see section 133CQ.

14 **4 After Part 3-2C**

15 Insert:

16 **Part 3-2CA—Licensees supplying credit** 17 **information to credit reporting bodies etc.**

18 **Division 1—Introduction**

19 **133CM Guide to this Part**

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

22 Each licensee must supply certain information to eligible credit
23 reporting bodies about all of the open credit accounts held with the
24 licensee or with other members of the licensee's corporate group.

EXPOSURE DRAFT

Amendments **Schedule 1**

1 Each licensee must then supply updated information to those credit
2 reporting bodies on an ongoing basis.

3 Conditions may need to be met before the credit reporting bodies
4 who are supplied with this information can further disclose this
5 information to credit providers.

6 This Part applies in addition to the *Privacy Act 1988*.

7 **133CN Meanings of *eligible licensee* and *eligible credit reporting body***

8 (1) A licensee is an *eligible licensee*, on 1 April 2020 or a later day, if
9 on that day the licensee:

- 10 (a) is a large ADI, or is a body corporate of a kind prescribed by
11 the regulations; and
12 (b) is a credit provider.

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

- 15 (a) the following conditions are met:
16 (i) an agreement of the kind referred to in
17 paragraph 20Q(2)(a) of the *Privacy Act 1988* between
18 the body and the licensee was in force on 2 November
19 2017;
20 (ii) the licensee is an eligible licensee on 1 April 2020; or
21 (b) the conditions (if any) prescribed by the regulations are met.

22 **133CO Meaning of *eligible credit account***

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

- 24 (a) relates to the provision, or possible provision, of consumer
25 credit (within the meaning of the *Privacy Act 1988*); and
26 (b) is held by one or more natural persons with a credit provider;
27 and
28 (c) is not of a kind prescribed by the regulations.

EXPOSURE DRAFT

Schedule 1 Amendments

133CP Meaning of *mandatory credit information*

- 1
- 2 (1) ***Mandatory credit information***, for eligible credit accounts held by
3 natural persons with a credit provider, is personal information
4 (other than sensitive information) for those accounts that is:
- 5 (a) identification information (within the meaning of the *Privacy*
6 *Act 1988*) about the natural persons; or
- 7 (b) consumer credit liability information (within the meaning of
8 the *Privacy Act 1988*) about the natural persons; or
- 9 (c) repayment history information (within the meaning of the
10 *Privacy Act 1988*) about the natural persons; or
- 11 (e) default information (within the meaning of the *Privacy Act*
12 *1988*) about the natural persons; or
- 13 (f) payment information (within the meaning of the *Privacy Act*
14 *1988*) about the natural persons; or
- 15 (g) new arrangement information (within the meaning of the
16 *Privacy Act 1988*) about the natural persons.
- 17 (2) Despite paragraph (1)(c), ***mandatory credit information*** does not
18 include repayment history information (within the meaning of the
19 *Privacy Act 1988*) that comes into existence more than 3 months
20 before the first 1 April on which:
- 21 (a) if the credit provider is a member of a banking group—the
22 head company of the group is an eligible licensee; or
- 23 (b) otherwise—the credit provider is an eligible licensee.
- 24 (4) Despite paragraph (1)(e), ***mandatory credit information*** does not
25 include default information (within the meaning of the *Privacy Act*
26 *1988*) that comes into existence before the first 1 April on which:
- 27 (a) if the credit provider is a member of a banking group—the
28 head company of the group is an eligible licensee; or
- 29 (b) otherwise—the credit provider is an eligible licensee.

30 133CQ Meaning of *supply requirements*

- 31 (1) Information is supplied in accordance with the ***supply***
32 ***requirements*** if the supply is in accordance with:
- 33 (a) the registered CR code (within the meaning of the *Privacy*
34 *Act 1988*); and
-

EXPOSURE DRAFT

Amendments **Schedule 1**

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

19 **Division 2—Supplying credit information to credit**
20 **reporting bodies etc.**

21 **Subdivision A—Initial bulk supplies of credit information**

22 **133CR Requirement to supply**

23 *First bulk supply for at least 50% of total eligible credit accounts*

- 24 (1) An eligible licensee must supply mandatory credit information for
25 the accounts referred to in subsection (2) to each eligible credit
26 reporting body (**CRB**) for the licensee:
27 (a) before the end of the later of the following periods:
28 (i) the 90-day period starting on the first 1 April on which
29 the licensee is an eligible licensee;

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (ii) if subsection (5) applies—the 14-day period starting on
2 the cessation day referred to in that subsection; and
3 (b) in accordance with the supply requirements; and
4 (c) to the extent that the licensee is not prevented by the *Privacy*
5 *Act 1988* from doing so.

6 Civil penalty: 5,000 penalty units.

- 7 (2) For the purposes of subsection (1), the accounts are at least 50% of
8 all of the eligible credit accounts held:
9 (a) on the first 1 April on which the licensee is an eligible
10 licensee; and
11 (b) with the licensee, or with a member of a banking group of
12 which the licensee is the head company.
13 The licensee may choose which eligible credit accounts make up
14 this 50%.

15 *Bulk supply for remaining eligible credit accounts*

- 16 (3) An eligible licensee must supply mandatory credit information for
17 the accounts referred to in subsection (4) to each eligible credit
18 reporting body (*CRB*) for the licensee:
19 (a) before the end of the latest of the following periods:
20 (i) the 90-day period starting on the second 1 April on
21 which the licensee is an eligible licensee;
22 (ii) if subsection (5) applies—the 14-day period starting on
23 the cessation day referred to in that subsection;
24 (iii) if, because paragraph 133CS(1)(b) is no longer satisfied,
25 subsection 133CS(1) ceases to provide the licensee with
26 an exception to this subsection for the *CRB*—the 14-day
27 period starting on the day that exception ceases to
28 apply; and
29 (b) in accordance with the supply requirements; and
30 (c) to the extent that the licensee is not prevented by the *Privacy*
31 *Act 1988* from doing so.

32 Civil penalty: 5,000 penalty units.

EXPOSURE DRAFT

Amendments **Schedule 1**

- 1 (4) For the purposes of subsection (3), the accounts are all of the
2 eligible credit accounts held:
3 (a) on the second 1 April on which the licensee is an eligible
4 licensee; and
5 (b) with the licensee, or with a member of a banking group of
6 which the licensee is the head company;
7 for which mandatory credit information was not supplied under
8 subsection (1) to the CRB.

9 *Possible extension of time if credit reporting body later complies*
10 *with information security requirements before end of 90-day period*

- 11 (5) For the purposes of subsection (1) or (3), this subsection applies if:
12 (a) the licensee reasonably believes that the CRB is not
13 complying with section 20Q of the *Privacy Act 1988* on the
14 1 April referred to in that subsection; and
15 (b) the licensee complies with paragraphs 133CS(2)(a) and (b) in
16 relation to that belief; and
17 (c) the licensee ceases to hold that belief on a day (the *cessation*
18 *day*) before the end of the 90-day period starting on that
19 1 April.

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

- 22 (6) Subsection (1) or (3) applies whether the mandatory credit
23 information is kept in or outside this jurisdiction.

24 **133CS Exception if credit reporting body not complying with**
25 **information security requirements**

- 26 (1) Subsection 133CR(1) or (3) does not apply, and is taken never to
27 have applied, to a licensee for a credit reporting body if:
28 (a) the licensee reasonably believes that the body is not
29 complying with section 20Q of the *Privacy Act 1988*:
30 (i) on the 1 April referred to in that subsection; and
31 (ii) on the last day of the 90-day period starting on that
32 1 April; and

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (b) in the case of subsection 133CR(3)—the licensee continues
2 to hold that belief after that 90-day period; and
3 (c) the licensee satisfies subsection (2) of this section.
- 4 Note 1: Paragraph (b) means that, if the licensee ceases to hold that belief after
5 the 90-day period starting on the 1 April in subsection 133CR(3), this
6 exception will cease to apply and the supply requirement in
7 subsection 133CR(3) will apply.
- 8 Note 2: A person who wishes to rely on this subsection bears an evidential
9 burden in relation to the matters in this subsection (see subsection (3)
10 of this section and subsection 13.3(3) of the *Criminal Code*).
- 11 (2) The licensee satisfies this subsection if:
12 (a) the licensee prepares a written notice:
13 (i) stating that the licensee reasonably believes that the
14 body is not complying with section 20Q of the *Privacy*
15 *Act 1988* on that 1 April; and
16 (ii) setting out the licensee’s reasons for that belief; and
17 (iii) stating that the body may try to convince the licensee
18 otherwise, but that in the case of subsection 133CR(1)
19 the body will need to do so before the end of the 90-day
20 period starting on that 1 April; and
21 (b) the licensee gives that notice to the credit reporting body, and
22 a copy to the Information Commissioner and ASIC, within 7
23 days after that 1 April; and
24 (c) the licensee prepares a written notice (the *final notice*):
25 (i) stating that the licensee reasonably believes that the
26 body is not complying with section 20Q of the *Privacy*
27 *Act 1988* on the last day of that 90-day period; and
28 (ii) setting out the licensee’s reasons for that belief; and
29 (d) the licensee gives the final notice to the body, and a copy to
30 the Information Commissioner and ASIC, within 7 days after
31 the last day of that 90-day period.
- 32 (3) A licensee who wishes to rely on subsection (1) in proceedings for
33 a declaration of contravention or a pecuniary penalty order bears an
34 evidential burden in relation to the matters in that subsection.

EXPOSURE DRAFT

Amendments Schedule 1

133CT Licensee must give notice if credit reporting body later complies with information security requirements

If:

- (a) an eligible licensee reasonably believes that an eligible credit reporting body for the licensee is not complying with section 20Q of the *Privacy Act 1988* on the first or second 1 April on which the licensee is an eligible licensee; and
- (b) the licensee complies with paragraphs 133CS(2)(a) and (b) in relation to that belief; and
- (c) the licensee ceases to hold that belief:
 - (i) in the case of subsection 133CR(1)—on a day during the 90-day period starting on that first 1 April; or
 - (ii) in the case of subsection 133CR(3)—on any day after that second 1 April;

the licensee must:

- (d) prepare a written notice:
 - (i) stating that the licensee has ceased to hold that belief; and
 - (ii) setting out the licensee's reasons for ceasing to hold that belief; and
- (e) give that notice to the body, and a copy to the Information Commissioner and ASIC, within 7 days after the day the licensee ceases to hold that belief.

Civil penalty: 5,000 penalty units.

Subdivision B—Ongoing supplies of credit information

133CU Requirement to supply

(1) If:

- (a) a licensee has supplied a credit reporting body (the *CRB*) with mandatory credit information under this Division; and
- (b) on a later day (the *trigger day*):
 - (i) the conditions (if any) prescribed by the regulations are not met for the licensee and the CRB; and

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (ii) the licensee, or a member of a banking group of which
2 the licensee is the head company, would reasonably be
3 expected to have become aware that an event in an item
4 of the following table has happened; and
5 (iii) the licensee is still an eligible licensee; and
6 (iv) an agreement of the kind referred to in
7 paragraph 20Q(2)(a) of the *Privacy Act 1988* is in force
8 between the CRB and a body referred to in
9 subparagraph (ii) of this paragraph;
10 the licensee must supply to the credit reporting body the
11 information referred to in that table item:
12 (c) before the end of the latest of the following periods:
13 (i) the 45-day period starting on the trigger day;
14 (ii) if subsection (2) applies—the 14-day period starting on
15 the cessation day referred to in that subsection;
16 (iii) if, because paragraph 133CV(1)(b) is no longer
17 satisfied, subsection 133CV(1) ceases to provide the
18 licensee with an exception to this subsection for the
19 CRB—the 14-day period starting on the day that
20 exception ceases to apply; and
21 (d) in accordance with the supply requirements; and
22 (e) to the extent that the licensee is not prevented by the *Privacy*
23 *Act 1988* from doing so.
24

Ongoing supplies of mandatory credit information

Item	If this event happens:	This information must be supplied:
1	the need to change any mandatory credit information the licensee has supplied under this Division to ensure that the information is accurate, up to date and complete	details of the changed information
2	the payment of an overdue payment about which default information (within the meaning of the <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 reopening) of an eligible	mandatory credit information for

12 *National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019* No. , 2019

EXPOSURE DRAFT

Amendments Schedule 1

Ongoing supplies of mandatory credit information

Item	If this event happens:	This information must be supplied:
	credit account with: (a) the licensee; or (b) a member of a banking group of which the licensee is the head company; provided this happens after the licensee has supplied the CRB with mandatory credit information under subsection 133CR(3)	that account
5	default information (within the meaning of the <i>Privacy Act 1988</i>) comes into existence for an eligible credit account for which mandatory credit information has previously been supplied by the licensee to the CRB under this Division	the default information
6	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	information that: (a) is, or relates to, mandatory credit information; and (b) is of a kind prescribed by the regulations for that kind of event

- 1 Civil penalty: 5,000 penalty units.
- 2 (2) For the purposes of subparagraph (1)(c)(ii), this subsection applies
- 3 if:
- 4 (a) the licensee reasonably believes that the CRB is not
- 5 complying with section 20Q of the *Privacy Act 1988* on the
- 6 trigger day; and
- 7 (b) the licensee complies with paragraphs 133CV(2)(a) and (b)
- 8 in relation to that belief; and
- 9 (c) the licensee ceases to hold that belief on a day (the ***cessation***
- 10 ***day***) before the end of the 45-day period starting on the
- 11 trigger day.
- 12 (3) Supplies under subsection (1) of information relating to multiple
- 13 events, or multiple trigger days, may be made together.

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (4) Subsection (1) applies whether the information referred to in the
2 table is kept in or outside this jurisdiction.
- 3 (5) Regulations made for the purposes of subparagraph (1)(b)(i) may
4 make provision in relation to a matter by applying, adopting or
5 incorporating, with or without modification, any matter contained
6 in any other instrument or writing as in force or existing from time
7 to time.
- 8 (6) Subsection (5) has effect despite subsection 14(2) of the
9 *Legislation Act 2003*.

10 **133CV Exception if credit reporting body not complying with** 11 **information security requirements**

- 12 (1) Subsection 133CU(1) does not apply, and is taken never to have
13 applied, to a licensee for a credit reporting body if:
- 14 (a) the licensee reasonably believes that the body is not
15 complying with section 20Q of the *Privacy Act 1988*:
16 (i) on the trigger day referred to in that subsection; and
17 (ii) on the last day of the 45-day period starting on the
18 trigger day; and
- 19 (b) the licensee continues to hold that belief after that 45-day
20 period; and
- 21 (c) the licensee satisfies subsection (2) of this section.
- 22 Note 1: Paragraph (b) means that, if the licensee ceases to hold that belief after
23 that 45-day period, this exception will cease to apply and the supply
24 requirement in subsection 133CU(1) will apply.
- 25 Note 2: A person who wishes to rely on this subsection bears an evidential
26 burden in relation to the matters in this subsection (see subsection (3)
27 of this section and subsection 13.3(3) of the *Criminal Code*).
- 28 (2) The licensee satisfies this subsection if:
- 29 (a) the licensee prepares a written 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 trigger day; and
33 (ii) setting out the licensee's reasons for that belief; and

EXPOSURE DRAFT

Amendments **Schedule 1**

- 1 (iii) stating that the body may try to convince the licensee
2 otherwise; and
- 3 (b) the licensee gives that notice to the credit reporting body, and
4 a copy to the Information Commissioner and ASIC, within 7
5 days after the trigger day; and
- 6 (c) the licensee prepares a written notice (the *final notice*):
7 (i) stating that the licensee reasonably believes that the
8 body is not complying with section 20Q of the *Privacy*
9 *Act 1988* on the last day of that 45-day period; and
10 (ii) setting out the licensee's reasons for that belief; and
- 11 (d) the licensee gives the final notice to the body, and a copy to
12 the Information Commissioner and ASIC, within 7 days after
13 the last day of that 45-day period.
- 14 (3) A licensee who wishes to rely on subsection (1) in proceedings for
15 a declaration of contravention or a pecuniary penalty order bears an
16 evidential burden in relation to the matters in that subsection.
- 17 (4) Subsection 21U(2) of the *Privacy Act 1988* does not require a
18 licensee to give a credit reporting body notice of a correction of
19 certain information if:
20 (a) subsection (1) of this section is providing the licensee with an
21 exception from a requirement under subsection 133CU(1) of
22 this Act; and
23 (b) that requirement is to supply the corrected information to the
24 credit reporting body;
25 unless the reason under subsection 21U(1) of the *Privacy Act 1988*
26 for the correction is that the information is inaccurate, and it was
27 inaccurate when earlier supplied to the credit reporting body under
28 this Division.

29 **133CW Licensee must give notice if credit reporting body later**
30 **complies with information security requirements**

- 31 If:
32 (a) an eligible licensee reasonably believes that an eligible credit
33 reporting body for the licensee is not complying with
34 section 20Q of the *Privacy Act 1988* on the trigger day
35 referred to in subsection 133CU(1); and
-

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (b) the licensee complies with paragraphs 133CV(2)(a) and (b)
2 in relation to that belief; and
3 (c) the licensee ceases to hold that belief on any day after the
4 trigger day;
5 the licensee must:
6 (d) prepare a written notice:
7 (i) stating that the licensee has ceased to hold that belief;
8 and
9 (ii) setting out the licensee's reasons for ceasing to hold that
10 belief; and
11 (e) give that notice to the body, and a copy to the Information
12 Commissioner and ASIC, within 7 days after the day the
13 licensee ceased to hold that belief.
14 Civil penalty: 5,000 penalty units.

15 Subdivision C—Offences

16 133CX Offence relating to initial bulk supplies

- 17 (1) A person commits an offence if:
18 (a) the person is subject to a requirement under
19 subsection 133CR(1) or (3); and
20 (b) the person engages in conduct; and
21 (c) the conduct contravenes the requirement.
22 Criminal penalty: 100 penalty units.
23 (2) Section 14.1 of the *Criminal Code* does not apply to an offence
24 against subsection (1).
25 Note: For an exception to an offence against subsection (1), see
26 subsection 133CS(1). A defendant bears an evidential burden in
27 relation to the matters in subsection 133CS(1) (see subsection 13.3(3)
28 of the *Criminal Code*).

29 133CY Offence relating to ongoing supplies

- 30 (1) A person commits an offence if:
-

- 1 (a) the person is subject to a requirement under
2 subsection 133CU(1); and
3 (b) the person engages in conduct; and
4 (c) the conduct contravenes the requirement.

5 Criminal penalty: 100 penalty units.

- 6 (2) Section 14.1 of the *Criminal Code* does not apply to an offence
7 against subsection (1).

8 Note: For an exception to an offence against subsection (1), see
9 subsection 133CV(1). A defendant bears an evidential burden in
10 relation to the matters in subsection 133CV(1) (see subsection 13.3(3)
11 of the *Criminal Code*).

12 **133CZ Offence relating to giving notice if credit reporting body**
13 **later complies with information security requirements**

14 A person commits an offence if:

- 15 (a) the person is subject to a requirement under section 133CT or
16 133CW; and
17 (b) the person engages in conduct; and
18 (c) the conduct contravenes the requirement.

19 Criminal penalty: 100 penalty units.

20 **Division 3—Conditions on credit reporting bodies**
21 **on-disclosing credit information**

22 **133CZA On-disclosing information supplied under Division 2 etc.**

- 23 (1) This section applies to a credit reporting body in relation to the
24 following information (the *protected information*):
25 (a) any information that the credit reporting body is supplied
26 under Division 2;
27 (b) any CRB derived information (within the meaning of the
28 *Privacy Act 1988*) that is derived from information that the
29 credit reporting body is supplied under Division 2.

EXPOSURE DRAFT

Schedule 1 Amendments

1

When protected information must not be disclosed

2

(2) If the conditions prescribed by the regulations are met for the credit reporting body and a credit provider, the credit reporting body must not disclose to the credit provider so much of the protected information as:

3

4

5

6

(a) is prescribed by the regulations; or

7

(b) is of a kind or kinds prescribed by the regulations.

8

Civil penalty: 5,000 penalty units.

9

When protected information must be disclosed

10

(3) If the conditions prescribed by the regulations are met for the credit reporting body and a credit provider, the credit reporting body must disclose to the credit provider so much of the protected information as:

11

12

13

14

(a) the regulations require to be disclosed; or

15

(b) is of a kind or kinds prescribed by the regulations;

16

and which the *Privacy Act 1988* does not prevent the credit reporting body from disclosing.

17

18

Civil penalty: 5,000 penalty units.

19

(4) If the credit reporting body is required under subsection (3) to disclose information, the credit reporting body must make the disclosure by the time, and in accordance with the requirements, prescribed by the regulations.

20

21

22

23

Civil penalty: 5,000 penalty units.

24

Incorporation of other instruments

25

(5) Regulations made for the purposes of subsection (2), (3) or (4) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing as in force or existing from time to time.

26

27

28

29

30

(6) Subsection (5) has effect despite subsection 14(2) of the *Legislation Act 2003*.

31

18

National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 No. , 2019

EXPOSURE DRAFT

1 *Matters regulations may deal with*

2 (7) Without limiting subsection (2), (3) or (4), a matter prescribed for
3 the purposes of that subsection may depend on a person or body
4 being satisfied of one or more specified matters.

5 **133CZB Offence**

6 A person commits an offence if:

- 7 (a) the person is subject to a requirement under
8 subsection 133CZA(2), (3) or (4); and
- 9 (b) the person engages in conduct; and
- 10 (c) the conduct contravenes the requirement.

11 Criminal penalty: 100 penalty units.

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

13 **133CZC Reports about initial bulk supplies of credit information**

- 14 (1) A licensee who is required under subsection 133CR(1) or (3) to
15 supply mandatory credit information must arrange:
- 16 (a) for the preparation of a written statement containing
17 information of the kinds prescribed by the regulations
18 relating to:
 - 19 (i) the mandatory credit information; or
 - 20 (ii) the eligible credit accounts to which the mandatory
21 credit information relates; and
 - 22 (b) for a person appointed under section 133CZD to audit that
23 statement and prepare a written report of the audit; and
 - 24 (c) for that statement and audit report to be given to the Minister
25 within 6 months after the 1 April referred to in that
26 subsection.

27 Civil penalty: 5,000 penalty units.

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

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (a) for the preparation of a written statement containing
2 information of the kinds prescribed by the regulations
3 relating to:
4 (i) the mandatory credit information; or
5 (ii) the eligible credit accounts to which the mandatory
6 credit information relates; and
7 (b) for a person appointed under section 133CZD to audit that
8 statement and prepare a written report of the audit; and
9 (c) for that statement and audit report to be given to the Minister
10 within 6 months after the 1 April referred to in that
11 subsection.

12 Civil penalty: 5,000 penalty units.

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

17 **133CZD Auditors**

- 18 (1) ASIC may, in writing, appoint as auditors for the purposes of this
19 Division:
20 (a) one or more suitably qualified persons; or
21 (b) the members of one or more classes of suitably qualified
22 persons.
23 (2) The reasonable fees and expenses of an auditor for preparing an
24 audit report under this Division are payable by the person required
25 to arrange for the preparation of the statement to which the audit
26 report relates.
27 (3) The auditor may recover those fees by action against that person.

28 **133CZE Offence**

- 29 A person commits an offence if:
30 (a) the person is subject to a requirement under
31 subsection 133CZC(1) or (2); and
32 (b) the person engages in conduct; and
-

1 (c) the conduct contravenes the requirement.

2 Criminal penalty: 100 penalty units.

3 **Division 5—Assisting ASIC**

4 **133CZF Meaning of *Part 3-2CA body***

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

- 6 (a) an eligible licensee; or
7 (b) an eligible credit reporting body for a licensee.

8 **133CZG Obligation to provide a statement or obtain an audit report** 9 **if directed by ASIC**

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

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

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

- 27 (3) ASIC may also give a Part 3-2CA body a written notice directing
28 the body to obtain an audit report prepared:
29 (a) by a suitably qualified person specified in the notice; and

EXPOSURE DRAFT

Schedule 1 Amendments

1 (b) on a statement, or on each statement in a class of statements,
2 under subsection (1); and

3 (c) before the statement is given to ASIC.

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

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

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

10 *Requirement to comply with notice*

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

13 Civil penalty: 5,000 penalty units.

14 *Offence*

15 (7) A person commits an offence if:

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

18 (b) the person engages in conduct; and

19 (c) the conduct contravenes the requirement.

20 Criminal penalty: 6 months imprisonment.

21 **133CZH Obligation to give ASIC information required by the** 22 **regulations**

23 *Regulations may require Part 3-2CA body to give information*

24 (1) The regulations may require:

25 (a) a Part 3-2CA body; or

26 (b) each Part 3-2CA body in a class of Part 3-2CA bodies;

EXPOSURE DRAFT

Amendments **Schedule 1**

1 to give ASIC specified information about whether the body, or
2 another Part 3-2CA body, is complying with this Part (other than
3 Division 4).

4 *Requirement to comply with regulations*

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

7 Civil penalty: 5,000 penalty units.

8 *Offence*

9 (3) A person commits an offence if:

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

12 (b) the person engages in conduct; and

13 (c) the conduct contravenes the requirement.

14 Criminal penalty: 6 months imprisonment.

15 **133CZI Obligation to provide ASIC with assistance if reasonably** 16 **requested**

17 *Requirement to provide assistance*

18 (1) If ASIC, or a person authorised by ASIC, reasonably requests
19 assistance from a Part 3-2CA body (the *assisting body*) about
20 whether:

21 (a) the assisting body; or

22 (b) another Part 3-2CA body;

23 is complying with this Part (other than Division 4), the assisting
24 body must give ASIC or the authorised person the requested
25 assistance.

26 Civil penalty: 5,000 penalty units.

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

EXPOSURE DRAFT

Schedule 1 Amendments

1

Offence

2

(3) A person commits an offence if:

3

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

4

5

(b) the person engages in conduct; and

6

(c) the conduct contravenes the requirement.

7

Criminal penalty: 6 months imprisonment.

8

133CZJ Extended application of Division 4 of Part 2-5

9

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

10

11

12

13

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 133CZG(3)
---	------------------	----------------------

3	financial records or other credit books	records
---	---	---------

14

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

15

16

17

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

18

Division 6—Miscellaneous

19

133CZK This Part does not limit the *Privacy Act 1988*

20

Subject to subsection 133CV(4), this Part does not limit the operation of the *Privacy Act 1988*.

21

1 **133CZL Review of the operation of this Part**

- 2 (1) The Minister must cause an independent review to be conducted of
3 the operation of this Part.
- 4 (2) The persons who conduct the review must complete it, and give the
5 Minister a written report of the review, before 1 October 2023.
- 6 (3) The Minister must cause copies of the report to be tabled in each
7 House of the Parliament within 15 sitting days of that House after
8 the report is given to the Minister.

9 **133CZM Main constitutional basis**

10 The main constitutional basis for this Part is set out in Part 1-3.

11 **133CZN Other constitutional bases**

- 12 (1) Independently of section 133CZM, this Part also has effect as
13 provided by subsections (2), (3), (4) and (5).

14 *Other constitutional bases—eligible licensees*

- 15 (2) This Part also has the effect it would have if a reference in it to an
16 eligible licensee were expressly confined to an eligible licensee
17 that is a corporation to which paragraph 51(xx) of the Constitution
18 applies.
- 19 (3) This Part also have the effect it would have if a reference in it to an
20 eligible licensee were expressly confined to an eligible licensee
21 acting:
22 (a) in the course of; or
23 (b) in relation to;
24 the carrying on of the business of banking, other than State banking
25 (within the meaning of paragraph 51(xiii) of the Constitution) not
26 extending beyond the limits of the State concerned.

27 *Other constitutional bases—credit reporting bodies*

- 28 (4) Division 3, subsection 133CZC(2) and Division 5 also have the
29 effect they would have if a reference in them to a credit reporting

EXPOSURE DRAFT

Schedule 1 Amendments

1 body were expressly confined to a credit reporting body that is a
2 corporation to which paragraph 51(xx) of the Constitution applies.

3 (5) Division 3, subsection 133CZC(2) and Division 5 also have the
4 effect they would have if a reference in them to a credit reporting
5 body were expressly confined to a credit reporting body acting:
6 (a) in the course of; or
7 (b) in relation to;
8 the carrying on of the business of banking, other than State banking
9 (within the meaning of paragraph 51(xiii) of the Constitution) not
10 extending beyond the limits of the State concerned.

11 **5 At the end of paragraph 265(2)(c)**

12 Add:

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

15 **6 Section 266 (at the end of the heading)**

16 Add “or credit reporting”.

17 **7 Section 266**

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

19 **8 At the end of section 266**

20 Add:

21 (2) ASIC may give to:
22 (a) a Part 3-2CA body that is, or has been, subject to a
23 requirement under Part 3-2CA (other than Division 4), either
24 alone or together with any other person or persons; or
25 (b) a representative, banker, lawyer or auditor of a person
26 referred to in paragraph (a);
27 a written notice requiring the production to a specified ASIC
28 member or ASIC staff member, at a specified place and time, of
29 specified books relating to:
30 (c) information, or a statement, to which that requirement
31 relates; or

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

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

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

6 **9 Paragraph 267(1)(b)**

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

8 **10 Paragraph 307(1)(b)**

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

10 ***Privacy Act 1988***

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

12 Add:

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

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

16 (b) in accordance with any requirements determined under
17 subsection (4).

18 (4) The Commissioner may, by legislative instrument, determine
19 requirements for how a credit reporting body, that holds credit
20 reporting information, must store the information.

21 (5) In deciding whether to make a determination under subsection (4),
22 the Commissioner must have regard to:

23 (a) any relevant advice given to the Commissioner by the
24 Australian Signals Directorate; and

25 (b) such other advice or matters (if any) as the Commissioner
26 considers relevant.

EXPOSURE DRAFT

Schedule 2 Financial hardship and other amendments

Part 1 Financial hardship amendments

1 **Schedule 2—Financial hardship and other**
2 **amendments**

3 **Part 1—Financial hardship amendments**

4 ***Privacy Act 1988***

5 **1 Subsection 6(1)**

6 Insert:

7 *financial hardship information* has the meaning given by
8 section 6QA.

9 **2 After paragraph 6N(c)**

10 Insert:

11 (ca) financial hardship information about the individual; or

12 **3 After section 6Q**

13 Insert:

14 **6QA Meaning of financial hardship information**

15 *Hardship arrangement indicator*

16 (1) If:

17 (a) a credit provider provides consumer credit to an individual;
18 and

19 (b) the individual notifies the credit provider that the individual
20 is or will be unable to meet the individual's obligations in
21 relation to the consumer credit; and

22 (c) because of the individual's inability to meet those
23 obligations, the terms or conditions of the consumer credit
24 are temporarily varied; and

25 (d) the variation affects an obligation the individual has to make
26 a monthly payment in relation to the consumer credit; and

EXPOSURE DRAFT

Financial hardship and other amendments **Schedule 2**
Financial hardship amendments **Part 1**

1 (e) the individual meets the obligation to make the varied
2 monthly payment;
3 then the fact that the payment met an obligation that arose under
4 the temporarily varied terms or conditions is *financial hardship*
5 *information* about the individual.

6 *Contract variation indicator*

7 (2) If:

8 (a) a credit provider provides consumer credit to an individual;
9 and

10 (b) the individual notifies the credit provider that the individual
11 is or will be unable to meet the individual's obligations in
12 relation to the consumer credit; and

13 (c) because of the individual's inability to meet those
14 obligations, the terms or conditions of the consumer credit
15 are permanently varied;

16 then the fact that a monthly payment that is due and payable is the
17 first monthly payment the individual has met under the
18 permanently varied terms or conditions is *financial hardship*
19 *information* about the individual.

20 (3) Regulations made for the purposes of subsection 6V(2) have the
21 same effect in relation to this section as they have in relation to
22 section 6V.

23 **4 Paragraph 20C(4)(e)**

24 After "repayment history information", insert "or financial hardship
25 information".

26 **5 Subsection 20E(4)**

27 After "repayment history information", insert "or financial hardship
28 information".

29 **6 At the end of section 20E**

30 Add:

EXPOSURE DRAFT

Schedule 2 Financial hardship and other amendments

Part 1 Financial hardship amendments

1 *No disclosure of financial hardship information as part of credit*
2 *score*

3 (7) Subsection (3) does not apply to the disclosure of CRB derived
4 information which contains or takes the form of a credit score
5 where the credit information from which the credit score is derived
6 includes financial hardship information.

7 **Paragraph 20G(2)(c)**

8 Omit “or repayment history information,” substitute “repayment
9 history information, or financial hardship information”.

10 **8 Section 20W (after table item 2)**

11 Insert:

12 2A financial hardship information the period of 1 year that starts on the day
13 on which the monthly payment to which
14 the information relates is due and
15 payable.

12 **9 Paragraph 21D(3)(c)**

13 After “repayment history information”, insert “or financial hardship
14 information”.

15 **10 After section 21E**

16 Insert:

17 **21EA Financial hardship information must be disclosed**

18 If:

19 (a) a credit provider discloses to a credit reporting body
20 repayment history information about an individual in relation
21 to a monthly payment under section 21D; and

22 (b) financial hardship information about that individual exists in
23 relation to that monthly payment;

24 the credit provider must disclose the financial hardship information
25 to the credit reporting body.

26 Civil penalty: 500 penalty units.

EXPOSURE DRAFT

Financial hardship and other amendments **Schedule 2**

Financial hardship amendments **Part 1**

1 **11 Subsection 21G(4)**

2 After “repayment history information”, insert “or financial hardship
3 information”.

4 **12 Application**

5 Section 6QA of the *Privacy Act 1988*, as inserted by this Part, applies in
6 relation to notifications referred to in paragraphs 6QA(1)(b) and (2)(b)
7 that are given on or after the commencement of this Part, regardless of
8 whether the consumer credit was applied for before, on or after that
9 commencement.

EXPOSURE DRAFT

Schedule 2 Financial hardship and other amendments

Part 2 Related amendments

1 **Part 2—Related amendments**

2 *National Consumer Credit Protection Act 2009*

3 **13 After paragraph 133CP(1)(c)**

4 Insert:

5 (d) financial hardship information (within the meaning of the
6 *Privacy Act 1988*) about the natural persons; or

7 **14 After subsection 133CP(2)**

8 Insert:

9 (3) Despite paragraph (1)(d), *mandatory credit information* does not
10 include financial hardship information (within the meaning of the
11 *Privacy Act 1988*) that comes into existence:

12 (a) before 1 April 2021; or

13 (b) more than 3 months before the first 1 April on which:

14 (i) if the credit provider is a member of a banking group—
15 the head company of the group is an eligible licensee; or

16 (ii) otherwise—the credit provider is an eligible licensee.

17 Note: Paragraph (b) is included to deal with the case where the first 1 April
18 is in 2022 or a later year.

19 **15 Subsection 133CU(1) (after table item 3)**

20 Insert:

4 financial hardship information (within the meaning of the *Privacy Act 1988*) comes into existence, on or after 1 April 2021, for an eligible credit account for which mandatory credit information has previously been supplied by the licensee to the CRB under this Division the financial hardship information

EXPOSURE DRAFT

Financial hardship and other amendments **Schedule 2**
Other amendments **Part 3**

1 **Part 3—Other amendments**

2 *Privacy Act 1988*

3 **16 Subsection 6(1)**

4 Insert:

5 *non-participating credit provider* means a credit provider to which
6 all of the following apply:

- 7 (a) the credit provider has not disclosed credit reporting
8 information or credit eligibility information about an
9 individual to a credit reporting body or another credit
10 provider;
- 11 (b) the credit provider is not likely to disclose credit reporting
12 information or credit eligibility information about an
13 individual to a credit reporting body or another credit
14 provider;
- 15 (c) the credit provider has not collected credit reporting
16 information or credit eligibility information about an
17 individual from a credit reporting body or another credit
18 provider.

19 **17 Subparagraph 20E(3)(c)(ii)**

20 After “member of”, insert “or subject to”.

21 **18 At the end of section 21B**

22 Add:

23 *Exemption for certain non-participating credit providers*

24 (8) This section does not apply to a non-participating credit provider.

25 **19 Subparagraph 21D(2)(a)(i)**

26 After “member of”, insert “or subject to”.

EXPOSURE DRAFT

Schedule 2 Financial hardship and other amendments

Part 3 Other amendments

1 **20 Subparagraph 21G(3)(e)(ii)**

2 After “member of”, insert “or subject to”.

3 **21 Subparagraph 21T(7)(b)(i)**

4 After “member”, insert “or to which it is subject”.

5 **22 At the end of section 21U**

6 Add:

7 *Exemption for certain non-participating credit providers*

8 (5) This section does not apply to a non-participating credit provider.

9 **23 At the end of section 21V**

10 Add:

11 *Exemption for certain non-participating credit providers*

12 (7) This section does not apply to a non-participating credit provider.

13 **24 Subparagraph 21W(3)(c)(i)**

14 After “member”, insert “or to which it is subject”.

15 **25 Subparagraph 23B(4)(b)(i)**

16 After “member”, insert “or to which it is subject”.

17 **26 Application**

18 The amendments made by this Part apply in relation to consumer credit
19 applied for, or provided, after the commencement of this Part.