

DRAFT EXPLANATORY STATEMENT

National Consumer Credit Protection Amendment (Mandatory Credit Reporting) Regulations 2020

The National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 will amend the *National Consumer Credit Protection Act 2009* (the Credit Act) to establish a mandatory comprehensive credit reporting (CCR) regime within Australia.

The *National Consumer Credit Protection Amendment (Mandatory Credit Reporting) Regulations 2020* (the Regulations) will amend the *National Consumer Protection Regulations 2010* to support the mandatory regime.

Since March 2014, the *Privacy Act 1988* has allowed credit providers to voluntarily share comprehensive credit information with credit reporting bodies. However, the level of participation in the voluntary regime has remained at low levels.

The mandatory CCR regime requires a large authorised deposit-taking institution to supply 50 per cent of its consumer credit information within 90 days of 1 April 2020 to all credit reporting bodies it had an existing agreement with on 2 November 2017. Within 90 days of 1 April 2021, the same banks will need to supply credit information on their remaining accounts to the same credit reporting bodies.

From 1 April 2021, the CCR regime will also require the same banks to supply any financial hardship information about an individual if the bank is disclosing repayment history information about the individual to a credit reporting body as part of its credit reporting obligations.

The mandatory CCR regime is expected to give lenders access to a deeper, richer set of data so they can better assess a borrower's true credit position and the borrower's ability to pay a loan. The mandatory CCR regime is also expected to increase competition between lenders in the credit market and benefit consumers who will be able to better demonstrate their reliability to get better deals on financial products.

The Regulations will support the mandatory CCR regime by:

- setting out additional circumstances when a bank subject to the regime must update or supply new credit information to a credit reporting body;
- setting out restrictions on a credit reporting body disclosing the information it has received through the mandated regime or derived from this information;
- setting out the types of information that must be included in statements provided to the Treasurer by credit providers and credit reporting bodies following the initial bulk supplies of credit information; and
- setting out an additional circumstance when the Australian Securities and Investments Commission (ASIC) could issue an infringement notice for a civil penalty.

Details of the Regulations are set out in the [Attachment](#).

The Regulations will commence the day after being registered on the Federal Register of Legislation.

ATTACHMENT

Section 1 — Name

This section provides that the name of the regulations will be the *National Consumer Credit Protection Amendment (Mandatory Credit Reporting) Regulations 2020* (the Regulations).

Section 2 — Commencement

This section provides that the Regulations will commence the day after the instrument was registered.

Section 3 — Authority

This section provides that the Regulations are made under the *National Consumer Credit Protection Act 2009* (the Credit Act).

Section 4 — Schedules

This section provides a technical provision to give operational effect to the amendments contained in the Schedule.

Schedule 1 — Amendments

Item 1

Regulation 28TA – Ongoing supplies of mandatory credit information

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

The explanatory memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 recognises that the *Privacy Act 1988* and Privacy (Credit Reporting) Code 2014 (the Privacy Credit Code) include both broad obligations to keep information accurate, up-to-date and complete and specific obligations on credit providers about the timeframe in which certain information must be supplied in certain circumstances.

Where the *Privacy Act 1988* and Privacy Credit Code do not prescribe a timeframe for supplying information, new section 133CU of the Credit Act will require that an eligible licensee must supply the information required by *Privacy Act 1988* and Privacy Credit Code in 45 days.

New section 133CU will also include a regulation making power to allow for additional circumstances when information must be supplied.

Regulation 28TA of the Regulations requires an eligible licensee to supply credit information in certain circumstances where the *Privacy Act 1988* and Privacy Credit Code do not require updates.

Repayment History Information

Section 21U of the *Privacy Act 1988* requires credit providers to take reasonable steps to correct repayment history information to ensure it is accurate, up-to-date, complete, relevant and not misleading. This does not generally require a credit provider to disclose new repayment history information each month where repayment history information has previously been supplied for that account.

The Regulations do not prevent a credit provider from supplying repayment history information. The *Privacy Act 1988* and Privacy Credit Code restrict the disclosure of repayment history information by credit providers to credit reporting bodies except in certain prescribed circumstances. Where the disclosure of repayment history information is permitted under the *Privacy Act 1988* and Privacy Credit Code, the Regulations set out when it must be supplied.

Regulation 28TA will require the reporting of repayment history information. Whether repayment history information needs to be disclosed depends on:

- the date;
- whether the credit provider had previously supplied mandatory credit information on that account; and
- whether the credit provider and consumer have entered into an arrangement following the consumer's request for financial hardship assistance.

The Regulations will provide that the credit provider must supply repayment history information if mandatory comprehensive credit information has previously been supplied for that account and the consumer and credit provider have **not** entered into an arrangement about the consumer's repayment obligations at any time between 1 April 2020 and 31 March 2021 (inclusive). (Regulation 28TA(1), Item 1)

However, the Regulations will provide that the credit provider does not need to supply repayment history information where mandatory comprehensive credit information has previously been supplied for that account if the consumer and credit provider have entered into an arrangement about the consumer's monthly payment obligations. The arrangement must be in place at any time between 1 April 2020 and 31 March 2021 (inclusive) and does not need to continue to be in effect at the time the repayment history information comes into existence. (Regulation 28TA(1), Item 1)

These arrangements could take the form of an agreement, undertaking or other kind of an arrangement whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings.

Beginning on 1 April 2021, financial hardship information about an individual that comes into existence on and after 1 April 2021 will need to be supplied on an ongoing basis by credit providers to relevant credit reporting bodies. This requirement is set out in the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019.

The *Privacy Act 1988* and the Privacy Credit Code are important sources for defining repayment history information and set out the circumstances in which repayment history information can be disclosed to a credit reporting body. The Privacy Credit Code also includes how to determine that an amount is overdue including the grace period that must be considered.

The rules and details included in the *Privacy Act 1988* and the Privacy Credit Code continue to apply and must be complied with when considering the obligation to report repayment history information under the mandatory CCR regime.

Regulation 28TB - When information collected through the mandatory comprehensive credit regime cannot be disclosed

New subsection 133CZA(2) of the Credit Act will provide that a credit reporting body must not disclose credit information it has received under the mandatory regime, or information it has derived from that information, where certain conditions are met.

Regulation 28TB of the Regulations sets out these conditions.

The conditions are that:

- the credit information was received through the mandated regime;
- the information was provided by a credit provider which is a signatory to the *Principles of Reciprocity and Data Exchange* (PRDE); and
- the PRDE has the effect of restricting some or all of the information supplied.

The Australian Retail Credit Association (ARCA), the industry body involved in the disclosure, exchange and application of credit reporting data, developed the PRDE as an industry standard for the collection and sharing of credit information.

The PRDE operates within the existing framework set out by the *Privacy Act 1988* and the Privacy Credit Code and the limits imposed on the use and disclosure of credit information set out in that legislation.

Under the PRDE, a credit reporting body only shares information with a credit provider where that credit provider is a signatory to the PRDE and only to the level of detail being supplied by the credit provider. The exception to this is 'negative data' which can be shared whether or not a credit provider is a signatory to the PRDE or is supplying data to the credit reporting body.

'Negative data' is not a defined term in the Credit Act or *Privacy Act 1988*. Industry uses this term to refer to identification information, default information, payment information and new arrangement information.

Regulation 28TB provides that if a mandated credit provider is a signatory to the PRDE, any eligible credit reporting body receiving mandatory credit information from that credit provider must follow all restrictions on the on-disclosure included in the PRDE, whether or not the credit reporting body is itself a signatory (sub regulation 28TB(4)).

This means that where the mandated credit provider is a signatory to the PRDE:

- 'negative information' could be shared regardless of whether or not the credit reporting body or the receiving credit provider is a signatory to the PRDE;
- 'partial information' could be shared if the receiving credit provider is a signatory to the PRDE and the receiving credit provider has disclosed information to the same level. The industry uses the term 'partial information' to refer to mandatory credit information except repayment history information; and
- 'comprehensive information' could be shared if the receiving credit provider is a signatory to the PRDE and the receiving credit provider has disclosed information to the same level. The industry uses the term 'comprehensive information' to refer to mandatory credit information.

If the mandated credit provider who has supplied the credit information is not a signatory to the PRDE there are no restrictions on the on-disclosure of the credit information supplied other than the restrictions included in the *Privacy Act 1988* and Privacy Credit Code.

Regulation 28TC - Information to be included in statements supplied to the Treasurer by credit providers

New section 133CZC of the Credit Act requires licensees and eligible credit reporting bodies to give the Treasurer statements about the supply and on-disclosure of credit information for the two initial bulk supplies. New section 133CZC requires that the statements are given within 6 months of the 1 April when the information was supplied.

Regulation 28TC of the Regulations sets out the information that must be included in these statements by credit providers.

Eligible Licensees

For the first bulk supply, an eligible licensee must include the following information in the statement to the Treasurer:

- the number of accounts held by the eligible licensee for which mandatory credit information has been supplied to each eligible credit reporting body;
- the number of accounts held by each member of the banking group for which the eligible licensee is the head company and for which mandatory credit information has been supplied to each eligible credit reporting body;
- the number of accounts held by the licensee for which mandatory credit information has not been supplied; and
- the number of accounts held by each member of the banking group for which the eligible licensee is the head company and for which mandatory credit information has not been supplied.

For the accounts listed above, the statement needs to include the type of that account as well as a list of the account types for which mandatory credit information had been supplied.

This requirement provides certainty that an eligible licensee had met its obligations to supply at least 50 per cent of eligible accounts in the first bulk supply, either individually or across the banking group for which it is the head company.

For accounts that had been included in the first bulk supply, the statement must include:

- the number of those accounts for which the credit provider has had a subsequent request to correct information and the number of accounts that had been corrected as a result of the request until 31 August;
- the number of accounts supplied under the mandatory regime where the credit provider has had to correct information; and
- the number of those accounts for which the credit provider has had a subsequent complaint about a privacy breach until 31 August.

This means the first statement will include information about a breach of privacy or a request to correct for the period 1 April to 31 August. The first statement will only

include corrections made during this period. Requests or complaints after this time will be included in the second statement which will also include corrections made as a result of a request made between 1 April and 31 August.

If the credit provider made the initial bulk supply of accounts on a date after 1 April but within the allowed window for compliance, the required information is required on an account for which a type of credit reporting data was supplied prior to the initial bulk supply and about which a correction request or complaint was made.

Example 5

A credit provider supplied incorrect default information on an account before 1 April 2020. Other mandatory credit information was supplied on the account as part of the initial bulk supply. Between 1 April 2020 and 31 August 2020 the person requests a correction for the default information supplied before 1 April 2020. The eligible licensee must supply information about that correction request.

The intent of this provision is to capture relevant information about the operation of the comprehensive credit reporting system over the period, which includes correction requests and complaints about mandatory credit information which may have been supplied by credit providers prior to the mandatory CCR regime.

For the second bulk supply, an eligible licensee must include the following information in the statement to the Treasurer:

- the number of accounts held by the eligible licensee for which mandatory credit information has been supplied to each eligible credit reporting body; and
- the number of accounts held by each member of the banking group where the eligible licensee is the head company and for which mandatory credit information has been supplied to each eligible credit reporting body.

For the accounts listed above, the statement must include the type of that account as well as a list of the account types for which mandatory credit information has been supplied.

For the period starting 1 September immediately before the second bulk supply to 31 August after the second bulk supply, the second statement needs to include information about:

- the number of accounts supplied under the mandatory regime for which the credit provider has had a subsequent request to correct information and the number of accounts that have been corrected as a result of the request;
- the number of accounts supplied under the mandatory regime where the credit provider has had to correct information; and
- the number of accounts included in the bulk supply for which the credit provider has had a subsequent complaint about a privacy breach.

For the period starting on 1 April 2021 to the 31 August immediately after the second bulk supply, the second statement would also need to include information about the number of accounts held with the licensee for which financial hardship information has been supplied to the credit reporting body.

The time period that applies to the information to be included in the second statement captures relevant information about corrections, complaints and supply of credit information that occurred after the first statement was submitted and the second statement is due.

Regulation 28TD - Information to be included in statements supplied to the Treasurer by credit reporting bodies

Regulation 28TD of the Regulations sets out the information that must be included in statements from credit reporting bodies.

Eligible Credit Reporting Bodies

In the statement about the first supply the credit reporting body must include the number of accounts for which mandatory comprehensive credit information has been supplied by each licensee subject to the regime.

For the period 1 April to 31 August and about accounts that were supplied during that period, the credit reporting body must include information in the statement on:

- the number of accounts where a subsequent request to correct the information has been received and the number of accounts that have been corrected as a result of the request;
- the number of accounts where corrections were required;
- the number of accounts where a complaint has been made by the account holder about a privacy breach; and
- the number of disclosures made to a credit provider of information supplied through the mandatory CCR regime or derived from that information.

For the statement about the second supply, the credit reporting body must include the number of accounts for which information has been supplied under the mandatory regime by each licensee.

For the period between 1 September immediately before the second bulk supply to 31 August immediately after the second bulk supply, the statement must include information on:

- the number of accounts where a subsequent request to correct the information has been received and the number of accounts that have been corrected as a result of the request;
- the number of accounts where corrections were required;
- the number of accounts where a complaint has been made by the account holder about a privacy breach; and
- the number of disclosures made to a credit provider of information supplied through the mandatory CCR regime or derived from that information.

For the period starting on 1 April 2021 to the 31 August immediately after the second bulk supply, the second statement would also need to include information about the number of accounts held with the licensee for which financial hardship information has been supplied to the credit reporting body.

The time period captures relevant information about corrections, complaints and supply and on-disclosure of credit information after the first statement was submitted and the second statement is due.

Item 2

Existing regulation 38 - Infringement notices

Subsection 288K(1) in the Credit Act allows for regulations to be made which provide for circumstances where a person who is subject to a civil penalty can instead pay a penalty set out under an infringement notice.

Infringement notices are an important, flexible tool for ASIC to use to facilitate timely outcomes, particularly when it may be inefficient to pursue court action for relatively straightforward contraventions.

Existing Regulation 38 in the *National Consumer Credit Protection Regulations 2010* is amended to include those provisions which give effect to the CCR regime where ASIC could issue an infringement notice instead of seeking a civil penalty.

These are:

- the eligible licensee has failed to meet the bulk supply or ongoing supply obligations;
- an eligible licensee has failed to give a notice to a credit reporting body, ASIC and the Australian Information Commissioner once the licensee believes the credit reporting body is meeting its data security obligations under the Privacy Act where the credit provider did not previously hold this belief;
- a credit reporting body has not met its obligations around disclosing (or not disclosing) the credit information it has received through the mandatory regime;
- the eligible licensee or credit reporting body has failed to supply statements to the Treasurer; and
- the eligible licensee or credit reporting body has not complied with a notice or regulation to give ASIC certain information or failed to give ASIC assistance when reasonably asked.

Giving ASIC the ability to issue an infringement notice is in keeping with the existing penalties framework in the Credit Act.