

## EXPLANATORY MATERIALS

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

Section 329 of the *National Consumer Credit Protection Act 2009* (the Credit Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018 (the CCR Bill) will amend the Credit Act to establish a mandatory comprehensive credit reporting (CCR) regime within Australia. The CCR Bill is currently before Parliament.

Since March 2014, the *Privacy Act 1988* (the Privacy Act) 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 CCR regime will require the four largest banks to supply 50 per cent of their consumer credit information within 90 days of 1 July 2018 to all credit reporting bodies they had an existing agreement with on 2 November 2017. Within 90 days of 1 July 2019, the same banks will need to supply credit information on their remaining accounts to the same credit reporting bodies.

The 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 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 purpose of the Regulations is to:

- exclude certain types of credit accounts from the definition of 'eligible credit account' which will mean an eligible licensee will not need to supply information on these types of accounts;
- set out restrictions on a credit reporting body disclosing the information it has received through the mandated regime or derived from this information;
- set 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;
- set out additional circumstances when an eligible licensee must update or supply new credit information to a credit reporting body; and
- set out circumstances when the Australian Securities and Investments Commission (ASIC) can issue an infringement notice for a civil penalty.

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

Section 1 — Name

This section provides that the title of the regulations is the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Regulations 2018* (the CCR Regulations).

Section 2 — Commencement

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

Section 3 — Authority

This section provides that the Regulations are made under the *National Consumer Credit Protection Act 2010* (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 28T - Accounts that are not eligible credit accounts**

Section 133CO of the CCR Bill sets out the definition of an eligible credit account. These are the accounts for which an eligible licensee must supply mandatory credit information to a credit reporting body.

Subsection 133CO(c) of the CCR Bill provides that regulations may prescribe a kind of account which is not an eligible credit account. In developing these exceptions the Government considered the approach industry developed in the absence of the mandatory regime.

Item 1 inserts a new regulation 28T into the *National Consumer Credit Protection Regulations 2010* (the Credit Regulations), to provide for the kinds of accounts which are not eligible credit accounts. This means that an eligible licensee will not need to provide mandatory credit information for these accounts. The accounts are:

***Margin lending facilities***

Also known in the sector as margin loans, these are defined in Chapter 7 of the *Corporations Act 2001*. Under a margin lending facility a consumer is able to borrow to invest in shares or a managed fund and the shares or managed fund is used as security.

Margin loans are excluded as they do not lend themselves to regular monthly reporting. This is because transactions depend on the purchase and sale of shares making reporting on margin loans difficult and complicated.

### *Accounts without formal overdrafts*

An account which is providing credit or could provide credit without the consumer's consent is not an eligible credit account. An example of this type of account would be a savings account where the provider allows the customer to withdraw more than is in the account for a short period of time.

It does not include a savings or transactions account where the customer was offered and accepted an overdraft facility on the account.

### *Accounts that are being 'run down'*

An account where the type of credit can no longer be issued, the number of accounts is less than 10,000 and the total number of accounts is less than 3 per cent of the total credit accounts held by that eligible licensee.

The proportion of accounts should not be determined by considering the accounts across the whole banking group only those held by the eligible licensee or the credit provider who provides the credit.

### *Novated leases*

An account that provides a novated lease is characterised by the existence of a deed of novation between the employer, the credit provider and the employee.

A typical example of a novated lease is where the employee leases a vehicle from a finance company and the employer agrees with the financier to take on the employee's obligations under the lease. The employee's wages would be reduced for the duration of the lease to cover the repayments.

### *Charge cards*

A charge card is defined with reference to existing regulation 62 which explains the meaning of a charge card contract. Only the credit providers specified in regulation 62 can enter into a charge card contract that is not a kind of eligible credit account in the mandatory comprehensive credit regime.

Charge cards do not charge interest on the amount borrowed but instead require the balance on the charge card account to be paid in full when the statement is received. A late fee is payable if the debtor does not repay the amount of credit by the due date.

Regular repayments are not required for charge cards making it difficult to report regular repayment obligations of an individual.

## **Regulation 28U – Ongoing supplies of mandatory credit information**

Section 133CU of the CCR Bill sets out a number of circumstances where an eligible licensee must supply credit information to a credit reporting body. The provision also includes a regulation making power to allow for additional circumstances when information must be supplied. Section 133CU requires that an eligible licensee must supply the information in 45 days.

Item 1 also inserts new regulation 28U into the Credit Regulations to require an eligible licensee to supply credit information in the following circumstances:

- When there is new **repayment history information** and the eligible licensee has previously supplied mandatory credit information for that account.

Repayment history information is defined in section 6V of the Privacy Act. The *Privacy (Credit Reporting) Code 2014 (Version 1.2)* (the Code) includes details of how to define repayment history information and restricts the information that can be disclosed to a credit reporting body. The 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 and the Code continue to apply and are relevant when considering the obligation to report repayment history information.

- When there is new **default information** and the eligible licensee has previously supplied mandatory credit information for that account.

Default information is defined in 6Q of the Privacy Act and section 9 of the Credit Code. A credit provider remains subject to the restrictions on disclosing this information under the Privacy Act, including the requirement to give a notice under paragraph 21D(3)(d) of the Privacy Act.

- When an **account has opened (or reopened)** with a member of a banking group for which the eligible licensee is the head after the second bulk supply.

#### **Regulation 28V - When information collected through the mandatory comprehensive credit regime cannot be disclosed**

Subsection 133CZA(2) of the CCR Bill provides 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.

Item 1 inserts new regulation 28U into the Credit Regulations to set out these conditions. The conditions are that the:

- 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 would have 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 and the Privacy 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. Industry uses this term to refer to identification information, default information, payment information and new arrangement information.

The effect of new regulation 28U is 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 (subregulation 28U(4)).

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

- 'negative information' can be shared regardless of whether or not the credit reporting body or the receiving credit provider is a signatory to the PRDE;
- 'partial information' can 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' can 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 will be no restrictions on the on-disclosure of the credit information supplied other than the restrictions included in the Privacy Act and Privacy Code.

### **Regulation 28W - Information to be included in statements supplied to the Treasurer by credit providers**

Section 133CZC of the CCR Bill 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. Section 133CZC requires that the statements are given within 6 months of the 1 July when the information was supplied.

Item 1 inserts new regulation 28V into the Credit Regulations which 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 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 accounts that have 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 have been corrected as a result of the request until 30 November;
- 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 30 November.

This means that the first statement will include information about a breach of privacy or a request to correct for the period 1 July to 30 November. 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 that may have been made as a result of a request made between 1 July and 30 November.

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 1 December to 30 November after the second bulk supply, the second statement must also 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.

The time period that applies to the information to be included in the second statement is intended to capture 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 28X - Information to be included in statements supplied to the Treasurer by credit reporting bodies**

Item 1 inserts new regulation 28X into the Credit Regulations to set 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 July to 30 November 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 comprehensive 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 December and 30 November, 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 comprehensive regime or derived from that information.

The time period is intended to capture 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**

Existing section 331 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 the Australian Securities and Investments Commission (ASIC) to use to facilitate timely outcomes, particularly when it may be inefficient to pursue court action for relatively straightforward contraventions.

As explained in the explanatory memorandum to the CCR Bill, the Credit Act limits the amount that can be included in the infringement notice to one-fortieth of the maximum penalty that could be applied by a court. For example, where the maximum penalty that could be applied to a natural person was 2,000 penalty units, the infringement notice cannot be more than 50 penalty units (currently \$10,500).

Existing regulations 37 to 49 in Part 6-2 of Credit Regulations set out those civil penalties for which ASIC can instead issue an infringement notice. These regulations also allow for extensions in paying an infringement notice, refunds of penalties and other administrative arrangements needed to support the issuing and payment of infringement notices.

Item 2 amends existing regulation 38 in the Credit Regulations to include those provisions which give effect to the CCR regime where ASIC may issue an infringement notice instead of seeking a civil penalty.

These are where:

- 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. There are other circumstances when an infringement notice may be issued for civil penalties, including where the penalty amount is 2,000 penalty units.

It is considered an appropriate approach as it enables ASIC to ensure that eligible licensees and credit reporting bodies are sent a signal quickly about a minor breach so that they can more promptly update their systems.

The circumstances are also consistent with advice in ‘A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers’ produced by the Attorney General’s Department. That is, that an infringement notice is suitable to be given where a person has failed to comply with a reporting obligations.