

EXPOSURE DRAFT

EXPOSURE DRAFT

Credit reporting

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Credit reporting **Part A**
Introduction and application of this Part **Division 1**

Section 100

1 **Part A—Credit reporting**

2 **Division 1—Introduction and application of this Part**

3 **100 Guide to this Part**

4 This Part deals with the privacy of personal information relating to
5 credit reporting. It applies in relation to credit that is or has been
6 provided, or applied for, in Australia.

7 Division 2 sets out rules for credit reporting agencies.

8 Division 3 sets out rules for credit providers.

9 Division 4 sets out rules for certain recipients of information that
10 has been disclosed by credit reporting agencies or credit providers
11 under this Part.

12 Division 5 deals with complaints about credit reporting agencies or
13 credit providers.

14 Division 6 deals with entities that obtain credit reporting
15 information or credit eligibility information by false pretence, or
16 when they are not authorised to do so under this Part.

17 Division 7 deals with pecuniary penalties for contraventions of
18 civil penalty provisions.

19 Division 8 deals with the treatment of certain organisations and the
20 conduct of directors, employees and agents.

21 **101 Credit to which this Part applies**

22 This Part applies in relation to credit that is or has been provided,
23 or applied for, in Australia.
24

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Part A Credit reporting

Division 2 Credit reporting agencies

Section 102

1

2 **Division 2—Credit reporting agencies**

3 **Subdivision A—Introduction and application of this Division** 4 **etc.**

5 **102 Guide to this Division**

6

This Division sets out rules for credit reporting agencies.

7

Most of the rules relate to the handling of credit reporting information by credit reporting agencies. The remaining rules relate to specified kinds of personal information and de-identified information.

8

9

10

11

The rules in this Division apply to credit reporting agencies that are APP entities instead of the Australian Privacy Principles.

12

13 **103 Application of this Division to credit reporting agencies**

14

(1) This Division (other than sections 115, 121 and 122) applies to a credit reporting agency in relation to credit reporting information.

15

16

(2) Section 115 applies to a credit reporting agency in relation to de-identified information.

17

18

(3) Sections 121 and 122 apply to a credit reporting agency in relation to credit information, CRA derived information and CP derived information.

19

20

21 **104 Application of the Australian Privacy Principles to credit** 22 **reporting agencies**

23

(1) If a credit reporting agency is an APP entity, the Australian Privacy Principles do not apply to the agency in relation to credit information, CRA derived information or CP derived information.

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1 Note: Subject to this Division, the Australian Privacy Principles apply to the
2 credit reporting agency in relation to other kinds of personal
3 information.

4 (2) If a credit reporting agency is a small business operator, the
5 following apply, subject to this Division, to the agency in relation
6 to personal information that is not credit reporting information as if
7 the agency were an organisation:

- 8 (a) the Australian Privacy Principles;
9 (b) any other provisions of this Act that relate to those principles.

10 (3) Subsection (2) has effect despite anything else in this Act.

11 **Subdivision B—Consideration of information privacy**

12 **105 Open and transparent management of credit reporting** 13 **information**

14 (1) The object of this section is to ensure that credit reporting agencies
15 manage credit reporting information in an open and transparent
16 way.

17 *Compliance with this Division etc.*

18 (2) A credit reporting agency must take such steps as are reasonable in
19 the circumstances to implement practices, procedures and systems
20 relating to the credit reporting business of the agency that:

- 21 (a) will ensure that the agency complies with this Division and
22 the Credit Reporting Code; and
23 (b) will enable the agency to deal with inquiries or complaints
24 from individuals about the agency's compliance with this
25 Division or the Credit Reporting Code.

26 *Policy about the management of credit reporting information*

27 (3) A credit reporting agency must have a clearly expressed and
28 up-to-date policy about the management of credit reporting
29 information by the agency.

30 (4) Without limiting subsection (3), the policy must contain the
31 following information:

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Part A Credit reporting

Division 2 Credit reporting agencies

Section 105

- 1 (a) the kinds of credit information that the credit reporting
2 agency collects and how the agency collects that information;
3 (b) the kinds of credit reporting information that the agency
4 holds and how the agency holds that information;
5 (c) the kinds of personal information that the agency usually
6 derives from credit information that the agency holds;
7 (d) the purposes for which the agency collects, holds, uses and
8 discloses credit reporting information;
9 (e) information about the effect of section 110 (which deals with
10 direct marketing) and how the individual may make a request
11 under subsection (5) of that section;
12 (f) how an individual may access credit reporting information
13 about the individual that is held by the agency and seek the
14 correction of such information;
15 (g) information about the effect of section 121 (which deals with
16 individuals requesting the correction of credit information
17 etc.);
18 (h) how an individual may complain about a failure of the
19 agency to comply with this Division or the Credit Reporting
20 Code and how the agency will deal with such a complaint.

21 *Availability of policy etc.*

- 22 (5) A credit reporting agency must take such steps as are reasonable in
23 the circumstances to make the policy available:
24 (a) free of charge; and
25 (b) in such form as is appropriate.
- 26 (6) If an individual requests a copy, in a particular form, of the policy
27 of a credit reporting agency, the agency must take such steps as are
28 reasonable in the circumstances to give the individual a copy in
29 that form.

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1 **Subdivision C—Collection of credit information**

2 **106 Collection of solicited credit information**

3 *Prohibition on collection*

- 4 (1) A credit reporting agency must not collect credit information about
5 an individual.

6 Civil penalty: 2,000 penalty units.

7 *Exceptions*

- 8 (2) Subsection (1) does not apply if the collection of the credit
9 information is required or authorised by or under an Australian
10 law, or an order of a court or tribunal.
- 11 (3) Subsection (1) does not apply if:
- 12 (a) the credit reporting agency collects the credit information
13 about the individual from a credit provider who is permitted
14 under section 132 to disclose the information to the agency;
15 and
- 16 (b) the agency collects the information in the course of carrying
17 on a credit reporting business; and
- 18 (c) if the information is identification information about the
19 individual—the agency also collects from the provider, or
20 already holds, credit information of another kind about the
21 individual.
- 22 (4) Subsection (1) does not apply if:
- 23 (a) the credit reporting agency collects the credit information
24 about the individual from an entity other than a credit
25 provider; and
- 26 (b) the agency collects the information in the course of carrying
27 on a credit reporting business; and
- 28 (c) the agency knows, or believes on reasonable grounds, that
29 the individual is at least 18 years old; and
- 30 (d) the information does not relate to an act, omission, matter or
31 thing that occurred or existed before the individual turned 18;
32 and
-

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Part A Credit reporting

Division 2 Credit reporting agencies

Section 107

- 1 (e) if the information is identification information about the
2 individual—the agency also collects from the entity, or
3 already holds, credit information of another kind about the
4 individual; and
5 (f) if the information is repayment history information about the
6 individual—the agency collects the information from another
7 credit reporting agency.

8 (5) Paragraph (4)(d) does not apply to identification information about
9 the individual.

10 (6) Despite paragraph (4)(d), consumer credit liability information
11 about the individual may relate to consumer credit that was entered
12 into on a day before the individual turned 18, so long as the
13 consumer credit was not terminated, or did not otherwise cease to
14 be in force, on a day before the individual turned 18.

15 *Means of collection*

16 (7) A credit reporting agency must collect credit information only by
17 lawful and fair means.

18 *Solicited credit information*

19 (8) This section applies to the collection of credit information that is
20 solicited by a credit reporting agency.

21 **107 Dealing with unsolicited credit information**

22 (1) If:

23 (a) a credit reporting agency receives credit information about an
24 individual; and

25 (b) the agency did not solicit the information;

26 the agency must, within a reasonable period after receiving the
27 information, determine whether or not the agency could have
28 collected the information under section 106 if the agency had
29 solicited the information.

30 (2) The credit reporting agency may use or disclose the credit
31 information for the purposes of making the determination under
32 subsection (1).

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1 (3) If the credit reporting agency determines that it could have
2 collected the credit information, sections 108 to 128 apply in
3 relation to the information as if the agency had so collected the
4 information.

5 (4) If the credit reporting agency determines that it could not have
6 collected the credit information, the agency must, as soon as
7 practicable, destroy the information.

8 Civil penalty: 1,000 penalty units.

9 (5) Subsection (4) does not apply if the credit reporting agency is
10 required by or under an Australian law, or an order of a court or
11 tribunal, to retain the credit information.

12 **Subdivision D—Dealing with credit reporting information etc.**

13 **108 Use or disclosure of credit reporting information**

14 *Prohibition on use or disclosure*

15 (1) If a credit reporting agency holds credit reporting information
16 about an individual, the agency must not use or disclose the
17 information.

18 Civil penalty: 2,000 penalty units.

19 *Permitted uses*

20 (2) Subsection (1) does not apply to the use of the credit reporting
21 information about the individual if:
22 (a) the credit reporting agency uses the information in the course
23 of carrying on the agency's credit reporting business; or
24 (b) the use is required or authorised by or under an Australian
25 law, or an order of a court or tribunal; or
26 (c) the use is a use prescribed by the regulations.

27 *Permitted disclosures*

28 (3) Subsection (1) does not apply to the disclosure of credit reporting
29 information about the individual if:

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Part A Credit reporting

Division 2 Credit reporting agencies

Section 108

- 1 (a) the disclosure is a permitted CRA disclosure in relation to the
2 individual; or
3 (b) the disclosure is to another credit reporting agency; or
4 (c) both of the following apply:
5 (i) the disclosure is for the purposes of a recognised
6 external dispute resolution scheme;
7 (ii) a credit reporting agency or credit provider is a member
8 of the scheme; or
9 (d) both of the following apply:
10 (i) the disclosure is to an enforcement body;
11 (ii) the credit reporting agency is satisfied that the body, or
12 another enforcement body, believes on reasonable
13 grounds that the individual has committed a serious
14 credit infringement; or
15 (e) the disclosure is required or authorised by or under an
16 Australian law, or an order of a court or tribunal; or
17 (f) the disclosure is a disclosure prescribed by the regulations.
- 18 (4) However, if the credit reporting information is, or was derived
19 from, repayment history information about the individual, the
20 credit reporting agency must not disclose the information under
21 paragraph (3)(a) or (f) unless the recipient of the information is a
22 credit provider who is a licensee.
- 23 Civil penalty: 2,000 penalty units.
- 24 (5) If a credit reporting agency discloses credit reporting information
25 under this section, the agency must make a written note of that
26 disclosure.
- 27 Civil penalty: 500 penalty units.
- 28 *No use or disclosure for the purposes of direct marketing*
- 29 (6) This section does not apply to the use or disclosure of credit
30 reporting information for the purposes of direct marketing.
- 31 Note: Section 110 deals with the use or disclosure of credit reporting
32 information for the purposes of direct marketing.
-

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109 Permitted CRA disclosures in relation to individuals

(1) A disclosure by a credit reporting agency of credit reporting information about an individual is a *permitted CRA disclosure* in relation to the individual if:

- (a) the disclosure is to an entity specified in an item of the table; and
- (b) such conditions as are specified for the item are satisfied.

Permitted CRA disclosure

Item	If the disclosure is to ...	the condition or conditions are ...
1	a credit provider	the provider requests the information for a consumer credit related purpose of the provider in relation to the individual.
2	a credit provider	(a) the provider requests the information for a commercial credit related purpose of the provider in relation to a person; and (b) the individual expressly consents to the disclosure of the information to the provider for that purpose.
3	a credit provider	(a) the provider requests the information for a credit guarantee purpose of the provider in relation to the individual; and (b) the individual expressly consents, in writing, to the disclosure of the information to the provider for that purpose.
4	a credit provider	the credit reporting agency is satisfied that the provider, or another credit provider, believes on reasonable grounds that the individual has committed a serious credit infringement.
5	a credit provider	(a) the credit reporting agency holds consumer credit liability information that relates to consumer credit provided by the provider to the individual; and (b) the consumer credit has not been terminated, or has not otherwise ceased to be in force.
6	a credit provider under subsection 190(1)	the provider requests the information for a securitisation related purpose of the provider in relation to the individual.

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Part A Credit reporting

Division 2 Credit reporting agencies

Section 110

Permitted CRA disclosure

Item	If the disclosure is to ...	the condition or conditions are ...
7	a mortgage insurer	the insurer requests the information for a mortgage insurance purpose of the insurer in relation to the individual.
8	a trade insurer	(a) the insurer requests the information for a trade insurance purpose of the insurer in relation to the individual; and (b) the individual expressly consents, in writing, to the disclosure of the information to the insurer for that purpose.

1

2

(2) The consent of the individual under paragraph (b) of item 2 of the table in subsection (1) must be given in writing unless:

3

4

(a) the credit provider referred to in that item requests the information for the purpose of assessing an application for commercial credit made by a person to the provider; and

5

6

7

(b) the application has not been made in writing.

8

110 Use or disclosure of credit reporting information for the purposes of direct marketing

9

10

Prohibition on direct marketing

11

(1) If a credit reporting agency holds credit reporting information about an individual, the agency must not use or disclose the information for the purposes of direct marketing.

12

13

14

Civil penalty: 2,000 penalty units.

15

Permitted use for pre-screening

16

(2) Subsection (1) does not apply to the use by the credit reporting agency of credit information about the individual for the purposes of direct marketing by, or on behalf of, a credit provider if:

17

18

19

(a) the provider is a licensee; and

20

21

(b) the direct marketing is about consumer credit that the provider provides; and

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- 1 (c) the information is not consumer credit liability information,
2 or repayment history information, about the individual; and
3 (d) the agency uses the information to determine whether or not
4 the individual is eligible to receive the direct marketing
5 communications of the credit provider; and
6 (e) the individual has not made a request under subsection (5);
7 and
8 (f) the agency complies with any requirements that are set out in
9 the Credit Reporting Code.

10 (3) In determining under paragraph (2)(d) whether or not the
11 individual is eligible to receive the direct marketing
12 communications of the credit provider, the credit reporting agency
13 must have regard to the eligibility requirements nominated by the
14 provider.

15 (4) A determination under paragraph (2)(d) is not credit reporting
16 information about the individual.

17 *Request not to use information for pre-screening*

18 (5) An individual may request a credit reporting agency that holds
19 credit information about the individual not to use the information
20 under subsection (2).

21 (6) If the individual makes a request under subsection (5), the credit
22 reporting agency must not charge the individual for the making of
23 the request or to give effect to the request.

24 *Written note of use*

25 (7) If a credit reporting agency uses credit information under
26 subsection (2), the agency must make a written note of that use.

27 Civil penalty: 500 penalty units.

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Part A Credit reporting

Division 2 Credit reporting agencies

Section 111

1 **111 Use or disclosure of pre-screening determinations**

2 *Use or disclosure by credit reporting agencies*

- 3 (1) If a credit reporting agency makes a pre-screening determination in
4 relation to direct marketing by, or on behalf of, a credit provider,
5 the agency must not use or disclose the determination.

6 Civil penalty: 2,000 penalty units.

- 7 (2) Subsection (1) does not apply if:

- 8 (a) the credit reporting agency discloses the pre-screening
9 determination for the purposes of the direct marketing by, or
10 on behalf of, the credit provider; and
11 (b) the recipient of the determination is an entity other than the
12 provider.

- 13 (3) If the credit reporting agency discloses the pre-screening
14 determination under subsection (2), the agency must make a
15 written note of that disclosure.

16 Civil penalty: 500 penalty units.

17 *Use or disclosure by recipients*

- 18 (4) If the credit reporting agency discloses the pre-screening
19 determination under subsection (2), the recipient must not use or
20 disclose the determination.

21 Civil penalty: 1,000 penalty units.

- 22 (5) Subsection (4) does not apply if the recipient uses the
23 pre-screening determination for the purposes of the direct
24 marketing by, or on behalf of, the credit provider.

- 25 (6) If the recipient uses the pre-screening determination under
26 subsection (5), the recipient must make a written note of that use.

27 Civil penalty: 500 penalty units.

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1 *Interaction with the Australian Privacy Principles*

- 2 (7) If a credit reporting agency or recipient referred to in this section is
3 an APP entity, Australian Privacy Principles 6 and 7 do not apply
4 to the agency or recipient in relation to a pre-screening
5 determination.

6 **112 Destruction of pre-screening determinations**

- 7 (1) If an entity has possession or control of a pre-screening
8 determination, the entity must destroy the determination if:
9 (a) the entity no longer needs the determination for any purpose
10 for which it may be used or disclosed under section 111; or
11 (b) the entity is not required by or under an Australian law, or an
12 order of a court or tribunal, to retain the determination.

13 Civil penalty: 1,000 penalty units.

- 14 (2) If an entity that has possession or control of a pre-screening
15 determination is an APP entity, subsection (2) of Australian
16 Privacy Principle 11 does not apply to the entity in relation to the
17 determination.

18 **113 No use or disclosure of credit reporting information during a**
19 **ban period**

- 20 (1) If:
21 (a) a credit reporting agency holds credit reporting information
22 about an individual; and
23 (b) the individual believes on reasonable grounds that the
24 individual has been, or is likely to be, a victim of fraud
25 (including identity fraud); and
26 (c) the individual requests the agency not to use or disclose the
27 information under this Division;

28 then, despite any other provision of this Division, the agency must
29 not use or disclose the information during the ban period for the
30 information.

31 Civil penalty: 2,000 penalty units.

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Part A Credit reporting

Division 2 Credit reporting agencies

Section 113

- 1 (2) Subsection (1) does not apply if:
2 (a) the individual expressly consents, in writing, to the use or
3 disclosure of the credit reporting information under this
4 Division; or
5 (b) the use or disclosure of the credit reporting information is
6 required by or under an Australian law, or an order of a court
7 or tribunal.

8 *Ban period*

- 9 (3) The *ban period* for credit reporting information about an individual
10 is the period that:
11 (a) starts when the individual makes a request under
12 paragraph (1)(c); and
13 (b) ends:
14 (i) 14 days after the day on which the request is made; or
15 (ii) if the period is extended under subsection (4)—on the
16 day after the extended period ends.
- 17 (4) If:
18 (a) there is a ban period for credit reporting information about an
19 individual that is held by a credit reporting agency; and
20 (b) before the ban period ends, the individual requests the agency
21 to extend that period; and
22 (c) the agency believes on reasonable grounds that the individual
23 has been, or is likely to be, a victim of fraud (including
24 identity fraud);
25 the agency must:
26 (d) extend the ban period by such period as the agency considers
27 is reasonable in the circumstances; and
28 (e) give the individual written notification of the extension.
- 29 Civil penalty: 1,000 penalty units.
- 30 (5) A ban period for credit reporting information may be extended
31 more than once under subsection (4).

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1 *No charge for request etc.*

- 2 (6) If an individual makes a request under paragraph (1)(c) or (4)(b), a
3 credit reporting agency must not charge the individual for the
4 making of the request or to give effect to the request.

5 **114 Adoption of government related identifiers**

6 (1) If:

7 (a) a credit reporting agency holds credit reporting information
8 about an individual; and

9 (b) the information is a government related identifier of the
10 individual;

11 the agency must not adopt the government related identifier as its
12 own identifier of the individual.

13 Civil penalty: 2,000 penalty units.

- 14 (2) Subsection (1) does not apply if the adoption of the government
15 related identifier is required or authorised by or under an
16 Australian law, or an order of a court or tribunal.

17 **115 Use or disclosure of de-identified information**

18 *Use or disclosure*

19 (1) If a credit reporting agency possesses or controls de-identified
20 information, the agency must not use or disclose the information.

21 (2) Subsection (1) does not apply to the use of the de-identified
22 information if:

23 (a) the use is for the purposes of conducting research in relation
24 to the assessment of the credit worthiness of individuals; and

25 (b) the credit reporting agency complies with any Australian
26 Privacy Rules made under subsection (3).

27 *Information Commissioner may make rules*

- 28 (3) The Information Commissioner may, by legislative instrument,
29 make rules relating to the use by a credit reporting agency of

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Part A Credit reporting

Division 2 Credit reporting agencies

Section 116

- 1 de-identified information for the purposes of conducting research
2 in relation to the assessment of the credit worthiness of individuals.
- 3 (4) Without limiting subsection (3), the rules may relate to the
4 following matters:
- 5 (a) the kinds of de-identified information that may or may not be
6 used for the purposes of conducting the research;
- 7 (b) whether or not the research is research in relation to the
8 assessment of the credit worthiness of individuals;
- 9 (c) the purposes of conducting the research;
- 10 (d) consultation about the research;
- 11 (e) how the research is conducted.

12 **Subdivision E—Integrity of credit reporting information**

13 **116 Quality of credit reporting information**

- 14 (1) A credit reporting agency must take such steps as are reasonable in
15 the circumstances to ensure that the credit information the agency
16 collects is accurate, up-to-date and complete.
- 17 (2) A credit reporting agency must take such steps as are reasonable in
18 the circumstances to ensure that the credit reporting information
19 the agency uses or discloses is accurate, up-to-date, complete and
20 relevant.
- 21 (3) Without limiting subsections (1) and (2), a credit reporting agency
22 must:
- 23 (a) enter into agreements with credit providers that require the
24 providers to ensure that credit information that they disclose
25 to the agency under section 132 is accurate, up-to-date and
26 complete; and
- 27 (b) ensure that regular audits are conducted by an independent
28 person to determine whether those agreements are being
29 complied with; and
- 30 (c) identify and deal with suspected breaches of those
31 agreements.

EXPOSURE DRAFT

1 **117 False or misleading credit reporting information**

2 *Offence*

- 3 (1) A credit reporting agency commits an offence if:
4 (a) the agency uses or discloses credit reporting information
5 under this Division (other than subsection 107(2)); and
6 (b) the information is false or misleading in a material particular.

7 Penalty: 200 penalty units.

8 *Civil penalty*

- 9 (2) A credit reporting agency must not use or disclose credit reporting
10 information under this Division (other than subsection 107(2)) if
11 the information is false or misleading in a material particular.

12 Civil penalty: 2,000 penalty units.

13 **118 Security of credit reporting information**

- 14 (1) If a credit reporting agency holds credit reporting information, the
15 agency must take such steps as are reasonable in the circumstances
16 to protect the information:
17 (a) from misuse, interference and loss; and
18 (b) from unauthorised access, modification or disclosure.

- 19 (2) Without limiting subsection (1), a credit reporting agency must:
20 (a) enter into agreements with credit providers that require the
21 providers to protect credit reporting information that is
22 disclosed to them under this Division:
23 (i) from misuse, interference and loss; and
24 (ii) from unauthorised access, modification or disclosure;
25 and
26 (b) ensure that regular audits are conducted by an independent
27 person to determine whether those agreements are being
28 complied with; and
29 (c) identify and deal with suspected breaches of those
30 agreements.

EXPOSURE DRAFT

Part A Credit reporting

Division 2 Credit reporting agencies

Section 119

1 **Subdivision F—Access to, and correction of, information**

2 **119 Access to credit reporting information**

3 *Access*

4 (1) If:

5 (a) a credit reporting agency holds credit reporting information
6 about an individual; and

7 (b) an access seeker in relation to the information requests to be
8 given access to the information;

9 the agency must give the access seeker access to the information.

10 *Exceptions to access*

11 (2) Despite subsection (1), the credit reporting agency is not required
12 to give the access seeker access to the credit reporting information
13 to the extent that:

14 (a) giving access would be unlawful; or

15 (b) denying access is required or authorised by or under an
16 Australian law, or an order of a court or tribunal; or

17 (c) giving access would be likely to prejudice one or more
18 enforcement related activities by or on behalf of an
19 enforcement body.

20 *Dealing with requests for access*

21 (3) If an access seeker requests a credit reporting agency to give access
22 to credit reporting information, the agency must respond to the
23 request within a reasonable period, but not longer than 10 days,
24 after the request is made.

25 *Means of access*

26 (4) If a credit reporting agency gives access to credit reporting
27 information under subsection (1), the access must be given in the
28 manner set out in the Credit Reporting Code.

EXPOSURE DRAFT

1

Access charges

2

(5) If:

3

(a) an access seeker requests a credit reporting agency to give access to credit reporting information about an individual; and

4

5

6

(b) a request of that kind has not been made to the agency in the previous 12 months;

7

8

the agency must not charge the access seeker for the making of the request or for giving access to the information.

9

10

(6) If:

11

(a) an access seeker requests a credit reporting agency to give access to credit reporting information about the individual; and

12

13

14

(b) a request of that kind has been made to the agency in the previous 12 months; and

15

16

(c) the agency charges the access seeker for giving access to the information;

17

18

the charge must not be excessive and must not apply to the making of the request.

19

20

Refusal to give access

21

(7) If:

22

(a) an access seeker requests a credit reporting agency to give access to credit reporting information; and

23

24

(b) the agency refuses to give access to the information because of subsection (2);

25

26

the agency must, in writing:

27

(c) give the access seeker reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and

28

29

(d) notify the access seeker of the effect of sections 157 and 158 (which deal with complaints).

30

31

32

120 Correction of credit reporting information

33

(1) If:

EXPOSURE DRAFT

Part A Credit reporting

Division 2 Credit reporting agencies

Section 121

- 1 (a) a credit reporting agency holds credit reporting information
2 about an individual; and
- 3 (b) the agency is satisfied that, having regard to a purpose for
4 which the information is held by the agency, the information
5 is inaccurate, out-of-date, incomplete or irrelevant;
6 the agency must take such steps (if any) as are reasonable in the
7 circumstances to correct the information to ensure that, having
8 regard to the purpose for which it is held, the information is
9 accurate, up-to-date, complete and relevant.
- 10 (2) If:
- 11 (a) the credit reporting agency corrects credit reporting
12 information under subsection (1); and
- 13 (b) the agency has previously disclosed the information under
14 this Division (other than subsections 107(2) and 121(4));
15 the agency must, within a reasonable period, give each recipient of
16 the information written notice of the correction.
- 17 (3) Subsection (2) does not apply if:
- 18 (a) it is impracticable for the credit reporting agency to give the
19 notice under that subsection; or
- 20 (b) the credit reporting agency is required by or under an
21 Australian law, or an order of a court or tribunal, not to give
22 the notice under that subsection.

23 **121 Individual may request the correction of credit information etc.**

24 *Request*

- 25 (1) An individual may request a credit reporting agency to correct
26 personal information about the individual if:
- 27 (a) the personal information is:
- 28 (i) credit information about the individual; or
29 (ii) CRA derived information about the individual; or
30 (iii) CP derived information about the individual; and
- 31 (b) the agency holds at least one kind of the personal information
32 referred to in paragraph (a).

EXPOSURE DRAFT

1

Correction

2

(2) If:

3

(a) an individual requests a credit reporting agency to correct personal information under subsection (1); and

4

5

(b) the agency is satisfied that the information is inaccurate, out-of-date, incomplete or irrelevant;

6

7

the agency must take such steps (if any) as are reasonable in the circumstances to correct the information within:

8

9

(c) the period of 30 days that starts on the day on which the request is made; or

10

11

(d) such longer period as the individual has agreed to in writing.

12

Consultation

13

(3) If the credit reporting agency considers that the agency cannot be satisfied of the matter referred to in paragraph (2)(b) in relation to the personal information without consulting either or both of the following (the *interested party*):

14

15

16

17

(a) another credit reporting agency that holds or held the information;

18

19

(b) a credit provider that holds or held the information;

20

21

the agency must consult that interested party, or those interested parties, about the individual's request.

22

(4) The use or disclosure of personal information about the individual for the purposes of the consultation is taken, for the purposes of this Act, to be a use or disclosure that is authorised by this subsection.

23

24

25

26

No charge

27

(5) The credit reporting agency must not charge the individual for the making of the request or for correcting the information.

28

29

122 Notice of correction etc. must be given

30

(1) This section applies if an individual requests a credit reporting agency to correct personal information under subsection 121(1).

31

EXPOSURE DRAFT

Part A Credit reporting

Division 2 Credit reporting agencies

Section 123

1

Notice of correction etc.

2

- (2) If the credit reporting agency corrects the personal information under subsection 121(2), the agency must, within a reasonable period:

3

4

5

- (a) give the individual written notice of the correction; and

6

- (b) if the agency consulted an interested party under subsection 121(3) about the individual's request—give the party written notice of the correction; and

7

8

9

- (c) if the correction relates to information that the agency has previously disclosed under this Division (other than subsections 107(2) and 121(4))—give each recipient of the information written notice of the correction.

10

11

12

13

- (3) If the credit reporting agency does not correct the personal information under subsection 121(2), the agency must, within a reasonable period, give the individual written notice that:

14

15

16

- (a) states that the correction has not been made; and

17

- (b) sets out the agency's reasons for not correcting the information; and

18

19

- (c) sets out the effect of sections 157 and 158 (which deal with complaints).

20

21

Exceptions

22

- (4) Paragraph (2)(c) does not apply if it is impracticable for the credit reporting agency to give the notice under that paragraph.

23

24

- (5) Subsection (2) or (3) does not apply if the credit reporting agency is required by or under an Australian law, or an order of a court or tribunal, not to give the notice under that subsection.

25

26

27

Subdivision G—Dealing with credit reporting information after the retention period ends etc.

28

29

123 Destruction etc. of credit reporting information after the retention period ends

30

31

- (1) This section applies if:

EXPOSURE DRAFT

1 (a) a credit reporting agency holds credit information about an
2 individual; and

3 (b) the retention period for the information ends.

4 Note: There is no retention period for identification information or credit
5 information of a kind referred to in paragraph 181(k).

6 *Destruction etc. of credit information*

7 (2) The credit reporting agency must destroy the credit information, or
8 ensure that the information is no longer personal information,
9 within 1 month after the retention period for the information ends.

10 Civil penalty: 1,000 penalty units.

11 (3) Despite subsection (2), the credit reporting agency must neither
12 destroy the credit information nor ensure that the information is no
13 longer personal information, if immediately before the retention
14 period ends:

15 (a) there is a pending correction request in relation to the
16 information; or

17 (b) there is a pending dispute in relation to the information.

18 Civil penalty: 500 penalty units.

19 (4) Subsection (2) does not apply if the credit reporting agency is
20 required by or under an Australian law, or an order of a court or
21 tribunal, to retain the credit information.

22 *Destruction etc. of CRA derived information*

23 (5) The credit reporting agency must destroy any CRA derived
24 information about the individual that was derived from the credit
25 information, or ensure that the CRA derived information is no
26 longer personal information:

27 (a) if:

28 (i) the CRA derived information was derived from 2 or
29 more kinds of credit information; and

30 (ii) the agency is required to do a thing referred to in
31 subsection (2) to one of those kinds of credit
32 information;

EXPOSURE DRAFT

Part A Credit reporting

Division 2 Credit reporting agencies

Section 124

1 at the same time that the agency does that thing to that credit
2 information; or

3 (b) otherwise—at the same time that the agency is required to do
4 a thing referred to in subsection (2) to the credit information
5 from which the CRA derived information was derived.

6 Civil penalty: 1,000 penalty units.

7 (6) Despite subsection (5), the credit reporting agency must neither
8 destroy the CRA derived information nor ensure that the
9 information is no longer personal information, if immediately
10 before the retention period ends:

11 (a) there is a pending correction request in relation to the
12 information; or

13 (b) there is a pending dispute in relation to the information.

14 Civil penalty: 500 penalty units.

15 (7) Subsection (5) does not apply if the credit reporting agency is
16 required by or under an Australian law, or an order of a court or
17 tribunal, to retain the CRA derived information.

18 **124 Retention period for credit information—general**

19 The following table sets out the *retention period* for credit
20 information:

21 (a) that is information of a kind referred to in an item of the
22 table; and

23 (b) that is held by a credit reporting agency.

24

Retention period

Item	If the credit information is ...	the <i>retention period</i> for the information is ...
-------------	---	---

1	consumer credit liability information	the period of 2 years that starts on the day on which the consumer credit to which the information relates is terminated or otherwise ceases to be in force.
---	---------------------------------------	--

2	repayment history information	the period of 2 years that starts on the
---	-------------------------------	--

EXPOSURE DRAFT

Retention period

Item	If the credit information is ...	the <i>retention period</i> for the information is ...
		day on which the monthly payment to which the information relates is due and payable.
3	information of a kind referred to in paragraph 181(d) or (e)	the period of 5 years that starts on the day on which the information request to which the information relates is made.
4	default information	the period of 5 years that starts on the day on which the credit reporting agency collects the information.
5	payment information	the period of 5 years that starts on the day on which the credit reporting agency collects the default information to which the payment information relates.
6	new arrangement information within the meaning of subsection 184(1)	the period of 2 years that starts on the day on which the credit reporting agency collects the default information referred to in that subsection.
7	new arrangement information within the meaning of subsection 184(2)	the period of 2 years that starts on the day on which the credit reporting agency collects the information about the opinion referred to in that subsection.
8	court proceedings information	the period of 5 years that starts on the day on which the judgment to which the information relates is made or given.
9	information of a kind referred to in paragraph 181(l)	the period of 7 years that starts on the day on which the credit reporting agency collects the information.

1

2 **125 Retention period for credit information—personal insolvency**
3 **information**

4 (1) The following table has effect:
5

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Division 2 Credit reporting agencies

Section 125

Item	If personal insolvency information relates to ...	the <i>retention period</i> for the information is whichever of the following periods ends later ...
1	a bankruptcy of an individual	(a) the period of 5 years that starts on the day on which the individual becomes a bankrupt; (b) the period of 2 years that starts on the day the bankruptcy ends.
2	a personal insolvency agreement to which item 3 of this table does not apply	(a) the period of 5 years that starts on the day on which the agreement is executed; (b) the period of 2 years that starts on the day the agreement is terminated or set aside under the Bankruptcy Act.
3	a personal insolvency agreement in relation to which a certificate has been signed under section 232 of the Bankruptcy Act	(a) the period of 5 years that starts on the day on which the agreement is executed; (b) the period that ends on the day on which the certificate is signed.
4	a debt agreement to which item 5 of this table does not apply	(a) the period of 5 years that starts on the day on which the agreement is made; (b) the period of 2 years that starts on the day: (i) the agreement is terminated under the Bankruptcy Act; or (ii) an order declaring that all the agreement is void is made under that Act.
5	a debt agreement that ends under section 185N of the Bankruptcy Act	(a) the period of 5 years that starts on the day on which the agreement is made; (b) the period that ends on the day on which the agreement ends.

1

2

Debt agreement proposals

3

(2) If personal insolvency information relates to a debt agreement proposal, the *retention period* for the information is the period that ends on the day on which:

4

5

EXPOSURE DRAFT

- 1 (a) the proposal is withdrawn; or
2 (b) the proposal is not accepted under section 185EC of the
3 Bankruptcy Act; or
4 (c) the acceptance of the proposal for processing is cancelled
5 under section 185ED of that Act; or
6 (d) the proposal lapses under section 185G of that Act.

7 *Control of property*

- 8 (3) If personal insolvency information relates to a direction given, or
9 an order made, under section 50 of the Bankruptcy Act, the
10 ***retention period*** for the information is the period that ends on the
11 day on which the control of the property to which the direction or
12 order relates ends.

13 Note: See subsection 50(1B) of the Bankruptcy Act for when the control of
14 the property ends.

- 15 (4) If the personal insolvency information relates to an authority
16 signed under section 188 of the Bankruptcy Act, the ***retention***
17 ***period*** for the information is the period that ends on the day on
18 which the property to which the authority relates is no longer
19 subject to control under Division 2 of Part X of that Act.

20 *Interpretation*

- 21 (5) An expression used in this section that is also used in the
22 Bankruptcy Act has the same meaning in this section as it has in
23 that Act.

24 **126 Destruction of credit reporting information in cases of fraud**

- 25 (1) This section applies if:
26 (a) a credit reporting agency holds credit reporting information
27 about an individual; and
28 (b) the information relates to consumer credit that has been
29 provided by a credit provider to the individual, or a person
30 purporting to be the individual; and
31 (c) the agency is satisfied that:
32 (i) the individual has been a victim of fraud (including
33 identity fraud); and
-

EXPOSURE DRAFT

Part A Credit reporting

Division 2 Credit reporting agencies

Section 126

- 1 (ii) the consumer credit was provided as a result of that
2 fraud.

3 *Destruction of credit reporting information*

- 4 (2) The credit reporting agency must:
5 (a) destroy the credit reporting information; and
6 (b) within a reasonable period after the information is destroyed:
7 (i) give the individual a written notice that states that the
8 information has been destroyed and sets out the effect of
9 subsection (4); and
10 (ii) give the credit provider a written notice that states that
11 the information has been destroyed.

12 Civil penalty: 1,000 penalty units.

- 13 (3) Subsection (2) does not apply if the credit reporting agency is
14 required by or under an Australian law, or an order of a court or
15 tribunal, to retain the credit reporting information.

16 *Notification of destruction to third parties*

- 17 (4) If:
18 (a) a credit reporting agency destroys credit reporting
19 information about an individual under subsection (2); and
20 (b) the agency has previously disclosed the information to one or
21 more recipients under Subdivision D of this Division; and
22 (c) the individual requests the agency to notify all or any of
23 those recipients of the matters referred to in paragraph (1)(c);
24 the agency must, within a reasonable period after the request is
25 made, give that notification.

26 Civil penalty: 500 penalty units.

- 27 (5) Subsection (4) does not apply if the credit reporting agency is
28 required by or under an Australian law, or an order of a court or
29 tribunal, not to give the notification.

EXPOSURE DRAFT

1 **127 Dealing with information if there is a pending correction request**
2 **etc.**

- 3 (1) This section applies if a credit reporting agency holds credit
4 reporting information about an individual and either:
5 (a) subsection 123(3) applies in relation to the information; or
6 (b) subsection 123(6) applies in relation to the information.

7 *Notification of Information Commissioner*

- 8 (2) The credit reporting agency must, as soon as practicable, notify in
9 writing the Information Commissioner of the matter referred to in
10 paragraph (1)(a) or (b) of this section.

11 Civil penalty: 1,000 penalty units.

12 *Use or disclosure*

- 13 (3) The credit reporting agency must not use or disclose the
14 information under Subdivision D of this Division.

15 Civil penalty: 2,000 penalty units.

- 16 (4) However, the credit reporting agency may use or disclose the
17 information under this subsection if:

18 (a) the use or disclosure is for the purposes of the pending
19 correction request, or pending dispute, in relation to the
20 information; or

21 (b) the use or disclosure of the information is required by or
22 under an Australian law, or an order of a court or tribunal.

- 23 (5) If the credit reporting agency uses or discloses the information
24 under subsection (4), the agency must make a written note of the
25 use or disclosure.

26 Civil penalty: 500 penalty units.

27 *Direction to destroy information etc.*

- 28 (6) The Information Commissioner may, by legislative instrument,
29 direct the credit reporting agency to destroy the information, or

EXPOSURE DRAFT

Part A Credit reporting

Division 2 Credit reporting agencies

Section 128

1 ensure that the information is no longer personal information, by a
2 specified day.

3 (7) If the Information Commissioner gives a direction under
4 subsection (6) to the credit reporting agency, the agency must
5 comply with the direction.

6 Civil penalty: 1,000 penalty units.

7 (8) To avoid doubt, section 115 applies in relation to de-identified
8 information that the credit reporting agency possesses or controls
9 as a result of complying with the direction.

10 **128 Dealing with information if an Australian law etc. requires it to** 11 **be retained**

12 (1) This section applies if a credit reporting agency is not required:
13 (a) to do a thing referred to in subsection 123(2) to credit
14 information because of subsection 123(4); or
15 (b) to do a thing referred to in subsection 123(5) to CRA derived
16 information because of subsection 123(7); or
17 (c) to destroy credit reporting information under subsection
18 126(2) because of subsection 126(3).

19 *Use or disclosure*

20 (2) The credit reporting agency must not use or disclose the
21 information under Subdivision D of this Division.

22 Civil penalty: 2,000 penalty units.

23 (3) However, the credit reporting agency may use or disclose the
24 information under this subsection if the use or disclosure of the
25 information is required by or under an Australian law, or an order
26 of a court or tribunal.

27 (4) If the credit reporting agency uses or discloses the information
28 under subsection (3), the agency must make a written note of the
29 use or disclosure.

30 Civil penalty: 500 penalty units.

EXPOSURE DRAFT

Credit reporting **Part A**
Credit reporting agencies **Division 2**

Section 128

1

Other requirements

2

- (5) Subdivision E of this Division (other than section 118) does not apply in relation to the use or disclosure of the information.

3

4

Note: Section 118 deals with the security of credit reporting information.

5

- (6) Subdivision F of this Division does not apply in relation to the information.

6

EXPOSURE DRAFT

Part A Credit reporting
Division 3 Credit providers

Section 129

1

2 **Division 3—Credit providers**

3 **Subdivision A—Introduction and application of this Division**

4 **129 Guide to this Division**

5

This Division sets out rules for credit providers.

6

Most of the rules relate to the handling of credit information, or credit eligibility information, by credit providers. The remaining rules relate to specified kinds of personal information.

7

8

9

The rules in this Division apply to credit providers that are APP entities in addition to, or instead of, the Australian Privacy Principles.

10

11

12 **130 Application of this Division to credit providers**

13

(1) This Division (other than sections 149 and 150) applies to a credit provider in relation to credit information or credit eligibility information.

14

15

16

(2) Sections 149 and 150 apply to a credit provider in relation to credit information, CRA derived information and CP derived information.

17

18

19

(3) If the credit provider is an APP entity, this Division may apply to the provider in relation to information referred to in subsection (1) or (2) in addition to, or instead of, the Australian Privacy Principles.

20

21

22

EXPOSURE DRAFT

1 **Subdivision B—Dealing with credit information**

2 **131 Additional notification requirements for the collection of**
3 **personal information**

- 4 (1) At or before the time a credit provider collects personal
5 information about an individual that the provider is likely to
6 disclose to a credit reporting agency, the provider must:
7 (a) notify the individual of the following matters:
8 (i) the name and contact details of the agency;
9 (ii) any other matter specified in the Credit Reporting Code;
10 or
11 (b) otherwise ensure that the individual is aware of those matters.
- 12 (2) If a credit provider is an APP entity, subsection (1) applies to the
13 provider in relation to personal information in addition to
14 Australian Privacy Principle 5.

15 **132 Disclosure of credit information to a credit reporting agency**

16 *Prohibition on disclosure*

- 17 (1) A credit provider must not disclose credit information about an
18 individual to a credit reporting agency.

19 Civil penalty: 2,000 penalty units.

20 *Permitted disclosure*

- 21 (2) Subsection (1) does not apply if:
22 (a) the credit provider is a member of a recognised external
23 dispute resolution scheme; and
24 (b) the provider knows, or believes on reasonable grounds, that
25 the individual is at least 18 years old; and
26 (c) the credit information does not relate to an act, omission,
27 matter or thing that occurred or existed before the individual
28 turned 18; and
29 (d) if the information is repayment history information about the
30 individual:

EXPOSURE DRAFT

Part A Credit reporting
Division 3 Credit providers

Section 132

- 1 (i) the provider is a licensee; and
2 (ii) the consumer credit to which the information relates is
3 consumer credit in relation to which the provider also
4 discloses, or a credit provider has previously disclosed,
5 consumer credit liability information about the
6 individual to the credit reporting agency; and
7 (iii) the provider complies with any requirements relating to
8 the disclosure of the information that are prescribed by
9 the regulations; and
10 (e) if the information is default information about the individual:
11 (i) the provider has given the individual a notice in writing
12 stating that the provider intends to disclose the
13 information to the agency; and
14 (ii) a reasonable period has passed since the giving of the
15 notice.

16 Note: Section 134 limits the disclosure of credit information if there is a ban
17 period for the information.

18 (3) Paragraph (2)(c) does not apply to identification information about
19 the individual.

20 (4) Despite paragraph (2)(c), consumer credit liability information
21 about the individual may relate to consumer credit that was entered
22 into on a day before the individual turned 18, so long as the
23 consumer credit was not terminated, or did not otherwise cease to
24 be in force, on a day before the individual turned 18.

25 *Written note of disclosure*

26 (5) If a credit provider discloses credit information under this section,
27 the provider must make a written note of that disclosure.

28 Civil penalty: 500 penalty units.

29 *Interaction with the Australian Privacy Principles*

30 (6) If a credit provider is an APP entity, Australian Privacy Principle 6
31 does not apply to the disclosure by the provider of credit
32 information to a credit reporting agency.

EXPOSURE DRAFT

1 **133 Payment information must be disclosed to a credit reporting**
2 **agency**

3 If:

- 4 (a) a credit provider has disclosed default information about an
5 individual to a credit reporting agency under section 132; and
6 (b) after the default information was so disclosed, the amount of
7 the overdue payment to which the information relates is paid;
8 the provider must, within a reasonable period after the amount is
9 paid, disclose payment information about the amount to the agency
10 under that section.

11 Civil penalty: 500 penalty units.

12 **134 Limitation on the disclosure of credit information during a ban**
13 **period**

14 (1) This section applies if:

- 15 (a) a credit reporting agency holds credit reporting information
16 about an individual; and
17 (b) a credit provider requests the agency to disclose the
18 information to the provider for the purpose of assessing an
19 application for consumer credit made to the provider by the
20 individual, or a person purporting to be the individual; and
21 (c) the agency is not permitted to disclose the information
22 because there is a ban period for the information; and
23 (d) during the ban period, the provider provides the consumer
24 credit to which the application relates to the individual, or the
25 person purporting to be the individual.

26 (2) If the credit provider holds credit information about the individual
27 that relates to the consumer credit, the provider must not, despite
28 sections 132 and 133, disclose the information to a credit reporting
29 agency.

30 Civil penalty: 2,000 penalty units.

31 (3) Subsection (2) does not apply if the credit provider has taken such
32 steps as are reasonable in the circumstances to verify the identity of
33 the individual.

EXPOSURE DRAFT

Part A Credit reporting
Division 3 Credit providers

Section 135

1 **Subdivision C—Dealing with credit eligibility information etc.**

2 **135 Use or disclosure of credit eligibility information**

3 *Prohibition on use or disclosure*

4 (1) If a credit provider holds credit eligibility information about an
5 individual, the provider must not use or disclose the information.

6 Civil penalty: 2,000 penalty units.

7 *Permitted uses*

8 (2) Subsection (1) does not apply to the use of credit eligibility
9 information about the individual if:

10 (a) the use is for a consumer credit related purpose of the credit
11 provider in relation to the individual; or

12 (b) the use is a permitted CP use in relation to the individual; or

13 (c) both of the following apply:

14 (i) the credit provider believes on reasonable grounds that
15 the individual has committed a serious credit
16 infringement;

17 (ii) the provider uses the information in connection with the
18 infringement; or

19 (d) the use is required or authorised by or under an Australian
20 law, or an order of a court or tribunal; or

21 (e) the use is a use prescribed by the regulations.

22 *Permitted disclosures*

23 (3) Subsection (1) does not apply to the disclosure of credit eligibility
24 information about the individual if:

25 (a) the disclosure is a permitted CP disclosure in relation to the
26 individual; or

27 (b) the disclosure is to a related body corporate of the credit
28 provider; or

29 (c) the disclosure is to a person:

30 (i) who manages credit provided by the credit provider for
31 use in managing that credit; and

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- 1 (ii) who is not acting as an agent of the provider; or
2 (d) both of the following apply:
3 (i) the credit provider believes on reasonable grounds that
4 the individual has committed a serious credit
5 infringement;
6 (ii) the provider discloses the information to another credit
7 provider or an enforcement body; or
8 (e) both of the following apply:
9 (i) the disclosure is for the purposes of a recognised
10 external dispute resolution scheme;
11 (ii) a credit provider or credit reporting agency is a member
12 of the scheme; or
13 (f) the disclosure is required or authorised by or under an
14 Australian law, or an order of a court or tribunal; or
15 (g) the disclosure is a disclosure prescribed by the regulations.
- 16 (4) However, if the credit eligibility information about the individual
17 is, or was derived from, repayment history information about the
18 individual, the credit provider must not disclose the information
19 under subsection (3).
- 20 Civil penalty: 2,000 penalty units.
- 21 (5) Subsection (4) does not apply if:
22 (a) the recipient of the credit eligibility information is another
23 credit provider who is a licensee; or
24 (b) the credit provider discloses the credit eligibility information
25 under paragraph (3)(d) to an enforcement body; or
26 (c) the credit provider discloses the credit eligibility information
27 under paragraph (3)(e) or (f).
- 28 *Written note of use or disclosure*
- 29 (6) If a credit provider uses or discloses credit eligibility information
30 under this section, the provider must make a written note of that
31 use or disclosure.
- 32 Civil penalty: 500 penalty units.

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Interaction with the Australian Privacy Principles

(7) If a credit provider is an APP entity, Australian Privacy Principles 6 and 7 do not apply to the provider in relation to credit eligibility information.

(8) If:

(a) a credit provider is an APP entity; and

(b) the credit eligibility information is a government related identifier of the individual;

subsection (2) of Australian Privacy Principle 9 does not apply to the provider in relation to the information.

136 Permitted CP uses in relation to individuals

A use by a credit provider of credit eligibility information about an individual is a *permitted CP use* in relation to the individual if:

(a) the relevant credit reporting information was disclosed to the provider under a provision specified in column 1 of the table for the purpose (if any) specified in that column; and

(b) the provider uses the credit eligibility information for the purpose specified in column 2 of the table.

Permitted CP use

	Column 1	Column 2
Item	The relevant credit reporting information was disclosed to the credit provider under ...	The credit provider uses the credit eligibility information for ...
1	item 1 of the table in subsection 109(1) for the purpose of assessing an application for consumer credit made by the individual to the provider.	(a) a securitisation related purpose of the provider in relation to the individual; or (b) the internal management purposes of the provider that are directly related to the provision or management of consumer credit by the provider.
2	item 2 of the table in subsection 109(1) for a particular commercial credit related purpose	that particular commercial credit related purpose.

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Permitted CP use		
	Column 1	Column 2
Item	The relevant credit reporting information was disclosed to the credit provider under ...	The credit provider uses the credit eligibility information for ...
	of the provider in relation to the individual.	
3	item 2 of the table in subsection 109(1) for the purpose of assessing an application for commercial credit made by a person to the provider.	the internal management purposes of the provider that are directly related to the provision or management of commercial credit by the provider.
4	item 3 of the table in subsection 109(1) for a credit guarantee purpose of the provider in relation to the individual.	(a) the credit guarantee purpose; or (b) the internal management purposes of the provider that are directly related to the provision or management of any credit by the provider.
5	item 5 of the table in subsection 109(1).	the purpose of assisting the individual to avoid defaulting on his or her obligations in relation to consumer credit provided by the provider to the individual.
6	item 6 of the table in subsection 109(1) for a particular securitisation related purpose of the provider in relation to the individual.	that particular securitisation related purpose.

1

2 **137 Permitted CP disclosures between credit providers**

3 *Consent*

4 (1) A disclosure by a credit provider of credit eligibility information
5 about an individual is a *permitted CP disclosure* in relation to the
6 individual if:

7 (a) the disclosure is to another credit provider (the *recipient*) for
8 a particular purpose; and

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- 1 (b) the individual expressly consents to the disclosure of the
2 information to the recipient for that purpose.
- 3 (2) The consent of the individual under paragraph (1)(b):
4 (a) must be given in writing unless:
5 (i) the disclosure of the information to the recipient is for
6 the purpose of assessing an application for consumer
7 credit or commercial credit made to the recipient; and
8 (ii) the application has not been made in writing; and
9 (b) must be given to the credit provider or recipient.

10 *Agents of credit providers*

- 11 (3) A disclosure by a credit provider of credit eligibility information
12 about an individual is a *permitted CP disclosure* in relation to the
13 individual if:
14 (a) the provider is acting as an agent of another credit provider;
15 and
16 (b) while the provider is so acting, the provider is a credit
17 provider under subsection 189(1); and
18 (c) the provider discloses the information to the other credit
19 provider in the provider's capacity as such an agent.

20 *Securitisation arrangements etc.*

- 21 (4) A disclosure by a credit provider of credit eligibility information
22 about an individual is a *permitted CP disclosure* in relation to the
23 individual if:
24 (a) the provider is a credit provider under subsection 190(1) in
25 relation to credit; and
26 (b) the credit has been provided by, or is credit for which an
27 application has been made to, another credit provider (the
28 *original credit provider*); and
29 (c) the original credit provider is not a credit provider under that
30 subsection; and
31 (d) the information is disclosed to:
32 (i) the original credit provider; or
33 (ii) another credit provider who is a credit provider under
34 that subsection in relation to the credit; and

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- 1 (e) the disclosure of the information is reasonably necessary for:
2 (i) purchasing, funding or managing, or processing an
3 application for, the credit by means of a securitisation
4 arrangement; or
5 (ii) undertaking credit enhancement in relation to the credit.

6 *Mortgage credit secured by the same real property*

- 7 (5) A disclosure by a credit provider of credit eligibility information
8 about an individual is a *permitted CP disclosure* in relation to the
9 individual if:
10 (a) the disclosure is to another credit provider; and
11 (b) both credit providers have provided mortgage credit to the
12 individual in relation to which the same real property forms
13 all or part of the security; and
14 (c) the individual is at least 60 days overdue in making a
15 payment in relation to the mortgage credit provided by either
16 provider; and
17 (d) the information is disclosed for the purpose of either provider
18 deciding what action to take in relation to the overdue
19 payment.

20 **138 Permitted CP disclosures relating to guarantees etc.**

21 *Offer to act as a guarantor etc.*

- 22 (1) A disclosure by a credit provider of credit eligibility information
23 about an individual is a *permitted CP disclosure* in relation to the
24 individual if:
25 (a) either:
26 (i) the provider has provided credit to the individual; or
27 (ii) the individual has applied to the provider for credit; and
28 (b) the disclosure is to a person for the purpose of that person
29 considering whether:
30 (i) to offer to act as a guarantor in relation to the credit; or
31 (ii) to offer property as security for the credit; and
32 (c) the individual expressly consents to the disclosure of the
33 information to the person for that purpose.

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- 1 (2) The consent of the individual under paragraph (1)(c) must be given
2 in writing unless:
3 (a) if subparagraph (1)(a)(i) applies—the application for the
4 credit was not made in writing; or
5 (b) if subparagraph (1)(a)(ii) applies—the application for the
6 credit has not been made in writing.

7 *Guarantors etc.*

- 8 (3) A disclosure by a credit provider of credit eligibility information
9 about an individual is a *permitted CP disclosure* in relation to the
10 individual if:
11 (a) the disclosure is to a person who:
12 (i) is a guarantor in relation to credit provided by the
13 provider to the individual; or
14 (ii) has provided property as security for such credit; and
15 (b) either:
16 (i) the individual expressly consents to the disclosure of the
17 information to the person; or
18 (ii) if subparagraph (a)(i) applies—the information is
19 disclosed to the person for a purpose related to the
20 enforcement, or proposed enforcement, of the
21 guarantee.
22 (4) The consent of the individual under subparagraph (3)(b)(i) must be
23 given in writing unless the application for the credit was not made
24 in writing.

25 **139 Permitted CP disclosures to mortgage insurers**

- 26 A disclosure by a credit provider of credit eligibility information
27 about an individual is a *permitted CP disclosure* in relation to the
28 individual if the disclosure is to a mortgage insurer:
29 (a) for a mortgage insurance purpose of the insurer in relation to
30 the individual; or
31 (b) for any purpose arising under a contract for mortgage
32 insurance that has been entered into between the provider and
33 the insurer.

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1 **140 Permitted CP disclosures to debt collectors**

- 2 (1) A disclosure by a credit provider of credit eligibility information
3 about an individual is a *permitted CP disclosure* in relation to the
4 individual if:
- 5 (a) the disclosure is to a person or body that carries on a business
6 or undertaking that involves the collection of debts on behalf
7 of others; and
 - 8 (b) the information is disclosed for the purpose of the collection
9 of payments that are overdue in relation to:
 - 10 (i) consumer credit provided by the provider to the
11 individual; or
 - 12 (ii) commercial credit provided by the provider to a person;
13 and
 - 14 (c) the information is information of a kind referred to in
15 subsection (2).
- 16 (2) The information for the purposes of paragraph (1)(c) is:
- 17 (a) identification information about the individual; or
 - 18 (b) court proceedings information about the individual; or
 - 19 (c) personal insolvency information about the individual; or
 - 20 (d) if subparagraph (1)(b)(i) applies—default information about
21 the individual if:
 - 22 (i) the information relates to a payment that the individual
23 is overdue in making in relation to consumer credit that
24 has been provided by the credit provider to the
25 individual; and
 - 26 (ii) the provider does not hold, or has not held, payment
27 information about the individual that relates to that
28 overdue payment.

29 **141 Permitted CP disclosures to other recipients**

30 *Mortgage credit assistance schemes*

- 31 (1) A disclosure by a credit provider of credit eligibility information
32 about an individual is a *permitted CP disclosure* in relation to the
33 individual if:
34 (a) the disclosure is to a State or Territory authority; and
-

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- 1 (b) the functions or responsibilities of the authority include:
2 (i) giving assistance (directly or indirectly) that facilitates
3 the provision of mortgage credit to individuals; or
4 (ii) the management or supervision of schemes or
5 arrangements under which such assistance is given; and
6 (c) the information is disclosed for the purpose of enabling the
7 authority:
8 (i) to determine the extent of the assistance (if any) to give
9 in relation to the provision of mortgage credit to the
10 individual; or
11 (ii) to manage or supervise such a scheme or arrangement.

12 *Assignment of debts owed to credit providers etc.*

- 13 (2) A disclosure by a credit provider of credit eligibility information
14 about an individual is a ***permitted CP disclosure*** in relation to the
15 individual if:
16 (a) the disclosure is to one or more of the following (the
17 ***recipient***):
18 (i) an entity;
19 (ii) a professional legal adviser of the entity;
20 (iii) a professional financial adviser of the entity; and
21 (b) subsection (3) applies to the information.
- 22 (3) This subsection applies to the credit eligibility information if the
23 recipient proposes to use the information:
24 (a) in the process of the entity considering whether to:
25 (i) accept an assignment of a debt owed to the credit
26 provider; or
27 (ii) accept a debt owed to the provider as security for credit
28 provided to the provider; or
29 (iii) purchase an interest in the provider or a related body
30 corporate of the provider; or
31 (b) in connection with exercising rights arising from the
32 acceptance of such an assignment or debt, or the purchase of
33 such an interest.

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1 **142 Notification of a refusal of an application for consumer credit**

2 (1) This section applies if:

3 (a) a credit provider refuses an application for consumer credit
4 that is:

5 (i) made by an individual; or

6 (ii) made jointly by an individual and one or more other
7 persons (the *other applicants*); and

8 (b) the refusal is based wholly or partly on credit eligibility
9 information about one or more of the following:

10 (i) the individual;

11 (ii) a person who is proposing to act as a guarantor in
12 relation to the consumer credit;

13 (iii) if the application is an application of a kind referred to
14 in subparagraph (a)(ii)—one of the other applicants; and

15 (c) a credit reporting agency disclosed the relevant credit
16 reporting information to the provider for the purposes of
17 assessing the application.

18 (2) The credit provider must, within a reasonable period after refusing
19 the application, give the individual a written notice that:

20 (a) states that the application has been refused; and

21 (b) states that the refusal is based wholly or partly on credit
22 eligibility information about one or more of the persons
23 referred to in paragraph (1)(b); and

24 (c) if that information is about the individual:

25 (i) sets out the name and contact details of the credit
26 reporting agency that disclosed the relevant credit
27 reporting information to the provider; and

28 (ii) sets out any other matter specified in the Credit
29 Reporting Code.

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Part A Credit reporting
Division 3 Credit providers

Section 143

1 **Subdivision D—Integrity of credit information and credit**
2 **eligibility information**

3 **143 Quality of credit eligibility information**

4 (1) A credit provider must take such steps (if any) as are reasonable in
5 the circumstances to ensure that the credit eligibility information
6 the provider collects is accurate, up-to-date and complete.

7 (2) A credit provider must take such steps (if any) as are reasonable in
8 the circumstances to ensure that the credit eligibility information
9 the provider uses or discloses is accurate, up-to-date, complete and
10 relevant.

11 (3) If a credit provider is an APP entity, Australian Privacy Principle
12 10 does not apply to the provider in relation to credit eligibility
13 information.

14 **144 False or misleading credit information or credit eligibility**
15 **information**

16 *Offences*

17 (1) A credit provider commits an offence if:
18 (a) the provider discloses credit information under section 132;
19 and
20 (b) the information is false or misleading in a material particular.

21 Penalty: 200 penalty units.

22 (2) A credit provider commits an offence if:
23 (a) the provider uses or discloses credit eligibility information
24 under this Division; and
25 (b) the information is false or misleading in a material particular.

26 Penalty: 200 penalty units.

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1 *Civil penalties*

- 2 (3) A credit provider must not disclose credit information under
3 section 132 if the information is false or misleading in a material
4 particular.

5 Civil penalty: 2,000 penalty units.

- 6 (4) A credit provider must not use or disclose credit eligibility
7 information under this Division if the information is false or
8 misleading in a material particular.

9 Civil penalty: 2,000 penalty units.

10 **145 Security of credit eligibility information**

- 11 (1) If a credit provider holds credit eligibility information, the provider
12 must take such steps as are reasonable in the circumstances to
13 protect the information:

- 14 (a) from misuse, interference and loss; and
15 (b) from unauthorised access, modification or disclosure.

- 16 (2) If:

- 17 (a) a credit provider holds credit eligibility information about an
18 individual; and
19 (b) the provider no longer needs the information for any purpose
20 for which the information may be used or disclosed by the
21 provider under this Division; and
22 (c) the provider is not required by or under an Australian law, or
23 an order of a court or tribunal, to retain the information;

24 the provider must take such steps as are reasonable in the
25 circumstances to destroy the information or to ensure that the
26 information is no longer personal information.

27 Civil penalty: 1,000 penalty units.

- 28 (3) If a credit provider is an APP entity, Australian Privacy Principle
29 11 does not apply to the provider in relation to credit eligibility
30 information.

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Part A Credit reporting
Division 3 Credit providers

Section 146

1 **Subdivision E—Access to, and correction of, information**

2 **146 Access to credit eligibility information**

3 *Access*

4 (1) If:

- 5 (a) a credit provider holds credit eligibility information about an
6 individual; and
7 (b) an access seeker in relation to the information requests to be
8 given access to the information;
9 the provider must give the access seeker access to the information.

10 *Exceptions to access*

- 11 (2) Despite subsection (1), the credit provider is not required to give
12 the access seeker access to the credit eligibility information to the
13 extent that:
14 (a) giving access would be unlawful; or
15 (b) denying access is required or authorised by or under an
16 Australian law, or an order of a court or tribunal; or
17 (c) giving access would be likely to prejudice one or more
18 enforcement related activities by or on behalf of an
19 enforcement body.

20 *Dealing with requests for access*

- 21 (3) If an access seeker requests a credit provider to give access to
22 credit eligibility information about the individual, the provider
23 must respond to the request within a reasonable period after the
24 request is made.

25 *Means of access*

- 26 (4) If a credit provider gives access to credit eligibility information
27 under subsection (1), the access must be given in the manner set
28 out in the Credit Reporting Code.

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1

Access charges

2

(5) If:

3

(a) a credit provider is an agency; and

4

(b) an access seeker requests the provider to give access to credit eligibility information about the individual;

5

6

the provider must not charge the access seeker for the making of the request or for giving access to the information.

7

8

(6) If:

9

(a) a credit provider is an organisation or small business operator; and

10

11

(b) an access seeker requests the provider to give access to credit eligibility information about the individual; and

12

13

(c) the provider charges the access seeker for giving access to the information;

14

15

the charge must not be excessive and must not apply to the making of the request.

16

17

Refusal to give access

18

(7) If:

19

(a) an access seeker requests a credit provider to give access to credit eligibility information about the individual; and

20

21

(b) the provider refuses to give access to the information because of subsection (2);

22

23

the provider must, in writing:

24

(c) give the access seeker reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and

25

26

27

(d) notify the access seeker of the effect of sections 157 and 158 (which deal with complaints).

28

29

Interaction with the Australian Privacy Principles

30

(8) If a credit provider is an APP entity, Australian Privacy Principle 12 does not apply to the provider in relation to credit eligibility information.

31

32

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Part A Credit reporting
Division 3 Credit providers

Section 147

1 **147 Correction of credit information**

2 (1) If:

3 (a) a credit provider holds credit information about an
4 individual; and

5 (b) the provider is satisfied that, having regard to a purpose for
6 which the information is held by the provider, the
7 information is inaccurate, out-of-date, incomplete or
8 irrelevant;

9 the provider must take such steps (if any) as are reasonable in the
10 circumstances to correct the information to ensure that, having
11 regard to the purpose for which it is held, the information is
12 accurate, up-to-date, complete and relevant.

13 *Notice of correction*

14 (2) If:

15 (a) the credit provider corrects credit information under
16 subsection (1); and

17 (b) the provider has previously disclosed the information under
18 this Division or under the Australian Privacy Principles;

19 the provider must, within a reasonable period, give each recipient
20 of the information written notice of the correction.

21 (3) Subsection (2) does not apply if:

22 (a) it is impracticable for the credit provider to give the notice
23 under that subsection; or

24 (b) the credit provider is required by or under an Australian law,
25 or an order of a court or tribunal, not to give the notice under
26 that subsection.

27 *Interaction with the Australian Privacy Principles*

28 (4) If a credit provider is an APP entity, Australian Privacy Principle
29 13:

30 (a) applies to the provider in relation to credit information that is
31 identification information; but

32 (b) does not apply to the provider in relation to any other kind of
33 credit information.

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1 Note: Identification information may be corrected under this section or
2 Australian Privacy Principle 13.

3 **148 Correction of credit eligibility information**

- 4 (1) If:
- 5 (a) a credit provider holds credit eligibility information about an
6 individual; and
 - 7 (b) the provider is satisfied that, having regard to a purpose for
8 which the information is held by the provider, the
9 information is inaccurate, out-of-date, incomplete or
10 irrelevant;
- 11 the provider must take such steps (if any) as are reasonable in the
12 circumstances to correct the information to ensure that, having
13 regard to the purpose for which it is held, the information is
14 accurate, up-to-date, complete and relevant.

15 *Notice of correction*

- 16 (2) If:
- 17 (a) the credit provider corrects credit eligibility information
18 under subsection (1); and
 - 19 (b) the provider has previously disclosed the information under
20 this Division;
- 21 the provider must, within a reasonable period, give each recipient
22 of the information written notice of the correction.
- 23 (3) Subsection (2) does not apply if:
- 24 (a) it is impracticable for the credit provider to give the notice
25 under that subsection; or
 - 26 (b) the credit provider is required by or under an Australian law,
27 or an order of a court or tribunal, not to give the notice under
28 that subsection.

29 *Interaction with the Australian Privacy Principles*

- 30 (4) If a credit provider is an APP entity, Australian Privacy Principle
31 13:
- 32 (a) applies to the provider in relation to credit eligibility
33 information that is identification information; but

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Part A Credit reporting
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Section 149

1 (b) does not apply to the provider in relation to any other kind of
2 credit eligibility information.

3 Note: Identification information may be corrected under this section or
4 Australian Privacy Principle 13.

5 **149 Individual may request the correction of credit information etc.**

6 *Request*

7 (1) An individual may request a credit provider to correct personal
8 information about the individual if:

9 (a) the personal information is:

10 (i) credit information about the individual; or

11 (ii) CRA derived information about the individual; or

12 (iii) CP derived information about the individual; and

13 (b) the provider holds at least one kind of the personal
14 information referred to in paragraph (a).

15 *Correction*

16 (2) If:

17 (a) an individual requests a credit provider to correct personal
18 information under subsection (1); and

19 (b) the provider is satisfied that the information is inaccurate,
20 out-of-date, incomplete or irrelevant;

21 the provider must take such steps (if any) as are reasonable in the
22 circumstances to correct the information within:

23 (c) the period of 30 days that starts on the day on which the
24 request is made; or

25 (d) such longer period as the individual has agreed to in writing.

26 *Consultation*

27 (3) If the credit provider considers that the provider cannot be satisfied
28 of the matter referred to in paragraph (2)(b) in relation to the
29 personal information without consulting either or both of the
30 following (the *interested party*):

31 (a) a credit reporting agency that holds or held the information;

32 (b) another credit provider that holds or held the information;

EXPOSURE DRAFT

1 the provider must consult that interested party, or those interested
2 parties, about the individual's request.

3 (4) The use or disclosure of personal information about the individual
4 for the purposes of the consultation is taken, for the purposes of
5 this Act, to be a use or disclosure that is authorised by this
6 subsection.

7 *No charge*

8 (5) The credit provider must not charge the individual for the making
9 of the request or for correcting the information.

10 *Interaction with the Australian Privacy Principles*

11 (6) If a credit provider is an APP entity, Australian Privacy Principle
12 13:

13 (a) applies to the provider in relation to personal information
14 referred to in paragraph (1)(a) of this section that is
15 identification information; but

16 (b) does not apply to the provider in relation to any other kind of
17 personal information referred to in that paragraph.

18 Note: Identification information may be corrected under this section or
19 Australian Privacy Principle 13.

20 **150 Notice of correction etc. must be given**

21 (1) This section applies if an individual requests a credit provider to
22 correct personal information under subsection 149(1).

23 *Notice of correction etc.*

24 (2) If the credit provider corrects personal information about the
25 individual under subsection 149(2), the provider must, within a
26 reasonable period:

27 (a) give the individual written notice of the correction; and

28 (b) if the provider consulted an interested party under subsection
29 149(3) about the individual's request—give the party written
30 notice of the correction; and

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1 (c) if the correction relates to information that the provider has
2 previously disclosed under this Division (other than
3 subsection 149(4)) or under the Australian Privacy Principles
4 (other than subsection 5(2))—must give each recipient of the
5 information written notice of the correction.

6 (3) If the credit provider does not correct the personal information
7 under subsection 149(2), the provider must, within a reasonable
8 period, give the individual written notice that:
9 (a) states that the correction has not been made; and
10 (b) sets out the provider's reasons for not correcting the
11 information; and
12 (c) sets out the effect of sections 157 and 158 (which deal with
13 complaints).

14 *Exceptions*

15 (4) Paragraph (2)(c) does not apply if it is impracticable for the credit
16 provider to give the notice under that paragraph.

17 (5) Subsection (2) or (3) does not apply if the credit provider is
18 required by or under an Australian law, or an order of a court or
19 tribunal, not to give the notice under that subsection.
20

EXPOSURE DRAFT

1

2 **Division 4—Other recipients of information**

3 **151 Guide to this Division**

4

This Division sets out rules for certain recipients of information that has been disclosed by credit reporting agencies or credit providers under this Part.

5

6

7

The rules in this Division apply to recipients that are APP entities instead of any relevant Australian Privacy Principles.

8

9 **152 Use or disclosure of information by mortgage insurers and trade**
10 **insurers**

11 *Prohibition on use or disclosure*

12 (1) If:

13

(a) a mortgage insurer or trade insurer holds or held personal information about an individual; and

14

15

(b) the information was disclosed to the insurer by a credit reporting agency or credit provider under this Part;

16

17

the insurer must not use or disclose the information, or any personal information about the individual derived from that information.

18

19

20

Civil penalty: 2,000 penalty units.

21

Permitted uses

22 (2) Subsection (1) does not apply to the use of the information if:

23

(a) for the mortgage insurer—the use is for:

24

(i) a mortgage insurance purpose of the insurer in relation to the individual; or

25

26

(ii) any purpose arising under a contract for mortgage insurance that has been entered into between the credit provider and the insurer; or

27

28

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- 1 (b) for the trade insurer—the use is for a trade insurance purpose
2 of the insurer in relation to the individual; or
3 (c) the use is required or authorised by or under an Australian
4 law, or an order of a court or tribunal.

5 *Permitted disclosure*

- 6 (3) Subsection (1) does not apply to the disclosure of the information
7 if the disclosure is required or authorised by or under an Australian
8 law, or an order of a court or tribunal.

9 *Interaction with the Australian Privacy Principles*

- 10 (4) If the mortgage insurer or trade insurer referred to in subsection (1)
11 is an APP entity, Australian Privacy Principles 6 and 7 do not
12 apply to the insurer in relation to the information referred to in that
13 subsection.
- 14 (5) If:
15 (a) the mortgage insurer or trade insurer referred to in
16 subsection (1) is an APP entity; and
17 (b) the information referred to in that subsection is a government
18 related identifier of the individual;
19 subsection (2) of Australian Privacy Principle 9 does not apply to
20 the insurer in relation to the information.

21 **153 Use or disclosure of information by a related body corporate**

22 *Prohibition on use or disclosure*

- 23 (1) If:
24 (a) a body corporate holds or held credit eligibility information
25 about an individual; and
26 (b) the information was disclosed to the body by a credit
27 provider under paragraph 135(3)(b);
28 the body must not use or disclose the information, or any personal
29 information about the individual derived from that information.
- 30 Civil penalty: 1,000 penalty units.

EXPOSURE DRAFT

1 *Permitted uses or disclosures*

2 (2) Subsection (1) does not apply to the use or disclosure of the
3 information by the body corporate if the body would be permitted
4 to use or disclose the information under section 135 if the body
5 were the credit provider.

6 (3) In determining whether the body corporate would be permitted to
7 use or disclose the information under section 135, assume that the
8 body is whichever of the following is applicable:

9 (a) the credit provider that has provided the relevant credit to the
10 individual;

11 (b) the credit provider to which the relevant application for credit
12 was made by the individual.

13 *Interaction with the Australian Privacy Principles*

14 (4) If the body corporate referred to in subsection (1) is an APP entity,
15 Australian Privacy Principles 6 and 7 do not apply to the body in
16 relation to the information referred to in that subsection.

17 (5) If:

18 (a) the body corporate referred to in subsection (1) is an APP
19 entity; and

20 (b) the information referred to in that subsection is a government
21 related identifier of the individual;

22 subsection (2) of Australian Privacy Principle 9 does not apply to
23 the body in relation to the information.

24 **154 Use or disclosure of information by credit managers**

25 *Prohibition on use or disclosure*

26 (1) If:

27 (a) a person holds or held credit eligibility information about an
28 individual; and

29 (b) the information was disclosed to the person by a credit
30 provider under paragraph 135(3)(c) for use in managing
31 credit provided by the provider;

EXPOSURE DRAFT

Part A Credit reporting

Division 4 Other recipients of information

Section 155

1 the person must not use or disclose the information, or any
2 personal information about the individual derived from that
3 information.

4 Civil penalty: 1,000 penalty units.

5 *Permitted uses*

- 6 (2) Subsection (1) does not apply to the use of the information if:
7 (a) the person uses the information in managing credit provided
8 by the credit provider; or
9 (b) the use is required or authorised by or under an Australian
10 law, or an order of a court or tribunal.

11 *Permitted disclosure*

- 12 (3) Subsection (1) does not apply to the disclosure of the information
13 if the disclosure is required or authorised by or under an Australian
14 law, or an order of a court or tribunal.

15 *Interaction with the Australian Privacy Principles*

- 16 (4) If the person referred to in subsection (1) is an APP entity,
17 Australian Privacy Principles 6 and 7 do not apply to the person in
18 relation to the information referred to in that subsection.
- 19 (5) If:
20 (a) the person referred to in subsection (1) is an APP entity; and
21 (b) the information referred to in that subsection is a government
22 related identifier of the individual;
23 subsection (2) of Australian Privacy Principle 9 does not apply to
24 the person in relation to the information.

25 **155 Use or disclosure of information by advisers etc.**

26 *Prohibition on use or disclosure*

- 27 (1) If:
28 (a) any of the following (the *recipient*) holds or held credit
29 eligibility information about an individual:

EXPOSURE DRAFT

- 1 (i) an entity;
2 (ii) a professional legal adviser of the entity;
3 (iii) a professional financial adviser of the entity; and
4 (b) the information was disclosed to the recipient by a credit
5 provider under subsection 141(2);
6 the recipient must not use or disclose the information, or any
7 personal information about the individual derived from that
8 information.

9 Civil penalty: 1,000 penalty units.

10 *Permitted uses*

- 11 (2) Subsection (1) does not apply to the use of the information if:
12 (a) for a recipient that is the entity—the information is used for a
13 matter referred to in subsection 141(3); or
14 (b) for a recipient that is the professional legal adviser, or
15 professional financial adviser, of the entity—the information
16 is used:
17 (i) in the adviser's capacity as an adviser of the entity; and
18 (ii) in connection with advising the entity about a matter
19 referred to in subsection 141(3); or
20 (c) the use is required or authorised by or under an Australian
21 law, or an order of a court or tribunal.

22 *Permitted disclosure*

- 23 (3) Subsection (1) does not apply to the disclosure of the information
24 if the disclosure is required or authorised by or under an Australian
25 law, or an order of a court or tribunal.

26 *Interaction with the Australian Privacy Principles*

- 27 (4) If a recipient is an APP entity, Australian Privacy Principles 6 and
28 7 do not apply to the recipient in relation to the information
29 referred to in subsection (1) of this section.
30 (5) If:
31 (a) a recipient is an APP entity; and

EXPOSURE DRAFT

Part A Credit reporting

Division 4 Other recipients of information

Section 155

1 (b) the information referred to in subsection (1) is a government
2 related identifier of the individual;
3 subsection (2) of Australian Privacy Principle 9 does not apply to
4 the recipient in relation to the information.
5

EXPOSURE DRAFT

1

2 **Division 5—Complaints**

3 **156 Guide to this Division**

4

This Division deals with complaints about credit reporting agencies or credit providers.

5

6

Individuals may complain if credit reporting agencies or credit providers do not give access to, or correct, personal information. They may also complain about acts or practices that may be a credit reporting infringement.

7

8

9

10

If a complaint is made, the respondent for the complaint must investigate the complaint and make a determination about the complaint.

11

12

13 **157 Individual may complain to a credit reporting agency or credit**
14 **provider**

15

Complaints relating to access or correction

16

(1) An individual may complain to a credit reporting agency if:

17

(a) the agency refuses to give access to credit reporting information about the individual because of subsection 119(2); or

18

19

20

(b) the agency does not correct personal information under subsection 121(2).

21

22

(2) An individual may complain to a credit provider if:

23

(a) the provider refuses to give access to credit eligibility information about the individual because of subsection 146(2); or

24

25

26

(b) the provider does not correct personal information under subsection 149(2).

27

EXPOSURE DRAFT

Part A Credit reporting

Division 5 Complaints

Section 158

1 *Complaints about credit reporting infringements*

2 (3) An individual may complain to a credit reporting agency about an
3 act or practice engaged in by the agency that may be a credit
4 reporting infringement in relation to the individual.

5 (4) An individual may complain to a credit provider about an act or
6 practice engaged in by the provider that may be a credit reporting
7 infringement in relation to the individual.

8 *Nature of complaint*

9 (5) If an individual makes a complaint, the individual must specify the
10 nature of the complaint.

11 (6) The complaint may relate to personal information that has been
12 destroyed or that is no longer personal information.

13 *No charge*

14 (7) The credit reporting agency or credit provider must not charge the
15 individual for the making of the complaint or for dealing with the
16 complaint.

17 **158 Dealing with complaints**

18 (1) If an individual makes a complaint under section 157, the
19 respondent for the complaint:

20 (a) must, within 7 days after the complaint is made, give the
21 individual a written notice that:

22 (i) acknowledges the making of the complaint; and

23 (ii) sets out how the respondent will deal with the
24 complaint; and

25 (b) must investigate the complaint.

26 *Consultation about the complaint*

27 (2) If the respondent for the complaint considers that it is necessary to
28 consult a credit reporting agency or credit provider about the
29 complaint, the respondent must consult the agency or provider.

EXPOSURE DRAFT

- 1 (3) The use or disclosure of personal information about the individual
2 for the purposes of the consultation is taken, for the purposes of
3 this Act, to be a use or disclosure that is authorised by this
4 subsection.

5 *Determination about the complaint*

- 6 (4) After investigating the complaint, the respondent must, within the
7 period referred to in subsection (5), make a determination about the
8 complaint and give the individual a written notice that:
9 (a) sets out the determination; and
10 (b) explains that, if the individual is not satisfied with the
11 determination, the individual may:
12 (i) access a recognised external dispute resolution scheme
13 of which the respondent is a member; or
14 (ii) make a complaint to the Information Commissioner
15 under this Act.
- 16 (5) The period for the purposes of subsection (4) is:
17 (a) the period of 30 days that starts on the day on which the
18 complaint is made; or
19 (b) such longer period as the individual has agreed to in writing.

20 *Failure to make a determination*

- 21 (6) If, at the end of the period referred to in subsection (5) that applies
22 in relation to the complaint, the respondent has not made a
23 determination about the complaint, the individual may:
24 (a) access a recognised external dispute resolution scheme of
25 which the respondent is a member; or
26 (b) make a complaint to the Information Commissioner under
27 this Act.

28 **159 Notification requirements relating to certain complaints**

- 29 (1) This section applies if:
30 (a) an individual makes a complaint under paragraph 157(1)(b)
31 or (2)(b); or

EXPOSURE DRAFT

Part A Credit reporting

Division 5 Complaints

Section 159

- 1 (b) an individual makes a complaint under subsection 157(3)
2 about an act or practice that may contravene section 120 or
3 121 (which deal with the correction of personal information
4 by credit reporting agencies); or
5 (c) an individual makes a complaint under subsection 157(4)
6 about an act or practice that may contravene section 147, 148
7 or 149 (which deal with the correction of personal
8 information by credit providers).

9 *Notification of complaint etc.*

- 10 (2) If:
11 (a) the respondent for the complaint is a credit reporting agency;
12 and
13 (b) the complaint relates to credit information or credit eligibility
14 information that a credit provider holds;
15 the respondent must, in writing:
16 (c) notify the provider of the making of the complaint as soon as
17 practicable after it is made; and
18 (d) notify the provider of the making of a determination about
19 the complaint under subsection 158(4) as soon as practicable
20 after it is made.
- 21 (3) If:
22 (a) the respondent for the complaint is a credit provider; and
23 (b) the complaint relates to:
24 (i) credit reporting information that a credit reporting
25 agency holds; or
26 (ii) credit information or credit eligibility information that
27 another credit provider holds;
28 the respondent must, in writing:
29 (c) notify the agency or other provider (as the case may be) of
30 the making of the complaint as soon as practicable after it is
31 made; and
32 (d) notify the agency or other provider (as the case may be) of
33 the making of a determination about the complaint under
34 subsection 158(4) as soon as practicable after it is made.

EXPOSURE DRAFT

1

Notification of recipients of disclosed information

2

(4) If:

3

(a) a credit reporting agency discloses credit reporting information to which the complaint relates under Division 2 of this Part; and

4

5

6

(b) at the time of the disclosure, a determination about the complaint under subsection 158(4) has not been made;

7

8

the agency must, at that time, notify in writing the recipient of the information of the complaint.

9

10

(5) If:

11

(a) a credit provider discloses personal information to which the complaint relates under Division 3 of this Part or under the Australian Privacy Principles; and

12

13

14

(b) at the time of the disclosure, a determination about the complaint under subsection 158(4) has not been made;

15

16

the provider must, at that time, notify in writing the recipient of the information of the complaint.

17

18

Exceptions

19

(6) Subsection (2), (3), (4) or (5) does not apply if:

20

(a) it is impracticable for the credit reporting agency or credit provider to give the notification under that subsection; or

21

22

(b) the credit reporting agency or credit provider is required by or under an Australian law, or an order of a court or tribunal, not to give the notification under that subsection.

23

24

25

EXPOSURE DRAFT

Part A Credit reporting

Division 6 Unauthorised obtaining of credit reporting information etc.

Section 160

1

2 **Division 6—Unauthorised obtaining of credit reporting** 3 **information etc.**

4 **160 Obtaining credit reporting information from a credit reporting** 5 **agency**

6 *Offences*

- 7 (1) An entity commits an offence if:
- 8 (a) the entity obtains credit reporting information; and
- 9 (b) the information is obtained from a credit reporting agency;
- 10 and
- 11 (c) the entity is not:
- 12 (i) an entity to which the agency is permitted to disclose
- 13 the information under Division 2 of this Part; or
- 14 (ii) an access seeker for the information.

15 Penalty: 200 penalty units.

- 16 (2) An entity commits an offence if:
- 17 (a) the entity obtains credit reporting information; and
- 18 (b) the information is obtained from a credit reporting agency;
- 19 and
- 20 (c) the information is obtained by false pretence.

21 Penalty: 200 penalty units.

22 *Civil penalties*

- 23 (3) An entity must not obtain credit reporting information from a credit
- 24 reporting agency if the entity is not:
- 25 (a) an entity to which the agency is permitted to disclose the
- 26 information under Division 2 of this Part; or
- 27 (b) an access seeker for the information.

28 Civil penalty: 2,000 penalty units.

EXPOSURE DRAFT

- 1 (4) An entity must not obtain, by false pretence, credit reporting
2 information from a credit reporting agency.

3 Civil penalty: 2,000 penalty units.

4 **161 Obtaining credit eligibility information from a credit provider**

5 *Offences*

- 6 (1) An entity commits an offence if:
7 (a) the entity obtains credit eligibility information; and
8 (b) the information is obtained from a credit provider; and
9 (c) the entity is not:
10 (i) an entity to which the provider is permitted to disclose
11 the information under Division 3 of this Part; or
12 (ii) an access seeker for the information.

13 Penalty: 200 penalty units.

- 14 (2) An entity commits an offence if:
15 (a) the entity obtains credit eligibility information; and
16 (b) the information is obtained from a credit provider; and
17 (c) the information is obtained by false pretence.

18 Penalty: 200 penalty units.

19 *Civil penalties*

- 20 (3) An entity must not obtain credit eligibility information from a
21 credit provider if the entity is not:
22 (a) an entity to which the provider is permitted to disclose the
23 information under Division 3 of this Part; or
24 (b) an access seeker for the information.

25 Civil penalty: 2,000 penalty units.

- 26 (4) An entity must not obtain, by false pretence, credit eligibility
27 information from a credit provider.

28 Civil penalty: 2,000 penalty units.
29

EXPOSURE DRAFT

Part A Credit reporting

Division 7 Civil penalty orders

Section 162

1

2 **Division 7—Civil penalty orders**

3 **Subdivision A—Civil penalty provisions**

4 **162 Civil penalty provisions**

5 A subsection of this Act (or a section of this Act that is not divided
6 into subsections) is a ***civil penalty provision*** if the words “civil
7 penalty” and one or more amounts in penalty units are set out at the
8 foot of the subsection (or section).

9 **163 Ancillary contravention of civil penalty provisions**

- 10 (1) An entity must not:
- 11 (a) attempt to contravene a civil penalty provision; or
 - 12 (b) aid, abet, counsel or procure a contravention of a civil
13 penalty provision; or
 - 14 (c) induce (by threats, promises or otherwise) a contravention of
15 a civil penalty provision; or
 - 16 (d) be in any way, directly or indirectly, knowingly concerned in,
17 or party to, a contravention of a civil penalty provision; or
 - 18 (e) conspire with others to effect a contravention of a civil
19 penalty provision.
- 20 (2) An entity that contravenes subsection (1) in relation to a civil
21 penalty provision is taken to have contravened the provision.

22 **Subdivision B—Obtaining a civil penalty order**

23 **164 Civil penalty orders**

24 *Application for order*

- 25 (1) Within 6 years of an entity contravening a civil penalty provision,
26 the Information Commissioner may apply to the Federal Court or
27 Federal Magistrates Court for an order that the entity pay the
28 Commonwealth a pecuniary penalty.

EXPOSURE DRAFT

1 *Court may order entity to pay pecuniary penalty*

2 (2) If the court is satisfied that the entity has contravened a civil
3 penalty provision, the court may order the entity to pay to the
4 Commonwealth a pecuniary penalty.

5 (3) An order under subsection (2) is a ***civil penalty order***.

6 *Determining pecuniary penalty*

7 (4) The pecuniary penalty must not be more than:

8 (a) if the entity is a body corporate—5 times the maximum
9 number of penalty units referred to in the civil penalty
10 provision; or

11 (b) otherwise—the maximum number of penalty units referred to
12 in the civil penalty provision.

13 (5) In determining the pecuniary penalty, the court must take into
14 account all relevant matters, including:

15 (a) the nature and extent of the contravention; and

16 (b) the nature and extent of any loss or damage suffered because
17 of the contravention; and

18 (c) the circumstances in which the contravention took place; and

19 (d) whether the entity has previously been found by a court in
20 proceedings under this Act to have engaged in any similar
21 conduct.

22 **165 Civil enforcement of penalty**

23 (1) A pecuniary penalty is a debt payable to the Commonwealth.

24 (2) The Commonwealth may enforce a civil penalty order as if it were
25 an order made in civil proceedings against the entity to recover a
26 debt due by the entity. The debt arising from the order is taken to
27 be a judgment debt.

28 **166 Conduct contravening more than one civil penalty provision**

29 (1) If conduct constitutes a contravention of 2 or more civil penalty
30 provisions, proceedings may be instituted under this Division

EXPOSURE DRAFT

1 **Subdivision C—Civil proceedings and criminal proceedings**

2 **171 Civil proceedings after criminal proceedings**

3 The Federal Court or Federal Magistrates Court must not make a
4 civil penalty order against an entity for a contravention of a civil
5 penalty provision if the entity has been convicted of an offence
6 constituted by conduct that is substantially the same as the conduct
7 constituting the contravention.

8 **172 Criminal proceedings during civil proceedings**

- 9 (1) Proceedings for a civil penalty order against an entity for a
10 contravention of a civil penalty provision are stayed if:
- 11 (a) criminal proceedings are commenced or have already been
12 commenced against the entity for an offence; and
 - 13 (b) the offence is constituted by conduct that is the same, or
14 substantially the same, as the conduct alleged to constitute
15 the contravention.
- 16 (2) The proceedings for the civil penalty order may be resumed if the
17 entity is not convicted of the offence. Otherwise, those proceedings
18 are dismissed.

19 **173 Criminal proceedings after civil proceedings**

20 Criminal proceedings may be commenced against an entity for
21 conduct that is substantially the same as conduct constituting a
22 contravention of a civil penalty provision regardless of whether a
23 civil penalty order in relation to the contravention has been made
24 against the entity.

25 **174 Evidence given in proceedings for civil penalty order not**
26 **admissible in criminal proceedings**

- 27 (1) Evidence of information given, or evidence of production of
28 documents, by an individual is not admissible in criminal
29 proceedings against the individual if:
- 30 (a) the individual previously gave the evidence or produced the
31 documents in proceedings for a civil penalty order against the

EXPOSURE DRAFT

Part A Credit reporting

Division 7 Civil penalty orders

Section 174

- 1 individual for a contravention of a civil penalty provision
2 (whether or not the order was made); and
3 (b) the conduct alleged to constitute the offence is the same, or
4 substantially the same, as the conduct alleged to constitute
5 the contravention.
- 6 (2) However, subsection (1) does not apply to criminal proceedings in
7 relation to the falsity of the evidence given by the individual in the
8 proceedings for the civil penalty order.
9

EXPOSURE DRAFT

1

2 **Division 8—Miscellaneous**

3 **175 Treatment of partnerships**

4 (1) If, apart from this subsection, this Part would impose an obligation
5 on a partnership, the obligation is imposed instead on each partner
6 but may be discharged by any of the partners.

7 (2) If, apart from this subsection, a credit reporting offence would be
8 committed by a partnership, the offence is taken to have been
9 committed by each partner.

10 (3) If, apart from this subsection, a partnership would contravene a
11 civil penalty provision, the contravention is taken to have been
12 committed by each partner.

13 (4) A partner does not commit a credit reporting offence because of
14 subsection (2), or contravene a civil penalty provision because of
15 subsection (3), if the partner:

16 (a) does not know of the circumstances that constitute the
17 contravention of the provision concerned; or

18 (b) knows of those circumstances but takes all reasonable steps
19 to correct the contravention as soon as possible after the
20 partner becomes aware of those circumstances.

21 Note: In criminal proceedings, a defendant bears an evidential burden in
22 relation to the matters in subsection (4) (see subsection 13.3(3) of the
23 *Criminal Code*).

24 **176 Treatment of unincorporated associations**

25 (1) If, apart from this subsection, this Part would impose an obligation
26 on an unincorporated association, the obligation is imposed instead
27 on each member of the association's committee of management but
28 may be discharged by any of the members.

29 (2) If, apart from this subsection, a credit reporting offence would be
30 committed by an unincorporated association, the offence is taken to
31 have been committed by each member of the association's
32 committee of management.

EXPOSURE DRAFT

Part A Credit reporting
Division 8 Miscellaneous

Section 177

- 1 (3) If, apart from this subsection, an unincorporated association would
2 contravene a civil penalty provision, the contravention is taken to
3 have been committed by each member of the association's
4 committee of management.
- 5 (4) A member of an unincorporated association's committee of
6 management does not commit a credit reporting offence because of
7 subsection (2), or contravene a civil penalty provision because of
8 subsection (3), if the member:
- 9 (a) does not know of the circumstances that constitute the
10 contravention of the provision concerned; or
- 11 (b) knows of those circumstances but takes all reasonable steps
12 to correct the contravention as soon as possible after the
13 member becomes aware of those circumstances.
- 14 Note: In criminal proceedings, a defendant bears an evidential burden in
15 relation to the matters in subsection (4) (see subsection 13.3(3) of the
16 *Criminal Code*).

17 **177 Treatment of trusts**

- 18 (1) If, apart from this subsection, this Part would impose an obligation
19 on a trust, the obligation is imposed instead on each trustee of the
20 trust but may be discharged by any of the trustees.
- 21 (2) If, apart from this subsection, a credit reporting offence would be
22 committed by a trust, the offence is taken to have been committed
23 by each trustee of the trust.
- 24 (3) If, apart from this subsection, a trust would contravene a civil
25 penalty provision, the contravention is taken to have been
26 committed by each trustee of the trust.
- 27 (4) A trustee of a trust does not commit a credit reporting offence
28 because of subsection (2), or contravene a civil penalty provision
29 because of subsection (3), if the trustee:
- 30 (a) does not know of the circumstances that constitute the
31 contravention of the provision concerned; or
- 32 (b) knows of those circumstances but takes all reasonable steps
33 to correct the contravention as soon as possible after the
34 trustee becomes aware of those circumstances.

EXPOSURE DRAFT

1 Note: In criminal proceedings, a defendant bears an evidential burden in
2 relation to the matters in subsection (4) (see subsection 13.3(3) of the
3 *Criminal Code*).

4 **178 Conduct of directors, employees or agents of bodies corporate**

5 (1) If, in enforcement proceedings in relation to conduct engaged in by
6 a body corporate, it is necessary to establish the state of mind of
7 the body corporate, it is sufficient to show:

8 (a) that a director, employee or agent of the body engaged in that
9 conduct within the scope of his or her actual or apparent
10 authority; and

11 (b) that the director, employee or agent had the state of mind.

12 (2) If:

13 (a) a director, employee or agent of a body corporate engages in
14 conduct on behalf of the body; and

15 (b) the conduct is within the scope of the actual or apparent
16 authority of the director, employee or agent;

17 the conduct is taken, for the purposes of enforcement proceedings,
18 to have also been engaged in by the body unless the body
19 establishes that it took reasonable precautions and exercised due
20 diligence to avoid the conduct.

21 **179 Conduct of employees or agents of persons other than bodies** 22 **corporate**

23 (1) If, in enforcement proceedings in relation to conduct engaged in by
24 a person other than a body corporate, it is necessary to establish the
25 state of mind of the person, it is sufficient to show:

26 (a) that an employee or agent of the person engaged in that
27 conduct within the scope of his or her actual or apparent
28 authority; and

29 (b) that the employee or agent had the state of mind.

30 (2) If:

31 (a) an employee or agent of a person other than a body corporate
32 engages in conduct on behalf of the person; and

33 (b) the conduct is within the scope of the actual or apparent
34 authority of the employee or agent;

EXPOSURE DRAFT

Part A Credit reporting

Division 8 Miscellaneous

Section 179

1 the conduct is taken, for the purposes of enforcement proceedings,
2 to have also been engaged in by the person unless the person
3 establishes that the person took reasonable precautions and
4 exercised due diligence to avoid the conduct.
5

EXPOSURE DRAFT

Other relevant provisions **Part B**
Definitions **Division 1**

Section 180

1

Part B—Other relevant provisions

2

Division 1—Definitions

3

180 Definitions

4

5

In this Act:

6

access seeker: see subsection 192(1).

7

agency: see section 16.

8

amount of credit: see subsection 193(2).

9

APP entity means an agency or organisation.

10

Australia, when used in a geographical sense, includes the external Territories.

11

12

Australian law means:

13

(a) an Act of the Commonwealth or of a State or Territory; or

14

(b) regulations, or any other instrument, made under such an Act; or

15

(c) a rule of common law or equity.

16

17

Australian Privacy Principle has a meaning affected by section 18.

18

bank means:

19

(a) the Reserve Bank of Australia; or

20

(b) a body corporate that is an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; or

21

22

(c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

23

24

Bankruptcy Act means the *Bankruptcy Act 1966*.

25

ban period: see subsection 113(3).

EXPOSURE DRAFT

Part B Other relevant provisions

Division 1 Definitions

Section 180

1 **child**: without limiting paragraph (b) of the definition of *family* in
2 this section, someone is a **child** of an individual for the purposes of
3 that paragraph if he or she is a child of the individual within the
4 meaning of the *Family Law Act 1975*.

5 **civil penalty order**: see subsection 164(3).

6 **civil penalty provision**: see section 162.

7 **collects**: an entity **collects** personal information only if the entity
8 collects personal information for inclusion in a record or generally
9 available publication.

10 **commercial credit** means credit (other than consumer credit) that is
11 applied for by, or provided to, a person.

12 **commercial credit related purpose** of a credit provider in relation
13 to a person is the purpose of:

- 14 (a) assessing an application for commercial credit made by the
15 person to the provider; or
16 (b) the collection of payments that are overdue in relation to
17 commercial credit provided by the provider to the person.

18 **committee of management** of an unincorporated association means
19 a body (however described) that governs, manages or conducts the
20 affairs of the association.

21 **Commonwealth enactment** means:

- 22 (a) an Act of the Commonwealth other than:
23 (i) the *Australian Capital Territory (Self-Government) Act*
24 1988; or
25 (ii) the *Northern Territory (Self-Government) Act 1978*; or
26 (iii) an Act of the Commonwealth providing for the
27 administration or government of an external Territory;
28 or
29 (b) an Ordinance of the Australian Capital Territory; or
30 (c) an instrument (including rules, regulations or by-laws) made
31 under:
32 (i) an Act of the Commonwealth, other than an Act referred
33 to in subparagraph (a)(i), (ii) or (iii); or

EXPOSURE DRAFT

- 1 (ii) an Ordinance of the Australian Capital Territory; or
2 (d) any other legislation to the extent that it applies:
3 (i) as a law of the Commonwealth, other than legislation in
4 so far as it is applied by an Act referred to in
5 subparagraph (a)(ii) or (iii); or
6 (ii) as a law of the Australian Capital Territory.

7 **consent** means express consent or implied consent.

8 **consumer credit** means credit:

- 9 (a) for which an application has been made by an individual to a
10 credit provider, or that has been provided to an individual by
11 a credit provider, in the course of the provider carrying on a
12 business or undertaking as a credit provider; and
13 (b) that is intended to be used wholly or primarily:
14 (i) for personal, family or household purposes; or
15 (ii) to acquire, maintain, renovate or improve residential
16 property for investment purposes; or
17 (iii) to refinance consumer credit that has been provided
18 wholly or primarily to acquire, maintain, renovate or
19 improve residential property for investment purposes.

20 **consumer credit liability information**: if a credit provider provides
21 consumer credit to an individual, the following information about
22 the consumer credit is **consumer credit liability information** about
23 the individual:

- 24 (a) the name of the provider;
25 (b) whether the provider is a licensee;
26 (c) the type of consumer credit;
27 (d) the day on which the consumer credit is entered into;
28 (e) the terms or conditions of the consumer credit:
29 (i) that relate to the repayment of the amount of credit; and
30 (ii) that are prescribed by the regulations;
31 (f) the maximum amount of credit available under the consumer
32 credit;
33 (g) the day on which the consumer credit is terminated or
34 otherwise ceases to be in force.

EXPOSURE DRAFT

Part B Other relevant provisions

Division 1 Definitions

Section 180

1 **consumer credit related purpose** of a credit provider in relation to
2 an individual is the purpose of:

- 3 (a) assessing an application for consumer credit made by the
4 individual to the provider; or
5 (b) the collection of payments that are overdue in relation to
6 consumer credit provided by the provider to the individual.

7 **corporation** means a body corporate that:

- 8 (a) is a foreign corporation (within the meaning of paragraph
9 51(xx) of the Constitution); or
10 (b) is a trading or financial corporation (within the meaning of
11 that paragraph) formed within the limits of Australia; or
12 (c) is incorporated in a Territory, other than the Northern
13 Territory.

14 **court proceedings information** about an individual means
15 information about a judgment of an Australian court:

- 16 (a) that is made or given against the individual in proceedings
17 (other than criminal proceedings); and
18 (b) that relates to any credit that has been provided to, or applied
19 for by, the individual.

20 **CP derived information** about an individual means any personal
21 information (other than sensitive information) about the individual:

- 22 (a) that is derived from credit reporting information about the
23 individual that was disclosed to a credit provider by a credit
24 reporting agency under Division 2 of Part A; and
25 (b) that has any bearing on the individual's credit worthiness;
26 and
27 (c) that is used, has been used or could be used in establishing
28 the individual's eligibility for consumer credit.

29 **CRA derived information** about an individual means any personal
30 information (other than sensitive information) about the individual:

- 31 (a) that is derived by a credit reporting agency from credit
32 information about the individual that is held by the agency;
33 and
34 (b) that has any bearing on the individual's credit worthiness;
35 and

EXPOSURE DRAFT

1 (c) that is used, has been used or could be used in establishing
2 the individual's eligibility for consumer credit.

3 **credit**: see subsections 193(1) and (3).

4 **credit card** means an article that is one or more of the following:

- 5 (a) an article of a kind commonly known as a credit card or
6 charge card;
- 7 (b) a similar article intended for use in obtaining cash, goods or
8 services by means of credit;
- 9 (c) an article of a kind that persons carrying on business
10 commonly issue to customers, or prospective customers, for
11 use in obtaining goods or services from those persons by
12 means of credit.

13 **credit eligibility information** about an individual means:

- 14 (a) credit reporting information about the individual that was
15 disclosed to a credit provider by a credit reporting agency
16 under Division 2 of Part A; or
17 (b) CP derived information about the individual.

18 **credit enhancement**, in relation to credit, means:

- 19 (a) the process of insuring risk associated with purchasing or
20 funding the credit by means of a securitisation arrangement;
21 or
22 (b) any other similar process related to purchasing or funding the
23 credit by those means.

24 **credit guarantee purpose** of a credit provider in relation to an
25 individual is the purpose of assessing whether to accept the
26 individual as a guarantor in relation to:

- 27 (a) credit provided by the provider to a person other than the
28 individual; or
29 (b) credit for which an application has been made to the provider
30 by a person other than the individual.

31 **credit information**: see section 181.

32 **credit provider**: see sections 188 to 191.

33 **credit reporting agency** means:

EXPOSURE DRAFT

Part B Other relevant provisions

Division 1 Definitions

Section 180

- 1 (a) an organisation; or
2 (b) a small business operator; or
3 (c) an agency prescribed by the regulations;
4 that carries on a credit reporting business.

5 ***credit reporting business***: see subsections 194(1) and (4).

6 ***credit reporting information*** about an individual means credit
7 information, or CRA derived information, about the individual.

8 ***credit reporting infringement*** means a contravention of a
9 provision of Part A or the Credit Reporting Code.

10 ***credit reporting offence*** means:

- 11 (a) an offence against a provision of Part A; or
12 (b) an offence against section 6 of the *Crimes Act 1914* if the
13 offence relates to an offence referred to in paragraph (a) of
14 this definition; or
15 (c) an offence against section 11.1, 11.2, 11.2A, 11.4 or 11.5 of
16 the *Criminal Code* if the offence relates to an offence
17 referred to in paragraph (a) of this definition.

18 ***credit worthiness*** of an individual means the individual's:

- 19 (a) eligibility to be provided with consumer credit; or
20 (b) history in relation to consumer credit; or
21 (c) capacity to repay an amount of credit that relates to consumer
22 credit.

23 ***de facto partner*** has the meaning given by the *Acts Interpretation*
24 *Act 1901*.

25 ***default information***: see section 182.

26 ***de-identified information*** means credit reporting information that
27 is no longer personal information.

28 ***enforcement body*** means:

- 29 (a) the Australian Federal Police; or
30 (b) the Australian Commission for Law Enforcement Integrity;
31 or
32 (c) the Australian Crime Commission; or

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- 1 (d) the CrimTrac Agency; or
2 (e) Customs; or
3 (f) the Australian Prudential Regulation Authority; or
4 (g) the Australian Securities and Investments Commission; or
5 (h) the Office of the Director of Public Prosecutions, or a similar
6 body established under a law of a State or Territory; or
7 (i) the police force or police service of a State or Territory; or
8 (j) the Independent Commission Against Corruption of New
9 South Wales; or
10 (k) the New South Wales Crime Commission; or
11 (l) the Police Integrity Commission of New South Wales; or
12 (m) the Office of Police Integrity of Victoria; or
13 (n) the Crime and Misconduct Commission of Queensland; or
14 (o) the Corruption and Crime Commission of Western Australia;
15 or
16 (p) another agency, or State or Territory authority, to the extent
17 that it is responsible for:
18 (i) administering, or performing a function under, a law
19 that imposes a penalty or sanction, or a law prescribed
20 by the regulations; or
21 (ii) administering a law relating to the protection of the
22 public revenue; or
23 (q) another authority or body prescribed by the regulations that is
24 established under a law of a State or Territory to conduct
25 criminal investigations or inquiries.
- 26 ***enforcement proceedings*** means:
27 (a) proceedings for a credit reporting offence; or
28 (b) proceedings for a civil penalty order.
- 29 ***enforcement related activity*** means:
30 (a) the prevention, detection, investigation, prosecution or
31 punishment of:
32 (i) criminal offences; or
33 (ii) breaches of a law imposing a penalty or sanction; or
34 (b) the conduct of surveillance activities, intelligence gathering
35 activities or monitoring activities; or
-

EXPOSURE DRAFT

Part B Other relevant provisions

Division 1 Definitions

Section 180

- 1 (c) the enforcement of laws relating to the confiscation of the
2 proceeds of crime; or
3 (d) the protection of the public revenue; or
4 (e) the prevention, detection, investigation or remedying of
5 misconduct of a serious nature, or other conduct prescribed
6 by the regulations; or
7 (f) the preparation for, or conduct of, proceedings before any
8 court or tribunal, or the implementation of orders made by a
9 court or tribunal.

10 ***engage in conduct*** includes fail or refuse to engage in conduct.

11 ***entity*** means:

- 12 (a) an agency; or
13 (b) an organisation; or
14 (c) a small business operator.

15 ***family***, in relation to an individual, includes (without limitation):

- 16 (a) a de facto partner of the individual; and
17 (b) someone who is the child of the individual, or of whom the
18 individual is the child; and
19 (c) anyone else who would be a member of the individual's
20 family if someone referred to in paragraph (a) or (b) is taken
21 to be a member of the individual's family.

22 ***Federal Court*** means the Federal Court of Australia.

23 ***generally available publication*** means a magazine, book, article,
24 newspaper or other publication that is or will be generally available
25 to members of the public:

- 26 (a) whether or not it is published in print, electronic or any other
27 form; and
28 (b) whether or not it is available on the payment of a fee.

29 ***government related identifier***: see subsection 10(4).

30 ***guarantee*** includes an indemnity given against the default of a
31 person in making a payment in relation to credit that has been
32 applied for by, or provided to, the person.

EXPOSURE DRAFT

1 **holds**: an entity **holds** personal information if the entity has
2 possession or control of a record that contains the personal
3 information.

4 **identification information** about an individual means:

- 5 (a) the individual's full name; or
6 (b) an alias or previous name of the individual; or
7 (c) the individual's date of birth; or
8 (d) the individual's sex; or
9 (e) the individual's current or last known address, and 2 previous
10 addresses (if any); or
11 (f) the name of the individual's current or last known employer;
12 or
13 (g) if the individual holds a driver's licence—the individual's
14 driver's licence number.

15 **identifier**: see subsections 10(5) and (6).

16 **information request**: see section 183.

17 **interested party**: see subsections 121(3) and 149(3).

18 **licensee** has the meaning given by the *National Consumer Credit*
19 *Protection Act 2009*.

20 **managing credit** does not include an act relating to the collection
21 of overdue payments in relation to credit.

22 **misconduct** includes fraud, negligence, default, breach of trust,
23 breach of duty, breach of discipline or any other misconduct in the
24 course of duty.

25 **mortgage credit** means consumer credit:

- 26 (a) that is provided in connection with the acquisition,
27 maintenance, renovation or improvement of real property;
28 and
29 (b) in relation to which the real property is security.

30 **mortgage insurance purpose** of a mortgage insurer in relation to
31 an individual is the purpose of assessing:

EXPOSURE DRAFT

Part B Other relevant provisions

Division 1 Definitions

Section 180

- 1 (a) whether to provide insurance to, or the risk of providing
2 insurance to, a credit provider in relation to mortgage credit:
3 (i) provided by the provider to the individual; or
4 (ii) for which an application to the provider has been made
5 by the individual; or
6 (b) the risk of the individual defaulting on mortgage credit in
7 relation to which the insurer has provided insurance to a
8 credit provider; or
9 (c) the risk of the individual being unable to meet a liability that
10 might arise under a guarantee provided, or proposed to be
11 provided, in relation to mortgage credit provided by a credit
12 provider to another person.

13 ***mortgage insurer*** means an organisation or small business operator
14 that carries on a business or undertaking that involves providing
15 insurance to credit providers in relation to mortgage credit
16 provided by providers to other persons.

17 ***National Personal Insolvency Index*** has the meaning given by the
18 Bankruptcy Act.

19 ***new arrangement information***: see section 184.

20 ***order of a court or tribunal*** means an order, direction or other
21 instrument made by:

- 22 (a) a court; or
23 (b) a tribunal; or
24 (c) a judge (including a judge acting in a personal capacity) or a
25 person acting as a judge; or
26 (d) a magistrate (including a magistrate acting in a personal
27 capacity) or a person acting as a magistrate; or
28 (e) a member or an officer of a tribunal;

29 and includes an order, direction or other instrument that is of an
30 interim or interlocutory nature.

31 ***organisation***: see section 17.

32 ***payment information***: see section 185.

EXPOSURE DRAFT

1 ***penalty unit*** has the meaning given by section 4AA of the *Crimes*
2 *Act 1914*.

3 ***pending correction request*** in relation to credit information or
4 CRA derived information means:

- 5 (a) a request made under subsection 121(1) in relation to the
6 information if a notice has not been given under subsection
7 122(2) or (3) in relation to the request; or
8 (b) a request made under subsection 149(1) in relation to the
9 information if:
10 (i) the credit reporting agency referred to in subsection
11 123(3) has been consulted about the request under
12 subsection 149(3); and
13 (ii) a notice has not been given under subsection 150(2) or
14 (3) in relation to the request.

15 ***pending dispute*** in relation to credit information or CRA derived
16 information means:

- 17 (a) a complaint made under section 157 that relates to the
18 information if a determination about the complaint has not
19 been made under subsection 158(4); or
20 (b) a matter that relates to the information and that is still being
21 dealt with by a recognised external dispute resolution
22 scheme; or
23 (c) a complaint made to the Information Commissioner under
24 this Act that relates to the information and that is still being
25 dealt with.

26 ***permitted CP disclosure***: see sections 137 to 141.

27 ***permitted CP use***: see section 136.

28 ***permitted CRA disclosure***: see section 109.

29 ***personal information*** means information or an opinion about an
30 identified individual, or an individual who is reasonably
31 identifiable:

- 32 (a) whether the information or opinion is true or not; and
33 (b) whether the information or opinion is recorded in a material
34 form or not.

EXPOSURE DRAFT

Part B Other relevant provisions

Division 1 Definitions

Section 180

- 1 ***personal insolvency information***: see section 186.
- 2 ***pre-screening determination*** means a determination made under
3 paragraph 110(2)(d).
- 4 ***purchase***, in relation to credit, includes the purchase of rights to
5 receive payments relating to the credit.
- 6 ***recognised external dispute resolution scheme***: see section 195.
- 7 ***record*** includes:
8 (a) a document; or
9 (b) an electronic or other device;
- 10 **but does not include:**
11 (c) a generally available publication; or
12 (d) anything kept in a library, art gallery or museum for the
13 purposes of reference, study or exhibition; or
14 (e) Commonwealth records (within the meaning of the *Archives*
15 *Act 1983*) that are in the open access period for the purposes
16 of that Act; or
17 (f) records (within the meaning of the *Archives Act 1983*) in the
18 care (within the meaning of that Act) of the National
19 Archives of Australia (the *Archives*) in relation to which:
20 (i) the Archives has entered into arrangements with a
21 person other than a Commonwealth institution (within
22 the meaning of that Act); and
23 (ii) those arrangements provide for the extent to which the
24 Archives or other persons are to have access to those
25 records; or
26 (g) documents placed by or on behalf of a person (other than an
27 agency) in the memorial collection (within the meaning of
28 the *Australian War Memorial Act 1980*); or
29 (h) letters or other articles in the course of transmission by post.
- 30 Note: For ***document***, see section 25 of the *Acts Interpretation Act 1901*.
- 31 ***related body corporate*** has the meaning given by the *Corporations*
32 *Act 2001*.
- 33 ***repayment history information***: see subsection 187(1).

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1 **residential property** has the meaning given by section 204 of the
2 National Credit Code (within the meaning of the *National*
3 *Consumer Credit Protection Act 2009*).

4 **respondent** for a complaint made under section 157 means the
5 credit reporting agency or credit provider to which the complaint is
6 made.

7 **retention period**: see sections 124 and 125.

8 **securitisation arrangement** means an arrangement:

- 9 (a) involving the funding, or proposed funding, of:
10 (i) credit that has been, or is to be, provided by a credit
11 provider; or
12 (ii) the purchase of credit by a credit provider;
13 by issuing instruments or entitlements to investors; and
14 (b) under which payments to investors in relation to such
15 instruments or entitlements are principally derived, directly
16 or indirectly, from such credit.

17 **securitisation related purpose** of a credit provider in relation to an
18 individual is the purpose of:

- 19 (a) assessing the risk in purchasing, by means of a securitisation
20 arrangement, credit that has been provided to, or applied for
21 by:
22 (i) the individual; or
23 (ii) a person for whom the individual is, or is proposing to
24 be, a guarantor; or
25 (b) assessing the risk in undertaking credit enhancement in
26 relation to credit:
27 (i) that is, or is proposed to be, purchased or funded by
28 means of a securitisation arrangement; and
29 (ii) that has been provided to, or applied for by, the
30 individual or a person for whom the individual is, or is
31 proposing to be, a guarantor.

32 **sensitive information** means personal information that is:

- 33 (a) information or an opinion about an individual's:
34 (i) racial or ethnic origin; or
-

EXPOSURE DRAFT

Part B Other relevant provisions

Division 1 Definitions

Section 180

- 1 (ii) political opinions; or
- 2 (iii) membership of a political association; or
- 3 (iv) religious beliefs or affiliations; or
- 4 (v) philosophical beliefs; or
- 5 (vi) membership of a professional or trade association; or
- 6 (vii) membership of a trade union; or
- 7 (viii) sexual orientation or practices; or
- 8 (ix) criminal record; or
- 9 (b) health information about an individual; or
- 10 (c) genetic information about an individual that is not otherwise
- 11 health information; or
- 12 (d) biometric information that is to be used for the purpose of
- 13 automated biometric verification or biometric identification;
- 14 or
- 15 (e) biometric templates.

16 ***serious credit infringement*** means:

- 17 (a) an act done by an individual that involves fraudulently
- 18 obtaining consumer credit, or attempting fraudulently to
- 19 obtain consumer credit; or
- 20 (b) an act done by an individual that involves fraudulently
- 21 evading the individual's obligations in relation to consumer
- 22 credit, or attempting fraudulently to evade those obligations;
- 23 or
- 24 (c) an act done by an individual if:
 - 25 (i) a reasonable person would consider that the act
 - 26 indicates an intention, on the part of the individual, to
 - 27 no longer comply with the individual's obligations in
 - 28 relation to consumer credit provided by a credit
 - 29 provider; and
 - 30 (ii) the provider has, after taking such steps as are
 - 31 reasonable in the circumstances, been unable to contact
 - 32 the individual about the act.

33 ***solicits***: an entity *solicits* personal information if the entity requests

34 another entity to provide the personal information, or to provide a

35 kind of information in which that personal information is included.

EXPOSURE DRAFT

Other relevant provisions **Part B**

Definitions **Division 1**

Section 180

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state of mind of a person includes:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

State or Territory authority means:

- (a) a Minister of a State or Territory; or
- (b) a Department of a State or Territory; or
- (c) a body or tribunal, whether incorporated or unincorporated, established or appointed for a public purpose by or under a law of a State or Territory, other than:
 - (i) an incorporated company, society or association; or
 - (ii) an association of employers or employees that is registered or recognised under such a law that deals with the resolution of industrial disputes; or
- (d) a body, whether incorporated or unincorporated, established or appointed, otherwise than under a law of a State or Territory, by:
 - (i) a Governor of a State; or
 - (ii) the Government of the Australian Capital Territory or the Northern Territory; or
 - (iii) the Government of Norfolk Island; or
 - (iv) a Minister of a State or Territory; or
 - (v) a person holding an executive office mentioned in section 12 of the *Norfolk Island Act 1979*; or
- (e) a person who holds or performs the duties of:
 - (i) an office established by or under a law of a State or Territory; or
 - (ii) an appointment made under such a law; other than the head of a Department of a State or Territory (however described); or
- (f) a person who holds or performs the duties of an appointment made, otherwise than under a law of a State or Territory, by:
 - (i) a Governor of a State; or
 - (ii) the Government of the Australian Capital Territory or the Northern Territory; or

EXPOSURE DRAFT

Part B Other relevant provisions

Division 1 Definitions

Section 180

- 1 (iii) the Government of Norfolk Island; or
2 (iv) a Minister of a State or Territory; or
3 (v) a person holding an executive office mentioned in
4 section 12 of the *Norfolk Island Act 1979*; or
5 (g) a court of a State or Territory.

6 ***trade insurance purpose*** of a trade insurer in relation to an
7 individual is the purpose of assessing:

- 8 (a) whether to provide insurance to, or the risk of providing
9 insurance to, a credit provider in relation to commercial
10 credit provided by the provider to the individual or another
11 person; or
12 (b) the risk of a person defaulting on commercial credit in
13 relation to which the insurer has provided insurance to a
14 credit provider.

15 ***trade insurer*** means an organisation or small business operator that
16 carries on a business or undertaking that involves providing
17 insurance to credit providers in relation to commercial credit
18 provided by providers to other persons.
19

EXPOSURE DRAFT

Other relevant provisions **Part B**
Definitions relating to credit reporting **Division 2**

Section 181

1

2 **Division 2—Definitions relating to credit reporting**

3 **Subdivision A—Credit information etc.**

4 **181 Meaning of *credit information***

5 *Credit information* about an individual is personal information
6 (other than sensitive information) that is:

- 7 (a) identification information about the individual; or
8 (b) consumer credit liability information about the individual; or
9 (c) repayment history information about the individual; or
10 (d) a statement that an information request has been made in
11 relation to the individual by a credit provider, mortgage
12 insurer or trade insurer; or
13 (e) the type of consumer credit or commercial credit, and the
14 amount of credit, sought in an application:
15 (i) that has been made by the individual to a credit
16 provider; and
17 (ii) in connection with which the provider has made an
18 information request in relation to the individual; or
19 (f) default information about the individual; or
20 (g) payment information about the individual; or
21 (h) new arrangement information about the individual; or
22 (i) court proceedings information about the individual; or
23 (j) personal insolvency information about the individual; or
24 (k) publicly available information about the individual:
25 (i) that relates to the individual's activities in Australia and
26 the individual's credit worthiness; and
27 (ii) that is not court proceedings information about the
28 individual or information about the individual that is
29 entered or recorded on the National Personal Insolvency
30 Index; or
31 (l) the opinion of a credit provider that the individual has
32 committed, in circumstances specified by the provider, a

EXPOSURE DRAFT

Part B Other relevant provisions

Division 2 Definitions relating to credit reporting

Section 182

1 serious credit infringement in relation to consumer credit
2 provided by the provider to the individual.

3 **182 Meaning of *default information***

4 *Consumer credit defaults*

- 5 (1) ***Default information*** about an individual is information about a
6 payment (including a payment that is wholly or partly a payment of
7 interest) that the individual is overdue in making in relation to
8 consumer credit that has been provided by a credit provider to the
9 individual if:
- 10 (a) the individual is at least 60 days overdue in making the
11 payment; and
 - 12 (b) the provider has given a written notice to the individual
13 informing the individual of the overdue payment and
14 requesting that the individual pay the amount of the overdue
15 payment; and
 - 16 (c) the provider is not prevented by or under any Australian law
17 from bringing proceedings against the individual to recover
18 the amount of the overdue payment; and
 - 19 (d) the amount of the overdue payment is equal to or more than:
20 (i) \$100; or
21 (ii) such higher amount as is prescribed by the regulations.

22 *Guarantor defaults*

- 23 (2) ***Default information*** about an individual is information about a
24 payment that the individual is overdue in making as a guarantor
25 under a guarantee given against any default by a person (the
26 ***borrower***) in repaying all or any of the debt deferred under
27 consumer credit provided by a credit provider to the borrower if:
- 28 (a) the provider has given the individual written notice of the
29 borrower's default that gave rise to the individual's
30 obligation to make the overdue payment; and
 - 31 (b) the notice requests that the individual pay the amount of the
32 overdue payment; and
 - 33 (c) at least 60 days have passed since the day on which the
34 notice was given; and

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- 1 (d) in addition to giving the notice, the provider has taken other
2 steps to recover the amount of the overdue payment from the
3 individual; and
4 (e) the provider is not prevented by or under any Australian law
5 from bringing proceedings against the individual to recover
6 the amount of the overdue payment.

7 **183 Meaning of *information request***

8 *Credit provider*

- 9 (1) A credit provider has made an ***information request*** in relation to
10 an individual if the provider has sought information about the
11 individual from a credit reporting agency:
12 (a) in connection with an application for consumer credit made
13 by the individual to the provider; or
14 (b) in connection with an application for commercial credit made
15 by a person to the provider; or
16 (c) for a credit guarantee purpose of the provider in relation to
17 the individual; or
18 (d) for a securitisation related purpose of the provider in relation
19 to the individual.

20 *Mortgage insurer*

- 21 (2) A mortgage insurer has made an ***information request*** in relation to
22 an individual if:
23 (a) the insurer has sought information about the individual from
24 a credit reporting agency; and
25 (b) the information was sought in connection with the provision
26 of insurance to a credit provider in relation to mortgage credit
27 provided by the provider to:
28 (i) the individual; or
29 (ii) a person for whom the individual is, or is proposing to
30 be, a guarantor.

EXPOSURE DRAFT

Part B Other relevant provisions

Division 2 Definitions relating to credit reporting

Section 184

1

Trade insurer

2

(3) A trade insurer has made an *information request* in relation to an individual if:

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(a) the insurer has sought information about the individual from a credit reporting agency; and

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(b) the information was sought in connection with the provision of insurance to a credit provider in relation to commercial credit provided by the provider to the individual or another person.

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184 Meaning of *new arrangement information*

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Consumer credit defaults

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(1) If:

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(a) a credit provider has disclosed default information about an individual to a credit reporting agency; and

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15

(b) the default information relates to a payment that the individual is overdue in making in relation to consumer credit (the *original consumer credit*) that has been provided by the provider to the individual; and

16

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18

(c) because of the individual being so overdue:

19

20

(i) the terms or conditions of the original consumer credit that relate to the repayment of the amount of credit are varied; or

21

22

23

(ii) the individual is provided with other consumer credit (the *new consumer credit*) by a credit provider that relates, wholly or in part, to that amount of credit;

24

25

26

then *new arrangement information* about the individual is a statement that those terms or conditions of the original consumer credit have been varied, or that the individual has been provided with the new consumer credit.

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Serious credit infringements

31

(2) If:

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(a) a credit provider is of the opinion that an individual has committed a serious credit infringement in relation to

33

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- 1 consumer credit (the *original consumer credit*) provided by
2 the provider to the individual; and
3 (b) the provider has disclosed the opinion to a credit reporting
4 agency; and
5 (c) because of the provider having that opinion:
6 (i) the terms or conditions of the original consumer credit
7 that relate to the repayment of the amount of credit are
8 varied; or
9 (ii) the individual is provided with other consumer credit
10 (the *new consumer credit*) by a credit provider that
11 relates, wholly or in part, to that amount of credit;
12 then *new arrangement information* about the individual is a
13 statement that those terms or conditions of the original consumer
14 credit have been varied, or that the individual has been provided
15 with the new consumer credit.

16 **185 Meaning of *payment information***

- 17 If:
18 (a) a credit provider has disclosed default information about an
19 individual to a credit reporting agency; and
20 (b) on a day after the default information was so disclosed, the
21 amount of the overdue payment to which the information
22 relates is paid;
23 then *payment information* about the individual is a statement that
24 the amount of the overdue payment has been paid on that day.

25 **186 Meaning of *personal insolvency information***

- 26 (1) *Personal insolvency information* about an individual is
27 information:
28 (a) that is entered or recorded in the National Personal
29 Insolvency Index; and
30 (b) that relates to:
31 (i) a bankruptcy of the individual; or
32 (ii) a debt agreement proposal given by the individual; or
33 (iii) a debt agreement made by the individual; or

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- 1 (iv) a personal insolvency agreement executed by the
2 individual; or
3 (v) a direction given, or an order made, under section 50 of
4 the Bankruptcy Act that relates to the property of the
5 individual; or
6 (vi) an authority signed under section 188 of that Act that
7 relates to the property of the individual.
- 8 (2) Despite subparagraph (1)(b)(i), the personal insolvency
9 information about the individual must not relate to:
10 (a) the presentation of a creditor's petition against the individual;
11 or
12 (b) an administration under Part XI of the Bankruptcy Act of the
13 individual's estate.
- 14 (3) An expression used in paragraph (1)(b) or (2)(a) that is also used in
15 the Bankruptcy Act has the same meaning in that paragraph as it
16 has in that Act.

187 Meaning of *repayment history information*

- 18 (1) If a credit provider provides consumer credit to an individual, the
19 following information about the consumer credit is ***repayment***
20 ***history information*** about the individual:
21 (a) whether or not the individual has met an obligation to make a
22 monthly payment that is due and payable in relation to the
23 consumer credit;
24 (b) the day on which the monthly payment is due and payable;
25 (c) if the individual makes the monthly payment after the day on
26 which the payment is due and payable—the day on which the
27 individual makes that payment.
- 28 (2) The regulations may make provision in relation to:
29 (a) whether or not an individual has met an obligation to make a
30 monthly payment that is due and payable in relation to
31 consumer credit; and
32 (b) whether or not a payment is a monthly payment.

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1 **Subdivision B—Credit provider**

2 **188 Meaning of *credit provider***

3 *General*

4 (1) Each of the following is a ***credit provider***:

- 5 (a) a bank;
- 6 (b) an organisation or small business operator if:
- 7 (i) the organisation or operator carries on a business or
- 8 undertaking; and
- 9 (ii) a substantial part of the business or undertaking is the
- 10 provision of credit;
- 11 (c) an organisation or small business operator:
- 12 (i) that carries on a retail business; and
- 13 (ii) that, in the course of the business, issues credit cards to
- 14 individuals in connection with the sale of goods, or the
- 15 supply of services, by the organisation or operator (as
- 16 the case may be);
- 17 (d) an agency, organisation or small business operator:
- 18 (i) that carries on a business or undertaking that involves
- 19 providing credit; and
- 20 (ii) that is prescribed by the regulations.

21 *Other credit providers*

22 (2) If:

- 23 (a) an organisation or small business operator (the ***supplier***)
- 24 carries on a business or undertaking in the course of which
- 25 the supplier provides credit in connection with the sale of
- 26 goods, or the supply of services, by the supplier; and
- 27 (b) the repayment, in full or in part, of the amount of credit is
- 28 deferred for at least 7 days; and
- 29 (c) the supplier is not a credit provider under subsection (1);
- 30 then the supplier is a ***credit provider*** but only in relation to the
- 31 credit.

32 (3) If:

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- 1 (a) an organisation or small business operator (the *lessor*) carries
2 on a business or undertaking in the course of which the lessor
3 provides credit in connection with the hiring, leasing or
4 renting of goods; and
5 (b) the credit is in force for at least 7 days; and
6 (c) no amount, or an amount less than the value of the goods, is
7 paid as a deposit for the return of the goods; and
8 (d) the lessor is not a credit provider under subsection (1);
9 then the lessor is a *credit provider* but only in relation to the credit.

- 10 (4) An organisation or small business operator is a *credit provider* if
11 subsection 189(1), 190(1) or 191(1) provides that the organisation
12 or operator is a credit provider.

13 *Exclusions*

- 14 (5) Despite subsections (1) to (4) of this section, an organisation or
15 small business operator acting in the capacity of:
16 (a) a real estate agent; or
17 (b) a general insurer (within the meaning of the *Insurance Act*
18 *1973*); or
19 (c) an employer of an individual;
20 is not a *credit provider* while acting in that capacity.
- 21 (6) Despite subsections (1) to (4) of this section, an organisation or
22 small business operator is not a *credit provider* if it is included in a
23 class of organisations or operators prescribed by the regulations.

24 **189 Agents of credit providers**

- 25 (1) If an organisation or small business operator (the *agent*) is acting
26 as an agent of a credit provider (the *principal*) in performing, on
27 behalf of the principal, a task that is reasonably necessary:
28 (a) in processing an application for credit made to the principal;
29 or
30 (b) in managing credit provided by the principal;
31 then, while the agent is so acting, the agent is a *credit provider*.

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- 1 (2) Subsection (1) does not apply if the principal is an organisation or
2 small business operator that is a credit provider because of a
3 previous application of that subsection.
- 4 (3) If subsection (1) applies in relation to credit that has been provided
5 by the principal, the credit is taken, for the purposes of this Act, to
6 have been provided by both the principal and the agent.
- 7 (4) If subsection (1) applies in relation to credit for which an
8 application has been made to the principal, the application is taken,
9 for the purposes of this Act, to have been made to both the
10 principal and the agent.

11 **190 Securitisation arrangements etc.**

- 12 (1) If:
- 13 (a) an organisation or small business operator (the *securitisation*
14 *entity*) carries on a business that is involved in either or both
15 of the following:
16 (i) a securitisation arrangement;
17 (ii) managing credit that is the subject of a securitisation
18 arrangement; and
19 (b) the securitisation entity performs a task that is reasonably
20 necessary for:
21 (i) purchasing, funding or managing, or processing an
22 application for, credit by means of a securitisation
23 arrangement; or
24 (ii) undertaking credit enhancement in relation to credit;
25 and
26 (c) the credit has been provided by, or is credit for which an
27 application has been made to, a credit provider (the *original*
28 *credit provider*);
29 then, while the securitisation entity performs such a task, the
30 securitisation entity is a *credit provider*.
- 31 (2) Subsection (1) does not apply if the original credit provider is an
32 organisation or small business operator that is a credit provider
33 because of a previous application of that subsection.

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Section 191

- 1 (3) If subsection (1) applies in relation to credit that has been provided
2 by the original credit provider, the credit is taken, for the purposes
3 of this Act, to have been provided by both the original credit
4 provider and the securitisation entity.
- 5 (4) If subsection (1) applies in relation to credit for which an
6 application has been made to the original credit provider, the
7 application is taken, for the purposes of this Act, to have been
8 made to both the original credit provider and the securitisation
9 entity.

10 **191 Acquisition of the rights of a credit provider**

- 11 (1) If:
12 (a) an organisation or small business operator (the *acquirer*)
13 acquires, whether by assignment, subrogation or any other
14 means, the rights of a credit provider (the *original credit*
15 *provider*) in relation to the repayment of an amount of credit;
16 and
17 (b) the acquirer is not a credit provider under subsection 188(1);
18 then the acquirer is a *credit provider* but only in relation to the
19 credit.
- 20 (2) If subsection (1) of this section applies in relation to credit that has
21 been provided by the original credit provider, the credit is taken,
22 for the purposes of this Act, to have been provided by the acquirer.
- 23 (3) If subsection (1) of this section applies in relation to credit for
24 which an application has been made to the original credit provider,
25 the application is taken, for the purposes of this Act, to have been
26 made to the acquirer.

27 **Subdivision C—Other definitions**

28 **192 Meaning of *access seeker***

- 29 (1) An *access seeker* in relation to credit reporting information, or
30 credit eligibility information, about an individual is:
31 (a) the individual; or
32 (b) a person:

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- 1 (i) who is assisting the individual to deal with a credit
2 reporting agency or credit provider; and
3 (ii) who is authorised, in writing, by the individual to make
4 a request in relation to the information under subsection
5 119(1) or 146(1).
- 6 (2) An individual must not authorise a person under
7 subparagraph (1)(b)(ii) if the person is:
8 (a) a credit provider; or
9 (b) a mortgage insurer; or
10 (c) a trade insurer; or
11 (d) a person who is prevented from being a credit provider by
12 subsection 188(5) or (6).

13 **193 Meaning of *credit* and *amount of credit***

- 14 (1) ***Credit*** is a contract, arrangement or understanding under which:
15 (a) payment of a debt owed by one person to another person is
16 deferred; or
17 (b) one person incurs a debt to another person and defers the
18 payment of the debt.
- 19 (2) The ***amount of credit*** is the amount of the debt that is actually
20 deferred, or that may be deferred, but does not include any fees or
21 charges payable in connection with the deferral of the debt.
- 22 (3) Without limiting subsection (1), ***credit*** includes:
23 (a) a hire-purchase agreement; and
24 (b) a contract, arrangement or understanding of a kind referred to
25 in that subsection that is for the hire, lease or rental of goods,
26 or for the supply of services, other than a contract,
27 arrangement or understanding under which:
28 (i) full payment is made before, or at the same time as, the
29 goods or services are provided; and
30 (ii) in the case of goods—an amount greater than, or equal
31 to, the value of the goods is paid as a deposit for the
32 return of the goods.

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Part B Other relevant provisions

Division 2 Definitions relating to credit reporting

Section 194

1 **194 Meaning of *credit reporting business***

- 2 (1) A ***credit reporting business*** is a business or undertaking:
- 3 (a) that is carried on in Australia; and
- 4 (b) that involves collecting, holding, using or disclosing personal
- 5 information about individuals for the purpose of, or for
- 6 purposes including the purpose of, providing an entity with
- 7 information about the credit worthiness of an individual.
- 8 (2) Subsection (1) applies whether or not the information about the
- 9 credit worthiness of an individual is:
- 10 (a) provided for profit or reward; or
- 11 (b) provided, or intended to be provided, for the purposes of
- 12 assessing an application for consumer credit.
- 13 (3) In determining whether a business or undertaking carried on by a
- 14 credit provider is a credit reporting business, disregard the
- 15 provision of information about the credit worthiness of an
- 16 individual to a related body corporate by the provider.
- 17 (4) Despite subsection (1), a business or undertaking is not a ***credit***
- 18 ***reporting business*** if the business or undertaking is included in a
- 19 class of businesses or undertakings prescribed by the regulations.

20 **195 Meaning of *recognised external dispute resolution scheme***

- 21 (1) A credit reporting agency is a member of a ***recognised external***
- 22 ***dispute resolution scheme*** if the agency is a member of one or
- 23 more external dispute resolution schemes that is, or are, recognised
- 24 by the Information Commissioner under this Act.
- 25 (2) A credit provider is a member of a ***recognised external dispute***
- 26 ***resolution scheme*** if the provider is a member of one or more
- 27 external dispute resolution schemes that is, or are, recognised by
- 28 the Information Commissioner under this Act.