

ATTACHMENT A

CONSULTATION DRAFT CREDIT REPORTING CODE: FEEDBACK FROM THE OFFICE OF THE TELECOMMUNICATIONS INDUSTRY OMBUDSMAN (MAY 2013)

Clause	Privacy Act, Current Credit Code, Explanatory Memo 2012	Draft CR Code 2013	Explanation	TIO Comment/Suggestion or Question
Introduction	Part IIIA, Part IIIB Div 3	1. Introduction The Privacy Act 1988 (Privacy Act) sets out in Part IIIA (Part IIIA) requirements applicable to credit reporting. Among other things, Part IIIA restricts the types of credit information that may be collected and reported to Credit Reporting Bodies (CRBs), the circumstances in which that information may be made available to Credit Providers (CPs) and affected information recipients and the uses they may make of that information. The Act contemplates that a registered CR Code will further define CRBs', CPs', and affected information recipients' obligations. CR Code obligations are binding - a breach of the CR Code is a breach of the Privacy Act. The CR Code is approved and overseen by the Information Commissioner.		<p>We are pleased that the Introduction provides an outline of the purpose of the Code and how the Privacy Act – specifically Part IIIA – relates to this. We suggest that the Introduction sets out the objectives of the credit reporting system and promotes the adoption of a culture consistent with the objectives.</p>
1.1	Sec 26N(2) Explanatory Memorandum p. 208	This CR Code binds all CRBs, CPs and affected information recipients .	Ensures consistency in the language used in the Code and the Act	We note that the current CR Code did not mention which entities are bound by it. We are pleased that the draft Code specifically outlines the type of entities that it will cover.
1.2	Para 4.4 of current Code	1.2 In this Code: (a) A term that is used in this CR Code and is defined in the Privacy Act has the meaning given to it in the Privacy Act and other grammatical forms of defined words or expressions have corresponding meanings (b) A reference to a Section is a reference to a section of the Privacy Act. (new) (c) An “ acceleration clause ” is a term in a contract for credit that gives the CP an entitlement to immediate payment or a discretion to require immediate payment of all or part of the	By way of example, an acceleration clause may entitle a CP to demand immediate payment of the full amount of the credit if the individual to whom the credit has been provided fails to make a payment when due.	<p>We suggest that there should be cross references in these clauses of the draft Code (eg sub-clauses 1.2(g), (h)) to the specific provisions under Part IIIA of the Act where relevant.</p> <p>We also suggest that for sub-clause 1.2(c) any contracts or information provided to a consumer at the point of sale or prior to a contract being</p>

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		<p>amount that under the contract would not otherwise have been payable.</p> <p>(d) An “<i>acquirer</i>” means an organisation or small business operator that acquires the rights of repayment of a CP whether by assignment, subrogation or any other means.</p> <p>(e) “<i>Credit reporting data</i>” means <i>credit information, credit reporting information, credit eligibility information or regulated information</i> as applicable in the context.</p> <p>(f) Information has “data integrity” if it is accurate, up-to-date and complete.</p> <p>(g) An obligation on a CRB to “destroy” credit information or credit reporting information (other than for the purposes of paragraph 5.4 of this CR Code) requires the CRB:</p> <p>(i) to omit the relevant credit information from the databases that it utilises for the purposes of making permitted CRB disclosures under Part IIIA;</p> <p>(ii) to cease from that point in time generating any CRB derived information from that omitted credit information; and</p> <p>(iii) to refrain from that point in time from disclosing to any person the omitted information or CRB derived information from that omitted credit information, but does not oblige the CRB to alter its records of historical dealings in relation to the destroyed information which can be retained for audit purposes until the retention period for the information ends.</p> <p>(h) An obligation on a CP to “destroy” credit reporting information or credit eligibility information includes an</p>	<p>(e) This term is being used to help simplify the language used in the Code and to aid comprehension. (As drafting progresses, other specially defined terms may also be utilised.)</p> <p>(g) Consistent with the language of Part IIIA, the CR Code refers to a CRB “destroying” information. The definition of “destroy” is included to make it clear that the CRB destroys information when the CRB removes the information from its database.</p>	<p>entered into should include and highlight any acceleration clauses and the impact of such clauses on payments due if the clause is triggered.</p> <p>For sub-clause 1.2(e) we suggest that <i>consumer credit liability information</i> should be included under the meaning of “<i>credit reporting data</i>”.</p>

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		<p>obligation on the CP:</p> <p>(i) to cease from that point in time generating any CP derived information from the destroyed information; and</p> <p>(ii) to refrain from that point in time from disclosing to any person the destroyed information or CP derived information from that destroyed information, but does not oblige the CP to alter its records of historical dealings in relation to the destroyed information which can be retained for audit purposes until the retention period for the information ends.</p> <p>(i) A “section 6Q notice” is a written notice that is given by a CP to an individual pursuant to Section 6Q(b) requesting the individual to pay the overdue amount specified in the notice.</p> <p>(j) A “transfer event” is an event whereby the rights of a CP in relation to the repayment of an amount of consumer credit are acquired by an acquirer, whether by assignment, securitisation, subrogation or any other means.</p>		
2. Credit reporting system arrangements	Sections 20N(3) and 20Q(2)	Introduction: Part IIIA requires CRBs to enter into written contracts with CPs that require CPs to ensure that <i>credit information</i> that they disclose to CRBs is accurate, up-to-date and complete and <i>credit reporting information</i> provided by CRBs to CPs is properly protected.		We are pleased that the draft Code references the specific part of the Act which is relevant here and that the regularly auditing of CPs has its own reference (clause 24).
2.1	Sections 20N(3) and 20Q(2) p.145 explanatory memo	An agreement entered into by a CRB with a CP to meet the requirements of Section 20N(3) and Section 20Q(2) must oblige both parties to comply to the extent applicable from time to time with Part IIIA, the Regulations made for the purposes of that Part and the CR Code.	This ensures that a CRB is able to enforce the obligations a CP incurs under this Code – and vice versa.	The current Code makes little reference to CRBs and CPs setting expectations or requiring each other to act in accordance with the Act. This clause provides for each party taking responsibility to enforce obligations

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2.2	Section 20N(3)	Where a CP has entered into an agreement with a CRB pursuant to which the CP has disclosed consumer credit liability information and/or default information to a CRB, the CP must not terminate its agreement with the CRB until the end of the retention period for that consumer credit liability information and/or default information .	This ensures that there is a current CRB/ CP agreement in place as required by Section 20N(3)(a) pursuant to which the CP may report to the CRB credit termination information (see paragraph (g) of the definition of consumer credit liability information) and payment information (see Section 21E). This provision would not, however, prevent a CP and CRB agreeing to a variation of the commercial terms of the agreement.	<p>under the Code upon each other.</p> <p>We suggest that this clause needs to be refined to ensure that the ongoing agreement relates only to the existing credit information.</p> <p>We note that this clause's application is narrower than the broader obligation under Section 20N(3). Is this intended?</p> <p>Does this clause also relate to Section 20Q(2)?</p>
2.3 a&b	4.1 of current code	CRBs, CPs, mortgage insurers and trade insurers must take reasonable steps: (a) to inform employees, who deal with credit reporting data , of the requirements of Part IIIA and this CR Code that relate to information of these type; and (b) to train employees, who deal with credit reporting data , in the practices, procedures and systems that are designed to achieve compliance with those requirements.	This establishes an obligation on those bound by the Code to train relevant employees about the Code.	We note that this clause appears to strengthen the current measures that CRBs and CPs must take in relation staff training. We suggest that in any staff training undertaken relating to the practices, procedures and systems developed to achieve compliance, particular reference should be made to the importance of complaint handling, complaint escalation and referral to external dispute resolutions schemes or the Commissioner as appropriate.

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3. Open and transparent management of credit reporting information	Section 20B, Section 21B and Section 22A	Introduction: Part IIIA obliges each CRB, CP and affected information recipient to have a clearly expressed and up to date written policy about their management of credit reporting data including the types of information they collect, how they collect and hold that information, what they use that information for and to whom the information is disclosed. This policy must be made freely available. They must also take reasonable steps to implement practices, procedures and systems to ensure compliance with their credit reporting obligations under Part IIIA and this CR Code .		<p>We note that this clause does not comprehensively set out the scope of the policy as outlined under Section 20B(4), 21B(4) and 22H, particularly about:</p> <ul style="list-style-type: none"> • what is derived from any collected information; • access to information; • correction of information; and • making complaints. <p>We suggest that the introduction to clause 3 includes the above.</p>
3.1 Code Obligations	Section 20B(5)&(6) p. 131 explanatory memo 1.6 of current code	A CRB must publish on its website its policy about the management of credit reporting information that is required by Section 20B(4).	<p>This specifies one way in which CRBs must make their credit reporting management policy publicly available. (Website publication does not, however, relieve a CRB of the obligation under Part IIIA to take reasonable steps to give the policy to a person on request in the requested form.)</p> <p>CPs may determine for themselves the way in which they will fulfil their obligation under Part IIIA to make their policies publicly available.</p>	<p>We note that the clause only requires CRBs to publish its policy on a website. Should the clause also apply to CPs and affected information recipients noting the obligations under section 21(B)(4) and section 22A(4) (we note that the Explanatory Notes appear to include CPs)? If so, our comments below also apply to CPs and affected information recipients.</p> <p>We note that the published information is only required to be what is relevant under Section 20B(4) and that this expands on the current CR Code's obligation to ensure that</p>

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				<p>information is freely available and obtainable by those requesting it.</p> <p>We suggest that the draft Code should set out that a CRB's policy on the management of credit reporting information should be available in a prominent or easy to find place on the CRB's website.</p> <p>We suggest that the draft Code sets out a standard timeframe for the policy to be issued if requested by an individual – for example, within 10 business days.</p> <p>We suggest that the draft Code sets out that the policy be made available in languages other than English if requested by an individual or the advocate of an individual. The CRB's website might include a broad overview of its policy and information on how to obtain a full copy in the required language.</p>
4. Information Collection Procedures		<p>Introduction: Part IIIA obliges CPs to notify or ensure individuals are aware at time of collection of personal information that the CP is likely to disclose to a CRB:</p> <p>(a) of the CRBs with which the CP deals; and</p>		<p>The introduction appears to be missing some words or is unclear. Please clarify this.</p>

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4.1	Sec 21C, Explanatory Memorandum p.160	<p>(b) other matters required by the CR code.</p> <p>At or before the time a CP collects personal information from an individual that the CP is likely to disclose to a CRB, the CP must notify or otherwise ensure that the individual is made aware of the following matters in addition to the matters specified in Section 21C(1)(a):</p> <p>(a) how that information will be held by the CP;</p> <p>(b) to whom the CP may disclose the information and the purposes for which it may be used;</p> <p>c) how the individual may obtain the CP's policy about the management of credit reporting data required by Section 21B and the CRB's policy about the management of credit reporting data required by Section 20B;</p> <p>(d) the individual's rights to access the information from the CP, to request the CP to correct the information and to make a complaint to the CP;</p> <p>(e) the individual's right to inform CRBs that they do not want their credit reporting information to be used for the purposes of pre-screening of direct marketing by a CP and how this right may be exercised; and</p> <p>(f) the individual's right to request the CRB not to use or disclose credit reporting information about the individual, if the individual believes on reasonable grounds that the individual has been or is likely to be a victim of fraud.</p>	<p>This requires a CP to provide important information to a person from whom credit information is collected i.e. information in addition to that required by the legislation to be given. The CP's options as to how to convey the required information include arranging for a third party to notify the individual.</p>	<p>Although envisaged by section 21C, we do not believe that providing this information <i>at the time</i> of collecting credit information will be sufficient for individuals to absorb all six sub-clauses and what these mean. We suggest that the draft Code sets out that this information should be given to and acknowledged by an individual <i>before</i> the CP collects credit information.</p> <p>Further, we consider that there is a lot of information for both CPs to deliver and individuals to understand. We suggest that the draft Code be more specific about how this information will be provided – for example, will there be an information pack given with the contract and acknowledged as having been received by the individual?</p> <p>We suggest that the clause clearly explains and the Explanatory Notes provide examples as to how a CP can ensure a third party will convey this information to the relevant</p>

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				individual. The CPs obligations if using a third party or agent should also be set out in the draft Code.
4.2	Sec 21C, Explanatory Memorandum p.160	A CP may comply with the obligations in Section 21C(1)(a) and paragraph 4.1 of this CR Code to notify or make an individual aware of specified matters (the “notifiable matters”) by: (a) publishing a clearly expressed statement of the notifiable matters on its website; and (b) at or before the time of collection of the personal information from the individual notify the individual: (i) that the CP’s website includes information about credit reporting including the CRBs to which the CP is likely to disclose the individual’s credit information; and (ii) how to access that information on the CP’s website.	This provides one option as to how the CP may make an individual aware of notifiable matters. The website statement could be a special purpose statement for the purposes of information collection. Alternatively the CP could utilise its credit reporting data management policy required by Section 21B (which will in any event cover some of those matters) as a vehicle for making the disclosure. For an APP entity, it would also be possible for the Section 21B policy to be combined with the policy required by Australian Privacy Principles 1.3 and 1.4	We suggest that if a CP publishes notifiable matters on its website, the draft Code should set out that this information must be easily accessible and obtainable. Further, we consider this information should be provided to the individual <i>before</i> the collection of personal information occurs. We suggest that the Code should prescribe that an individual or advocate can request the “statement of notifiable matters” in a language other than English. We also suggest that an example of a notification should be included in the Explanatory Notes.
5. Types of credit information	Sec 6N	Introduction: Types of credit information Part IIIA permits CRBs, subject to conditions, to collect and disclose the following types of credit information : (a) identification information about the individual; (b) consumer credit liability information about the individual; (c) repayment history information about the individual; (d) a statement that an information request has been made		

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		<p>in relation to the individual by a CP, mortgage insurer or trade insurer;</p> <p>(e) the type of consumer credit or commercial credit and amount of credit sought in an application to a CP and in connection with which the CP has made an information request;</p> <p>(f) default information in relation to an individual;</p> <p>(g) payment information about the individual;</p> <p>(h) new arrangement information about the individual;</p> <p>(i) court proceedings information about the individual;</p> <p>(j) personal insolvency information about the individual;</p> <p>(k) publicly available information as to the individual's credit worthiness (subject to some exceptions); or</p> <p>(l) the CP's opinion that the individual has committed a serious credit infringement in relation to consumer credit provided by the CP to the individual.</p>		
5.1	Section 21D, Section 20C	<p>(a) A CRB must not collect personal information in relation to consumer credit, if that personal information does not constitute credit information unless:</p> <p>(i) the CRB collects the personal information for administrative purposes only ("administrative information"); and</p> <p>(ii) the CRB does not include the administrative information when the CRB discloses credit reporting information to a CP or affected information recipient.</p> <p>(b) A CP must not disclose to a CRB personal information in relation to consumer credit, if that personal information does not constitute credit information unless:</p> <p>(i) the information is administrative information; and</p>	Paragraph 5.1 fulfils the intent of the legislation that a CRB cannot collect information about CPs' provision of consumer credit, other than the types of information specifically enumerated in the legislation.	<p>We note that it is unclear whether sections 20C and 21D envisage the permitted collection of credit information for "administrative purposes".</p> <p>We note sub-clause 5.1(a)(i) indicates that a CRB must not collect personal information unless the information is for "administrative purposes only". We are unsure what would fall within the ambit of "administrative purposes" and suggest that this be</p>

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		(ii) the CRB does not include that administrative information when it discloses credit reporting information to a CP or affected information recipient.		explained in the draft Code or Explanatory Notes. Further, we suggest that if personal information is to be collected for “administrative purposes”, the draft Code outlines that individuals must be informed about what those purposes are, how the information will be used and that this should be clearly outlined in the CRB’s/CP’s policy.
5.2	Section 20(N) paragraph 2.4, 2.5 and 2.6 of current code	A CP must have adequate practices, procedures and systems, given the size and complexity of its business, in place to: (a) ensure that it only discloses information to a CRB that it is entitled under Part IIIA and this CR Code to disclose; (b) promptly advise the relevant CRB if the CP becomes aware that it has disclosed information to the CRB that is not permitted by Part IIIA or this CR Code to be disclosed; (c) ensure the data integrity of disclosed credit information ; (d) if it identifies data integrity issues in credit information that it has disclosed to a CRB: (i) promptly advise the CRB of those issues; and (ii) take such steps as are reasonable in the circumstances to rectify those issues; (e) promptly advise the relevant CRB if the CP becomes aware of data integrity issues in credit reporting information disclosed to it by the CRB;	This provides more detail as to what a CP must do to assist with data integrity pertaining to consumer credit-related information. The obligation is scaleable ie to have reasonable practices etc given the CP’s circumstances. It will not be a breach of the Code if a CP, for example, occasionally inadvertently discloses information to a CRB that it is not permitted by the Act and this CR Code to disclose. By way of implementation guidance, it is intended that the Explanatory Notes will include examples of situations where a CP would be expected to notify a CRB of data integrity issues,	We suggest that “...given the size and complexity of the business...” is removed. We do not consider that the size of the business should be relevant to ensuring that a CP has adequate practices, procedures and systems for compliance with privacy obligations. The obligations should be the same irrespective of the size or complexity of the business, although we acknowledged that the level of details and controls around its practices, procedures and systems may differ from business to business. We note that the Explanatory Notes indicate that it would not be a breach

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		<p>(f) where requested by a CRB:</p> <p>(i) review its credit reporting data management practices, procedures and systems to assess the data integrity of credit information it has disclosed to CRBs;</p> <p>(ii) take such steps as are reasonable in the circumstances to rectify any data integrity issues that are identified; and</p> <p>(iii) advise the CRB of the results of the review and action taken to rectify data integrity issues; and</p> <p>(g) otherwise provide reasonable assistance to CRBs to maintain data integrity and to rectify any issues that are detected.</p>	<p>for example, where the CP becomes aware that a CRB has multiple records in relation to the same individual.</p>	<p>of the Code should a CP “inadvertently disclose information...”. We suggest that this should be removed given the intent of clause 5.2 is to ensure that CPs have practices, procedures and systems in place to ensure that this does not happen.</p> <p>We suggest that sub-clauses (e) and (f) include a timeframe so that a CP is aware of its obligation to advise the relevant CRB if it becomes aware of any data integrity issues and review and rectify this issue. For example the sub-clauses could require a CP should advise a CRB within 2 business days once it becomes aware of and 10 business days to review and rectify, any data integrity issues.</p>
5.3	Section 20(N) p.30 explanatory memo paragraphs 1.3 and 1.4 of current code	<p>A CRB must have adequate practices, procedures and systems to:</p> <p>(a) use the information disclosed by CPs in relation to individuals’ dates of birth to identify any information disclosed by the CP that relates to an act, omission, matter or thing that occurred or existed before the relevant individual turned 18 and so that this is not permitted under Part IIIA to be disclosed by the CP to the CRB;</p> <p>(b) promptly assess collected information and destroy</p>	<p>Paragraph 5.3 applies only to a CRB’s activities that are regulated under Part IIIA. It does not apply to a CRB’s collection and use of information about commercial credit. Paragraph 5.3 provides more detail as to what a CRB must do to comply with its legislative obligation to ensure that credit reporting</p>	<p>We suggest that the draft Code requires CPs to ensure that if an individual is under 18 when obtaining credit, they are advised at the point of sale that information regarding the credit will be applied to their credit history once they turn 18.</p> <p>We suggest that the draft Code sets</p>

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		<p>information that the CRB is not permitted under Part IIIA and this CR Code to collect;</p> <p>(c) promptly notify the relevant CP where information is destroyed on the basis that Part IIIA does not permit the CRB to collect that information;</p> <p>(d) undertake regular testing and analysis of the credit information that the CRB holds and uses to identify data integrity issues;</p> <p>(e) rectify any data integrity issues that are identified through its regular testing or otherwise, including destroying any information held by the CRB that the CRB is not entitled to collect under Part IIIA and this CR Code;</p> <p>(f) raise with the relevant CP any identified data integrity issues in credit information disclosed by the CP and, where appropriate, request the CP to:</p> <p>(i) review its credit information management practices, procedures and systems;</p> <p>(ii) rectify any data integrity issues that are identified; and</p> <p>(iii) advise the CRB of the results of the review; and</p> <p>(g) where advised by a CP of data integrity issues in credit reporting information provided by the CRB to the CP:</p> <p>(i) promptly review its credit reporting information practices, procedures and systems and take such steps as are reasonable in the circumstances to rectify any data integrity issues that are identified; and</p> <p>(ii) advise the CP of the results of the review and action taken to rectify data integrity issues</p>	<p>information is accurate, up-to-date and complete and that it does not collect information that is prohibited to be collected.</p> <p>Para (a) requires a CRB to have practices, procedures and systems that aim to identify information about minors that the CRB is not permitted to hold. Note, however, that Section 20C(5) and (6) permit a CRB to hold some information that pertains to the period before the individual turned 18.</p> <p>For para (c), a system generated error message could be the vehicle for notifying a CP where it provides information that is not permitted to be collected.</p> <p>Further guidance for CRBs would be possible in the Explanatory Notes, for example:</p> <ul style="list-style-type: none"> • CRB's testing should look for CP data that is not consistent with usual pattern of reporting and which may be indicative of processing errors. • Testing should aim to identify multiple records of the same individual or the same credit that are not linked together in a way that 	<p>out timeframes for sub-clauses (c), (e), (f) and (g). Specifically, the draft Code should prescribe a timeframe for rectifying data integrity issues.</p>

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			<p>facilitates complete information being provided in relation to the individual or that credit</p> <ul style="list-style-type: none"> • Corrections and complaints data should be used as a source of intelligence to identify likely weaknesses e.g. incorrect approach taken to what is a serious credit infringement. 	
6.Consumer credit liability information		<p>Introduction: The information that Part IIIA permits CRBs, subject to conditions, to collect and disclose includes consumer credit liability information –this is defined as:</p> <p>(a) the name of the CP;</p> <p>(b) whether the CP is a licensee;</p> <p>(c) the type of consumer credit;</p> <p>(d) the day the consumer credit is entered into;</p> <p>(e) certain of the terms or conditions of the consumer credit prescribed by the Regulations;</p> <p>(f) the maximum amount of available credit;</p> <p>(g) the day on which the consumer credit is terminated or otherwise ceases to be in force.</p>		
6.1	Sec 6(1) definitions of consumer credit liability information p.103 explanatory	CRBs must develop and maintain in conjunction with CPs common descriptors of the types of consumer credit so that these descriptors can be used by CPs when disclosing to CRBs information about the type of consumer credit that they have provided to individuals. The purpose of the descriptors is to enable consumer credit to be classified in relation to matters such as industry, purpose of credit and nature of	<p>This enables industry standards to be the vehicle for specifying ways of classifying consumer credit. To give an example of the extent of classification and detail:</p> <ul style="list-style-type: none"> • Telephone-related credit could be classified as: industry - 	We suggest that common descriptors of consumer credit should sit in a guideline so that these are standardised and can be used consistently by all CRBs and CPs. This sub-clause should not give rise to different descriptors being developed

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	memo	credit.	telecommunications, purpose of credit –telecommunications services, and nature of credit – unsecured, revolving credit; or <ul style="list-style-type: none"> • A home mortgage could be classified as: industry - finance, purpose of credit - housing loan, nature of credit – secured, fixed credit, principal and interest repayments. 	or used.
6.2	Sec 6(1) definitions of consumer credit liability information p.103 &162 explanatory memo	When consumer credit liability information is either collected or disclosed in accordance with Part IIIA: (a) “the day the consumer credit is entered into” is the day that, under the terms and conditions of the consumer credit , the credit is made available to the individual; (b) “the maximum amount of credit available” is: (i) where no credit limit applies to revolving credit or a charge card contract – no fixed limit; (ii) in the case of revolving credit with a credit limit - the credit limit applicable to that credit from time to time; (iii) in the case of credit where the principal amount is not repayable until a fixed date and, until that time, payments of interest only are required to be made - the principal amount of the credit ; (iv) in the case of credit where payments of the principal amount must be made throughout the term of the credit - the amount as at the day the credit is entered into (or, if applicable, as at the date that the CP increases that amount) that is the maximum amount that the	This further defines various limbs of the definition in the legislation of “consumer credit liability information”. Para (a) defines how to determine what is “the day the consumer credit is entered into” and provides that the terms of the consumer credit facility are determinative of this. For example, depending upon the terms, credit may be available to the individual when: <ul style="list-style-type: none"> • the borrower delivers their signed acceptance of the lender’s offer; • the borrower accepts the lender’s offer by making the first drawdown on a credit facility; • the lender issues a credit card; or • the lender first charges a fee for 	We suggest that the draft Code or its Explanatory Notes provide further guidance or examples to clarify “the day the consumer credit is entered into”. For telecommunications services, we need to be sure whether this is interpreted as: <ul style="list-style-type: none"> • when the contract is signed or verbal agreement is given for solicited sales or after the cooling off period expires for unsolicited sales; • when the service is activated; or • when the individual begins to use the service. <p>We note that sub-clause 6.2(c) appears to be unclear (highlighted in yellow). Please let us know what this</p>

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		<p>individual is entitled to have outstanding as at that date;</p> <p>(v) in the case of credit provided for the purposes of the acquisition of particular goods or services – the applicable credit limit;</p> <p>(vi) in the case of credit provided by a supplier of goods and services where the contract specifies the amount of the credit or the credit limit - that amount;</p> <p>(vii) in the case of credit provided by a supplier of goods and services where the contract does not specify the amount of the credit or a credit limit and the amount to be paid depends upon the extent to which goods or services are obtained or used - the total amount that the supplier reasonably expects will be paid by the acquirer of the goods or services over the period of the contract; and</p> <p>(c) “the day credit is terminated or otherwise ceases to be in force” is the day that under the relevant contract, arrangement or understanding debt is no longer available to the individual by reason of:</p> <p>(i) the payment by the individual of all amounts required to be paid in respect of the credit either in full or in accordance with a settlement agreed with the CP, without entitlement by the individual to incur and defer any further debt to the CP under that contract, arrangement or understanding; or</p> <p>(ii) the CP irrevocably terminating the relevant contract, arrangement or understanding.</p>	<p>providing the credit.</p> <p>Para (b) defines how to determine what is “the maximum amount of credit available” and sets out 7 different possibilities depending upon the type of credit. The maximum amount of credit available is determined at the inception of the loan. Where payment obligations include principal payments, the account balance will decline – but this does not mean that the CP is permitted to update the disclosure provided to the CRB as to the maximum amount of credit available so as to track the account balance. Rather the CP may only update its disclosure of the maximum amount of credit available if the CP agrees to increase the amount of credit, for example, by increasing a credit card limit. The exercise of a redraw entitlement on a fixed loan would not increase the maximum amount of the credit.</p> <p>Para (c) defines how to determine what is “the day credit is terminated or otherwise ceases to be in force”.</p>	<p>clause is meant to state.</p>

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			Under para (c)(i), no money would be owing at the time of termination either because of payment in full or because the CP has written off part of the debt. Under para (c)(ii), there could be moneys owing to the CP at the time of termination of the credit that the CP is intending to take steps to recover, for example, through debt collection procedures, by proving in the individual's bankruptcy or by enforcing a judgement debt.	
6.3	Explanatory memo p 103	Where a CP chooses to disclose to a CRB the type of consumer credit that has been provided to an individual (paragraph (c) of the definition of consumer credit liability information), the CP must disclose all elements of consumer credit liability information in relation to that credit , unless the information is not reasonably available.	Where the type of consumer credit is disclosed by a CP to a CRB, it would seem appropriate to treat consumer credit liability information as one data set and so require information to be provided under all paragraphs of the definition where this is available. (The provision does not, however, prevent the continuation of the current practice whereby a CP may simply disclose that it is a current credit provider of an individual ie this provision would permit that to occur without disclosure of information within paragraphs (b) to (f) of the definition	It is not clear why this clause is necessary. We further note that the exception "information that is not reasonably available" could potentially give rise to an inconsistency with the intent of section 21D(3).

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			<p>of consumer credit liability information (see current Section 18E(1)(b)(v)).)</p> <p>The exception from the disclosure obligation for “information that is not reasonably available” recognises that particularly where a CP discloses consumer credit liability information a long time after the credit is entered into, it may be difficult for the CP, for example, to identify the day the credit is entered into.</p> <p>Information to meet paras (a) to (f) of the definition of consumer credit liability information will be able to be disclosed at the time of the disclosure that the consumer credit has been entered into. The day of termination (para (g) of that definition) will, of course, be disclosed later (see para 6.4).</p>	
6.4	Paragraph 2.3 of current code	Where a CP chooses to disclose to a CRB consumer credit liability information in relation to credit provided to an individual, the CP must, once that credit is terminated or otherwise ceases to be in force, disclose this to the CRB within 45 days of that date.	<p>This ensures that an individual’s credit reporting information does not include credit that has been terminated ie present a misleading impression of indebtedness.</p> <p>This provision applies whether a CP chooses to simply disclose that it is a current consumer credit relationship</p>	We suggest that the 45 day period for disclosure is too long. Given that an individual’s need to obtain credit may be urgent in some circumstances, we suggest that the period a CP has to disclose to a CRB that credit has been terminated or ceased to be in force should be 14 days, or if this is not

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			with an individual (ie if the CP discloses information under paragraph (a) of the definition of consumer credit liability information but not information under paragraphs (b) to (f) of the definition of consumer credit liability information) or if the CP chooses to disclose information as to the type of consumer credit and so is obliged as a result of paragraph 6.3 to disclose information in relation to that credit under all paragraphs of the definition of consumer credit liability information.	practicable, then not more than 30 days.
7. Information requests	Section 6N(e)	Introduction: The information that Part IIIA permits CRBs, subject to conditions, to collect includes information requests . Where a CP makes an information request, the CRB may also collect the type of consumer credit or commercial credit and, the amount of credit sought by the individual in the application to the CP to which the CP's information request relates.		
7.1	Section 6N(e) paragraph 2.1 current code	Where a CP makes an information request to a CRB in connection with an application for credit and the amount of credit sought is unknown or incapable of being specified, the credit information that the CRB may collect and disclose may include that an unspecified amount of credit is being sought from the CP.	This recognises that at the time that a CP obtains a credit report from a CRB the CP may not know how much credit is being sought by the applicant. This should not prevent the CRB from collecting the	

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			information about the individual's credit application.	
8. Repayment history information	Section 6V	<p>Introduction: The information that Part IIIA permits CRBs, subject to conditions, to collect includes repayment history information. Collection is only permitted from a CP that is a licensee or is prescribed by the Regulations.</p> <p>Repayment history information is information about:</p> <p>(a) whether an individual has met an obligation to make a monthly payment that is due and payable in relation to consumer credit;</p> <p>(b) the day the monthly payment is due and payable;</p> <p>(c) if late payment is made – the day on which the individual makes that payment.</p>		<p>It may be useful to include in the Explanatory Notes to the draft Code that the collection and disclosure obligations around repayment history information apply to those CPs that are a licensee <i>under the National Consumer Credit Protection Act</i> or as prescribed by the Regulations. We note that as telecommunications providers are not CPs for this purpose, we have not commented on the clauses relating to repayment history information.</p>
8.1	Section 6V, Explanatory Memorandum P129-130	When disclosing repayment history information to a CRB, a CP must reasonable steps to ensure that the CP only discloses that the individual has failed to make a due payment if, at least, 5 days have elapsed since the CP's systems first classified that as being in arrears.	This provides a grace period before repayment history information may be reported to a CRB.	
8.2		Where a CRB becomes aware that a CP has ceased disclosing to the CRB repayment history information in relation to credit although repayments are continuing to be made by the individual who has been provided with the credit , the CRB must take reasonable steps to ensure that any disclosure by it of the repayment history information that it holds in relation to that credit is accompanied by a note to this effect.	If a CP begins disclosing repayment history information in relation to an account and then decides to cease disclosing this information to the CRB, this change needs to be apparent to a user of the information. For this reason, any credit reporting information	

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			disclosed by the CRB that includes that repayment history information should note that the repayment history information is not being updated by the CP.	
9. Default information	Section 6Q	Introduction: The information that Part IIIA permits CRBs, subject to conditions, to collect and disclose includes default information . Preconditions to this include – a consumer credit payment must be overdue by at least 60 days, the overdue amount must be not less than the Part IIIA specified minimum amount and the CP must have met the notice obligation specified in Part IIIA.		We suggest that clause 9 (or any sub-clause) includes a requirement for credit providers and credit reporting bodies to give information about the right to access a free credit report if an individual disputes a default listing.
9.1	explanatory memo p. 126	A CP must not disclose a consumer credit overdue payment to a CRB as default information : (a) if the individual has requested new payment terms (whether via a variation of the terms and conditions of the consumer credit or new consumer credit); (b) if the individual has not made a request during the previous 4 months for new payment terms that the CP reasonably believes had bases that were materially the same as those on which the current request was made; and (c) either: (i) whilst the CP is in the process of deciding the individual's eligibility for new payment terms, including if the CP is waiting upon information from the individual for the purposes of so deciding this; or (ii) if the CP deco des decides to refuse to provide new payment terms to the individual – until at least 14 days after	This prevents a CP from reporting default information to a CRB if the individual has made a financial hardship assistance request and the CP has not yet decided whether to allow the request or has not given the individual a reasonable time to respond to a refusal of the request (the 14 day period aligns with the National Credit Code prohibition on enforcement proceedings being instituted until 14 days after a consumer credit provider refuses a hardship variation request). Protections consistent with the National Credit Code are included to	We consider that the provisions provide protections to ensure individuals are not defaulted in these circumstances. However, we suggest that the 14 day timeframe for a default being in play after a CP has refused a hardship variation request could be insufficient – individuals may be unaware of or not have time to seek assistance from an EDR body or another agency (for example, financial counsellors/legal aid). On this basis, we suggest that the timeframe could be extended to 30 days.

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		the CP has notified the individual of this decision.	avoid this being abused.	We further suggest that an individual who has a complaint about this issue should be advised of the CP's dispute resolution processes and the availability of external dispute resolution schemes.
9.2	Section 6Q, Explanatory Memorandum p.126, 162, Sen Committee Report p.55-56, Para 2.7 of current Code	A CP must not disclose default information about an individual to a CRB unless: (a) the section 6Q notice given by the CP to the individual states that the CP intends to disclose information about the overdue payment to the CRB if the amount remains overdue for 60 days or more (thereby also meeting the requirements of paragraph 21D(3)(d)); (b) if the terms of the consumer credit include an acceleration clause , the section 6Q notice explains the effect of the acceleration clause and that the default information disclosure to the CRB may include the amount accelerated as a consequence of the acceleration clause ; and (c) the CP meets the other requirements relating to default information that are set out in Part IIIA and this CR Code.	This is consistent with sections 88 and 93 of the National Consumer Code and for CPs that are not bound by that Code adds to the protections in the law by ensuring that the individual concerned is on notice that a default listing may be made and, if applicable, that an accelerated amount may be disclosed in the default listing.	We have concerns that this provision goes beyond the intent of section 6Q which makes reference to 'a payment' that is overdue. We are concerned that individuals may be unaware of any acceleration clauses in the contract or the implications of this. Further, any credit management undertaken for an overdue amount may not highlight the fact that the consumer will be default listed for the entire amount under the contract should the overdue payment remain unpaid (if there is an acceleration clause in the contract). If the amount due as a result of an acceleration clause is not overdue for at least 60 days at the time of disclosure, the full amount should not, in our opinion, be disclosed. Only the amount which is overdue by at least 60 days should be default listed.

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				We suggest that if there is a dispute over the default amount disclosed by a CP to a CRB, the draft Code should require a CP to advise individuals of the CP's dispute resolution process and the availability of external dispute resolution schemes.
9.3		Provided the CP meets the pre-conditions for disclosing default information set out in Part IIIA and this CR Code, including giving the individual a section 6Q notice , the CP may, when disclosing default information to a CRB, specify, as the amount of the overdue payment, the amount that is owing to the CRB on the date of disclosure to the CRB of the default information .	This enables a CP to ensure that the default information it discloses to a CRB accurately reflects the amount owing at the time of the disclosure	<p>We take the view that this sub-clause appears to be going beyond the intention of section 6Q and section 21D – which requires that notice is given to the consumer about the intended disclosure of default information about a payment that is at least 60 days overdue. If the amount owing the time of disclosure is not at least 60 days overdue, it should not be disclosed.</p> <p>We suggest that if there is a dispute over the default amount disclosed by a CP to a CRB, the draft Code should require a CP to advise individuals of the CP's dispute resolution process and the availability of external dispute resolution schemes.</p>
10. Payment information	Section 6T	Introduction: The information that Part IIIA permits CRBs, subject to conditions, to collect and disclose includes payment information – this is a statement that payment has		

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		been made of an overdue payment that has previously been disclosed by the CP to the CRB as default information.		
10.1	Section 6T explanatory memo p.128	For the purposes of the definition of " payment information " in the Privacy Act, the amount of the overdue payment to which the information relates is taken to be paid when: (a) payment is made in cleared funds of the full amount of the overdue payment, including all interest, fees and other amounts that are owing as a result of the overdue payment; (b) payment is made in cleared funds of part of the amount of the overdue payment and the CP accepts this amount in full settlement of the overdue payment; (c) the CP waives the overdue payment.; or (d) the CP agrees to terminate the consumer credit provided to the individual to which the overdue payment relates and replace it with new consumer credit .	This provides further clarity as to the legislative term "payment information". Where an individual makes a partial payment without reaching a settlement of the credit, this is not payment information and so the mandatory obligation to disclose to the CRB will not apply.	The inclusion of 'fees and other amounts' in the expanded definition of 'payment information' appears to make this definition wider than what may be the intention of section 6T. We suggest that the scope of this definition be reconsidered in light of the intention of section 6T (and the Explanatory Memo at page 128). We suggest that the words 'whether by a single payment or series of payments' be included in sub-clauses 10.1(a) and (b).
10.2	Sec 21E, Explanatory Memorandum p.163	Where a CP has an obligation under Section 21E to disclose to a CRB payment information relating to an individual and the individual asks the CP to disclose this information to the CRB urgently, the CP must disclose the payment information within 5 business days of the later of: (a) the individual's request; and (b) the date of the payment information as determined in accordance with paragraph 10.1, unless the CP has reasonable grounds for requiring a longer period of time to do this.	This imposes a timeframe for disclosure required by the legislation (i.e. disclosure that payment has been made in relation to a default that has been previously reported by the CP to a CRB) but only where the individual asks the CP to make the payment disclosure to the CRB as a matter of urgency	We suggest that if an individual is seeking an urgent disclosure of payment to a CRB, the CP should make that disclosure within 2 business days once informed that the payment has been successful. Further, we suggest that the draft Code or the Explanatory Notes give examples of what may constitute 'reasonable grounds' for a CP to require a longer period to disclose a

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				payment to a CRB.
11. New arrangement information	Section 6S	Introduction: The information that Part IIIA permits CRBs, subject to conditions, to collect and disclose includes new arrangement information – this is a statement that terms and conditions of consumer credit have been varied or an individual has been provided with new consumer credit in either case because of an overdue payment that has previously been disclosed by the CP to the CRB as default information.		
11.1	Section 6S explanatory memo p.127	When disclosing new arrangement information to a CRB, a CP must disclose which of the following is the case: (a) the terms or conditions of the original consumer credit have been varied; or (b) the individual has been provided with new consumer credit .	The legislation establishes 2 categories of “new arrangement information”. This requires a CP disclosing new arrangement information to a CRB to make it clear which legislative category the new arrangement information constitutes. The CRB can then ensure that the individual’s current credit position is accurately shown. A new arrangement may also mean that the CP will have an obligation under Part IIIA and this CR Code to disclose to the CRB payment information and the day on which consumer credit is terminated or otherwise ceases to be in force.	We suggest that the Code provide timeframes for the disclosure of sub-clauses 11.1(a) or (b). The draft Code makes no reference to the disclosure of payment information where the new arrangement has the effect of making the individual’s payments under the original consumer credit no longer overdue (see Explanatory Memorandum page 127). We suggest that the requirement of payment information about this, if applicable, is included in the draft Code.
12. Publicly available information	Section 6N(K)	Introduction: The information that Part IIIA permits CRBs, subject to conditions, to collect and disclose includes publicly available information (an undefined term in the Privacy Act).		

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12.1	Explanatory memo p. 124, Section 6N(k)	A CRB must only collect publicly available information about an individual: (a) from a government department or agency; and (b) if the content of the information that is collected is generally available to members of the public (whether in the form provided to the CRB or another form and whether or not a fee must be paid to obtain that information).	This places limits on the credit information that a CRB may collect and hence disclose under the “publicly available information” limb of the definition of “credit information”. To obtain the information, the CRB may have to pay a government fee. This is consistent with the definition of “generally available publication” in section 6(1).	This is a practical limitation on the broad term ‘publically available information’. We suggest that the draft Code or Explanatory Notes provide examples so that individuals are aware of what may constitute “publically available information” that relates to credit worthiness.
13. Serious credit infringements	Section 6(1) definition of “serious credit infringement”	Introduction: The information that Part IIIA permits CRBs, subject to conditions, to collect and disclose includes serious credit infringements – this is defined as: (a) an act by an individual that involves fraudulently obtaining consumer credit or attempting to do this; (b) an act by an individual that involves fraudulently evading the individual’s consumer credit obligations or attempting to do this; or (c) an act by an individual if: (i) a reasonable person would consider the act indicates an intention by the individual no longer to comply with the individual’s obligations in relation to consumer credit provided by a CP; (ii) the CP has taken reasonable steps to contact the individual about the act; and (iii) at least 6 months have passed since the CP last had		

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13.1	<p>Section 6(1)(a) explanatory memo p.116-117</p> <p>Section 6(1)(b) explanatory memo p.116-117</p> <p>Section 6(1)(c) explanatory memo p.116-117</p>	<p>contact with the individual.</p> <p>(a) Where a CP discloses to a CRB that, in the CP's opinion, an individual has committed a serious credit infringement within paragraph (a) of the Section 6(1) definition of that term, the CP must be able to reasonably establish that:</p> <p>(i) when obtaining or attempting to obtain consumer credit, the individual made, or arranged for someone else to make, a material false statement to the CP or knowingly allowed the CP to rely upon a material false statement; and</p> <p>(ii) the individual did this knowing that the false statement was untrue</p> <p>(b) Where a CP discloses to a CRB that, in the CP's opinion, an individual has committed a serious credit infringement within paragraph (b) of the Section 6(1) definition of that term, the CP must be able to reasonably establish that:</p> <p>(i) the individual made, or arranged for someone else to make, a material false statement to the CP or knowingly allowed the CP to rely upon a material false statement; and</p> <p>(ii) the individual did this knowing that the false statement was untrue and with intent to evade the individual's obligations in relation to consumer credit by deceiving the CP as to a material fact</p> <p>(c) Before disclosing an overdue payment to a CRB as a serious credit infringement on the basis of paragraph(c) of the Section 6(1) definition of that term, the CP must have disclosed the overdue payment to the CRB as default information. In order to establish that reasonable steps have been taken to contact the individual:</p> <p>(i) where possible, the CP must attempt to make contact with</p>	<p>Paras (a) and (b) specify the evidentiary grounds that a CP must be able to establish if the CP wants to disclose a serious credit infringement to a CRB on the basis of fraud. These paragraphs incorporate the legally-accepted elements of fraud. Note that a materially false statement could include a materially false assertion made by the individual or a forged document.</p> <p>This sets out steps that a CP must undertake before reporting a serious credit infringement to a CRB on the basis that the individual cannot be contacted – these requirements are in addition to those imposed by the legislation. In particular, this requires</p>	<p>Given that fraud in the context of a consumer credit contact requires a higher onus of proof, it may not be appropriate for the draft Code to require a CP to 'reasonably establish' this test. We suggest that sub-clauses 13.1(a) and (b) are reframed to reflect the higher standard of proof for fraud.</p> <p>As for sub-clause 13.1(c) which relates to non-fraud serious credit infringement which carries serious consequences for the individual, we suggest that more prescriptive requirements be included for a CP to establish that it has taken reasonable steps to contact the individual. For example, the number of attempts that the CP may need to take to contact the individual, and contacting the individual via their preferred contact methods could be included in the draft Code.</p> <p>We also suggest that the phrase 'where possible' in sub-clause 13.1(c)(i) waters down the effect of</p>

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		<p>the individual by phone, email and mail;</p> <p>(ii) if these contact attempts suggest that any of those contact details are no longer current, the CP must take reasonable steps to ascertain new contact details and, where new contact details are ascertained, repeat the previous contact attempts using the new contact details;</p> <p>(iii) in phone messages (where these can be left with an automatic answering service or with an adult) and emails, the CP must take reasonable steps to provide its contact details and ask the individual to contact the CP as a matter of urgency;</p> <p>(iv) in mailed letters, the CP must:</p> <ol style="list-style-type: none"> 1) give particulars of the default; and 2) state that if a period of 6 months elapses without contact with the individual about the default the CP intends to disclose the default to a CRB as a serious credit infringement and explain the effect of this; <p>(v) the CP must retain such evidence of attempts to contact the individual as is reasonable in the circumstances; and.</p> <p>(vi) if the individual makes contact with the CP at any time during the 6 month period beginning on:</p> <ol style="list-style-type: none"> 1) the date of the notice that the CP is required by Section 6Q to give to the individual; or 2) if more recent – the date of last contact with the individual, notice was given by the CP <p>the 6 months period referred to in paragraph (c)(iii) of the definition of “serious credit infringement” recommences.</p> 	<p>the CP to have previously disclosed the overdue payment as default information.</p> <p>The Explanatory Notes could include the following as examples of the kind of records that might be reasonable to retain:</p> <ul style="list-style-type: none"> • the time, date, CP representative involved and outcome of phone calls; • the date and text of an email transmission, the email address to which it is sent and any notification received in response to the email; and • if registered mail is utilised - the Australia Post registered mail unique identification number. <p>The Explanatory Notes could provide further guidance as to what constitutes unsuccessful contact e.g. that return of registered mail because the individual refuses to sign for receipt constitutes unsuccessful contact, as does failure by the individual to respond to registered mail.</p>	that sub-clause.
13.2	Section 6(1)	If a CP discloses payment information to a CRB that relates to	This enables a non-fraud serious	We are pleased to see the inclusion of

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	definition of "serious credit infringement"	an overdue amount the subject of a serious credit infringement disclosure pursuant to paragraph (c) of the definition in the Privacy Act of " serious credit infringement ", the CRB must remove the serious credit infringement disclosure from the credit information it holds about the individual.	credit infringement to be removed if the individual gets into contact with the credit provider (albeit after 6 months of no contact) and makes payment of the overdue amount. (The default listing that preceded the serious credit infringement would, however, continue to be recorded against the individual's name.) Full payment would be evidence of the debtor's good faith justifying the removal of the serious credit infringement record. This provision also provides an incentive to a debtor to make full payment.	this clause in the draft Code – it achieves a fair balance between the competing rights of individuals and CPs.
14. Transfer of rights of credit provider	Section 6K	Introduction: The Privacy Act recognises that the repayment rights of a CP in relation to credit may be acquired by assignment, subrogation or other means and treats the acquirer as a CP for the purposes of the credit .		
14.1	Sec 6K Para 2.3 of existing Code	If: (a) an acquirer acquires the rights of a CP in relation to the repayment of an amount of consumer credit ; (b) the original CP notifies the individual to whom that consumer credit was provided of the transfer event ; and (c) prior to the transfer event , the original CP had disclosed to a CRB consumer credit liability information about the consumer credit ,	This ensures that the CRB's credit information about the individual is updated to reflect the acquirer's status as the new CP. Paragraph 14.1 enables both parties to notify the CRB of the transfer of rights to the acquirer. Alternatively, if they wish, they may agree as between	We suggest that the period of 45 days is too long. An individual must be in a position to know which entity has acquired their debt. The TIO receives complaints from consumers who may have made a payment to the wrong CP – and who are unaware or unsure of which CP should have received the

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		both the original CP and the acquirer must ensure that disclosure is made to the CRB of the transfer event within 45 days of its occurrence including the name of the acquirer	themselves as to who must make this notification.	amount. In order for individuals to be confident that they are dealing with the correct entity, we suggest that the disclosure period for the transfer event should be reduced.
14.2	Section 6J, 6K	After a transfer event occurs in relation to credit , both the original CP and the acquirer must ensure the disclosure to the CRB of any information that is required to be disclosed under Part IIIA or this CR Code (and for the purposes of those subsequent disclosure the acquirer is taken to have made any disclosures by the original CP in relation to that credit that were made prior to the transfer event).	Where the original CP transfers the right to repayment of credit to another organisation, paragraph 14.2 permits the original CP and the acquirer to agree as to which of them is to make updating disclosure (such as payment information) to the CRB.	
15. Permitted CRB disclosures	Sec 20F and 21G We	Introduction: Part IIIA permits a CRB to disclose credit reporting information to CPs, mortgage insurers and trade insurers - but only for certain permitted purposes.		
15.1	Section 20E, 20F	When a CRB receives a request from a CP, mortgage insurer or trade insurer for the disclosure of credit reporting information about an individual, the CRB is entitled to rely upon a written statement made by the CP, mortgage insurer or trade insurer as to the basis on which the disclosure is a permitted CRB disclosure and, if applicable, that the individual has expressly consented to the disclosure of the information. This does not apply if, however, the CRB has actual knowledge that the CP, mortgage insurer or trade insurer does not meet the relevant Part IIIA condition for	This provides an efficient way for a CRB to evidence that its disclosure of credit reporting information is	We suggest that the draft Code sets out the steps that can be taken if complaints about incorrect disclosure are received by the CRB and the availability of EDR schemes to assist in complaint resolution. We note that some words seem to be missing from the Explanatory Notes.

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15.2	Section 20F	<p>permitted CRB disclosure.</p> <p>If a CP operates in an industry that is not covered by any of the recognised external dispute resolution schemes and accordingly the CP is not able to become a member of a recognised external dispute resolution scheme, the CP may nevertheless make an information request to a CRB for the purposes of a CRB making a permitted CRB disclosure to it.</p>	<p>Section 20F does not require a CP to be a member of a recognised external dispute resolution scheme in order to obtain credit reporting information from a CRB. However, a request for credit reporting information may be thought to be the contribution of credit information of the kind described in section 6N(d) and, under section 21D(2)(a)(i), a CP may only contribute credit information if it is a member of a recognised external dispute resolution scheme or is prescribed by the Regulations. This provision is designed to overcome that technical issue in particular for a supplier of goods and services on credit that:</p> <ul style="list-style-type: none"> • does not have access to such a scheme; and • has not been prescribed by the Regulations. 	<p>It is unclear whether this sub-clause appears to be allowing what is not intended under section 21D(2)(a)(i). The draft Code also does not appear to provide for the other obligations that may arise with an information request – including access and correction rights. Please clarify.</p> <p>We suggest that if this sub-clause is retained, the draft Code should provide that any complaints made about CPs that are not members of a recognised EDR scheme can be investigated by the Commissioner.</p>
15.3	Section 20E, 20F	<p>Where CRB receives a request that it make a permitted CRB disclosure in relation to an individual and the CRB is not reasonably sure whether information it holds relates to the individual named in the request, the CRB may disclose identification information about an individual who may be</p>	<p>This provides a mechanism for a CRB to check before providing credit reporting information that it has correctly identified the individual the subject of the request.</p>	

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		the individual named in the request (but not other credit reporting information in relation to that individual) to the requesting CP, mortgage insurer or trade insurer , so as to provide the latter with an opportunity to verify that the identification information provided by the CRB matches the individual the subject of the request.		
15.4	Paras 1.5, 2.2 and 2.15 of current Code	<p>Where, in response to a request:</p> <p>(a) a CRB discloses credit reporting information (other than a disclosure by a CRB that consists only of identification information in accordance with paragraph 15.3) to a CP, mortgage insurer or trade insurer; or</p> <p>(b) a CP discloses credit eligibility information to an entity to which a permitted CP disclosure may be made; and the CRB, CP or recipient of the information (as applicable) subsequently becomes aware that the credit reporting information or credit eligibility information was about an individual other than the individual the subject of the request:</p> <p>(c) in the case of a recipient of the information - it must:</p> <p>(i) advise the disclosing CRB or CP (as applicable) of the mistake as to identity (unless it was the disclosing CRB or CP that identified the mistake); and</p> <p>(ii) destroy the disclosed information; and</p> <p>(d) in the case of a CRB or CP that disclosed the information - it must:</p> <p>(i) advise the recipient of the information of the mistake as to identity (unless it was the recipient of the information that identified the mistake); and</p> <p>(ii) as appropriate, review its disclosure practices, procedures</p>	<p>This sets out the steps that must be taken where credit reporting data is disclosed that relates to the wrong individual.</p> <p>The Explanatory Notes could also note the relevance of s20 and s21U and, for example, if a CP notifies a CRB that it has provided information about the wrong person, the CRB would have an obligation to correct its records and tell those who had previously received the erroneous information.</p>	<p>We suggest that for sub-clause (d)(ii), the draft Code requires that a CP must include in its “...review (of) its disclosure practices, procedures and systems...” steps that will be taken if complaints regarding incorrect disclosure are received and the availability of EDR schemes.</p> <p>Further, we suggest that the Code prescribe an additional sub-clause which ensures a CP or CRB informs the individual effected by any erroneous disclosure of:</p> <ul style="list-style-type: none"> • the nature of the disclosure • any implications of the disclosure • the steps taken to rectify any issues stemming from the disclosure • whether any review of its practices, procedures and systems has occurred, and • the option to make a complaint

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		and systems so that similar mistakes are minimised in the future.		<p>to an EDR scheme if they remain dissatisfied with the actions of the CP or CRB.</p> <p>We also suggest that the draft Code requires the CP to provide this information in writing if requested by the individual.</p>
15.5	Para 1.15 of current Code	Before a CRB discloses credit reporting information to a CP, mortgage insurer or trade insurer , the CRB must have taken reasonable steps to ensure that the CP, mortgage insurer or trade insurer has been notified of the requirements of the Privacy Act governing limitations on use and disclosure of credit reporting information .	This places an obligation on CRBs to ensure that they make their customers aware of the Part IIIA restrictions on credit reporting information use and disclosure. Information as to this only has to be provided once. Repeat customers do not need to be warned about the Part IIIA requirements every time they are provided with credit reporting information.	<p>We suggest that the draft Code sets out that information regarding the limitations on credit reporting information use and disclosure should be provided in writing, and to prescribe a timeframe for this (for example, within 10 business days).</p> <p>We suggest that regular notification of this information (for example, annually or made available on the CRB's website) may be a useful reminder for repeat customers.</p> <p>In addition, we suggest that the draft Code prescribe that the CRB record that this information has been provided.</p>
16 Security of credit reporting		Introduction: Part IIIA requires CRBs and CPs to take reasonable steps to maintain the security of credit reporting data . CRBs are required to enter into agreements with CPs		

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information		requiring them to protect credit reporting information from misuse, interference and loss and unauthorised access, modification or disclosure.		
16.1	Section 20Q, Explanatory Memorandum p.146-7	CRBs and CPs must maintain reasonable practices, procedures and systems to make electronic transmission of credit reporting data secure.	Given the importance of electronic transmission of credit reporting data, this imposes a specific obligation to secure online transmission of data. The Explanatory Notes could emphasise the importance of privacy enhancing software including firewalls, email encryption software etc.	We suggest that this sub-clause include the requirement to make 'storage' as well as electronic transmission of credit reporting data secure.
17 Use and disclosure of credit reporting data by CPs and affected information recipients	Div 3, Subdiv D	Introduction: Part IIIA places restrictions and conditions on the use and disclosure of credit information and credit eligibility information .		
17.1	Sec 21H Item 1	(a) Notwithstanding anything in Part IIIA (other than Section 20H) or any other provision of this CR Code (other than paragraph 17.1(b)), a CP or an affected information recipient must not use or disclose credit reporting information or credit eligibility information for the purposes of: (i) assessing the likelihood that the individual to which the information relates may accept: 1) an invitation to apply for, or an offer of, credit or insurance in relation to mortgage credit or commercial credit ; or	This ensures that information that is sourced from a CRB (whether directly or through a CP) is not used by the recipient for marketing purposes. In particular, it has the effect of placing constraints on the breadth of the words used in section 21H Item 1 "internal management purposes .. directly related to the	We suggest that this sub-clause include the requirement for the CP or affected information recipient to advise any dissatisfied individual that the individual may complain to an EDR scheme or, in the case of a CP/affected information recipient that is not a member of one, to the Commissioner.

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		<p>2) an invitation to apply for a variation of, or an offer to vary, the amount of or terms on which credit or insurance in relation to mortgage credit or commercial credit is provided; or</p> <p>(ii) targeting or inviting an individual to apply, or accept an offer, for:</p> <p>1) credit or insurance in relation to mortgage credit or commercial credit; or</p> <p>2) variation of the amount of or terms on which credit or insurance in relation to mortgage credit or commercial credit is provided.</p> <p>(b) A CP or affected information recipient that has received an application for credit or insurance in relation to mortgage credit or commercial credit is not, however, prohibited by paragraph (a) from using credit reporting information or credit eligibility information for the purposes of assessing the application (but this does not permit the CP to use that information to offer or invite the applicant to apply for a different product other than that applied for).</p>	provision or management of consumer credit”.	
17.2	Sec 21H Item 5, Explanatory Memorandum p.104-5	A CP must only request a CRB to disclose credit reporting information to the CP, for the purposes of assisting the individual to avoid defaulting on his or her obligations in relation to consumer credit provided by the CP to the individual, if the CP has a reasonable basis for believing that the individual may be at significant risk of defaulting on his or her obligations to the CP.	This ensures that a CP does not obtain regular or continuous disclosures about an individual from a CRB for the purposes of simply monitoring or checking the individual’s overall credit worthiness or behaviour. A CP would, however, be justified in seeking a credit report if an individual made a hardship request or if other CP indicators of	We suggest that it may be necessary for the sub-clause to outline the test for what is a ‘reasonable basis’ for a CP to believe that an individual may be at significant risk of default – ie ‘objectively strongly indicative of default risk’.

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			<p>financial difficulty are triggered. Another avenue open to the CP would be for the CP to ask a CRB to alert it if an individual triggered a CP-specified indicator of significant default risk for example:</p> <ul style="list-style-type: none"> • default to another credit provider; • in the case of a CP that is a licensee - a payment that is 90 days' overdue; or • in the case of a CP that is utility – change of residence. <p>The 'reasonable basis' test would be met in these circumstances ie specification by the CP of indicators that are objectively strongly indicative of default risk, with the CRB assisting the CP by applying those CP-specified indicators and thereby identifying for the CP the individuals that are likely to require assistance to avoid default.</p>	
17.3	Sec 21P, Explanatory Memorandum p.173-5	Where a CP obtains credit reporting information about an individual from a CRB and, within 90 days of obtaining that information, the CP refuses a consumer credit application made by the individual whether alone or jointly with other applicants, the CP must provide a written notice of refusal	This specifies what must be included in the notice of refusal of credit. The aim is to educate individuals about the credit reporting process so that they become aware of the	We note that the explanatory notes to sub-clause 17.3(e) indicates that only generic information about the factors taken into account when refusing credit, is to be included in the

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		<p>that:</p> <p>(a) meets the requirements of Section 21P(2);</p> <p>(b) explains the individual's right to access their credit reporting information without charge during the 90 days following the date of the CP's notice of refusal and how to request the relevant CRBs to provide access to that information;</p> <p>(c) states that it is important for individuals to be proactive in checking the accuracy of the credit reporting information that CRBs hold;</p> <p>(d) states that the CP relies upon information from a number of sources when deciding whether to refuse credit including information provided by the individual to the CP and credit reporting information disclosed to the CP by CRBs;</p> <p>(e) provides information about factors that are often taken into account when refusing credit (these may include:</p> <p>(i) the adequacy of the applicant's level of income and other resources to meet repayments of credit;</p> <p>(ii) the extent of the applicant's indebtedness and other commitments;</p> <p>(iii) the security of the applicant's employment;</p> <p>(iv) the applicant's credit history including previous bankruptcy, defaults, serious credit infringements, high number of credit applications and unsatisfactory repayment history); and</p> <p>(f) refers to the CP's credit eligibility information access and correction processes and its complaints process.</p> <p>The written notice must be given to the individual either at</p>	<p>importance of monitoring their credit reporting information. Para (e) requires generic information to be provided – rather than information about the specific factors that led to the particular individual's credit application being refused.</p> <p>The legislative requirement for contact details of the CRB can be met by disclosing the CRB's website.</p>	<p>notice of refusal of credit. We note however that the Explanatory Memorandum (page 175) to section 21(P)(2) outlines some useful information that could be incorporated into the draft CR Code – namely the obligation to notify the individual about which elements of the individual's credit eligibility information may have led to the refusal of credit. In this regard, we note that credit eligibility information includes credit reporting information (credit information and CRB derived information) and CP derived information (which could include the CP's credit scores). We suggest that the draft CR Code could impose an obligation for the CP to explain what elements of the individual's credit eligibility information – for example whether this was the credit reporting information, CRB derived information or CP derived information) that may have impacted on a CP's decision to refuse credit.</p> <p>In light of the obligations under section 21T and section 21V, we</p>

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		the time the CP notifies the individual of the refusal decision or within 10 business days of that date.		<p>suggest that sub-clause 17.3(f) requires CPs to include in the written notice of refusal, information that explains the individual's <i>right to access or correct credit eligibility information</i> instead of only referencing the CP's credit eligibility information access and correction processes. This information should include how to complain to the recognised EDR scheme.</p> <p>We note the timeframe outlined in clause 17.3 appears to be reasonable.</p>
17.4	Section 21J	<p>As evidence of an individual's express consent to the disclosure by a CP (the "disclosing CP") of credit eligibility information to another CP with an Australian link (the "recipient"), the disclosing CP is entitled to rely upon a written statement provided by the recipient that:</p> <p>(a) it has an Australian link;</p> <p>(b) the individual has given their consent in the manner required by Section 21J to the disclosure of the information by any CP to the recipient for specified categories of purpose, for example, assessing an application made by the individual for consumer credit or commercial credit, assessing whether to accept the individual as a guarantor and collecting payments that are overdue in relation to consumer credit or commercial credit; and</p> <p>(c) specifies the intended purpose for which the requested</p>	<p>This is included to facilitate (as allowed by the legislation) a disclosing CP relying on consent from an individual that is obtained by the recipient CP ie the CP to which the disclosing CP will disclose credit eligibility information. The individual's consent need not specifically name each CP that is permitted to disclose information. The consent need not be a stand-alone document. It may, for example, be included in a credit application form.</p> <p>By way of implementation guidance,</p>	<p>We suggest that sub-clause 17.4(b) reflects the language of the Act, namely the use of the terms 'permitted CP uses' and 'permitted CP disclosures' instead of specified categories of purpose.</p>

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		information will be used, provided, however, that this is one of the categories of purpose specified in the individual's statement of consent.	it is intended that the Explanatory Notes will include consent wording that may be used by CPs.	
18 Protections for victims of fraud	Section 20K	Introduction: Where an individual has been a victim of fraud (including identity fraud), Part IIIA enables the individual to request a CRB to commence a ban period during which the CRB may not disclose or use the individual's credit reporting information unless the individual expressly consents in writing.	Explanatory Notes should state that as permitted by section 20K(2) , it would be open for CPs to obtain consent from borrowers at the time of establishing credit arrangements to disclosure and use of credit reporting information for managing debt or debt collection purposes while a ban period is in force.	We suggest the inclusion of the words in red to relate this obligation to the relevant provision in the Act.
18.1	Sec 20K, Explanatory Memorandum p.142, 164	Where an individual reasonably believes that the individual has been or is likely to be a victim of fraud and the individual requests a CRB not to use or disclose their credit reporting information , the CRB must immediately: (a) include on the credit reporting information held in relation to the individual a notation about the individual's request and retain this for the duration of the ban period ; and (b) explain to the individual the effect and duration of the ban period including that the individual may not be able to access credit during the ban period .	This sets out processes where an individual is concerned about identity fraud and so requests a ban be placed on the use or disclosure of their credit reporting information without the individual's consent (unless required by or under an Australian law or a court/ tribunal order).	
18.2	Sec 20K, Explanatory Memorandum p.142, 164	Where a CRB receives a request from a CP for credit reporting information about an individual in relation to whose credit reporting information a ban period is in effect, the CRB must inform the CP of the ban period and its effect.	This makes it clear that the ban on the use or disclosure of an individual's credit reporting information does not prevent a CRB	Would this sub-clause require the CP's request during a ban period and the CRB's response under sub-clause 18.2 be included in the individual's

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			from explaining to a CP that it is unable to provide a credit report because of the establishment of a ban period. (A CRB is not prevented from continuing to collect credit information during a ban period save to the extent specified in Section 21F.)	credit reporting information? If yes, we suggest that this should be stated in this sub-clause.
18.3	Sec 20K, Explanatory Memorandum p.142, 173-4	Where a CRB has established a ban period in relation to credit reporting information about an individual, the CRB must notify the individual not less than 10 business days before the end of the ban period : (a) of the date the ban period is due to finish; (b) about the individual's rights under Part IIIA and this CR Code to extend the ban period ; and (c) what, if any, information the CRB requires to support the individual's allegation of fraud.	This sets out processes for the extension of a ban period.	We suggest that the draft Code set out that notification to the individual regarding a ban period must be issued in <i>writing</i> and that this notice should include what information an individual should provide if they wish the ban to be extended. Further, if there is a dispute over the removal of a ban, what steps the individual can take to have this resolved and the availability of EDR schemes.
18.4	Sec 20K, Explanatory Memorandum p.142-3, 164	Where, at an individual's request, a CRB establishes a ban period in relation to credit reporting information about the individual, the CRB may seek information relevant to the individual's fraud allegations from a CP who may have also been affected by the alleged fraud for the purposes of: (a) deciding what extension period (if any) is reasonable in the circumstances; and (b) determining whether the individual has been a victim of fraud that resulted in consumer credit being provided by the CP and accordingly whether information about that	This gives the CRB a right to obtain information from a CP so that the CRB can meet its obligations where identity fraud allegations are made by an individual.	We suggest that the draft Code set out that an individual is advised that information will be obtained by CRB from a CP in relation to credit reporting information and what the nature of this information will be. Further, any disputes regarding the denial of a ban period (or extension) should be referred through internal

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		consumer credit should be destroyed by the CRB.		complaint processes and information should be provided regarding the availability of EDR schemes.
19 Use by a CRB of credit reporting information to facilitate a CP's direct marketing	Sec 20G	Introduction: Part IIIA restricts a CRB's use of credit reporting information to facilitate a CP's direct marketing. It does, however, permit a CRB at the request of a CP to undertake pre-screening of a list of individuals provided by the CP using eligibility requirements nominated by the CP.		
19.1	Sec 20E	Notwithstanding Section 20E(2), a CRB must not: (a) use credit reporting information for the purpose of developing any tool for provision to a CP or affected information recipient for the purposes of assisting them: (i) to assess the likelihood that an individual may accept: 1) an invitation to apply for, or an offer of, credit or insurance in relation to mortgage credit or commercial credit ; or 2) an invitation to apply for a variation of, or an offer to vary, the amount of or terms on which credit or insurance in relation to mortgage credit or commercial credit is provided; or (ii) to target or invite an individual to apply, or accept an offer, for: 1) credit or insurance in relation to mortgage credit or commercial credit ; or 2) variation of the amount of or terms on which credit or insurance in relation to mortgage credit or commercial credit is provided; or (b) provide any such tool that uses credit reporting	This prohibits a CRB from using credit reporting information to develop a predictor or other tool for use by a CP in its marketing. It thereby limits Section 20E which permits a CRB to use information in the course of carrying out its credit reporting business.	We are pleased to note the inclusion of this clause.

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		information to a CP or affected information recipient.		
19.2	Sec 20G(3)	When nominating eligibility requirements to a CRB for the purposes of a pre-screening assessment , a CP must not nominate eligibility requirements that are based specifically on attributes or behaviours that indicate the individual is, or may in the future be, unable to meet repayments under their existing credit.	This ensures that pre-screening is used for responsible lending rather than to target high risk customers.	
19.3	Sec 20G(5)	A CRB must give effect to a request by an individual not to use their credit information for the purposes of pre-screening assessments, whether that request is made of the CRB through the CRB's website facility (if any), by telephone, mail, email or other means.	This ensures that an individual is not restricted as to the method in which they are able to exercise their right under the Act to opt out of pre-screening assessments so that they are not sent direct marketing communications.	We suggest that the draft Code includes a requirement for CRBs to inform their customers of the existence of this clause – this could perhaps be included in the CRB's credit reporting policy.
19.4	Sec 20G(5)	Each CRB must keep a confidential register of individuals who have made a request of the kind referred to in paragraph 19.3.	The register constitutes a mechanism against which CRBs can wash pre-screening requests. The Explanatory Notes could provide guidance that CRBs do not need to offer individuals the choice of opting out of direct marketing for selected CPs i.e. the opt out is for all CPs.	
19.5	Sec 20G(3)	When providing the results of a CP requested pre-screening assessment to an entity where permitted by Part IIIA, the CRB must not provide the names or other details of individuals: (a) who have requested the CRB not to use their information for the purposes of a pre-screening assessment ;	This ensures that a CRB does not report the results of its pre-screening in a way that enables the CP's agent to identify which individuals were excluded for what purpose.	

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		(b) who were included in the pre-screening assessment but failed to meet the CP's eligibility requirements; or (c) in relation to whom a ban period was in effect at the time of the pre-screening assessment .		
20 Access	Sec 20R and 21T	Introduction: Part IIIA obliges CRBs and CPs to provide access on request to credit reporting information held about the individual and to do so within a reasonable period (in the case of a CRB this cannot be longer than 10 days). A CRB is not permitted to charge for access if the individual (whether directly or through an agent) has not made a previous request within the preceding 12 months. If a previous request has been made within the preceding 12 months, the CRB may impose a charge but this must not be excessive. A CP (unless a government agency) may impose a reasonable charge for providing access to credit information.		
20.1	Sec 20R, 21T, Para 1.10, 2.17 and 2.18 of current Code	Where a person requests a CRB or CP to provide them with access to credit reporting information or credit eligibility information (as applicable), the CRB or CP (as applicable) must not provide access without first obtaining such evidence as is reasonable in the circumstances to satisfy itself as to the identity of the person making the request and that person's entitlement under Part IIIA to the access.	This is to ensure that access is not inadvertently provided to someone other than the individual or other duly authorised access seeker. The Explanatory Notes could provide guidance as to the evidence of identity that will need to be obtained i.e. that where someone seeks access on behalf of an individual, the CRB or CP will need to ensure that person has been authorised in writing (save in the case of the National Relay Service), the person is	

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			not someone prevented from being an access seeker by the legislation (e.g. an employer, general insurer, CP etc.) and that the terms of the authority cover the information being requested. This means that the written authorisation will need to be obtained.	
20.2	Current Code Para 1.7	Where an individual (whether personally or through another access seeker) requests a CRB to provide access to the individual's credit reporting information , the CRB must not charge a fee for the provision of the individual's credit reporting information if, the individual provides the CRB with evidence that not more than 90 days previously, a CP refused a credit application made by the individual.	This provides an entitlement to a free credit report to check credit reporting information that may have led to a CP's refusal of credit.	We note that sub-clauses 20.2, 20.3 and 20.4 have some degree of overlap and can be confusing. We suggest that sub-clauses 20.2, 20.3 and 20.4 be restructured to more clearly outline the relevant obligations, as follows:
20.3	Sec 20R, 21T	A CRB may establish a service whereby an individual (whether personally or through another access seeker) may for a fee obtain their credit reporting information ("fee-based service") provided that: (a) the information made available by the CRB about the fee-based service prominently states that individuals have a right under Part IIIA to obtain their credit reporting information free of charge: (i) once every 12 months; (ii) if the access request relates to a CP's decision to refuse the individual's consumer credit application; and (iii) if the access request relates to a decision by a CRB or CP to correct or not correct credit reporting data about the	This gives visibility to rights to credit reporting information free of charge and minimises access barriers.	<ul style="list-style-type: none"> - when an individual can get access to their credit reporting information free of charge (including once every 12 months, when the access request relates to refusal of credit, when the access request relates to correction, and a new addition for access when there is a disputed default listing), and how and when this is communicated to individuals - when information is provided free of charge, what this

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		individual; and (b) the CRB takes reasonable steps to ensure that its service whereby individuals may obtain their credit reporting information free of charge is as available and easy to access as its fee-based service .		<p>information should contain and how it should be provided</p> <ul style="list-style-type: none"> - how and when the individual can make a request for access that relates to a refusal of credit - if the CRB offers a fee based service, how this is governed.
20.4	Sec 20R, Explanatory Memorandum p.178	<p>Where credit reporting information is provided to an access seeker free of charge by a CRB as required by Part IIIA or this CR Code:</p> <p>(a) the CRB must provide the access seeker with:</p> <p>(i) all credit information in relation to the individual currently held in the databases that the CRB utilises for the purposes of making permitted CRB disclosures under Part IIIA; and</p> <p>(ii) all current CRB derived information about the individual that is available;</p> <p>(b) the CRB must present the information clearly and accessibly and provide reasonable explanation and summaries of the information to assist the access seeker to understand the impact of the information on the individual's credit worthiness; and</p> <p>(c) if the CRB does not provide the information to the access seeker in the manner requested by the access seeker, the CRB must take reasonable steps to provide access in a way that meets the needs of the CRB and the individual..</p>	<p>This ensures that the free credit reporting information is comprehensive, useful and provided in a way that meets the individual's needs.</p> <p>Para (a)(ii) means that the CRB must disclose the individual's credit score. Para (b) requires the CRB to provide explanation. It is not envisaged that this needs to be lengthy. Nor does it necessarily have to be tailored to the individual's particular circumstances. But the information should be sufficient to enable the individual to understand whether or not their credit reporting information adversely impacts their capacity to obtain credit. It is envisaged that the Explanatory Notes could provide further guidance as to this.</p> <p>Para (c) is consistent with the approach taken in APP 12.5. It is expected that if an access seeker requests access by standard delivery</p>	<p>As for sub-clause 20.3, we suggest that access to a free credit report should also be available when a consumer disputes a default listing, or when there are extenuating circumstances such as financial hardship.</p> <p>In addition, to ensure that the information regarding obtaining credit reporting information free of charge is prominently displayed, we suggest that sub-clauses 20.2 and 20.3 require this information to be placed on the front page of the CRBs website or within FAQs.</p> <p>We also suggest the draft Code includes information that the individual with a dispute about free access to their credit reporting</p>

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			mail, fax or email, the CRB would accommodate this request.	information should be referred through internal complaint processes and be told about the availability of EDR schemes.
20.5	Sec 21T, Para 2.21 of current Code	A CP must provide an accessible means for an individual to obtain access to credit eligibility information about them. Unless unusual circumstances apply, access should be provided within 30 days of the request. The CP must present the information clearly and accessibly and provide reasonable explanations and summaries of the information to assist the access seeker to understand the impact of the information on the individual's credit worthiness .	This provides CPs with some flexibility as to the means and timeframe to respond to access requests, recognising that CPs will vary in the nature and scale of their activities. As for CRBs, there is a requirement for reasonable explanations and summaries of the information. Again it is not envisaged that this needs to be lengthy. Nor does it necessarily have to be tailored to the individual's particular circumstances. But the information should be sufficient to enable the individual to understand whether or not their credit eligibility information adversely impacts their capacity to obtain credit. It is envisaged that the Explanatory Notes could provide further guidance as to this.	We often receive complaints regarding individuals whose application for credit has been denied and they are seeking access to their credit eligibility information to determine the cause. In these complaints, the need to obtain this information can be sometimes urgent due to pending finance. On this basis, we suggest that the 30 day timeframe for CPs to provide access to credit eligibility information is too long. We suggest that the draft Code should prescribe this as 14 days in general, with a longer timeframe if exceptional circumstances apply.
20.6	Sec 20R, 21T,	Where a CRB provides an access seeker with CRB derived information about the individual or a CP provides an access seeker with CP derived information about the individual, this may be done in a way that preserves the confidentiality of	This protects CRBs' and CPs' intellectual property in their derived data, whilst ensuring that access seekers obtain meaningful	We suggest that the Explanatory Notes should state clearly that this sub-clause should not operate to limit sub-clause 20.5 in any way.

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		the methodology, data analysis methods, computer programs or other information that is used to produce the derived information.	information about derived data	
21 Correction of information	Sec 20T, 21V	Introduction: Part IIIA provides an individual with correction of information rights. Where a CRB or CP is satisfied that credit reporting data is inaccurate, out-of-date, incomplete, irrelevant or misleading, the CRB or CP (as applicable) must take reasonable steps to correct the information within 30 days or longer period agreed to by the individual in writing. Where necessary to resolve the correction request, the CRB or CP (as applicable) must consult with other CRBs or CPs.		
21.1	Sec 21V, Explanatory Memorandum p.179	Where a CP receives a correction request from an individual in accordance with Part IIIA and the CP does not either disclose credit information to a CRB or receive credit reporting information from a CRB, the CP must within 30 days inform the individual that it does not participate in the credit reporting system and so is unable to assist the individual.	This clarifies that a CP that does not participate in the credit reporting system can fulfil its “reasonable steps” obligation in relation to a correction request by simply by informing the individual that it cannot assist with the correction request. If, however, a CP that does participate in the credit reporting system receives a correction request in relation to credit reporting data that the CP does not hold, the CP receiving the correction request must consult with relevant CRBs and CPs and manage that request	We suggest that the draft Code sets out the timeframe that a CP must advise an individual that they do not participate in the credit reporting system – which we suggest should be within 14 days unless exceptional circumstances apply.

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			through to finalisation.	
21.2	Sec 20T, 21V	A CRB or CP consulted by another CRB or CP about a correction request must take reasonable steps to respond to the consultation request promptly.	<p>This is to ensure that the individual's correction request is not delayed because a consulted party is overly slow. The Explanatory Notes could provide guidance that a 10 business day response time should be aimed for.</p> <p>The Explanatory Notes could provide guidance that where a CP is satisfied that personal information it holds is inaccurate, out-of-date, incomplete, irrelevant or misleading and that information was disclosed by another party, the CP would be expected to consult with that other party, thereby triggering the correction of their information also.</p>	We suggest that the timeframe of 10 business days proposed in the Explanatory Notes should be set out in the sub-clause. Should a CP or CRB require additional information from another CP or CRB, we suggest that the draft Code could prescribe that this information should be responded to within 2 to 5 business days to ensure that the CP or CRB can respond to an escalated or external complaint within the 10 business day timeframe.
21.3	Sec 20T, 21V, Explanatory Memorandum p.150, 180-1	<p>If CRB or CP forms the view that it will not be able to resolve an individual's correction request within the 30 day period required by Part IIIA, the CRB or CP (as applicable) must promptly:</p> <p>(a) notify the individual of the delay, the reasons for this and the expected timeframe to resolve the matter;</p> <p>(b) seek the individual's consent to an extension; and</p> <p>(c) advise that the individual may complain to a recognised external dispute resolution scheme or, in the case of a CP that is not a member of one, to the Commissioner, and how</p>	<p>This specifies the process for seeking an individual's agreement to extension of time for a correction request.</p> <p>Explanatory Notes to state that the notification seeking consent may point out that, if the individual is not willing to consent to an extension, the individual's correction request will have to be refused because the</p>	We suggest the draft Code sets out that should a CP or CRB be unable to resolve a correction request and an individual requests the reasons for this in writing, the CP or CRB must provide reasons in writing. Further, if an individual does not consent to an extension and the correction request is then refused, we suggest that the CP or CRB then put the reasons for

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		they may do this.	CRB or CP are not yet satisfied that correction is required.	this refusal in writing to the individual. In both instances, the draft Code should set out that the written correspondence should include referrals to an EDR scheme or the Commissioner.
21.4	Sec 20S(1), 20T(2), 21U(1), 21V(2)	If a CRB or CP is satisfied that credit reporting data needs to be corrected, the CRB's or CP's obligation to take reasonable steps to correct the information is satisfied if they correct the credit information and take reasonable steps to ensure that any future derived information is based on the corrected credit information .	This makes it clear that a CRB or CP need not correct historical derived information.	We suggest that the term "historical derived information" is defined and examples provided. Further, the Act makes clear that where the CRB or CP has disclosed incorrect credit reporting information, the CP or CRB must give each recipient of the information notice of the correction. As such, we suggest that the draft Code states that a CP or CRB may be required to correct historical information.
21.5	Sen C'ee Rec 16, 17 & 18	If an individual: (a) enters into a new arrangement with a CP of the kind referred to in Section 6S(1)(c); and (b) requests a CRB to correct the credit reporting information held by the CRB about the individual by removing default information that relates to an overdue payment that is the subject of that new arrangement; and (c) the request is made on the basis that the overdue payment occurred because of circumstances beyond the	This provides a CRB with discretion to determine whether there are extenuating circumstances that mean that default information would provide a misleading impression of an individual's credit worthiness and on that basis the default information should be removed. This discretion may only be exercised with the	In the event an individual disputes the discretionary findings of a CP or CRB in relation to what may constitute circumstances beyond the individual's control (where a correction request is declined), we suggest the draft Code includes a requirement for the CP or CRB to refer the individual through internal complaint processes and the

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		individual's control such as natural disaster, bank error in processing a direct debit or fraud, the CRB must, in consultation with the CP that disclosed the relevant default information , consider whether it would be appropriate to destroy the default information to avoid an inaccurate, out-of-date, incomplete, irrelevant or misleading impression that the individual lacks credit worthiness and, if the CRB and CP are satisfied that this is the case, the CRB must agree to remove the default information and effect this by taking the correction steps set out in Part IIIA.	agreement of the CP that disclosed the relevant default information	availability of EDR schemes.
21.6	Sec 20U, 21W, Explanatory Memorandum p.14, Para 1.14, 3.14, 3.15 of current Code	A decision by a CRB or CP about a correction request made by an individual under Section 20T or Section 21V must be notified to the individual promptly and in any event so that person receives the notification within 7 business days of the decision. Where the decision is to correct the information, the notification to the individual must: (a) include all credit reporting information or credit eligibility information (as applicable) held by the CRB or CP (as applicable) so that the individual can check that the information has been appropriately corrected; (b) where the correction decision is made by a CP – explain: (i) that individuals have a right under this CR Code to obtain their credit reporting information from the CRB free of charge if the access request to the CRB relates to a decision by a CP to correct information that is held by the CRB about the individual; and (ii) how that right may be exercised; and (c) if the CRB or CP (as applicable) is proposing to rely upon	This provides a timeframe for the notification of a correction decision. It also provides the individual with sufficient detail about the correction to check what has been done.	We suggest the word “written” is inserted before “notification” to ensure that the individual is notified in writing and that this includes the details to be omitted, altered or inserted.

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		<p>paragraph 21.8 of this CR Code:</p> <p>(i) explain what CRBs, CPs and affected information recipients the CRB or CP (as applicable) is intending to notify to fulfil its notification obligation under Part IIIA and this CR Code and timeframes to do this; and</p> <p>(ii) ask the individual if there is any other CP or affected information recipient that the individual wants the CRB or CP (as applicable) to notify of the correction.</p>		
21.7	Section 20S(2), 20U(2), 21U(2) 21W(2)	Where a CRB or CP corrects credit reporting data by updating identification information about an individual, the CRB or CP (as applicable) is not obliged to notify any previous recipient of the information of the updating of that information.	If, for example, the individual changes address, there would seem no public policy purpose achieved by notifying CPs and others who have previously been provided with credit reporting data of that person's change of address. The provision thereby enhances the individual's privacy.	This sub-clause could give rise to problems if the correction of identification information relates to an incorrect identity – in which case it would be important for previous recipients of the information to be notified. We suggest that this sub-clause is confined to the correction of identification information that has minor impacts.
21.8	Section 20S(2), 20U(2), 21U(2) 21W(2), Explanatory Memorandum p.147, 179-80, Para 1.14 of current Code,	<p>Where a CRB or CP ("the correcting CRB or CP") corrects credit reporting data and this gives rise to an obligation under Part IIIA to give notice to a CRB, CP or affected information recipient, unless it is impracticable or illegal to give that notice, the notification obligation is taken to be met if:</p> <p>(a) the correcting CRB or CP gives notice of the correction to:</p> <p>(i) all CRBs to which it disclosed the pre-corrected information;</p> <p>(ii) all CPs and affected information recipients to which it</p>	This ensures notification of a correction to anyone who has received the pre-corrected information sufficiently recently that the pre-corrected information may have continuing relevance to them. It is a broader notification obligation than under the existing Code which restricts notification to a person who:	We note that the Act does not suggest a 3 month cut-off for correction of previously disclosed information. The Explanatory Memorandum (at page 149, 180) suggests limited circumstances where notification of correction to a previously disclosed recipient may not be required – for example, when that recipient has ceased trading. We are not sure about

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	Para 3.15 of current Code	disclosed the pre-corrected information within the previous 3 months; and (iii) any other CP or affected information recipient that has been nominated by the individual and to which it disclosed the pre-corrected information more than 3 months previously; (b) if notice is given to a CP or affected information recipient that previously received CRB derived information or CP derived information that is no longer correct by reason of the information correction - the notice must include revised CRB derived information or CP derived information (as applicable) derived after the information has been corrected; and (c) the notice is given promptly and in any event within 7 business days of the correction.	<ul style="list-style-type: none"> received the pre-corrected information in the previous 3 months; and is nominated by the individual as someone who should be provided with the corrected information. 	<p>the rationale for the 3 month cut-off period.</p> <p>If this 3 month cut-off is to be retained, we suggest that it should not apply to sub-clause 21.8(a)(iii) where the CP/affected information recipient has been nominated by the individual.</p>
21.9	20T, 21V	Where an individual makes a correction request within Section 20T(1) or Section 21V(1), Part IIIA Division 5 – Complaints will not also apply to the correction request even if the correction request includes an expression of dissatisfaction by the individual about an act or practice by the CRB or CP (as applicable).	This makes it clear that where an individual expresses dissatisfaction in the course of making a correction request, the individual's request should nevertheless be dealt with as a correction rather than a complaint.	We suggest that the sub-clause makes it clear that the individual has the right to make a complaint to the relevant EDR scheme or the Commissioner about an access request or a refusal of a correction request as envisaged in the Explanatory Memorandum (page 190).
22 Complaints		Introduction: Part IIIA enables an individual to complain either to a CRB or a CP about an act that may breach Part IIIA (other than certain provisions pertaining to access or corrections) or the CR Code (other than an obligation that pertains to a Part IIIA excluded provision). The complaint		There does not appear to be any indication at this stage that the complaints section of the draft Code has any obligations set out regarding complaint monitoring, compliance

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		must be acknowledged within 7 days, investigated and where necessary consultation with other CRBs or CPs must occur. A decision must be made in relation to the complaint within 30 days or longer period agreed to by the individual in writing.		monitoring and what might happen if CP/CRBs fail to comply. Will this be addressed in the draft Code?
22.1	Div 5, Explanatory Memorandum p.189, Para 3.1, 3.2, of current Code	Where a CRB or CP is required by Australian law, a condition of a licence issued by a regulatory authority or an enforceable Industry Code requirement to meet complaints handling requirements, the CRB or CP must comply with those requirements for the purposes of a complaint under Part IIIA. Any other CRB or CP must comply with the following sections of ISO 10002-2006 <i>Customer satisfaction - Guidelines for complaints handling in organisations</i> for the purposes of a complaint under Part IIIA: (a) Section 4 <i>Guiding Principles</i> ; (b) Section 5.1 <i>Commitment</i> ; (c) Section 6.4 <i>Resources</i> ; (d) Section 8.1 <i>Collection of information</i> ; and (e) Section 8.2 <i>Analysis and evaluation of complaints</i> .	This ensures that a CRB or CP is subject to only one regulatory regime for complaints handling requirements e.g. ASIC Regulatory Guide 165 or Telecommunications Consumer Protections Code. For those not already subject to a regulatory regime for complaints handling, the ISO standard must be met. This standard is widely accepted and, for example, forms the foundation for ASIC Regulatory Guide 165.	As telco providers who are CPs would be subject to the Telecommunications Consumer Protections Code and its complaint handling provisions, we have not made specific comments on the complaint handling clauses in the draft Code.
22.2	Sec 26N(3)(a)	A CRB must be a member of a recognised external dispute resolution scheme.	This obligation is imposed in view of the pivotal role played by CRBs in the credit reporting system. EDR Scheme membership will help to ensure that individuals obtain redress if a CRB fails to meet its obligations under Part IIIA and this CR Code.	
22.3	Sec 23B, Explanatory Memorandum p.191	A CRB or CP that is consulted by another CRB or CP about a complaint must take reasonable steps to respond to the consultation request promptly.	This is to ensure that the individual's complaint is not delayed because a consulted party is overly slow. The Explanatory Notes could provide	We suggest that the draft Code sets out that the consulted party should provide information to the CRB or CP within 2-5 business days.

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			guidance that a 10 business day response time should be aimed for.	
22.4	Sec 23B(5)	If a CRB or CP forms the view that it will not be able to resolve a complaint within the 30 day period required by Part IIIA, the CRB or CP (as applicable) must: (a) inform the individual of this before the end of that period and provide the reason for the delay, the expected timeframe to resolve the complaint and seek their consent to an extension; and (b) advise that the person may complain to the recognised external dispute resolution scheme of which the CRB or CP (as applicable) is a member or, in the case of a CP that is not a member of such a scheme, to the Commissioner .	This specifies the process for seeking an individual's agreement to extension of time for a complaint	
22.5	Sec 23C	Where a CRB has an obligation under Section 23C(2), unless it is impracticable or illegal to do so, to give notice to a CP about a complaint relating to a CRB's act or practice that may breach Section 20S, this obligation is taken to be met if the CRB gives notice as soon as practicable to: (a) if the complaint relates to credit information that was disclosed to the CRB by a CP – that CP; (b) any other CP to which in the previous 3 months the CRB disclosed the credit information to which the complaint relates; and (c) any other CP that has been nominated by the individual for this purpose.	This relates to a complaint about a correction that a CRB has previously initiated. It requires the CRB to give notice of the complaint to relevant CPs.	
22.6	Sec 23C	Where a CP has an obligation under Section 23C(3), unless it is impracticable or illegal to do so, to give notice to a CRB or CP about a complaint relating to a CP's act or practice that	This relates to a complaint about a correction that a CP has previously initiated or has failed to self-initiate.	

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		may breach Section 21U, this obligation is taken to be met if the CP gives notice as soon as practicable to: (a) if the complaint relates to credit information that was disclosed to the CP by a CRB or another CP – that CRB or CP; (b) any other CP to which in the previous 3 months the CP disclosed the credit information to which the complaint relates; and (c) any other CP that has been nominated by the individual for this purpose.	It requires the CP to give notice of the complaint to relevant CRBs and CPs.	
23 Record keeping		Introduction: Part IIIA imposes various obligations on CRBs and CPs to keep records where credit information is used or disclosed.		
23.1	Explanatory Memorandum p.139, Para 1.17, 2.14, 2.14A, 2.19 of current Code	Each CRB and CP must maintain adequate records in relation to their management of credit reporting data sufficient to establish a reasonable audit trail. To the extent relevant, this includes an obligation to keep a record: (a) where credit reporting data is destroyed in order to meet obligations under Part IIIA and this CR Code; (b) in the case of a CP that is disclosed credit eligibility information by another CP - the date on which that information was disclosed, the CP who disclosed the information, a brief description of the type of information disclosed and the evidence relied upon that the consent requirements have been met; (c) for each disclosure they make of credit reporting data - the date of the request, the date of the disclosure, a brief description of the type of information disclosed, the CP, affected information recipient or other person to whom the disclosure was made and evidence that the disclosure was	This imposes comprehensive record keeping obligations. The Explanatory Notes could provide further guidance that CRBs or CPs may need to hold information for more than 5 years if other legislation so requires.	

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		<p>permitted under Part IIIA; (d) of any consent provided by an individual (where required) to the collection or disclosure of credit reporting data; (e) in the case of a CRB – of any use made of de-identified credit reporting information; (f) in the case of a CP - of any written notice given to an individual stating that a consumer credit application has been refused within 90 days of disclosure by a CRB to the CP of credit reporting information in relation to that individual; (g) of correspondence and actions taken in relation to requests to establish or extend a banning period; (h) of any requests for access to credit reporting data and the response made to the request; (i) of any requests for corrections and the responses and notifications made in connection with these requests; (j) any self-initiated corrections and notifications made in relation to these; (k) of correspondence and actions taken in relation to complaints; (l) of pre-screening requests by a CP; (m) in the case of a CRB - of its monitoring and auditing of CPs in accordance with Part IIIA and this CR Code; and (n) in the case of a CP – of its response to issues identified during an audit undertaken pursuant to paragraph 24.2(d) of this CR Code.</p> <p>Records must be retained for a minimum period of 5 years from the date on which the record is made unless, in the case of a CRB, the record includes information that the CRB is required by Part IIIA to destroy at the end of the applicable</p>		

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		retention period, in which case the record must be retained for the duration of that retention period only.		
24 Credit reporting system integrity	Sec 20N and 20Q.	Introduction: Part IIIA includes measures to facilitate credit reporting system integrity including an obligation on CRBs to ensure that regular audits are conducted by an independent person to determine whether CPs are complying with aspects of their contractual obligations to the CRB.		
24.1	Sec 20N and 20Q. Explanatory Memorandum p.30 and p.145	A CRB must establish a documented, risk based program to monitor CPs' compliance with their Part IIIA obligations, incorporated in their agreements with the CRB, to ensure: (a) the data integrity of credit information that the CP discloses to the CRB; (b) that credit reporting information that the CRB discloses to the CP is protected by the CP from misuse, interference and loss and from unauthorised access, modification or disclosure; and (c) that the CP takes the steps in relation to requests to correct credit reporting data required by Part IIIA and this CR Code.	This obliges CRBs to monitor CPs' compliance with their data integrity and data security obligations. CRBs can then use the intelligence acquired through monitoring to target to best effect the auditing of CPs that the legislation requires CRBs to ensure takes place. (See paragraph 25 for the oversight mechanisms in relation to CRBs.)	
24.2	Sec 20N and 20Q	The risk based program established by a CRB for the purposes of paragraph 24.1 must: (a) identify and evaluate indicators of risk of non-compliance by CPs with the obligations referred to in paragraph 24.1; (b) assess the risk posed by CPs of significant non-compliance with those obligations utilising those risk indicators and the range of information available to the CRB including correction requests and complaints; (c) utilise an appropriate range of monitoring techniques to validate and update those risk assessments from time to time	The risk assessment methodology set out in paragraphs (a) and (b) is modelled on the risk assessment methodology that the AML/ CTF Act mandates. For paragraph (b), the risk assessment needs to take into account both the likelihood of non-compliance and the impact of non-compliance. The risk assessment needs to be	

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		<p>(which could, for example, include questionnaires or attestations);</p> <p>(d) include an audit program for CPs that are identified through the risk based program as posing a high risk of significant non-compliance with the obligations referred to in paragraph 24.1 - the frequency and extent of an audit of a CP's compliance with the obligations referred to in paragraph 24.1 must be determined taking into account the CRB's risk assessment process.</p>	<p>informed by the CRB's experience of dealing with CPs. For example, a risk indicator could be repeat provision of information that the CP is not permitted to disclose to a CRB. A CP identified as having done this would be prone to a higher risk rating.</p> <p>Paragraph (c) requires a CRB to utilise a range of monitoring techniques to test and refine the risk assessment. The aim is to target the CRB's auditing program to maximum effect. When carrying out monitoring activities, a CRB may choose to use the services of a suitably qualified, external services provider.</p> <p>Paragraph (d) enables a CRB to tailor its auditing of a CP to their circumstances and risk profile. For example, if a CP is not contributing information about new credit or new defaults and the agreement is merely to permit the CP to report through payment information in relation to previously reported default information (and if applicable credit closures in relation to previously disclosed credit), the CP would have</p>	

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			quite a different risk profile from a CP that is reporting much more extensively to the CRB	
24.3	Sec 20N(3)(b), 20Q(2)(b)	To be independent and so eligible under Part IIIA to conduct an audit of a CP as part of the CRB's auditing program referred to in paragraph 24.2: (a) an auditor must not be a director or employee of the CP, have a significant financial interest in the CP or at any time during the previous 12 months had any such relationship or interest; (b) if the auditor is an employee of the CRB – the CRB's organisational structure and supervision arrangements must achieve functional independence for the auditor; (c) if the auditor is an employee of an industry funded organisation – the organisation's governance and supervision arrangements must achieve functional independence for the auditor; and (d) the auditor must not have any other association that would impair the perception of the auditor's independence or had any such association at any time during the previous 12 months.	This ensures that auditors have both actual and perceived independence.	
24.4		A CRB must take reasonable steps to ensure that a person who conducts an audit of a CP as part of the CRB's auditing program referred to in paragraph 24.2 has sufficient expertise for the role including: (a) knowledge of the requirements of Part IIIA and this CR Code; (b) knowledge of audit methodology and previous experience in conducting audits; and	This ensures that auditors have sufficient expertise to ensure that audits are appropriately robust.	

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		(c) credit reporting system experience.		
24.5	Sec 20N and 20Q Explanatory Memorandum p.30 and p.145	Subject to paragraphs 24.3 and 24.4, a CRB's CP auditing program for the purposes of paragraph 24.2(d) may utilise as auditors: (a) a CRB's compliance or auditing team; (b) consultants engaged by the CRB; (c) consultants engaged by the CP where the CRB is satisfied as to the consultant's independence and expertise; or (d) an industry funded organisation where the CRB is satisfied as to that organisation's independence and expertise.	The legislation requires CRBs to ensure regular audits are conducted of CPs – but does not specify who must carry out those audits. This provides guidance as to who CRBs may use to carry out that auditing.	
24.6	Sec 20N and 20Q Explanatory Memorandum p.30 and p.145	The CRB must take reasonable steps to ensure that its audit oversight including reporting arrangements is sufficient to enable the CRB to form a view as to whether the CP is complying with the obligations referred to in paragraph 24.1.	This ensures that the CRB retains accountability for audit activities	
24.7		A CP must permit a person, who conducts an audit of a CP as part of the CRB's auditing program referred to in paragraph 24.2 auditor, to have reasonable access to the CP's records for the purposes of carrying out the audit.	This obliges a CP to cooperate in a CRB-arranged audit.	
24.8	Sec 20N and 20Q Explanatory Memorandum p.30 and p.145	A CP must take reasonable steps to rectify issues identified in the course of an audit undertaken pursuant to the CRB's auditing program referred to in paragraph 24.2.	This obliges a CP to address issues identified during a CRB-arranged audit.	We suggest that the draft Code includes a requirement that CRBs should provide regular reports to the Commissioner on the results of these audits. We suggest that the draft Code also requires CPs to report to the CRBs' auditors and the Commissioner on the

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				steps taken to rectify any identifiable issues.
24.9	OAIC, Guide to Handling Personal Information Breaches	Where a CRB, CP or affected information recipient becomes aware of a breach of Part IIIA or of this CR Code that creates a real risk of serious harm to an individual, the CRB, CP or affected information recipient must take reasonable steps to contact the individual to inform the individual of the breach.	This utilises the test set out in the OAIC Data Breach Notification Guide April 2012 to determine whether notification of the individual is appropriate	
24.10	Explanatory Memorandum p.30 and p.146	Where a CP fails to meet its contractual obligation to a CRB to comply with Part IIIA and this CR Code and in particular fails to: (a) ensure that the credit information that the CP discloses to the CRB is accurate, up-to-date and complete; or (b) protect CRB disclosed credit reporting information from misuse, interference or loss, or unauthorised access, modification or disclosure; the CRB will take such action as is appropriate in the circumstances which may include termination of the agreement, but termination may only occur if the CRB first provides the CP with reasonable notice of its intention to terminate the agreement and an opportunity to trigger the dispute resolution procedures in paragraph 24.11.	This obliges a CRB to address CP non-compliance. In the first instance, it would be expected that the CRB and CP would discuss and try to resolve issues. But if this proved impossible, a CRB could terminate their agreement with a CP, thereby depriving the CP of access to the CRB's credit reporting information. Note that the dispute resolution requirements would apply in this type of scenario.	We suggest that the draft Code includes a requirement that should a CP be non-compliant with its obligations under Part IIIA, the Code itself and in particular sub-clauses 24.10(a) and (b), mechanisms should be developed and implemented to allow for that CP's suspension from the credit reporting system, until such time as it rectifies any issues and demonstrates compliance.
24.11	Explanatory Memorandum p.146	Where disputes arise between two or more CRBs, CPs and affected information recipients in relation to actions undertaken or required to fulfil their obligations under Part IIIA or this CR Code, the parties to the dispute must endeavour to resolve the dispute in a fair, efficient and timely manner.		We suggest the draft Code prescribes an efficient and effective mechanism through which CRBs and CPs can resolve disputes and an independent adjudicator to which these matters can be addressed.

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24.12	Sec 26N(3)(a)	<p>A CRB must publish on its website a report for each financial year ending on 30 June (or in the case of the report provided in 2014, for the period beginning on the date of approval of this CR Code and ending on 30 June 2014) that includes information about the following:</p> <p>(a) the percentage calculated in accordance with the following formula; $\% = \text{CR} / \text{IND} \times 100$ where: CR is the number of correction requests received by the CRB during the reporting period; and IND is the number of individuals about whom credit information is held at the end of the reporting period;</p> <p>(b) the percentage calculated in accordance with the following formula; $\% = \text{SCR} / \text{IND} \times 100$ where: SCR is the number of successful correction requests, that is, correction requests received by the CRB during the reporting period where the CRB was satisfied that a correction should be made; and IND is the number of individuals about whom credit information is held at the end of the reporting period;</p> <p>(c) the percentage calculated in accordance with the following formula; $\% = \text{C} / \text{IND} \times 100$ where: C is the number of complaints received by the CRB during the reporting period; and IND is the number of individuals about whom credit information is held at the end of the reporting period;</p> <p>(d) information about the types of correction requests and</p>	<p>This promotes accountability through providing transparency in relation to corrections requests and complaints</p> <p>LL: Some actual numbers (as well as percentages) would allow readers to get some idea of the real scope of the problems.</p>	

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		complaints that were received during the reporting period including about the industry sectors that gave rise to those correction requests and complaints; and (e) the number of serious credit infringements that were disclosed to the CRB during the period and information about the industry sector sources of these.		
25 Information Commissioners role		Introduction: The Privacy Act specifies that this CR Code may impose obligations on CRB, CP or affected information recipients to report matters to the Commissioner .		
25.1	Para 4.2 of Current Code	The Commissioner may at the request of a CRB, CP or affected information recipient agree to vary time limits imposed by this CR Code where the CRB, CP or affected information recipient (as applicable) is unable to comply with the specified time limit due to circumstances such as technological failure or other practical or unforeseen difficulties.	This provides the Commissioner with a discretion to modify time limits in exceptional circumstances	We suggest the insertion of “beyond its control” after “circumstances”, and the removal of the wording “technological failure or other practical or unforeseen difficulties” from this sub-clause.
25.2	Sec 26N(3), Explanatory Memorandum p.208-9, Paras 1.4, 1.18, 2.6 and of Current Code,	A CRB must provide the Commissioner with a report for each financial year ending on 30 June (or in the case of the report provided in 2014 for the period beginning on the date of approval of this CR Code and ending on 30 June 2014) that includes the following: (a) the CRB’s publicly available report for the period prepared in accordance with paragraph 24.12; (b) a certification by the CRB, signed by a person authorised by the CRB’s Board, that to the best of that person's knowledge after making appropriate enquiries, there have been no material breaches by the CRB of its obligations under	This provides the Commissioner with the information that they need to oversee CRBs’ compliance with their credit reporting privacy obligations. The report as to systemic issues would need to cover CP issues of which the CRB has become aware (as well as CRB issues).	

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		<p>Part IIIA and this CR Code other than as disclosed in the report;</p> <p>(c) details of any material breaches of Part IIIA or this CR Code, by the CRB or by a CP with which the CRB entered into an agreement pursuant to Part IIIA (without identification of the name of the CP involved), of which the CRB became aware during the period and a summary of the action taken in response to the breach;</p> <p>(d) the number of individuals in relation to whom credit information is held at the end of the reporting period;</p> <p>(e) the total number of CPs that during the period disclosed information to the CRB, their industry categories, the number of CPs that disclosed consumer credit liability information and the number of CPs that disclosed repayment history information;</p> <p>(f) any systemic issues (without identification of the name of the CP or CRBs involved) of which the CRB became aware during the period and an explanation of the action taken to address these issues;</p> <p>(g) the number of individuals that were during the period provided free of charge with access to their credit reporting information and the number of individuals that were during the period provided with access to their credit reporting information through the CRB's fee-based service;</p> <p>(h) the key issues raised in correction requests and complaints received by the CRB during the period, an overview of the outcomes of these and the timeframes for resolving these, an analysis of trends in relation to correction requests and complaints and an explanation of systemic</p>		

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		<p>improvements made by the CRB to address issues raised in correction requests and complaints;</p> <p>(i) a summary of the activity undertaken by the CRB pursuant to its risk-based CP monitoring program and the results of that activity including the number and status of audits in progress during the period, the results of audits completed during the period and an explanation of rectification work planned or undertaken during the period in response to an audit; and</p> <p>(j) any other information requested by the Commissioner from time to time.</p> <p>A report must be provided to the Commissioner within one month of the end of the reporting period.</p>		
25.3	Sec 26N	<p>Every 3 years, or more frequently if the Commissioner requests, a CRB must commission an independent review of its operations and processes to assess compliance by the CRB with its obligations under Part IIIA and this CR Code. The CRB must consult with the Commissioner as to the choice of reviewer and scope of the review. The review report and the CRB's response to the review report must be provided to the Commissioner and made publicly available.</p>	<p>These independent reviews are the equivalent of the CP audits that CRBs will oversee. But for CRBs, the Privacy Commissioner will oversee the review process. When a CRB consults with the Privacy Commissioner as to the choice of reviewer and scope of the review, the Privacy Commissioner may seek and take into account stakeholder views. Because of CRBs' important public interest role – and as for Ombudsman scheme reviews – the review results should be publicly available.</p>	

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25.4	Sec 26T	The Commissioner must ensure that this CR Code is reviewed after 3 years and every 5 years thereafter.	The first review is to be in 3 years time so that the review can address at an early stage issues that emerge, whilst encompassing sufficient experience of the CR Code. Thereafter reviews can be less frequent	We support the regular and timely review of the Credit Reporting Code, once this is registered. We believe the timeframes proposed for review are appropriate and consistent with best practice.