Attachment D

Paragraphs 20.1: Further Explanation and Submissions

A. Legislative context

1. Section 21V enables an individual to make a correction request to any CP that holds any credit information, CRB derived information or CP derived information about the individual.

2. A CP may hold credit information about the individual, but may not participate in the credit reporting system, that is, may never obtain CRI from CRBs or disclose CI to CRBs. If then the CP receives a correction request that relates to information that the CP does not hold, the CP is not in a position to agree to the correction request as per Section 21V(2). Rather the CP must:
   - consult with either or both of a CRB or CP that holds or held the information - Section 21V(3) imposes this obligation but does not clarify the nature of that consultation or how extensive that consultation must be; and
   - if the CP does not correct the information under Section 21V(2) - give the individual written notice stating that the correction has not been made, setting out the reasons for not correcting the information including evidence substantiating the correctness of the information and advising complaint rights - Section 21W(3).

B. Code provisions

3. In our submission, paragraph 20.1 addresses all the requirements of Sections 21V(2) and 21W(3). The paragraph requires a CP, that does not hold the information to which the correction request relates, to consult with CRBs or CPs and to provide the individual with a written notice stating that the correction has not been made, the reasons for this, what the CP has found out through its consultation and the required complaint information.

4. Paragraph 20.1 has the result that the CP does not have to manage the correction request through to finalisation by the entity responsible for the information the subject of the correction request. But neither Sections 21V nor 21W explicitly require a CP that receives a correction request to do this. Rather it is the Explanatory Memorandum that layers this notion onto the legislative provision, suggesting that this is appropriate because “industry participants in the credit reporting system derive

significant benefits from the availability of information about individuals in the system". To ensure that paragraph 20.1 is aligned with the Explanatory Memorandum commentary, paragraph 20.1 only applies to a CP that does not participate in the credit reporting system.

5. Consumer and privacy advocates and EDR schemes support paragraph 20.1. They consider that the best outcome is for an individual to deal directly with the entity that is in a position to decide a correction request, and if the correction request outcome is unsatisfactory, for the individual to access that entity's EDR scheme (rather than to go to the EDR scheme of the CP that originally received the correction request). There is also concern that credit repair companies may 'play the system' and deliberately elongate the corrections process by involving the 'wrong CP' and its EDR scheme (giving the expectation from EDR schemes that debt management processes will be suspended while the matter is within EDR processes) – paragraph 20.1 goes some way to address this concern.

6. The Joint Consumer Submission has, however, raised one issue in relation to paragraph 20.1 – that the 30 day timeframe is too long. This timeframe is, however, consistent with the timeframe specified in Section 21V(2) and allows time for the CP (that will inevitably be unfamiliar with Part IIIA and the CR Code) to undertake inquiries with CRBs or CPs.