
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**NOTICE 596 OF 2021****INFORMATION
REGULATOR
(SOUTH AFRICA)***Ensuring protection of your personal information
and effective access to information*

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06 October 2021**NOTICE IN TERMS OF SECTION 61(2) OF THE PROTECTION OF PERSONAL
INFORMATION ACT NO 4 OF 2013 (POPIA) CODE OF CONDUCT: CREDIT BUREAU
ASSOCIATION (CBA)**

1. In terms of the provisions of section 61 (2) of POPIA, the Information Regulator gives notice that the Regulator is in receipt of a code of conduct from Credit Bureau Association (CBA) that deals with how personal information will be processed in the credit sector.
2. The purpose of the code of conduct is to-
 - 2.1. promote appropriate practices by members of CBA governing the processing of personal information in terms of POPIA;
 - 2.2. encourage the establishment of appropriate agreements between members of CBA and third parties, regulating the processing of personal information as required by POPIA and dictated by good business practice; and
 - 2.3. to establish procedures for members of CBA to be guided in their interpretation of principally POPIA, but also other laws or practices governing the processing of personal information, allowing for complaints against credit bureau to be considered and remedial action, where appropriate, to be taken.
3. The code of conduct governs-
 - 3.1. the processing of personal information (including consumer credit information) by credit bureau that are members of CBA in compliance with POPIA and National Credit Act, 34 of 2005 (NCA);

Adv. FDP Tlakula (Chairperson), Adv. LC Stroom Nzama (Full-time Member), Adv. JC Weapond (Full-time Member), Prof SL Snail ka Mtuze (Part-time Member) Ms AR Tilley (Part-time Member)

- 3.2. where appropriate, agreements that may need to be concluded between members of CBA and third parties promoting, and to the extent possible ensuring that personal information is processed in compliance with POPIA; and
 - 3.3. the enforcement by CBA of the provisions of the code of conduct,
4. Affected persons are invited to submit written comments to the Regulator (email address: lr@justice.gov.za) within fourteen (14) days after publication of the notice in the Government Gazette. A copy of the code of conduct will be made available on the Regulator's website, alternatively, a request for a copy of the code may be made by addressing correspondence to email address: infoereg@justice.gov.za.

**Code of Conduct governing the Conditions for Lawful Processing of Personal Information
by members of the Credit Bureau Association, South Africa.**

**Issued in terms of Section 60 of the Protection of Personal Information Act, No. 4 of 2013
("PoPIA") by the Information Regulator**

CODE OF CONDUCT

Lawful Processing of Personal Information by credit bureaus in South Africa

THE CREDIT BUREAU ASSOCIATION, SOUTH AFRICA



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PART A – INTRODUCTION

1. MANDATE AND APPLICATION

- 1.1 The Credit Bureau Association, South Africa (“CBA”) is a voluntary association of credit bureaus, whose members process the vast majority of consumer credit information relied upon by the credit industry in South Africa.
- 1.2 Credit bureaus are duly registered in terms of Section 43(1) of the National Credit Act, 34 of 2005 and the Regulations thereto (as amended) (“NCA”), and governed by the National Credit Regulator (“NCR”).
- 1.3 All CBA members are bound by the CBA Constitution to process consumer credit information in a manner that promotes confidentiality, accuracy, and relevancy in accordance with international best practice and relevant legislation.
- 1.4 The Protection of Personal Information Act, 4 of 2013 (“PoPIA”) stipulates as among its primary purposes; giving effect to the constitutional right to privacy, the establishment of the way personal information may be processed by prescribing minimum threshold requirements for the lawful processing of personal information and providing remedies to persons whose personal information is not processed in accordance with PoPIA.
- 1.5 In addition to the conditions governing the lawful processing of personal information stipulated in PoPIA, credit bureaus are also subject to the restrictions contained in Section 70 of the NCA, read with Section 18 of the NCA Regulations, which governs the processing of consumer credit information.
- 1.6 All members of the CBA are statutorily obliged to process credit information and to comply with the conditions for the lawful Processing of Personal Information as set out in PoPIA. All members of the CBA adopt this Code of Conduct and will apply its principles to the processing of consumer credit information and personal information.

2. PURPOSE

The purpose of this Code of Conduct is to set out specific data processing rules and standardised procedures to guarantee, at a credit bureau industry level and having regard for the legal obligations under PoPIA, the NCA and other laws or practices governing the processing of personal information, the effective, consistent and homogeneous application of PoPIA, while also guaranteeing that the interests of the parties involved in the processing of personal data are properly balanced.

3. SCOPE

This Code of Conduct applies to :

- 3.1 the processing of personal information (including consumer credit information) belonging to data subjects (natural and juristic) by registered credit bureaus that are members of the CBA,

3.2 the enforcement by the CBA of the provisions of this Code of Conduct.

4. DEFINITIONS AND ABBREVIATIONS

Unless stated otherwise, the definitions as set out in PoPIA and the NCA will apply.

5. COMMENCEMENT OF THE CODE

5.1 This Code will come into force and be binding on every member of the CBA on the 28th day after notification of its issue by the Regulator in the Gazette as required in section 62(2) of PoPIA (“commencement date”).

5.2 Unless revoked by the Regulator, the Code will terminate on the last day before the 5th anniversary of the commencement date (“termination date”), prior to which time, the CBA may apply to the Information Regulator for the issue of a revised or new Code of Conduct.

5.3 The Regulator may review the operation of the Code and if necessary, require amendment or revoke the Code with immediate effect or at a future date to be determined by the Regulator.

5.4 The CBA will publish the commencement and termination date of this Code of Conduct on its website, which notice will be displayed in a manner that it is associated with the Code of Conduct.

PART B – CONDITIONS FOR LAWFUL PROCESSING OF PERSONAL INFORMATION**GENERAL**

- a) In applying the conditions for the lawful processing of personal information the separate conditions must not be considered in isolation. They should be regarded as a constellation of conditions that interact with and may influence the interpretation, and application of the other conditions as circumstances may dictate.
- b) Credit bureaus and other members of the credit industry are subject to governance and regulation stipulated in terms of the NCA. The NCA expressly deals with “consumer credit information” (defined in Section 70) and with “confidential information”, and defines these terms to mean “*Personal information that belongs to a person and is not generally available to or known by others*”. Both “consumer credit information” and “confidential information” as used in the NCA fall within the definition of “personal information” in PoPIA.
- c) While the general principles of processing personal information stipulated in PoPIA apply to all personal information, the NCA governs the filing of consumer credit information, and specifically states that credit bureaus must accept the filing of consumer credit information, take reasonable steps to verify the accuracy of information, retain the information for the prescribed period, promptly delete the information once it is no longer permitted to retain it anymore and furthermore release the information if someone requires it as set out in the NCA (see section 70(2) of the NCA).
- d) Therefore, while the provisions governing the processing of information in the NCA, are not in all aspects as detailed and as extensive as PoPIA, they are not inconsistent with PoPIA. Credit bureaus operating in accordance with the NCA, already largely comply with the conditions for the lawful processing of personal information contained in PoPIA.
- e) In consequence of their compliance with the NCA, credit bureaus, in many instances, have developed practices that comply with the conditions for the lawful processing of personal information or practices that constitute functional equivalence of what is required in these conditions.
- f) The practical application of the principles for the processing of personal information by credit bureaus are described in addressing each of the conditions as hereinafter more fully described.

1. CONDITION 1: ACCOUNTABILITY¹

Due to their regulatory obligations under the NCA, credit bureaus will in most cases act as a responsible party, specifically when a credit bureau receives and loads information in order to perform its obligations as mandated by law. When acting as a responsible party, the bureaus must ensure that all 8 conditions for lawful processing and the measures that give effect to such conditions, are complied with at the time of the determination of the purpose and means of the processing, as well as during the processing itself.

- 1.1 To ensure that credit bureaus comply with the accountability condition when acting as a responsible party, credit bureaus have established a governance framework to ensure strategic, governance and execution oversight of all privacy-related matters that:
 - 1.1.1 necessitates the appointment and registration of an Information Officer (and where applicable a deputy Information Officer) with the Information Regulator;
 - 1.1.2 assigns responsibility for the protection of personal information throughout the business;
 - 1.1.3 requires effective communication between the Information Officer, data subjects and the business;
 - 1.1.4 requires that all PoPIA compliance activities and controls are documented and demonstrable for verification or audit purposes, this includes the development and maintenance of policies that set out PoPIA requirements, and procedures that incorporate appropriate controls;
 - 1.1.5 requires the performance of a personal information impact assessments ("PIIA"), that ensure that adequate measures and standards exist in order to comply with the conditions for the lawful processing;
 - 1.1.6 requires the bureau to maintain an inventory of processing activities, that demonstrates that processing activities involving personal information comply with PoPIA;
 - 1.1.7 requires the implementation of training programmes that will ensure that those persons responsible for the credit bureau complying with its obligations in terms of PoPIA are appropriately trained.
- 1.2 Where credit bureaus act as operator for a client, the bureau will require the client to only instruct the bureau to process information where the client has a lawful ground for processing. Where the processing is conducted in accordance with section 70 of the NCA, the lawful ground for processing will be section 11(c) of PoPIA. Credit bureaus will: i) maintain strong security controls for any data processing activity; ii) maintain an updated record of all processing activities carried out as an Operator; iii) notify the Responsible Party as soon as a breach of Personal Information is discovered; and iv) ensure that a legally binding contract with Responsible Party is in place.

¹ Section 8 Responsible party to ensure conditions for lawful processing, PoPIA

2. CONDITION 2: PROCESSING LIMITATION

Lawfulness of processing²

- 2.1. When acting as a responsible party, credit bureaus ensure personal information is processed lawfully and in a reasonable manner that does not infringe the privacy of data subjects. In order to facilitate such processing, bureaus implement and maintain a data privacy policy requiring the lawful processing of personal information, as provided for in PoPIA and elaborated further in this code of conduct.
- 2.2. The data privacy policy ensures that all processing of personal information is reasonable, necessary and does not infringe on the data subjects right to privacy.

Minimality³

- 2.3. Credit bureaus will only process Personal Information if, given the purpose for which the information is processed, the categories and volumes of Information are adequate, relevant and not excessive.
- 2.4. In order to ensure that the minimum amount of processing of personal information is processed to achieve a specified purpose, bureaus implement and maintain appropriate control measures to ensure that their products only require and return minimal Information required for the predetermined purpose of processing.
- 2.5. Credit bureau systems which facilitate the processing of large volumes of Personal Information, ensure that only the necessary information is processed to achieve the stated purposes and the systems and information are securely maintained. A PIIA is conducted to ensure the minimum amount of personal information necessary to achieve the specified purpose(s) is processed.

Consent, justification, and objection⁴

- 2.6 Credit bureaus only process Personal Information based on one of the acceptable grounds for lawful processing, which are identified and documented by the credit bureau prior to the commencement of the contemplated processing activity. The lawful grounds and justifications for processing in terms of the PoPIA which may be relied upon by credit bureaus include:
 - 2.6.1 the data subject provides explicit consent for the processing of their Personal Information for specified purpose(s); or
 - 2.6.2 processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is party; or
 - 2.6.3 processing to protect a legitimate interest of the Data subject; or

² Section 9 lawfulness of processing, PoPIA

³ Section 10 minimality, PoPIA

⁴ Section 11 consent, justification and objection, PoPIA

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- 2.6.4 processing which is necessary to comply with an obligation imposed by law; or
 - 2.6.5 processing is necessary for pursuing the legitimate interests of the responsible party (or of a third party), such as in the instance of a credit worthiness assessment for juristic persons.
- 2.7 Where credit bureaus rely on *consent* for the lawful processing of Personal Information, the consent complies with the following provisions:
- 2.7.1 the credit bureaus ensure that such consent is for a specific purpose, freely given, and requires a clear expression of will by the data subject;
 - 2.7.2 the data subject is notified at the time of consent collection how consent can be withdrawn in a clear, concise and understandable manner;
 - 2.7.3 where consent specifically relates to direct marketing by electronic communication, that the consent is requested in manner and form prescribed in PoPIA regulation 6, read with form 4;
 - 2.7.4 the credit bureau adequately records such consent so it can demonstrate the explicit consent, and when such consent was received for the processing on request.
- 2.8 Where processing of personal information by credit bureaus is conducted in *accordance with the NCA*, its processing is necessary to comply with an *obligation imposed by law* on the responsible party.
- 2.8.1 The NCA stipulates the manner of processing personal information in so far as it applies to a consumer. Therefore, credit bureaus process consumer credit information in the course and scope of their activities and limits the collection of Personal Information to include only what is permitted and which is necessary to maintain data quality and accuracy and to enable its clients to make meaningful and accurate decisions;
 - 2.8.2 The credit bureaus will report or release consumer credit information as directed or permitted by the NCA. The bureaus are obligated to release consumer credit information to any person who requires it for a prescribed or contemplated purpose; and to other credit bureaus, as required and permitted in terms of the NCA.
- 2.9 Where credit bureaus rely on the processing of personal information in terms of a *legitimate interest*, the credit bureaus will:
- 2.9.1 determine the applicable legitimate interest;
 - 2.9.2 determine whether the interest entails the protection of a legitimate interest of the data subject, or is necessary for pursuing the legitimate interest of the responsible party, or a third party to whom the personal information will be supplied;
 - 2.9.3 carefully assess whether a data subject can reasonably expect, at the time of collection of the personal information, that processing for that purpose may take place;

- 2.9.4 ensure that when it relies upon the legitimate interests for processing personal information that those interests are not overridden by the interests or fundamental rights and freedoms of the data subject(s).
- 2.10 Where processing is based on the protection of a legitimate interest of the data subject, or necessary for pursuing the legitimate interest of the responsible party, the bureau must cater for the objection of such processing by the data subjects, on reasonable grounds relating to his, her or its particular situation, unless legislation provides for such processing. The right to object to such processing must be communicated to the data subject, when the bureau communicates the purpose for processing as specified below in Condition 6 Openness.

Direct collection from the Data subject⁵

- 2.11 In most cases personal information, which by definition includes consumer credit information, is not collected directly from the data subject by credit bureaus, but emanates from a credit provider. The credit bureau may also accept information originating from the additional sources prescribed in NCA Regulations.⁶
- 2.12 A credit bureau must accept consumer credit information from any credit provider and may accept consumer credit information that originates from sources prescribed in the NCA Regulations.
- 2.13 Credit bureaus notify data subjects of data sources by publishing notification required by section 18 of PoPIA on their websites. The requirements of this notice are elaborated further in Condition 6 Openness.
- 2.14 In the case of a credit bureau, the indirect collection of personal information falls within the exceptions provided for in PoPIA, as the collection does not prejudice the legitimate interests of the data subject and is necessary to maintain the legitimate interests of the responsible party or the third party to whom the information is supplied.
- 2.15 Where a credit bureau collects personal information directly from data subjects, the lawful conditions for processing of personal information will be complied with.

3 CONDITION 3: PURPOSE SPECIFICATION

Collection for a specific purpose⁷

- 3.1 If credit bureaus collect personal information directly from a data subject the credit bureau ensure that the data subject is aware of the specific, explicitly defined, and lawful purpose related to the function and activity of the credit bureau in processing the data subject's personal information e.g. where personal information is collected for dispute resolution.

⁵ Section 12 Collection directly from data subject, PoPIA

⁶ Section 70(2) of the NCA and Section 18(7) and Reg 19(13) of the NCA regulations

⁷ Section 13 Collection for a specific purpose, PoPIA

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- 3.2 If a credit bureau does not collect information directly from the data subject, it verifies the originating source of the information and ensures that personal information is lawfully collected in terms of the NCA.
 - 3.3 Unless mandated by law to submit data to the credit bureau, credit bureaus require the supplier of personal information, to agree in writing that:
 - 3.3.1 where required, the prior consent of the data subject has been obtained; and
 - 3.3.2 the data subject has received proper notification relating to the processing of the data as required in terms of Section 18(1) of PoPIA.

Retention and restriction of records⁸

- 3.4 All credit bureaus have developed and maintain a policy for data retention and destruction that ensures that records of personal information are not retained any longer than is necessary for achieving the predetermined purpose for which the information was collected and subsequently processed, unless required by law, or reasonably necessary for lawful purposes related to credit bureau functions and activities.
- 3.5 The credit bureau policy for data retention and destruction contains a schedule which specifies the periods for retention of records of personal information, the security measures applied to records that are no longer displayed or used for purposes of credit scoring or credit assessment, and the destruction or de-identification of records containing personal information. The schedule includes triggers for such destruction or de-identification of such records when outside of the specified retention period. The policy also considers the period that Personal Information is retained in excess of the display period set out in the NCA and documents the retention period in the retention policy together with a justification for the retention period.
- 3.6 Personal Information that credit bureaus retain for data quality (i.e. for purposes related to bureau functions and activities), is retained in a secure environment and is subject to the same security controls as the data displayed.
- 3.7 Credit bureaus will destroy or de-identify personal information, as soon as reasonably practicable after its retention is no longer necessary.

4. CONDITION 4: FURTHER PROCESSING LIMITATION

Further processing to be compatible with purpose of collection⁹

- 4.1 The NCA provides clear definition of the purposes for, and the parameters within which consumer credit information must be processed.

⁸ Section 14 Retention and restriction of records, PoPIA

⁹ Section 15 Further processing to be compatible with purpose of collection, PoPIA

Credit bureaus apply reasonable commercial and organisational measures to ensure that the processing of personal information falls within the purposes defined in the NCA and prescribed in the NCA Regulations

- 4.2 If any information is to be processed outside of the normal course of processing stipulated in the NCA and the Regulations, the processing is assessed, to ensure it complies with PoPIA further processing requirements.
- 4.3 Personal Information will not be further processed in a manner that is incompatible with the original purpose for processing, unless the bureau ascertains that the steps set out in Condition 4 of PoPIA are met prior to the further processing by conducting a **PIIA**.
- 4.4 Where further processing occurs, the credit bureaus will assess: (i) Any link between the purpose of collection of personal information and reasons for intended further processing; (ii) the relationship between the data subject and the responsible party, and the context of the collection of Personal Information; (iii) the nature of the Personal Information e.g. if special categories of data are being processed; (iv) the possible consequences of intended further processing to the data subject; (v) appropriate safeguards relating to further processing will be implemented; and (vi) whether in the circumstances, a data subject may have reasonably expected such further processing.
- 4.5 If the purpose for processing the Personal Information changes and is no longer compatible with the original purpose, it will be considered as a new processing activity which will require a separate legal basis for processing.

5. **CONDITION 5: INFORMATION QUALITY**

Quality of information¹⁰

- 5.1 Accurate consumer credit information is critical to the credit industry, including in ascertaining risk, encouraging responsible borrowing, and discouraging the reckless granting of credit as well as considering the provision of services. To prevent decisions that may unfairly prejudice a data subject, credit bureaus ensure that the information which may affect these decisions is complete, accurate, not misleading and updated where necessary, considering the purpose for the processing of this information.
- 5.2 The information held by credit bureaus promotes information quality requirements as contemplated by both PoPIA and the NCA. To facilitate compliance, credit bureaus:
 - 5.2.1 apply the industry agreed data validation rules to ensure that personal information processed by the bureaus conforms with minimum data quality requirements and filters out inconsistent, incomplete, and inaccurate information;
 - 5.2.2 have established measures to address and remedy instances where the quality of the personal information processed by a credit bureau is found to be deficient, and to remedy

¹⁰ Section 16 Quality of information, PoPIA

- the deficiency and correct personal information, as soon as reasonably practicable;
- 5.2.3 comply with the CBA Policy directives governing data quality to promote information quality;
 - 5.2.4 take reasonable measures, including, where appropriate, the conclusion of written agreements to obtain assurance from sources of information that the personal information provided to the credit bureau is accurate, up to date, relevant, complete, valid, and not duplicated;
 - 5.2.5 record data quality requirements and quality assurance processes in credit bureau policies; and
 - 5.2.6 have established and maintain free consumer dispute processes in terms of the NCA allowing consumers to challenge inaccurate information contained on the credit bureau records.

6. CONDITION 6: OPENNESS

Documentation¹¹

- 6.1 A fundamental objective of PoPIA is to allow the data subject access to and knowledge that his, hers or its personal information is being processed by responsible parties and operators, in order to facilitate the ability of a data subject to exercise their rights under PoPIA and protect themselves from any potential adverse effects of the processing of Personal Information.
- 6.2 The processing of personal information by credit bureaus is strictly regulated in terms of the NCA. Credit bureaus demonstrate how they process personal information, using documented and readily available policies and procedures describing its processing activities.
- 6.3 To ensure that credit bureaus, as responsible parties, comply with the condition of openness, the following measures are implemented:
 - 6.3.1 credit bureaus keep detailed records of their processing activities, categories of personal information and information flows;
 - 6.3.2 credit bureaus maintain the documentation of all processing operations under their responsibility in compliance with section 51 of the Promotion of Access to Information Act;
 - 6.3.3 credit bureaus have developed and display a PAIA Manual on their website that includes (i) direction to request access to information; (ii) details of sources from which information may be collected; (iii) the purpose of the collection of the information; (iv) whether the supply of the information by the data subject is voluntary or mandatory; (v) where applicable, details of cross border transfers of information;

¹¹ Section 17 Documentation, PoPIA

- 6.3.4 credit bureaus appoint an Information Officer and Deputy Information Officers (where appropriate) to handle requests for access to information;
- 6.3.5 before providing a record to any person including the data subject, or the data subject's duly authorised representative, credit bureaus authenticate the identity of the data subject or the data subjects authorised representative (if necessary, verifying the authority of the representative) and confirm the purpose for which the record is required.

Notification to data subject when collecting personal information¹²

- 6.4 Credit bureaus are required to take appropriate steps to communicate to data subjects the processing activities which data subjects can expect from the bureau by way of a privacy notice. The privacy notice displayed on the credit bureau's website and communicated to the data subject, includes:
 - 6.4.1 the categories of information being collected and where the information is not collected from the data subject, the source from which it is collected;
 - 6.4.2 the name and address of the credit bureau;
 - 6.4.3 the purpose for which the information is being collected;
 - 6.4.4 whether or not the supply of the information by that data subject is voluntary or mandatory;
 - 6.4.5 the potential consequences of failure to provide the information, if any;
 - 6.4.6 any particular law authorising or requiring the collection of the information;
 - 6.4.7 if the credit bureau intends to transfer the information to a third country or international organisation and the level of protection afforded to the information by that third country or international organisation;
 - 6.4.8 the rights a data subject may exercise under certain circumstances;
 - 6.4.9 and the details of the information regulator should a data subject wish to make a complaint.
- 6.5 Credit bureaus, when acting as the operator, are not obliged to confirm whether the data suppliers (who are the responsible party) have complied with their obligations to notify the data subject of the purpose and manner of the processing of the data subject's personal information for credit assessments.
- 6.6 To facilitate further openness and transparency, credit bureaus are required to:
 - 6.6.1 publish on their websites that, to the extent that the information processed by the credit bureaus is consumer credit information as defined in the NCA, its processing is subject to

¹² Section 18 Notification to data subject when collecting personal information, PoPIA

the provisions of the NCA, the NCA Regulations, and rulings and guidelines of the National Credit Regulator;

- 6.6.2 publish on their websites that the data subject has a right to access personal information, rectify incorrect information and object to the processing of personal information subject to the requirements for processing of consumer credit information in terms of the NCA;
- 6.6.3 publish on their websites that the data subject may lodge a complaint with the Information Regulator and/or the National Credit Regulator as may be applicable and provide contact details of both the Information Regulator and the National Credit Regulator.

7. CONDITION 7: SECURITY SAFEGUARDS

Security measures on integrity and confidentiality of personal information¹³

- 7.1 PoPIA requires that a responsible party must, in establishing appropriate technical and organisational safeguards to protect personal information, have regard to generally accepted information security practices and procedures. Without adherence to generally accepted information security practices and procedures it would not be possible for a credit bureau to fulfil its obligations in terms of the NCA and NCA Regulations. Security safeguards established by credit bureaus are periodically monitored by the NCR. Due to the nature the information processed by a credit bureau, credit bureaus are required to have robust information security controls, which are applied to all processing. Credit bureaus do not currently engage in information matching programmes, however these security safeguards would also apply should a credit bureau engage in such programmes.
- 7.2 To comply with the Security Safeguards stipulated in PoPIA, credit bureaus have established and maintain Information Security Management Systems ("ISMS") as required in generally accepted information security practice. The credit bureaus' ISMS include:
 - 7.2.1 the establishment of appropriate organisational infrastructure;
 - 7.2.2 development of policies (supported by procedures and standards) appropriate to the credit bureau;
 - 7.2.3 planning information security activities and assigning responsibilities as well as appropriate resources to the management of information security;
 - 7.2.4 the adoption, of control measures that are appropriate and if any generally accepted control measures are excluded, the credit bureau provides written justification of the exclusion of these control measures;
 - 7.2.5 addressing the information and communications technologies employed by the organisation in processing information, the procedures governing the appropriate use of the information and communications technologies;

¹³ Section 19 Security measures on integrity and confidentiality of personal information, PoPIA

- 7.2.6 addressing the training of all users of the information and communications technologies in the procedures governing their use;
- 7.2.7 IT security policies, systems and controls that comply with appropriate security measures e.g., vulnerability scanning, and penetration testing reviewed by independent auditors.
- 7.3 Credit bureaus implement appropriate and reasonable technical and organizational measures to ensure the ongoing confidentiality, integrity and availability of processing systems, services and data, by implementing for example:

Confidentiality	Integrity	Availability
Restricting permissions to a need-to-know basis.	Storage privacy controls (e.g., operating system controls, local encrypted storage)	Incident management procedures
Attribute-based credentials.	Asset management controls e.g. malware detection	Business continuity plans (e.g., recovery and contingency arrangements)
Authentication controls	Secure data transfer (e.g., use encryption techniques to prevent against attacks on data in motion).	Malware protections Vulnerability scan Capacity management

- 7.4 There is organisational and departmental segregation within the credit bureau business to allow for separation in duties when personal information is being processed.

Information processed by operator or person acting under authority¹⁴

- 7.5 Where a credit bureau acts as an operator as defined in PoPIA, it may only process personal information with the knowledge and authorisation of the responsible party. Further, it is obliged to maintain the confidentiality of the personal information and not disclose it unless required by law or in the performance of its duties as a credit bureau.
- 7.6 The security safeguards stipulated in part b paragraph 7 (security measures on integrity and confidentiality of personal information) above are implemented to all processing by credit bureaus, including in their capacity as an operator. Where appropriate, security safeguards are included in written contracts concluded between responsible parties and operators.

Security measures regarding information processed by operator¹⁵

- 7.7 Whether the credit bureau acts as a responsible party or an operator it will establish and maintain an effective ISMS.

¹⁴ Section 20 Information processed by operator or person acting under authority, PoPIA

¹⁵ Section 21 Security measures regarding information processed by operator, PoPIA

- 7.8 Where the credit bureau is a responsible party it will conclude written contracts with all operators that process personal information under its mandate or in terms of a contract to ensure that the operator establishes and maintains the security measures necessary to safeguard the integrity and confidentiality of personal information.
- 7.9 Credit bureaus include provisions in written contracts requiring that the operator will notify the credit bureau on an immediate basis if there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by an unauthorised person.

Notification of security compromises¹⁶

- 7.10 In terms of PoPIA a data subject has the right to know if the security of their personal information has been compromised. The data subject is in the best position to protect him or herself against the abuse of their personal information but, unless the data subject has knowledge of a compromise, they are deprived of this right.
- 7.11 To ensure that credit bureaus comply with their obligations as a responsible party to meet the requirements of this condition, credit bureaus have developed a Compromise Response Guideline that is applicable to credit bureaus and describes the processes to be followed in the event of a security compromise as defined by PoPIA. The guideline ensures timeous notification of security compromises to the Information Regulator and the data subject where appropriate.
- 7.12 In the event of a compromise, the affected credit bureau will conduct a risk assessment to determine the likelihood of harm to the data subject following the compromise and the bureau will ensure that it offers appropriate support and services free of charge to the affected data subjects.
- 7.13 Where credit bureaus are the Operator and there is a Personal Information Breach, credit bureaus will notify the Responsible Party without undue delay after becoming aware of the Personal Information breach (and in line with notification obligations as per the agreement with the Responsible party). Credit bureaus will assist the Responsible Party in ensuring compliance with its obligation to notify the Information Regulator, considering the nature of Processing and the information available to it, in its capacity as the Operator.

8. CONDITION 8: DATA SUBJECT PARTICIPATION

Access to and correction of Personal Information¹⁷

- 8.1 Data subjects are granted access to their personal information and are able to request correction if necessary, as contemplated in Sections 23 and 24 of PoPIA. If the accuracy of consumer credit information is contested by a data subject, credit bureaus comply with the provisions of the NCA allowing the data subject the opportunity to dispute their personal information free of charge.

¹⁶ Section 22 Notification of security compromises, PoPIA

¹⁷ Section 23 Access to personal information, and section 24 correction of personal information, PoPIA

- 8.2 Therefore, in fulfilment of the obligations stipulated in the NCA, credit bureaus have established procedures to provide consumers access to their consumer credit information displayed on their credit reports, free of charge once in any 12-month period (free credit report). For other data subjects, the credit bureaus provide this information at a charge.

Access requests

- 8.3 Upon receipt of a data subject's request to confirm whether a credit bureau holds personal information on the data subject and upon authentication of a data subject's identity, the credit bureau will issue confirmation to the data subject should the credit bureau hold the information. This confirmation may be provided in the form of a confirmation letter or a credit report, which indicates that personal information is held on the data subject.
- 8.4 On receipt of a data subject request for a record or a description of the personal information about the data subject held by a credit bureau, credit bureaus will provide to a data subject, a free credit report of consumer credit information, and a record or description of the personal information held by the credit bureau, on the relevant data subject. If the data subject is an individual (meaning a consumer), the first credit report will be issued to consumers free of charge.
- 8.5 A credit bureau will be entitled to require the data subject to pay a reasonable fee, as may be prescribed, for extracting and preparing the information, payment of which may be required in advance. Credit bureaus will not charge a fee with the intention of deterring or prohibiting a data subject's request for information.
- 8.6 Credit bureaus will present the requested information to the data subject in a reasonable manner and in a format that is understandable.
- 8.7 Credit bureaus will upon receipt of a request by a data subject for information about the identity of third parties, or categories of third parties who have or have had, access to the data subjects' personal information, provide the names of the third parties.

Correction Requests

- 8.8 Credit bureaus will correct incorrect information that it holds on its database. Where the correction request is to correct or dispute consumer credit information, credit bureaus will investigate the request and update consumer credit information on behalf of and on the instruction of the credit provider (the responsible party). The NCA requires the data provider to confirm the accuracy of the information, and the bureau to act on their instruction, therefore the credit provider is the responsible party.
- 8.9 If the request for correction is to correct consumer credit information, and the credit bureau does not receive an instruction to correct the information from the responsible party, the credit bureau will advise the data subject of its decision and inform the data subject that he/she/it may refer a complaint to the NCR in terms of Section 136 of the NCA or to the Credit Ombud.

- 8.10 In cases where the credit bureaus have responded to a data subject's request resulting in a change to personal information they will, if reasonably practicable, inform each responsible party, operator or their client to whom the personal information has been disclosed, of the changes by way of future credit reporting.

Procedure to facilitate data subject participation

- 8.11 In order to facilitate data subject participation as required by PoPIA, credit bureaus are required to develop and maintain one or more procedures allowing the data subject to exercise their personal information rights under PoPIA and/or the NCA. The procedure/s must require bureaus to:

8.11.1 cater for the exercise of all the rights under PoPIA by providing data subjects the ability to obtain confirmation of information held by the bureau, request restriction of processing, request access to, and/or a copy of the information, or request the correction of their personal information under appropriate circumstances, subject to the provisions and restrictions of the NCA;

8.11.2 ensure the requested information is provided within a reasonable time but no later than 30 business days (unless the credit bureau notifies the data subject that it may take longer) from receipt of a valid request and payment of the fee, which period of time shall be determined with due regard for the amount of information to be reported, the format of the information and the resources required and available to a credit bureau to extract and present such information;

8.11.3 establish procedures to notify the data subject of actions taken resulting from the data subject's request and provide them with the procedures and contact details for submitting a complaint should they not be satisfied with the outcome of their request;

8.11.4 advise the data subject of his or her right to request the correction of inaccurate information, in response to any request for information.

9. PROCESSING OF SPECIAL PERSONAL INFORMATION

9.1 Credit bureaus are expressly prohibited from processing the information contained in Regulation 18(3) of the NCA Regulations. These categories of information correlate closely to the categories of Personal Information defined as special personal information under the PoPIA.

9.2 Section 26 of PoPIA further prohibits the processing of personal information including biometric information and criminal behaviour, in respect of which a data subject has not yet been found guilty of an offence.

9.3 The processing of biometric and criminal behaviour information is not expressly prohibited in the NCA or NCA Regulations and as such credit bureaus may process information of this nature on behalf of their clients.

- 9.4 Credit bureaus may process biometric information to verify the identity of a data subject in order to provide services that enables its clients to prevent or detect fraud.
- 9.5 The processing of criminal behaviour information may be conducted during background screening for employment or during employment.

10. PROCESSING OF PERSONAL INFORMATION OF CHILDREN

The NCA stipulates that credit agreements are unlawful if at the time that the agreement was made the consumer was an unemancipated minor unassisted by a guardian, unless the consumer or person acting on behalf of the consumer directly or indirectly, by an act of omission, induced the credit provider believe that the consumer had legal capacity to contract. In terms of PoPIA a child is defined as a natural person under the age of 18 years who is not legally competent. In those instances where a person under the age of 18 is no longer regarded as a child by virtue of emancipation or marriage, the PoPIA provision would not apply. Due to the nature of a credit bureaus regulated activities, a credit bureau would not process information related to a child as defined in PoPIA.

11. AUTOMATED DECISION MAKING

The prohibition against automated decision making in the context of granting of credit does not directly affect credit bureaus, as credit bureaus do not make use of automated decisioning in their operations.

Regulation 23A of the National Credit Act, 34 of 2005 ("the NCA") specifies the steps that a credit provider has to take in the granting of credit. Examining the records of the credit bureaus is only one step in that process. In addition, credit providers are obliged to check the affordability of the consumer by inter alia, checking his income and obtaining bank statements and payslips. Credit bureaus provide a record of how the consumer is meeting his/her credit obligations on a monthly basis, and whether or not he/she has a default or judgment, they do not provide decisions or even the basis for a decision on credit in terms of Regulation 23A of the NCA.

12. INFORMATION MATCHING

The definition of "information matching programmes" does not accord with the business of a credit bureau in that the information sent to credit bureaus: a) is by way of data strings; b) is loaded to the individual consumer's record by way of an ID number; c) no comparison of information is done; and d) no action/decision is taken by the credit bureau as a result of the upload of information. Information is transferred from credit/data providers in terms of an industry agreed data layout, via the Data Transmission Hub, to the credit bureaus. The data layout contains obligatory data fields, which if correctly filled, results in an automatic upload to a consumer's credit profile, if not, the data is rejected. No comparison is done by credit bureaus between the previous information held and the incoming information.

PART C – ENFORCEMENT

1. INTERPRETATION

- 1.1 Credit bureaus are governed by the NCA and PoPIA. The NCA refers to “consumers” and “consumer credit information” and PoPIA refers to “data subjects” and “personal information”. In dealing with Complaints and Enforcement the terms “data subjects” and “personal information” must be interpreted to include “consumers” and “consumer credit information”.
- 1.2 The CBA Executive Manager shall, for the purposes of this Part C of the Code, include any person assigned by the Executive Manager to discharge the Executive Manager’s duties.
- 1.3 The term “data subject” shall, for the purposes of this Part C of the Code, include a person authorised to act on behalf of the data subject, and a relevant person appointed by a court of law to manage the affairs of a data subject.

2. RIGHTS UNDER THE NCA AND POPIA

- 2.1 Complaints relating to alleged breaches of the NCA must be adjudicated with reference to the NCA and this Code.
- 2.2 Complaints by any person relating to the protection of personal information by a credit bureau, alleging a breach of PoPIA, must be adjudicated with reference to PoPIA and this Code.
- 2.3 To expedite the resolution of disputes data subjects are encouraged to follow the complaints process as described in 3 below.
- 2.4 Nothing in this Code, PoPIA or the NCA prevents a data subject from referring a complaint to the Regulator or the NCR or the Credit Ombud directly, should they choose to do so.

3. COMPLAINTS PROCESS

- 3.1 A failure by a CBA member to comply with this Code is deemed to be a breach of the conditions of lawful processing of personal information.

Complaints to CBA member

- 3.2 If you believe that a CBA member has breached the terms of this Code, you may lodge a complaint directly with the CBA member concerned.
- 3.3 All CBA members have established processes to address complaints in terms of both PoPIA and the NCA.
- 3.4 The names, information officers and web addresses of CBA members subject to this Code are published on the CBA website (www.cba.co.za).
- 3.5 CBA members will respond to a complaint within a reasonable time but by no later than 30 (thirty) days from receipt, or any longer period permitted by law.

- 3.6 If the data subject is dissatisfied with a decision made by a CBA member, they may refer the complaint to the CBA.

Complaints to the CBA

- 3.7 Complaints addressed to the CBA must be made in the prescribed form that requires:
- 3.7.1 the full names, physical address, email address and contact number of the data subject;
 - 3.7.2 if the data subject is represented by a third party or a competent person acting on behalf of a minor, the representative or competent person's detail, including their name, email address and contact number are required and must be accompanied by documents indicating the authority of the third party to represent or act on behalf of the data subject;
 - 3.7.3 a description of the alleged unlawful processing or breach of the Code;
 - 3.7.4 the date or dates of the alleged unlawful processing or breach;
 - 3.7.5 if the data subject has addressed a complaint to a CBA member, details of the complaint and the response of the CBA member are required and must be accompanied with the written evidence relating to that complaint; and
 - 3.7.6 the reasons that the data subject is aggrieved with the decision made by the CBA member.

Investigation

- 3.8 The CBA will investigate the complaint and respond to the data subject within 30 (thirty) days advising of the outcome of its investigation.
- 3.9 The CBA Executive Manager may, after receipt of the complaint, communicate with the Information Officer of the CBA member against whom the complaint is made to obtain a response.
- 3.10 The CBA's Executive Manager may engage directly with the data subject and the Information Officer of the CBA member to attempt to resolve the complaint.
- 3.11 If after investigating the complaint and the response of the CBA member the CBA Executive Manager believes that it may be possible to secure a settlement between the parties or obtain satisfactory assurances that the conduct complained of will not be repeated, they will use their best endeavours to settle the matter without further investigation.

Referral to an independent adjudicator

- 3.12 If after completing the investigation the CBA Executive Manager is unable to resolve the dispute the matter will be referred to an independent adjudicator for consideration and resolution.
- 3.13 The independent adjudicator will be provided with all documents submitted by the disputing parties and a report by the CBA Executive Manager within 30 (thirty) days of the CBA Executive Manager determining that the dispute cannot be resolved.

- 3.14 The independent adjudicator will be entitled to request further written submissions from the disputing parties and the information from the CBA Executive Manager.
- 3.15 The independent adjudicator will provide a written decision on the dispute and reasons for the decision within 30 (thirty) days of the dispute being referred to him/her or such longer period as is reasonably necessary to secure written submissions and information to determine the dispute fairly.

4. INTERPRETATION AND DISPUTES RELATING TO THE CODE BY CBA MEMBERS

- 4.1 If a CBA member wishes to request an interpretation of the Code, or a complaint against another CBA member relating to an alleged breach of the Code, it may address the request or complaint in writing to the CBA Executive Manager.
- 4.2 If the request or complaint cannot be resolved by the CBA Executive Manager, it will be placed on the agenda for discussion at the next meeting of the Legal and Compliance representatives of the CBA members.
- 4.3 If at the meeting of CBA Legal and Compliance representatives a request or a complaint cannot be resolved by the representatives attending the meeting, the CBA Executive Manager must refer the request or complaint to the CBA Executive Committee.
- 4.4 The CBA Executive Committee may, in its discretion:
 - 4.4.1 make a decision and communicate the decision to the members of the CBA by email to its nominated representatives; or
 - 4.4.2 refer the request or complaint to legal counsel for consideration and opinion; or
 - 4.4.3 recommend to the CBA member requesting the interpretation or making the complaint to, at the CBA member's cost, obtain an opinion from legal counsel and provide this to the CBA Executive Manager.
- 4.5 Once advice or an opinion has been obtained from legal counsel the CBA Executive Manager will circulate this to the CBA Executive Committee and members of the CBA with a view to resolving the request or complaint.
- 4.6 If any member of the CBA remains aggrieved by the advice or opinion from legal counsel, they may request the CBA Executive Manager to again refer the matter to the CBA Executive Committee, which may, but is not obliged to, appoint an independent adjudicator to consider and determine the request or complaint.
- 4.7 Nothing in this Code prevents any member of the CBA from obtaining independent advice or an opinion from legal counsel or a subject matter expert, as may be appropriate and providing this to the CBA Executive Committee.

5. INDEPENDENT ADJUDICATOR

- 5.1 The CBA Executive Committee will appoint independent adjudicators who meet the criteria stipulated under the heading “Qualifications and Criteria for Independent Adjudicators” provided for below to adjudicate on disputes referred to the CBA by data subjects or its members.

6. QUALIFICATIONS AND CRITERIA FOR INDEPENDENT ADJUDICATORS

- 6.1 To be eligible for appointment as an independent adjudicator of the CBA, and to continue to hold that office, a person must—
- 6.1.1 not be subject to any disqualification set out in **Error! Reference source not found.** below;
 - 6.1.2 not have any interests referred to in **Error! Reference source not found.** below;
 - 6.1.3 be a natural person and a citizen of South Africa, who is ordinarily resident in the Republic; and
 - 6.1.4 have suitable qualifications and/or experience in economics, law, commerce, industry and consumer affairs.
- 6.2 A person is disqualified for the appointment as an independent adjudicator of the CBA if that person—
- 6.2.1 is an office-bearer of any political party, movement, organisation or body of a partisan political nature;
 - 6.2.2 personally, or through a spouse, partner, immediate family member or associate—
 - 6.2.2.1 has or acquires a direct or indirect interest (whether financial or otherwise) in a member of the CBA or the CBA itself; or
 - 6.2.2.2 has or acquires an interest in a business or enterprise, which may conflict or interfere or perceive to conflict or interfere with the proper performance of the duties of an independent adjudicator of the CBA.
 - 6.2.3 is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person’s estate;
 - 6.2.4 has been removed from a position of trust on grounds of misconduct involving fraud, misappropriation of money, or any dishonesty;
 - 6.2.5 is subject to an order of a competent court holding that person to be mentally unfit or mentally disordered;
 - 6.2.6 within the previous 10 (ten) years has been convicted in the Republic of South Africa or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, an offence under the Financial Intelligence Centre Act, No. 38 of 2001, or an offence involving dishonesty; or

- 6.2.7 has been convicted of any other offence.
- 6.3 A financial interest does not include an indirect interest held in any fund or investment if the person contemplated in that subsection has no control over the investment decisions of that fund or investment.
- 6.4 If approved and appointed as an independent adjudicator, then such independent adjudicator must promptly inform the CBA Executive Manager in writing after acquiring an interest that is, or is likely to become, an interest contemplated in **Error! Reference source not found.** above.
- 6.5 If, at any time, it appears to an independent adjudicator that a matter referred to him/her for adjudication concerns an interest referred to in **Error! Reference source not found.**, that independent adjudicator must—
- 6.5.1 immediately and fully disclose the nature of that interest to the CBA Executive Manager; and
- 6.5.2 withdraw from the matter as adjudicator.
- 6.6 An independent adjudicator must not –
- 6.6.1 engage in any activity that may undermine the integrity or reputation of the CBA or any of its members;
- 6.6.2 adjudicate or influence the proceedings in any matter before adjudication if that person has an interest—
- 6.6.2.1 contemplated in **Error! Reference source not found.** above; or
- 6.6.2.2 that precludes that person from performing the functions of an independent adjudicator in a fair, unbiased and proper manner;
- 6.6.3 make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as an independent adjudicator of the CBA; or
- 6.6.4 divulge any information referred to in **Error! Reference source not found.** to any third party, except as required as part of that person's official functions as an independent adjudicator of the CBA.
- 6.7 The Executive Manager of the CBA will seek appropriately qualified persons to be appointed as independent adjudicators.

7. APPOINTMENT AND POWERS OF ADJUDICATOR

- 7.1 The CBA Executive Committee may appoint one, or if it deems necessary, more than one of the independent adjudicators approved by the CBA Executive Committee to hear the complaint and adjudicate thereon.

- 7.2 The adjudicator must apply the principles stipulated in Section 44 of PoPIA in determining any decision which relates to the unlawful processing of personal information.
- 7.3 The adjudicator may in addition to information provided to him or her, call for further information or summon the complainant or representatives of a CBA member to provide oral evidence and, if the adjudicator deems appropriate, allow cross-examination of a witness.
- 7.4 On completion of his or her investigation the independent adjudicator must send a report containing its determination, together with reasons therefore, to the CBA Executive Manager and the CBA member.
- 7.5 If the CBA member continues to be in breach of this Code the adjudicator may make or give any order, declaration or direction requiring that the CBA member takes any specific actions within a reasonably stipulated period of time, failing which any one or more of the sanctions available in the CBA's constitution may be imposed, and such determination shall, unless formally disputed, be final and binding upon the CBA member.
- 7.6 If any member of the CBA remains aggrieved by the decision the CBA member may refer the dispute to the Information Regulator in terms of Chapter 10 of PoPIA.
- 7.7 Nothing in this Part D shall in any way restrict or detract from the provisions of Chapter 10 of PoPIA.

8. REPORTS TO REGULATOR

- 8.1 The CBA Executive Manager will within 5 (five) months of the end of the financial year of the Regulator submit a report to the Regulator on the operation of the Code during the financial year.
- 8.2 The report will be in the form required by the Regulator and will describe complaints made to the Regulator during the financial year immediately preceding the report, including the number of complaints referred to adjudication, the nature of the complaints and the decisions made by the adjudicators.

PART D – ADMINISTRATION OF CODE OF CONDUCT

1. COMPLIANCE WITH CHAPTER 7 OF POPIA

Issue of Code of Conduct

- 1.1. This Code of Conduct applies to credit bureaus registered in terms of Section 43 of the NCA that is a member (regardless of category of membership) of the CBA.
- 1.2. Credit bureaus who are members of the CBA have mandated the CBA to apply to the Information Regulator for the issue of this Code of Conduct. It is noted that issuance and enforcement of this Code of Conduct in accordance with Chapter 7 of PoPIA, will render section 57 (1) and section 58 of PoPIA not applicable to CBA members in accordance with section 57 (3).
- 1.3. The Code of Conduct incorporates the conditions for the lawful processing of personal information and provides functional equivalence of obligations set out in those conditions that are applicable to the conduct of credit bureaus as regulated by the NCA and as may be prescribed by the NCA Regulations.

Monitoring

- 1.4. The CBA has drafted a Credit Bureau Compliance Monitoring Plan which it will use in the monitoring of its members adherence to this Code of Conduct. This Credit Bureau Compliance Monitoring Plan is attached hereto.

Review

- 1.5. This Code of Conduct will be reviewed annually by no later than the anniversary of the date of the coming into force of this Code of Conduct.
- 1.6. The review of this Code of Conduct may be accelerated:
 - 1.6.1. if an earlier review is prescribed by the Regulator in writing addressed to the CBA Executive Manager;
or
 - 1.6.2. required in terms of a ruling made by the Regulator; or
 - 1.6.3. if directed to do so by the Regulator in an Information Notice issued in terms of Section 90 or an Enforcement Notice issued in terms of Section 95 of PoPIA; or
 - 1.6.4. if any court having jurisdiction over credit bureaus who is a member of the CBA directs that any provisions of this Code of Conduct are unlawful.

Amendment of the Code of Conduct

- 1.7. The CBA will revoke or make any amendments to the Code of Conduct as directed by the Regulator or mandated by its members, in compliance with Sections 60 to 63 of PoPIA.

Publication of Code of Conduct

- 1.8. From the date that the Code of Conduct comes into force the CBA will cause publication of the Code on its website and require that its members publish the Code on their websites.
- 1.9. The CBA will make copies of the Code of Conduct available in hardcopy form to persons requesting a copy in that form.

Interpretation

- 1.10. The interpretation of PoPIA and of this Code of Conduct as they relate to the operation of credit bureaus may be made by the CBA Executive Manager. No interpretation made by the CBA Executive Manager shall be binding on the Information Regulator or detract from any of the powers of the Information Regulator stipulated in Chapter 10 of PoPIA.

Revision History

- 1.11. The CBA Executive Manager will ensure that a revision history of this Code of Conduct will be established and maintained.
- 1.12. The revision history must record the material aspects of any decisions or rulings made by the Regulator or by the CBA Executive Committee that cause amendments to be made to this Code of Conduct.