

EXPOSURE DRAFT



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Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Stuart Robert [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Treasurer

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1 Name

This instrument is the *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1, Part 1	The day after this instrument is registered.	
3. Schedule 1, Part 2	The later of: (a) the day after this instrument is registered; and (b) the day on which item 92 of Schedule 1 to the <i>Treasury Laws Amendment (Measures for a later sitting) Act 2018</i> commences. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Competition and Consumer Act 2010*;
- (b) the *Corporations Act 2001*;
- (c) the *Superannuation Industry (Supervision) Act 1993*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Part 1—Amendments commencing the day after registration

Competition and Consumer Regulations 2010

1 At the end of Part 6

Add:

92A Enforcement of the Australian Consumer Law—identity card for inspectors

For paragraph 133A(2)(a) of the Act, an identity card must contain the following information:

- (a) a recent photograph of the inspector to whom the card was issued;
- (b) the name of the inspector;
- (c) the date of issue of the card;
- (d) the Commission corporate logo and the Australian coat of arms;
- (e) the following text:

“The person whose name and photograph appear on this card is an inspector of the Commission who:

- (a) has been appointed by the Chairperson of the Commission as an Inspector pursuant to section 133 of the *Competition and Consumer Act 2010*; and
- (b) has been issued with this identity card by the Chairperson of the Commission pursuant to section 133A of the *Competition and Consumer Act 2010*.”

Corporations Regulations 2001

2 At the end of Part 7.6

Add:

7.6.07A Modification of section 923C

For paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies as if subsections 923C(1) to (10) of the Act were modified to read as follows:

- “(1) An individual contravenes this subsection if:
- (a) the individual carries on a financial services business or provides a financial service (whether or not on behalf of another person); and
 - (b) the individual assumes or uses, in this jurisdiction, a restricted word or expression in relation to the service; and
 - (c) any of the following apply:
 - (i) the individual is not a relevant provider;
 - (ii) the individual is a provisional relevant provider;
 - (iii) the individual is a limited-service time-sharing adviser.

Note 1: For the meanings of *restricted word or expression* and *assume or use*, see subsections (8) and (9) of this section.

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Amendments **Schedule 1**
Amendments commencing the day after registration **Part 1**

Note 2: A contravention of this subsection is an offence (see subsection 1311(1)).

- (2) A person contravenes this subsection if:
- (a) the person carries on a financial services business or provides a financial service; and
 - (b) an individual provides a financial service on behalf of the person; and
 - (c) the person assumes or uses, in this jurisdiction, a restricted word or expression in relation to the service; and
 - (d) any of the following apply:
 - (i) the individual is not a relevant provider;
 - (ii) the individual is a provisional relevant provider;
 - (iii) the individual is a limited-service time-sharing adviser.

Note 1: For the meanings of *restricted word or expression* and *assume or use*, see subsections (8) and (9) of this section.

Note 2: A contravention of this subsection is an offence (see subsection 1311(1)).

Advice to wholesale clients

- (3) It is not a contravention of subsection (1) for an individual to assume or use a restricted word or expression if:
- (a) the individual provides advice to wholesale clients; and
 - (b) the individual assumes or uses the restricted word or expression only in relation to that advice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (4) It is not a contravention of subsection (2) for a person to assume or use a restricted word or expression if:
- (a) another person (the *adviser*) provides a financial service on behalf of the person; and
 - (b) the adviser provides advice to wholesale clients; and
 - (c) the person assumes or uses the restricted word or expression only in relation to that advice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

Advice as employee or director

- (5) It is not a contravention of subsection (1) for an individual to assume or use a restricted word or expression if:
- (a) the individual is an employee or director of a body; and
 - (b) the individual provides advice to the body; and
 - (c) the individual assumes or uses the restricted word or expression only in relation to that advice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

- (6) It is not a contravention of subsection (2) for a person to assume or use a restricted word or expression if:
- (a) another person (the *adviser*) is an employee or director of a body; and
 - (b) the adviser provides advice to the body; and

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Schedule 1 Amendments

Part 1 Amendments commencing the day after registration

- (c) the person assumes or uses the restricted word or expression only in relation to that advice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

Continuing contravention

- (7) If a person assumes or uses a word or expression in circumstances that give rise to the person committing an offence under subsection (1) or (2), the person commits the offence in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

References to restricted word or expression

- (8) In this section:
- (a) a reference to a restricted word or expression is a reference to:
 - (i) the expression *financial adviser* or *financial planner*; or
 - (ii) any other word or expression specified in the regulations as a restricted word or expression for the purposes of this section; or
 - (iii) any other word or expression (whether or not in English) that is of like import to a word or expression covered by any of the previous subparagraphs; and
 - (b) a reference to a restricted word or expression being assumed or used includes a reference to the restricted word or expression being assumed or used:
 - (i) as part of another word or expression; or
 - (ii) in combination with other words, letters or other symbols.
- (9) However, a reference in this section to a restricted word or expression does not include a reference to a word or expression mentioned in paragraph (8)(a) if:
- (a) the word or expression mentioned in that paragraph is assumed or used in relation to a provisional relevant provider; and
 - (b) the word or expression is assumed or used as part of a word or expression specified by the standards body for the purposes of subparagraph 921U(2)(a)(v).

Contravention does not affect compensation arrangements

- (10) To avoid doubt, this section does not affect the obligation of a financial services licensee to have arrangements in place under section 912B.

Note: Section 912B requires financial services licensees to have in place compensation arrangements if the licensee provides financial services to retail clients.”

3 Paragraph 7.8.08(17)(a)

Omit “a insurance financial services licensee”, substitute “an insurance financial services licensee”.

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Amendments **Schedule 1**
Other amendments **Part 2**

Part 2—Other amendments

Superannuation Industry (Supervision) (Transitional Provisions) Regulations 1993

4 The whole of the instrument

Repeal the instrument.

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