

EXPOSURE DRAFT

TREASURY LAWS AMENDMENT (ENDING GRANDFATHERED CONFLICTED
REMUNERATION) BILL 2019

EXPLANATORY MATERIALS

Table of contents

Glossary.....	1
Chapter 1 Conflicted remuneration.....	3

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Act	<i>Corporations Act 2001</i>
Bill	Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Chapter 1

Conflicted remuneration

Outline of chapter

1.1 This Bill implements the Government's response to recommendation 2.4 of the Final Report of the Royal Commission. The Royal Commission recommended that the grandfathering arrangements for conflicted remuneration in relation to financial advice provided to retail clients should be removed as soon as is reasonably practicable.

1.2 The Bill removes these grandfathering arrangements for conflicted remuneration and other banned remuneration from 1 January 2021. It also enables the regulations to provide for a scheme under which amounts that would otherwise have been paid as conflicted remuneration are rebated to affected consumers.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Grandfathering arrangements for conflicted remuneration and other banned remuneration in relation to financial advice to retail clients are removed effective from 1 January 2021.	Conflicted remuneration and other banned remuneration may be paid if the benefit is paid under a grandfathered arrangement entered into before the application day specified in the Act (generally 1 July 2013).
The regulations may provide for a scheme under which amounts that would otherwise have been paid as conflicted remuneration are rebated to affected consumers.	No equivalent.

Detailed explanation of new law

1.3 The *Corporations Act 2001* (the Act) includes provisions that ban conflicted remuneration and certain other remuneration in relation to financial advice provided to retail clients. These provisions aim to more closely align the interests of those who provide financial products advice with the interests of their retail clients. In particular:

- Division 4 of Part 7.7A of the Act bans the payment and receipt of benefits which have the potential to influence financial advice provided to retail clients about financial products;
- Division 5 of Part 7.7A of the Act bans platform operators from accepting volume-based shelf-space fees; and
- Division 5 of Part 7.7A of the Act bans financial services licensees and authorised representatives of financial services licensees from charging asset-based fees to retail clients on borrowed amounts.

1.4 These Divisions generally apply to benefits given or, with respect to asset-based fees on borrowed amounts, fees charged from 1 July 2013. However, there are currently exemptions to these Divisions for ‘grandfathered arrangements’. Under the grandfathering provisions:

- the bans on accepting and giving conflicted remuneration do not apply to benefits paid under arrangements entered into before 1 July 2013 except with respect to benefits given by a platform operator (see section 1528 of the Act);
- the ban on charging volume-based shelf-space fees does not apply to benefits paid under arrangements entered into before 1 July 2013 (see section 1529 of the Act); and
- the ban on charging asset-based fees to retail clients on borrowed amounts only applies to the extent that the borrowed amounts are used or are to be used to acquire financial products on or after 1 July 2013 (see section 1531 of the Act).

1.5 This Bill ends these grandfathering arrangements effective from 1 January 2021. This means that from 1 January 2021 all remuneration of a kind banned by Divisions 4 or 5 of Part 7.7A of the Act will be subject to the bans in those Divisions.

1.6 As part of ending grandfathering, the Government will put forward regulations prior to 1 January 2021 which will repeal a number of other grandfathering arrangements which are continued in Part 7.7A of the *Corporations Regulations 2001*.

Removing grandfathering arrangements

1.7 The new law removes the grandfathering of conflicted remuneration under Division 4 of Part 7.7A, effective from 1 January 2021. [*Schedule 1, Item 1, subsection 1528(1) of the Corporations Act*]

1.8 The new law repeals the existing subsection 1528(3) of the Act. Subsection 1528(3) of the Act currently provides that Division 4 of Part 7.7A does not apply to a benefit to the extent that the operation of the Division would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of paragraph 51(xxxi) of the Constitution). [*Schedule 1, Item 2, subsection 1528(3) of the Corporations Act*]

1.9 The new law provides that section 1350 of the Act does not apply in relation to the operation of Division 4 of Part 7.7A in respect of a benefit given to a financial services licensee, or a representative of a financial services licensee. Section 1350 of the Act provides for compensation to be payable where the operation of the Act would result in the acquisition of property otherwise than on just terms. *[Schedule 1, Item 2, subsection 1528(3) of the Corporations Act]*.

1.10 The new law removes the grandfathering of volume-based shelf-space fees, effective from 1 January 2021. *[Schedule 1, Item 3, subsection 1529(1) of the Corporations Act]*

1.11 The new law provides that section 1350 of the Act does not apply in relation to the operation of Subdivision A of Division 5 of Part 7.7A of the Act in respect of a benefit given to a financial services licensee, or an RSE licensee. *[Schedule 1, Item 4, subsection 1529(2A) of the Corporations Act]*

1.12 The new law repeals the existing section 1530 of the Act. Section 1530 currently provides that regulations made for the purposes of subsections 1528(2) or 1529(2) of the Act do not apply to a benefit to the extent that the operation of the Division would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of paragraph 51(xxxi) of the Constitution). *[Schedule 1, Item 5, section 1530 of the Corporations Act]*

1.13 The new law provides that section 1350 does not apply in relation to regulations made for the purposes of subsection 1528(2) or 1529(2) of the Act. *[Schedule 1, Item 5, section 1530 of the Corporations Act]*

1.14 The new law removes the grandfathering of asset-based fees charged to retail clients on borrowed amounts, effective from 1 January 2021. *[Schedule 1, Items 6 and 7, subsections 1531(1) and 1531(2) of the Corporations Act]*

1.15 The new law also repeals the existing subsection 1531(2) of the Act. Subsection 1531(2) of the Act currently provides that Subdivision B of Division 5 of Part 7.7A does not apply to a benefit to the extent that the operation of the Division would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of paragraph 51(xxxi) of the Constitution). *[Schedule 1, Item 7, subsection 1531(2) of the Corporations Act]*

1.16 The new law also provides that section 1350 of the Act does not apply in relation to the operation of Subdivision B of Division 5 of Part 7.7A in respect of an asset-based fee. *[Schedule 1, Item 7, subsection 1531(2) of the Corporations Act]*

Rebating Provisions for Conflicted Remuneration

1.17 The new law allows the regulations to provide for a scheme under which benefits that would otherwise have been paid as conflicted remuneration after 1 January 2021 are rebated to affected retail clients. The

amount that is required to be rebated is to be based on the conflicted remuneration that would be paid in relation to the affected clients. Rebating a monetary benefit can occur in a variety of ways, and includes making a payment or reducing a fee. *[Schedule 1, Item 9, sections 963M and 963N of the Corporations Act]*

1.18 This regulation making power is intended to be a broad power for giving effect to the above mentioned purpose. To this end, the new law provides that:

- the regulations may make different provision in respect of: different classes of persons that would otherwise have given conflicted remuneration; different classes of financial product; and different classes of relevant person (being the retail client that received the advice to which the conflicted remuneration related and to whom the rebate should be directed); and
- the regulations may provide for: the identification of the affected retail client; the timeframe in which rebates must occur; and the method of making the rebate.

1.19 These examples are an inclusive list of the matters that may be dealt with by the regulations. Their inclusion in the new law is not intended to limit the matters that may properly be dealt with by the regulations. *[Schedule 1, Item 9, subsections 963N(2) and 963N(3) of the Corporations Act]*

1.20 The new law makes it a civil penalty if a person fails to pay an amount or monetary benefit in accordance with the Regulations. The new section 963P is a Part 7.7A civil penalty provision. *[Schedule 1, Items 8 to 10, sections 9 and 963P and subsection 1317E(3) of the Corporations Act]*

Commencement

1.21 The new law commences on 1 January 2021. *[Section 2 of the Bill]*