

EXPOSURE DRAFT



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Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019

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 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Josh Frydenberg [**DRAFT ONLY—NOT FOR SIGNATURE**]
Treasurer

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1 Name

This instrument is the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019*.

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	The later of: (a) the day after this instrument is registered; and (b) 1 January 2021.	

Note: This table relates only to the provisions of this instrument as originally made.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 *Corporations Act 2001*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Corporations Regulations 2001

1 After Subdivision 4 of Division 4 of Part 7.7A

Insert:

Subdivision 4A—Ban on conflicted remuneration (rebates)

7.7A.15AJ What Subdivision is about

- (1) This Subdivision is made for subsection 963N(1) of the Act.
- (2) This Subdivision provides for a scheme under which a person (the *covered person*) covered by section 963M of the Act in relation to conflicted remuneration must pay amounts, or provide monetary benefits, based on that conflicted remuneration to relevant persons (the *clients*) to whom the relevant financial services licensee, or relevant representative of a financial services licensee, gave advice as retail clients.

7.7A.15AK Obligations of covered person

The covered person must:

- (a) if the conflicted remuneration can be attributed to a particular client—comply with the obligation in regulation 7.7A.15AL; or
- (b) otherwise—comply with the obligation in regulation 7.7A.15AM.

7.7A.15AL Obligation of covered person where conflicted remuneration can be attributed to a particular client

- (1) This regulation applies in circumstances described in paragraph 7.7A.15AK(a).
- (2) The covered person must pay the amount of the conflicted remuneration to the client no later than 10 business days after the day by which the covered person is legally obliged (disregarding Subdivision C of Division 4 of Part 7.7A of the Act) to give the conflicted remuneration to another person (see paragraph 963M(a) of the Act).

7.7A.15AM Obligation of covered person where conflicted remuneration relates to a group of clients

- (1) This regulation applies in circumstances described in paragraph 7.7A.15AK(b).
- (2) The covered person must pay, or provide a monetary benefit to, each of the clients referred to in subregulation 7.7A.15AJ(2) no later than:
 - (a) for a payment—10 business days after the day (the *remuneration day*) by which the covered person is legally obliged (disregarding Subdivision C of Division 4 of Part 7.7A of the Act) to give the conflicted remuneration to another person (see paragraph 963M(a) of the Act); or

- (b) for a monetary benefit other than a payment—1 year after the remuneration day.
- (3) The amount paid, or the amount of the monetary benefit provided, to each of the clients under subregulation (2) must be an amount that is just and equitable in the circumstances.
- (4) For the purposes of subregulation (3), in determining whether an amount is just and equitable in the circumstances, take account of the following matters:
 - (a) the amount of the conflicted remuneration;
 - (b) the sum of the amounts invested by the clients in financial products to which the conflicted remuneration relates;
 - (c) the amount invested by each client in financial products to which the conflicted remuneration relates;
 - (d) the amount mentioned in paragraph (c), expressed as a proportion of the amount mentioned in paragraph (b);
 - (e) the structure of the fees (if any) that the clients have paid in respect of financial products to which the conflicted remuneration relates;
 - (f) the extent to which the sum of the amounts to be paid, and the amount of the monetary benefits to be provided, to the clients under subregulation (2) equals the amount of the conflicted remuneration;
 - (g) any other relevant matter.

2 Subdivision 5 of Division 4 of Part 7.7A

Repeal the Subdivision.

3 After regulation 7.8.11A

Insert:

7.8.11B Information to be shown in records: records of rebates in relation to conflicted remuneration

- (1) For the purposes of paragraph 988E(g) of the Act, the following matters are specified in relation to records that must be kept by a financial services licensee who is a person covered by section 963M of the Act:
 - (a) all conflicted remuneration the financial services licensee is legally obliged (disregarding Subdivision C of Division 4 of Part 7.7A of the Act) to give another person for a financial year;
 - (b) all amounts paid by the financial services licensee as required by regulation 7.7A.15AL (about obligation where conflicted remuneration can be attributed to a particular client) for a financial year;
 - (c) all amounts paid and monetary benefits provided by the financial services licensee as required by regulation 7.7A.15AM (about obligation where conflicted remuneration relates to a group of clients) for a financial year.
- (2) For the purposes of section 988F of the Act, the following additional requirements are imposed in relation to records that must be kept by a financial services licensee who is a person covered by section 963M of the Act:
 - (a) for each amount paid by the financial services licensee as required by regulation 7.7A.15AL:

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Schedule 1 Amendments

- (i) an explanation of how the financial services licensee ascertained that the conflicted remuneration could be attributed to the particular client, including a description of the financial product or products to which the conflicted remuneration relates; and
- (ii) the date by which the financial services licensee was required under that regulation to pay the amount; and
- (iii) the date on which the amount was paid; and
- (iv) a description of the manner in which the amount was paid;
- (b) for each amount paid or monetary benefit provided by the financial services licensee as required by regulation 7.7A.15AM:
 - (i) an explanation of how the financial services licensee determined that the circumstances described in paragraph 7.7A.15AK(a) did not exist; and
 - (ii) an explanation of how the financial services licensee ascertained the identity of each of the clients; and
 - (iii) an explanation of how the financial services licensee determined the amount that, in the circumstances, was just and equitable to pay or provide to each of the clients, including a description of the financial product or products to which the conflicted remuneration relates; and
 - (iv) the date by which the financial services licensee was required under regulation 7.7A.15AM to pay the amount or provide the monetary benefit; and
 - (v) the date on which the amount was paid, or the monetary benefit was provided; and
 - (vi) a description of the manner in which the amount was paid, or the monetary benefit was provided.

4 In the appropriate position in Chapter 10

Insert:

Part 10.33—Application provisions relating to the Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019

10.33.01 Application of end of grandfathering arrangements

The amendment made by item 2 of Schedule 1 to the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019* applies to a benefit given on or after 1 January 2021, if the benefit is given under an arrangement entered into before, on or after the application day (within the meaning of subsection 1528(4) of the Act).

10.33.02 Application of record keeping requirements for rebate scheme

The amendment made by item 3 of Schedule 1 to the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019* applies to financial records relating to periods ending after 1 January 2021.

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Amendments **Schedule 1**

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