

EXPOSURE DRAFT

2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

National Consumer Credit Protection Amendment (Mortgage Brokers) Bill 2019

No. , 2019

(Treasury)

**A Bill for an Act to amend the law relating to
consumer credit, and for related purposes**

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1

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	
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2 Note: This table relates only to the provisions of this Act as originally
3 enacted. It will not be amended to deal with any later amendments of
4 this Act.

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

3 Schedules

9 Legislation that is specified in a Schedule to this Act is amended or
10 repealed as set out in the applicable items in the Schedule
11 concerned, and any other item in a Schedule to this Act has effect
12 according to its terms.

1 **Schedule 1—Main amendments**
2

3 *National Consumer Credit Protection Act 2009*

4 **1 Subsection 5(1)**

5 Insert:

6 *associate*: see section 15A.

7 **2 Subsection 5(1) (at the end of the definition of *commission*)**

8 Add:

9 Note: Commissions may be conflicted remuneration: see Division 4 of
10 Part 3-5A.

11 **3 Subsection 5(1)**

12 Insert:

13 *conflicted remuneration*: see sections 158N and 158NA.

14 *mortgage broker*: see section 15B.

15 *mortgage intermediary*: see section 15C.

16 **4 After section 15**

17 Insert:

18 **15A Meaning of *associate***

19 (1) If a person is associated with a credit provider for the purposes of
20 the National Credit Code:

- 21 (a) the person is an *associate* of the credit provider; and
22 (b) the credit provider is an *associate* of the person.

23 (2) In any other case, a person is an *associate* of another person in the
24 circumstances prescribed by the regulations.

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Main amendments **Schedule 1**

1 **Part 3-5A—Mortgage brokers and mortgage**
2 **intermediaries**

3 **Division 1—Introduction**

4 **Subdivision A—Guide to this Part**

5 **158K Guide to this Part**

6 This Part imposes obligations on mortgage brokers and mortgage
7 intermediaries.

8 Mortgage brokers must act in the best interests of consumers when
9 giving credit assistance in relation to credit contracts.

10 Where there is a conflict of interest, mortgage brokers must give
11 priority to consumers in providing credit assistance in relation to
12 credit contracts.

13 Mortgage brokers and mortgage intermediaries must not accept
14 conflicted remuneration.

15 Employers, credit providers and mortgage intermediaries must not
16 give conflicted remuneration to mortgage brokers or mortgage
17 intermediaries.

18 The circumstances in which these bans on conflicted remuneration
19 apply are to be set out in the regulations.

20 **Subdivision B—Interpretation**

21 **158KA Doing acts**

22 A reference in this Part to doing an act or thing includes a
23 reference to causing or authorising the act or thing to be done.

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Schedule 1 Main amendments

1 **158KB Circumstances in which a secondary representative is taken**
2 **to be acting within actual or apparent authority**

3 (1) This section applies if a person (the *secondary representative*) is
4 authorised as a credit representative of a licensee by a credit
5 representative that is a body corporate (the *primary*
6 *representative*).

7 (2) For the purposes of this Part, the secondary representative is taken
8 to be acting within the scope of the secondary representative's
9 actual or apparent authority from the licensee if the secondary
10 representative is acting within the actual or apparent scope of the
11 authority given by the primary representative to engage in
12 specified credit activities on behalf of the licensee.

13 **158KC Obligations under this Part in addition to other obligations**

14 The obligations imposed on a person under this Part are in addition
15 to any other obligations to which the person is subject under this
16 Act or any other law.

17 **Division 2—Best interests obligations**

18 **Subdivision A—Licensees that provide credit assistance in**
19 **relation to credit contracts**

20 **158L Application of this Subdivision**

21 (1) This Subdivision applies in relation to credit assistance provided
22 by a licensee to a consumer in relation to a credit contract if the
23 licensee is a mortgage broker.

24 (2) However, this Subdivision does not apply in relation to credit
25 assistance provided to a consumer in relation to a credit contract by
26 a credit representative acting within the scope of the credit
27 representative's actual or apparent authority from the licensee.

28 Note 1: A credit representative in these circumstances is covered by
29 Subdivision B of this Division.

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Schedule 1 Main amendments

1 **158LE Credit representative must act in the best interests of the**
2 **consumer**

3 (1) The credit representative must act in the best interests of the
4 consumer in relation to the credit assistance.

5 Civil penalty: 5,000 penalty units.

6 (2) The licensee must take reasonable steps to ensure that the credit
7 representative complies with subsection (1).

8 Civil penalty: 5,000 penalty units.

9 **158LF Conflict between consumer's interests and those of the credit**
10 **representative etc.**

11 (1) If the credit representative knows, or reasonably ought to know,
12 that there is a conflict between the interests of the consumer and
13 the interests of:

14 (a) the licensee; or

15 (b) an associate of the licensee; or

16 (c) the credit representative; or

17 (d) an associate of the credit representative; or

18 (e) another representative of the licensee; or

19 (f) an associate of another representative of the licensee;

20 the credit representative must give priority to the consumer's
21 interests when giving the credit assistance.

22 Civil penalty: 5,000 penalty units.

23 (2) The licensee must take reasonable steps to ensure that the credit
24 representative complies with subsection (1).

25 Civil penalty: 5,000 penalty units.

1 **Division 4—Conflicted remuneration**

2 **Subdivision A—What is conflicted remuneration?**

3 **158N *Conflicted remuneration***

4 ***Conflicted remuneration*** means:

- 5 (a) any benefit, whether monetary or non-monetary, that:
- 6 (i) is given to a licensee, or a representative of a licensee,
7 who provides credit assistance to consumers; and
- 8 (ii) because of the nature of the benefit or the circumstances
9 in which it is given, could reasonably be expected to
10 influence the credit assistance provided to consumers;
11 or
- 12 (b) any benefit, whether monetary or non-monetary, that:
- 13 (i) is given to a licensee, or a representative of a licensee,
14 who acts as an intermediary; and
- 15 (ii) because of the nature of the benefit or the circumstances
16 in which it is given, could reasonably be expected to
17 influence whether the licensee or representative acts as
18 an intermediary, or how the licensee or representative
19 acts as an intermediary.

20 **158NA Regulations may further define *conflicted remuneration***

21 The regulations may prescribe:

- 22 (a) circumstances, in addition to those set out in section 158N, in
23 which a benefit given to a licensee or a representative of a
24 licensee is ***conflicted remuneration***; and
- 25 (b) circumstances in which a benefit given to a licensee or a
26 representative of a licensee is not ***conflicted remuneration***.

27 **Subdivision B—Ban on accepting conflicted remuneration**

28 **158NB Licensee must not accept conflicted remuneration**

29 A licensee must not accept conflicted remuneration in
30 circumstances prescribed by the regulations if:

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Schedule 1 Main amendments

- 1 (a) the licensee is a mortgage broker; or
2 (b) the licensee is a mortgage intermediary.

3 Civil penalty: 5,000 penalty units.

4 **158NC Credit representative must not accept conflicted** 5 **remuneration**

- 6 (1) A credit representative of a licensee must not accept conflicted
7 remuneration in circumstances prescribed by the regulations if the
8 credit representative or the licensee is:

- 9 (a) a mortgage broker; or
10 (b) a mortgage intermediary.

11 Civil penalty: 5,000 penalty units.

- 12 (2) The licensee must take reasonable steps to ensure that the credit
13 representative complies with subsection (1).

14 Civil penalty: 5,000 penalty units.

15 **Subdivision C—Ban on giving conflicted remuneration**

16 **158ND Employer must not give employees conflicted remuneration**

- 17 (1) An employer of a licensee must not give the licensee conflicted
18 remuneration in circumstances prescribed by the regulations if the
19 licensee is:

- 20 (a) a mortgage broker; or
21 (b) a mortgage intermediary.

22 Civil penalty: 5,000 penalty units.

- 23 (2) An employer of a representative of a licensee must not give the
24 representative conflicted remuneration in circumstances prescribed
25 by the regulations if the licensee or the representative is:

- 26 (a) a mortgage broker; or
27 (b) a mortgage intermediary.

28 Civil penalty: 5,000 penalty units.

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Main amendments **Schedule 1**

1 **158NE Credit provider must not give conflicted remuneration**

- 2 (1) A credit provider must not give a licensee conflicted remuneration
3 in circumstances prescribed by the regulations if the licensee is:
4 (a) a mortgage broker; or
5 (b) a mortgage intermediary.

6 Civil penalty: 5,000 penalty units.

- 7 (2) A credit provider must not give a representative of a licensee
8 conflicted remuneration in circumstances prescribed by the
9 regulations if the licensee or the representative is:
10 (a) a mortgage broker; or
11 (b) a mortgage intermediary.

12 Civil penalty: 5,000 penalty units.

13 **158NF Mortgage intermediary must not give conflicted**
14 **remuneration**

- 15 (1) A mortgage intermediary must not give a licensee conflicted
16 remuneration in circumstances prescribed by the regulations if the
17 licensee is:
18 (a) a mortgage broker; or
19 (b) a mortgage intermediary.

20 Civil penalty: 5,000 penalty units.

- 21 (2) A mortgage intermediary must not give a representative of a
22 licensee conflicted remuneration in circumstances prescribed by
23 the regulations if the licensee or the representative is:
24 (a) a mortgage broker; or
25 (b) a mortgage intermediary.

26 Civil penalty: 5,000 penalty units.

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Schedule 1 Main amendments

1 **Division 6—Miscellaneous**

2 **158T Anti-avoidance**

3 A person must not, either alone or together with one or more other
4 persons, enter into, begin to carry out or carry out a scheme if:

5 (a) it would be concluded that the person, or any of the persons,
6 who entered into, began to carry out or carried out the
7 scheme or any part of the scheme did so for the sole purpose
8 or for a purpose (that is not incidental) of avoiding the
9 application of any provision of this Part in relation to any
10 person or persons (whether or not a person or persons who
11 entered into, began to carry out or carried out the scheme or
12 any part of the scheme); and

13 (b) the scheme or the part of the scheme has achieved, or apart
14 from this section, would achieve, that purpose.

15 Civil penalty: 5,000 penalty units.

16 ***National Consumer Credit Protection (Transitional and***
17 ***Consequential Provisions) Act 2009***

18 **6 In the appropriate position**

19 Insert:

20 **Schedule 9—Application provisions for the**
21 **National Consumer Credit Protection**
22 **Amendment (Mortgage Brokers) Act**
23 **2019**
24

25 **1 Definitions**

26 In this Schedule:

27 ***amending Act*** means the *National Consumer Credit Protection*
28 *Amendment (Mortgage Brokers) Act 2019*.

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Schedule 2 Consequential amendments

1 **Schedule 2—Consequential amendments**
2

3 *National Consumer Credit Protection Act 2009*

4 **1 Subsection 5(1)**

5 Insert:

6 *indirect remuneration* means a commission or conflicted
7 remuneration.

8 **2 Paragraph 92(e)**

9 Omit “commissions” (wherever occurring), substitute “indirect
10 remuneration”.

11 **3 Section 111 (paragraph beginning “Division 5”)**

12 Omit “commission”, substitute “indirect remuneration”.

13 **4 Subparagraph 113(2)(g)(i)**

14 Omit “commissions”, substitute “indirect remuneration”.

15 **5 Subparagraph 113(2)(g)(ii)**

16 Omit “those commissions”, substitute “that indirect remuneration”.

17 **6 Subparagraphs 113(3)(b)(i) and (ii)**

18 Omit “commissions” (wherever occurring), substitute “indirect
19 remuneration”.

20 **7 Division 5 of Part 3-1 of Chapter 3 (heading)**

21 Omit “commissions”, substitute “indirect remuneration”.

22 **8 Section 121 (heading)**

23 Omit “commissions”, substitute “indirect remuneration”.

24 **9 Paragraph 121(2)(b)**

25 Omit “commissions”, substitute “indirect remuneration”.

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Consequential amendments **Schedule 2**

- 1 **10 Paragraphs 121(3)(a) and (b)**
2 Omit “commissions”, substitute “indirect remuneration”.
- 3 **11 Section 134 (paragraph beginning “Division 5”)**
4 Omit “commission”, substitute “indirect remuneration”.
- 5 **12 Subparagraph 136(2)(g)(i)**
6 Omit “commissions”, substitute “indirect remuneration”.
- 7 **13 Subparagraph 136(2)(g)(ii)**
8 Omit “those commissions”, substitute “that indirect remuneration”.
- 9 **14 Subparagraphs 136(3)(b)(i) and (ii)**
10 Omit “commissions” (wherever occurring), substitute “indirect
11 remuneration”.
- 12 **15 Division 5 of Part 3-3 of Chapter 3 (heading)**
13 Omit “commissions”, substitute “indirect remuneration”.
- 14 **16 Section 144 (heading)**
15 Omit “commissions”, substitute “indirect remuneration”.
- 16 **17 Paragraph 144(2)(b)**
17 Omit “commissions”, substitute “indirect remuneration”.
- 18 **18 Paragraphs 144(3)(a) and (b)**
19 Omit “commissions”, substitute “indirect remuneration”.
- 20 **19 Subparagraph 158(2)(g)(i)**
21 Omit “commissions”, substitute “indirect remuneration”.
- 22 **20 Subparagraph 158(2)(g)(ii)**
23 Omit “those commissions”, substitute “that indirect remuneration”.
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Schedule 2 Consequential amendments

1 **21 Subparagraphs 158(3)(b)(i) and (ii)**

2 Omit “commissions” (wherever occurring), substitute “indirect
3 remuneration”.

4 **22 Subparagraph 160B(2)(a)(i)**

5 Omit “commissions (apart from commissions that are”, substitute
6 “indirect remuneration (apart from indirect remuneration that is”.

7 **23 Paragraph 160B(2)(d)**

8 Omit “commission”, substitute “indirect remuneration”.