

EXPOSURE DRAFT

2016-2017-2018-2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019

No. , 2019

(Treasury)

A Bill for an Act to amend the *Corporations Act 2001* in relation to grandfathered conflicted remuneration, and for related purposes

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1 **A Bill for an Act to amend the *Corporations Act***
2 ***2001* in relation to grandfathered conflicted**
3 **remuneration, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Treasury Laws Amendment (Ending Grandfathered*
7 *Conflicted Remuneration) Act 2019*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

No. , 2019 *Treasury Laws Amendment (Ending Grandfathered Conflicted* *1*
Remuneration) Bill 2019

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

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.	
2. Schedule 1	1 January 2021.	1 January 2021

4 Note: This table relates only to the provisions of this Act as originally
5 enacted. It will not be amended to deal with any later amendments of
6 this Act.

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

3 Schedules

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12 repealed as set out in the applicable items in the Schedule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

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Conflicted remuneration **Schedule 1**
End of grandfathering arrangements from 1 January 2021 **Part 1**

Schedule 1—Conflicted remuneration

Part 1—End of grandfathering arrangements from 1 January 2021

Corporations Act 2001

1 Subsection 1528(1)

Repeal the subsection, substitute:

(1) Subject to subsections (1A) and (2), Division 4 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given to a financial services licensee, or a representative of a financial services licensee, if:

- (a) the benefit is given under an arrangement entered into on or after the application day; or
- (b) the benefit is given by a platform operator.

(1A) Subject to subsection (2), Division 4 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given on or after 1 January 2021 to a financial services licensee, or a representative of a financial services licensee, if the benefit is given under an arrangement entered into before, on or after the application day.

2 Subsection 1528(3)

Repeal the subsection, substitute:

(3) Section 1350 does not apply in relation to the operation of that Division in respect of a benefit given to a financial services licensee, or a representative of a financial services licensee.

3 Subsection 1529(1)

Repeal the subsection, substitute:

(1) Subject to subsections (1A) and (2), Subdivision A of Division 5 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given to a financial services licensee, or an

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Schedule 1 Conflicted remuneration

Part 1 End of grandfathering arrangements from 1 January 2021

1 RSE licensee, under an arrangement entered into on or after the
2 application day.

3 (1A) Subject to subsection (2), Subdivision A of Division 5 of
4 Part 7.7A, as inserted by item 24 of Schedule 1 to the amending
5 Act, applies to a benefit given on or after 1 January 2021 to a
6 financial services licensee, or an RSE licensee, under an
7 arrangement entered into before, on or after the application day.

8 **4 After subsection 1529(2)**

9 Insert:

10 (2A) Section 1350 does not apply in relation to the operation of that
11 Subdivision in respect of a benefit given to a financial services
12 licensee, or an RSE licensee.

13 **5 Section 1530**

14 Repeal the section, substitute:

15 **1530 Section 1350 does not apply to regulations made for the** 16 **purposes of subsection 1528(2) or 1529(2)**

17 Section 1350 does not apply in relation to regulations made for the
18 purposes of subsection 1528(2) or 1529(2).

19 **6 Subsection 1531(1)**

20 Before “Subdivision B”, insert “Subject to subsection (1A),”.

21 **7 Subsection 1531(2)**

22 Repeal the subsection, substitute:

23 (1A) Subdivision B of Division 5 of Part 7.7A, as inserted by item 24 of
24 Schedule 1 to the amending Act, applies to asset-based fees
25 charged on or after 1 January 2021 on borrowed amounts, where
26 those amounts have been used, are used or are to be used, to any
27 extent, to acquire financial products before, on or after the
28 application day.

29 (2) Section 1350 does not apply in relation to the operation of that
30 Subdivision in respect of an asset-based fee.

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Conflicted remuneration **Schedule 1**
Rebate of benefits **Part 2**

1 **Part 2—Rebate of benefits**

2 *Corporations Act 2001*

3 **8 Section 9 (after paragraph (j) of the definition of Part 7.7A**
4 **civil penalty provision)**

5 Insert:

6 (ja) section 963P (person covered by section 963M must pay
7 amount etc. in accordance with regulations);

8 **9 After Subdivision C of Division 4 of Part 7.7A**

9 Insert:

10 **Subdivision CA—Rebate of conflicted remuneration**

11 **963M Person covered by this section in relation to conflicted**
12 **remuneration**

13 This section covers a person in relation to conflicted remuneration
14 if:

- 15 (a) the person is legally obliged (disregarding Subdivision C) to
16 give, on or after 1 January 2021, the conflicted remuneration
17 to another person; and
18 (b) the person is prohibited under that Subdivision from giving
19 the conflicted remuneration to the other person, or the other
20 person is prohibited under that Subdivision from accepting
21 the conflicted remuneration.

22 **963N Regulations may provide for rebate of conflicted remuneration**

- 23 (1) The regulations may provide for a scheme under which a person
24 covered by section 963M in relation to conflicted remuneration
25 must pay an amount, or provide a monetary benefit, based on that
26 conflicted remuneration to the relevant person to whom the
27 relevant financial services licensee, or relevant representative of a
28 financial services licensee, gave advice as a retail client.

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Schedule 1 Conflicted remuneration

Part 2 Rebate of benefits

- 1 (2) Without limiting the scope of regulations made for the purposes of
2 subsection (1), those regulations may make different provision in
3 respect of any of the following:
4 (a) different classes of person covered by section 963M;
5 (b) different classes of financial product;
6 (c) different classes of relevant person to whom advice was
7 given as a retail client.
- 8 (3) Without limiting the scope of regulations made for the purposes of
9 subsection (1), those regulations may provide for any of the
10 following matters:
11 (a) the identification of relevant persons to whom advice was
12 given as a retail client;
13 (b) the timeframe for making payments or providing monetary
14 benefits;
15 (c) the method of making payments or providing monetary
16 benefits.

17 **963P Person covered by section 963M must pay amount etc. in** 18 **accordance with regulations**

19 If regulations made for the purposes of subsection 963N(1) require
20 a person covered by section 963M to pay an amount, or provide a
21 monetary benefit, the person must pay the amount or provide the
22 monetary benefit in accordance with those regulations.

23 Note: This section is a civil penalty provision (see section 1317E).

24 **10 In the appropriate position in subsection 1317E(3)**

25 Insert:

section 963P	person covered by section 963M must pay amount etc. in accordance with regulations	financial services
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