



Corporations Amendment (Financial Advice Measures) Act 2016

No. 22, 2016

An Act to amend the law in relation to financial products and financial advice, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Amendments		3
	<i>Corporations Act 2001</i>	3



Corporations Amendment (Financial Advice Measures) Act 2016

No. 22, 2016

An Act to amend the law in relation to financial products and financial advice, and for related purposes

[Assented to 18 March 2016]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Corporations Amendment (Financial Advice Measures) Act 2016*.

2 Commencement

- (1) Each provision of this Act 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
Provision(s)	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.	18 March 2016
2. Schedule 1	The day after this Act receives the Royal Assent.	19 March 2016

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Corporations Act 2001

1 Section 960

Insert:

consumer credit insurance has the same meaning as in the *Insurance Contracts Act 1984*.

2 Section 960

Insert:

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

12 Subsections 961B(3) and (4)

Repeal the subsections, substitute:

Advice given by Australian ADIs—best interests duty satisfied if certain steps are taken

(3) If:

(a) the provider is:

- (i) an agent or employee of an Australian ADI; or
- (ii) otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI; and

(b) the subject matter of the advice sought by the client relates only to the following:

- (i) a basic banking product;
- (ii) a general insurance product;
- (iii) consumer credit insurance;
- (iv) a combination of any of those products;

the provider satisfies the duty in subsection (1) in relation to the advice given in relation to the basic banking product and the general insurance product if the provider takes the steps mentioned in paragraphs (2)(a), (b) and (c).

General insurance products—best interests duty satisfied if certain steps are taken

- (4) To the extent that the subject matter of the advice sought by the client is a general insurance product, the provider satisfies the duty in subsection (1) if the provider takes the steps mentioned in paragraphs (2)(a), (b) and (c).

14A Paragraph 961F(b)

Omit “that is related to a basic deposit product”.

16 Subsections 961J(2) and (3)

Repeal the subsections, substitute:

- (2) If:
- (a) the provider is:
 - (i) an agent or employee of an Australian ADI; or
 - (ii) otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI; and
 - (b) the subject matter of the advice sought by the client relates only to the following:
 - (i) a basic banking product;
 - (ii) a general insurance product;
 - (iii) consumer credit insurance;
 - (iv) a combination of any of those products;subsection (1) does not apply to the extent that the advice relates to a basic banking product or a general insurance product or a combination of those 2 products.
- (3) Subsection (1) does not apply to the extent that the subject matter of the advice sought by the client is a general insurance product.

20A Subsection 962G(1)

Omit “30 days”, substitute “60 days”.

20B Subparagraph 962H(1)(b)(i)

Omit “30 days”, substitute “60 days”.

21 Subsection 962K(1)

Omit “30 days”, substitute “60 days”.

22 Subsection 962S(1)

Omit “within a period of 30 days”, substitute “before the end of a period of 60 days”.

23 At the end of section 963A

Add:

Note: A reference in this Subdivision (including sections 963A, 963B, 963C and 963D) to giving a benefit includes a reference to causing or authorising it to be given (see section 52).

28 At the end of subsection 963B(1)

Add:

Note: Under the governing rules of some regulated superannuation funds, a member may seek advice on the basis that the trustee of the fund will pay the licensee or representative for the advice and then recover the amount paid from the assets of the fund attributed to that member. In that case, the member has caused or authorised the amount to be paid to the licensee or representative and so, because of section 52 of this Act, paragraph (1)(d) would apply to that amount. This does not affect the trustee’s obligations under section 62 of the *Superannuation Industry (Supervision) Act 1993* (which deals with the purposes for which a trustee may act in maintaining a regulated superannuation fund).

29 At the end of section 963B (after the note)

Add:

- (4) The regulations may prescribe circumstances in which, despite a provision of this section, all or part of a benefit is to be treated as conflicted remuneration.

Note: The expression *intrafund advice* is often used to describe financial product advice given by a trustee (or an employee of, or another person acting under arrangement with, the trustee) of a regulated superannuation fund to its members, where that advice is not of a kind to which the prohibition in section 99F of the *Superannuation Industry (Supervision) Act 1993* applies. (Section 99F of that Act prohibits trustees of regulated superannuation funds from passing on the cost of providing certain kinds of financial product advice in relation to one member of the fund to another.)

33 Subparagraph 963C(c)(ii)

Repeal the subparagraph, substitute:

- (ii) the benefit is relevant to the carrying on of a financial services business;

34 Section 963C

Before “Despite”, insert “(1)”.

34A At the end of section 963C

Add:

- (2) The regulations may prescribe circumstances in which, despite subsection (1), all or part of a benefit is to be treated as conflicted remuneration.

35 Section 963D

Repeal the section, substitute:

963D Benefits for employees etc. of ADIs

- (1) This section applies if:
 - (a) a monetary or non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee; and
 - (b) the benefit is in whole or in part remuneration for work carried out, or to be carried out, by the licensee or representative:
 - (i) as an agent or employee of an Australian ADI; or
 - (ii) in otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI.
- (2) If:
 - (a) access to the benefit, or the amount of the benefit, is in whole or in part dependent on the licensee or representative recommending:
 - (i) a basic banking product; or
 - (ii) a general insurance product; or
 - (iii) consumer credit insurance; and
 - (b) the licensee or representative does not, in the course of recommending any, or any combination, of those products give other financial product advice that does not relate to any of those products;

to the extent that the benefit relates to the recommendation of any, or any combination of, the products mentioned in paragraph (a), the benefit is not *conflicted remuneration*.

- (3) The regulations may prescribe circumstances in which, despite subsection (2), all or part of a benefit is to be treated as conflicted remuneration.

41 Part 10.18 (heading)

Repeal the heading, substitute:

Part 10.18—Transitional and application provisions relating to the Future of Financial Advice Measures

42 Before section 1526

Insert:

Division 1—Provisions relating to the Corporations Amendment (Further Future of Financial Advice Measures) Act 2012

43 At the end of Part 10.18

Add:

Division 2—Provisions relating to the Corporations Amendment (Financial Advice Measures) Act 2016

1531A Definitions

In this Division:

commencement day means the day on which Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* commences.

1531B Best interests obligation

The amendments made by items 12, 14A and 16 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* apply in relation to the provision of personal advice to a person as a retail client on or after the commencement day.

1531C Renewal notices (opt-in requirement)

- (1) The amendment made by item 21 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* applies in relation to an ongoing fee arrangement for those renewal notice days for the arrangement that occur on or after the commencement day.
- (2) In this item:

renewal notice day for an ongoing fee arrangement has the same meaning as it has in Part 7.7A, as in force immediately before the commencement day.

1531D Disclosure statements

The amendments made by items 20A, 20B and 22 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* apply in relation to an ongoing fee arrangement for those disclosure days for the arrangement that occur on or after the commencement day.

1531E Conflicted remuneration

The amendments made by items 23 to 35 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* apply in relation to a benefit if:

- (a) the benefit is one to which Division 4 of Part 7.7A applies under section 1528; and
- (b) the benefit is given on or after the commencement day.

*[Minister's second reading speech made in—
House of Representatives on 19 March 2014
Senate on 1 September 2014]*

(57/14)

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9