



Corporations Amendment Regulation 2012 (No. 4)

Select Legislative Instrument 2012 No. 170

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Corporations Act 2001*.

Dated 12 July 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

WILLIAM RICHARD SHORTEN
Minister for Financial Services and Superannuation

1 Name of regulation

This regulation is the *Corporations Amendment Regulation 2012 (No. 4)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Schedule 1 Amendments

(section 3)

[1] After regulation 7.7.04A

insert

7.7.04AA Financial Services Guide given by financial services licensee: non-monetary benefit that is not conflicted remuneration

- (1) This regulation is made for paragraph 942B (4) (b) of the Act.
- (2) Information about a non-monetary benefit that, in accordance with paragraph 963C (b) of the Act, is not conflicted remuneration is not required by paragraph 942B (2) (e) of the Act.

Note Under paragraph 963C (b) of the Act, if a non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

7.7.04AB Financial Services Guide given by authorised representative: non-monetary benefit that is not conflicted remuneration

- (1) This regulation is made for paragraph 942C (4) (b) of the Act.
- (2) Information about a non-monetary benefit that, in accordance with paragraph 963C (b) of the Act, is not conflicted remuneration is not required by paragraph 942C (2) (f) of the Act.

Note Under paragraph 963C (b) of the Act, if a non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

[2] After regulation 7.7.09BB

insert

7.7.09BC Statement of Advice given by financial services licensee: non-monetary benefit that is not conflicted remuneration

- (1) This regulation is made for paragraph 947B (4) (b) of the Act.
- (2) Information about a non-monetary benefit that, in accordance with paragraph 963C (b) of the Act, is not conflicted remuneration is not required by paragraph 947B (2) (d) of the Act.

Note Under paragraph 963C (b) of the Act, if a non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

7.7.09BD Statement of Advice given by authorised representative: non-monetary benefit that is not conflicted remuneration

- (1) This regulation is made for paragraph 947C (4) (b) of the Act.

- (2) Information about a non-monetary benefit that, in accordance with paragraph 963C (b) of the Act, is not conflicted remuneration is not required by paragraph 947C (2) (e) of the Act.

Note Under paragraph 963C (b) of the Act, if a non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

[3] After Part 7.7

insert

Part 7.7A Best interests obligations and remuneration

Note Regulations 7.7A.01 to 7.7A.09 are reserved for future use.

Division 3 Charging ongoing fees to clients

7.7A.10 Arrangements that are not ongoing fee arrangements

- (1) This regulation is made for subsection 962A (5) of the Act.
- (2) An arrangement mentioned in subsection 962A (1) or (2) is not an ongoing fee arrangement to the extent that the fee payable under the arrangement is a product fee.
- (3) A product fee is a fee that the issuer of a financial product charges a retail client for the management and operation of a financial product issued to the client.

Example

A monthly account keeping fee charged by the provider of a basic deposit product.

7.7A.11 Fee disclosure statements: product fee

- (1) This regulation is made for paragraph 962H (3) (a) of the Act.

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- (2) Information about a product fee mentioned in subregulation 7.7A.10 (3) is not required by subsection 962H (2) of the Act.

Division 4 Conflicted remuneration

7.7A.12 Monetary benefit given in certain circumstances not conflicted remuneration: prescribed benefit

- (1) This regulation is made for paragraph 963B (1) (e) of the Act.
- (2) A benefit given to a financial services licensee, or a representative of a financial services licensee, for advice that relates to an interest in a time-sharing scheme is a prescribed benefit.

Note Under subsection 963B (1) of the Act, if a monetary benefit is a prescribed benefit, the benefit is not conflicted remuneration.

7.7A.13 Non-monetary benefit given in certain circumstances not conflicted remuneration: prescribed amount

For subparagraph 963C (b) (i) of the Act, the amount is \$300 for each financial services licensee, or each representative of a financial services licensee, who is the final recipient of a non-monetary benefit.

Note Under paragraph 963C (b) of the Act, if a non-monetary benefit is given to a financial services licensee, or a representative of a financial services licensee, who provides financial advice, is less than the prescribed amount and identical or similar benefits are not given on a frequent or regular basis, the benefit is not conflicted remuneration.

7.7A.14 Non-monetary benefit given in certain circumstances not conflicted remuneration: education or training course

- (1) This regulation is made for subparagraph 963C (c) (iii) of the Act.
- (2) This regulation sets out requirements if a non-monetary benefit to which subparagraphs 963C (c) (i) and (ii) of the Act apply is the provision of an education or training course to a financial services licensee, or a representative of a financial services licensee.

Note Under paragraph 963C (c) of the Act, if certain non-monetary benefits have a genuine education or training purpose, are relevant to the provision of financial product advice to retail clients and comply with the regulations, the benefits are not conflicted remuneration.

- (3) Education or training activities for the professional development of the participants in the course must take up at least:
 - (a) 75% of the time spent on the course; or
 - (b) 6 hours a day;whichever is the lesser.
- (4) The participant, or the participant's employer or licensee, must pay for the costs of:
 - (a) travel and accommodation relating to the course; and
 - (b) events and functions held in conjunction with the course.

Example

The cost of day trips or dinners.

- (5) In this regulation:
education or training course includes a conference or seminar.

7.7A.15 Non-monetary benefit given in certain circumstances not conflicted remuneration: other education and training benefit

- (1) This regulation is made for subparagraph 963C (c) (iii) of the Act.
- (2) This regulation sets out a requirement if a non-monetary benefit to which subparagraphs 963C (c) (i) and (ii) of the Act apply is not the provision of an education or training course to which regulation 7.7A.13 applies.

Note Under paragraph 963C (c) of the Act, if certain non-monetary benefits have a genuine education or training purpose, are relevant to the provision of financial product advice to retail clients and comply with the regulations, the benefits are not conflicted remuneration.

- (3) The dominant purpose of the non-monetary benefit must be education and training.

[4] After regulation 7.8.11

insert

7.8.11A Particular categories of information to be shown in records: records of non-monetary benefit that is not conflicted remuneration

- (1) This regulation is made for paragraph 988E (g) and section 988F of the Act.
- (2) The following table sets out matters in relation to a non-monetary benefit that:
 - (a) is given to a financial services licensee or a representative of a financial services licensee; and
 - (b) either:
 - (i) is not conflicted remuneration in accordance with paragraph 963C (b) of the Act, and is over \$100; or
 - (ii) is not conflicted remuneration in accordance with paragraph 963C (c) or (d) of the Act; or

Note Particulars of the matters must be shown in the records kept by the financial services licensee.

Item	Matter
1	A description of the benefit
2	Either: <ol style="list-style-type: none"> (a) the value of the benefit; or (b) if the value is not known, the estimated value of the benefit; expressed as a dollar amount or as a range of dollars
3	The date on which the benefit was given
4	The name of the person who gave the benefit and, if relevant, the number of the person's financial services licence
5	Whether the benefit was given to the licensee or to a representative of the licensee
6	If the benefit was given to an authorised representative of the licensee, the name and contact details of the authorised representative

Item	Matter
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- | | |
|---|--|
| 7 | If the benefit was given to another representative of the licensee, the name and contact details of the other representative |
|---|--|
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- (3) At the request of a person, a financial services licensee must give the person the particulars in its records relating to the matters in items 1 to 4 of the table for the last financial year.
- (4) The licensee may require the person making the request to pay a charge for obtaining the particulars.
- (5) The amount of the charge must not exceed the reasonable costs that the licensee incurs that are reasonably related to giving the particulars (including any costs incurred in photocopying the document containing the particulars).

Note This would include the costs of collating the information.

- (6) The licensee must give the particulars to the person as soon as practicable, and no later than one month after the person makes the request to the licensee.

[5] After Part 10.15

insert

**Part 10.18 Transitional provisions
relating to *Corporations
Amendment (Further Future of
Financial Advice Measures)
Act 2012***

**10.18.01 Ban on conflicted remuneration does not apply in
certain circumstances**

- (1) This regulation is made for subsection 1528 (2) of the Act.

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- (2) A circumstance in which Division 4 of Part 7.7A of the Act does not apply to a benefit given to a financial service licensee, or a representative of a financial services licensee, is that the benefit relates to:
- (a) a group life policy for members of a superannuation entity; or
 - (b) a life policy for a member of a default superannuation fund.

Note For the definitions of *group life policy for members of a superannuation entity* and *life policy for a member of a default superannuation fund*: see section 963B of the Act.

- (3) This regulation expires on 1 July 2013 as if the regulation had been repealed by another legislative instrument.