



Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014

Select Legislative Instrument No. 102, 2014

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 regulation.

Dated 26 June 2014

Peter Cosgrove
Governor-General

By His Excellency's Command

Mathias Cormann
Minister for Finance
for the Treasurer

OPC60381 - F

Contents

1	Name of regulation	1
2	Commencement	1
3	Authority	1
4	Schedule(s)	1
Schedule 1—Amendments		2
<i>Corporations Regulations 2001</i>		<i>2</i>

<i>No. 102, 2014</i>	<i>Corporations Amendment (Streamlining Future of Financial Advice)</i>	<i>i</i>
	<i>Regulation 2014</i>	
<i>OPC60381 - F</i>		

1 Name of regulation

This regulation is the *Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014*.

2 Commencement

This regulation commences on 1 July 2014.

3 Authority

This regulation is made under the *Corporations Act 2001*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Corporations Regulations 2001

1 Regulation 7.6.02AB (after table item 2)

Insert:

2A section 1368 Part 7.7A

2 Regulation 7.6.02AC (after table item 2)

Insert:

2A section 1368 Part 7.7A

3 Regulation 7.6.02AD (after table item 2)

Insert:

2A section 1368 Part 7.7A

4 Regulation 7.6.02AE (after table item 2)

Insert:

2A section 1368 Part 7.7A

5 Regulation 7.6.02AF (after table item 2)

Insert:

2A section 1368 Part 7.7A

6 Subdivision 1 of Division 2 of Part 7.7A (heading)

Repeal the heading.

7 Regulation 7.7A.1

Repeal the regulation, substitute:

7.7A.2 Best interests duty—identifying objectives etc. disclosed

- (1) This regulation:
- (a) is made for paragraph 961B(5)(a) of the Act; and
 - (b) prescribes a step (the *prescribed step*) in substitution for the step mentioned in paragraph 961B(2)(a) of the Act; and
 - (c) prescribes the circumstances in which the provider must prove that he or she has taken the prescribed step.
- (2) For paragraph (1)(b), the prescribed step is that the provider has identified the objectives, financial situation and needs of the client that are disclosed to the provider by the client.
- Note 1: Nothing in section 961B of the Act prevents the provider and a client from agreeing the subject matter of the advice sought by the client.
- Note 2: The provider need not inquire into circumstances that would not reasonably be considered as relevant to the subject matter.
- (3) For paragraph (1)(c), the provider must prove that he or she has taken the prescribed step if the advice is provided to the client in the period between:
- (a) the commencement of the *Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014*; and
 - (b) the end of 31 December 2015.

Client seeks scaled advice

- (4) To avoid doubt, nothing in this regulation prevents the provider and a client from agreeing the subject matter of the advice sought by the client.
- Example: A client approaches the provider intending to seek advice on a particular subject matter. As a result of discussion with the provider, the client decides to instead seek advice on a narrower subject matter. The provider and the client then agree the subject matter of the advice sought by the client. The obligations of Division 2 of Part 7.7A of the Act apply to the advice ultimately sought.

7.7A.3 Best interests duty—identifying reasonable objectives etc.

- (1) This regulation:
 - (a) is made for paragraph 961B(5)(b) of the Act; and
 - (b) prescribes a circumstance in which the provider is not required to prove that he or she has taken the step mentioned in paragraph 961B(2)(g) of the Act.
- (2) The provider is not required to prove that he or she has taken the step if the advice is provided to the client in the period between:
 - (a) the commencement of the *Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014*; and
 - (b) the end of 31 December 2015.

7.7A.4 Best interests duty—basic banking products etc.

- (1) This regulation:
 - (a) is made for paragraph 961B(5)(b) of the Act; and
 - (b) prescribes a circumstance in which the provider is not required to prove that he or she has taken the steps mentioned in paragraphs 961B(2)(d), (e) and (f) of the Act in relation to advice that relates to a basic banking product or general insurance product.
- (2) The provider is not required to prove that he or she has taken the steps 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.

7.7A.5 Best interests duty—general insurance products

- (1) This regulation:

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- (a) is made for paragraph 961B(5)(b) of the Act; and
 - (b) prescribes a circumstance in which the provider is not required to prove that he or she has taken the steps mentioned in paragraphs 961B(2)(d), (e) and (f) of the Act.
- (2) The provider is not required to prove that he or she has taken the steps to the extent that the subject matter of the advice sought by the client is a general insurance product.

7.7A.6 Best interests duty—basic banking products

For paragraph 961F(e) of the Act, a facility for making non-cash payments (see section 763D of the Act) that is not related to a basic deposit product is a *basic banking product*.

7.7A.7 Renewal notice

- (1) This regulation:
 - (a) is made for subsection 962K(3) of the Act; and
 - (b) provides a situation in which subsection 962K(1) of the Act does not apply.
- (2) The current fee recipient is not required to give the client a renewal notice in relation to an ongoing fee arrangement if the arrangement is entered into in the period between:
 - (a) the commencement of the *Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014*; and
 - (b) the end of 31 December 2015.

7.7A.8 Fee disclosure statement

- (1) This regulation:
 - (a) is made for subsection 962S(2) of the Act; and
 - (b) provides a situation in which subsection 962S(1) of the Act does not apply.
- (2) The current fee recipient is not required to give the client a fee disclosure statement in relation to an ongoing fee arrangement that was entered into before 1 July 2013 during the period between:

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- (a) the commencement of the *Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014*; and
- (b) the end of 31 December 2015.

8 At the end of regulation 7.7A.10

Add:

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.)

9 Regulation 7.7A.12 (note)

After “Note”, insert “1”.

10 At the end of regulation 7.7A.12

Add:

Note 2: A reference in this Division to giving a benefit includes a reference to causing or authorising it to be given (see section 52 of the Act).

Note 3: 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. If the operation of section 52 of the Act and these regulation means that the payment is not conflicted remuneration, 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) will not be affected.

11 Regulation 7.7A.12B

Repeal the regulation, substitute:

7.7A.12B Stamping fees

- (1) A monetary benefit is not conflicted remuneration if it is a stamping fee given to facilitate an approved capital raising.

(2) In this regulation:

approved capital raising means:

- (a) an offer to issue an approved financial product; or
 - (b) an offer to sell an approved financial product;
- where the purpose of the offer is to raise funds for the person issuing or selling the approved financial product.

approved financial product means:

- (a) debentures, stocks or bonds that are, or are proposed to be, issued by a government; or
- (b) shares in, or debentures of, a body that are, or are proposed to be, quoted on a prescribed financial market; or
- (c) interests in a managed investment scheme that are, or are proposed to be, quoted on a prescribed financial market; or
- (d) a right to acquire, by way of issue, shares, debentures or interests mentioned in paragraph (b) or (c).

stamping fee means a fee, or a part of a fee:

- (a) that a person, including an issuer of a financial product, or a person acting on behalf of the issuer, pays either directly or indirectly to a provider in connection with:
 - (i) an offer by the issuer to issue the financial product; or
 - (ii) an invitation by the issuer for an application to issue the financial product; or
- (b) that a person, including a holder of a financial product, or person acting on behalf of the holder, pays either directly or indirectly to a provider in connection with:
 - (i) an offer by the holder to sell the financial product; or
 - (ii) an invitation by the holder for an application to sell the financial product.

12 Paragraph 7.7A.12D(1)(a)

After “financial market”, insert “or the market known as the ASX24”.

13 Subregulation 7.7A.12D(1) (note)

Repeal the note, substitute:

Note 1: For ***prescribed financial market***, see regulation 1.0.02A.

Note 2: The ASX24 is the financial market operated by Australian Securities Exchange Limited that was formerly known as the Sydney Futures Exchange.

14 Subregulation 7.7A.12D(2) (after paragraph (a) of the definition of *brokerage fee*)

Insert:

(aa) the market known as the ASX24; or

15 Subregulation 7.7A.12D(2) (note at the end of the definition of *brokerage fee*)

Repeal the note, substitute:

Note 1: Regulations 7.7A.17 and 7.7A.18 relate to exemptions in relation to the charging of asset-based fees on borrowed amounts.

Note 2: The ASX24 is the financial market operated by Australian Securities Exchange Limited that was formerly known as the Sydney Futures Exchange.

16 Subregulation 7.7A.12D(2) (definition of *trading participant*)

After “financial market”, insert “or the market known as the ASX24”.

17 Subregulation 7.7A.12D(2) (at the end of the definition of *trading participant*)

Add:

Note: The ASX24 is the financial market operated by Australian Securities Exchange Limited that was formerly known as the Sydney Futures Exchange.

18 At the end of Subdivision 1 of Division 4 of Part 7.7A

Add:

7.7A.12EB Performance bonuses for individuals

- (1) This regulation applies if:
- (a) a benefit is an element of an individual’s remuneration for work done by the individual:
 - (i) as an employee or agent of a licensee; or
 - (ii) by arrangement with a licensee under the name of the licensee; and

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- (b) access to the benefit, or the value of the benefit, or both, is partly dependent on the total value or number of financial products of a particular class, or particular classes, that:
 - (i) the individual recommends to retail clients or a class of retail clients; or
 - (ii) are acquired by retail clients, or a class of retail clients, to whom the individual has provided financial product advice.
 - (2) Any part of the benefit that:
 - (a) relates to financial products covered by paragraph (1)(b); and
 - (b) would, apart from this regulation, be conflicted remuneration;
 is not conflicted remuneration, so long as:
 - (c) the part, together with any other such part that is an element of the individual's remuneration, is low in proportion to the individual's total remuneration; and
 - (d) in calculating the part, the weighting attributed to the total value or number of financial products covered by paragraph (1)(b) and in relation to which the part would, apart from this regulation, be conflicted remuneration is outweighed or balanced by the weighting attributed to other matters.
 - (3) This regulation does not limit, and has effect in addition to:
 - (a) any other regulation made for paragraph 963B(1)(e) of the Act; and
 - (b) any regulation made for subsection 1528(2) of the Act.

7.7A.12.EC Execution-only services

- (1) A monetary benefit given to a financial services licensee who provides financial product advice to persons as retail clients is not conflicted remuneration if:
 - (a) the benefit is given to the licensee in relation to the issue or sale of a financial product to a person; and
 - (b) financial product advice in relation to the product, or a class of products of which the product is one, has not been given to the person as a retail client by the licensee, or a representative of the licensee, in the 12 months immediately before the benefit is given.

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- (2) A monetary benefit given to a representative of a financial services licensee who provides financial product advice to persons as retail clients is not conflicted remuneration if:
- (a) the benefit is given to the representative in relation to the issue or sale of a financial product to a person; and
 - (b) financial product advice in relation to the product, or a class of products of which the product is one, has not been given to the person as a retail client by the representative in the 12 months immediately before the benefit is given.

19 After regulation 7.7A.12F

Insert:

7.7A.12FA General advice

- (1) A monetary benefit given to a person who gives general advice to a retail client on behalf of a financial services licensee is not conflicted remuneration if:
- (a) the person gives the general advice as:
 - (i) an employee of the licensee, or a related body corporate of the licensee; or
 - (ii) an employee of an authorised representative of the licensee; or
 - (iii) an individual who has been sub-authorised under section 916B of the Act by an authorised representative of the licensee to give general advice on behalf of the licensee of the kind given; and
 - (b) the person gives the general advice under the name of the licensee, a trade mark of the licensee or a business name of the licensee; and
 - (c) the benefit is neither:
 - (i) a recurring payment made because the person has given the general advice; nor
 - (ii) a payment made solely because a financial product of a class in relation to which the general advice was given has been issued or sold to the client; (payments commonly referred to as commissions); and
 - (d) during the 12 months immediately before the benefit was given, the person did not give financial product advice to a retail client, other than:

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- (i) general advice; or
 - (ii) personal advice in relation to basic banking products, general insurance products, consumer credit insurance or a combination of those products; or
 - (iii) a combination of the advice mentioned in subparagraphs (i) and (ii); and
 - (e) the financial product in relation to which the general advice is given is either:
 - (i) a product issued or sold by the licensee or a related body corporate of the licensee; or
 - (ii) a product issued or sold by another entity under the name of the licensee, a trade mark of the licensee or a business name of the licensee.

(2) In this regulation:

business name of a licensee means a business name that is registered to the licensee under the *Business Names Registration Act 2011*.

trade mark of a licensee means a trade mark of which the licensee is the registered owner under the *Trade Marks Act 1995*.

20 Paragraph 7.7A.12H(a)

Omit “only”.

21 Paragraph 7.7A.12H(b)

Before “advice”, insert “personal”.

22 Subparagraph 7.7A.12H(a)(iii)

Repeal the subparagraph, substitute:

- (iii) consumer credit insurance;
- (iv) a combination of any of those products; and

23 At the end of subregulation 7.7A.12I(1)

Add:

Example: If a benefit of \$2 000 is given and paragraph 963B(1)(a) of the Act is satisfied in relation to \$500 of that benefit, and paragraph 963B(1)(b) of the Act is satisfied in relation to the remaining \$1 500 of that benefit, none of the benefit would be conflicted remuneration.

24 Subregulation 7.7A.12I(2)

Repeal the subregulation.

25 Subregulation 7.7A.12I(3) (at the end of the definition of *prescribed provision*)

Add:

; or (c) section 963D of the Act.

26 After regulation 7.7A.12I

Insert:

7.7A.12J Benefits calculated by reference to another benefit

A benefit is not conflicted remuneration to the extent that the amount or value of the benefit is calculated by reference to another benefit that is not conflicted remuneration because of section 963B, 963C or 963D.

27 After regulation 7.7A.15

Insert:

7.7A.15A Non-monetary benefit given in certain circumstances not conflicted remuneration—education and training in conducting a financial services business

(1) This regulation:

- (a) is made for paragraph 963C(f) of the Act; and
- (b) prescribes the circumstances in which a non-monetary benefit given to a financial services licensee, or representative of a financial services licensee, who provides financial product advice to persons as retail clients is not conflicted remuneration.

Note: For *financial product advice*, see subsection 766B(1) of the Act.

(2) The benefit is not conflicted remuneration if the benefit:

- (a) has a genuine education or training purpose; and
- (b) is relevant to the carrying on of a financial services business; and
- (c) complies with regulations made for the purposes of subparagraph 963C(c)(iii) of the Act.

28 Before regulation 7.7A.16

Insert:

**7.7A.15B Application of ban on conflicted remuneration—
non-platform operator (Division 4 of Part 7.7A of
Chapter 7 of the Act does not apply)**

- (1) This regulation:
- (a) is made for subsection 1528(2) of the Act; and
 - (b) prescribes a circumstance in which Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit.

Note: Subsection 1528(1) of the Act sets out a rule about when Division 4 of Part 7.7A of Chapter 7 of the Act does not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee. Subsection 1528(2) of the Act permits regulations to prescribe circumstances in which that Division applies, or does not apply, to a benefit.

- (2) The circumstance is that the benefit would have been given as mentioned in subsection 1528(1) of the Act had it not been redirected under one or more later arrangements.
- (3) For subregulation (2), if a party to an arrangement changes, the arrangement is taken to have continued in effect, after the change, as the same arrangement.

29 Subregulation 7.7A.16(2)

Repeal the subregulation, substitute:

- (2) The circumstance is that:
- (a) the benefit is given by a platform operator; and
 - (b) either:
 - (i) the benefit is given under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; or
 - (ii) the benefit would have been given as mentioned in subparagraph (i) had it not been redirected under one or more later arrangements.

30 After subregulation 7.7A.16B(5)

Insert:

Pension switches

- (5A) For subregulation (2), if a retail client:
- (a) has a superannuation interest in the growth phase before 1 July 2014; and
 - (b) elects to receive a pension from the superannuation interest, or part of the interest;
- do not treat the election or the receipt of the pension as an acquisition occurring on or after 1 July 2014.
- (5B) In paragraph (5A)(a) ***growth phase*** has the meaning given by regulation 1.03AB of the SIS Regulations.

31 After regulation 7.7A.16B

Insert:

7.7A.16BA Sale of business

The application of regulation 7.7A.16, 7.7A.16A or 7.7A.16B in relation to a benefit is not affected only because the benefit, or the right to the benefit, is transferred as part of the sale of a business, or a part of a business.

Note: This means that the buyer of a business will have the same protection for benefits that the seller of the business had.

32 Subregulation 7.7A.16C(3)

Omit “6 months”, substitute “18 months”.

33 Subregulation 7.7A.16C(4)

Omit “2014”, substitute “2015”.

34 Paragraph 7.7A.16C(5)(c)

Omit “2014”, substitute “2015”.

35 Paragraph 7.7A.16F(b)

Repeal the paragraph, substitute:

- (b) the benefit, as passed through, was given under an arrangement:
 - (i) that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; or

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- (ii) by which an authorised representative of a financial services licensee became an authorised representative of another financial services licensee; or
 - (iii) by which a representative of a financial services licensee, or an employee of an authorised representative of a financial services licensee, became an authorised representative of the licensee or a related body corporate of the licensee; and