Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019

No. 87, 2019

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

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

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Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019

No. 87, 2019

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

[*Assented to 28 October 2019*]

The Parliament of Australia enacts:

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1 Short title

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

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**
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.	28 October 2019
2. Schedule 1	1 January 2021.	1 January 2021

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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

(1A) Subject to subsection (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 on or after 1 January 2021 to a financial services licensee, or an RSE licensee, under an arrangement entered into before, on or after the application day.

4 After subsection 1529(2)

Insert:

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

5 Section 1530

Repeal the section, substitute:

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

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

6 Subsection 1531(1)

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

7 Subsection 1531(2)

Repeal the subsection, substitute:

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

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

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Part 2—Rebate of benefits

Corporations Act 2001

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

Insert:

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

9 At the end of Division 4 of Part 7.7A

Add:

Subdivision D—Rebate of conflicted remuneration

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

(1) This section covers a person in relation to conflicted remuneration if:

(a) the person is legally obliged (disregarding Subdivision C) to give, on or after 1 January 2021, the conflicted remuneration to another person; and

(b) the person is prohibited under that Subdivision from giving the conflicted remuneration to the other person, or the other person is prohibited under that Subdivision from accepting the conflicted remuneration.

(2) This section also covers a person in relation to conflicted remuneration if:

(a) regulations made for the purposes of this subsection specify conditions in relation to the conflicted remuneration; and

(b) those conditions are met.

(3) Despite subsections (1) and (2), this section does not cover a person in relation to conflicted remuneration if:

(a) regulations made for the purposes of this subsection specify conditions in relation to the conflicted remuneration; and

(b) those conditions are met.

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963N Regulations may provide for rebate of conflicted remuneration

(1) The regulations may provide for a scheme under which a person covered by section 963M in relation to conflicted remuneration must, in the circumstances set out in subsection (2), pay amounts based on that conflicted remuneration, or provide monetary benefits based on that conflicted remuneration, to persons (the ***product holders***) described in subsection (3).

(2) The circumstances are as follows:
  (a) a financial services licensee, or a representative of a financial services licensee:
    (i) provided financial product advice to one or more persons as retail clients, in connection with the conflicted remuneration; or
    (ii) is or was legally obliged to provide financial product advice to one or more persons as retail clients, in connection with the conflicted remuneration; and
  (b) the financial product advice relates to a particular financial product or class of financial products.

(3) A person is a product holder mentioned in subsection (1) if:
  (a) the person holds the particular financial product mentioned in paragraph (2)(b), or a financial product in the class mentioned in that paragraph; or
  (b) another person holds the particular financial product mentioned in that paragraph, or a financial product in the class mentioned in that paragraph, on behalf of the person.

(4) Without limiting the scope of regulations made for the purposes of subsection (1), those regulations may make different provision in respect of any of the following:
  (a) different classes of person covered by section 963M;
  (b) different classes of financial product;
  (c) different classes of product holder;
  (d) different classes of conflicted remuneration;
  (e) different classes of circumstances in which conflicted remuneration arises.

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(5) Without limiting the scope of regulations made for the purposes of subsection (1), those regulations may provide that a person covered by section 963M need not pay amounts mentioned in subsection (1), nor provide monetary benefits mentioned in that subsection, to one or more specified classes of product holder.

(6) Without limiting the scope of regulations made for the purposes of subsection (1), those regulations may provide for any of the following matters:

(a) the identification of product holders;

(b) the timeframe for making payments or providing monetary benefits;

(c) a method or methods of determining amounts of payments, or amounts of monetary benefits;

(d) a method or methods of making payments or providing monetary benefits.

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

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

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

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

Insert:

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

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[*Minister's second reading speech made in—*
House of Representatives on 1 August 2019
Senate on 11 September 2019]

(155/19)

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