2016‑2017‑2018‑2019

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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

The Parliament of Australia enacts:

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 |
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| 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 |

Note: This table relates only to the provisions of this Act as originally enacted.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 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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 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.

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 After Subdivision C of Division 4 of Part 7.7A

Insert:

Subdivision CA—Rebate of conflicted remuneration

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

 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.

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 pay an amount, or provide a monetary benefit, based on that conflicted remuneration to the relevant person to whom the relevant financial services licensee, or relevant representative of a financial services licensee, gave advice as a retail client.

 (2) 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 relevant person to whom advice was given as a retail client.

 (3) 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 relevant persons to whom advice was given as a retail client;

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

 (c) the method 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 |