



Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 28 November 2019

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg
Treasurer

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
	Schedule 1—Amendments	2
	<i>Corporations Regulations 2001</i>	<i>2</i>

1 Name

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

2 Commencement

- (1) Each provision of this instrument 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. The whole of this instrument	1 January 2021.	1 January 2021

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 After Subdivision 4 of Division 4 of Part 7.7A

Insert:

Subdivision 4A—Ban on conflicted remuneration (rebates)

7.7A.15AJ What Subdivision is about

- (1) This Subdivision is made for the purposes of subsection 963N(1) of the Act.
- (2) This Subdivision provides for a scheme under which a person (the *covered person*) covered by section 963M of the Act in relation to conflicted remuneration must pay amounts, or provide monetary benefits, based on that conflicted remuneration, to product holders mentioned in section 963N of the Act.

7.7A.15AK Obligations of covered person

- (1) The covered person must pay amounts, or provide monetary benefits, to the product holders no later than 1 year after the day by which the covered person is legally obliged (disregarding Subdivision C of Division 4 of Part 7.7A of the Act) to give the conflicted remuneration to another person (see paragraph 963M(1)(a) of the Act).
- (2) The amounts paid, or the amounts of the monetary benefit provided, to the product holders under subregulation (1) must be amounts that are just and equitable in the circumstances.
- (3) For the purposes of subregulation (2), in determining whether an amount is just and equitable in the circumstances, take account of the following matters:
 - (a) the amount of the conflicted remuneration;
 - (b) the amount invested by each product holder in the financial products mentioned in subsection 963N(2) of the Act;
 - (c) the structure of the fees (if any) that the product holders have paid in respect of those financial products;
 - (d) the extent to which the sum of the amounts to be paid, and the amount of the monetary benefits to be provided, to the product holders under subregulation (2) equals the amount of, or the present value of, the conflicted remuneration;
 - (e) any other relevant matter.
- (4) However, for the purposes of subregulation (2), in determining whether an amount is just and equitable in the circumstances, do not take account of the costs of the covered person in paying the amounts or providing the monetary benefits.

2 Subdivision 5 of Division 4 of Part 7.7A

Repeal the Subdivision.

3 After regulation 7.8.11A

Insert:

7.8.11B Information to be shown in records: records of rebates in relation to conflicted remuneration

- (1) For the purposes of paragraph 988E(g) of the Act, the following matters are specified in relation to records that must be kept by a financial services licensee who is a person covered by section 963M of the Act:
 - (a) all conflicted remuneration that the financial services licensee is legally obliged (disregarding Subdivision C of Division 4 of Part 7.7A of the Act) to give another person for a financial year;
 - (b) all amounts that the financial services licensee is required by regulation 7.7A.15AK to pay, and all monetary benefits that the financial services licensee is required by that regulation to provide, for a financial year, and the following:
 - (i) all such amounts paid, and all such monetary benefits provided, by the financial services licensee for the financial year;
 - (ii) all cases where the financial services licensee determined that an amount that was just and equitable in the circumstances for the purposes of subregulation 7.7A.15AK(2) was nil.
- (2) For the purposes of section 988F of the Act, subregulation (3) sets out additional requirements for things to be contained in records, and relating to the level of detail to be shown in records, that are imposed in relation to records that must be kept by a financial services licensee who is a person covered by section 963M of the Act, for:
 - (a) all amounts that the financial services licensee is required by regulation 7.7A.15AK to pay, and all monetary benefits that the financial services licensee is required by that regulation to provide; and
 - (b) all cases where the financial services licensee determined that an amount that was just and equitable in the circumstances for the purposes of subregulation 7.7A.15AK(2) was nil.
- (3) The requirements are as follows:
 - (a) an explanation of how the financial services licensee ascertained the identity of the product holders;
 - (b) an explanation of:
 - (i) if paragraph (2)(a) applies—how the financial services licensee determined that the amounts to pay, or the amounts of the monetary benefit to provide, were just and equitable in the circumstances for the purposes of subregulation 7.7A.15AK(2); and
 - (ii) if paragraph (2)(b) applies—how the financial services licensee determined that nil amounts were just and equitable in the circumstances for the purposes of subregulation 7.7A.15AK(2);
 - (c) a description of the financial product or products to which the conflicted remuneration relates, including the following information:
 - (i) the name of that product (or the names of those products);
 - (ii) the product identification number of that product (or the product identification numbers of those products) (if any);
 - (d) if paragraph (2)(a) applies:

- (i) the date by which the financial services licensee was required under regulation 7.7A.15AK to pay the amounts or provide the monetary benefits; and
- (ii) the date or dates on which the amounts were paid, or the monetary benefits were provided; and
- (iii) a description of the manner in which the amounts were paid, or the monetary benefits were provided.

4 In the appropriate position in Chapter 10

Insert:

Part 10.33—Application provisions relating to the Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019

10.33.01 Application of end of grandfathering arrangements

The amendment made by item 2 of Schedule 1 to the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019* applies to a benefit given on or after 1 January 2021, if the benefit is given under an arrangement entered into before, on or after the application day (within the meaning of subsection 1528(4) of the Act).

10.33.02 Application of record keeping requirements for rebate scheme

The amendment made by item 3 of Schedule 1 to the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019* applies to financial records relating to periods ending after 1 January 2021.