

EXPOSURE DRAFT

2013-2014

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014

No. , 2014

(Treasury)

**A Bill for an Act to amend the law in relation to
financial products and financial advice, and for
related purposes**

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A Bill for an Act to amend the law in relation to financial products and financial advice, and for related purposes

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The Parliament of Australia enacts:

6

1 Short title

7

This Act may be cited as the *Corporations Amendment (Streamlining of Future of Financial Advice) Act 2014*.

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2 Commencement

10

- (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.

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Commencement information

Column 1

Column 2

Column 3

Provision(s)

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

The day after this Act receives the Royal Assent.

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Note: This table relates only to the provisions of this Act as originally enacted.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

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- (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.

No. , 2014 *Corporations Amendment (Streamlining of Future of Financial Advice)*

1

Bill 2014

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1 **3 Schedule(s)**

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3 repealed as set out in the applicable items in the Schedule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

2 *Corporations Amendment (Streamlining of Future of Financial Advice) No. , 2014*
Bill 2014

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1 **Schedule 1—Amendments**
2

3 *Corporations Act 2001*

4 **1 Section 960**

5 Insert:

6 *consumer credit insurance* has the same meaning as in the
7 *Insurance Contracts Act 1984*.

8 **2 Section 960 (definition of group life policy for members of a
9 superannuation entity)**

10 Repeal the definition.

11 **3 Section 960 (definition of life policy for a member of a
12 default superannuation fund)**

13 Repeal the definition.

14 **4 Section 960**

15 Insert:

16 *MySuper member* has the same meaning as in the *Superannuation
17 Industry (Supervision) Act 1993*.

18 **5 Section 960 (definition of renewal notice)**

19 Repeal the definition.

20 **6 Section 960 (definition of renewal notice day)**

21 Repeal the definition.

22 **7 Section 960 (definition of renewal period)**

23 Repeal the definition.

24 **8 Section 960 (definition of volume-based shelf-space fee)**

25 Omit “a meaning affected”, substitute “the meaning given”.

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1 **9 At the end of section 960**

2 Add:

3 Note: The expression *intrafund advice* is often used to describe financial
4 product advice given by a trustee of a regulated superannuation fund,
5 as defined in the *Superannuation Industry (Supervision) Act 1993*, to
6 its members. Section 99F of that Act prohibits trustees of regulated
7 superannuation funds from passing on the cost of providing certain
8 kinds of financial product advice in relation to one member of the
9 fund to another. Paragraph 99F(1)(c) sets out the kinds of advice to
10 which this prohibition applies.

11 **10 Paragraph 961B(2)(a)**

12 Repeal the paragraph.

13 **11 After paragraph 961B(2)(b)**

14 Insert:

15 (ba) identified the objectives, financial situation and needs of the
16 client that are disclosed to the provider by the client;

17 **12 Paragraph 961B(2)(f)**

18 Omit “relevant circumstances;”, substitute “relevant circumstances.”.

19 **13 Paragraph 961B(2)(g)**

20 Repeal the paragraph.

21 **14 Subsection 961B(2) (note)**

22 Repeal the note.

23 **15 Subsections 961B(3) and (4)**

24 Repeal the subsections, substitute:

25 *Advice given by Australian ADIs—best interests duty satisfied if*
26 *certain steps are taken*

27 (3) If:

28 (a) the provider is:

29 (i) an agent or employee of an Australian ADI; or

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- 1 (ii) otherwise acting by arrangement with an Australian
2 ADI under the name of the Australian ADI; and
3 (b) the subject matter of the advice sought by the client relates
4 only to the following:
5 (i) a basic banking product;
6 (ii) a general insurance product;
7 (iii) consumer credit insurance;
8 (iv) a combination of any of those things;
9 the provider satisfies the duty in subsection (1) in relation to the
10 advice given in relation to the basic banking product and the
11 general insurance product if the provider takes the steps mentioned
12 in paragraphs (2)(b), (ba) and (c).

13 *General insurance products—best interests duty satisfied if certain*
14 *steps are taken*

- 15 (4) To the extent that the subject matter of the advice sought by the
16 client is a general insurance product, the provider satisfies the duty
17 in subsection (1) if the provider takes the steps mentioned in
18 paragraphs (2)(b), (ba) and (c).

19 **16 After subsection 961B(4)**

20 Insert:

21 *Client seeks scaled advice*

- 22 (4A) To avoid doubt, nothing in subsection (2) prevents a client from
23 agreeing the subject matter of the advice sought by the client with
24 the provider.

25 **17 Section 961E**

26 Repeal the section.

27 **18 Section 962CA**

28 Repeal the section.

29 **19 Subdivision B of Division 3 of Part 7.7A (heading)**

30 Repeal the heading, substitute:

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1 **Subdivision B—Disclosure and termination**

2 **20 Subsection 962F(1)**

3 Omit “or section 962K (the renewal notice obligation)”.

4 **21 Subsections 962F(2) and (3)**

5 Omit “or section 962K”.

6 **22 Sections 962K, 962L, 962M and 962N**

7 Repeal the sections.

8 **23 Subdivision C of Division 3 of Part 7.7A**

9 Repeal the Subdivision.

10 **24 Paragraph 963A(a)**

11 After “to retail clients”, insert “in personal advice”.

12 **25 Paragraph 963A(b)**

13 Omit “financial product advice”, substitute “personal advice”

14 **26 At the end of section 963A**

15 Add:

16 Note: A reference in this Subdivision (including sections 963A, 963B, 963C
17 and 963D) to giving a benefit includes a reference to causing or
18 authorising it to be given (see section 52).

19 **27 Subsection 963B(1)**

20 Omit “in the circumstances set out in any of the following paragraphs”,
21 substitute “to the extent that one or more of the following paragraphs is
22 satisfied”.

23 **28 Paragraph 963B(1)(a)**

24 Omit “solely”.

25 **29 Paragraph 963B(1)(b)**

26 Repeal the paragraph, substitute:

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- 1 (b) the benefit is given to the licensee or representative in
2 relation to a life risk insurance product, other than:
3 (i) a life risk insurance product for MySuper members; or
4 (ii) a life risk insurance product for the benefit of a person,
5 either as a member of a superannuation entity or one of
6 a class of members of a superannuation entity, in
7 relation to which that person has not been given
8 personal advice;

9 30 Paragraph 963B(1)(c)

10 Repeal the paragraph.

11 31 Subsection 963B(2)

12 Repeal the subsection, substitute:

- 13 (2) A life risk insurance product is *for MySuper members* if the
14 product is issued to an RSE licensee of a superannuation entity, or
15 a custodian in relation to a superannuation entity, for the benefit of
16 MySuper members of the entity.

17 32 Subsection 963B(3)

18 Repeal the subsection, substitute:

- 19 (3) Despite section 963A, a monetary benefit given to a financial
20 services licensee who provides financial product advice to persons
21 as retail clients is not *conflicted remuneration* if:
22 (a) the benefit is given to the licensee in relation to the issue or
23 sale of a financial product to a person; and
24 (b) personal advice in relation to the product, or products of that
25 class, has not been given to the person as a retail client by the
26 licensee, or a representative of the licensee, in the 12 months
27 immediately before the benefit is given.
- 28 (4) Despite section 963A, a monetary benefit given to a representative
29 of a financial services licensee who provides financial product
30 advice to persons as retail clients is not *conflicted remuneration* if:
31 (a) the benefit is given to the representative in relation to the
32 issue or sale of a financial product to a person; and

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- 1 (b) personal advice in relation to the product, or products of that
2 class, has not been given to the person as a retail client by the
3 representative in the 12 months immediately before the
4 benefit is given.

5 **33 Section 963C**

6 Omit “in the circumstances set out in any of the following paragraphs”,
7 substitute “to the extent that one or more of the following paragraphs is
8 satisfied”.

9 **34 Paragraph 963C(a)**

10 Omit “solely”.

11 **35 Subparagraph 963C(c)(ii)**

12 Repeal the subparagraph, substitute:

- 13 (ii) the benefit is relevant to the carrying on of a financial
14 services business;

15 **36 Section 963D**

16 Repeal the section, substitute:

17 **963D Benefits for employees etc. of ADIs**

18 If:

- 19 (a) a monetary or non-monetary benefit is given to a financial
20 services licensee, or a representative of a financial services
21 licensee; and
22 (b) the benefit is in whole or in part remuneration for work
23 carried out, or to be carried out, by the licensee or
24 representative:
25 (i) as an agent or employee of an Australian ADI; or
26 (ii) in otherwise acting by arrangement with an Australian
27 ADI under the name of the Australian ADI; and
28 (c) access to the benefit, or the amount of the benefit, is in whole
29 or in part dependent on the licensee or representative
30 recommending:
31 (i) a basic banking product; or
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- 1 (ii) a general insurance product; or
2 (iii) consumer creditor insurance; and
3 (d) the licensee or representative does not, in the course of
4 recommending any, or any combination, of those products
5 give other financial product advice that does not relate to any
6 of those products;
7 to the extent that the benefit relates to the recommendation of any,
8 or any combination of, the products mentioned in paragraph (c),
9 the benefit is not *conflicted remuneration*.

37 Subsection 964(1)

10 Repeal the subsection, substitute:

- 11 (1) This Subdivision applies if:
12 (a) a financial services licensee or an RSE licensee (the *platform*
13 *operator*) is, or offers to be, the provider of a custodial
14 arrangement; and
15 (b) a funds manager issues or sells a financial product to which
16 the custodial arrangement relates; and
17 (c) a monetary or non-monetary benefit is given, or to be given,
18 by the funds manager to the platform operator.
19

38 Subsection 964(2)

20 Insert:

21 *funds manager* means a financial services licensee or an RSE
22 licensee who issues or sells a financial product to which a custodial
23 arrangement relates.
24

39 Section 964A

25 Repeal the section, substitute:

26 964A Platform operator must not accept volume-based shelf-space 27 fees 28

- 29 (1) The platform operator must not accept the benefit if it is a
30 volume-based shelf-space fee.

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

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- 1 (2) Subject to subsection (3), the benefit is a *volume based shelf-space*
2 *fee* if, because of the nature of the benefit or the circumstances in
3 which it is given, it could reasonably be expected to influence the
4 platform operator:
- 5 (a) to increase the total number or value of the funds manager's
6 financial products in relation to which the platform operator
7 is prepared to provide custodial arrangements; or
- 8 (b) to give preferential treatment to the funds manager's
9 financial products in providing custodial arrangements.
- 10 (3) If all or part of the benefit is of a kind specified in one of the
11 following paragraphs, then, to the extent that the benefit is of that
12 kind, it is not a *volume-based shelf-space fee*:
- 13 (a) a reasonable fee for a service provided to the funds manager
14 by the platform operator or another person;
- 15 (b) a discount on an amount payable, or a rebate of an amount
16 paid, to the funds manager by the platform operator, that can
17 reasonably be attributed to economies of scale gained
18 because of the number or value of the funds manager's
19 financial products in relation to which the platform operator
20 provides custodial arrangements;
- 21 (c) the benefit is for providing a custodial arrangement in
22 relation to a general insurance product or a life risk insurance
23 product.

24 **40 Subsection 1317E(1) (table item 22)**

25 Repeal the item.

26 **41 Subparagraph 1317G(1E)(b)(v)**

27 Repeal the subparagraph.

28 **42 Part 10.18 (heading)**

29 Repeal the heading, substitute:

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1 **Part 10.18—Transitional and application provisions**
2 **relating to the Future of Financial Advice**
3 **Measures**

4 **43 Before section 1526**

5 Insert:

6 **Division 1—Provisions relating to the Corporations**
7 **Amendment (Further Future of Financial Advice**
8 **Measures) Act 2012**

9 **44 At the end of Part 10.18**

10 Add:

11 **Division 2—Provisions relating to the Corporations**
12 **Amendment (Streamlining of Future of Financial**
13 **Advice) Act 2014**

14 **1531A Definitions**

15 In this Division:

16 *commencement day* means the day on which Schedule 1 to the
17 *Corporations Amendment (Streamlining of Future of Financial*
18 *Advice) Act 2014* commences.

19 **1531B Best interests obligation**

20 The amendments made by items 10 to 17 of Schedule 1 to the
21 *Corporations Amendment (Streamlining of Future of Financial*
22 *Advice) Act 2014* apply in relation to the provision of personal
23 advice to a person as a retail client on or after the commencement
24 day.

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1 **1531C Renewal notices (opt-in requirement)**

2 (1) The amendments made by items 18 to 22 and items 40 and 41 of
3 Schedule 1 to the *Corporations Amendment (Streamlining of*
4 *Future of Financial Advice) Act 2014* apply in relation to an
5 ongoing fee arrangement for those renewal notice days for the
6 arrangement that occur on or after the commencement day.

7 (2) In this item:

8 *renewal notice day* for an ongoing fee arrangement has the same
9 meaning as it has in Part 7.7A of the *Corporations Act 2001*, as in
10 force immediately before the commencement day.

11 **1531D Disclosure statements for pre-existing clients**

12 The amendment made by item 23 of Schedule 1 to the
13 *Corporations Amendment (Streamlining of Future of Financial*
14 *Advice) Act 2014* applies in relation to an ongoing fee arrangement
15 for those disclosure days for the arrangement that occur on or after
16 the commencement day.

17 **1531E Conflicted remuneration**

18 The amendments made by items 24 to 36 of Schedule 1 to the
19 *Corporations Amendment (Streamlining of Future of Financial*
20 *Advice) Act 2014* apply in relation to a benefit if:

- 21 (a) the benefit is one to which Division 4 of Part 7.7A applies
22 under section 1528; and
23 (b) the benefit is given on or after the commencement day.

24 **1531F Volume-based shelf-space fees**

25 The amendments made by items 37 to 39 of Schedule 1 to the
26 *Corporations Amendment (Streamlining of Future of Financial*
27 *Advice) Act 2014* apply to a benefit if:

- 28 (a) the benefit is one to which Subdivision A of Division 5 of
29 Part 7.7A applies under section 1529; and
30 (b) the benefit is given on or after the commencement day.