



AUSTRALIAN
SENATE

Senate Standing Committee for the
Scrutiny of Delegated Legislation

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

6 February 2020

Mr Josh Frydenberg MP
Treasurer
Parliament House
Canberra ACT 2600

Via email: Josh.Frydenberg.MP@aph.gov.au
CC: tsrdlos@aph.gov.au, committeescrutiny@treasury.gov.au

Dear Treasurer,

Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019 [F2019L01526]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable legislative instruments against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Matters more appropriate for parliamentary enactment

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be included in primary, rather than delegated, legislation).

The instrument is made pursuant to subsection 963N(1) of the *Corporations Act 2001*. It amends the Corporations Regulations 2001 to establish a scheme to rebate certain benefits to affected retail clients which would otherwise have been paid as conflicted remuneration under the now repealed grandfathered conflicted remuneration scheme.

The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills committee) commented on section 963N of the *Corporations Act 2001* when the Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019 was before Parliament. The Scrutiny of Bills committee noted that the provision would provide for the inclusion of key elements of the regulatory scheme in delegated legislation, and reiterated its longstanding scrutiny position that such significant matters should instead be included in primary legislation.

The committee's views about this matter accord with those of the Scrutiny of Bills committee. The committee is concerned that the instrument deals with significant matters arising from the repeal of the grandfathered conflicted remuneration scheme. In this regard, the explanatory statement does not indicate why it is considered necessary and appropriate to leave these matters to delegated legislation, rather than primary legislation.

In light of these matters, the committee requests your advice as to why it is considered necessary and appropriate to establish key elements of the conflicted remuneration rebate scheme via delegated legislation, rather than primary legislation.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

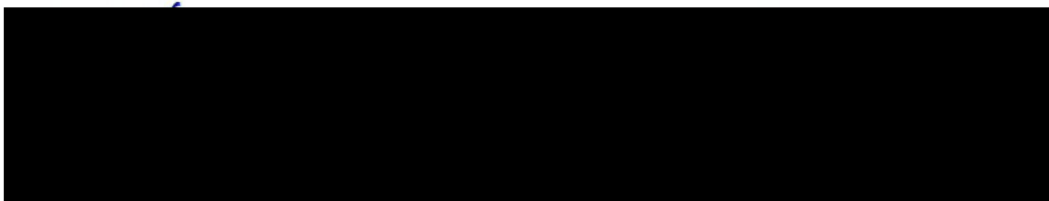
Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **Thursday, 20 February 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,



Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation



THE HON JOSH FRYDENBERG MP
TREASURER
DEPUTY LEADER OF THE LIBERAL PARTY

Ref: MS20-000314

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear Senator Fierravanti-Wells

I am writing in response to your letter of 6 February 2020 requesting information in relation to the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019* (the Regulations).

The Committee sought advice as to:

- whether the Regulations contain matter more appropriate for parliamentary enactment; and
- why it is considered necessary and appropriate to establish key elements of the conflicted remuneration rebate scheme via delegated legislation, rather than primary legislation.

As you note, the Regulations provide the rules around how grandfathered benefits are to be passed through to retail clients.

I consider it appropriate that these rules are contained in delegated legislation, within the bounds of the framework set out in the primary legislation, in order to account for the variety of financial products and arrangements in relation to which rebates may need to be paid, and the variety of potential recipients of those rebates. Specifying these requirements in the Regulations provides the ability to make more detailed rules on how benefits must be passed through and reported on as the regulations provide for flexibility to respond to changing industry circumstances in a more timely manner. This will help to achieve the intended policy of the primary legislation and enabling provisions: specifically, to ensure that the benefits of ending grandfathered conflicted remuneration go to customers.

While the rebating scheme must be sufficiently adaptable to cover the wide variety of situations in which conflicted remuneration may be provided, it will only be applicable to a limited class of persons. The rebating scheme in the Regulations only applies to those covered persons, within the meaning of section 963N of the *Corporations Act 2001*¹ (the Act) where the person would be legally obliged (disregarding the ban on conflicted remuneration in Subdivision C of Division 4 of Part 7.7A of the Act) to give conflicted remuneration to another person, on or after 1 January 2021.

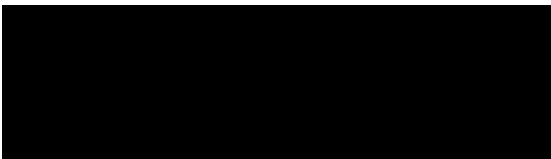
¹ As will be inserted by item 9 of Schedule 1 to the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019*.

That is, the obligations to make payments in accordance with the regulations would only apply to those covered persons who still had obligations to pay conflicted remuneration as at 1 January 2021 under an arrangement that had been in place prior to the application date of Division 4 of Part 7.7A of the Corporations Act (generally 1 July 2013).

Given the limited class of persons who would be required to pay rebates in accordance with the regulations, it is appropriate that these matters are dealt with in the Regulations, rather than in the primary law. If matters in relation to rebating were to be inserted into the Act, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to a relatively small group of persons. This would result in additional cost and unnecessary complexity for other users of the Act.

Thank you for bringing your concerns to my attention.

Yours sincerely



THE HON JOSH FRYDENBERG MP

20 / 02 / 2020



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27 February 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: Josh.Frydenberg.MP@aph.gov.au

CC: tsrdlos@aph.gov.au; committeescrutiny@treasury.gov.au;
chris.reside@treasury.gov.au


Dear Treasurer,

**Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration)
Regulations 2019 [F2019L01526]**

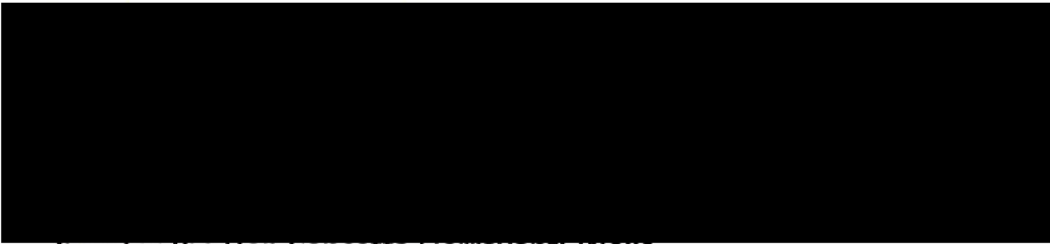
Thank you for your response of 20 February 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 26 February 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,


Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation