

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Australian Securities and Investments Commission Act 2001

Australian Securities and Investments Commission (Investigation into Grandfathered Conflicted Remuneration for Financial Advice) Direction 2019

Section 14 of the *Australian Securities and Investments Commission Act 2001* (the Act) provides that the Minister may direct the Australian Securities and Investments Commission (ASIC) to investigate certain matters when, in the Minister's opinion, it is in the public interest for the matter to be investigated.

Section 17 of the Act provides that at the end of such an investigation, ASIC must prepare a report about the investigation.

In its response to the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, the Government announced that it would end grandfathering of conflicted remuneration for financial advice effective from 1 January 2021.

The Government announced that, from 1 January 2021, payments of any previously grandfathered conflicted remuneration still in contracts will instead be required to be rebated to applicable clients where the applicable client can reasonably be identified.

The Government also announced that, to ensure that the benefits of industry renegotiating current arrangements to remove grandfathered conflicted remuneration ahead of 1 January 2021 flow through to clients, the Government will commission ASIC to monitor and report on the extent to which product issuers are acting to end the grandfathering of conflicted remuneration for the period 1 July 2019 to 1 January 2021 and are passing the benefits to clients, whether through direct rebates or otherwise.

The *Australian Securities and Investments Commission (Investigation into Grandfathered Conflicted Remuneration for Financial Advice) Direction 2019* (the Direction) requires ASIC to investigate the extent to which persons who are giving or accepting grandfathered conflicted remuneration in relation to financial advice as at the commencement of the Direction are changing their arrangements to end the payment of grandfathered conflicted remuneration prior to 1 January 2021. *[section 5]*

Where these persons do change their arrangements, ASIC will investigate the extent to which they are passing the benefit of ending the payment of grandfathered conflicted remuneration on to clients, whether through direct rebates or otherwise.

Grandfathered conflicted remuneration is defined in the Direction as any benefit, the giving or acceptance of which would be prohibited by Subdivision C of Division 4 of Part 7.7A of the *Corporations Act 2001* but for the operation of section 1528 of that Act. *[section 4, definition of 'grandfathered conflicted remuneration']*

The direction is a legislative instrument for the purposes of the *Legislation Act 2003*.

ASIC was consulted on the Direction. Public consultation was not considered necessary as the Direction is of a minor or machinery nature and does not substantially alter existing arrangements.

The Direction commences on 1 July 2019. *[section 2]*