

Superannuation Industry (Supervision) Amendment Act 2010

No. 100, 2010

**An Act to amend the *Superannuation Industry
(Supervision) Act 1993*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 100, 2010

An Act to amend the *Superannuation Industry (Supervision) Act 1993*, and for related purposes

[Assented to 6 July 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Industry
(Supervision) Amendment Act 2010*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Limited recourse borrowing arrangements

Superannuation Industry (Supervision) Act 1993

1 Subsection 10(1)

Insert:

acquirable asset has the meaning given by section 67A.

2 Subsection 10(1) (paragraph (a) of the definition of *excluded instalment trust*)

Omit “(within the meaning of subsection 66(5))”.

3 Subsection 10(1)

Insert:

instalment receipt means an investment under which:

- (a) a listed security is held in a trust until the purchase price of the security is fully paid; and
- (b) the security, and property derived from the security, is the only trust property.

4 Subsection 10(1)

Insert:

listed security has the meaning given by subsection 66(5).

5 Subsection 67(1)

After “this section”, insert “and section 67A”.

6 At the end of subsection 67(1)

Add:

Note: Section 67A contains an exception for certain limited recourse borrowing arrangements.

7 Subsection 67(4A)

Repeal the subsection.

8 After section 67

Insert:

67A Limited recourse borrowing arrangements

Exception

- (1) Subsection 67(1) does not prohibit a trustee of a regulated superannuation fund (the **RSF trustee**) from borrowing money, or maintaining a borrowing of money, under an arrangement under which:

- (a) the money is or has been applied for the acquisition of a single acquirable asset, including:
- (i) expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the acquirable asset (but not expenses incurred in improving the acquirable asset); and

Example: Conveyancing fees, stamp duty, brokerage or loan establishment costs.

- (ii) money applied to refinance a borrowing (including any accrued interest on a borrowing) to which this subsection applied (including because of section 67B) in relation to the single acquirable asset (and no other acquirable asset); and
- (b) the acquirable asset is held on trust so that the RSF trustee acquires a beneficial interest in the acquirable asset; and
- (c) the RSF trustee has a right to acquire legal ownership of the acquirable asset by making one or more payments after acquiring the beneficial interest; and
- (d) the rights of the lender or any other person against the RSF trustee for, in connection with, or as a result of, (whether directly or indirectly) default on:
 - (i) the borrowing; or
 - (ii) the sum of the borrowing and charges related to the borrowing;
 are limited to rights relating to the acquirable asset; and

Example: Any right of a person to be indemnified by the RSF trustee because of a personal guarantee given by that person in favour of the lender is limited to rights relating to the acquirable asset.

- (e) if, under the arrangement, the RSF trustee has a right relating to the acquirable asset (other than a right described in paragraph (c))—the rights of the lender or any other person against the RSF trustee for, in connection with, or as a result of, (whether directly or indirectly) the RSF trustee's exercise of the RSF trustee's right are limited to rights relating to the acquirable asset; and
- (f) the acquirable asset is not subject to any charge (including a mortgage, lien or other encumbrance) except as provided for in paragraph (d) or (e).

*Meaning of **acquirable asset***

- (2) An asset is an **acquirable asset** if:
 - (a) the asset is not money (whether Australian currency or currency of another country); and
 - (b) neither this Act nor any other law prohibits the RSF trustee from acquiring the asset.
- (3) This section and section 67B apply to a collection of assets in the same way as they apply to a single asset, if:
 - (a) the assets in the collection have the same market value as each other; and
 - (b) the assets in the collection are identical to each other.

Example: A collection of shares of the same class in a single company.

- (4) For the purposes of this section and section 67B, the regulations may provide that, in prescribed circumstances, an acquirable asset ceases to be that particular acquirable asset.

RSF trustee

- (5) Paragraphs (1)(d) and (e) do not apply to a right of:
 - (a) a member of the regulated superannuation fund; or
 - (b) another trustee of the regulated superannuation fund;to damages against the RSF trustee for a breach by the RSF trustee of any of the RSF trustee's duties as trustee.
- (6) A reference in paragraph (1)(d) or (e) (but not in subsection (5)) to a right of any person against the RSF trustee includes a reference to a right of a person who is the RSF trustee, if the person holds the right in another capacity.

67B Limited recourse borrowing arrangements—replacement assets

- (1) Subsection (2) applies to:
 - (a) a reference in paragraph 67A(1)(b), (c), (d), (e) or (f) to an acquirable asset (the ***original asset***); or
 - (b) a reference in subsection 71(8) to an acquirable asset (the ***original asset***) mentioned in paragraph 67A(1)(b);(including a reference resulting from a previous application of subsection (2) of this section).
- (2) Treat the reference as being a reference to another single acquirable asset (the ***replacement asset***) if:
 - (a) the replacement asset replaces the original asset; and
 - (b) subsection (3), (4), (5), (6), (7) or (8) applies.
- (3) This subsection applies if:
 - (a) the original asset consists of:
 - (i) a share in a company, or a collection of shares in a company; or
 - (ii) a unit in a unit trust, or a collection of units in a unit trust; and
 - (b) the replacement asset consists of:
 - (i) a share in that company, or a collection of shares in that company; or
 - (ii) a unit in that unit trust, or a collection of units in that unit trust; and
 - (c) at the time the replacement occurs, the original asset and the replacement asset have the same market value.
- (4) This subsection applies if:
 - (a) the original asset consists of an instalment receipt that confers a beneficial interest in:
 - (i) a share in a company; or
 - (ii) a collection of shares in a company; and
 - (b) the replacement asset consists of that share or collection.
- (5) This subsection applies if:
 - (a) the original asset consists of:
 - (i) a share in a company, or a collection of shares in a company; or

- (ii) a unit in a unit trust, or a collection of units in a unit trust; and
 - (b) the replacement asset consists of:
 - (i) a share in another company, or a collection of shares in another company; or
 - (ii) a unit in another unit trust, or a collection of units in another unit trust; and
 - (c) the replacement occurs as a result of a takeover, merger, demerger or restructure of the company or unit trust mentioned in paragraph (a).
- (6) This subsection applies if:
- (a) the original asset consists of a share in a company, or a collection of shares in a company; and
 - (b) the replacement asset consists of a stapled security, or a collection of stapled securities; and
 - (c) each of those stapled securities consists of a single share, or a single collection of shares of the same class, stapled together with a single unit, or a single collection of units of the same class, in a unit trust; and
 - (d) the replacement occurs under a scheme of arrangement of the company.
- (7) This subsection applies if:
- (a) the original asset consists of a unit in a unit trust, or a collection of units in a unit trust; and
 - (b) the replacement asset consists of a unit in that unit trust, or a collection of units in that unit trust; and
 - (c) the replacement occurs as a result of an exercise of a discretion granted under the trust deed of that unit trust to the trustee of that unit trust.
- (8) This subsection applies in the circumstances (if any) prescribed by the regulations for the purposes of this subsection.

9 Paragraph 71(1)(g)

Omit “(within the meaning of subsection 66(5))”.

10 Paragraph 71(8)(b)

Omit “paragraph 67(4A)(b)”, substitute “paragraph 67A(1)(b)”.

11 Paragraph 71(8)(b)

Omit “subsection 67(4A)”, substitute “subsection 67A(1)”.

12 Paragraph 71(8)(c)

Omit “original asset or replacement described in that subsection”, substitute “acquirable asset mentioned in that paragraph”.

13 Subsection 71(8)

Omit “if the original asset or replacement described in subsection 67(4A)”, substitute “if the acquirable asset mentioned in that paragraph”.

14 Application provision

The amendments made by this Schedule apply to an arrangement entered into on or after the commencement of this item (including an arrangement that is a refinancing of a borrowing of money under an arrangement entered into before, on or after that commencement).

*[Minister’s second reading speech made in—
House of Representatives on 26 May 2010
Senate on 24 June 2010]*