



**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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# Superannuation Industry (Supervision) Amendment Act 2010

No. 100, 2010

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

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## **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).

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

(107/10)

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