

EXPOSURE DRAFT

1 Inserts for
2 **Superannuation Legislation Amendment**
3 **Bill 2010: Superannuation and**
4 **relationship breakdowns**

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule 1	The day after this Act receives the Royal Assent.	
2.		

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Schedule 1—Superannuation and relationship breakdowns

Superannuation Industry (Supervision) Act 1993

1 Subsection 10(1) (note at the end of the definition of *relative*)

Omit “Subsection (6)”, substitute “Subsection (5)”.

Note: This item fixes an incorrect cross-reference.

2 After subsection 66(2A)

Insert:

Exception—breakdown of relationships

(2B) Subsection (1) does not prohibit a trustee or investment manager acquiring an asset from a related party of the fund (the *acquiring fund*) if:

(a) the asset is acquired:

(i) for the benefit of a particular member of the acquiring fund; and

(ii) from a trustee or investment manager of another regulated superannuation fund (the *transferring fund*); and

(b) at the time of the acquisition:

(i) the member and his or her spouse or former spouse are separated; and

(ii) there is no reasonable likelihood of cohabitation being resumed; and

(c) the acquisition occurs because of reasons directly connected with the breakdown of the relationship between the spouses or former spouses; and

(d) the asset represents the whole, or a part, of either:

(i) the member’s own interests in the transferring fund; or

(ii) the member’s entitlements as determined under Part VIIIIB of the *Family Law Act 1975* in relation to the interests of the member’s spouse, or former spouse, in the transferring fund.

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1 (2C) For the purposes of subsection (2B), the question whether the
2 spouses, or former spouses, have separated is to be determined in
3 the same way as it is for the purposes of section 48 of the *Family*
4 *Law Act 1975* (as affected by sections 49 and 50 of that Act).

5 **3 After section 71E**

6 Insert:

7 **71EA Relationship breakdowns**

8 *Scope*

9 (1) This section applies if:

- 10 (a) a trustee or an investment manager of a regulated
11 superannuation fund (the *acquiring fund*) acquires an asset:
12 (i) for the benefit of a particular member of the acquiring
13 fund; and
14 (ii) from a trustee or investment manager of another
15 regulated superannuation fund (the *transferring fund*);
16 and
17 (b) at the time of the acquisition:
18 (i) the member and his or her spouse or former spouse are
19 separated; and
20 (ii) there is no reasonable likelihood of cohabitation being
21 resumed; and
22 (c) the acquisition occurs because of reasons directly connected
23 with the breakdown of the relationship between the spouses
24 or former spouses; and
25 (d) the asset represents the whole, or a part, of either:
26 (i) the member's own interests in the transferring fund; or
27 (ii) the member's entitlements as determined under
28 Part VIIIIB of the *Family Law Act 1975* in relation to the
29 interests of the member's spouse, or former spouse, in
30 the transferring fund.

31 (2) For the purposes of subsection (1), the question whether the
32 spouses, or former spouses, have separated is to be determined in
33 the same way as it is for the purposes of section 48 of the *Family*
34 *Law Act 1975* (as affected by sections 49 and 50 of that Act).

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Acquiring fund taken to have always held asset

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- 2 (3) For the purposes of applying this Subdivision to the asset at or after
3 the time (the **acquisition time**) the trustee or investment manager
4 of the acquiring fund acquires the asset, treat:
- 5 (a) the acquisition as having occurred at the time the trustee or
6 investment manager of the transferring fund acquired the
7 asset; and
- 8 (b) anything done by, for or in relation to the transferring fund in
9 relation to the asset before the acquisition time as having
10 been done by, for or in relation to the acquiring fund; and
- 11 (c) anything done by, for or in relation to the trustee or
12 investment manager of the transferring fund in relation to the
13 asset before the acquisition time as having been done by, for
14 or in relation to the trustee or investment manager of the
15 acquiring fund.

16 *Section 71E elections*

- 17 (4) In addition to their effect apart from this subsection, subsection
18 103(2A) (duty to keep record of election) and subsection 103(3), to
19 the extent that it relates to subsection 103(2A), also have the effect
20 they would have if subsection (3) of this section applied to them.

21 Note: This means that the trustees of both the transferring fund and the
22 acquiring fund must retain, in accordance with subsection 103(2A),
23 any election made under section 71E in relation to the transferring
24 fund before the transfer of the asset.

- 25 (5) A person commits an offence if:
- 26 (a) the person is a trustee of the transferring fund; and
- 27 (b) just before the acquisition time, the trustee had a duty under
28 subsection 103(2A) to retain an election, or a copy of an
29 election, under section 71E in relation to the transferring
30 fund; and
- 31 (c) the trustee does not, within 14 days after the acquisition time,
32 give the election or copy to a trustee or investment manager
33 of the acquiring fund.

34 Penalty: 50 penalty units.

35 Note: If the trustee gives the election to the acquiring fund, he or she must
36 retain a copy of the election: see subsection (4).

- 37 (6) An offence against subsection (5) is an offence of strict liability.

38 Note: For strict liability, see section 6.1 of the *Criminal Code*.

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4 Application

The amendments made by items 2 and 3 of this Schedule apply to acquisitions occurring on or after the commencement of this item.