



Changes to other laws relating to LRBAs

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Marketed instalment warrant products

A borrowing is allowed under any arrangement that meets the requirements of the super law, not just financial products marketed as instalment warrants.

Conversely, it does not automatically follow that a product marketed as an instalment warrant meets the conditions of the super law.

The rules allowing limited recourse borrowing are not limited to investments in instalment warrants traditionally offered by financial institutions where the underlying asset is a listed security. Other arrangements or products are allowed if they satisfy all of the requirements of the super law.

Changes resulting in a new arrangement

If the parties adopt a change to the terms or conditions of an arrangement (either expressly or by inference) that goes to the root of the arrangement – that is, it alters the character of the arrangement in a significant way – then there is a new arrangement from that time and the earlier arrangement has come to an end. If that change happened after 7 July 2010, the requirements of section 67A of the SISA apply to the arrangement.

Changes resulting in a new arrangement include:

- The borrowing under the original arrangement is refinanced – refer to
 - [Can an SMSF trustee refinance a limited recourse borrowing without contravening the super law?](#)
 - [Arrangements entered into on or after 24 September 2007 and before 7 July 2010, then refinanced on or after 7 July 2010 \(?anchor=Specialinhouseassetrule#Specialinhouseassetrule\)](#)
- There is a borrowing (drawdown) that is inconsistent with the earlier arrangement – for example, borrowing to acquire an asset or class of asset clearly not contemplated under the original arrangement
- There has been a change to the ultimate beneficiaries of the arrangement resulting from selling a

structure involving a pre-existing arrangement.

Example 1: New arrangement

There is an LRBA that meets the requirements of former subsection 67(4A) of the SISA entered into by a corporate SMSF trustee and a private company lender before 7 July 2010. On or after 7 July 2010, new directors of the corporate SMSF trustee (and members of the SMSF) and new directors of the private company lender are appointed, replacing all of the former members. The Commissioner will treat the LRBA now controlled by the new ultimate beneficiaries as a new arrangement. The new arrangement must meet the requirements of section 67A of the SISA.

Example 2: No new arrangement

There is an LRBA that meets the requirements of former subsection 67(4A) of the SISA entered into by a corporate SMSF trustee and a private company lender before 7 July 2010. On or after 7 July 2010 two new members of the SMSF are admitted as a result of changing family circumstances. The Commissioner will not treat the LRBA as a new arrangement on this basis alone.

Conditions for refinancing an LRBA

Arrangements entered into on or after 7 July 2010 and then refinanced at a later date

An LRBA can be refinanced provided the re-financed arrangement meets the requirements of section 67A of the SISA.

Section 67A explicitly allows re-financing of a borrowing (including any accrued interest) under an arrangement if the new borrowing arrangement is over the acquirable asset from the first arrangement (including an asset from the first arrangement that is a replacement asset under section 67B of the SISA) and no other acquirable asset.

Where a new trust is created to hold the asset, SMSF trustees must ensure that the asset is transferred directly to that new trust and that the SMSF does not temporarily obtain title to the asset at that time, otherwise a contravention of the super law will occur.

Find out about:

- [Super law requirements for LRBA by super trustees](#)
([?anchor=Requirementsunderthesuperlawforlimitedre#Requirementsunderthesuperlawforlimitedre](#))
- [Existing fund assets](#)
([?anchor=IsanSMSFtrusteeallowedtoputanexistingfun#IsanSMSFtrusteeallowedtoputanexistingfun](#))

Arrangements entered into on or after 24 September 2007 and before 7 July 2010, then refinanced on or after 7 July 2010

SMSF trustees can refinance the borrowing, but the refinanced arrangement must meet the requirements of the law applying to LRBA's entered into on or after 7 July 2010.

A new borrowing that takes the place of the old borrowing, such that the application of the new borrowing is solely to extinguish the previous borrowing and meet associated costs, satisfies the requirement that borrowed funds are applied for the acquisition of the relevant asset.

However, refinancing the borrowing is entering into a new limited recourse borrowing arrangement at the time of refinancing. Any arrangement refinanced on or after 7 July 2010 must meet the requirements of the super law (section 67A of the SISA) applying to arrangements entered into on or after 7 July 2010.

Where a new trust is created to hold the asset, SMSF trustees must ensure the asset is transferred directly to that new trust and that the SMSF does not temporarily obtain title to the asset at that time, otherwise a contravention of the super law will occur.

Find out about:

- [Existing fund assets](#)
([?anchor=IsanSMSFtrusteeallowedtoputanexistingfun#IsanSMSFtrusteeallowedtoputanexistingfun](#))

Varying the terms of a limited recourse borrowing

Varying the contract of borrowing does not always result in the end of the previous borrowing and the creation of a new and different borrowing (a refinancing).

This depends upon the nature and extent of the variation and the intention of the parties.

Example: Extension of borrowing

Assume a borrowing is extended by a variation to the terms of a contract. An agreement to extend the period of the borrowing could be so inconsistent with the original agreement that it results in a new contract for borrowing. Some relevant factors are:

- whether the original loan agreement provided for the parties to agree to extend the term
- the period of the extension in relation to the period of the original loan
- whether other terms of the loan were changed by the later agreement.

In *Roberts v I.A.C (Finance) Pty Ltd* (1967) VR 231, the parties agreed to extend a three-year borrowing for a further two months. It was held the extension was not totally inconsistent with the terms of the original agreement as the variation left the terms and conditions of the original agreement intact, except to the limited extent that the due date was extended by two months. As the contract was modified to a limited extent, the rights and obligations of the parties were not affected by the variation. In these circumstances, the loan extension did not discharge the original obligation to pay and create a new obligation to pay in its place.

Find out about:

- [Super law requirements for LRBA by super trustees](#)

[\(?anchor=Requirementsunderthesuperlawforlimitedre#Requirementsunderthesuperlawforlimitedre\)](#)

- [Loan and lender \(?anchor=Theloanandthelender#Theloanandthelender\)](#)
- [Asset being acquired and replacement assets \(?anchor=Theassetbeingacquiredandreplacementasset#Theassetbeingacquiredandreplacementasset\)](#)
- [Special in-house asset rules \(?anchor=Specialinhouseassetrules#Specialinhouseassetrules\)](#)
- [Holding trust \(?anchor=Theholdingtrust#Theholdingtrust\)](#)

Outstanding LRBA amount for total superannuation balance

From 1 July 2018, SMSFs that start a limited recourse borrowing arrangement (LRBA) must include the outstanding limited borrowing arrangement amount at 30 June each income year for each member when specific criteria are met.

This change doesn't include the refinancing of an existing LRBA that was entered into before 1 July 2018 and is refinanced on or after 1 July, where the following apply:

- the new borrowing is secured by the same asset or assets as the old borrowing
- the refinanced amount is the same or less than the existing LRBA.

The outstanding balance of a relevant LRBA at 30 June will be reported in the member information section of the SMSF annual return and included in the member's [total superannuation balance \(/Individuals/Super/In-detail/Growing-your-super/Super-contributions---too-much-can-mean-extra-tax/?page=5#TotalSuperannuationBalance\)](#) (TSB).

Reporting of the outstanding balance of a relevant LRBA is required if either of the following applies:

- the LRBA is between the fund and an [associate \(/forms/self-managed-superannuation-fund-annual-return-instructions-2018/?anchor=RelatedParty&anchor=RelatedParty#RelatedParty\)](#) of the fund, or
- the members has met a [condition of release \(/super/self-managed-super-funds/paying-benefits/conditions-of-release/\)](#) with a nil cashing restriction.

If the fund has an impacted LRBA and a member has met either of the above criteria, the fund must report the outstanding LRBA amount in that member's section of the SMSF Annual return.

LRBA is between the fund and an associate of the fund

An [associate \(/forms/self-managed-superannuation-fund-annual-return-instructions-2018/?anchor=RelatedParty&anchor=RelatedParty#RelatedParty\)](#) of the superannuation fund covers any entity that benefits under a trust (for example, the members of a super fund), as well as the associates of those entities.

Where the adjustment applies because the LRBA is with an associate of the fund, all members whose interests are supported by the assets the LRBA relates to will have their [total superannuation balance \(/Individuals/Super/In-detail/Growing-your-super/Super-contributions---too-much-can-mean-extra-tax/?page=5#TotalSuperannuationBalance\)](#) adjusted.

Meeting a condition of release with a nil cashing restriction

The [conditions of release \(/super/self-managed-super-funds/paying-benefits/conditions-of-release/\)](#) with nil cashing restrictions that apply are:

- retirement
- terminal medical condition
- permanent incapacity
- attaining 65 years.

Where a fund has to report an outstanding LRBA amount because a member has satisfied a nil condition of release, it will be included in the calculation of the member's total superannuation balance (</Individuals/Super/In-detail/Growing-your-super/Super-contributions---too-much-can-mean-extra-tax/?page=5#TotalSuperannuationBalance>) but not other members who have not satisfied such a condition of release, despite the fact that their interests may be supported by the same assets the LRBA relates to.

LRBA and TSB flow chart questions

The LRBA and TSB flow chart questions below provides steps to help you work out whether your TSB is increased by an outstanding LRBA amount.

You should follow these flow chart questions each 30 June to determine the impact on your TSB.

Question 1: Was the contract for the current LRBA entered into before 1 July 2018?

Yes	an outstanding LRBA amount is not included in your TSB
No	Go to Question 2 ✓

Question 2: Is the current LRBA a refinancing of an existing LRBA that was entered into before 1 July 2018?

Yes	Go to Question 3
No	Go to Question 5 ✓

Question 3: Is the refinanced LRBA secured by the same asset/s as the original LRBA?

Yes	Go to Question 4
No	Go to Question 5

Question 4: When the LRBA was refinanced, did it increase the borrowed amount?

Yes	Go to Question 5
No	An outstanding LRBA amount is not included in your TSB

Question 5: Is the lender of the LRBA an associate of the SMSF?

Yes	Your share of an outstanding LRBA amount is included in your TSB ✓
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No	Go to Question 6
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Question 6: Have you met any of the following conditions of release at any point in time?

- Retirement
- Attained 65 years old
- Terminal medical condition
- Permanent incapacity.

Yes	Your share of an outstanding LRBA amount is included in your TSB
No	An outstanding LRBA amount is not included your TSB

Outstanding LRBA amount included in your TSB

When you need to include your share of the outstanding amount of an LRBA in your TSB, the amount is a proportion of the total outstanding balance based on your share of the super interests supported by the LRBA. The proportion is calculated by determining the ratio of the total super interests supported by the borrowing that are attributable to you.

Example: Working out the outstanding LRBA amount included in a member's TSB

Kevin is aged 65 years old and is a member of an SMSF with an outstanding LRBA as at 30 June.

Kevin is calculating his TSB for 30 June 2019 and needs to know his share of the outstanding LRBA amount to include in the calculation of his total super balance.

Kevin's account balance at 30 June is \$400,000 which is 75% supported by the assets that secure the LRBA.

The SMSF's total outstanding balance of the LRBA at 30 June 2019 is \$200,000 and the total fund assets that are supported by the assets that secure the LRBA is \$800,000.

Kevin works out his outstanding LRBA amount at 30 June 2019 as following:

- Outstanding LRBA balance \times (value of Kevin's interests supported by the assets that secure the LRBA \div value of fund's interests supported by the assets that secure the LRBA)
- $\$200,000 \times (\$400,000 \times 75\%) \div \$800,000 = \$75,000$.

Kevin's SMSF will report \$75,000 as the outstanding LRBA amount for Kevin in the member section of the SMSF annual return for the 2018–19 financial year.

100% for John

when loan was formed - John had the only member balance.

Find out about:

- [LCG 2016/12 \(/law/view/document/?DocID=COG/LCG201612/NAT/ATO/00001\)](#) Superannuation reform: total superannuation balance

- [Subsection 318\(3\) of ITAA 1936 – definition of associates \(http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/itaa1936240/s318.html\)](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/itaa1936240/s318.html)

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Related party

Related parties of an SMSF are:

- › all members of the SMSF and their **associates**
- › all **standard employer-sponsors** of the SMSF and their associates.

Associates of a member of the SMSF include:

- › every other member of the SMSF
- › relatives of any member of the SMSF
- › business partners of any member of the SMSF
- › companies and trustees of trusts that any member of the SMSF controls (either alone or with their other associates).

A **standard employer-sponsor** is an employer who contributes to the SMSF for the benefit of a member, under an arrangement between the employer and the trustee of the SMSF.