

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Financial Management (Ethical Investment) Legislation Amendment Bill 2010

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Financial Management (Ethical Investment) Legislation Amendment Bill 2010

A Bill for

An Act to amend the *Financial Management Act 1996* and the *Territory Superannuation Provision Protection Act 2000*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Financial Management (Ethical Investment) Legislation Amendment Act 2010*.

2 Commencement

This Act commences on 1 July 2011.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Financial Management Act 1996* and the *Territory Superannuation Provision Protection Act 2000*.

Part 2 Financial Management Act 1996

4 Investment of certain public money New section 38 (10)

insert

- (10) This section is subject to section 38A.

5 New section 38A

in part 5, insert

38A Restrictions on investment of certain public money

- (1) The Treasurer must not invest any money held in the territory banking account or departmental banking accounts in a prohibited investment.
- (2) An investment is a *prohibited investment* if—
- (a) it includes investment in a relevant body; and
 - (b) the Treasurer is not satisfied on reasonable grounds that 5% or less of the relevant body's revenue for the current financial year is likely to be attributable to any 1 of the following activities:
 - (i) the manufacture or sale of liquor;
 - (ii) the manufacture or sale of tobacco;
 - (iii) the manufacture or sale of arms or armaments, their components or software;

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- (iv) the manufacture or sale of gaming equipment, its components or software;
 - (v) the operation of gambling facilities;
 - (vi) the mining, processing or sale of uranium;
 - (vii) the mining, processing or sale of coal;
 - (viii) the extraction, processing or sale of crude oil;
 - (ix) the manufacture or sale of timber products, including paper, that are produced using timber harvested from—
 - (A) native old-growth forests; or
 - (B) plants protected under the *Nature Conservation Act 1980* or a law of another Australian or foreign jurisdiction corresponding to that Act;
 - (x) genetically modified agricultural crops;
 - (xi) the manufacture or sale of products that are produced using intensive animal farming;
 - (xii) the manufacture or sale of cosmetics that are produced using animal testing;
 - (xiii) the manufacture or sale of products that are produced using labour in breach of any international treaty or other international agreement, in relation to labour and child labour, to which Australia is a party;
 - (xiv) an activity declared by the Minister under subsection (3).
- (3) The Minister may declare an activity for subsection (2) (b) (xiv).

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- (4) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (5) If the Treasurer becomes aware that an investment has become a prohibited investment, the Treasurer must divest the Territory of the investment as soon as reasonably practicable.
- (6) In this section:

gaming equipment—see the *Gambling and Racing Control Act 1999*, dictionary.

investment, in a relevant body—

- (a) means investment within the meaning of the Corporations Act, section 9; but
- (b) does not include a term deposit, bond or similar investment in an authorised deposit-taking institution.

liquor—see the *Liquor Act 2010*, dictionary.

relevant body means—

- (a) a company registered under the Corporations Act; or
- (b) a disclosing entity under the Corporations Act; or
- (c) a body under the Corporations Act; or
- (d) a registered scheme under the Corporations Act.

6 Investment by territory authorities **New section 58 (9)**

insert

- (9) This section is subject to section 58A.

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7 New section 58A

insert

58A Restrictions on investment by territory authorities

- (1) A territory authority must not invest funds of the authority in a prohibited investment.
- (2) An investment is a *prohibited investment* if—
 - (a) it includes investment in a relevant body; and
 - (b) the territory authority is not satisfied on reasonable grounds that 5% or less of the relevant body's revenue for the current financial year is likely to be attributable to any 1 of the following activities:
 - (i) the manufacture or sale of liquor;
 - (ii) the manufacture or sale of tobacco;
 - (iii) the manufacture or sale of arms or armaments, their components or software;
 - (iv) the manufacture or sale of gaming equipment, its components or software;
 - (v) the operation of gambling facilities;
 - (vi) the mining, processing or sale of uranium;
 - (vii) the mining, processing or sale of coal;
 - (viii) the extraction, processing or sale of crude oil;
 - (ix) the manufacture or sale of timber products, including paper, that are produced using timber harvested from—
 - (A) native old-growth forests; or

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- (B) plants protected under the *Nature Conservation Act 1980* or a law of another Australian or foreign jurisdiction corresponding to that Act;
- (x) genetically modified agricultural crops;
 - (xi) the manufacture or sale of products that are produced using intensive animal farming;
 - (xii) the manufacture or sale of cosmetics that are produced using animal testing;
 - (xiii) the manufacture or sale of products that are produced using labour in breach of any international treaty or other international agreement, in relation to labour and child labour, to which Australia is a party;
 - (xiv) an activity declared by the Minister under subsection (3).
- (3) The Minister may declare an activity for subsection (2) (b) (xiv).
- (4) A declaration is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (5) If a territory authority becomes aware that an investment has become a prohibited investment, the authority must divest itself of the investment as soon as reasonably practicable.
- (6) In this section:
- gaming equipment***—see the *Gambling and Racing Control Act 1999*, dictionary.
- investment***, in a relevant body—
- (a) means investment within the meaning of the Corporations Act, section 9; but

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- (b) does not include a term deposit, bond or similar investment in an authorised deposit-taking institution.

liquor—see the *Liquor Act 2010*, dictionary.

relevant body means—

- (a) a company registered under the Corporations Act; or
(b) a disclosing entity under the Corporations Act; or
(c) a body under the Corporations Act; or
(d) a registered scheme under the Corporations Act.

8 Dictionary, note 2

insert

- Corporations Act

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Part 3 Territory Superannuation Provision Protection Act 2000

9 Investment of amounts in superannuation banking accounts New section 11 (7)

insert

- (7) This section is subject to section 11A and section 11B.

10 New sections 11A and 11B

insert

11A Prioritising investment of amounts in superannuation banking accounts

- (1) In deciding how to invest an amount in a superannuation banking account under section 11, the chief executive must, if satisfied it is prudent, give priority to investing in a defined ethical investment over another investment.
- (2) An investment is a *defined ethical investment* if it includes investment in any 1 of the following activities:
- (a) the generation of renewable energy;
 - (b) energy efficiency and reduction of greenhouse gas emissions;
 - (c) water conservation;
 - (d) environmental reporting and remediation;
 - (e) pollution control and chemical replacement;

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- (f) waste management and recycling;
- (g) education, including the development and supply of educational products and services;
- (h) the development of sustainable and social housing;
- (i) health and safety improvement and management;
- (j) the alleviation of poverty;
- (k) charitable and community support programs;
- (l) the modification of products and provision of services to improve disabled access;
- (m) the provision of services in a way that promotes social inclusion;

Example—services

banking services

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (n) the provision of public transport;
 - (o) an activity declared by the Minister under subsection (3).
- (3) The Minister may declare an activity for subsection (2) (o).
- (4) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

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11B Restrictions on investment of amounts in superannuation banking accounts

- (1) The chief executive of the superannuation department must not invest an amount in a superannuation banking account in a prohibited investment.
- (2) An investment is a *prohibited investment* if—
 - (a) it includes investment in a relevant body; and
 - (b) the chief executive is not satisfied on reasonable grounds that 5% or less of the relevant body's revenue for the current financial year is likely to be attributable to any 1 of the following activities:
 - (i) the manufacture or sale of liquor;
 - (ii) the manufacture or sale of tobacco;
 - (iii) the manufacture or sale of arms or armaments, their components or software;
 - (iv) the manufacture or sale of gaming equipment, its components or software;
 - (v) the operation of gambling facilities;
 - (vi) the mining, processing or sale of uranium;
 - (vii) the mining, processing or sale of coal;
 - (viii) the extraction, processing or sale of crude oil;
 - (ix) the manufacture or sale of timber products, including paper, that are produced using timber harvested from—
 - (A) native old-growth forests; or

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- (B) plants protected under the *Nature Conservation Act 1980* or a law of another Australian or foreign jurisdiction corresponding to that Act;
- (x) genetically modified agricultural crops;
 - (xi) the manufacture or sale of products that are produced using intensive animal farming;
 - (xii) the manufacture or sale of cosmetics that are produced using animal testing;
 - (xiii) the manufacture or sale of products that are produced using labour in breach of any international treaty or other international agreement, in relation to labour and child labour, to which Australia is a party;
 - (xiv) an activity declared by the Minister under subsection (3).
- (3) The Minister may declare an activity for subsection (2) (b) (xiv).
- (4) A declaration is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (5) If the chief executive of the superannuation department becomes aware that an investment has become a prohibited investment, the chief executive must divest the Territory of the investment as soon as reasonably practicable.
- (6) In this section:
- gaming equipment*—see the *Gambling and Racing Control Act 1999*, dictionary.

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investment, in a relevant body—

- (a) means investment within the meaning of the Corporations Act, section 9; but
- (b) does not include a term deposit, bond or similar investment in an authorised deposit-taking institution.

liquor—see the *Liquor Act 2010*, dictionary.

relevant body means—

- (a) a company registered under the Corporations Act; or
- (b) a disclosing entity under the Corporations Act; or
- (c) a body under the Corporations Act; or
- (d) a registered scheme under the Corporations Act.

11 Dictionary, note 2

insert

- Corporations Act

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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2010.

2 Notification

Notified under the Legislation Act on 2010.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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