



# **Superannuation Industry (Supervision) Amendment Regulations 2011 (No. 2)<sup>1</sup>**

**Select Legislative Instrument 2011 No. 130**

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Superannuation Industry (Supervision) Act 1993*.

Dated 30 June 2011

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

BILL SHORTEN  
Minister for Financial Services and Superannuation

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**1 Name of Regulations**

These Regulations are the *Superannuation Industry (Supervision) Amendment Regulations 2011 (No. 2)*.

**2 Commencement**

These Regulations commence on 1 July 2011.

**3 Amendment of *Superannuation Industry (Supervision) Regulations 1994***

Schedule 1 amends the *Superannuation Industry (Supervision) Regulations 1994*.

**Schedule 1 Amendment**

(regulation 3)

**[1] After regulation 13.18**

*insert*

**13.18AA Self managed superannuation funds — investment in collectables and personal use assets**

- (1) For section 62A of the Act, this regulation applies to investments involving any of the following (*section 62A items*):
- (a) artwork (within the meaning of the *Income Tax Assessment Act 1997*);
  - (b) jewellery;
  - (c) antiques;
  - (d) artefacts;
  - (e) coins, medallions or bank notes;
  - (f) postage stamps or first day covers;
  - (g) rare folios, manuscripts or books;

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- (h) memorabilia;
  - (i) wine or spirits;
  - (j) motor vehicles;
  - (k) recreational boats;
  - (l) memberships of sporting or social clubs.

*Asset must not be leased to related party*

- (2) Each trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:
  - (a) the fund holds an investment involving a section 62A item; and
  - (b) either:
    - (i) an interest in the item is leased to a related party of the fund; or
    - (ii) a trustee of the fund enters a lease arrangement with a related party of the fund in relation to the item.

Penalty: 10 penalty units.

*Note* **Lease arrangement** and **related party** are defined in subsection 10 (1) of the Act.

*Item must not be stored in private residence of related party*

- (3) Each trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:
  - (a) the fund holds an investment involving a section 62A item; and
  - (b) the item is stored in the private residence of a related party of the fund.

Penalty: 10 penalty units.

*Note* **Related party** is defined in subsection 10 (1) of the Act.

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*Decision on storage of item must be documented*

- (4) Each trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:
- (a) the fund holds an investment involving a section 62A item; and
  - (b) the trustee or trustees of the fund make a decision relating to the storage of the item; and
  - (c) either:
    - (i) a written record of the reasons for the decision is not made; or
    - (ii) if a written record of the reasons is made — the record is not kept for at least 10 years after the decision.

Penalty: 10 penalty units.

*Item must be insured in fund's name*

- (5) Each trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:
- (a) the fund owns a section 62A item, other than a membership of a sporting or social club; and
  - (b) it is more than 7 days since the fund acquired the item; and
  - (c) the item is not insured in the name of the fund.

Penalty: 10 penalty units.

*Item must not be used by related party*

- (6) Each trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:
- (a) the fund holds an investment involving a section 62A item; and
  - (b) a related party of the fund uses the item.

Penalty: 10 penalty units.

*Note* **Related party** is defined in subsection 10 (1) of the Act.

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*Transfer of asset to related party requires independent valuation*

- (7) A trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:
- (a) the trustee realises an investment held by the fund involving a section 62A item; and
  - (b) a related party of the fund receives an interest in the item because of the realisation; and
  - (c) the realisation was not at a market price determined by a qualified independent valuer.

Penalty: 10 penalty units.

*Note* **Related party** is defined in subsection 10 (1) of the Act.

*Offences are strict liability offences*

- (8) An offence against any of subregulations (2) to (7) is an offence of strict liability.

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

*Transitional period for existing assets*

- (9) Subregulations (2) to (7) do not apply in relation to an investment in a section 62A item that was held by the fund on 30 June 2011.
- (10) However, subregulation (9) ceases to be in force on 1 July 2016.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.