



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 252

# Keeping superannuation websites up to date

June 2014

### **About this guide**

This guide explains how remuneration and other information on superannuation websites may be kept up to date under s29QB of the *Supervision Industry (Supervision) Act 1993* (SIS Act).

It is relevant to those in the superannuation industry, including licensees of registrable superannuation entities (RSEs), custodians and administrators.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This regulatory guide was issued in June 2014 and is based on legislation and regulations as at the date of issue.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the SIS Act, Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

The Stronger Super reforms, which commence on 1 July 2014, require the licensee of a registrable superannuation entity (RSE) to publish remuneration details and other information on the RSE's website and to keep this up to date at all times. (An RSE is colloquially referred to as a superannuation fund.)

The purpose of the required remuneration details and other information is to ensure that RSE licensees are accountable to the market by improving the transparency of superannuation funds and the way they are governed and managed.

Class Order [CO 14/509] *Keeping registrable superannuation entities' websites up to date* provides RSE licensees with a 'safe harbour' so that, if they update the RSE's website within the timeframes set out in the class order, they will be taken to comply with the obligation to keep the website up to date at all times (updating obligation).

## Superannuation websites must disclose remuneration details and other information

RG 252.1 Section 29QB of the *Supervision Industry (Supervision) Act 1993* (SIS Act) requires an RSE licensee to disclose on the RSE's website:

- (a) remuneration details of the RSE licensee's executive officers or individual trustees; and
- (b) other information and documents relating to the RSE and RSE licensee (e.g. the trust deed and proxy voting policies).

Note: Section 29QB was included in the SIS Act under the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*, registered on 5 December 2012. In this guide, references to s29QB are to the SIS Act.

### Commencement date

RG 252.2 The s29QB requirements were enacted with a commencement date of 1 July 2013. Under Class Order [CO 13/830] *RSE licensees of registrable superannuation entities*, ASIC delayed the commencement date of the requirements until 1 July 2014.

## Purpose of s29QB: Systemic transparency

- RG 252.3 Money in superannuation funds (i.e. registrable superannuation entities, or RSEs) comprises a significant component of Australian savings and is an important part of Australia's economy.
- RG 252.4 Subjecting RSEs and those governing them (RSE licensees) to market scrutiny by making them transparent to the market or the financial system (systemic transparency) is a key mechanism for ensuring this money is efficiently allocated and managed.
- RG 252.5 The purpose of s29QB is to deliver systemic transparency, enabling market intermediaries and gatekeepers (e.g. financial journalists, investment analysts and financial advisers) and interested retail clients to use the information in a way that contributes to the accountability of those managing superannuation money.

Note: See the Super System Review, *Final report: Part 2*, Commonwealth of Australia, 2010, p. 101, [www.supersystemreview.gov.au](http://www.supersystemreview.gov.au); and the Revised Explanatory Memorandum for the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012, p. 27.

- RG 252.6 These measures are not directly aimed at retail clients or superannuation fund members (consumers), although consumers will benefit from the improved market scrutiny of RSEs and RSE licensees.

## Details of the required information

- RG 252.7 The Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations), as amended by the Superannuation Legislation Amendment (MySuper Measures) Regulations 2013, prescribe the information required to be set out on an RSE's website. In particular:
- (a) reg 2.37 sets out the prescribed remuneration details; and
  - (b) reg 2.38 sets out other prescribed information and documents relating to the RSE and RSE licensee.

Note: In this guide, references to reg 2.37 (for example) are to the SIS Regulations.

- RG 252.8 Section 29QB requires this information to be publicly available on the RSE's website and kept up to date at all times—however, the legislation does not clarify what this means in practice. For example, it is not stated whether a website should be updated on the day that the required information changes or at some later time.

## Safe harbour

- RG 252.9 ASIC has issued Class Order [CO 14/509] *Keeping registrable superannuation entities' websites up to date* to clarify how RSE licensees can comply with the obligation to keep RSEs' websites up to date.
- RG 252.10 [CO 14/509] provides RSE licensees with a safe harbour so that, if they update the RSE's website within the class order timeframes, they will be taken to comply with the updating obligation under s29QB.
- RG 252.11 Section B of this guide explains how the safe harbour works. It illustrates the operation of [CO 14/509], using Table 1 which covers the reg 2.37 requirements and Table 2 which covers the reg 2.38 requirements.

## B How the safe harbour works

### Key points

In this section, we explain how RSE licensees can take advantage of the safe harbour that [CO 14/509] offers, so that they will be taken to comply with the updating obligation.

Table 1 and Table 2 illustrate the operation of [CO 14/509]. The tables use the concepts of ‘triggers’ and ‘release times’ to help clarify [CO 14/509], although the class order does not use these terms.

We regard failure to comply with [CO 14/509] as a breach of the updating obligation and expect RSE licensees who are Australian financial services (AFS) licensees to report the breach to ASIC if they regard it as a significant breach.

### How [CO 14/509] works—Triggers and release times

- RG 252.12 Table 1 and Table 2 outline the remuneration details, and the documents and information that must be published on an RSE’s website under s29QB and regs 2.37 and 2.38.
- RG 252.13 The tables illustrate the operation of [CO 14/509] using the concepts of ‘triggers’ and ‘release times’ as a simple way of dealing with the complexities of regs 2.37 and 2.38, although the class order does not use these terms.
- RG 252.14 An RSE licensee can take advantage of the safe harbour offered by [CO 14/509] if it updates the RSE’s website after a trigger event (trigger) within a given time (release time) after the day the trigger occurs. This means that:

$$\text{update time} = \text{trigger} + \text{release time}$$

### Release times

- RG 252.15 The release times are:
- (a) 20 business days, except for remuneration items; and
  - (b) four months for remuneration items—these comprise items 5 to 16 in reg 2.37(1).

### Example 1

If a trigger occurs on 10 November 2014 (Monday) and the release time is 20 business days, the RSE licensee must update the RSE’s website by the end of 8 December 2014 (Monday) to be taken as complying with the updating obligation. You start counting the 20 business days on the day *after* the day of the trigger.

**Example 2**

If a trigger for a remuneration item occurs on 30 June 2020 and the release time is four months, the RSE licensee must publish details of the remuneration item on the RSE's website by no later than the end of 31 October 2020.

**Failure to comply with [CO 14/509]**

- RG 252.16 We consider that the release times we have set, following industry consultation, are sufficiently generous for RSE licensees to be able to comply with [CO 14/509] in normal circumstances.
- RG 252.17 We regard a failure to comply with [CO 14/509] as a breach of the updating obligation, and expect RSE licensees who are also AFS licensees to apply their normal breach handling procedures to such a breach.
- RG 252.18 If an AFS licensee regards such a breach as significant, it should report the breach to ASIC—and, if relevant, to the Australian Prudential Regulation Authority (APRA)—in accordance with s912D of the Corporations Act and Regulatory Guide 78 *Breach reporting by AFS licensees* (RG 78).

## Tables illustrating the operation of [CO 14/509]

**Table 1: Illustration of how [CO 14/509] operates for remuneration details required to be published on an RSE's website under reg 2.37(1)**

Item	Event	Prescribed remuneration details	Trigger	Release time
<i>General</i>				
1		The name of each person who is a relevant executive officer or relevant individual trustee	When the person is newly appointed or advises the RSE licensee that they have changed their name	20 business days
2	If a person: (a) began to hold a position as a relevant executive officer or relevant individual trustee during the current financial year; or (b) retired from a position as a relevant executive officer or relevant individual trustee during the current financial year	The date on which the person: (a) began holding the position; or (b) retired from the position	When the event occurs	20 business days
3	If the position of a person who is either of the following changes during the current financial year: (a) a relevant executive officer who is a chief executive officer or director; or (b) a relevant individual trustee	(a) The person's name and position; and (b) when the change occurred	When the event occurs	20 business days
4	If a relevant executive officer who is not mentioned in item 3 has retired during the current financial year	(a) The relevant executive officer's name and position; and (b) when the retirement took effect	When the event occurs	20 business days

Item	Event	Prescribed remuneration details	Trigger	Release time
<i>Payments and benefits (as affected by reg 2.37(2))</i>				
5		<p>The short-term employee benefits of each relevant executive officer or relevant individual trustee for the two most recently completed financial years, divided into at least the following components:</p> <p>(a) cash salary, fees and short-term compensated absences;</p> <p>(b) short-term cash profit sharing and other bonuses;</p> <p>(c) non-monetary benefits; and</p> <p>(d) other short-term employee benefits</p>	<p>For executive officers, the last day of the RSE licensee's most recently completed financial year</p> <p>For individual trustees, the last day of the most recent period of 12 months ending 30 June</p>	4 months
6		<p>The post-employment benefits of each relevant executive officer or relevant individual trustee for the two most recently completed financial years, divided into at least the following components:</p> <p>(a) pension and superannuation benefits; and</p> <p>(b) other post-employment benefits</p>	<p>For executive officers, the last day of the RSE licensee's most recently completed financial year</p> <p>For individual trustees, the last day of the most recent period of 12 months ending 30 June</p>	4 months
7		<p>The long-term employee benefits other than benefits mentioned in items 5 and 6 for each relevant executive officer or relevant individual trustee for the two most recently completed financial years (any amount attributable to a long-term incentive plan being separately identified)</p>	<p>For executive officers, the last day of the RSE licensee's most recently completed financial year</p> <p>For individual trustees, the last day of the most recent period of 12 months ending 30 June</p>	4 months

Item	Event	Prescribed remuneration details	Trigger	Release time
8	If a person's position as a relevant executive officer or relevant individual trustee was terminated during the current financial year	The person's termination benefits	For executive officers, the last day of the RSE licensee's current financial year  For individual trustees, the last day of the current period of 12 months that will end on 30 June	4 months
9	If a person: (a) began to hold a position as relevant executive officer or relevant individual trustee during the most recently completed financial year; and (b) received a payment as part of the consideration for agreeing to hold the position	Details of the payment, including: (a) the monetary value of the payment; and (b) the date of the payment	For executive officers, the last day of the RSE licensee's most recently completed financial year  For individual trustees, the last day of the most recent period of 12 months ending 30 June	4 months
10		The share-based payments made to each person who was a relevant executive officer or relevant individual trustee during the two most recently completed financial years, divided into at least the following components: (a) equity-settled, share-based payment transactions, showing separately: (i) shares and units; and (ii) options and rights; (b) cash-settled, share-based payment transactions; and (c) all other forms of share-based payment compensation (including hybrids)	For executive officers, the last day of the RSE licensee's most recently completed financial year  For individual trustees, the last day of the most recent period of 12 months ending 30 June	4 months

Item	Event	Prescribed remuneration details	Trigger	Release time
<i>Compensation (as affected by reg 2.37(2))</i>				
11	If a grant of a cash bonus, performance-related bonus or share-based payment compensation benefit, whether part of a specific contract for services or not, was made to a relevant executive officer or relevant individual trustee during the most recently completed financial year	<p>The terms and conditions of each grant affecting compensation, including:</p> <ul style="list-style-type: none"> <li>(a) the grant date;</li> <li>(b) the nature of the compensation granted;</li> <li>(c) the service and performance criteria used to determine the amount of compensation;</li> <li>(d) if there has been any alteration of the terms or conditions of the grant since the grant date—the date, details and effect of each alteration;</li> <li>(e) the percentage of the bonus or grant for the financial year that was paid to the person, or that vested in the person, in the financial year;</li> <li>(f) the percentage of the bonus or grant for the financial year that was forfeited by the person (because the person did not meet the service and performance criteria for the bonus or grant) in the financial year;</li> <li>(g) the financial years, after the most recently completed financial year, for which the bonus or grant will be payable if the person meets the service and performance criteria for the bonus or grant; and</li> <li>(h) estimates of the maximum and minimum possible total value of the bonus or grant (other than option grants) for financial years after the most recently completed financial year</li> </ul>	<p>For executive officers, the last day of the RSE licensee's most recently completed financial year</p> <p>For individual trustees, the last day of the most recent period of 12 months ending 30 June</p>	4 months

Item	Event	Prescribed remuneration details	Trigger	Release time
12	If, during the most recently completed financial year, a contract for services was negotiated between the RSE licensee and a relevant executive officer or relevant individual trustee	An explanation of: (a) how the amount of compensation was determined; and (b) how the terms of the contract affect compensation in future periods	For executive officers, the last day of the RSE licensee's most recently completed financial year  For individual trustees, the last day of the most recent period of 12 months ending 30 June	4 months
13	If the terms of share-based payment transactions (including options or rights) granted as compensation to a relevant executive officer were altered or modified by the RSE licensee during the most recently completed financial year	(a) The date of the alteration or modification; (b) the market price of the underlying equity instrument at the date of the alteration or modification; (c) the terms of the grant of compensation immediately before the alteration or modification, including: (i) the number and class of the underlying equity instruments; (ii) the exercise price for any option or other right affected by the alteration or modification, immediately before and after the alteration or modification; (iii) the time remaining until expiry of the underlying equity instruments; and (iv) each other condition in the terms affecting the vesting or exercise of an option or other right; (d) the modified or altered terms; and (e) the difference between: (i) the total of the fair value of the options or other rights affected by the alteration or modification immediately before the alteration or modification; and (ii) the total of the fair value of the options or other rights immediately after the alteration or modification	For executive officers, the last day of the RSE licensee's most recently completed financial year  For individual trustees, the last day of the most recent period of 12 months ending 30 June	4 months

Item	Event	Prescribed remuneration details	Trigger	Release time
14	If, during the most recently completed financial year, options and rights over an equity instrument issued or issuable by the RSE licensee or by a related body corporate were provided as compensation to a person who was a relevant executive officer or relevant individual trustee	<p>(a) The number of options and the number of rights that, during the financial year, were:</p> <ul style="list-style-type: none"> <li>(i) granted; and</li> <li>(ii) vested; and</li> </ul> <p>(b) the terms and conditions of each grant made during the financial year, including:</p> <ul style="list-style-type: none"> <li>(i) the fair value per option or right at grant date;</li> <li>(ii) the exercise price per share or unit;</li> <li>(iii) the amount, if any, paid or payable by the person;</li> <li>(iv) the expiry date of the grant;</li> <li>(v) when the options or rights may be exercised; and</li> <li>(vi) a summary of the service and performance criteria that must be met before the beneficial interest vests in the person</li> </ul>	<p>For executive officers, the last day of the RSE licensee's most recently completed financial year</p> <p>For individual trustees, the last day of the most recent period of 12 months ending 30 June</p>	4 months
15	If an equity instrument that is issuable by the RSE licensee or a related body corporate was issued as a result of the exercise, during the most recently completed financial year, of options and rights that were granted as compensation to a relevant executive officer or relevant individual trustee	<p>(a) How many equity instruments were issued;</p> <p>(b) if the number of options or rights exercised differs from the number of equity instruments disclosed under paragraph (a)—how many options or rights were exercised;</p> <p>(c) the amount paid under each instrument; and</p> <p>(d) the amount payable under each instrument that is yet to be paid</p>	<p>For executive officers, the last day of the RSE licensee's most recently completed financial year</p> <p>For individual trustees, the last day of the most recent period of 12 months ending 30 June</p>	4 months
16	If an amount attributable to the service of a relevant executive officer who is a director, or a relevant individual trustee, for the most recently completed financial year is paid to an organisation or entity rather than to the relevant executive officer or relevant individual trustee	<p>(a) The amount; and</p> <p>(b) the name of the organisation or entity</p>	<p>For executive officers, the last day of the RSE licensee's most recently completed financial year</p> <p>For individual trustees, the last day of the most recent period of 12 months ending 30 June</p>	4 months

**Table 2: Illustration of how [CO 14/509] operates for documents and information required to be published on an RSE's website under reg 2.38**

Prescribed documents and information	Trigger	Release time
<i>... relating to the RSE</i>		
(2)(a) Both: (i) a current version of the trust deed; and (ii) any material not incorporated in the current version of the trust deed	When the trust deed or any material not incorporated in the trust deed begin to apply, or the later of: • the date on which any amendments are executed; or • the effective date of the relevant amendments	20 business days
(2)(b) The governing rules	When the governing rules begin to apply, or the later of: • the date on which any amendments are executed; or • the effective date of the relevant amendments	20 business days
(2)(c) Rules relating to the nomination, appointment and removal of trustees or trustee directors	When the rules begin to apply or the later of: • the date on which any amendments are executed; or • the effective date of the relevant amendments	20 business days
(2)(d) The most recent actuarial report for each defined benefit fund	When the RSE licensee receives the actuarial report	20 business days
(2)(e) The most recent Product Disclosure Statement (PDS) for each superannuation product (within the meaning of Ch 7 of the Corporations Act) offered by the entity	When a copy of the PDS is first given to someone in a recommendation, issue or sale situation  Note: RSE licensees may publish the most recent PDS on the RSE's website when it has been prepared and dated, and need not wait until the PDS is first given to a retail client.	20 business days
(2)(f) The annual report for the previous financial year	When the annual report is first provided or made available to an RSE member  Note: This refers to the RSE's annual report given to members under s1017DA of the Corporations Act.	20 business days
(2)(g) The Financial Services Guide (FSG)	When the FSG is first given to a retail client  Note: RSE licensees may publish the most recent FSG on the RSE's website when it has been prepared and dated, and need not wait until the FSG is first given to a retail client.	20 business days

Prescribed documents and information	Trigger	Release time
(2)(h) A summary of each significant event notice or material change notice (notice) made to RSE members within the previous two years	When the latest notice is first sent to an RSE member  Note: <i>Transition</i> —1 July 2014 is a transitional trigger, so after 20 business days (i.e. by the end of 29 July 2014), the RSE's website summary of notices must encompass notices for the period from 1 July 2012 to 30 June 2014.	20 business days
(2)(i) The name and Australian Business Number of each outsourced service provider who provides a service which may affect a material business activity of the entity (material service)	When a person is first appointed as an outsourced service provider if the service is expected to be a material service; or otherwise, when the service first becomes a material service  Note 1: The trigger is the appointment of the service provider (e.g. when the contract is executed, rather than when the service is first supplied).  Note 2: <i>Transition</i> —1 July 2014 is a transitional trigger, so after 20 business days (i.e. by the end of 29 July 2014), the RSE's website must list each outsourced service provider who provides a service that may affect a material business activity of the RSE.	20 business days
(2)(j) The following information about each executive officer of the RSE licensee of the entity or each individual trustee of the entity (relevant person): (i) the relevant person's name; (ii) the qualifications of the relevant person; and (iii) a summary of the relevant person's experience as a trustee or executive officer, including the periods during which the relevant person served as a trustee or board member	When a person is first appointed; or otherwise, the last day of the RSE licensee's most recently completed financial year	20 business days
(2)(k) The record of attendance at board meetings for each director for: (i) the last seven financial years; or (ii) if the director has served for a period of less than seven years—that period	The last day of the RSE licensee's most recently completed financial year	20 business days
(2)(l) A register of relevant interests and a register of relevant duties	31 March, 30 June, 30 September and 31 December in any year	20 business days
(2)(m) A summary of the conflicts management policy	When the policy commences or changes	20 business days

Prescribed documents and information	Trigger	Release time
(2)(n) The proxy voting policies	When the policies commence or change	20 business days
(2)(o) A summary of when, during the previous financial year, and how the entity has exercised its voting rights in relation to shares in listed companies	The last day of the RSE licensee's most recently completed financial year  Note: A summary may include brief details of the vote on every relevant resolution.	20 business days
<i>... relating to the RSE licensee</i>		
(3)(a) If the RSE licensee is a body corporate—the constitution	When the constitution commences or changes	20 business days
(3)(b) If the RSE licensee is a body corporate, the annual financial statement for the previous financial year	When the annual financial statement for the RSE licensee is lodged with ASIC or first provided to a member of the RSE licensee	20 business days

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
[CO 14/509]	An ASIC class order (in this example, numbered 14/509)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
FSG	Financial Services Guide
notice	Significant event notice or material change notice
PDS	Product Disclosure Statement
reg 2.37 (for example)	A regulation of the SIS Regulations (in this example, numbered 2.37)
release time	The period of time after the day the trigger occurs, within which an RSE's website must be updated under [CO 14/509]
remuneration items	Items 5 to 16 of reg 2.37(1)
Revised Explanatory Memorandum	Revised Explanatory Memorandum to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012
RSE	A registrable superannuation entity (e.g. a superannuation fund)
RSE licensee	A person or group of persons licensed by APRA to operate an RSE (e.g. the corporate trustee of a superannuation fund or the group of individual trustees of a superannuation fund)
s29QB (for example)	A section of the SIS Act (in this example, numbered 29QB) unless otherwise specified
safe harbour	Where RSE licensees are safe from claims that they have not complied with the updating obligation. Licensees may obtain this safety if they comply with [CO 14/509]

<b>Term</b>	<b>Meaning in this document</b>
SIS Act	<i>Supervision Industry (Supervision) Act 1993</i>
SIS Regulations	Superannuation Industry (Supervision) Regulations 1994
trigger	An event that gives rise to an obligation under reg 2.37 or reg 2.38 to update an RSE's website
updating obligation	The obligation of an RSE licensee to keep the RSE's website up to date at all times

## Related information

### Headnotes

executive officer, individual trustee, prescribed documents and information, prescribed remuneration details, registrable superannuation entity, release times, RSE licensees, safe harbour, superannuation websites, systemic transparency, triggers, updating obligation

### Class orders

[CO 14/509] *Keeping registrable superannuation entities' websites up to date*

[CO 13/830] *RSE licensees of registrable superannuation entities*

### Regulatory guides

RG 78 *Breach reporting by AFS licensees*

### Legislation

SIS Act, s29QB

SIS Regulations, regs 2.37, 2.38

Corporations Act, s912D, 1017DA; Ch 7

### Consultation papers and reports

CP 219 *Keeping superannuation websites up to date*

REP 396 *Response to submissions on CP 219 Keeping superannuation websites up to date*