



ASIC

Australian Securities & Investments Commission

REPORT 396

Response to submissions on CP 219 Keeping superannuation websites up to date

June 2014

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 219 *Keeping superannuation websites up to date* (CP 219) and details our responses to those issues.

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.

Disclaimer

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

This report does not contain ASIC policy. Please see Regulatory Guide 252 *Keeping superannuation websites up to date* (RG 252)).

Contents

A	Overview/Consultation process	4
	Responses to consultation.....	4
	The test for assessing submissions.....	5
B	Safe harbour—Reporting timeframes	6
	Safe harbour—Triggers and release times.....	6
	Disclosure of executive officer details	7
	Disclosure of payments and benefits.....	8
	Documents and information prescribed under reg 2.38	9
C	Updating obligation—Other comments	11
	Actuarial reports.....	11
	PDSs for employer-sponsored sub-plans	12
	Summaries of significant event notices	13
	Outsourced service providers	14
	Annual reports for employer-sponsored sub-plans	14
	Voting.....	14
	Appendix: List of non-confidential respondents	16

A Overview/Consultation process

- 1 In Consultation Paper 219 *Keeping superannuation websites up to date* (CP 219), we consulted on proposals for dealing with the uncertainty about the updating obligation under s29QB of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), prescribed under regs 2.37 and 2.38 of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations).
- 2 We provided three options for addressing the uncertainty about the nature and timing of the requirement to update the website. The requirement is that licensees of registrable superannuation entities (RSE licensees) keep the RSE's website up to date at all times (updating obligation).
- 3 These options included ASIC issuing a class order to provide RSE licensees with a 'safe harbour' for updating the website within a certain timeframe (generally 14 days). Another option was to issue guidance (without a class order), setting out our expectations on how to comply with the requirement. We also proposed to issue neither guidance nor a class order, which would require industry to determine the best way of complying. We also sought suggestions on the best way to provide certainty on the updating obligation.
- 4 This report highlights the key issues that arose out of the submissions received on CP 219 and our responses to those issues.
- 5 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 219. We have limited this report to the key issues.
- 6 For a list of the non-confidential respondents to CP 219, see the appendix. Copies of the submissions are on the ASIC website at www.asic.gov.au/cp under CP 219.

Responses to consultation

- 7 We received 16 responses to CP 219 from industry associations, retail funds and industry funds. We are grateful to respondents for taking the time to send us their comments.
- 8 Generally, respondents were supportive of Option 1, which proposed the safe harbour for RSE licensees who publish the prescribed information within the timeframes set by a class order.
- 9 The main issues raised by respondents related to:
 - (a) appropriate triggers and release times for the publication of information;
 - (b) the publication of disclosure documents for employer-sponsored sub-plans;

- (c) privacy concerns relating to the publication of actuarial reports;
 - (d) the publication of summaries of significant event notices and material change notices; and
 - (e) voting.
- 10 Most respondents also wanted guidance on a range of issues, including a definition of the term ‘financial year’.

The test for assessing submissions

- 11 The test we have applied in assessing submissions or proposals concerning s29QB of the SIS Act is their likely effect on market transparency and accountability, and on the usefulness of information for gatekeepers or market intermediaries.
- 12 The test is not whether retail clients or fund members find the information useful, or can obtain it by alternative means such as log-in access to the non-public part of the website. The objective is that the public can access the information.
- 13 We also consider that those seeking particular information—for example, an actuarial report—will only do so if they are likely to understand it. We are therefore unlikely to view member confusion as a reason not to publish.

B Safe harbour—Reporting timeframes

Key points

This section outlines the issues raised by respondents—and our response to those issues—in relation to the reporting timeframes set by class order that we proposed for the safe harbour option.

It covers the triggers and release times for publishing on an RSE's website:

- executive officer details;
- information about payments and benefits; and
- documents and information prescribed under reg 2.38.

Safe harbour—Triggers and release times

- 14 In CP 219, we proposed giving RSE licensees a safe harbour so that they are taken to comply with the updating obligation if they update their website within the timeframes set out in a class order.
- 15 Respondents were strongly in favour of the safe harbour option, with 75% in favour of this approach and only one submission expressly against it. Respondents who favoured the safe harbour did so because of the greater certainty it provided in a regulatory environment where there were numerous compliance challenges. Many respondents also sought simplification and consistency.
- 16 While the proposal for a safe harbour was strongly supported, not all respondents to CP 219 agreed with the reporting timeframes set out in the draft class order. We proposed a range of triggers and release times for publication of the information or documents required under regs 2.37 and 2.38 of the SIS Regulations.
- 17 The response from industry indicated a general feeling that more time was needed for some of the disclosure, and that release times should be expressed in 'business days' rather than just 'days' to accommodate obligations that fell during holiday periods. Respondents also requested a definition of the term 'financial year'.
- 18 Most respondents expressed a desire for release times to be consistent with public company reporting requirements under the *Corporations Act 2001* (Corporations Act) or with Australian Prudential Regulation Authority (APRA) reporting standards.

ASIC's response

We have adopted the safe harbour approach in Option 1, and have issued Class Order [CO 14/509] *Keeping registrable superannuation entities' websites up to date* and Regulatory Guide 252 *Keeping superannuation websites up to date* (RG 252).

In response to the concerns raised, we have generally extended the release times for updating the website with the information or documents required under regs 2.37 and 2.38. Following respondents' suggestions, release times are now expressed in 'business days' rather than 'days'.

Unless a different type of financial year is expressly provided for, where a trigger refers to a 'financial year', we have changed the wording to refer to the financial year of the RSE licensee (if it is a corporation). If the RSE licensee is one or more individual trustees, the financial year is the 12-month period ending 30 June. Further details about specific triggers and release times are discussed below.

While we gave considerable thought to how the obligations could be aligned as closely as possible with existing reporting requirements, we found that complete harmonisation was unworkable. We therefore sought to achieve as much consistency as possible within the requirements under regs 2.37 and 2.38 but did not try to align these with other reporting requirements.

Disclosure of executive officer details

- 19 In CP 219, we proposed a 14-day release time for publishing the remuneration details of executive officers required under items 1 to 4 of reg 2.37(1). Most respondents opposed this, with one respondent suggesting that there should be an annual trigger for this information, consistent with s315 of the Corporations Act. Another suggested that the reporting frequency should align with APRA's Superannuation Prudential Standard SPS 520 *Fit and proper*.
- 20 Most respondents were concerned about administrative efficiency. As noted above, many suggested that the release times should be expressed in 'business days' rather than 'days'. The commonly suggested release time was 10 business days.
- 21 Most respondents agreed that the trigger should be the occurrence of the change (i.e. the day that a new executive officer is appointed)—however, some suggested that the trigger should be the following day to allow time if something occurs late in the day.

ASIC's response

We have taken into account respondents' suggestions and have tried to maintain as much consistency in release times as possible.

We have therefore set a release time of 20 business days for publishing the remuneration details of executive officers—consistent with the release time set for prescribed documents and information under reg 2.38.

In setting the trigger, we considered that the most logical approach was to set it to coincide with the occurrence of the event. Our extension of the release time to 20 business days after the day the trigger occurs should avoid any concerns about having sufficient time if a trigger event occurs late in the day.

Disclosure of payments and benefits

- 22 In CP 219, we sought submissions on appropriate timeframes for the payments and benefits disclosure required under reg 2.37(2). There was considerable opposition to the 14-day release time proposed in CP 219.
- 23 The main concerns raised by respondents were as follows:
- (a) CP 219 does not take into account the long internal processing time for finalising remuneration payments.
 - (b) The calculations for most performance-based incentives are based on the RSE licensee's company financials and the payments are not signed off until after the company's financial statements are finalised (usually some weeks after the relevant year end).
 - (c) The financial year of many RSE licensees may not be the same as the financial year of the fund.
 - (d) The executive officers' remuneration may involve an apportionment of salary and benefits from employer–sponsors or other related entities. This could potentially involve additional financial year ends.
- 24 In CP 219, we also proposed the first day of the current financial year as the trigger event for all aspects of the payments and benefits in items 5 to 16 of reg 2.37(1), except for item 8 relating to the termination benefits. There was strong disagreement with the trigger being the first day of the current financial year because it was viewed as not taking into account the time taken to process remuneration internally.
- 25 Respondents suggested that the trigger should be when the amount of the payment is signed off by the board or otherwise finalised, or when it is actually paid.

ASIC's response

We acknowledge industry's concerns about the time taken to finalise payments and benefits and its reliance on the completed financial statements of the RSE licensee to do this.

We have therefore set a release time of four months for all payments and benefits in items 5 to 16 of reg 2.37(1), including termination benefits.

For executive officers, the trigger is the last day of the RSE licensee's most recently completed financial year, except for termination benefits, where the trigger is the last day of the RSE licensee's current financial year.

For individual trustees, we have set the trigger as the last day of the most recent 12-month period ending 30 June, except for termination benefits, where the trigger is the last day of the current 12-month period that will end on 30 June.

We believe that the release time of four months should accommodate most differences in the financial years of the entities involved in paying remuneration and other benefits.

Documents and information prescribed under reg 2.38

- 26 In CP 219, we proposed various release times for the documents and information prescribed under reg 2.38(2). A general release time of 14 days was proposed, with the exception of some disclosure documents and significant event notice summaries.
- 27 For documents prescribed by regs 2.38(2)(e)–(g) and 3(b) (i.e. the Product Disclosure Statement (PDS), the RSE's annual report, the Financial Services Guide (FSG) and the RSE licensee's financial statement, respectively), we proposed a same-day release. Our rationale for this was that there was no further work required on these documents, once finalised—except perhaps to reformat them for uploading to the website.
- 28 Most respondents opposed the proposal for the same-day release of these documents for the reason that it was too onerous. Some documents may only be approved late in the day or after normal business hours. Furthermore, technology teams can require a lead time for publication. The point was also made that PDSs often comprise a range of documents incorporated by reference and the uploading or updating would involve much more than just one document.
- 29 In CP 219, for PDSs and FSGs, we proposed the trigger to be when the document is first given to a retail client. Most respondents disagreed with this, submitting that it can be difficult to know when a document has been given to a client, particularly because many PDSs are given by a third party such as an employer. Also, a PDS is likely to be published on an RSE's website before it is first given to a client.

ASIC's response

To address most of the concerns raised by respondents, and to achieve as much consistency as possible, we have set a release time of 20 business days for publishing on the RSE's website all documents and information prescribed under reg 2.38(2).

We have largely maintained the triggers proposed in CP 219. For the disclosure documents prescribed under regs 2.38(2)(e)–(g), we have maintained the trigger of when the document is first given or made available to a retail client. We consider that the RSE licensee is free to publish the document on the RSE's website as soon as it is finalised and, in doing so, will meet the requirement without having to ascertain when the document is first given to a client.

We have changed some triggers to promote certainty. For example, for the governing rules, we have amended the trigger to be the later of (a) the date on which any amendments are executed, or (b) the effective date of the relevant amendments.

For information about executive officers or individual trustees under reg 2.38(2)(j), we have determined the trigger should be when a person is first appointed; or otherwise, the last day of the RSE licensee's most recently completed financial year. We have removed from the trigger the circumstance of when an executive officer's qualifications change.

C Updating obligation—Other comments

Key points

This section outlines the issues raised by respondents about other aspects of the updating obligation. We received submissions on both the timeframes for publication and the nature of the obligations themselves. These included comments on the publication of the following prescribed documents and information:

- actuarial reports;
- PDSs for employer-sponsored sub-plans;
- summaries of significant event or material change notices;
- details of outsourced service providers;
- annual reports of employer-sponsored sub-plans; and
- details of proxy voting policies and voting rights exercised.

Actuarial reports

- 30 There were many concerns raised about the publication of actuarial reports. Broadly, the concerns were that:
- (a) actuarial reports are technical documents likely to be of little value to the public, or possibly misunderstood;
 - (b) publication could give rise to privacy concerns where, in a fund with only a small number of members, details of individuals and their personal information such as salaries, insurance claims and retirement benefits could be ascertained; and
 - (c) actuarial investigations may, for example, recommend a large increase in an employer's contribution rate, affecting the profit outlook for the business. Some respondents opposed the publication of potentially price-sensitive information through an actuarial report of an employer-sponsored superannuation fund.

ASIC's response

We have amended the release time for actuarial reports from 14 days to 20 business days.

We may consider individual applications for relief for funds with few members where disclosure may result in a breach of privacy.

In assessing relief applications for funds with few members, we will consider whether personal or identifying information can be redacted (and if not, why not).

The purpose of s29QB is to make information available to everyone, and not just members. We envisage that external parties will use this information. We also feel that it is likely that a person seeking to view an actuarial report will have both a reason to view it and the ability to understand it. If a retail client is unlikely to understand the actuarial report, they are unlikely to seek it out.

We feel that, if information in the actuarial report is price sensitive, it will be required to be disclosed under the continuous disclosure obligations no later than it is disclosed through the actuarial report. The objective of the legislation is to increase transparency in the superannuation sector. To allow RSE licensees to avoid the publication of information because it is price sensitive would appear to undermine that objective.

PDSs for employer-sponsored sub-plans

- 31 Concerns were raised by most respondents about the requirement to publish plan-specific features, or plan summaries, that are incorporated into the PDSs of employer-sponsored sub-plans. Respondents expressed their preparedness to publish the product-level PDS (which we understand to be the public offer PDS) but were opposed to having to publish the summaries for sub-plans. The reasons for their opposition were that:
- (a) some funds had large numbers of employer-sponsored sub-plans and the volume of information would be too much to publish;
 - (b) consumers would be confused by having access to PDSs for plans that they were either ineligible to join or that were closed to new members; and
 - (c) fund members already had access to their PDSs through a member log-in.

ASIC's response

The publication of PDSs for employer-sponsored sub-plans is also the subject of relief applications, and ASIC is yet to finalise its policy in this area. Therefore, we will defer decisions about providing guidance on this issue until our policy is formed.

Some of the issues we will consider in forming this policy are:

- how the objectives of the provisions can be achieved if the different features of employer-sponsored sub-plans cannot be accessed by the public;
- if the PDS of an employer-sponsored sub-plan is made available on a website, whether it could contain a message that only employees of the relevant employer or other eligible persons may join the fund (we think it is unlikely that consumers who are not connected to the relevant employer will seek access to such a PDS); and
- that the provisions are meant to make the information available to many users, and not just to members.

Summaries of significant event notices

- 32 We sought feedback on our proposed seven-day release time for RSE licensees to update their website summary of significant event or material change notices (notices). We envisaged that RSE licensees would be able to quickly prepare a brief summary, as suggested in our guidance in our Stronger Super FAQ D2 *What is a summary of each significant event or material change notice?*
- 33 Most respondents considered that the proposed seven-day release time was insufficient for the following reasons:
- (a) For many large funds, member mailings are staggered to make volumes acceptable for mail houses and Australia Post. The staggered mailout can take up to three weeks. A seven-day release time may result in summaries of notices appearing on the website before an affected member is notified in the mail.
 - (b) When notices are to be sent to large numbers of members, this may require significant restructuring of the website so that notices can be located where they can be easily accessed by members.
 - (c) The timeframe does not allow for:
 - (i) holiday periods where the number of business days is reduced;
 - (ii) absences of key staff; and
 - (iii) website downtime or time to give instructions to a third party when the website operation is outsourced.
- 34 Furthermore, respondents considered that the inconsistency between the 14-day, seven-day and same-day requirements proposed in CP 219 added confusion and complexity.
- 35 One respondent commented that, where there are a large number of sub-plans, most notices relate to a particular sub-plan with few members compared to a public offer fund. It was suggested that summaries of notices should only be published on the website when the particular notice applies to all or a majority of members.

ASIC's response

We have set a release time of 20 business days for publishing summaries of notices on an RSE's website. We consider that this release time accommodates most of the concerns expressed by respondents regarding a reasonable time period for updating the website with this information.

We do not consider that the objective of the legislation will be achieved by only requiring publication of the notices that apply to the majority of members. This may inhibit transparency in respect of matters that do not affect the majority of members but are, nonetheless, very significant. Therefore, summaries of all significant event notices are required to be published.

Outsourced service providers

- 36 In CP 219, we proposed that the trigger for updating the details of outsourced service providers on the RSE's website should be 'when a person is first appointed as an outsourced service provider'. We received some feedback on the proposed trigger, which stated that the trigger should be when the service agreement is executed.
- 37 We also received a query about whether the requirement under reg 2.38(2)(i) extended to publishing information about the ceasing of an external service arrangement.

ASIC's response

We have set a release time of 20 business days for publishing the prescribed information on outsourced service providers, which is consistent with all of the release times for reg 2.38(2).

We have amended the trigger for updating the website to when the external service agreement is executed.

Annual reports for employer-sponsored sub-plans

- 38 Concerns were raised about publishing the annual reports of employer-sponsored sub-plans. Respondents felt that it would be more appropriate to publish the annual report for the public offer fund and not those for the employer-sponsored sub-plans. They felt that including the annual reports for the sub-plan would confuse members and that it was more appropriate for the information to be accessed through a member log-in.

ASIC's response

We consider that limiting access to the annual reports of employer-sponsored sub-plans to members through a log-in will not achieve the desired objectives of market transparency and accountability, and assumes that this information will only be used by members.

Voting

- 39 In CP 219, we proposed a release time of 14 days for publication of both the RSE licensee's proxy voting policies and the summary of how the entity has exercised its voting rights in relation to shares in listed companies during the previous financial year. While there was some support for the 14-day release time, other respondents stated that more time was necessary.
- 40 One respondent suggested that the proposed timeframe was too short for trustees to obtain the information from their custodian on voting rights exercised, and suggested that the trigger for publication should be from the time that the information is received from the custodian.

- 41 Concerns were raised about the volume of voting information, including the extent of detail required to be disclosed under reg 2.38(2)(o). One respondent suggested that the voting disclosure should be modelled on Financial Services Council Voting Standard No. 13.
- 42 Respondents also queried whether there would be a requirement to disclose votes exercised in relation to bonds and other debt instruments or units held in a unit trust.
- 43 Another query related to how RSE licensees should report on voting behaviour when they have multiple managers holding the same shares across different funds and vote differently—for example, if one fund manager votes in favour of a resolution while another fund manager votes against it.

ASIC's response

We note respondents' concerns about the volume and detail of the information required about voting rights exercised, and whether a materiality threshold is appropriate.

We understand reg 2.38(2)(o) to apply only to voting behaviour in relation to shares in listed companies. We therefore consider that there is no requirement to disclose information about voting on debt assets or units in a fund.

It has been suggested that a standard should be set by industry—perhaps modelled on existing industry standards. We may consult in the future on whether this would be an appropriate approach.

Appendix: List of non-confidential respondents

- AMP
 - ANZ Banking Group Ltd
 - ASFA (Association of Superannuation Funds of Australia)
 - Australian Institute of Superannuation Trustees (AIST)
 - AustralianSuper
 - BT Financial Group
 - Commonwealth Bank of Australia
 - Corporate Super Association
 - CPA Australia
 - Industry Super Australia
 - Institutional Shareholder Services
 - Law Council of Australia
 - Mercer
-