

ASIC CLASS ORDER [CO 14/592]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Superannuation Industry (Supervision) Act 1993

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Class Order [CO 14/592] under subsection 332(1) of the *Superannuation Industry (Supervision) Act 1993* (the **Act**).

Subsection 332(1) provides that ASIC may, in writing, declare that a modifiable provision is to have effect, as if it were modified as specified in the declaration, in relation to a particular person or a class of persons or a particular group of individual trustees or a class of groups of individual trustees. The modifiable provisions include a provision of Part 2B of the Act and a provision of regulations made under Part 2B.

1. Background

On 29 May 2009, the Government commissioned the Super System Review to make recommendations to improve the superannuation system. The Review's final report was handed to the Government on 30 June 2010.

The Government's response to the Review was a package of reform recommendations entitled Stronger Super (the **reforms**). These reforms included strengthening the governance, integrity and regulatory settings of the superannuation system including enhancements to the disclosure and reporting requirements for superannuation (**systemic transparency measures**).

One of the objectives of the systemic transparency measures is to increase transparency and accountability in the superannuation sector. The Government noted that a large amount of information was only available to members through request or on the member only section of the fund's website. Greater transparency required certain information to be made available to the public as well.

To promote systemic transparency, section 29QB of the Act requires the publication, on the public section of the fund's website, of information and documents prescribed in regulations 2.37 and 2.38 of the *Superannuation Industry (Supervision) Regulations 1994* (**Regulations**). These requirements, originally scheduled to commence on 1 July 2013, have been deferred by ASIC Class Orders [CO 13/830] and [CO 13/1275] and now come into effect on 1 July 2014.

Under these requirements, an RSE licensee of a registrable superannuation entity will be required to make publicly available and to keep up to date at all times, on the registrable superannuation entity's website, details and remuneration of executive officers and individual trustees and information and documents relevant to the superannuation fund.

ASIC Class Order [CO 14/509] clarified the requirement under section 29QB of the Act that superannuation websites must be kept up to date at all times. To achieve this, that class order provided RSE licensees with a safe harbour so that if they update the registrable superannuation entity's website within the time frames prescribed they will be taken to comply with the updating obligations under section 29QB.

[CO 14/509] also modified regulations 2.37 and 2.38 of the Regulations by clarifying how references to 'financial year' are to operate in various circumstances.

2. Purpose of the class order

The purposes of Class Order [CO 14/592] are to:

- amend [CO 14/509] so that information required under paragraphs 2.38(2)(j) and (k) of the Regulations is to be provided in relation to the financial year of the relevant RSE licensee rather than the financial year of the registrable superannuation entity;
- enable information required under paragraphs 2.38(2)(a), (b), (d), (e), (f) and (h) of the Regulations to be redacted to exclude personal information of fund beneficiaries and former beneficiaries; and
- defer the start date until 1 July 2015 for certain disclosures required pursuant to subsection 29QB(1) of the Act for standard employer-sponsored sub-plans. This will provide further time for consideration of the commercial sensitivity issues that arise in the context of these types of sub-plans.

3. Operation of the class order

[CO 14/592] amends [CO 14/509] so that the financial year of the RSE licensee will apply in relation to information required under paragraphs 2.38(2)(j) and (k) of the Regulations. Where the information relates to an individual trustee, the financial year will be the period of 12 months ending on 30 June.

[CO 14/592] also amends [CO 14/509] so that instead of making available and updating a document referred to in any of paragraphs 2.38(2)(a),(b),(d),(e),(f) and (h) of the Regulations, an RSE licensee may make available and update a version of that document that has been redacted to exclude information that is personal information in relation to a beneficiary of the RSE. Personal information is defined by reference to subsection 6(1) of the *Privacy Act 1988*.

Further, [CO 14/592] amends [CO 14/509] to defer the start date of disclosure requirements in relation to such documents until 1 July 2015 for standard employer-sponsored sub-plans. This means that in respect of standard employer-sponsored sub-plans, RSE documents such as product disclosure statements, trust deeds and governing rules, actuarial reports of defined benefit funds, annual reports and summaries of significant event notices do not have to be published on the RSE's website until 1 July 2015 or may be redacted if the document relates to both the sub-plan and the RSE more generally.

The class order defines the term 'standard employer-sponsored sub-plan' as meaning a segment of a public offer superannuation fund. The effect of this definition is that the relief will not apply to a corporate fund that is not a segment of a public offer superannuation fund.

The class order deals with both non-publication of documents (where the document only relates to the sub-plan) and redaction (redaction of information relating to the sub-plan is permitted for documents that do not only relate to the sub-plan).

This deferral is intended to allow time for more consultation in respect of RSE documents that contain potentially sensitive information in relation to standard employer-sponsored sub-plans. As a result of feedback received from industry, ASIC understands that most issues regarding commercially sensitive information relate to sub-plans as defined in [CO 14/509]. There is no intention to extend the scope of this deferral to other documents or information required by regulations 2.37 and 2.38 of the Regulations.

Finally, the amendments also correct incorrect cross-references to regulation 2.38 of the Regulations that were originally contained in notional subregulation 2.38(5) of the Regulations as made by paragraph 6 of [CO 14/509].

4. Consultation

When regulations 2.37 and 2.38 were released, feedback from industry indicated uncertainty around the meaning of the term 'up to date at all times'. ASIC released Consultation Paper 219 *Keeping superannuation websites up to date* in November 2013 (CP219), and obtained industry's comments on its proposed times for publication of the various matters required by these regulations. ASIC accepted a number of points made by industry and released [CO 14/509] and Regulatory Guide 252 *Keeping superannuation websites up to date* to clarify how RSE licensees can comply with the obligation to keep registrable superannuation entities' websites up to date.

Responses to CP219 also raised concerns that some documents required to be published under regulation 2.38 may contain the personal information of members. We have responded to that concern by enabling the redaction of personal information in certain documents.

ASIC received further feedback on concerns about the commercial sensitivity of the some of the material that may be disclosed under subsection 29QB(1). The deferral of this provision as it applies to standard employer-sponsored sub-plans will facilitate further consultation on these issues.

The Office of Best Practice Regulation confirmed that a Regulation Impact Statement was not necessary.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Class Order [CO 14/592]

This class order is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the class order

Class Order [14/592] amends ASIC Class Order [CO 14/509].

Class Order [CO 14/509] relates to regulations 2.37 and 2.38 of the *Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations)*, which were made under section 29QB of the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*. These provisions require the licensee of a registrable superannuation entity (RSE) to make publicly available, and to keep up to date at all times, on the registrable superannuation entity's website:

- a) details of executive officers and individual trustees, including their remuneration (regulation 2.37); and
- b) various items of information relating to the relevant superannuation fund, such as trust deeds and summaries of significant event notices given to members of the fund (regulation 2.38).

Class Order [CO 14/509] provides RSE licensees with a 'safe harbour' so that if they update the RSE's website within the time frames prescribed they will be taken to comply with the updating obligations under section 29QB.

The amendments made by Class Order [CO 14/592] to Class Order [CO 14/509] have the effect that certain information is to be provided in relation to the financial year of the RSE licensee, rather than the financial year of the RSE.

The amendments also defer the start date until 1 July 2015 for certain disclosures required pursuant to subsection 29QB(1) of the Act for standard employer-sponsored sub-plans. This will provide further time for consideration of the commercial sensitivity issues that arise in the context of these types of sub-plans.

Finally, for documents that may contain personal information of beneficiaries, the amendments enable an RSE licensee to make available and update a version of a document that has been redacted to exclude such personal information.

Human rights implications

Class Order [CO 14/592] is protective of the human right to privacy under Article 17 of the *International Covenant on Civil and Political Rights* (Article 17). Article 17 prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence.

Section 29QB of the SIS Act and regulation 2.38 of the SIS Regulations require an RSE licensee to publish certain documents on the RSE's website. Some of these documents may contain personal information about beneficiaries of the relevant superannuation fund. As mentioned above, Class Order [CO 14/592] allows the RSE licensee to redact personal information about beneficiaries from documents published on the RSE's website.

Conclusion

This class order is compatible with human rights as it is protective of the human right to privacy under Article 17 and does not otherwise raise any human rights issues.