



Australian Government

The Treasury

POST IMPLEMENTATION REVIEW:

Systematic transparency

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Purpose of the post-implementation review

Under the Australian Government's Best Practice Regulation Handbook (July 2013) a regulation impact statement is required for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on business or the not-for-profit sector, unless that impact is of a minor or machinery nature.

A regulation impact statement was prepared for the Stronger Super legislation package (the Australian Government's initial response to the Super System Review (Cooper Review)). However, the regulation impact statement did not cover all of the elements of the Stronger Super legislation package, including the subject of this review, section 29QB relating to systematic transparency. For those elements that were not covered, exceptional circumstances were granted by the Prime Minister at the decision making stage to exempt them from the regulation impact statement requirements.

However, because a regulation impact statement was not prepared, a post implementation review is required to be completed within two years to ensure compliance under the best practice regulation requirements. The purpose of this PIR is to assess the efficiency and effectiveness of section 29QB in facilitating systematic transparency within the superannuation regulatory framework.

Background

Section 29QB, which relates to systematic transparency in the superannuation regulatory framework, was a part of the Government's Stronger Super response to the Super System Review chaired by Jeremy Cooper. The terms of reference of the Super System Review was to comprehensively examine and analyse the governance, efficiency, structure and operation of Australia's superannuation system, including both compulsory and voluntary aspects. The Stronger System Review was conducted around the concepts of the best interests of the member and the maximising of retirement incomes for Australians, with reference to improving the regulation of the superannuation system, while reducing business costs within the system. It recommended that:

Recommendation 4.17 — Trustees of large APRA funds should maintain a website that provides, free of charge, systematic transparency about the fund and the fund's management.

The government added section 29QB to the *Superannuation Industry (Supervision) Act 1993* in December 2012 as a result of this recommendation. Section 29QB aims to improve systematic transparency by obliging a licensee of a registrable superannuation entity (RSE) to publicly disclose on its website:

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

Section 29QB requires this information to be publicly available on the RSE's website and kept up to date at all times. Failure to comply with this updating obligation is a strict liability offence with a penalty of 50 penalty units.

The *Superannuation Industry (Supervision) Regulations 1994* was amended in 2013 to prescribe the information required to be set out on an RSE's website. In particular:

- (a) regulation 2.37 sets out the prescribed remuneration details; and
- (b) regulation 2.38 sets out other prescribed information and documents relating to the RSE and RSE licensee.

Although the operation of section 29QB was due to commence on 1 July 2013, ASIC issued Class Orders (CO 13/830 and 13/1275) which had the effect of delaying the commencement of section 29QB until 1 July 2014. Also, ASIC wrote to affected trustees on 20 August 2014 stating that it would apply a facilitative compliance message with regards to the requirements of section 29QB until 1 July 2015.

Problem and reason for government action

In June 2010, the Super System Review stated that although it is not expected that ordinary Australians be investment experts or read complex information about their super, there is a great deal of benefit in financial markets in 'systematic transparency' — disclosure and information available to the system at large, including to regulators, academics, analysts, advisers and informed investors.

The Review concluded that this systemic transparency was largely missing in the Australian super system. There was too little high quality information available to experts who would be able to use such information for the ultimate benefit of members as a whole. The relevance to the average member was not the issue — the Review considered that there are other benefits flowing from low-cost transparency afforded by the availability of information on a fund's website.

The Review found that although trustees were already required to make available many documents to members free of charge and on request, it was unduly restrictive for members to have to request this information and sub-optimal for the industry as a whole that the information is only available to members. There appears to be no reason why documents and information must first be requested before they can be accessed (particularly when the trustee is obliged to make that information available upon request), and why this material should not be routinely published by trustees on the fund's website. The Review also concluded that information about a fund made available on the fund's website should be freely available to members and non-members alike, with 'members only' sections kept to an absolute minimum where privacy and confidentiality considerations would legally require the trustee to restrict access.

The Review considered that there needs to be a low cost but dramatic change in the area of systematic transparency. Superannuation funds (excluding small self-managed superannuation funds) had seen themselves as different from other businesses. However, the Review considered that since superannuation is a heavily tax-subsidised 'public good', trustees of superannuation funds must get used to being more transparent about their funds.

Objectives

The Review recommended new standards for web-based systematic transparency for all large APRA funds (Recommendation 4.17, quoted above at page 1). The government accepted the recommendation and implemented it through section 29QB which, as noted earlier, imposed a strict liability offence for failure to comply with the disclosure requirements in order to bring about the desired dramatic change. The Revised Explanatory Memorandum accompanying the relevant legislation further elucidated on the need for systematic transparency by indicating that:

- (a) the amendments, including website disclosure of remuneration and other information, are designed to improve transparency, comparability, and, consequently, accountability in Australia's superannuation system;
- (b) because superannuation is a compulsory system of retirement savings, RSE licensees should ensure that there is complete transparency about the financial products that members have an equitable interest in; and
- (c) because a large amount of information is currently only available to RSE members by request, or through members-only section of the website, regulations would prescribe certain documents to be published on the public section of the website.

The implementation of the requirement that the information be publicly available on the RSE's website and kept up to date 'at all times' did, however, require further refinement. In particular, even though 'at all times' suggested that website updating had to be immediate, the business community considered that this was impractical. Accordingly, a number of options were developed for consultation to address the impracticality of immediate disclosure.

Three options were subject to consultation:

- Option 1 — the law would be modified to give RSE licensees a 'safe harbour', so that if they update the RSE's website within a certain time period, they would be taken to comply with the obligation to keep the website up to date at all times. This would be achieved by an ASIC Class Order. This Option aimed to address the issue in a way that provided greater certainty.
- Option 2 — the law would not be modified, but guidance would be issued on the obligation to keep the website up to date at all times. There would not have a safe harbour, but RSE licensees would be aware of the policy in relation to the obligation to keep the website up to date at all times. This Option aimed to address the issue in a way that was simpler to implement.
- Option 3 — no class order or guidance would be provided. This Option aimed to address the issue in a way that was more flexible, taking into account how RSE licensees already operate.

Sixteen responses were received from industry associations, retail funds, and industry funds in relation to the three options. Seventy five percent of the respondents were supportive of Option 1, due to the greater certainty it provided. The details of the safe harbour, particularly pertaining to the prescribed time periods, were modified as a result of consultation, and the safe harbour was implemented in ASIC Class Order 14/509, effective 3 July 2014. The Class Order also allowed redacting of information in appropriate circumstances and, together with Class Order 14/592, excluded employer specific sub-plans from section 29QB until 1 July 2016.

Impact analysis

Four responses were received to requests for data for the purpose of this review, with two responses setting out full estimates of implementation and ongoing costs of compliance with section 29QB, and the number of external webpage hits. One of these responses set out the number of member accounts affected by the costs. The other two responses contained estimates of the implementation costs only.

Data received in the course of consultation suggests that the costs of implementing changes to comply with section 29QB as modified by ASIC Class Orders 14/509 and 14/592 is somewhere around \$50,000 to \$150,000 per fund, with ongoing annual cost estimates ranging from \$6,000 to \$40,000 per fund. As there are 247 APRA regulated funds as at June 2015, this suggests an initial industry compliance cost of around 21 million with ongoing annual costs of around 3.9 million, albeit with poor reliability due to the small sample and limited data received. Spread over 30 million member accounts, the cost of implementing changes to comply with section 29QB would be estimated at less than a dollar per account, with ongoing costs of around 15 cents per annum per account. The Regulatory Cost Burden Measurement is outlined below.

Average annual regulatory costs (from business as usual)

Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$5,984,000	-	-	\$5,984,000

Responses also indicate that per annum, the number of website hits to web pages that contain section 29QB information is around 0.02 per cent of member accounts, or an estimated 6,000 website hits in the first and to date the only year of operation of the systematic transparency requirements, or about 17 hits per APRA regulated superannuation fund.

As noted in the beginning of this report, however, the key issue is how this access has been used by members' proxies (regulators, academics, analysts, advisers and certain informed investors), and how the disclosure of information has affected decisions that affect members. There is little information about either consideration, however some observations can be made about the use of information by proxies.

First, as there has only been, to date, one full years' worth of data, the use of such information to prepare multi-period analysis (i.e. time series or panel data analysis) is limited. Over time, inter-period analysis will become more applicable as greater trend data is made available.

Second, ASIC has only commenced enforcement on a business as normal basis from 1 July 2015. Prior to that, ASIC had enforced the requirements of section 29QB consistent with a facilitative compliance message — see download.asic.gov.au/media/2048546/letter-to-trustees-asic-apra-20-august-2014.pdf. As a result, the regular incentives resulting from section 29QB to alter behaviour have not applied for a significant period of time.

Finally, the information provided under section 29QB could be improved, and may not be at a standard that easily allows members' proxies to prepare reliable reports. ASIC has surveyed superannuation websites to check the quality and timeliness of required information. Superannuation trustees have made a good (but not perfect) effort to comply with section 29QB and

have presented the required information in a variety of ways that could reduce the reliability of efforts to compare data.

A summary of the results of the ASIC's survey are reproduced in the table below.

Table 1: ASIC survey into section 29QB disclosure

Timeliness of disclosure	<p>In general trustees have been updating their websites on time. However, often websites publish a list of current executive officers (directors and senior managers) every October and April. When the trustee appointed a director in January, the website did not record this until April which is too late to comply with section 29QB.</p>
Ease in locating information	<p>Information was not generally found in one place (for example, via a link on the homepage called something like 'Transparency Information under SIS Act s29QB' or 'SIS Act s29QB website information').</p> <p>On average, Transparency Information was 3 or 4 clicks away from the homepage. It was sometimes difficult to find it by starting at the home page — often had a website searching tool or the site's search function had to be used.</p> <p>An example of a difficult pathway for a conglomerate with several trustees (where '>' symbolises clicking a hyperlink): Scroll down to the site map at the bottom of the homepage > About us > scroll down to Trustee details > Trustee documents > [Trustee name] > Remuneration disclosure.</p> <p>However, once one information item was located, it was usually relatively easy to find the others.</p>
Identification of executive officers of the trustee of the superannuation fund	<p>Executive officers comprise trustee directors and senior managers. Trustees appear to have readily followed ASIC guidance on which senior managers are executive officers. Position titles of senior managers whose remuneration was disclosed include: Chief Executive Officer, Deputy CEO, Chief Investment Officer, General Counsel & Company Secretary, Chief Risk Officer, Chief Financial Officer, Chief Actuary, Fund secretary, Executive Manager (EM) Administration & Insurance, EM Member Advice, General Manager (GM) Strategic Relations, GM Marketing & Communications, GM Information Systems and Head of Infrastructure.</p>
Disclosure of the periods that executive officers have served as board members	<p>Websites did not always set out the periods that executive officers (directors and senior managers) had served on boards as required by section 29QB. Some sites disclosed the periods of board service for directors but not for those senior managers who had previous board experience.</p>

Table 1: ASIC survey into section 29QB disclosure cont.

<p>Disclosure of executive officers remuneration as nil</p>	<p>Corporate groups whose employees act as directors of a superannuation trustee in the group sometimes disclose those directors’ remuneration in relation to the trustee as nil, because a group company other than the trustee pays them. Except where a director carries out director services in a voluntary capacity, for example, in their own time after hours or whilst on annual leave, the website should disclose the director’s remuneration as a positive, not nil, amount. Trustees who pay remuneration to another organisation, instead of paying it directly to the executive officer, generally disclose the amount against the executive officer’s name and use an annotation or footnote to record that it was paid to the organisation. This a good way of giving effect to SIS reg 2.37(1) Item 16. One trustee disclosed its executive officer remuneration in bands. Although this was once permitted for listed company executives, in the superannuation context, remuneration must be disclosed at an individual trustee or executive officer level.</p>
<p>Voting summaries</p>	<p>Superannuation trustees are required to summarise how they voted in relation to shares in listed companies during the last financial year (under reg 2.38(2)(o)). Some trustees did so only for shares in Australian listed companies but others also disclosed how they voted in relation to listed international companies. Trustees should summarise how they voted in relation to Australian and international listed companies.</p> <p>Where the trustee’s policy is not to vote on listed shares, disclose that there is no voting summary (to avoid users looking for something not there). If the trustee’s policy is not to vote in relation to listed shares held by the superannuation fund, we think it desirable that the super fund’s website explicitly say that there is no voting summary (to avoid users looking for something not there).</p> <p>Where voting summaries comprise a table listing how votes were cast on specific resolutions, consider including an overview (like an executive summary) — this might include showing overall voting by resolution type and simple graphics (e.g. pie charts). There is a variety of practice in relation to voting summaries. Nearly all funds have a table listing the resolutions in abbreviated form, grouped by listed company showing how they voted (e.g., for, against or abstain). In addition, the best voting summaries also provided an overview of the way the trustee voted. We encourage super websites to include such overviews.</p>
<p>Significant event notice (SEN) summaries</p>	<p>Super websites are required to include a summary of SENs issued to members in the last 2 financial years. We found that super trustees are using the model suggested by ASIC in Stronger Super FAQ D2 or have adapted it in a way that suits them.</p>

On an ongoing basis, the Government is engaging with the business community through ASIC on compliance with section 29QB as it currently operates, modified by ASIC Class Orders 14/509 and 14/592.

The Government is also engaging with the business community through Treasury on the application of section 29QB to superannuation fund employee sponsored subplans (currently excluded from section 29QB due to ASIC Class Order 14/592). Indeed, the business community's relatively greater engagement on the application of section 29QB to employee sponsored subplans compared suggests that business community concerns lie with that issue, rather than section 29QB as it currently operates.

Consultation

Surveys requesting information about the costs of compliance with section 29QB was sent via the Financial Council of Australia, the Australian Superannuation Funds Association, Australian Super and the Australian Institute of Superannuation Trustees to the membership of those organisations. As discussed above, four responses were received. This is in contrast to sixteen responses received on the formulation of a safe harbour around the disclosure of information. The ratio of responses received for this post implementation review and the responses received to the formulation of a safe harbour could suggest relative acceptance of the form of section 28QB as it currently stands.

Net benefit of regulation

The effect on superannuation governance of the increased availability of information is difficult to estimate — the data shows that the web pages mandated by section 29QB have been accessed, but it is too early to ascertain whether that is being used to provide meaningful information for superannuation fund members, or whether the availability of information has improved superannuation governance.

Over time, as greater data becomes available and ASIC compliance action improves the reliability (and therefore comparability) of data, it should become clearer about the effect of section 29QB on systematic transparency. Regardless, the moderate cost of the measure, together with the ratio of implementation costs to ongoing compliance costs (around 6:1), together with the likelihood that ongoing compliance costs will reduce as familiarisation improves, supports the proposition that the elements of section 29QB in operation should be maintained pending greater evidence that it does not provide the expected benefits that come from improved systematic transparency.

Conclusion

The requirements designed to improve systematic transparency contained in section 29QB have been in operation for only a little over one year, and for most of that time the incentives created by the legislation have not been in full effect due to a facilitative compliance approach that was applied. The implementation of the section has benefitted from extensive engagement with the business community, resulting in various mechanisms to reduce the inadvertent compliance burden, such as a facilitative compliance approach, a commencement date that was delayed by a year, as well as extensive consultation on safe harbours around the timing of disclosure and the application of disclosure requirements to employer sponsored subplans (this consultation is ongoing).

Post-Implementation Review

Based on the data received, the compliance cost of the measure to superannuation funds is estimated to be low. Although the nature of the data reduces the reliability of the estimate, the implementation costs of complying with section 29QB to date is estimated to be less than a dollar for each member account, and around 15 cents per annum on ongoing compliance costs.

The effect of this regulation is hard to estimate at this stage, but over the effects should become clearer. Regardless, the moderate cost of the measure, together with the ratio of implementation costs to ongoing compliance costs (around 6:1), together with the likelihood that ongoing compliance costs will reduce as familiarisation improves, supports the proposition that the elements of section 29QB in operation should be maintained pending greater evidence that it does not provide the expected benefits that come from improved systematic transparency.