

SUBMISSION

Submission to Treasury —
Trustees of Registrable
Superannuation Entities
(RSE) should hold no
other role or office

28 February 2020

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Retirement Income Policy Division
Treasury
Langton Cres
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Via email: FSRCconsultations@treasury.gov.au

28 February 2020

Dear Sir / Madam,

Royal Commission Recommendation 3.1 – Trustees of Registrable Superannuation Entities (RSE) should hold no other role or office

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation on this matter.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.9 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 16 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact me on (02) 8079 0815 or by email jcabarrus@superannuation.asn.au. We acknowledge that the deadlines for this consultation are tight but we would welcome the opportunity to discuss our submission with you if time permits.

Yours sincerely



Julian Cabarrus
Director of External Affairs and Strategy

Rec 3.1 – RSEs should hold no other role or office

ASFA supports this recommendation in principle. Our concern is with the proposed transitional arrangements.

We discuss these concerns in further detail below.

Transitional Issues

Commencement date

The 1 July 2020 commencement date is not achievable for many impacted trustees. Separating out the Registrable Superannuation Entity (RSE) and Responsible Entity (RE) functions of a dual regulated entity requires a significant restructure of the corporate business and operating models supporting each entity and more time is required to implement a change of this magnitude.

A hard 1 July 2020 commencement date compromises the interests of superannuation fund members by exposing them to operational and regulatory risk.

Additionally, in the absence of final legislation, it is difficult for trustees to decide how they will implement the significant structural changes required. The proposed legislation still needs to go through both Houses of Parliament and can be subject to amendments. Restructuring corporate businesses and operating models is a costly and time intensive exercise. Should the proposed legislation be subject to amendment as it progresses through Parliament, any changes a trustee has implemented or is in the process of implementing might need to be reversed or changed at a significant cost.

Implementation aspects to consider in setting an appropriate commencement date

There are a wide range of implementation issues for affected entities to work through.

Several activities may need to be undertaken (dependent on the nature of the restructure) to implement the new requirements, which are estimated to take 12 to 24 months to complete. Some of these activities include:

1. Approval of the proposed change in structure
2. Notify members and hold member meeting (if relief not provided)
3. Due diligence and framework set-up for new RSE
4. Review of all legal contracts and arrangements that the entities are party to. Novation or renegotiation of new contracts, including negotiation time and notice periods, is likely to be required. Some examples of contracts needing novation or renegotiation include:
 - Investment management agreements
 - Custodian agreements
 - Other key vendors' agreements
5. Global custody market re-registration of assets and submission of required documentation (e.g. new Deeds, Product Disclosure Statements (PDS), Certificates of Residency). All these documents require notarisation.
6. Other Trust Deed Amendments if required
7. RSE licence and Australian Financial Services Licence (AFSL) applications
 - Initial application
 - Regulator engagement
 - Review and approvals by regulators – noting an influx of requests may result in slower approvals

8. New Fund development and transition of assets
9. Appointment of Transition managers (incurring transition costs in some instances)
10. Some fund rationalisation may be required to protect interests of members
11. De-registration of some funds if they cannot meet minimum investor requirements
12. System changes including registry, member statements and website. This will occur at a time when entities already have a backlog of regulatory changes to deal with.
13. Finance changes including:
 - New general ledgers
 - Tax implications
 - Re-mapping of revenue and cost
 - System and reporting changes
14. PDS and disclosure collateral amendments. PDS rolls are a lengthy process, which can only be implemented once new entities are established.
15. Updates to all web content, printed material and templates in use to reflect new entities
16. Changes to standard operating procedures, policies and reports used in all entities
17. ASIC and ATO notification of changes and time for regulatory bodies to update their registers
18. Member communications, communications to distribution channels, and AFSL communications
19. Product pricing considerations
20. Human resources engagement and renegotiation of individual employment contracts

In addition to the elapsed time required to undertake all these activities there are other factors impacting the overall time taken to implement this change. These include the consideration of implementing changes on or around the end of financial year (EOFY) if the commencement date continues to be 1 July 2020. The EOFY is typically an industry blackout period to deal with financial reporting, issue of statements and associated requirements.

Transition plans will also need to allow time for regulatory approvals, where necessary.

For example, according to correspondence received from ASIC by some trustees, when applying for or varying an AFSL ASIC aim to decide whether to grant or vary an AFSL within 150 days of receiving a complete application. According to ASIC's Service Charter, ASIC aims to decide whether to grant or vary an AFSL within 150 days 70% of the timeⁱ.

The same Charter states that ASIC aims to decide 90% of the time whether to grant or vary an AFSL within 240 days. ASIC did not meet the 90% target in 2018-19 in granting AFSLs, showing that ASIC may take longer than 240 days to make a decision on these applications.

In the absence of legislative changes to the *Corporations Act 2001* to grant relief from calling and holding a member meeting, ASIC has indicated they will require time to review and deliberate upon applications for relief under RG 136 prior to making determinations. This will add additional time to complete restructures.

Adequate time is also needed to carefully consider any impact upon members and unitholders, including transaction costs and tax implications that may arise, in developing an appropriate transition plan. Trustees should not have to compromise member outcomes due to short compliance timeframes.

In certain circumstances, where assets need to be sold to facilitate the restructure, capital gains tax (CGT) relief may be required to avoid costs being passed on to superannuation fund members. In the absence of CGT relief being provided, an application to the ATO for a ruling to clarify the tax treatment of changes made to fulfil the legislative requirements will further delay implementation.

Recommendation

A transition period of at least 12 months from the date of Royal Assent should be provided in the legislation.

- This would provide a reasonable timeframe to implement the requirements and prevent undue operational and regulatory risk being conferred on superannuation funds.
- APRA's discretion power should be exercised from the end of this transition period, in circumstances where entities require additional time to complete the wide range of implementation activities.

APRA's discretion power

One of the challenges arising from a hard commencement date is that APRA does not have the power to exercise their discretion to provide relief under part 29 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) until the legislation is passed. This places superannuation funds in a precarious position where they will not have certainty as to relief until close to the commencement date of the legislation.

APRA should standardise the information requested of impacted entities to streamline the extension relief process. APRA should also provide indicative assessments to trustees as to whether relief will be granted and/or what further information is required to access relief well in advance of exercising their discretion.

A 12-month transitional period in the legislation would be beneficial to both APRA and the industry in facilitating this process and limit the need for APRA to exercise their discretion to a narrower set of entities.

Further relief

Paragraph 1.43 of the explanatory memorandum contemplates the provision of relief under section 601FL of the *Corporations Act 2001* requiring a RE to call and hold a member meeting in relation to circumstances where the RE function is to be transferred to another entity within the same corporate group for the purposes of complying with the new licence condition.

We recommend that this relief be made part of the final legislation to assist trustees in implementing these changes in a timely manner.

ⁱ <https://asic.gov.au/about-asic/what-we-do/how-we-operate/performance-and-review/asic-service-charter/asic-service-charter-results-2018-19/>