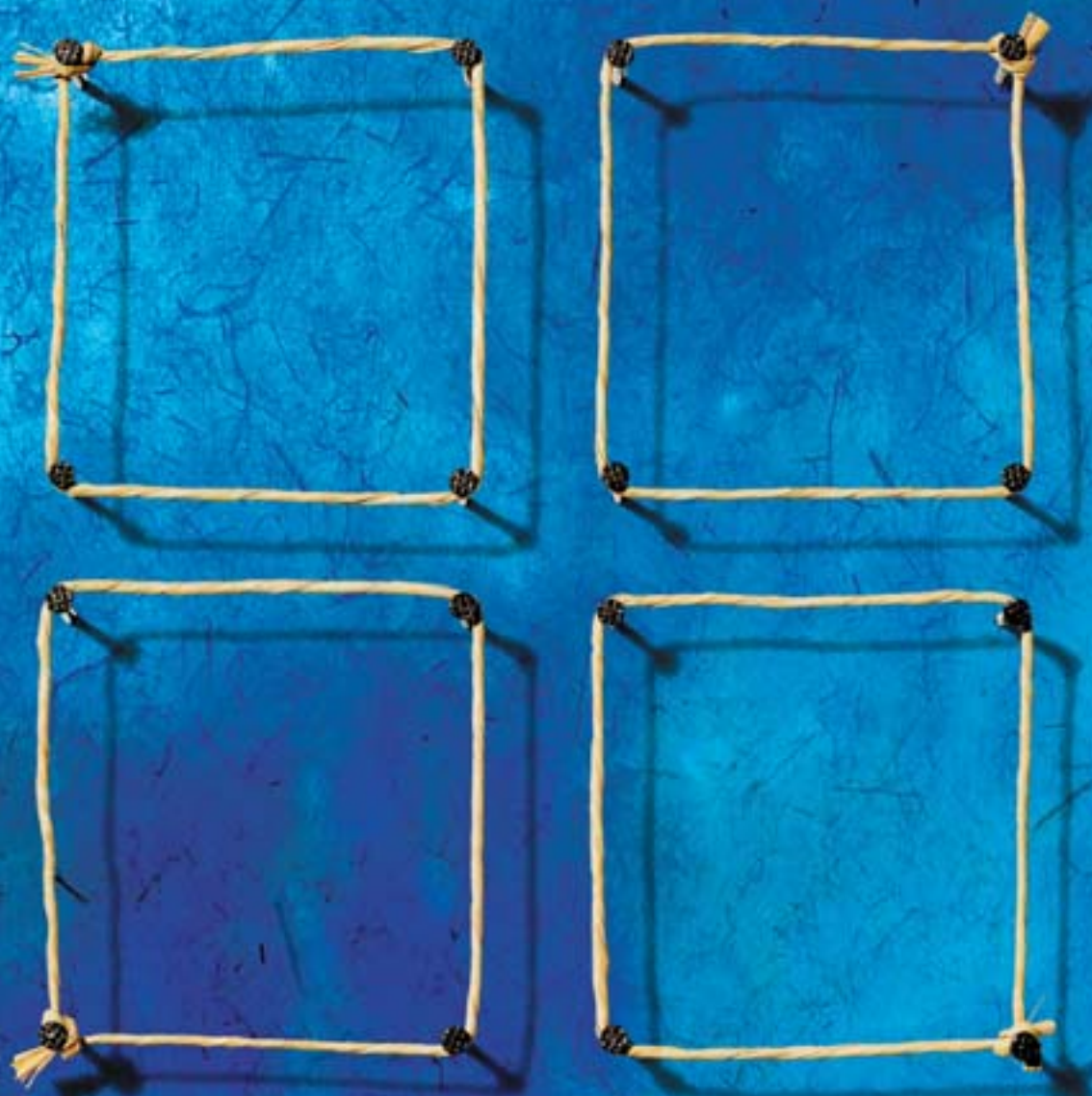




Superannuation

Licensing and registering a superannuation entity

Explanatory guide on licensing and registration



Introduction

Applicants must read this Guide prior to completing either the licence or registration application forms. Its purpose is to provide general information on the licensing of superannuation trustees and the registration of superannuation entities. It does not constitute legal advice. Applicants may wish to seek professional advice on how the legislation and regulations apply to their application.

There are three sections to the licensing and registration kit:

- the explanatory guide for licensing and registration (this document);
- the licence application (including Forms A1.0 - A6.0); and
- the registration application.

For further information, visit APRA's website at www.apra.gov.au or contact APRA on 1300 131 060 or by email at superannuationlicensing@apra.gov.au

Contents

Penalties for false or misleading information	4
Checklist of terms	5
General information	6
Who needs to hold an RSE licence and register superannuation entities?	6
When do trustees need to apply?	6
Implications of operating without a licence	6
What if the requirements change over the transition period?	6
What type of entity can apply for a licence?	6
Why do trustees need another licence in addition to the AFSL?	6
What happens after trustees are licensed?	7
The licensing process	8
Step 1: obtaining a kit	9
Step 2: identifying the class of licence	9
Step 3: completing the application forms	9
Step 4: lodging the application forms	10
Step 5: assessing by APRA	10
Step 6: receiving the RSE licence	11
Step 7: lodging a final registration application	11
Step 8: receiving the RSE registration	12

Penalties for false or misleading information

Applicants should note that there are stringent penalties for the provision of false or misleading information (Section 136.1 of the *Criminal Code Act 1995*) and where information is disclosed to APRA which appears to indicate a breach of the law, APRA is authorised under section 56 of the *Australian Prudential Regulation Authority Act 1998* to pass that information to the Australian Securities and Investments Commission or any other financial sector supervisory agency specified in the Regulations.

Checklist of terms

- **APRA**
Australian Prudential Regulation Authority
- **ASIC**
Australian Securities and Investments Commission
- **Entity**
Registrable Superannuation Entity (RSE)
- **Operating standards**
Those prescribed by the Regulations
- **Regulations**
Superannuation Industry (Supervision) Regulations 1994
- **RMP**
Risk Management Plan
- **RMS**
Risk Management Strategy
- **RSE**
Registrable Superannuation Entity. Includes Public Offer Superannuation Funds, other APRA regulated superannuation entities, Multi-Member Approved Deposit Funds, Pooled Superannuation Trusts and Eligible Rollover Funds.
- **RSE licence**
Registrable Superannuation Entity licence, which is granted under section 29D of the SIS Act
- **SAF**
Small APRA Fund. A fund with fewer than five members under an Approved Trustee that has elected to be supervised by APRA
- **SIS Act**
Superannuation Industry (Supervision) Act 1993
- **SSAA**
Superannuation Safety Amendment Act 2004

General information

Who needs to hold an RSE licence and register superannuation entities?

The SIS Act was amended by the SSAA to require:

- all trustees operating an APRA regulated superannuation entity to hold an RSE Licence. Trustees of self-managed superannuation funds regulated by the ATO and public sector superannuation schemes are exempt; and
- all superannuation entities other than those self-managed superannuation funds regulated by the ATO and exempt public sector superannuation schemes to be registered. Only an RSE licensee can register a superannuation entity.

When do trustees need to apply?

Existing trustees, including those currently approved under Part 2 of the SIS Act to operate public offer entities, will have a transition period of two years, from 1 July 2004 to 30 June 2006 within which to obtain an RSE licence and register their RSEs. During the transition period, trustees operating at the commencement of the transition period may continue to operate without a licence or under their current approved status.

From 1 July 2006, all corporations or groups of individuals wishing to act as a trustee for an RSE must be licensed. There are serious penalties for operating without an RSE licence and/or for operating an RSE that has not been registered by the end of the transition period. These are outlined in the next section.

Please note that under sub section 29CB (3) of the SIS Act, APRA may refuse to consider any application for an RSE licence at any time during the final six months of the transition period. This power enables APRA to manage the application approval process more effectively by averting a rush on licence applications in the final weeks of the transition period.

Consequently, it is in the interests of applicants seeking an RSE licence to submit applications early. This will provide trustees with sufficient time to address any matters that may affect the granting of a licence.

Implications of operating without a licence

At the conclusion of the transition period, trustees operating without a licence will be committing an offence. The consequences of operating an RSE without a licence range from replacement of the trustee to imprisonment for up to two years and/or a substantial fine.

What if the requirements change over the transition period?

The application requirements for an RSE licence and/or to register an RSE will not change during the transition period.

Applicants are required to demonstrate compliance with the new operating standards and legislative requirements as at 1 July 2004. If further regulations are made or existing regulations are varied during the transition period, APRA will not amend the application form to request that applicants demonstrate compliance.

A condition of an RSE Licence is that the applicant complies with the RSE Licensee law, including any changes made during the transition period. APRA expects that applicants will make themselves aware of changes or variations and will ensure they comply with them. APRA will review compliance with any additional or varied requirements during the entity's first routine review after the transition period.

What type of entity can apply for a licence?

Constitutional corporations, bodies corporate and groups of individual trustees may apply for a licence. Groups of individual trustees are licensed as a group: that is, each individual trustee is not required to have a licence.

Why do trustees need another licence in addition to the AFSL?

The RSE licence is not the same as the Australian Financial Services Licence (AFSL) issued by ASIC to providers of financial services.

Some requirements for each licence may overlap marginally, but each licence has a different focus and enables the licensee to conduct different business operations. The RSE licensing requirements are prudentially focused. In assessing an application for an AFSL, ASIC also relies on prudential requirements, particularly in relation to financial resources and risk management. Trustees applying for an RSE licence should expect APRA to focus on these areas.

Applicants should be aware that holding an AFSL will be a requirement for undertaking certain types of business activities under an RSE licence. For instance, if a trustee is dealing in a financial product or providing advice about financial products, it is a requirement under the *Corporations Act 2001* that the trustee holds an appropriate AFSL. Applicants should check with ASIC to ensure that they meet the requirements under the AFSL licensing regime before applying for an RSE licence from APRA.

What happens after trustees are licensed?

Once a licence application has been approved, APRA will issue the trustee with a unique RSE licence number that must be displayed on all official documents issued by the trustee. APRA will provide reasonable relief in respect of the immediate display of identifiers on product disclosure statements to limit the additional cost to licensees.

Following receipt of a licence, trustees must meet a number of ongoing requirements including, but not limited to:

- compliance with the RSE Licensee law;
- proper and prudent performance of duties as trustees of RSEs;
- maintenance and compliance with the trustee's RMS (refer Part A of the licensing kit);
- registration of each superannuation entity for which the trustee is a licensed trustee;
- ongoing compliance with fitness and propriety standards;

- notification to APRA of any changes in the composition of the licensed trustee within 14 days of that change, whether it is a change of directors of a body corporate or corporation or a change in the membership of the group of individual trustees;
- compliance with conditions of the specific RSE licence issued; and
- ongoing reports to APRA of various matters (as outlined in the *Financial Sector (Collection of Data) Act 2001*).

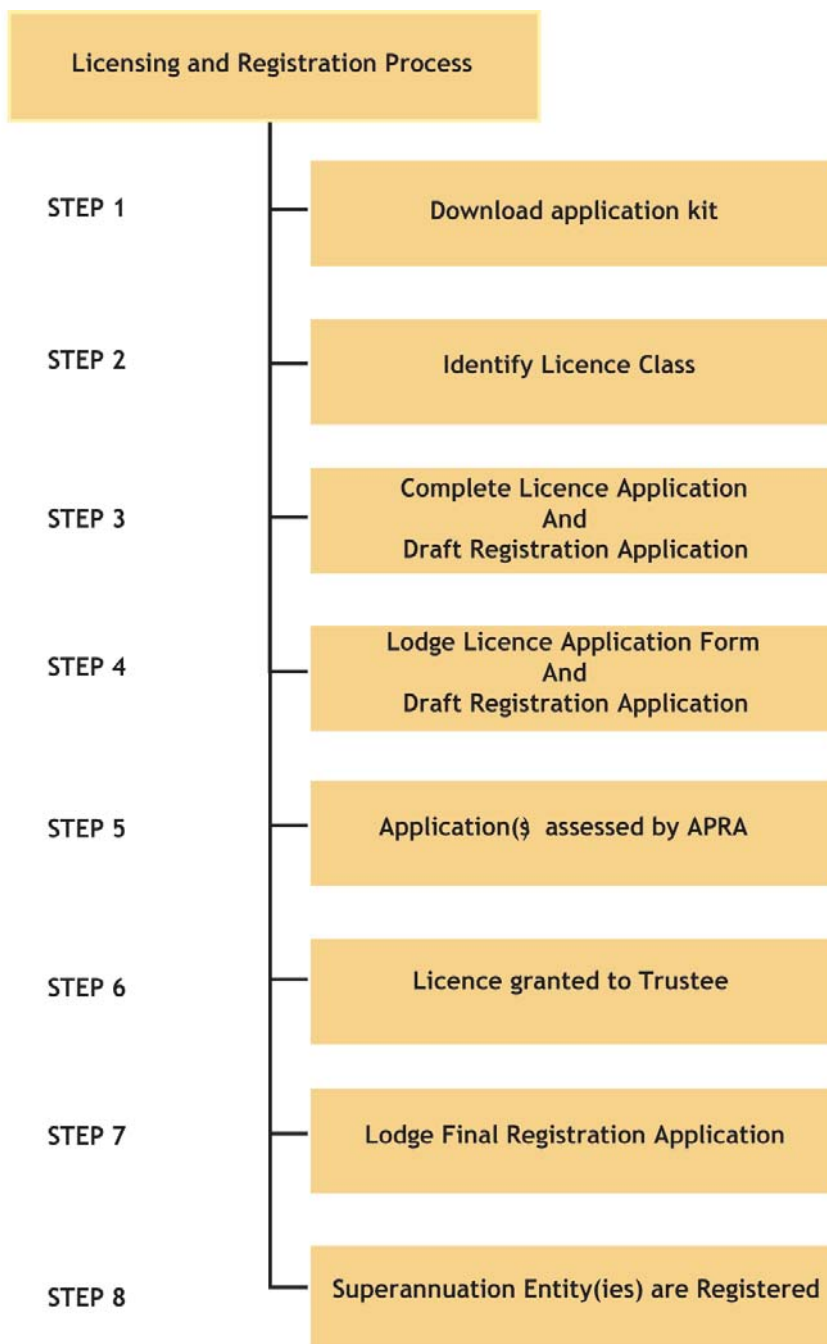
In addition, trustees that are granted a licence that enables them to operate public offer entities must continue to comply with net tangible asset requirements and/or custodian requirements stipulated by APRA.

The licensing process

The process to comply with the amendments under the SSAA has eight steps and involves:

- applying for an RSE licence; and
- registering all RSEs.

Steps in the licensing and registration process



Step 1: obtain a kit

Copies of the application kit can be obtained from the APRA website: <http://www.apra.gov.au>.

Copies of the kit are also available from the APRA Superannuation Licensing Team:

Telephone: 1300 131 060

Email: superannuationlicensing@apra.gov.au

Step 2: identify the class of licence

Applicants must apply for an RSE licence by using the approved form, paying the appropriate fee and demonstrating that they are able and willing to comply with the licence conditions for the class of licence.

There are two main classes of trustee licence:

- public offer entity licence; and
- non-public offer entity licence.

If a trustee is licensed to operate one or more non-public offer entity funds in addition to a public offer entity fund, a single licence will be granted, known as an 'extended public offer entity licence'.

If the trustee structure of a fund is comprised of a group of individuals rather than the more common body corporate, the group may apply for a licence. Only a body corporate that is a constitutional corporation will be able to apply for a licence in respect of a public offer entity or in respect of a fund where the primary benefit paid is a lump sum rather than a pension.

Obviously, there is a broad range of superannuation operations that will fall within each class of licence. APRA will be taking into consideration the nature, size and complexity of the applicant's operations when assessing licence applications.

Step 3: complete the application forms

As part of Step 3, trustees will need to complete the licence application form and the registration application form.

The RSE licence application form

Applicants must complete all three parts of the RSE licence application form. There are some questions that will not apply to all applicants, in particular those seeking a non-public offer entity licence.

- **PART A**
Part A of the form requests details of the applicant and other general information and contains guidance on completing necessary forms. Applicants should read this document carefully.
- **PART B**
Part B requests information from the applicant to determine its current compliance and ability to continue to comply with the Operating Standards prescribed in the SIS Regulations. No forms need to be completed for Part B, however, the applicant will need to provide supporting evidence to demonstrate its current and ongoing ability to comply with the Standards.
- **PART C**
Part C contains certificates that will need to be signed by the Directors if the applicant is a body corporate or constitutional corporation, or each trustee if the applicant is a group of individual trustees.

Trustees should read the application forms closely to determine which sections need to be completed.

The RSE registration application form

Only the holder of an RSE licence can apply for registration of an RSE, which means trustees must have been granted an RSE licence to be able to register an RSE. However, in order to expedite the process, applicants are advised to submit the application for registration in draft form with the relevant documents at the same time as they submit the licence application so that the two applications can be considered together. If an RSE licence is granted, APRA will advise the licensee to resubmit the application for registration in final form (see Step 7).

APRA requests a draft registration application be lodged with the RSE licence application to ensure that its assessment of the licence application takes into account the nature, size and complexity of its operations.

The application for RSE registration must be made on the approved form and must provide for each RSE:

- a completed registration application form;
- trust deed/governing rules of the RSE;
- a risk management plan for the RSE signed by the licensed trustee;
- a signed statement by the licensed trustee that the RMP complies with Section 29P of the SIS Act.

Please refer to the registration application form for further information.

Step 4: lodge the application forms

How much does an RSE licence cost?

A one-off licence application fee must accompany the RSE Licence application. Cheques or money orders should be made payable to the 'Australian Prudential Regulation Authority'.

Please refer to the schedule of fees for the appropriate fee.

NB: The existing annual APRA supervision levy arrangements will continue.

How much does RSE registration cost?

There is no fee for registering an RSE.

How and where do trustees lodge the application?

Trustees should ensure the application forms are completed in full. Applications will only be considered as having been lodged with APRA when completed and received by the Superannuation Licensing Team, together with the prescribed application fee, as per the schedule.

Applications and the application fee should be mailed to:

The Manager
Superannuation Licensing
Specialised Institutions Division
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

Where can trustees obtain further assistance?

Queries relating to the completion of the application and general enquiries regarding the application requirements should be directed to the Superannuation Licensing Team. The team can be contacted by telephone on (02) 9210 3344 or via email on superannuationlicensing@apra.gov.au.

All other queries in relation to a specific entity should be directed to the trustee's responsible supervisor at APRA. Applicants should contact the Superannuation Licensing Team if they are unsure of the name of their responsible supervisor or are not an existing trustee.

Step 5: assessment by APRA

Requesting further information

When an application for an RSE licence or RSE registration has been accepted as lodged but the assessing officer considers that the information is inadequate, the processing of the application may be delayed while further information is obtained.

APRA may lawfully request additional information to enable it to assess the application (subsection 29CA(1) of the SIS Act). If the applicant does not comply with the request, and does not have a reasonable excuse for not complying, APRA is empowered, under section 29CA(2) of the SIS Act, to treat the application as having been withdrawn.

To grant a licence, APRA must be satisfied of the applicant's capacity to perform properly the duties of a trustee and to comply with RSE Licensee law and any conditions imposed on the licence. Otherwise, APRA must refuse the application under subsection 29D(2) of the SIS Act.

As far as possible, the current APRA responsible supervisor will carry out the assessment of an application.

If APRA approves the licence application, APRA will issue a licence that will contain the conditions specific to the licence, as deemed appropriate.

How long will APRA take to issue a licence?

APRA will begin receiving and processing licence applications from 1 July 2004.

For existing trustees, APRA will endeavour to link the licensing and registration assessment to its existing on-site visit program, where possible. However, this will depend on when applications are received by APRA.

Existing trustees may give APRA notice indicating their intention to apply for an RSE licence. The notice of intent is not binding on the applicant but it will assist APRA in planning its workload over the two year transition period.

If APRA receives an application for an RSE licence from an existing trustee at the start of the transition period, it is required to decide the application prior to the end of that period. This open timeframe provides APRA with flexibility to manage peak flows of applications, and also provides applicants lodging early, time in which to rectify any issues identified during the assessment process. Existing trustees will be able to continue their operations while their application is being decided during the transition period.

APRA will have 90 days to process and assess an application for an RSE licence from a newly-established trustee. APRA has the option of extending this assessment period by a further 30 days.

Trustees are reminded to lodge their applications with sufficient time for APRA to conduct its assessment. This will ensure that a licence can be granted by 1 July 2006 and normal business operations can continue if the application is successful.

Review of APRA's decision

If APRA refuses an application or is deemed to have refused it by virtue of subsection 29CC(4), the applicant may, if dissatisfied with the refusal, apply to APRA under subsection 344(1) for a review of the decision. The applicant may also apply under subsection 344(1) for a review of any conditions that APRA includes in an RSE licence.

The application for review must be made in writing and given to APRA within 21 days of the applicant receiving notice of the decision or within such further period as APRA allows, and must set out the reasons for making the request.

Step 6: receive the RSE licence

APRA will always notify applicants of the outcome of their application. If the application is successful, the applicant will receive an RSE licence showing:

- the name of the licensee, RSE licence number, and the date the licence takes effect; and
- the class of superannuation entity the trustee is authorised to operate, including any limitations or restrictions.

The licence will also contain any conditions that apply expressly to the licence.

Step 7: lodge a final registration application

Why do trustees need to lodge a final application for registration?

As the registration of superannuation entities can be finalised only after an RSE Licence has been issued, trustees will need to submit a final registration application. This does not mean that trustees will need to submit the entire application again. Please refer to the registration application form for further information.

How long will APRA take to register an RSE?

APRA must decide an application within 21 days of receiving the application in final form including all required information. APRA may request further information and may extend the time to decide an application by seven days.

Processing time may be increased should all required information not be received with the initial application. To expedite the process, APRA strongly encourages applicants to submit draft registration applications with the application for an RSE licence.

Step 8: receive RSE registration

Once a superannuation entity is registered, it will receive a unique RSE registration number that must be displayed on all official documentation and correspondence relating to the entity. APRA will provide reasonable relief in respect of immediate display of the RSE registration number. The registration will remain in force until cancelled by APRA. The registration of an RSE will be cancelled by APRA upon receipt of a wind-up return.



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