

Superannuation (prudential standard) determination No. 1 of 2012

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Superannuation Industry (Supervision) Act 1993, section 34C(1)

Under subsection 34C(1) of the *Superannuation Industry (Supervision) Act 1993* (the Act), APRA has the power to determine standards (prudential standards), in writing, in relation to prudential matters to be complied with by all RSE licensees of registrable superannuation entity (RSEs).

On 15 November 2012, APRA made Superannuation (prudential standard) determination No. 1 of 2012 under subsection 34C(1) of the Act (the instrument).

The instrument commences on 1 July 2013.

1. Background

The Government indicated, in its response to the recommendations of the Super System Review in December 2010, support for the recommendation that APRA be given the power to make prudential standards in respect of superannuation, consistent with APRA's existing powers in respect of banking and insurance.¹ The Government also expressed its support for the recommendation that all RSE licensees must hold adequate financial resources to respond to operational risks.²

In April 2012, APRA released 11 draft prudential standards to implement APRA's proposed prudential framework for superannuation, incorporating those elements of the Government's superannuation reforms that come within APRA's mandate. APRA's proposals covered prudential requirements common to other APRA-regulated industries as well as superannuation-specific requirements. The proposals also included relocating some current requirements in the Act and the *Superannuation Industry (Supervision) Regulations 1994* and non-binding guidance material into the new prudential standards, and harmonising the requirements for superannuation with those applying to other APRA-regulated industries to the extent practical.

APRA was granted the ability to make prudential standards in relation to superannuation under the Act by the passage of the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012* on 8 September 2012.

2. Purpose and operation of the instrument

The purpose of the instrument is to make *Prudential Standard SPS 114 Operational Risk Financial Requirement* (SPS 114), which sets out prudential requirements for an

¹ *Stronger Super*, Recommendation 10.2, p. 60.

² *Stronger Super*, Recommendation 6.1, p. 40; refer also to the Explanatory Memorandum to *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012*, p. 25

RSE licensee to maintain adequate financial resources to address losses arising from operational risks that may affect RSEs within their business operations. The operational risk financial requirement (ORFR) is the target amount of financial resources that the RSE licensee determines is necessary to respond to these losses.

The key requirements of SPS 114 are that an RSE licensee must:

- have a documented strategy that sets out the RSE licensee's approach to determining, implementing, managing and maintaining the ORFR target amount;
- have suitable policies and procedures to manage the financial resources held to meet the ORFR target amount;
- determine a tolerance limit below the ORFR target amount that, if financial resources held to meet the ORFR target amount were to breach this limit, would require the RSE licensee to notify APRA and implement a replenishment plan; and
- ensure that the financial resources held to meet the ORFR target amount are only used to address an operational risk event or to ensure that the ORFR target amount remains at an appropriate level.

3. Consultation

In September 2011, APRA released for public consultation a discussion paper, *Prudential Standards for Superannuation*, which outlined proposals, including those Stronger Super reforms that the Government had recommended APRA implement in prudential standards. A suite of 12 prudential standards, including a standard dealing with the operational risk financial requirement, was described in the paper. APRA received 41 written submissions in response to this discussion paper, presented the reforms via a wide range of industry forums and held discussions with a variety of industry participants.

In a second consultation round, APRA released a *Response to Submissions – Prudential standards for superannuation* and a package of 11 draft prudential standards on 27 April 2012. In the response, APRA outlined the significant issues raised in the submissions and APRA's proposed response to them.

APRA received 38 written submissions in response to the draft prudential standards; again, APRA also presented the reforms at industry forums and met with individual industry participants on the proposed requirements.

APRA took note of the issues raised in submissions on the draft standard and the final version of SPS 114 clarifies the purposes for which financial resources held to meet the operational risk financial requirement can be used, including that an RSE licensee can reduce the financial resources held to meet the ORFR to ensure that the ORFR remains at the target level.

4. Regulation Impact Statement

A Regulation Impact Statement is required for the superannuation prudential standards.

5. Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

The legislative instrument the subject of this explanatory statement does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Accordingly, in APRA's assessment, this legislative instrument is compatible with human rights.