

## **Superannuation (prudential standard) determination No. 5 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 entities (RSEs).

On 15 November 2012, APRA made Superannuation (prudential standard) determination No. 5 of 2012 under subsection 34C(1) of the Act (the instrument).

The instrument commences upon registration on the Federal Register of Legislative Instruments.<sup>1</sup>

#### **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.<sup>2</sup>

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 *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 250 Insurance in Superannuation* (SPS 250), which sets out prudential requirements for an RSE licensee with respect to making available insured benefits to beneficiaries..

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<sup>1</sup> Paragraphs 28 and 29 of *Prudential Standard SPS 250 Insurance in Superannuation* (SPS 250) commence on the date of registration of the instrument on the Federal Register of Legislative Instruments. SPS 250 otherwise commences on 1 July 2013.

<sup>2</sup> *Stronger Super*, Recommendation 10.2, p. 60.

The key requirements of SPS 250 are that an RSE licensee must:

- have in place an insurance management framework to manage the making available of insured benefits to beneficiaries. This includes monitoring and review of the insurance management framework at appropriate intervals;
- meet minimum requirements which must be documented in the RSE licensees' insurance strategy<sup>3</sup>; and
- formulate and give effect to appropriate selection processes for, and due diligence of, insurers and monitor relationships with insurers on an ongoing basis.

### **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 insurance, 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 250 incorporates a number of changes including clarification of what is expected when reviewing the insurance management framework.

There was also adjustment to the provisions that referred to a proposed restriction on insurance only being acquired from a life company which is registered or taken to be registered under section 21 of the *Life Insurance Act 1995*. The effect of this change is that insurance can be acquired from both life insurers and general insurance companies or Lloyd's underwriters authorised under the *Insurance Act 1973*.

### **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

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3 Refer to s. 52(7) of the Act which sets out the insurance covenants.

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.