

Superannuation (prudential standard) determination No. 1 of 2022

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Superannuation Industry (Supervision) Act 1993, section 34C

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). Under subsection 34C(6) of the Act, APRA may, in writing, vary or revoke a prudential standard.

On 27 May 2022, APRA made Superannuation (prudential standard) determination No. 1 of 2022 (the instrument) which revokes *Prudential Standard SPS 250 Insurance in Superannuation* (existing SPS 250) made under Superannuation (prudential standard) determination No. 5 of 2012 and determines a new *Prudential Standard SPS 250 Insurance in Superannuation* (SPS 250).

The instrument commences on 1 July 2022.

1. Background

APRA's mandate is to ensure the safety and soundness of prudentially regulated financial institutions so that they can meet their financial promises to depositors, policyholders and fund members within a stable, efficient and competitive financial system.

APRA carries out this mandate through a multi-layered prudential framework that encompasses licensing and supervision of institutions. APRA is empowered under the Act to issue legally binding prudential standards that set out specific prudential requirements with which APRA-regulated institutions in the superannuation industry must comply. These standards are supported by prudential practice guides which clarify APRA's expectations with regard to prudential requirements.

In November 2012, APRA issued a package of prudential standards related to superannuation. This included existing SPS 250 which was effective from 1 July 2013.

In February 2019, the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Financial Services Royal Commission) issued its Final Report.¹ Two of the Royal Commission's recommendations were relevant to insurance in superannuation and included the following:

- Recommendation 4.14: *APRA should amend SPS 250 to require RSE licensees that engage a related party to provide group life insurance, or who enter into a contract, arrangement or understanding with a life insurer by which the*

¹ [Final Report | Royal Commissions](#)

insurer is given a priority or privilege in connection with the provision of life insurance, to obtain and provide to APRA within a fixed time, independent certification that the arrangements and policies entered into are in the best interests of members and otherwise satisfy legal and regulatory requirements; and

- Recommendation 4.15: *APRA should amend Prudential Standard SPS 250 to require RSE licensees to be satisfied that the rules by which a particular status is attributed to a member in connection with insurance are fair and reasonable.*

APRA made public commitments to address the recommendations of the Royal Commission. In addition, APRA completed a post-implementation review (PIR) of the superannuation prudential framework in April 2019.² The PIR identified two key enhancements in respect of existing SPS 250, both of which were considered to have been superseded by the above recommendations of the Royal Commission.

In addition, two matters of concern had been raised by Government in relation to trustees' oversight of insurance in superannuation: concerns with the processes for members opting out of insurance, with an improvement in practices needed; and whether the cost of insurance is inappropriately eroding the retirement income of beneficiaries.

2. Purpose and operation of the instrument

The purpose of Superannuation (prudential standard) determination No. 1 of 2022 is to revoke and replace existing SPS 250 with a new version of the standard and set out in SPS 250, revised prudential requirements for an RSE licensee with respect to making available insured benefits to beneficiaries.

Existing SPS 250 has been revised to address the recommendations of the Royal Commission, the findings of the post-implementation review of the superannuation prudential framework and the concern raised by Government regarding members opting out of insurance. SPS 250 now also incorporates the increased focus on the best financial interests duty, implemented as part of the Government's Your Future, Your Super reforms (YFYS).³

The key revisions to existing SPS 250 are that an RSE licensee must:

- obtain an independent certification of insurance arrangements with connected entities before entering into, renewing or materially altering an insurance arrangement, and on a triennial basis. APRA may also require an RSE licensee to obtain such a certification for an insurance arrangement with a non-connected entity;
- strengthen arrangements to protect members from potential adverse outcomes caused by conflicted life insurance arrangements. This includes heightened

² [Review of 2013 super reforms supports APRA's plans to strengthen prudential framework | APRA](#)

³ <https://www.apra.gov.au/implementation-of-your-future-your-super-reforms>

obligations on the RSE licensee to assess whether there are any business practices of the RSE licensee or terms and conditions of the insurance arrangement that may indicate the arrangement is not at arm's length, and whether the insurance arrangement is overall in the best financial interests of beneficiaries. Importantly, this requirement increases the scope of the comprehensive review of the insurance management framework, conducted by operationally independent, appropriately trained and competent persons at least every three years;

- satisfy itself, and demonstrate to APRA, that the rules for attributing any status to a beneficiary (including a class or cohort of beneficiaries) in connection with the provision of insurance, are fair and reasonable; and
- include in the insurance management framework a process that enables beneficiaries to easily opt out of insurance cover, and that sets out how this process will be communicated to beneficiaries.

In summary, SPS 250 is intended to support RSE licensees to deliver better outcomes for their members with respect to insurance arrangements, and ensure that any risks related to insurance arrangements for beneficiaries are appropriately considered and addressed.

Merits review

The prudential standards provide for APRA to exercise various discretions. Decisions made by APRA exercising those discretions are not subject to merits review. This is because these decisions are preliminary decisions that may facilitate or lead to substantive decisions which are subject to merits review.

Under the Act, it is a condition on all RSE licences that the RSE licensee must comply with the RSE licensee law, which includes prudential standards. However, there are no penalties prescribed for breach of the prudential standards under the Act. Instead an RSE licensee's breach of an RSE licence condition is a ground for APRA to make further, substantive decisions under the Act in relation to the RSE licensee. Those decisions are, as the case may be, decisions to:

- a) cancel a licence to operate an APRA-regulated superannuation fund (section 29G of the Act); and
- b) issue a direction to the RSE licensee, including a direction to comply with the whole or part of a prudential standard (section 131D of the Act).

It is only at this stage that an RSE licensee is exposed to a penalty: loss of licence or 100 penalty units each day if it breaches the direction (section 131DD of the Act).⁴ The subsequent substantive decisions of APRA to impose a direction are subject to merits review.

⁴ The exception is section 54B of the Act, which provides that breach of a covenant under sections 52 or 52A is a civil penalty provision. The covenants include a requirement to comply with prudential standards in relation to specified topics (conflicts, capital requirements for operational risk, MySuper and choice products). SPS 250 is not a standard in relation to any of these topics.

3. Consultation

APRA undertook two rounds of public consultation, in November 2019 and in January 2021, on its proposed revisions to existing SPS 250, through updated requirements for selecting and monitoring insurers, and providing insured benefits to beneficiaries.⁵ In making its final changes to SPS 250, APRA considered feedback from industry submissions and the increased focus on the best financial interests duty, implemented as part of the YFYS reforms.

In November 2019, the key proposed revisions to existing SPS 250 were to address Royal Commission recommendations 4.14 and 4.15 regarding independent certification and status attribution, and to address government concerns around easy opt-out of insurance and the cost of insurance not inappropriately eroding members' retirement income. Eleven submissions were received as part of the November 2019 consultation. These submissions sought guidance, particularly in respect of the independent certification requirements, the scope and meaning of priority and privilege, and related matters such as easy opt-out of insurance and status attribution.

In January 2021, APRA made amendments to draft SPS 250 and provided guidance in draft SPG 250. APRA received seven public submissions as part of the January 2021 consultation. Submissions to the January 2021 consultation were generally supportive of the draft amendments to SPS 250 and SPG 250, including the proposed independent certification for insurance arrangements with connected entities. However, concerns were raised about the scope of priority and privilege arrangements and the requirement for an independent certification of these arrangements. In particular, the submissions noted that the priority and privilege arrangements would potentially capture all, or a majority of, insurance arrangements and the concepts of priority and privilege were complex and ambiguous. In response to industry concerns, APRA removed the requirement for an independent certification for priority and privilege arrangements, and instead made other enhancements to the prudential framework, to ensure that insurance arrangements are entered into and managed in the best financial interests of beneficiaries. A letter to RSE licensees to notify industry of this change in approach was released on 21 September 2021.⁶

Other issues raised in submissions to the January 2021 consultation related to queries on independent certification, insurance strategy, termination of an insurance arrangement and member related matters such as easy opt-out of insurance arrangements and status attribution. Clarification has been provided in SPS 250 and SPG 250 to address these queries.

The following were released during the consultation period⁷:

⁵ The timing gap between the November 2019 and January 2021 consultations was on account of APRA suspending its planned policy initiatives and updates to the prudential framework, until 30 September 2020, due to COVID-19.

⁶ <https://www.apra.gov.au/prudential-standard-sps-250-insurance-super-update-on-industry-consultation>

⁷ [Consultation on Prudential Standard SPS 250 Insurance in Superannuation | APRA](#)

- November 2019: Proposed revisions to *Prudential Standard SPS 250 Insurance in Superannuation*: letter and proposed revisions to draft SPS 250;
- January 2021: Proposed revisions to *Prudential Standard SPS 250 Insurance in Superannuation* and *Prudential Practice Guide SPG 250 Insurance in Superannuation*: letter, proposed revisions to revised draft SPS 250 and proposed revisions to SPG 250;
- September 2021: update on industry consultation on SPS 250 via a letter; and
- November 2021: Release of response paper, final *Prudential Standard SPS 250 Insurance in Superannuation* and final *Prudential Practice Guide SPG 250 Insurance in Superannuation*.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for this legislative instrument to implement recommendations 4.14 and 4.15 of the Financial Services Royal Commission. The costs associated with the implementation of the recommendations 4.14 and 4.15 have already been costed in by Treasury, therefore APRA's implementation has no additional regulatory costs.

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

A statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at Attachment A to this Explanatory Statement.

ATTACHMENT A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

Overview of the Legislative Instrument

The purpose of this instrument is to revoke *Prudential Standard SPS 250 Insurance in Superannuation* determined by APRA in 2012 and replace it with a new *Prudential Standard SPS 250 Insurance in Superannuation* (SPS 250). The instrument sets out prudential requirements for RSE licensees to maintain insurance arrangements in the best financial interests of beneficiaries and to implement a sound insurance management framework for making insured benefits available to beneficiaries, including prudently selecting and monitoring insurers.

SPS 250 is being remade to strengthen the insurance management framework and place heightened obligations on RSE licensees to ensure there are no conflicts affecting the insurance arrangements. In addition, RSE licensees will be required to obtain an independent certification of insurance arrangements with connected entities, to increase the scope of the comprehensive review of the insurance management framework, to establish fair and reasonable rules for attributing a status to a beneficiary, and to ensure there is a process for beneficiaries to easily opt out of insurance cover.

Human rights implications

APRA has assessed the instrument against the international instruments listed in section 3 of the HRPS Act and has determined that the instrument does not engage any of the applicable rights or freedoms. Accordingly, in APRA's assessment, the instrument is compatible with human rights.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.