

Superannuation (prudential standard) determination No. 2 of 2024

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Superannuation Industry (Supervision) Act 1993, section 34C(1) and (6)

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 3 June 2024, APRA made *Superannuation (prudential standard) determination No. 2 of 2024* (the instrument), which revokes *Prudential Standard SPS 310 Audit and Related Matters* (previous SPS 310) made under *Superannuation (prudential standard) determination No. 4 of 2022* and determines a new *Prudential Standard SPS 310 Audit and Related Matters* (SPS 310).

The instrument commences on 30 June 2024.

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 in respect of the prudential requirements.

SPS 310 sets out requirements for an RSE licensee to ensure that independent advice is provided to the RSE licensee on the operations, financial position and risk controls of the business operations of the RSE licensee. It outlines the roles and responsibilities of the RSE auditor and the obligations of an RSE licensee to make arrangements to enable an RSE auditor to fulfil their responsibilities. The key responsibility of the RSE auditor is the preparation of the auditor's report of the RSE.

In June 2023, legislative reforms¹ were passed to extend the financial reporting and auditing requirements in the *Corporations Act 2001* (Corporations Act) to apply to RSEs.² The legislative amendments align RSE financial reporting obligations with those that apply to public companies, registered schemes and other APRA regulated entities. The changes apply from 1 July 2023 (for year ends from 30 June 2024) and

¹ [Federal Register of Legislation - Treasury Laws Amendment \(2022 Measures No. 4\) Act 2023](#)

² Small APRA funds (SAFs) were excluded from these reforms.

require lodgement of RSE financial statements and audit reports with the Australian Securities and Investments Commission (ASIC) rather than APRA.

Amendments to the prudential requirements for superannuation, including SPS 310, are necessary to align with the new legislative obligations.

2. Purpose and operation of the instrument

The purpose of this instrument is to revoke the previous SPS 310 and to replace it with a new version.

The key requirements of SPS 310 are set out below, including the amendments required to align the obligations in SPS 310 with the legislative changes set out above:

1. Obligations of RSE licensees – RSE auditor appointment

Paragraphs 8-12 outline requirements for the appointment of an RSE auditor, and the terms of engagement of an RSE auditor including compliance with auditing standards issued by the Auditing and Assurance Standards Board and with relevant prudential and legislative requirements.³ In addition, this includes obligations on the RSE licensee to ensure the RSE auditor has access to all matters necessary to ensure they can carry out their role and responsibilities as an RSE auditor.

Changes made include the requirement for an RSE auditor to be appointed at all times (rather than annually), to ensure compliance with the Corporations Act and minor updates to an RSE auditor's terms of engagement to ensure compliance with the relevant legislative changes.

2. Obligations of RSE licensees – fitness and propriety of RSE auditors

Paragraphs 13-14 outline requirements for an RSE licensee to ensure that an RSE auditor is not disqualified under the *Superannuation Industry (Supervision) Act 1993* (SIS Act), satisfies the eligibility criteria in *Prudential Standard SPS 520 Fit and Proper* (SPS 520), is a fit and proper person under the RSE licensee's fit and proper policy, and satisfies the auditor independence requirements in *Prudential Standard SPS 510 Governance* (SPS 510).

Changes made include the application of these requirements to an individual RSE auditor and a lead auditor of an RSE audit firm or RSE audit company (to align with legislative changes to the definition of an RSE auditor to include an individual RSE auditor, an RSE audit firm or an RSE audit company), and new requirements to ensure that an RSE audit firm or an RSE audit company is not disqualified under the SIS Act and satisfies the auditor independence requirements in SPS 510.

3. Obligations of RSE licensees – RSE auditor's report

Paragraphs 15-21 set out requirements for an RSE licensee to ensure the RSE auditor provides an auditor's report for an RSE to the Board, for the report to be submitted to APRA within three months of the end of the year of income, and a

³ [Auditing Standards \(auasb.gov.au\)](https://auasb.gov.au)

number of other provisions clarifying audit report requirements, for example, where an RSE has wound up, auditor reports for small APRA funds (SAFs) and group arrangements.

Changes made include providing an RSE licensee (with the exception of an RSE licensee of a SAF) with the option of submitting the auditor's report to ASIC, together with the report lodged with ASIC in accordance with section 319 of the Corporations Act, or alternatively for the RSE licensee to lodge the auditor's report with APRA. An RSE licensee of a SAF must continue to submit the auditor's report to APRA.

4. Responsibilities of the RSE auditor – reporting

Paragraphs 22-25 set out requirements for the auditor's report to provide reasonable and limited assurance over the information related to each RSE required under reporting standards, compliance with legislative provisions, systems, procedures and controls to ensure compliance, and compliance with the risk management framework.

Changes to the requirements for the auditor's report include removal of assurance over the annual financial statements for RSEs (other than SAFs which will continue to be included) and incorporation of the legislative provisions for compliance into a new Attachment B of SPS 310, following removal of an 'approved form' for the audit. In addition, a change was made to extend the requirement for retention of working papers to seven years (from five years) to align with Corporations Act requirements.

5. Other responsibilities of the RSE licensee

Paragraphs 26-27 set out requirements for an RSE licensee to bear the costs of preparing and submitting reports and other material required by SPS 310, and to facilitate meeting arrangements requested by APRA, including ensuring attendance by the RSE auditor.

Changes made include a minor update to clarify that the requirements apply to an individual RSE auditor and to extend the requirement to a lead auditor where the RSE auditor is an RSE audit firm or company.

6. Special purpose engagements

Paragraphs 28-31 set out requirements for an RSE licensee to engage an auditor to provide a report on a particular aspect of the RSE licensee's business operations. An RSE auditor engaged under a special purpose engagement must comply with the reporting requirements as required by APRA and submit the report to APRA and the Board within the required time.

Minor wording changes only have been made to this section.

7. Attachment A - Content of auditor's report: information required under reporting standards made by APRA

Attachment A relates to paragraph 22 of SPS 310 that sets out requirements for the auditor's report to provide reasonable and limited assurance addressing the information related to each RSE required under reporting standards identified in the attachment. It includes a list of reporting standards that must be considered in the audit, including the level of assurance – reasonable or limited assurance.

Minor changes have been made to the list of reporting standards for audit and the addition of a paragraph to clarify requirements for an RSE that has wound up.

8. *Attachment B – Content of auditor's report: compliance with legislative provisions*

Attachment B is a new addition to SPS 310. It relates to paragraph 22 of the standard and sets out requirements for the auditor's report to provide reasonable assurance addressing the legislative provisions identified in the attachment. These legislative provisions were previously included in the 'approved form' and were therefore required to be included in the audit. No changes have been made to the list of provisions for audit in relation to provisions in the SIS Act and the *Superannuation Industry (Supervision) Regulations 1994*. A limited number of provisions have been removed from the list of provisions for audit in relation to the Corporations Act and the *Corporations Regulations 2001*.

The above change moves the list of provisions for audit from the 'approved form' (which is being retired) to a new Attachment B in SPS 310, and removes a limited number of provisions for audit.

Exercise of discretion by APRA

The prudential standards provide for APRA to exercise various discretions. Decisions made by APRA in 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 grounds for APRA to make further, substantive decisions under the Act in relation to the RSE licensee. Those decisions are, as the case may be:

- (a) to cancel a licence to operate an APRA-regulated superannuation fund (section 29G of the Act); and
- (b) to 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

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.

subsequent substantive decisions of APRA to impose a direction are subject to merits review.

Adjust and exclude discretion

SPS 310 gives APRA the discretion to adjust or exclude a provision of the prudential standard (paragraph 6). The power to create such a discretion is provided for under subsection 34C(5) of the Act.

APRA may exercise this power when it is satisfied that the adjustment or exclusion of a specific requirement for one or more specified RSE licensees will better support APRA in meeting its objectives. For example, the adjustment or exclusion may be necessary to obtain a better prudential outcome than would be the case if the prudential requirement were applied unaltered to a particular RSE licensee. A tailored approach would give APRA comfort that the prudential requirements apply appropriately to protect the interests of superannuation fund members. APRA will also take into account other considerations, such as efficiency, competition, contestability, competitive neutrality and regulatory burden, including comparisons with the entity's peer group.

The exercise of APRA's powers is governed by a robust decision-making framework which is documented in APRA's internal policies. This framework supports APRA in fulfilling its mandate by limiting decision making to those senior APRA officers with the appropriate experience and skill to exercise prudent judgement. The framework also requires decision makers to seek advice from internal technical experts.

Exemption from sunseting and disallowance

SPS 310 is exempt from disallowance in accordance with section 44(2)(b) of the *Legislation Act 2003* (Legislation Act) and regulation 9 of the *Legislation (Exemptions and Other Matters) Regulations 2015* (Legislation Regulations) as SPS 310 is an 'instrument (other than a regulation) relating to superannuation'.⁵

SPS 310 is exempt from sunseting in accordance with section 54(2)(b) of the Legislation Act and regulation 11 of the Legislation Regulations as this Legislative Instrument is 'an instrument (other than a regulation) relating to superannuation'.⁶

As SPS 310 falls within the above-mentioned exemptions to disallowance and sunseting, APRA does not have discretion to subject SPS 310 to disallowance and sunseting. To mitigate against any adverse impact arising from the above-mentioned exemptions from disallowance and sunseting, APRA undertook consultation on SPS

⁵ For paragraph 44(2)(b) of the Legislation Act, section 42 of the Legislation Act (disallowance of legislative instruments) does not apply to a legislative instrument in a class of legislative instrument referred to in an item of the table contained in regulation 9 of the Legislation Regulations. Item 3 of the table contained in regulation 9 of the Legislation Regulations provides that 'an instrument (other than a regulation) relating to superannuation' is a class of legislative instrument not subject to disallowance.

⁶ For paragraph 54(2)(b) of the Legislation Act, Part 4 of Chapter 3 of the Legislation Act (sunseting of legislative instruments) does not apply to a legislative instrument in a class of legislative instruments referred to in an item of the table contained in regulation 11 of the Legislation Regulations. Item 6 of the table contained in regulation 11 of the Legislation Regulations provides that 'an instrument (other than a regulation) relating to superannuation' is a class of legislative instrument not subject to sunseting.

310 (refer to section 3 below for further details) and will continue to conduct regular reviews of SPS 310.

Incorporation by reference

Under paragraph 14(1)(a) of the Legislation Act, where SPS 310 refers to provisions in primary legislation or a disallowable legislative instrument (e.g. the *Superannuation Industry (Supervision) Regulations 1994*), this is a reference to the primary legislation or disallowable legislative instrument as it exists *from time to time*.

Under paragraph 14(1)(b) of the Legislation Act, where SPS 310 incorporates by reference another superannuation prudential standard determined by APRA under section 34C of the Act, or reporting standard determined by APRA under paragraph 13(1)(a) *Financial Sector (Collection of Data) Act 2001*, the superannuation prudential standard and reporting standard referred to is the version that exists *at the time* SPS 310 was determined.

All documents incorporated by reference in this standard are available on the Federal Register of Legislation at www.legislation.gov.au.

3. Consultation

On 17 January 2024, APRA undertook a public consultation on its proposal to make minor and consequential amendments to the prudential framework to align with legislative changes in relation to the financial reporting and auditing reforms.⁷

The consultation proposed amendments to three prudential standards, SPS 310, SPS 510 and SPS 520, and to *Prudential Practice Guide SPG 520 Fit and Proper* (SPG 520).

The key amendments included the removal of financial reporting obligations from SPS 310, given these responsibilities have moved to ASIC; updating independence requirements including in SPS 510 to align with the Corporations Act; and amending the definition of responsible persons in relation to fit and proper requirements in SPS 520 so that they apply to an individual RSE auditor and a lead auditor of an RSE audit firm or an RSE audit company. Additional minor amendments were proposed to SPS 310 including the removal of the prudential requirement for RSE auditors to use an APRA approved form for audit reports and the retirement of *Prudential Practice Guide SPG 310 Audit and Related Matters* (SPG 310).

Four submissions were received during the consultation, with respondents generally supportive of the proposed changes, subject to two key areas of feedback concerning SPS 310.

APRA's consultation proposed to broaden the scope of reasonable assurance audit requirements. Feedback from submissions raised concerns that the expanded scope would be too broad, could be implemented inconsistently and may expose members to additional cost for limited benefit. APRA's consultation also proposed to retire SPG 310, on the basis it was no longer required given discontinuance of the approved form

⁷ [Audit consequential amendments – superannuation | APRA](#)

and the legislative changes. Feedback from submissions raised two areas of guidance which are still relied upon, including guidance related to entities winding up and for RSE auditors where a different auditor audits the RSE licensee.

APRA has taken account of both these areas of feedback and has made appropriate adjustments where required. APRA has determined to not expand the scope of reasonable assurance audit requirements and has instead introduced a new Attachment B within SPS 310, which specifies the scope of reasonable assurance audit requirements, in line with Part 2(B) of the discontinued approved form, with a limited reduction in the legislative provisions for audit. APRA has made an adjustment to Attachment A of SPS 310 to clarify requirements for entities winding up. Where RSE auditors have a different auditor for the RSE licensee, APRA has confirmed that the existing requirements in SPS 310 apply and will proceed with retiring the guidance in SPG 310.

4. Impact Analysis

The Office of Impact Analysis has confirmed that it considers the proposal is unlikely to have a more than minor impact, as the proposed changes seek to ensure alignment with the Corporations Act and remove regulatory burden and, as such, that the preparation of an Impact Analysis is not required.

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 instrument listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

Overview of the Legislative Instrument

The purpose of this Legislative Instrument is to revoke *Prudential Standard SPS 310 Audit and Related Matters* (SPS 310) and replace it with a new version of the prudential standard.

SPS 310 sets out requirements for an RSE licensee to ensure that independent advice is provided to the RSE licensee on the operations, financial position and risk controls of the business operations of the RSE licensee. It outlines the roles and responsibilities of the RSE auditor and the obligations of an RSE licensee to make arrangements to enable an RSE auditor to fulfil their responsibilities.

Human rights implications

APRA has assessed the Legislative Instrument and is of the view that it does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the HRPS Act. 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.