

Superannuation (prudential standard) determination No. 3 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. 3 of 2024* (the instrument), which revokes *Prudential Standard SPS 510 Governance* (previous SPS 510) made under *Superannuation (prudential standard) determination No. 2 of 2023* and determines a new *Prudential Standard SPS 510 Governance* (SPS 510).

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.

One of the key components of APRA's superannuation prudential framework is the prudential standards which set out requirements relating to governance of RSE licensees and SPS 510 is part of this set of standards.

SPS 510 sets out requirements for foundations of good governance of an RSE licensee. SPS 510 is designed to ensure that an RSE licensee's business operations are managed soundly and prudently by a competent Board, which can make reasonable and impartial business judgements in the best financial interests of beneficiaries and which duly considers the impact of its decisions on beneficiaries.

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

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

RSEs.² The legislative amendments align RSE financial reporting obligations with those that apply to public companies, registered schemes and other APRA regulated entities.

SPS 510 replicates the substantive obligations in the previous SPS 510 with minor, consequential changes to reflect amendments to the financial reporting and auditing requirements in the Act and the Corporations Act. The minor and consequential changes consist of references to new or amended provisions in the Act and the Corporations Act and updates to terminology in relation to the RSE auditor.

2. Purpose and operation of the instrument

The purpose of this instrument is to revoke the previous SPS 510 and to replace it with a new version.

The key requirements of SPS 510 are set out below, including the amendments required to align the obligations in SPS 510 with the legislative changes set out above:

1. The role of the Board and senior management

Paragraphs 8-14 set out requirements relating to responsibility of the Board of an RSE licensee and any delegations of their functions as well as requirements relating to the collective and individual skills and experiences of directors and senior managers of an RSE licensee. These requirements also include provisions about who can chair material board committees, Australian resident status of senior managers and availability to meet with APRA when requested.

2. Governance framework

Paragraphs 16-18 require RSE licensees to have a governance framework which sets out how a Board oversees and exercises its authority. The minimum elements of the governance framework include a charter and policies on voting rights, Board and Board committee composition and Board renewal and tenure.

3. Board composition

Paragraphs 19-20 require that the chair of the Board must be a director of the RSE licensee and the majority of directors of an RSE licensee must be resident in Australia.

4. Board performance assessment

Paragraph 21 requires that Boards must annually assess the performance of the Board against its objectives.

5. Board renewal, nomination, appointment and removal

Paragraphs 22-23 set out further detail on minimum inclusions within Board policies on Board renewal and Board nomination, appointment and removal.

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

6. *Board Audit Committee*

Paragraphs 24-36 set out that Boards must establish a Board Audit Committee and the minimum requirements of this committee in terms of its powers, composition, chair, charter inclusions, role in reviewing the engagement of the RSE auditor and audit plans. These provisions also establish the requirements for the Board Audit Committee to have access to individuals with critical roles in relation to risk and audit and the flow of important information to the Board Audit Committee.

Paragraph 35 requires the Board Audit Committee to invite the ‘individual RSE auditor’ or ‘lead auditor’ to Board Audit Committee meetings. This change clarifies that this requirement applies to a natural person.

7. *Internal audit*

Paragraphs 37-38 require that an RSE licensee must have an internal audit function or a proposed alternative arrangement that must be approved by APRA.

8. *Auditor independence*

Paragraphs 39-47 set out minimum requirements relating to the independence of the audit function and the RSE licensee’s role in ensuring that this is the case and the expectations around managing conflicts of interest scenarios should they arise.

To align with amendments to the Act and the Corporations Act, the RSE auditor independence declaration must be obtained from the individual RSE auditor or the lead auditor.

Paragraph 42 was introduced to align with *Prudential Standard CPS 510 Governance* and sets out the circumstances in which a conflict of interest situation arises for an individual RSE auditor or a lead auditor.

Paragraph 46 provides that exemptions from the time limits for eligibility for an individual to play a significant role in the audit of an RSE will no longer be a matter for APRA from 1 July 2028. From 1 July 2028, and such approvals will be granted in accordance with the Corporations Act.

9. *Persons not to be constrained from providing information to APRA*

Paragraphs 48-49 provide that persons cannot be constrained from providing information to APRA including within internal policies or contractual arrangements.

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).³ The subsequent substantive decisions of APRA to impose a direction are subject to merits review.

Adjust and exclude discretion

SPS 510 gives APRA the discretion to adjust or exclude a provision of the prudential standard (paragraph 50). 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 510 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 510 is an 'instrument (other than a regulation) relating to superannuation'.⁴

³ 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.

⁴ 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

SPS 510 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’.⁵

As SPS 510 falls within the above-mentioned exemptions to disallowance and sunseting, APRA does not have discretion to subject SPS 510 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 510 (refer to section 3 below for further details) and will continue to conduct regular reviews of SPS 510.

Incorporation by reference

Under paragraph 14(1)(a) of the Legislation Act, where SPS 510 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 510 incorporates by reference another superannuation prudential standard determined by APRA under section 34C of the Act or other document, the superannuation prudential standard or other document referred to is the version that exists *at the time* SPS 510 was determined.

All documents incorporated by reference in this standard are available on the Federal Register of Legislation at www.legislation.gov.au with the exception of *APES 110 Code of Ethics for Professional Accountants*, which was issued by the Accounting Professional and Ethical Standards Board in November 2018 and can be accessed at [Standards & Guidance – Home \(apesb.org.au\)](http://Standards & Guidance – Home (apesb.org.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.⁶ The consultation proposed amendments to SPS 510 as part of a package of amendments to three prudential standards (SPS 310, SPS 510 and SPS 520) and to *Prudential Practice Guide SPG 520 Fit and Proper* (SPG 520).

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.

⁵ 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.

⁶ [Audit consequential amendments – superannuation | APRA](#)

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. No feedback was received on the proposed changes to SPS 510.

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 *Superannuation (prudential standard) determination No. 3 of 2024* is to revoke *Prudential Standard SPS 510 Governance* made under *Superannuation (prudential standard) determination No. 2 of 2023* and replace it with another version.

SPS 510 sets out requirements for foundations of good governance of an RSE licensee. SPS 510 is designed to ensure that an RSE licensee's business operations are managed soundly and prudently by a competent Board, which can make reasonable and impartial business judgements in the best financial interests of beneficiaries and which duly considers the impact of its decisions on beneficiaries.

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.