

Superannuation (prudential standard) determination No. 4 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. 4 of 2024* (the instrument), which revokes *Prudential Standard SPS 520 Fit and Proper* (previous SPS 520) made under *Superannuation (prudential standard) determination No. 4 of 2013* and determines a new *Prudential Standard SPS 520 Fit and Proper* (SPS 520).

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 fitness and propriety of RSE licensees and SPS 520 is part of this set of standards.

SPS 520 sets out requirements for RSE licensees when determining the fitness and propriety of persons who hold positions of responsibility. SPS 520 is designed to ensure that persons who are responsible for the management and oversight of an RSE licensee are fit and proper to hold those positions, have appropriate skills and experience, and act with honesty and integrity. This serves to strengthen the protection for 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 520 replicates the substantive obligations in the previous SPS 520 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, updates to terminology in relation to the RSE auditor and clarify that a responsible person that is an RSE auditor is a natural person.

2. Purpose and operation of the instrument

The purpose of this instrument is to revoke the previous SPS 520 and to replace it with a new version.

The key requirements of SPS 520 are set out below, including the amendments required to align the obligations in SPS 520 with the legislative changes set out above:

1. Fit and Proper Policy

Paragraphs 7-11 require that an RSE licensee must prudently manage the risks related to persons acting in responsible person positions (responsible persons) who are not fit and proper and requires that an RSE licensee has a Fit and Proper Policy.

2. Responsible persons

Paragraphs 12-17 define who is a responsible person and includes both prescriptive and principles-based criteria.

Changes made include the addition of an individual RSE auditor and a lead auditor as a responsible person.

3. Criteria to determine if a responsible person is fit and proper

Paragraphs 18-19 require that an RSE licensee must document competencies required for each responsible person position and criteria to determine whether a responsible person is fit and proper to hold that position.

4. Additional fitness and propriety criteria applying to RSE auditors

Paragraphs 20-22 set out a number of additional criteria which must be met by lead auditors and individual RSE auditors.

5. Additional fitness and propriety criteria applying to RSE actuaries

Paragraphs 23-25 set out a number of additional criteria which must be met by RSE actuaries.

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

6. *Process for assessment of fitness and propriety*

Paragraphs 26-35 set out the minimum requirements relating to the process for assessing whether a person is fit and proper which must be documented within the Fit and Proper Policy. This includes actions that will be taken where a person is assessed as not fit and proper, providing a copy of the Fit and Proper Policy to candidates ahead of their appointment, the timing of fit and proper assessments, arrangements for short-term appointments of responsible persons, annual assessment of fitness and propriety and notification requirements.

7. *Whistleblowing*

Paragraphs 36-41 set out requirements that must be included within an RSE licensee's Fit and Proper Policy to support and encourage whistleblowing in the event a person does not meet the fit and proper criteria.

8. *When a responsible person is not fit and proper*

Paragraph 42 requires an RSE licensee to take all reasonable steps to ensure a person who has been assessed as not fit and proper is not appointed to, or does not continue to hold, a responsible person position.

9. *Informing APRA*

Paragraphs 43-48 require RSE licensees to notify APRA of details of responsible persons and changes to responsible persons. RSE licensees are also required to take reasonable steps to ensure that responsible persons are not disqualified under s. 120 of the Act.

Changes made include the removal of notification requirements that were already required under *Reporting Standard SRS 520.0 Responsible Persons Information*.

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 520 gives APRA the discretion to adjust or exclude a provision of the prudential standard (paragraph 49). 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 520 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 520 is an 'instrument (other than a regulation) relating to superannuation'.⁴

SPS 520 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

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 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

As SPS 520 falls within the above-mentioned exemptions to disallowance and sunseting, APRA does not have discretion to subject SPS 520 to disallowance and sunseting. To mitigate against any adverse impact arising from the above-mentioned exemptions from disallowance and sunseting, APRA undertook consultation on existing SPS 520 (refer to section 3 below for further details) and will continue to conduct regular reviews of SPS 520.

Incorporation by reference

Under paragraph 14(1)(a) of the Legislation Act, where SPS 520 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 520 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.⁶ The consultation proposed amendments to SPS 520 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).

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 520.

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.

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](#)

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*

Superannuation (prudential standard) determination No. 4 of 2024

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. 4 of 2024* is to revoke *Prudential Standard SPS 520 Fit and Proper* made under *Superannuation (prudential standard) determination No. 4 of 2013* and replace it with another version.

SPS 520 sets out requirements for RSE licensees when determining the fitness and propriety of persons who hold positions of responsibility. SPS 520 is designed to ensure that persons who are responsible for the management and oversight of an RSE licensee are fit and proper to hold those positions, have appropriate skills and experience, and act with honesty and integrity. This serves to strengthen the protection for 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.