

Superannuation (prudential standard) determination No. 5 of 2024

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Superannuation Industry (Supervision) Act 1993 subsection 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 29 July 2024, APRA made Superannuation (prudential standard) determination No. 5 of 2024 (the instrument), which revokes *Prudential Standard SPS 515 Strategic Planning and Member Outcomes* made under *Superannuation (prudential standard) determination No. 2 of 2019*, and determines a new *Prudential Standard SPS 515 Strategic Planning and Member Outcomes* (SPS 515).

The instrument commences on 1 July 2025.

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 515 sets out requirements to ensure that RSE licensees manage their business operations in a sound and prudent manner to achieve the outcomes RSE licensees seek for beneficiaries. To support the achievement of outcomes for members, RSE licensees are required to set strategic objectives, conduct business planning, appropriately manage financial resources including reserves and expenditure, and monitor performance. SPS 515 also includes requirements to support the legislated outcomes assessment and requirements for RSE licensees to appropriately manage and plan for the transfer of members to another RSE should this need arise.

In June 2021, legislative reforms¹ were passed to amend the Act to include the best financial interests duty.

¹ [Federal Register of Legislation - Treasury Laws Amendment \(Your Future, Your Super\) Act 2021](#)

In February 2022, legislative reforms² were passed to amend the Act to include the retirement income covenant.

SPS 515 aligns with these legislative reforms and also uplifts industry practice in a number of areas in response to changes in the operating environment. These enhancements are aimed at improving RSE licensees' management of financial resources, managing risks relating to transferring members across funds and supporting the implementation of the retirement income covenant. As compared to the previous version of the standard, SPS 515 requires:

- an RSE licensee to set strategic objectives that support the outcomes it seeks to achieve for members;
- funding and costing of key initiatives to be included within an RSE licensee's business plan;
- an RSE licensee to ensure that its retirement income strategy is subject to review at least every three years;
- uplifts to RSE licensees' financial resource management, including fee setting principles, expenditure management and reserving practices;
- monitoring of performance indicators and triggers to drive a timely response where outcomes are not being or unlikely to be achieved;
- the business performance review to clearly assess and demonstrate the outcomes achieved for beneficiaries and whether strategic objectives are being met, with results of the business performance review to be considered by the RSE Licensee when setting strategic objectives; and
- measures to support the management of risks when planning for and undertaking a transfer of members.

2. Purpose and operation of the instrument

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

The key requirements of SPS 515 are set out below:

1. Strategic objectives

Paragraphs 8-10 outline requirements for RSE licensees to set strategic objectives to support the achievement of outcomes sought for members and set out factors RSE licensees must consider when setting strategic objectives.

2. Business plan

² [Federal Register of Legislation – Schedule 9 - Corporate Collective Investment Vehicle Framework and Other Measures Act 2022](#)

Paragraphs 11-14 require an RSE licensee to create and maintain a business plan and specify minimum inclusions for the business plan, as well as a requirement for the business plan to be reviewed and updated annually.

For each key initiative that the RSE licensee will undertake to achieve its strategic objectives, the business plan must specify the expected cost, how it will be funded and the expected results of the initiative. Where an RSE licensee has decided to undertake a transfer of beneficiaries, remedial action or other recovery of exit activities, the business plan must include how that decision will be implemented.

3. *Financial resource management*

Paragraphs 15-22 set out requirements for an RSE licensee regarding its management of financial resources to support achieving outcomes for beneficiaries. These paragraphs include requirements relating to:

- prudent and transparent fee setting;
- the demonstration of the need for, and purpose of, each reserve in the RSE licensee's business operations as well as regular review of each reserve;
- controls to ensure prudent management of financial resources held at the trustee company level; and
- the positive demonstration of factors relating to expenditure decisions.

4. *Monitoring*

Paragraphs 23-24 set out requirements for an RSE licensee to monitor progress against its strategic objectives and the business plan to prompt remedial action or transfer planning where expected outcomes sought for beneficiaries are not being, or are unlikely to be, achieved.

An RSE licensee must set triggers for taking action to improve outcomes for beneficiaries or to commence preparation for a transfer of beneficiaries. These triggers must, at a minimum, include failing or expecting to fail the legislated annual performance assessment in subsection 60C(2) of the Act.

5. *Business performance review*

Paragraphs 25-26 set out requirements for an RSE licensee to annually review its performance in achieving its strategic objectives, informed by the monitoring of key performance indicators and triggers. The results of the review must be used to improve the RSE licensee's business operations for the benefit of beneficiaries.

The minimum factors that the business performance review must assess and demonstrate include whether an RSE licensee's strategic objectives are being met and an explanation of what has driven this assessment.

6. *Annual outcomes assessment*

Paragraphs 27-29 set out minimum requirements for an RSE licensee in relation to documenting the methodology applied in undertaking annual outcomes assessment under subsection 52(9) of the Act.

7. *Remedial actions and transfer planning*

Paragraphs 30-32 set out the requirements for an RSE licensee to demonstrate how it is taking timely remedial action where the expected outcomes it seeks for beneficiaries are not being achieved, including where relevant monitoring triggers have been met.

An RSE licensee must take appropriate and timely steps to prepare for circumstances that may necessitate a transfer of beneficiaries out of, or into, its RSE(s). Where an RSE licensee has received a determination from APRA that one or more of its products has not met the requirements of the legislated annual performance assessment under subsection 60D(1) of the Act, the RSE licensee is required to document its plan for responding to this determination in a timely manner.

8. *Transfer of MySuper product assets*

Paragraphs 33-43 set out requirements that apply in circumstances where an authority of an RSE licensee to offer a class of beneficial interests in a regulated superannuation fund as a MySuper product is cancelled, or if APRA notifies an RSE licensee that its authority to offer a MySuper product may be cancelled, by APRA under subsection 29U(1) of the Act.

The Board is accountable for the transfer of affected MySuper assets within the legislative timeframe following the cancellation of an authority to offer a MySuper product. Where APRA notifies an RSE licensee that its authority to offer a MySuper product may be cancelled by APRA, an RSE licensee is required to plan for a transfer of MySuper assets.

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 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);

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

It is only at this stage that an RSE licensee is exposed to a penalty: 100 penalty units each day if it breaches the direction (section 131DD of the Act) or loss of licence.³ The subsequent substantive decisions of APRA to impose a direction or cancel an RSE licence are subject to merits review.

Adjust and exclude discretion

SPS 515 gives APRA the discretion to adjust or exclude a provision of the prudential standard (paragraph 7). 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 515 is exempt from disallowance in accordance with paragraph 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 515 is an 'instrument (other than a regulation) relating to superannuation'.⁴

SPS 515 is exempt from sunseting in accordance with paragraph 54(2)(b) of the Legislation Act and regulation 11 of the Legislation Regulations as SPS 515 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 515 falls within the above-mentioned exemptions to disallowance and sunseting, APRA does not have discretion to subject SPS 515 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 515 (refer to section 3 below for further details) and will continue to conduct regular reviews of SPS 515.

Incorporation by reference

Under paragraph 14(1)(a) of the Legislation Act, where SPS 515 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 515 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 515 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

APRA undertook two rounds of consultation on SPS 515. The consultations proposed amendments to previous SPS 515 and to guidance in *Prudential Practice Guide SPS 515 Strategic and Transfer Planning* and *Prudential Practice Guide SPS 516 Business Performance Review*.

The first consultation commenced in August 2022⁶ and was a discussion paper setting out APRA's proposed areas of focus for the amendments to SPS 515. At the same time APRA consulted on amendments to strengthen superannuation transfer planning with the release of a discussion paper on this proposal in November 2022⁷.

Following these initial consultations, APRA undertook a final round of consultation in September 2023⁸ which tied together the responses to the two discussion papers and a draft version of SPS 515.

Eleven submissions were received during the final round of consultation, with respondents generally supportive of the proposed changes. Feedback centred on the need for further clarification in a small number of areas in SPS 515.

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 [Discussion paper - Strategic planning and member outcomes: Proposed enhancements | APRA](#)

⁷ [Transfer planning in superannuation: proposed enhancements | APRA](#)

⁸ [Strategic planning and member outcomes: proposed enhancements | APRA](#)

APRA has taken account of this stakeholder feedback and made adjustments to the draft version of SPS 515 to reflect this feedback. The final SPS 515:

- allows industry an extra six months to implement the changes by moving the start date of the standard to 1 July 2025;
- clarifies the reference to ‘non-financial expenditure’ in light of the best financial interests duty; and
- clarifies that the retirement income strategy must be reviewed every three years.

Stakeholders also requested further clarity on requirements relating to business planning, monitoring of strategic objectives and transfer planning, which APRA has addressed through further separate guidance.

4. Impact Analysis (IA)

The Office of Impact Analysis has confirmed that it considers the proposal is unlikely to have a more than minor impact and, as such, that the preparation of an Impact Analysis (IA) 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 the Legislative Instrument is to revoke *Prudential Standard SPS 515 Strategic Planning and Member Outcomes* made under *Superannuation (prudential standard) determination No. 2 of 2019* and replace it with a new version of the prudential standard.

SPS 515 sets out requirements for an RSE licensee to manage their business operations in a sound and prudent manner to achieve the outcomes it seeks for beneficiaries by setting strategic objectives, conducting business planning, appropriately managing financial resources including reserves and expenditure and monitor performance. SPS 515 also includes requirements to support the legislated outcomes assessment and to support the effective transfer of members to another RSE where necessary.

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.