

Superannuation (prudential standard) determination No. 7 of 2012

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

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

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).

On 15 November 2012, APRA made Superannuation (prudential standard) determination No. 7 of 2012 under subsection 34C(1) of the Act (the instrument).

The instrument commences on 1 July 2013.

1. Background

The Government indicated, in its response to the recommendations of the Super System Review in December 2010, support for the recommendation that APRA be given the power to make prudential standards in respect of superannuation, consistent with APRA's existing powers in respect of banking and insurance.¹ The Government also, to support reforms that affect how RSE licensees manage conflicts of interest and duty, amended the Act to require RSE licensees to meet requirements in APRA's prudential standards relating to conflicts of interest and duty when observing their obligations to beneficiaries.²

In April 2012, APRA released 11 draft prudential standards to implement APRA's proposed prudential framework for superannuation, incorporating those elements of the Government's superannuation reforms that come within APRA's mandate. APRA's proposals covered prudential requirements common to other APRA-regulated industries as well as superannuation-specific requirements. The proposals also included relocating some current requirements in the Act and *Superannuation Industry (Supervision) Regulations 1994* and non-binding guidance material into the new prudential standards, and harmonising the requirements for superannuation with those applying to other APRA-regulated industries to the extent practical.

APRA was granted the ability to make prudential standards in relation to superannuation under the Act by the passage of the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012* on 8 September 2012.

¹ *Stronger Super*, Recommendation 10.2, p. 60.

² Refer to sections 52(2)(d) and 52A(2)(d) of the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012*.

2. Purpose and operation of the instrument

The purpose of the instrument is to make *Prudential Standard SPS 521 Conflicts of Interest* (SPS 521), which sets out prudential requirements for the identification, avoidance and management of conflicts of duty and interest by an RSE licensee. These requirements are essential to ensure that an RSE licensee and its responsible persons meet legislative obligations in Part 6 of the Act.

The key requirements of SPS 521 are that an RSE licensee must:

- have a Board-approved conflicts management framework that is appropriate to the size, business mix and complexity of the RSE licensee's business operations and which applies to the entirety of its business operations.
- develop, implement and review a conflicts management policy that is approved by the Board;
- identify all relevant duties and relevant interests; and
- develop registers of relevant duties and relevant interests.

3. Consultation

In September 2011, APRA released for public consultation a discussion paper, *Prudential Standards for Superannuation*, which outlined proposals, including those Stronger Super reforms that the Government had recommended APRA implement in prudential standards. A suite of 12 prudential standards, including a standard dealing with conflicts of interest, was described in the paper. APRA received 41 written submissions in response to this discussion paper, presented the reforms via a wide range of industry forums and held discussions with a variety of industry participants.

In a second consultation round, APRA released a *Response to Submissions – Prudential standards for superannuation* and a package of 11 draft prudential standards on 27 April 2012. In the response, APRA outlined the significant issues raised in the submissions and APRA's proposed response to them.

APRA received 38 written submissions in response to the draft prudential standards; again, APRA also presented the reforms at industry forums and met with individual industry participants on the proposed requirements.

APRA took note of the issues raised in submissions on the draft standard and the final version of SPS 521 includes a number of changes. As the conflicts management framework is designed to assist the establishment and maintenance of an organisational culture where all conflicts are identified, avoided or managed, the prudential standard now explicitly requires the inclusion of all employees in the scope of the framework. Draft provisions proposing to require public disclosure of the conflicts management policy and registers of relevant interests and duties have been removed from the standard and have been referred to the Australian Securities and Investments Commission for possible inclusion in broader disclosure requirements. SPS 521 has also been clarified to allow RSE licensees more flexibility when deciding whether a particular interest or duty is relevant in the context of their business operations.

4. Regulation Impact Statement

A Regulation Impact Statement is required for the superannuation prudential standards.

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

The legislative instrument the subject of this explanatory statement does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Accordingly, in APRA's assessment, this legislative instrument is compatible with human rights.