

## **Superannuation (prudential standard) determination No. 3 of 2013**

### **EXPLANATORY STATEMENT**

**Prepared by the Australian Prudential Regulation Authority (APRA)**

*Superannuation Industry (Supervision) Act 1993*, subsection 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 entity (RSEs).

On 28 June 2013, APRA made Superannuation (prudential standard) determination No. 3 of 2013 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.<sup>1</sup>

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 the *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.

On 15 November 2012, APRA determined eight new prudential standards for superannuation after a long consultation process. At the same time, three prudential standards – *Prudential Standard SPS 160 Defined Benefit Matters* (SPS 160), *Prudential Standard SPS 310 Audit and Related Matters* (SPS 310), and *Prudential Standard SPS 520 Fit and Proper* (SPS 520) – were released in proposed final version.

In the response to submissions that accompanied the final prudential standards, APRA indicated that these three standards could not be determined at the time because they each contained provisions that required the passage of the Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Bill 2012 (Tranche 4 Bill). The Tranche 4 Bill received royal assent on 26 June 2013 and the amendments to the SIS Regulations will commence on 1 July 2013.

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<sup>1</sup> *Stronger Super*, Recommendation 10.2, p. 60.

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.

## **2. Purpose and operation of the instrument**

The purpose of the instrument is to make SPS 310, which sets out prudential requirements for an RSE licensee to maintain independent advice in relation to the operations, financial position and risk controls of the business operations of the RSE licensee. This advice is designed to assist the Board and senior management in carrying out their responsibilities for the sound and prudent management of the business operations of the RSE licensee.

The key requirements of SPS 310 are that an RSE licensee must:

- make arrangements to enable an RSE auditor to undertake his or her role and responsibilities;
- ensure the RSE auditor audits the financial statements and annual information required under reporting standards made by APRA in relation to each RSE, and review other aspects of that RSE, and provide a report to the RSE licensee of that RSE. The audit and review must cover the RSE licensee's business operations in respect of the RSE;
- ensure the RSE auditor is undertaking special purpose engagements, if applicable; and
- submit to APRA all reports required to be prepared by an RSE auditor under this Prudential Standard.

## **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 audit matters, 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.

Since November 2012, APRA has consulted closely with industry and the audit profession to finalise the details of the information to be covered in the auditor's report. The content of paragraph 19 and Attachment B to SPS 310, determined and released on 28 June 2013, has been updated to reflect this consultation. Attachment A is a new insertion to preserve existing audit obligations (in respect of years of income ending on or before 30 June 2013) and to allow a transition period that aligns with a similar transition period for the submission of data to APRA under reporting standards made under the *Financial Sector (Collection of Data) Act 2001*.

#### **4. Regulation Impact Statement**

A Regulation Impact Statement has been prepared and has been lodged as supporting material.

#### **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. 3 of 2013**

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 making this legislative instrument is to make SPS 310, which sets out prudential requirements for an RSE licensee to maintain independent advice in relation to the operations, financial position and risk controls of the business operations of the RSE licensee. This advice is designed to assist the Board and senior management in carrying out their responsibilities for the sound and prudent management of the business operations of the RSE licensee.

The key requirements of SPS 310 are that an RSE licensee must:

- make arrangements to enable an RSE auditor to undertake his or her role and responsibilities;
- ensure the RSE auditor audits the financial statements and annual information required under reporting standards made by APRA in relation to each RSE, and review other aspects of that RSE, and provide a report to the RSE licensee of that RSE. The audit and review must cover the RSE licensee's business operations in respect of the RSE;
- ensure the RSE auditor is undertaking special purpose engagements, if applicable; and
- submit to APRA all reports required to be prepared by an RSE auditor under this Prudential Standard.

This is a new prudential standard which applies to RSE licensees in order to implement the Government's Stronger Super reforms that come within APRA's mandate.

### **Human rights implications**

APRA has assessed the instrument against the international instruments listed in section 3 of the HRPS Act and determined that it does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.