

Superannuation (prudential standard) determination No. 4 of 2022

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Superannuation Industry (Supervision) Act 1993, section 34C

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 1 December 2022, APRA made Superannuation (prudential standard) determination No. 4 of 2022 (the Instrument) which revokes *Prudential Standard SPS 310 Audit and Related Matters* (existing SPS 310) made under Superannuation (prudential standard) determination No. 1 of 2018 and determines a new *Prudential Standard SPS 310 Audit and Related Matters* (SPS 310), Superannuation (prudential standard) determination No. 4 of 2022.

The instrument commences on 30 June 2023.

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 beneficiaries 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 determine legally binding prudential standards that set out specific prudential requirements for RSE licensees. These standards are supported by prudential practice guides which set out APRA's expectations in respect of prudential requirements.

In November 2012, APRA issued a package of prudential standards related to superannuation. This introduced SPS 310 which was effective from 1 July 2013.

SPS 310 outlines the roles and responsibilities of the RSE auditor of an RSE licensee and the obligations of an RSE licensee to make arrangements to enable an RSE auditor to fulfil its responsibilities. This includes a list of the reporting standards that the RSE auditor's report must address, with the level of assurance that must be provided for each specified reporting standard.

In April 2018, APRA revoked and replaced SPS 310 to remove the limited assurance review requirement in paragraph 19(b)(iv) of SPS 310 and the equivalent provision in the approved form of the audit report which must comply with SPS 310. SPS 310, as amended, was effective from 1 May 2018.

APRA is currently undertaking a Superannuation Data Transformation project (SDT) to drive better industry practices and improve member outcomes by enhancing the

comparability and consistency of reported data. The SDT expands APRA's data collection across a wider range of RSE investment options and collects more granular data.

Under the SDT, APRA has introduced new reporting standards. In some instances, the new reporting standards have replaced, or will replace, existing reporting standards. Amendments to SPS 310 are necessary to reflect these changes and to provide an additional review mechanism to support the provision of accurate data reporting in accordance with APRA's reporting standards.

Purpose and operation of the instrument

The purpose of Superannuation (prudential standard) determination No. 4 of 2022 is to revoke and replace existing SPS 310 with a new version of the standard and set out, in Attachment A of SPS 310, an updated schedule of the reporting standards that must be addressed in the RSE auditor's report for the year under review.

The amendments to SPS 310 remove audit requirements for revoked reporting standards and specify the content of selected new reporting standards, including whether reasonable assurance audit, or limited assurance review, is required in respect of the reporting standard. APRA has also amended provisions of SPS 310, relating to the exercise of APRA's discretion under the standard to ensure consistency with equivalent provisions in other recently updated prudential standards.

On 10 December 2021, APRA consulted on proposed amendments to SPS 310 to adjust the specified reporting standards to be audited consistent with the first phase of the SDT project. These changes ensure RSE auditors are not required to include revoked forms within their audit scope and that data items which APRA considers to be critical are captured.

The amendments to SPS 310, which are contained within Attachment A of SPS 310, are summarised below:

- *Reporting Standard SRS 330.2 Statement of Financial Performance, Reporting Standard SRS 530.0 Investments, Reporting Standard SRS 531.0 Investment Flows, Reporting Standard SRS 540.0 Fees and Reporting Standard SRS 703.0 Fees Disclosed* have been removed from the audit scope as these reporting standards have been, or will be, revoked by APRA by 30 June 2023; and
- *Reporting Standard SRS 706.0 Fees and Costs Disclosed* (for MySuper only) and *Reporting Form SRF 550.1 Investments and Currency Exposure* (Table 1, columns 1-5 and 9-12) of *Reporting Standard SRS 550.0 Asset Allocation* have been added to the audit scope. These reporting standards include data items that APRA considers to be critical for purposes including APRA's administration of the legislated MySuper Performance Test and Heatmap.

Footnote 13 has also been added to SPS 310, specifying that if a reporting standard has been revoked prior to or during a year of income, the RSE auditor's report for that year of income does not need to address the annual information required by that reporting standard. This footnote removes the need for future amendment to SPS 310 solely to remove audit requirements for a revoked reporting standard.

Merits review

The prudential standards provide for APRA to exercise various discretions. Decisions made by APRA 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 a ground for APRA to make further, substantive decisions under the Act in relation to the RSE licensee. Those decisions are, as the case may be, decisions to:

- a) cancel a licence to operate an APRA-regulated superannuation fund (section 29G of the Act); and
- b) 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).¹ A subsequent substantive decisions of APRA to cancel the licence and impose a direction are subject to merits review.

Exemption from sunseting and disallowance

¹ Section 54B of the Act, provides that breach of a covenant under sections 52 or 52A is a civil penalty provision.

SPS 310 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 310 is an ‘instrument (other than a regulation) relating to superannuation’.²

SPS 310 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’.³

As SPS 310 falls within the above-mentioned exemptions to disallowance and sunseting, APRA does not have discretion to subject SPS 310 to disallowance and sunseting. To mitigate against any adverse impact arising from the above-mentioned exemptions from disallowance and sunseting, APRA undertook consultation on the proposed revisions to existing SPS 310 and will continue to conduct regular reviews of SPS 310 as APRA’s SDT project progresses, and further changes are made to reporting standards.

Incorporation by reference

Where SPS 310 refers to provisions in an Act, this is a reference to an Act as it exists *from time to time*, and which is available on the Federal Register of Legislation at www.legislation.gov.au. Where SPS 310 refers to another superannuation prudential standard or reporting standard, the superannuation prudential standard or reporting standard referred to is the version that exists *at the time* the Instrument was determined, also available on the Federal Register of Legislation website. Where SPS 310 refers to standards or statements issued by the Auditing and Assurance Standards Board, it is a reference to the standards or statements that existed *at the time* this instrument was determined.

2. Consultation

The consultation on SPS 310 consisted of the following releases:

- On 10 December 2021: APRA released *Proposed revisions to Prudential Standard SPS 310 Audit and Related Matters: letter* and proposed revisions to draft Attachment A of SPS 310;
- On 9 June 2021: APRA released *Response to submissions - Minor amendments to Prudential Standard SPS 310 Audit and Related matters: letter*; and

² 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.

³ 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.

- On 7 December 2022: *Final revisions to SPS 310: letter* and final SPS 310.

APRA undertook three months of public consultation between December 2021 and March 2022 on the proposed revisions to existing SPS 310. Four submissions were received and a meeting of the Superannuation National Audit Consultative Committee (SNACC) was held to consult on the initial draft of SPS 310.

The submissions and SNACC were broadly supportive of the intent of the proposed amendments, but issues were raised in relation to implementation. The core issue was the proposed timing of the introduction of the changes and lack of certainty about elements of APRA's data collection.

APRA released a response letter in June 2022 to confirm that the proposed changes to SPS 310 would be deferred until 30 June 2023. Since the issue of the response letter, APRA has further reviewed the proposal noting:

- On 7 July 2022, the Government announced a review of Your Future, Your Super Measures (YFYS). This review could lead to changes to APRA's data collection in relation to the Performance Test, which may delay the retirement and replacement of reporting standards that are within scope of the proposed SPS 310 changes; and
- APRA continued to receive feedback through the SNACC regarding industry readiness, highlighting that the transition to new reporting standards continued and that interim reporting processes remain prevalent.

As a result of consultation the amendments to SPS 310 were reduced in scope from those initially proposed to changes that APRA view as time-critical. This means that references to reporting standards that have been, or will be, revoked are removed from SPS 310, reporting standards expected to be used for APRA's administration of the next MySuper Performance Test and Heatmap are retained, and new reporting standards that provide key data and are in-force with settled content have been added.

4. Regulation Impact Statement

The Office of Impact Analysis has advised that they consider the amendments to SPS 310 are unlikely to have a more than minor regulatory impact, and therefore the preparation of a Regulation Impact Statement is not required for this Legislative Instrument.

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.⁴

⁴ APRA is not obliged to prepare a statement given SPS 310 is exempt from disallowance, however, has nonetheless prepared one: see section 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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 instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

Overview of the Legislative Instrument

The purpose of this instrument is to revoke *Prudential Standard SPS 310 Audit and Related Matters* determined by APRA in 2018 and replace it with a new *Prudential Standard SPS 310 Audit and Related Matters* (SPS 310). The instrument outlines the roles and responsibilities of the RSE auditor of an RSE licensee, and it also outlines the obligations of an RSE licensee to make arrangements to enable an RSE auditor to fulfil its responsibilities.

The amendments being made to SPS 310 are minor; their purpose is to ensure that only relevant reporting standards are included in the audit scope for an RSE.

Human rights implications

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