



FINANCIAL
SERVICES
COUNCIL

Draft SPS 250 – Insurance in Superannuation

FSC Submission

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1. About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing \$3 trillion on behalf of more than 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

2. Introduction

The FSC welcomes APRA's proposed revisions to Prudential Standard 250 (the **Standard**) to strengthen the insurance in superannuation framework. We understand that the policy intent of the revised Standard is to comply with recommendation 4.14 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission**). Overall, we are satisfied with the scope of the proposed changes, however we have highlighted some changes which require either amendment or clarification.

The FSC is also concerned that the revised Standard has introduced several new terms which have not been defined or explained. APRA could consider providing additional guidance, such as through SPG 250, to assist in complying with the new Standard. The FSC notes that APRA has committed to consulting on a revised SPG 250 in the first quarter of 2020 and we welcome the opportunity to provide additional comments.

Section 3 of this submission contains further detailed feedback on the key areas of concern for FSC members.

3. Detailed Feedback

3.1. Independent certification

In response to recommendation 4.14 of the Royal Commission, paragraph 24 and 25 require that a trustee obtain independent certification of certain matters and to provide this to APRA.

Recommendation 4.14 was designed to provide additional scrutiny where an insurer engages a related party or enters into a contractual arrangement which provides priority or privilege to the insurer. The current drafting of the Standard is unclear in which circumstances an independent certification is required. As drafted, paragraph 24(a) could apply to all trustees while paragraph 24(b) only applies where there is a “related party insurer” or an arrangement which provides “priority or privilege”.

FSC understands the intention of paragraph 24 is to only apply to related party insurers or arrangements which provide priority or privilege as recommended in the Final Report of the Royal Commission, and as such we recommend that this paragraph be redrafted as suggested below:

- 24) *“Where an RSE licensee enters into an insurance arrangement or any other arrangement in relation to the provision of group insurance which:*
- a) is with a related party insurer; or*
 - b) gives priority or privilege to an insurer,*
- the RSE licensee must obtain independent certification that the insurance arrangement or other arrangement...”*

Best interests

FSC notes paragraph 24 proposes that trustees obtain independent certification that certain arrangements are in the best interests of the beneficiaries.

However, an external third party will generally not be able to go so far as to certify that a trustee has met the best interests duty, as it is the responsibility of the trustee to make that assessment.

To avoid confusion, we suggest the proposed scope of the independent certification make clear that the certification would be used by the trustee to help form a view on the selected insurance arrangements. For example, a trustee may seek independent certification on aspects of the nature of an insurance contract such as legal advice regarding the commercial terms. This certification will form a key part of the selection process and due diligence review, which will be used to assist trustees to form a view on the selected insurer.

Accordingly, we suggest the scope of the independent certification provide advice more in the realm of negative assurance, as below:

- 24) *“...RSE licensee must obtain independent certification that the insurance arrangement or other arrangement:*
- c) is not inconsistent with the best interests of the beneficiaries; and*

d) otherwise satisfies all applicable legal and regulatory requirement.”

The FSC also recommends that APRA consider revising SPG 250 to provide additional clarification and guidance on the scope of “independent certification”, how this might apply in practice and what factors would lead to “negative” independent certification at paragraph 18(n). For example, an insurer may have 20 legal requirements which apply to a contract, would missing one, two, half or more of these factors lead to negative certification?

Further, the FSC recommends that APRA could provide further guidance to assist trustees on who should be providing the independent certification, for example, if actuarial or legal advice must be sought.

Related party insurer and priority or privilege

It is unclear from the current drafting of paragraph 24(c) who is considered to be a related party insurer.

We recommend that a definition is provided in the Standard, consistent with similar definitions in the SIS Act or the Corporations Act.

It is also unclear from the current drafting of paragraph 24(d) in what circumstances an arrangement which provides “priority or privilege” would arise. For example, would this apply to all group insurance contracts (as they generally involve exclusivity) or only those where a special priority or privilege is granted which would effectively put an insurer into the same position as a related party insurer.

We recommend APRA provide a clear definition of what constitutes “priority or privilege”.

Frequency and timing

Paragraph 25 requires a trustee which has obtained independent certification to provide the certification to APRA within specific timeframes when “entering into” a new arrangement or “renewing” an existing arrangement. It also requires trustees to provide certification to APRA on a biennial basis where the term of the insurance contract is three years or greater.

It is unclear in the current drafting as to what date “entering into” or “renew” refers to. For example, an insurance contract may often have an execution date and an effective date which may not be the same.

We recommend that APRA provide additional clarity or guidance to explain when “entering into” or “renew” starts.

As currently drafted, paragraph 25 requires that certification be provided “no later than one calendar month prior to” an entering into or renewing an insurance arrangement. This could potentially require reporting when an insurance arrangement does not exist.

We query if this should be worded “one calendar month *following* the RSE licensee” entering into or renewing an insurance arrangement.

The FSC also seeks to better understand the rationale of a two-year reporting period for contract lengths of three years or greater which could result in misalignment of reporting

periods and contract length. For example, where contracts are three years in length, the two-year reporting period combined with reporting requirements when a new contract is put in place will effectively mean a trustee reports in two out of three years.

We recommend that the certification must be provided to APRA every three years where the arrangement is for a term of, or exceeding, three years.

3.2. Transition timing

The current drafting of the transition provisions is unclear as to when the obligations of the Standard apply.

While arrangements entered into from 1 January 2021 must have independent certification before entering into a new agreement, it is not clear in the current drafting what the transitions arrangements are for arrangements entered into before this date are.

Where an arrangement is entered into prior to the registration date, the trustee must comply with the requirements outlined in paragraph 30(a) – (g). This includes taking all reasonable steps to ensure that the arrangement contains a termination provision should the independent certification under paragraph 24 found to be negative.

Where policies are entered into after the date of registration but before 1 January 2021, the trustee should ensure that the arrangement grants the right to terminate the insurance agreement should the independent certification under paragraph 24 be negative.

In both of these scenarios, the effect of the application of the Standard is unclear as the requirement to obtain independent certification does not commence until 1 January 2021 (after the registration date).

We recommend that the transition provisions in the Standard are made clear so that where insurance arrangements are entered into:

- 1) prior to the registration date: the trustee must use reasonable endeavors to ensure that they comply with the obligations under paragraph 18; and
- 2) between the registration date and 1 January 2021: that the insurance arrangement have in place provisions which are consistent with paragraph 18.

It should be made clear that in both instances, independent certification should only be required on a biennial (or as otherwise amended) basis if the term of the policy exceeds three years, in this case by 1 January 2023.

3.3. Data collection

Under revised paragraph 14, the Standard proposes that that a trustee must maintain records of sufficient detail to comply with its obligation under the prudential framework. We note that trustees are already subject to minimum data collection requirements and the onus is on each trustee to determine if they are satisfied that they collect sufficient data enable a prospective insurer to assess the insured benefits and, if required, obtain an independent certification.

The FSC notes the findings of the Australian Securities and Investments Commission's Report 633 which sought to review TPD insurance claims. It found that insurers did not have sufficient understanding of the reasons for withdrawn claims and recommended that insurers and superannuation trustees review their policies. ASIC also stated an expectation that insurers and trustees would seek to improve their own understanding of claims data.

We encourage APRA to work closely with ASIC to ensure that there is an alignment of regulatory expectations and data requirements for insurers and trustees.