



21 September 2021

TO: ALL RSE LICENSEES

PRUDENTIAL STANDARD SPS 250 INSURANCE IN SUPER – UPDATE ON INDUSTRY CONSULTATION

In January 2021, APRA undertook further consultation of its proposed revisions to draft *Prudential Standard SPS 250 Insurance in Superannuation* (SPS 250) and draft *Prudential Practice Guide SPG 250 Insurance in Superannuation* (SPG 250). APRA advised that a response to submissions was expected to be issued in mid-2021.¹

These revisions to the superannuation prudential framework are an important step in ensuring RSE licensees meet their obligations to prudently select, monitor and manage insurers. The amendments are consistent with the sharper focus of the new best financial interests duty, and the reverse evidential burden of proof, recently implemented as part of the Government's Your Future, Your Super reforms.² RSE licensees must maintain sound insurance management frameworks, and robust decision-making in the negotiation and ongoing review of insurance arrangements.

APRA is in the process of finalising the amendments to SPS 250 and SPG 250 and intends to issue the final standard and guidance in the coming months. It is intended that the revised SPS 250 will be effective from 1 July 2022.

In the interim, this letter clarifies APRA's intended position on the proposed independent certification of certain insurance arrangements, specifically related party arrangements and those that include priority and privilege terms.

Independent certifications of insurance arrangements

In response to the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services industry* recommendation 4.14³, draft SPS 250 (January 2021) required an independent certification for insurance arrangements with related parties and for those

¹ APRA's consultation on SPS 250 is available here: [Consultation on Prudential Standard SPS 250 Insurance in Superannuation | APRA](#)

² Letter on YFYS reforms issued 30 July 2021: [Implementation of Your Future, Your Super reforms | APRA](#)

³ APRA should amend Prudential Standard SPS 250 to require RSE licensees that engage a related party to provide group life insurance, or who enter into a contract, arrangement or understanding with a life insurer by which the insurer is given a priority or privilege in connection with the provision of life insurance, to obtain and provide to APRA within a fixed time, independent certification that the arrangements and policies entered into are in the best interests of members and otherwise satisfy legal and regulatory requirements.

arrangements with priority and privilege.⁴ Draft SPG 250 provided guidance on APRA's view of contractual terms that could provide a priority or privilege to an insurer.

Industry submissions

APRA received seven submissions, which expressed broad support for the draft SPS 250 proposals, including the requirement for an independent certification of related party arrangements.

The submissions, however, queried the proposals relating to the proposed independent certification requirement for priority and privilege arrangements. Issues raised include:

- the examples in the guidance could potentially capture all, or a majority, of insurance arrangements. For example, all incumbent insurers would have more up to date claims data, putting them in a privileged position. Most group life policies are open ended (though they may have a rate guarantee fixed period), and generally allow for automatic rollover; and
- more broadly, the concepts of priority and privilege were complex and ambiguous.

APRA response

APRA plans to proceed with the requirement for independent certification for related party arrangements. However, APRA recognises that mandating independent certification of priority and privilege insurance arrangements may result in unintended consequences. Therefore APRA intends to remove this requirement.

Industry feedback has indicated that the majority of insurance arrangements across the industry could fall within the definition of priority and privilege arrangements. Therefore it is important that RSE licensees ensure that the risks that arise from such contracts are appropriately identified and managed.

APRA intends to amend the prudential framework to reflect the intent of the Royal Commission recommendation with respect to priority and privilege arrangements, in the following ways:

- **APRA power to require independent certification in SPS 250:** in addition to maintaining the requirement for independent certification for related party insurance arrangements, APRA intends to include a provision in SPS 250 for APRA to require an RSE licensee to obtain an independent certification. This is intended to be a reserve power that it is likely to be used in limited situations;
- **Expanded scope of the insurance management framework in SPS 250:** APRA intends to require that RSE licensees' insurance management frameworks (IMF) include consideration of any contractual terms and business practices that may indicate conflicts and/or 'priority and privilege'. Further, the comprehensive review of the IMF (undertaken every 3 years by an operationally independent person) will be required to assess whether there are any such provisions or practices with respect to insurance arrangements, and to

⁴ APRA understands priority and privilege in an insurance arrangement to be any arrangement whereby an insurer may be afforded an advantage such that member interests may not have been prioritised and/or where an RSE licensee may be prevented from acting independently in relation to the insurance arrangements for the members of the RSE. Some examples would include exclusive tender rights, excessively long contracts and limited data sharing by the incumbent insurer.

assess the appropriateness of these provisions and practices, and whether they are in the best financial interests of beneficiaries; and

- **Express consideration of priority and privilege provisions in delivering member financial outcomes in SPS 515:** APRA intends to require RSE licensees to consider whether any 'priority and privilege' provisions in insurance arrangements are affecting the insurance outcomes for members (as reflected in the Business Performance Review (BPR) and annual outcomes assessment in *Prudential Standard SPS 515 Strategic Planning and Member Outcomes* (SPS 515)).⁵

If you have any queries in relation to this advice, please contact your APRA supervisor.

Yours sincerely,

Renée Roberts

Executive Director

⁵ This update will be considered in 2022 as part of the broader suite of changes to *Prudential Standard SPS 515 Strategic Planning and Member Outcomes* and the associated guidance, as advised in APRA's July 2021 letter on YFYS implementation.