

Mr [REDACTED]
General Manager, Policy Development
Policy and Advice Division
Australian Prudential Regulation Authority (APRA)
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Sydney NSW 2001

Sent via email to [REDACTED]

12 March 2021

Consultation: Proposed revisions to SPS 250 - Mercer Submission

Dear Mr [REDACTED]

Thank you for the opportunity to provide comment on the proposed revisions to *Superannuation Prudential Standard SPS 250 Insurance in Superannuation* (SPS 250) and *Prudential Practice Guide SPG 250 Insurance in Superannuation* (SPG 250).

The revised draft of SPS 250 addresses many of the concerns Mercer had with the initial draft, as set out in our earlier submission. Thank you for your consideration of the matters raised in that submission.

We have set out our comments on the consultation material below.

1. Proposed independent certification requirement

Our detailed comments and recommendations regarding the proposed independent certification requirement are set out in the Appendix to this letter. We have numbered our specific recommendations in the Appendix 1 through to 10. Our key recommendations are:

- **Recommendation 1**

(i) The certification requirements (including para 18(n)) should be re-framed to refer to the insurance policy. This would require consequential changes to SPG 250. If considered necessary, the SPG could state that the independent certification would be expected to have regard to any other relevant agreements that form part of the insurance arrangement.

(ii) If the certification requirements are not re-framed to refer to the insurance policy, we request that clear guidance be added to SPG 250 covering the questions raised above and APRA's expectations regarding the depth of examination of the insurance-related agreements.

For the reasons set out in the Appendix, we consider requiring the independent certification to relate to the insurance arrangement – which includes contracts other than the insurance policy – is problematic.

▪ **Recommendation 4**

(i) We recommend the “satisfies applicable legal and regulatory requirements” part of the certification be removed.

(ii) If it is not removed, we request that clear guidance be added to SPG 250 about APRA’s expectations of the scope and depth of the work to be undertaken before making this certification.

As detailed in the Appendix, we remain concerned that this limb of the certification is problematic, unnecessary and will substantially increase the cost of the certification.

2. Proposed requirement that any status attributed to a beneficiary in connection with the provision of insurance is fair and reasonable

We strongly support the change expressing the requirement in terms of ‘the rules by which a particular status is attributed...’.

However we remain concerned about the potential for ‘interpretation creep’ in regard to what might be considered a ‘status’ that is covered by the new fair and reasonable requirement:

(1) In the discussion leading up to recommendation 4.15, the Hayne report says:

Trustees must be required to make proper arrangements about the premiums that will be charged to default members. That can be achieved by APRA amending SPS 250 to require that any status attributed to default members (such as ‘blue-collar’, ‘smoker’, or other status affecting the premium to be charged for insurance) is fair and reasonable. Ordinarily that would require consideration of whether the status attributed is statistically appropriate.

(2) It seems clear from this that the recommendation was directed at ‘attributed status affecting the premium charged to a member’. However neither the draft changes to SPS 250 or SPG 250 provide clarity that the new SPS 250 requirement should be limited to status affecting premiums charged.

Recommendation 11

- *If APRA intends that the new SPS 250 requirement should be limited to status affecting premiums charged, we suggest that SPS 250 should include this limitation.*
- *If APRA intends that the new requirement apply more widely than premium impact, we request that SPG 250 provides examples of other areas that trustees will need to consider.*

- (3) In considering whether the rules by which a particular status is attributed to a beneficiary in connection with the provision of insurance are fair and reasonable, we believe it is critical that the factors permitted to be taken into account include:
- what cover terms the insurer/insurance market is willing to provide
 - the information available to the trustee
 - the nature of group insurance, in particular that for efficiency group ratings apply with most members not required to provide additional information or be individually underwritten
- (4) In regard to the terms on which insurers are prepared to provide cover, we note that SIS s68AA (which sets out provisions requiring default Death and TPD cover for MySuper members) allows the trustee to determine reasonable conditions to which the provision of cover is subject, and specifies that conditions determined for this purpose 'are reasonable if they are the same as the terms and conditions of the policy of insurance taken out to provide the benefit'.

Recommendation 12

We recommend that APRA considers whether a similar 'deeming provision' may be required in order to make the proposed 'fair and reasonable' attributed status requirement workable.

Who is Mercer?

Mercer is one of the world's leading firms for superannuation, investments, health and human resources consulting and products. Across the Pacific, leading organisations look to Mercer for global insights, thought leadership and product innovation to help transform and grow their businesses. Supported by our global team of 22,000, we help our clients challenge conventional thinking to create solutions that drive business results and make a difference in the lives of millions of people every day.

Mercer Australia provides customised administration, technology and total benefits outsourcing solutions to a large number of employer clients and superannuation funds (including industry funds, master trusts and employer sponsored superannuation funds). We have over \$150 billion in funds under administration locally and provide services to over 2.4 million superannuation members and 15,000 private clients. Our own master trust in Australia, the Mercer Super Trust, has around 220 participating employers, around 190,000 members and more than \$24 billion in assets under management.



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Please contact me on [REDACTED] if you would like to discuss this submission.

Yours sincerely

[REDACTED]

[REDACTED]

Manager, Research & Policy

Appendix – Comments on proposed independent certification requirements

This Appendix sets out our comments and recommendations regarding the draft amendments to SPS 250 relating to the proposal to require an independent certification where the insurer is a connected entity or a contractual term of the insurance arrangement provides the insurer with a priority or privilege.

Reference	Comments/Recommendations
<p><i>Draft SPS 250 para 17</i></p> <p>Insurance arrangements 17. For the purposes of this Prudential Standard, ‘insurance arrangement’ means:</p> <p>(a) where an RSE licensee makes available insured benefits as described in paragraph 6(a) – an insurance policy document¹¹; or</p> <p>(b) where an RSE licensee makes available insured benefits as described in paragraph 6(b) – appropriate documentation of the terms and conditions of the insured benefits</p>	<p>The proposed independent certification requirements are included in the ‘Selection and monitoring of insurers’ section of SPS 250. We think this is appropriate and question whether it is appropriate for the independent certification requirements to extend beyond the agreement with the insurer; i.e. beyond the insurance policy/contract.</p> <p>Requiring independent certification of the ‘insurance arrangement’, where that term is defined to include ‘<i>any agreements with any other party related to making available insured benefits</i>’ unnecessarily widens the scope of the certification and raises a number of questions for the proposed independent certification requirements.</p> <p>1.1 Scope The scope of ‘<i>any agreements with any other party related to making available insured benefits</i>’ remains unclear. According to the draft SPG (para 47):</p> <p><i>Examples of other agreements that may fall within this broad definition of insurance arrangement include, but are not limited to, administration agreements or other agreements related to the provision of insurance, such as the selection process for insurers and premium setting arrangements. Therefore, any additional agreements related to making available insured benefits would be considered as part of the independent certification process.</i></p>

and any agreements with any other party related to making available insured benefits.¹²

Administration agreements will generally include matters relating to administration of insurance as well as a whole range of other aspects of superannuation fund administration. In such cases, is the whole contract part of the 'insurance arrangements' requiring certification or is it only the part/s dealing with insurance? Or something else? How does APRA see the proposed para 18(n) requirements (re termination provisions to be included in an insurance arrangement) working in such agreements?

1.2 Term

If 'insurance arrangement' includes some agreements outside the insurance policy document (such as administration agreements and agreements with a tender provider), how is it determined whether the 'term' of the insurance arrangements is more than three years for the purpose of para 24(b)? When is the 'insurance arrangement' entered into or renewed for the purposes of para 24?

Recommendation 1

- (i) The certification requirements (including para 18(n)) should be re-framed to refer to the insurance policy. This would require consequential changes to SPG 250. If considered necessary, the SPG could state that the independent certification would be expected to have regard to any other relevant agreements that form part of the insurance arrangement.
- (ii) If the certification requirements are not re-framed to refer to the insurance policy, we request that clear guidance be added to SPG 250 covering the questions raised above and APRA's expectations regarding the depth of examination of the insurance-related agreements.

A further minor observation is that if 'accompanying' is removed from para 17 as proposed, this would appear to require a consequential amendment to footnote 12.

<p><i>Draft SPS 250 sub-para 18(n)</i></p> <p>without limiting sub-paragraph 18(m) to specify a termination provision, the termination provision must include the RSE licensee's right to terminate the insurance arrangement, if an independent certification required under paragraph 25 or paragraph 26 does not state it is reasonable for the RSE licensee to form the view that the insurance arrangement is in the best interests of the beneficiaries.¹³</p> <p>¹³Sub-paragraph 18(n) applies to new insurance arrangements entered into on and from the effective date of this Prudential Standard</p>	<p>Recommendation 2</p> <p>Footnote 13 refers to 'new insurance arrangements entered into on and from the effective date of this Prudential Standard'. We recommend that, for clarity and consistency with para 24(a), APRA considers expansion to also refer to when insurance policies/contracts (see Recommendation 1) are renewed or materially altered.</p>
<p><i>Draft SPS 250 para 24</i></p> <p>Subject to paragraph 31 and paragraph 32, an RSE licensee that is required to obtain an independent certification under paragraph 25 or paragraph 26 must obtain the certification: (a) before the RSE licensee:</p>	<p>See Recommendation 1 re changes to refer to the insurance policy rather than insurance arrangement.</p> <p>Recommendation 3</p> <p>Re part (b) we presume it would be acceptable to obtain a certification after two years (for example) instead of three. To more clearly provide this flexibility, Para 24(b) could be amended to</p> <p><i>(b) at least every three years</i></p>

<p>(i) enters into a new insurance arrangement; or (ii) renews, or materially alters the terms of, an existing insurance arrangement; or (b) on a triennial basis if the insurance arrangement is for a term of, or exceeding three years.</p>	<p>It may also be necessary to amend the 'or' before' (b) to 'and'.</p> <p>This wording would also better cater for insurance policies written as ongoing contracts without any specific term, which are common in group insurance arrangements.</p>
<p><i>Draft SPS 250 para 25</i></p> <p>Where an insurer that is a connected entity of an RSE licensee is party, or will be party, to an insurance arrangement with the RSE licensee under which the RSE licensee makes or will make insured benefits available to beneficiaries (other than an insurance arrangement covered by paragraph 31), the RSE licensee must obtain an independent certification that states: (a) it is reasonable for the RSE licensee to form the view that the insurance arrangement is in the best interests of the beneficiaries; and (b) the insurance arrangement otherwise satisfies applicable legal and regulatory requirements.</p>	<p>See Recommendation 1 re changes to refer to the insurance policy rather than insurance arrangement.</p> <p><i>Required certification that the arrangement otherwise satisfies applicable legal and regulatory requirements</i></p> <p>We remain concerned that para 25(b) appears to require an extremely wide and unqualified certification which is far more onerous than the terms of the assurance required from the fund's auditor. We consider this is unreasonable given both the scope (i.e. 'applicable legal and regulatory requirements') and the greyness of many of the applicable legal and regulatory requirements and the fact that views about what some of these require are constantly changing. Consider the following examples:</p> <ul style="list-style-type: none"> (i) Does the scope of the certification include that the expert is satisfied that the insurance arrangements do not inappropriately erode the balance of any member? There is huge scope for legitimate differences of opinion here. (ii) Does the scope of the certification include that claims assessment processes meet all applicable legal and regulatory requirements? (iii) Does the expert need to check that the contract meets the requirements of the Life Insurance Act? And Commonwealth and State/Territory human rights and equal opportunity legislation? (iv) Having regard to the views about 'activities of daily living' (ADL) TPD cover expressed by ASIC in REP 633, could either limb of the draft certification be provided for arrangements that include ADL TPD cover?

	<p>On our reading, draft SPG 250 does not provide any insight into APRA expectations regarding the part (b) certification. In fact we did not find any reference to the part (b) certification at all.</p> <p>What level of review/checking/audit does APRA expect to be undertaken to provide the part (b) certification?</p> <p>The wider the scope of the certification and the more grey areas it is required to cover, the more costly the certification will be. Why would such a wide certification – extending well beyond related party type issues - be considered necessary for funds with a related party insurer when it is not considered necessary for funds not in these circumstances?</p> <p>Furthermore, in our view the nature of this second limb of the certification implies the certifier would need to have legal qualifications, whereas we suggest that the first limb will require actuarial expertise.</p> <p>In our view the scope should be focused only on those areas where there are concerns that concessions may be inappropriately afforded to a related party insurer. We think the important areas are the pricing and other material terms and conditions, which require actuarial expertise to assess. Is it acceptable for different parties to provide the part (a) and (b) certifications?</p> <p>As the 'best interest' certification will cover these areas, in our view the second limb of the certification (satisfies applicable legal and regulatory requirements) is not necessary to achieve the objective of the changes and raises doubts as to whether an actuary could provide the required certification.</p> <p>Recommendation 4</p> <p>(i) We recommend the “satisfies applicable legal and regulatory requirements” part of the certification be removed.</p>
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	<p>(ii) If it is not removed, we request that clear guidance be added to SPG 250 about APRA's expectations of the scope and depth of the work to be undertaken before making this certification. Furthermore, SPG 250 should comment on :</p> <ul style="list-style-type: none"> • the implications if the part (a) certification can be provided but not part (b) • whether it is acceptable for different parties to provide the part (a) and (b) certifications
<p><i>SPS 250 para 27</i></p> <p>An RSE licensee must provide APRA with an independent certification obtained under paragraph 25 or paragraph 26 no later than five business days after the RSE licensee receives the certification.</p>	<p>Five business days is a very short period. A maximum period of 20 business days would be reasonable, as specified in Prudential Standard SPS 231 Outsourcing for trustees to notify APRA after execution of an outsourcing agreement.</p> <p>Recommendation 5</p> <p>We recommend the period allowed be increased to 20 business days.</p> <p>Also see Recommendation 9</p>
<p><i>SPS 250 para 31</i></p> <p>Where:</p> <p>(a) an RSE licensee has entered into an insurance arrangement with a connected entity of the RSE licensee prior to the effective date; and</p> <p>(b) the insurance arrangement ends on or after 1 January 2023, the RSE licensee must, before 1 January 2023, seek an independent</p>	<p>See Recommendation 1 re changes to refer to the insurance policy rather than insurance arrangement.</p> <p>We note that the independent certification specified here does not include the para 25(b) component that we have recommended above be removed from para 25.</p> <p>Recommendation 6</p> <p>It is not clear whether a certification is required under para 24(a)(ii) where an existing insurance arrangement which ends on or after 1 January 2023 is renewed or materially altered between 31 December 2021 and 1 January 2023. We recommend this be clarified.</p>

<p>certification that states it is reasonable for the RSE licensee to form the view that the insurance arrangement is in the best interests of the beneficiaries.</p>	
<p><i>SPS 250 para 32</i></p> <p>Where:</p> <p>(a) an RSE licensee has entered into an insurance arrangement with an insurer that is not a connected entity of the RSE licensee prior to the effective date; and</p> <p>(b) a contractual term of the insurance arrangement provides the insurer with a priority or privilege; and</p> <p>(c) the insurance arrangement ends on or after 1 January 2025,</p> <p>the RSE licensee must, before 1 January 2025, seek an independent certification that states it is reasonable for the RSE licensee to form the view that the insurance arrangement is in the best interests of the beneficiaries.</p>	<p>See Recommendation 1 re changes to refer to the insurance policy rather than insurance arrangement.</p> <p><i>Recommendation 7</i></p> <p>It is not clear whether a certification is required under para 24(a)(ii) where an existing insurance arrangement which ends on or after 1 January 2025 is renewed or materially altered between 31 December 2021 and 1 January 2025. We recommend this be clarified.</p>

<p><i>SPS 250 para 33</i></p> <p>An RSE licensee must provide APRA with an independent certification obtained for the purposes of paragraph 31 or paragraph 32 no later than five business days after the RSE licensee receives the certification.</p>	<p>Five business days is a very short period. A maximum period of 20 business days would be reasonable, as specified in SPS 231 for trustees to notify APRA after execution of an outsourcing agreement.</p> <p>Recommendation 8</p> <p>We recommend the period allowed be increased to 20 business days.</p>
<p><i>SPS 250 para 34</i></p> <p>Where an RSE licensee is unable to obtain an independent certification for the purposes of paragraph 31 or paragraph 32, that states it is reasonable for the RSE licensee to form the view that the insurance arrangement is in the best interests of the beneficiaries, the RSE licensee must notify APRA no later than five business days after becoming aware that it cannot obtain an independent certification containing that statement.</p>	<p>Five business days is a very short period. A maximum period of 20 business days would be reasonable, as specified in SPS 231 for trustees to notify APRA after execution of an outsourcing agreement.</p> <p>Recommendation 9</p> <p>We recommend the period allowed be increased to 20 business days.</p> <p>Recommendation 10</p> <p>Para 27 has ongoing provisions aligning with the transitional provisions in para 33. However we cannot find an ongoing requirement aligning with the transitional provisions in para 34 for certifications required under para 24 that the RSE licensee is unable to obtain. We recommend APRA consider incorporating an ongoing requirement covering these circumstances.</p>