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Updated proposed revisions to Prudential Standard SPS 250 Insurance in Superannuation

ABOUT US

Super Consumers Australia (Super Consumers), formerly known as the Superannuation Consumers' Centre, is an independent, not-for-profit consumer organisation formed in 2013. Super Consumers was first funded in 2018. We work to advance and protect the interests of low and middle income people in the Australian superannuation system.

During its start up phase Super Consumers has partnered with CHOICE to deliver support services. CHOICE is the leading consumer advocate in Australia, established 60 years ago, it is an independent voice, ensuring consumers get a fair go.

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3258 | Fax 02 9577 3377 | Email enquiries@superconsumers.com.au |

www.superconsumers.com.au

The Superannuation Consumers' Centre is a not-for-profit company limited by guarantee. ABN 34 163 636 566 ACN 163 636 566

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Introduction

Life insurance is a product no consumer wants to have to rely on and few engage with. If the worst happens people should have the confidence that their super fund has designed an appropriate product that won't unduly erode their retirement savings. It is important that APRA maintains a watchful eye to ensure trustees are attuned to the needs of their members. APRA's standard goes some of the way to achieving this goal.

We are generally supportive of the updated proposed changes, particularly in respect of the draft Prudential Practice Guide SPG 250 (SPG 250). The guidance is significantly improved with regards to expectations, definitions, opting-out of insurance and data management.

However, despite some improvements to draft SPS 250, further explicit changes should be implemented. These include ensuring that funds provide flexible options to opt-out of insurance, improving member communications and strengthening independence in the insurance selection process.

Prudential practice guides frequently discuss legal requirements from legislation, regulations, or APRA's prudential standards, but do not themselves create enforceable requirements. Therefore, it is important that the prudential standards are robust enough to protect consumers without reliance on the guides.

Summary of Recommendations

Recommendation 1: That APRA amend SPS 250 and SPG 250 to clarify that members should be able to easily opt-out of either 'all or part' of their insurance cover.

Recommendation 2: That APRA amend Clause 16 to specify that trustees should be required to annually report why the levels of cover chosen by the trustee are in members' best interests, with reference to the erosive impacts on particular cohorts of members (e.g. women, people with low balances, people across different age demographics). Trustees should also be required to provide this on their website to illustrate how insurance premiums are affecting different members' balances.

Recommendation 3: That APRA amend SPS 250 and SPG 250 to ensure that an RSE licensee must expressly consider any misconduct in the selection of firms to undertake independence certification.

Recommendation 4: That APRA amend SPS 250 Clause to 33 to require a report of independent certification to be provided to APRA by the author of the report at the same time as it is provided to the RSE licensee.

In the absence of the above:

- require an RSE licensee obtaining independent certification to supply APRA with a formal assurance that they have not sought to improperly influence the content of the independent certification or its author, and,
- update SPG 250 to ensure that RSE licensees are not to improperly influence the content of the independent certification or its author and to not engage in editorial interference.

Updated proposed revisions

We welcome APRA's incorporation of feedback to SPS 250 which will enhance the interests of superannuation members and their retirement balances. These amendments include:

- ensuring that members will be communicated with about how to to easily opt out of their insurance cover

- ensuring that RSE licensees are assessing that the cost of insurance is not inappropriately eroding the retirement income of beneficiaries and documenting this in their annual member outcome assessments
- clarifying the independent certification requirements by separating the SPS 250 into two separate paragraphs – one for connected entities (related party insurers) and the other for ‘priority and privilege’ arrangements with non-related parties

We also support the revisions to SPG 250 which improve:

- guidance related to the ease of opt-out of insurance
- guidance on expectations for maintenance of data including data to support member outcomes assessment
- guidance on expectations for complying with the covenant ‘to only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries’, particularly from the view of default members
- guidance on expectations for the independent certification requirements for related party insurers and priority and privilege arrangements, including examples of contractual terms that may constitute a priority or privilege
- guidance on expectations for the rules for attributing a particular status to a member, and that these rules must be fair and reasonable.

Below, we note areas of concern regarding updated proposed revisions as requested by ASIC and detail areas of improvement where SPS 250 should be strengthened, or at the very least referenced in SPG 250.

A revised commencement date

SPS 250 is now intended to commence on 1 January 2022, approximately 10 months away. We understand that this delay was due to the significant impacts of the COVID-19 pandemic.

Noting that the proposed updated revisions are not a substantial change to previous standards which were consulted on in February 2020, we believe 1 July 2021 is a more appropriate commencement date for SPS 250.

If APRA chooses to keep the longer deadline it should detail why 1 January 2022 is the most appropriate commencement date. We expect APRA to take steps to quantify and consider the potential burden on consumers if the current proposed commencement date is accepted.

Flexible opt-out process

SPS 250 and SPG 250 still fall short of allowing members to opt-out of either ‘all or part’ of their insurance cover.

In some cases members are being denied a choice to opt-out of a specific type of insurance, for example when death insurance and total and permanent disability (TPD) insurance are sometimes bundled together. The bundling of death and TPD insurance can disadvantage people without dependants who would value TPD cover, but not death cover. On the other hand, if an individual already had TPD cover which was more tailored to their profession outside of superannuation, but wished to keep their death insurance within superannuation because it was better value they would be unable to without paying multiple premiums for TPD.

Without regulatory direction the decision to offer the choice of unbundled cover is left to the trustee and may ultimately be subject to commercial considerations, rather than the best interests of members who wish to choose their cover type. The Productivity Commission noted that such a choice would be of likely benefit to many members. In order to ensure insurance is appropriately designed for members we recommend SPS 250 and SPG 250 be amended to give this choice.

Recommendation:

1. That APRA amend SPS 250 and SPG 250 to clarify that members should be able to easily opt-out of either ‘all or part’ of their insurance cover

Public insurance strategy

The Productivity Commission recommended that trustees “should be required to annually articulate the ‘balance erosion trade-off’ for their members and publish it on their website.

The revised SPS 250 clarifies that an RSE licensee must document their methodology to assess whether the cost of the insurance inappropriately erodes the retirement income of beneficiaries. It also ensures that their assessment under s52 (11)(d) of the SIS Act will be documented in the RSE licensee’s annual member outcomes assessments.

While an improvement, we believe that SPS 250 falls short of the intent of the Productivity Commission recommendation, which is publicly available and easily understood information for members.

Presenting simple information which makes reference to the trade off for members on a cohort basis is extremely important to help individuals make an assessment of the value of insurance cover. This should include impact models for people who work to retirement age and those who are out of paid employment for a period of time.

Noting that annual member outcomes assessments are to be published in 2021, we continue to recommend that SPS 250 make reference to the erosive impacts on 'particular cohorts of members' in Clause 16. These member outcomes and cohort analysis should be made available on RSE licensee websites to illustrate how premiums are affecting different members' balances.

Recommendation:

2. That APRA amend Clause 16 to specify that trustees should be required to annually report why the levels of cover chosen by the trustee are in members' best interests, with reference to the erosive impacts on particular cohorts of members (e.g. women, people with low balances, people across different age demographics). Trustees should also be required to provide this on their website to illustrate how insurance premiums are affecting different members' balances.

The recasting of independent certification requirements including 'the best interests of beneficiaries'

Despite improvements to the clarification of 'the best interests of beneficiaries', no reference is made to the probity in relation to trustees' selection of firms to undertake independent certification.

Evidence provided to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry highlighted examples from funds such as Colonial First State, which continued to provide poor quality insurance products due to inappropriate conflicts of interests.

We previously submitted to APRA that there should be an explicit prohibition from arranging to obtain an independence certification from a firm that has been found to have engaged in any kind of administrative or corporate misconduct for a period of time.

In the absence of the above, we believe it is appropriate that SPS 250 and SPG 250 dictate that an RSE licensee must expressly consider any misconduct in the selection of its insurer.

Recommendation:

3. That APRA amend SPS 250 and SPG 250 to ensure that an RSE licensee must expressly consider any misconduct in the selection of its insurer.

Clarifying the timing requirements for obtaining an independent certification and for providing it to APRA

We support the clarification in the timing requirements for obtaining an independent certification and for providing to APRA. Reducing this requirement to no later than five business days is an improvement on the previous one month requirement.

However, the Royal Commission's related commentary on Recommendation 4.14 highlighted that:

"The independent report should also be provided to APRA by the author of the report at the same time as it is provided to the RSE licensee. The contemporaneous provision of the report will allow APRA to form a view more quickly on the appropriateness of the arrangement and to take such action as it thinks necessary, including by referring the matter to ASIC, so that it can take action to protect the interests of members.

Contemporaneous provision is still not required in the proposed update SPS. The Royal Commission showed evidence of supposedly independent reports being edited by AMP which compromised their integrity. Delaying the time between a report being made available to a trustee and provided to APRA creates opportunity for this kind of mischief. We see this is a misstep, but in the absence of these documents being provided to APRA immediately we see value in a requirement for trustees to explicitly assure the independence of these documents and that they did not engage in editorial interference.

Recommendation:

4. That APRA amend SPS 250 Clause to [33]:

- require a report of independent certification to be provided to APRA by the author of the report at the same time as it is provided to the RSE licensee.

In the absence of the above,

- require an RSE licensee obtaining independent certification to supply APRA with a formal assurance that they have not sought to improperly influence the content of the independent certification or its author.
- update SPG 250 to ensure that RSE licensees are not to improperly influence the content of the independent certification or its author and to not engage in editorial interference.

Additional comments

While offering our observations and recommendations on the proposed changes to SPS 250 in good faith, we reiterate our position that an independent inquiry into insurance in super remains necessary. Such a review was recommended by the Productivity Commission.

This is because there are a number of differing insurance codes under continual consultation and regulatory standards and guides under revision which intend to prescribe what should be common sense behaviour to act in the best interests of members, yet issues continue to emerge.

This review should include consideration of whether insurance in superannuation is the most equitable and efficient way to meet the insurance needs of most Australians.