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Dear Mr Littrell

**RE: DRAFT PRUDENTIAL PRACTICE GUIDE LPG270 – GROUP INSURANCE ARRANGEMENTS**

The Financial Services Council (FSC) is pleased to have the opportunity to make this submission in relation to Draft LPG270 Group Insurance Arrangements. We also thank APRA for the extension provided to make the submission.

The FSC represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 125 members who are responsible for investing more than \$2.3 trillion on behalf of 11 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. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

This submission is made on behalf of the FSC's life insurance members.

FSC understanding of LPG270 objective

The FSC understands from discussions with APRA that the objective of draft LPG270 – *Group Insurance Arrangements* (LPG270) is unique in that it is intended to provide 'mirror' guidance for insurers in relation to the obligations imposed upon RSE licensees through Superannuation Prudential Standard 250 – *Insurance in superannuation* (SPS250) and associated guidance for RSE licensees in Prudential Practice Guide 250 – *Insurance in superannuation* (SPG250). We further understand from discussions with APRA that draft LPG270 has been drafted to reflect what it believes to be industry practice and further set out APRA's view of 'best practice' in relation to group insurance arrangements in general and insurance arrangements in superannuation in particular.

The FSC is supportive of the provision of guidance by APRA to clarify the requirements of prudential standards and is supportive of improving the long term sustainability of group insurance which may result from a more consistent understanding of what is required in relation to these arrangements.

If this is not APRA's objective in drafting LPG270, we would be pleased to have further discussions with APRA to clarify the FSC's understanding.

Please contact me on \_\_\_\_\_ should you wish to discuss any aspect of this submission.

Yours Sincerely



Holly Dorber  
Senior Policy Manager

### Application of the Prudential Practice Guide (PPG)

The FSC submits that it is important that the guidance is appropriately considered by all participants involved in the provision of insurance arrangements through superannuation. Therefore, we note that by classifying the guidance as a Life Insurance PPG, LPG270, it may inadvertently be overlooked by general insurers who are also actively participating in this market.

Further we note that despite administrators, consultants, and other service providers to the RSE not being regulated by APRA, APRA should expect that the RSE, in contracting with administrators and consultants (i.e for tenders), to communicate to such organisations as an integral part of their appointment, that in completing the task for which they have been contracted to perform, they will be mindful of the guidelines which the RSE and the Insurer are subject to (i.e, SPS250 and LPG270) and the overarching expectations of APRA.

The oversight of the practice guide is better placed with the RSE rather than the insurer as the RSE has contractual relationships with the administrator and service providers.

We also submit that is important for the final LPG270 to include reference to the role and context of reinsurers in these arrangements.

#### RECOMMENDATION

- The FSC recommends that the final guidance be issued as a Combined Practice Guide (CPG) to ensure it is appropriately considered by all relevant market participants.
- The FSC recommends that the final guidance be amended to make reference to reinsurers in paragraph 1 as follows:

*“This PPG provides broad guidance to insurers **and reinsurers** on prudent practices...”*

We note that draft LPG270 has been drafted and released for consultation subsequent to the finalisation of SPS250 and SPG250 and that the guidance has been drafted to reflect perceived changes in the group insurance market that have emerged since both documents were finalised and published.

Therefore, we submit that some elements of draft LPG270 appear to be inconsistent with the requirements and guidance provided in the relevant superannuation standards. The following are areas where the FSC has identified potential inconsistencies which may lead to adverse outcomes.

#### Risk Management Framework

This paragraph outlines, “risks that may be specific to group insurance that, if material, should be specifically identified within the risk management framework and taken into account in pricing and the assessment of capital adequacy.”

The FSC submits that the assessment of the following risks in particular may requires RSE licensees to maintain detailed information they do not currently hold and/or to pass on to insurers including:

- 4 (f) *catastrophe risk* – this would require the RSE licensee to maintain fund members’ working locations, especially if working for large employers. It is unlikely that such information is collected and maintained.

We submit that in absence of the RSE licensee being obliged to maintain this type of information and a requirement to make it available to insurers; this would be a difficult, if not impossible, task for insurers to obtain such information for the purpose suggested in the draft guidance.

- 4 (g) *aggregate exposure for individuals* – this type of information would require an insurer to be able to access sufficient information about fund members in order to identify them both across multiple superannuation funds and retail policies – for example TFNs, contact address.

Again, we submit that in absence of the RSE licensee being obliged to maintain this type of information and a requirement to make it available to insurers; this would be a difficult, if not impossible, task for insurers to obtain such information for the purpose suggested in the draft guidance.

- The FSC submits an additional consideration that could be included in paragraph four is consideration of the risk of changes in regulation and social welfare benefits that may impact rates of claim on insurance benefits.

A general limitation in complying with the requirements in paragraph 4 is that insurers often do not have access either directly or via the RSE licensee to the information required. If APRA feels this is required, we submit that RSE licensees be required to produce this information in a superannuation prudential guide (during tenders and as a matter of course under group insurance policies).

#### RECOMMENDATION

1. The FSC recommends APRA consider the different obligations, and lack of compulsion for each stakeholder, i.e. RSE licensee, insurer and fund administrator, to collect, maintain and/or share the information as suggested in the draft guidance for the purposes of establishing a risk management framework for group insurance arrangements.
2. The FSC recommends the final guidance includes an additional risk factor be included in the Risk Management Framework section as follows:  
 (l) *changes in regulation and social welfare benefits that may impact rates of claim on insurance benefits.*
3. The FSC recommends that APRA create RSE licensee obligations under superannuation guidance requiring trustees to produce all information to the trustee required to enable the insurer to form a view on the risks outlined in paragraph 4.

#### Insurance Tenders

- 6 (c) this paragraph suggests it is APRA’s expectation that insurers to address the sustainability of the premium rates and terms and conditions of the insurance contract beyond the initial guarantee period in the tender response.

We are unclear about the meaning of this paragraph and seek further clarification from APRA as to its expectations in relation to this particular aspect of the draft guidance. In any event, we note that this may involve a statement about a future matter. The Australian Securities and Commissions Act (section 12BB) automatically deems such statements to be misleading or deceptive unless the maker can prove there was a reasonable basis for the statement. FSC considers that it is inappropriate for APRA to expect insurers to make explicit or implicit statements regarding their expectation of future matters. An expectation that insurers should make comments addressing the sustainability of premium rates and terms and conditions of the insurance contract beyond the initial guarantee period is a representation as to a future matter which is unlikely to be fully known to the insurer at the time of making it.

- 6(e)

This paragraph states that the terms of any outsourcing of functions to an administrator or other entity should be addressed in an insurer’s response to a tender.

FSC has no objection to the tender response disclosing the existence of the outsourcing, and the functions undertaken along with the insurer’s processes for monitoring the quality of the service delivered by the outsourced service provider. However, any other matters relating to the terms of the outsourcing, such as pricing and other

commercial arrangements, are regarded as confidential to the internal working of the insurer and the outsourced service providing and inappropriate for a regulatory expectation to be created around their disclosure.

#### Claims philosophy

The FSC is broadly supportive of APRA guidance to clarify the requirement for the RSE licensee insurance management framework to clearly articulate the insurer's claims philosophy. However, we submit that much of the guidance in this regard relates to very subjective information which is of no relevance to a claims philosophy – and so should be removed. For example, the reference to 'awareness of case law', 'process of paying interest', 'rate of rejection of claims' etc.

Insurers do not want to compromise their legal right to deny a claim under the policy because the insurer has made representations in the Response to Tender.

Specific feedback on this section of the draft guidance follows.

- 8 (c) *the insurer having in place a process for providing claimants with access to **all material** that has influenced the claims decision .....*

The privacy implications of this proposed requirement should be considered where, for example, the personal medical information of a deceased member may be claimed by beneficiaries who are persons other than the legal personal representative of the deceased member.

The insurer should always have a legal obligation with the policy owner in the first instance.

- 8 (e) *the insurer's process for paying interest on claims **where applicable**;*

We note in relation to paying interest on claims is not a standard requirement or practice on non-disputed living benefit claims.

We also submit that the process of paying interest is covered under the *Insurance Contracts Act* legislation and as such should not need to be addressed by this guidance. We also note that an unintended consequence of focusing on these factors may be increased pressure from RSE licensees for insurers to be compared on the basis of price and rejection rates alone.

- 8 (f) *the insurer's awareness of case law that might affect its decision making processes*

The important issue is the insurer's decision making processes. It is to be expected that those processes will reflect the insurer's understanding of its legal obligations arising under case law. However, a detailed explanation of those cases and what they mean to the processes is likely to assist little. It is also worth keeping in mind that cases are being decided regularly by the courts, with each decision having a potential impact on processes. Information given in a tender may therefore become out of date. FSC therefore recommends that this requirement be removed.

- 9 (b) *the insurer's record of claims decisions being overturned by the Superannuation Claims Tribunal or a court*

We submit that this disclosure may have the unintended consequence of putting more pressure on insurers to settle rather than risk an adverse outcome.

- 9 (d) *the training and skills of the insurer's claims assessors*

The FSC's view is that this guidance is not relevant here other than generic statements that the insurer has a training program for claims assessors in place.

#### RECOMMENDATION

The FSC recommends that paragraphs 8 and 9 be revised to remove non-relevant and misleading items such as 8 (d), 8 (e), 8 (f), 9 (a), 9 (b), and 9 (d).

### Terms and conditions

We submit that setting out RSE licensee requirements of SPS250 in paragraph 10 may lead to confusion about who is primarily responsible for meeting the RSE licensee requirements.

#### RECOMMENDATION

The FSC recommends that paragraph 10 should be revised to make it clear that under LPG270 insurers are not required to assume SPS250 responsibilities, and that insurers are only required to allow access to insurer data to enable trustees to meet their obligations.

### Sustainability

- Paragraph 11 indicates APRA expects an insurer's response to a tender to discuss the potential for future changes to the premium rates and the other terms and conditions. This is particularly important if there is a significant likelihood that future changes will have a materially adverse impact to beneficiaries

As already noted under 6(c) this will involve a statement about a future matter. The Australian Securities and Commissions Act (section 12BB) automatically deems such statements to be misleading or deceptive unless the maker can prove there it had reasonable grounds for making the statement. FSC considers that it is inappropriate for APRA to expect insurers to make explicit or implicit statements regarding their expectation of future matters. An expectation that an insurer should make comments addressing the potential for future changes to premium rates and other terms and conditions, and form a view that there is a significant likelihood of such changes occurring well in advance of the period over which they may or may not occur, is a representation as to a future matter which is unlikely to be fully known to the insurer at the time of making it.

- The FSC seeks clarification from APRA that paragraph 12 and 13 do not introduce guidance that may require an insurer to divulge capital information to the RSE licensee.
- 13 (d) 'differences between claims philosophy of tendering insurers and previous insurers'.

We submit that this guidance is subjective and would prove difficult for one insurer to comment of another's philosophy.

### Service Agreements

- 15 (d) the provision of data to the RSE licensee on an annual basis, including claims experience, membership, sums insured and premiums paid...

We note that this provision may be intended to support trustees' responsibilities under SPS250 which required trustees to maintain at least 5 years' "claims experiences, membership, sums insured and premiums paid..." however we note that insurers do not hold the bulk of this information – it is held by trustees (or their outsourced administrators).

#### RECOMMENDATION

The FSC recommends that 15 (d) be deleted, along with 15 (f) which would not be relevant given insurers do not hold much of the data required under SPS250.

In addition, we note it would be desirable for SPS250 to include a requirement that trustees regularly exchange of data with insurers (including previous contracted insurers) to enable prudent management of policy obligations

- 16 (b)

*"APRA considers that it would be sound practice for the service standards to cover, at a minimum, the timeframes for:*

*(a) processing of underwriting of applications for insurance and the communication of the outcome of underwriting decisions to beneficiaries;*

*(b) the provision of relevant member and claims information to the insurer; **(from the RSE)***

*(c) processing claims, including the time taken to undertake the initial assessment of a claim;"*

We note the provision of relevant member and claims information to the insurer (from the RSE). By adding this point, it becomes about individual member data, which needs to be in and part of a service standard.

16 (a-e)

*"APRA considers that it would be sound practice for the service standards to cover, at a minimum, the timeframes for:*

*(a) processing of underwriting of applications for insurance and the communication of the outcome of underwriting decisions to beneficiaries;*

*(b) the provision of relevant member and claims information to the insurer;**(from the RSE)***

*(c) processing claims, including the time taken to undertake the initial assessment of a claim;*

*(d) claim decisions once all relevant information has been received; and*

*(e) payment of admitted claims."*

Paragraph 17

- We submit that dispute resolution should only extend to disputes between the insurer and policy owner as this is the extent of the legal relationship.

**RECOMMENDATION**

The FSC recommends the draft LPG270 be revised to include reference to what are believed to be standard timeframes and minimum standards,

- 18 (a)

*"APRA expects that an insurer and RSE licensee would also have documented arrangements in place, prior to the commencement of risk, which address matters including, but not limited to*

*(a) eligibility for insurance cover and underwriting requirements, including the responsibilities of the **incoming and outgoing** insurer, the RSE licensee or the administrator with respect to underwriting:"*

Eligibility for insurance cover and underwriting requirements are already covered by the policy terms and conditions. Reinsurance manuals could also include further underwriting requirements, which reinsurers are typically able to alter unilaterally. It is inappropriate for an insurer to be committed to specific underwriting arrangements specified at a particular point in time by an agreement with an RSE licensee.

- 18 (b)

restrictions to benefits and premium loadings i.e. exclusions or extra premiums charged to a member or group of members based on specific conditions, including how members are notified about additional premiums;

As with 18(a), these matters are underwriting matters which are typically driven by reinsurance manuals which reinsurers are typically able to alter unilaterally. It is inappropriate for an insurer to be committed to specific underwriting arrangements specified at a particular point in time by an agreement with an RSE licensee.

- 18 (g)

*"(g) liability and indemnity where incorrect data has been relied upon; and"*

These matters are regulated by the Insurance Contracts Act. There is a risk that remedies for insurers would be limited if these matters were subject to contractual negotiation. We therefore submit that paragraph 18(g) should be removed.

RECOMMENDATION
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The FSC recommends paragraph 18(g) be removed.
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- 18(h)  
We submit that the responsibility to determine whether profit share are consistent with the SIS Act undertakings to its members should rest with the RSE.
- Paragraph 20  
We submit that the RSE should have the responsibility to determine whether this provision is consistent with the SIS Act.

#### Outsourcing

- Paragraph 22

We note that the draft guidance states that it does not consider the outsourcing of claims decisions to be good practice. We seek clarification that this is APRA's intention. The risks posed by a particular approach to outsourcing should be left to insurers to consider as part of their business model and according to their documented risk appetite statement. For example, risks arising from outsourcing can be mitigated by competency of staff, administration processes that involve vetting and review, authority limits (variable by benefit type) above which the insurer must approve the decision, monitoring through outsource provider reporting (with a range of content and reporting frequency choices), and supervision through on-site inspections and review (again with a range of frequency and scope of review choices). So, for example outsourcing of claim decisions, up to specified amounts with agreed assessment procedures and auditing might be appropriate.

#### Data Management

- Paragraph 30 notes that SPS250 requires RSE licensee to maintain records of sufficient detail to enable prospective insurers to properly assess the benefits made available.
- However, the FSC submits that this in an inconsistency between LPG270 and SPS 250. SPS250 does not provide sufficient detail for this to occur and a framework outlining the minimum level of detail required for such assessment is required otherwise, it is open to interpretation.
- Paragraph 33 states that, *"The insurer will need to maintain claims experience information for its own purposes such as the determination of liabilities and capital requirements, even if the insurer has not been allocated the responsibility for maintenance of this data by the RSE licensee. The data maintained by the insurer may need to include data in respect of claims incurred under earlier contracts with the RSE licensee, even if those contracts were with other insurers. The current insurer should be able to obtain updates to this data regular basis from the RSE licensee."*

The FSC strongly supports the requirement and any guidance and/or support from APRA to improve the accessibility and availability of group insurance data. The FSC has commenced work on the development of a new standard for consideration by its members in relation to data requirements for group insurers.

We submit that a stronger requirement in the collection of data from other earlier contracted insurers may be appropriate and consideration is being given to the need for mandatory obligations through industry self-regulation in relation to the requirement for outgoing and incoming insurers to provide the requested data (at minimum standards) in a consistent format.

#### Data used in tenders

- Paragraph 38

Completeness of data is critical for accurate pricing, but in practise it's very difficult for a prospective insurer to do an effective check of this as they have no access to the relevant processes and systems, and may be prevented by confidentiality and privacy obligations.

We recommend that there should also be an expectation that RSE licensee's will have an independent party audit or reconcile the total membership and claims data and provide these reconciliations to prospective insurers as part of preparing the tender data for tender.

We further submit that APRA should clarify if it expects insurers to decline to quote where data cannot be checked to the degree required under the Guidance, and its views on if this will create a competitive imbalance favouring incumbent insurers.

<p><b>RECOMMENDATION</b></p>
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<p>The FSC recommends draft LPG270 be amended to include guidance in relation to completeness and quality of data used for tender purposes.</p>
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- Paragraph 39 – transitional arrangements

These transition arrangements appear to absolve the RSE licensees from aiming for best practice in data collection to provide sufficient and good data during a period when the industry is experiencing significant claims and profitability issues, and advocating change.

We submit that the RSE licensee should be obtaining the relevant data from their previous insurers during this "transition period". The standard of data may not be at the level being advocated in this LPG, but we would expect it to be at least better than no data at all.

<p><b>RECOMMENDATION</b></p>
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<p>The FSC recommends LPG270 should also refer to the quality of data in this section.</p>
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