



PRUDENTIAL PRACTICE GUIDE

Draft SPG 227 – Successor Fund Transfers and Wind-ups

November 2016

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About this guide

Prudential Practice Guides (PPGs) provide guidance on APRA's view of sound practice in particular areas. PPGs frequently discuss legal requirements from legislation, regulations or APRA's prudential standards, but do not themselves create enforceable requirements.

Prudential Standard SPS 220 Risk Management (SPS 220) sets out APRA requirements for a registrable superannuation entity (RSE) licensee (RSE licensee) to have systems for identifying, assessing, managing, mitigating and monitoring material risks that may affect its ability to meet its obligations to beneficiaries.

This PPG aims to assist an RSE licensee in addressing the particular risks that occur when undertaking successor fund transfers (SFTs). This guide does not attempt to cover all possible issues related to SFTs as these will vary according to the particular circumstances.

For the purposes of this guide, and consistent with the application of SPS 220, 'RSE licensee' has the same meaning given in the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

Subject to the requirements of SPS 220, an RSE licensee has the flexibility to structure its business operations in the way most suited to achieving its business objectives.

Not all practices outlined in this PPG will be relevant for every RSE licensee and some aspects may vary depending upon the size, business mix and complexity of the RSE licensee's business operations.

Introduction

1. An SFT is a transfer of a registrable superannuation entity's (RSE's) existing members to a different RSE (successor fund) without the consent of those individual members.¹ Such transfers of members' benefits between RSEs gives rise to a number of risks to the affected members and the RSE licensees undertaking the transfer. Effective management of these risks assists an RSE licensee in meeting its legal obligations and ensuring the orderly and timely transfer of members' benefits.
2. The key requirement of an SFT is the RSE licensee's assessment of 'equivalent rights'. Without this, a transfer of members' benefits normally requires member consent.
3. This PPG provides guidance for situations where an RSE licensee has made the decision to transfer some or all of the members in an RSE to a different RSE licensee and RSE, or to another RSE within its business operations.
4. This PPG provides guidance where an SFT involves the transfer of the whole RSE (i.e. the transfer of all the members' benefits) and where an SFT involves the transfer of part of an RSE (i.e. the transfer of a group of members' benefits or a 'partial transfer'). Where an SFT involves the transfer of the whole RSE, the process is expected to include the wind-up and subsequent cancellation of the registration of the RSE.² Where there are no other RSEs under trusteeship, APRA expects that an RSE licensee will apply to APRA to have its RSE licence cancelled.³
5. Whilst this PPG focuses on SFTs, certain paragraphs may also be relevant to other types of bulk transfers of a group of members, for example, bulk transfers completed with member consent or from an eligible rollover fund to an active superannuation account.⁴ This PPG does not deal with the transfer of individual members' benefits; refer to *Prudential Practice Guide SPG 280 Payment Standards* for guidance relating to these types of transfers.

RSE licensee obligations

6. In undertaking an SFT, an RSE licensee is required to ensure that:
 - a) it acts in the best interests of the members (ahead of all other interests) and, in the case of MySuper members, promotes their financial interests; and

¹ Refer to r. 1.03(1) of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) for the definition of successor fund.

² Refer to s. 29N of the SIS Act. A reference to 'winding up' in this PPG can also be read as a reference to cancelling the registration of an RSE.

³ Refer to s. 29G(2)(a) of the SIS Act.

⁴ Refer to r. 6.29 of the SIS Regulations.

- b) the members' rights in the receiving RSE are equivalent to their rights in the transferring RSE ('equivalent rights').⁵
7. These obligations remain in place throughout the process of transferring members' benefits up until such point that an RSE licensee is no longer acting as RSE licensee for the members being transferred.
 8. APRA expects an RSE licensee would ensure that an SFT is carried out without unnecessary delays. It is also expected that members would be informed in a clear, effective and timely manner of the decision that an SFT will occur.⁶
 9. APRA expects an RSE licensee that initiates an SFT (the transferring RSE licensee) would give due consideration to the rights and benefits of the members being transferred, and any members that may remain in the RSE in the case of a partial SFT.
 10. Similarly, APRA expects an RSE licensee that accepts an SFT into an RSE within its business operations (the receiving RSE licensee) would give due consideration to the rights and benefits of both the members being transferred into the RSE and the existing members of the RSE, with a view to not adversely affecting the rights and benefits of existing members as a result of the SFT.
 11. APRA expects a decision to undertake an SFT would be consistent with the strategic direction and business plans of the transferring RSE licensee and the receiving RSE licensee.⁷
 12. APRA expects a transferring RSE licensee would have a documented due diligence and risk assessment process for assessing alternative RSEs that may potentially receive the transferred members. A prudent RSE licensee would generally document the reasons why, after comparing the rights and features of candidate RSEs and after undertaking the equivalent rights assessment, a particular receiving RSE has been chosen.
 13. Similarly, APRA expects a receiving RSE licensee would have a documented due diligence and risk assessment process for assessing the impact of receiving the transferred members into its RSE.
 14. A prudent RSE licensee would normally obtain and consider expert advice, including but not limited to legal, actuarial, tax, data, audit or assurance advice, prior to making any formal decision to undertake an SFT and throughout the SFT process, as necessary.

Members' best interests

15. APRA's view is that an RSE licensee is best placed to consider the best interests of members, including whether members' best interests are more likely to be met in the existing RSE or in another RSE.

⁵ Refer to s. 52[2](c), s. 52A[2](c) and s. 29VN of the SIS Act, and r. 1.03[1] of the SIS Regulations.

⁶ Refer to: <http://asic.gov.au/regulatory-resources/superannuation-funds/further-resources-on-superannuation/notifying-members-about-superannuation-transfers-without-consent/>

⁷ Refer to SPS 220.

16. A transferring RSE licensee or receiving RSE licensee may make the decision to undertake a full or partial SFT for a number of reasons. Reasons for undertaking an SFT may include, but are not limited to:
- a) a decision that it is no longer in the best interests of members to continue to operate the RSE;
 - b) access to greater economies of scale;
 - c) enhancing member outcomes and experience;
 - d) insolvency or wind-up of the RSE; or
 - e) a decision by an RSE licensee to transfer members to another RSE following an employer sponsor's decision to change its default RSE, cease to support the RSE, or as a result of a takeover, wind-up or liquidation of an employer sponsor.⁸
17. APRA expects that an RSE licensee would have clearly documented reasons for deciding to undertake an SFT, including how the decision is in the best interests of the members as a whole. Further, in relation to any members of a MySuper product, APRA expects an RSE licensee to be able to demonstrate how the decision is intended to promote the financial interests of the MySuper members.
18. There are various approaches available to an RSE licensee regarding how it undertakes an SFT in order to satisfy members' best interests. For example, an RSE licensee may consider that it is in the members' best interests to transfer some members to one RSE and other members to another RSE.
19. Alternatively, another approach may be to undertake an SFT in stages, for example, the initial transfer of a group of members to a receiving RSE and, at a later stage, the transfer of another group of members to the same, or another, receiving RSE.
20. If a proposed SFT is prevented from proceeding, for example, if legal issues cannot be resolved, APRA expects an RSE licensee would determine an appropriate course of action that is in the members' best interests. In this situation, an RSE licensee would be expected to review its plans, reconsider whether an SFT is still in members' best interests and revisit its due diligence and risk assessment process for assessing alternative RSEs.

'Equivalent rights' assessment

21. Under the SIS Regulations, an RSE can only be considered a successor fund if both the transferring and receiving RSE licensees agree to confer on the members equivalent rights.⁹
22. Identifying the rights of members is essential when undertaking the 'equivalent rights' assessment. APRA considers that a 'right' is a legally enforceable right. For example, the

⁸ Refer to s. 16(1) of the SIS Act for the definition of employer sponsor.

⁹ Refer to r. 1.03(1) of the SIS Regulations.

right of members to their accrued benefits, or the right to be informed about their benefit and changes to their benefit via a Product Disclosure Statement (PDS) would be considered to be legally enforceable rights.¹⁰

23. APRA's view is that features which are determined and can be changed at the discretion of the RSE licensee are not rights. Such features include the amount of fees that will be charged to a member, product features and particular investment options. While features can be changed (as they are not rights), an RSE licensee would need to be able to demonstrate that any changes to the RSE's features are in the overall best interests of members.
24. In making an assessment of 'equivalent rights', APRA expects that an RSE licensee would conduct a thorough assessment and comparison of the members' rights in both the transferring and receiving RSE, with reference to both the governing rules of the transferring and receiving RSEs and all relevant legislative requirements.¹¹
25. APRA expects an RSE licensee would undertake the assessment of equivalent rights on a 'bundle of rights' basis. Although special consideration would be expected to be given to significant rights and the materiality of any changes to individual rights, a 'line by line' comparison of rights is not required.
26. In practice, APRA considers that it may be appropriate to consider equivalent rights based on groups of members with common characteristics. Groups of members that may suggest separate consideration include, but are not limited to, default members, choice members, defined benefit members, retained members and members with pension benefits.
27. SIS Regulation 13.16 requires preservation of the members' right or claim to accrued benefits and the amount of accrued benefits. APRA expects that the transferring RSE licensee would seek to ensure that such rights are preserved in the governing rules of the receiving RSE.

MySuper to MySuper successor fund transfers

28. As all MySuper members have the same rights under Part 2C of the SIS Act, APRA considers that a successor fund transfer of members from a MySuper product to another RSE's MySuper product would generally satisfy the equivalence test.
29. As all MySuper products offer the same rights, APRA considers that MySuper members do not have a right to be in a particular type of MySuper product. Accordingly, for the equivalence test to be met, it is APRA's view that it is not necessary for a proposed receiving RSE in an SFT to have an equivalent type of MySuper product, nor is it necessary for the receiving RSE to have identical features to the transferring RSE, provided that it is in the best interests of members to transfer to the chosen RSE.

¹⁰ Refer to r. 13.16 of the SIS Regulations for the definition of 'accrued benefit'.

¹¹ Refer to s. 10(1) of the SIS Act for the definition of governing rules.

30. APRA considers that the equivalence test will generally be met, and an SFT can therefore occur, in the following types of scenarios:
- a) a transfer from a MySuper product with a single diversified investment strategy to a MySuper product with a lifecycle investment option; and
 - b) a transfer between MySuper products with different features such as a different asset allocation or investment strategy, different applicable fees or different insurance offerings.
31. However, an RSE licensee is also required to promote the financial interests of MySuper members. Accordingly, in addition to meeting the equivalent rights test, APRA expects a prudent RSE licensee would also consider the features of a proposed receiving RSE, for example, features such as the investment strategy, return target and recent investment performance in selecting or narrowing the range of suitable MySuper products. Similar to the approach for the equivalent rights assessment, a 'line by line' comparison of these features is not required, i.e. the features of the proposed receiving RSE would not generally be expected to be identical. APRA considers that a thorough evaluation of the features of the proposed receiving RSE would assist an RSE licensee to demonstrate that it has acted to promote the financial interests of the MySuper members.

Planning and carrying out an SFT

32. APRA expects an RSE licensee would effectively plan for, and manage, the SFT process to ensure the successful outcome of an SFT. A well-managed process will generally identify likely issues in advance, i.e. during the earlier due diligence and risk assessment process. APRA expects an RSE licensee conducting an SFT would be able to manage known issues and any new issues that may arise during the process.
33. Key matters to consider early in the planning process might include:
- a) whether the governing rules of either or both the transferring or receiving RSE require amendment to enable the SFT to occur;
 - b) conflicts of interest that may arise as a result of the decision and whether the conflicts are considered to be manageable or whether they must be avoided¹²;
 - c) how financial resources held to meet the operational risk financial requirement (ORFR) and any reserves in the RSE will be treated in a manner that is consistent with the respective policies of both the transferring and receiving RSEs¹³;
 - d) a review of outsourcing agreements to understand termination provisions. A prudent RSE licensee would, as soon as practicable, enter into discussions with the receiving

¹² Refer to s. 52(2)(d) of the SIS Act, *Prudential Standard SPS 521 Conflicts of Interest* (SPS 521) and *Prudential Practice Guide SPG 521 Conflicts of Interest* (SPG 521).

¹³ Refer to *Prudential Standard SPS 114 Operational Risk Financial Requirement* (SPS 114) and *Prudential Practice Guide SPG 114 Operational Risk Financial Requirement* (SPG 114) for requirements and guidance relating to the ORFR, and to *Prudential Practice Guide SPG 222 Management of Reserves* for guidance relating to the treatment of reserves in an RSE.

RSE licensee's third-party outsourcing providers to ensure transition arrangements are managed effectively¹⁴;

- e) a review of the business continuity planning process to facilitate and manage potential disruptions to critical business activities that may arise during the wind-up or SFT process¹⁵;
- f) insurance issues, including:
 - i) transferring existing insured benefits and insurance policies to the receiving RSE;
 - ii) the extent to which members' insured benefits may be altered by any changes to the level of cover, premiums or terms and conditions; and
 - iii) how claims incurred but not finalised will be managed;
- g) taxation, including capital gains tax, issues;
- h) any issues that may need to be resolved with other regulators, for example, the Australian Taxation Office, the Australian Securities and Investments Commission, and regulators of other countries, where applicable;
- i) whether the SFT will give rise to any portability issues as a consequence of interim blackout periods or other liquidity concerns¹⁶;
- j) processes for capturing and transmitting member data and assets to the receiving RSE;
- k) processes for completion of the auditor's report¹⁷; and
- l) contingency plans for dealing with unforeseen delays or events that could impede the proposed SFT, including critical dependencies and associated monitoring and reporting processes.

34. Where an SFT is taking place between two RSEs with the same RSE licensee, there may be legal concerns that an RSE licensee cannot contract with itself, i.e. cannot agree with itself that the receiving RSE will confer on the members equivalent rights to the rights the members had under the original RSE. Given this potential legal issue, APRA recommends that an RSE licensee contemplating such an SFT applies to APRA for a modification declaration concerning r. 1.03(1) of the SIS Regulations, as it applies to r. 6.29 of the SIS

¹⁴ *Prudential Standard SPS 231 Outsourcing* (SPS 231) requires RSE licensees to notify APRA no later than 20 business days after execution of the outsourcing agreement for a material business activity.

¹⁵ Refer to *Prudential Standard SPS 232 Business Continuity Management*.

¹⁶ Refer to APRA's letter 'Operational and governance risks issues to consider when implementing change' of 28 February 2011 at: <http://www.apra.gov.au/Super/Publications/Pages/Other-Information-for-Superannuation.aspx>

¹⁷ Refer to paragraph 15 of *Prudential Standard SPS 310 Audit and Related Matters*.

Regulations, to facilitate the RSE licensee's 'equivalent rights' agreement in respect of the SFT.¹⁸

35. Where a modification declaration is in force for a transferring RSE and is considered to be still appropriate, a prudent receiving RSE licensee would approach APRA in advance to seek approval for the modification declaration to be made applicable to the receiving RSE.

Governance and managing conflicts

36. SPS 521 requires an RSE licensee to have in place a conflicts management framework to ensure that the RSE licensee identifies all potential and actual conflicts in the RSE licensee's business operations and takes all reasonably practicable actions to ensure that they are avoided or prudently managed.
37. APRA expects an RSE licensee would establish a process that ensures conflicts of interest that have been identified under the conflicts management framework or that are unique to the proposed SFT are properly evaluated and managed by the Board during all phases of the SFT. By way of illustration, conflicts that are unique to SFTs include where directors or other responsible persons have interests in the transferring RSE, the receiving RSE or any other entities that may be positively or negatively affected by the SFT.

Operational risk financial requirement (ORFR)

38. *Prudential Standard SPS 114 Operational Risk Financial Requirement* (SPS 114) requires an RSE licensee to determine an operational risk financial requirement (ORFR) target amount that is appropriate to the operational risks to which it is exposed. Where an SFT is being contemplated, possible differences in the ORFR financial resources, the ORFR target amount or the strategy for managing the ORFR target amount, between the transferring and receiving RSE licensees may include:
- a) the ORFR financial resources in the transferring RSE may be held as a reserve, whilst the receiving RSE may hold the ORFR financial resources as capital, or vice versa;
 - b) the ORFR financial resources in the transferring RSE may have been funded by the members, whilst the ORFR financial resources in the receiving RSE may have been funded through trustee capital, or vice versa;
 - c) the required ORFR target amount may be set at different levels for each RSE; and
 - d) either the transferring or receiving RSEs, or both, may be currently in shortfall or may have suffered an operational risk event.

¹⁸ Refer to APRA's letter 'Operational and governance risks issues to consider when implementing change' of 28 February 2011. Note that r. 1.03(1) of the SIS Regulations includes a requirement that, before the transfer, the RSE licensee of the receiving RSE must have agreed with the RSE licensee of the original RSE that equivalent rights will be conferred on the members.

39. It is APRA's view that differences in the ORFR financial resources, the ORFR target amount or the ORFR strategy would not generally, of themselves, prevent an SFT occurring, as the ORFR is only one of a number of factors relevant in an SFT.
40. When undertaking an SFT, APRA expects an RSE licensee would consider how the ORFR financial resources in both the transferring RSE and the receiving RSE have been funded and how they will continue to be funded in the future. In evaluating the two sets of ORFR financial resources, a prudent RSE licensee would ensure that appropriate consideration is given to all affected members, including the members transferring into the receiving RSE, the existing members of the receiving RSE and, if applicable, any members remaining in the transferring RSE (i.e. in the case of a partial SFT).
41. In keeping with the requirement for RSE licensees to act in members' best interests at all times, APRA expects both RSE licensees involved in discussions concerning an SFT would work together to determine an arrangement for the ORFR financial resources that would produce the most equitable outcome for all affected members. The most appropriate arrangement will vary depending on the specific circumstances of an SFT.
42. Where there are differences in the ORFR financial resources, the ORFR target amount or the ORFR strategy, an RSE licensee may determine that an adjustment to one, or a number of these factors, may be appropriate prior to the SFT taking place. Prior to any changes being made, an RSE licensee would be expected to ensure it remains in compliance with all relevant legislative requirements including in relation to the charging of fees and with any requirements of SPS 114, including any requirements to review the ORFR and to notify APRA of any relevant changes to the ORFR.¹⁹
43. For example, a transferring RSE may hold ORFR financial resources of 0.25 per cent of funds under management (FUM) and a receiving RSE may hold ORFR financial resources of 0.27 per cent of FUM. When assessing an outcome that would be in the best interests of all affected members, an RSE licensee of a transferring RSE may determine that the most equitable approach is to increase the ORFR financial resources to 0.27 per cent of FUM prior to the SFT, i.e. so that all affected members would have contributed equally to the ORFR financial resources in the receiving RSE when the SFT occurs. APRA expects that any such decision would only be made after evaluating the impact on all affected members as a result of the SFT.
44. Where there will be a change in the ORFR financial resources, ORFR target amount or the ORFR strategy as a result of an SFT, a prudent RSE licensee would document the reasons for its decision and why it considers the SFT and the treatment of the ORFR financial resources to be, overall, in members' best interests despite these differences.

¹⁹ Refer to ss. 99A to 99F of the SIS Act, for the general fees rules, and to ss. 29V to s29VE of the SIS Act for the fees rules that apply to MySuper products.

Calculating benefits

45. APRA expects a transferring RSE licensee would have processes in place to ensure that each member's entitlements have been fully assessed and allocated to the member. A prudent RSE licensee would consider obtaining specialist advice on the calculation and verification of benefits, and ensure that final balances are signed off by the external auditor (and actuary where the benefits of defined benefit members are being transferred).
46. If the benefits have not yet accrued but are in the course of accruing, APRA expects that the transferring RSE licensee and the receiving RSE licensee would ensure that the method of accrual, at least to the date of transfer, or the amount signed off by the actuary, is protected by being preserved in the governing rules of the receiving RSE. APRA expects that an explanation of how any adverse change to the method of calculation of such benefits, or reduction in the amount signed off by the actuary, is considered to be in the members' best interests would be documented and explained by both RSE licensees.
47. Where relevant, APRA expects an RSE licensee would have processes in place to ensure that the final crediting rate/unit price is fair and equitable.
48. APRA expects an RSE licensee would have processes in place to confirm the valuation placed on the assets at the time of transfer and to ensure that the transfer of all assets is fully documented.

Member communications

49. The *Corporations Act 2001* outlines requirements for the ongoing disclosure of material changes and significant events for the holders of financial products.²⁰ A prudent RSE licensee would keep members informed about a decision to conduct an SFT, the planned actions to give effect to an SFT, details of any material changes to the benefit structure and future superannuation arrangements, including options available to members, and details of how disputes or concerns can be raised with the RSE licensee.
50. APRA expects an RSE licensee would take all reasonable steps to ensure that all responsible persons and other employees of the RSE licensee, and any relevant outsourced service providers, are informed and understand the decision to undertake an SFT.
51. APRA expects an RSE licensee would inform members of key matters affecting them as a result of an SFT, for example, the continuity or otherwise of existing insurance cover and arrangements for claims made after the SFT has occurred.
52. APRA expects an RSE licensee would clearly document the timing and methods for providing information to members including, but not limited to:
 - a) significant event notices²¹;

²⁰ Refer to s. 1017B of the *Corporations Act 2001*.

²¹ Refer to s. 1017B of the *Corporations Act 2001*.

- b) communication that demonstrates that members' benefits have been successfully transferred; and
- c) contact details for the new RSE licensee and individual membership details in the new RSE.

53. An RSE licensee must inform APRA of a decision to transfer members' benefits from an RSE without the members' consent as soon as practicable after the decision to undertake the SFT is made or, if the RSE is being wound up, before the winding up is commenced.²²

Project planning

54. A successfully implemented SFT is generally the result of a well-planned and well-executed process. APRA expects an RSE licensee would have a documented project plan for undertaking an SFT.
55. APRA expects a project plan would outline clear timeframes for achievement of the various stages of an SFT, with the SFT aiming to be completed as soon as practicable. In any event, APRA would not expect the process to take longer than 18 months.
56. APRA's view is that a prudent RSE licensee would consider establishing a board committee or appoint a person with responsibility for overseeing all activities relating to an SFT. If a board committee is established or a person is appointed to oversee the SFT, APRA expects that committee or person would report directly to the Board.

Data management

57. APRA's view is that a prudent RSE licensee would ensure robust data risk management processes are applied during an SFT.
58. At a minimum, APRA expects a transferring RSE licensee would perform a data cleansing exercise before the assets and liabilities are transferred to a receiving RSE.
59. APRA expects a transferring RSE licensee would ensure that the data being transferred is of reasonable quality. It may be appropriate to engage appropriate specialists to assist in assessing the quality and accuracy of the data.

Wind-up of an RSE after a successor fund transfer

60. Where an SFT involves a complete transfer of all members' benefits out of an RSE, the process is expected to include the wind-up and subsequent cancellation of the registration of the RSE.
61. Before the wind-up is finalised, APRA expects a prudent RSE licensee would ensure that sufficient assets are initially retained in a transferring RSE to meet minor residual liabilities for example taxes, legal fees and outstanding APRA levies.

²² Refer to r. 11.08 of the SIS Regulations.

62. A prudent RSE licensee would ensure it has the necessary arrangements in place to ensure it can meet its ongoing reporting obligations until such time as all wind-up reporting has been completed.
63. *Reporting Standard SRS 602.0 Wind-up* (SRS 602.0) must be lodged with APRA within three months of the wind-up date. SRS 602.0 provides further details of the additional reporting requirements for an RSE licensee at the wind-up date.
64. APRA expects an RSE licensee would have a process in place to confirm that lodgement of a wind-up return and cancellation of registration has occurred.
65. It is possible, despite the best efforts of an RSE licensee, that an RSE may receive unexpected monies after members' benefits have been transferred out and a wind-up return lodged, for example, an unexpected tax refund. APRA expects an RSE licensee would establish a policy for the equitable distribution of any additional funds to members prior to lodging the final wind-up return under SRS 602.0. An RSE licensee would also be expected to ensure that arrangements for the treatment of additional funds received, in addition to any unexpected shortfalls that may occur, are clearly outlined in documentation concerning an SFT.
66. In the event of additional funds being received after the wind-up of an RSE, APRA expects an RSE licensee would inform APRA of its distribution plan, given that there are no members remaining in the RSE to approve the distribution.

Post implementation review

67. APRA expects a receiving RSE licensee, and a transferring RSE licensee, where it continues to operate, would conduct a post-implementation review of an SFT.



 **APRA**