

# The AFSL Application Process

Before applying for a licence, you need to know:

1. **Why** are you applying? “Branding” alone won’t cut it. You need to convince ASIC that you *need* a licence. You may need to get legal advice if your proposed model is not a common mix of business activities.
2. **What** type of licence authorisations do you need? There are three types of authorisations:
  - a. *Financial products* (eg. derivatives, managed investment schemes, securities, etc.)
  - b. *Financial services* (eg. advice, dealing, market making, custodial services, equity crowd funding, traditional trustee services, operating a registered scheme)
  - c. *Client types* (wholesale, retail or both).
3. **Who** will:
  - a. hold the licence. A company? A trustee? A partnership? A partnership of trustee companies? No problems. Just make sure you’re clear before you begin; and
  - b. be your nominated **Responsible Managers**?

## What is a Responsible Manager?

For a more comprehensive explanation, see [this article](#) or watch this [video](#).

You may have heard the term, “Responsible Manager” thrown around

here and there, but you may be thinking, who exactly are they, and what exactly is their role? The biggest and main obstacle in the **AFSL application process** for the vast majority of applicants is finding appropriate Responsible Managers for their business. Many of the questions asked are, how do you know who your Responsible Managers should be? What are they responsible for? How are they tied to the AFSL application, and ultimately to the AFSL itself? These are all questions that you should be asking because the answers to these questions go to the heart of the AFSL regime.

In essence, a Responsible Manager is a key individual within a business that ASIC looks at to ensure that the licensee is “competent” to provide its financial services. Responsible Managers do not need to be directors of the licensee. They can be an employee or a contractor. Where they are a contractor, it would be prudent that their responsibilities be supported by a detailed agreement.

In larger organisations, it is possible that the nominated Responsible Manager would not be actually providing the services, but they will be responsible for the supervision of those that do provide the services.

The number of people nominated as Responsible Managers will depend on the nature, scale and complexity of a business.

A Responsible Manager’s role is one of competence. Generally, Responsible Managers will oversee the provision of financial services and manage the provision of financial services. Despite common belief, they are not legally “responsible” for everything that goes on by virtue of their appointment as Responsible Managers. They are liable to their employer pursuant to an employment

contract. Also, they will mostly be personally liable for certain things if they also meet the definition of Officer or Director in the Corporations Act.

ASIC also expects Responsible Managers to play an active role in fostering compliance culture in the industry – which means being aware and supportive of the business' compliance arrangements.

In assessing whether a Responsible Manager has the appropriate skills and experience, ASIC expects that a Responsible Manager would meet one of five criteria specified in [ASIC Regulatory Guide 105 \(Licensing: Organisational Competence\)](#). In short, this means that they will need to hold an undergraduate or postgraduate qualification relevant to the financial services they are responsible for, along with 3 years' experience out of the last 5 in providing the services for which they are being nominated.

## How do I apply for an AFS Licence?

Typically, the application process is through an [online application](#) where information about the applicant and proposed authorisations need to be provided. The applicant is required to attest that they have all of the systems and processes in place and is ready to commence business.

Some supporting documentation about the licensee and key personnel (Responsible Manager(s)) also need to be prepared and submitted with the application. The supporting documentation and Responsible Managers warrant further discussion and is explained in more detail in the following sections.

## What is the AFSL application process?

Before you even think of starting the application process, you need to be 100% sure that the authorisations you will be

requesting on your AFSL cover all of the business activities.

Your AFSL application will also require suitable Responsible Managers who can demonstrate that they have the [required level of skills and experience](#) in the authorisations requested on the AFSL, to demonstrate that your company is competent in providing those financial services under an AFSL.

If you have all of the above, you may be ready to commence the application process for an AFSL. However, the tricky part isn't over yet!

You will need to collate the material required to lodge an application with ASIC ([core proof documents](#)) and have them prepared, ready for lodgement. This includes the following:

- **Business Description**: This is a detailed overview of your business, including the types of financial services and products you will provide, anticipated growth, your sources of business income, typical client types, service delivery location and models, and organisational chart.

**TIP:** a detailed transaction example will bring together this whole proof document, resulting in an easier assessment for ASIC.

- **Table of Organisational Expertise**: This is a critical document that details the relevant knowledge, experience and skills of each of your nominated responsible managers.
- **Supporting Documents for Each Responsible Manager**: These documents substantiate the competence of each Responsible Manager and includes:
  - copies of qualifications;
  - statement of personal information (with wording accepting nomination as responsible manager); and
  - two relevant business references attesting to the financial services experience of

the Responsible Manager (less than 12 months old).

- Fit and Proper check of Applicant and Controllers: Each fit and proper person needs to provide the following:
  - a statement of personal information; and
  - copies of a national criminal history check and a bankruptcy check also less than 12 months old.

Fit and proper persons include the following:

- Responsible Managers;
- Directors, Secretaries and Senior Managers of the licence applicant and its controlling entity (or in the case of multiple controllers, entities); and
- Individuals who control the applicant.

These documents are to be accompanied by a signed Declaration.

**TIP:** ensure that your records in relation to Directors and Secretaries of the Applicant and the Controller match with ASIC's registers.

- Financial Resources Proof: A description of your processes for ensuring ongoing compliance with the financial requirements. You will also need to provide:
  - Signed financial statements that include a statement of financial position and financial performance that are no more than 3 months old; and
  - Cash flow projections that demonstrate your ability to meet the cash needs requirement.
- Additional proofs: Depending on the authorisations being requested you may need to prepare additional supporting documents. For example, if you are a financial planner who intends to have more than four advisers will be required to prepare a document detailing how the applicant

will Monitor, Supervise and Train Representatives.

ASIC's [online application process](#) is continually being updated as you respond to questions. Note that many questions are worded as statements asking you if systems, documents or processes are in place. There is a [sample of the online AFSL application](#) that is quite useful to help you understand how the process works, and to get a sense of some of the questions being asked.

Once you lodge your AFSL application and submit the required documents to ASIC, you will need to allow for somewhere in the vicinity of 5 to 8 months for the whole process to reach a conclusion. More complex applications take longer.

As part of the assessment process, you will receive requests for additional information to be provided. Generally, these requests are in the form of further documents called [non-core proof documents](#) in addition to the Additional proofs detailed above, or questions from an ASIC analyst looking to gain a deeper understanding of your business, processes, procedures, activities, etc.

Other things for you to think of which you will need to obtain before a final AFSL is issued to you include, but are not limited to:

- updated cash flow projections and financial statements. This may include the need to strengthen the financial position of the applicant so as to meet the financial requirements being imposed;
- [professional indemnity insurance](#); and
- [internal and external dispute resolution](#).

Further items of note to put on your list include:

- If you have retail clients, making sure your disclosure documents, if required, are accurate, up-to-date, and compliant;

- maintaining the adequacy of your financial, technological and human resources; and
- having processes and procedures in place for compliance, managing conflicts of interest, risk management, and training and competence of your representatives and authorised representatives.

## What if I'm applying for an AFSL and an APRA licence?

If you intend to also be licensed by [APRA](#) as an Insurer, Superannuation Entity, Bank or Restricted Bank then it is very important to allow significant time to gain the necessary approvals not only from APRA and ASIC but also AUSTRAC and the RBA. The [Licensing process through APRA](#) is quite extensive requiring the submission of a range of pre-application documents followed by the detailed licence application. At the same time, you will need to prepare your AFS licence application and supporting documents.

Have a read of a more comprehensive guide as to how you will need to meet the general obligations for holding an AFSL [here](#).

## Before you proceed you should...

**Clarify threshold issues:** The threshold issues, discussed above, must be clarified before you proceed. If you don't do this initially, ASIC will ask you to clarify these issues during assessment, after you've spent time and money getting to that stage. In any application, ASIC will make its own assessment as to:

- whether you actually need the licence for what you propose to do;
- whether you're asking for the right authorisations; whether you or other proposed Responsible Managers have the competency required; and
- whether there are any other issues that merit further questioning.

## Consider the cost

What is your time worth to you? You will have to balance the cost of outsourcing the application or spending time doing it yourself.

If you do it yourself, you will need the time and resources to create everything from scratch, and ensure you have a comprehensive checklist so that you don't miss anything in the application process. Your business procedures will need to meet the requirements of your proposed licence conditions, the Corporations Act and Regulations, ASIC's RG 104 and about half a dozen other regulatory guides, not to mention the Australian or International Standards that are often referred to (this varies if you're only going to have wholesale clients).

If you decide to outsource it, you will still be involved in the process. You may even wish to outsource certain tasks and do some parts yourself to cut down on a bit of the costs. Alternatively, you may decide to start the process yourself, and seek assistance from a licensing service provider to review your documents before submitting the application to ASIC.

Some potential applicants, when they're faced with the time and costs involved in an AFSL application, decide that it isn't viable to proceed as planned and look at their other alternatives, for example, being an authorised representative of a licensee. This is particularly the case with one or two-person businesses.

At the end of the day, it is ultimately up to you to determine the pros and cons of obtaining your own licence, and determining which pathway is best for your business.

## Still have more questions?

See our other Fact Sheets from our AFSL Series below:

1. [Do I need an Australian Financial Services Licence \(AFSL\)?](#)

2. [Should I have my own AFSL?](#)
3. [Key AFSL Requirements](#)
4. [AFSL Costs](#)
5. [Top 10 Tips for a successful AFSL Application](#)

Or contact us to speak to one of our consultants.

## Contact us

W: [www.hnlaw.com.au](http://www.hnlaw.com.au)

E: [info@hnlaw.com.au](mailto:info@hnlaw.com.au)

Ph: +61 3 9670 8200

*This fact sheet is a summary only intended to promote and assist discussion. The document is subject to a Creative Commons Licence – [www.creativecommons.org](http://www.creativecommons.org). The author is Holley Nethercote Pty Ltd (ACN 068 367 046) trading as Holley Nethercote Lawyers and trading as Holley Nethercote Compliance. Liability limited by a scheme approved under Professional Standards Legislation. HN Documents is a service provided by Holley Nethercote Compliance. To attribute the author, please provide this link to [www.hnlaw.com.au](http://www.hnlaw.com.au). This fact sheet does not constitute legal advice, and is current as at February 2024.*