



**ASIC**

Australian Securities & Investments Commission

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## **Times of change: ASIC update for the accounting profession**

*A speech by John Price, Commissioner,  
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### ***CHECK AGAINST DELIVERY***

Good morning, and thank you to the Institute of Public Accountants (IPA) for the opportunity to present to you again today. You may recall that I spoke to you earlier this year at the IPA Public Practice symposium. In my presentation today, I want to update you on many of the same topics that I covered in my previous presentation. There is a lot of work happening in the accountants' sphere that is of relevance, and hopefully interest, to you.

Today's presentation will cover:

- what ASIC is doing to help small business
- an update on ASIC's role in self-managed superannuation fund (SMSF) matters – for example, SMSF auditor registration and the regulatory landscape post the 1 July 2016 reforms for any practitioner who provides advice about self-managed super
- how we work with other regulators, providing an update on our work with the Australian Taxation Office (ATO) and an update to our joint strategic priorities.

### **ASIC's regulatory role and objectives**

Before I delve into this detail, let me briefly outline ASIC's regulatory role and objectives.

Our goal is ensuring that the financial services and markets we regulate operate to fund the real economy and drive economic growth. In doing that, we can contribute to improved standards of living for all Australians. We do this by:

- promoting investor and consumer trust and confidence

- ensuring fair and efficient markets
- providing efficient registration services.

But we can only achieve this if investors, consumers and those needing capital to build their businesses have trust and confidence in our financial services and markets. Sensible regulation can play a key role in helping to build this trust.

## **ASIC and small business – cutting red tape**

Given the critical role of IPA members in helping small business navigate the challenges of the business world, I wanted to update you on important initiatives that ASIC and others are taking that I hope you will pass on to your clients. But first, let me provide some context.

There are around 4.4 million companies and business names registered with ASIC. Approximately 96% fit the Australian Bureau of Statistics (ABS) definition of a small business (i.e. they have less than 20 employees).

ABS data tells us that these small businesses make a significant contribution to the Australian economy, both in terms of the number of people they employ (half the Australian workforce) and their output (accounting for around one-third of gross domestic product (GDP)).

This is why small business is a focus for ASIC. Now, let me outline some of the work relevant to small business that ASIC is involved in. This includes:

- work around cutting red tape
- the work of our small business team
- resources that we make available for small business.

ASIC has interaction with small business on a daily basis, most notably through our Registry function. Over the past five years, Registry has undertaken a number of enhancement projects that assist small business, including:

- taking over the registration of business names, giving people the ability to register a business name online
- the national Business Names Register, which delivers a single national registration with free online searches whereby people only need to register a business name once to have national effect.

In the 2015–16 financial year, 337,413 new business names were registered with ASIC, up from 327,687 new business names in 2014–15. All except 28 new business name applications in 2015–16 were lodged and registered online. This demonstrates how we are reducing red tape and making the administration process easier. Another interesting statistic is that 30% of new business name registrations occurred after hours, demonstrating the importance small businesses place on being able to access information and services at a time that is convenient to them.

We estimate that ASIC's Business Names Register will save business over \$215 million in reduced fees to register or renew business names during its first five years of operation (from May 2012 to June 2017).

We are also working closely with Government to make it easier to start a business. The Streamlining Business Registration Measure was tabled in the 2015–16 Budget and made a provision of \$32.4 million over five years from 2014–15 for the ATO, ASIC, and the Department of Industry, Innovation, and Science, to:

- create a single online portal for business and company registration
- publish application programming interfaces for Australian Business Numbers (ABNs), business names and company registrations, which allow information to be exchanged between different systems in a seamless manner and enable software developers to build registration software
- reduce the number of business identifiers by making the ABN the primary identifier for businesses and companies.

Under the Streamlined Business Registration model, expected to be publicly available in early 2017, an individual planning to start a business will be able to log onto [business.gov.au](http://business.gov.au) and access the Australian Business Licence and Information Service (ABLIS). This will allow them to identify the Government licences, permits, approvals and registrations required for:

- ABN registration
- company registration
- business name registration
- goods and services tax (GST) registration
- pay-as-you-go (PAYG) withholding registration
- fringe benefits tax (FBT) registration
- an Australian Business Account to provide an integrated business account with Government
- online payment for registration.

With the wide-ranging use of social media channels throughout the business environment, ASIC has also introduced a number of initiatives to help small businesses connect with us. We have a range of social media channels where small businesses can interact directly with ASIC staff. These include Facebook, Twitter, and YouTube. These channels provide ASIC with a means of getting tailored messages out to small businesses, while ensuring small business has the ability to engage directly with ASIC.

A key priority for ASIC is providing efficient and accessible registration. We can support this priority by making it simpler for customers to do business with us and ultimately improve customer satisfaction. To provide quick and easy assistance to customers, we introduced web chat earlier in the year, to aim to answer customer registration questions then and there.

We are also making our Registry data available and accessible to our customers. The information contained within ASIC registers is a valuable resource for our customers. We are facilitating new ways to access our data, and our inclusion on the Australian Government's [data.gov.au](http://data.gov.au) website means the public can now download lists of our most searched registers for free.

To illustrate this, in the 2015–16 financial year:

- 90.7 million searches of ASIC registers were requested, which was an increase of 4.5 million from the previous year
- almost 100% of searches were requested online, with most provided free of charge.

Let me turn now to what our Small Business Team does.

## Small Business team

Engaging with small businesses can be difficult for regulators like ASIC because of the sheer size, breadth, and variation of the sector.

ASIC's Small Business team uses a number of different strategies to enhance our interaction and understanding of the small business sector, while at the same time ensuring small businesses have ASIC services that are tailored specifically to their needs.

These strategies include:

- *Engaging with stakeholders* – This involves working closely with other regulatory and government agencies so that we can communicate our messages using a variety of channels. This also allows us (where possible) to minimise process duplication and to reduce regulatory burden or red tape on small business. We also engage with key advisers, such as you, who play a very important role in helping small businesses understand the obligations placed on them.
- *Using a combination of compliance and enforcement activities* – We regulate small businesses that fail or refuse to comply with their legal requirements using a combination of compliance and enforcement activities. We try to facilitate a compliance outcome, rather than taking punitive enforcement action, but enforcement action may be necessary where there is persistent non-compliance. Part of our work in this area is focused on directors that engage in illegal phoenix activity, and I'd be more than happy to take any questions on our work in this area later.
- *Providing useful resources* – Our final strategy is around what useful resources we can provide to small business.

Just on this point, resources that we have developed for small business include:

- A booklet called '[Your obligations as a small business operator](#)'. This booklet provides easy-to-understand information that simply sets out the main obligations for directors of small proprietary limited companies.
- A dedicated small business hub on the ASIC website. The Small Business Hub provides easy-to-access and understandable information for people wanting to know

how ASIC regulates small businesses. This includes how to start a small business, the different laws that need to be followed by small businesses and, importantly, how to close a small business down.

- ASIC Business Check app. We have developed a smartphone app to help protect small businesses when engaging in commerce. The app has been developed to encourage business owners to start their due diligence early, before they enter into a business relationship with another party, rather than waiting until something has gone wrong and finding out that they are now chasing money from a business that doesn't exist.
- As part of the whole-of-government ATO-led 'Fix It Squad initiative', we have added a guide on the Small Business Hub called '[ASIC guide for small business directors](#)'. This guide is targeted at people who transition from operating as a sole trader to starting a proprietary limited company.

## ASIC and SMSF regulation

ASIC's primary role in relation to SMSFs is to regulate the gatekeepers – the accountants, financial advisers and SMSF auditors. ASIC also regulates many of the financial products that SMSFs commonly invest in.

We think that accountants and other gatekeepers have a critically important role to ensure that only those investors for whom an SMSF is suitable go into the SMSF sector and, in doing so, they are fully informed. We also think that they have an important role to ensure that the overall health of the SMSF sector is sound.

### SMSF audit experience

We work very closely with the ATO as co-regulator in the SMSF auditor sphere. While ASIC has responsibility for determining eligibility requirements, setting competency standards and taking enforcement action where appropriate, the ATO has continued to police SMSF auditor compliance and refer non-compliant auditors to ASIC.

As you know, ASIC has been registering approved SMSF auditors since January 2013. Once registered, SMSF auditors are obliged to lodge annual compliance statements with ASIC. Annual compliance statements are a critical part of the regulatory framework, providing information needed by both ASIC and the ATO.

Recently, ASIC notified 811 auditors that they had not met their annual compliance statement requirement and faced cancellation of their registration. Of these, 626 responded to our concerns and complied. A final warning was sent to 185 auditors giving them until 22 July to comply or have their registration cancelled; 133 auditors failed to comply and have now had their registrations cancelled. The program also highlighted the importance of auditors meeting their ongoing obligation to provide up-to-date contact details – changes to details need to be updated within 21 days of the change occurring.

In the last 12 months, the ATO has referred seven SMSF auditors to ASIC for further action. These referrals contributed to the 11 misconduct actions taken by ASIC against SMSF auditors in 2015–16, including:

- one registration disqualification order
- one suspension order
- one instance of additional conditions being imposed on an SMSF auditor registration
- one instance where ASIC initiated a registration cancellation
- seven voluntary cancellation requests accepted by ASIC.

The ATO helps us maintain and further develop the SMSF auditor competency exam question bank. We also exchange valuable information, including information from the ATO that has assisted us directly with individual registration assessments – identifying, confirming or allaying concerns with the applicants.

For all of you involved in this field, ASIC recognises that very important role you play in providing assurance that SMSFs are operating within the law. This is very important to the health of the sector and to the financial wellbeing of the more than one million members of SMSFs. I strongly encourage you to continue to develop your professional skills, especially by engaging in continuing professional education.

### **Expiry of licensing exemption for certain accountants**

Let me move now to advice about SMSFs. As you would all know, on 1 July this year, the licensing exemption for certain accountants giving advice to establish or wind up an SMSF was repealed and the new limited AFS licensing regime is in full swing.

Licensing is an important regulatory function for ASIC to protect consumers and ensure appropriate standards in the financial services sector. ASIC assesses all applications for a limited AFS licence in a consistent and rigorous way. We approach our licensing responsibilities seriously and diligently.

Since the transitional period began on 1 July 2013, ASIC received 1,152 applications for a limited AFS licence. Of these:

- 475 applicants have been granted a licence or have been offered a draft licence
- 313 applications have been withdrawn or returned to applicants because they were incomplete, deficient or missed mandatory information
- two applications were refused by ASIC hearings delegate.

Of all the applications, 758 (66%) were lodged in the last four months of the transition period, with 443 (38%) received in June 2016, the final month of the three-year transition period. This late influx of applications was disappointing – especially given extensive publicity around the need to lodge applications early and the generous transition period.

Currently, ASIC has around 377 applications left to assess.

Given the volume of applications and the large number that lack all the information that we require for assessment, we expect the applications on hand will take some time. We also expect we will require further information or clarification from most applicants.

We are working hard to assess those applications, and have re-assigned staff to this task, because we appreciate the importance of the limited AFS licence regime and appreciate this is a key part of your services to clients. However, it is hard to predict when we will have completed our assessments. We are aiming to complete all applications lodged before 30 June 2016 by the end of March 2017.

We were clear in our past communications of the need for applicants not to leave it to the end of the three-year transition period. Unfortunately, the large numbers coming in at the end affects our ability to service other licence and professional registration applicants.

ASIC is communicating with limited AFS licence applicants regularly, and we are engaging with the accounting bodies regularly. This allows ASIC the opportunity to provide feedback about the quality or issues being seen in applications to the accounting bodies. The accounting bodies can then provide this feedback to their members and help them directly.

We expect this will help with speeding up the assessment of the remaining applications.

Two of the main issues we are encountering in applications are in relation to professional indemnity insurance and education and training:

- it is important that limited AFS licensees have, and maintain, adequate coverage of professional indemnity insurance, and
- responsible managers must be sufficiently trained and qualified to meet the standards in Regulatory Guide 146 *Training of financial product advisers* (RG 146).

Applicants should not provide SMSF advice until their licence is granted. As you all know, providing unlicensed financial services is an offence.

## **Regulatory framework for accountants and ASIC guidance**

Depending on what authorisations have been selected, a limited AFS licensee can provide financial product advice in relation to:

- SMSFs
- a person's existing superannuation fund, to recommend that they establish an SMSF or provide advice on contributions or pensions
- 'class of product advice' on the types of financial products clients are likely to hold through their SMSFs – such as securities, simple managed investment schemes and basic deposit products.

'Class of product advice' means financial product advice about a class of products that does not include a recommendation about a specific product.



While the licensing exemption was repealed from 1 July 2016, a range of other current exemptions are still available. The various types of financial services accountants can continue to provide without holding an AFS licence include, for example:

- establishing, structuring or valuing an SMSF (without recommending the establishment or winding up of an SMSF)
- broad asset allocation advice
- advice on how to operate an SMSF, including the process of winding up or exiting an SMSF.

An accountant can also become authorised under another person's AFS licence or, alternatively, can refer clients to an AFS licensee or representative for financial product advice.

It's important to remember, though, that some of these exemptions also require certain disclosures to be made to clients when relying on the exemption (i.e. the person is not an AFS licence holder and that the client should consider seeking advice from an AFS licensee).

We will be publishing an information sheet later this year to assist you in understanding the regulatory framework. It will cover:

- how the licensing regime applies to SMSF services provided by accountants since 1 July 2016
- the various SMSF services an accountant might provide and whether a licensing exemption applies or whether they need to be covered by a licence.

### **Obligations on limited AFS licensees**

It is important to recognise that a limited AFS licence is restricted in the scope of financial services the licensee can provide, but not in respect of the obligations they must meet.

A limited AFS licensee must still comply with the relevant requirements of the Corporations Act, including the conduct and disclosure obligations that apply when giving financial product advice and any licence conditions. This means they will need to comply with the best interests duty and related obligations – including the conflicts priority rule (s961J of the Corporations Act), which will be particularly relevant to those who provide advice to set up an SMSF and also do the accounting and audit.

They will also need to comply with the requirement to give a Statement of Advice and the ban on conflicted remuneration, as well as the requirement to be a member of an external dispute resolution scheme.

ASIC has already published much guidance on how to comply with these ongoing obligations.

A limited AFS licensee must also notify ASIC about any of its representatives who meet the criteria to be listed on the Financial Advisers register. That is, any person must be



listed on the Financial Advisers register if they are authorised to provide personal advice to retail clients on:

- SMSFs
- superannuation, or
- class of product advice on:
  - securities
  - superannuation
  - simple managed investment schemes, or
  - life risk insurance.

However, for limited AFS licensees, if they do not deal with client money, they do not need to lodge an auditor's report annually and comply with the regulated trust account provisions; and they can instead lodge an annual compliance certificate.

In the near future, we will be conducting a range of activities in relation to accountants. We will:

- visit a small number of licenced accountants in each state to understand how they are operating
- conduct targeted surveillance on some licensed accountants to assess whether they are meeting their ongoing obligations when giving financial product advice in relation to SMSFs
- seek to identify unlicensed conduct and take appropriate action.

## ASIC and working with other regulators

As I have already mentioned, along with ASIC, the ATO also has a significant role in the regulation of SMSFs.

ASIC meets regularly with the ATO at senior and officer levels to discuss emerging issues and trends and also specific matters. The ongoing exchange of information between the two agencies is extremely valuable in monitoring the space. It is a priority for both agencies to work together to improve our joint understanding of, and to positively influence behaviours of, intermediaries, financial advisers and SMSF auditors.

We have recently revised our strategic priorities for joint work and included a specific priority around conduct in respect of self-managed superannuation funds.

Our two agencies intend to carry out a number of joint initiatives, including:

- producing information and education products and campaigns about the importance of obtaining advice from a licensed adviser about establishing an SMSF and the regulatory obligations associated with operating one
- sharing information and intelligence about instances where reports of misconduct and various compliance and other related activities reveal advisers and accountants

providing advice about SMSFs without an AFS licence, and taking enforcement action in appropriate cases

- considering strategies to further enhance professional standards and the competence of licensed advisers and AFS licensees, taking into consideration the role of the proposed standards-setting body to be established as part of the Government's proposed education, training and professionalism reforms
- jointly considering new and emerging investment products marketed towards SMSFs, with a view to considering whether ASIC or the ATO can provide alerts and warnings to consumers and advisers about the potential risks of particular structures and investment platforms and the need to seek financial advice
- both agencies continuing to work together to ensure professional standards are maintained within the SMSF auditor population through:
  - considering opportunities for any further information and guidance about what is expected of SMSF auditors
  - enforcement action, including deregistration, against registered auditors who fail to discharge their SMSF audit obligations in accordance with specified standards or who fail to satisfy independence and other legislative requirements
  - continued communication of the outcomes of ASIC and ATO joint activities in relation to non-compliant SMSF auditors
  - exploration of any possible additional strategies to further enhance the professional standards and competence of SMSF auditors.

An example of the kind of outcome that we have been able to achieve by working with the ATO is our work investigating the conduct of a group of people and companies related to the company formally called Heritage Financial Solutions Pty Ltd. Since 2015, ASIC has been engaged in an ongoing investigation into unlicensed advice given to investors to establish SMSFs for investment in real estate in Queensland and arranging finance for those investments. ASIC has had concerns about the way the loans and property ownership have been structured.

We worked with the ATO to understand what the structuring requirements were for SMSFs to borrow money and own property and together developed a plan to identify and remediate the 400 or so non-compliant SMSFs. We were also able to draw on the ATO's data to identify affected consumers.

## Times of change

Clearly, the changes that I foreshadowed earlier in the year are continuing, although our focus will move to implementation and establishment, rather than transition, as time goes on.

In this year's Corporate Plan, we outlined for the first time what 'good' looks like for the sectors we regulate. For accountants and auditors, we stated that 'good' was delivering professional, high-quality financial reporting and audits through:

- experience and expertise

- effective internal supervision and review
- robust accountability mechanisms.

The criteria for ‘good’ for financial advisers also applies to accountants who provide advice on SMSFs:

- act professionally, avoid conflicts of interest and treat consumers fairly
- deliver strategic financial advice that is aligned with consumer needs and preferences
- ensure that consumers are fully compensated when losses result from poor conduct.

I would encourage you all to consider these criteria in delivering your services.