



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 75

# Updating [PS 164]: Organisational competence

November 2006

## What this paper is about

1 We are updating Policy Statement 164 *Licensing: Organisational capacities* [PS 164] and intend replacing it with two separate policy statements.

2 As part of this process, we have released two consultation papers:

- (a) this paper (*Updating [PS 164]: Organisational competence* (November 2006)); and
- (b) *Updating [PS 164]: Meeting the general obligations* (November 2006).

3 Each consultation paper:

- (a) explains our overall approach in updating [PS 164];
- (b) sets out the changes we propose making; and
- (c) includes a draft version of the relevant policy statement as an attachment.

## Your feedback is invited

4 We invite you to comment on our proposals and the issues for consideration in this paper. We would also like to receive any qualitative or quantitative information to support your comments or arguments. All submissions will be treated as public documents unless you specifically request that we treat the whole or part of your submission as confidential.

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### Your comments

Comments are due by 28 February 2007 and should be sent to:

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You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

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5 Following the consultation period, we aim to publish the updated policy statements by the end of May 2007. The final versions will also take into account the outcomes of our Better Regulation initiative to rationalise and redesign our regulatory documents: see *Better Regulation: ASIC initiatives* (April 2006).

## Status of current [PS 164]

6 The current [PS 164] remains our policy during the consultation period and until we publish separate, updated policy statements.

# Contents

<b>What this paper is about .....</b>	<b>2</b>
<b>Section 1: Why we are updating [PS 164] .....</b>	<b>4</b>
<b>Section 2: Harmonising our policy on organisational competence .....</b>	<b>6</b>
Our proposal .....	6
Explanation.....	6
<b>Section 3: Clarifying whose knowledge and skills we assess.....</b>	<b>10</b>
Our proposal .....	10
Explanation.....	10
<b>Appendix A: Draft policy statement <i>Licensees: Organisational competence</i>.....</b>	<b>12</b>

## Section 1: Why we are updating [PS 164]

**1.1** We are updating Policy Statement 164 *Licensing: Organisational capacities* [PS 164] to more effectively communicate our policy to industry.

**1.2** This process will not involve a full-scale revision of the basic policy settings in [PS 164]—we do not think there is any need to reconsider our policy approach.

**1.3** However, we are proposing to:

- (a) clarify some aspects of our policy in light of our regulatory experience;
- (b) communicate our policy using simpler language;
- (c) make minor adjustments to our policy and update references; and
- (d) consolidate and harmonise our policy on organisational competence, which is currently spread across a number of ASIC publications, including Section E of [PS 164].

**1.4** To consolidate our policy on organisational competence, we plan to remove Section E from [PS 164] and combine it with the rest of our policy on organisational competence so that all of our policy on that obligation is in a single document: see Section 2.

**1.5** This means that [PS 164] will be divided into two separate policy statements, namely:

- (a) *Licensees: Organisational competence*, covering the organisational competence obligation under s912A(1)(e) of the *Corporations Act 2001* (the Act); and
- (b) *Licensees: Meeting the general obligations*, covering the remainder of [PS 164]—i.e. our general approach to all of the AFS licensee obligations under s912A(1) and our policy on particular s912A(1) obligations relating to compliance, risk management, representatives and resources.

Note: Some of the general obligations are covered in more detail in separate policy statements: see Table 1 of the draft policy statement *Licensees: Meeting the general obligations*, which is Appendix A of the consultation paper *Updating [PS 164]: Meeting the general obligations* (November 2006).

**1.6** This consultation paper (*Updating [PS 164]: Organisational competence* (November 2006)) outlines how we propose to harmonise and clarify our policy on organisational competence. We have included a draft version of the policy statement *Licensees: Organisational competence* at Appendix A.

**1.7** The changes we propose making to the remainder of our policy in [PS 164] are outlined in a separate consultation paper, *Updating [PS 164]: Meeting the general obligations* (November 2006).

## Section 2: Harmonising our policy on organisational competence

### Our proposal

**2.1** We propose consolidating and harmonising our policy on what we look for when we assess compliance with the organisational competence obligation under s912A(1)(e) of the Act. This involves:

- (a) creating a separate policy statement dealing only with the organisational competence obligation—see Appendix A for a draft version of this policy statement;
- (b) applying a single set of organisational competence requirements across all licensees; and
- (c) communicating our policy using simpler language.

**2.2** We propose having five options for demonstrating appropriate knowledge and skills based on those in the current [PS 164] at [PS 164.104C]. In the draft policy statement in Appendix A, the five options are set out in Table 1 (Section C).

**2.3** We do not propose retaining separate requirements for particular licensees (e.g. for licensees who operate registered schemes). However, we will continue to give guidance on the types of knowledge and skills particular licensees need: see paragraphs 2.15 and 2.16.

### Explanation

#### Our current policy

**2.4** Currently, our policy on complying with the organisational competence obligation under s912A(1)(e) is split between five policy statements:

- (a) Section E of [PS 164] sets out our general approach to organisational competence;
- (b) Section D of Policy Statement 130 *Managed investments: Licensing* [PS 130] sets out the organisational competence requirements for licensees who operate registered schemes; and
- (c) the following policy statements extend the organisational competence requirements in [PS 130] to licensees who provide investor directed portfolio services (IDPS), custodial services and managed discretionary account (MDA) services:
  - (i) Policy Statement 148 *Investor directed portfolio services* [PS 148] at [PS 148.23];

- (ii) Policy Statement 167 *Licensing: Discretionary powers* [PS 167] at [PS 167.20]–[PS 167.22]; and
- (iii) Policy Statement 179 *Managed discretionary account services* [PS 179] at [PS 179.32]–[PS 179.33].

**2.5** We have also published a guide on organisational competence: *Responsible officers: Demonstrating compliance with organisational competency obligations—An ASIC guide* (July 2003).

**2.6** To demonstrate organisational competence under our current policy, licensees need to show that their ‘nominated responsible officers’ have appropriate knowledge and skills for their role. The method for demonstrating this depends on the type of financial services licensees provide. Broadly speaking:

- (a) if a licensee operates a registered scheme, IDPS, MDA service or custodial service—the licensee needs to comply with either Column A or Column B in [PS 130.51]; or
- (b) if a licensee provides other types of financial services—the licensee’s nominated responsible officers need to meet one of the five options for demonstrating appropriate knowledge and skills in [PS 164.104C].

### **Why consolidate and harmonise our policy?**

**2.7** From our experience, we have found that the current ‘fragmented’ approach has made our policy more complicated than it needs to be, and causes confusion—especially for licensees who provide more than one type of financial service (e.g. if a licensee operates a registered scheme and provides financial product advice).

**2.8** We think consolidating and harmonising our policy will:

- (a) rationalise and simplify our policy;
- (b) apply consistent organisational competence requirements across all licensees; and
- (c) only involve minor adjustments to the policy settings.

### **What will be our policy?**

**2.9** Under our proposal, there will be a single set of options for demonstrating that a licensee has appropriate knowledge and skills. These are the five options set out in Table 1 (Section C) of the draft policy statement and based on the requirements in [PS 164.104C]. We do not propose retaining separate requirements for particular types of licensees.

**2.10** Our proposed approach will mean that licensees and licence applicants who currently rely on either Column A or Column B in

[PS 130.51] to demonstrate that they have appropriate knowledge and skills will instead need to meet one of the five options in Table 1 (Section C) of the draft policy statement.

**2.11** Our proposal will mainly affect licence applicants who are applying to operate a registered scheme, IDPS, MDA or custodial service. We expect that the impact on licensees who currently provide these services will be minimal. This is because most licensees who currently meet Column A in [PS 130.51] will generally meet Option 4 in Table 1 of the draft policy statement, and licensees who currently meet Column B will generally meet Option 5. There are, however, some minor differences between Column A and Option 4. The main difference is that Option 4 requires three years relevant experience over the past five years, while Column A only requires two years relevant experience over the past five years.

**2.12** Under our proposal, licensees and licence applicants will be able to choose any of the five options in Table 1 of the draft policy statement. Licensees who operate registered schemes, unregistered schemes (including IDPS or MDA services) or custodial services will not be limited to Options 4 and 5.

### **Will there be other options for demonstrating appropriate knowledge and skills?**

**2.13** The decision of the Administrative Appeals Tribunal (AAT) in *Power v ASIC* [2005] AATA 338 raised questions about whether the five options in [PS 164.104C] are the only ways a licensee can demonstrate it has appropriate knowledge and skills.

**2.14** We propose to clarify our policy to make it clear that:

- (a) the five options in Table 1 (Section C) of the draft policy statement are the *only* options for demonstrating appropriate knowledge and skills; and
- (b) Option 5 (see [PS no.69] of the draft policy statement) is a flexible option that may cover situations where Options 1 to 4 do not apply.

### **What additional guidance will we give for managed investment schemes and custodial services?**

**2.15** We propose giving guidance to the effect that licensees who operate registered schemes or unregistered schemes (including IDPS and MDA services), or who provide custodial services, need knowledge and skills in relation to both:

- (a) the provision of the financial service (e.g. the operation of the scheme and related dealing activities); and



- (b) the investment and operational issues of all the kinds of assets under management or, if relevant, the business operated by the registered scheme.

See [PS no.33] and [PS no.36] of the draft policy statement.

**2.16** This guidance will, in effect, be a continuation of our current policy under [PS 130]: see [PS 130.34]). However, it will also clarify that all licensees who operate unregistered schemes (i.e. not just licensees who provide IDPS or MDA services) need to have knowledge and skills relevant to the asset(s) under management.

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## **Your feedback: Section 2**

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- Q2.1** Do you agree with our proposal to have a single set of organisational competence requirements for all licensees based on those in the current [PS 164] at [PS 164.104C]? If not, why not?
- Q2.2** If you currently rely on Column A or Column B in [PS 130.51] to demonstrate organisational competence, do you think you can meet at least one of the options in Table 1 (Section C) of the draft policy statement at Appendix A? Will our proposal cause any practical difficulties for you or your business? If so, would a short transition period help to overcome these difficulties?
- Q2.3** Do you think we should provide further guidance on the knowledge and skills needed to demonstrate organisational competence and/or the five options in Table 1 (Section C) of the draft policy statement? If so, what guidance do you suggest we provide?
- Q2.4** Do you think the draft policy statement at Appendix A is clear and easy to understand? If not, how do you think we could improve the communication of our policy?
- Q2.5** In trying to improve our communication, do you think we have changed our policy in a way that adversely affects you or your business? If so, how do you suggest we correct this?

## Section 3: Clarifying whose knowledge and skills we assess

### Our proposal

**3.1** When we assess a licensee's organisational competence, we focus on the knowledge and skills of people who manage the licensee's financial services business. The current [PS 164] refers to this category of people as the licensee's 'nominated responsible officers'.

**3.2** We propose clarifying that the people nominated by a licensee for organisational competence purposes do not need to be 'responsible officers' or 'officers' (as defined in s9 of the Act). Our proposal includes referring to these people as the licensee's 'responsible managers'. Nominating responsible managers is covered in Section B of the draft policy statement.

**3.3** Our policy will otherwise remain substantially unchanged, i.e. a person can only be nominated as a responsible manager if they:

- (a) are directly responsible for significant day-to-day decisions about the ongoing provision of the licensee's financial services: see the current [PS 164] at [PS 164.75] and [PS no.24] in the draft policy statement at Appendix A; and
- (b) meet one of the five options for demonstrating knowledge and skills: see the current [PS 164] at [PS 164.104C] and [PS no.24] in the draft policy statement at Appendix A.

### Explanation

**3.4** The term 'responsible officer' is defined widely in s9 as 'an officer of the body [corporate] who would perform duties in connection with the holding of the licence'.

**3.5** We originally adopted the term 'responsible officer' for convenience, as it is a generally understood term. However, the use of this term has led to:

- (a) some confusion about which people can or should be put forward for organisational competence purposes; and
- (b) industry concerns about the legal liability of the people put forward for organisational competence purposes.

**3.6** Our proposal includes replacing the term 'nominated responsible officer' with 'responsible manager'. We have chosen the term 'responsible manager' to avoid confusion with other established concepts, such as 'responsible person' (which is used under APRA's prudential standards), 'responsible executive' (which is used under the

Australian Stock Exchange's Market Rules) 'senior manager' (which is defined in s9 of the Act) and 'key person' (which is already used elsewhere in the current [PS 164] and in the draft policy statement at Appendix A).

**3.7** Clarifying that the people nominated by a licensee for organisational competence purposes do not need to be 'responsible officers' or 'officers' is consistent with how we administer our policy in practice: see *Responsible officers: Demonstrating compliance with organisational competency obligations—An ASIC guide* (July 2003), page 6.

**3.8** When we assess applications for an AFS licence, we will assess the 'good fame and character' of the people who are nominated as 'responsible managers'. This will, in effect, be a continuation of our current practice.

Note: For more on our requirements in relation to good fame and character, see the *AFS Licensing Kit* (November 2005).

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### **Your feedback: Section 3**

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**Q3.1** Do you agree with this proposal? If not, why not?

**Q3.2** Do you think the term 'responsible manager' will cause confusion or practical difficulties? If so, do you think we should use a different term and what term do you suggest?

# Appendix A: Draft policy statement

## *Licensees: Organisational competence*

### [Draft PS]

## Licensees: Organisational competence

### Chapter 7—Financial services and markets

Issued dd/mm/yyyy

### What this policy statement is about

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[PS no.1] This policy statement helps Australian financial services (AFS) licensees and licence applicants to comply with the ‘organisational competence obligation’ under the *Corporations Act 2001* (the Act). The organisational competence obligation is one of the general obligations under s912A(1) of the Act.

[PS no.2] This policy statement gives guidance on:

- A complying with the organisational competence obligation  
*see [PS no.6]–[PS no.23]*
- B the people we look at when assessing organisational competence (i.e. ‘responsible managers’) and the knowledge and skills they need  
*see [PS no.24]–[PS no.44]*
- C the five options for demonstrating that responsible managers have appropriate knowledge and skills  
*see [PS no.45]–[PS no.80]*
- D when licensees and applicants need to tell us about their responsible managers  
*see [PS no.81]–[PS no.94]*

[PS no.3] We have issued this policy statement to help licensees and licence applicants understand what we look for when we:

- (a) assess an application for an AFS licence or an application to vary financial service or product authorisations; and
- (b) check a licensee’s ongoing compliance with the organisational competence obligation.

[PS no.4] This policy statement should be read in conjunction with the draft policy statement *Licensees: Meeting the general obligations*, which is Appendix A of the consultation paper *Updating [PS 164]: Meeting the general obligations* (November 2006). Our policy on particular s912A(1) obligations is also contained in separate policy statements. Table 1 in draft policy statement *Licensees: Meeting the general obligations* explains where to find all of our policy on the general obligations.

[PS no.5] Licence applicants should also read the *AFS Licensing Kit* (November 2005). The Kit gives guidance on the licence application and variation processes, and what licence applicants must do to demonstrate that they are able to meet their obligations.

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## Contents

<b>What this policy statement is about.....</b>	<b>12</b>
<b>A Complying with the organisational competence obligation .....</b>	<b>14</b>
Our policy .....	14
Underlying principles .....	16
Explanation .....	17
<b>B Nominating your responsible managers .....</b>	<b>18</b>
Our policy .....	18
Underlying principles .....	21
Explanation .....	22
<b>C The five options for demonstrating knowledge and skills .....</b>	<b>23</b>
Our policy .....	23
Underlying principles .....	28
Explanation .....	28
<b>D Telling us about your responsible managers .....</b>	<b>31</b>
Our policy .....	31
<b>Key terms.....</b>	<b>34</b>
<b>Related information.....</b>	<b>35</b>

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## A Complying with the organisational competence obligation

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### Our policy

#### ***The organisational competence obligation***

[PS no.6] If you are a licensee, you must maintain the competence to provide the financial services covered by your AFS licence: s912A(1)(e). We refer to this obligation as the ‘organisational competence obligation’. This is because this obligation requires you to be competent at the organisational level.

Note: This is not the same as the obligation under s912A(1)(f) to ensure that the representatives who provide financial services on your behalf are trained and competent to do so: see [PS no.23].

[PS no.7] We assess your compliance with this obligation by looking at the knowledge and skills of people who manage your financial services business. We refer to these people as your ‘responsible managers’.

Note: Our policy used to refer to these people as ‘nominated responsible officers’. We have replaced this term with ‘responsible managers’: see [PS no.43]–[PS no.44].

#### ***What do you need to do to comply?***

[PS no.8] The Act places responsibility on you to ensure you maintain the competence to provide the financial services covered by your AFS licence.

[PS no.9] What you need to do to comply will depend on the nature, scale and complexity of your business, including the size of your business, the financial services and products you provide, and the roles that individuals play in your business. However, this policy sets out our minimum expectations for demonstrating organisational competence.

[PS no.10] At a minimum, you need to nominate responsible managers who:

- (a) are directly responsible for significant day-to-day decisions about the ongoing provision of your financial services—this is explained in Section B;
  - (b) together, have appropriate knowledge and skills for all of your financial services and products—this is explained in Section B;
- and

- (c) individually, meet one of the five options for demonstrating appropriate knowledge and skills—this is explained in Section C.

[PS no.11] We also expect you to have measures in place to ensure you maintain your organisational competence at all times.

### Measures for maintaining organisational competence

[PS no.12] We generally expect your measures for complying with the organisational competence obligation will ensure that you:

- (a) review your organisational competence on a regular basis and whenever your responsible managers or business activities change;
- (b) maintain and update the knowledge and skills of your responsible managers; and
- (c) keep records showing that you have reviewed your organisational competence and the steps you have taken to maintain your organisational competence.

Note: For more information on compliance measures, see Sections B and C of the draft policy statement *Licensees: Meeting the general obligations*, which is Appendix A of the consultation paper *Updating [PS 164]: Meeting the general obligations* (November 2006).

[PS no.13] We generally expect you to document your measures in some form. In our view, it is more difficult to show compliance where documentation is not in place. Documentation helps you demonstrate whether or not you are complying with the organisational competence obligation.

### ***When do you need to comply?***

#### Applying for an AFS licence

[PS no.14] If you are applying for an AFS licence, you must be able to show that you can comply with the organisational competence obligation from the time you are granted a licence, and on an ongoing basis. We cannot grant you a licence if we have any reason to believe you will not be able to comply with this obligation: s913B(1)(b).

Note: If you are applying for an AFS licence, you should read the *AFS Licensing Kit* (November 2005). The Kit explains the licence application process and the ‘proof’ documents you may need to provide to support your application.

#### Ongoing compliance

[PS no.15] Once you have an AFS licence, you must maintain your organisational competence at all times. If we have reason to

believe that you are not complying, we may take administrative action, which could include suspending or cancelling your licence, or imposing additional licence conditions: s915C(1)(a) and 914A(1).

Note: For guidance on our administrative powers, see *Licensing: Administrative action against financial services providers—An ASIC guide* (April 2006).

[PS no.16] If we conduct a surveillance visit on your business, we may check your ongoing compliance with the organisational competence obligation, including the measures you have for ensuring compliance.

[PS no.17] If you breach or are likely to breach the organisational competence obligation, you may need to notify us of that breach: s912D.

Note: For guidance on breach reporting, see *Breach reporting by AFS licensees—An ASIC guide* (May 2006).

## Making changes to your business

[PS no.18] We generally expect you to review your organisational competence and ensure you will maintain it *before* you make any changes to your business, such as expanding your range of financial services or products or replacing a responsible manager.

### ***When do you need to tell us about your responsible managers?***

[PS no.19] You must nominate your responsible managers when you apply for an AFS licence or apply to vary your licence authorisations. You must also notify us if you change any of your responsible managers. This is explained in Section D.

[PS no.20] We may ask you about your responsible managers if we conduct a surveillance visit on your business.

## Underlying principles

[PS no.21] In setting out minimum expectations for demonstrating organisational competence, our policy aims to strike a balance between certainty and flexibility for licensees while promoting consumer protection and market integrity. It aims to ensure you have the competence to provide all of your financial services efficiently, honestly and fairly.



## Explanation

### ***Who does this policy apply to?***

[PS no.22] This policy statement applies to all licensees and covers all kinds of financial services and products. It consolidates and harmonises our policy on organisational competence, which was previously spread across a number of ASIC publications.

### ***How does this policy relate to the obligation to ensure your representatives are trained and competent?***

[PS no.23] This policy does not cover the obligation to ensure that your representatives are trained and competent to provide the financial services covered by your licence: s912A(1)(f). To find out about that obligation, see Section D of the draft policy statement *Licensees: Meeting the general obligations*, which is Appendix A of the consultation paper *Updating [PS 164]: Meeting the general obligations* (November 2006). If your representatives provide financial product advice to retail clients, also see Policy Statement 146 *Licensing: Training of financial product advisers* [PS 146].

## B Nominating your responsible managers

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### Our policy

[PS no.24] We assess your compliance with the organisational competence obligation by looking at the knowledge and skills of your responsible managers. You can only nominate someone as a responsible manager if they:

- (a) are directly responsible for significant day-to-day decisions about the ongoing provision of your financial services: see [PS no.27]–[PS no.31]; and
- (b) meet one of the five options for demonstrating knowledge and skills in Section C: see [PS no.32].

[PS no.25] You also need to ensure that you nominate responsible managers whose combined knowledge and skills cover all of your financial services and products: see [PS no.33]–[PS no.36].

[PS no.26] Responsible managers are the people whose ‘good fame and character’ we consider when we assess an application for an AFS licence. When nominating your responsible managers, you also need to ensure they are of good fame and character.

Note: For more on our requirements in relation to good fame and character, see the *AFS Licensing Kit* (November 2005).

### ***Who can you nominate as a responsible manager?***

#### Direct responsibility for significant day-to-day decisions

[PS no.27] The people you nominate as responsible managers need to have direct responsibility for significant day-to-day decisions about your financial services. A compliance manager or financial controller, for example, might not have this direct responsibility. If you are a body corporate, the people you nominate do not need to be ‘officers’ of the body corporate or ‘responsible officers’ as defined in s9 of the Act.

[PS no.28] Who you nominate as your responsible managers will depend on the nature, scale and complexity of your business: see [PS no.42]. In most cases, the people who have direct responsibility for significant day-to-day decisions about your financial services will be people who decide how your financial services are provided and supervise the provision of those services. They do not need to actually provide financial services on your behalf, although they may do so.

[PS no.29] The job description and title of responsible managers will vary from business to business. For example, the managing director of a small advisory business is likely to have direct responsibility for significant day-to-day business decisions, but the chief executive officer of a large financial services group might not.

*Availability on a day-to-day basis*

[PS no.30] Having direct responsibility for significant day-to-day decisions about your financial services includes having enough time available to do so. Before you nominate a person as a responsible manager, you need to consider whether they are already acting as a responsible manager for one or more other licensees. If they are, you need to consider whether they have enough time available to act as a responsible manager for you.

[PS no.31] In general, the more licensees a responsible manager acts for, the less likely they will be to have enough time available to undertake that role for you. Factors that may affect how much time they have available include:

- (a) whether they are a key person for another licensee;
- (b) whether the other licensee(s) share common systems or processes with you (e.g. they are in the same corporate group as you);
- (c) how many staff they need to supervise and whether those staff are in different locations; and
- (d) the nature, scale and complexity of the business of the other licensee(s) (e.g. the size of their business, how many registered schemes they operate etc.).

**Knowledge and skills**

[PS no.32] The people you nominate as responsible managers also need appropriate knowledge and skills for the financial services and products their role relates to. You need to be able to demonstrate that:

- (a) each responsible manager you nominate meets one of the five options for demonstrating appropriate knowledge and skills—the five options are explained in Section C; and
- (b) together, the responsible managers you nominate have appropriate knowledge and skills to cover all of your financial services and products—this is explained below.

## ***Covering all of your financial services and products***

What are appropriate knowledge and skills?

[PS no.33] Together, your responsible managers need to have knowledge and skills that demonstrate you:

- (a) can provide all of the financial services and products covered by your licence and understand the legal and compliance obligations relating to those services and products; and
- (b) if you operate a registered scheme, unregistered scheme (including an IDPS or MDA service) or custodial service— understand the investment and operational issues of all the kinds of assets under management or, if relevant, the business operated by the scheme.

How do you 'cover' all of your financial services and products?

[PS no.34] If you have a responsible manager with appropriate knowledge and skills for some, but not all, of your financial services or products, you need to ensure that your other responsible managers have appropriate knowledge and skills for the remaining services and products.

[PS no.35] For example, if you deal in life and general insurance products, you could have one responsible manager with knowledge and skills in relation to advising and dealing in *life* insurance products and another with knowledge and skills in advising and dealing in *general* insurance products. Alternatively, one responsible manager could have knowledge and skills in relation to *advising* on both types of insurance products while the other responsible manager has knowledge and skills in relation to *dealing* in both types of insurance products. In both examples, each responsible manager would need to meet one of the five options in Section C for the services and products their role relates to.

Operating a managed investment scheme or custodial service

[PS no.36] If you operate a registered scheme, unregistered scheme (including an IDPS or MDA service) or custodial service, you also need to have at least one responsible manager with knowledge and skills in relation to the kinds of assets under management or, if relevant, the business operated by the scheme: see [PS no.33(b)]. For example, if you operate a registered scheme that invests in financial assets (such as cash or shares), you could have:

- (a) a responsible manager with knowledge and skills in relation to the operation of a registered scheme (i.e. the financial service you provide); and
- (b) a responsible manager with knowledge and skills in relation to investment in financial assets (i.e. the asset under management).

Each responsible manager would need to meet one of the five options in Section C for the services and products their role relates to.

### ***How many responsible managers do you need?***

[PS no.37] The number of people you need to nominate as responsible managers will depend on the nature, scale and complexity of your business: see [PS no.42]. However, we generally expect that you will nominate two or more responsible managers.

[PS no.38] If you operate a large business, you will usually only need to nominate a subset of the people who can be responsible managers. If you are a smaller business, you may need to nominate everyone who can be a responsible manager. If you are an individual who holds or is applying for an AFS licence in your own name, you will need to nominate yourself as the responsible manager.

Note: The maximum number of responsible managers you can have at any given time is 20.

[PS no.39] In some cases we may accept you having only one responsible manager, e.g. where you operate a one-person advisory business or where your main business is not the provision of financial services.

### **‘Key person’ licence conditions**

[PS no.40] If you are heavily dependent on the competence of one or two responsible managers (e.g. in a small organisation with one or two principals), we will generally impose a ‘key person’ condition on your licence: see [PS no.90].

### **Underlying principles**

[PS no.41] Our policy focuses on the people in your business who are responsible for the quality of your financial services. In setting minimum expectations for demonstrating organisational competence, we aim to ensure you have enough of these people with appropriate knowledge and skills so that you can provide all of your financial services efficiently, honestly and fairly.

## Explanation

### ***Nature, scale and complexity of your business***

[PS no.42] Factors that can affect who you nominate as your responsible managers and how many you need include:

- (a) the financial services and products you provide;
- (b) the number of representatives who provide financial services on your behalf;
- (c) the size, structure and diversity of your operations;
- (d) the number of clients you have; and
- (e) whether your main business is the provision of financial services.

### ***'Responsible managers' and 'nominated responsible officers'***

[PS no.43] Our policy previously used the term 'nominated responsible officer' to identify the category of people we look at when assessing organisational competence. We are now using the term 'responsible manager' to clarify that the people we look at for organisational competence purposes do not need to be 'officers' of the body corporate or 'responsible officers' as defined in s9 of the Act.

[PS no.44] Our policy on who we look at when assessing organisational competence otherwise remains unchanged—i.e. we still focus on the people you nominate who:

- (a) are directly responsible for significant day-to-day decisions about the ongoing provision of your financial services; and
- (b) have appropriate knowledge and skills for their role in your business.

## C The five options for demonstrating knowledge and skills

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### Our policy

[PS no.45] You need to be able to demonstrate that each of your responsible managers has appropriate knowledge and skills for their role in your business. There are five options for demonstrating this: see Table 1 below.

[PS no.46] Each option has a knowledge component (generally requiring completion of relevant qualifications or training) and a skills component (generally requiring minimum years of relevant experience). Your responsible managers need to meet both components of an option.

**Table 1: The five options**

Option	Knowledge component (qualifications, training etc)	Skills component (experience)
Option 1  see [PS no.52]–[PS no.55]	Meet widely adopted and relevant industry standard or relevant standard set by APRA	3 years relevant experience over past 5 years
Option 2  see [PS no.56]–[PS no.58]	Be individually assessed by an authorised assessor as having relevant knowledge equivalent to a full diploma	5 years relevant experience over past 8 years
Option 3  see [PS no.59]–[PS no.63]	Hold a university degree in a relevant discipline <i>and</i> complete a relevant short industry course	3 years relevant experience over past 5 years
Option 4  see [PS no.64]–[PS no.68]	Hold a relevant industry- or product-specific qualification equivalent to a full diploma or higher	3 years relevant experience over past 5 years
Option 5  see [PS no.69]	If not relying on Options 1–4, you need to provide a written submission that satisfies us that your responsible manager has appropriate knowledge and skills for their role. Your submission must cover all of the information in [PS no.69]	

***What are ‘relevant’ qualifications/training and experience?***

[PS no.47] Your responsible managers need to have experience and qualifications or training that are relevant to their role in your business. This means that their experience and qualifications or training need to be relevant to one or both of the following:

- (a) the financial services and products that their role relates to;
- (b) if you operate a registered scheme, unregistered scheme (including an IDPS or MDA service) or custodial service—the assets under management or business that their role relates to: see [PS no.36] for an example.

***What kind of qualifications/training and experience do we accept?***

[PS no.48] Paragraphs [PS no.52]–[PS no.68] give guidance on the qualifications and training we will accept under Options 1 to 4.

[PS no.49] Options 1 to 4 also require minimum periods of relevant experience. We expect this to be practical experience that enables a responsible manager to understand the responsibilities and requirements of their role in your business. This generally includes experience in:

- (a) deciding how the financial services or products their role relates to are provided; and
- (b) either actually providing those financial services or products or supervising others who do.

[PS no.50] Option 5 is a flexible option that does not set minimum qualifications, training or periods of relevant experience: see [PS no.69].

[PS no.51] We will accept relevant overseas qualifications if they are comparable to Australian qualifications that meet one of the five options: see [PS no.77]–[PS no.80].

***Option 1: Relevant industry or APRA standard***

[PS no.52] We will accept a wide range of relevant standards for the knowledge component of Option 1. The onus is on you to demonstrate the relevance of a standard to your responsible manager’s role. Your responsible manager must also have three years relevant experience over the past five years.



### Industry standards

[PS no.53] As well as being relevant, industry standards must also be widely adopted. To be widely adopted, industry standards generally need to:

- (a) be endorsed by the appropriate industry body or bodies;
- (b) have been developed with industry;
- (c) address the competencies required for that sector, financial service or product; and
- (d) represent the views of a significant number of industry participants.

[PS no.54] Industry standards that we may accept include those endorsed by the Australian Financial Markets Association (AFMA), the Financial Planning Association (FPA) and the Australian and New Zealand Institute of Insurance and Finance (ANZIIF).

### APRA standards

[PS no.55] We will accept a standard set by APRA if you are a body regulated by APRA and the standard is relevant to your responsible manager's role. For example, if you are a general insurer regulated by APRA, we will accept that a person who is a 'responsible person' for the purposes of APRA's Prudential Standard GPS 520 *Fit and Proper* has appropriate knowledge about general insurance products.

### **Option 2: Individual assessment**

[PS no.56] Individual assessment means an assessment of a person's capability to undertake their current duties, taking into account their previous work experience. This type of assessment does not necessarily include a formal written examination. It may take the form of an oral or practical test, on-the-job assessment or some other form.

[PS no.57] Individual assessment must be carried out by an authorised assessor. The assessor must verify that your responsible manager has knowledge relevant to their role and equivalent to a full diploma.

Note: You can find authorised assessors that carry out individual assessment by looking at the ASIC Training Register: see [PS no.74].

[PS no.58] Individual assessment is generally more suited to experienced responsible managers who do not have formal qualifications. This is why Option 2 requires a longer period of

relevant experience (i.e. five years relevant experience over the immediate past eight years).

**Option 3: University degree and short industry course**

[PS no.59] Under Option 3, we will accept a responsible manager with a university degree that is only broadly relevant to their role if they have also completed a short industry course covering the specific knowledge not covered by their degree. Your responsible manager must also have three years relevant experience over the past five years.

**University degree**

[PS no.60] To rely on Option 3, your responsible manager’s degree must be in a relevant discipline. We generally prefer this to be a financial discipline (e.g. economics, commerce, business, accounting or equivalent). In some cases, we may accept a degree in some other technical discipline (e.g. a degree in geology if your responsible manager’s role relates to giving financial product advice about resource equities).

[PS no.61] If your responsible manager has a university degree that is specifically relevant to the industry or product their role relates to, you will generally be able to rely on Option 4 instead.

**Short industry course**

[PS no.62] To rely on Option 3, your responsible manager’s short industry course must be specifically relevant to the industry or product their role relates to.

[PS no.63] We will accept relevant short industry courses that are:

- (a) listed on the ASIC Training Register: see [PS no.74]; or
- (b) approved under the Australian Qualifications Framework or self-accredited by universities or other institutions of higher education: see [PS no.72]–[PS no.73].

**Option 4: Industry- or product-specific diploma (or higher)**

[PS no.64] To rely on Option 4, your responsible manager must have a full diploma (or higher) that is specifically relevant to the industry or product their role relates to. They must also have three years relevant experience over the past five years.

[PS no.65] We will accept relevant qualifications that are:

- (a) listed on the ASIC Training Register: see [PS no.74]; or

- (b) approved under the Australian Qualifications Framework or self-accredited by a university or other institution of higher education: see [PS no.72]–[PS no.73].

[PS no.66] Examples of qualifications that we will accept are the Diploma of Financial Planning (FPA) and the Diploma of Financial Markets (Financial Services Institute of Australasia), provided they are relevant to your responsible manager’s role.

[PS no.67] We will not accept an individual assessment by an authorised assessor for the purposes of Option 2 as an industry- or product-specific diploma.

#### Asset specialist qualifications for operating a registered scheme

[PS no.68] If you operate a registered scheme, Table 2 below sets out some of the qualifications we accept under Option 4 as demonstrating your responsible managers have appropriate knowledge for the asset under management or the business operated by a registered scheme. However, you can rely on any of the five options to demonstrate that your responsible managers have appropriate knowledge and skills—you do not have to rely on Option 4.

Note: If you operate a registered scheme, you also need to have at least one responsible manager with knowledge and skills in relation to the financial service (i.e. the operation of the scheme): see [PS no.36].

**Table 2: Relevant asset specialist qualifications for operating a registered scheme**

Type of asset or business	Qualification
Financial assets Derivatives Mortgages IDPS-like schemes	Tertiary qualification (at least diploma) in business, accounting or actuarial studies
Primary production	Tertiary qualification (at least diploma) relevant to the underlying product (e.g. horticulture, viticulture, forestry)
Direct real property Time-sharing schemes	Tertiary qualification (at least diploma) in real estate or property, or a real estate agent’s licence

### **Option 5: Other demonstration of knowledge and skills**

[PS no.69] If you do not rely on Options 1 to 4, you need to be able to satisfy us that your responsible manager has appropriate knowledge and skills for their role by providing us with a written submission. Your submission must explain:

- (a) the nature of your responsible manager's role;
- (b) any relevant qualifications or courses they have completed;
- (c) their relevant experience over the past 10 years (this does not necessarily mean they need 10 years relevant experience);
- (d) any relevant credentials they have, including association membership or affiliation, or skills or knowledge recognised by an industry association, a regulatory body such as APRA, or some relevant overseas body; and
- (e) why you think they have appropriate knowledge and skills for the financial services and products their role relates to.

### **Underlying principles**

[PS no.70] The five options are benchmarks designed to strike a balance between certainty and flexibility for licensees, while promoting consumer confidence in the provision of financial services. Options 1 to 4 are combinations of qualifications/training and experience that we accept as demonstrating appropriate knowledge and skills. Option 5 is a flexible option that may be used where responsible managers have appropriate knowledge and skills but are unable to meet Options 1 to 4.

[PS no.71] We have developed the five options based on our regulatory experience. Our approach is strongly influenced by the Australian Qualifications Framework and recognises that short industry courses, industry standards and APRA also have a role to play in setting benchmarks for organisational competence.

### **Explanation**

#### ***What is the Australian Qualifications Framework?***

[PS no.72] The Australian Qualifications Framework is a government initiative that provides a nationally consistent framework for all qualifications in post-compulsory education. For a qualification to be accepted under the Australian Qualifications Framework, it must be assessed as meeting certain standards.

[PS no.73] You can find qualifications that are accepted under the Australian Qualifications Framework by visiting [www.aqf.edu.au](http://www.aqf.edu.au). You can also go to [www.aqf.edu.au](http://www.aqf.edu.au) to check which universities and other higher education institutions can self-accredit their own qualifications.

### ***What is the ASIC Training Register?***

[PS no.74] The ASIC Training Register is a register of training courses and authorised assessment services set up for our requirements for financial product advisers under Policy Statement 146 *Licensing: Training of financial product advisers* [PS 146]. The ASIC Training Register is available on our website at [www.asic.gov.au](http://www.asic.gov.au).

[PS no.75] You can also use the ASIC Training Register for the purposes of this policy to find:

- (a) an authorised assessor to conduct a self-assessment;
- (b) a relevant short industry course; or
- (c) a relevant industry- or product-specific qualification.

However, you are not limited to the short courses and industry- or product-specific qualifications listed on the Training Register.

[PS no.76] The courses listed on the ASIC Training Register are more suited to responsible managers whose role relates to the provision of financial product advice. You can rely on these courses for responsible managers whose role relates to the provision of other financial services. However, you need to be able to demonstrate the relevance of the course to your responsible manager's role.

### ***What if your responsible manager has overseas qualifications?***

[PS no.77] If your responsible manager has a relevant overseas qualification, you need to be able to show that the qualification is comparable to an Australian qualification that meets one of the five options.

[PS no.78] If your responsible manager has a relevant overseas qualification from a university or other higher education institution, you need to either:

- (a) have the qualification assessed as comparable by Australian Education International's National Office for Overseas Skills Recognition (AEI-NOOSR); or

- (b) compare the qualification against AEI-NOOSR's relevant Country Education Profile and be able to satisfy us that it is comparable.

Note: You can find out about AEI-NOOSR's assessment of qualifications and their Country Education Profiles by visiting [www.dest.gov.au/noosr](http://www.dest.gov.au/noosr).

[PS no.79] If your responsible manager has some other kind of relevant overseas qualification, you need to be able to show that the qualification is recognised by a relevant overseas regulator. Relevant overseas regulators include the Financial Services Authority (UK), New Zealand Securities Commission, National Association of Securities Dealers (US), Canadian Dealers Association, Securities and Futures Commission (Hong Kong), and the Monetary Authority of Singapore.

#### Overseas qualifications and financial product advice

[PS no.80] If your responsible manager's role relates to the provision of financial product advice, we generally expect your responsible manager to also complete a relevant short industry course listed on the ASIC Training Register. This is so that they can become familiar with Australian regulatory requirements (e.g. obligations under the Act) and relevant features of the financial services industry peculiar to Australia (e.g. taxation and superannuation).

## D Telling us about your responsible managers

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### Our policy

[PS no.81] You must tell us about your responsible managers when you:

- (a) apply for an AFS licence or apply to vary your licence authorisations: see [PS no.83]–[PS no.91]; and
- (b) change any of your responsible managers: see [PS no.92]–[PS no.94].

[PS no.82] You may also need to tell us about your responsible managers if we conduct a surveillance visit on your business.

### ***Applying for an AFS licence or varying your licence authorisations***

[PS no.83] You must demonstrate your organisational competence when you apply for an AFS licence. You may also need to demonstrate your organisational competence if you later apply to vary your licence authorisations.

[PS no.84] When you apply for an AFS licence or to vary your licence authorisations, you must nominate your responsible managers in your application and answer questions about their role, training and experience, and which of the five options in Section C they meet. You must also support your application with a ‘core proof’ demonstrating that your responsible managers:

- (a) individually meet one of the five options in Section C for demonstrating appropriate knowledge and skills; and
- (b) together have appropriate knowledge and skills to cover all of your financial services and products: see Section B.

Note: See the *AFS Licensing Kit* (November 2005) for guidance on the licence and variation application process and the core proof for demonstrating organisational competence.

[PS no.85] If you apply to vary your licence authorisations, you may need to add responsible managers to cover your new financial services or products. If so, you must also notify us: see [PS no.92].

### What if you cannot demonstrate organisational competence?

[PS no.86] If you cannot demonstrate your organisational competence, we may refuse your licence application (under

s913B(1)(b)) or decide to grant you more limited authorisations than those you are applying for.

### Licence authorisations for registered schemes and IDPSs

[PS no.87] If you want to operate a registered managed investment scheme or an investor-directed portfolio service (IDPS), you can either apply for a narrow authorisation—i.e. a ‘named scheme’ or ‘named IDPS’—or apply for the broad ‘schemes of a particular kind’ authorisation or IDPS authorisation.

[PS no.88] The narrow authorisation will only permit you to operate the particular registered scheme or IDPS named on your licence. The broad authorisation will allow you to operate more registered schemes of the same asset kind, or more IDPSs, without varying your licence. However, you must ensure that you have the organisational competence for the extra schemes or IDPSs before you start operating them.

[PS no.89] Before we can grant you a broad authorisation, you must first be able to demonstrate that you have the organisational competence and capacity (e.g. systems and resources) to operate multiple schemes of the same asset kind, or more IDPSs. You can generally demonstrate this if you have been operating two or more registered schemes or IDPSs for at least the past two years. If you are a first-time applicant, we will consider granting you a broad authorisation if you can show that you have the same level of competence and capacity as an experienced licensee.

### Key person licence conditions

[PS no.90] If we are satisfied with your organisational competence but we think you are heavily dependent on the knowledge and skills of one or two responsible managers, we will generally impose a ‘key person condition’ on your licence. For example, we may impose a key person condition if you are a small organisation with one or two principals, or if only one responsible manager has knowledge and skills relevant to a particular financial service or product. The key person condition will name those responsible managers whose competence we think you heavily depend on.

[PS no.91] If a responsible manager who is a key person leaves your business, the licence condition will require you to:

- (a) nominate another responsible manager to replace them, or if you have not appointed someone to replace them, give us reasons why not; and



- (b) demonstrate that you continue to have the organisational competence for all of your financial services and products.

Note: The standard key person condition is condition 3 of Pro Forma 209 *Australian financial services licence conditions* [PF 209].

### ***Changing your responsible managers***

[PS no.92] Once you have an AFS licence, you have an ongoing obligation to formally notify us when you change any of your responsible managers. This means you must tell us when you add or remove any of your responsible managers.

Note: We maintain details of your responsible managers as part of our register of licensees under s922A and reg 7.6.05. You must notify us if information in the register changes: see reg 7.6.04(1)(b). To do this, use ASIC form FS20.

[PS no.93] If the responsible manager you are changing is named on your licence as a key person, you must also apply to vary the key person condition on your licence.

Note: To vary a key person condition, use ASIC form FS03.

### **When do you need to add or remove a responsible manager?**

[PS no.94] You may need to add or remove a responsible manager if:

- (a) your business changes (e.g. it expands to cover new services or products, or the roles of people within your business change); or
- (b) a responsible manager leaves your business or is no longer involved in significant day-to-day decisions about your business.

## Key terms

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[PS no.95] In this policy statement, terms have the following meanings:

**AFS licence** Australian financial services licence granted under s913B of the Act

**APRA** Australian Prudential Regulation Authority

**ASIC** Australian Securities and Investments Commission

**custodial service** custodial or depository service as defined under s766E of the Act

**general obligations** the obligations of a licensee under s912A of the Act

**IDPS** investor directed portfolio service

**licensee** a person who holds an AFS licence

**MDA** managed discretionary account

[PF 209] (for example) an ASIC pro forma (in this example numbered 209)

[PS 146] (for example) an ASIC policy statement (in this example numbered 146)

**reg 7.6.04** (for example) a regulation of the Corporations Regulations 2001 (in this example numbered 7.6.04)

**registered scheme** a managed investment scheme that is registered under s601EB of the Act

**s912A** (for example) a provision of the Act (in this example numbered 912A), unless a contrary intention appears

**the Act** *Corporations Act 2001*

**you** licensee or applicant for an AFS licence

## Related information

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[PS no.96]

### Headnotes

organisational competence; responsible manager; knowledge and skills; nature, scale and complexity; compliance measures

### Pro formas

Pro Forma 209 *Australian financial services licence conditions* [PF 209]

### Policy statements and guides

Policy Statement 146 *Licensing: Training of financial product advisers* [PS 146]

Policy Statement 165 *Licensing: Internal and external dispute resolution* [PS 165]

Policy Statement 166 *Licensing: Financial requirements* [PS 166]

Policy Statement 167 *Licensing: Discretionary powers* [PS 167]

Policy Statement 181 *Licensing: Managing conflicts of interest* [PS 181]

Draft policy statement *Licensees: Meeting the general obligations*, which is Appendix A of the consultation paper *Updating [PS 164]: Meeting the general obligations* (November 2006)

*AFS Licensing Kit* (November 2005)

### Legislation

*Corporations Act 2001* Chapter 7, s9, 912A, 912D, 913B, 914A, 915C, *Corporations Regulations 2001* reg 7.6.04, 7.6.05

### Consultation papers

Consultation paper *Updating [PS 164]: Meeting the general obligations* (November 2006)