



ASIC
Australian Securities &
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**Australian Securities
and Investments Commission**

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By email only

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Dear Superannuation Trustee,

Impact of the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

This letter outlines important information about recent legislative reforms relating to your Australian financial services (AFS) licence and your ongoing obligations as an AFS licensee.

On **1 January 2021**, the legislative changes set out in *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* commenced. These reforms impact:

- the authorisations covered by your existing AFS licence; and
- ongoing AFS licensee obligations in section 912A of the Corporations Act 2001.

We strongly encourage you to take steps to ensure that these changes are understood by your Board and relevant staff within your fund.

Background

The new reforms have broadened the scope of conduct covered by ASIC's consumer protection powers under the *Corporations Act 2001* (Corporations Act) and *Australian Securities and Investments Commission Act 2001* (ASIC Act). The reforms include the introduction of a new financial service, 'Provide a superannuation trustee service', for the purpose of these Acts.

ASIC and APRA's [joint letter dated 14 February 2020](#) provided important information about these reforms, what they mean for superannuation trustees, and how APRA and ASIC will work together to implement the reforms going forward. We encourage you to review this information again.

We also recommend that you review the [legislation and accompanying explanatory material](#) to fully understand what the changes mean for you and your fund.

Authorisations on your AFS licence

As an eligible AFS licence holder, you **do not** have to take additional steps to acquire the new licence authorisation.

The new authorisation, 'Provide a superannuation trustee service', was automatically deemed by law to apply to your AFS licence from 1 January 2021, when the reforms commenced. This means the AFS licence issued by ASIC automatically includes the new authorisation for the purpose of your ongoing compliance with the Corporations Act and the application of the consumer protection provisions of the ASIC Act.

ASIC will update your AFS licence documentation to ensure that it accurately reflects the new authorisation, and that the authorisation is also reflected in the [public register](#). ASIC will do this by varying the authorisation condition (Condition 1) of your AFS licence.

ASIC aims to have all trustee AFS licence documentation updated by **30 June 2021**. We will notify you when the relevant updates have been made to your AFS licence.

Your ongoing obligations as an AFS licensee

As a result of the reforms, all activities carried out by a trustee in the operation of its fund are now considered 'financial services' under the Corporations Act and the ASIC Act. This means that a trustee must ensure that all activities relevant to the operation of its fund(s) are carried out in accordance with the general obligations as an AFS licensee.

ASIC expects that, as an existing AFS licensee, a trustee is aware of its obligations and has processes in place to ensure continued compliance. Trustees must take note of the following obligations:

- **doing all things necessary to ensure the provision of financial services efficiently, honestly and fairly** – this applies to all activities captured by the new financial service – 'provide a superannuation trustee service'. The new section 766H of the Corporations Act says that a person provides a **superannuation trustee service** if the person operates a registerable superannuation entity as trustee of the entity; and
- **maintain competence to provide those financial services** – a trustee must have measures in place to ensure that it maintains organisational competence at all times. This is a condition of the AFS licence.

ASIC assesses compliance with this obligation by looking at the knowledge and skills of responsible managers of an AFS licensee. As an AFS licensee, a trustee must be satisfied that the combined knowledge and skills of its responsible managers covers all of its financial services and products.

You should consider whether the existing responsible managers nominated to ASIC for the purposes of your AFS licence have the combined knowledge and skills across all financial services and products covered by your AFS licence. If the existing responsible managers cannot meet these requirements, then you should consider appointing responsible managers who can ensure compliance with your ongoing obligations.

Given the new authorisation captures activities currently undertaken by trustees, ASIC expects that trustees already have in place appropriately qualified people who can meet these requirements.

Next steps

ASIC is committed to implementing the legislative reforms without imposing unnecessary burden. We will do this by working closely with APRA to address areas of concern for trustees and through ongoing engagement with the industry.

Ultimately, we want to see superannuation funds operate in a way that is fair for members and that promotes confidence in the superannuation system.

We welcome any questions about the reforms and would like to be made aware of any concerns. Please contact us at SuperRegRoles@asic.gov.au.

Yours sincerely,

Jane Eccleston
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Australian Securities and Investments Commission