

AFS licence—compliance services

The legal and regulatory requirements to obtain and maintain an Australian financial services (AFS) licence are complex.

To ensure ongoing compliance with the AFS licence conditions, the Corporations Act 2001 (Act) and ASIC policy, licensees require a robust compliance system and often appoint a dedicated compliance officer.

Implementing a compliance system and engaging a compliance officer can be time consuming and expensive.

How can McMahon Clarke Legal help?

McMahon Clarke Legal is experienced in preparing AFS licence applications, compliance systems, manuals and checklists. We can also manage the compliance system for licensees and perform surveillance visits or AFS licence reviews.

McMahon Clarke Legal offers a range of compliance related services, including the following:

- AFS licence applications and variations.
- Documentation of compliance systems.
- Management of compliance systems.
- Compliance consulting.
- Compliance committee management.
- Surveillance visits and AFS licence reviews.

More information on each service is outlined further in this factsheet.

Why should licensees take compliance seriously?

As part of any surveillance or licensee review, ASIC will consider the compliance systems of the licensee and the resources dedicated to compliance.

If ASIC considers a licensee's compliance system is inadequate or has any reason to believe the licensee has not complied (or will not comply) with its obligations under the Act or its AFS licence, then it may seek to cancel the AFS licence.

ASIC's surveillance or licensee reviews generally focus on the following compliance related issues:

- Documented compliance system, including breach reporting procedures.
- Training undertaken by responsible managers and representatives.
- Compliance with the financial requirements, e.g., base level and cash needs requirements.
- Adequacy of the dispute resolution system.
- Compliance with the disclosure obligations under the Act, e.g., financial services guides and statements of advice.

Licensees should ensure their compliance systems are both documented and effective.

What compliance services can McMahon Clarke Legal provide?

AFS licence applications and variations

McMahon Clarke Legal offers a full range of AFS licensing related services, including the following:

- AFS licence applications and variations.
- Review and appointment of responsible managers.
- Review and appointment of authorised representatives.
- Product distribution and referral arrangements.

Company secretarial services

The company secretarial services we offer include the following:

- Maintenance of the statutory books and records, including company registers.
- Company law filing requirements, such as annual company returns.
- Board meeting management.

Documentation of compliance systems

The compliance documents we can prepare include the following:

- Compliance manuals and procedures.
- Compliance checklists for each person who has a compliance reporting obligation.
- Checklists to manage the appointment of responsible managers, authorised representatives and service providers.
- Training plans for responsible managers and authorised representatives.
- Breach reports and registers.
- Conflict of interest notices and registers.

Management of compliance systems

Licensees can outsource the management of their compliance systems to McMahon Clarke Legal. The compliance management program we offer includes the following:

- Compliance checklists—managing the distribution and compilation of the compliance checklists, as follows:
 - Distribution of compliance checklists to those with compliance reporting obligations in each reporting period.
 - Compilation of completed checklists.
 - Review of completed checklists for non-compliance issues.
- Compliance reporting—preparing the following compliance reports:
 - Monthly compliance report to the board of directors detailing breaches, complaints and compliance with the financial requirements.
 - Annual report to the board of directors detailing adequacy and amendments to the compliance management system, breaches, complaints, organisational competence (i.e., responsible managers), compensation arrangements, compliance with the financial requirements, external dispute resolution membership and service providers.
- Breaches—managing the breach reporting procedures and breach register, including recording, documenting and reporting breaches to ASIC, if required.
- Conflicts of interest—managing the conflicts of interest procedures and conflicts of interest register, including recording, documenting and reporting conflicts of interest.
- Compensation arrangements—reviewing the adequacy of compensation arrangements (i.e. insurance).
- Training—managing the training requirements for responsible managers and authorised representatives, including—
 - Preparation of annual training plans.
 - Training registers.
 - Compilation of training certificates and awards.
- Service providers—managing the appointment and review of service providers.

Compliance consulting

McMahon Clarke Legal can provide compliance consulting services on a regular or ad hoc basis. This service can be provided on a range of topics, including the following:

- Organisational competence.
- Human resources and representatives.
- Compliance reviews, including reviews of client files or statements of advice.
- Financial services disclosure, e.g., disclosure documents, financial services guides, statements of advice, business cards and letter head.
- Promotional material, such as advertisements and website content.

Compliance committee management

For responsible entities, McMahon Clarke Legal can manage the compliance committee requirements of each registered scheme operated by the licensee. Our service can include the following:

- Scheduling quarterly compliance committee meetings.
- Notifying and reminding participants of upcoming compliance committee meetings.
- Preparing and distributing meeting agenda.
- Attending and facilitating compliance committee meetings on a quarterly basis.
- Recording and documenting minutes, decisions and action items.
- Distributing copies of minutes following the meeting.
- Arranging for compliance plans to be updated, as required.

Surveillance visits

McMahon Clarke Legal offers a surveillance visit program where we simulate a surveillance visit by ASIC. Under the program, the licensee is issued with a notice to produce certain documents and information; and make it available for inspection on a specified date. The notice may also require certain individuals to be made available for questions, such as the compliance officer or responsible managers.

The primary purposes of the surveillance visit is to—

- Review the licensee's compliance arrangements.
- Review the compliance records, including client files or scheme records.
- Identify any incidences of non-compliance, systemic issues or breaches of the compliance system.
- Provide a report which outlines how to improve the compliance arrangements and monitoring activities.



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