

Do I need an Australian Financial Services Licence?

The law says that you need an [Australian Financial Services Licence \(AFSL\)](#) if you are a “person” who carries on a “financial services” business in this jurisdiction. (This article includes hyperlinks to legal provisions for those of you that want to dig a bit deeper.)

Holding an AFSL issued by ASIC authorises you and your representatives to provide financial services to clients. Financial services are specifically listed in the law. There are currently seven financial services described in the law:

Providing [financial product advice](#): personal advice or general advice. This is the selling part of your business. A good ASIC guide on this topic is [RG36: Licensing: Financial product advice and dealing](#).

[Dealing](#) in financial products. This includes applying for, issuing, varying or disposing of a financial product. This is the transaction part of your business. Issuers are, naturally, subject to higher capital requirements.

Dealing also includes underwriting an issue of securities or interests in registered managed investment schemes.

Providing [custodial or depository services](#). You may need this if you hold financial products on behalf of someone else.

- [Make a market](#) in a financial product
- Operating a managed investment scheme
- Providing a crowd funding service

- Providing traditional trustee company services

If you provide the above services or products, you will need an AFSL. There are exceptions though, such as if you were a representative of a licensee.

What type of business do you operate?

Below is a list of the different industries that may need to apply for an AFSL.

- [Financial Planners](#)
- [Managed Discretionary Account Providers](#) (MDA Advisers and MDA Operators)
- [Managed Investment Schemes](#) (Fund Managers, Responsible Entities and Custodians)
- [Remittance Providers](#)
- [Traders](#) (Foreign Exchange, Futures and Contracts for Differences)
- [Brokerage Providers](#) (e.g. Insurance and Securities)
- [Payment Product Providers](#) (e.g. PayPal)
- [Multi-disciplinary financial institutions](#), including Banks

Let’s look more specifically at the sorts of advice and services you may be offering that will warrant the need for a licence.

Financial advisers

People still want to go out on their own. The [Royal Commission](#)'s investigations into vertical integration and other conflicts of interest in the Australian financial services sector has added momentum to existing plans. Also, as the cost of compliance for larger licensees increases, the authorised representative fees may be greater than the cost of running a smaller, leaner business.

Non-cash payment partners

Global payments giants (particularly from China) are increasingly distributing their stores of value through Australia-based partners. Rather than getting licensed themselves, they require partners to obtain non-cash payment (NCP) provider licenses.

Cryptocurrencies

Despite the \$5 Billion of turnover through [crypto exchanges](#) in 2017, and subsequent rise, fall and then rise of digital currencies (or "virtual assets" as they're currently being described) there is currently no regulation mandating minimum capital, audit, disclosure or custody requirements. Yikes. The bigger or better exchanges may comply with the [Code of Conduct](#) (we oversaw the drafting), and all exchanges are now regulated by AUSTRAC for anti-money laundering and counter-terrorism financing purposes (we were in the working group that helped draft the [Rules](#)). Despite this, the sheer volume and diversity of cryptocurrencies and virtual assets has led the more serious players to consider licensing.

FinTechs

Whilst this buzzword has (and AltTech buzzwords have) been flogged to death, ASIC's Innovation Hub is still processing licence applications faster than NonTech

licence applications. We get a steady stream of enquiries that hopefully meet the definition of "potentially ground-breaking" ranging from [P2P platforms](#) through to BlockChainTech, well, anything.

Foreign Financial Services Providers

Since 2003 a large number of Foreign Financial Services providers have been able to operate within Australia subject to relief provided by ASIC. This relief has been withdrawn and these Foreign Financial Services providers now need to apply for a foreign AFS Licence by 31 March 2022. We have already received a number of enquiries from those eligible to assist them through the licensing process.

The above industry types make up the large majority of AFSL holders but there are many more than can be classified as "Other". These include:

Cryptocurrency providers, traders and brokers – ASIC has not yet released detailed guidance as to the status of cryptocurrencies as financial products and/or services. However, they have released [some guidance](#). Advice providers – for activities including Initial Public Offerings or other capital raisings such as Initial Coin Offerings.

Still have questions?

See our other Fact Sheets from our AFSL Series below:

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

Or contact us to speak to one of our consultants.

Contact us

W: www.hnlaw.com.au

E: info@hnlaw.com.au

Ph: +61 3 9670 8200

This fact sheet is a summary only intended to promote and assist discussion. The document is subject to a Creative Commons Licence – www.creativecommons.org. The author is Holley Nethercote Pty Ltd (ACN 068 367 046) trading as Holley Nethercote Lawyers and trading as Holley Nethercote Compliance. Liability limited by a scheme approved under Professional Standards Legislation. HN Documents is a service provided by Holley Nethercote Compliance. To attribute the author, please provide this link to www.hnlaw.com.au. This fact sheet does not constitute legal advice, and is current as at May 2020.