

Article Information

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Update: No update on AFSL reforms for Foreign Financial Service Providers

In December 2021, we published an insight titled “*The exposure draft legislation for Foreign Financial Service Providers (FFSPs) has dropped just in time for Christmas - Thank you Treasury*” ([read here](#)). At that time, the industry anticipated imminent reform to clarify the application of AFSL laws to FFSPs.

With news this week that “the \$3 trillion APRA-regulated superannuation industry now has more than 50% of its assets invested overseas”^[1] and ASIC reporting this week that there is no update to the application of AFSL laws to foreign financial service providers,^[2] it is worth a reminder about the vacuum that exists in Australian regulation for foreign fund managers who manage, or who want to manage, investments by Australian investors.

The Bill discussed below, to implement a new FFSP licensing and exemption regime, sailed through various Federal Parliamentary committees with barely a batting of an eye. You might assume that the Bill must have had bi-partisan support in Canberra, or that no one understood why the reform was necessary but was not going to stand in its way. However, the Bill languished on the tables of Parliament until it automatically lapsed in March this year when Parliament was prorogued. Since then, nothing.

FFSPs managing Australian investors’ money are left in the quandary of not knowing whether they “carry on a financial services business in Australia” and whether the AFSL laws even apply to them. For those FFSPs who secured an ASIC “passport exemption” before 2021, they can continue to rely on that exemption until 31 March 2026 and all they have by way of comfort is this week’s statement by ASIC that “*We will announce our position on extending the relief closer to the expiry date.*”

The AFSL laws were drafted before the internet was the platform by which global investing occurred and before Australian investors were actively seeking foreign investments *en masse*. The jurisdictional nexus in these laws to FFSPs is outdated and in serious need of reform. Clearly some FFSPs should be regulated by Australia or not permitted to take money from Australian investors. Other FFSPs who service Australia’s most sophisticated institutional investors should not or should only be lightly regulated by Australia, and their sophisticated Australian institutional clients should not be blocked from allocating to their preferred foreign fund managers. It makes no sense that Australian law does not clearly tell FFSPs whether they are regulated or not.

The lapsed Bill was not a perfect solution to this problem, but it was at least better than the current vacuum. Hopefully our next update on this topic will have some positive news.

Our team at Piper Alderman specialises in advising FFSPs about these Australian legal issues.

[1] NAB News, *Super Sector Deepens Internationalisation and Embraces Digital* (Web Page, 11 November 2025)

<<https://news.nab.com.au/news/super-sector-deepens-internationalisation-and-embraces-digital-i>>.

[2] Australian Securities and Investments Commission, *Report 825 Licensing and Professional Registration Activities: 2025 Update* (Report, November 2025)

