



Do I really need to do Responsible Manager Training?

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You are busy. Demand for financial services is high and there is a skills shortage. This leaves you with a lot to do. On top of that, your compliance consultant is saying you need to do Responsible Manager training. Is she joking?

Let us take a look at whether, as the Responsible Manager (RM) of an Australian financial services (AFS) licensee, you really need to do RM training and what drives the answer to that question.

What the law tells us

There is no reference to ‘Responsible Managers’, let alone to the need for them to do ongoing training, contained within the *Corporations Act 2001* (Corporations Act). RMs were created by the Australian Securities and Investments Commission (ASIC) as a way for an AFS licensee to demonstrate that it meets a particular requirement under section 912A of the Corporations Act. This is the requirement under section 912A(1)(e) to “maintain the competence to provide [the financial services covered by the licence]”.

What ASIC policy tells us

ASIC sets out its policy in relation to this legislative requirement, and the ways in which ASIC considers RMs satisfy the requirement, in *ASIC Regulatory Guide 105: AFS Licensing: Organisational competence* (RG 105).

ASIC policy is not law but rather an indication of how ASIC interprets and will enforce the law. In relation to RMs, if ASIC took the view that a licensee’s RMs were deficient, it might bring action against the licensee alleging a breach of section 912A(1)(e) of the Corporations Act.

Regulatory Guide 105.1-2 explains that ASIC:

- refers to the obligation under section 912A(1)(e) as the “organisational competence obligation”
- assesses compliance with this obligation by “looking at the knowledge and skills of the people who manage your financial services business” and refers to these people as ‘Responsible Managers’

RG 105 sets out base requirements for those people the licensee nominates as its RMs. One of these requirements is that they together, “have appropriate knowledge and skills for all of [the licensee’s] financial services and products”, as set out at RG 105.5(b).

The need for knowledge and skills to pick up the regulatory context

RG 105 does not explicitly refer to the need for an RM to have knowledge and skills in relation to the Australian regulatory framework applicable to financial services. However, ASIC’s approach over the years reveals that this is regarded as an essential component of being an RM. For example, at RG 105.85, when discussing requirements for RMs who have overseas experience and will be working in a financial advice business, ASIC requires them to complete a course listed on the ASIC Training Register “so that they can become famil-

iar with Australian regulatory requirements (for example, obligations under the Corporations Act”).

Over nearly 20 years of assisting organisations to prepare licence applications, the team at Holley Nethercote Compliance has observed that ASIC is alert to situations that suggest that a proposed RM may, in ASIC's view, have insufficient familiarity with the Australian regulatory context to be appointed as an RM.

So, individuals need to have appropriate knowledge and skills to be appointed an RM in the first place. These include familiarity with the Australian regulatory context in which the licensee operates. Current RMs have obviously ticked these boxes—what about ongoing training?

The need to maintain knowledge and skills

ASIC expects that a licensee will have measures in place to ensure that it maintains its organisational competence at all times, as set out in RG 105.6. This expectation derives from a standard condition on all AFS licences that:

The licensee must establish and maintain compliance measures that ensure, as far as is reasonably practicable, that the licensee complies with the provisions of the financial services laws.

Do not be tempted to brush aside licence conditions. Section 912A(1)(b) of the Corporations Act requires a licensee to comply with the conditions on its licence—this means they well and truly have the force of law.

ASIC expects that a licensee's measures for ongoing compliance with the organisational competence obligation will ensure that the licensee maintains and updates the knowledge and skills of its RMs, as set out in RG 105.7(b).

Maintaining knowledge and skills – documentation and areas to consider

In practical terms, there is a range of ways a licensee might maintain the knowledge and skills of its RMs, and this would often be documented by way of a professional development plan or other documentation which both plans what will be covered—perhaps in a 12-month period—and records activities once they have actually been completed.

A range of activities will relate to the RM maintaining their skills and knowledge in relation to the technical aspects of the provision of the financial services for which they are responsible under the licence, and industry developments in relation to those financial services. For example, an RM of a financial planning licensee which provides personal advice to retail clients would need to stay abreast of developments in superannuation law and market developments affecting investments.

Maintaining knowledge and skills in relation to the regulatory environment

Other activities will need to relate to the regulatory framework applicable to the licensee. The regulatory framework of primary importance is the AFS licensing framework. But other regulatory frameworks directly impacting the financial services for which the RM is responsible, such

as anti-money laundering and counter-terrorism financing (AML/CTF), are important as well. This is because section 912A(1)(c) of the Corporations Act requires a licensee to comply with the “financial services laws” and this phrase captures other “legislation that covers conduct relating to the provision of financial services”, as stated in section 761A of the Corporations Act.

How does an RM, maintain knowledge and skills in relation to the regulatory framework applicable to the licensee and particularly in relation to the financial services for which they are responsible? They might do things like:

- read financial services law regulatory updates provided weekly or monthly through subscription services*
- obtain regular reports from the internal legal or compliance team, perhaps through sitting on the compliance committee
- attend training in relation to regulatory areas impacting the provision of financial services, such as AML/CTF and privacy*

**As an illustration, the Holley Nethercote Hub provides updates to financial services law via the HN Hub Regulatory Updates, delivered monthly, via T-REX.*

And, of course, one might do training that specifically addresses AFS licensing obligations and the associated regulatory framework. Ideally, this training would also provide a refresher on the role of an RM, as a reminder of where they fit into the bigger picture. This kind of training is what we generally mean when we talk about RM training.

Why are the answers not clearer?

It is probably frustrating to read that you ‘might’ do this or you ‘might’ do that. The reality is that the licensee needs to make sure that its RMs do something to keep their knowledge and skills up to date. But it is then over to the licensee to determine what exactly that is and how often it happens. You have probably heard ASIC's regular refrain, set out at RG 105.4, on areas where neither the law nor ASIC is terribly prescriptive:

What you need to do to comply will depend on the nature, scale and complexity of your business.

To boot, ASIC's media releases do not reveal many instances where ASIC has taken action against a licensee specifically on the basis that it failed to maintain the knowledge and skills of its RMs. By contrast, there are many examples of ASIC taking action against the director of an AFSL licensee—where the director also happens to be an RM—resulting in a banning order under section 920A of the Corporations Act. While some commentary on the RM role may be thrown in to such media releases, the crux of such issues is usually attached to the role of the banned person as director of the licensee, rather than as RM.

Could RM training help you steer (personally) clear of trouble?

Nevertheless, a recent decision of the Administrative Appeals Tribunal (Tribunal), *Schroeder and ASIC* [2021]



The quote

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AATA 3519 (30 September 2021) addressing just such a scenario, was interesting because of the comments it contained about the kind of culture the director and the RM, Mr Schroeder, fostered at the organisation. The Tribunal found that the evidence spoke to “a culture that promoted growth, sales and revenue over compliance”. The Tribunal broadened the ban originally imposed by ASIC.

It is not clear from the decision whether or not Mr Schroeder attended any RM training during the course of his role as RM, but one of the grounds for the ban under section 920A was that there was reason to believe that Mr Schroeder was not adequately trained or competent to provide financial services or be involved in a financial services business. One wonders whether regular—or more regular—attendance at RM training would have sharpened Mr Schroeder’s senses as to the kinds of regulatory issues and risks faced by the licensee and caused him either to strive to change the organisation’s culture or to step down.

Good licensees send their RMs to RM training

As an organisation that provides RM training, it is only fair to declare our conflict of interest here. This declaration aside, completion of a half-day RM training course once a year is not a bad element to have in any RM’s professional development plan. In our experience, licensees with well-run, orderly compliance frameworks generally send their RMs to an RM training session at least once a year.

There are now a number of organisations (not just ours) that offer these kinds of courses.

What to look for in RM training

Look for a course that:

- provides a refresher on the role of an RM
- provides a refresher on the AFS legislative framework applicable to the licensee and, particularly, applicable to the financial services and products for which the RM is responsible under the licence
- updates you on any recent regulatory developments applicable to this legislative framework
- identifies ‘big ticket’ items on the regulatory scene at the time—for example, in recent times one might expect at least some discussion of ASIC’s interest in cyber security and the 2021 reforms relating to breach reporting.

It is the responsibility of the licensee—and not the RM’s responsibility—to maintain competence under section 912A(1)(e) and therefore to ensure that the RMs’ knowledge and skills are kept up to date. However, there can be implications for the RM if the licensee fails in this regard. For example, if the licensee contravenes the obligation under section 912A(1)(e) of the Corporations Act, the RM may be considered to be involved in that contravention. Being involved in the contravention of a financial services law by another person provides grounds for ASIC to ban an individual from the financial services industry under section 920A of the Corporations Act.

For this reason, RMs may wish to look for a course that also addresses the topic of personal liability of RMs and senior managers.

Doing RM training is sensible

So, where we land, then, is that an RM does not absolutely have to do RM training. But a sensible licensee would send its RMs to a half-day RM course at least annually as part of ensuring that it meets its obligations under section 912A(1)(e).

Other advantages of RM training

Attending such a course also has other potential advantages.

- It is a good risk management strategy as it helps the licensee stay abreast of regulatory developments and risk areas, helping it to achieve smoother sailing for its business activities.
- It can be an excellent opportunity—provided the course is interactive and some discussion is encouraged on a confidential basis, of course—to calibrate your business against other AFS licensees in various areas of compliance risk, to share tips for managing such risk and to make connections with others in your industry. For these reasons, it can also often be advantageous to bring the compliance manager to the RM training, whether or not they also wear an RM hat.
- If you choose the right course, with experienced presenters who have worked with the financial services industry for some time, it can be a really enjoyable way to spend an afternoon and take a break from the busyness of everyday work, while at the same time, kicking goals for both yourself and your licensee. **FS**