

# FFSP AFSL EXEMPTION UNCERTAINTY RETURNS

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Legal Briefings - By **Fiona Smedley and Ewan MacDonald**

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The bill to implement the foreign financial service provider (**FFSP**) exemptions to the requirement to hold an Australian financial services licence (**AFSL**) has lapsed on the dissolution of Parliament following the calling of the federal election yesterday.

For more information on the final form of the bill (the *Treasury Laws Amendment (Streamlining and Improving Economic Outcomes for Australians) Bill 2022*) (**Bill**) that had been introduced into Parliament on 17 February 2022, see our article [here](#).

## WHAT HAPPENS NOW?

The federal election will be held on 21 May 2022.

Whether the Bill will be re-introduced to Parliament or not after the election will depend on the returned government. We will have to wait to learn the returned government's position on the FFSP AFSL exemptions.

## WHAT HAPPENS IF THE BILL IS NOT RE-INTRODUCED AND PASSED?

The current class order AFSL exemptions for FFSPs (the limited connection exemption and the passporting or sufficient equivalent exemptions) are in a transitional wind down period to their termination on 31 March 2023.

- They can be used until that date.
- It is theoretically possible that the transitional wind down periods will be extended again

but no indication has been given at this stage of any intention to extend them.

If the Bill is not reintroduced then FFSPs can revisit the options that were on the table before the May 2021 federal budget announcement of the consultation *“to restore previously well-established regulatory relief for FFSPs who are licensed and regulated in jurisdictions with comparable financial service rules and obligations, or have limited connection to Australia, and that deal with wholesale clients and professional investors, ... in order to reduce duplicate regulatory requirements”* as reported [here](#). These options are:

1. FFSPs may apply for a **foreign AFSL** if they are eligible for the foreign AFSL due to their home regulation being pre-approved for this purpose.
  - a. The legislation to effect the foreign AFSL regime was passed in 2020 and was not affected by the Bill.
  - b. The lead time for preparing a foreign AFSL application and procuring all the fit and proper person documentation for the officers of the applicant and its controlling entities remains 2 months. We suggest allowing an additional 6 months for ASIC processing of applications. In order to have a foreign AFSL by 31 March 2023 we recommend commencing work by the end of June 2022.
2. The **funds management exemption** introduced by instrument in 2020 and which commenced April 2022 also remains an option.
3. If the FFSP’s activities are wholly outside Australia and limited to advising on, dealing in or making a market for derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units for professional investors then the FFSP may be able to use **the professional investor exemption** inserted by Corporations Regulation 7.6.02AG. This exemption was to be terminated from 31 March 2023 under the Bill, but the lapsing of the Bill gives new life to this narrow exemption.

For more information about these options see our earlier [article](#).





## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**FIONA SMEDLEY**  
PARTNER, SYDNEY

+61 2 9225 5828  
Fiona.Smedley@hsf.com



**EWAN MACDONALD**  
SPECIAL COUNSEL,  
SYDNEY

+61 2 9225 5351  
Ewan.MacDonald@hsf.com

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