



Superannuation

Licensing Application for an Acting Trustee RSE Licence

(Trustees proposing to be appointed by APRA under section 134 of the *Superannuation Industry (Supervision) Act 1993*)

12 May 2006



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Introduction

This document is for use by applicants seeking an Acting Trustee RSE licence. The acting trustee class of licence is created by regulation 3A.03A of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations). There is no requirement for an application fee in relation to this class of licence. This document does not constitute legal advice. Applicants may wish to seek professional advice on how the legislation and regulations apply to their application.

For further information, visit APRA's website at www.apra.gov.au, or contact APRA on (02) 9210 3344, or by email at superannuationlicensing@apra.gov.au

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Penalties for false or misleading information

Applicants should note that there are stringent penalties for the provision of false or misleading information (Section 136.1 of the *Criminal Code Act 1995*) and where information is disclosed to APRA which appears to indicate a breach of the law, APRA is authorised under s. 56 of the *Australian Prudential Regulation Authority Act 1998* to pass that information to the Australian Securities and Investment Commission, any other financial sector supervisory agency, or other agency specified in the APRA Regulations.

Acting Trustee RSE licence application form

There are four sections to the application – section A, section B, section C and section D (information only). **Applicants must complete sections A and C upon applying for an Acting Trustee Licence. Some parts of section B, namely 'B2 Fitness and propriety' and 'B4 Risk management' must also be completed upon applying for the licence.** In addition, before APRA can grant the licence, APRA must be satisfied that the trustee meets the requirements outlined in B5 Capital, which would normally occur by the trustee signing a *Notice of an agreement to written requirements relating to the custody of assets*, the standard terms of which are set out in section D.

Parts 'B1 Adequacy of resources' and 'B3 Outsourcing' need not be completed when applying for the licence. However, APRA will need them to be completed and submitted to APRA when, or shortly after, the trustee is appointed to a Registrable Superannuation Entity (APRA may require this by imposing a condition to that effect, under section 135 of the SIS Act, on trustee's appointment).

Section A

Section A of the application requests details of the Applicant and other general information. It consists of a series of forms that contain questions relating to the Applicant.

Where the Applicant has two or more persons in the same position, then the Applicant must copy and supply that form for each person who holds the position. For example, form A1.2 must be copied and completed for each current director of the trustee.

Section B

Section B determines compliance with certain operating standards prescribed in Part 4 of the SIS Regulations. While no forms are required for section B, trustees will have to demonstrate their current and ongoing ability to maintain compliance with the operating standards.

Section C

Section C contains the certificate that will need to be signed on behalf of the trustee.

Section D

Section D contains the custodian requirements that will be applied to each acting trustee licensee.

Section A1 – Applicant details – Corporations

Form A1.1 – Applicant details

For office use only	1. Name of applicant
	<input type="text"/>
	2. Trading name(s)
	<input type="text"/>
	3. Australian Business Number
	<input type="text"/>
	4. Registered office
	Address line 1
	<input type="text"/>
	Address line 2
<input type="text"/>	
Suburb	
<input type="text"/>	
State	
<input type="text"/>	
Postcode	
<input type="text"/>	
5. Principal place of business (if same as registered office, write 'as above')	
Address line 1	
<input type="text"/>	
Address line 2	
<input type="text"/>	
Suburb	
<input type="text"/>	
State	
<input type="text"/>	
Postcode	
<input type="text"/>	
6. Postal address (if same as registered office, write 'as above')	
PO Box	
<input type="text"/>	
Suburb	
<input type="text"/>	
State	
<input type="text"/>	
Postcode	
<input type="text"/>	
7. Website address (if applicable)	
<input type="text"/>	

Section A1 – Applicant details – Corporations

Form A1.2 – Office holder details (a) Director

Total number of Directors

For office use only	1. Name of office holder
	Family name <input type="text"/>
	Given name(s) <input type="text"/>
	2. Telephone number(s)
	Direct business line () <input type="text"/>
	Mobile number <input type="text"/>
	3. Email address <input type="text"/>
	4. Residential address
	Address line 1 <input type="text"/>
	Address line 2 <input type="text"/>
Suburb <input type="text"/>	
State <input type="text"/>	
Postcode <input type="text"/>	
5. Date of birth	
Day Month Year <input type="text"/> / <input type="text"/> / <input type="text"/>	
6. Date of appointment as Director	
Day Month Year <input type="text"/> / <input type="text"/> / <input type="text"/>	

Section A1 – Applicant details – Corporations

Form A1.2 – Office holder details (b) Company Secretary

For office use only	<p>1. Name of office holder</p> <p>Family name <input type="text"/></p> <p>Given name(s) <input type="text"/></p> <p>2. Telephone number(s)</p> <p>Direct business line <input type="text" value="()"/></p> <p>Mobile number <input type="text"/></p> <p>3. Email address <input type="text"/></p> <p>4. Residential address</p> <p>Address line 1 <input type="text"/></p> <p>Address line 2 <input type="text"/></p> <p>Suburb <input type="text"/> State <input type="text"/> Postcode <input type="text"/></p> <p>5. Date of birth</p> <p>Day Month Year <input type="text" value=""/> / <input type="text" value=""/> / <input type="text" value=""/></p> <p>6. Date of appointment in role</p> <p>Day Month Year <input type="text" value=""/> / <input type="text" value=""/> / <input type="text" value=""/></p>
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Section A1 – Applicant details – Corporations

Form A1.2 – Office holder details (c) Executive Officer

For office use only	1. Name of office holder
	Family name
	<input type="text"/>
	Given name(s)
	<input type="text"/>
	Position title
	<input type="text"/>
	Brief description of position
	<input type="text"/>
	2. Telephone number(s)
	Direct business line
	()
	<input type="text"/>
	Mobile number
<input type="text"/>	
3. Email address	
<input type="text"/>	
4. Residential address	
Address line 1	
<input type="text"/>	
Address line 2	
<input type="text"/>	
Suburb	
<input type="text"/>	
State	
<input type="text"/>	
Postcode	
<input type="text"/>	
5. Date of birth	
Day Month Year	
<input type="text"/>	
6. Date of appointment in role	
Day Month Year	
<input type="text"/>	

Section A2 – Contact details

Form A2.1 – Contact person(s) for applicant

For office use only	1. Name of contact person
	Family name <input type="text"/>
	Given name(s) <input type="text"/>
	2. Position held with applicant <input type="text"/>
	3. Date of appointment with applicant <input type="text"/>
	4. Telephone number(s)
	Direct business line <input type="text" value="()"/>
	Mobile number <input type="text"/>
	Fascimile number <input type="text" value="()"/>
	5. Email address <input type="text"/>
6. Name of second contact person	
Family name <input type="text"/>	
Given name(s) <input type="text"/>	
7. Position held with applicant <input type="text"/>	
8. Date of appointment with applicant <input type="text"/>	

Section A2 – Contact details

Form A2.1 – Contact person(s) for applicant (cont.)

For office use only	<p>9. Telephone number(s)</p> <p>Direct business line</p> <input data-bbox="406 497 1412 551" type="text" value="()"/> <p>Mobile number</p> <input data-bbox="406 607 1412 660" type="text"/> <p>Fascimile number</p> <input data-bbox="406 716 1412 770" type="text" value="()"/> <p>10. Email address</p> <input data-bbox="406 840 1412 893" type="text"/>
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Section B – Compliance with operating standards

Section B requires applicants to provide information that will allow APRA to assess compliance and ability to comply on an ongoing basis in the following areas:

- adequacy of resources;
- fit and proper;
- outsourcing arrangements;
- risk management; and
- capital requirements.

Applicants must provide statements and/or attachments to support this application. Please use the checklist below to ensure that all the relevant forms have been completed and attached.

To be provided upon lodging the application form (or, in the case of B5, before licence can be issued):

Section B	All applicants	Attached
B2	<ul style="list-style-type: none"> • Written statement of compliance with the Fit and Proper Operating Standard; • Curriculum Vitae; and • Federal Police checks. 	
B4	RMS.	
B5	Agreement to written custody conditions (APRA will provide a separate instrument of agreement in relation to this).	

To be provided before being appointed to a Registrable Superannuation Entity:

Section B	All applicants	Attached
B1	<ul style="list-style-type: none"> • Written statement of compliance with the Adequacy of Resources Operating Standard; and • Trustee Indemnity Insurance Policy. 	
B3	<ul style="list-style-type: none"> • Copies of outsourcing agreements; and • Written statement of compliance with the Outsourcing Operating Standard. 	

Section B1 – Adequacy of resources

This section requires **all applicants** to state how they satisfy the RSE licensee requirements contained in the Adequacy of Resources Operating Standard in SIS regulation 4.15 (made under Part 3 of the SIS Act).

The information required by this section **need not be provided with the application for the RSE licence**. However, APRA will require this information when, or shortly after, APRA appoints the Applicant to be acting trustee of a particular superannuation entity, and may impose a condition of appointment to that effect. In other words, before actually appointing the trustee to a particular entity, APRA will need to be satisfied that the trustee meets the requirements of the Adequacy of Resources Operating Standard in SIS regulation 4.15.

Sub-regulation 4.15(1) of the SIS Regulations requires an RSE licensee to maintain adequate human, technical and financial resources to enable it to undertake its activities as an RSE licensee. An Applicant will be able to demonstrate adequate resources if it has human, technical and financial resources in its own right or has these resources available to it under an enforceable agreement or undertaking.

Applicants must therefore maintain or have access to:

- financial resources;
- technological resources; and
- human resources.

(See SIS regulation 4.15 for an explanation as to what these resources include).

In providing evidence of compliance with regulation 4.15, a trustee may wish to include attachments to substantiate written explanations of how the Applicant satisfies the requirements contained in the operating standard. For further information on the Adequacy of Resources requirements, please refer to:

- Operating Standard for Adequacy of Resources (SIS regulation 4.15);
- APRA's *Superannuation Guidance Note SGN 140.1: Adequacy of Resources*; and
- APRA's *Frequently Asked Questions* (for superannuation) available from APRA's website.

Attachment B1.1 – Adequacy of resources

Please provide a detailed written explanation and supporting evidence of how the Applicant meets the requirements of the Operating Standard for Adequacy of Resources. To meet the requirements, the Applicant must demonstrate that it maintains or has access to adequate financial, technological and human resources. Please ensure that all three resource areas are addressed separately. Importantly, in addressing the financial resources limb, please provide an outline of the proposed rates of remuneration that the trustee would seek to charge (subject always to any determination by APRA under s. 135 of the SIS Act relating to trustee fees) in discharging its acting trustee duties.

Where the Applicant does not own or control its resources but relies on resources provided by another entity to undertake its operations, the provision of such resources must (at least) be formalised in a letter.

APRA will have regard as to whether the Applicant has insurance cover to cater for potential liabilities associated with the Applicant's business activities. If the Applicant maintains insurance cover, please ensure that the following information is attached.

Attachment B1.2 – Insurance cover

Please provide a copy of the relevant insurance policy covering the Applicant.

Section B2 – Fit and proper

Section B2 requires **all applicants** to provide written explanations how they meet the RSE licensee requirements contained in the Fit and Proper Operating Standard in SIS regulation 4.14 (made under Part 3 of the SIS Act).

This information **must be provided with the application for an RSE licence**. For APRA to grant an RSE licence, APRA must be satisfied that RSE licence applicants meet the requirements contained in the operating standard relating to fitness and propriety.

Where the Applicant is a corporation or body corporate, APRA will make an assessment of the fitness and propriety of that entity's responsible officers. A **responsible officer** in this context includes a director (and alternate director), company secretary, or executive officer of the Applicant as defined in s. 10 of the SIS Act.

For further information on the fit and proper requirements, please refer to:

- Part 15 of the SIS Act;
- Fit and Proper Operating Standard (SIS regulation 4.14);
- APRA's *Superannuation Guidance Note SGN 110.1: Fit and Proper*; and
- APRA's *Frequently Asked Questions* (for superannuation) available from APRA's website.

In attachment B2.1, the Applicant will need to address both the fit and proper components separately. In respect to fitness, the Applicant must clearly address its fitness requirements for each individual responsible officer, and for the body corporate as a collective. It is APRA's expectation that **each** officer will have (or acquire, within three months of his/her appointment as a director or the grant of an RSE licence to the trustee, whichever may be the later) a basic knowledge of investments, his/her responsibilities as a trustee and the requirements of the prudential framework in which the trustee operates. Collectively, the body corporate as a whole is expected to have expertise in insolvency and superannuation.

Attachment B2.1 – Fit and proper

Please provide a detailed written explanation and supporting evidence such as policies and/or procedures as to how the Applicant meets the requirements of the Fit and Proper Operating Standard (SIS regulation 4.14). The explanation must address the fit and proper requirements as relevant to the Applicant, demonstrate how each responsible officer satisfies those requirements, provide information on the trustee's processes for ensuring that it continues to satisfy the individual and collective fit and proper requirements in the event of a change in the composition of the responsible officers, and describe the processes for identifying and managing conflicts of interest.

You must ensure that fitness and propriety are addressed separately. In relation to each responsible officer, you must also submit:

- a statutory declaration completed by each officer as to whether he or she raises one of the 'probity flags' outlined in paragraph 15(b) on page 7–8 of *Superannuation Guidance Note SGN 110.1: Fit and Proper* (available from APRA's website). A 'probity flag' will be raised where a question in that paragraph 15(b) is answered in the affirmative. In that event, details must be provided in the statutory declaration; and
- a copy of the curriculum vitae for each responsible officer identified in the application form.

As part of its assessment of the proper requirements outlined in the Fit and Proper Operating Standard, APRA requires an Australian Federal Police (AFP) check for each responsible officer of the Applicant where the Applicant is a body corporate or a constitutional corporation or for each trustee where the Applicant is a group of individual trustees. AFP checks must be undertaken before this application can be assessed. A copy of the Police Check Form (the approved form) can be downloaded from the AFP website at www.afp.gov.au. Please select the form specific for APRA purposes.

Attachment B2.2 – Australian Federal Police checks

Please provide AFP checks in the approved form for each responsible officer of the Applicant. Where these are not available at the time of submitting the application, please provide confirmation from the AFP that the application forms have been lodged.

Attachment B2.3 – Overseas police checks

Please provide confirmation that no responsible officers have been charged with any offence whilst residing in any jurisdiction outside Australia. Where such confirmation cannot be made, details must be provided.

Section B3 – Outsourcing arrangements

This section requires **all applicants** to provide a written explanation as to how their material service provider agreements satisfy the requirements contained in the Outsourcing Operating Standard in SIS regulation 4.16 (made under Part 3 of the SIS Act).

The information required by this section **need not be provided when applying for the RSE licence**. However, APRA will require this information when, or shortly after, APRA appoints the Applicant to be acting trustee of a particular superannuation entity, and may impose a condition of appointment to that effect. In other words, before actually appointing the trustee to a particular entity, APRA will need to be satisfied that the trustee meets the requirements of the Outsourcing Operating Standard in SIS regulation 4.16.

This section of the application is mainly concerned with the content of outsourcing agreements. The use of third parties to perform functions on behalf of the trustee (that is, the performance of an outsourcing agreement) gives rise to operational risk. The processes that the trustee has put in place to measure, monitor and manage those risks are to be disclosed in the trustee's RMS and the entity's RMP. This will be assessed as part of APRA's assessment of 'Section B4: Risk Management'.

For further information on the outsourcing requirements, please refer to:

- Operating Standard for Outsourcing (SIS regulation 4.16);
- APRA *Guidance Note SGN 130.1: Outsourcing*; and
- APRA's *Frequently Asked Questions* (relating to superannuation) available from APRA's website.

Attachment B3.1 – Outsourcing arrangements

Where the Applicant has outsourced material business activities, please provide a detailed written explanation of how the Applicant's material service provider agreements comply with the Outsourcing Operating Standard in SIS regulation 4.16. For each material business activity that is outsourced please provide the name of the service provider, the type of services provided, confirmation that each agreement complies with regulation 4.16 of the SIS Regulations, and the extent of legal advice sought in relation to the review of the agreements.

Also, where such agreements exist, the Applicant is required to submit a copy of its policy and/or procedures supporting the appointment and management of outsourced arrangements.

Section B4 – Risk management

This section requires **all applicants** to provide a Risk Management Strategy (RMS) that complies with the **risk management requirements** set out in s. 29H of the SIS Act. Subsection 29H(2)(c) provides that the Regulations may prescribe for other matters to be addressed as part of the risk management requirements, and in this regard certain matters are prescribed by SIS sub-regulation 4.07A(2).

For APRA to grant an RSE licence, it must be satisfied (under subsection 29D(1)(e) of the SIS Act) that the Applicant's RMS meets the requirements of 29H. Accordingly, the information required by this section **must be provided with the application** for an RSE licence.

For further information on the risk management requirements, please refer to:

- Regulations for Risk Management Strategies (SIS regulation 4.07A) and Risk Management Plans (SIS regulation 4.07B); and
- APRA *Superannuation Guidance Note SGN 120.1: Risk management*;
- APRA's *Frequently Asked Questions* (relating to superannuation) available from APRA's website.

Attachment B4.1 – Risk Management Strategy (RMS)

Please provide the Applicant's RMS. Please ensure that the RMS complies with the requirements outlined in the SIS Act and regulations and APRA's FAQs 2.5–2.8. These are on APRA's website at <http://www.apra.gov.au/Superannuation/FAQ.cfm>. Please note that the Applicant is required to certify (in Section C of the application) that the RMS complies with section 29H of the SIS Act.

Please note that, for an RSE licensees to register an RSE, there must be a **Risk Management Plan (RMP) for the RSE**. Applicants must ensure that each fund to which they are appointed is registered (if they have not been registered already) by completing the registration application form which includes the requirement to lodge an RMP of each RSE. Please refer to the 'Registration application' (on APRA's website).

Section B5 – Capital requirements

An RSE licence of the acting trustee class will permit the licensee to be acting trustee of public offer (as well as non-public offer) funds. For APRA to grant a licence of a class that enables a trustee to be a trustee of a public offer entity, APRA must be satisfied (under paragraph 29D(1)(g) of the SIS Act) that the Applicant is a constitutional corporation that meets the capital requirements under s. 29DA. For acting trustees, the capital requirements may be met under subsection 29DA(5) of the SIS Act, by the acting trustee's prior agreement to written custodian requirements.

It is expected that most trustees will seek to meet the capital requirements in this way. However, APRA does not intend to preclude a trustee from choosing to satisfy the capital requirements on another ground set out in s. 29DA (e.g. by satisfying APRA that the value of the trustee's net tangible assets is equal to or greater than the amount prescribed in the regulations, currently \$5 million).

APRA's standard written custodian requirements for acting trustees are detailed in section D of the application.

Attachment B5.1 – Capital requirements

To demonstrate compliance with the capital requirements in subsection 29DA(5), the Applicant is required to sign a *Notice of an agreement to written requirements relating to the custody of assets*, to be provided separately by APRA, agreeing to written custodian requirements under subsection 29DA(5). These written requirements will generally be in the standard form set out in section D, although the circumstances of individual cases may be relevant.

Section C – Certificate

The Corporation certifies that each of the statements (i), (ii) and (iii) in this certificate is true and correct:

(i) Risk Management Strategy (RMS)

The Applicant certifies that the Risk Management Strategy provided as part of this application complies with section 29H of the SIS Act and SIS regulation 4.07A.

In addition, the Applicant certifies that any changes to the RMS will be advised to APRA within 14 days of making the modification.

(ii) Section B

The Applicant agrees to provide the necessary documentation required in section 'B1 Adequacy of resources' and 'B3 Outsourcing' when, or shortly after, APRA appoints the Applicant to be acting trustee of a particular superannuation entity, and may impose a condition of appointment to that effect. In other words, before actually appointing the trustee to a particular entity, APRA will need to be satisfied that the trustee meets the requirements of the Adequacy of Resources and Outsourcing Operating Standards in the SIS regulations.

The Applicant also agrees to lodge a registration application, under Part 2B of the SIS Act, for each RSE to which it is appointed (if the RSE is not already registered).

(iii) Further information

The Applicant acknowledges that APRA may ask for more information and agrees that it will promptly provide any information that APRA reasonably considers is necessary in order for the application to proceed, and, in the event that the Applicant is approved, any other information which APRA reasonably considers is necessary for deciding whether the approval should remain in force.

Those persons authorised to sign on behalf of the corporation must sign the certificate.

Signature:

Print name:

Position:

Date:

Signature:

Print name:

Position:

Date:

Common Seal of
Corporation
(if required)

Section D – Custodian requirements

Note: It will be necessary for the Applicant to sign a separate *Notice of and agreement to written requirements relating to custody of assets*, in compliance with subsection 29DA(5) of the SIS Act.

The Applicant must comply with the requirements below in respect of the assets of each registrable superannuation entity of which the Applicant is, or is proposing to become, the trustee.

1. Where the Applicant is appointed acting trustee of a registrable superannuation entity that is a public offer entity then (subject to any Condition or Direction to the contrary) the Applicant will:
 - (a) ensure that a custodian is, or has been, appointed to hold the assets of the entity; and
 - (b) comply with the requirements set out in paragraphs A to K inclusive, of this Schedule;
 2. Where the Applicant is appointed acting trustee of a registrable superannuation entity that is not a public offer entity then:
 - (a) if any assets of the entity were custodially held at the time of the appointment or this Agreement (whichever the later), the Applicant will (subject to any Condition or Direction to the contrary) ensure that those arrangements comply with the requirements set out in paragraphs A to K inclusive of this Schedule; and
 - (b) in all cases, the Applicant will comply with any Condition or Direction relating to the custody of assets of the entity.
- A. The custodian must be appointed under a written agreement between the Applicant and the custodian (the custodian agreement).
 - B. The custodian agreement must be in force while the custodian holds assets of the registrable superannuation entity and must comply with the outsourcing standard in regulation 4.16 of the *Superannuation Industry (Supervision) Regulations 1994*.
 - C. The custodian agreement must comply with the requirements contained in the *APRA Cross Industry Circular No. 1* released in November 2000.
 - D. Only one custodian may be appointed for the registrable superannuation entity.
 - E. All assets of the registrable superannuation entity, including all bank accounts (including those maintained for the purpose of meeting expenses incurred by the Applicant), must be custodially held by the custodian.
 - F. The custodian must be independent of the Applicant.
 - G. The Applicant must take all reasonable steps to ensure that the custodian satisfies the requirements of Part 15 of the Act.
 - H. If the Applicant becomes aware that the custodian no longer satisfies the requirements of Part 15 of the Act, this is a notifiable event and must be reported to APRA in writing no later than 14 days after the event occurred or the Applicant became aware of it.
 - I. If the Applicant becomes aware of any problems with the custodian that jeopardise the safety of the assets of a registrable superannuation entity or that indicate that the custodian can no longer be relied on to perform, in a proper manner, the duties of custodian of the assets of any registrable superannuation entity, it must:
 - (i) advise APRA in writing as soon as practicable, and in any event within seven days after becoming aware; and
 - (ii) take all reasonable steps (not involving a breach of the Act) to secure the safety of the assets held by the custodian including, if necessary, causing the custodian to return the assets to the Applicant and/or arranging for the assets to be custodially held by another appropriate custodian.

- J. The Applicant must notify APRA in writing at least 30 days prior to any change of custodian. It will be the Applicant's responsibility to ensure that the new custodian is another appropriate custodian. The notice must specify the name and address of the new custodian, and must certify that the use of the new custodian will not result in the contravention of any conditions imposed on the Applicant in its capacity either as an RSE licensee or as an acting trustee.
- K. If the Applicant needs to change the custodian arrangements in a shorter time period than 30 days, due to concerns that the custodian may no longer be relied upon to perform, in a proper manner, the duties of custodian or there is any potential to jeopardise the assets, the Applicant need only notify APRA in writing regarding the change of custodian as soon as the Applicant becomes aware of the concerns or potential to jeopardise the assets of the registrable superannuation entity, **provided that** the notification is given, at the latest, immediately after the change of custodian occurs.



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