

Module	AUSTRALIAN CREDIT LICENCE
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
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Module Scope

Is your organisation engaged in or intend to engage in credit activities by offering a credit contract or consumer lease to individuals for personal, household or domestic purposes?

Does your organisation currently have or intend to obtain a credit licence?

Does your organisation currently have or intend to have representatives undertaking credit activities on its behalf?

Does your organisation have a compliance program in place to manage its credit licence obligations?

Module Application

The AUSTRALIAN CREDIT LICENCE (CREDIT PROVIDERS) module provides an organisation operating in Australia as a credit provider an understanding of their legal obligations under Australian national credit legislation. The module provides the practical assistance and guidance to ensure these obligations are complied with by demonstrating the establishment and maintenance of best practice processes.

All individuals and organisations operating or intending to operate as credit providers in Australia should be subscribing to this module.

The AUSTRALIAN CREDIT LICENCE (CREDIT PROVIDERS) module covers the consumer credit regulatory sector in Australia that imposes obligations on credit licensees that issue;

- › Consumer credit contracts;
- › Consumer leases; and
- › Credit cards.

The primary piece of legislation governing consumer credit in Australia is the National Consumer Credit Protection Act 2009 (Cth) (NCCPA), which includes the National Credit Code as a schedule to the NCCPA. In addition to the NCCPA, obligations are also imposed on credit providers and credit assistance providers by other legislation, including;

- › The National Consumer Credit Protection Regulations 2010 (Cth);
- › Operates under the NCCPA and significantly informs its operation and application;
- › The Privacy Act 1988 (Cth);
- › Establishes principles in relation to the collection, storage, use and disposal of personal information by public sector and some private sector entities;
- › The Australian Securities and Investments Commission Act 2001 (Cth).

The Australian Securities and Investment Commission (ASIC) is the primary regulator of credit services in Australia. ASIC is tasked with the role of licensing and monitoring credit services providers to ensure that they comply with their legal obligations. To fulfil this role ASIC has issued numerous regulatory guides and legislative instruments that provide practical guidance on compliance issues and assist credit licensees to understand how ASIC will exercise its powers. The AUSTRALIAN CREDIT LICENCE (CREDIT PROVIDERS) module covers the role and function of ASIC.

Australian credit providers and credit assistance providers must establish a robust compliance framework to ensure they comply with their core regulatory obligations.

The framework should include systems for ensuring that the licensee:

- › Is appropriately licensed for all credit activities it engages in and that any authorised credit representatives have been properly appointed;
 - › Engages in credit activities efficiently, honestly and fairly;
 - › Appropriately manages conflicts of interest;
 - › Has access to sufficient resources on a continuing basis;
 - › Maintains organisational competence;
 - › Has risk management and breach reporting systems in place;
 - › Complies with disclosure requirements;
 - › Makes reasonable inquiries as to a consumer's objectives, requirements and circumstances;
 - › Holds client money on trust where required;
 - › Engages in lawful advertising practices;
 - › Maintains required financial and other records;
 - › Has a complying internal dispute resolution system in place; and
 - › Is a member of an approved external dispute resolution scheme.
- In addition to the stated core regulatory obligations Australian credit licensees are also obligated to ensure that their compliance framework;
- › Satisfies requirements in relation to standard home loans, credit card contracts, short-term loans and small amount credit contracts, including providing a Key Facts Sheet (KFS) to all consumers;
 - › Complies with the Payment Card Industry Security Standards when sending credit or debit cards;

- › Creates credit contracts in the correct form and provides the debtor or guarantor under such contracts with all required information, including when the contract is terminated;
- › Has procedures in place to ensure that mortgages and guarantees are valid and enforceable;
- › Provides a debtor with written notice if there is any change to the terms of a credit contract, mortgage or guarantee;
- › Has procedures in place to ensure that sale contracts are not based on misrepresentation, breaches or a failure of consideration;
- › Informs a debtor of all relevant information under a sale contract or insurance contract; and
- › Has procedures in place to ensure that consumer leases are created in the correct form and provide the lessee with all required information.

Continued or systemic failure to meet legal obligations exposes the Australian credit provider entity to consequences including criminal liability, significant pecuniary penalties and reputational damage to the organisation. The AUSTRALIAN CREDIT LICENCE (CREDIT PROVIDERS) module comprehensively covers the range of specific consequences that apply to different breaches or failures by Australian credit licensees.

The AUSTRALIAN CREDIT LICENCE (CREDIT PROVIDERS) module provides comprehensive coverage of the legal obligations of Australian credit licensees providing credit to consumers. The module does not cover the procedures or processes to be followed by individuals or entities relying on Australian credit licensees who have suffered damages or losses due to breaches of obligations by Australian credit licensees.

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