

Module	AUSTRALIAN FINANCIAL SERVICES LICENCE (PRODUCT ISSUER)
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
Legal Expert	<p>DOUGLAS GRATION Barrister at Victorian Bar</p> <p>https://www.vicbar.com.au/profile/7765 https://www.linkedin.com/in/douglas-gration-99750127/?originalSubdomain=au</p> <p>TEMOGEN HIELD Principal at My General Counsel</p> <p>https://www.mygeneralcounsel.com.au/ https://www.linkedin.com/in/temogenhield/?originalSubdomain=au</p>

Module Scope

Does your organisation provide or deal in financial products or operate a registered scheme?

Does your organisation currently hold or intend to acquire an Australian Financial Services Licence (AFSL)?

Does your organisation have systems and processes in place to manage and monitor compliance with its obligations?

Module Application

The Australian Financial Services sector encompasses significant areas of industry within the Australian economy, including:

- Financial advisory;
- Financial product issuers;
- Stockbroking;
- Funds management and superannuation;
- Hedge funds;
- Investment banking;
- Private banking;
- Retail banking;
- Insurance;
- Private equity;
- Margin lending;
- Asset-based finance and leasing;
- Foreign exchange; and
- Payment, clearing and settlement facilities.

As the primary regulator of the financial services sector, the Australian Securities and Investment Commission (ASIC) is tasked with licensing and monitoring all financial services businesses or organisations operating in these areas in Australia.

The AUSTRALIAN FINANCIAL SERVICES LICENCE (PRODUCT ISSUERS) module provides an organisation licenced to operate or intending to become licenced to operate in the Australian financial sector, an understanding of their legal obligations specifically with regard to issuing financial products. The module also provides practical assistance and guidance to ensure these obligations are complied with by demonstrating the establishment and maintenance of best practice processes within the organisation.

All individuals and organisations operating within the Australian financial sector that issue or intend to issue financial products should be subscribing to this module.

The AUSTRALIAN FINANCIAL SERVICES LICENCE (PRODUCT ISSUERS) module covers the legal obligations of entities operating in the financial sector that as part of their business issue financial products.

The Australian Securities and Investment Commission (ASIC) is the primary regulator of the financial sector in Australia. ASIC is tasked with the role of licensing and monitoring organisations operating in the financial services sector 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 FINANCIAL SERVICES LICENCE (PRODUCT ISSUERS) 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.

The AUSTRALIAN FINANCIAL SERVICES LICENCE (PRODUCT ISSUERS) module covers the primary legislation imposing legal obligations on the Australian Financial Sector:

- Corporations Act 2001 (Cth) (CA);
- Financial Services Reform Act 2001 (Cth);

- Corporations Regulations 2001 (Cth); made under the CA and significantly affecting its operation and application;
- Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act); which contains a suite of consumer protections;
- Privacy Act 1988 (Cth); which establishes principles in relation to the collection, storage, use and disposal of personal information by public sector and certain private sector entities; and
- Regulatory Guides issued by ASIC that provide practical guidance on compliance issues and information as to how ASIC will exercise its powers.

The legal obligations that are specific to issuers of financial products are the main focus of the AUSTRALIAN FINANCIAL SERVICES LICENCE (PRODUCT ISSUERS) module. The legal obligations are intended to promote:

- Confident and informed decision-making by consumers;
- Efficiency, flexibility and innovation;
- Fairness, honesty and professionalism;
- Fair, orderly and transparent financial markets;
- The reduction of systemic risk; and
- Fair and effective services by clearing and settlement facilities.

The module provides practical advice to the financial sector product issuer intended to ensure compliance with the legal obligations including:

- The licensing process and authorisation of representatives;
- General operational obligations such as organisational competence and resourcing;
- Disclosure, including Financial Services Guides and a Statement of Advice;
- Dealing in good faith with clients' money and other property;
- Reporting processes;
- Market misconduct and other prohibited actions;
- Record-keeping and financial statements; and
- Effective dispute resolution.

Continued or systemic failure to meet product issuer legal obligations exposes the Australian financial sector licensee to consequences including criminal liability, significant pecuniary penalties and reputational damage to the organisation. The AUSTRALIAN FINANCIAL SERVICES LICENCE (PRODUCT ISSUERS) module comprehensively covers the range of specific consequences that apply to different breaches or failures by Australian credit licensees.

The AUSTRALIAN FINANCIAL SERVICES LICENCE (PRODUCT ISSUERS) module provides comprehensive coverage of the legal obligations of Australian financial sector licensees issuing financial products to consumers. The module does not cover the procedures or processes to be followed by individuals, entities or consumers relying on financial products issued by Australian financial sector licensees who have suffered damages or losses due to breaches of obligations by an Australian financial sector licensee.

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