

Module	AUTHORISED DEPOSIT-TAKING INSTITUTIONS
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
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Module Scope

Is your organisation a bank, building society or credit union that undertakes banking business including taking deposits, facilitating payment and advancing money?

Does your organisation have a risk management framework for managing overall operational risk, capital adequacy and liquidity risk?

Does your organisation have a governing board that meets the APRA requirements in terms of composition, policies and committees?

Module Application

The AUTHORISED DEPOSIT-TAKING INSTITUTION module provides an organisation operating in Australia as a banking business an understanding of their legal obligations under Australian banking 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.

The AUTHORISED DEPOSIT-TAKING INSTITUTION module covers the regulatory system for the banking sector in Australia that imposes obligations on authorised deposit-taking (ADIs) including;

- › Banks;
- › Building societies;
- › Credit unions; and
- › Foreign entities operating in Australia as Foreign ADIs or subsidiary ADIs.
- › The primary piece of legislation governing the banking industry in Australia is the Banking Act 1959 (Cth). In addition there are other legislative sources of obligations for authorised deposit taking institutions including;

- › Banking Regulation 2016 (Cth);
- › Code of Banking Practice 2013;
- › Corporations Act 2001 (Cth);
- › Corporations Regulations 2001 (Cth);
- › Crimes Act 1914 (Cth);
- › Criminal Code Act 1995 (Cth);
- › Customer Owned Banking Code of Practice;
- › Financial Claims Scheme (ADIs) Levy Act 2008 (Cth);
- › Financial Institutions Supervisory Levies Collection Act 1998 (Cth);
- › Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cth);
- › Financial Sector Determinations;
- › Financial Sector (Collection of Data) Act 2001 (Cth);
- › Payment Systems (Regulation) Act 1998 (Cth);
- › Personal Property Securities Act 2009 (Cth); and
- › Privacy Act 1988 (Cth).

The regulatory body that authorises and monitors the practices of authorised deposit taking institutions (ADIs) is the Australian Prudential Regulation Authority (APRA). APRA fulfils their role partly through the establishment of Prudential Standards. An ADI must ensure that it complies with all requirements set out in APRA's Prudential Standards;

- › Provision of necessary and requested information and documentation;
- › Complying with conditions;
- › Restructuring formation;
- › Transferring business to another ADI;
- › Dealings with related entities;
- › Compulsory transfers of business;
- › Outsourcing;
- › Comply with the Financial Claims Scheme requirements;
- › Pay correct levies within required time-frames;
- › Maintain adequate capital and liquidity;
- › Comply with requirements relating to securitisation; and
- › Comply with requirements relating to non-centrally cleared derivatives.
- › There are also specific obligations for foreign banks or entities operating in the Australian banking sector. The module covers these specific foreign entity obligations including;
- › Application requirements;
- › Disclosure statements;
- › Retail deposits; and
- › Severability requirements.

The AUTHORISED DEPOSIT-TAKING INSTITUTIONS module covers the requirement and practical guidance for ADIs to establish a robust compliance framework to ensure they comply with their core regulatory obligations. The framework should include systems for ensuring that the institution;

- › Is appropriately authorised to conduct all activities it engages in;
- › Authorised representatives have been properly appointed;
- › Operates efficiently, honestly and fairly;
- › Appropriately manages conflicts of interest;
- › Has access to sufficient resources on a continuing basis;
- › Maintains organisational competence;
- › Maintains risk management and breach reporting systems;
- › 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 records;
- › Maintains a complying internal dispute resolution system; and
- › Is a member of an approved external dispute resolution scheme.

In addition to these stated core obligations ADIs are also regulated to ensure that they are compliant with additional practical obligations or requirements;

- › Appoint an auditor to audit business activities;
- › Develop a business continuity plan;
- › Protect the interests of depositors;
- › Manage assets efficiently; and
- › Record-keeping and reporting.

An ADI must also comply with all administrative requirements that are relevant to its day-to-day practices. These include requirements relating to;

- › Public disclosures;
- › Privacy;
- › Complaints;
- › Trading days;
- › Advances;
- › Personal property interests;
- › Covered bonds;
- › The Foreign Account Tax Compliance Act (FATCA) regime, and
- › Transferring foreign currency to the Reserve Bank of Australia.

Continued or systemic failure to meet legal obligations exposes the ADI operating in Australia to consequences including criminal liability, significant pecuniary penalties and reputational damage to the organisation. The AUTHORISED DEPOSIT-TAKING INSTITUTION module comprehensively covers the range of specific consequences that apply to different breaches or failures by ADIs operating within the Australian banking sector.

The AUTHORISED DEPOSIT-TAKING INSTITUTION module provides comprehensive coverage of the legal obligations of ADIs operating in Australia. The module does not cover the procedures or processes to be followed by individuals or entities relying on the Australian banking sector who have suffered damages or losses due to breaches of obligations by ADIs operating in Australia.

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