

Module	COMPETITION AND CONSUMER
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
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Module Application

Does your organisation provide products and/or services to consumers?

Does your organisation know and understand its obligations in respect of competition and consumer law?

Is your organisation currently or planning to undertake any mergers or acquisitions?

Module Scope

The COMPETITION AND CONSUMER module informs the Australian organisations of their legislated legal competition and consumer obligations. The module also demonstrates effective practical advice and assistance to the Australian organisation to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the entity.

The COMPETITION AND CONSUMER module advises Australian organisations of the processes and procedures they need to implement to ensure compliance with all legal and regulatory obligations. Core legal and regulatory obligations are based on considerations of the broad questions determining;

- › Decision making;
- › Accountability;
- › Stewardship;
- › Direction; and
- › Control

To fulfil its purpose the module focuses on providing practical assistance to the Australian organisation establishing and maintaining a robust foundational framework that determines;

- › How the organisation will function;
- › Who is the responsible decision maker;

- › What matters are relevant to the decision-making process; and
- › Whether the desired outcome has been achieved.

Organisations, their employees and authorised individuals are all expected to be familiar with the broad landscape of legal obligations to which they are subject as well as more specific obligations relevant to the particular sector they are operating in. The COMPETITION AND CONSUMER module should be subscribed by all Australian organisations dealing with consumers, their employees and authorised individuals. The aim of the module is to equip the subscriber with knowledge of their obligations and the skills they require to establish relevant systems and processes to ensure compliance with competition and consumer regulations throughout the organisation.

Competition and consumer law in Australia is designed to ensure healthy competition between businesses and the fair treatment of consumers. It is primarily governed by the Competition and Consumer Act 2010 (Cth) (CCA) which applies not only to corporations — which, under the Commonwealth Constitution, fall under the remit of federal law — but to sole traders, partnerships, unincorporated associations and unincorporated joint ventures, by reason of the adoption of the Competition Code by the states and territories.

The broad scope of the COMPETITION AND CONSUMER module is to provide answers to these questions;

- › What are our legal obligations?
- › From where are our legal obligations derived?
- › How can we ensure that we are complying with our legal obligations? and
- › What are the consequences if we are not complying with our legal obligations?

The COMPETITION AND CONSUMER module covers all legislated commonwealth and state legal obligations of Australian organisations and demonstrates practical assistance and guidance to ensure that these obligations are complied with through the implementation and maintenance of best practice processes throughout the organisation. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply in particular circumstances.

The module fulfils this objective by comprehensively covering three areas;

- › Commonwealth and State Legislation;
- › Obligations; and
- › Consequences.

The legislative and regulatory landscape from which the primary legal obligations are derived;

- › Australian Securities and Investments Commission Act 2001 (Cth);
- › Competition and Consumer Act 2010 (Cth);
- › Competition and Consumer Regulations 2010 (Cth);
- › Fair Trading Act 1987 (NSW);
- › Fair Trading Regulation 2012 (NSW);
- › Fair Trading Act 1989 (QLD);

- › Fair Trading Act 1987 (SA);
- › Fair Trading Regulations 2010 (SA);
- › Fair Trading Act 2010 (WA);
- › Fair Trading (Australian Consumer Law) Act 1992 (ACT);
- › Australian Consumer Law and Fair Trading Act 2012 (VIC);
- › Australian Consumer Law and Fair Trading Regulations 2012 (VIC);
- › Australian Consumer Law (Tasmania) Act 2010 (TAS);
- › Consumer Affairs and Fair Trading Act 1990 (NT);
- › Spam Act 2003 (Cth);
- › Do Not Call Register Act 2006 (Cth);
- › Copyright Act 1968 (Cth);
- › National Consumer Credit Protection Act 2009 (Cth);
- › Privacy Act 1988 (Cth);
- › Australian Association of National Advertisers Code of Ethics;
- › Telecommunications Act 1997 (Cth);
- › Telemarketing and Research Industry Standard 2007 (Cth);
- › Electronic Transactions Act 1999 (Cth); and
- › Electronic Transactions Regulations 2000 (Cth).

The specific areas where legal and regulatory competition and consumer obligations apply to the organisation;

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| <ul style="list-style-type: none"> › Business model and strategy; › Establish a compliance program; › Australian Competition and Consumer Commission (ACCC) authorisations and notifications; › Mergers and acquisitions; › Acquiring shares and other assets; › Parallel importing; › Use of market power; and › Contracting with businesses. › Agreements with third parties; › Anti-competitive agreements; › Output restrictions; › Market sharing; › Boycotts; › Bid rigging; › Exclusive dealing; and › Collective bargaining. › Product safety; › Safety standards; › Reporting; › Defective goods; › Bans; › Recalls; and › Labelling › Pricing of goods and services; › Price fixing; › Predatory pricing; | <ul style="list-style-type: none"> › Concerted practices; › Truthful representations; › Price displays; › Resale of goods; and › Payment surcharges. › Advertising and marketing; › Advertising ethics; › Misleading and deceptive conduct; › Country of origin claims; › Promotions and competitions; › Bait advertising; and › Email, SMS and MMS. › Sales practices; › Conduct of sales-people; › Referral selling; › Pyramid schemes; › Telemarketing; › Unsolicited sales and supplies; › Wrongly accepting payment; and › Third line forcing. › Contracting with consumers; › Fairness; › Lay-by agreements; › Drafting unsolicited consumer agreements; › Guarantees; › Provision of transactions and billing information; and |
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- Gift cards.
- Debt collection;
- Harassment and coercion;
- Misleading or deceptive conduct;
- Unconscionable conduct; and
- Privacy of debtor.
- Enforcement;
- Infringement notices;
- Search and seizure;
- ACCC powers;
- Substantiation notices;
- Public warnings; and
- Court orders and enforceable undertakings.

Significant consequences can apply to Australian organisations, their employees and authorised individuals found to have breached or not complied with their legal obligations. These consequences vary considerably depending on the nature and extent of the breach or failure. The COMPETITION AND CONSUMER module covers specific consequences in detail and the role of commonwealth and state regulators. They can include monetary penalties, disciplinary measures and even terms of imprisonment for individuals found to have committed serious criminal offences.

The COMPETITION AND CONSUMER module does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of competition and consumer obligations by Australian organisations. The module does not cover the process that an entity or an individual would follow to report or seek compensation for the breach or their loss.

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