

Module	FINANCE AND LEASING
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 have a compliance program in place to manage its credit licence obligations?

Module Application

The *FINANCE AND LEASING COMPANIES* module informs the Australian finance and leasing company of their legislated legal obligations. The module also demonstrates effective practical advice and assistance to the finance and leasing company to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the company.

To fulfil its purpose the module focuses on providing practical assistance to the finance and leasing company 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.

Australian finance and leasing companies, their employees, and authorised individuals are 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 *FINANCE AND LEASING COMPANIES* module should be subscribed by all Australian finance and leasing companies, 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 throughout the company.

The finance or leasing company must comply with a range of legislation in the operation of its business. Principally this includes consumer credit legislation.

The consumer credit regulatory regime in Australia imposes obligations on companies that engage in credit activities such as;

- › Consumer credit contracts;
- › Consumer leases;
- › Chattel (goods) mortgages; and
- › Credit cards.

The broad scope of the *FINANCE AND LEASING COMPANIES* module is to provide Australian finance and leasing companies with 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?
- › What are the consequences if we are not complying with our legal obligations?

The *FINANCE AND LEASING COMPANIES* module covers all legislated legal obligations of finance and leasing companies 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 company. 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;

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

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

- › *Competition and Consumer Act 2010* (Cth);
- › *National Consumer Credit Protection Act 2009* (Cth) *Regulation 2010* (Cth);
- › *Personal Property Securities Act 2009* (Cth) *Regulation 2010* (Cth) and various related instruments;
- › *Privacy Act 1988* (Cth) *Regulation 2013* (Cth) and various related instruments;

- *Taxation Administration Act 1953* (Cth);
- *Australian Securities and Investments Commission Act 2001* (Cth) and various related instruments;
- *Corporations Act 2001* (Cth) *Regulations 2001* (Cth);
- *Criminal Code Act 1995* (Cth);
- ePayments Code;
- *Electronic Transactions Act 1999* (Cth) *Regulations 2000* (Cth) and various related instruments;
- *Bankruptcy Act 1966* (Cth);
- *Banking Act 1959* (Cth);
- *Financial Sector (Collection of Data) Act 2001* (Cth) and various related instruments;
- *ASIC Supervisory Cost Recovery Levy Act 2017* (Cth) *Regulations 2017* (Cth) and various related instruments;
- *Australian Prudential Regulation Authority Act 1998* (Cth);
- Mortgage and Finance Association of Australia (MFAA) Code of Practice 2014 and Disciplinary Rules;
- Commonwealth insurance acts;
- *Public Governance, Performance and Accountability Act 2013* (Cth); and
- *Superannuation Industry (Supervision) Act 1993* (Cth).

2. The specific areas where legal and regulatory obligations apply to finance and leasing companies;

- Licensing and authorisation of persons engaging in credit activities.
- Conduct obligations of finance and leasing companies;
 - Provision of services;
 - Compliance;
 - Resourcing;
 - Organisational competence;
 - Risk management;
 - Annual compliance certificate;
 - Compensation; and
 - Autonomous sanctions.
- Responsible lending;
 - Credit guides;
 - Unsuitable contracts and consumer leases;
 - Standard home loans;
 - Credit card contracts;
 - Reverse mortgages; and
 - Debt collection.
- Assessment of suitability to ensure responsible lending;
 - Inquiries and verification;
 - Making and recording an assessment;
 - Copies of the assessment;
 - Small amount credit contracts;
 - Reverse mortgages; and
 - Credit card contracts.

- Customer protection when entering credit contracts and leases;
 - Prohibition on misleading conduct, information and representations;
 - Unconscionable conduct;
 - Unfair terms;
 - Comparison rates and advertising;
 - Guarantees;
 - Flex commissions;
 - Privacy and credit reporting; and
 - Mortgage and Finance Association of Australia (MFAA) Code of Practice.
- Record keeping and financial statements;
 - Financial records;
 - Trust accounts;
 - Appointment and role of auditor;
 - Concealment or falsification of credit books; and
 - Privacy.
- Credit contracts;
 - Debtor's obligations;
 - Interest, fees and charges;
 - Annual cost rate;
 - Obligation to account;
 - Rules for small amount credit contracts;
 - Ending of contract by the debtor; and
 - Enforcement.
- Compliant mortgages and guarantees.
- Changes to the terms of credit;
 - Interest rates;
 - Repayment;
 - Credit fees and charges;
 - Credit limits;
 - Unilateral changes;
 - By agreement;
 - Hardship; and
 - Early termination fees.
- Sale contracts and insurance contracts;
 - Liability; and
 - Termination.
- Consumer leases;
 - Required form and information to be included;
 - Obligation to account;
 - Changes to obligations;
 - Repossession;
 - Termination by lessee;
 - Enforcement;
 - False or misleading representations and harassment; and
 - Recover of expenses.

- Leasing of commercial goods;
 - PPS leases;
 - Professional Standards;
 - Code of Practice; and
 - Minimum expiry date.
- Personal property securities;
 - Enforceability and perfection;
 - Possession and control;
 - Attachment and perfection;
 - Personal property free of security interests; and
 - Priority of interests.
- Enforcement of personal property security interests;
 - Seizing;
 - Disposal;
 - Retaining; and
 - Following enforcement.
- Registration of personal property securities;
 - Application;
 - Belief; and
 - Statements.
- Electronic payments;
 - Disclosure;
 - Allocating liability for losses;
 - Pass code security;
 - Reporting;
 - Comply with security, communication and privacy requirements; and
 - Low value facility requirements.
- Internal and external dispute resolution.
- Calculation and payment of the Australian Securities and Investment Commission (ASIC) cost recovery levy.
- Complying with non-ADI lender rules and reporting requirements.

3. Significant consequences can apply to finance and leasing companies, 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 *FINANCE AND LEASING COMPANIES* module covers specific consequences in detail. They can include monetary penalties, loss of licence and even terms of imprisonment for individuals found to have committed serious criminal offences.

The *FINANCE AND LEASING COMPANIES* module does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of obligations by finance and leasing companies. 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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