

Module	<b>INTELLECTUAL PROPERTY</b>
Jurisdictions	<b>CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT</b>
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## Module Scope

Has the organisation that wants to protect its intellectual property (except in the case of Copyright) applied to the appropriate IP authority to register its ownership of the intellectual property and gained legally enforceable protection?

Has the organisation that wishes to protect the trade marks it uses to reflect its branding and represent its products and services applied to the relevant IP authority to register the trade mark in the desired classes of goods and services?

Has the organisation wanting to obtain legally enforceable, exclusive control over an invention in Australia or in other countries applied for a patent through IP Australia?  
LexisNexis Regulatory Compliance is a legal obligations register and alerting solution that combines regulatory content with technology to empower you to take control of your compliance obligations.

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## Module Application

The INTELLECTUAL PROPERTY module informs an organisation, its' employees and officers of their legislated legal obligations related to intellectual property. The module also demonstrates effective practical advice and assistance to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the organisation.

The INTELLECTUAL PROPERTY module advises entities operating in Australia 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 entity establishing and maintaining a robust foundational framework that determines;

- › How systems and processes 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.

All organisations, their employees and officers 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 INTELLECTUAL PROPERTY module should be subscribed by all Australian organisations, their employees and officers intending to;

- › Legally protect their intellectual property (other than copyright);
- › Seek permission or licences to allow access to and use of protected materials; and
- › Refrain from infringing on the intellectual property rights of others.

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 their organisation.

Intellectual property (IP) rights are legal rights to creations or expressions of intellect in a material form. Intellectual property rights confer on the creator the exclusive rights to use, assign, license, exhibit, perform, publish, reproduce or broadcast their 'works'.

An organisation that has created intellectual property in the form of trade marks, designs, patentable inventions, or new varieties of plants and wishes to gain legally enforceable rights over its creation and control its use in Australia must apply to Intellectual Property Australia to have the rights registered or granted. The module also covers Australian copyright, which is a distinct form of intellectual property.

For protection of intellectual property rights internationally it is necessary to deal with each country's intellectual property agency individually. This process is streamlined in countries that are members of the Madrid System and utilise the World Intellectual Property Organisation (WIPO).

The broad scope of the INTELLECTUAL PROPERTY 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?
- › What are the consequences if we are not complying with our legal obligations?

The INTELLECTUAL PROPERTY module covers all legislated legal obligations of organisations, their employees and officers 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;

- Legislation;
- Obligations; and
- Consequences

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

- Competition and Consumer Act 2010 (Cth);
- Copyright Act 1968 (Cth);
- Copyright Regulations 1969 (Cth);
- Designs Act 2003 (Cth);
- Designs Regulations 2004 (Cth);
- Patents Act 1990 (Cth);
- Patents Regulations 1991 (Cth);
- Plant Breeder's Rights Act 1994 (Cth);
- Plant Breeder's Rights Regulations 1994 (Cth);
- Trademarks Act 1995 (Cth); and
- Trademarks Regulations 1995 (Cth).

2. The specific areas where legal and regulatory obligations apply to the Australian organisation, their employees and officers;

- Trademarks;
  - Applying to register;
  - Requirements for overseas enforcement;
  - Defensive trademarks;
  - Certification trademarks;
  - Opposition;
  - Maintenance;
  - Amending or cancelling; and
  - Proper use.
- Patents;
  - Standard patent;
  - Innovation patent;
  - Licensing;
  - Divisional applications;
  - Applying for a patent of addition;
  - Protection; and
  - International applications.
- Designs;
  - Registration application and renewal; and
  - Proper use.
- Copyright;
  - Literary;
  - Musical;
  - Artistic;
  - Computer programs; and
  - Audio visual.
- Plant Breeder's Rights;
  - Application;

- Proper use; and
- Essentially derived varieties.

3. Breaching intellectual property rights can result in civil actions which may see the awarding of damages and an account of profits for breaches of trademarks, designs, patents and plant breeder's rights. In the case of copyright, criminal penalties can apply on conviction. The INTELLECTUAL PROPERTY module covers specific consequences for breaches in detail.

The INTELLECTUAL PROPERTY module does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of obligations by organisations, their employees or officers. 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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