

Module	LAND AND PROPERTY
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT

Module Scope

Does the organisation manage real property or engage in land and property transactions (ie sale of land, transfer of land, leasing of land)?

Is the organisation responsible for developing land, preserving and maintaining ecologically sensitive land or preventing degradation or pollution on land it holds?

Does the organisation manage land where native title has not been extinguished? Does the organisation have appropriate heritage management plans in place for Aboriginal heritage sites?

Module Application

The *LAND AND PROPERTY* module informs the entity or organisation of their legislated legal obligations relating to land and property. The module also demonstrates effective practical advice and assistance to the entity to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the organisation.

To fulfil its purpose the module focuses on providing practical assistance to the entity intending to establish and maintain 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 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.

The broad scope of the *LAND AND PROPERTY* module is to provide the Australian organisation or entity dealing in land and property considerations 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? and
- › What are the consequences if we are not complying with our legal obligations?

The *LAND AND PROPERTY* module covers all legislated legal obligations of Australian organisations or entities dealing with land and property 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 large legislative and regulatory landscape from which the primary legal obligations are derived;

- › Civil Law (Property) Act 2006 (ACT);
- › Civil Law (Sale of Residential Property) Act 2003 & Regulation 2004 (ACT);
- › Land Titles Act 1925 (ACT);
- › Lands Acquisition Act 1994 (ACT);
- › Land Acquisition (Just Terms Compensation) Act 1991 (NSW);
- › Land Sales Act 1964 (NSW);
- › Real Property Act 1900 (NSW);
- › Property NSW Act 2006 (NSW);
- › Land Title Act 2000 (NT);
- › Lands Acquisition Act 1978 & Regulations 1979 (NT);
- › Law of Property Act 2000 (NT);
- › Acquisition of Land Act 1967 (QLD);
- › Land Title Act 1994 & Regulation 2009 (QLD);
- › Land Sales Act 1984 (QLD);
- › Property Law Act 1974 (QLD);
- › Land Acquisition Act 1969 & Regulations 2004 (SA);
- › Law of Property Act 1936 (SA);
- › Real Property Act 1886 (SA);
- › Land Acquisition Act 1993 (TAS);
- › Land Titles Act 1980 (TAS);
- › Land Act 1958 (VIC);
- › Land Acquisition and Compensation Act 1986 & Regulations 2010 (VIC);
- › Property Law Act 1958 (VIC);
- › Sale of Land Act 1962 (VIC);
- › Transfer of Land Act 1958 (VIC);

- › Property Law Act 1969 (WA);
- › Sale of Land Act 1970 (WA);
- › Transfer of Land Act 1893 (WA);

In addition to this state based land and property legislation the module also refers to legislation from all states and territories covering obligations related to a wide range of areas including;

- › Conveyancing;
- › Crown land & valuations;
- › Building & encroachment;
- › Heritage considerations;
- › Aboriginal cultural heritage & native title;
- › Environmental protection, conservation, nature and forestry;
- › Planning, development & subdivisions;
- › Civil law, public administration and criminal codes;
- › Associations, body corporate & owners corporation management;
- › Unit titles, community title, & strata schemes;
- › Leasing & tenancies;
- › Electronic transactions;
- › Agents;
- › Local government;
- › Water & Waste;
- › Biosecurity, emergencies & bushfire; and
- › Pipelines & natural resources.

2. The specific areas where legal and regulatory obligations apply to ownership of land and property;

- › Electronic lodgement networks;
 - Conveyancing;
 - Document requirements;
 - Verifying identity; and
 - Client authorisation.
- › Management of crown lands;
 - Sale;
 - Duty payable on leases;
 - Authorisation to enter;
 - Assessments;
 - Reserved; and
 - Surplus.
- › Owners corporations;
 - Developments;
 - Responsibilities;
 - Record keeping;
 - Financial duties;
 - Committees; and
 - Complaints handling.
- › Managing land related legal procedures;
 - Contracts;
 - Covenants;
 - Legal proceedings;

- Risk;
 - Local laws;
- Duties regarding encroachments.
- Perpetual leases.
- Retail leases;
 - Renewing;
 - Rent;
 - Outgoings;
 - Assignment;
 - Interference;
 - Termination;
 - Unconscionable conduct;
 - Retail shopping centres; and
 - Disputes.
- Sale of land;
 - Restrictions on the sale of subdivisional land;
 - Avoiding misrepresentations;
 - Contracts;
 - Mortgages;
 - Auction regulations;
 - Transfer processes;
 - Information provided to purchasers;
 - Sub-sales;
 - Due diligence; and
 - Implied covenants.
- Land acquisitions;
 - Compulsory acquisitions;
 - Notifications;
 - Execution;
 - Compensation;
 - Managing mortgages; and
 - Due diligence.
- Land valuations;
 - Proper uses;
 - Eligible land; and
 - Site value for improved and unimproved land.
- Managing a subdivision;
 - Plans – form and content;
 - Certification;
 - Staged subdivisions;
 - Altering a plan;
 - Engineering plans;
 - Non-residential land; and
 - Consolidating.
- Natural resources management;
 - Protecting water resources;
 - Flora and fauna;
 - Forest produce;
 - Forestry licences and permits; and
 - Preventing forest fires.
- Prevention of land contamination;
 - Land conservation;
 - Waste management;

- Chemical use records; and
 - Use of chemicals to control noxious weeds and pests.
- Constructing and operating pipelines;
 - Plans and routes;
 - Environmental effects and plans;
 - Licence approval process;
 - Access to land;
 - Safety;
 - Construction and activation;
 - Monitoring; and
 - Decommissioning.
- Recognition and protection of native title;
 - Extinguishment;
 - Future acts;
 - Indigenous land use agreements;
 - Area agreements;
 - The right to negotiate agreements;
 - Procedural rights;
 - Finalising and registering agreements;
 - Compensation; and
 - Council land.
- Protecting Aboriginal heritage;
 - Identifying places;
 - Ancestral remains and sacred objects;
 - Cultural heritage permits and agreements in each state and territory; and
 - Authorities and protective orders in each state and territory.
- Residential leases;
 - Preparation;
 - Duties;
 - Maintaining; and
 - Termination.

3. Significant consequences can apply to Australian organisations or entities dealing with land and property, 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 *LAND AND PROPERTY* module covers specific consequences in detail. They can include monetary penalties, disciplinary measures and even terms of imprisonment for individuals found to have committed serious criminal offences.

The *LAND AND PROPERTY* module does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of obligations by Australian organisations or entities dealing with land and property considerations. 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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