

Module	<b>TELECOMMUNICATIONS</b>
Jurisdictions	<b>CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT</b>
Legal Expert	<b>ROBERT FELDMAN</b> Director at Gadens <a href="https://www.gadens.com/people/robert-feldman/">https://www.gadens.com/people/robert-feldman/</a> <a href="https://www.linkedin.com/in/robert-m-feldman/?originalSubdomain=au">https://www.linkedin.com/in/robert-m-feldman/?originalSubdomain=au</a>

## Module Scope

Is the organisation a 'carrier' (excluding NBN Co and Telstra) who owns, or has been nominated to operate, telecommunications network infrastructure used to supply carriage services to the public (such as telephone services, internet access services and Voice over Internet Protocol services) and is therefore required to be licensed to provide such services unless an exemption applies?

Is the organisation a provider that uses carriers' services to supply carriage services (excluding organisations that offer a different principal business or activity at its premises) or a content services provider, and is therefore required to comply with obligations relating to the kinds of declared services that must be provided, the provision of call assistance to end-users, and maintaining competition and competitive neutrality ('access' arrangements)?

Is the organisation a telecommunications service provider whom uses radiocommunication devices or supplies customer equipment or cabling?

---

## Module Application

The TELECOMMUNICATIONS module informs the Australian telecommunications provider of their legislated legal obligations. The module also demonstrates effective practical advice and assistance to the telecommunications provider to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the organisation.

The TELECOMMUNICATIONS module advises telecommunications providers 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 telecommunications provider establishing and maintaining a robust foundational framework that determines;

- How the 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 Australian telecommunications providers, 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 TELECOMMUNICATIONS module should be subscribed by all Australian telecommunications providers, 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 their organisation.

The broad scope of the TELECOMMUNICATIONS 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?

Telecommunications providers in Australia must ensure effective administrative systems are in place to monitor compliance with the applicable rules, conditions, standards, codes and procedures that relate to their operations as carriers, service providers, intermediaries, equipment suppliers and maintenance providers. This includes investing in the appropriate resources, technology and personnel to meet their regulatory obligations and monitor compliance.

The objectives of the TELECOMMUNICATIONS module are to cover all legislated legal obligations of telecommunications providers and demonstrate 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 these objectives by comprehensively covering three areas;

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

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

- › Telecommunications Act 1997 (Cth);
- › Radiocommunications Act 1992 (Cth);
- › Competition and Consumer Act 2010 (Cth);
- › Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth);
- › Telecommunications (Interception and Access) Act 1979 (Cth); and
- › Australian Communications and Media Authority (ACMA) is the main regulatory authority for telecommunications in Australia.

Additional commonwealth legislation that also provides legal obligations and regulations to the Australian telecommunications industry;

- › Australian Communications and Media Authority (Annual Carrier Licence Charge) Directions 2017 (Cth);
- › Telecommunications Determinations, Declarations, and Notifications;
- › Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015 (Cth);
- › Telecommunications (Carrier Licence Charges) Act 1997 (Cth);
- › Telecommunications (Numbering Charges) Act 1997 (Cth);
- › Telecommunications Numbering Plan 2015 (Cth);
- › Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015 (Cth);
- › Surveillance Devices Act 2004 (Cth);
- › Criminal Code Act 1995 (Cth);
- › Electronic Transaction Act 1999 (Cth);
- › Electronic Transactions Regulations 2000 (Cth);
- › Carrier Licence Conditions (Networks Supplying Superfast Carriage Services to Residential Customer) Declaration 2014 (Cth);
- › Fair Work Act 2009 (Cth);
- › Privacy Act 1988 (Cth); and
- › Crimes Act 1914 (Cth);

2. The specific areas where legal and regulatory obligations apply to the telecommunications providing entity;

- Carrier Licensing;
  - Applications;
  - Standard carrier licence conditions;
  - Change of status of carrier;
  - Cancellation and surrender; and
  - Carrier powers and immunities.
- Service provider rules and obligations;
  - Standard access obligations;
  - Universal service obligations;
  - Customer service guarantee standard;
  - Industry ombudsman;
  - Integrated public number database;
  - Numbering plan;
  - Duty of disclosure regarding backup power service; and
  - National Broadband Network (NBN) Standards.
- Call assistance services;
  - Emergency call services;
  - Life-threatening and unwelcome communications;
  - Disability requirements;
  - Operatory services and directory assistance;
  - Priority assistance;
  - Itemised billing;
  - Calling line identification; and
  - Untimed local calls.
- Technical standards and labelling requirements;
  - Technical standards;
  - Labelling; and
  - Obligation to connect.
- Industry codes and standards;
  - Telecommunications Consumer Protections (TCP) Code;
  - Other industry codes;
  - Australian Communications and Media Authority (ACMA) Industry Standards; and
  - Internet industry codes.
- Interception and assistance;
  - Capacity to intercept;
  - Interception capability plan;
  - Tracing call connection;
  - Preventing offences and providing assistance to law enforcement agencies; and
  - Defence and natural disasters.
- Preserving records and disclosure of stored information;
  - Stored communications not to be accessed;
  - Disclosure of information;
  - Retaining records;
  - Preserving communications; and
  - Disclosure for law enforcement purposes.

- Competition and competitive neutrality;
  - Pre-selection of voice telephony services;
  - Access determinations and access agreements;
  - Supply of superfast fixed line broadband;
  - Supply of layer 2 bitstream service;
  - Structural separation in the residential market; and
  - Anti-competitive conduct.
- Privacy and protection of consumer information;
  - Confidentiality of communications; and
  - Reporting on disclosures.
- Metadata storage and access;
  - Requirements to retain and protect;
  - Encryption; and
  - Protect confidentiality.
- Prepaid mobile services;
  - Identity checking;
  - Record keeping; and
  - Restrictions on dealing with identifying information.
- Annual fees and levies;
  - Submission of revenue information;
  - Annual industry levy;
  - Annual carrier licence charge; and
  - Annual numbering charges.
- Conventions and rules of conduct for international telecommunications;
- Spectrum licences;
  - Radiocommunications equipment;
  - Core conditions;
  - Payment of charges;
  - Third-party use;
  - Registration of transmitters; and
  - Australian Communications and Media Authority (ACMA) conditions.
- Apparatus Licences;
  - Conditions for transmitter licences;
  - Interference;
  - Third-party use; and
  - Notification of certain matters.
- Managing investigations, infringement notices, remedial directions, formal warnings and enforcement actions.

3. The main regulatory authority for telecommunications is the Australian Communications and Media Authority (ACMA). It has the power to investigate and enforce compliance with the obligations of participants in the telecommunications industry. Regulatory powers are also given to the Australian Competition and Consumer Commission (ACCC) to investigate and enforce competition and competitive neutrality (or 'access' arrangements). The Telecommunications Industry Ombudsman is a self-regulatory scheme that handles complaints and disputes for the telecommunications industry.

Significant consequences can apply to telecommunication providers, 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 TELECOMMUNICATIONS module covers specific consequences in detail. They include civil penalties, criminal sanctions and other administrative or legal enforcement processes.

The module does not primarily focus on the obligations of NBN Co Limited and Telstra. The main focus of the module are other participants in the telecommunications industry.

The TELECOMMUNICATIONS module also does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of obligations by telecommunications providers. 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.

### **About LexisNexis Regulatory Compliance**

LexisNexis Regulatory Compliance® helps you forge a clear path to compliance.

With LexisNexis® content know-how at the core, our compliance registers, alerts, and information-driven solutions make compliance uncomplicated for GRC professionals across the globe.