



**FINANCIAL SERVICES AND CREDIT:
ACCOUNTABLE PERSONS AND
RESPONSIBLE MANAGERS' COMPLIANCE
MANUAL**

Version Date: 1 January 2024
www.brightlaw.com.au

STATEMENT AS TO THE CURRENCY OF LAW

This Manual refers to a number of laws relevant to financial services and credit. In particular it incorporates amendments to the Corporations Act 2001 and Regulations, the National Consumer Credit Protection Act 2010, the National Credit Code and Regulations, the Australian Securities and Investments Commission Act and the Banking Act up to and including 1 January 2024.

IMPORTANT NOTE ON THE MANUAL

The information contained in this Manual is provided on the understanding that it neither represents nor is intended to be legal advice. It is not to be relied upon as a full statement of the law. Whilst every care has been taken in its preparation no person should act specifically on the basis of the material contained in this Manual. If assistance is required for your specific needs and circumstances competent professional advice should be obtained.

Bright Law and the authors of the Manual each exclude any liability for loss suffered by any person resulting in any way from the use of, or reliance on, the Manual.

Bright Law is the business name of Bright Legal Services Pty Ltd ABN 55166695610. Legal advice to Bright Law customers is provided through Bright Corporate Law. The liability of Bright Corporate Law is limited by a scheme approved by Professional Standards Legislation.

© COPYRIGHT – BRIGHT LAW January 2024

All rights reserved. No part of this work covered by copyright may be reproduced or copied in any form or by any means (graphic, electronic or mechanical including photocopying, recording, taping or information retrieval system) without the written permission of Bright Law.

Contents

About this Manual	7
1 COMPLIANCE ROLES IN FINANCIAL SERVICES PROVIDERS	8
2 CPD FOR RESPONSIBLE MANAGERS	11
Objective of CPD.....	11
The CPD requirement	11
CPD for dual licensees	13
Continuing knowledge and skills development	13
3 THE ROLE OF RESPONSIBLE MANAGERS	15
Financial Service Licensees	15
Credit licensees	16
General responsibilities.....	18
Consequences of Responsible Manager Failure.....	19
Annual compliance reporting	20
4 OVERVIEW OF FINANCIAL SERVICES LICENSING	21
Licensing of Financial Service Providers	21
Exemptions from requirement to hold licence	21
Principals vs representatives	23
Authorised representatives.....	24
Agreements with unlicensed persons	25
Restrictions on the use of terminology	26
ASIC's Powers	27
Financial Services Licence Registers	27
5 CONDUCT OF FINANCIAL SERVICE LICENSEES	29
General conduct obligations	29
Main obligations of licensees	30
The FOFA provisions: best interests obligations and remuneration	31
Other provisions relating to conduct.....	32
Dealing with client money	32
Dealing with other property of clients	36
Reporting to clients where money or property is held	36

Financial records, statements and audit	37
Unconscionable conduct.....	39
6 OVERVIEW OF CONSUMER CREDIT LICENSING.....	40
What is credit regulated by the Credit Code?	40
What business loans are covered by the Code?.....	40
Residential investment property loans	40
Loans to individuals and strata corporations	41
Restriction on engaging in credit activities	42
Exemptions from the licensing requirements	43
Restrictions on the use of terminology.....	46
Credit representatives	48
Credit Licence Registers.....	50
7 CONDUCT OF CREDIT LICENSEES	52
General conduct obligations	52
Responsible lending	54
Other conduct obligations	55
8 ISSUES FOR DUAL LICENSEES.....	57
Conduct obligations.....	57
General conduct obligations	58
Specific conduct obligations.....	58
Licensee's disclosure obligations	59
9 APRA REGULATED LICENSEES	63
APRA APS 520: ADI Fit and Proper Persons	63
Definitions	63
Assessing fitness and propriety.....	64
Requirements for making a declaration under APS 220	65
Suspension or cancellation of a credit license of APRA regulated body	66
FAR.....	66
10 COMPLIANCE FRAMEWORK	68
Compliance measures.....	68
Monitoring, supervising and training representatives	71
Organisational expertise	74

Training and experience.....	75
Risk management systems.....	75
Managing conflicts of interest	78
Non-financial resources	78
Technological resources	78
Human resources	79
Financial requirements	80
Dispute resolution system.....	81
11 COMPLIANCE ROLES	83
The Board	83
Responsible Managers	84
Audit and Risk Committee.....	84
Compliance Officer	85
Management	86
Staff.....	86
12 MANAGING CONFLICTS OF INTEREST.....	87
13 COMPLAINTS AND DISPUTE RESOLUTION	89
Internal dispute resolution	89
External Dispute Resolution.....	90
14 BREACH NOTIFICATION	92
Australian financial services licence breaches	92
Australian credit licence breaches	93
Penalty for Code key requirement breaches.....	94
What breaches must be reported to APRA?.....	95
Mandatory data breach notification	96
15 CONDUCT REQUIREMENTS.....	98
General duties	98
Advertisements and promotions.....	105
Direct dealings with the public.....	107
Other Requirements	110
16 PENALTIES AND OFFENCES	112
ASIC Act offences	112

Corporations Act offences	113
Credit Remedies and Offences	121
17 ASIC's ENFORCEMENT POWERS	126
18 DEALING WITH REGULATORS	128
19 DISQUALIFICATION OF OFFICERS.....	131
Disqualification from credit activities	131
Disqualification from managing corporations	131
Disqualification under Banking Act	132
20 INSURANCE FOR RESPONSIBLE MANAGERS AND ACCOUNTABLE PERSONS 133	
21 COMPANY BOOKS AND REGISTERS	139
22 CODES OF PRACTICE.....	140
23 CORPORATE GOVERNANCE, RISK MANAGEMENT AND ETHICS	142
24 OTHER LAWS.....	143
25 FINANCIAL SERVICES WEBSITES	145
Online disclosures	145
Online calculators	146
Record retention	146
Comparison websites.....	147
Website guidelines	148
26 IT GOVERNANCE.....	149
27 OUTSOURCING RISKS	151
28. PRODUCT DEVELOPMENT AND DESIGN.....	155
29 RESPONDING TO A WHISTLEBLOWER	158
Who is protected?	159
APRA CPS 520	161

About this Manual

The purpose of this Manual is to help Accountable Persons and Responsible Managers understand their obligations. It sets out the key obligations of Accountable Persons under the Financial Accountability Regime and Responsible Managers of Australian Financial Service Licensees and Credit Licensees and the knowledge and skills they need. It provides the basis for appropriate professional development specific to the role of an Accountable Person and a Responsible Manager.

What this Manual does NOT do

Provisions in relation to the licensing of specific products are not discussed in this Manual.

The Manual is not a substitute for comprehensive legal advice to address the individual circumstances of each reader.

Who is this Manual for?

This Manual has been written for Accountable Persons and Responsible Managers of financial service providers, who are directors or senior company officers with responsibility for financial services products or credit. The financial services sector is a highly regulated industry. That means it is exposed to significant legal and financial risks, which must be managed professionally and appropriately to ensure the long-term viability of the organisation and the protection of customers. This manual sets out the key processes, systems and measures which apply to ensure compliance with the laws, Codes and standards that affect financial service providers.

Disclaimer

This Manual is subject to change. It is summary and general in nature and is intended only to provide a brief outline of some of the main legal requirements of Accountable Persons and Responsible Managers involved in the financial services industry. It is not legal advice.