

ASH
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COVID-19 | Your Regulatory Roadmap

(14 – 27 April 2020)

NEW!
GCR
Resources

GCR Resources.

The Ash St. GCR Team are aware of the significant pressure on in-house compliance functions and have designed a set of high quality, practical and pragmatic resources to assist in-house compliance functions to implement a robust approach to managing compliance risk.

Informed by the Teams' decades of experience in private practice and in-house governance, compliance and legal roles, the Ash St. GCR resources provide a strong base from which to ensure an organisation's regulatory and compliance obligations are appropriately addressed. Industry agnostic, the Team can tailor and adapt the GCR resources to reflect the arrangements and approach adopted by an organisation.

Some of the GCR Teams' current resources include:

- **Compliance Management:** Compliance Policy, Compliance Management Framework and Compliance Risk Evaluation Register
- **Regulatory:** Regulator Response and Engagement Framework
- **Remediation:** Remediation Frameworks
- **Monitoring:** Compliance Monitoring Program
- **Compliance Reporting:** Compliance Reporting Framework
- **Key Compliance Programs:** NCCP, FSR, Privacy, Sanctions, AML/CTF and Modern Slavery

The GCR Documents embody a strong commitment to best practice including incorporating latest guidance from regulators, international standards and cases.

If you would like to find out more about the GCR Team's suite of solutions and how they can help tailor these to your organisation's particular circumstances, please contact Samantha or Michelle.

'We believe that GCR documentation should not just be a replication of the law but be drafted in such a way that it is meaningful and relevant to the organisation, its people and how it conducts its business'. Samantha Carroll

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What you need to know about the changing regulatory environment

Peak Financial Regulatory Bodies

APRA

- APRA published two new FAQs setting out its expectations for superannuation trustees on the release of benefits under the COVID-19 temporary early access to superannuation provision. The new FAQs outline expected processing times and fraud checking in dealing with payments to superannuation members significantly financially impacted by COVID-19 ([Link](#)).

- APRA has announced new delayed commencement dates for six prudential and reporting standards that have been finalised but are yet to fully come into effect ([Link](#)).

This covers:

- CPS 226 Margining and Risk Mitigation for Non-Centrally Cleared Derivatives (phase-in of initial margin requirements)
- CPS 234 Information Security (third-party arrangements transition provision)
- APS 220 Credit Risk Management
- APS 222 Associations with Related Entities
- ARS 222.0 Exposures to Related Entities
- ARS 222.2 Exposures to Related Entities – Step-in risk

Additionally, APRA's work on product responsibility under the Banking Executive Accountability Regime (BEAR) has now been subsumed into its work on the Financial Accountability Regime (FAR), as mentioned in the Government's proposal paper on FAR. APRA intends to release further information on product responsibility when the Government consults on the exposure draft.

APRA (CONT)

- APRA has released a new reporting standard to collect data from financial institutions taking part in the Federal Government's Coronavirus SME Guarantee Scheme. Reporting standard ARS 920.0 Australian Government Small and Medium Enterprise (SME) Guarantee Scheme must be completed weekly by all lenders that are approved under the scheme ([Link](#)).

- RSE licensees will be asked to complete and submit APRA's new Early Release Initiative (ERI) data collection form weekly until further notice. The first ERI data collection is due on 29 April 2020 for information as at 26 April 2020 ([Link](#)).

ASIC

- ASIC has provided further detail on its revised priorities and work schedule as a result of the COVID-19 crisis ([Link](#)). This includes:

- working constructively and pragmatically with the firms ASIC regulates;
- delaying activities not immediately necessary in light of these significantly changed circumstances, including consultations, regulatory reports and reviews;
- continuing to remotely monitor firms for the Close and Continuous Monitoring Program, including through close working and information sharing arrangements with APRA;
- stepping up its markets supervision work to support the fair and orderly operation of markets, ensure investors are appropriately informed, and protect against manipulation and abuse;
- heightening its support for consumers who may be vulnerable to scams and sharp practices, receive poor advice, or need assistance in finding information and support should they fall into hardship; and
- identifying other actions needed to support firms such as facilitating the timely completion of capital raisings and other urgent transactions, providing regulatory relief, where appropriate, and identifying measures to support small business.

ASIC (CONT)

- ASIC announced that it will extend the deadline for unlisted entities to lodge financial reports under Chapters 2M and 7 of the Corporations Act 2001 by one month for balance dates from 31 December 2019 to 31 March 2020 ([Link](#)).

- To assist the provision of affordable advice on early access to super (up to \$10,000 in 2019-2020 and a further \$10,000 in 2020-2021), ASIC has ([Link](#)):

- allowed advice providers not to give a statement of advice (SOA) when providing advice about early access to superannuation;
- permitted registered tax agents to give advice to existing clients about early access to superannuation without needing to hold an AFSL; and
- issued a temporary no-action position for superannuation trustees to expand the scope of personal advice that may be provided by, or on behalf of, the superannuation trustee as 'intra-fund advice'.

ASIC's relief is subject to conditions, including:

- clients must be provided with a record of advice (ROA), which meets certain content requirements;
- the advice fee, if any, is capped at \$300;
- the advice provider must establish that the client is entitled to the early release of their superannuation; and
- the client must have approached the advice provider for the advice.



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ABF

- The Australian Border Force (ABF)'s Modern Slavery Business Engagement Unit has released an online information sheet for reporting entities under the Modern Slavery Act about the impacts of the Coronavirus (COVID-19) pandemic. The information sheet provides guidance for entities impacted by COVID-19 about how to report under the Act, including how to address the impact of COVID-19 in a modern slavery statement. The information sheet also outlines key actions entities can take to reduce the risk of vulnerable workers in their operations and supply chains becoming exposed to modern slavery as a result of COVID 19 ([Link](#)).

ACCC

- The ACCC has granted interim authorisation allowing life insurers to co-ordinate to ensure frontline healthcare workers are not excluded from coverage due to potential or actual exposure to COVID-19. The interim authorisation, granted to the Financial Services Council (FSC) and its members, means that exposure to COVID-19 cannot be used as a reason to decline life insurance coverage to a frontline health worker, or to charge higher premiums or apply risk exclusions to any new policy ([Link](#)).
- Private hospitals and health agencies in the Northern Territory and South Australia respectively will be able to cooperate in responding to the COVID-19 pandemic, following separate interim authorisations granted by the ACCC. The interim authorisations granted to each of the Northern Territory and the State of South Australia follow similar authorisations granted to Victoria and Queensland earlier this month ([Link](#)).

ACCC (CONT)

- The ACCC has granted new interim authorisation for an expanded range of measures allowing participants in the gas and electricity markets to work together to help safeguard Australia's energy supply during the COVID-19 pandemic. On April 3, the ACCC granted interim authorisation to the Australian Energy Market Operator (AEMO), allowing energy market participants to co-operate on certain measures intended to maintain secure and reliable energy supplies while the pandemic continues ([Link](#)).
- The ACCC has granted interim authorisation allowing retailers to collectively bargain with landlords about rent relief during the COVID-19 pandemic. The interim authorisation, granted to the Australian Retailers Association and its current and future members, will also allow retailers to share information relevant to the negotiations including in relation to requests by landlords for certain information as part of considering and negotiating support to be provided in the context of COVID-19 ([Link](#)).
- Members of the Minerals Council of Australia (MCA) and other mining associations will be able to work together to manage critical services and supplies during the COVID 19 pandemic, after the ACCC granted interim authorisation for the arrangements ([Link](#)).

ACCC (CONT)

- The ACCC has granted new interim authorisation for an expanded range of measures allowing participants in the gas and electricity markets to work together
- The ACCC has granted a 3-month exemption for financial services providers required to share open banking product reference data by 1 July 2020, due to the impact of the COVID-19 pandemic. The temporary exemptions under the Consumer Data Right (CDR) lasts until 1 October and will apply to non-major ADIs, including non-major banks, building societies and credit unions, and extend to non-primary brand products offered by the major banks ([Link](#)).



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Peak Regulatory Bodies

AFCA

- AFCA will put a pause on processing complaints against insolvent firms, including existing and new complaints. AFCA will accept future complaints about insolvent financial firms, but will hold them over until there is more clarity about the Compensation Scheme of last resort, and the parameters of the scheme ([Link](#)).
- AFCA will give consumers, small businesses and financial firms extra time to respond to complaints due to the COVID-19 pandemic. The 9-day extension will apply to all complaints, including those relating to financial difficulty. Financial firms currently have 21 days to respond when AFCA notifies them that a complaint has been lodged, **they will now have 30 days**. AFCA is also providing as standard, a flat 21-day timeframe to provide an initial response, once the dispute reaches the case management stage ([Link](#)).
- AFCA will take into account ASIC's changed approach to advice about early access to superannuation when dealing with complaints that arise due to COVID-19 ([Link](#)).

ATO

- The ATO says the implementation of the early access to superannuation for those financially affected by COVID-19 is progressing well. The first batch of applications have been sent to funds ([Link](#)).

AUSTRAC

- AUSTRAC has introduced a new AML/CTF Rule (Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 1)) that will help to streamline the customer verification process for superannuation funds to make payments to their members made under the COVID-19 early release of superannuation initiative ([Link](#)). Note however AUSTRAC's emphasis on fraud detection noting that detection of fraud could be reportable as a suspicious matter report under the AML/CTF Act.

IP Australia

- IP Australia has created a specific FAQ section on their website with COVID-19 information relating to IP rights for patents, trademarks and designs and plant breeder's rights ([Link](#)).
- From 22 April 2020, IP Australia customers impacted by COVID-19 can submit a request for extension of time through eServices. An extension of time of up to three months is available and is free of charge. This arrangement applies to most Patents, Trade Marks, and Designs extension of time requests. For Plant Breeder's Rights (PBR) extensions of time. These arrangements will be in place until at least 31 May 2020 ([Link](#)).



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Peak Industry Bodies

ABA

- The ABA announced that ANZ, NAB, Westpac and CBA have agreed to bolster their efforts to prioritise businesses needing funding to bridge the gap until the first JobKeeper payments are made in May. It was agreed special hotlines would be set up to help manage the applications from businesses. Banks would also bring JobKeeper-related applications to the front of the queue and work with the ATO to accelerate the assessment process ([Link](#)).

COBA

- Customer owned banking institutions are stepping up support to small businesses impacted by the coronavirus pandemic through the Government's \$40 billion Coronavirus SME Guarantee Scheme. The Federal Government has to date confirmed the appointment of 9 Customer Owned Banking Association (COBA) members to the scheme, with the possibility of further appointments. Participating lenders will be responsible for allocating unsecured loans of up to \$250,000 to businesses in urgent need of working capital ([Link](#)).



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The Government

Business.gov.au

- Enrolments are open until the end of May for the JobKeeper Payment through ATO online, the Business Portal using myGov ID or through your registered tax professional ([Link](#)).
- So far, NSW ([Link](#)), QLD ([Link](#), legislation only, no regulations), SA ([Link](#)), WA ([Link](#)) and TAS ([Link](#)) has acted to pass legislation and regulations in response to the National Cabinet's Commercial Tenancies Code of Conduct principles. Enabling legislation to adopt the principle remains in progress/under consideration in other states.

National Cabinet

- The PM stated that he was looking to have a trial week of Parliament in May and that would be returning to the normal business of Parliament ([Link](#)).
- The National Cabinet has agreed to develop nationally-consistent, industry-specific work health and safety guidance on COVID-19, accessible via a central hub provided by Safe Work Australia. The guidance will be developed and endorsed through Safe Work Australia, working with its members (the Commonwealth, states and territories, employer groups, and unions). Australian workplaces will be able to use this central hub of WHS guidance and tools to help manage health and safety risks posed by COVID-19. To support the development of nationally-consistent guidance, National Cabinet agreed the 'National COVID-19 Safe Workplace Principles' ([Link](#)).
- The Government has launched the new voluntary coronavirus app, *COVIDSafe*. A new determination issued by the Minister for Health under the Biosecurity Act will ensure information provided voluntarily through the App will only be accessible for use by authorised state and territory health officials. Any other access or use will be a criminal offence ([Link](#)).

State Governments

- A section on the NSW Government legislation website's homepage has been created to display COVID-19 related updates. The section provides links to all the NSW COVID-related legislation, whether it's gazetted, assented to or notified ([Link](#)). SA also has something similar ([Link](#)).
- Video conferencing technology like Skype, WhatsApp, FaceTime, Microsoft Teams and Zoom can now be used in the witnessing of important legal documents like wills, powers of attorney and statutory declarations under a new regulation (Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020) made by the NSW Governor ([Link](#)). Similar amendments are in progress/under consideration in other state jurisdictions.

Treasury

- To ensure the integrity and the efficient operation of the JobKeeper payment the Government is clarifying the operation of the rules for the payment ([Link](#)):
 - *SPVs*: An alternate decline in turnover test will apply for employees employed through a special purpose entity, rather than an operating entity.
 - *Charities*: Changes will allow charities (other than schools and universities) to elect to exclude government revenue from the JobKeeper turnover test.
 - *Religious organisations*: Changes will allow JobKeeper Payments to be made to religious institutions in respect of religious practitioners.
 - *'One in, all in' principle*: Once an employer decides to participate in the JobKeeper scheme and their eligible employees have agreed to be nominated by the employer, the employer must ensure that all of these eligible employees are covered by their participation in the scheme. This includes all eligible employees who are undertaking work for the employer or have been stood down. The employer cannot select which eligible employees will participate in the scheme.
 - *Full time students aged 16 and 17 years old*: The benefit of the JobKeeper payment to workers over the age of 16 is justified for those who are financially independent and who require the security provided by participation in the JobKeeper scheme and the maintenance of the working relationship that it affords. However, the rules will provide that full-time students who are 17 years old and younger, and who are not financially independent, are not eligible for the JobKeeper Payment.
 - *International Aid Organisations*: Those that are endorsed under the Overseas Aid Gift Deductibility Scheme or for developed country relief can access payments if they meet the requirement that not-for-profits pursue their objectives principally in Australia. The current requirement that employees must be Australian residents to be eligible under the JobKeeper program would remain in place.
 - *Universities*: Changes will clarify that the core Commonwealth Government financial assistance provided to universities will be included in the JobKeeper turnover tests.



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