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# COVID-19 | Your Regulatory Roadmap

(27 April - 14 May 2020)

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## What you need to know about the changing regulatory environment

### Peak Financial Regulatory Bodies

#### APRA

- APRA has published guidance for authorised deposit-taking institutions (ADIs) on their expectations during the COVID-19 pandemic ([Link](#)). The frequently asked questions (FAQs) cover the following topics:
  - The regulatory capital approach for loan repayment deferrals.
  - Clarification of APRA's guidance for serviceability assessments in Prudential Practice Guide APG 223 – Residential Mortgage Lending.
- APRA's second weekly publication of industry-level data from its Early Release Initiative (ERI) data collection showed that, as of 3 May, superannuation funds had issued early release payments to 830,000 members worth a total of \$6.3 billion. The average payment was \$7,629 and the average payment processing time was 3.1 days after receiving the application from the ATO. In addition to industry-level data, APRA has published the first fund-level statistics from its ERI data collection, revealing the number and value of the payments processed by each fund, as well as the time taken to make payments ([Link](#)).

#### ASIC

- ASIC has written a letter directly to general insurers and life insurers outlining its expectations in the current COVID-19 environment ([Link](#)). ASIC expects insurers to handle insurance claims with utmost good faith and to deal with complaints genuinely, promptly, fairly and consistently. ASIC also expects insurers to communicate proactively, clearly and accurately with consumers about their insurance cover, recognising the rapidly changing situation they are facing.
- Lenders have written to ASIC seeking guidance on a number of matters around regulation of lending during the COVID-19 pandemic ([Link](#)). ASIC has responded to provide clarity on issues of hardship, responsible lending and communication. ASIC encourages lenders to continue to work closely with their customers to develop options that provide both short-term assistance to customers experiencing difficulty due to COVID-19 and also longer-term viability post COVID-19. Responsible lending obligations apply to new lending (i.e. new loans or an increase to a credit limit on an existing loan). These obligations do not apply, and should not be considered by lenders as a barrier to, making appropriate changes to the terms of existing loans in response to hardship situations.

#### ASIC (CONT)

- ASIC analysis of markets during the COVID-19 period has revealed a substantial increase in retail activity across the securities market, as well as greater exposure to risk ([Link](#)). ASIC warned that some retail investors are engaging in short term trading strategies unsuccessfully attempting to time price trends.
- Following the temporary modifications to the Corporations Act under the Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 (Determination) on 6 May 2020, ASIC has released further guidelines for investor meetings using virtual technology ([Link](#)).
- ASIC warns consumers about investment advertising that compares fixed-term investment products to bank term deposits. A surge in such marketing of fixed-term investment products in recent months has prompted ASIC to caution consumers to take care making investment decisions based on such advertising ([Link](#)). ASIC recognises that many consumers may be seeking higher and regular returns on their investments during this time because of low interest rates and market volatility. But there are significant differences between bank term deposits that are relatively low-risk products and fixed-term funds and debentures offering regular, fixed distributions that are higher risk investment products.

#### ASIC (CONT)

- ASIC has reminded directors to carefully consider acquisition and disposal of securities and other financial products issued by their listed entity during the COVID-19 pandemic, including to ([Link](#)):
  - Consider the entity's trading policy
  - Consider the information in possession – and account for the current uncertain and volatile market conditions
  - Notify the market
  - Consider conflicts and disclosure obligations arising from margin loans and similar arrangements
- ASIC announced it will **defer the commencement date of the mortgage broker best interest duty and remuneration reforms and the design and distribution obligations for six months** from their original commencement dates, given the significant impact of COVID19 on the Australian economy, especially on the financial system and consumers ([Link](#)). ASIC will defer the commencement date for the **mortgage broker reforms until 1 January 2021**. ASIC will defer the commencement date for the **design and distribution obligations until 5 October 2021**.
- To assist users during the COVID-19 pandemic, ASIC, in coordination with the Council of Financial Regulators (CFR) is publishing a weekly tracker of new and updated regulatory documents (including instruments related to COVID-19([Link](#)))



**Samantha Carroll**  
Practice Director

E scarroll@ashstreet.com.au

M +61 438 323 584



**Michelle Bradshaw**  
Special Counsel

E mbradshaw@ashstreet.com.au

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#### ASIC (CONT)

- ASIC will extend the deadline for both listed and unlisted entities to lodge financial reports under Chapters 2M and 7 of the Corporations Act by one month for certain balance dates up to and including 7 July 2020 balance dates ([Link](#)).
- ASIC announced the final tranche in over \$160 million in remediation for consumers sold 'junk' consumer credit insurance (CCI). This follows ASIC's 2019 report (REP 622) on the sale of CCI by 11 major banks and lenders across eight years, which found that the design and sale of CCI had consistently failed consumers ([Link](#)).
- To assist users during the COVID-19 pandemic, ASIC, in coordination with the Council of Financial Regulators (CFR) is publishing a weekly tracker of new and updated regulatory documents (including instruments related to COVID-19) ([Link](#)).

#### ACCC

- The ACCC has released the Home Loan Price Inquiry interim report ([Link](#)). The report shows that the big four banks considered various factors as they decided whether to pass on the RBA's June, July and October 2019 rate cuts. But recovering profits was central to their decisions to not always fully pass through the lower rates to mortgage customers. The report also shows that although average interest rates charged by the big four banks on home loans fell during 2019, a lack of price transparency and higher interest rates for existing loans continued to cost customers.
- The ACCC has granted conditional interim authorisation to allow the Australian Energy Council and wholesale and retail energy businesses to co-operate to provide financial relief to residential and business customers who may be financially impacted by the COVID-19 pandemic ([Link](#)).
- The ACCC and the Office of the Australian Information Commissioner (OAIC) have jointly released the Compliance and Enforcement Policy for the Consumer Data Right ([Link](#)). The Policy outlines the approach that the ACCC and the OAIC have adopted to encourage compliance with, and address breaches of, the Consumer Data Right regulatory framework. The Policy has been developed following consultation with current and future data holders and recipients.

#### ACCC (CONT)

- The ACCC has published guidelines that will assist electricity retailers and generators to comply with laws aimed at protecting consumers and businesses from excessive electricity prices ([Link](#)). The laws prohibit electricity retailers from keeping consumer and small business prices unnecessarily high when costs fall, and prohibit generators from inflating wholesale prices or blocking access to critical contracts, which could increase retail prices. The laws will form part of the Competition and Consumer Act and come into effect on 10 June 2020. The guidelines provide examples and information to help industry comply with the laws and were prepared after consultation with stakeholders.

#### ASBFEO

- The Australian Small Business and Family Enterprise Ombudsman has announced that small businesses that had concerns about paying their staff the \$1,500 fortnightly JobKeeper payment for the first month prior to payments flowing in early May, now have until 8 May 2020 to ensure those payments have been made to their eligible employees ([Link](#)). Businesses have until 31 May 2020 to formally enrol to claim JobKeeper payments.

#### AUSTRAC

- The Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 2) has been signed into law ([Link](#)). It amends Part 4.15 of the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) to assist reporting entities to meet their customer identification obligations during the COVID-19 pandemic including the use of a self-attestation from a customer where a reporting entity is unable to establish the identity of a customer due to COVID-19 Pandemic measures.



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Practice Director

E [scarroll@ashstreet.com.au](mailto:scarroll@ashstreet.com.au)

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Special Counsel

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#### OAIC

- The ACCC and the Office of the Australian Information Commissioner (OAIC) today jointly released the Compliance and Enforcement Policy for the Consumer Data Right ([Link](#)). Monitoring compliance and enforcement of CDR regulatory obligations will be jointly conducted by the ACC and the OAIC. A risk-based approach to monitoring and assessing compliance matters and taking enforcement action will be adopted by the regulators.

#### ABF

- The Australian Border Force announced that the Government has extended the deadline for entities due to lodge statements in 2020 under the Modern Slavery Act 2018 by three months ([Link](#)). This deadline extension recognises that the coronavirus pandemic is significantly impacting many reporting entities due to submit modern slavery statements in 2020. This extension only changes the deadline for submission of modern slavery statements and does not alter the reporting periods for entities, which remain unchanged.

#### SAFE WORK AUSTRALIA

- The Safe Work Australia website has been updated with a central hub of work health and safety (WHS) guidance and tools to help Australian workplaces manage the health and safety risks posed by COVID-19 ([Link](#)). The website gives users easy access to guidance that is directly relevant to their specific industry. It includes guidance about physical distancing, personal protective equipment, cleaning, workers' compensation, how to conduct risk assessments and design emergency plans, as well as providing case studies to help explain how to manage the risk of COVID-19 in the workplace. There are 23 industries to choose from as well as general industry information if your industry is not listed.



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Practice Director

E [scarroll@ashstreet.com.au](mailto:scarroll@ashstreet.com.au)

M +61 438 323 584



**Michelle Bradshaw**  
Special Counsel

E [mbradshaw@ashstreet.com.au](mailto:mbradshaw@ashstreet.com.au)

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### Peak Industry Bodies

#### ABA

- The Australian Banking Association announced that Australian banks will issue a record number of debit cards (Mastercard or VISA debit) to customers who don't have them and who may be self-isolating to make sure they can continue to pay for their goods and services online or over the phone throughout the COVID-19 pandemic ([Link](#)). This follows regulatory relief granted by ASIC.
- The ABA announced that recent data show Australia's banks have deferred an extra 100,000 loans, including approximately 50,000 home loans, throughout the week leading up to 8 May 2020, to help customers through the COVID-19 pandemic ([Link](#)). These updated figures, together with figures not previously reported, bring the total number of loans deferred by Australia's banks as a result of the COVID-19 pandemic to over 643,000, of which approximately 392,000 are home loans.

#### COBA

- Customer owned banking institutions welcome ASIC's approval of regulatory relief to fast track the issuance of debit cards to customers who use passbooks and branch visits to do their banking. These customers face particular impacts from the COVID-19 crisis ([Link](#)).



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### The Government

#### Business.gov.au

- Employees that are 16 and 17 years old who identified as eligible under the original eligibility criteria for the first three JobKeeper fortnights (from 30 March until 10 May 2020), may no longer be eligible employees under the JobKeeper wages subsidy scheme from the JobKeeper fortnight 4 commencing 11 May ([Link](#)). For them to remain eligible employees, they need to meet the following additional criteria. From 1 March 2020, the employee aged 16 or 17 was either:
  - independent, or
  - not in full time studyThese terms are defined in the Social Security Act 1991.

#### National Cabinet

- The National Cabinet has released a three-step plan to gradually remove COVID-19 restrictions ([Link](#)).
- Cabinet has released a draft legislation program agenda for the House of Representatives for when parliament resumes on 12 to 14 May 2020 ([Link](#)).
- The National COVID-19 Coordination Commission has created an online planning tool to help business develop a plan to keep their workers, customers and the community safe as they reopen or increase their activities in the weeks and months ahead. This tool complements the Safe Work Australia online hub ([Link](#)).

#### Digital Transformation Agency

- The Digital Transformation Agency released to the public the source code for the COVIDSafe application. The source code is hosted on a GitHub repository ([Link](#)).

#### APH

- The Privacy Amendment (Public Health Contact Information) Bill 2020 has been introduced to parliament. The Bill amends the Privacy Act 1988 to provide stronger privacy protections for users of the Commonwealth's COVIDSafe app and data collected through the app (COVID app data) than the protections that would otherwise apply under Australian law ([Link](#)).
- The Payment Times Reporting Bill 2020 has been introduced to parliament ([Link](#)). The bill introduces a new Payment Times Reporting Scheme which requires large businesses and large government enterprises with an annual total income of over \$100 million to publicly report on their payment terms and practices for their small business suppliers. The objective of the Scheme is to improve payment outcomes for small businesses by creating transparency around the payment practices of large business entities.

#### Treasury

- The Government has released the ACCC's Home Loan Price Inquiry interim report ([Link](#)).
- Update to JobKeeper Payment rules ([Link](#)) - To ensure the integrity and the efficient operation of the JobKeeper Payment scheme, the Government is clarifying the operation of some rules.
  - Extension of time to enrol for the JobKeeper scheme - The Australian Commissioner of Taxation has extended the time to enrol for the initial JobKeeper periods, from 30 April 2020 until 31 May 2020.
  - Changes to the Fair Work Act - The Fair Work Act has been amended to support the implementation and operation of the JobKeeper wage subsidy scheme in Australian workplaces. These changes are temporary and will end on 28 September 2020.
  - Tax support for small business webinars - The ATO are running a free 60-minute webinar on how the Government's stimulus package can help your small business.
- From 6 May 2020, companies will be able to convene annual general meetings and other meetings prescribed under the Corporations Act entirely online rather than face-to-face ([Link](#)). The changes to the Corporations Act 2001 from the Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 will also allow companies to execute a document electronically. The changes will be in effect for six months.
- The Government announced a six-month deferral to the implementation of commitments associated with the Banking Royal Commission as a result of the significant impacts of the coronavirus ([Link](#)). Under the updated timetable, those measures that the Government had indicated would be introduced into the Parliament by 30 June 2020, will now be introduced by December 2020. Similarly, those measures originally scheduled for introduction by December 2020 will now be introduced by 30 June 2021. In relation to commencement dates contained in Royal Commission related exposure draft legislation issued prior to the coronavirus pandemic, the Government will also extend these dates by an additional six months.



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Practice Director

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### *The Government*

#### Attorney General

- The Parliamentary Joint Committee on Corporations and Financial Services inquiry has been launched to examine all aspects of the class action system, including litigation funders. A motion to refer the inquiry to the Parliamentary Joint Committee on Corporations and Financial Services is being considered by the House of Representatives ([Link](#)). Issues to be examined include:
  - examining the consequences of Labor’s decision in 2012 to exempt litigation funders from licensing requirements and prudential supervision
  - the potential impact of Australia’s current class action industry on vulnerable Australian business already suffering the impacts of the COVID-19 pandemic;
  - the likely future impact on the broader economy if class actions cases continue to grow at their current rate;
  - the financial and organisational relationship between litigation funders and lawyers acting for class action members, and;
  - the potential impact of a Victorian plan to allow lawyers to charge contingency fees.The Committee will be asked to report back to Parliament by 7 December 2020 and its work will complement the work already done in this area by the Australian Law Reform Commission.



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Practice Director

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## 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 and legal 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. As our GCR Team are also practising lawyers, they incorporate built-in legal sign-off for relevant documents and are designed to be ready for implementation. Our pricing also incorporates tailoring and directly related advisory services to finalise documentation.

GCR Resources featured in this edition of our Regulatory Update based on key regulatory focus areas and recent matters are:

- **New! AML/CTF Board Briefing:** A deep dive briefing presented by our experts Samantha or Michelle designed specifically for boards
- **Key Compliance Programs:** NCCP, FSR, Privacy, Sanctions, AML/CTF and Modern Slavery
- **Regulatory:** Regulator Response and Engagement Framework
- **Remediation:** Remediation Frameworks
- **Compliance Reporting:** Compliance Reporting Framework

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 or [click here](#) to visit our website.**

*'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*

Disclaimer: This communication is intended to provide commentary and general information only. It is not intended to be a comprehensive review of all aspects of the matter referred to. It should not be relied upon as legal advice as to specific issues or transactions.

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