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COVID-19 | Your Regulatory Roadmap

(14 May 2020 - 4 June 2020)

COVID19 | Your Regulatory Roadmap (14 May – 4 June)

What you need to know about the changing regulatory environment

Peak Financial Regulatory Bodies

ACCC

- The ACCC has launched the Consumer Data Right Register and Accreditation Application Platform (RAAP) to allow businesses to become Accredited Data Recipients, representing another major step towards the launch of the CDR regime ([Link](#)).

The RAAP provides a portal where businesses can apply to be accredited in order to be able to transmit data under the CDR regime. It also represents the core IT infrastructure that will support the delivery of the CDR ensuring that consumers' data is only shared securely between parties that are accredited by the ACCC.

The ACCC has also published the Consumer Data Right Accreditation Guidelines to assist applicants with the accreditation process. Sharing of banking data securely between major banks and initial Accredited Data Recipients will commence on 1 July 2020.

ASBFEO

- The Australian Small Business and Family Enterprise Ombudsman has released a plan recommending a suite of reforms to support small businesses in the post-COVID recovery phase. ASBFEO's COVID-19 Recovery Plan details a number of recommendations to improve the legal, regulatory and compliance environment for small businesses including:
 - Abolishing Fringe Benefits Tax for small business
 - Creating a federal small business claims tribunal with ASBFEO to provide triage services
 - Permanent small business instant asset tax write-off of \$150k
 - Introducing a Small Business Award
 - Legislating 30-day payment terms for small businesses
 - Creating a small business procurement panel for any Government contract under \$10m.

The recommendations aim to build essential support for Australia's small businesses and family enterprises ([Link](#)).

ASIC

- ASIC has outlined its expectations for all market participants to act appropriately to ensure Australia's equity markets remain resilient ([Link](#)). In a letter published on 14 May 2020, all equity market participants are requested to take reasonable steps to ensure the number of trades matched from their orders:
 - are capable of being handled by their internal processing and risk management systems and, if applicable, their clearing and settlement operations; and
 - support the fair and orderly operation of Australian equity markets.

On 13 March 2020, the equity market exceeded the number of trades that could be reliably processed on a single day and, as a consequence, ASIC issued directions to nine large equity market participants requiring them to limit the number of trades each day. These directions have now been revoked.

ASIC (CONT)

- The Federal Court of Australia has declared several terms within six small business contracts used by Bendigo and Adelaide Bank to be unfair ([Link](#)). Justice Gleeson found that the unfair terms:
 - caused a significant imbalance in the parties' rights and obligations under the contract;
 - were not reasonably necessary to protect the legitimate interests of Bendigo and Adelaide Bank; and
 - would cause detriment to the small businesses if the terms were relied on.

Some of the unfair terms, gave the bank broad discretion to:

- unilaterally vary the terms and conditions of the contract without giving the borrower advance notice;
- exit the contract without penalty; and
- take disproportionate actions in response to a breach by the borrower (e.g. where the borrower had no opportunity to remedy the breach or calling a default based on events that posed no material risk to the bank).

ASIC welcomed the judgement and flagged increased enforcement activity in this space.



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AUSTRAC

- AUSTRAC announced a change to the AML/CTF customer ID and verification Rule to help people experiencing family and domestic violence ([Link](#)). Under the rule, if a customer cannot produce their driver's license or birth certificate, or show a different address, banks and other regulated businesses can use alternative ways to verify their customer's identity. The AUSTRAC CEO noted the importance of having a bank account independent of an abuser for those who are leaving or have left abusive relationships.

OAIC

- The OAIC has welcomed the passing of the Privacy Amendment (Public Health Contact Information) Act 2020 ([Link](#)). Key protections include:
 - COVIDSafe app data can only be used for purposes related to contact tracing
 - Must be stored in Australia
 - Must be destroyed when the app is no longer required
 - Mishandling of COVIDSafe app data is an offence and an interference with privacy
 - Breaches of COVID Safe app data by those handling the information (State or Federal) must be notified to the OAIC.
 - The OAIC can proactively assess the system to identify any privacy risks and has expanded powers to compel information and documents.
- The OAIC has released advice and guidance on privacy and freedom of information in the context of the COVID-19 outbreak for individuals, Australian Government agencies and organisations covered by the Privacy Act 1988 ([Link](#)).



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The Government

Federal Register of Legislation

- The Privacy Amendment (Public Health Contact Information) Act 2020 has been signed into law. The purpose of the Act is to amend the Privacy Act 1988 to provide for a range of offences and privacy protections in relation to the collection, use, disclosure and deletion of data in connection with the COVIDSafe contact tracing app ([Link](#)).

Treasury

- The Government is ensuring that litigation funders are subject to greater regulatory oversight by requiring them to hold an Australian Financial Services Licence (AFSL) and comply with the managed investment scheme regime. The amendments to the regulations will take effect from 22 August 2020. As the holder of an AFSL, a litigation funder will be required to:
 - act honestly, efficiently and fairly;
 - maintain an appropriate level of competence to provide financial services;
 - have adequate organisational resources to provide the financial services covered by the licence.

These changes complement the inquiry being undertaken by the Parliamentary Joint Committee on Corporations and Financial Services into litigation funding and the regulation of the class action industry which is due to report by 7 December 2020 ([Link](#)).

- Given the impact of the Coronavirus crisis and the uncertainty it continues to generate, it has been considerably more difficult for companies to release reliable forward-looking guidance to the market. The Government will temporarily amend the continuous disclosure provisions of the Corporations Act 2001 so that companies and officers' will only be liable if there has been "knowledge, recklessness or negligence" with respect to updates on price sensitive information to the market. The changes will be in effect for six months from 26 May 2020 ([Link](#)).



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GCR Resources.

Documentation ready for your implementation

✓ Briefing Documentation ✓ Programs ✓ Frameworks ✓ Reporting Documentation

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.

Why our GCR Resources

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.

Some of our GCR Resources to choose from....

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 GCR Portal.

'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