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# COVID-19 | Your Regulatory Roadmap

(2 June 2020 - 3 July 2020)

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

### Peak Financial Regulatory Bodies

#### ASIC

- ASIC has published its Interim Corporate Plan, which sets out 5 priorities to tackle the challenges presented by the COVID-19 pandemic ([Link](#)):
    - protecting consumers from harm at a time of heightened vulnerability;
    - maintaining financial system resilience and stability;
    - supporting Australian businesses to respond to the effects of COVID-19;
    - continuing to identify, disrupt and take enforcement action against the most harmful conduct; and
    - continuing to build our organisational capacity in challenging times.
  - ASIC has issued a revised timetable for ongoing work in relation to legislation implementing the recommendations of the Banking Royal Commission ([Link](#)).
  - ASIC has released Information Sheet 245 Board oversight of executive variable pay decisions during the COVID-19 pandemic (INFO 245) which focuses on ([Link](#)):
    - the importance of a robust remuneration governance framework; and
    - factors to consider when exercising discretion on executive variable pay in the current environment.
  - ASIC has registered an amending instrument to specify an end date for three COVID-19 related instruments including those related to share and interest purchase plans, trading suspension relief and advice-related relief ([Link](#)). All instruments will terminate in October 2020.
- ASIC has issued a notice to all managed investment scheme REs warning of serious concerns about the clarity, balance and accuracy of advertisements in the sector ([Link](#)). ASIC was particularly concerned about:
    - unbalanced comparisons which focus on one aspect of a fund without providing a fair and balanced indication of key differences and risks;
    - safety and stability representations promoting the funds as having little or no risk of capital loss despite underlying assets being subject to considerable risk and market volatility; and
    - misleading withdrawal representations giving the impression it is easy to withdraw funds on short notice, despite the liquidity of the fund assets not supporting this claim.
  - ASIC has warned that it is actively monitoring financial services advertising during the COVID-19 pandemic ([Link](#)). ASIC's newly established cross-team advertising working group is focused on two areas:
    - misleading or deceptive advertisements; and
    - advertisements for unsuitable or inappropriate products or services.
  - ASIC has released Regulatory Guide 272 Product intervention power (RG 272) ([Link](#)) which provides guidance on the administration of the product intervention power in areas such as the scope of the power, when and how the power will be exercised and the process for making an intervention order.

#### APRA

- ASIC has published Regulatory Guide 273 Mortgage brokers: Best interests duty (RG 273) to assist in the application of the new best interests duty for mortgage brokers, which comes into effect from 1 January 2021 ([Link](#)). RG 273 contains ASIC's views on how mortgage brokers can comply with their best interest obligations at key stages of the credit assistance process. Alongside the new guidance, ASIC has also published a report responding to key issues that arose out of the submissions received as part of the consultation process (REP 662).
  - ASIC has approved a variation of the Banking Code of Practice ([Link](#)). The variation, as proposed by the Australian Banking Association (ABA), involves the insertion of a 'Special Note' into the Code to allow for special application of specified Code provisions until 1 March 2021 due to the COVID-19 pandemic.
  - ASIC has released new information sheets to help companies, officers (INFO 247) and auditors (INFO 246) understand and comply with whistleblower obligations ([Link](#)). The info sheets provide guidance on (i) developing arrangements for handling whistleblower disclosures that are effective and tailored to particular circumstances (ii) obtaining consent from whistleblowers to disclose their identity for investigations, and (iii) how to address any employment issues involving a whistleblower while also handling their disclosure.
- APRA has delegated certain enforcement powers to ASIC in connection with the agencies' investigations into matters arising from AUSTRAC's AML proceeding against Westpac ([Link](#)). APRA and ASIC have determined that there is the potential for a significant overlap of the factual background as well as any legal contraventions under the Corporations Act 2001 and the Banking Act. To avoid overlap, ASIC will help APRA consider whether the conduct that it is investigating also gives rise to contraventions of the accountability obligations under the Banking Executive Accountability Regime (BEAR) and standards of fitness and propriety under the Banking Act.



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#### ACCC

- The ACCC has issued several exemptions under s56GD of the Competition and Consumer Act 2010 for the upcoming launch of the Consumer Data Right ([Link](#)). Due to COVID-19, the ACCC has exempted non-major ADIs from their consumer data sharing obligations until 1 July 2021 (Phase 1) and 1 November 2021 (Phase 2). This reinstates the previous 12-month gap between mandatory compliance dates for major and non-major banks. This exemption also applies to the non-primary brands of the major banks. ADIs that wish to commence data sharing at an earlier date on a voluntary basis will be able to do so. The ACCC has also exempted both major banks and non-major ADIs from their direct-to-consumer data sharing obligations until 1 November 2021 and deferred reciprocal data holder obligations until 1 March 2021 (Phase 1) and 1 July 2021 (Phase 2). The current implementation timetable for Consumer Data Right in banking is available at: ([Link](#)).
- The ACCC welcomed a direction from the Government to actively monitor and regularly report on the domestic air travel market, particularly in relation to its competitiveness ([Link](#)). The ACCC will be looking out for any early signs of damage to competition in the domestic airline industry which could harm the long-term interests of consumers. This information can then be quickly acted on by the ACCC and/or provided to the Government.

- The ACCC is proposing to allow insurance companies and brokers to continue coordination and implementation of temporary COVID-19 relief measures for certain small businesses ([Link](#)). The authorisation will apply to Suncorp, Allianz, QBE Insurance and other insurers or insurance brokers who have notified the ACCC. Under an urgent interim authorisation granted by the ACCC on 2 April 2020, insurers and brokers were granted temporary permission to coordinate a range of relief measures to eligible policyholders whose insurance premiums fall due before 30 June 2020. The ACCC is now proposing to grant authorisation to allow insurers and brokers to continue coordination of relief measures until 30 June 2020, and to keep these relief measures in place until 31 December 2020.
- The ACCC has welcomed the go live for data sharing for the launch of the Consumer Data Right ([Link](#)). From 1 July, individual customers can request their bank share their data for deposit and transaction accounts and credit and debit cards. From 1 November 2020 consumers will be able to share their data relating to home loans, investment loans, personal loans and joint accounts.
- The ACCC has announced the launch of the new official Consumer Data Right website ([Link](#)). The website features educational videos, guidance materials, a public register of participating data holders and accredited data and recipients and access to the Consumer Data Right Participant Portal to apply for accreditation.

#### OAIC

- The OAIC has released guidance for businesses who are collecting personal information for contact tracing and have obligations under the Privacy Act 1988 ([Link](#)). The guidance focuses on:
  - only collecting the information required under the Direction or Order;
  - notifying individuals before collecting the information;
  - securely storing the information;
  - only providing the information to relevant health authorities who undertake contact tracing activities, when requested to do so; and
  - destroying the information once it is no longer reasonably necessary for the purpose of contact tracing.

#### ACMA

- Woolworths has paid a \$1,003,800 infringement notice and agreed to a court-enforceable undertaking with the Australian Communications and Media Authority (ACMA) in response to significant breaches of spam laws ([Link](#)). The infringement notice is the largest ever issued by the ACMA. The ACMA found more than five million breaches of the Spam Act 2003 by Woolworths when it sent marketing emails to consumers after they had unsubscribed from previous messages. In its court-enforceable undertaking Woolworths has committed to appointing an independent consultant to review its systems, processes, and procedures, to implement improvements, and to report to the ACMA.

#### Safe Work Australia

- Safe Work Australia has created a new infographic tool to support small businesses to operate safely and manage work health and safety risks from COVID-19 ([Link](#)). The small business planning tool outlines key steps for safely operating a business during the COVID-19 pandemic, including:
  - understanding and following public health directions and work health and safety (WHS) laws;
  - assessing and managing WHS risks; and
  - ongoing review and monitoring.



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### Peak Industry Bodies

#### ABA

- A coalition of associations including the ABA are writing to the National Cabinet requesting temporary COVID-19 related measures for electronic transactions and mortgages be made permanent ([Link](#)). Permanent changes being asked for include:
  - allowing deeds to be created/signed electronically;
  - accepting electronic signatures for a broader range of legal and business documents, including guarantees, statutory declarations and trust deeds;
  - allowing witnessing of documents to happen via audio-visual means;
  - witnessing should not be required for deeds; and
  - processing a mortgage digitally.
- The ABA has made temporary changes to the Banking Code of Practice to accommodate the impact of the COVID-19 pandemic on banking services ([Link](#)). The two changes provide that:
  - in certain circumstances banks may not always be able to meet the timelines for customer communication outlined in some provisions of the code; and
  - a bank's obligations when lending to small business customers, to engage in a fair, reasonable and ethical manner, and to exercise the care and skill of a diligent and prudent banker, will be informed by the circumstances and effects of COVID-19 generally.ASIC has approved these temporary changes.

#### COBCCC

- The independent Customer Owned Banking Code Compliance Committee (COBCCC) that monitors the Customer Owned Banking Code of Practice has released an inquiry report to assist financial institutions manage and protect customer information appropriately ([Link](#)). The matters considered by the inquiry included privacy policies; staff access to data; document storage and destruction; and privacy and data breaches. The report identifies three key areas for improvement:
  - the review of soft and hard copy documents to ensure information is destroyed or de-identified when no longer required;
  - the adoption of formal processes to document informal actions within the institution; and
  - the development of a policy that details the steps required to disclose information to overseas recipients.The Committee found that while subscribers had displayed a willingness to review policies and processes regularly, ongoing compliance requires continued attention to monitoring, reviews and effective training. The Committee recommended that relevant policies be reviewed at least annually.



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### Government

#### Treasury

- Treasury is consulting on the exposure draft of the Corporations Amendment (Stamping Fee Exemption) Regulations 2020 ([Link](#)). These Regulations extend the ban on conflicted remuneration to stamping fees paid in respect of listed investment companies and trusts (LICs and LITs). Specifically, the Regulations amend the Corporations Regulations 2001 to remove the exemption from the prohibition on paying and receiving conflicted remuneration for stamping fees paid in respect of LICs and LITs. The stamping fee exemption is retained for trading companies, real estate investment trusts and listed infrastructure entities.
  - The Government has announced significant reforms to the Foreign Acquisitions and Takeovers Act 1975 ([Link](#)). Key elements of the reform package include:
    - a new national security test for foreign investors who will be required to seek approval to start or acquire a direct interest in a 'sensitive national security business' regardless of the value of the investment;
    - a time-bound 'call in' power enabling the Treasurer to review acquisitions that raise national security risks outside of proposed acquisitions relating to a 'sensitive national security business';
    - a national security last resort power that provides the ability to impose or vary conditions and in extraordinary circumstances order disposal on national security grounds;
    - stronger and more flexible enforcement options including the expansion of infringement notices and higher civil and criminal penalties; and
    - measures to streamline approval for passive investors and investments into non-sensitive businesses.
- The Government will release exposure draft legislation for consultation in July, with the reforms scheduled to commence on 1 January 2021.
- The Government has announced the next two priority areas for its Deregulation Taskforce to assist with COVID-19 economic recovery ([Link](#)):
    - modernising business communications to reduce costs incurred by businesses when legislation is not technology neutral, and to better reflect the way Australians want to engage and communicate; and
    - improving occupational mobility to enable businesses and consumers to access skilled workers more quickly, and make it easier for people in licensed occupations to move where their skills are needed.
  - The Government will spend \$1.35 billion over the next decade to enhance the cyber security capabilities and assistance provided to Australians through the Australian Signals Directorate (ASD) and the Australian Cyber Security Centre. This initiative, known as the Cyber Enhanced Situational Awareness and Response (CESAR) package, is aimed at identifying more cyber threats, disrupting more foreign cybercriminals and building more partnerships with industry and government ([Link](#)).

#### Legislation.gov.au

- The Corporations (Fees) Amendment (Registries Modernisation) Act 2020 was signed into law on 22 June 2020 ([Link](#)). The act will introduce a new director identification number (DIN) requirement and create Commonwealth business registry scheme (via the Commonwealth Registers Act 2019). The DIN is one of a number of initiatives designed to deter and penalise phoenix activity. All persons appointed as a director of a body corporate will be required to apply to the Registrar (to be appointed by the government) for a DIN; all directors will be required to confirm their identity; and the DIN will be a unique identifier, allowing traceability of a director's relationship across companies. There are civil and criminal penalties for directors that fail to apply for a DIN within the applicable timeframe. The DIN regime will commence by proclamation at a future date once administrative arrangements (including a new information technology platform and the development of systems and processes) are in place.
- Under most Commonwealth laws, financial penalties are expressed in terms of 'penalty units' instead of dollar figures. To ensure the real value of the penalty unit is maintained, the penalty unit will then be automatically increased according to inflation every three years. From 1 July 2020, the value of the penalty unit amount will increase to \$222 (from \$210) ([Link](#)).



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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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