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COVID-19 | Your Regulatory Roadmap

(4 July 2020 - 17 August 2020)

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What you need to know about the changing regulatory environment

Peak Financial Regulatory Bodies

ASIC

- ASIC has released Consultation Paper 330 Using the product intervention power: Continuing credit contracts (CP 330) on the proposed use of its product intervention power (PIP) to address significant detriment it has identified in the continuing credit industry ([Link](#)). In monitoring the effect of the short-term credit intervention, ASIC has identified another class of financial products, namely continuing credit products, being issued to borrowers. ASIC is concerned that the continuing credit products are likely to result in significant detriment due to borrowers incurring very high cost, relative to the loan amount. ASIC is also concerned that continuing credit products are being issued to vulnerable clients, including many who are already in financial difficulty. Submissions are due by 6 August 2020.
- ASIC will not seek special leave to appeal to the High Court in the Westpac responsible lending matter, following the full Federal Court's 2-1 decision to reject its earlier appeal ([Link](#)). ASIC is mindful of the impact of the additional time required to resolve this matter in the current challenging economic circumstances ASIC will review its updated regulatory guidance RG 209 (Credit licensing: responsible lending conduct) and will consider what implications the Federal Court decision has for that guidance. ASIC said that any reform of the National Consumer Credit Protection Act to clarify further the enforcement of those principles is ultimately a matter for parliament.

- ASIC has released minor amendments to the fees and cost disclosure regime for issuers of superannuation and managed investment products in Regulatory Guide 97 Disclosing Fees and Costs in PDSs and Periodic Statements (RG 97) ([Link](#)). A major update of RG 97 and the associated legislative instrument was released in November 2019. ASIC has amended the transitional arrangements for PDSs in response to COVID-19:
 - PDSs given on or after 30 September 2022 must comply with the new requirements.
 - Issuers can choose to apply the new requirements from 30 September 2020.
 - Once an issuer has elected to apply the new requirements, all subsequent PDSs for that financial product must comply with the new requirements.
 - There is no change to the transition arrangements for periodic statements.

- ASIC has released the updated requirements for how financial firms deal with consumer and small business complaints – under their Internal Dispute Resolution (IDR) procedures ([Link](#)). Upon commencement, the new Regulatory Guide 271 Internal dispute resolution will replace the existing Regulatory Guide 165. The new Regulatory Guide:
 - introduces reduced timeframes for responding to complaints, including superannuation complaints
 - sets out what information firms must include in written IDR responses to allow consumers to decide whether to escalate their complaint
 - sets new timeframe requirements for customer advocate reviews of appeals against IDR decisions
 - gives guidance about how firms can deal with representatives who are not acting in consumers' best interests.
 - ASIC will publish a legislative instrument alongside RG 271 which clarifies the enforceable IDR standards and requirements.ASIC has given industry until 5 October 2021, to comply with the new IDR standards and requirements, the timeframe takes into account the impact of COVID-19. RG 165 remains in place up until this date and will be withdrawn from commencement of the new RG 271.

- ASIC is seeking stakeholder feedback on a proposed product intervention order on the sale of add-on insurance and warranty products sold with motor vehicles ([Link](#)). The proposed product intervention order would complement the proposed industry-wide deferred sales model for add-on insurance to be implemented as part of the response to the Financial Services Royal Commission (recommendation 4.3).
- ASIC has published expectations of lenders to assist them to deliver appropriate outcomes to consumers whose six-month loan repayment deferrals will expire in the coming months ([Link](#)). ASIC's expectations include how lenders should approach consumers who cannot resume repayments on their mortgages. If a consumer identifies that they cannot resume full repayments on their mortgage, ASIC expects lenders to make reasonable efforts to gather personalised information about the consumer's circumstances. ASIC is also working closely with APRA to ensure that ASIC's expectations of ADIs and how they are handling loans impacted by COVID-19 are aligned.



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APRA

- APRA announced an extension of its temporary capital treatment for bank loans with repayment deferrals, as well as temporarily adjusting the capital treatment of loans where terms are modified or renegotiated due to COVID-19 ([Link](#)). APRA has written to all ADIs advising that this regulatory approach will be extended to cover a maximum period of 10 months from the start of a repayment deferral, or until 31 March 2021, whichever comes first (a four-month extension) ([Link](#)).
 - APRA has written to registrable superannuation entity (RSE) licensees reaffirming its expectations regarding two key regulatory requirements aimed at improving outcomes for superannuation members ([Link](#)). In the letter, trustees are reminded of their obligations to undertake a Business Performance Review by 31 December 2020 (to implement SPS 515 Strategic Planning and Member Outcomes (SPS 515)), and an outcomes assessment by 28 February 2021 (in accordance with s 52(9) Supervision Industry (Supervision) Act 1993), that are commensurate with the complexity of their operating models and diversity of their product offerings.
 - APRA has published a new FAQ to assist ADIs in complying with their prudential requirements relating to commercial property valuations during the COVID-19 pandemic ([Link](#)).
- APRA has updated its capital management guidance for banks and insurers ([Link](#)), in particular easing restrictions around paying dividends as institutions continue to manage the disruption caused by COVID-19. APRA's updated guidance replaces its recommendation in April this year that banks and insurers "seriously consider deferring decisions on the appropriate level of dividends until the outlook is clearer". In addition to guidance for the banking sector, APRA has indicated that for the remainder of the calendar year boards should:
 - seek to retain at least half of their earnings when making decisions on capital distributions (and utilise dividend reinvestment plans and other initiatives to offset the diminution in capital from capital distributions where possible);
 - conduct regular stress testing to inform decision-making and demonstrate ongoing lending capacity; and
 - make use of capital buffers to absorb the impacts of stress, and continue to lend to support households and businesses.
 - APRA announced it will recommence public consultations on select policy reforms and begin a phased resumption of the issuing of new licenses, which was suspended previously due to COVID-19 ([Link](#)).

- APRA announced it will recommence public consultations on select policy reforms and begin a phased resumption of the issuing of new licenses ([Link](#)). APRA's recommencement of assessing and issuing new banking, insurance and superannuation licences will occur in two phases, with phase one starting in September 2020 and phase two in March 2021. The policy reforms that will be recommended in 2020 are:
 - the cross-industry prudential standard for remuneration;
 - ADI capital reforms;
 - insurance capital reforms; and
 - the prudential standard for insurance in superannuation, and updated guidance on the sole purpose test.Aligned with its policy agenda, APRA will also restart consultation on a limited number of its data collections, including the Superannuation Data Transformation project.
- APRA has issued a consultation letter regarding ADI capital measures and reporting requirements for loans impacted by COVID-19, and an update to its FAQs ([Link](#)).

AUSTRAC

- AUSTRAC has released proposed amendments to Chapter 46 of the AML/CTF Rules for public consultation ([Link](#)). The proposed amendments create a simpler, less prescriptive chapter. The proposed amendments include two new general conditions that must be satisfied before a reporting entity can rely on section 33 (which allows a reporting entity to carry out applicable customer identification procedure (ACIP) in respect of a customer after commencing to provide a designated service), and an additional special circumstance that allows a reporting entity to carry out ACIP in respect of a customer after opening an account, provided no transactions - other than an initial deposit - are conducted in relation to the account. The consultation closes on 12 August 2020.



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Peak Industry Bodies

AFCA

- AFCA has welcomed ASIC's updated guidance on Internal Dispute Resolution (IDR) ([Link](#)).
- In conjunction with releasing the new ASIC Regulatory Guide 271, ASIC has also released Regulatory Guide 267 Oversight of the Australian Financial Complaints Authority (RG 267). The Guide sets out ASIC's enhanced oversight role over AFCA. It is important to note that under the new framework, AFCA must refer serious contraventions (in connection with a complaint) to APRA, ASIC and the ATO, as appropriate. Under the previous EDR framework, schemes reported serious misconduct to ASIC. In determining what is a serious contravention, ASIC makes reference to the Explanatory Memorandum at paragraph 1.87 which states that the intention of the law is that the contravention relates to laws relevant to the subject matter and circumstances of a complaint made and the complaint handling processes rather than necessarily a contravention of any law.

ABA

- As customers approach the end of their six-month loan repayment deferral period, Australia's banks will implement a new phase of support to assist customers to get back to making their repayments ([Link](#)). In this next phase, customers who can restart paying their loans will be required to do so at the end of their six-month deferral period, but if they require extra time, a further four-month extension is available. A deferral extension of up to four months will not be automatic, it will be provided to those who genuinely need some extra time. Banks will work with customers to find the best options to restructure or vary their loan.
 - Extending the length of the loan
 - Converting to interest only payments for a period of time
 - Consolidating debt
 - A combination of these and other measures

COBA

- COBA has welcomed APRA's announcement on loan repayment deferrals ([Link](#)).



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Government

Treasury

- The government welcomed the ABA's announcement on the continued support that will be provided by banks to customers on repayment deferrals ([Link](#)).
- The government will extend the Coronavirus SME Guarantee Scheme which supports small and medium sized businesses (SMEs) to get access to the funding they need to adapt and innovate during the coronavirus crisis ([Link](#)). Under the existing Scheme, the government is guaranteeing 50% of new unsecured loans to SMEs. Key changes to the Scheme include:
 - Extending the purpose of loans able to be provided beyond working capital, such that a wider range of investment can be funded;
 - Permitting secured lending (excluding commercial or residential property);
 - Increasing the maximum loan size to \$1 million (from \$250,000) per borrower;
 - Increasing the maximum loan term to five years (from three years); and
 - Allowing lenders the discretion to offer a repayment holiday period.

The initial phase of the Scheme remains available for new loans issued by eligible lenders until 30 September 2020. The second phase of the Scheme will start on 1 October 2020 and will be available until 30 June 2021.

- The JobKeeper Payment will be extended by six months to 28 March 2021 and the temporary Coronavirus Supplement for those on income support will be extended until 31 December 2020. The payments will be made at reduced rates ([Link](#)).
- The government has released for consultation exposure draft legislation amending the Foreign Acquisitions and Takeovers Act 1975 to implement the reforms to Australia's foreign investment framework announced on 5 June 2020 ([Link](#)). The new provisions require foreign investors to:
 - Seek approval for all investments in sensitive national security land or businesses (including starting such a business) – regardless of value.
 - Comply with the terms of their approval or be subject to enhanced monitoring and investigation powers and stronger and more flexible enforcement options and penalties.
 - Continue to bear the costs of administering the foreign investment regime, under a reformed framework which will be fairer and simpler for foreign investors.

The consultation will run for four weeks and will close on 31 August 2020.

- The government is extending temporary regulatory relief in respect of online meetings and electronic document execution for a further six months till 21 March 2021 ([Link](#)). These changes will be made under the instrument-making power that has been inserted into the Corporations Act 2001 as part of the government's response to the Coronavirus crisis. Under the extension of the temporary relief measures, companies will continue to:
 - provide notice of annual general meetings to shareholders using email;
 - achieve a quorum with shareholders attending online; and
 - hold annual general meetings online.

Home Affairs

- The government has launched the Online Register of Modern Slavery Statements. The online register is now available at modernslaveryregister.gov.au. Entities required to report under the Modern Slavery Act or entities that wish to voluntarily report are now able to submit their modern slavery statements to the online register for review and publication by the Australian Border Force. The first tranche of modern slavery statements is expected to be available on the online register from August 2020 ([Link](#)).

PM.gov.au

- The sitting of Parliament commencing on 4 August 2020 will be cancelled. Parliament will next meet on 24 August 2020 ([Link](#)).

Legislation.gov.au

- The Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020 was registered on 13 July 2020 ([Link](#)). The new regulations give effect to proposal 15 of the Australian Consumer Law Review which recommended increasing the monetary threshold in the definition of “consumer” for the purposes of the Australian Consumer Law. From 1 July 2021, the new monetary threshold is \$100,000, an increase from prior threshold of \$40,000.



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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!* Product Governance Framework:** A practically focused Product Governance Framework and supporting documentation and tools to facilitate implementation of the design and distribution obligations
- **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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