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# COVID-19 | Your Regulatory Roadmap

(18 August 2020 – 6 October 2020)

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

### Peak Financial Regulatory Bodies

#### ASIC

- ASIC has released guidance to assist innovative financial businesses test their products and services under the Government's enhanced regulatory sandbox (ERS), scheduled to commence on 1 September 2020 ([Link](#)). ASIC's guidance is contained in *Information Sheet 248 Enhanced regulatory sandbox* (INFO 248), an infographic and a document that compares the ERS with the ASIC sandbox. The ERS:
  - is a class waiver from licensing for certain financial services and credit activities
  - supersedes the ASIC sandbox that was issued in December 2016, and
  - expands on the ASIC sandbox and allows for a longer testing period (of up to 24 months) for a broader range of financial services and credit activities and for a wider range of businesses (including existing licensees).

- ASIC has published its Corporate Plan for 2020-24 which sets out how ASIC aims to achieve its vision through its strategic priorities and actions over the next four years ([Link](#)). ASIC's work to address the COVID-19 pandemic is guided by five strategic priorities:
  - 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 the pandemic
  - continuing to identify, disrupt and take enforcement action against the most harmful conduct, and
  - continuing to build organisational capacity in challenging times.ASIC's longer term focus areas beyond the pandemic include:
  - promoting confident participation in the financial system
  - detering poor behaviour and misconduct
  - improving entities' management of key risks to prevent/mitigate harms to consumers and promote healthy financial system and economic growth
  - addressing consumer harm as a result of elevated debt levels and hardship, with a particular focus on predatory lending
  - reducing poor product design and restricting mis-selling
  - reducing misconduct by company directors and professional service providers, and
  - delivering as a conduct regulator for superannuation.

- A recent ASIC surveillance has found that fund managers must do more to ensure their products are 'true to label' – that the product name aligns with the underlying assets ([Link](#)). Issues identified by the survey include:
  - confusing or inappropriate 'cash' product labels
  - mismatch between redemption features offered and the liquidity of underlying assetsASIC's expectation is that products are "true to label" and the redemption terms offered to investors are supported by and consistent with the underlying liquidity of the fund's assets.
- ASIC is extending the temporary relief for capital raisings and financial advice due to the continuing uncertain impacts of COVID-19 ([Link](#)). ASIC is also extending the financial advice relief related to the COVID-19 early release of superannuation scheme in light of the extension of the scheme by the Government.

#### APRA

- APRA and the ACCC have signed an updated Memorandum of Understanding (MoU) designed to foster closer collaboration between the two regulators ([Link](#)). The new MoU commits both agencies to a broader model of engagement, with a greater emphasis on proactive information sharing and collaboration.
- APRA has announced that it is commencing the roll-out of a new model for assessing the risks faced by banks, insurers and superannuation licensees ([Link](#)). The Supervision Risk and Intensity Model (SRI Model) will be in use from October but is expected to be fully operational by June 2021. The model will be used to assess the systemic significance of APRA-regulated entities and the level of risk each entity faces. These assessments will then guide the nature and intensity of APRA's supervisory response.



**Samantha Carroll**  
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 Regulatory and Industry Bodies

#### ACCC

- The Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities (MMAC), was signed virtually by the US Department of Justice, US Federal Trade Commission, the UK Competition and Markets Authority, the New Zealand Commerce Commission, the Competition Bureau Canada and the ACCC and comes into effect on 2 September 2020 ([Link](#)). Under the cooperation agreement, the competition agencies from five countries will share intelligence, case theories and investigative techniques to better coordinate investigations across international borders
- The ACCC has amended the CDR Rules to permit accredited intermediaries to collect data on behalf of third-party data recipients, with consumer consent ([Link](#)). These amended rules mean accredited businesses can now ask other accredited businesses to obtain consumer data on their behalf, and are intended to facilitate greater participation in the Consumer Data Right by fintech firms. The changed rules will, for example, allow an accredited business to use outsourced IT infrastructure and software of an accredited intermediary to connect to data holders' APIs, rather than have to build their own.
- The ACCC has published frequently asked questions (FAQs) for accredited data recipients ([Link](#)) and data holders ([Link](#)) about the CDR on-boarding process on the CDR website and CDR Support Portal (the Support Portal).

#### OAIC

- The OAIC has reported on the Australian Community Attitudes to Privacy Survey 2020 which it commissioned ([Link](#)). The report provides a comprehensive view of beliefs and concerns about the protection of personal information including that privacy is a major concern for 70% of Australians while 87% want more control and choice over the collection and use of their personal information.
- The OAIC has published its Corporate Plan for 2020-21 ([Link](#)) which sets out its strategic priorities and key activities for the next four years. The plan identifies four strategic priorities that will help the OAIC achieve its vision to increase public trust and confidence in the protection of personal information and access to government-held information:
  - advance online privacy protections for Australians
  - influence and uphold privacy and information access rights frameworks
  - encourage and support proactive release of government-held information, and
  - contemporary approach to regulation.

#### AUSTRAC

- AUSTRAC has issued a new financial crimes guide to help businesses to combat Australia's illegal wildlife trafficking trade by identifying, targeting and reporting suspicious activity ([Link](#)). The guide was developed by AUSTRAC's public-private partnership the Fintel Alliance with the Department of Agriculture, Water and Environment.
- AUSTRAC has released the next suite of resources in the Insights series including a guidance document 'Assessing ML/TF risk', a video animation and updated web content ([Link](#)).

#### AFSA

- AFSA has acknowledged the Government's announcement to extend the temporary debt relief measures, designed to support people facing bankruptcy due to the economic impacts of COVID-19 ([Link](#)). Originally scheduled to end in late September, the measures introduced in March 2020 have now been extended to 31 December 2020. The extended temporary debt relief measures include an increase to the:
  - minimum amount of debt that can trigger bankruptcy from \$5,000 to \$20,000
  - amount of time an individual has to respond to a Bankruptcy Notice from 21 days to six months
  - temporary debt protection period – people can apply for six months relief from creditors, an increase from 21 days.

#### ABA

- The ABA has welcomed proposed changes to the nation's consumer credit laws ([Link](#)). Australian banks will work with the Government and regulators in the months ahead on the detail of the proposed changes.

#### COBA

- COBA has also welcomed the Government's announcement that it will simplify Australia's credit framework to ensure consumers and small business can get timely access to credit ([Link](#)).



**Samantha Carroll**  
Practice Director

E scarroll@ashstreet.com.au

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### Government

- The Government is reducing the cost and time it takes consumers and businesses to access credit ([Link](#)). A key element of the reform is the removal of **responsible lending obligations** from the *National Consumer Credit Protection Act 2009*, with the exception of small amount credit contracts and consumer leases where heightened obligations will be introduced. The Government will consult publicly with stakeholders before finalising any legislation required to implement the reforms.
- The Government is seeking stakeholder views on the exposure draft of amendments to Part IVD of the Competition and Consumer Act 2010 in relation to the **operation of the CDR regime**. The proposed technical amendments include provisions that clarify the scope of information that may be subject to the CDR regime, the operation of provisions specifying when data access may be chargeable, that the rules may determine whether or not outsourced service providers (OSPs) of accredited persons must themselves be accredited to collect CDR data, interactions between the rules and the Privacy Safeguards, the permitted types of data flows in relation to Gateways and miscellaneous amendments addressing a range of minor drafting irregularities. The consultation period closes on 16 October 2020.
- The ALRC report, Corporate Criminal Responsibility (Report 136, 2020), has been tabled in Parliament ([Link](#)). The 20 recommendations made by the ALRC are aimed at significantly strengthening and simplifying the Commonwealth **corporate criminal responsibility regime**. The ALRC's recommendations would:
  - result in simpler, clearer laws that reduce the regulatory compliance burden on corporations;
  - better protect individuals from serious corporate misconduct by focusing on the most egregious criminal conduct;
  - standardise attribution of criminal responsibility to corporations;
  - increase the range of penalty and sentencing options to punish and rehabilitate corporations more effectively; and
  - make corporations criminally responsible for failing to prevent an associate from committing certain crimes overseas on their behalf.
- The Attorney-General released a **draft work health and safety (WHS) Code of Practice** (draft code) to provide businesses and workers guidance on what they need to do to mitigate the risks of COVID-19 in the workplace ([Link](#)). Codes of practice under the model WHS laws provide duty holders with practical guidance on how they can meet their WHS duties in relation to specific hazards and risks.
- The *Financial Sector Reform (Hayne Royal Commission Response - Protecting Consumers) (Mortgage Brokers) Regulations 2020* has been registered to address Recommendation 1.3 of the Banking Royal Commission (conflicted remuneration for mortgage brokers) ([Link](#)). The Regulations amend the National Consumer Credit Protection Regulations 2010 (the Credit Regulations) to prescribe circumstances under which a benefit is and is not **conflicted remuneration**. They also prescribe circumstances under which conflicted remuneration must not be accepted, circumstances in which conflicted remuneration must not be given and requirements relating to clawback arrangements
- The ALRC has been asked to inquire into the potential **simplification of laws that regulate financial services** in Australia ([Link](#)). The Inquiry is part of the Government's response to the Banking Royal Commission. The inquiry is more technical in nature, and seeks to facilitate a more adaptive, efficient, and navigable framework of legislation "within the context of existing policy settings". The ultimate goal is to achieve meaningful compliance with the substance and intent of the law. The Terms of Reference focus on the provisions of the Corporations Act and the Corporations Regulations while also referring to other financial services legislation, and legislative instruments. Three sub-topics are specifically outlined, each of which is to be the subject of an interim report by the ALRC, prior to release of the consolidated Final Report due on 30 November 2023:
  - A first interim report focusing on the appropriate use of definitions in corporations and financial services legislation is due by 30 November 2021;
  - A second interim report focusing on regulatory design and the hierarchy of primary law provisions, regulations, class orders, and standards, is due by 30 September 2022;
  - A third interim report focusing on potential reframing or restructuring of Chapter 7 of the Corporations Act is due by 25 August 2023.
- The Crimes Legislation Amendment (Economic Disruption) Bill 2020 ([Link](#)) has been introduced into parliament. The Bill improves and clarifies **arrangements targeting the criminal business model**, ensuring that law enforcement has suitable tools to detect illicit financial flows through effective information-gathering, confiscate relevant assets (in Australia and overseas) and prosecute responsible individuals. The Bill amends the Crimes Act (Crimes Act), Criminal Code Act (the Criminal Code), the COAG Reform Fund Act and the Proceeds of Crime Act (the POC Act). The bill also updates Commonwealth money laundering offences to address the behaviour of modern money laundering networks and remove unnecessary obstacles to securing convictions and appropriate sentencing outcomes.



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Practice Director

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### Government

- The Government will extend **temporary insolvency and bankruptcy protections** until 31 December 2020 ([Link](#)).
- The Government will undertake significant **reforms to Australia's insolvency framework**. The reforms give distressed businesses flexibility to either restructure or to wind down their operations in an orderly manner ([Link](#)). The new processes will be available for small businesses from 1 January 2021, after the expiration of the government's temporary COVID-19 measures.
- The Government will extend the **temporary continuous disclosure provisions** that apply to companies and their officers' for a further six months until 23 March 2021 ([Link](#)).
- The *Corporations and Bankruptcy Legislation Amendment (Extending Temporary Relief for Financially Distressed Businesses and Individuals) Regulations 2020* has been registered ([Link](#)). The purpose of the Regulations is to extend measures expressed in Schedule 12 to the **Coronavirus Economic Response Package Omnibus Act 2020** beyond their initial six month application period so that they apply until the end of 31 December 2020 (original measures were due to expire on 24 September 2020). Companies with liabilities of less than \$1 million will be able to keep trading without an administrator while they develop a debt restructuring plan which will be voted on by creditors.
- The AG has released an industry consultation paper which provides information on the current operation of the **PPS Act** and how it impacts on certain financial products ([Link](#)). The paper seeks input from the financial services industry about the practical operation of the PPS Act on the trading of financial products. The closing date for submissions is 16 October 2020.
- The Senate Select Committee on Financial Technology and Regulatory Technology has published its Interim Report ([Link](#)). The report on the **FinTech and RegTech sectors**:
  - covers the challenges and opportunities for the sector in light of the COVID-19;
  - looks at some relevant taxation issues, such as the R&D tax incentive;
  - provides an overview of the regulatory environment;
  - examines in detail a major regulatory reform, the introduction of the CDR;
  - explores the issue of access to capital;
  - discusses issues relating to culture and skills; and
  - details the committee's conclusions and recommendations.



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Practice Director

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Special Counsel

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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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