


## COVID-19 Toolkit for Corporations Law

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This toolkit provides an index to key corporations law developments and our coverage of them during the COVID-19 pandemic.

For general information about COVID-19, see [LexisNexis Information Hub COVID-19](#) .

Please note that this toolkit provides for the status of the law as at 14 May 2020. As the law and market practice on these issues is evolving, you should always consider the full text of all relevant legislation and accompanying guidance material.

### Legal resources



#### ***Annual General Meetings (AGMs) and other company meetings***

- On 5 May 2020, the Treasurer released [Corporations \(Coronavirus Economic Response\) Determination \(No. 1\) 2020](#)  (Determination) virtual” meetings. The Determination allows companies and other entities that are required to or wish to hold meetings, such AGMs, to do so using technology (rather than face-to-face), enables a quorum, votes, notices and the asking of questions to be facilitated electronically, and allows for information required for the meeting to be circulated and accessed electronically. The Determination took effect on 6 May 2020 and lasts for 6 months. See [Federal Treasurer makes new legislative instrument temporarily amending Corporations Act requirements due to impact of COVID-19](#).
- Before the Determination was made, ASIC issued [guidelines](#)  for meeting upcoming AGM requirements. These included a 2-month “no-action” position for entities with a 31 December 2019 balance date that do not hold their AGMs by 31 May 2020. ASX [supported](#)  ASIC’s “no action” position in relation to AGMs and using electronic communications to facilitate shareholder meetings. ASIC has now [amended](#)  its no action position to cover all entities with financial years ending between 31 December 2019 and 7 July 2020, so long as they do so within 7 months of the end of their financial year. See our detailed guidance note [COVID-19 and Annual General Meeting \(AGMs\)](#).

#### ***ASIC fees***

- ASIC has offered fee relief for entities. See [ASIC offers fee relief for entities in financial difficulty due to COVID-19](#).

#### ***Business continuity plans and staff monitoring and supervision***

- ASIC’s [Market Integrity Update — COVID-19 Special Issue — 31 March 2020](#)  outlines ASIC’s expectations for market intermediaries’ business continuity plans and back-up arrangements, and supervision and monitoring of staff working remotely, during the COVID-19 pandemic.
- ASIC has underscored that entities need to ensure continued compliance with regulatory obligations in the context of COVID-19 and assess the effectiveness of their business continuity plans and alternative working arrangements to comply with all regulatory requirements, including by establishing robust monitoring and supervision. ASIC is actively monitoring firms and markets for potential misconduct and will not hesitate to take action in appropriate circumstances. See ASIC’s media release [Betting over S&P/ASX 200 index highlights failures in controls](#) .

## Capital raising

- ASX has issued class waivers under ASX Listing Rule 18.1 to give the relief in relation to trading halts, placement capacity and non-renounceable entitlement offers, which take effect on 31 March 2020 and expire on 31 July 2020 (unless amended by ASX). ASX has also clarified and improved the operation of the capital raising measures and imposed enhanced disclosure requirements on entities who take advantage of the relief. ASIC has indicated its support for the enhanced disclosure requirements. See [Key ASX responses to COVID-19 in March 2020](#) and [ASX provides Compliance Update that includes changes to temporary emergency capital raising relief measures](#).
- ASIC has given temporary relief to listed companies to enable them to raise capital quickly and at lower cost using certain “low doc” offers (including rights offers, placements and share purchase plans) to be made to investors. See [ASIC gives temporary relief to listed companies for low doc capital raisings as part of COVID-19 response](#).

## Charities and not-for-profit entities

- The Australian Charities and Not-for-profits Commission (ACNC) has announced temporary changes ([ACNC Compliance During COVID-19](#)) to its investigation of certain breaches of its Governance Standards and External Conduct Standards that occur from 25 March 2020 to 25 September 2020, given challenges faced by charities during the COVID-19 pandemic.
- The ACNC has provided charities with Annual Information Statements (and where required, annual financial reports) due between 12 March 2020 and 30 August 2020 a blanket extension until 31 August 2020. See the ACNC’s dedicated information page, [Charity Operations and COVID-19](#).
- The ACNC has made a number of recommendations to charities regarding governance matters in the context of COVID-19, including in relation to AGMs and other meetings, operations and governance issues, drawing on financial reserves, government stimulus measures and other financial considerations. See the ACNC’s dedicated information page, [Charity Operations and COVID-19](#).

## Continuous disclosure

- ASX has issued [guidance on listed entities’ continuous disclosure obligations](#) under ASX Listing Rule 3.1.

## Cybersecurity

- ASIC has advised corporate entities and investors to heighten their vigilance in regarding cybersecurity, as more organisations requiring employees to work from home increases the likelihood of cyber breaches, phishing activity and scams. The regulator has also encouraged entities to consider implementing proactive cybersecurity strategies published by the Australian Cyber Security Centre as well as ASIC’s own previously published [good practice guidance](#) on cybersecurity. See [ASIC Market Integrity Market Integrity Update — Issue 114 — April 2020](#).

## Directors’ duties

- The [Corporations Act 2001](#) (Cth) (Corporations Act) includes temporary measures (effective from 25 March 2020 for 6 months) to relieve directors from personal liability for insolvent trading with respect to any debts incurred in the ordinary course of the company’s business. These measures add to the existing safe harbour provisions for directors in the Corporations Act. See [Corporations Act amended to include temporary relief measures for companies under Federal Government’s COVID-19 economic stimulus package](#).
- ASIC Commissioner John Price has warned directors of corporate entities that temporary relief from insolvent trading provisions does not extend to absolve directors of their underlying statutory and common law directors’ duties, including duties to act in the company’s best interests, with care, diligence and good faith

## COVID-19 Toolkit for Corporations Law

and not to use a director's position or information obtained as a director to gain an advantage or cause detriment to the company. See [Directors duties in the context of COVID-19](#) and our [Directors and Officers — Duties](#) topic.

### Financial reporting

- The Australian Securities and Investments Commission (ASIC) previously [extended](#) financial reporting deadlines: see [ASIC announces extended deadline for financial reporting by unlisted entities due to COVID-19](#). ASIC has now given a [further 1-month extension](#) to the deadline for financial reporting under [Chs 2M](#) and [7](#) of the Corporations Act. This means that:
  - unlisted entities can take 1 additional month to lodge financial reports for year ends from 31 December 2019 to 7 July 2020; and
  - listed entities can take 1 additional month to report for full year and half-year financial reports for 21 February 2020 to 7 July 2020 balance dates.
- ASX has [stated it](#) would consider requests for extensions to financial reporting deadlines under [Ch 4](#) of the ASX Listing Rules for entities with a 30 September, 31 December or 31 March balance date, on a case-by-case basis (though not for quarterly reports and other unaudited information). ASX will keep the situation for listed entities with a 31 May or 30 June balance date under review.
- ASX has issued a [class waiver](#) to ensure that NZX dual-listed entities can take advantage of financial reporting extensions [announced](#) in New Zealand.

### Financial services

- ASIC has given temporary relief (commencing 15 April 2020) to facilitate retail clients accessing financial product advice because of the adverse economic effects of COVID-19. ASIC has also issued a temporary no-action position for superannuation trustees to expand the scope of personal advice that may be provided by, or on behalf of, the superannuation trustee as “intra-fund advice”. For more information, see [ASIC gives temporary relief for urgent advice and early access to superannuation](#).
- APRA has issued guidance to ADIs and insurers on capital management during this period of disruption. See [APRA issues guidance to ADIs and insurers on capital management](#).
- APRA has temporarily suspended the issuing of new Australian financial services licences. See [APRA temporarily suspends the issuing of new licences due to impact of COVID-19](#).
- ASIC has written to a selection of responsible entities (REs) of large registered managed investment schemes to remind them of their legal obligations and duties to members, particularly in relation to scheme liquidity, as they face market volatility, disruption and other challenges associated with COVID-19. See [ASIC reminds responsible entities of their obligations in COVID-19 environment](#).
- ASIC has written to general and life insurers to remind them of ASIC's expectations on insurers' responses during the COVID-19 pandemic. See [ASIC reminds insurers of ASIC's expectations during COVID-19 pandemic](#).

### Foreign investment in Australia

- Monetary screening thresholds for all foreign investments under the [Foreign Acquisitions and Takeovers Act 1975](#) (Cth) have been temporarily reduced to \$0 effective 10:30 pm AEST on 29 March 2020, with the effect that all foreign investments caught by the Act will now be subject to approval by the Foreign Investments Review Board. The statutory timeframe for reviewing applications will be extended by up to 6 months. See [Threshold to FIRB approval of foreign investments dropped to \\$0 to address economic impact of COVID-19](#) and [FIRB regulations made to implement \\$0 threshold for FIRB approval in response to COVID-19](#).

### Insolvency

## COVID-19 Toolkit for Corporations Law

- The Corporations Act includes temporary measures (effective from 25 March 2020 for 6 months) to increase the minimum debt threshold for issuing a statutory demand, extend the time for responding to a statutory demand, relieve directors from personal liability for insolvent trading with respect to any debts incurred in the ordinary course of the company's business, and give the Treasurer a temporary instrument-making power to amend provisions of the Act to provide relief from, or modify, obligations under the Act. See [Corporations Act amended to include temporary relief measures for companies under Federal Government's COVID-19 economic stimulus package](#).

### **Modern Slavery**

- In recognition of the fact that COVID-19 is adversely impacting the ability of reporting corporate entities to meet their reporting obligations under the [Modern Slavery Act 2018](#) (Cth) (Modern Slavery Act), The Department of Home Affairs has extended the deadlines for submission of modern slavery statements by an additional three months for all entities whose reporting periods end on or before 30 June 2020. Modern Slavery statements are ordinarily required to be submitted to the Australian Border Force (ABF) within 6 months of the end of a reporting entity's financial year. ABF has also issued an information sheet for entities on modern slavery risk and reporting in the context of COVID-19. For general information on reporting obligations under the Modern Slavery Act, see our guidance note [Modern Slavery Act 2018 \(Cth\)](#) and for details of the COVID-19 extended deadlines and ABF guidance see our Latest Legal Update, [Modern slavery — Modern slavery reporting extensions and COVID-19](#).

### **Potential amendments to Corporations Act**

- The Treasurer has a temporary instrument-making power to amend provisions of the Corporations Act, to provide relief from, or modify, obligations under the Act. Any instrument made under this power will last for 6 months. See [Corporations Act amended to include temporary relief measures for companies under Federal Government's COVID-19 economic stimulus package](#).

### **Regulator activities and priorities**

- ASIC has adjusted its regulatory activities due to COVID-19. See [ASIC announces changes to regulatory activities due to COVID-19](#).
- APRA has adjusted its regulatory activities due to COVID-19. See [ASIC and APRA readjust 2020 activities to prioritise responding to COVID-19 challenges](#).
- AFCA has adjusted its activities due to COVID-19. For more information, see [AFCA to modify its approach to dispute resolution in light of Australia's COVID-19 response](#) and [AFCA gives more time to resolve complaints due to COVID-19](#).
- The ACCC has also adjusted the focus of its regulatory activities due to COVID-19. See [ACCC's response to Covid-19](#).

### **Signing and witnessing documents**

- Federal emergency legislation has been enacted to give ministers temporary powers to amend requirements regarding the signing and witnessing of documents. Emergency legislation has also been enacted in NSW, Victoria, Queensland and Tasmania, with similar measures expected to be passed in other jurisdictions in response to challenges relating to signing and witnessing documents imposed by the COVID-19 pandemic. See [Emergency legislation signing under section 127 and remote witnessing during COVID-19 pandemic](#). The legislation includes:
  - Federal: [Coronavirus Economic Response Package Omnibus Act 2020](#) (Cth) (the JobKeeper legislation), which gives ministers temporary powers to amend or disapply any provisions of a Commonwealth Act or legislative instrument that require or permit the following matters (among others) the signature of a person or witnessing of signatures, the certification of matters by witnesses, the

## COVID-19 Toolkit for Corporations Law

verification of the identity of witnesses, and the attestation of documents. See [JobKeeper legislation includes temporary powers to amend Commonwealth legislation relating to executing and witnessing documents](#). On 5 May 2020 the Treasurer released [Corporations \(Coronavirus Economic Response\) Determination \(No. 1\) 2020](#) to allow companies to sign electronically a document under [s 127](#) of the Corporations Act (effective from 6 May 2020 for 6 months).

- NSW: documents can be witnessed and attested to by audio visual link under the [Electronic Transactions Amendment \(COVID-19 Witnessing of Documents\) Regulation 2020](#) (NSW). The documents covered include wills, powers of attorney, enduring powers of attorney, deeds, agreements, affidavits (including annexures and exhibits) and statutory declarations. However, the regulation does not address uncertainty over whether deeds and agreements that are signed electronically satisfy the requirements of [s 127](#) of the Corporations Act. The regulation commenced on 22 April 2020 and expires on 26 September 2020. See [NSW temporary regulations allow for remote witnessing of documents](#).
- Queensland: The Parliament has passed the [COVID-19 Emergency Response Act 2020](#) (Qld) (Act) in response to the COVID-19 pandemic. Under [s 9](#) of the Act the Queensland Government has broad powers to make regulations to amend or suspend any legislation or common law relating to documents, including in relation to the signing, witnessing, certification and lodgement of documents. Any regulations made under the Act will expire on 31 December 2020. See [QLD emergency legislation provides broad powers to amend laws relating to documents](#).
- Victoria: The Victorian Government has introduced new temporary regulations, [COVID-19 Omnibus \(Emergency Measures\) \(Electronic Signing and Witnessing\) Regulations 2020](#) (Vic) (Regulations), made under [s 4](#) of the COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic), which allow for electronic signing of deeds and mortgages, remote witnessing for electronic transactions, and electronic signing and remote witnessing of powers of attorney, wills and statutory declarations. See [VIC temporary regulations allow for electronic signing of deeds and remote witnessing of documents](#).

### **Trading and market volatility**

- ASIC has issued directions under the ASIC Market Integrity Rules mandating institutional investors and large equity market participants reduce their number of executed trades by 25% from the levels seen on 13 March 2020. See [ASIC orders 25% reduction in market trades following record heavy trading due to COVID-19, ASX expresses support for the move](#).
- To provide market participants with certainty in the current period, ASIC has extended for 2 more years [Class Waiver 2018/313](#) which provides relief for aggregate loss limit requirements in the [ASIC Market Integrity Rules \(Futures Markets\) 2017](#) (Cth). See [ASIC Market Integrity Update — Issue 113 — March 2020](#).
- Given increased levels of market volatility, ASIC has reminded Australian financial services licensees to ensure they are appropriately monitoring risk-taking and financial exposure. See [ASIC Market Integrity Update — Issue 113 — March 2020](#).
- ASIC is closely monitoring short selling activity in the current volatile climate and has reminded parties of their obligations with regard to short selling under the Corporations Act, including the prohibition on naked short selling, emphasising that it has “no tolerance for breaches of these provisions, especially in the current environment”. See [ASIC Market Integrity Market Integrity Update — Issue 114 — April 2020](#) and our guidance note on [Advertising, cooling off periods and miscellaneous matters](#).
- ASIC has issued guidance warning directors (as well as company officers and key management personnel) of listed companies and managed investment schemes to be mindful of the legal restrictions on their ability to trade in their entity’s securities or financial products, and of the reputational impact of doing so in circumstances of perceived informational asymmetry between insiders and other investors during COVID-19, and to consider their entity’s trading policies, insider trading provisions, directors’ duties and notification requirements under the Act and the ASX Listing Rules prior to buying and selling their own entity’s securities in the current volatile trading environment caused by COVID-19. See [ASIC reminds directors of listed entities of their trading obligations during COVID-19](#).

**Other Resources**

[ASIC's COVID-19 Market updates](#) 

[ASIC's COVID-19 Information page](#) 

[Weekly tracker: New and updated ASIC regulatory publications since 1 March 2020](#) 

[Australian Institute of Company Directors' COVID-19 Resource Hub](#) 

[Australian Financial Security Authority](#) 

[Australian Charities and Not-for-profits Commission](#) 

[Australian Accounting Standards Board COVID-19 Guidance](#) 

[ATO COVID-19 support page](#) 

[Australian Government COVID-19 information and support for business](#)  and section on [Support for companies](#) 

[Institute of Community Directors Australia COVID Information page](#) 