


[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 the [LexisNexis Information Hub COVID-19](#) .


Please note that this toolkit refers to the status of the law as at 6 August 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

This toolkit covers the following (click to go to the section):

- Annual General Meetings (AGMs) and other company meetings;
- ASIC fees;
- Business continuity plans and staff monitoring and supervision;
- Capital raising;
- Charities and not-for-profit entities;
- Continuous disclosure;
- Cybersecurity;
- Directors;
- Financial reporting;
- Financial services;
- Foreign investment in Australia;
- Insolvency;
- Modern Slavery;
- Potential amendments to Corporations Act;
- Regulator activities and priorities;
- Signing and witnessing documents;
- Trading and market volatility; and
- Other 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). The Determination allows companies and other entities that are required

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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](#). On 31 July 2020 the Treasurer announced that the measures in the Determination would be extended for another 6 months, to expire on 21 March 2021. See [COVID-19 relief measures relating to virtual company meetings and e-signatures to be extended until 21 March 2021](#). The extension will be enacted in a new Determination that has yet to be made.

- 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 \(AGMs\)](#), and our Latest Legal Update, [ASIC further extends financial reporting and amends “no action” position for AGMs](#).
- The [Australian Shareholders’ Association](#) (ASA) has issued a [Guide to online meetings](#) to help shareholders “make the best of virtual meetings” during the AGM season.

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

- On 31 March 2020, ASX issued 2 class waivers under ASX Listing Rule 18.1 to give the relief in relation to trading halts, placement capacity and non-renounceable entitlement offers. ASIC expressed support for this relief. On 22 April 2020, ASX clarified and improved the operation of the capital raising measures and imposed enhanced disclosure requirements on entities who take advantage of the relief. The relief under the class waivers was due to expire on 31 July 2020. However, on 9 July 2020, ASX extended it to 20 November 2020 by issuing 2 new class waivers to replace those previously issued. See [ASX extends temporary emergency capital raising relief to 30 November 2020](#).
- 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](#). This temporary relief will come to an end on 2 October 2020. See [ASIC specifies end date for financial advice and capital raisings COVID-19 instruments](#).

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.
- The Federal Treasurer has exercised the temporary instrument-making power granted in the [Coronavirus Economic Response Package Omnibus Act 2020](#) (Cth) to issue [Corporations \(Coronavirus Economic Response\) Determination \(No. 2\) 2020](#). The Determination temporarily amends the continuous disclosure requirements and civil penalties contained in [ss 674](#) and [675](#) of the Corporations Act 2001 (Cth) (Corporations Act) and the attendant materiality test in [s 677](#). The existing objective test of whether a reasonable person would expect particular information to have a material impact on the price or value of ED securities if generally available has been replaced with a subjective test of whether the entity knows or is reckless or negligent as to whether information would have a material impact on the price or value of securities. The Determination will operate for 6 months and expires on 26 November 2020. For more details see [Federal Treasurer temporarily amends Corporations Act's continuous disclosure requirements and penalties to address COVID-19 uncertainty](#).

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](#).
- ASIC has reminded AFS licensees to be more alert to the possibility of share sale fraud and account hacking throughout the COVID-19 pandemic and encouraged them to refer to the previously published Information Sheet [Protecting against share sale fraud \(INFO 237\)](#) and review their due diligence, verification and payment processes. See [ASIC Market Integrity Market Integrity Update — Issue 117 — July 2020](#).

Directors



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- The 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 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.
- ASIC has released [Information sheet 245: Board oversight of executive variable pay decisions during the COVID-19 pandemic](#) (INFO 245) which sets out high-level practical guidance to support board oversight and the exercise of discretion on the variable pay outcomes of large listed companies' most senior executives. The guidance is informed by ASIC's review of remuneration governance practices across 21 ASX 100 companies.




Financial reporting

- 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 (see [ASIC further extends financial reporting and amends "no action" position for AGMs](#)). 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.
- ASIC has released [FAQs on COVID-19 implications for financial reporting and audit](#).
- The Australian Accounting Standards Board (AASB) and Australian Auditing and Assurance Standards Board (AUASB) have released [joint guidance](#) for directors and management on their duties and responsibilities in relation assessing solvency and going concern, and to assist auditors by providing an overview of an auditor's obligations in relation to going concern and directors' declarations of solvency.
- ASX initially [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). On 3 June 2020, ASX issued a [class waiver decision](#) which sought to harmonise the ASX Listing Rules with [ASIC's reporting relief](#). ASX issued an [amended class waiver decision](#) on 16 June 2020 to further extend deadlines for ASX-listed entities to comply with their lodgement obligations under the ASX Listing Rules.
- ASX has issued a [class waiver](#) to ensure that NZX dual-listed entities can take advantage of financial reporting extensions [announced](#) in New Zealand.
- ASIC has approved electronic lodgment and signing of documents for the purposes of financial reporting relief under [ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785](#): see [ASIC Corporations \(COVID-19 Email Lodgment Service — ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785\) Instrument 2020/612](#) and [ASIC Email Lodgement Service: User Agreement for ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785](#). This relief expires on 5 November 2020 when [Corporations \(Coronavirus Economic Response\) Determination \(No 1\) 2020](#) is repealed.

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- ASIC has reminded directors, auditors and preparers of financial reports for entities adversely affected by COVID-19 to focus on certain issues for the purposes of financial reporting. See [ASIC has released new guidance on focus areas for financial reporting in the COVID-19 environment](#) .
- The Australian Institute of Company Directors (AICD), Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia have joined together to publish guidance on the disclosure and reporting of COVID-19 impacts on entities. See [Impacts of COVID-19 on annual report disclosures: a guide for directors and preparers](#) .


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](#). This temporary relief will end on 15 October 2020: see [ASIC specifies end date for financial advice and capital raisings COVID-19 instruments](#).
- 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’s guidance has now been updated: see [APRA updates capital management guidance for ADIs and insurers](#).
- 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 also published an [FAQ on the operation of managed investment schemes during COVID-19](#) .
- 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](#).
- The start date of mortgage broker reforms and design and distribution obligations have been deferred due to the COVID-19 pandemic. See [ASIC defers mortgage broker reforms and design and distribution obligations due to COVID-19](#) and ASIC’s legislative instruments [Corporations \(Deferral of Design and Distribution Obligations\) Instrument](#)  and [Credit \(Deferral of Mortgage Broker Obligations\) Instrument](#) .
- The Australian Banking Association has made temporary changes to Banking Code of Practice provisions relating to timelines for customer communication and small business lending obligations in response to the COVID-19 pandemic. See [Temporary changes made to Banking Code of Practice](#).
- Financial planners and financial advisers whose CPD year includes 18 March 2020 have 3 extra months in which to meet their CPD requirements. See [Financial planners and financial advisers get 3-month extension for CPD requirements due to COVID-19](#).

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 (FIRB). 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](#).

- FIRB has released updated guidance ([Guidance Note 53](#) ) on streamlined exemption certificates. In addition to applying for standard exemption certificates, investors can now apply for three new types of streamlined exemption certificates. These streamlined exemption certificates will be available to investors during the period the temporary changes to Australia's foreign investment review framework are in place (ie, 1 January 2021).

Insolvency

- 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 adverse impact of COVID-19 on 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


- In April 2020 ASIC adjusted its regulatory activities due to COVID-19. See [ASIC announces changes to regulatory activities due to COVID-19](#) and subsequently issued an interim corporate plan for 2020-2021 outlining its priorities in the context of COVID-19. See [ASIC releases interim corporate plan for 2020-2021 setting out strategic priorities during COVID-19 and aftermath](#). ASIC further reviewed its regulatory work priorities in June 2020 and has [published updated details on its website](#) .
- 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](#).

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- 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 and State emergency legislation now facilitates or implements temporary amendments to legal requirements regarding the signing and witnessing of documents in response to challenges imposed by the COVID-19 pandemic. See [Emergency legislation, signing under section 127 and remote witnessing during COVID-19 pandemic](#). The legislation includes:

Jurisdiction	Emergency legislation	Expiry date
Commonwealth	Coronavirus Economic Response Package Omnibus Act 2020 (Cth) — gives the Treasurer temporary powers by legislative instrument to amend provisions of the Corporations Act 2001 (Cth) (Act).	24 Sep 2020
	Corporations (Coronavirus Economic Response) Determination (No 1) 2020  — allows companies to sign electronically a document under s 127 of the Corporations Act.	5 Nov 2020 (however, Treasurer has announced these measures will be extended until 21 March 2021 via a new Determination that has yet to be made)
	Coronavirus Economic Response Package Omnibus (Measures No 2) Act 2020 (Cth) — gives Ministers temporary powers to amend or disapply provisions of any Commonwealth Act or legislative instrument that relates to the signing, witnessing and attesting of documents, certification of matters by witnesses and verification of identity.	31 Dec 2020
NSW	COVID-19 Legislation Amendment (Emergency Measures) Act 2020 (NSW): <ul style="list-style-type: none"> Allows for regulations to be made under certain NSW Acts to amend requirements for signing, witnessing and attesting of documents (valid for up to 6 months). Introduces a regulation-making power under the Electronic Transactions Act 2000 (NSW) to allow altered arrangements regarding signing, witnessing and attesting of certain NSW-law governed documents, certification of matters by witnesses and verification of identity (valid for up to 6 months). See Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020 (NSW) which addresses remote witnessing. 	22 Oct 2020
VIC	COVID 19 Omnibus (Emergency Measures) Act 2020 (Vic) <ul style="list-style-type: none"> Gives Ministers temporary regulation-making powers to amend or disapply legislation relating to various matters, including witnessing, execution or signing of legal documents and certification of documents. See COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020 (Vic) which addresses electronic signing and remote witnessing. Temporarily amends the Oaths and Affirmations Act 2018 (Vic) to allow for affidavits to be witnessed by audio visual link and 	24 Oct 2020


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	signed and initialed electronically.	
QLD	COVID-19 Emergency Response Act 2020 (Qld) — gives Ministers broad regulation-making powers to amend or suspend any legislation or common law relating to documents, including in relation to the signing, witnessing and attesting of documents, certification of matters, verification of identity and the filing, lodgment, giving or service of a notice or other document. See Justice Legislation (COVID-19 Emergency Response — Documents and Oaths) Regulation 2020 (Qld) which addresses electronic signing and remote witnessing.	31 Dec 2020
SA	COVID-19 Emergency Response Act 2020 (SA): <ul style="list-style-type: none"> gives Ministers regulation-making powers to amend or suspend any requirements under an act or law relating to the preparation, signing, witnessing, attestation, certification, stamping or other treatment of any document. See COVID-19 Emergency Response (Section 16) Regulations 2020 (SA) which broadens the categories of persons who may take statutory declarations. permits certain meetings to be held remotely by audiovisual link, but this does not apply to the witnessing of a document being signed. 	9 Oct 2020
TAS	COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Tas) (TAS Emergency Act) — gives the Minister power to issue a notice to enable any action required under a legislative instrument to be taken physically or evidenced in a non-electronic document to be taken or evidenced by the electronic means as specified in the notice. On 3 April 2020 the Premier issued a notice under the TAS Emergency Act to allow for signatures to be taken and documents to be evidenced by electronic means under certain provisions of the Local Government Act 1993 (Tas) and related regulations.	“Emergency cessation day” as declared under s 27 of the TAS Emergency Act
ACT	COVID-19 Emergency Response Act 2020 (ACT) — permits an individual to witness the signing of a document remotely via audiovisual link provided that certain conditions are satisfied.	3 months after end of “COVID-19 emergency”

Trading and market volatility

- ASIC previously 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](#). ASIC has now withdrawn those directions and set out its expectations for the maintenance of equity market resilience. See [ASIC outlines expectations for maintaining equity market resilience; revokes direction to limit trades](#).
- 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](#) .

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- 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](#) 

[ASIC revised timetable for key regulatory work deferred due to COVID-19](#) 

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

[Australian Financial Security Authority](#) 

[Australian Charities and Not-for-profits Commission — Charity Operations and COVID-19](#) 

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

[ACCC COVID-19 information for business](#) 

[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](#) 