

Bird & Bird & Australian COVID-19 Legal Tracker



Updated 10 July 2020

Foreword

COVID-19 has prompted an unprecedented response from Australian politicians, legislators, and government officials. We understand how hard it can be to keep track of all relevant COVID-19 legal changes that may impact you and your business.

Legislative orders, ministerial directions, and governmental decisions that have legal force are being made each day in the hope they may help individuals and businesses get through this pandemic.

This document is intended to provide a bite-sized summary of some of the key changes to Australian laws that have been made in response to COVID-19.

We hope you find this document a useful resource. Please do let us know if you have any queries. We are here to support you, and we're in this together with you.



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An interactive picture of COVID-19 laws

Please **select your chosen area of interest** below to learn more about measures being adopted in Australia.



Leasing

25 April 2020– Leasing Measures Update

- The Australian Government announced a Mandatory Code of Conduct aimed at assisting small and medium sized commercial tenancies whose businesses have been impacted by the COVID-19 pandemic.
- This Code has now been implemented in New South Wales and will soon be implemented across all the other states and territories in Australia.
- We have prepared a high level summary of the Code including how it will apply in practice. Read more in our article [here](#).

7 April 2020 - Code of Conduct for Commercial Tenancies

- The Federal Government has issued a Mandatory Code of Conduct for commercial tenancies. It will apply where the tenant has an annual turnover of up to \$50 million and is eligible for the federal government's JobKeeper programme.
- The Code impacts both landlords and tenants by imposing a set of good faith leasing principles during COVID-19. This includes landlords being unable to terminate leases for non-payment of rent during COVID-19, and a framework for agreeing reductions in rent.
- The Code can be found [here](#).

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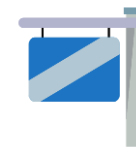
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Government assistance packages

9 April 2020 – Federal government to subsidise employee wages under JobKeeper scheme

- Eligible employers will be able to receive the JobKeeper payment, which is a payment of \$1,500 per fortnight. The payment is intended to help employers maintain the employment of their employees during COVID-19.
- To be eligible, employers with a turnover of less than \$1 billion must estimate a reduction in turnover of at least 30%, while businesses with a turnover of \$1 billion or more must estimate a reduction of at least 50%.
- Further details can be found [here](#).
- For any queries please contact [Kristy Peacock-Smith](#).

3 April 2020 – New South Wales government to offer small business grants

- Eligible small businesses affected by COVID-19 will be able to apply for a \$10,000 grant from the New South Wales government to use for unavoidable business costs such as utilities and overheads.
- In addition to other criteria, businesses must have between 1 to 19 employees, and a turnover of more than \$75,000.
- Further details can be found in the NSW news release [here](#).
- For any queries please contact [Hamish Fraser](#).

23 & 27 March 2020 – NSW stimulus packages announced with changes to payroll tax and fee waivers for businesses

- The New South Wales government has announced stimulus package which include temporary changes in relation to payroll tax, and fee waivers for certain businesses affected by the COVID-19 pandemic
- All businesses paying payroll tax can defer their payments until October 2020, while businesses with grouped Australian wage for FY2020 of \$10 million or less have their tax liability reduced by 25%.
- Eligible businesses in industries such as the entertainment and hospitality sectors, and the building and motor vehicle repair industries will have certain fees administered by Liquor and Gaming NSW, SafeWork NSW and NSW Fair Trading waived. The relief period is for 12 months.
- Further details can be found [here](#) as well as in the New South Wales Treasury [release](#).
- For any queries please contact [Hamish Fraser](#), [Lynne Lewis](#) or [Megan Edwards](#).

25 March 2020 – Apprentices and trainees wage subsidy

- Eligible employers can apply for a 50% wage subsidy from the federal government for the cost of apprentices & trainees paid between 1 January 2020 and 30 September 2020, up to a maximum of \$21,000 per apprentice or trainee.
- This wage subsidy is intended to help maintain the employment of apprentices and trainees during COVID-19.
- Further details can be found [here](#).
- For any queries please contact [Kristy Peacock-Smith](#).

25 March 2020 – Accelerated depreciation deductions

- The federal government is temporarily permitting businesses with a turnover of less than \$500 million to claim a tax deduction for 50% of the cost of eligible assets on installation, with the balance of the cost able to be depreciated as normal.
- This will help businesses who are encountering cash flow issues but still need to make business investments.
- Further details can be found [here](#).
- For any queries please contact [Hamish Fraser](#).

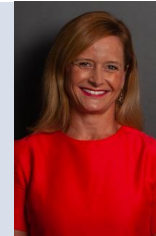
24 March 2020 – Federal government to provide cash flow support for small and medium sized businesses

- The federal government is providing up to \$100,000 to eligible small and medium sized businesses and not for profits, intended to help with cash flow issues arising from COVID-19.
- The funding will be provided through credits provided through the federal tax system.
- Further details can be found [here](#).
- For any queries please contact [Hamish Fraser](#).

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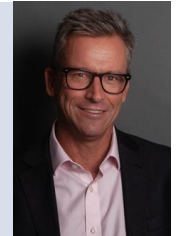
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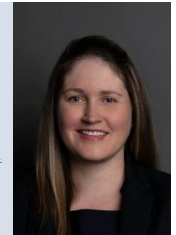
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Employment

18 May 2020 – Federal Court decision on personal/carer's leave

- The Federal Court of Australia has confirmed that employers are not obligated to provide paid personal/carer's leave to employees who have been stood down.
- In reaching this decision the court reiterated that the purpose of personal/carer's leave is to provide a form of income protection for employees who are absent due to illness or carers' responsibilities; where there is no work available to be performed, there is no income to be protected.
- It is important to note however that the decision does not prohibit employers from electing to providing employees with access to paid personal/carer's leave.
- See *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia & Ors v Qantas Airways Limited [2020] FCA 656* (18 May 2020)
- For any queries please contact [Kristy Peacock-Smith](#).



12 May 2020 - The Australian Government introduced the Privacy Amendment (Public Health and Contact Information) Bill 2020

- The Australian Government has recently introduced the Privacy Amendment (Public Health and Contact Information) Bill 2020, which prohibits the requirement for individuals to download and use the COVIDSafe app in many commercial relationships such as landlord/tenant or an employment relationship.
- Under the Bill, employers will commit an offence if they:
 - refuse to allow employees to attend work premises;
 - take adverse action against the employee; or
 - refuse to enter into, or continue the employment relationship, because an employee has refused to download the COVIDSafe app, does not have the app in operation, or does not consent to the uploading of COVID app data to the National COVIDSafe Data Store.
- Penalties for breaching the Bill include imprisonment for 5 years, a fine of \$63,000 or both.
- A copy of the Bill can be found [here](#).

11 May 2020 - The National COVID-19 Coordination Commission (NCCC) released a COVIDsafe checklist for businesses

- The National COVID-19 Coordination Commission (NCCC) has released a COVIDsafe checklist for businesses to assist in developing a plan to keep their workplace safe whilst adapting to the easing of government restrictions.
- The checklist sets out information relating to planning, preventing and responding to COVID-19 outbreaks, business planning and available government support measures.
- The NCCC checklist can be found [here](#).

11 May 2020 - In line with the government's plan for the return to work, a number of significant changes have been made to the Safe Work Australia

- In line with the government's plan for the return to work, a number of significant changes have been made to the Safe Work Australia website to provide comprehensive industry-specific information for managing COVID-19 in the workplace. The aim of the changes are to provide employers with a complete toolkit for managing the return to a COVID safe workplace. The Safe Work Australia website can be accessed [here](#).

11 May 2020 – JobKeeper scheme first round payments set to be made this week

- In an address to the National Press Club, Australia's Treasurer announced that more than 725,000 businesses, with more than 4.7 million employees have formally registered for the government's JobKeeper scheme, with first round payments set to be made this week.

29 April 2020 - Fair Work Commission publishes JobKeeper disputes Benchbook

- The Fair Work Commission reports it has already received 120 dispute applications under the Fair Work Act over JobKeeper and has published a 'JobKeeper disputes' Benchbook to assist those who are lodging or responding to JobKeeper dispute applications.
- A copy of the Benchbook can be found [here](#).

29 April 2020 - Extension of time to claim JobKeeper payments

- The Australian Taxation Office has extended the time available for employers to pay their employees, in order to claim back the first JobKeeper payments. Employers now have until 8 May 2020 to ensure all eligible employees have received a minimum of \$3,000 in gross wages for the first two JobKeeper fortnights (30 March – 12 April and 13 April -26 April).
- Employers who wish to claim the initial JobKeeper payments must be enrolled by 31 May 2020.



29 April 2020 - National COVID-19 Safe Workplace Principles published

- The Australian Government has published 10 National COVID-19 Safe Workplace Principles. In accordance with the Principles, Safe Work Australia is developing nationally-consistent and industry-specific work health and safety guidance for employers in dealing with COVID-19.
- The 10 Principles can be found [here](#).



28 April 2020- Extended deadlines for submitting modern slavery statements

The Australian Government has announced a 3-month extension to the deadlines for reporting entities to lodge their modern slavery statements under the *Modern Slavery Act 2018* (Cth) (**Act**).

The relevant new deadlines are set out in the below table:

Reporting period	Original deadline for submission of modern slavery statement	New, extended deadline for submission of modern slavery statement
1 April 2019 – 31 March 2020 (Foreign financial year)	30 September 2020	31 December 2020
1 July 2019 – 30 June 2020 (Australian financial year)	31 December 2020	31 March 2021
Reporting periods ending after 30 June 2020	The 6 month deadline for reporting periods after 30 June 2020 remains unchanged.	

In addition to extending the deadline for the submission of modern slavery statements, the Australian Border Force (**ABF**) has published guidance for reporting entities on reducing the risk of vulnerable workers in their operations and supply chains becoming exposed to modern slavery as a result of the COVID-19 pandemic.

A copy of the ABF Information sheet can be found [here](#).

16 April 2020 – Confirmation that employees are entitled to public holiday payment while stood down

- The Fair Work Ombudsman has confirmed that during a stand down (furlough), permanent employees whose ordinary hours would include a gazetted public holiday are entitled to be paid (at their base rate of pay) for that public holiday, despite the stand down.
- This is on the basis that an employee is not deemed to be stood down where the employee is otherwise entitled to be absent from work because of a public holiday.
- This will provide clarity to both employers who have effected a stand down as well as employees who have been stood down.
- More information can be found [here](#).

9 April 2020 – Flexibility provisions introduced to Modern Awards

- The Full Bench of the Fair Work Commission made a coronavirus-driven change to 99 Modern Awards to temporarily give an estimated 4.4 million workers access to two weeks unpaid "pandemic leave" and also enable them to take annual leave at half pay.
- The new provisions will apply until June 30.
- The decision of the Full Bench can be found [here](#) and will affect many employers in Australia.

9 April 2020 – Amendments to the Fair Work Act passed permitting "JobKeeper-enabling stand downs"

- Eligible employers will be able to make what will become known for the next six months as "JobKeeper-enabling stand downs" that will be reviewable by the Fair Work Commission.
- "JobKeeper enabling stand downs" allow eligible employers to:
 - direct employees to reduce their days/hours of work or not to attend work at all
 - grant such employees permission to undertake secondary jobs;
 - alter employees' usual duties, location of work and change the days employees work; and
 - direct employees to take a period of annual leave.
- Civil penalties will apply for employers that breach JobKeeper requirements, such as by failing to pass on the full \$1,500 fortnightly payment to employees.
- Employers may wish to consider implementing a "JobKeeper-enabling stand down" as an alternative to making positions redundant.
- More information can be found [here](#).



28 March 2020 – FWC grants temporary variation to the *Clerks – Private Sector Award*

- The Fair Work Commission granted a temporary variation to the *Clerks – Private Sector Award* providing more flexibility for working from home arrangements, the taking of annual leave and the reduction in working hours.
- The new flexibility schedule, which operates until 30 June 2020 (unless extended by the Commission), is aimed at preserving the ongoing viability of businesses and preserving jobs. Key changes to the Award include:
 - employers may direct employees to perform other duties;
 - employers may reduce employee hours by up to 25% per week (by agreement);
 - employers can direct employees to take annual leave on 1 weeks' notice (as opposed to the previous notice requirement of 4 weeks);
 - employees can take annual leave at half pay; and
 - amending the spread of hours for employees working from home.
- The Fair Work Commission decision can be found [here](#).



24 March 2020 – NSW amends Long Service Leave Act

- The NSW State Parliament has passed *Treasury Legislation Amendment (COVID-19) Act 2020 No 2*, temporarily amending the *Long Service Leave Act 1955* (NSW) during the COVID-19 pandemic.
- Key amendments include:
 - waiving the one-month notice period for employees taking leave (by mutual agreement between the employer and employee); and
 - providing greater flexibility for employees to take long service leave in shorter blocks if they wish.
- The amending Act can be viewed [here](#).

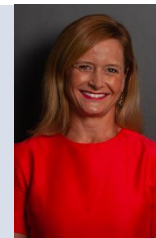
24 March 2020 – FWC granted flexibility in *Hospitality Industry (General) Award*

- The Fair Work Commission granted temporary flexibility measures in the *Hospitality Industry (General) Award*.
- These measures allow impacted employers to reduce their full-time and part-time employees' hours by up to 40% per week, direct employees to take annual leave upon 24 hours' notice (as opposed to the previous 4 weeks' notice), and direct employees to perform duties regardless of their classification.
- The determination of the Fair Work Commission can be found [here](#).

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Small business

2 April 2020 - ACCC guidance for small business affected by COVID-19

- The ACCC has released guidance on the rights and obligations of small businesses in response to events caused by the COVID-19 pandemic.
- The guidance can be found [here](#) and is relevant to all businesses whose interactions with customers and suppliers have been impacted by COVID-19. Particular issues addressed at the time of writing include cancellation of functions and events, supply and pricing issues, and country of origin labelling.
- The ACCC's media release can be viewed [here](#).

23 March 2020 – Liquor & Gaming NSW issue statement of regulatory intent

- The NSW Government issued a Statement of Regulatory Intent which sets out the regulatory approach it will take in relation to home delivery and take-away sales of liquor in the context of COVID-19 and application of the *Liquor Act 2007* (NSW).
- The Statement of Regulatory Intent notes that "a flexible approach" will be taken where licensed venues wish to provide home delivery or takeaway services, even where those liquor licences do not authorise the sale of alcohol for consumption away from the premises.
- The Statement of Regulatory Intent can be found [here](#).

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Restrictions on gathering and movement

10 July 2020 – National Cabinet Meeting, new Victorian measures

- The National Cabinet convened on 10 July 2020 for its 23rd meeting since the onset of the COVID-19 pandemic, after 288 new cases were reported in Victoria over the past 24 hours.
- The Victorian Government is recommending that people who live in the Melbourne or the Mitchell Shire wear a cloth face mask whenever they leave their house for one of the four essential reasons, in circumstances where physical distancing is difficult, such as supermarkets, public transport and taxis or ride share services.
- As of 8 July 2020, residents of Melbourne and Mitchell Shire are only permitted to leave their home for the following reasons:
 - shopping for food and essential items;
 - work and study that cannot be performed at home;
 - daily exercise; and
 - to seek medical treatment or provide care.



The Chief Health Officer has advised that wearing of a cloth face mask provides an additional physical barrier to COVID-19; but has clarified that recommendation to wear a cloth mask does not apply to children under the age of 18, individuals with breathing difficulties and those who have physical conditions that make it difficult to wear a mask. The National Cabinet has announced it will reduce the capacity for international arrivals through airports by over 50% to 4,000 per week, effective from Monday 13 July 2020, to allow more resources to be directed to domestic tracing and testing.

7 July 2020 - Victoria Government restrictions on movement and gatherings

- Stage 3 restrictions will recommence at 11.59pm, Wednesday 8 July 2020 for all residents who live in Metropolitan Melbourne or the Mitchell Shire. For a period of six weeks, residents in these areas are only permitted to leave their home for the following reasons:
 - shopping for food and essential items;
 - work and study that cannot be performed at home;
 - daily exercise; and
 - medical treatment and care giving.
- Businesses in these areas will also return to stage 3 restrictions; restaurants and cafes must return to takeaway and delivery services only, beauty and personal services, entertainment and cultural venues will be closed and community sport will cease.

7 July 2020 - Australian Capital Territory restrictions on movement and gatherings

- The ACT Government has imposed travel restrictions between Victoria and the ACT effective from 12.01am Wednesday 8 July 2020.
- All non-residents travelling from Victoria will be denied entry unless an exemption has been granted.
- ACT residents returning home from Victoria will be required to:
 - notify ACT Health of their intent to return to the ACT;
 - provide details of how they intend to travel; and
 - provide details of where they intend to quarantine for the 14-day period.
- For any queries please contact [Kristy Peacock-Smith](#) or [Tanem Taskin](#).

31 March 2020, amended 4 April 2020, 1 May 2020, 9 May 2020 and 15 May 2020, 1 June 2020 and 1 July 2020 - New South Wales Government restrictions on movement and gatherings

- Gatherings of more than twenty people in a public place are prohibited except in certain circumstances including at those venues specified in the Public Health Order or for "essential gatherings". Up to twenty visitors may visit another household (although those restrictions do not apply to a wedding, funeral or memorial service held at a residential residence).
- Following the changes to the Public Health Order on 1 July 2020, nightclubs are the only venues still required to be closed. Venues do, however, have limitations on the numbers of people, and/or restrictions or conditions on operations as per the Public Health Order
- The restrictions on the hospitality industry include that the total number of persons allows 4 square metres of space for each person on the premises. People working on the premises, and those attending to order or collect food to consume off premises, are not included in those calculations. Further, the venue must have, and comply with, a COVID-19 safety plan that addresses the

matters required by the guidelines published by the Chief Health Officer. Relevantly for the hospitality industry, there are COVID-19 Safety Plans published [here](#), including for pubs, clubs, small bars, breweries and casinos found [here](#), restaurants and cafes found [here](#), hotels and accommodation found [here](#), and food processing found [here](#). The safety plan must be kept on the premises, and made available for inspection by an authorised officer as requested.

- There has been an easing of the restrictions of attendees at certain events, with weddings being able to have up to 20 guests unless the size of the premises is sufficient to ensure there is at least 4 square metres of space for each person, in which case more can attend. Funerals and memorial services held in places of worship, funeral homes or crematoriums can have up to 50 mourners if the size of the premises is insufficient to ensure that there is at least 4 square metres of space for each person, in which case more can attend.
- It provides that an employer must allow an employee to work at the person's place of residence if it is reasonably practicable to do so.
- It allows NSW government agencies to exchange personal or health information with other government sector agencies if necessary for the purposes of protecting the health or welfare of members of the public during COVID-19.
- The Public Health Order can be found [here](#)
- Each other state and territory is enforcing their own restrictions on gathering and movement.
- This order is likely to be amended as restrictions are relaxed – watch this space!
- For any queries please contact [Lynne Lewis](#) or [Megan Edwards](#).

1 July, 2020 - New South Wales Government restrictions on movement and gatherings - Major Recreation Facilities

- There has been an easing of restrictions at major recreation facilities, such as sports stadiums, showgrounds and racecourses, which can now have up to 10,000 people or 25% of the venue's capacity (whichever is the lower figure of the two) in attendance, provided that each person is assigned to a seating area and has a ticket to enter the venue. This rule does not apply, however, to venues which are limited to a maximum number of 500 persons and have an area large enough to accommodate at least 4 square metres of space per person. Venue operators are still required to have in place, and comply with, a COVID-safety plan which sets out the actions that they will take in relation to a range of matters, such as physical distancing, hygiene and cleaning and record keeping, in order to keep customers and workers safe at those venues.
- For any queries please contact [Rich Hawkins](#) or [Tom Macken](#).



25 April 2020 – Federal Government launches COVIDSafe app

- The Federal Government has launched COVIDSafe, an app designed to enable digital contact-tracing. The app uses a mobile devices' Bluetooth signal to detect when users are within 1.5 metres of each other for longer than 15 minutes with the aim of making contact tracing faster and more effective.
- COVIDSafe is governed by the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Public Health Contact Information) Determination 2020*, which can be found [here](#).
- The Determination stipulates how the data collected by the app will be handled, including the circumstances in which it may be used or disclosed.
- For any queries please contact [Hamish Fraser](#).



29 March 2020 - Mandatory 14 day quarantine in hotels/motels for returning travellers

- The Australian Government announced that all travellers arriving in Australia will now be required to be quarantined in designated facilities (for example, a hotel) in the city of arrival for the mandatory 14- day isolation period.
- Travellers will be transported directly to the designated facilities after appropriate immigration, customs and health checks.
- The mandatory quarantine has been legislated through the relevant health orders of States and Territories.

25 March 2020 – NSW Public Health Order requires immediate self-isolation following COVID-19 diagnosis

- *Public Health (COVID-19 Self-Isolation) Order 2020* made under the *Public Health Act 2010* (NSW) entered force.
- This requires that any person diagnosed with COVID-19 must immediately self-isolate at home or in hospital as directed by a medical practitioner and remain isolated until cleared by a medical practitioner.
- The Order can be found [here](#).
- For any queries please contact [Lynne Lewis](#) or [Megan Edwards](#).

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Data Protection

6 May 2020 – OAIC statement on COVID-19 and the duty to document

- The regulator has issued a reminder of the following during the COVID-19 period.
- The basis of decisions, the decisions themselves and the senior decision-makers involved should be thoroughly documented, particularly as records may be at risk due to new ways of working which are being rapidly adopted without the usual processes and infrastructure.
- Records and data should be secured and preserved in all sectors. In particular, commercial entities will need essential records to be maintained for the continuity of operations, to evidence rights and entitlements, but also to be able to apply for government subsidies.
- The security, preservation and access to digital content should be facilitated during the shutdown. In particular, archives should be recognised and resourced as the custodians of the raw data that underpins composite data or reported information. The duty to document this information does not cease in a crisis, it becomes more essential than ever.
- The OAIC's statement can be found [here](#).

25 and 26 April 2020 - the Australian government released COVIDSafe App Privacy Impact Assessment, and on 26 April it released the COVIDSafe contact tracing App, a public health initiative to help combat the spread of COVID-19.

- The OAIC will have independent oversight of personal information handling by the App and the National COVIDSafe Data Store.
- The OAIC can also audit the system and investigate complaints from the public about privacy issues.
- The Minister for Health has made a Determination under the Biosecurity Act 2015 to protect data collected by the App for an interim period until legislation can be enacted. The OAIC will closely review the legislation that is intended to be introduced and monitor the implementation of the Privacy Impact Assessment recommendations.
- The OAIC's guidance can be found [here](#).



6 April 2020 – Office of the Australian Information Commissioner (OAIC) issues guidance in relation to assessing the privacy impacts of a remote working arrangement

- With many businesses implementing working from home arrangements due to COVID-19, the OAIC has issued timely guidance on assessing the privacy impacts of working remotely.
- In particular, the OAIC recommends using a privacy impact assessment (PIA) to assess whether changes to working arrangements will impact the handling of personal information, assess any potential privacy risks (including those of a data breach), and put in place appropriate mitigation strategies.
- The OAIC's guidance can be found [here](#).

6 April 2020 – NSW Information and Privacy Commissioner (IPC) issues update in relation to privacy complaint statutory timeframes

- The IPC has advised that it will engage with complainants and agencies in relation to any additional time required by those complainants and agencies to meet statutory timeframes in relation to privacy complaints.
- The IPC's statement can be found [here](#).

27 March 2020 – OAIC convenes National COVID-19 Privacy Team

- The OAIC advises that it and the states and territories have convened a National COVID-19 Privacy Team to respond to proposals with national implications.
- The OAIC's statement can be found [here](#).

18 March 2020 – OAIC provides guidance on critical information sharing

- The Commonwealth privacy regulator, the Office of the Australian Information Commissioner (OAIC), advises that the Privacy Act will not stop critical information sharing.
- Nonetheless, Commonwealth government agencies and private sector employers should limit the collection, use and disclosure of personal information to what is necessary ("need to know") to prevent and manage COVID-19, and take reasonable steps to keep personal information secure.
- In addition, even if the employee records exemption for private sector employers applies, organisations should consider taking steps to notify staff how their personal information will be handled in responding to any potential or confirmed case of COVID-19 in the workplace.
- The OAIC's guidance can be found [here](#).

18 March 2020 – OAIC recommendations relating to Commonwealth government agencies meeting their statutory FOI timeframes

- The OAIC has recommended a range of measures to assist Commonwealth government agencies in meeting their statutory FOI timeframes, advising that applications for extensions of time will be assessed on a case by case basis.
- The OAIC's recommendations can be found [here](#).

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Competition and Consumer law

10 June 2020 – The Australian Competition and Consumer Commission (ACCC) released a draft decision to continue to authorise insurers to offer relief measures for small businesses

- Suncorp Group Limited, Allianz Australia Limited and QBE Insurance Australia Limited are seeking to extend the terms of the authorisation granted by the ACCC on 2 April 2020 to discuss and collectively agree on minimum relief measures in relation to policy renewals for a further six months until 31 December 2020.
- The ACCC granted a further six months exemption based on the terms in the interim authorisation granted on 2 April 2020.
- The draft decision discussed potential public benefits, public detriments and industry feedbacks for the operation of the six months original interim authorisations performance.
- By applying the "future with and future without the conduct" test, the ACCC believes the anticipated public benefits outweigh the expected public detriments.
- The ACCC's decision reflects that the ACCC is being conservative towards the recovery of small businesses after the COVID-19 pandemic. We may expect the ACCC to grant extensions to other interim authorisations for other industries released earlier this year in the coming weeks.
- The ACCC's media release can be found [here](#).
- For any queries please contact [Thomas Jones](#) and [Jeff Tian](#).

8 May 2020 – The Australian Competition and Consumer Commission (ACCC) revoked the interim authorisation for car rental companies due to COVID-19 pandemic.

- The ACCC has revoked the interim authorisation granted on 13 February 2020 lodged by a group of car rental operators on 28 November 2019.
- The rental companies, Avis, Budget, Hertz, Europcar, and Thrifty were involved in the application.
- The application involved the car rental companies to collectively negotiate all terms and conditions (both price and non-price) related to the acquisition of airport space and services from Cairns Airport under licence and lease agreements, including a turnover percentage, car parking fees, rental payment and concessions for 10 years.
- The ACCC believes there is no longer any urgency or need for this interim authorisation under the influence of the COVID-19 pandemic.
- The ACCC's decision reflects the fact that the asymmetry of bargaining power between the airport and car rental companies no longer exists due to the COVID -19 pandemic and the consequent cessation of air traffic and revenue for the airport from landing fees.
- The ACCC's media release can be found [here](#).
- For any queries please contact [Thomas Jones](#).

28 April 2020 – The Australian Competition and Consumer Commission (ACCC) grants temporary exemptions to financial services providers under Consumer Data Right

- A three month exemption has been granted to financial services providers that are required to share product reference data under the Consumer Data Right by 1 July 2020.
- The exemption is until 1 October 2020, and will apply to non-major ADIs.
- The exemption follows acknowledgement by the ACCC of the intense resource requirements that the industry faces as a result of COVID-19.
- The revised draft of the Consumer Data Right Rules can be found [here](#).
- For any queries please contact [Thomas Jones](#).

27 March 2020 – ACCC announces adjustments to its regulatory focus

- The ACCC announced it will adjust its regulatory focus to prioritise issues arising from COVID-19. In particular the ACCC will focus on any behaviour which seeks to exploit the crisis to unduly enhance their commercial position or which may harm consumers.
- ACCC will pay particular attention to instances of unfair or unconscionable conduct on the part of businesses in dealing with consumers during COVID-19
- The ACCC has established a COVID-19 taskforce to communicate directly with businesses and educate them on their responsibilities. Price gouging and affordability issues are areas of particular concern and, although the ACCC does not directly regulate pricing, it will take action where this behaviour amounts to misleading and deceptive or unconscionable conduct.
- The regulatory burden of enforcement activities will be minimised as far as possible and the ACCC encourages businesses to seek authorisations where necessary to support ordinarily prohibited coordination between businesses, where this is in the public interest.

- The ACCC's media release can be found [here](#).
- For any queries please contact [Lynne Lewis](#), [Thomas Jones](#) or [Megan Edwards](#).

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Environmental planning and assessment

2 April 2020 - *Environmental Planning and Assessment (COVID-19 Development - Takeaway Food and Beverages) Order 2020* enters force

- This order permits the use of existing community facilities, cooking school facilities, food and drink premises or function centres to be used to prepare and sell takeaway food and beverages (other than alcohol) without obtaining development approval, provided it otherwise complies with the Order.
- Premises used in this way must have existing kitchen facilities and sufficient space to comply with social distancing requirements.

- Preparation and sale of takeaway food and beverages from mobile food outlets is also permitted at any time without development approval, provided the operator has consent of the owner of the land or relevant public authority, no more than one mobile food outlet is located on a single piece of private land, access to neighbouring land is not obstructed, no damage is caused to public property and sufficient space is provided to allow for social distancing requirements.
- The order can be found [here](#).
- For any queries please contact [Lynne Lewis](#) or [Megan Edwards](#).

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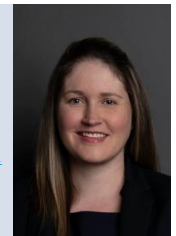
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Insolvency & Bankruptcy

24 March 2020 – The federal government has legislated a temporary 6 month 'safe harbour' for directors, granting them relief from personal liability if trading while insolvent

- The safe harbour applies in respect of debts incurred 'in the ordinary course of business', during the six month period from 24 March 2020 (or any longer period prescribed in the regulations), and before the appointment of an administrator or liquidator during the safe harbour period.
- The safe harbour changes were implemented as a new section 588GAAA to the *Corporations Act 2001* (Cth), and the omnibus law effecting it can be found [here](#).

24 March 2020 – statutory demand threshold and timeframe to pay increased

- The Federal Government has amended the laws relating to statutory demands, temporarily raising the minimum debt in respect of which a statutory demand can be served from \$2,000 to \$20,000, and the period within which a company must pay the amount demanded (or make an application to set aside the demand) has increased from 21 days to six months. These changes will apply for six months.

- The changes were implemented as an amendment to the *Corporations Regulations 2001* (Cth), and the omnibus law effecting it can be found [here](#).
- For any queries please contact [Justine Abel](#).

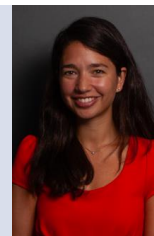
24 March 2020 – Bankruptcy threshold and timeframe to pay increased

- The threshold under the Bankruptcy Act for the minimum amount of debt required for a creditor to initiate bankruptcy proceedings against an individual debtor will temporarily increase from its current level of \$5,000 to \$20,000
- The time a debtor has to respond to a bankruptcy notice will be temporarily increased from 21 days to six months.
- The changes will apply for six months.
- The changes were implemented as amendments to the *Bankruptcy Act 1966* (Cth) and the *Bankruptcy Regulation 1996* (Cth) by the omnibus legislation which can be found [here](#).

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Corporate governance

13 May 2020 – ASIC extension for financial reporting

- ASIC has announced a further extension to financial reporting deadlines for listed and unlisted entities by one month for certain balance dates up to and including 7 July 2020 balance dates. It has amended its 'no action' position for AGMs.
- This supplements the original extension effected by *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395*.
- The ASIC media release can be found [here](#)

5 May 2020: Electronic Execution of Documents by Companies and Virtual Meetings

The Treasurer has introduced temporary measures that modify the operation of the *Corporations Act 2001* ("Act") in relation to online company meetings and the electronic execution of documents by companies.

The *Corporations (Coronavirus Economic Response) Determination (No.1) 2020* ("Determination") was made on 5 May 2020, with a [stated purpose](#) of "providing certainty to companies and boards about how they can meet their legal obligations over the next six months". The changes will apply until 6 November 2020.

Electronic execution of documents under section 127

Section 127 of the Act allows companies to execute documents without the use of a common seal. Section 6 of the Determination modifies the operation of the Act to enable the electronic execution of documents under section 127. This

clarifies the uncertainty relating to section 127 noted in our [previous update](#) on electronic transactions.

Under the Determination, electronic execution of documents under section 127 will be valid where requirements similar to those in the *Electronic Transactions Act 1999* are satisfied. Specifically, the electronic method used must be reliable for the purpose of executing the document, and identify the signatory and indicate their intention to be bound.

Alternatively, the Determination provides that a document may also be validly executed under section 127 where parties sign a physical copy or counterpart of the document.

Whether the document is executed electronically or by counterparts, the Determination requires that the full document be signed (and not merely a copy of the execution page).

The Explanatory Note provides examples of how a document might be validly executed under section 127 in accordance with the Determination:

- pasting a copy of a signature into a document;
- signing a PDF on a tablet, smartphone or laptop using a stylus or finger
- cloud-based signature platforms like DocuSign.



Virtual company meetings

Section 5 of the Determination also clarifies that companies may hold shareholder meetings online, with virtual attendance sufficient for purposes including achieving quorum.

Notice of meetings, including details regarding how an online meeting can be attended, may be provided by email. However, a letter or postcard should still be sent where a company does not have the email address of a person who is entitled to attend the meeting.

Companies intending to convene online meeting should also consider the functionalities of their chosen platform. Attendees must be able to participate in the meeting, and votes taken during the meeting must be taken on a poll in real-time and not by a show of hands. Where practical, votes should be recorded in advance of the meeting.



24 April 2020 – Australian Securities & Investments Commission (ASIC) changes regulatory priorities

- In order to allow entities to focus on areas of immediate concern, ASIC has announced changes to its regulatory work and priorities.
- ASIC is mindful that entities may encounter difficulties in undertaking their regulatory compliance due to the impacts of the pandemic. As such, a number of consultations, regulatory reports and reviews that are not immediately necessary have been delayed.
- ASIC's overview of current areas of focus and details of deferred projects can be found [here](#).

14 April 2020 – ASIC announces extension for financial reporting by unlisted entities

- ASIC has announced that the deadline for unlisted entities to lodge financial reports under Chapters 2M and 7 of the *Corporations Act 2001* (Cth) has been extended by one month.
- This extension has been effected by the *ASIC Corporations (Extended Reporting and Lodgement Deadlines—Unlisted Entities) Instrument* which can be found [here](#).
- The extended deadlines apply where normal reporting deadlines have not already passed.

25 March 2020 - Treasurer given instrument-making power under Corporations Act

- The Treasurer will be given a temporary instrument-making power in the *Corporations Act 2001* (Cth) to temporarily amend provisions of the Act
- Legislative Instruments may be made to provide relief from specific obligations or to modify obligations to enable compliance with legal requirements during the crisis
- The power will apply for six months. Instruments made under the power will apply for six months from the date on which they are made.
- The changes were implemented as an amendment to section 1362A of the *Corporations Act 2001* (Cth), and the omnibus law effecting it can be found [here](#).

24 March 2020 – ASIC enacts "no action" position on deferred annual general meetings

- The ASIC has announced temporary measures in relation to AGMs for public companies with a financial year ending 31 December 2019, by announcing 'no action' positions on a 2 month extension to the date by which AGMs must be held, and on listed companies holding virtual AGMS.
- ASIC's announcement can be found [here](#).

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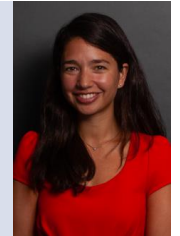
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Foreign investment

29 March 2020 – Threshold for foreign investors to submit FIRB notification reduced to \$0

- The Treasurer has announced temporary changes to the Foreign Investment Review Board (FIRB) regime legislated under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).
- The monetary screening threshold for foreign investments in Australia to be 'significant' or 'notifiable' actions, requiring the investor to submit a FIRB application, is now \$0.
- FIRB review periods have been extended to 6 months to allow FIRB sufficient time to screen applications.
-

The acquisition of securities in particular types of entities will have a lower notification threshold.

- These changes will impact foreign persons looking to make investments into Australia during COVID-19.
- More information from FIRB can be located [here](#).
- Read our more detailed article [here](#).

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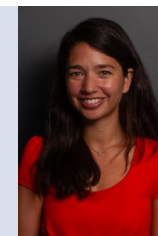
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Electronic transactions

23 April 2020 – NSW regulations enable remote witnessing of documents

- The NSW Government has made the *Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020* under section 17 of the *Electronic Transactions Act 2000* (NSW).
- The regulation allows for documents to be witnessed by audio visual technology, providing that the witness:
 - observes the person signing the document in real time;
 - attests that the signature was witnessed by signing a copy of the document;
 - is reasonably satisfied that the document the witness signs is the same document, or a copy of the document signed by the signatory; and
 - endorses the copy of the document with a statement specifying the method used to witness the signature and that the document was witnessed in accordance with this regulation.
- The regulation can be located [here](#).

22 April 2020 – Queensland introduces remote witnessing of documents

- Under section 9 of the *COVID-19 Emergency Response Act 2020*, legal practitioners in Queensland can use video conferencing technology to conduct transactions, including the witnessing of agreements.
- The legislation can be found [here](#).

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Health related goods

8 April 2020: Exemptions for some therapeutic goods

- The Minister for Health has exercised his power under section 41GS of the *Therapeutic Goods Act 1989* (Cth) (the Act) to exempt certain medical devices from the normal requirements of assessment and inclusion on the Australian Register of Therapeutic Goods (ARTG)
- However there are four exemptions now in place for COVID-19 related medical devices:
 - The *Therapeutic Goods (Medical Devices—Novel Coronavirus) (Emergency) Exemption 2020*, which entered force on 31 January 2020 (Coronavirus Exemption);
 - The *Therapeutic Goods (Medical Devices—Face Masks and Other Articles) (COVID-19 Emergency) Exemption 2020*, which entered force on 22 March 2020 (Face Masks Exemption);
 - The *Therapeutic Goods (Medical Devices—Accredited Pathology Laboratories) (COVID-19 Emergency) Exemption 2020*, which entered force on 22 March 2020 (Pathology Exemption); and
 - The *Therapeutic Goods (Medical Devices—Ventilators) (COVID-19 Emergency) Exemption 2020*, which entered force on 8 April 2020 (Ventilators Exemption).
- Read more in our article [here](#).

30 March 2020: Export restrictions announced

- To help combat COVID-19, temporary restrictions on exports of certain health-related products and materials were announced.
- Read more in our article [here](#)

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