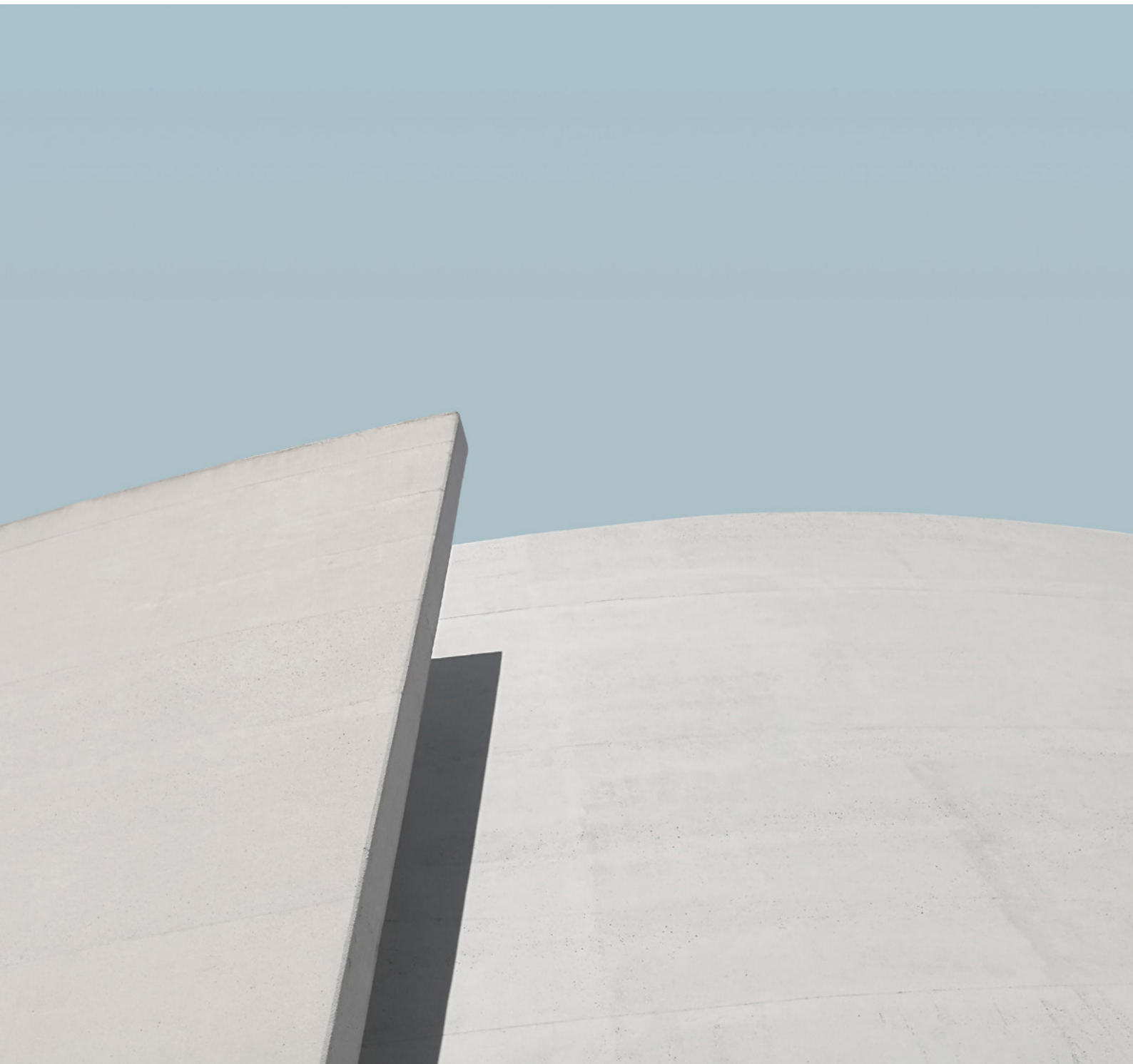

COVID-19:

Understanding Commonwealth Government support and regulatory intervention

Last updated – 20 April 2020



Foreword

Very few countries seem to have been spared from the human tragedy and economic turmoil caused by the global coronavirus (COVID-19) pandemic.

The economic consequences are human-made – they flow directly from the measures implemented by Governments across the globe to combat the spread of the disease. Viewed in this light, it should not be surprising that the very same Governments are implementing a range of measures to support businesses, people, and communities – the level of support in Australia, at least, far exceeds the breadth and scale of our Government’s response to the 2007-2008 Global Financial Crisis.

The support is, quite naturally, being developed with haste – many people and organisations will potentially miss out on the support being offered, either as a result of deliberate Government policy or because there is no time to work through all the consequences of law and policy being enacted on the run.

In many situations, for example, employees stood down or terminated as a direct result of COVID-19 will find that their employers cannot access the largest single source of Government monetary intervention – the landmark JobKeeper scheme. Similarly, the Commonwealth Government’s intervention in the private contractual rights agreed between debtor and creditor, or landlord and tenant, are well intentioned and will provide significant relieve for impacted individuals or enterprises.

However, as we emerge from the depths of the COVID-19 pandemic, there will inevitably be unforeseen consequences.

As the impact of the global coronavirus (COVID-19) pandemic continues to unfold, Corrs partners are making regular contributions to our insight series, *COVID-19: Navigating the implications for business in Australia and beyond*, accessible [here](#).

To be notified by email when new insights have been added to the series, please [subscribe for updates here](#).

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Introduction

This publication summarises the range of interventionist measures deployed by the Commonwealth Government to support businesses, markets, industries, employees, people and communities through the COVID-19 pandemic.

It is current as at **20 April 2020 (Issue Date)** and will be updated periodically to identify further material developments. Further updates will also analyse the impacts, issues and consequences of Government intervention as they become visible.

We encourage you to engage with your regular Corrs contact in relation to issues affecting your business as a result of COVID-19.

Our partners are also making regular contributions to our insight series, *COVID-19: Navigating the implications for business in Australia and beyond*, accessible [here](#). To be notified by email when new insights have been added to the series, please subscribe for updates [here](#).

Governmental approach

National Cabinet

A National Cabinet of Australia (**National Cabinet**) was established on 13 March 2020 as a new joint cabinet of the Prime Minister, Premiers and Territory leaders to coordinate a united Commonwealth, State and Territory Government response to the COVID-19 crisis.¹ The National Cabinet is presently supported by the advice of the Australian Health Protection Principal Committee (**AHPPC**).

Following a Council of Australian Governments (**COAG**) meeting on 13 March 2020, the leaders of the National Cabinet also signed the *National Partnership on Covid-19 Response*,² an agreement between the Commonwealth of Australia and each of the States and Territories. The agreement provides insight into the initial national response with the purpose of the partnership being, amongst other things, to protect the Australian community by ensuring the health system can respond effectively to the outbreak of COVID-19. The Commonwealth's financial contribution to each of the States and Territories are also set out under the agreement, with an Upfront Advance Payment to each of the States and Territories via the National Health Funding Pool³ and other support such as the Hospital Services Payment⁴ and the State Public Health Payments.⁵

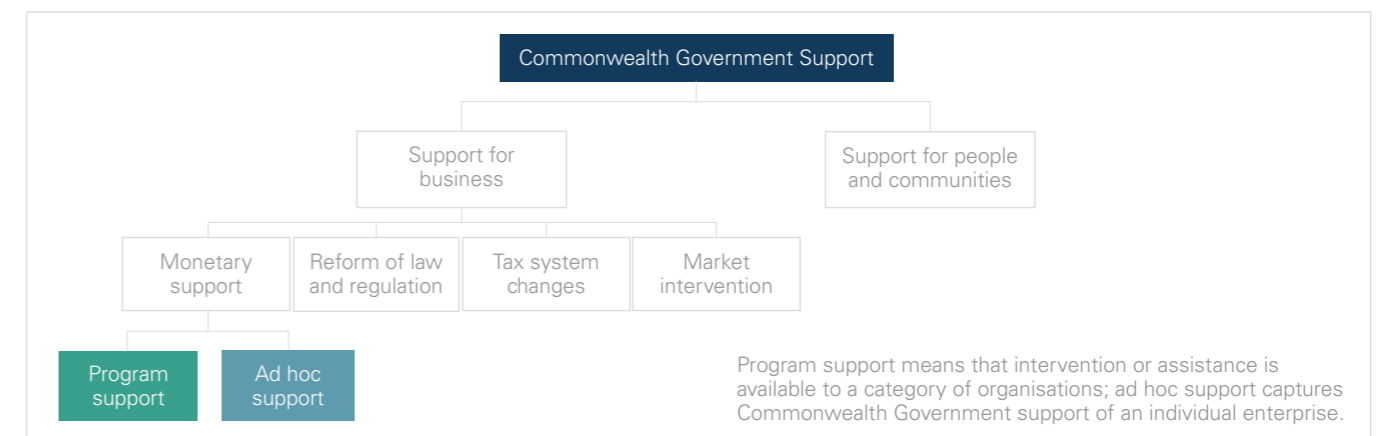
State approaches

While not the focus of this publication, Australia's State and Territory governments have also announced similar measures. All six states along with the Australian Capital Territory have announced a payroll tax waiver or deferral for small and medium businesses (**SMEs**), while most states have also announced initiatives to:

- boost or sustain employment (by job matching and training programs);
- boost job creation (by bringing forward public infrastructure projects and maintenance); and
- help manage the relationship between landlord and tenant.

Summary of approaches

This publication presents a summary of the key Commonwealth Government initiatives (categorised as follows), together with links to [relevant Corrs insights](#) into the measures implemented and potential future regulatory directions.



¹ Prime Minister, Minister for Health, Chief Medical Officer, Media Release, 13 March 2020, available [here](#).

² Council of Australian Governments, *National Partnership on Covid-19 Response*, 13 March 2020, available [here](#).

³ This is a payment of \$100 m to each of the States and Territories based on population size. See Part 5, clause 20 a. of the *National Partnership on Covid-19 Response*; for further information about the National Funding Pool, see [here](#).

⁴ The Commonwealth will provide a 50% contribution for costs incurred by the States and Territories for the diagnosis and treatment of COVID-19 cases and suspected cases. See Part 5, clause 20 b. of the *National Partnership on Covid-19 Response*.

⁵ The Commonwealth will provide a 50% contribution for costs incurred by States and territories for other COVID-19 activities undertaken by the States and Territories' public health systems for the management of the outbreak. See Part 5, clause 20 c. of the *National Partnership on Covid-19 Response*.

Commonwealth Government initiatives

Support for business

Program support

JobKeeper Program

The Commonwealth Government has passed legislation to implement its \$130 billion JobKeeper wage subsidy program (**JobKeeper Program**), the centrepiece of its support for business and workers.⁶

The JobKeeper Program is established under a principal act (the Coronavirus Economic Response Package (Payments and Benefits) Act 2020 (Cth)) which authorises the Treasurer to make or vary rules in relation to its implementation in response COVID-19. The Treasurer has considerable flexibility.

The Government has also amended the Fair Work Act 2009 (Cth) in order to, in effect, vary existing arrangements between employers and employees in response to COVID-19.⁷ Changes to the Fair Work Act are discussed below, but in large measure operate alongside the JobKeeper Program.

The JobKeeper Program allows 'eligible businesses' to register their interest with the Australian Taxation Office (ATO) in order to receive fortnightly payments of \$1,500 for each 'eligible employee', for the period between 30 March 2020 and 27 September 2020.⁸

Unlike the UK's employee support scheme which is a payment to workers to ensure a minimum level of income, the subsidy is paid to an employer for each eligible employee that is paid \$1,500 or more per fortnight (including workers on substantially higher salaries).

Eligible businesses include those that are not subject to the Major Bank Levy⁹ and whose GST turnover is reduced by more than 30% if the relevant employer has 'aggregated turnover' of less than \$1 billion, or reduced by more than


50% if they have aggregated turnover of more than \$1 billion (as relative to a comparable period of at least a month in the last year).¹⁰ This is known as the decline in turnover test.

Aggregated turnover looks at a broad range of corporate relationships (essentially based on a 40% interest test) and affiliations – it will capture relevant turnover of offshore entities.

Eligible employees include Australian citizens¹¹ who were employed on a full-time basis as at 1 March 2020 and are continued to be employed by an eligible employer, or who have been with their employer on a regular basis for at least the previous 12 months as at 1 March 2020. Self-employed individuals will be eligible to receive the subsidy if they satisfy the decline in turnover test.¹² Where employees have multiple employers, the employee may only notify their primary employer to claim the subsidy on their behalf (only one employer will be eligible per employee).¹³

Businesses are able to register their interest in the JobKeeper Program from 30 March 2020, with the first payments from the ATO scheduled for the first week of May 2020.

A hard end-date is set for availability of the JobKeeper Program – there is no contemplation (for example, through a notification mechanism) that support may be withdrawn earlier than 27 September 2020. The rules are also silent as to any potential extension of the program.


 Further insight: Corrs has considered the JobKeeper Program in detail [here](#).

Fair Work Act amendments

So long as an employer is paying their employees a minimum \$1,500 from JobKeeper, the Fair Work Act amendments allow them to (within reason):

- stand down employees;¹⁴ and
- vary employees' work hours, duties and location, so long as the variations are reasonable (includes reducing hours of work).¹⁵

Further, an employer may request an employee to take annual leave. The employee may not unreasonably refuse, so long as they have an annual leave balance of more than two weeks.¹⁶ Employees and employers may also agree for the employee to take annual leave at half the rate of pay, but for twice as long.¹⁷

 Further insight: Corrs has considered the new Fair Work Act amendments and their interaction with the JobKeeper Program [here](#).

Cash-flow boost through tax credits

The ATO will deliver tax-free 'cash flow boosts' of between \$20,000 and \$100,000 to eligible businesses through two sets of automatic payments, in the form of tax credits to their activity statements.¹⁸ Provided that an eligible business has lodged their activity statements, the ATO will automatically calculate payment amounts and credit their account – no further forms are required.

Eligible businesses that withhold tax on their employees' salary and wages will receive a credit equal to 100% of the amount withheld, up to a maximum of \$50,000, in the initial March-July 2020 payment period, followed by an additional credit in the July-October 2020 period equal to the total value of credit received in the initial payment period.

Eligible businesses include SMEs and not-for-profit (NFP) organisations with an aggregated annual turnover of under \$50 million.¹⁹ Only those SMEs that were established prior to 12 March 2020 and continue to be active are eligible under the scheme, however NFP organisations will be eligible irrespective of when they were registered, subject to meeting other eligibility requirements.

Wage subsidy support for apprentices and trainees

Eligible employers are able to apply for a 'wage subsidy' of 50% of an apprentice's or trainee's wage paid during the nine months from 1 January 2020 to 30 September 2020. Employers will be reimbursed up to a maximum of \$21,000 per eligible apprentice or trainee.²⁰

The subsidy is available to small businesses employing fewer than 20 full-time employees who retain an apprentice or trainee (who must have been in training with a small business as at 1 March 2020). Where a small business is not able to retain an apprentice, the subsidy will be available to a new employer.

Employers are able to register for the subsidy from 2 April 2020²¹ and final claims for payment must be lodged by 31 December 2020.

Support for Australian airlines and airports

The Commonwealth Government has pledged an initial support package to the Australian airline industry of up to \$715 million in relief from a range of taxes and Government charges, effective 1 February 2020 to 30 September 2020.²²

Increase to Export Market Development Grants

The Commonwealth Government has announced²³ its commitment to inject a further \$49.8 million into the Export Market Development Grants program (**EMDG Program**) in the 2019-20 financial year.

Increased funding for the EMDG Program is aimed at providing timely cash flow injections for Australian exporters and tourism businesses who have incurred costs in marketing their products and services globally, with the expectation they would see high enough income returns to meet the Export Performance Test.²⁴

All businesses who have incurred eligible EMDG Program expenses for promotional activities in 2019-20 financial year will be able to seek reimbursement for 50% of these expenses without the Export Performance Test applying, when they apply from July 1 2020.

Ad hoc support of enterprises

As at the Issue Date no public announcement has been made by the Commonwealth Government directed at providing support to an individual organisation.

There is, however, considerable media attaching to the financial position of Virgin Airlines. As at the Issue Date no announcement has been made by the Commonwealth Government other than it does not intend to support individual organisations (which it has referred to as picking 'winners and losers').

6 Coronavirus Economic Response Package (Payments and Benefits) Act 2020 (Cth); Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth).

7 *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020 (Cth)*, Schedule 1.

8 Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth), s 19(a). 'Jobkeeper Payment — Information For Employers', *Department of Treasury*, 31 March 2020, available [here](#); 'JobKeeper Program', *Australian Tax Office*, 30 March 2020, available [here](#).

9 Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth), s 7(2). The Major Bank Levy is a 0.06% levy on the liabilities of banks with over \$100 bn in total liabilities.

10 Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth), s 8(1-4).

11 Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth), s 9. To be eligible, an employee must be an Australian citizen, the holder of a permanent visa, a Protected Special Category Visa Holder, a non-protected Special Category Visa Holder who has been residing continually in Australia for 10 years or more, or a Special Category (Subclass 444) Visa Holder.

12 Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth), ss 11, 12.

13 *Ibid*, s 9(3)(b)(iii).

14 *Fair Work Act 2009* (Cth), ss 789GDC.

15 *Ibid*, ss 789GE, 789GF, 789GG.

16 *Ibid*, s 789GJ(1).

17 *Ibid*, s 789GJ(2).

18 *Coronavirus Economic Response Package Omnibus Act 2020* (Cth), Schedule 3; *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020* (Cth).

19 Annual turnover is calculated based on prior year turnover.

20 *Coronavirus Economic Response Package Omnibus Act 2020* (Cth), Schedule 7—Part 1 (as amending the Financial Framework (Supplementary Powers) Regulations 1997, Schedule 1AB).

21 'Supporting Apprentices and Trainees,' Department of Education, Skills and Employment, 2 April 2020, available [here](#).

22 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Schedule 7—Part 2.

23 Announcement, *Office of the Minister for Trade, Tourism and Investment*, 1 April 2020, available [here](#).

24 Austrade calculates provisional grant entitlements based on the following formula: 50% of total eligible expenses minus a \$5000 non-reimbursable threshold amount.

Reform of law and regulation

An ongoing discussion is occurring between the Commonwealth Government, key departments (including Treasury) and stakeholders in relation to a range of reforms in response to COVID-19.

At the moment there are a range of matters with treasury for consideration, including:

- online meetings, including AGMs, general meetings, scheme meetings, creditors meetings including associated issues like forming a quorum, electronic communications with members and voting mechanisms; and
- electronic execution of documents, including provisions under Commonwealth laws for 'witnessing' or otherwise certifying electronic documents.

There have also been submissions to the Treasurer to reduce the class action threat posed by the present difficult disclosure environment.


Changes implemented or announced as at the Issue Date are addressed below.

Solvency and bankruptcy laws

The Commonwealth Government has implemented a series of temporary, six month²⁵ relief measures targeted at lessening the threat of actions that could unnecessarily push financially distressed businesses into insolvency, including:


- increasing the minimum threshold at which a company creditor can issue a statutory demand under the Corporations Act 2001 (from \$2,000 to \$20,000) and increasing the time companies have to respond to any statutory demands they receive (from 21 days to six months);²⁶
- increasing the threshold for the minimum amount of debt required for a creditor to initiate bankruptcy proceedings against a debtor under the Bankruptcy Act 1966 (from \$5,000 to \$20,000) and increasing the time a debtor has to respond to a bankruptcy notice (from 21 days to six months);²⁷

- relieving directors of liability attaching to their duty to prevent insolvent trading with respect to any debts incurred in the ordinary course of company business;²⁸ and
- providing the Treasurer with the power to make instruments that modify or exempt people from obligations under the Corporations Act 2001 where compliance would be difficult because of COVID-19, or are necessary to reduce COVID-19's economic impact and allow the continuation of business. The Treasurer must make any instruments within six months of 25 March 2020. Any instrument made may not operate for more than six months. As of 7 April 2020, the Treasurer has not announced any instruments under this amendment.²⁹

 Further insight: See Corrs' analysis of the suspension of insolvent trading laws [here](#).

Postponement of annual general meetings (AGMs)

The Australian Securities and Investments Commission (ASIC) announced that COVID-19 would temporarily impact on the ability of companies to hold AGMs. As such, for companies that are required to hold AGMs by 31 May 2020, ASIC has confirmed that it will not take action if AGMs are postponed for two months and in the alternative, supports the use of technology for AGMs. This said, ASIC warns that companies should conduct a review of their constitutions to check for restrictions on holding virtual meetings and also consider whether members will have a reasonable opportunity to participate in the meeting.³⁰

 Further insight: Corrs' analysis of the impact of COVID-19 on shareholder meetings as part of its COVID-19 Head Office Guide is available [here](#).

Corrs' insight into the key implications of COVID-19 for boards and corporate disclosure is available [here](#).

25 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Schedule 12.

26 Ibid, Schedule 12—Part 2.

27 Ibid, Schedule 12—Part 1.

28 Ibid, Schedule 12—Part 3.

29 Ibid, Schedule 8

30 '20-068MR Guidelines for meeting upcoming AGM and financial reporting requirements', *Australian Securities and Investments Commission*, 20 March 2020, available [here](#).

Australian Stock Exchange regulation – emergency capital raisings

Both the ASX and ASIC have introduced regulatory relief in order to facilitate emergency capital raisings.

Increasing placement capacity

Under ASX Listing Rule 7.1 (LR 7.1), listed entities typically have a placement capacity of 15% with an additional 10% capacity if agreed to by security holders at an annual general meeting under ASX Listing Rule 7.1A (LR 7.1A).³¹

With the announcement of the ASX Class Waiver – Temporary Extra Placement Capacity Decision on 31 March 2020 (Decision), listed entities now have an extra 10% placement capacity under LR 7.1. This is in addition to the usual 15%. However, a listed entity may only use the extra capacity for a single placement and to the extent of their unused LR 7.1A placement capacity.³²

Example

A listed entity has already used 15% of their placement capacity under LR 7.1 and 4% of their LR 7.1A placement capacity. This entity may now only use a maximum of 6% for a placement under LR 7.1, because they only have 6% of their LR 7.1A placement capacity remaining.

Further, to protect investors, the placement must be followed by either:³³

- an accelerated pro rata entitlement offer that complies with LR 10.12. This means a listed entity must make an offer to all holders on a pro rata basis right after the placement;³⁴ or
- a security purchase plan that complies with resolution 1.2 of the Decision. The security purchase plan is an offer by a listed entity to subscribe for up to \$30,000 securities.³⁵ In this case, the ASX intends that the offer be made equitably to retail investors and those who did not participate in the placement.³⁶

As additional protection to investors that did not take part in the initial placement, any offer under 1.1.3(a) or 1.1.3(b) must be for a price that is less than or equal to the price of shares offered in the initial placement.³⁷

31 ASX Listing Rules, 7.1A.

32 'ASX Class Waiver Decision – Temporary Extra Placement Capacity', *Australian Securities Exchange*, 31 March 2020, available [here](#), 1.1.5.

33 Ibid, 1.1.3.

34 1.1.3(a) of the Decision.

35 ASIC RG125 'Share and interest purchase plans', available [here](#). Purchase plans give existing holders a convenient means of obtaining additional shares or interests in the issuer. These securities are priced at a discount to the market price during a period before the offer and without brokerage fees.

36 1.1.3(b) of the Decision.

37 'ASX Class Waiver Decision – Temporary Extra Placement Capacity', *Australian Securities Exchange*, 31 March 2020, available [here](#), 1.1.4.

38 ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289 s 5 – 8; ASIC Corporations (Amendment) Instrument 2020/290; s 1 – 2.

39 'Listed@ASX Compliance Update', *Australian Securities Exchange*, 31 March 2020, available [here](#).

40 'Changes to foreign investment framework', *Foreign Investment Review Board*, 29 March 2020, available [here](#).

41 Ibid.

Suspension from trading rules have been relaxed to help companies undertake quick 'low doc' offers

A listed entity that has had trading suspended for more than five days in the past 12 months cannot typically make an offer with reduced disclosure requirements, known as a 'low doc' offer. 'Low doc' offers are easier and faster for companies to implement since they do not require a long form disclosure document.

In light of many companies needing to raise capital due to COVID-19, ASIC has increased the maximum period of allowable trading suspension to ten days to give companies extra time to prepare for and announce a capital raising.³⁸


For the same reason, the ASX has also provided companies with the right to request back-to-back trading halts to suspend trading for up to four days.³⁹

Foreign Investment Review Board (FIRB)

On 29 March 2020, the Treasurer announced temporary changes to the foreign investment review framework. The threshold amount in determining whether foreign investments made on or after 10.30 pm (AEST) 29 March 2020 are subject to the foreign investment framework was dropped to \$0.⁴⁰ The Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 were issued on 16 April 2020.

The impact of these temporary changes include the decision for a foreign investment application involving significant actions or exemptions to be extended by up to six months from the date of application fee payment.⁴¹

The flow on effect to the FIRB notification threshold is the de facto Australian Competition and Consumer Commission (ACCC) notification requirement for a larger range of transactions. This is because one of the mandatory factors that FIRB must consider is the effect of the proposed transaction on competition.

 Further insight: Corrs has considered the foreign investment regulatory change [here](#), and the impact of the FIRB changes on merger control in Australia [here](#).

Competition regulation


While the Federal Government has not yet directly intervened in competition and consumer law or policy, the ACCC has announced various measures in response to the COVID-19 pandemic, including in relation to co-ordination between competitors, merger control and consumer protection.

Co-ordination between competitors

The ACCC is using its powers to urgently grant interim authorisations that allow competing businesses (typically through an industry association) to co-ordinate in ways that would ordinarily contravene the cartel conduct and other prohibitions in the *Competition and Consumer Act 2010* (Cth) (CCA). Interim authorisations have been granted to businesses including banks, hospitals, airlines, insurers and energy providers so that they can co-ordinate terms of supply, logistics and other aspects of their operations. For example, the interim authorisation granted to banks allows them to co-ordinate a deferral of loan repayments by certain small business customers for six months.


Merger control process

The ACCC has published high-level guidance about how it will administer merger control processes during the COVID-19 pandemic. It has indicated that it expects timelines for some reviews to be extended and, while it is not yet requesting parties to delay merger clearance applications, it is encouraging them to consider deferring non-urgent applications. The ACCC has also indicated that the longer-term competitive impacts of a transaction, for instance as a result of a change to market structure, will remain a factor in its assessment. In other words, the ACCC won't be adopting a more accommodating approach to merger control, and won't approve transactions that it believes will have a substantive anti-competitive effect beyond the current crisis.

 Further insight: Corrs has considered the effect of COVID-19 on merger control in Australia [here](#).

Consumer protection

The ACCC has announced that the protection of consumers throughout the COVID-19 pandemic is a key priority, and it has established a COVID-19 Taskforce to deal specifically with consumer-related issues. The ACCC has also released high-level guidance relating to consumer rights in relation to the cancellation of events and transport, and the suspension of services.

 Further insight: Corrs has considered three key consumer law compliance issues – pricing, the consumer guarantee regime and unfair contract terms issues – arising from the COVID-19 pandemic [here](#).

Landlord and tenant rights

While leasing arrangements are generally governed by State and Territory legislation, in March 2020, the Federal Government committed to intervening more directly in the commercial, retail and industrial leasing space. The National Cabinet has released a National Code of Conduct on SME Commercial Leasing Principles (the Code) to instil a set of 'good faith leasing principles' to apply to parties to commercial, industrial and retail leases who are in financial distress as a result of COVID-19. The Code applies retrospectively from 3 April 2020.

Whilst the Code is not a piece of legislation in its current form, State and Territory governments will legislate to bring the Code into force (from a date following 3 April 2020). A number of aspects of the operation of the Code require further clarity, which will hopefully become apparent with the passing of the relevant State and Territory legislation to give effect to the Code.

Eligibility

The Code will be mandatory for tenancies where the tenant:

- is a small-to-medium sized business, with an annual turnover of up to \$50 million; and
- is in a position of financial stress or hardship as a result of the COVID-19 pandemic, defined by reference to the tenant's eligibility for the Commonwealth Government's JobKeeper program.

The Code further states that the annual turnover threshold is to be assessed at the franchisee level if the tenant is a franchisee, and at the group level if it is part of a retail corporate group (rather than at the individual retail outlet level). For more information on the JobKeeper Program, please see page four.

Ultimately, the Government expects that 'the spirit' of the Code should apply to all leasing arrangements for affected businesses, with regard to the size and structure of those businesses.

Overarching principles, negotiation and binding mediation


The Code outlines 11 overarching principles to guide the conduct of negotiation and the implementation of these arrangements. These overarching principles aim to ensure arrangements are appropriately tailored to the relevant lease, are negotiated in good faith and follow the objectives of the Code.

Parties to the Code are encouraged to negotiate and reach an agreement on leasing arrangements independently and with the 11 overarching principles in mind. Where negotiations fail, the matter will be referred for binding mediation in a process overseen by the applicable state or territory retail, commercial or industrial leasing dispute resolution process. The Code highlights that these can include Small Business Commissioners, Ombudsmen or Champions.

Leasing principles

The Code outlines 14 leasing principles to be applied on a case-by-case basis to each temporary arrangement. The leasing principles require that landlords cannot terminate leases for a failure to pay rent, and that they consider arrangements for proportionate rent reductions, waivers and deferrals. They require tenants to remain committed to the terms of their lease. Where appropriate, landlords should also seek to reduce the recovery of outgoings and statutory charges, freeze rent increases and not draw on a tenant's bank securities for the non-payment of rent. Additionally, the leasing principles require that any statutory benefit received by the landlord be passed onto their tenants.

The implementation of these principles and their practical effect will become more clear when the Code is legislated by each State and Territory.

 Further insight: Corrs has considered the Code and its practical implications on negotiations and ongoing leasing arrangements moving forward [here](#).

Other regulatory changes

As at the Issue Date, a range of further changes to laws, regulations and rules relating to the following areas are being discussed and announced, including:

- international freight assistance mechanisms; and
- support for existing government program participants and applicants.⁴²

⁴² 'Government assistance for business', business.gov.au, 5 April 2020, available [here](#).

Tax system changes

Increasing instant asset-write-offs

An increase of the instant asset write-off (**IAWO**) threshold from \$30,000 to \$150,000⁴³ will provide cash flow benefits for businesses that are able to immediately deduct purchases of eligible assets each costing less than \$150,000. The threshold applies on a per asset basis, meaning eligible businesses can immediately write-off multiple assets.

The higher IAWO threshold is effective as of 12 March 2020 and access has been expanded to include all businesses with aggregated annual turnover of less than \$500 million⁴⁴ until 30 June 2020.

Deduction for eligible assets on installation

The introduction of a 15-month investment incentive to support business investment and economic growth over the short-term will allow eligible businesses to deduct 50% of the cost of an eligible asset on installation (acquired after 12 March 2020), with existing depreciation rules applying to the balance of the asset's cost.⁴⁵

All businesses with an aggregated turnover below \$500 million who purchase certain new depreciable assets are eligible.

The incentive applies to eligible assets acquired after 12 March 2020 and first used or installed by 30 June 2021.

Tax rule changes to facilitate cash flow

The ATO has announced a range of options to assist businesses impacted by COVID-19.⁴⁶ These relief measures will not be automatically applied and businesses must contact the ATO to discuss the specific options available to them. Measures potentially available to affected businesses include:

- deferring by up to six months the payment of liabilities due through business activity statements (including PAYG instalments), income tax assessments, fringe benefit tax assessments and excise;

- allowing businesses on a quarterly GST reporting cycle to opt into monthly reporting to expedite access to GST refunds (once businesses elect to revert to monthly reporting, they must maintain this for 12 months before being able to revert back to quarterly reporting);
- allowing businesses to vary PAYG instalment amounts to zero for the March 2020 quarter and claim a refund for instalments paid for the September 2019 and December 2019 quarters (if businesses wish to vary their March 2020 PAYG instalment amounts, they must lodge a revised activity statement before an instalment is due and prior to the business lodging its annual tax return);
- remitting any interest and penalties incurred after 23 January 2020 which have been applied to tax liabilities; and
- allowing businesses to enter into low interest payment plans to assist with existing and ongoing tax liabilities.⁴⁷

Businesses will still be required to meet ongoing superannuation guarantee obligations for employees.

Treatment of foreign companies

The ATO has announced relief for foreign incorporated companies that may be impacted by the travel restrictions resulting from COVID-19.⁴⁸

Broadly, a foreign company may be considered by the ATO to have a taxable presence in Australia where the foreign company is deemed to be a tax resident by virtue of its central management and control being partly in Australia or is a permanent establishment in Australia (such as a branch, including employees working from a fixed place in Australia).

Tax residence – central management and control

If the only reason for holding board meetings in Australia or directors attending board meetings from Australia is because of impacts of COVID-19, then the ATO will not apply compliance resources to determine if the central management and control of a foreign company is in Australia. This effectively means that the ATO is willing to look the other way on this one.

Permanent establishment

Where a foreign incorporated company has an unplanned presence of employees working within Australia, the ATO will not treat the foreign company as having an Australian permanent establishment if:


- the foreign company did not have a permanent establishment in Australia before the impacts of COVID-19;
- there are no other changes in the foreign company's circumstances; and
- the unplanned presence of employees is the short-term result of them being temporarily restricted in travel because of COVID-19.

PAYG

Foreign employers do not need to register for PAYG withholding if a non-resident employee is now working in Australia because of COVID-19 travel restrictions, and it is anticipated that they will leave before 30 June 2020.

The above announcements do not have the force of law or binding ruling but it is an indication of the ATO's attitude.

It is not known how long the impacts of COVID-19 on travel will last, but the ATO will continue to monitor the impacts of travel restrictions and update its guidance where appropriate.

 Further insight: Corrs has considered a number of the tax system changes [here](#).



43 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Schedule 1(3).

44 Ibid, Schedule 1(6).

45 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Schedule 2.

46 'Support for large business impacted by COVID-19', *Australian Tax Office*, 26 March 2020, available [here](#).

47 'Support measures to assist those affected by COVID-19', *Australian Tax Office*, 3 April 2020, available [here](#).

48 'COVID 19 frequently asked questions – International Business', *Australian Tax Office*, 27 March 2020, available [here](#).



Market intervention

Support for immediate cash flow needs for SMEs

On 25 March 2020, the Commonwealth Government, the Reserve Bank of Australia (RBA) and the Australian Prudential Regulation Authority (APRA) announced the Coronavirus SME Guarantee Scheme (SME Scheme) to support the immediate cash flow needs of SMEs.

Under the SME Scheme, the Government will provide a guarantee of 50% to eligible SME lenders for new unsecured loans to be used for working capital.

SMEs with a turnover of up to \$50 million are eligible for the loans, with a maximum total size of loan being \$250,000 per borrower, up to three years with a six month repayment holiday.

The SME Scheme commences early April 2020 and runs until 30 September 2020. It is available for new loans by eligible lenders.⁴⁹

Access to credit for small business

The Commonwealth Government is cutting red tape by providing a six month exemption from responsible lending obligations for lenders providing credit to existing small business customers. The purpose of this intervention is to help small businesses obtain quick and efficient access to credit.⁵⁰

Reserve Bank of Australia initiatives

The RBA have announced the following initiatives to support the flow and reduce the cost of credit:

- cash rate reduction to 0.25%;
- target yield on three year Australian Government bonds of approximately 0.25%; and
- a term funding facility of at least \$90 billion at a fixed rate of 0.25% for the banking system to support SMEs (authorised deposit-taking (ADIs) can borrow up to 3% of their existing outstanding credit with access to more funding by increasing lending to SMEs);⁵¹
- temporary changes to capital ratio requirements;⁵²
- quantitative easing by purchasing Australian Government Securities (government bonds).⁵³

Support for non-ADI and smaller ADI lenders in the securitisation market

The Commonwealth Government has announced that it will provide \$15 billion to the Australian Office of Financial Management (AOFM) to invest in structured finance markets used by smaller lenders, including non-Authorised Deposit-Taking Institutions (non-ADIs) and smaller ADIs.⁵⁴

The AOFM will investment in residential mortgage backed securities, unsecured and secured loans, credit cards, personal loans and automobiles. The fiscal injection is intended to support small lenders who will miss out on benefits of the RBA's \$90 billion term funding facility.

49 'Coronavirus SME Guarantee Scheme - supporting the flow of credit', *Department of Treasury*, available [here](#).

50 'Supporting the flow of credit', *Department of Treasury*, available [here](#); 'Supporting the flow of credit', *Department of Industry, Science, Energy and Resources*, 2 April 2020, available [here](#).

51 'Statement by Philip Lowe, Governor: Monetary Policy Decision', *Reserve Bank of Australia*, 19 March 2020, available [here](#).

52 'APRA adjusts bank capital expectations', *Australian Prudential Regulation Authority*, 19 March 2020, available [here](#).

53 'Reserve Bank Purchases of Government Securities', *Reserve Bank of Australia*, 19 March 2020, available [here](#).

54 'Supporting the flow of credit', *Department of Industry, Science, Energy and Resources*, 2 April 2020, available [here](#).


Support for people and communities

Temporary early release of superannuation

The Commonwealth Government have announced that COVID-19 affected individuals will have tax free access to up to \$10,000 of their superannuation in 2019-20 and a further \$10,000 in 2020-21.⁵⁵

The legislation for this initiative has already commenced, and the ATO has issued guidance on who will be eligible. Application to the ATO can be made from mid-April by any person who:⁵⁶

- is unemployed; or
- is receiving certain Centrelink payments (e.g. the Jobseeker Payment, youth allowance for job seekers, parenting payment etc.); or
- has been made redundant; or
- has had their working hours reduced by 20%; or
- is a sole trader who is experiencing a decrease in turnover of 20% or more.

 Further insight: Amongst other issues (that Corrs have considered [here](#)), this initiative may put significant liquidity pressure on superannuation funds as they must prepare to release billions of dollars to their members.

Supporting COVID-19-affected regions and communities

The Commonwealth Government has pledged \$1 billion to provide financial support to regions and communities most affected by COVID-19 to recover, including those heavily reliant on the tourism, agriculture and education industries.⁵⁷

The funds will be provided through existing or newly established government programs as soon as practicable, and will also be targeted towards helping businesses identify alternative export markets or supply chains.⁵⁸

Income support for individuals

Over the next six months, the Commonwealth Government will temporarily expand eligibility to income support payments and establish a new, time-limited COVID-19 supplement to be paid at a rate of \$550 per fortnight on top of existing income support payments.⁵⁹

The payment will be paid to both existing and new recipients of the Jobseeker Payment, Youth Allowance, Parenting Payment, Austudy, ABSTUDY Living Allowance, Farm Household Allowance and Special Benefit.

Jobseeker Payment access will also be expanded with a relaxation of the partner income test.

Household payments

The Commonwealth Government will provide two separate \$750 payments to social security, veteran and other income support recipients and eligible concession card holders to help mitigate the impact of low interest rates in financial markets on retirement savings.⁶⁰

The first payment will be made from 31 March 2020 and the second from 13 July 2020 in an effort to foster confidence and domestic demand in the economy.

Early childhood education and care relief Package

From 6 April 2020 to 30 June 2020, the Commonwealth Government will provide weekly payments (**Childcare Payments**) direct to all Australian childcare services that remain open, and have children enrolled, to ensure ongoing access to early childhood education and care.⁶¹

In return, childcare services are required to ensure families are not charged usual out of pocket or gap fees⁶² for services – families will accordingly receive free childcare during this period.

Childcare Payments will be in lieu of the existing Child Care Subsidy and Additional Child Care Subsidy⁶³ and will, in most cases, be based on 50% of services fee revenue or 50% of the existing hourly rate cap (whichever is lower) based on the fortnight before 2 March 2020. Childcare Payments will begin automatically (without any application required) and are intended to complement the JobKeeper Program. In addition, childcare services are authorised to waive gap fees for services up to and including 5 April 2020, backdated to 23 March 2020.

The Government estimates Childcare Payments will be worth \$1.6 billion over the payment period.

Temporary reduction of superannuation drawdown rates

The Commonwealth Government is temporarily reducing superannuation minimum drawdown requirements for account-based pensions and similar products by 50% for 2019-20 and 2020-21.

This is being done in an effort to support retirees with account-based pensions and similar products by reducing their need to sell investment assets to fund minimum drawdown requirements.⁶⁴

Reduction of social security deeming rates

As of 1 May 2020, the upper social security deeming rate will be 2.25% and the lower deeming rate will be 0.25%.⁶⁵

The reductions reflect the low interest rate environment and are designed to primarily benefit income support recipients and pensioners (budgeted benefit of \$876 million).

55 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Schedule 13(9).

56 'The Australian Government's economic response to coronavirus', *Australian Tax Office*, 31 March 2020, available [here](#).

57 'Support for Businesses', *Department of Treasury*, available [here](#).

58 'Assistance for affected regions, communities and industries', *Department of Industry, Science, Energy and Resources*, 2 April 2020, available [here](#).

59 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Schedule 11(12), (21), (30), (34) and (39).

60 *Ibid*, Schedule 4(2).

61 *Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules 2020* (Cth).

62 The out of pocket or gap fee is the difference between the fee charged and any Child Care Subsidy paid.

63 Child care subsidies established under the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.

64 *Ibid*, Schedule 10(5)-(8).

65 'Economic Response to the Coronavirus' *Department of Treasury*, 30 March 2020, available [here](#).

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