

COVID-19: (AUSTRALIA) GOVERNMENT AND REGULATOR RESPONSES FOR SUPERANNUATION FUNDS AND FUND MANAGERS

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There are many government and regulator initiatives aimed at addressing COVID-19 issues and new responses emerge on a daily basis. We have summarised those announcements, relevant to the superannuation and funds management industry in Australia, and further details in relation to each announcement are included in [this table](#).

The information will obviously change quickly and we will keep updating the material on a regular basis. If you wish to discuss any of the issues examined here please contact us.

Early Release of Superannuation

Those eligible can apply from mid-April 2020 through the myGov website to access AUD 10,000 before 1 July 2020 and a further AUD 10,000 from 1 July 2020. Applications will be open for approximately three months, and tax will not need to be paid on amounts released.

The criteria for accessing these funds include those who are:

- Unemployed; or
- Eligible to receive a job seeker payment, youth allowance, parenting payment, special benefit or farm household allowance; or
- On or after 1 January 2020, were made redundant, or your working hours were reduced by 20% or more; or
- On or after 1 January 2020, a sole trader whose business was suspended or turnover reduced by 20% or more.

Minimum Drawdown Rates for Retirees

The minimum amount to be paid in a financial year, determined by account balance at 1 July and the age of the individual accessing the pension or annuity, is to be reduced by 50% in the 2019-20 and 2020-21 financial years.

Liquidity Surveillance

APRA and ASIC have been mindful of the liquidity of superannuation funds. In a joint letter addressed to all Registrable Superannuation Entity (RSE) licensees dated 1 April 2020, the importance of undertaking regular liquidity stress testing, identifying areas for heightened concern with respect to liquidity and assessing the impact of liabilities and contractual commitments on liquidity were highlighted as priorities for trustees.

Further, APRA has required superannuation funds to submit modelling on the impact they were expecting from the government's decision to allow early release from superannuation. Due to the impact of COVID-19 on capital ratios, changes to expectations regarding benchmarks set in 2017 (a CET1 ratio of at least 10.5%) have been made, provided banks can continue to meet minimum capital requirements.

APRA have also prompted superannuation funds to ensure that their valuations of unlisted and illiquid assets remain appropriate and to consider whether any assets need to be revalued.

Facilitating Capital Raising

ASIC will allow 'low doc' placements, rights issues and share purchase plans where a listed entity (including funds and stapled entities) has been suspended for a total of up to 10 days in the previous 12-month period (previously five days).

In addition, ASX has also given fundraising relief for listed entities:

- Entities may now place up to 25% of their existing issued equity capital provided that the entity combines its placement with an accelerated non-renounceable rights entitlement offer (ANREO) or a Share Purchase Plan (SPP) style offer.
- The underwritten portion of the follow-on ANREO may be added to the "base" when calculating the entity's available Listing Rule 7.1 placement capacity without a waiver.
- The 30% issuance limit and 80% issue price floor for SPPs have, subject to certain conditions, now also been waived.
- The 1 for 1 cap for non-renounceable entitlement offers has been waived allowing non-renounceable entitlement offers to be conducted on a greater than 1:1 ratio.
- Entities are now able to apply for a four day trading halt (rather than the usual two day) when conducting a material fundraising.

Recalibration of Regulator Goals

ASIC is encouraging those with difficulties meeting Industry Funding obligations or other obligations to contact them to discuss payment options, payment plans and fee waiver.

ASIC has also released new guidance to staff in relation to issuing information-gathering notices, mindful that notice recipients are facing significant disruption.

APRA and ASIC have both suspended consultation on non-essential matters such as regulatory reports and reviews.

The AUSTRAC Compliance Report 2019, due to be submitted on 31 March 2020, will be accepted until 30 June 2020 without risk of compliance action.

ASIC will take no action if AGMs are postponed until the end of July, and supports the holding of AGMs using appropriate technology.

Further Guidance for Superannuation Fund Trustees

In their joint letter to RSE licensees dated 1 April 2020, APRA and ASIC emphasised a coordinated regulatory response to ensure the proper functioning of the superannuation sector.

APRA and ASIC consider that the circumstances of COVID-19 require trustees to make new business arrangements, amend priorities and adjust short term investment strategies. The regulators also underlined the importance of trustees communicating clearly and accurately to their members and to the regulators, both proactively and reactively.

Additional issues flagged include that trustees should help their members understand how their life insurance provided through superannuation may be affected by economic and employment conditions and reduced account balances due to market conditions and early release.

The regulators also called out increased exposure of funds to possible scams which may flourish in circumstances of market uncertainty and early release of account balances.

While there has been some shifting of regulatory goals, APRA and ASIC have cautioned that trustees must still ensure that key business activities are maintained. Given the unsettled circumstances, the regulators have indicated a willingness to work constructively with trustees where meeting regulatory requirements may be challenging.

Changes in FIRB Requirements

On 29 March 2020, the government announced changes to foreign investment approval requirements in Australia in order to protect the national interest while the COVID-19 outbreak leaves the Australian economy and businesses in a vulnerable position. All monetary thresholds that apply to foreign acquisitions have been reduced to \$0, meaning all acquisitions subject to the *Foreign Acquisitions and Takeovers Act 1975* (Cth) will require approval by the Foreign Investment Review Board (FIRB) regardless of the nature of the investor.

Consequently, deadlines for decisions by the FIRB have been extended from one month to six months.

Changes in Insolvency Rules

As of 25 March 2020 and for the next six months, directors will be relieved from their duty to prevent a company from trading whilst insolvent with respect to debts incurred in the ordinary course of carrying on its business. This relief only relates to debts incurred in the ordinary course of business and not where dishonesty and fraud are involved.

Further, for both personal and corporate insolvency matters, the government is providing a temporary increase to the amount required to issue a Statutory Demand against a company (from AUD 2,000 to AUD 20,000) and a Bankruptcy Notice against an individual (from AUD 5,000 to AUD 20,000). The government is also increasing the time within which a company and an individual has to comply with a Statutory Demand and a Bankruptcy Notice, from 21 days to six months. You can read more on these changes [here](#).

Relief for Domestic and Commercial Tenants

On 29 March 2020, it was announced that the States and Territories agreed to a six-month moratorium on eviction of persons as a result of financial distress. Legislation has been enacted by NSW and Tasmania, with the rest of the states yet to act on the announcement. The legislation in NSW gives the relevant Minister broad power

to regulate for this. The federal government has indicated it may consider providing rental property owners with tax relief as a compensation for the waiver or reduction of their tenant's rent.

For industrial and commercial leases, the scope of rights and obligations in emergency situations will turn on the drafting of the respective leases. You can read more on these changes [here](#).

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