



Revised financial reporting deadlines due to COVID-19

The Australian Securities and Investments Commission and ASX Limited have provided entities with additional time to meet key financial reporting deadlines considering the impacts of COVID-19

The key changes are as follows:

- Most entities reporting under Chapter 2M and 7 of the *Corporations Act 2001* will have an additional month to comply with reporting deadlines, e.g. an unlisted large proprietary company will have five rather than four months to lodge annual financial reports
- The deadline for holding Annual General Meetings has been extended by two months and can be held using electronic means during the COVID-19 pandemic
- ASX listed entities will also have additional time for some deadlines – but will still be required to file their Appendix 4D or Appendix 4E in the normal timeframes and also lodge unaudited or unreviewed financial reports
- ASX listed entities will also need to disclose to the ASX that they are taking advantage of the ASIC relief and consider their continuous disclosure obligations (even though these have also been modified during the COVID-19 pandemic)
- The extensions apply for financial reporting periods ending on or before 7 July 2020, so long as the relevant deadline had not already passed when the enabling instruments were made.

These deadline extensions are welcomed, but will require careful consideration by listed entities

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Summary of revised deadlines

The tables below outline the changed reporting deadlines varied as a result of relief provided by the Australian Securities and Investments Commission (ASIC) and the ASX Listed (ASX):

Listed entities

Obligation	Usual deadline	Revised deadline	New date for 30 June reporting periods
Full years			
Lodgement of Appendix 4E with ASX ^(A)	2 months	Unchanged ^(B)	31 August 2020
Lodgement of unaudited annual financial information with ASX ^(B)			
• Mining and oil or gas exploration entities (accounts)	n/a	3 months ^(C)	30 September 2020
• Other entities (as required by the Appendix 4E)	n/a	2 months ^(C)	31 August 2020
Lodgement of audited annual financial report ^(D)	3 months	4 months ^(E)	2 November 2020 ^(F)
Reporting to members – listed public companies	Earlier of 21 days before AGM or 4 months	Earlier of 21 days before AGM or 5 months	Earlier of 21 days before AGM or 30 November 2020
Reporting to members – listed registered scheme	3 months	4 months	2 November 2020 ^(F)
Holding of Annual General Meeting (AGM)	5 months	7 months ^(G)	31 January 2021 ^(H)
Half years			
Lodgement of Appendix 4D with ASX ^(A)	2 months	Unchanged ^(B)	31 August 2020
Lodgement of unaudited or unreviewed half year accounts with ASX ^(B)			
• Mining and oil and gas exploration entities	n/a	75 days ^(C)	11 September 2020 ^(I)
• Other issuers	n/a	2 months ^(C)	31 August 2020
Lodgement of audited or reviewed half year financial report ^(D)			
• Mining and oil and gas exploration entities	75 days	106 days ^(C)	14 October 2020
• ASX AQUA market issuers	75 days	106 days ^(J)	14 October 2020
• Other issuers	2 months	106 days ^(E,K)	14 October 2020

Unlisted entities

Obligation	Usual deadline	Revised deadline	New date for 30 June reporting periods
Full years			
Lodgement of audited annual financial report with ASIC			
• Disclosing entities	3 months	4 months	2 November 2020 ^(F)
• Other entities	4 months	5 months	30 November 2020
Reporting to members – public companies	Earlier of 21 days before AGM or 4 months	Earlier of 21 days before AGM or 5 months	Earlier of 21 days before AGM or 30 November 2020
Reporting to members – proprietary companies	4 months	5 months	30 November 2020
Holding of AGM – public companies	5 months	7 months ^(G)	31 January 2021 ^(H)

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Obligation	Usual deadline	Revised deadline	New date for 30 June reporting periods
Half years			
Lodgement of audited or reviewed half year financial report – disclosing entities	75 days	105 days ^(K)	13 October 2020

Other deadlines

Obligation	Usual deadline	Revised deadline	New date for 30 June reporting periods
Lodgement of profit and loss statement and balance sheet by AFS licensees			
<ul style="list-style-type: none"> Bodies corporate (disclosing entities) Other unlisted bodies corporate Not bodies corporate 	<ul style="list-style-type: none"> 3 months 4 months 2 months 	<ul style="list-style-type: none"> 4 months 5 months 3 months 	<ul style="list-style-type: none"> 2 November 2020^(F) 30 November 2020 30 September 2020
Sending of the audited financial report to members by grandfathered proprietary companies under <i>ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840</i>	4 months	5 months ^(L)	30 November 2020
Preparation of consolidated financial statements under <i>ASIC Corporations (Wholly-owned Companies) Instrument 2016/785</i>	4 months	5 months	30 November 2020
Audit of the compliance plan of a registered scheme	3 months	4 months	2 November 2020 ^(F)

Notes to the tables

- A The Appendix 4D and Appendix 4E requirements do not apply to mining and oil and gas exploration entities or to issuers on the ASX Quoted Assets (AQUA) market (see note J). Mining and oil and gas exploration entities must continue to provide the additional ASX information required under the ASX Listing Rules in the normal timeframes, i.e. a quarterly report outlining activities for the quarter, together with Appendix 5B (quarterly cash flow report), both within one month of the end of each quarter.
- B *ASX Class Waiver Decision (Extended Reporting and Lodgment Deadlines)* (available at www.asx.com.au) continues to require the lodgement of the Appendix 4E and Appendix 4D within two months of reporting date. In the case of the Appendix 4E (preliminary final report), this will require the inclusion of unaudited financial statements as these are required by the Appendix 4E and are explicitly required under the waiver. Mining and oil and gas exploration entities are not required to provide an Appendix 4E and instead must give the ASX unaudited accounts within three months (the ASX Listing Rules define “accounts” to mean the statement of financial position, statement of comprehensive income, statement of cash flows, statement of changes in equity, notes to those financial statements, disclosures in relation to those financial statements and any other information necessary to give a true and fair view of the financial position and performance of the entity – in all cases, as required by any law, regulation, rule or accounting standard). Entities taking advantage of the ASX waiver provide this information on an unaudited basis and are required to announce to the market at that time that they are taking advantage of the ASIC relief and that they will immediately make a further announcement if there a material difference between its unaudited annual accounts and its audited annual accounts.
- C The ASX waiver provides limited access to the ASIC relief, such that the entity's audited or reviewed financial report can be lodged in accordance with the extended deadlines available under the ASIC relief. One of the conditions of the waiver is that the entity provides unaudited annual financial statements or unaudited or unreviewed half year accounts to the ASX. These must be provided within two months of reporting date in conjunction with the Appendix 4D or Appendix 4E. As mining and oil and gas exploration entities are not required to lodge an Appendix 4D or Appendix 4E, these entities taking advantage of the extended deadlines are required to separately provide their unaudited accounts within three months of year end or their unreviewed half year accounts within 75 days of half-year.
- D Although there is a requirement to lodge the annual financial report with both ASIC and the ASX, *ASIC Corporations (Electronic Lodgment of Financial Reports) Instrument 2016/181* (available at www.legislation.gov.au) allows entities listed on the ASX to lodge the reports electronically with the relevant market operator without also having to separately lodge the reports with ASIC.

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- E The normal deadline for lodgement of full year and half year financial reports under the ASX Listing Rules is three months and two months respectively. The normal deadlines under the *Corporations Act 2001* are 3 months and 75 days respectively (prior to the one month extension). Because the deadlines under the ASX Listing Rules are earlier than the *Corporations Act 2001* requirements, the earlier deadline would normally prevail. However, the ASX waiver provides equivalent relief to that provided by ASIC for the lodgement of audited or reviewed financial reports, including for half years. Accordingly, in respect of half years, the ASX deadlines for the lodgement of audited or reviewed half year financial reports have been extended by more than a month for many listed entities.
- F Where a deadline under the *Corporations Act 2001* falls on a Saturday, Sunday or public holiday, section 36(2) of the *Acts Interpretations Act 1901* permits the deadline to be met on the next day that is not a Saturday, Sunday or public holiday. 31 October 2020 is a Saturday, and accordingly, the deadline is met on the next day that is not a Saturday, Sunday or public holiday.
- G ASIC cannot extend the AGM deadline and so has adopted a 'no action' position in respect of non-compliance with the relevant deadline under the *Corporations Act 2001*, so long as an AGM is held within 7 months of year end (see ASIC 20-113MR *ASIC to further extend financial reporting deadlines for listed and unlisted entities and amends 'no action' position for AGMs*, available at asic.gov.au). In addition, The Federal Treasurer has issued *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (available at www.legislation.gov.au) amending the *Corporations Act 2001* for six months from 6 May 2020 and which facilitates meetings, including AGMs, being held using one or more technologies (virtual technology) that give all persons entitled to attend a reasonable opportunity to participate without being physically present in the same place. ASIC has provided further guidance on using virtual technology for investor meetings (see asic.gov.au). The ASX waiver also provides relief for listed entities from ASX Listing Rule 4.7 so that they can lodge their annual report with the ASX in accordance with the revised ASIC deadlines.
- H Note that 31 January 2021 is a Saturday but as this relief is being provided by an ASIC 'no action' position, it is unclear whether the AGM deadline could be met on the next day that is not a Saturday, Sunday or public holiday, as this is not a deadline under the *Corporations Act 2001* nor an instrument made under any Act (see note F).
- I Where a deadline arises under the ASX Listing Rules and that deadline falls on a Saturday, Sunday or public holiday, ASX Listing Rule 19.5 requires the deadline to be met by the preceding business day. As 75 days after 30 June 2020 is a Sunday (13 September 2020), the deadline must be met on the previous business day.
- J The ASX Listing Rules do not apply to securities admitted to the ASX Quoted Assets (AQUA) market, e.g. exchange traded fund securities and managed fund products. These issuers are instead subject to the ASX Operating Rules. Specifically, Schedule 10A *AQUA Products and the AQUA Trading Market* (available at www.asx.com.au) outlines the requirements for such issuers. In terms of disclosure requirements, Rule 10A.4.2 sets out the disclosure requirements for managed fund products, and Rule 10A.4.4 sets out the disclosure requirements for exchange traded funds. These rules require, among other things, the issuer to provide the ASX a copy of all periodic reports (including financial reports, directors' reports and auditor's reports) that the issuer is required to lodge with ASIC under the *Corporations Act 2001*. Because these deadlines are linked to the *Corporations Act 2001*, the revised ASIC deadlines apply to these issuers. Such issuers in practice should still notify the ASX of an intention to rely on the extended deadlines.
- K The extension of deadlines for half years is different for listed and unlisted entities. Under *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451*, listed disclosing entities must lodge half year reports within 106 days after the end of the half year. However, under *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities 2020/395)*, unlisted disclosing entities must lodge half year reports with ASIC within 105 days after the end of the half year. (i.e. one day less than for listed disclosing entities).
- L Under *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840* (available at www.legislation.gov.au), grandfathered proprietary companies are not required to lodge their financial reports with ASIC under s.319(1) of the *Corporations Act 2001*. For a financial year that ends between 31 December 2019 and 7 July 2020 (both inclusive), the audited financial report must be sent to members within one month after the deadline for reporting to members and the directors' report must disclose the nature and effect of the relief permitting deferred compliance.

Considerations in taking advantage of the relief

Is the relief automatic?

Yes. Any entity that is eligible to obtain the relief may apply it. In some cases, disclosure is required of the relief being applied, for example:

- Listed entities will be required to make disclosure to the ASX and lodge unaudited or unreviewed accounts (see 'Are there any special relief requirements for listed entities?' below)
- Grandfathered proprietary companies are required to disclose the nature and effect of the relief in the directors' report.

Furthermore, in some cases, there may be additional steps required to be eligible for the relief under other instruments. Although the new relief may extend the time available to meet certain of the eligibility requirements under other instruments, it does not otherwise change or exempt entities from complying with those requirements.



Example - wholly-owned entity relief

Many groups take advantage of the relief in *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*, which relieves eligible wholly-owned entities from the requirement to prepare and lodge audited financial reports. This instrument normally requires that many actions are undertaken within the 'relevant time', which is defined as within four months after the end of the financial year. This includes requirements to lodge certain forms with ASIC and lodge consolidated financial statements of the holding entity with ASIC.

The ASIC relief provided in light of COVID-19 changes the 'relevant time' to be five months after the end of the year in respect of a financial year that ends between 31 December 2019 and 7 July 2020 (both inclusive). Therefore, entities taking advantage of the extended deadlines still need to comply with the other requirements of the Corporations Instrument before they are eligible for relief, i.e. lodge forms and consolidated financial statements (among others).

When does the ASIC relief apply?

The periods of relief depend upon the registration of the relevant instrument, as an extended deadline only applies where the normal reporting deadline had not already passed at the time that the instrument of relief was registered. A summary of the ASIC Corporations Instruments providing the relief is included in the [Appendix](#).

In general, the relief applies as follows:

- Unlisted entities – for financial years ending between 31 December 2019 and 7 July 2020¹ (both inclusive)
- Listed entities – for financial years ending between 21 February 2020 and 7 July 2020 (both inclusive).



Interaction with other requirements

Entities seeking to take advantage of the relief should ensure any extended reporting timetable adopted does not impact other legislation or relevant agreements. For instance, an entity's financing facilities may require the provision of audited financial statements within a stated timeframe after the end of a financial year. Where this is the case, the entity may need to arrange a waiver under the relevant agreement to ensure compliance with those facilities.

¹ The choice of 7 July 2020 accommodates entities that adjust their financial years and half years to be shorter or longer by not longer than 7 days (under s.323D(2) and s.323D(5) of the *Corporations Act 2001*). This often applies to entities such as retailers who report using a 52 week (or 53 week), rather than calendar year, basis.

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Are there any special relief requirements for listed entities?

Special provisions apply for listed entities choosing to rely on *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451*. The instrument requires companies, schemes and entities to disclose to the ASX that it intends to rely upon the instrument prior to the lodgment deadlines within the *Corporations Act 2001*, i.e. before the modifications to those deadlines made by the instrument.

Under the Corporations Instrument, listed entities must inform the ASX (or other relevant exchange) of their intention to take advantage of the relief within 3 months of the end of the financial year and within 75 days of the end of the half year². However, these timelines need to be considered in light of the ASX Listing Rule requirements which requires earlier notification to the ASX.

The ASX has issued *Class Waiver Decision – Extended Reporting and Lodgment Deadlines* (available at www.asx.com.au), which contains additional conditions that must be met by ASX listed entities in order to take advantage of the relief under the Corporations Instrument, including the requirement for unaudited financial information to be provided to the market. In effect, the combination of the ASIC Corporations Instrument and ASX waiver is that listed entities:

- Must lodge the Appendix 4E (full years) or Appendix 4D (half-years) in the normal timeframes (not required by mining and oil and gas exploration entities or for ASX AQUA issuers)
- Must lodge unaudited financial information in lieu of audited or reviewed information where the relief is relied upon (as part of the Appendix 4E, or together with the Appendix 4D, where these are required)
- Must announce to the market where they are relying on the ASIC relief to extend the lodgment date for its half year or full-year financial report, or the extended deadline for sending of annual reports to security holders (this will be together with the Appendix 4E, Appendix 4D or unaudited or unreviewed accounts)
- Keep the market informed of any changes to the unaudited (or unreviewed) financial information
- Comply with the extended ASIC lodgment deadline for lodgment of the audited financial report and sending of annual reports to security holders.

The ASX waiver notes that listed entities should endeavour to lodge their audited or reviewed accounts with ASX within the normal listing rule deadlines, having regard to the information needs of security holders, creditors and other users of their financial reports, and any applicable borrowing covenants or other obligations.

How does the relief interact with continuous disclosure requirements?

The relief provided by ASIC does not amend the continuous disclosure provisions for disclosing entities under Chapter 6CA of the *Corporations Act 2001*, or for listed entities, under the ASX Listing Rules.

However, in late May 2020, the Federal Treasurer made *Corporations (Coronavirus Economic Response) Determination (No. 2) 2020* (available at www.legislation.gov.au) which modifies the continuous disclosure requirements under the *Corporations Act 2001* for a six month period beginning 26 May 2020.

The Determination means companies and their officers will only be liable for continuous disclosure breaches if there is “knowledge, recklessness or negligence” with respect to updates on price-sensitive information. The ordinary requirement refers to disclosure if “a reasonable person would expect, if it were generally available, to have a material effect on the price or value of ED securities of the entity”.

Notwithstanding these temporary amendments, disclosing entities should disclose all relevant and known information.

² Note that the exchange notification requirement in the Corporations Instrument is linked to the reporting deadline under the *Corporations Act 2001* (which is 75 days) rather than those arising under the ASX Listing Rules (which is ordinarily two months after half year for most entities). However, these requirements are effectively overridden by the requirements of the ASX waiver.

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What entities cannot take advantage of the relief?

The relief provided by ASIC does not impact the following reporting obligations:

- Registered foreign companies required to lodge financial statements under s.601CK of the *Corporations Act 2001*. These entities are still required to lodge financial statements with ASIC at least once in every calendar year and at intervals of not more than 15 months
- Lodgement of the annual reports of notified foreign passport funds with ASIC under s.319(1AA) of the *Corporations Act 2001*. These entities will need to continue lodging these reports within three months of the end of the financial year.

The above entities may be able to apply for relief (see below).

What if additional relief is needed?

In extreme cases, the extended deadlines may not be able to be complied with. This may occur where information needed to prepare financial statements is unavailable due to COVID-19 impacts on foreign operations.

Where the relevant deadline arises under the *Corporations Act 2001*, the entity may be able to apply to ASIC for entity-specific relief. Listed entities wishing to do so would also need to consider the ASX Listing Rules. All entities seeking relief should consider the guidance in ASIC media release 20-084MR *ASIC to provide additional time for unlisted entity financial reports* (available at www.asic.gov.au), which notes:

"... ASIC will consider applications to extend the reporting deadline for individual entities in appropriate circumstances. Where possible, any applications should be made at least 14 days before the normal reporting deadline. Applications should include sufficient information for ASIC to assess the impact of market conditions and COVID-19 developments."

Further guidance on how to make an application to ASIC, and when an application is likely to be successful, can be found in ASIC Regulatory Guide RG 43 *Financial reports and audit relief* (available at www.asic.gov.au) and ASIC Regulatory Guide RG 51 *Applications for Relief* (also available at www.asic.gov.au).

In addition, entities facing difficulties meeting the deadlines under the ASX Listing Rules (including those linked to the *Corporations Act 2001* requirements) can apply to the ASX for a waiver. Entities wishing to pursue a waiver should follow the guidance in ASX Guidance Note 17 *Waivers and In-principle Advice* (available at www.asx.com.au). For issuers on the ASX Quoted Assets (AQUA) market, ASX Operating Rules Guidance Note 4 *Waivers and In-Principle Advice* (also available at www.asx.com.au) has further information on how to apply for a waiver of the operating rules governing those products.

Where entity specific relief is required, applications should be made as early as possible and before the relevant deadline passes.

Conclusion

The deadline extensions will be welcomed by many entities. However, entities need to carefully review how the extensions impact all their relevant requirements under the *Corporations Act 2001*, ASX Listing Rules and other requirements. Understanding exactly why particular deadlines must be met and each deadline's interaction with the relief, internal reporting and other requirements will be important in ensuring ongoing compliance.

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Appendix: Summary of relief

ASIC Corporations Instruments

The four Corporations Instruments issued by ASIC providing the deadline relief are as follows, along with the relevant date that the instrument was registered (as an extended deadline only applies where the normal reporting deadline had not already passed at the time that the instrument of relief was registered)

Instrument	Applies to	Financial years affected	Registered
<i>ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395</i> (available at www.legislation.gov.au)	Unlisted entities reporting under Chapter 2M of the <i>Corporations Act 2001</i> Unlisted Australian Financial Services licensees reporting under Chapter 7 of the <i>Corporations Act 2001</i> Audits of compliance plans for unlisted registered schemes	Financial years and half years ending between 31 December 2019 and 7 July 2020 (both inclusive)	24 April 2020
<i>ASIC Corporations (Amendment) Instrument 2020/396</i> (available at www.legislation.gov.au)	Exempt proprietary companies obtaining relief under <i>ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840</i> (available at www.legislation.gov.au)	Financial years ending between 31 December 2019 and 7 July 2020 (both inclusive)	24 April 2020
<i>ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451</i> (available at www.legislation.gov.au)	Listed entities reporting under Chapter 2M of the <i>Corporations Act 2001</i> Listed Australian Financial Services licensees reporting under Chapter 7 of the <i>Corporations Act 2001</i> Audits of compliance plans for listed registered schemes	Financial years ending between 21 February 2020 and 7 July 2020 (both inclusive) Half years ending between 15 March 2020 and 7 July 2020 (both inclusive)	20 May 2020
<i>ASIC Corporations (Amendment) Instrument 2020/452</i> (available at www.legislation.gov.au)	Unlisted entities (amends applicable dates in the first two instruments above from 31 March 2020 to 7 July 2020) Entities obtaining relief under <i>ASIC Corporations (Wholly-owned Companies) Instrument 2016/785</i>	Financial years ending between 31 December 2019 and 7 July 2020 (both inclusive)	20 May 2020

In addition, ASIC has put in place a 'no action' position (available at asic.gov.au) in respect of the holding of AGMs.

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