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Director, Continuous Disclosure Review Unit  
Markets Conduct and Digital Division  
Treasury  
Langton Cres  
Parkes ACT 2600

By email: [continuousdisclosurereview@treasury.gov.au](mailto:continuousdisclosurereview@treasury.gov.au)

## **AUSTRALIAN SHAREHOLDERS' ASSOCIATION – CONTINUOUS DISCLOSURE: REVIEW OF LIABILITIES FOR FAILURE TO MEET OBLIGATIONS.**

Dear Sir/Madam

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees, and investors generally seeking ASA's representation and support.

Thank you for the opportunity to comment on the review of the operation of the amendments made to the Continuous Disclosure Regime by the Treasury Laws Amendment (2021 Measures No.1) Act 2021 (Amending Act), (the review).

In our initial comments on the amendments bills in February 2021, we expressed an opinion that the proposed removal of the strict liability offences would reduce access to justice for retail shareholders and a return to the unlevel playing field prior to the introduction of the class action regime.

ASA has agreed with the Productivity Commission that a well-functioning civil justice system requires access to avenues for dispute resolution which are affordable and lead to quick resolutions (and are beyond the scope of alternative dispute resolution or other arbitration regimes); the provision of a range of affordable legal services that are proportionate to the problems experienced, easy to access and treat people fairly to ensure that access to justice is not contingent on personal wealth.

We see class actions as helping to provide access to justice for retail shareholders who would not otherwise be able to access legal assistance to secure redress for corporate misconduct.

ASIC's capacity to continue to prosecute disclosure no fault failures does not assist shareholders to access any redress, as well as being limited to imposing a civil penalty of up to \$100,000, unlikely to act as a deterrent. However, the ability for a disclosing entity to ignore such an infringement notice is likely to reduce retail shareholder trust in the process.

We respond at a high level to the questions posed.

We were concerned the 2021 amendments watered down the continuous disclosure laws however, given a review was coming, we consider the deterioration of behaviours was held back as companies and directors observed the previous standards.

We also note actions against companies with inadequate disclosures often experience significant delays. Typically, these shortcomings become evident only after a crisis has occurred, at which point the deviation from the expected standard of disclosures can be traced back over an extended period of time, often spanning several years. We expect any impact of the watering down to take a few years to become apparent.

The goal of Australia's continuous disclosure regime is to ensure that the market is trading in a fully informed condition. ASA agrees the timely disclosure of market sensitive information is essential to maintaining and increasing the confidence of investors in Australian markets, and to improving the accountability of company management. This is a responsibility listed entities take on in return for easy access to capital from retail and other investors.

The 2021 Amendments changed the disclosure regime such that for successful civil penalty proceeding brought by ASIC or shareholder, a disclosing entity or its officers must be shown to have acted with 'knowledge, recklessness or negligence,' compared to the previous circumstance where a disclosure should have been made and was not.

We consider embedding the amendments requiring showing a disclosing entity or its officers has acted with 'knowledge, recklessness or negligence,' rather than showing a disclosure should have been made in a more permanent form, will encourage slippage of standards of disclosure and deliver a consequently materially negative impact. We see removing these amendments as being beneficial to the efficiency or effectiveness of, or the level of information in, the market for Australian listed securities.

## Summary

We request that the amendments made to the Continuous Disclosure Regime by the Treasury Laws Amendment (2021 Measures No.1) Act 2021 should be unwound.

If you have any questions about these comments or other matters, please do not hesitate to contact me ([ceo@asa.asn.au](mailto:ceo@asa.asn.au)), or Fiona Balzer, Policy & Advocacy Manager ([policy@asa.asn.au](mailto:policy@asa.asn.au)).

Yours sincerely



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Australian Shareholders' Association