

MEDIA RELEASE

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A BAD DAY FOR RETAIL SHAREHOLDERS

ASA asks Treasurer how temporary is 'temporary' and expresses concern about allowing the "Honest Idiot" defence for Directors.

Australian Shareholders' Association (ASA) today raised concerns about the Government's Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020, which was passed last night.

ASA supports measures to overcome logistical difficulties caused by the pandemic and gathering restrictions during the current pandemic. However, we do not believe that short-term reactions to longer-term issues are justified.

All of these measures water down retail shareholder rights and we are concerned some may not end up being temporary.

Virtual AGMs

ASA is in general terms opposed to virtual-only AGMs, because they limit the ability of shareholders to ask questions of the Board and management. They are a mere shadow of the real thing.

This allows executives and directors to avoid transparency and dodge questions, potentially leaving retail investors uninformed about the true performance of the company.

We support the use of hybrid AGMs being the best of all worlds.

Shareholder communications

ASA agrees with electronic communications, but only where shareholders can "opt in" for mailed communications.

Shareholders who choose to opt-in should receive all relevant information, not just a postcard that directs them to a website for further information.

Not every shareholder has or wants access to the internet, so their needs must equally be met.

Continuous disclosure

Changes to continuous disclosure laws – a permanent change to the regulations – raise significant concerns for shareholders and their rights.

Allan Goldin, ASA Chair said “Previously, disclosure laws meant investors only had to prove a company had failed to disclose information to the market, regardless of intention. This meant all Directors had to be aware of what was happening as they were liable.

For most Directors who are people with integrity trying to do their best this is not going to change their behaviour.

However, for a small number of Directors, this change of liability to situations where a director has acted with “knowledge, recklessness, or negligence” opens the door to the “honest Idiot” defence. For those Directors who really don’t care, all they do is tell the executives do what you want, just don’t tell me until after, and just pay me each month.

For the poor shareholder, this change will significantly limit the grounds on which a plaintiff can make a claim and it will be unlikely a case will be raised.

Now, a shareholder will only be successful in a case if they can prove “knowledge”, “recklessness”, “negligence”, which will place a significant burden on mum and dad investors.

Continuous disclosure protects shareholders, promotes market integrity, and makes it easier for companies to raise capital by protecting the investors’ rights.

The Government has gone from a position where directors were liable if they didn’t disclose information to only holding them accountable where they did so recklessly.

The people who suffer will be the self-funded retiree and mum and dad investors who don’t have special interest knowledge about the company’s performance.

Limits to class actions and disclosure rules will only deny justice to millions of shareholders in an effort to protect the director classes.”

- Ends -

For more information please contact:

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The Australian Shareholders’ Association (ASA) is the only independent, member-funded, not-for-profit organisation that educates shareholders to become better investors and focuses on driving improvements in transparency and accountability of corporate behaviour in Australia.

Each year the ASA monitors the ASX200 companies, representing retail Australian investors and safeguarding and advancing their interests.