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13 April 2021

Mr Mark Fitt
Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: economics.sen@aph.gov.au

Inquiry into Treasury Laws Amendment (2021 Measures No.1) Bill 2021

Dear Mr Fitt,

CPA Australia represents the diverse interests of more than 168,000 members in over 100 countries supported by 19 offices globally. We make this submission on behalf of our members and in the broader public interest.

Schedule 1

We support the proposals to extend the relief measures by a further six months. However, in line with our comments provided in response to the proposed permanent amendments made in the *Exposure Draft Bill: Making permanent reforms in respect of virtual meetings and electronic document executing*, we recommend that these proposals should be developed into a permanent solution.

Meeting documents should be able to continue to be provided electronically if readily accessible and the security holder or member, including in the case of a company limited by guarantee, has not elected to receive a hard copy. The permanency of this provision should not be delayed whilst any opt-in pilot for hybrid general meetings is tested.

Accordingly, we support the Government's intention noted in paragraphs 1.6 of the Explanatory Memorandum (EM) that it intends to permanently implement the reforms relating to the electronic signing of company documents.

We note from paragraph 1.7 of the EM that the Government is intending to conduct an opt-in pilot for hybrid annual general meetings in which shareholders can attend meetings in person or virtually. We would welcome further details around this proposed opt-in pilot. In this regard, we also note that there is a need to ensure that avenues continue to exist for shareholders/members to be able to engage directly (face-to-face) with directors, and that when any measures relating to the holding of virtual annual general meetings become permanent, these measures should not preclude such direct engagement.

Schedule 2/Chapter 2 – Continuous disclosure obligations

As the EM sets out (para. 2.6-2.7) these amendments arise out of recommendation 29 of the Parliamentary Joint Committee on Corporations and Financial Services (PJCCFS) report on *Litigation funding and the regulation of the class actions industry* (December 2020):

> The committee recommends the Australian Government permanently legislate changes to the continuous disclosure laws in the Corporations (Coronavirus Response) Determination (No. 2) 2020.

Chapter 17 of the PJCCFS report deals with shareholder class actions and litigation funding, and specifically addresses continuous disclosure laws at pp. 343 – 345. We note paras. 17.92 – 17.97 of the report and are unclear how, based on those paragraphs, the PJCCFS could have reached such a definitive conclusion as that expressed in Recommendation 29. We refer to several submissions cited by the PJCCFS in its report:

- The Risk and Insurance Management Society noted that there is "minimal empirical evidence as to the true impact of the of the current continuous disclosure and misleading or deceptive conduct regimes on the Australian class action market". (para. 17.95)
- MinterEllison argued that there is a lack of evidence regarding the impact of class actions combined with the Australian corporate regulatory environment. The firm stated there has been no in-depth, empirically-based research examining the impact of the continuous disclosure and misleading or deceptive conduct regimes on corporate Australia when coupled with exposure to an increasing number of funded shareholder class actions. (para. 17.95)
- Augusta Ventures (Australia) argued that any examination of the continuous disclosure regime deserves full consideration of the evidence, long term policy impact and whether they deliver tangible benefits to the community. (para. 17.96)
- There were also calls for a broader review covering all aspects of disclosure laws from a wide range of submitters, not just those opposed to the continuation of the COVID-19 temporary relief. Norton Rose Fulbright submitted, "we believe that longer-term law reform addressing the underlying tests for entities to disclose material, price sensitive information in the Corporations Act ought to be pursued as a core part of the Australian Government's strategy to support businesses towards economic recovery and growth in the next critical 12 to 24 months". (para. 17.97)

CPA Australia's submission is referenced at para. 17.97. In this submission we urge the implementation of Recommendation 24 from the ALRC Report 134 *Integrity, Fairness and efficiency – An Inquiry into Class Action Proceedings and Third-Party Litigation Funders* (December 2018):

> The Australian government should commission a review of the legal and economic impact of the operation, enforcement, and effect of continuous disclosure obligations and those relating to misleading and deceptive conduct contained in the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth).

The proposed reforms in Schedule 2 amount to a significant reorientation which CPA Australia argues should be considered in a wider context around the efficacy of the liability regime, particularly in its dealing with misleading and deceptive conduct across a range of corporate disclosures. Further, there is a risk of conflating each of the issues of shareholder class actions (private versus regulatory enforcement), the litigation funding market and the function of continuous disclosure in addressing information asymmetries.

Furthermore, we believe it crucial to weigh the need for Recommendation 29, which amounts to a substantive reorientation of rights, liability and remedies, with other recommendations (for example, Recommendation 17 dealing with detailed information to accompanying application for a class action

settlement) to determine what are balanced, fair and incrementally acceptable outcomes. As it presently stands, separating the continuous disclosure reforms in Schedule 2 of the Bill from other reforms recommended by the PJCCFS, and which are before the ARLC, amounts to piecemeal law reform with potential for adverse unintended outcomes.

If you require further information on the views expressed in this submission, please contact Dr John Purcell, Policy Advisor – Environmental, Social and Governance on [redacted]

Your sincerely

[redacted]

Dr. Gary Pflugrath
Executive General Manager, Policy and Advocacy