# Senate Standing Committees on Economics

**Submitter:** **Michael Sanderson**

## TREASURY LAWS AMENDMENT (2021 MEASURES NO. 1) BILL 2021

Issue addressed by this submission:

*Hybrid annual general meetings (AGM) in which shareholders can attend meetings in person or virtually*

I understand and support the temporary introduction of virtual AGM's due to the current pandemic.

The committee should be aware that in some cases it was not a straight forward process to log into a virtual AGM, even for the tech savvy. This included:

- The requirement for additional characters to be added to the advertised login ID that were not advertised.
- Random dropouts and the inability to log back on.
- Online help delays and unhelpful advice.

I acknowledge that these may be a consequence of teething issues, but they are issues that do not exist at physical shareholder meetings and physical AGM's.

More importantly the exercise did serve to highlight how corporations are able to manipulate questions and responses posed by shareholders and their proxies within the virtual format, they include:

- The ignoring of reasonable questions
- The editing of reasonable questions
- The bundling of questions that the company unilaterally deemed to be similar

- The unreasonable character limit on questions
- The inability of a shareholder to have a right of reply when a question is:
    - Ignored
    - Partially answered
    - Answer did not address the question

I have personally experienced all of the above.

A physical AGM is generally the only time that small shareholders can eyeball the board and ask a question in the presence of fellow shareholders. Based on reaction to questions of those in physical attendance the board can gauge collective mood of their shareholders. The Shareholders are able to observe the body language of the board and generally meet with them after an AGM.

None of these crucial interactions are possible virtually.

I know from real experience, that virtual AGM's are able to be, and have been manipulated in a way that physical AGM's can't.

**It is critical that meetings involving shareholders, be physical or have a physical option: that is a hybrid meeting. For the reasons above, under no circumstances with the exception of an emergency, should such meetings be exclusively held virtually.**

# Senate Standing Committee on Economics

**Submitter:** **Michael Sanderson**

## TREASURY LAWS AMENDMENT (2021 MEASURES NO. 1) BILL 2021

Issue addressed by this submission:

*Continuous disclosure obligations*

**Continuous Disclosure**

Entities are not conscious or thinking, they function under instruction of thinking people and it is the company's boards that have ultimate responsibility. Any member of the board that does not disclose information and issues of public importance should be held accountable. Often company executives and boards like to hide news or information that might reflect badly on the company and affect its share price.

One only has to look at examples highlighted by the Financial Services Royal Commission (FSRC) and the recent Crown debacle.

The point of the laws is to encourage company boards to disclose timely and accurate information that shareholders have a right to know.

Class actions and their sister enterprise litigation funding is a direct consequence of the lack of access to timely, equitable and proportional justice within the country's privatised monetarised not fit for purpose legal sector, posing as a justice system.

This judicial inequity drives a culture of perceived impunity within boards. If company boards behaved unethically and don't operate in the interest of customers, clients and shareholders there is little danger of board members, seeing the inside of a court.

Not only are appropriate laws and penalties required that discourage this type of behavior, but more importantly we need a justice system that is timely, equitable and proportional that enforces those laws.

If one wishes to get rid of class actions and their sister enterprise litigation funding,

one needs to fix the inequity and dysfunction within the justice system.

Politics and corporations are no longer generally trusted by the wider public. Watering down continuous disclosure is just another example of government putting in place laws that operate against the public's interests. Another contemporary example is the government's push to axe Responsible Lending Laws despite the FSRC recommendations.

Continuous Disclosure drives honesty, ethics, due diligence and timely corrections.

Shareholders must have accurate, honest, timely disclosure of any information that affects their position with the company they have invested in.

**Notwithstanding and in addition to the above**

When making decisions that affect the public I encourage you to consider the following.

Public office is a public trust, as the Hon Paul Finn stated:

> *"... Much the most fundamental of fiduciary relations in our society is that which exists between the community ... and the state and its agencies that serve the community…"*

The parliament, the Senate Standing Committee on Economics and its staff have an overarching fiduciary obligation and must act in the interests of the Australian public.

The Hon Tim Smith Q.C., Adjunct Professor Monash University in the paper titled *"Public Office – Public Trust: the forgotten principle"* stated:

> *"…the party with the fiduciary obligation is expected to act in the interests of the other party or in their joint interests…the proposition also matters because, by the use of the term "public trust", it also encapsulates the fundamental and ultimate obligation of those who hold office in any branch of government to serve the best interests of the people…where it is forgotten or overlooked, those holding public office are unlikely to bring their fiduciary obligations into consideration when they are making their decisions. This is particularly important for our elected representatives who, from the moment of their election to office, have to perform their duties in a situation of many potential conflicts of interest…"*

The committee and its staff as a public trustee, has a fiduciary duty to act in the public interest, not the corporation's or their political self-interest.

Watering down of continuous disclosure laws would be a breach of public trust.