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Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted: Online via

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLAB2021MeasuresNo1

**ASA SUBMISSION - SENATE ECONOMICS REFERENCES COMMITTEE - INQUIRY INTO THE TREASURY LAWS
AMENDMENT (2021 MEASURES NO.1) BILL 2021**

Dear Madam/Sir

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. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

Summarised below is the Australian Shareholders' Association's (ASA's) views on Schedule 1 of Treasury Laws Amendment (2021 Measures No.1) Bill 2021 as expressed in previous consultations. We provide additional comment on Schedule 2.

Summary of ASA's views

Schedule 1 – Virtual meetings and electronic communication of documents

1. AGMs should be held as hybrid meetings, a combination of physical and virtual, not exclusively virtual
2. Electronic communications should be default with an "opt in" for mailed communications
3. Electronic execution of company documents is welcomed

Schedule 2 – Continuous disclosure obligations

1. The proposed removal of the strict liability offences will reduce in our opinion access to justice for retail shareholders and a return to the unlevel playing field

Links to ASA's previous submissions relevant to this enquiry

Schedule 1 – Virtual meetings and electronic communication of documents

- 6 November 2020 [ASA Response to Corporations Amendment \(Virtual Meetings and Electronic Communications\) Bill 2020](#)
- 10 August 2020 [Appearance Select Committee on Financial Technology and Regulatory Technology](#)

Schedule 2 – Continuous disclosure obligations

- Position Paper [Class actions](#)
- 26 July 2018 [Submission to ALRC Inquiry into class action proceedings and third-party litigation funders](#)
- 6 October 2017 [ASA submission VLRC Access to justice](#)

See also: ASA response to the bill, being media release dated 17 February 2021 [New disclosure laws - A curates egg](#)

ASA considered the protections offered to directors and officers during the early stages of COVID-19 in removing the existing strict liability for companies and officers who fail to meet the requirements of the continuous disclosure of market sensitive information, while not definitely necessary, allowed (additional) information to be provided to shareholders and potential shareholders in the face of unprecedented uncertainty. We had been concerned that all guidance would be withdrawn by some companies that take an overly legalistic approach to disclosures. The temporary nature of the amendment was its greatest value.

Provision of guidance and feedback of how companies were being impacted through the pandemic allowed companies to raise capital and maintain confidence of shareholders. Retail shareholders provided large sums of new capital during 2020 and retained existing holdings in general.

Making the changes to officer liability permanent will return the market an unlevel playing field, where shareholders have no opportunity to hold company officers to account for lack of appropriate disclosures or to seek redress for the losses to shareholders that flow from those deficiencies.

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 resolution (and are beyond the scope of alternative dispute resolution or other arbitration regimes); the provision of a range of legal services that are proportionate to the problems experienced, easy to access and treat people fairly; and affordable services to ensure that access to justice is not contingent on personal wealth.

ASA has publicly (but not financially) supported Australian class actions where companies have failed in their corporate governance and retail shareholders have not received redress for the losses they have suffered.

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

Allowing ASIC to continue to prosecute disclosure failures on a no-fault basis will not assist shareholders to access any redress.

Class actions can assist in creating a more 'level playing field' between plaintiffs and large, well-resourced corporate defendants. We see the proposed changes in Schedule 2 will widen this gap.

If you have any questions about these comments, please do not hesitate to contact me, or Fiona Balzer, Policy & Advocacy Manager on [REDACTED].

Yours sincerely

[REDACTED]

John Cowling
Chief Executive Officer
Australian Shareholders' Association