Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
28 February 2021

Reg: Submission - Treasury Laws Amendment (2021 Measures No.1) Bill 2021 [Provisions]

To Committee Secretariat,

The title of Shankar Jaganathan's book 'Corporate Disclosures, The Origin of Financial and Business Reporting 1553 - 2007 AD' Published September 5, 2019 by Routledge, gives an idea of how long corporate disclosure has been around. In the many centuries that financial regulators and law enforcement authorities have fine-tuned the law, it still doesn't serve consumers' best interest. The push to axe continuous disclosure obligations, like the push to axe responsible lending laws appears to be industry driven.

This Bill under the spotlight, the 2021 Measures No. 1) Bill 2021, Explanatory Memorandum wants to axe / reduce the continuous disclosure obligations. Those obligations can be expressed as, *'A listed company has an obligation to continuously disclose information which may have an effect on its market price or value. Continuous disclosure is based on the principle that all investors should have equal and timely access to information about a company. Timely disclosure of information helps to protect the investor and the reputation of the market.'*[1]

Part of the problem appears to be according to the 2021 Measures No. 1) Bill 2021, Explanatory Memorandum,
2.7 The report of the Committee provides that securities class actions are frequently brought in Australia alleging contraventions of the continuous disclosure obligations and that this has a significant financial and compliance impact on the entities and officers subject to these actions. [2]

[1] The Australian Institute of Company Directors, Continuous disclosure requirements Board performance Page 1
[2] 2019-2020-2021 The Parliament of the Commonwealth Of Australia, House Of Representatives, Treasury Laws Amendment (2021 Measures No. 1) Bill 2021, Explanatory Memorandum (Circulated by authority of the Treasurer, the Hon Josh Frydenberg MP) Page 24

An example of a more recent document titled, *Corporate disclosure Strengthening the financial reporting framework* 2002, its 205-pages makes no mention of class actions. Today class action litigation funders have hijacked the spirit of justice for the sake of investment returns. Purely business, like the 2018 case in which lawyers and their funder tried to grab $11.75 million from a $12 million settlement.[3] And in the article, *High Noon for Cashed-up Cowboys of Class Actions* and *"Promises about offering plaintiffs greater access to justice have become a smokescreen for ripping them off"* [4] captures the culture in a sub heading.

Did Charles Dickens consider litigation funders when he said, "the law is an ass"? Now the option is to axe consumer protection in the hope of taming litigation funders is like pinning the tail on the donkey. In fact consumers need better protection, the continuous disclosure law doesn't need axing it needs widening. A listed disclosing entity is too narrow. The law needs to be extended to ensure that other important information is made available to consumers. Information like the number of financial breaches, the number of resolved / unresolved cases and what are the remedies? List the cyber crimes and list the names of repeat misconduct offenders in banking, insurance, superannuation and financial services industry. Put their names up on an ASIC website in the same way paedophile offenders are listed for the public's safety and benefit.

Of the 27.5 million Australians mandated in superannuation, only the APRA-supervised funds have exclusive right to the protection (insurance) against 'fraud' offered by Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act). Before the Trio Capital fraud was discovered in September 2009, there was not a single piece of information that informed consumers about Part 23 or about organised crime in the financial sector.

The exclusiveness of Part 23 of the SIS Act, knocks down its competitor. Part 23 of the SIS Act trumps criminal law, 1,000 Trio victims saw no justice. Part 23 of the SIS Act compensated 90 per cent of the Trio victims, thus the crime was closed. Part 23 of the SIS Act removed any need for a proper thorough investigation. The failure to disclose evidence, the misinformation and massive cover-up exacerbated the harm caused to the 10 per cent group. In considering the Trio story, the argument to improve disclosure and reduce the imbalance between consumer and industry is all the more compelling.

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[3] Richard Guilliatt Bitter Taste Weekend Australian Magazine 6 May 2020 page 12
[4] Janet Albrechtsen High Noon for Cashed-up Cowboys of Class Actions The Australian 13 May 2020 page 10

It's dangerous to expect ASIC can fill the void left after axing continuous disclosure obligation laws. The Banking Royal Commission and the Productivity Commission found both regulators reluctant to act against misconduct in banking, insurance, superannuation and financial services industry. It's a concern that the axing continuous disclosure law is based on the need to prevent class actions. Generally it's not the information that may or may not effect the market price or value that causes the greatest harm to consumers. Usually it's fraudulent activity in relation to the presentation of the company's financial statements. and the missing estimated $25 million from around 60 investors could have been avoided if there was a public ledger that shows if the person who claims to have an ASIC licence is legitimate. To proceed with a financial planner, the investor would be required to check ASIC's licence database and confirm legitimacy.

The Trio Capital Limited scheme held a legitimate licence, but nearly $200 million disappeared. Full disclosure as why that's possible would have benefited all consumers in the financial market. But ASIC's and APRA's stranglehold on information benefits perpetrators more than victims of crime. The Robert Maxwell case saw deceptive and misleading disclosure behind the plunder of pension funds. Why are frauds able to operate for years unchallenged? Why do auditing disclosures fail to use evidence-based data? Why are Gatekeepers failing to serve consumer's best interests? Better disclosure, more disclosure would help inform and educate consumers and help reduce the number of Australians who get stripped of their assets.

Consumers deserve accurate disclosure and they deserve not to be at the bottom of the ladder or the easiest entity to blame. Simply reminding fraud victims of "Caveat Emptor" is inappropriate, as the term has no application where contract is induced by fraud.
This submission supports disclosure laws and transparency and in particular, spelling out in plain English the Gatekeeper's; Custodian's; and the Regulator's responsibilities and obligations. Also needed is disclosure about systemic issues and how they can impact on consumers.

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Senate Standing Committees on Economics
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1 March 2021

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[Virtual Meetings]

To Committee Secretariat,

Legislation amendment for the introduction of virtual meetings and electronic communications would allow members the option to decide whether to leg-it to or login to the meeting it is hybrid.

A couple of suggestions [probably already covered]:
Suggestion 1.
Prepare question in a word or text document. This will help articulate the question and also provides a back-up if the virtual meeting files become lost.

Suggestion 2.
Learn how to get the most out of joining a virtual meeting.

Suggestion 3.
Recognise and understand that virtual meetings bring benefits and drawbacks.

John Telford
Secretary
Victims of Financial Fraud (VOFF Inc)