



1 December 2023

Dr Kevin Lewis
Independent reviewer
Continuous Disclosure Review Unit
Markets Conduct and Digital Division
Treasury
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Dear Kevin,

CONTINUOUS DISCLOSURE REVIEW 2023

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members are Australian and international asset owners and institutional investors with over AU\$1 trillion in funds under management.

Through research, engagement, advocacy and voting recommendations, ACSI supports members in managing ESG investment risk and exercising active ownership to strengthen investment outcomes. Active ownership, including the management of climate related risk, allows institutional investors to enhance the long-term value of retirement savings entrusted to them to manage.

ACSI's position

ACSI welcomes the opportunity to participate in the review of Australia's continuous disclosure laws. As ACSI outlined during the consultation in 2021, the changes to the continuous disclosure regime were not necessary. Australia's continuous disclosure obligations are a foundation to maintaining market integrity and transparency. Investors need information that is complete, accurate and timely to make robust investment decisions, which is critical to a well-functioning market. ACSI was of the view that changes made to the disclosure obligations in 2021 (requiring the state of mind of a disclosing entity to be taken into account) were not necessary, and our position has not changed.

The 2021 changes were not necessary because significant guidance was already available to company directors and officers on how to manage their disclosure obligations. As demonstrated by [the ASX's Compliance Update](#) issued on 31 March 2020, the Listing Rules were capable of addressing market uncertainty and there was detailed guidance already available that outlines the action a company should take to avoid a misinformed market. Therefore, the pandemic did not create any need to modify the continuous disclosure obligations, nor a need for them to be changed permanently.

Investors do not expect listed entities to predict the unpredictable. Rather, listed entities should make balanced disclosures that have a reasonable basis, and update disclosures if there is new material information. Well-governed companies were aware of how to comply with the pre-pandemic provisions, although we recognise the laws may have presented a challenge for poorly-governed companies, in which case the laws had an important role in encouraging better practice.

As we expressed in our 2021 submission, it is difficult to attribute challenges in the class actions system or in directors' and officers' insurance to the continuous disclosure requirements. Arguably the issues arose from a variety of factors.

For the integrity and efficiency of Australia's market to be secured, the pre-pandemic objective test should be re-instated. At the very least, there should be no further changes to the requirements.

I trust our comments are of assistance. Please contact me or Kate Griffiths, Executive Manager – Policy and Research [REDACTED], should you require any further information.

Yours sincerely,



Louise Davidson AM
Chief Executive Officer
Australian Council of Superannuation Investors