



11 February 2021

Mr Jason Lange
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
1 National Circuit
BARTON ACT 2600

Email: helpdesk-OBPR@pmc.gov.au

Dear Mr Lange

CERTIFICATION OF INDEPENDENT REVIEW: INQUIRY INTO LITIGATION FUNDING AND THE REGULATION OF THE CLASS ACTION INDUSTRY – FINAL REPORT

I am writing to certify that, with regards to amendments to the continuous disclosure laws to introduce a fault element, the attached report of the Parliamentary Joint Committee on Corporations and Financial Services (PJC report) involved a process and analysis equivalent to a Regulation Impact Statement (RIS).

I certify that these documents adequately address all seven RIS questions, and is submitted to the Office of Best Practice Regulation for the purposes of a final policy decision.

The PJC Report included a recommendation that the Government permanently legislate changes to continuous disclosure laws that were made temporarily by Corporations (Coronavirus Economic Response) Determination (No. 2) 2020. This involves the introduction of a 'fault standard' to continuous disclosure rules so that entities are only liable where they have acted with 'knowledge, recklessness or negligence' in regards to failing to update the market. This covers most of the scope of the Treasurer's announced policy. We have provided supplementary analysis on two components of the legislative amendments that were not part of the recommendation included in the PJC Report:

- introducing a fault standard for misleading and deceptive conduct actions brought under the same circumstances as continuous disclosure actions; and
- retaining the existing standard for administrative action and non-financial enforcement action by the Australian Securities and Investments Commission, so that they do not have to prove fault for these types of actions.

Therefore I am satisfied that with this addition the scope of the certified documents matches the policy proposal.

The regulatory burden to business, community organisations or individuals of introducing a fault element to continuous disclosure and in limited circumstances for misleading and deceptive conduct is quantified using the Australian Government's Regulatory Burden Measurement framework and is provided below.

Regulatory burden estimate table

Average annual regulatory savings (from business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$912.5	N/A	N/A	\$912.5

Accordingly, I am satisfied that the attached report, together with the supplementary analysis, is consistent with the *Australian Government Guide to Regulatory Impact Analysis*.

Yours sincerely



Meghan Quinn
Deputy Secretary, Markets Group
11 February 2021