



4 June 2021

Mr Robert Jeremenko/Mr Ben Dolman  
Market Conduct Division/Retirement Income Policy Division  
Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [MCDproxyadvice@treasury.gov.au](mailto:MCDproxyadvice@treasury.gov.au)

Dear Mr Jeremenko and Mr Dolman

**Re: Consultation Paper – Greater Transparency of Proxy Advice**

**In brief:**

*AIST supports transparency and accountability regarding proxy voting, however, if implemented, the prescriptive nature of the detailed recommended disclosure regime and additional regulation on the ownership structure of proxy advisors would result in the undermining of trustees' capacity to act in member's best financial interest. Regarding independence, it is critical between a proxy advisor and the companies that they assess rather than between the proxy advisor and client. This is already in place in Australia. There is no evidence of systematic problems or material errors in the proxy voting service offerings in Australia, so it is unclear what regulatory failures the Consultation Paper is seeking to fix. Furthermore, the options outlined are out of step with practices in the USA and the UK.*

**Overview of submission**

AIST's organisational purpose is to advocate for the financial wellbeing in retirement for all Australians. We do this by advocating for public policy which promotes the best interests of Australian superannuation account holders and by providing professional development for trustee directors, fund staff and other professionals in the sector.

AIST has engaged our membership on the Treasury Consultation Paper, and we were pleased to have met with Treasury Officials to discuss proxy voting practice last month. There are two broad areas where we have significant concerns with the options presented in the Paper:

**Trustees' capacity to act in members' best financial interests could be undermined**

- Contrary to assumptions made in the Consultation Paper, AIST is not aware of evidence that there are governance compromises where asset owners leverage joint ownership

models and related to this, cost sharing models for proxy advice. This includes where superannuation funds have partial membership of proxy advisors.<sup>1</sup> This is supported by current ASIC regulatory guidance<sup>2</sup> and international practice (refer to page five of this submission).

- There is no evidence that the proposal to require more detailed disclosure of informational input to proxy voting decisions would improve decision making or meet the needs of stakeholders.
- If implemented, both proposals would undermine trustees' capacity to act in members' best financial interests as they would impose additional net costs.

### **There are no governance or market failures to fix**

- Good governance principles require that proxy advisors be independent from the companies that they assess but good governance does not require proxy advisors to be independent from their clients. This is supported by the June 2018 ASIC review of proxy advisor engagement practices<sup>3</sup> and, as evidenced, in this submission (page five) by international practice.
- Proxy advisors are already regulated against misleading or deceptive conduct under the Corporations Act and they also hold AFSLs which carry additional obligations.
- Given that ASIC's 2018 Review did not identify issues in the market or evidence of poor practice that requires remedy or regulation (nor did AIST's engagement with a subset of members during our recent consultation identify material errors in proxy reports), AIST believes there is no evidential basis for requiring proxy advisors to change practice regarding when a proxy voting report is provided to the company. The UK does not take a prescriptive approach to the timing of the release of reports to companies and, in the USA, proxy advisors are also not required to disclose the report to the company before it is released to the client.
- The Consultation Paper suggests that asset owners may be jointly determining their positions on proxy voting. This is incorrect as multiple sources of information are used by funds to determine how they will vote.

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<sup>1</sup> It is worth noting that superannuation funds that subscribe to the services of a proxy advisor where they are also a member of that body, pay an additional fee for this service beyond base membership fee.

<sup>2</sup> ASIC [Regulatory Guide 79: Research report providers: Improving the quality of investment research](#), December 2021, page 32.

<sup>3</sup> ASIC's [Report 578: ASIC review of proxy adviser engagement practices](#), June 2018, page 8.

## Specific comments

### **Transparency, the existence of a ‘data gap’ and best financial interests**

AIST supports transparency of reporting by superannuation funds on their proxy votes for all resolutions. Funds are already required to make disclosures in the Superannuation Industry (SIS) Act.<sup>4</sup> This includes disclosure of:

- a summary of when, during the previous financial year, and how the entity has exercised its voting rights in relation to shares in listed companies;<sup>5</sup>
- the proxy voting policies of the fund;<sup>6</sup> and
- a summary of the conflicts management policy.<sup>7</sup>

Funds produce detailed reports on their web sites with some funds reporting every six months and providing additional detail (if fund members request it). For what might be considered a ‘small fund’ (\$5 billion funds under management (FUM) this means that an existing report might run to over 4,700 pages. A typical fund with FUM of \$20 billion might vote on over 13,900 resolutions, with 1,600 of these for ASX listed companies (international shareholdings are typically much larger and across a greater range of companies than Australian shareholdings).

In addition to disclosing according to SIS Act requirements, funds typically report on whether they receive proxy advice and which advisors they use. Funds have no issue with being transparent about how they vote as it is in the fund’s interest to be transparent with their members.<sup>8</sup>

The Consultation Paper appears to assume that there is a ‘data gap’ and suggests that funds could go beyond current practice of how each vote was exercised to include:

- whether any advice was received from a proxy adviser;
- who provided the service; and

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<sup>4</sup> Superannuation Insurance Supervisions Act, section 29QB.

<sup>5</sup> SIS Act, Regulations 1994 (SIS Regulations) 2.38(2)(o).

<sup>6</sup> SIS Act, Regulations 1994 (SIS Regulations) 2.38(2)(n).

<sup>7</sup> SIS Act, Regulations 1994 (SIS Regulations) 2.38(2)(m).

<sup>8</sup> During our consultation with members in May 2021, AIST asked a subset of members if they receive requests for additional information on proxy voting beyond what they are already disclosing. This subset of our membership indicated that they that there is no evidence that members are seeking additional information via helpline requests or online requests. Funds indicated that if members wanted more information that this would be disclosed.

- if advice was received, disclosure could include whether the voting actions taken were consistent with the proxy advice.

The paper appears to assume that funds rely exclusively on proxy advisors when making a voting decision. In practice, voting decisions are made based on multiple sources of information and principles including the fund's proxy voting policy and, at minimum, input from investment managers. In general, smaller funds maintain a model wherein they seek external advice and support from investment managers, they screen the investment managers for their credentials and have trustee board input into the Proxy Voting Policy. Larger funds typically use more sources of information, including internal investment managers. Irrespective of size proxy voting decisions are subject to scrutiny and are based on specialist knowledge of the company and its performance.

The current model does not diminish funds' responsibilities for final voting decisions. It is a responsible way to harness the expertise of others in a cost-effective way for members. There is no evidence that increased reporting would be in members' best interests.

A requirement to publish the additional data would be inconsistent with the best financial interests of superannuants (due to the cost imposition) as it would require a narrative on which sources of information were used for each vote and what the rationale was on why the vote was taken. There is no requirement for such detailed information on other investment decisions in Australia, so it is unclear why there should be for proxy voting.

### **Accountability**

AIST fully endorses the principle of accountability regarding proxy voting. Funds actively exercise their voting rights responsibly to maximise financial value for members by using ownership rights to influence and support positive corporate behaviour and drive improved practices.

In the last decade, funds have stepped up their accountability and are now voting comprehensively across Australian and international equity holdings to exercise their shareholder rights. This is important for stewardship reasons, including ESG issues which materially affect risk and return, and therefore funds have increased the priority for voting, ESG integration in investment decision-making and the selection (and monitoring) of investment managers regarding ESG. ESG, of course, is only one aspect of stewardship. Again, it is important to keep in mind that proxy voting decisions are made using more than one source of advice and are undertaken with care and due diligence.

**There is no 'governance failure' to fix**

The Consultation Paper states that proxy advisors should be required to be 'meaningfully independent' from a superannuation fund they are advising to ensure that proxy advice is provided to and used by superannuation funds on an 'arm's length' basis.

It is not clear what is meant by 'meaningful independence' nor is there evidence of a governance weakness or failure in this regard.

Good governance principles require that proxy advisors be independent from the companies that they assess, and this is already in place. This is evidenced by the June 2018 ASIC review of proxy advisor engagement practices<sup>9</sup> and by international practice as outlined below.

In the UK and Europe there are examples of proxy advisors with shared ownership structure with clients that are set up in this way to harness cost efficiencies. This includes the UK's [Investment Association](#) which has an Institutional Voting Information Service, [Federated Hermes EOS](#), which is owned by an investment manager. [Eumedion Corporate Governance](#) in the Netherlands is another example of an institution which offers services in corporate governance and ESG (including alerts for controversial resolutions), with membership open to all institutional investors that hold shares in Dutch listed companies.

In summary, the Consultation Paper appears to assume that there is a governance problem with Australian proxy advisors that ASIC did not uncover in its 2018 research and is not born out in international practice.

**There is no evidentiary basis for increased regulation**

The Consultation Paper suggests that there should be an opportunity for companies to identify factual inaccuracies and convey context or information to the proxy advisor that may impact the final voting recommendation. It is suggested that proxy advisors provide reports to companies five days prior to the final report being provided to the client.

Australian proxy advisors provide the reports to companies either before they are given to clients, at the same time or shortly thereafter which gives companies an opportunity to review and act if there are errors. Given that ASIC's 2018 Review did not identify issues in the market or evidence of poor practice that requires remedy or additional regulation, there does not appear to be a basis for requiring proxy advisors to change practice. AIST consulted members to ask if they

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<sup>9</sup> ASIC's [Report 578: ASIC review of proxy adviser engagement practices](#) comments on the importance of independence of a proxy advisor from the companies that are the subject of their reports and 'maintaining independence from companies (including preventing receipt of non-public information and avoiding undue influence)', June 2018, page 8.

were aware of material errors in proxy reports. Our consultation indicated no concern with the quality of the proxy advice delivered and the supporting material underpinning that advice. There was positive support for the accuracy, relevance, and timeliness of advice. One issue cited was that companies may choose to withdraw shareholder resolutions after receipt of proxy advice reports, which is not a reflection on the quality of proxy advisor reports but rather may reflect management's decision following discussion/engagement with their shareholders and a desire to avoid the likelihood of a defeated resolution.

Given already tight timeframes a new five-day rule could impede ability to make informed voting decisions in a timely manner or increase the cost of undertaking the activity. Costs may rise as a result of trying to meet time constraints through the need for increased resourcing. A process of allowing companies to review proxy reports prior to clients would also open the door for the potential for companies to influence reports; it is critical that independence be maintained between proxy advisor and companies.

International practice supports the position that factual inaccuracies in proxy advice reports are not material and there is no strong case for the provision of reports to companies in advance of clients. In the US, the Securities and Exchange Commission abandoned a proposed regulation that companies be provided with proxy reports in advance of clients.

In the UK, regulation provides for disclosure by proxy advisors without prescription on timing. The UK Stewardship Code supports principles regarding the code of conduct which are widely adopted across the investment sector, including fund managers, asset owners and service providers. This approach is more appropriate than singling out one type of service provider in the market, as suggested in the Consultation Paper. AIST would be supportive of the adoption of a stewardship code which would apply to all institutional investors and allow investors to determine how to present voting information in the most meaningful way to stakeholders.

Proxy advisers in Australia are also subject to s1041H of the Corporations Act which states that a person must not engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive.<sup>10</sup> In addition, in Australia all proxy advisers all hold AFS licences. The provision of misleading or incorrect advice would undermine the commercial reputation of a proxy and could lead to costly enforcement action.

It is unclear why regulatory change should be undertaken if the 2018 ASIC review did not find gaps in the regulatory regime.

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<sup>10</sup> Report 578: [ASIC review of proxy advisor engagement practices](#), Australian Securities and Investment Commission, June 2018, page 4.

### **There is no ‘market failure’ to fix**

The Consultation Paper suggests that proxy advisors may have broader objectives than the best financial interests of beneficiaries. It is unclear to AIST that this is the case. Funds purchase proxy reports to uphold their fiduciary duties so proxy advisors naturally focus on what they believe to be members’ best financial interests in their advice. This makes commercial sense.


It is also important to keep in mind that asset owners use multiple sources of information determine how they will vote not just the insights provided by proxy advice firms.

### **Next steps**

AIST looks forward to learning about any next steps that Treasury or Government intends to take regarding governance and regulation of proxy advisors.

For further information regarding our submission, please contact Holly Lindsay at [hlindsay@aist.asn.au](mailto:hlindsay@aist.asn.au).

Yours sincerely,



Eva Scheerlinck  
**Chief Executive Officer**

*The Australian Institute of Superannuation Trustees (“AIST”) is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds.*

*As the principal advocate and peak representative body for the \$1.5 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.*

*AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.*