

04/06/2021

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Mr Robert Jeremenko & Mr Ben Dolman
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Jeremenko and Mr Dolman

CONSULTATION PAPER – GREATER TRANSPARENCY OF PROXY ADVICE

AustralianSuper welcomes the opportunity to make a submission in relation to the Consultation Paper Greater Transparency of Proxy Advice.

Background

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. Over 2.56 million Australians are members of AustralianSuper with over \$213bn in member assets under management. We are the custodians of the retirement savings of more than 10% of Australia's workforce. Our sole focus is to use our size and scale to provide the best possible retirement outcomes for members and in doing so, always act in members' best financial interests.

We make the following relevant disclosures with this submission:

- AustralianSuper has an internal practice focussing on ESG and Fund Stewardship
- AustralianSuper has contracts with proxy advisers Glass Lewis and Australian Council of Superannuation Investors (ACSI).
- AustralianSuper CEO Ian Silk is currently the President of ACSI.

AustralianSuper approach

As a trustee fiduciary AustralianSuper acts in accordance with our regulatory obligations, including to act in the best financial interests of AustralianSuper members.

As a major institutional investor, AustralianSuper has a right and responsibility to vote on company resolutions. As such, AustralianSuper votes on company and shareholder resolutions put to shareholders for consideration. These include resolutions regarding Board election, remuneration, governance and ESG considerations.

AustralianSuper exercises our voting rights independently. We are in no way obliged or required to follow voting recommendations from external third parties, including proxy advisers. Our approach is informed by the desire to produce outcomes that create and/or enhance company value and ensure that value is appropriately distributed. Each vote by AustralianSuper is consistent with this approach and reflects our regulatory obligations, including to act in the best financial interests of members.

AustralianSuper votes on resolutions for Australian and international listed companies and we make public our voting decisions quarterly.

To help us make informed decisions ahead of any vote, AustralianSuper undertakes an active process involving:

- Internal Investment team analysis and consideration;
- AustralianSuper direct engagement with companies; and
- Obtaining advice from the proxy advisers listed above and external fund managers as appropriate.

Ultimately, AustralianSuper makes our own decisions based on what is in the best financial interests of members. As such, this may differ from recommendations from third parties, including proxy advisors. We consider our approach to be reasonable and in accordance with our regulatory and fiduciary obligations.

AustralianSuper response to the Options in Consultation Paper

Option 1 (Fund disclosure of voting practice)

AustralianSuper supports appropriate proposals to increase disclosure of voting practices - and transparency is a key element of our voting activity. We publish our international and domestic voting decisions on a quarterly basis on our website.¹ AustralianSuper also publishes an update on our ESG & Stewardship activities in our annual report, and is a signatory to the Australian Asset Owner Stewardship Code.²

We disagree however, with the focus in the Consultation Paper on requiring superannuation funds to disclose where a vote is different to that recommended by proxy advisor.

We consider this recommendation is misplaced as it does not:

- Account for the fact that our voting decisions are made subject to a range of inputs, as set out above; and
- The proposal does not focus on the rationale as to why a particular vote was taken. This is more relevant to our obligation to act in members' best interests and reflects the fact that similar conclusions may be reached for different reasons.

We recommend that any additional disclosure requirements focus on ensuring the rationale behind the most important decisions is transparent. Such information is more relevant for our members and other stakeholders, as it would help them better understand our stewardship activities, how our vote has been used, and why it is in the best financial interest of members. A simple disclosure as to whether we voted in accordance with a proxy advisor recommendation would not achieve a similar outcome.

Option 2 (Demonstrating independence and appropriate governance)

The Consultation Paper proposes requiring proxy advisers to demonstrate they are 'meaningfully independent' from the superannuation fund they are advising and to ensure proxy advice is provided on an 'arm's length' basis. Trustees could also be required to outline publicly how they implement their existing trustee obligations and duties around independent judgement in the determination of voting positions.

We make three observations in relation to these proposals.

¹ www.australiansuper.com/ResponsibleInvestment

² AustralianSuper's Stewardship Statement at www.australiansuper.com/StewardshipCode

First, the Consultation Paper fails to articulate the problem sought to be resolved through provisions relating to 'meaningful independence' and 'arm's length' advice. Nor does the paper articulate what exactly is proposed by these phrases.

Second, the Consultation Paper does not consider at all, let alone demonstrate, how the proposed measure would improve voting decisions, or lead to improved financial outcomes for fund members or other shareholders. If the proposed regulatory measure does not improve financial outcomes for members, it is unclear why it should proceed.

Third, while the Consultation Paper notes that proxy advisers are not subject to the same regulatory framework as superannuation fund and therefore may have broader objectives, the notion of 'meaningful independence' is misplaced, as:

- Funds have an obligation to act in accordance with their regulatory obligations and in members' best financial interests, regardless of what proxy advice may say, whether or not that advice is 'meaningfully independent';
- The determination of a fund's voting position can be resolved in house within superannuation funds, or externally through a range of means not limited to proxy advisers;
- There is no requirement for funds to seek independent advice, therefore the notion of 'meaningful' independence is moot;
- Superannuation funds as shareholders are not bound by the proxy advice they receive. As set out above, AustralianSuper exercises our voting rights independently, informed by a range of inputs.

We recommend Treasury provide additional information about the problem to be solved and the proposed approach to enable meaningful consultation on this Option.

Option 3 (Facilitate engagement and ensure transparency)

AustralianSuper supports the principle that companies should be made aware of a proxy advisor's recommendation in relation to proposed resolutions for that company, as well as the underlying rationale for the recommendation. We also support the principle that companies be provided with the opportunity to correct any factual errors.

We note above that AustralianSuper undertakes an active process which can involve direct engagement with companies ahead of shareholder votes.

While we support the principle of the proposal, we note it is vital that proxy advice remains independent from the company and that the proxy advisor remains free to provide their opinion to their client, including where this differs from the company's view.

As set out above, AustralianSuper is well placed to synthesise that opinion with the other inputs in our consideration process and form our own decision in the best financial interests of members.

Therefore, we broadly agree with the principle of the proposal provided there is no impediment to a proxy advisor forming and publishing an independent view.

The Consultation Paper suggests a 5-day window for company review prior to the publication of a proxy report. We note the high workload of both companies and investors during the compressed Australian AGM season and that 5 days may be unworkably long.

We suggest Treasury consult further, including with proxy advisers in relation to their workload, on the length of the proposed window. One suggestion Treasury may wish to consider is allowing the provision of proxy reports to companies at the same time they are provided to clients to best balance workflow challenges.

Option 4 (Make materials accessible)

AustralianSuper is proactive in engaging with companies upon the receipt of proxy advice to clarify companies' perspectives and communicate to the company our intended voting decision and we understand this practice is common.

As set out above, AustralianSuper supports the principle that companies should be made aware of a proxy advisor's recommendation in relation to proposed resolutions for that company, as well as the underlying rationale for the recommendation and that companies be provided with the opportunity to correct any factual errors.

In relation to the proposal set out in the Consultation Paper that proxy advisers be required to notify clients on how to access a company's response to the report, we consider that providing an avenue to formalise these arrangements and simplify how investors can access company responses will support the principle of increased transparency, including to provide an opportunity to clarify any outstanding issues prior to a vote.

Option 5 (Ensuring advice is underpinned by professional licensing)

AustralianSuper understands that proxy advisers are required to hold an Australian Financial Services Licence (AFSL) for the advice they provide to wholesale investors in respect of votes that relate to dealing in financial products.

The Consultation Paper proposes requiring licences for activities that are not currently financial services and we question whether wholesale investors require further protections under the AFSL regime. Proxy advisers are already subject to misleading and deceptive conduct provisions under section 1014H of the *Corporations Act 2001*.

If you have any questions or require clarification please do not hesitate to contact Louise du Pre-Alba at lduprealba@australiansuper.com in the first instance.

Your sincerely



On behalf of
Sarah Adams
Group Executive
Strategy, Brand and Reputation