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Greater transparency of proxy advice

Super Consumers Australia welcomes the opportunity to make a submission on Treasury's consultation paper on greater transparency of proxy advice.

Superannuation funds are significant holders of shares in Australian listed companies which results in an enormous volume of company resolutions that a trustee may be entitled to vote on in a given year. It is therefore no surprise that proxy advisers are engaged to provide information and recommendations to superannuation funds to aid in deliberations on how to engage with companies and exercise voting rights.

We are currently not aware of any consumer harm or undue influence occurring in the superannuation system due to this process. ASIC's Report 578, which reviewed proxy adviser engagement practices in 2018 did not find any systemic problems.¹

The regulation of superannuation funds and their decision making is extremely important. A robust framework will be best served if it ensures:

1. That the obligations on shareholder voting sits with trustees as they are ultimately responsible for the outcomes of members.
2. The Your Future, Your Super reforms and existing laws, such as the best interests duty, achieve effective implementation of those obligations.
3. Any proposed options in the consultation paper are only implemented because evidence suggests they are necessary to complement this framework.

The impact of current safeguards and the best (financial) interests duty

The existing superannuation law requires funds to act in the best interests of members. This means that all decisions are made against this framework. This is a significant level of protection

¹ ASIC Report 578, ASIC review of proxy adviser engagement practices, June 2018
<https://asic.gov.au/media/4778954/rep578-published-27-june-2018.pdf>

and safeguard to ensure superannuation funds do not blindly follow the decision of proxy advisers.

Additionally, regulations require funds to disclose their proxy voting policies and summary of when and how the fund exercised its voting rights at AGMs of listed companies for the previous financial year.²

Regulators have the ability to investigate a fund if they believe the fund has not acted in the best interest of members. Through the use of contemporaneous evidence such as email chains and public disclosure they should be able to reach a satisfactory conclusion on the decision making of a fund and whether it acted in member best interests. The regulator's ability to make these assessments will be further enhanced if the reporting requirements proposed in the Your Future, Your Super package currently before parliament are enacted.

The impact of the proposed best financial interest duty is to ensure that superannuation funds make each decision with their members financial interests at the core. The documentation required to ensure compliance with the best financial interests duty will provide a robust evidentiary base for regulators.

The regulatory regime will be best served if obligations sit with trustees as the party that is directly responsible for ensuring member outcomes.

Superannuation funds, if they are acting in the interests of their members, should also be engaging with their proxy advisers to ensure that they understand the obligations superannuation funds must adhere to and are applying that oversight to their proxy advice.

This comprehensive set of measures, current and proposed, provides a strong framework for the regulation of superannuation funds and their proxy advice decision making. Scope for further change beyond this will require robust evidence.

One method to invoke change in the options discussed below may be through the implementation of a proxy adviser code.

What scope may there be to go further?

Option 1 - Improved disclosure of trustee voting

Providing information regarding how trustees vote at Annual General Meetings (AGMs) will no doubt be useful to stakeholders who value it. For example, in a survey undertaken by Super Consumers Australia, over half of the respondents considered unethical activities as a relevant consideration when investing in their superannuation fund.³

² Section 29QB of the Superannuation Industry (Supervision) Act 1993 (SIS Act) and s 2.38(2) of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations)

³ Fieldwork conducted between 14 and 21 January 2020, 1083 adults

Providing this type of information is clearly valuable to a majority of members and will help them keep their funds accountable. However, given the volume of information there will likely be a role for third parties in helping members analyse and interpret these decisions. As such there is scope to improve the consistency in disclosure of trustee voting for both consumers and third parties.

A starting position may be to disclose all decisions made in the funds Annual Notice to the Members Meeting. We suggest this is best served through a link to the information rather than including thousands of decisions directly in a voting pack. This provides a consistent location for superannuation fund members and interested stakeholders to engage with the trustees decision making. It will also improve accountability because members will have the ability to ask better questions at AGMs.

Funds should also be encouraged to provide context for controversial or significant decisions that impact the sustainability and societal impact of the company and point to evidence of voting practices that support the position they have taken. For example, the use of an ESG decision framework which details how a fund has determined an environmental concern and how it relates to the best interests of members.

In scenarios where the voting actions taken were inconsistent with proxy advice, it may require trustees to detail further information for members.

We do not support proposals which would only disclose the proxy advice that is received by trustees. This is because in addition to the advice provided by proxy advisers, superannuation funds also take into account a multitude of other factors in making decisions. Any proposal which only divulges the proxy advice may be misleading. For example, a fund will have internal teams, other advisers and other metrics that are considered.

At the same time, requiring a superannuation fund to disclose all of these considerations, of which there may be tens of thousands, may be costly and onerous.

The most important aspect of disclosure is relevant to detailing the trustees objectives, how they relate to best interests of their members and how they voted to achieve this.

Any policy to require disclosure must balance these considerations. It should also be built on the current information and evidence funds keep to make these decisions so that costs are not duplicated.

Option 2 - Demonstrating independence and appropriate governance.

Super Consumers Australia do not see a direct need for independence between superannuation funds and their proxy advisers. As stated, the existing law requires funds to act in the best interests of members. This protects against any action from advisers that would be inconsistent with what a fund believes is the right decision for their membership.

It is more important that there is independence between proxy advisers and the companies they are advising on. Proxy advisers need to impart a level of critical thinking and skepticism to ensure they are not simply mouthpieces of companies.

We recommend that superannuation funds could provide the appropriate proxy voting policy to members ahead of their AGM in the Annual notice to the Members Meeting. This could provide a meaningful outline of how a funds proxy engages with companies and provide the opportunity for any independence issues to be questioned.

Option 3 - Facilitate engagement and ensure transparency

We are aware that most proxy advisers engage with companies before distributing the final report to superannuation funds. This is best practice because proxy advisers want to discuss, inform their decision making and work towards recommendations that are in everyone's best interest.

However, as indicated in ASIC Report 578, some advisers do not engage to the same degree.

There may be merit in ensuring that this diligent process is consistent within the industry. This could include providing reports to clients and companies at the same time.

It is important that any requirement to facilitate engagement does not compromise independence and quality. For example, imposing engagement and strict time periods may result in shorter time frames for proxy advisers to get reports to superannuation funds and reduce the time they have to consider the advice.

A balance between consistency and due process should be considered. Ensuring that trustees have time to consider proxy advice is paramount. This will increase the ability for them to analyse the advice and reduce concerns regarding undue influence. Through the use of existing mechanisms, such as the ASX platform, companies should also have the opportunity to have a right of reply. It is important that this information from companies is considered by the trustee or adviser.

Option 4 - Make materials accessible

Companies are able to engage with their shareholders through their ASX platform. We see this as the most appropriate method for a company to respond to proxy reports.

However, we have no objection to a process where advisers notify their clients on any company replies.