



Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 16 December 2021

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg
Treasurer

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1 Name

This instrument is the *Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	18 December 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Corporations Act 2001*;
- (b) the *Superannuation Industry (Supervision) Act 1993*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Corporations Regulations 2001

1 Subregulation 1.0.02(1)

Insert:

proxy advice has the meaning given by subregulation 7.1.28AB(2).

2 After regulation 7.1.28AA

Insert:

7.1.28AB Proxy advice

- (1) This regulation applies to a service (***voting advice***) that consists of providing a recommendation, or a statement of opinion, or a report of either of those things, that is intended to influence, or could reasonably be regarded as intended to influence, a person or persons in making a decision in relation to the exercise of:
 - (a) voting rights attaching to a security; or
 - (b) voting rights attaching to an interest in a managed investment scheme.
- (2) Voting advice is ***proxy advice*** if:
 - (a) it relates to the exercise of voting rights attaching to a security, or an interest in a managed investment scheme; and
 - (b) one of the following entities holds the security or interest, or holds a beneficial interest in the security or interest:
 - (i) a body regulated by APRA, other than a trustee of a superannuation entity that has no more than 6 members;
 - (ii) the responsible entity for a managed investment scheme, other than a scheme that has net assets of less than \$10 million;
 - (iii) a company of a kind referred to in paragraph 994B(4)(b) of the Act, other than a company that has net assets of less than \$10 million; and
 - (c) it is voting advice on how to vote on a particular resolution; and
 - (d) a fee, charge or other amount is paid or payable by the entity or another entity in connection with the provision of the voting advice.

Note: Paragraph 994B(4)(b) of the Act refers to certain companies that invest funds subscribed after an offer or invitation to the public.

Additional circumstance in which proxy advice is a financial service

- (3) For the purposes of paragraph 766A(1)(f) of the Act, the provision of proxy advice that is not financial product advice is prescribed.

Note: Generally proxy advice is financial product advice and thus a financial service under paragraph 766A(1)(a) of the Act. Under this subregulation proxy advice that is not financial product advice is also prescribed as a financial service under paragraph 766A(1)(f) of the Act.

When providing proxy advice is not a financial service

- (4) For the purposes of paragraph 766A(2)(b) of the Act, a person is taken *not* to provide a financial service in either of the following circumstances:

- (a) the service consists of voting advice that is not proxy advice;
- (b) the service consists of proxy advice and the provision of proxy advice is not a significant part of a business carried on by the person.

Certain Parts of the Act apply as if proxy advice were not financial product advice

- (5) For the purposes of a provision of the Act set out in column 1 of an item in the following table, the Part of the Act specified in column 2 of that item applies as if the provisions of that Part that are expressed to apply in relation to financial product advice were varied so as not to apply in relation to financial product advice that is voting advice.

Variations for proxy advice		
Item	Column 1 Provisions of the Act	Column 2 Parts of the Act
1	paragraph 926B(1)(c)	Part 7.6
2	paragraph 951C(1)(c)	Part 7.7
3	paragraph 1020G(1)(c)	Part 7.9
4	paragraph 1045A(1)(c)	Part 7.10

3 Regulation 7.1.30

Repeal the regulation.

4 After regulation 7.6.03C

Insert:

7.6.03D Proxy advice obligations

Proxy advice relating to security of a body or interest in a managed investment scheme must also be provided to the body or the responsible entity for the scheme

- (1) For the purposes of paragraph 912A(1)(j) of the Act, if a financial services licensee provides a financial service that is proxy advice relating to the exercise of:
 - (a) voting rights attaching to a security of a body; or
 - (b) voting rights attaching to an interest in a managed investment scheme;
 the licensee must also provide the proxy advice to the body, or the responsible entity for the scheme, on the same day as the financial service is provided.
- (2) The advice must be provided to the body, or the responsible entity, in writing in electronic form (regardless of how the financial service was provided).

Financial services licensee providing proxy advice must be independent of key entities

- (3) For the purposes of paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies as if subsection 912A(1) of the Act were modified by inserting after paragraph 912A(1)(aa) the following paragraph:
- “(ab) if any of the financial services is proxy advice relating to the exercise of voting rights attaching to a security or an interest in a managed investment scheme—be independent of the following entities:
- (i) an entity that holds the security or interest and that is of a kind referred to in subparagraph 7.1.28AB(2)(b)(i), (ii) or (iii) of the *Corporations Regulations 2001*;
 - (ii) an entity that holds a beneficial interest in the security or interest and that is of a kind referred to in subparagraph 7.1.28AB(2)(b)(i), (ii) or (iii) of the *Corporations Regulations 2001*;
 - (iii) any other entity that makes decisions affecting the exercise of those voting rights; and”.
- (4) For the purposes of paragraph 926B(1)(c) of the Act, Part 7.6 of the Act applies as if subsection 912A(5A) of the Act were modified by omitting “(aa),” and substituting “(aa), (ab),”.

Note: Subsection 912A(5A) of the Act is a civil penalty provision.

5 In the appropriate position in Chapter 10

Insert:

Part 10.46—Application provisions for the Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021

10.46.01 Application of voting advice amendments

- (1) The repeal of regulation 7.1.30 by the *Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021* applies in relation to a service provided on or after 7 February 2022.
- (2) Regulation 7.1.28AB, as inserted by the *Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021*, applies in relation to voting advice provided on or after 7 February 2022.

10.46.02 Application of proxy advice obligations

- (1) Subregulations 7.6.03D(1) and (2), as inserted by the *Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021*, apply in relation to proxy advice provided by a financial services licensee:
 - (a) on or after 7 February 2022; and
 - (b) under a contract entered into or renewed on or after the commencement of that instrument.

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- (2) The modifications of Part 7.6 of the Act specified in subregulations 7.6.03D(3) and (4), as inserted by the *Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021*, apply in relation to proxy advice provided by a financial services licensee:
- (a) on or after 1 July 2022; and
 - (b) under a contract entered into or renewed on or after the commencement of that instrument.

Superannuation Industry (Supervision) Regulations 1994

6 Paragraph 2.38(2)(o)

Repeal the paragraph, substitute:

- (o) if the entity is not a registrable superannuation entity with no more than 6 members—a summary, that meets the requirements in subregulations (2A) and (2B), of how voting rights (***reportable voting rights***) attaching to shares in listed companies that the trustee of the registrable superannuation entity holds, or in which the trustee of the registrable superannuation entity holds beneficial interests, have been exercised.

7 After subregulation 2.38(2)

Insert:

- (2A) A summary for the purposes of paragraph (2)(o) must include the following information in relation to reportable voting rights exercised in the previous half of the financial year:
 - (a) the number of meetings where reportable voting rights were exercised;
 - (b) the number and types of resolutions in relation to which reportable voting rights were exercised;
 - (c) the respective proportions of those resolutions where the vote was for the resolution, against the resolution, and to abstain from voting on the resolution;
 - (d) the name of each financial services licensee that provided a financial service that is proxy advice (within the meaning of the *Corporations Regulations 2001*) in relation to one or more of those resolutions.
- (2B) A summary for the purposes of paragraph (2)(o) must include the following information for each resolution in relation to which reportable voting rights were exercised during the previous half of the financial year:
 - (a) the name of the company;
 - (b) the date of the resolution;
 - (c) the type of meeting at which the resolution was put;
 - (d) a description of the resolution;
 - (e) whether the resolution was on a company or a shareholder proposal;
 - (f) if the company made a recommendation to shareholders on how to vote on the resolution—the company’s recommendation;
 - (g) whether the vote was for the resolution, against the resolution, or to abstain from voting on the resolution.

8 In the appropriate position in Part 14

Insert:

**Division 14.31—Transitional arrangements arising out of the
Treasury Laws Amendment (Greater Transparency of
Proxy Advice) Regulations 2021**

14.33 Amendments to obligation to make information publicly available

Paragraph 2.38(2)(o), as inserted by the *Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021*, applies on and after 1 July 2022 in relation to a half of a financial year, if the half begins on or after 1 January 2022.