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Opinion

Proxy investor advice overhaul all about the politics

There are no proven harms to justify the government's draconian regulatory moves; rather, it's all about opening up another front against union-linked industry super funds.

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Free speech has always been a slippery concept. Churchill thought that "some people's idea of it is that they are free to say what they like, but if anyone else says anything back, that is an outrage".

Recently the growing indignation in corporate Australia about proxy advisers – those pesky analysts who advise shareholders about governance issues at annual general meetings – finally provoked a stern reaction from Treasurer Josh Frydenberg.

Business Council of Australia president Tim Reed quickly joined in the call for transparency. **Alex Ellinghausen**

In late April, Treasury quietly detailed proposals that would require proxy advisers to deliver their analysis to Australian companies for "fact checking", five days before they were entitled to publish it to their institutional investor clients. They would also have to include pointers to the company's response in their research.

Treasury's "Consultation Paper" gave the idea cover. It implied that proxy advisers lacked transparency and independence, were unaccountable and only partially regulated, and hinted that they might be motivated by "broader objectives". The Treasurer's press release emphasised that the moves would bring Australia in line with recent reforms in the US and the UK.

Business Council of Australia president Tim Reed quickly joined in the call for transparency. He thought the influence of proxy advisers had "big implications on how businesses run and their ability to make returns for shareholders".

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Australian Institute of Company Directors CEO Angus Armour's support settled on desire. Regulation, he enthused was "desirable for the companies, desirable for the market".

But something was missing in this unlikely union of regulatory fervour – no one bothered to identify specific harm from proxy advice. No clients of the advisers had complained. No investors claimed to be misled or deceived. No systemic errors were detailed. No meeting resolution that might have failed because of dodgy research even cracked a mention.

No matter that the respect for private property, freedom of contract and freedom of speech are the bedrock on which our market economy is based.

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Troublesome details such as the Australian Securities and Investments Commission's 2017 and 2018 investigations into proxy advice, which found no cause for concern, were glossed over.

Long established rules to prevent pre-publication of financial research on the grounds that it might compromise the independence of the writer went unaddressed.

There was no reflection on the contradiction of apparently "unregulated" proxy advisers already having Australian Financial Services Licences and being subject to ASIC's strict supervision. And those offshore rules? They looked nothing like what was being proposed here.

Policy sloppiness was the prelude for ideological contortion. Respect for property rights? The BCA thought it fine to compel a small business to disgorge its valuable intellectual property to a large ASX company for no compensation and without limitation.

A Liberal government saw nothing lost by constraining sophisticated investors' choices about who they contract with and what they contract for. The AICD was indifferent to the mooted restriction on advisers making their views "publicly known" until a company's five-day review period had expired. Freedom of speech? Sure, this conga line was all for it, but only after the fragile egos of Australian business had vetted the copy.

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If the worry was undue influence at AGMs, then no one bothered to check the results in the last decade. Board-endorsed directors at ASX 300 companies were appointed with an average vote of 96.2 per cent in favour. Only six candidates for office failed, five of them because of takeover activity. Thirty-eight candidates withdrew their nomination before the meeting, roughly half for benign reasons such as illness. The remainder (such as the directors of AMP) rightly fell on their swords under pressure from investors.

Perhaps the key concern was overreach on executive pay? Curious, because Peter Costello's 2004 reforms that introduced a non-binding vote on pay seem to be working as designed.

Votes against remuneration reports fall in the year after significant investor blowback. Since 2011, votes against pay issues reduced by an average of 23 per cent of the register in 131 of 148 instances where more than a quarter of investors had voted against a remuneration report in the year prior.

Proxy advisers identify the problems, but shareholders sort out the solutions.

More likely, these draconian moves open a new front in the government's continued skirmishes with industry funds, whose trade union links are reason

enough to call into question their motivation on governance issues.

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For the conspiracy theorists, these funds and their advisory network are a woke illuminati of increasingly powerful investors, hell-bent on cancelling capitalism. Convenient then to ignore their 20-year track record of moderation and constructive engagement.

In the world of transactional policy, the sacrifice of principles is a small price to pay for a victory over a perceived enemy. No matter that the respect for private property, freedom of contract and freedom of speech are the bedrock on which our market economy is based; no matter what you might lose in the crossfire.

The proposals, by design, will restrict the time and resources available for proxy advisers to monitor malfeasance in public companies on behalf of their clients. Unsurprising, then, that the AICD and the BCA are shamelessly in favour. Outrageous, however, that the Treasurer believes it to be in the public interest.

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