

Subject: Executive Remuneration - Productivity Commission Draft Report

The linked report contains the Executive Remuneration ruminations of the Productivity Commission (see >> <http://www.pc.gov.au/projects/inquiry/executive-remuneration/draft>). Released today, this draft report contains 15 draft recommendations, including:

- A new ASX listing rule should specify that all ASX300 companies have a remuneration committee of at least three members, all of whom are non-executive directors, with the chair and a majority of members being independent.
- The Corporations Act 2001 should specify that company executives identified as key management personnel and all directors (and their associates) be prohibited from voting their shares on remuneration reports and any other remuneration-related resolutions.
- The Corporations Act 2001 should prohibit all company executives from hedging unvested equity remuneration and vested equity remuneration that is subject to holding locks.
- Section 300A of the Corporations Act 2001 should be amended to specify that remuneration reports should additionally include:
 - a plain English summary statement of companies' remuneration policies;
 - actual levels of remuneration received by executives;
 - total company shareholdings of the individuals named in the report.Corporations should be permitted to only disclose fair valuation methodologies of equity rights for executives in the financial statements, while continuing to disclose the actual fair value for each executive in the remuneration report.
- Section 300A of the Corporations Act 2001 should be amended to reflect that individual remuneration disclosures be confined to the key management personnel. The additional requirement for the disclosure of the top five executives should be removed.
- The ASX listing rules should require that, where an ASX300 company's remuneration committee (or board) makes use of expert advisers, those advisers be commissioned by, and their advice provided directly to, the remuneration committee or board, independent of management.
- The ASX Corporate Governance Council should make a recommendation that companies disclose the expert advisers they have used in relation to remuneration matters, who appointed them, who they reported to and the nature of other work undertaken for the company by those advisers.
- The cessation of employment trigger for taxation for equity-based payments should be removed, with the taxing point for equity or rights that qualify for deferral being at the earliest of: where ownership of, and free title to, the shares or rights is transferred to the employee, or seven years after the employee acquires the shares.
- The Corporations Act 2001 should be amended to require that where a company's remuneration report receives a 'no' vote of 25 per cent or higher, the board be required to report back to shareholders in the subsequent remuneration report explaining how shareholder concerns were addressed and, if they have not been addressed, the reasons why. If the company's subsequent remuneration report receives a 'no' vote above a prescribed threshold, all elected board members be required to submit for re-election (a 'two strikes' test) at either:
 - an extraordinary general meeting, or
 - the next annual general meeting.

The general flavour of the draft report and its recommendations is stronger corporate governance, rather than regulatory caps on executive pay levels. Boards should retain their central role in reward management and not be undermined by binding shareholder votes on executive remuneration.

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