

SUBMISSION

INQUIRY INTO REGULATION OF DIRECTOR AND EXECUTIVE REMUNERATION

PRODUCTIVITY COMMISSION

BACKGROUND INFORMATION

My husband and I are Trustees of a Self Managed Superannuation Fund. We both worked for 43 years, raised our children, paid off our home and commenced saving towards our retirement long before compulsory superannuation was introduced. We were probably classed as middle income earners. I was employed in the Health Services in management and my husband was a truck driver. We are currently both retired.

We educated ourselves in respect to managing our own investments as we were unwilling to place our funds in the trust of others. It is extremely important for Retirees to have access to a diverse range of investments to soften the impact of cyclical movements in investments and therefore investing in shares in Companies is an integral part of a Self Managed Superannuation Fund or investments outside of superannuation for Retirees.

COMPANY SHARES

My view of owning Company Shares is that as Shareholders we are a part owner of the Company, along with many others and that Directors on the Boards of Companies are the Agents who act on behalf of Shareholders and manage the Company's business along with the Executive Officers of the Company. Hopefully to the best of their abilities and in the best interests of all Shareholders who are the Owners.

Over the past five years it would seem that Boards of Directors and Executives have really not been looking after the interests of Shareholders.

GENERAL INFORMATION

Over the last ten years we have noticed that Executive Salaries, along with Directors Pools have increased dramatically. On most occasions, the Executives and Directors have not added any value to a Company, there was not always an increase in profits or in the dividends paid to the Owners (Shareholders) of the Company however, as stated the payments to Executives and Directors started to increase significantly during this period.

Payments for both Executives and Directors were being increased even when poor performances were attributed to both of the aforementioned, and until Shareholders have a binding vote, nothing will change.

There needs to be more interaction between Shareholders and Directors so that views of both parties can be expressed. Directors hide behind the need for confidentiality whilst what Shareholders require is more transparent dealings. More often than not, Directors dismiss any request for information at Annual General Meetings and Directors use their votes and Chairmen use proxy votes to down any dissention by Owners (Shareholders).

Following some absolutely incredible decisions made by Directors to Executives who have really failed their Companies and have walked away with “golden handshakes” many times their base salaries, pressure has been building for a review of Executive Salaries and Payments, by Shareholders and Institutions.

The Statements made by some Professional Institutions, Company Directors and Executives in the press have absolutely astonished us and show how out of touch Directors (and their Professional groups) and Executives of Companies really are.

The following is an example:

Owen Hegarty, Executive, Oz Minerals (Oxiana)

Received \$8.35m payout

“There was a contract and the board decides what they will or won’t do. It wasn’t my decision”

The Australian Financial Review 19/03/2009.

Oz Minerals (Oxiana) is hanging on by a thread due to the debt that the Company is carrying. A decision by the Oxiana Board and Mr. Hegarty by combining two Companies, Oxiana & Zinifex created enormous debt for the combined Company.

Mr. Graham Kraehe, Chairman, Brambles, Bluescope, Director RBA

“If there was a need for further regulation, it could be done by having more prescriptive ASX guidelines”

The Australian Financial Review 19/03/09

The Australian Institute of Company Directors 2004 Policy was for payment on termination of no more than 12 months base pay.

All my correspondence to the ASX regarding Executive Payments have not been answered. The ASX should not be a Company Regulator. The ASIC should be the Regulator.

The ASX has no understanding of a Shareholders perspective and my feeling is that Directors and Executives should be able to negotiate Remuneration which is fair and reasonable without guidance, otherwise they should not be in the positions of managing a company. It seems ludicrous to me that under Workchoices an employee was required to negotiate an employment contract, however Company Directors & Executives require

some form of guidance as well as outside Consultants to negotiate a Contract.

Katie Lahey, Chief Executive, Business Council of Australia

“While the sorts of excesses and inappropriate payments to executives that have occurred overseas have not been such an issue here in Australia, this is an issue we must ensure is appropriately managed going forward”

The Australian Financial Review 19/3/09

I believe that the above statement shows just how out of touch Professional Organisations really are. I would suggest that excesses have occurred in Australia and that on a comparable Market Capital basis they were on a par with overseas Executives.

John Colvin, Chief Executive of Australian Institute of Company Directors “criticised the government for not consulting industry on the plans to make shareholder approval required where a golden handshake to a departing executive exceeded one year’s base salary”. **The Australian Financial Review 19/3/2009.**

I understand that everyone has a right to forward a submission to the Productivity Commission on Executive Salaries, including Shareholders and in a letter from Mr. Colvin in answer to giving him a Shareholders view of the current discontent, Mr. Colvin forwarded a copy of Executive Remuneration Guidelines for Listed Company Boards, published in February, 2009 by the Australian Institute of Company Directors. The guidelines on executive termination payments (as a general principle, executive termination payments of no more than 12 months base pay) has not worked since 2004, however, the Institute maintains that it does not agree with a plan to make shareholder approval necessary when a departing executive golden handshake exceeds

one year's base salary.
Clearly the guideline system has not worked.

**Extract from letter received from Mr. L. Gill,
Chairman, Babcock & Brown Power dated 16/3/2009**

"Vote on Remuneration report

As you may be aware, the remuneration report for BBP is presented at the Annual General Meeting each year and the securityholder vote is advisory only. Ultimately the Board has the authority to determine salary packages for senior executives such as Mr. Rolfe without securityholder approval. However, the Board does take securityholder feedback very seriously. I would like to point out that approximately 60% of securityholders voted in favour of the remuneration report tabled at the 2008 AGM."

My Reply "I do not believe that those figures are something the Directors can take any pride in. In actual fact the vote was against adopting the remuneration report and it was only passed on a Poll. Bearing in mind Babcock & Brown Group were substantial shareholders at the time owning 9.14% shares in Babcock & Brown Power. It therefore seems that I am not the only unhappy securityholder who has seen their investment deteriorate substantially over time and annual income cease."

The above comments displays to me that some Directors have really lost touch with reality in respect to Executive Remuneration.

Self determination by Boards has not worked and the time for issuing guidelines and education has past. Shareholders, who are the Owners of Companies require a more formal structure for Boards to follow.

We always vote at Company Annual General Meetings and if the Australian Shareholders Association has a representative at an AGM, we give our proxy to that organisation to act on our behalf sometime leaving the vote open on other occasions directing our votes.

For some time now we have been writing to Boards and in particular non-executive Directors and the Australian Stock Exchange requesting information on Executive Salaries. The ASX have never replied to our correspondence and only some Boards have answered our letters.

The major problem is that Boards will not divulge any information on Short Term and Long Term Incentive payments on the basis that it is necessary to have confidentiality. This aspect is seen by many Shareholders as Boards being non transparent with the

Owners of the Company.

One Company we have been corresponding with in relation to Executive Salaries is Babcock & Brown Power. This Company was capitalised at \$2.5 billion dollars and when the previous Executive Officer left, in the last 12 months of employment he was paid \$1.4 million. and the Company was capitalised at just \$430 million. Again someone who was paid for failure and sanctioned by the Board of Directors.

At the time of appointment of the new Executive Officer, Mr. Ross Rolfe, the Company was capitalised at just \$42 million dollars. Mr. Rolfe was offered a contract whereby in just twelve months he could earn \$2.8 million dollars, which equates to 6.7% of the Company's capital.

We did receive a reply from Mr. L. Gill, the Chairman of the Board of Directors and I enclose herewith a copy of the employment arrangements for the Chief Executive Officer for your information.

As you can see, along with the base salary, is an incentive payment to stay for twelve months. Short term and long term incentive payments have not been advised to Shareholders. In actual fact after just twelve months employment, Mr. Rolfe is eligible to receive a cash amount equivalent to up to 60% of his base salary (Maximum Annual STI).

Even though Mr. Rolfe was appointed on the 29th August, 2008 as of 12th February, 2009 the Directors still had not developed a Long Term Incentive Plan, that is after 5 months employment.

I decided that this contract to be not in the best interests of Shareholders and sought the names of the substantial shareholders from the Australian Stock Exchange who advised that they do not have those records and that I should contact the Registry. I rang the Computershare Registry who then advised that they would have to get back to me. When I did not receive a reply, I contacted the Registry again and was informed that I would have to put my request in writing. I forwarded my request in writing and then when I did not receive a reply I rang the registry again, I was advised that my letter had been received and I would be put through to the person dealing with the matter. The person handling the matter stated that my letter had not been received and I advised them that I was informed that it had been.

I was then told that they would have to request the information again. At that point I gave up to try other avenues. The information in Annual Reports are outdated and I will now contact my Broker and obtain the information and then write to major shareholders if there are any left, to try and vote down the remuneration report.

You can see how difficult it is for any small retail shareholder to obtain information and impart a Shareholder view.

SUMMARY

When Investors make a decision to invest any funds, Financial Advisors, Governments and Financial Institutions always state that investments should be held for a period of between 3 to 5 years for short term investments and 7 to 10 years for long term investments. These periods should be applied to benchmarks for incentive payments to Executives which will align Executives and Shareholder interests.

All benchmarks to be advised to Shareholders even if by way of percentage, there is no need for confidentiality.

Voting on the Remuneration Report by Shareholders should be binding.

If the Executive leaves before the short term or long term benchmarks are achieved then no payment should be made on resignation, only statutory requirements paid.

I feel that benchmarks for Executives' remuneration should follow this path and that benchmarks should be based on total shareholder return and if benchmarks are met, remuneration should be in the way of issuing shares only. This again aligns the Executives interests with that of the Shareholders.

Furthermore, the tax concession on shares received by Chief Executive Officers should be abolished.

Tax should be paid in accordance with the tax scales applying to the rest of the Community.

Shares made in payment to Executives should be held in escrow for a period of at least 2 years.

If Shareholder dividends are reduced, Board Members and Executives' salaries should be reduced also, again aligning Executives and Shareholder interest.

Superannuation to be paid in accordance with statutory requirements (currently 9%) any additional to be negotiated from within the base salary.

Base salary to be voted on by Shareholders at AGM's even if retrospective. Contracts to state this fact so that it will meet contractual laws. This will ensure that base salaries are not inflated to account for any increased regulation.

A number of Executives who have failed have received substantial financial rewards. This must stop and failed Executives should only receive statutory payments.

There needs to be some avenue to ensure that Boards do not overload base salary to compensate against any regulations introduced to counter excessive payments to Executives.

We have commenced to take our own action. We maintain a list of Directors who have failed in their duties of managing the Company for the benefit of shareholders and each time we vote in future we will vote against the election of those Directors on every Board that they sit on if we have the right to vote.

It is easy for Boards and Executives to attribute blame for failed Companies on the Global Financial Crises, however, they have all been paid handsomely and supposed to be extremely experienced therefore, they should have been aware that economic systems operates in cycles and that at some point in time a Company will meet with a recession or slow down in business activity and the Company should be managed to be able to within all business cycles.

Thank you for the opportunity to enable me to put forward my concerns and suggestions.

As our self managed super pension income is based on a high proportion of investment in shares, it is extremely important that we receive value for money from our investments.

BABCOCK & BROWN POWER



Babcock & Brown Power Limited - ABN 67 116 665 608
Babcock & Brown Power Services Limited - ABN 37 118 165 156
as responsible entity for Babcock & Brown Power Trust - ARSN 122 375 562
Level 23 The Chifley Tower - 7 Chifley Square - Sydney NSW 2000 Australia
T +61 2 9229 1900 - F +61 2 9235 3496 - www.bbpower.com

ASX Release

12 February 2009

BBP UPDATE & KEY TERMS OF CEO'S EMPLOYMENT ARRANGEMENTS

Babcock & Brown Power (ASX:BBP) has implemented a key step to ensure the continuity of its business going forward.

BBP is now the direct employer of the key management personnel who have provided management services to BBP. Accordingly, all staff previously employed by Babcock & Brown have now transferred their employment to BBP. The costs of employing the management staff will be met by BBP.

In accordance with BBP's obligations to disclose the key employment terms and conditions of the Chief Executive Officer and Managing Director, Mr Ross Rolfe, attached is a summary of those key terms and conditions which have now been concluded.

ENDS

Further Information:

Alison Carter
Investor Relations
Babcock & Brown Power
Ph + 61 2 9238 4478

About Babcock & Brown Power

Babcock & Brown Power (ASX:BBP) is a power generation business, with assets diversified by geographic location, fuel source, customers, contract types and operating mode. Its aim is to grow returns to its securityholders through optimisation of its existing power generation business and the addition of further generation assets and associated businesses via a combination of new construction and strategic acquisitions.

The portfolio has interests in 12 operating power stations representing over 3,000MW¹ of installed generation capacity and two power stations under construction. BBP has interests in a number of other associated power assets including the WA retail assets Alinta. Babcock & Brown has been developing, operating and acquiring the generation portfolio over a period of 10 years.

For further information please visit our website: www.bbpower.com

¹ Some assets have minority shareholders.

Summary of terms of Employment Contract between Babcock & Brown Power (BBP) and Mr Ross Rolfe

1 Arrangements with respect to former employment with Babcock & Brown Australia Pty Limited (BBA)

Mr Rolfe has entered into formal employment arrangements with BBP.

Mr Rolfe has agreed to forfeit any unvested awards he may have held under the Babcock & Brown Equity Incentive Plan.

2 Remuneration

2.1 Base salary

The initial base salary of Mr Rolfe is \$800,000 per annum (less amounts required to be deducted for taxation purposes). This amount is reviewable in accordance with BBP's policies.

2.2 Short term incentive

Mr Rolfe will be entitled to participate in BBP's Short Term Incentive (STI) schemes as amended from time to time.

As at date of the agreement, Mr Rolfe's participation in the STI schemes will be as follows:

- (a) Mr Rolfe will have the potential to earn a cash amount (less tax) equivalent to up to 60% of his base salary (Maximum Annual STI); and
- (b) from 1 January 2009, the STI scheme will operate on a financial year basis. Subject to performance, Mr Rolfe will be eligible to receive a payment of up to 50% of the Maximum Annual STI after 30 September 2009 and a payment of up to 100% of the Maximum Annual STI after 30 September 2010 and any subsequent year.

2.3 Long term incentive

Under his employment arrangements with BBP:

- (a) Mr Rolfe is entitled to participate in BBP's Long Term Incentive (LTI) scheme as amended from time to time, subject to any required shareholder approvals.
- (b) Mr Rolfe will have the potential ability to receive an LTI award equivalent to up to 40% of his base salary, to be delivered as cash, securities or equivalent benefits as determined by the Board in its sole discretion; and
- (c) LTI awards can be subject to certain vesting conditions including the assessment of the overall profitability and performance of the BBP Group.

At this stage, the Board is still in the process of developing an LTI plan tailored to meet the needs of BBP.

3 Retention arrangements

Mr Rolfe will be entitled to a further retention payment of \$240,000 (less tax), payable no later than the first pay run after 31 October 2009 subject to Mr Rolfe remaining in the employment of BBP on the dates the payment becomes payable.

4 Legacy arrangements with BBA

- (a) In respect of the calendar year 2008, Mr Rolfe is entitled to receive a guaranteed minimum STI award of \$700,000 in accordance with his previous contractual arrangements with BBA. This amount covers the 8 month period of Mr Rolfe's employment with BBA prior to his joining

BBP, as well as the remaining 4 month period from 29 August 2008 to 31 December 2008 during which Mr Rolfe fulfilled the role of Chief Executive Officer of BBP. BBP has assumed responsibility for this STI award, however, the assumption of this contractual commitment from BBA will be fully offset against fees payable by BBP to Babcock & Brown.

- (b) Consistent with Mr Rolfe's previous arrangements with BBA, Mr Rolfe will also be entitled to receive a retention payment of \$220,000 (less tax) subject to Mr Rolfe remaining in the employment of BBP until 28 February 2009.

5 Termination

- (a) Mr Rolfe can resign by providing 6 months' written notice to BBP.
- (b) BBP can terminate Mr Rolfe's employment:
- (1) immediately, for misconduct or other circumstances justifying summary dismissal; or
 - (2) by providing 12 months' written notice.
- (c) When notice is required, BBP can make a payment in lieu of all or part of any notice period based on Mr Rolfe's base salary. In addition, during the notice period when BBP effects termination, Mr Rolfe may be required to work for a period of up to 3 months.
- Mr Rolfe's entitlements (if any) upon termination under the STI and LTI schemes will be governed by the terms of those schemes.

6 Consequences of termination

6.1 Resignation as director

On termination, Mr Rolfe must resign as a director or officer of BBP and any BBP or B&B Group entity.

6.2 Incentives

Any entitlements to STI and LTI bonuses on termination will be in accordance with the terms of the relevant plan rules (as in force from time to time) and any conditions outlined in the grant letters for the STI and LTI bonuses.

6.3 Restrictive covenant

Mr Rolfe will be subject to a covenant, in any area the BBP Group operates, not to:

- (a) for twelve months after termination:
- (1) solicit any customers of the BBP Group he dealt with during his employment to cease doing business with the BBP Group or reduce the business they do with the BBP Group;
 - (2) accept business from the people above;
 - (3) induce any employee, director or manager to terminate their employment with the BBP Group or employ any ex-employee of the BBP Group who worked for the BBP Group in the 12 months prior to the termination of Mr Rolfe's employment; and
- (b) for six months after termination, work for certain competitive businesses.
- In each case the period the covenant operates will be reduced by any period in which BBP or Mr Rolfe provides actual notice of termination of his employment.

7 General provisions

The agreement also contains provisions regarding confidentiality, intellectual property moral rights and other facilitative clauses.