

27 May 2009

Commissioner Banks
Productivity Commission
Locked Bag No 2
Collins St East
Melbourne VIC 8003

Via email: excrem@pc.gov.au

Dear Commissioner

Inquiry into the regulation of director and executive remuneration

In response to the issues paper of April 2009, please find attached a submission on terms of reference 2 and 3.

Please contact me if I can provide any additional information that would assist the Commission in this task.

Yours sincerely

Kym Sheehan

Submission: Inquiry into regulation of director and executive remuneration

Kym Sheehan¹, 27 May 2009

This submission deals with terms of reference 2 and 3 as summarised below:

Term of reference	Short answer	Where in submission
TOR 2: effectiveness of regulatory arrangements	<p>A model of the regulatory framework for executive remuneration in Australia is presented around four activities in the regulated remuneration cycle:</p> <ul style="list-style-type: none"> • Remuneration <i>practice</i> • <i>Disclosure</i> of that practice • <i>Engagement</i> with shareholders on the practice • Shareholding <i>voting</i> on the practice. 	Pages 5-9
TOR 2: balance between legislative requirements and voluntary guidelines	<p>Tables 1-4 show that the relevant balance differs depending on which activity is being examined.</p> <p>The <i>highest level of legislative requirements</i> is found in disclosure and voting. While</p>	Pages 13 onwards

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Term of reference	Short answer	Where in submission
	<p>voluntary guidelines also exist in relation to disclosure and voting, in many instances they provide necessary detail on ‘how to best do’ the particular activity.</p> <p>The <i>lowest level of legislative requirements</i> is found in the area of engagement.</p> <p>The area of remuneration <i>practice</i> also features a low level of legislative requirements. This is consistent with a market-based approach to the regulation of executive remuneration. The voluntary guidance in this area can be highly prescriptive and ‘rule-like’ rather than ‘principles-based’. The risk is that the this guidance is treated by shareholders as a rule that companies must comply with, irrespective of whether the particular practice is right for the company, given its strategic objectives.</p> <p>This voluntary guidance is used by proxy advisors (who may have an additional set of requirements) to screen disclosed practices with a view to making a voting recommendation to a client.</p> <p>The Productivity Commission should examine the processes by which various parties develop voluntary guidance. It is by no means clear that the guidance does in fact represent ‘best practice’.</p>	
<p>TOR 2: Should Australia consider the adoption of a code of practice?</p>	<p>Given the many different forms of voluntary guidance available, there is merit in deriving a common set of practices to be given the status of a Code.</p> <p>This Code should be developed by a body with respected expertise; it is therefore suggested the Productivity Commission explore the potential of a body such as the ASX Corporate Governance Council (or some similarly constituted body) to develop a set of practices.</p>	<p>Pages 8-9</p> <p>Evidence to support overlap is found in Tables 1-4 from page 13 onwards</p>
<p>TOR 3: the role of institutional shareholders</p>	<p>Institutional shareholders are <i>the key</i> to ensuring good remuneration practices.</p> <p>Engagement and voting by shareholders are the primary enforcement mechanisms to</p>	<p>Pages 9-10</p>

Term of reference	Short answer	Where in submission
	ensure good remuneration practices. The Productivity Commission should examine further whether there is a need to strengthen the existing framework for regulation of engagement.	
TOR 3: In what aspects of remuneration practices and setting remuneration levels would it be appropriate to increase shareholder involvement?	<p>The Productivity Commission needs to consider any recommendations to increase the powers of shareholders with respect to decisions on remuneration in light of their willingness to engage with companies on practice and to vote on that practice. That willingness may again evaporate during times of strong market performance.</p> <p>It should consider the regulatory framework as a whole before making any further rules. It may be that the required rules are facilitative rules to improve the proxy voting process rather than a remuneration rule as such.</p>	Page 9-11
General comments	The role of remuneration consultants and proxy advisors should be carefully examined by the Productivity Commission. Both are essential advisors to their respective clients: remuneration committees and institutional investors, respectively.	Pages 11-12

The regulatory framework for executive remuneration in Australia

The regulatory framework for executive remuneration can be conceived around a cycle of four activities:

- **Remuneration practice:** the actual practices of firms and individual executives in relation to remuneration. Remuneration practice includes setting remuneration policy, writing the remuneration contract, execution of the contract, namely the executive performs and the company makes payments according to the contract, and termination of the contract;
- **Remuneration disclosure:** the disclosure of remuneration annually via the remuneration report together with ad hoc disclosures related to remuneration, such as share-transactions, margin loans, company loans;
- **Engagement on remuneration:** the engagement between the company and shareholders on remuneration. There are two types of engagement: proactive engagement of shareholders by the company and reactive engagement of the company by shareholders; and
- **Voting on remuneration:** the annual advisory vote on the remuneration report combined with all other remuneration-related resolutions.

This is illustrated below in **figure 1**, the regulated remuneration cycle, which shows the regulators involved in each of the four activities.

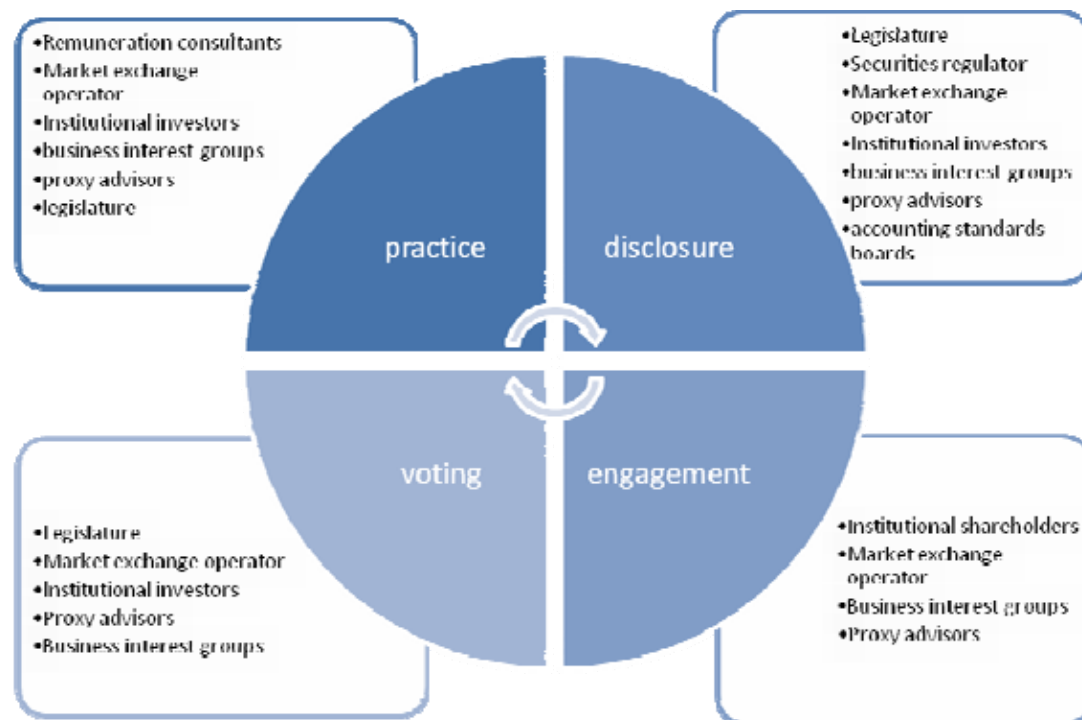


Figure 1: the regulated executive remuneration cycle

This figure illustrates some important aspects of the regulatory framework for executive remuneration:

- There are four distinct activities in the remuneration cycle: practice, disclosure, engagement and voting
- Each activity is regulated to some extent, even if primarily via market mechanisms
- Different rules are deployed in the regulation of the activity, with some rules aimed at giving content to the activity (content rules), whereas other rules facilitate the activity (facilitative rules).
- Some rules are mandatory, whereas others are only voluntary, with the corollary that different consequences will attach to each;
- A variety of organisations act as a regulator: the legislature, the executive (in the form of the securities regulatory or some other government agency or department), the accounting standards maker, the market exchange operate, the industry body, even the individual investor and the individual firm;
- A variety of legal persons are targeted by the regulation: listed companies, boards of directors, remuneration committees, individual executives/directors, institutional investors, shareholders;
- There is an iterative process in the regulation of executive remuneration practice and thus the potential for evolution in executive remuneration practice will be influenced by evolutions in the activities of disclosure, engagement and voting.

Thus the regulatory framework for executive remuneration has to provide rules for each activity. Ideally individual regulators will consider the other regulators, the whole cycle, and the time lags implicit within the cycle when making new rules or amending existing rules.²

Attached **tables 1-4** illustrate the regulatory framework for each of these activities for Australia.³

Rule types and regulators

If rules are thought of as ‘arrows’ directed at particular conduct to achieve a particular outcome,⁴ the regulatory framework for executive remuneration has a number of ‘archers’ involved in making the rules surrounding executive remuneration.

² The time lags implicit in the cycle are those surrounding the company’s ability to respond to evolving views of good practice.

³ Should the Productivity Commission be interested in the same information for the UK, I am able to supply this.

⁴ Julia Black, ‘Which arrow? Rule types and regulatory policy’ (1995) *Public Law* 94.

The more detailed rules are made by specialist bodies: accounting standards by accounting standards bodies, legislation and regulations by government departments or agencies charged with oversight of the company law or securities regulation.

Guidance on shareholder engagement is given by market-exchange operator codes of practice and by shareholder guidance at the national level by groups representing such shareholders or by individual shareholders. This guidance is supplemented at the international level by organisations such as the OECD,⁵ ICGN⁶ and UNEP.⁷

Lastly, business organisations representing functional roles involved in the regulatory framework too provide guidance for their own members (such as the Australian Institute of Company Directors and the Chartered Secretaries Association of Australia). As the attached tables demonstrate, these ‘archers’ are involved at different stages in the remuneration cycle.

The table below summarises the relevant rule styles and rule makers found in the regulatory framework:

Rule type	‘Regulator’
Legislation	Commonwealth Parliament
Regulations	ASIC, Treasury
Listing Rules	ASX
Principles of good practice	ASX Corporate Governance Council
Accounting standards	AASB ⁸
Shareholder practice guidance	ACSI, ⁹ IFSA, ¹⁰ ASA ¹¹
Business interest group practice statements	AICD, Chartered Secretaries of Australia
Proxy advisor voting guidelines	RiskMetrics, CGI Glass Lewis

The use of a variety of rule forms to regulate executive remuneration is a necessary feature of the framework. Good practice cannot be prescribed as a legal rule with legal

⁵ OECD, *Principles of corporate governance* (2004),

⁶ International Corporate Governance Network, *Statement of principles on institutional shareholder responsibilities* (2007).

⁷ United Nations Environment Program Finance Initiative, *Principles of responsible investment* (2006).

⁸ Australian Accounting Standards Board.

⁹ Australian Council of Super Investors,

¹⁰ Investment and Financial Services Association.

¹¹ Australian Shareholders’ Association.

consequences, because law is typically not concerned with aspirational goals. Failure to make the disclosures mandated by company law may well attract legal sanctions for the failure to disclose, but does not attract legal sanctions for short-comings in the remuneration practices disclosed. Those failures have to be addressed elsewhere through the market. Thus there is scope for principles rather than rules to regulate aspects of these four activities of remunerate practice, disclosure, engagement and voting: ‘compliance with the principle, at least in theory, is achievable by a number of alternative routes.’¹²

Understanding the regulatory framework is configured with interlocking (and overlapping) rules governing four separate activities also provides some alternatives of how to address perceived regulatory failure. ***The required rules might be facilitative rules rather than content rules.*** A clear example of this issue can be found in the various enquiries into shareholder engagement which have given attention to the integrity of the voting process rather than upon the types of decision making powers shareholder should have.¹³

Code of practice

Furthermore, ***the required rules might best be incorporated, not as rules in legislation with legal consequences, but as principles in a code of best practice, with market consequences*** (adverse market reaction, in the labour market for directors or in the securities market might be the best enforcement strategy). If the rule is targeted at a natural person and the desired outcome is to encourage striving towards an aspirational best practice outcome, the enforcement strategy is likely to be moral suasion.¹⁴ Trying to encapsulate that rule of conduct into legislation with legal consequences is thus not optimal.

The difficulty for the regulation of executive remuneration *practice*, as demonstrated in table 1 below, is that many of the desired outcomes are currently expressed as aspirational best practice principles. The regulators noted above have sought to circumvent this by providing detailed guidance on how the principles can be achieved.¹⁵ The result is that firms have taken the guidance as the rule and complied with the letter of the guidance.¹⁶ The approach of ‘if not, why not’ has translated in

¹² Oxera, *A framework for assessing the benefits of financial regulation: a report prepared for the Financial Services Authority* (2006) 29.

¹³ Committee on Corporations and Financial Services, (Commonwealth of Australia), *Better shareholders, better company* (2008), 43-46.

¹⁴ Evidence to the Joint Committee on Corporations and Financial Services, Sydney, 16 March 2004, 6-7 (Mr Richard Gilbert, IFSA).

¹⁵ See for example, ASX Corporate Governance Council, *Principles of good corporate governance and best practice recommendations* (March 2003), 51-57 and the commentary and guidance accompanying the five recommendations.

¹⁶ Igor Filatotchev et al, *Key drivers of ‘good’ corporate governance and the appropriateness of UK policy responses, Report for the Department of Trade and Industry UK* (2006), 95 notes that some compliance with the code can actually be counterproductive. The Committee on Corporate Governance, *Final report* (January 1998), [1.12]. Julia Black, ‘Forms and paradoxes of principles-based regulation’ [2008] 3 *Capital Markets Law Journal* 425, 449-450.

practice to ‘comply’: comply and explain (or ‘why not’) are not viewed as acceptable alternatives.¹⁷

The harm in applying principles as rules is the risk is that principles designed to allow for flexibility in application become ossified into a narrow interpretation as companies seek to avoid being labeled as ‘non-compliant.’¹⁸

This might explain the ‘vanilla-isation’ of remuneration practices observed in the UK over the period 2003-2007, whereby companies in the FTSE 100 scrambled to adopt one particular model of remuneration.¹⁹ It might also explain why remuneration reports in this jurisdiction are overly complex: reporting on remuneration is seen as a compliance exercise, not an exercise in providing information that is useful to shareholders in determining how to cast their vote on the remuneration report.²⁰

There is anecdotal evidence to suggest that a lot of remuneration disclosure is ‘optics’: the disclosure of remuneration policies checks the shareholders’ (or, more relevantly, the proxy advisors’) requirements and thus, in the absence of some obvious lapse from a consistent application of policy, shareholders will support the remuneration report.

Role of institutional shareholders

With a reliance upon the market to deal with aberrant remuneration practice, the legislative aspect of the regulatory framework has been devised to facilitate the operation of the market by mandating and standardising disclosure in the remuneration report (thus redressing information asymmetries), plus providing opportunities for shareholder ‘feedback’ via the advisory vote on the remuneration

¹⁷ James McConvill and John Bingham, ‘Comply or comply: the illusion of voluntary corporate governance in Australia’ (2004) 22 *Company and Securities Law Journal* 208, 209. Evidence to the Joint Committee on Corporations and Financial Services, Commonwealth of Australia, Melbourne, 18 March 2004 (Mr Ralph Evans, AICD).

¹⁸ Letter from Martin D Kriewaldt to ASX Regulatory and Public Policy Unit 18 January 2007 (‘My sense is that the ASX does not appreciate the power of such an endorsement and the significant drag “non-compliance” becomes to a company. It legitimises the check boxes developed by the so-called Corporate Governance advisors and has lead many companies to change perfectly sound practices solely to avoid the opprobrium of a “non-compliant” label.’)

¹⁹ This evidence derives from my thesis work and relies upon a content analysis of the remuneration reports for a sample of 73 FTSE 100 companies for the period 2003- 2005. Interviews conducted in the UK in December 2007 and June 2008 with remuneration consultants, remuneration committee representatives and institutional investors confirmed this view. The content analysis has previously been discussed in a working paper: ‘Is the outrage constraint an effective constraint on executive remuneration? Evidence from the UK and preliminary results from Australia’, (2007), available from <http://ssrn.com/abstract=974965>.

I have undertaken the fuller analysis for a sample of 109 S&P/ASX 200 companies for the first three years of the “remuneration report plus advisory vote” regime. This showed a much lower rate of change in remuneration practices than evident in the UK. I am currently interview remuneration consultants and remuneration committee chairpersons and there appears a common belief that long term incentive schemes have been reduced to a couple of standard ‘flavours’.

I am able to provide the fuller analysis for the S&P/ASX 200, should this be of interest to the committee.

²⁰ *Corporations Act 2001* (Cth), s 250R(2).

report and other binding resolutions on remuneration (thus providing opportunities for shareholder engagement and voice).

A heavy reliance on regulatory conversations implicit in this regulatory framework means that the quality of these conversations is key to the successful operation of the framework.²¹ Engagement is crucial to the overall effectiveness of the framework. Without engagement, companies will not learn why their remuneration practices are viewed as unacceptable.

The rules that compel companies to disclose their remuneration practices do not say what these practices should be in the particular firm, which is where remuneration practice takes place. The remuneration practice rules too provide largely guidance to firms on what practice should be; it is generic guidance, not tailored to the circumstances of any one industry, let alone any individual firm.

Furthermore, a vote against the remuneration report cannot tell you why shareholders declined to support the resolution for its adoption, merely the fact that they did not do so, and in what proportions of the overall issued capital of the firm. The exact identity of the non-supporters cannot clearly be known just on voting alone. Without engagement, shareholders cannot communicate their expectations in a timely fashion to enable companies to adopt good practices. Thus, this regulatory conversation is the key to ensuring good remuneration practices.

Of all the four activities, engagement has the lowest level of legislative intervention as well as the lowest level of various types of rules, being largely self-regulated or subject to a loose market-based form of regulation. Should institutional investors fail to undertake engagement activities, this failure is not addressed within the overarching regulatory framework for executive remuneration. It may be found in the separate mandates between institutional investors and their clients, thus regulated by contract law, through a competitive market for particular styles of investment that include governance risk²² or both.

The government and other regulators involved in rule-making for remuneration practice in particular are likely to assume that there is either ‘a carrot or stick’ to ensure that voting and engagement - the two primary mechanisms that ensure good remuneration practice – occur. This assumption may lack a valid foundation.

Whether institutional investors should be required by law to vote has been previously debated in 1998²³ and 2004²⁴ without any changes being made to mandate such

²¹ On the role that shareholder apathy can play a part in poor corporate governance see, HIH Royal Commission, *The failure of HIH Insurance, volume 1 – a corporate collapse and its lessons* (2002), 121.

²² Governance risk might form part of an environment, social and governance (ESG) screen applied by an investment manager to select companies for investment. There is some debate as to whether pension funds and superannuation funds can select investments on the basis of a positive ESG rating rather than on their positive impact on the overall portfolio (Benjamin J Richardson, *Social responsible investment law: regulating the unseen polluters* (2008), 222-3, 225-6).

²³ Company & Securities Advisory Committee, *Shareholder participation in the modern listed public company* (2000), 63-66.

²⁴ Joint Committee on Corporations and Financial Services, Commonwealth of Australia, *CLERP (Audit reform and corporate disclosure) Bill 2003, Part 1: Enforcement, executive remuneration, continuous disclosure, shareholder participation and related matters* (2004), 174. Commonwealth of Australia, *Parliamentary Debates*, 1 February 2004, 24824 (Simon Crean, Member for Hotham)

voting, disclosure of voting policy or disclosure of voting practice.²⁵ Justifications for refusing to mandate compulsory voting emphasise that it is more important for institutional investors to exercise their vote intelligently – as diligent trustees rather than conscripts –²⁶ than to have a truly representative voting outcome based upon all shareholders voting. The costs of compliance would be passed on, including the costs of any fines levied by ASIC for non-compliance.²⁷

The Productivity Commission should carefully consider any initiatives that would give shareholders increased decision-making rights with respect to executive remuneration in light of whether institutional investors are willing and able to consistently monitor, engage and enforce, via voting mechanisms, good remuneration practices.

Role of proxy advisors and remuneration consultants

Two key advisors in the regulatory framework are remuneration consultants who provide advice to remuneration committees and proxy advisors who analyse remuneration reports and notices of meeting and provide analysis and advice to investors on how to cast their proxy votes.

Remuneration consultants

Remuneration consultants are largely viewed as an essential advisor to the remuneration committee because the committee does not have resources to do the market comparisons of remuneration, nor the knowledge of remuneration practices in other firms. Should the committee wish to introduce a new arrangement, it will typically need professional advice to ensure it understands the financial, legal and tax implications of its decisions. Thus limiting considerations of the committees' advisors to simply remuneration consultants misses out some other key advisors.

Any initiatives to require disclosure of advisors to the remuneration committee should be framed to ensure that all the advisors to the committee are captured. It is likely these advisors will want to ensure that any disclosure by the committee of the advisor's role accurately reflects the extent of the 'brief'. This is because there may be multiple advisors to the remuneration committee. There is likely to be tension here between these advisors and the remuneration committee in terms of the nature of this disclosure.

argued it was ALP policy to require trustees of super funds to vote and to disclose their voting records, as part of institutional shareholders discharging their responsibility to take an active role in Australian companies.

²⁵ The ALP policy on corporate governance covered these additional aspects but they were unsuccessful in making these changes to the CLERP 9 reforms. *Parliamentary Debates*, Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 16 February 2004, 24830-24831 (Mr Cox, Member for Kingston).

²⁶ Evidence to the Joint Committee on Corporations and Financial Services, Commonwealth of Australia, Sydney, 7 May 2004, 15 (Dr Bradley Pragnell, ASFA. Evidence to the Joint Committee on Corporations and Financial Services, Commonwealth of Australia, Sydney 16 March 2004, 2-5 (Mr Richard Gilbert, IFSA), who identified the likely source of such unintelligent voting as 'overseas institutions' (5).

²⁷ Evidence to the Joint Committee on Corporations and Financial Services, Commonwealth of Australia, Sydney 16 March 2004, 5 (Mr Richard Gilbert, IFSA).

There can be an issue in some firms as to who is briefing the remuneration consultants: the remuneration committee directly or management. Unlike auditors or lawyers, there is no professional body or accrediting body for remuneration consultants. Thus the relevant professional standards are largely left to the individual firm of consultants to develop.

The Productivity Commission should consider whether there is merit in developing a set of professional standards for remuneration consultants and, if so, who is best placed to develop these standards.

Proxy advisors

Institutional investors do not have the resources to analyse the remuneration reports of companies in their portfolios in a timely manner but rely upon proxy advisors for that analysis. The two main proxy advisors in Australia, CGI Glass Lewis and RiskMetrics, both hold Australian Financial Services Licenses to provide general financial product advice on interests in managed investment schemes (excluding investor directed portfolio services) and securities to wholesale clients.²⁸ Regnan – Governance Research and Engagement Pty Limited holds an Australian Financial Services License to provide general financial product advice for securities to wholesale clients.²⁹

Consideration should be given as to whether the current licensing requirements adequately reflect the nature of the role undertaken. In particular, there may be merit in developing something more specific to cover the role of the proxy advisor.

Proxy advisors also play a role in the regulatory framework by making rules on remuneration practices. These rules then form a ‘screen’ which is used to assess remuneration practices as disclosed in remuneration reports. It is not clear how these rules are developed by the proxy advisors. As the rules are typically updated annually, there is a risk of moving goal posts and thus a lack of clear guidance for remuneration committees on which practices are likely to be accepted by shareholders.

²⁸ CGI Class Lewis, License No. 306501 (effective 16 February 2007) and RiskMetrics (Australia) Pty Ltd, License No. 297008 (effective 25 September 2007).

²⁹ Regnan – Governance Research and Engagement Pty Limited, License no. 316351, effective 9 October 2007.

Table 1 – the regulatory framework for executive remuneration practice

Key to codes used in this table:

M = mandatory;

V = voluntary,

INWN = if not, why not (compliance with the guideline is voluntary but the company must disclose whether it complies or else explain why it does not comply).

CG code = ASX Corporate Governance Council, Corporate governance principles and recommendations, 2nd edition (2007);

Practice statement = business interest group practice statement (issued by the Australian Institute of Company Directors, the Business Council of Australia, or the Chartered Secretaries Association);

Practice guidance = shareholder practice guidance (for example, that issued by the Australian Council of Super Investors Inc, or by the Investment and Financial Services Association);

Voting guidance = proxy advisor voting guidance (for example, that issued by RiskMetrics (Australia) Pty Ltd. ASIC= the Australian Investments and Securities Commission.

Accounting standards bodies do not have any direct role in regulating remuneration practice.

Aspect of practice	Regulator					
	Legislature	Securities regulator (ASIC)	Market exchange operator (ASX)	Business interest groups	Institutional investors	Proxy advisors
Remuneration committee			CG code (INWN)i	Practice statement (V)ii	Practice guidance (V)iii	
Structure			CG code (INWN)iv	Practice statement (V)v	Practice guidance (V)vi	Voting guidance (V) vii
Tasks or activities			CG code (INWN)viii	Practice statement (V)ix	Practice guidance (V)x	
Use of remuneration consultants			CG code (INWN)xi	Practice statement (V)xii	Practice guidance (V)xiii	
Remuneration policy			CG code (INWN)xiv	Practice statement (V)xv	Practice guidance (V)xvi	Voting guidance (V)xvii
Remuneration contract	Note xviii			Practice statement (V)xix	Practice guidance (V)xx	
Base pay			CG code (INWN)xxi		Practice guidance (V)xxii	

Aspect of practice	Regulator					
	Legislature	Securities regulator (ASIC)	Market exchange operator (ASX)	Business interest groups	Institutional investors	Proxy advisors
Annual bonus/ short term incentives			CG code (INWN)xxiii		Practice guidance (V)xxiv	
Long term incentive schemes			CG code (INWN)xxv		Practice guidance (V)xxvi	Voting guidance (V) xxvii Practice guidance (V) xxviii
Share-based remuneration			CG code (INWN)xxix Listing Rules (M)xxx	Practice statement (V)xxxi	Practice guidance (V)xxxii	Voting guidance (V) xxxiii Practice guidance (V) xxxiv
Performance criteria			CG code (INWN)xxxv	Practice statement (V)xxxvi	Practice guidance (V)xxxvii	Practice guidance (V) xxxviii
Superannuation	Superannuation laws (M)xxxix Taxation laws (M)xl					
Termination provisions	Company law (M)xli		CG code (INWN)xlii Listing rules (M)xliii	Practice statement (V)xliv	Practice guidance (V)xlv	
Share holdings					Practice guidance (V)	
Share transactions			CG code (INWN)xlvi			
Loans	Company law (M)xlvii			Practice statement (V) xlviii	Practice guidance (V) xlix	Practice guidance (V)l
Margin loans			CG code (INWN)li		Practice guidance (V) lii	
Hedging positions			CG code (INWN)liii		Practice guidance (V) liv	

Table 2: the regulatory framework for remuneration disclosure

Key to codes used in this table:

M = mandatory

V = voluntary

INWN = if not, why not (compliance with the guideline is voluntary but the company must disclose whether it complies or else explain why it does not comply).

CG code = ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007)

SR guidance = securities regulator guidance (guidance on how the securities regulator interprets the relevant laws and regulations, together with information on enforcement)

Practice statement = business interest group practice statement (issued by the Australian Institute of Company Directors, the Business Council of Australia, or the Chartered Secretaries Association)

Practice guidance = shareholder practice guidance (for example, that issued by the Australian Council of Super Investors Inc, or by the Investment and Financial Services Association)

Voting guidance = proxy advisor voting guidance (for example, that issued by RiskMetrics).

ASIC= the Australian Investments and Securities Commission.

AASB = Australian Accounting Standards Board. Accounting standards are issued by the AASB

AuSB = Auditing and Assurance Standards Board. Auditing standards are issued by the AuSB.

Aspect of disclosure	Regulator						
	Legislature	Securities regulator (ASIC)	Market exchange operator (ASX)	Accounting standards setter (AASB) Auditing standards setter (AuSB)	Business interest group	Institutional investors	Proxy advisors
Definition of remuneration	Corporations law (M) ^{lv}			Accounting standard (M) ^{lvi}			
Whose pay to be disclosed	Corporations law (M) ^{lvii}			Accounting standard (M) ^{lviii}		Practice guidance (V) ^{lix}	

Aspect of disclosure	Regulator						
	Legislature	Securities regulator (ASIC)	Market exchange operator (ASX)	Accounting standards setter (AASB) Auditing standards setter (AuSB)	Business interest group	Institutional investors	Proxy advisors
Frequency of disclosure	Corporations law (M) ^{lx}		Listing rules (M) ^{lxi} CG Code (INWN) ^{lxii}				
Remuneration report	Corporations law (M) ^{lxiii}						
Remuneration policy	Corporations law (M) ^{lxiv}		Listing rules (M) ^{lxv} CG Code (INWN) ^{lxvi}			Practice guidance (V) ^{lxvii}	
Remuneration committee membership	Corporations law (M) ^{lxviii}		Listing rules (M) ^{lxix} CG Code (INWN) ^{lxx}			Practice guidance (V) ^{lxxi}	
Remuneration committee activities	Corporations law (M) ^{lxxii}		Listing rules (M) ^{lxxiii} CG Code (INWN) ^{lxxiv}			Practice guidance (V) ^{lxxv}	
Material advisors to remuneration committee							
Contractual terms	Corporations law (M) ^{lxxvi}	Regulations (M) ^{lxxvii}				Practice guidance (V) ^{lxxviii}	
Remuneration payments	Corporations law (M) ^{lxxix}	Regulations (M) ^{lxxx}		Accounting standard (M) ^{lxxxi}		Practice guidance (V) ^{lxxxii}	
Superannuation		Regulations (M) ^{lxxxiii}		Accounting standards (M) ^{lxxxiv}			

Aspect of disclosure	Regulator						
	Legislature	Securities regulator (ASIC)	Market exchange operator (ASX)	Accounting standards setter (AASB) Auditing standards setter (AuSB)	Business interest group	Institutional investors	Proxy advisors
Loans				Accounting standards (M) ^{lxxxv}			
Options and other SBPs	Corporations law (M) ^{lxxxvi}	Regulations (M) ^{lxxxvii}		Accounting standards (M) ^{lxxxviii}		Practice guidance (V) ^{lxxxix}	Voting guidance (V) ^{xc}
Shareholdings	Corporations law (M) ^{xc}		Listing rules (M) ^{xcii}				
Share trading	Corporations law (M) ^{xciii}	SR Guidance (V) ^{xciv} Class order (M) ^{xcv}	Listing rules (M) ^{xcvi} Guidance (V) ^{xcvii}				
Termination payments		Regulations (M) ^{xcviii}		Accounting standard (M) ^{xcix}		Practice guidance (V) ^c	
Tabular disclosure format						Practice guidance (V) ^{ci}	
Performance graph						Practice guidance (V) ^{cii}	
Performance criteria	Corporations Law (M) ^{ciii}	Regulations (M) ^{civ}				Practice guidance (V) ^{cv}	Voting guidance (V) ^{cvi} Practice guidance (V) ^{cvii}
Valuations	Corporations law (M) ^{cviii}	Regulations (M) ^{cix}		Accounting standard (M) ^{cx}		Practice guidance (V) ^{cx}	Voting guidance (V) ^{cxii} Practice guidance (V) ^{cxiii}
Sign-off within company	Corporations law (M) ^{cxiv}					Practice guidance (V) ^{cxv}	

Aspect of disclosure	Regulator						
	Legislature	Securities regulator (ASIC)	Market exchange operator (ASX)	Accounting standards setter (AASB) Auditing standards setter (AuSB)	Business interest group	Institutional investors	Proxy advisors
Audit certification	Corporations law (M) ^{cxvi}			Accounting standards (M) ^{cxvii} Auditing standards (M) ^{cxviii}			
Other directorships	Corporations law (M) ^{cxix}					Practice guidance (V) ^{cxx}	
Compliance with CG codes			Listing rules (M) ^{cxxi} CG Code (INWN) ^{cxxii}			Practice guidance (V) ^{cxxiii}	

Table 3 – the regulatory framework for engagement on remuneration

Key to codes used in this table:

M = mandatory

V = voluntary

INWN = if not, why not.

CG code = ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007).

Practice statement = business interest group practice statement (issued by the Australian Institute of Company Directors, the Business Council of Australia, or the Chartered Secretaries Association)

Practice guidance = shareholder practice guidance (for example, that issued by the Australian Council of Super Investors Inc, or by the Investment and Financial Services Association)

Voting guidance = proxy advisor voting guidance (for example)

SR Guidance = securities regulatory guidance (that is guidance issued by ASIC, the Australian Investments and Securities Commission).

Accounting standards bodies do not have any direct role in regulating engagement on remuneration.

Aspect of engagement	Regulator						
	Legislature	Securities regulator (ASIC)	Market exchange operator (ASX)	Takeovers Panel	Institutional investors	Proxy advisors	Business interest groups
What companies should do to facilitate engagement			CG Code (INWN) ^{cxxiv}			Voting guidance (V) ^{cxxv}	Practice statement (V) ^{cxxvi}
Policy on engagement					Practice guidance (V) ^{cxxvii}		
Monitoring companies					Practice guidance (V) ^{cxxviii}		
Intervention					Practice guidance (V) ^{cxxix}		
Reporting on engagement					Practice guidance (V) ^{cxxx}		
Acting in concert	Company Law	SR Guidance ^{cxxxii}		Takeovers Panel			

Aspect of engagement	Regulator						
	Legislature	Securities regulator (ASIC)	Market exchange operator (ASX)	Takeovers Panel	Institutional investors	Proxy advisors	Business interest groups
	(M) ^{cxxx1}			Guidance (V) ^{cxxxiii}			

Table 4 – the regulatory framework for voting on executive remuneration

Key to codes used in this table:

M = mandatory

V = voluntary

INWN = if not, why not (compliance is voluntary but there is mandatory disclosure).

C= content rule

F = facilitative rule

SR guidance = regulatory guidance issued by the securities regulator (here ASIC)

CG Code = ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007)

Listing Rules = ASX *Listing Rules*

Practice statement = business interest group practice statement

Practice guidance = shareholder practice guidance

Voting guidance = proxy advisor voting guidance

ASIC= the Australian Investments and Securities Commission

Accounting standards bodies do not play any direct role in regulating voting on remuneration (except for disclosures in the financial reports, refer below note clxvi).

Aspect of voting	Regulator						
	Legislature	Securities regulator (ASIC)	Takeovers Panel	Market exchange operator (ASX)	Business interest groups	Institutional investors	Proxy advisors
Advisory vote on remuneration report (C)	Corporations Law (M) ^{cxxxiv}				Practice statement (V) ^{cxxxv}	Practice guidance (V) ^{cxxxvi}	Voting guidance (V) ^{cxxxvii}
Binding vote on share plan (C)				Listing Rules (M) ^{cxxxviii} CG Code		Practice guidance (V) ^{cxli}	Voting guidance (V) ^{cxlii}

Aspect of voting	Regulator						
	Legislature	Securities regulator (ASIC)	Takeovers Panel	Market exchange operator (ASX) (INWN) ^{cxxxix}	Business interest groups	Institutional investors	Proxy advisors
Binding vote on issue of securities to a director (C)				Listing Rules (M) ^{cxlii}		Practice guidance (V) ^{cxliii}	
Binding vote on termination payment (C)	Corporations Law (M) ^{cxliv}			Listing Rules (M) ^{cxlv}		Practice guidance (V) ^{cxlvi}	
Binding vote on related party transaction payment (C)	Corporations Law (M) ^{cxlvii}	SR guidance ^{cxlviii}		Listing Rules (M) ^{cxlix}		Practice guidance (V) ^{cl}	
Notice of meeting requirements (F)	Corporations Law (M) ^{cli}			Listing rules (M) ^{clii}	Practice statement (V) ^{cliii}	Practice guidance (V) ^{cliv}	
Proxy appointments (F)	Corporations Law (M) ^{clv}				Practice statement (V) ^{clvi}	Practice guidance (V) ^{clvii}	
Voting procedures (F)	Corporations Law (M) ^{clviii}				Practice statement (V) ^{clix}	Practice guidance (V) ^{clx}	
Disclosure of voting outcomes (F)	Corporations Law (M) ^{clxi}			Listing Rules (M) ^{clxii}	Practice statement (V) ^{clxiii}	Practice guidance (V) ^{clxiv}	
Disclosure of voting practice by institutional investors (F)						Practice guidance (V) ^{clxv}	
Share capital disclosure (F)	Corporations Law (M) ^{clxvi}			Listing Rules (M) ^{clxvii}			
Major shareholder notifications (F)	Corporations Law (M) ^{clxviii}			Listing Rules (M) ^{clxix}			
Institutional investors should exercise voting rights (C)						Practice guidance ^{clxx}	
Institutional investors have a strategy for proxy voting (C)						Practice guidance ^{clxxi}	
Acting in concert (F)	Company Law (M) ^{clxxii}	SR Guidance ^{clxxiii}	Takeovers Panel Guidance (V) ^{clxxiv}			Practice guidance (V) ^{clxxv}	

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- ⁱ ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 35 (recommendation 8.1).
- ⁱⁱ Australian Institute of Company Directors, *Remuneration committees: good practice guide* (YEAR).
- ⁱⁱⁱ Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 9 (guideline 12.1(a)).
- ^{iv} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 35 (commentary to recommendation 8.1).
- ^v Australian Institute of Company Directors, *Remuneration committees: good practice guide* (YEAR).
- ^{vi} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 9 (guideline 12.1(g)).
- ^{vii} RiskMetrics (Australia) Pty Ltd, *2008 Australia voting guidelines* (2008), 12.
- ^{viii} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 35 (commentary to recommendation 8.1).
- ^{ix} Australian Institute of Company Directors, *Executive equity plan guidelines*, Position paper no. 2 (2007), 5 (guideline 4.1).
- ^x Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 10-11(guidelines 12.3(a)-(g)).
- ^{xi} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 35 (commentary to recommendation 8.1).
- ^{xii} Australian Institute of Company Directors, *Remuneration committees: good practice guide* (YEAR).
- ^{xiii} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 10 (guideline 12.3(f)).
- ^{xiv} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 35-36 (commentary to recommendation 8.1).
- ^{xv} Australian Institute of Company Directors, *Remuneration committees: good practice guide* (YEAR).
- ^{xvi} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 12 (guidelines 14.1(c)-(f)).
- ^{xvii} RiskMetrics (Australia) Pty Ltd, *2008 Australia voting guidelines* (2008), 12.

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- xviii The remuneration contract is regulated by the private law of contract.
- xix Australian Institute of Company Directors, *Executive service agreements* (2003).
- xx Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 12 (guidelines 14.2(a),(b),(d),(e),(f)).
- xxi ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 36 (Box 8.1, 1).
- xxii Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 13-14 (guidelines 14.4(a)-(c)).
- xxiii ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 36 (Box 8.1, 2).
- xxiv Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 14 (guideline 14.5(d)).
- xxv ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 36 (Box 8.1, 2).
- xxvi Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 14 (guidelines 14.1(c)-(f)).
- xxvii RiskMetrics (Australia) Pty Ltd, *2008 Australia voting guidelines* (2008), 18.
- xxviii RiskMetrics (Australia) Pty Ltd, *2008 Australia voting guidelines* (2008), 15-18.
- xxix ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 36 (Box 8.1, 2, 3).
- xxx ASX, *Listing Rules*, rule 10.14.
- xxxi Australian Institute of Company Directors, *Executive equity plan guidelines*, Position paper no. 2 (2007), 4-6 (guidelines 3.1-4.7), 9 (guidelines 7.1-7.4).
- xxxii Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 15-17 (guidelines 14.8(a)-(h), 14.10,14.11).
- xxxiii RiskMetrics (Australia) Pty Ltd, *2008 Australia voting guidelines* (2008), 18.
- xxxiv RiskMetrics (Australia) Pty Ltd, *2008 Australia voting guidelines* (2008), 15-18.
- xxxv ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 36 (Box 8.1, 2).
- xxxvi Australian Institute of Company Directors, *Executive equity plan guidelines*, Position paper no. 2 (2007), 6-8 (guidelines 5.1-5.7).
- xxxvii Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 14-15 (guideline 14.6).

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- ^{xxxviii} RiskMetrics (Australia) Pty Ltd, *2008 Australia voting guidelines* (2008), 16-17.
- ^{xxxix} *Superannuation Guarantee (Administration) Act 1992* (Cth), *Superannuation (Excess Concessional Contributions Tax) Act 2007* (Cth), *Superannuation (Excess Non-concessional Contributions Tax) Act 2007* (Cth), together with provisions in the *Income Tax Assessment Act 1997* (Cth).
- ^{xl} *Income Tax Assessment Act 1936* (Cth), *Income Tax Assessment Act 1997* (Cth).
- ^{xli} *Corporations Act 2001* (Cth), ss 200A-200G.
- ^{xlii} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 36 (Box 8.1, 4).
- ^{xliii} ASX, *Listing Rules*, rules 10.18 and 10.19.
- ^{xliv} Australian Institute of Company Directors, *Executive termination payments* (2004); *Executive service agreements* (2003).
- ^{xlv} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 12-13 (guidelines 14.2(a)-(j)).
- ^{xlvi} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 23 (box 3.2, 3, 4, 6, 7).
- ^{xlvii} *Corporations Act 2001* (Cth), s 208(1) if the loan is on less than commercial terms *cf* s 210; a loan given by way of financial assistance to acquire shares in the company would trigger the prohibition contained in ss 260A(1)(a),(b), (c) unless the loan is given under an employee share scheme approved by shareholders in general meeting: s 260C(4)(a).
- ^{xlviii} AICD, *Non-recourse loans provided to executives*, Position paper no. 8 (May 2008).
- ^{xlix} IFSA, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 29 (guideline 11.14.1); ACSI, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian corporations* (2007), 17 (guideline 14.12). ACSI does not take as strong a position on non-recourse loans as does IFSA who opposes non-recourse loans. Rather ACSI wants the loans to be on a commercial basis and, where the loan is non-recourse or limited recourse, to have a provision in the share plan which allows the company to sell on market the shares forfeited by the executive to recoup part of the cost. Neither NAPF nor ABI deal with non-recourse loans in their guidelines.
- ^l Regnan, *Position paper – director and executive security trading* (2008).
- ^{li} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 23 (box 3.2, 7).
- ^{lii} ACSI and IFSA, *Joint statement by IFSA and ACSI on market integrity and efficiency* (28 March 2008), 2.
- ^{liii} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 23 (box 3.2, 8).
- ^{liv} ACSI, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian corporations* (2007), 17-18 (guidelines 14.13(a)-(c)).
- ^{lv} *Corporations Act 2001* (Cth), s 9.
- ^{lvi} *AASB 124 Related party disclosures* (2005) paragraphs 9, Aus 9.1, Aus 9.1.1.

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- ^{lvii} *Corporations Act 2001* (Cth), s 300A(1AAA) defines ‘key management personnel’ by reference to the definition in the applicable accounting standard. The standard is Australian Accounting Standards Board, *AASB 124 Related Party Disclosures* (2005) which defines key management personnel in clause 9 as ‘those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.’
- ^{lviii} Australian Accounting Standards Board, *AASB 124 Related party disclosures* (2005) paragraphs 9, 16.
- ^{lix} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 7 (guideline 9(b), 12 (guideline 14.1(b), 18 (guideline 14.14(a); Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 27 (guideline 13).
- ^{lx} *Corporations Act 2001* (Cth), s 300A(1A); s 674(2) (continuous disclosure obligations).
- ^{lxi} *ASX Listing Rules*, rule 3.1, rule 3.16 (where there is a change in a chief executive officer or equivalent); *ASX, Continuous disclosure and chief executive officer remuneration* (2003), 1-2.
- ^{lxii} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 29 (eliminating surprise about executive payments).
- ^{lxiii} *Corporations Act 2001* (Cth), s 300A (1A).
- ^{lxiv} *Corporations Act 2001* (Cth), ss 300A(1)(b),(ba).
- ^{lxv} *ASX, Listing Rules*, rule 4.10.3.
- ^{lxvi} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 37 (guide to reporting on principle 8).
- ^{lxvii} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 7 (guideline 14.1(f); Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 27 (guideline 13).
- ^{lxviii} *Corporations Act 2001* (Cth), s 300(11).
- ^{lxix} *ASX, Listing Rules*, rule 4.10.3.
- ^{lxx} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 37 (guide to reporting on principle 8).
- ^{lxxi} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 7 (guideline 9); Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 16-17 (guideline 1).
- ^{lxxii} *Corporations Act 2001* (Cth), s 300(11).
- ^{lxxiii} *ASX, Listing Rules*, rule 4.10.3.

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- ^{lxxiv} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 37 (guide to reporting on principle 8).
- ^{lxxv} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 7 (guideline 9); Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 16-17 (guideline 1).
- ^{lxxvi} *Corporations Act 2001* (Cth), s 300A(1)(e)(vii).
- ^{lxxvii} *Corporations Regulations 2001* (Cth), reg 2M.03(1), item 13.
- ^{lxxviii} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 12 (guideline 14.2(a)).
- ^{lxxix} *Corporations Act 2001* (Cth), s 300A(1)(c).
- ^{lxxx} *Corporations Regulations 2001* (Cth), reg 2M.03(1), items 6, 7, 8, 9 and 11.
- ^{lxxxi} Australian Accounting Standards Board, *AASB 124 Related party disclosures* (2005), paragraph 16.
- ^{lxxxii} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 13 (guideline 14.3); Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 28 (guideline 13);
- ^{lxxxiii} *Corporations Regulations 2001* (Cth), reg 2.M.3.03(1), item 7.
- ^{lxxxiv} Australian Accounting Standards Board, *AASB 124 Related Party Disclosures* (2005), paragraph 16(b); *AASB 119 Employee Benefits* (2006), paragraphs 29-30, 39, 44-47.
- ^{lxxxv} Australian Accounting Standards Board, *AASB 124 Related Party Disclosures* (2005), paragraphs Aus 25.8, Aus 25.8.1 but loans involved in transactions that are essentially options, including non-recourse loans in such transactions, are excluded from the requirement to disclose under Aus 25.8.2.
- ^{lxxxvi} *Corporations Act 2001* (Cth), s 300(1)(d), ss 300(3),(5),(6),s 300A(1)(ba).
- ^{lxxxvii} *Corporations Regulations 2001* (Cth), reg 2M.03(1), item 11.
- ^{lxxxviii} Australian Accounting Standards Board, *AASB 124 Related Party Disclosures* (2005), paragraphs Aus 25.7.3-Aus 25.7.5; *AASB 2 Share-based payments* (2007), paragraphs 7-8, 10-12, 16-25, 30-31, 34-40, 44-52, appendix B.
- ^{lxxxix} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 8 (guideline 10(a)), 16 (guideline 14.8(f), 18 (guideline 14.13(b)); Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 28 (guideline 13); Investment and Financial Services Association, *Executive equity plan guidelines* (2007), 10-11 (guidelines 8.1, 8.2, 8.3, 8.7).
- ^{xc} RiskMetrics (Australia) Pty Ltd, *2008 Australia voting guidelines* (2008), 18.

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- ^{xc}*i Corporations Act 2001* (Cth), ss 300(11)(a)-(c).
- ^{xc}*ii ASX Listing Rules*, rule 4.10.4.
- ^{xc}*iii Corporations Act 2001* (Cth), s 205G. Board policy on hedging of share-based payments is required under s 300A(1)(da), with effect from 28 June 2007.
- ^{xc}*iv Australian Securities and Investments Commission, Related Party Transactions, Regulatory Guide 76* (DATE), *Notification of directors' interests in securities – listed companies, Regulatory Guide 193* (2008).
- ^{xc}*v Australian Securities and Investments Commission, Class Order 01/1519 Disclosure of directors' interests.*
- ^{xc}*vi ASX, ASX Listing Rules*, rule 3.19A.
- ^{xc}*vii ASX, Disclosure of directors' share trading*, Guidance Note 22 (2002).
- ^{xc}*viii Corporations Regulations 2001* (Cth), reg 2M.03(1), item 9.
- ^{xc}*ix Australian Accounting Standards Board, AASB 124 Related party disclosures* (2005), paragraph 16; *AASB 119 Employee benefits* (2006), paragraphs 133-140, 143.
- ^c Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 12 (guideline 14.2(a)).
- ^{ci} Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 38.
- ^c*ii Investment and Financial Services Association, Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 29 (guideline 13); Investment and Financial Services Association, *Executive equity plan guidelines* (2007), 10 (guidelines 8.2).
- ^c*iii Corporations Act 2001* (Cth), ss 300A(1)(b),(ba), (1AA), (1AB).
- ^c*iv Corporations Regulations 2001* (Cth), reg 2M.3.03(1), items 12(c), (d), item 14 (c)(iii), item 15 (b)(vi).
- ^c*v Australian Council of Super Investors, Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 15 (guideline 14.6(f)); Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 28 (guideline 13); Investment and Financial Services Association, *Executive equity plan guidelines* (2007), 10 (guideline 8.2).
- ^c*vi RiskMetrics (Australia) Pty Ltd, Assessing remuneration reports for ASX-listed companies* (2008), 1-2.
- ^c*vii RiskMetrics (Australia) Pty Ltd, 2008 Australia voting guidelines* (2008), 17.
- ^c*viii Corporations Act 2001* (Cth), s 300A(1C)(a).
- ^c*ix Corporations Regulations 2001* (Cth), reg 2M.3.03(1), items 10(a), item 14(e), item 15(b), regs 2M.3.03(2), (4)
- ^c*x Various accounting standards give guidance on valuations, including Australian Accounting Standards Board, AASB 2 Share-based payment* (2007), *AASB 101 Presentation of financial statements* (2007), *AASB 119 Employee Benefits* (2006).

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- cxix Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 13 (guideline 14.3), 16 (guideline 14.8(g)); Investment and Financial Services Association, *Executive equity plan guidelines* (2007), 11 (guideline 8.7).
- cxii RiskMetrics (Australia) Pty Ltd, *Assessing remuneration reports for ASX-listed companies* (2008), 1-2.
- cxiii RiskMetrics (Australia) Pty Ltd, *2008 Australia voting guidelines* (2008), 17.
- cxiv *Corporations Act 2001* (Cth), s 298(2)(c) as the remuneration report forms part of the directors' report.
- cxv Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 11 (guideline 12.3(g)).
- cxvi *Corporations Act 2001* (Cth) s 308(3C) requires the auditor to state whether in the auditor's opinion, the remuneration report complies with s 300A. This section only applies from 28 June 2007; prior to this date, the remuneration report was not required to be audited, although disclosures made in the financial reports, including the notes to the financial reports, would be audited under s 307.
- cxvii Australian Accounting Standards Board, *AASB 101 Presentation of financial statements* (2007), paragraphs AUS 138.2.
- cxviii Various auditing standards impact upon the audit certification, including Auditing and Assurance Standards Board, *Auditing standard ASA 200 Objective and General Principles Governing an Audit of a Financial Report* (2006), paragraphs 7, 9, 14-15, 18, 20-21, 24; *Auditing Standard ASA 545 Auditing Fair Value Measurements and Disclosures* (2006), paragraphs 23-34, 40, 47, 64, 68-69; *Auditing Standard ASA 550 Related Parties* (2006), paragraphs 13, 18, 21, 23, 37-38; *Auditing Standard ASA 580 Management Representations* (2006), paragraphs 9, 12, 22; *Auditing Standard ASA 720 Other Information in Documents Containing Audited Financial Reports* (2006), paragraphs 14-16, 20, 22-23, 29; *Guidance Statement GS 008 The Auditor's Report on a Remuneration Report Pursuant to Section 300A of the Corporations Act 2001* (2008).
- cxix *Corporations Act 2001* (Cth), s 300(11)(e).
- cxx Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 7 (guideline 9(b)); Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 28 (guideline 13)
- cxix ASX, *Listing Rules*, rule 4.10.3.
- cxvii ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 5.
- cxviii Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian companies* (2007), 2 (guideline 1(c)); Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 16 (guideline 1).
- cxvii ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 30-31 (commentary to recommendation 6.1).
- cxv RiskMetrics Group, *2008 Australia voting guidelines* (2008), 13 (one factor in assessing a resolution to remove a director is that director's responsiveness to shareholders).

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- ^{cxxvi} Australian Institute of Company Directors, *Shareholder consideration of the annual remuneration report of a listed company: a guide for consideration of the issues* (2004), 10, 12-13, 16-17; Chartered Secretaries of Australia, *Better communication between entities and proxy advisory services* (2008); Chartered Secretaries of Australia, *Guide to procedures at AGMs* (2008), 13-15; Chartered Secretaries of Australia, *Policy to promote effective communication with shareholders* (other than at AGMs) Good Governance Guide No. 6.6 (2004); Business Council of Australia, *Company+shareholder dialogue: fresh approaches to communication between companies and their shareholders. A discussion paper* (2004), 46, 48-49.
- ^{cxxvii} Australian Council of Super Investors, *Environmental, social and governance guidelines* (2007), 5-6 (guidelines 2.1-2.2 for superannuation funds), 9 (guideline 5.1 on fund managers), 19-20 (superannuation trustees), 23, 25, 27-28, 29; Association of Superannuation Funds of Australia, *Best practice paper no 17: active share ownership guidelines for superannuation fund trustees* (May 2003), 8-9 (guidelines B1 and B2); Investment and Financial Services Association Limited, *Blue Book: corporate governance a guide for fund managers and corporations* (2004), 4 (guideline 1).
- ^{cxxviii} Australian Council of Super Investors, *Environmental, social and governance guidelines* (2007), 19 (guideline 5.2(b)), 27-29; Association of Superannuation Funds of Australia, *Best practice paper no 17: active share ownership guidelines for superannuation fund trustees* (May 2003), 10-11 (guideline B4); United Nations Environment Programme Finance Initiative, *Principles for responsible investment* (2006), principle 3.
- ^{cxxix} Australian Council of Super Investors, *Environmental, social and governance guidelines* (2007), 9 (guideline 5.2 on fund managers), 13 (guideline 6.1), 22, 27-28; Association of Superannuation Funds of Australia, *Best practice paper no 17: active share ownership guidelines for superannuation fund trustees* (May 2003), 11-12 (guidelines B5 and B6).
- ^{cxxx} Australian Council of Super Investors, *Environmental, social and governance guidelines* (2007), 6 (guideline 2.1(d)), 11 (guideline 5.2), 20, 21, 23, 28, 29. Association of Superannuation Funds of Australia, *Best practice paper no 17: active share ownership guidelines for superannuation fund trustees* (May 2003), 13-14 (guidelines B10 and B11).
- ^{cxxxi} *Corporations Act 2001* (Cth), ss 606(1)(c), 608(1), 609, 610, together with ss 12, 16 (definition of associate for the purposes of the takeover provisions) and various definitions in s 9 (relevant agreement, voting share).
- ^{cxxxii} Australian Securities and Investments Commission, *Collective action by institutional investors*, Regulatory Guide 128 (1998), [RG 128.2]-[RG128.3], [RG128.5]-[RG128.7], [RG128.12], [RG 128.25]-[RG 128.28].
- ^{cxxxiii} The Takeovers Panel, *Equity derivatives, Guidance Note 20* (2008), 6-9 (on associations).
- ^{cxxxiv} *Corporations Act 2001* (Cth), s 250R(2).
- ^{cxxxv} Australian Institute of Company Directors, *Shareholder consideration of the annual remuneration report of a listed company: a guide for consideration of the issues* (2004), 8-10, 14-17.
- ^{cxxxvi} IFSA, *Guidance note circular: non-binding shareholder vote on remuneration reports* (2005); ACSI, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian corporations* (2007), 12 (guideline 14.1(a)).
- ^{cxxxvii} RiskMetrics (Australia) Pty Ltd, *Assessing remuneration reports for ASX-listed companies* (2008); RiskMetrics Group, *2008 Australia voting guidelines* (2008), 14.

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- ^{cxxxviii} ASX, *Listing Rules*, rule 7.2, exception 9 allows for an issue of securities under an employee incentive scheme approved by shareholders within the previous three years to be excluded from the 15% limit on issues of securities within a rolling 12 month time frame (rule 7.1).
- ^{cxxxix} ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition (2007), 36 (commentary to recommendation 8.2)
- ^{cxl} Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 29 (guideline 11.14.1); ACSI, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian corporations* (2007), 12 (guideline 14.1(f)).
- ^{cxli} RiskMetrics Group, *2008 Australia voting guidelines* (2008), 15-18.
- ^{cxlii} ASX, *Listing Rules*, rule 10.14.
- ^{cxliii} Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 29 (guideline 11.14.1); ACSI, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian corporations* (2007), 19 (guideline 16.2(d)(i)).
- ^{cxliv} *Corporations Act 2001* (Cth), s 200E(1)
- ^{cxlv} ASX, *Listing Rules*, rule 10.18.
- ^{cxlvi} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian corporations* (2007), 12 (guideline 14.2(i)).
- ^{cxlvii} *Corporations Act 2001* (Cth), s 208(1)
- ^{cxlviii} ASIC, *Related party transactions*, Regulatory Guide 76 (1997), 9-12.
- ^{cxlix} ASX, *Listing Rules*, rule 10.1.1 (acquisition or disposal of a substantial asset to a related party). Substantial asset is defined in rule 10.2 as value equivalent to 5% or more of the equity interests of the entity as set out in the latest accounts given to the ASX under listing rule 4.1 (half-yearly report), rule 4.3 (annual report), rule 4.3A (preliminary final report).
- ^{cl} Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian corporations* (2007), 6 (guideline 3.6).
- ^{cli} *Corporations Act 2001* (Cth), s 249L(1) (general requirements) and s 249L(2) (advisory vote on the remuneration report); s 200E(2) for termination payments; s 219(1) re explanatory information for giving a financial benefit to a related party;
- ^{clii} ASX *Listing Rules*, rule 10.15 and 10.15A in relation to an issue of securities to a director under rule 10.14; rule 10.19 in relation to approval for a termination payment pursuant to rule 10.18.
- ^{cliii} Australian Institute of Company Directors, *Shareholder consideration of the annual remuneration report of a listed company: a guide for consideration of the issues* (2004), 8-10.

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- clv *Corporations Act 2001* (Cth), s 249X, ss 250A-250C.
- clvi Chartered Secretaries of Australia, Sample proxy voting form, <http://www.csaust.com/Content/NavigationMenu/TechnicalResources/CSApublications/Bestpracticevotingform/Best_practice_voting.htm> at 14 November 2008.
- clvii Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 32-33 (guideline 11.15.4); Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian corporations* (2007), 18 (guidelines 16.1), 19 (guideline 16.2(d)(ii)).
- clviii *Corporations Act 2001* (Cth), s 250J (replaceable rule – voting on a show of hands or by way of poll); s 250K (matters on which a poll may be demanded); s 250L (when a poll is effectively demanded); s 250M (replaceable rule – when and how polls must be taken). Listed companies are required to have a constitution that complies with the listing rules under ASX Listing Rules, rule 1.1, condition 1A. It is likely the constitution will have rules to replace ss 250J, 250M.
- clix Australian Institute of Company Directors, *Shareholder consideration of the annual remuneration report of a listed company: a guide for consideration of the issues* (2004), 15-16; Chartered Secretaries of Australia, *Guide to procedures at AGMs* (2008), 5-7.
- clx Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 30 (guideline 11.15.2); Australian Council of Super Investors, *Corporate governance guidelines: a guide for superannuation trustees to monitor listed Australian corporations* (2007), 18 (guidelines 16.1), 19 (guideline 16.2(d)(i)).
- clxi *Corporations Act 2001* (Cth), ss 251AA(1),(2) (disclosure of proxy votes and poll results).
- clxii ASX, *Listing Rules*, rule 3.13.2.
- clxiii Chartered Secretaries of Australia, *Guide to procedures at AGMs* (2008), 7-8.
- clxiv Investment and Financial Services Association, *Corporate governance: a guide for fund managers and corporations*, 5th edition (2004), 33-34 (guideline 11.15.5);
- clxv Investment and Financial Services Association, *Proxy voting*, Standard no. 13 (2004); Association of Super Funds of Australia, *Active share ownership guidelines for superannuation fund trustees*, Best Practice Paper 17 (2003), 14 (guideline B 11); Australian Council of Super Investors, *Environmental, social and governance guidelines* (2007), 11 (fund managers).
- clxvi *Corporations Act 2001* (Cth), s 296(1) requires the financial report to comply with accounting standards. AASB, *AASB 101 Presentation of Financial Statements* (2007), paragraph 79, requires disclosure of the share capital either in the statement of financial position, the statement of changes in equity or in the notes to the financial statements.
- clxvii ASX, *Listing Rules*, rule 3.10.

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- clxviii *Corporations Act 2001* (Cth), ss 672A-s 672D. Section 672B(1) contains the obligation on a person to disclose their interests if they direct a notice from ASIC or the listed company to do so under s 672A.
- clxix *ASX, Listing Rules*, rule 3.19.
- clxx *Investment and Financial Services Association, Proxy voting*, Standard no. 13 (2004); *Association of Super Funds of Australia, Active share ownership guidelines for superannuation fund trustees*, Best Practice Paper 17 (2003), 11-12 (guideline B 6); *Australian Council of Super Investors, Environmental, social and governance guidelines* (2007), 4; *Australian Council of Super Investors, Corporate governance guidelines* (2007), 1.
- clxxi *Investment and Financial Services Association, Proxy voting*, Standard no. 13 (2004); *Association of Super Funds of Australia, Active share ownership guidelines for superannuation fund trustees*, Best Practice Paper 17 (2003), 12 (guideline B 6); *Australian Council of Super Investors, Environmental, social and governance guidelines* (2007), 6 (superannuation funds), 10 (fund managers).
- clxxii *Corporations Act 2001* (Cth), ss 606(1)(c), 608(1), 609, 610, together with ss 12, 16 (definition of associate for the purposes of the takeover provisions) and various definitions in s 9 (relevant agreement, voting share).
- clxxiii *Australian Securities and Investments Commission, Collective action by institutional investors*, Regulatory Guide 128 (1998), [RG 128.2]-[RG128.3], [RG128.5]-[RG128.7], [RG128.12], [RG 128.25]-[RG 128.28].
- clxxiv *Takeovers Panel, Equity derivatives, Guidance Note 20* (2008), 6-9 (on associations).
- clxxv *Australian Council of Super Investors, Environmental, social and governance guidelines* (2007), 10.