

29 May 2009

Inquiry into the Regulation of Director and  
Executive Remuneration  
Productivity Commission  
Locked Bag 2, Collins Street East  
Melbourne VIC 8003

Via email: [exec\\_remuneration@pc.gov.au](mailto:exec_remuneration@pc.gov.au)

## **Submission on Regulation of Director & Executive Remuneration in Australia**

OPPEUS International has worked with and advises a wide range of companies in Australia and overseas in the areas of both corporate governance and director and executive remuneration. The focus of this submission is on the governance of director and executive remuneration including the role of advisors to company boards.

### **Summary**

Is it our submission, that for boards to regain the full confidence of shareholders and other stakeholders, it is necessary to strengthen the governance of director and executive remuneration. The resulting improvements in the effective governance of remuneration will alleviate the need for detailed prescriptive legislative. The key actions recommended are that:

- The boards of all listed companies should establish a remuneration committee;
- The members of the remuneration committee should be appropriately experienced independent non-executive directors;
- The remuneration committee should review all incentive plans and related remuneration policy, no matter the level of the employees included in a plan;
- All remuneration committees should be strongly encouraged to obtain independent remuneration advice at least annually; and,
- In relation to the independent remuneration advice, the board remuneration report to shareholders should specify the nature of advice obtained, name the advisor/s used and provide details of any other work performed by the advisor/s for the company.

## About OPPEUS International

OPPEUS International are Strategic Leadership Advisors who provide innovative solutions to leadership issues by providing a unique, integrated approach to **Talent, Organisation, Governance and Remuneration** services. We provide advice from the largest companies through to government.

Further details regarding OPPEUS International can be obtained via our website at [www.oppeus.com](http://www.oppeus.com)

Three of our key advisors have contributed to this submission:

**Jasper Coghlan** BEc (Monash), CAHRI, GAICD  
*Specialist Advisor – Remuneration*

For over 10 years at Ford Motor Company, Jasper was Head of Remuneration and Benefits for Asia Pacific and was the Global Lead on short term incentive plans. For many years prior, he was a senior human resources executive at Ford.

For the last few years he has been a Specialist Advisor in Remuneration at OPPEUS International with a focus on director and executive remuneration, including the design of short-term and long-term incentive plans. His role includes that of the independent advisor to board remuneration committees.

He has provided advice on remuneration strategies and practices to a wide range of companies and organisations in the public, private, government and not-for-profit sectors.

He is a committee member of the Performance and Rewards Specialist Area Group of the Australian Human Resources Institute (AHRI).

**Bill Patullo**, ACIS, CAHRI  
*Practice Leader - Remuneration*

Bill is a specialist advisor on executive and director remuneration, executive contracts, compensation and benefits policy, and negotiation strategies relating to remuneration.

Prior to his consulting career, Bill was Global Head of Remuneration at BHP where he developed an extensive array of experience in compensation policy and management for domestic, global and expatriate executives, management and staff. His past and present clients include leading publicly-listed companies in the resources/mining and industrial sectors; other fast-growing companies in the industrial services, bio-sciences, oil & gas, manufacturing, automotive, IT and chemicals industries; and, private and not-for-profit organisations in various fields.

Bill is a member of the Victorian Council of the Australian Human Resources Institute; a judge on two awards-of-excellence panels; and, an external consulting Member of the Government Senior Executive Remuneration Panel (GSERP) for the Victorian Government.

**Peter Kronborg** LLB, BJuris (Monash), MBA (Melbourne), FAICD, FIPAA, FCIS  
*Executive Chairman*

Peter Kronborg has 20 years experience as a Strategic Leadership Advisory professional. Peter has advised leading Australian organisations in the public, private and government sectors, as well as not-for-profit organisations on important leadership matters.

His expertise encompasses governance reviews and development programs, senior executive search, board appointments, remuneration, organisational transformations and corporate strategy development.

Peter is a Fellow of the Australian Institute of Company Directors and Victoria Councillor since 2004, a Fellow of the Institute of Public Administration in Australia and a Fellow of the Institute of Chartered Secretaries. Peter is on the Dean's Council of the Monash Law School and until recently was on the Advisory Board of Victoria University's Centre for International Corporate Governance Research. He a past President of the Melbourne University Business School Alumni, and a former Director of the Melbourne Business School, as well as a member of the Advisory Council De Bono Institute, 2002. He is a Director of Creativity Australia.

He is active in a variety of community interests being the Victorian Chairman of the Royal Flying Doctor Service and a former Director of the National Board.

### **Governance of Director and Executive Remuneration**

Boards of listed companies answer to shareholders for the effective management of executive remuneration and should be able to exercise this responsibility without the constraints and costs of detailed prescriptive legislative requirements. It is acknowledged that there are examples where boards have failed to resist the demands of a strong CEO or have introduced inappropriate remuneration plans due to a lack of knowledge and understanding of complex remuneration practices. These situations have sometimes resulted from a failure to obtain expert advice or advice that is independent of management. Some of these minority situations have become high profile cases. It is important not to over-react given that detailed prescriptive legislation would be a cost to everyone.

In order to avoid such deficiencies in the future and for boards to regain the full confidence of shareholders and other stakeholders, it is necessary to strengthen the governance of director and executive remuneration as outlined below. The resulting improvements in the effective governance of remuneration will alleviate the need for detailed prescriptive legislative requirements that would be an unnecessary constraint and a cost burden to the companies and the community.

As a first step in strengthening the governance of director and executive remuneration, the boards of all listed companies should establish a remuneration committee with a comprehensive charter and appropriately experienced independent non-executive directors.

## Charter of Remuneration Committee

The standard responsibilities of a remuneration committee are specified in the ASX Corporate Governance Principles and in guidelines and a good practice guide published by the Australian Institute of Company Directors (AICD). In addition to the standard role, remuneration committees should be responsible for:

- All aspects of remuneration for the executives reporting to the CEO, and in larger companies, for the broader senior executive group; and,
- The review of all incentive plans and related remuneration policy, no matter the level of the employees included in a plan.

## Membership of Remuneration Committee

All members of the remuneration committee should be independent non-executive directors in order to avoid any potential conflicts of interest. Given the increasing complexity, impact and priority on remuneration issues, these directors must be able to devote appropriate skill and independence, as well as sufficient time.

They must be of a high calibre with the skills and experience to exercise independent judgement on remuneration matters. It is also important that the chair of the remuneration committee is articulate and credible as he/she should be prepared to speak on behalf of his/her committee and the board at the AGM or other appropriate forums.

## **Role of Remuneration Advisors to Boards**

With the increasing complexity of executive remuneration, remuneration committees are more frequently seeking advice from remuneration consultants. Often this advice is ad hoc in nature and relates only to the more technical aspects of remuneration plans. In some instances the remuneration consultant has been engaged by management.

As an integral step in strengthening the governance of director and executive remuneration, all remuneration committees should be encouraged to obtain independent remuneration advice at least annually. In the case of larger listed companies, such as the top ASX 300, independent remuneration advice should be obtained on an ongoing basis as outlined below. Relevant details in relation to this remuneration advice should be included in the board remuneration report to shareholders in the interests of transparency.

While it is important for boards to obtain independent remuneration advice, it is still necessary for directors to exercise their own independent judgement on remuneration issues and not rely solely on expert advice and opinion. After all, they should know the company, its history, strategy and people better than any consultant.

## Role of Advisors

The independent remuneration advisor may be engaged by the remuneration committee to provide advice on an ad hoc basis or engaged on an ongoing basis to provide advice on all matters considered by the committee. Independent remuneration advice should be obtained at least annually by all committees. For example, this independent advice should cover matters such as:

- The determination of the CEO's remuneration;
- Advice on remuneration proposals presented by the CEO in relation to positions below the CEO; and,
- Advice on the determination of board director remuneration.

Particularly in larger companies, the remuneration committee should seek ongoing advice with the advisor attending all or most remuneration committee meetings. In an ongoing role, the advisor would assist the committee in proactively seeking advice from management on a range of remuneration matters not initiated by management.

OPPEUS International has developed a statement which is provided to clients on the recommended role of the independent advisor who is engaged on an ongoing basis. This role statement is attached and provided to the Productivity Commission on an "in confidence" basis.

## Independent Remuneration Advice

The independent advisor to the remuneration committee should be selected directly by the remuneration committee and should be different to the remuneration consultant used by management.

The independent advisor may obtain input and clarifications from management but it needs to be clear at all times that the independent advisor is acting on behalf of the remuneration committee.

We do not see a need for a regulatory regime to apply to consultants who act as independent advisors to remuneration committees. We say this in part, as there is no universally agreed qualification or certification of remuneration consultants so licensing etc. would be difficult, if not impossible. However, it is incumbent on the committee to ensure that the selected advisor is well qualified and experienced to fulfil the role and is clearly independent of management.

In order to assist shareholders to assess the independence of the advice provided to remuneration committees, the following information should be included in the board remuneration report to shareholders:

- The role and general nature of the advice provided by each remuneration advisor;

- The name of the particular remuneration advisor and/or the remuneration consultancy providing the advice; and,
- Details of any other work performed for the company by the advisor and the advisor's consultancy.

## Regulatory Requirements

Given the important role of remuneration committees as described above, it would be desirable for the establishment of a remuneration committee to be a regulatory requirement for larger companies. However, given the difficulties of defining larger companies within the regulations, it is considered that the requirement to establish a committee should be expressed as a regulatory guideline. The guidelines would state that it is an expectation that larger companies establish a remuneration committee with all other companies strongly recommended to do so.

In addition, the regulatory guidelines would state that it is expected that larger companies obtain independent consultant advice at least annually with all other companies strongly recommended to do so when complex remuneration matters are under consideration.

Compliance or otherwise with these regulatory guidelines should be required to be reported in the board remuneration report to shareholders on an "if not, why not" basis.

If you have any questions in relation to this submission please contact Jasper Coghlan on (03) 9661 8000 or [jcoghlan@oppeus.com](mailto:jcoghlan@oppeus.com)

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jasper Coghlan".

**Jasper Coghlan**  
*Specialist Advisor -  
Remuneration*

A handwritten signature in black ink, appearing to read "Bill Patullo".

**Bill Patullo**  
*Practice Leader -  
Remuneration*

A handwritten signature in blue ink, appearing to read "Peter Kronborg".

**Peter Kronborg**  
*Executive Chairman*