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4th June 2009

Dear Messrs Banks, Fitzgerald and Professor Fels,

We write as institutional investors with an interest in the long-term performance of companies.

We have concerns regarding executive remuneration in Australia, which in many cases feature significant at-risk amounts within structures that do not demonstrate clear links to the sustainable growth of the company. Importantly, executives make decisions whose effects in many cases outlast their tenure and we believe that alignment of executive rewards to better reflect this reality would strengthen Australia's governance practice.

The asymmetry, whereby executives can receive entrepreneurial levels of reward without commensurate personal exposure to financial downside, provides a significant incentive to executives for delivering short-term results, even where these are at the expense of the long-term health of the enterprise or wealth of its owners. Examples in which long-term shareowners have borne significant negative consequences are detailed in the Regnan Remuneration Reform Proposal Report (accompanying this submission).

In March 2009 (prior to the Productivity Commission's Executive Remuneration Inquiry) specialist governance adviser, Regnan, released the *Regnan Remuneration Reform Proposal*. We affirm our commitment to that proposal, which:

- Retains director discretion on the setting of overall remuneration package levels (and relative weight of components);
- Retains director control over key performance indicators/performance hurdles;
- Sets a clear expectation that rewards should be delivered over time (rolling five years) and via ordinary shares (alignment); and
- Allows for deviation from these principles, provided boards publicly communicate their practice and reasons.

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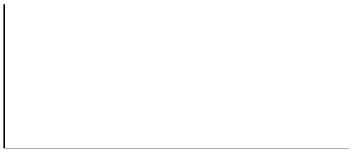
We would welcome the opportunity to discuss this directly with the Productivity Commission.

Yours sincerely,



Erik Mather
Managing Director

On behalf of:

- ARIA,
- Catholic Super,
- Hermes – owned by and managed for the BT (British Telecom) Pension Scheme,
- HESTA Super Fund,
- NSW Local Government Superannuation Scheme,
- NTGPASS (Northern Territory Government and Public Authorities Superannuation Scheme),
- Vanguard Investments Australia,
- Victorian Funds Management Corporation,
- VicSuper, and
- Westscheme.

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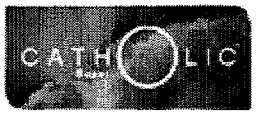
Regnan Submission to the Productivity Commission on the Regulation of Director and Executive Remuneration in Australia – 4th June 2009



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1. Introduction

1.1 We are10 institutional investors with a long-term perspective on financial markets and who collectively invest $18.3 billion on listed Australian companies as at 31st December 2008.

1.2 Regnan is a specialist governance adviser that since 2001[1] has undertaken research and engagement on ESG[2] issues including executive remuneration, on behalf of institutional investors. In March 2009, Regnan released a *Remuneration Reform Proposal* in accordance with its mandate from us to contribute constructively to the public debate on this issue.

1.3 This submission reflects the views of the following organisations;

- ARIA,
- Catholic Super,
- Hermes – owned by and managed for the BT (British Telecom) Pension Scheme,
- HESTA Super Fund,
- NSW Local Government Superannuation Scheme,
- NTGPASS (Northern Territory Government and Public Authorities Superannuation Scheme),
- Vanguard Investments Australia,
- Victorian Funds Management Corporation,
- VicSuper, and
- Westscheme.

1.4 We welcome the opportunity to provide comment to the Australian Government Productivity Commission (Productivity Commission) on its *Regulation of Director and Executive Remuneration in Australia* Issues Paper (Issues Paper) released in April 2009.

1.5 Our submission focuses on executive remuneration only, and does not seek to comment on remuneration of non-executive directors.

2. Response to Background to the inquiry

2.1 We have concerns regarding executive remuneration in Australia, which in many cases feature significant at-risk amounts within structures that do not demonstrate clear links to the sustainable growth of the company. Importantly, executives make decisions whose effects in many cases outlast their tenure and we believe that alignment of executive rewards to better reflect this reality would strengthen Australia's governance practice.

[1] Then as the BT Governance Advisory Service.
[2] Environmental, social and corporate governance.

The asymmetry, whereby executives can currently receive entrepreneurial levels of reward without commensurate personal exposure to financial downside, provides a significant incentive to executives for delivering short-term results, even where these are at the expense of the long-term health of the enterprise or wealth of its owners. Examples in which long-term shareowners have borne significant negative consequences are detailed in the Regnan Remuneration Reform Proposal accompanying this submission.

2.2 Executive remuneration levels have grown significantly and disproportionately in recent years. This is evident from the most recent Top 100 Chief Executive Pay report[3] released by the Australian Council of Super Investors (ACSI) which finds average fixed pay alone rose by more than 100% between 2001 and 2007 – more than three times the rate at which Average Weekly Ordinary Time Earnings (AWOTE) rose over the same period[4]. In addition, average total remuneration of top 100 Chief Executives also increased by more than 100% over the same period of time.

2.3 Executive remuneration is also heavily skewed toward the short-term. Regnan research shows that for the 2008 financial year S&P/ASX200 companies paid their executives 78% of total remuneration in cash or other immediate benefits (including 27% as short-term incentives[5]) while only 22% of total remuneration was in the form of long-term incentives[6].

These proportions may overstate the actual remuneration that is long-term. Many long-term incentive figures are overstated in company disclosures due to accounting standards, which require amortisation of some long-term incentive grants prior to performance testing. If performance hurdles are not met, an executive may not even realise these rewards which have already been accounted for. This effect is sure to take place in a depressed economic environment, and although the exact extent of this overstatement is not known its presence only strengthens the view that there is compelling evidence of short-termism in executive remuneration amongst Australian listed companies. GPT Group experienced a related issue in the 2008 financial year where they were required to account for a limited recourse loan amendment on a statutory accounting basis, which served to materially inflate the disclosed remuneration figures for executives beyond that which they actually received.

2.4 It is the combination of the significant remuneration quantum increases referred to in 2.2 with the short-term structures referred to in 2.3 that creates incentives for short-term results (even at the expense of long-term performance). This is a major misalignment between the interests of executives and their long-term owners, and is the reason for our interest in its rectification.

[3] Conducted by RiskMetrics – ISS Governance Services, released 27th October 2008.
[4] Page 1, "Top 100 Chief Executive Pay Research Released", ACSI Media Release dated 27th October 2008.
[5] We define short-term incentives as payments conditional upon meeting performance criteria measured over a 12 month performance period.
[6] We define long-term incentives as payments conditional upon meeting performance criteria typically measured over a 36 month performance period.

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3. Response to Definitions and scope

3.1 Accounting standards (which form part of the Corporations Act) require remuneration to be disclosed in terms of its accounting cost to the company.

However while 'accounting cost' is important to shareowners, it does not allow investors to inform themselves on how executives are being incentivised. This is because the amortisation of unrealised long-term incentive grants accounts for rewards which may yet be forfeited if performance hurdles are not met.

Therefore care should be taken to distinguish and encourage disclosure of both 'intrinsic value', which recognises the current value of as-yet unrealised long-term incentive grants, informing shareowners about the extent to which executives are exposed to changes in shareowner value; and 'realised rewards' which provides clarity about what executives are actually paid for performance.

3.2 It is important that shareowners be informed about the most substantial payments being made on their behalf if they are to exercise governance over their investment. The definition of 'executive' should include 'key management personnel' as defined in the Accounting Standard AASB124 and referenced by Corporations Act Section 300A.

3.3 Companies should retain flexibility to determine definitions of 'corporate performance' and 'individual performance' suited to their own circumstances at a given point in time. We do not seek to bind companies in this regard.

3.4 Current remuneration conventions attempt to measure 'long-term' performance over three years[7]. This is inconsistent with the investment horizon of a majority of Australians via their superannuation investments. Regnan has recommended, via the Regnan Remuneration Reform Proposal that accompanies this submission, that five to ten years is a more appropriate period of time over which executive rewards should be aligned with company performance.

We support Regnan's proposal as this longer period of alignment will better motivate and reward executives to create sustained growth in company value.

3.5 Transparency of performance hurdles for incentive payments is important because shareowners must be able to scrutinise these in order to exercise due governance and to satisfy themselves as to the consistency of executive incentives with the company's strategies and risks. Where such hurdles are "commercially sensitive" they should at least be disclosed on a lagged (i.e. after the fact) basis.

[7] Regnan's observation of S&P/ASX200 company remuneration reports is that three years is the most common length of performance period for an executive's long-term incentive plan.

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4. Response to TOR1: Trends in remuneration – Remuneration structures and incentives

4.1 The prominence of immediate rewards in executive remuneration, particularly the focus on high-value short-term incentives (see 2.3 above) can lead executives to produce short-term outcomes consistent with their performance hurdles but which expose the company and its shareowners to risks that are realised over a longer term than the executive's tenure. As described in 2.1 long-term shareowners that remain invested in the company beyond an executive's tenure bear all resulting downside.

While each industry sector has its own set of long-term risks, remuneration practices are consistent across all sectors in being unduly focused on the short-term. We do not believe this issue is limited to the financial sector.

We expect boards of directors to possess the experience, judgement and intimate company knowledge required to determine the appropriate strategy and risk profile of the company, and to ensure executive incentives are framed accordingly.

4.2 Australians invest capital in companies via compulsory (and voluntary) superannuation, and therefore have an interest in the decisions made by the boards who represent shareowners – including decisions about how to remunerate the executives who manage their investment. Compulsory superannuation alone was responsible for $22.2 billion of new capital invested in Australian listed companies in the financial year to 30th June 2008, while voluntary member contributions increased this number to over $38 billion[8] (3.68% of the S&P/ASX200). Prior to that in the four years to 30 June 2007 the S&P/ASX200 grew at an average of 23% annually, while superannuation provided an inflow of new capital equivalent to 19% of that increase in each of those years. Even as the value of the market contracted by 16% in FY2008, as stated above superannuation contributed over $38 billion in new capital without which the Australian listed market would likely have contracted even further.

Beyond the legitimate public interest that these superannuation flows give rise to, are economic considerations. Were the community to lose confidence and trust in the capital markets system, then a material level of capital market funding may be diverted (either through the exercise of choice and/or the reduction or cessation of voluntary member contributions) into less economically productive assets such as cash or housing.

In addition, executive remuneration structures that promote short-term decision making are unlikely to focus executive attention on issues which have financial implications over a longer period (such as protecting or enhancing social licence to operate). Re-orienting executive remuneration incentives

[8] "The Annual Superannuation Bulletin – June 2008", 10th March 2009, Australian Prudential Regulation Authority, and "The Annual Superannuation Bulletin – June 2007", 10th March 2009, Australian Prudential Regulation Authority, and "APRA Insight Issue 2 2007", June 2007, Australian Prudential Regulation Authority.

to the longer term is likely to better align the interests of companies and their stakeholders, including customers, employees, civil society organisations and the community.

4.3 Share price is imperfectly linked to shareowner value and consequently is not a preferred performance hurdle for executives, particularly where the time period for measuring the share price is short (e.g. three years) and / or where a single ("cliff") vesting date is used.

An emphasis on share price can incentivise executives to pursue capital management strategies that are suboptimal for shareowners, or other strategies that inflate share price over a short period in an unsustainable manner.

There is legitimate concern around linking executive remuneration and shareholder return over shorter (e.g. three year) periods, and using a single ('cliff') vesting date for rewards. Such structures may also result in executives being punished for short-term factors outside an executive's control.

Although re-testing has been historically used to counter the 'unfair' nature of such long-term incentive structures, the lack of re-calibration in re-testing practices has meant they have not succeeded in promoting alignment between executives and shareowners.

These concerns can however be addressed by 1. Lengthening the period over which equity rewards are linked to shareowner return, and 2. Using a gradual vesting of rewards. The accompanying Regnan Remuneration Reform Proposal explains this.

5. Response to TOR2: Effectiveness of regulatory arrangements

5.1 It is our view that a clearer statement of principles would assist boards in negotiating executive terms consistent with shareowner interests.

Currently, ASX Corporate Governance Principle 8 contains guidance and recommendations on executive remuneration for boards; shareowners are increasingly exercising their right to a non-binding vote on the company's remuneration report at each Annual General Meeting (AGM); and other industry bodies and private organisations have issued guidelines on executive remuneration practices. Examples include Investment and Financial Services Association's (IFSA) Blue Book, and the Australian Council of Super Investors' (ACSI) Executive Remuneration Guidelines.

While many of these forms of guidance have been available for a number of years, they have not resolved the issue of short-termism described above. Shareowner expectations on remuneration principles need to be more explicit, while reserving for the Board the role of determining terms and conditions for a given executive.

In our view the remuneration position contained in Principle 8 of the ASX Corporate Governance Principles does not go far enough and should be strengthened. The ASX Corporate Governance

Principles are prominent, flexible in their "comply or explain" framework[9], and balanced in their inclusion of both capital issuer and investor perspectives. Strengthening Principle 8 carries the lowest transaction cost of available methods of reforming executive remuneration.

5.2 Existing Australian regulation and guidelines on executive remuneration are clear in requiring companies to disclose remuneration practices including performance hurdles, however disclosure by listed companies has been of mixed quality. It would appear that compliance with the letter of the law has been achieved without compliance with the spirit of the law and the conveyance of meaningful information.

Few (if any) companies provide information on intrinsic reward and realised reward (as described in 2.3).

Many do not provide adequate explanation and rationale for hurdles that would allow shareowners to be usefully informed. Some omit short-term incentive performance hurdle details entirely on 'competitive grounds'. Research undertaken by Regnan collating the use of short-term performance hurdles for the 2007 and 2008 financial years for S&P/ASX200 companies, was unable to record information beyond the broad category of performance hurdles employed because of the lack of disclosure by listed companies. For example, Harvey Norman discloses the existence of a short-term incentive scheme but provides no insight in disclosure as to what performance hurdles are employed in determining rewards earned by executives.

5.3 It is our firm view that the role of voluntary guidelines needs to be elevated in articulating shareowner expectations regarding executive remuneration.

The ASX Corporate Governance Principles and Recommendations are considered the best vehicle for communicating shareowner expectations on executive remuneration for the reasons given in 5.1.

Voluntary guidelines released by other groups such as industry bodies remain important as a communication mechanism both to companies and to their own members to assist them in conducting their own assessment of executive remuneration practices employed by companies.

6. Response to TOR3: The role of institutional and retail shareowners

6.1 Shareholder interests should be paramount in determining the way executives are remunerated, and this is best achieved by articulating principles for companies to comply with or explain deviations from. However it is our view that this should stop short of shareowners making executive remuneration decisions in place of the board, for the reasons already outlined in 5.1.

[9] Also known as the 'if not, why not' approach.

Current regulatory arrangements do not prevent shareowners from communicating their expectations to boards on executive remuneration and there is no immediate need to change existing regulation in this regard. However if boards fail to respond in a satisfactory manner to shareowner expectations there may be a role for regulatory change, and this should be reviewed no more than two years following the outcomes of the Productivity Commission's Executive Remuneration Inquiry.

6.2 It is our view that the current non-binding vote does not require strengthening, as it is already communicating shareowners' dissatisfaction with board decisions on remuneration. However a key limitation of the non-binding vote is that it allows for neither precision nor constructive feedback to the board. This may be impeding take up of this feedback mechanism by a wider group of shareowners. A more effective measure would involve clearer expression of shareowner expectations (see 5.1) along with direct engagement with the company by institutional shareowners.

6.3 It is not appropriate for directors and executives named in the remuneration report, and who hold shares in the company, to be able to participate in the non-binding vote. They are clearly conflicted as they have a material interest in seeing the vote succeed, and their participation therefore risks a voting outcome inconsistent with shareowner interests.

7. Response to TOR4: Aligning Interests

7.1 The attached Regnan Remuneration Reform Proposal includes three recent Australian examples where the interests of boards and executives were not adequately aligned with those of shareowners. The common thread is that the Chief Executive in each case received high levels of immediate remuneration (cash based) for a company's short-term performance when it was later shown that this short-term performance was not sustainable.

7.2 Section 4.2 discusses how wider community interests relate to executive remuneration.

While there are many circumstances in which shareowner and community interests do not align in the short-term, over the long-term company value relies on intangibles such as social license to operate, political capital, stakeholder relationships, brand, customer loyalty and employee engagement. To the extent that executive remuneration re-weights executive focus to decisions that protect and enhance long-term company value, greater alignment between the interests of long-term shareowners and stakeholders can be anticipated.

7.3 Remuneration packages that consist predominantly of immediate performance based rewards such as high cash based short-term incentives fail to provide alignment with long-term shareowners, because they do not require an executive to deliver sustained corporate performance prior to realising the majority of their own reward. The case studies referenced in 7.1 provide Australian examples of where remuneration with a strong focus on immediate rewards has not aligned the interests of executives with those of the shareowners. We again note that these examples are not finance sector related.

7.4 The need to align executive interests with those of long-term shareowners applies to financial institutions as it does to other companies. The failure of a financial institution can have more far reaching consequences for society than the failure of another company and for this reason there is a need for special *scrutiny* of the financial institutions' risk management practices and their link to executive remuneration, but this does not change the applicability of the principle.

7.5 A clearer expression of shareowner expectations regarding remuneration practices in the ASX Corporate Governance Principles, as discussed in the attached Regnan Remuneration Reform Proposal, would improve alignment of interests between executives and shareowners.

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Cover Note

We remain committed to our proposal, but wish to address the following concerns around the implementation of a strict shareholder approval threshold of 12 months' base salary for termination payments;

- Past experience with the introduction of strict regulation around executive pay in the United States[1] has illustrated the unintended consequence of restricting a single aspect of executive remuneration; other elements of remuneration are increased to compensate for/bypass the element of remuneration that has been restricted (the "squeeze the balloon" effect). It is therefore our concern that other elements such as base salary or sign-on bonuses may experience artificial upward pressure in response to a strict shareholder approval threshold of 12 months' base salary for termination payments.

- There are many possible scenarios where an executive may leave a company for reasons unrelated to performance. In some of these circumstances a termination payment of 12 months' base salary may not be in shareowners' interests, and submitting such termination payments to shareholders for approval may not always be practical.

In response, Regnan proposes the following position on termination payments;

- Termination payments in excess of 12 months' base salary, but less than two times 12 months' base salary, be subject to an "if not, why not" provision via ASX Listing Rules requiring the board to explain to shareholders why a termination payment of the chosen size was considered by the board to be in the interests of shareowners, and

- Termination payments in excess of two times 12 months' base salary be subject to a binding shareholder vote.

Regnan believes that this alternative position retains the strong governance signal that termination payments above 12 months' base salary should only be made in exceptional circumstances and for good reason, while also reducing the likelihood of other elements of remuneration experiencing upward pressure (or other unintended consequences) and providing important flexibility for company boards in determining appropriate termination payments in difficult and unforeseen circumstances. The "if not, why not" buffer zone still ensures the key shareowner concern of careful use of payments is made transparent and always in an arena of full review/scrutiny.

If companies then abuse this "if not, why not" buffer zone by inappropriately rewarding executives via termination payments despite this material strengthening of the governance signal around termination payments, then shareowners should vote to remove the directors who presided over such decisions at their next re-election.

[1] For example, tax rules around bonuses in the US that led to very large option payments.

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Regnan Remuneration Reform Proposal – March 2009

Executive Summary

The interests of institutional investors are served through a better alignment of executive remuneration with the long-term sustainable growth and sound risk management of a company.

There are numerous examples in Australia and elsewhere of excessive executive remuneration that has no correlation with the long-term value of companies. Shareholders, tax payers and other stakeholders are wearing the costs of executives' risky behaviour.

Current practices encourage executives to behave in a manner which is not aligned with the long-term sustainable growth of a company and to ignore risk. Increased disclosure on its own has not achieved the desired alignment. In addition, current taxation legislation discourages remuneration structures that incorporate the holding of share-based payment equity beyond their term of employment.

Alignment is the key.

Regnan's proposed reform requires boards to apply a threshold on annual remuneration received by executives, above which all remuneration is paid in the form of equity which begins vesting after five years in five equal annual tranches. It also requires termination payments that exceed 12 months' base salary to be subject to binding shareholder approval, and will count towards annual remuneration subject to the threshold.

Boards would retain discretion to determine the quantum, short-term incentives, long-term incentives, performance hurdles and other parameters used in determining remuneration structures. Boards can also set short-term performance hurdles, allowing executives to earn in the short-term, but collect in the long-term.

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1 Introduction

Despite significant increases in the level of remuneration disclosure, the over-paying of some senior executives and the increasing opaqueness and complexity of variable remuneration schemes indicates that executive remuneration continues to be dysfunctional in Australia. Whilst problems in executive remuneration are significant internationally in the global finance sector, this sector bias is not present in Australia. This is evidenced later in the paper through the choice of non-financial sector Australian companies as case studies. Increased shareholder activism through the introduction of the non-binding vote on remuneration reports has led to a rise in shareholder protest votes against remuneration reports, however boards continue to structure unsatisfactory methods of paying their senior executives.

A concerted effort to redesign executive remuneration is needed. This should be done in a way which ensures listed companies[2] continue to offer competitive packages while reining in excessive salaries and realigning executive remuneration with the long-term interests of the company[3]. This is not possible while the public debate continues to focus on issues of disclosure.

This Proposal aims to present a principles based approach to the delivery of executive remuneration in a manner designed to align executives with the long-term sustainable growth of the company and take into account sound risk management (i.e. address inappropriate risk taking).

It must also be recognised that competent boards combined with remuneration committees comprised of members who have the skills and expertise to use independent judgement are key to any remuneration reform. It is intended that boards and remuneration committees will be able to utilise the principles and approach advocated by this Proposal, when determining the remuneration policies for their own executives.

[2] For the purposes of this Proposal, references to the terms "company" and "companies" refers to any publicly listed entity.
[3] While "shareholder interests" is the phrase often used when describing with whom executives' interests should be aligned it must be recognized that shareholder interests can be quite divergent depending on their investment timeframe and purpose. It is therefore considered appropriate to instead refer to a company's long-term sustainable growth, consistent with the fiduciary duty owed to that company by its executives and directors. It is also worthwhile noting that a company's long-term sustainable growth is synonymous with the interests of long-term investors such as superannuation funds.

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2 An International Perspective

The global financial community is currently experiencing an unprecedented global financial crisis ("GFC").

While the factors that have contributed to the global financial crisis are numerous and will be debated for many years there has clearly been failure, particularly in the US, of basic corporate governance standards. Principally, the lack of a separation between the role of Chief Executive and Chairman had lead to a lack of independence on boards. Further, boards have allowed executive pay structures that have resulted in obscene levels of remuneration and have simply ignored the behaviour encouraged by such structures and the inherent risks associated with that behaviour. It is not just shareholders who have suffered. Governments have had to step in and support companies that have lost billions of dollars. The issue of the level of competence of the directors who approved and monitored such pay structures will also be subject to continuing debate, particularly in the US where accountability to shareholders is limited due to the inability of shareholders to remove company directors. Without change in the US on this front, global markets will continue to suffer from the consequences of poorly governed capital markets.

While this paper focuses on Australian remuneration, institutional investor groups globally must act together to ensure consistent standards in a global market place. If jurisdictions act independently, the desired outcomes may not be achieved.

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3 What is wrong with the status quo?

The following four characteristics of executive remuneration in Australia that have so far stymied the agenda of reform;

1. Remuneration schemes have been structured in ways that encourage executives to take inappropriate risks which are not aligned with the long-term sustainable growth of the company.
2. Lengthy disclosure has not resulted in sufficiently aligned remuneration practices.
3. Current tax legislation discourages remuneration structures that align executives with the long-term sustainable growth of a company.

Reform of these characteristics is required for meaningful change.

3.1 Current remuneration practices

Australian listed company remuneration plans have been rightly criticised for excessive pay levels. These excessive pay levels are a global phenomenon, most notably the US practices.

The size of executive remuneration packages, combined with poor connection to sustainable growth is such that listed company executives are effectively receiving entrepreneurial levels of reward without personal financial exposure to the corresponding downside risk. Unfortunately, it is the shareholders and tax payers who have been left to bear downside financial exposure.

Executive remuneration levels have grown at a fast pace in recent years. This is evident from the most recent Top 100 CHIEF EXECUTIVE Pay report[4] released by the Australian Council of Super Investors (ACSI), which describes how the average Chief Executive's fixed pay alone rose by more than 100% between 2001 and 2007 – more than three times the rate at which Average Weekly Ordinary Time Earnings (AWOTE) rose over the same period of time[5].

Current Australian executive remuneration conventions often encourage executives to meet specific short-term objectives with immediate pay-offs, while incurring long-term risk exposures that are not realised until after executive rewards have been received. Executive remuneration is typically structured in four key components; fixed salary, short-term incentive (one year performance), long-term incentive (three year performance) and a termination component.

Short-term incentives tend to be settled in cash, thereby offering immediate reward and removing any exposure to future consequences of the chosen short-term strategy. Long-term incentives which are typically settled after three years also fail to capture the longer term success or otherwise of the chosen strategies.

[4] Conducted by RiskMetrics - ISS Governance Services, released on 27th October 2008.
[5] Page 1, "Top 100 CHIEF EXECUTIVE Pay Research Released", ACSI Media Release dated 27th October 2008.

Listed companies have also become notorious for rewarding executives even in instances of total failure with "golden parachutes", while shareholders have been powerless to intervene under existing legislation[6]. Case studies detailing specific instances where company boards have granted inappropriate executive rewards where sustainable growth has not occurred are documented in section 7.

3.2 Lengthy disclosure has not resulted in sufficiently aligned remuneration practices

The introduction of Corporations Act Section 300A has led to increased remuneration disclosure and to a certain extent improved shareholder understanding of these structures. In particular, line-by-line disclosure of executive remuneration amounts provides insight into the treatment of a Chief Executive relative to other senior executives in an organisation, and can also provide evidence as to effective internal succession plans. It has also provided a detailed record of the rise in quantum of executive remuneration, but it must be acknowledged that there has been criticism of the relevance of some of the information S300A requires to be disclosed.

The level of meaningful disclosure offered by companies, even under the current regime of remuneration disclosure legislation, has often been insufficient to allow all shareholders (institutional and retail) to evaluate the appropriateness of remuneration policies adopted by a board. Various "boiler-plate" statements, generic references to benchmarking by remuneration consultants, and exemptions of detail on the basis of commercial sensitivity (particularly for short-term hurdles) are common-place in Australian remuneration reports. These characteristics have combined to create lengthy remuneration disclosures which fail to justify the increase in executive remuneration, and fail to adequately explain the method and rationale on which variable remuneration is awarded.

In addition, the detailed information which has allowed close tracking of the rise of executive remuneration has ironically been one of the key drivers of that increase. The ability of executives to access information on theoretical rivals' remuneration levels has fuelled an unhealthy competition on pay, as each executive negotiates with its board using the argument that someone else of equal talent is getting paid more; commonly known as the "ratchet effect".

Ultimately, additional remuneration disclosure is not anticipated to bring about the reform of executive remuneration practices for the following reasons;

1. Unclear remuneration disclosure is to some extent, unavoidable.
   Many companies produce "vanilla" remuneration disclosure, and/or cite commercial sensitivities as a reason for withholding detail of short-term incentive hurdles. More specific requirements of remuneration disclosure may assist some companies' understanding of what shareholders are looking for. However, further disclosure requirements cannot prevent

[6]Section 200F of the Corporations Act 2001 provides that termination payments less than seven times total remuneration are exempt from shareholder approval, and ASX Listing Rule 10.19 provides that termination payments less 5% of the market capitalization of a listed company are exempt from shareholder approval.

poorly written passages in remuneration reports, nor solve the dilemma of companies citing commercial sensitivities as a reason for withholding certain short-term incentive hurdles.

2. Increased remuneration disclosure does not equal improved remuneration practice.
   Current executive remuneration practices have evolved under the existing remuneration disclosure regime, where greater disclosure and the non-binding shareholder vote have accompanied increases in executive remuneration de-coupled from performance. It can even be argued that current executive remuneration conventions have evolved in response to the disclosure environment, where complex variable remuneration schemes have been designed with the appearance of alignment while still ensuring executives receive high rewards.

3. Shareholder voting (non-binding or otherwise) does not provide constructive feedback.
   The ability of shareholders to express their approval (or disapproval) of a board's chosen remuneration approach is a worthwhile exercise, essential for providing general guidance to boards. Unfortunately as mentioned in section 3.1, remuneration packages have grown in both size and complexity to the point where they are vastly different from what shareholders require. In this circumstance, even where disclosure results in more targeted protest votes from shareholders, the blunt instrument of a protest vote is insufficient to guide boards in the face of significant vested interests of executives and remuneration consultants, and well-established (but flawed) conventions.

3.3 Tax legislation

Currently, division 13A of the Australian Income Tax Assessment Act requires that all tax liabilities associated with share-based remuneration be realised when employment ceases. This means that tax liabilities relating to equities that vest post-employment will be brought forward to departure date. This is a significant disincentive for boards to award executives in this manner, and thus a significant disincentive to align executive remuneration with the long-term sustainable growth of a company.

Reform of any tax disincentives to holding of equity through retirement is fundamental to bringing about a better aligned executive remuneration practice.

4 Reform proposal explained

1. The board or relevant sub-committee must continue to exercise their own judgement and expertise to take into account the financial and operational circumstances of the company when assessing remuneration structures. For example, when exercising discretion regarding the amount of remuneration paid and the performance periods and hurdles used in awarding remuneration to executives.

2. All remuneration for an executive in any given year[7] above a board-determined threshold must take the form of common equity vesting over a period of five to ten years following the grant date regardless of continued employment, with any dividends paid on common equity during escrow to be reinvested in more common equity.

3. Termination payments will count toward annual remuneration subject to the board-determined threshold on immediate pay (as with all other remuneration), and those termination payments exceeding 12 months' base salary to be subject to binding shareholder approval.

Key to the success of this reform is consistent application of the board-determined threshold, regardless of the pay components employed by a company. Even if companies reward executives through atypical pay components such as non-cash benefits or special payments, these additional pay components will count toward remuneration prior to application of the board-determined threshold. Executives will otherwise still have avenues through which they can receive a large amount of reward which is not aligned with the long-term interests of the company, thus defeating the purpose of the proposed remuneration reform. See Chart 1 below for an example application of the board-determined threshold.

Once an executive's remuneration in any given year below the board-determined threshold has been distributed to the executive in whatever manner is chosen (for example, cash, non-cash benefits, superannuation etc), the remainder of allocated remuneration above the threshold should be invested in common equity of the company via an executive share ownership plan, or XSOP. Each tranche of common equity invested via the XSOP should then remain in escrow for five years, after which 20% will vest each year for five years. See Chart 2 below for an example vesting schedule of 100 shares invested as a single tranche via an XSOP, noting that in practice dividends on shares held in escrow would be reinvested.

[7] Remuneration in any given year should not be interpreted as being the same as the elements of annual remuneration required to be disclosed pursuant to Corporations Act S300A, but instead refers to the sum of base pay, the value of variable remuneration which has met performance hurdles plus all other benefits and any termination payments received in that year.

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Chart 1

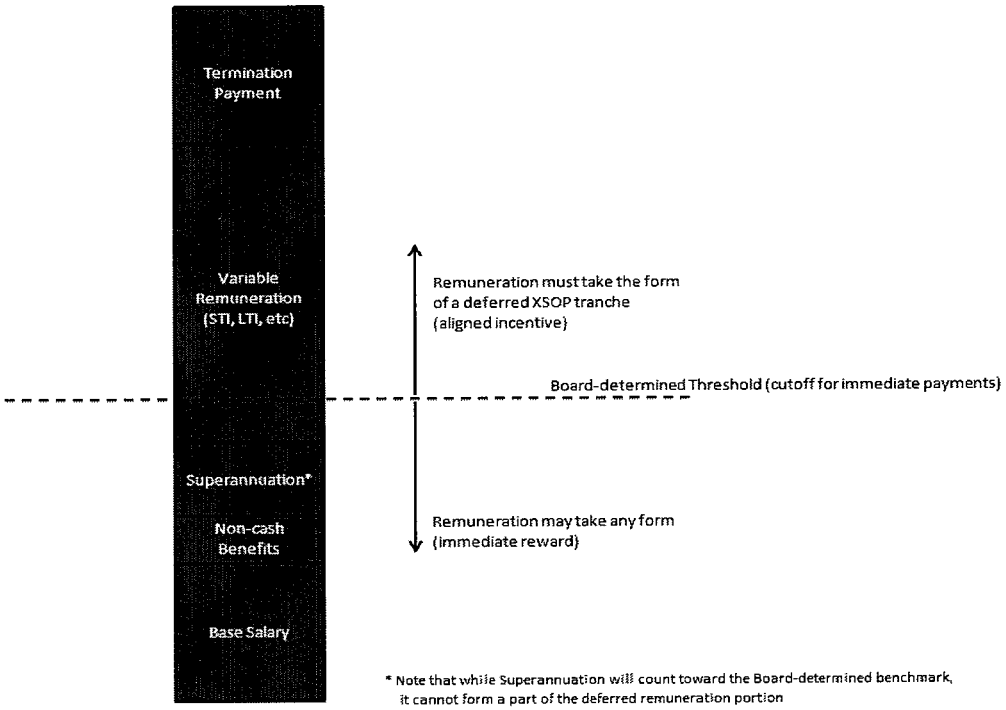
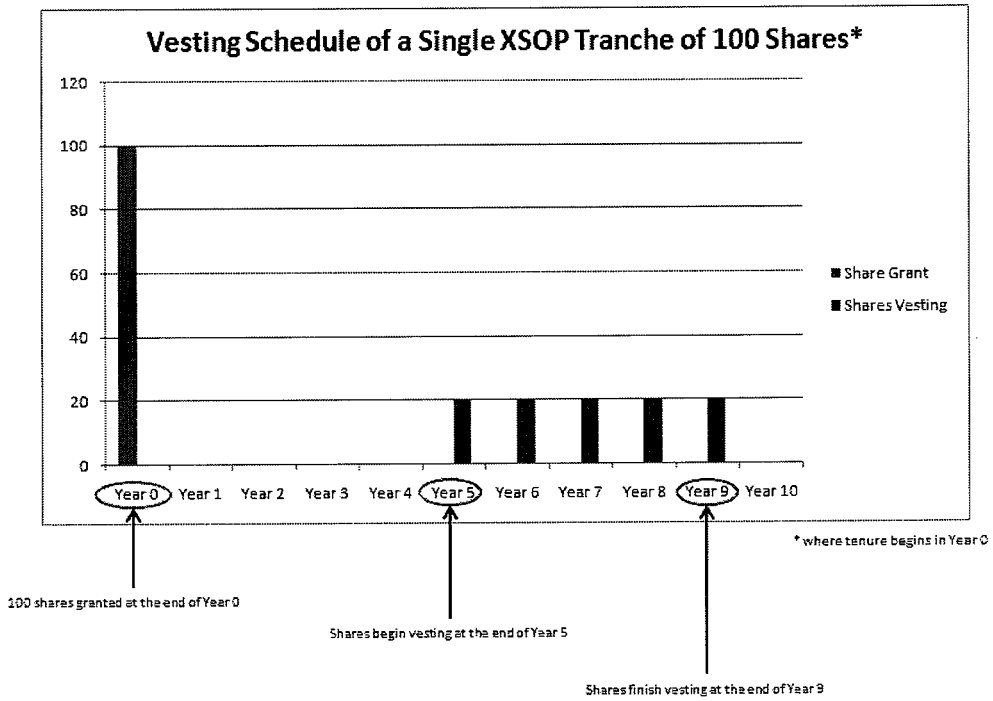
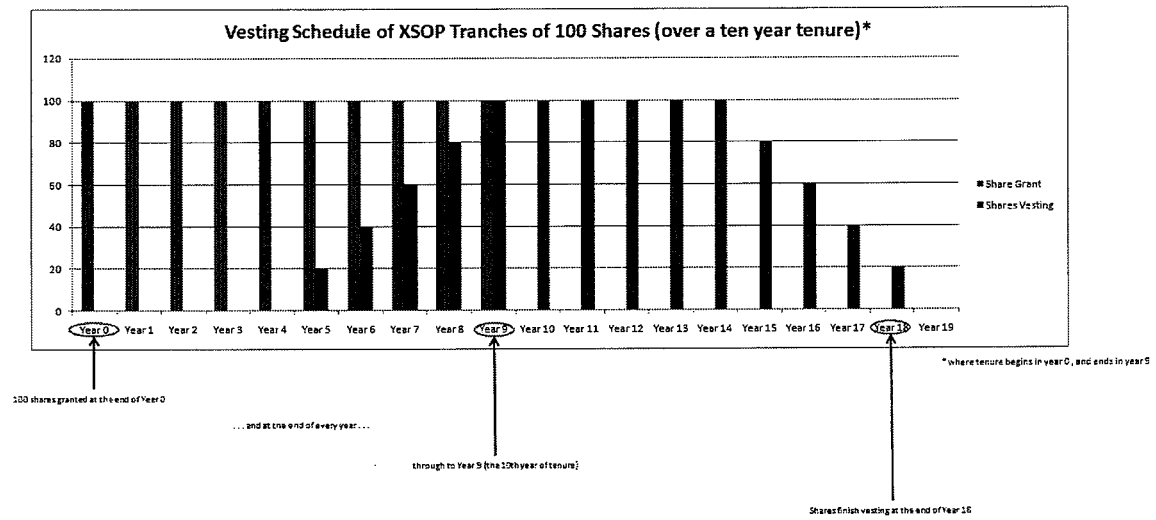


Chart 2



The effects of individual XSOP tranches being awarded every year will accumulate over time such that maximum annual payouts from the XSOP will not be achieved until after five years. See Chart 3 below for an example vesting schedule of an XSOP, in which 100 shares are invested every year over a ten year executive tenure.

Chart 3



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5 Rationale for reform

This reform proposal is designed to facilitate better alignment with the company's long-term sustainable growth in a simple manner, while not restricting the board from offering market competitive salary packages. These changes are advocated to achieve the following three objectives;

1. Maintaining the ability of companies to attract executive talent by not restricting a board's ability to pay.
2. Achieving better alignment between executives and the long-term sustainable growth of the company, taking into account sound risk management.
3. Avoiding rewards for failure.

It is worth noting that the reform proposal has been partially implemented at ASX-listed Macquarie Group. Macquarie Group Executive Committee members have 20% of their profit share (the principle form of remuneration at Macquarie Group) invested in a portfolio of Macquarie managed funds for ten years, and a further 10% of their profit share over the past ten years must be invested directly in Macquarie Group shares[8]. The company itself describes its approach to remuneration as "designed to provide staff with the incentive to strive for sustainable earnings growth", while at the same time "providing remuneration outcomes that are globally competitive"[9].

5.1 Maintaining the ability of companies to attract executives

The ability for a board to award common equity above the board-determined threshold ensures that their ability to attract, retain and appropriately reward executives is not constrained.

5.2 Executives should be aligned with long-term sustainable growth, taking into account sound risk management

Some may argue that limiting immediate payments such as cash, and requiring common equity payments to vest over five to ten years is a "reaction" which will stifle entrepreneurship and drive executives elsewhere (thus ultimately harming a company's long-term interests). The proposed reform is not designed to stop executives from being rewarded for their good work, but simply to ensure that they are motivated and rewarded *only* for good work (by aligning executives with the long-term sustainable performance of the company).

The proposed remuneration reform ensures listed companies are able to offer competitive salaries in the form of common equity to attract executive candidates. If a candidate believes that through their contribution they can build and/or progress a sustainable business model with sound risk management, which will drive long-term sustainable growth, then rewards will be provided as common equity vests. If a candidate does not have the conviction that equity payments vesting over

[8] P58, Macquarie Group Annual Report 2008.
[9] P57, Macquarie Group Annual Report 2008.

five to ten years will provide them with economic reward, then it is open to question whether they believe they have something to offer the company in terms of a lasting outcome through their tenure. Where agreement cannot be reached that a company's long-term prospects are sufficient to offer potential reward through common equity, then it is incumbent upon the board to consider the merit in continuing to seek to attract particular executive candidates.

It is recognised that a company's share price can at times be driven by short-term factors, and the current focus of variable remuneration structures on what is essentially current share price performance has been part of the problem. The vesting of common equity tranches over five to ten years should mean that any temporary falls (or spikes) in share price due to short-term drivers, are tempered by preceding and successive tranches which vest in other years – a "moving average" effect which better reflects the true value created. The key is that a long timeframe such as five to ten years following grant date be adopted, to ensure executives remain focused on sustained performance, and further the encouragement of sound risk management for the future.

Even in instances where short-term drivers impact share price in ways that a majority of common equity tranches awarded to executives vest at times where the share price is depressed, executives are not obliged to sell equity upon its vesting. They, like all other shareholders, have the freedom to retain ownership until such time that they believe the share price better reflects the true value of the company.

5.3 Avoiding rewards for failure

The proposed threshold of 12 months' base salary for termination payments requiring shareholder approval has been selected as a reasonable amount, but which does not allow for any real "reward" without shareholders' consent. It is intended specifically to prevent executives from receiving excessive "golden parachutes", particularly in instances where they have destroyed significant company value. Instances such as Kim Edwards' $5.2 million termination payment from Transurban Group, Owen Hegarty's $8.35 million termination payment from Oxiana (later Oz Minerals) and Paul Anthony's $5.1 million termination payment from AGL Energy (all of which are discussed in section 7) are just some examples of the capacity for corporate Australia to reward executives for failure.

Currently shareholders have no effective means of protecting against such excessive and inappropriate termination payments. Section 200 of the Corporations Act provides that shareholder approval is not required for termination payments up to as much as seven times the equivalent of 12 months of total remuneration. Alternatively, ASX Listing Rule 10.19 provides that shareholder approval is only required for termination payments exceeding 5% of the market capitalisation of a company. Neither of these legislative requirements imposes a meaningful threshold on executive termination payments requiring shareholder approval, and current examples demonstrate the excessive termination payments which have been allowed to occur as a result.

6 Implications for remuneration practices

Key to the success of any remuneration plan is for a competent board to exercise their own judgement and expertise to take account of the specific financial and operational circumstances of the company[10].

All remuneration for an executive in any given year above a board-determined threshold must take the form of common equity vesting over a period of five to ten years following the performance period, with any dividends paid on common equity during escrow to be reinvested in shares bought on-market.

6.1 Base pay

It is anticipated that the majority of boards would select a threshold above the level of an executive's base pay, therefore leaving the current functioning of base pay being paid up front in cash largely unchanged.

6.2 Short-term incentive

Short-term incentive rewards earned by executives at the end of a performance period that fall below the chosen threshold would continue to be paid to executives in the form of cash. However, the portion of earned short-term incentive reward that exceeds the chosen threshold must be invested via an XSOP and held in escrow for the five to ten years.

6.3 Long-term incentive

It is expected that long-term incentive payments would typically exceed the chosen threshold, therefore all long-term incentive rewards earned by executives at the end of a performance period would be fully invested via the XSOP and held in escrow for five to ten years.

It is recognised that the natural alignment and motivation provided by a five to ten year vesting period, combined with appropriate initial performance periods, has the potential to reduce the instances of highly complex variable reward structures while retaining appropriate short-term and long-term aspects. boards may cease to divide variable remuneration programs into separate short-term and long-term components. It may instead become acceptable that a single performance period over which hurdles are measured (for example, three years) is chosen to capture short-term considerations, and exposure to share price over five to ten years would be relied upon to incorporate a long-term element. Key to the success of any variable remuneration plan would however, continue to be the board's utilisation of strategy-relevant hurdles, as a means to distinguish and reward exceptional performance by executives.

[10] Consistent with principle 1 from the Financial Services Authority (UK) draft Code of practice on remuneration policies, issued 27th February 2009.

6.4 Termination payments

Termination payments would be crucially affected by the proposed remuneration reform. Not only would termination payments exceeding 12 months' base salary require shareholder approval, but consistent application of the threshold across all forms of pay would require any termination payment in excess of that threshold to be paid as common equity vesting over five to ten years. Therefore, even for shareholder-approved termination payments, the final worth of that termination payment would be influenced by the long-term success (or otherwise) of the company.

In addition to termination payments vesting post-employment for executives, it may be appropriate in many cases to allow tranches of common equity granted during employment to vest over the original five to ten year timeframes, despite the fact that the executive has left the company. While some may argue that this type of arrangement may unfairly punish former executives for the mistakes of their successors, it will in fact produce the very positive outcome of naturally embedding succession planning as a key measure of success.

6.5 Board discretion

The board will have discretion to determine appropriate thresholds for key management personnel. Boards may nominate a single threshold for their entire key management personnel, or alternatively determine appropriate individual thresholds. In cases where it is necessary to attract international talent, this can be achieved under the proposed reform by the board raising the threshold for either the Chief Executive or select senior executives to a level where immediate payments are considered competitive in the international market.

It may also be appropriate for boards to use discretion in the application of the proposed remuneration reform. Examples of discretion include; offering alternative forms of equity to be held in escrow via the XSOP, changing the vesting period of the XSOP, or allowing XSOP tranches to vest early (for example, in cases where the board changes the strategic direction of the company after an executive has retired). In cases where the board has used its discretion, the details and rationale for that discretion should be disclosed to shareholders using an "if not, why not" statement as is required of companies adhering to ASX Corporate Governance Principles.

7 Case studies

The following case studies were compiled using the assumption that company share prices remained steady from 12th March 2009 through to 30th June 2009. It should also be noted that were a dividend reinvestment plan in operation on the securities held in escrow via the XSOP, the total career rewards cited in the following case studies would vary upward depending on the company's dividend policy.

7.1 Transurban Group – Mr Kim Edwards

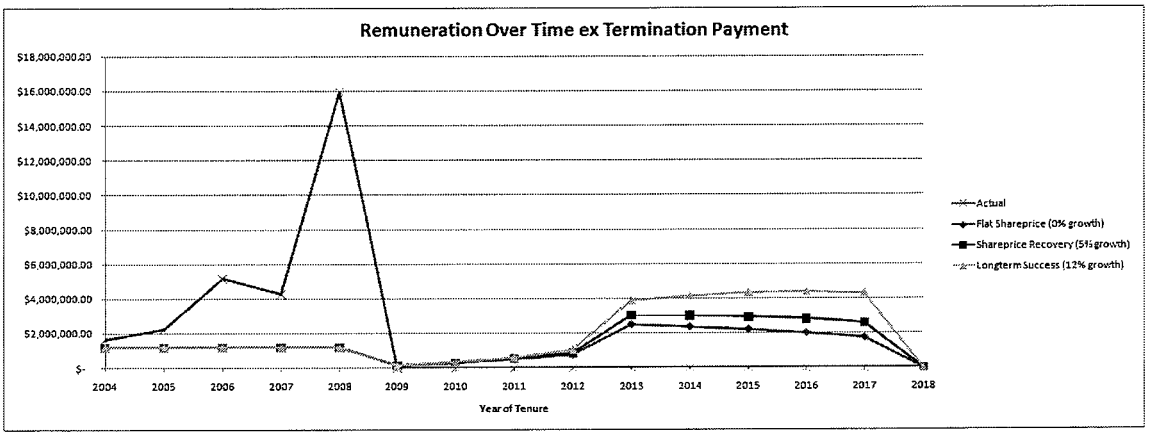
As the outgoing Chief Executive of Transurban Group retiring on 4th April 2008, Kim Edwards received $16 million remuneration in his final year including a $5.2 million termination payment. Two months later under a new Chief Executive, the company announced that the previous shareholder distributions of 58c were "substantially in excess of operating cash flow per security". A capital raising, a halving of future distributions and a cost reduction program were subsequently announced. The stock price now sits at $3.91 as at 12th March 2009, relative to $6.60 on Kim Edwards' day of retirement.

Treatment Under Proposed Remuneration Reform

Under the proposed remuneration reform had the board chosen a threshold of $1.2 million, Kim Edwards' remuneration over his last five years at Transurban Group would have been largely invested in Transurban Group shares which would continue vesting until 2017. In addition, it is anticipated that shareholders would have rejected Kim Edwards' termination payment of $5.2 million, given that shareholders rejected the FY08 remuneration report (46% voted against, 21.3% abstained) in protest at his final remuneration package.

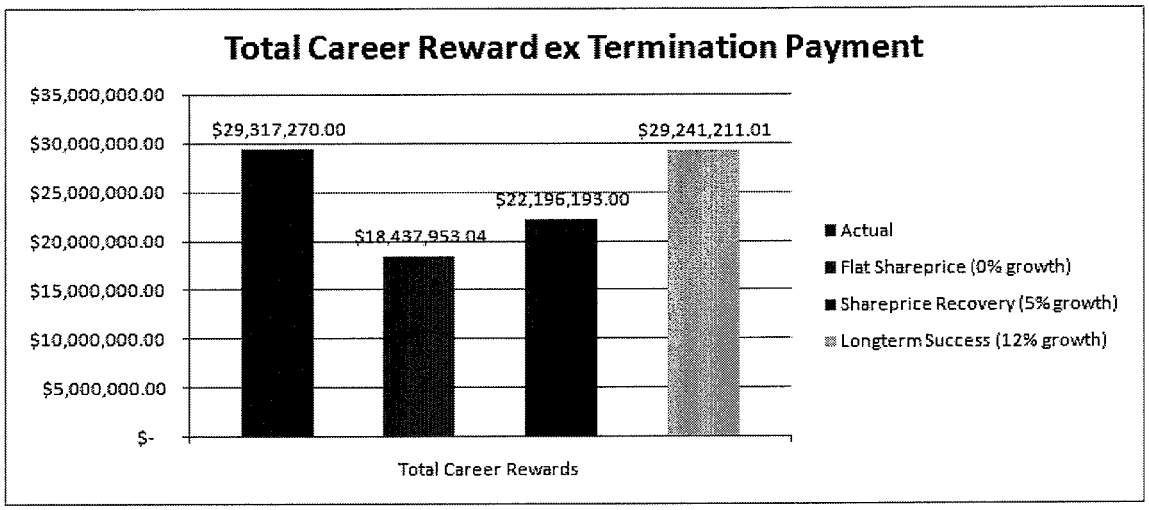
Graph 1 illustrates the gradual delivery of rewards excluding the $5.2 million termination payment for three alternative share price scenarios (flat share price, share price recovery and long-term success) which would have taken place under the proposed remuneration reform. This is contrasted with the actual "lump-sum" delivery of rewards (actual) which completed in 2008.

Graph 1



Graph 2 highlights the alignment between executives and shareholders produced by the proposed remuneration reform, by demonstrating how total remuneration shifts relative to the long-term success (or otherwise) of the company. In the event of prolonged depression of shareholder value (flat share price), Kim Edwards' reward is curbed from $29.3 million to $18.4 million. If, however, Transurban Group recovered its value (share price recovery of 5% per annum) then his eventual reward would also have recovered its value to $22.2 million. Only in the case of long-term success (share price growth of 12% p.a.) is Kim Edwards' remuneration under the proposed reforms equivalent to the actual payout of $29.3 million by rising to $29.2 million[11].

Graph 2



[11] Note that the differences between actual reward and reward levels under the proposed remuneration reform in graphs 1 and 2 are different to the $5.2 million quantum of the termination payment, because of two reasons; 1. the effect of compound growth on share price, and 2. the difference between stated value of long-term incentives at the time of their granting and the actual value of those long-term incentives when they vest.

7.2 Oxiana (now Oz Minerals) – Mr Owen Hegarty

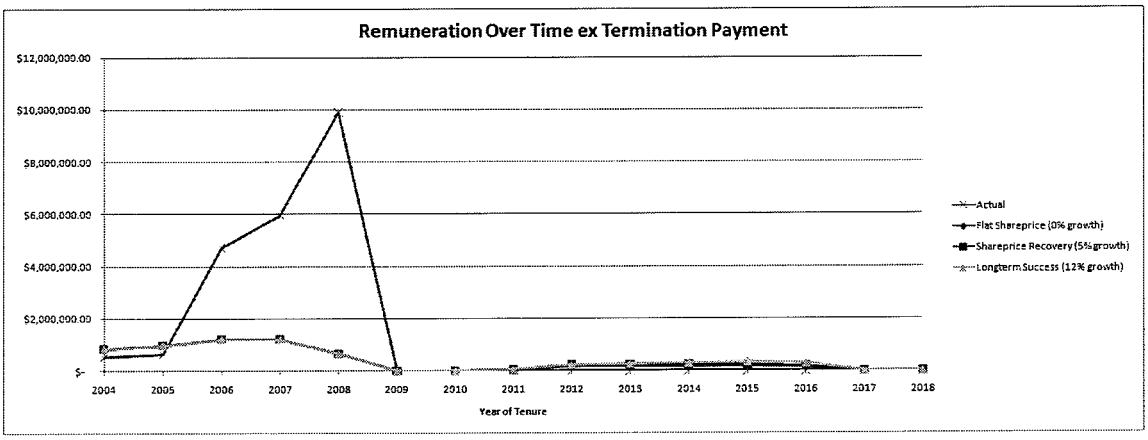
Toward the end of his tenure, Owen Hegarty engineered a merger of Oxiana with Zinifex which was very unpopular with shareholders and widely commented on as destroying shareholder value. Upon his retirement the Oxiana board proposed a $10.6 million termination payment to shareholders under obligation from legislation (due to the size of the payout), which shareholders rejected. Later, the board of the new company, Oz Minerals, elected to award Owen Hegarty a slightly smaller termination payment of $8.35 million which was not large enough to trigger a shareholder vote under ASX Listing Rules or the Corporations Act. Oxiana's share price has since fallen from $2.63 at Owen Hegarty's retirement on 20th June 2008, to $0.60 as at 12th March 2009.

Treatment Under Proposed Remuneration Reform

Under the proposed reform had the board chosen a threshold of $1.2 million, a majority of Owen Hegarty's remuneration over his last five years at Oxiana would have been invested in Oxiana shares (now Oz Minerals) which would continue vesting until 2017. It is also very likely that shareholders would have rejected his termination payment of $8.35 million, given that they had already rejected the $10.6 million termination payment.

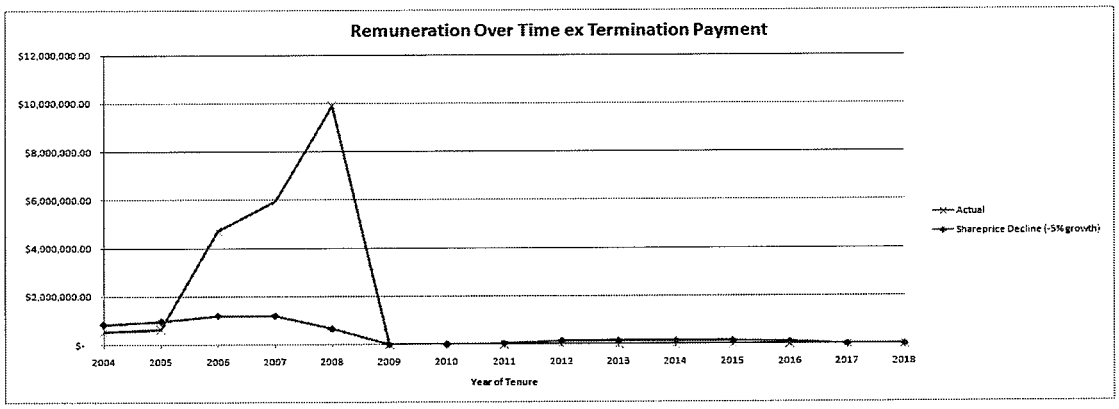
Graph 3 shows the gradual delivery of rewards excluding the $8.35 million termination payment for three alternative share price scenarios (flat share price, share price recovery and long-term success) which would have occurred under the proposed remuneration reform. This gradual delivery of rewards clearly contrasts with the actual "lump-sum" delivery of rewards (actual) which finished in 2008.

Graph 3



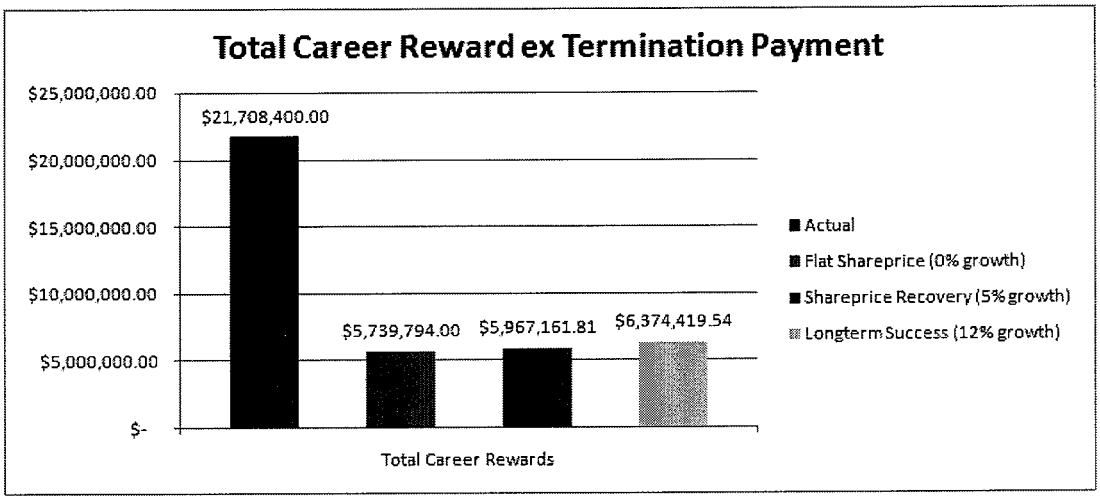
Graph 3a has also been included to demonstrate the delivery of rewards under a fourth scenario, where Oxiana's share price continues its current decline.

Graph 3a



Graph 4 highlights the alignment between executives and shareholders produced by the proposed remuneration reform, by illustrating how total remuneration shifts with the success (or otherwise) of the company. If shareholder value remains depressed for a long period of time (flat share price) Owen Hegarty's reward drops from $21.7 million to $5.7 million. Alternatively, if Oz Minerals recovers its value (share price recovery of 5% p.a.) then Owen Hegarty's reward recovers to $6 million. In the event that Oz Minerals does experience long-term success (share price growth of 12% p.a.) then Owen Hegarty's reward would reflect that by rising to $6.4 million, but note that this is still substantially less than the actual reward of $21.7 million[12].

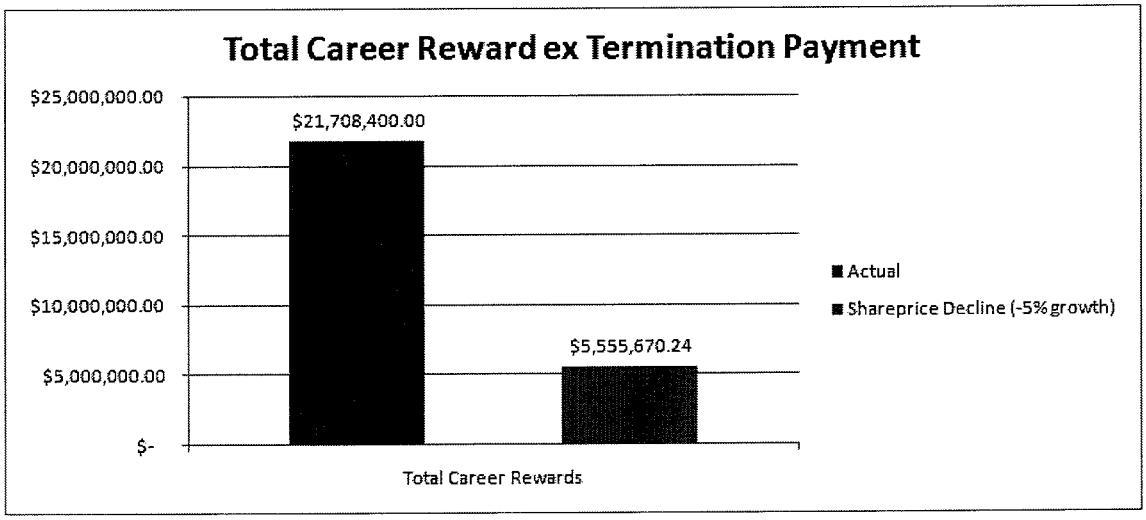
Graph 4



[12] Note that the differences between actual reward and reward levels under the proposed remuneration reform in graphs 3/3a and 4/4a are different to the $8.35 million quantum of the termination payment, for two reasons; 1. the effect of compound growth on share price, and 2. the difference between stated value of long-term incentives at the time of their granting and the actual value of those long-term incentives when they vest.

Again an additional graph (Graph 4a) has been included to illustrate what Owen Hegarty's reward would be in a fourth scenario, where Oxiana's share price continues its current decline (share price growth of -5% p.a.). In the event that this occurs, Owen Hegarty's reward falls even further down to $5.6 million.

Graph 4a



7.3 AGL Energy – Mr Paul Anthony

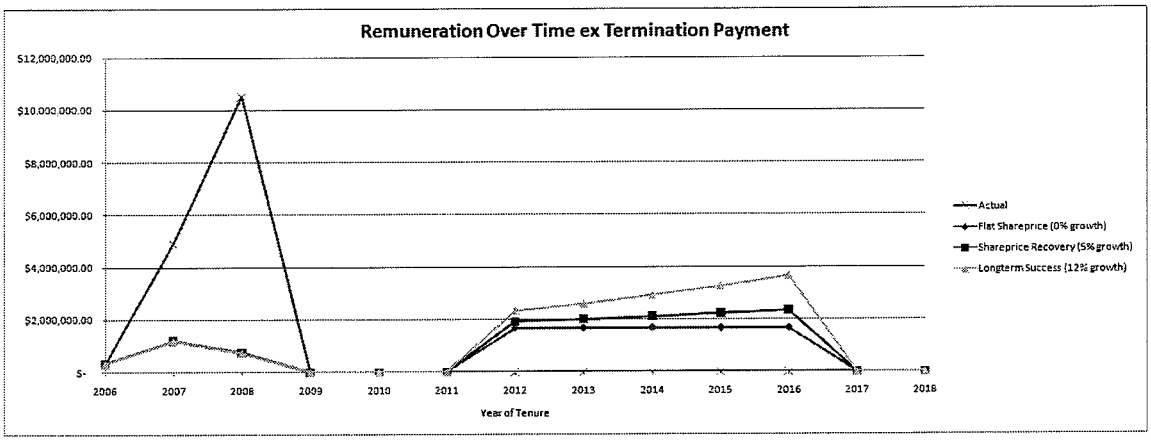
Paul Anthony experienced very high levels of remuneration during an 18 month tenure at AGL Energy preceding and following its listing on 12th October 2006. As part of sign-on, Paul Anthony received $1.64 million cash and approximately $4.7 million of AGL Energy shares held in escrow for two years. In addition, he received a $1.56 million cash bonus during his first year of tenure. However on the 15th October 2007 AGL Energy issued a substantial profit downgrade, followed shortly by Paul Anthony's resignation on 22nd October 2007. Over the space of ten days from the profit downgrade to Paul Anthony's resignation, AGL Energy shares lost 17.4% of their value. Almost 12 months after Paul Anthony's resignation, shareholders learned via the FY08 Annual Report released in September 2008 that a termination payment of $5.1 million had been paid.

Treatment Under Proposed Remuneration Reform

Under the proposed remuneration reform had the board chosen a threshold of $1.2 million, much of Paul Anthony's remuneration over his 18 month tenure at AGL Energy would have been invested in AGL Energy shares which would continue vesting until 2017. This is similar to some aspects of Paul Anthony's actual remuneration package where $4.7 million of his sign-on bonus was invested in AGL Energy shares, originally to be held in escrow for two years. Given the sudden profit downgrade and departure of Paul Anthony, coupled with an immediate share price fall of 17.5%, it is anticipated that shareholders would have rejected Paul Anthony's termination payment of $5.1 million.

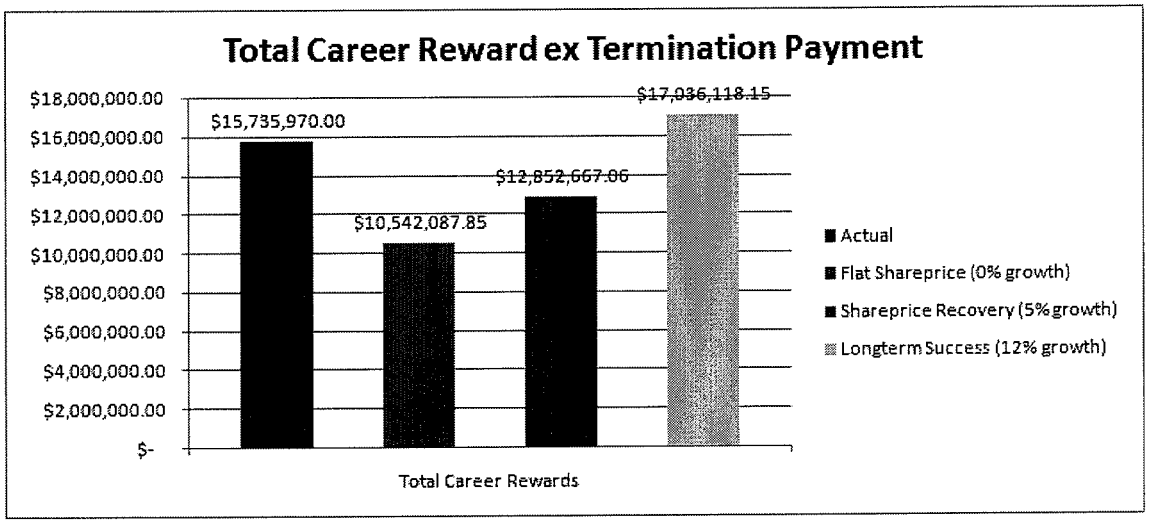
Graph 5 demonstrates the gradual delivery of rewards excluding the $5.1 million termination payment for three alternative share price scenarios (flat share price, share price recovery and long-term success) which would have occurred under the proposed remuneration reform. This steady delivery of rewards is contrasted with the actual "lump-sum" style of payments (actual) which completed in 2008, albeit the "lump-sum" aspect was partially reduced by part of the sign-on bonus taking the form of AGL Energy shares held in brief escrow (two years at most).

Graph 5



Graph 6 illustrates the alignment between executives and shareholders produced by the proposed remuneration reform, by demonstrating how total remuneration shifts relative to the long-term success (or otherwise) of the company. In the event that AGL Energy's share price remains depressed (flat share price), Paul Anthony's total reward over 18 months is reduced from $15.7 million to $10.5 million. If shareholder value is to recover instead (share price recovery of 5% p.a.), then Paul Anthony's total reward also recovers to $12.9 million. Alternatively, were AGL Energy to experience long-term success (share price growth of 12% p.a.) then Paul Anthony's total reward would rise with the rise in shareholder value to $17 million. It is worth noting that the differences between Paul Anthony's actual reward and his rewards under the proposed remuneration reform are not as dramatic as in other case studies, due to the fact that $4.7 million of sign-on bonus was exposed to the AGL Energy share price during its dramatic decline of 17.5% in October 2007[13].

Graph 6



[13] Note that the differences between actual reward and reward levels under the proposed remuneration reform in graphs 3/3a and 4/4a differ to the $5.1 million quantum of the termination payment, for three reasons; 1. the effect of compound growth on share price, 2. the difference between stated value of long-term incentives at the time of their granting and the actual value of those long-term incentives when they vest, and 3. Exposure of a $4.7 million sign-on bonus to the AGL Energy share price during its 17.5% decline in October 2007.