



AUSTRALIAN BANKERS' ASSOCIATION INC.

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Executive Remuneration Inquiry
Productivity Commission
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Email: exec_remuneration@pc.gov.au

Dear Commissioners,

Comments on draft recommendations

The Australian Banker's Association (ABA) welcomes the opportunity for providing comments on the Productivity Commission's (PC) Discussion Draft of its report '*Executive Remuneration in Australia*'.

The ABA would like to commend the PC for producing a very well researched report. Attached to this letter are our views and arguments in response to each of the draft recommendations.

If you would like additional information, please don't hesitate to contact us.

Yours sincerely

A handwritten signature in black ink, reading "David Bell". The signature is written in a cursive, flowing style. The first name "David" is written in a larger, more prominent script, and "Bell" follows in a similar but slightly smaller script. The signature is positioned below the "Yours sincerely" text.

David Bell

Submission to PC on draft remuneration report

ATTACHMENT: ABA's comments on draft recommendations

The Corporations Act 2001 should specify that only a general meeting of shareholders can set the maximum number of directors who may hold office at any time (within the limits in a company's constitution).

Disagree.

Decisions as to board size and more importantly composition must first and foremost be based on delivering the right balance of experience and expertise. It is imperative that the board can plan ahead on matters of succession and are able to increase or decrease the size of the board in the interests of succession planning. To have to go to a general meeting for temporary board size changes would not be an optimal outcome for shareholders.

In addition, this change leaves boards open to manipulation by vested external interests, in particular, for companies outside the top 50. For banks, especially given their position in the wider economic context, to enable interests not aligned with the best interests of shareholders to manipulate board composition would be inadvisable.

A new ASX listing rule should specify that all ASX300 companies have a remuneration committee of at least three members, all of whom are non-executive directors, with the chair and a majority of members being independent.

No objection.

The ASX Corporate Governance Council's current suggestion on the composition of remuneration committees should be elevated to a 'comply or explain' recommendation which specifies that remuneration committees:

- ***have at least three members***
- ***be comprised of a majority of independent directors***
- ***be chaired by an independent director.***

No objection.

The Corporations Act 2001 should specify that company executives identified as key management personnel and all directors (and their associates) be prohibited from voting their shares on remuneration reports and any other remuneration-related resolutions.

No objection.

The Corporations Act 2001 should prohibit all company executives from hedging unvested equity remuneration and vested equity remuneration that is subject to holding locks.

No objection.

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The Corporations Act 2001 and relevant ASX listing rules should be amended to prohibit company executives identified as key management personnel and all directors (and their associates) from voting undirected proxies on remuneration reports and any other remuneration-related resolutions.

No objection, but some banks have questioned whether this is important in practice given it already requires shareholder approval to allow Chairs to vote undirected proxies. Also, the maximum remuneration pool for non executive directors will have previously been approved by shareholders.

The Corporations Act 2001 should be amended to require proxy holders to cast all of their directed proxies on remuneration reports and any other remuneration-related resolutions.

No objection.

Section 300A of the Corporations Act 2001 should be amended to specify that remuneration reports should additionally include:

- ***a plain English summary statement of companies' remuneration policies***
- ***actual levels of remuneration received by executives***
- ***total company shareholdings of the individuals named in the report.***

No objection, but as a general principle, the ABA believes it is preferable to have the Corporations Act and Accounting Standards simplified to make the disclosures more useful rather than requiring additional disclosures.

There is also a view that the optimal remuneration disclosure is that of an aggregated disclosure combining all key management personnel (but leaving the CEO disclosure separate).

By publishing an aggregate, there is less pressure on company boards to match salaries cited in the disclosures of similar companies.

Corporations should be permitted to only disclose fair valuation methodologies of equity rights for executives in the financial statements, while continuing to disclose the actual fair value for each executive in the remuneration report.

No objection.

Section 300A of the Corporations Act 2001 should be amended to reflect that individual remuneration disclosures be confined to the key management personnel. The additional requirement for the disclosure of the top five executives should be removed.

Support.

The ASX listing rules should require that, where an ASX300 company's remuneration committee (or board) makes use of expert advisers, those advisers be commissioned by, and their advice provided directly to, the remuneration committee or board, independent of management.

Submission to PC on draft remuneration report

Support, but it needs to be recognised that from a practical point-of-view, there will be many circumstances in which expert advisers need to consult closely and liaise with management in order to ensure the quality of their recommendations. So long as this flexibility is recognised, then the ABA supports the broader recommendation.

The ASX Corporate Governance Council should make a recommendation that companies disclose the expert advisers they have used in relation to remuneration matters, who appointed them, who they reported to and the nature of other work undertaken for the company by those advisers.

Support.

Institutional investors should disclose, at least on an annual basis, how they have voted on remuneration reports and any other remuneration-related issues. How this requirement is met should be at the discretion of institutions.

Support.

The cessation of employment trigger for taxation for equity-based payments should be removed, with the taxing point for equity or rights that qualify for deferral being at the earliest of: where ownership of, and free title to, the shares or rights is transferred to the employee, or seven years after the employee acquires the shares.

Strongly support.

The Australian Securities and Investments Commission should issue a public confirmation to companies that electronic voting is legally permissible without the need for constitutional amendments – as recommended in 2008 by the Parliamentary Joint Committee on Corporations and Financial Services.

No objection.

The Corporations Act 2001 should be amended to require that where a company's remuneration report receives a 'no' vote of 25 per cent or higher, the board be required to report back to shareholders in the subsequent remuneration report explaining how shareholder concerns were addressed and, if they have not been addressed, the reasons why.

The ABA recommends the per cent 'no' vote should be increased to 50 per cent plus one from the recommended 25 per cent.

The problem with 25 per cent threshold is that it is possible those holding the other 75 per cent of votes disagree with the 'no' vote.

To register their opposition to the 25 per cent 'no' vote, these other shareholders will potentially be forced to participate in a board election vote – which would likely be a waste of time and money where majority of shareholders do not oppose the remuneration report. The company's share price may also be impacted.

Submission to PC on draft remuneration report

As a principle, the ABA is not convinced of the policy merits of elevating a "no" vote on the remuneration report above other matters (e.g. a failed merger, systemic risk issues that may cause substantial loss to a company) to create a board spill.

Lastly, the recommendation requires boards to explain how shareholder concerns were addressed in the event of a "no" vote. There is a problem in that it might not be obvious what elements of the remuneration report were of concern to shareholders. This will then make it problematic or impossible for a board to accurately report on what needed to be addressed.

If the company's subsequent remuneration report receives a 'no' vote above a prescribed threshold, all elected board members be required to submit for re-election (a 'two strikes' test) at either:

- ***an extraordinary general meeting or***
- ***the next annual general meeting.***

See previous comments.