

13 November 2009

Executive Remuneration Inquiry
Productivity Commission
Locked Bag 2, Collins St. East
Melbourne VIC 8003

Dear Commissioners,

Thank you for the opportunity to submit comments in response to the Commission's Discussion Draft on Executive Remuneration in Australia.

We have reviewed the Discussion Draft and for the most part are supportive of the recommendations it contains.

We would like to offer our views on the following recommendations.

Recommendation 1

We believe that the amendment to the Corporations Act proposed will not enhance diversity of Board membership but will in fact reduce the Board's flexibility to appoint additional directors when suitable candidates become available. An alternative approach would be to extend the existing ASX Corporate Governance Council guidelines for the operation of Nominations Committees by providing greater transparency to shareholders on the selection principles used by the Nominations Committee.

Recommendation 6

We are concerned that the enactment of this Recommendation would be to disenfranchise the significant group of retail shareholders who consciously and legitimately provide for their undirected proxies to be voted by the Chairman at the meeting and do so because they have confidence in the board and management. We do not believe this Recommendation is in the best interests of this class of retail shareholders.

Recommendation 13

We would like to note our vigorous support to this Recommendation. The Federal Government's proposed shift in taxing point to cessation of employment is directly contrary to the position expressed by APRA and other regulatory bodies and we believe promotes undesirable short-termism. We would note that the Westpac Board has recently amended its policy relating to future equity grants such that equity awards will no longer automatically vest at cessation of employment in cases such as retrenchment or retirement. This is despite the Federal Government's proposed change to the taxation treatment in such circumstances. The Westpac Board considers that its policy change is more consistent with the long-term view expressed in this Recommendation.

We would especially note the vigorous debate occurring around **Recommendation 15**. In that regard we confirm our support for the following positions:

- As an overarching comment, we believe existing shareholder rights in relation to executive remuneration are sufficient and do not require augmentation in the manner proposed.
- In particular we note the powerfully persuasive impact on boards of current non binding shareholder votes on Remuneration Reports.
- An aspect of executive remuneration of special concern to shareholders is, of course, any proposal to make an equity award to the company's managing director. In those circumstances shareholders already have explicit approval rights which bind the company's board.
- Another existing shareholder right is also relevant in this context. Directors, including the Chairman and the Remuneration Committee Chairman, already must submit themselves for regular re-election by shareholders. This phased rotation of directors facilitates true accountability from directors to shareholders, and allows an appropriate opportunity for shareholders to change, in an orderly way, the composition of a board whose remuneration policies they do not support.
- Should the Commission determine that a "two strikes" approach be implemented, we suggest that it be on the basis that majority votes against accepting the Remuneration Report be required. Most resolutions, including the appointment or removal of Directors, are passed by ordinary resolution, that is, one requiring a 50% simple majority. Adopting a different, lower, threshold in a new "two strikes" regime would effectively elevate the Remuneration Report to special status, allowing a minority of shareholders to prevail over the wishes of the majority.
- There are also obvious instability related concerns applicable if an entire board is obliged to retire at once. This will be the case even if some or all of the retiring board are prepared to submit themselves for re-election. In our view this practical factor lends further support to the proposition that any "two strikes" regime must require majority, not minority, voting by shareholders.

Thank you for the opportunity to submit these views.

Yours sincerely,

Gordon Cairns
Chairman, Board Remuneration Committee
Westpac Banking Corporation