



CALTEX

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21 January 2011

The General Manager
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

executiveremuneration@treasury.gov.au

Re: Exposure draft of the *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011*

Please find attached a submission by Caltex Australia Limited on the above matter.

We thank you for the opportunity to provide a submission in relation to this legislation.

If you would like to discuss these matters with Caltex please contact me on 02 9250 5989 or Jeff Smith (Rewards Manager) on 02 9250 5605.

Yours sincerely

Simon Willshire
General Manager Human Resources

Submission by Caltex Australia Limited to Treasury on exposure draft of the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011

Caltex fully supports the need for good governance in the area of executive pay and takes its responsibilities in this regard very seriously. The purpose of this submission is to respond to the government's invitation to comment on the proposed bill.

Caltex is focusing its submission on one particular section of the bill, namely Part 2D.8 - Advice on remunerating key management personnel for disclosing entities.

Caltex understands and supports the underlying intention of Part 2D.8 to remove all possible conflicts of interest in the engagement of remuneration consultants. However, we are concerned that in certain areas the new laws may lack the specificity required to enable business to properly comply while still effectively discharging routine administrative work.

Our specific areas of concern are outlined below together with suggested clarifications and enhancements which we believe would make implementation of the new legislation more practicable.

Issue 1: the need for more specific definition of remuneration work that is in/out of scope

Section 206K provides:

- (1) This section applies to a contract:
 - (a) that is for the provision of advice relating to the nature and amount or value of remuneration for one or more members of the key management personnel for a company that is a disclosing entity; and
 - (b) that is between the company and a person who, by providing the advice under the contract, will be a remuneration consultant.

- (2) A person must not execute the contract for the company if the person:
 - (a) is not a director of the company; or
 - (b) is an executive director of the company

Further, Section 206L(4) provides: "The remuneration consultant must not give the advice to a person who is neither a director of the company nor a member of remuneration committee."

Caltex is concerned that nature of remuneration for key management personnel is a very broad term potentially open to a great deal of subjective interpretation.

Internal remuneration professionals undertake a great deal of routine work with the support of external remuneration consultants to obtain industry data, or advice on legislation or remuneration design trends. Internal remuneration professionals also provide a key support role to remuneration committees by gathering and assembling data and information via external consultants which assists committees in framing and approving programs and policies. Such work may eventually impact the nature of KMP remuneration but only in a very indirect sense.

Examples of such work are set out below:

- salary movement forecasts
- collection and interpretation of salary survey data
- job evaluation and market pricing of roles
- tax advice pertaining to incentive design aspects such as deferral
- assessment of relative total shareholder return performance across a panel of selective companies
- advice on superannuation plan funding
- valuation of unvested equity grants
- advice on tax on employee share scheme payments

- design of remuneration packaging and benefits
- advice on interpreting the government's termination benefits legislation.

We doubt it is the intention of the bill to encompass every possible activity in which internal remuneration professionals interface with external remuneration consultants in the discharge of their day to day responsibilities.

Proposed enhancement to the legislation

Caltex believes that the bill would benefit from the inclusion of specific examples of types of remuneration activities which are not intended to be in the scope of sections 206K and 206L, which internal HR professionals therefore could continue to carry on with direct reference to external consultants as required.

Issue 2: there is a legitimate need to allow for internal remuneration staff to directly support remuneration committees

Caltex accepts the proposition that the contractual engagement of external consultants in relation to KMP remuneration must be executed by directors of the company rather than internal management.

However as noted above, it is quite routine for internal remuneration professionals to undertake a lot of preparatory work in the build-up of a proposal for consideration by the Caltex Board Remuneration Committee. For example, in the design of a new short term incentive plan, internal remuneration professionals would gather information on key business drivers, market practices, collection of relevant empirical data legislative conditions, modelling of costs, projection of total remuneration competitiveness and change management considerations. Based on this advice, the Remuneration Committee then makes decisions concerning the design of the new plan and the quantum of pay outcomes the plan should deliver.

For the Remuneration Committee to formally initiate every engagement with external consultants in the progressive build-up of a single pay design proposal would be inefficient. Directorships are usually undertaken on a part time basis. Internal remuneration professionals play an important role in the day to day progression of remuneration design and administration (including for KMP) and cannot effectively do this without direct interface without external consultants.

Proposed enhancement to the legislation

Delegation of certain responsibilities

Caltex proposes that the legislation explicitly allow for remuneration committees and directors to delegate certain responsibilities to management (HR and internal remuneration professionals) to obtain data and advice from external remuneration consultants for the purpose of providing the assembled package of information necessary for the committee to make decisions in relation to design and quantum of KMP remuneration. This in no way dilutes the accountability of the remuneration committee but will ensure efficiency in the development of proposals.

Independent external reviews

As a further suggestion, we would like to highlight a governance practice which Caltex has undertaken for some time now. When considering any significant pay design or pay policy proposals (which may have been developed by internal remuneration professionals supported by external consultants), the Caltex Remuneration Committee will directly initiate an independent review of those proposals by a third party external advisor with expertise in the field. The Remuneration Committee then makes its decisions on such proposals with the benefit of the additional perspective provided by the independent reviewer. We believe this practice serves the company, its shareholders and the public interest well.