24 January 2011

General Manager
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: executiveremuneration@treasury.gov.au

Dear Sir/Madam

Exposure Draft - Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011

Thank you for the opportunity to comment on the Exposure Draft - Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011. CPA Australia, The Institute of Chartered Accountants (The Institute) and the National Institute of Accountants (NIA) (the Joint Accounting Bodies) have considered the Exposure Draft (ED) and our comments follow.

The Joint Accounting Bodies represent over 180,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

We note that this ED implements some of the recommendations made by the Productivity Commission and that the recommendations relating to the remuneration report in s300A have been referred to CAMAC for consideration. We recommend that all changes to legislation relating to the reporting of remuneration (including consultants) are deferred to be released for consultation in conjunction with changes arising from CAMAC's recommendations. This would ensure all recommendations for legislative change of executive remuneration are drafted and considered as one. Our detailed comments on the ED are included in the attached Appendix and focus on the areas we consider need to be addressed.

We are concerned that the release of this ED on Monday 20 December 2010, with a comment period of one month does not provide adequate time for interested parties to consider the impacts of the changes fully. Whilst one month may normally be sufficient, this particular period includes Christmas and New Year, when many organisations typically close down for around two weeks. This could result in unintended consequences of the legislation not being identified during the consultation period. Additionally, the ED covers areas outside remuneration such as board appointment and interested parties to these other areas may not be aware of its wider coverage.

If you have any questions regarding this submission, please do not hesitate to contact either John Purcell (CPA Australia) at john.purcell@cpaaustralia.com.au, Kerry Hicks (The Institute) at kerry.hicks@charteredaccountants.com.au or Reece Agland (NIA) at reece.agland@nia.org.au.

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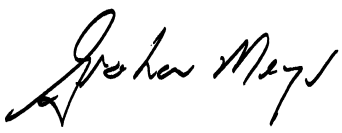

Graham Meyer
Chief Executive Officer
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Appendix: Detailed Comments

Application date
We note that all changes to legislation are to be effective for financial years commencing on or after 1 July 2011. We do not have any concerns with this application date.
However, we recommend that in the interests of reducing red tape for companies, the application date for the changes in chapter 7 could be applied for years ending 30 June 2011.

Chapter 1 – non-binding vote
We note that the non-binding vote relates to the adoption of the remuneration report by shareholders. However, the content of the remuneration report is currently under consideration by CAMAC. We consider it premature to introduce this legislation on the non-binding vote until the CAMAC review is finalised.

We note that the legislation drafted includes paragraph 300A(1)(g), which requires companies to include an explanation in their remuneration report of whether comments made at the most recent AGM on the remuneration report were taken into account. We consider this requirement to be too broad and it could lead to undue focus at the AGM on the remuneration report and unnecessary burden on companies to respond to the comments.
We recommend that finalisation of these requirements is delayed until consideration can be made of the CAMAC recommendations. If not, we recommend paragraph 300A(1)(g) is amended to require the company to explain in the remuneration report what changes they have made to respond to the recent vote against the last remuneration report.

While it is important that Boards take into consideration shareholder views on remuneration, it is also important not to overly impinge on the ability of a company to make effective decision making. The "spill" motion could lead to companies expending great time and resources on issues other than running the company.
We recommend that a sunset clause is included this legislation to review the cost effectiveness of the legislation to ensure that it is not imposing too hefty a burden on companies and to determine whether such spill motions have any practical impact on executive remuneration.

Chapter 2 – Improved accountability on the use of remuneration consultants
The definition of remuneration consultant relates to someone providing advice on the 'nature and amount or value of remuneration'. We note that remuneration consultants may be engaged to provide advice on only one aspect of the nature and amount remuneration such as the delivery method for incentive payments, performance hurdles or a suitable overall remuneration package. The definition would suggest that in these instances, where nature and amount are not being considered together, that the consultant would be outside the scope of this requirement. We consider this appropriate, although some further clarification would be useful.

Remuneration consultants can only be engaged by non-executive directors. There does not appear to be provision in the legislation in 206K *engaging remuneration consultants to provide advice* for a remuneration consultant to be engaged by an executive director, in the event that all the directors of the company are executive directors. This has been provided for in 206L *advice from remuneration consultants* in paragraph (3).
We recommend an additional paragraph is included to allow remuneration consultants to be engaged by executive directors, in the event that all the directors of the company are executive directors.

We note that 206L *advice from remuneration consultants* defines advice as relating to the nature and amount or value of remuneration for one or more members of the key management personnel and requires this to only be provided to non-executive directors. We consider that for the remuneration consultant to perform their job effectively, this would require consultation with senior management of the company, in order to engage them in the process.
Further, whilst the non-executive directors should be involved with the remuneration of executive directors, the remuneration details for other key management personnel would normally be the responsibility of the CEO. This has the potential not to attract non-executive directors to the Boards of smaller listed entities.
We recommend that this is amended to relate to only the final report from the remuneration consultant, which must first be delivered to non-executive directors prior to sharing with management.

We also recommend the inclusion of an additional paragraph to permit the remuneration consultant to engage with KMP and other company personnel in ways which assist the remuneration consultant in performing their role.

Additionally, we are concerned that the position of some of this legislation within the Corporations Act could be misleading. Part 2D.8 – *Advice on remuneration key management personnel for disclosing entities* and Part 2D.7 – *Ban on hedging remuneration of key management personnel* are to include paragraph's numbered 206. We note that currently all existing paragraphs numbered 206 relate to disqualification. We consider including these additional parts at the same number would be confusing and potentially mis-leading.

We recommend that Part 2D.3 is renamed to also relate to the remuneration of key management personnel and Division 2 within this section is renamed to relate to the remuneration of directors and key management personnel.

This would enable the additional paragraphs to be numbered 202 and all remuneration related matters would be located in the same area of the legislation.

We note that the Productivity Commission recommendations were for disclosure of remuneration consultants on an 'if not, why not' basis within the ASX Corporate Governance Principles, and the restrictions over the engagement of remuneration consultants were to apply to the ASX 300. However, the government has implemented these two recommendations through legislation applying to all disclosing entities. We do not consider that there is adequate analysis and reasoning for extending the requirements in legislation to this broader group. Further, we consider that these requirements will increase the reporting burden and compliance cost for companies and the complexity and length of remuneration reports for users of the reports. The government has decided to include these requirements in section 300A for remuneration reports, rather than in the ASX Corporate Governance Principles. The content of the remuneration report is currently under review by CAMAC.

We recommend that these additional disclosures are included in the ASX Corporate Governance Principles on an 'if not, why not' basis. If not, then they should be deferred and considered in conjunction with CAMAC's recommendations arising from their review of the remuneration report content.

We note that the legislation for the disclosures of remuneration consultants, paragraph 300A(1)(h) does not provide any allowance for non-disclosure on any basis. The recommendation from the Productivity Commission that this should be included within the ASX Corporate Governance Principles allowed for such disclosure to be made on an 'if not, why not' basis. In the instance of an open litigation matter relating to remuneration, there is the potential for the disclosure of remuneration advice received to impact the outcome. This disclosure would also increase the compliance cost for companies. The situation where the company decides not to follow the advice provided by the remuneration consultant should also be considered. Additionally, we consider the disclosure of the name of the director who executed the contract and the name of each person who was directly given the advice to be an unnecessary disclosure.

We recommend that these additional disclosures are included in the ASX Corporate Governance Principles on an 'if not, why not' basis. We also recommend that points (ii), (iii) and (iv) in paragraph 300A(1)(h) are deleted.

The threat is that companies may decide not to engage a remuneration consultant due to the reporting burden this will create. This may lead to less than optimal outcomes for companies as they attempt to attract the best talent to their organization. Alternatively, companies may decide to bring the expertise 'in-house' and in doing so those employees would likely report to the CEO and senior management, which will reduce their independence.

We recommend therefore that the impact of the changes, if included in this legislation, be reviewed after a period of time to determine whether they are cost effective and whether there are any negative unforeseen consequences as a result of the new requirements.

Chapter 3 – prohibiting KMP from voting on remuneration matters

No specific comments on this chapter

Chapter 4 – prohibiting hedging of incentive remuneration

We note that under 206J *No hedging of remuneration of key management personnel* point (1) states that 'must not enter into an arrangement (with anyone) that has the effect of limiting the exposure of the member to risk relating to an element of the member's remuneration that depends on the satisfaction of a performance condition'. We consider that this requirement has the potential to be very broad and could significantly prohibit the member and their closed related parties from normal investment activities. This is critical when the requirement is a strict liability offence. We consider that including the words 'intent' and 'materially' will add clarity to the requirement.

We recommend that this statement is revised to refer to 'entering into an arrangement with the intent of materially limiting the exposure….'.

Further, there is no information on what constitutes a hedge. Paragraph (2) indicates that to determine if an arrangement has the effect noted above, regard is to be had to the regulations made for the purpose of this subsection. We note the explanatory memorandum calls for examples for the regulation. The example of income protection insurance should not be included as this does not relate to meeting a performance condition and would only represent prudent financial planning on behalf of the KMP. Such insurance is commonly used to protect against a period of prolonged absence from work, such as through illness. This highlights the current broad application of this requirement. As the list for the regulation is not yet created and as indicated by the example in the memorandum, there is no clarity over the forms of arrangements which might be applicable, we don't consider a strict liability offence for this requirement appropriate.
We note that the Listing Rules include requirements relating to a company's share trading policy and we consider that hedging of incentive based remuneration would be best dealt with in a similar way.
We recommend that the requirement is withheld until the list for the regulation is created and further guidance provided to assist in the determination process. Additionally, we recommend it is included in the listing rules, rather than being a strict liability offence.

Additionally, please refer to our comments under Chapter 2 above regarding the potential confusion for numbering the paragraphs 206.

Chapter 5 – No vacancy rule
No specific comments on this chapter

Chapter 6 – Cherry picking
No specific comments on this chapter

Chapter 7 – Persons required to be named in the remuneration report
We strongly support the amendments to remove the requirement to disclose the remuneration of the key management personnel of the parent entity and the five highest paid executives. These reduce the reporting burden for companies and remove unnecessary and confusing disclosures in the remuneration report.