



27 January 2011

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

By e-mail: executiveremuneration@treasury.gov.au

Dear Sir

[Exposure Draft – Corporations Amendment \(Improving Accountability on Director and Executive Remuneration\) Bill 2011](#)

Thank you for the opportunity to make a submission on the exposure draft of the Corporations Amendment (Improving Accountability on Directors and Executive Remuneration) Bill 2011 (**Draft Bill**), released by the Parliamentary Secretary to the Treasurer on 20 December 2010.

We refer to previous submissions to the Productivity Commission (PC) and CAMAC by corporates (such as Telstra) and industry bodies on the proposed executive remuneration reforms. Telstra agrees with the overarching position set out in the PC Report and the CAMAC Information Paper that Australia's corporate governance and remuneration framework ranks highly in any international comparison.

We consider that any reforms should only enhance this framework and not add any unnecessary complication, and are particularly concerned that:

- practical issues remain with certain of the proposed reforms, such as the "two strikes" and "no vacancy" reforms. As numerous submissions have been made to the PC and Government on this in the past, we do not intend to re-iterate those issues here. However, we note that as previous constructive suggestions regarding the practical application of the reforms have not been taken up, the Bill will result in unintended and disproportionately onerous consequences. The fact that we have not re-iterated the relevant issues in this submission should not be read as support for the legislation; and
- the proposed reforms regarding the use of remuneration consultants are not workable in practice, will make it difficult for human resources teams to do their jobs effectively and will result in unintended and unnecessary disclosures.

We would also like to note our objection regarding the insufficient consultation period provided in relation to the Draft Bill. In our view, this was manifestly inadequate given the intervening holiday period and is not helpful in achieving the best outcome, especially in light of the significance of the proposed reforms.

Telstra makes the following comments on some of the key changes proposed to the Corporations Act 2001 (Cth) by the Draft Bill:

Use of Remuneration Consultants

- Telstra is concerned that the proposed new regime effectively imposes management functions on non-executive directors, which is inconsistent with widely accepted views on the appropriate role of non-executive directors for effective corporate governance.
- The proposed new definition of "remuneration consultant" is too broad, as it would inevitably include the company's lawyers and accountants.

- The CEO and expert HR executives employed by the company would no longer be able to commission, or receive directly, remuneration advice concerning KMP. As a result, everyday advice about, for example, short term and long term incentive plans, retirement benefits, taxation and superannuation contributions could only be given to non-executive directors. We submit that, in practice, this does not represent a workable solution. In addition, it may lead to a loss of data integrity if remuneration consultants are not able to work directly with the company's HR executives, for example to ensure that they have interpreted the company's data correctly (in particular in relation to LTI and STI arrangements).
- There is a lack of clarity on the practical operation of the proposed provisions, for example, it is unclear whether a remuneration consultant can, on the instruction of the Remuneration Committee, send copies of advice to management which have already been provided to the Remuneration Committee. There is also a lack of clarity on what constitutes advice on the "nature and amount or value" of KMP remuneration.
- It appears that any law firm or accountancy firm that provides wide ranging advice to the company that happens to include remuneration advice, will be required to disclose the nature of their work on unrelated matters, no matter whether it is privileged or confidential, and to disclose the fees paid for unrelated matters. As the proposed provisions do not appear to allow carve-outs for confidentiality of services provided, where a company has received remuneration advice from its legal advisors, the required disclosures may inappropriately undermine legal professional privilege.

Preventing cherry picking of proxies

- The reform raises a number of practical issues, for example, a proxy may be unaware of their appointment, may not be able to attend the meeting or might not consent to act. Telstra supports reform to make voting procedures less costly and more effective, however we suggest that this can be achieved by introducing measures to allow electronic voting procedures or encouraging the use of direct voting.

KMP prohibited from voting undirected proxies on remuneration related resolutions and KMP prohibited from voting on remuneration report

- The chair of the meeting often receives a significant number of undirected proxies from shareholders. However those proxies will be ineffective in relation to remuneration-related resolutions as the chair of the meeting will be unable to exercise the proxies in relation to those resolutions (regardless of whether the proxy form clearly specifies the way in which the chair intends to vote undirected proxies).
- Practical difficulties may arise in trying to determine if an undirected proxy is being cast on behalf of a KMP or a closely related party of a KMP.

Remuneration report for consolidated entities

- Telstra supports this amendment.

If you have any queries or would like to discuss our submission further, please do not hesitate to contact my office on 03 8647 3884.

Sincerely



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