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Business Council of Australia

The Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: economics.sen@aph.gov.au

Dear Sir

Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009 – Response to Questions on Notice

The BCA appreciated the opportunity to appear before the Senate Economics Legislation Committee in Sydney and to provide evidence to assist the Committee with its inquiry into the *Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009*.

Arising from this testimony, the BCA took a number of questions from the Committee on notice. The BCA is pleased to provide the following additional comments on those questions.

What is the average annual salary of an executive in the top 100?

Ernst & Young has complied information on remuneration levels for executives by ASX group for 2008[1].

- This data shows that for chief executive officers in the ASX 50, the median fixed remuneration was $1.9 million, (with a further $1.9 million in short-term incentives, and $2.6 million in long-term incentives).

- For chief executive officers in the ASX 51-100, the median fixed remuneration was $1.2 million, (with a further $0.9 million in short-term incentives, and $2.2 million in long-term incentives).

[1] Ernst & Young *Balancing Perceptions and Performance*, Excerpt from the 2009 Executive and board remuneration report, Analysis Highlights, March 2009.

The Chairman of the Productivity Commission, Gary Banks, has cited preliminary analysis[2] which indicates that "the CEOs of the top ten per cent of the S&P/ASX 300 listed companies received an average base salary of more than $2 million in 2007-08, compared with less than $1.5 million for CEOs of companies in the second highest decile, plateauing at around $0.5 million for the smallest 40 per cent".

Is the BCA arguing that if, after an average tenure of 5.7 running a company, a CEO departs that CEO should receive a termination benefit of twice their annual salary – being a figure of $6.8 million?

The BCA is not advocating this position. The BCA considers that the overall policy approach to executive remuneration (including termination payments) should adopt a principles-based approach that will allowed listed companies to adapt and respond to remuneration issues that best suit their company-specific circumstances and shareholder interests.

Existing best-practice governance processes should be promoted and re-enforced, including: clear board responsibility for remuneration strategies and outcomes; strong levels of remuneration disclosure; and the retention of non-binding shareholder votes.

Can the BCA provide examples of instances where a bidding war for the services of a CEO has occurred in Australia?

As the Committee is aware, the Productivity Commission is currently undertaking an inquiry into executive remuneration and it has identified 'the war for talent' as one issue being examined.

In his update on the issues[3], Gary Banks has noted "one hypothesis is that as firms become larger and/or more complex, they are prepared to pay more to attract the most talented executives – the so-called 'war for talent' "

Although not directly related to the specific question on notice, the BCA considers it relevant that Mr Banks has cited research from Professor Peter Swan from the University of New South Wales on US data which found that "demand for 'talent' together with job risk explains 85% of increases in pay".[4]

Can the BCA provide information on the narrow pool of board members who spread comparative wage justice around various companies?

In the time available the BCA is not in a position to provide a considered response to the Committee on this question. An organisation such as the Australian Institute of Company Directors, as the principal professional body representing a wide membership of directors, may be better placed to address this issue.

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[2] Gary Banks, The Productivity Commission's executive pay inquiry: an update on the issues, Paper presented at FINSIA forum, June 2009.
[3] Ibid, page 7
[4] Ibid, page 8

More generally, on the pool of board members, under existing governance arrangements board appointments are voted on by shareholders, and shareholders can exercise voting power to replace directors if they do not believe their interests are being looked after sufficiently.

How can the BCA argue that there is no comparative wage justice for ordinary workers when it is clear that executive salaries are based predominantly on comparative wage justice and a weak system of corporate governance at the board level?

The BCA has a clearly stated policy that productivity in the workplace depends on businesses having flexibility in terms of how they employ their workforce, how they structure their operations, and whether they are able to reward employees for contribution and effort. The BCA supports enterprise-based agreement making as the core of the workplace relations system along with the availability of a wide range of options for agreeing employment terms and conditions, including statutory individual contracts.

Just as a focus on overall productivity and performance of an enterprise should be relevant for non-executive workers within an organisation, arrangements for top executives should be targeted towards aligning executive remuneration with company performance.

The BCA maintains the position that remuneration practices among Australia's large listed companies currently do reflect a clear focus on long-term incentives and overall business performance. And in that regard there is some semblance in pay arrangements between the non-executive workforce and executives. Overall corporate performance can - and should - be a driver of remuneration levels across the board (and this is indeed the case for many companies). Naturally the role and responsibility of executives and their skill-set must also be a consideration.

The BCA does not consider that a weak system of corporate governance applies at the board level. Clear disclosure arrangements are in place and listed companies are required to have remuneration committees comprising a majority of independent directors. As outlined above, the BCA is firmly of the view that existing best-practice governance processes should be promoted and re-enforced.

I trust that you will find the information outlined above helpful. I will look forward to reading the Committee's final report and to the Committee's sympathetic consideration of the issues raised by the BCA in its previous submissions and in our recent testimony.

Yours sincerely

Peter Crone
Director Policy