

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10 – 11 February 2010

Question: aet 63

**Topic: PC Report ‘Executive Remuneration in Australia’
– Disclosure Issues**

Hansard Page: Written

Senator CAMERON asked:

1. Why does the PC not consider the salary surveys conducted by remuneration consultants in their work for boards a significant driver of executive pay in the same way it seems to consider pay ratcheting is in part the result of formal disclosure requirements in remuneration reports? (see pp. 96-97, 242)
2. Why has the PC steered clear of tackling some of the obvious disclosure problems and non-enforcement under the current rules – for example the rules governing termination payments and the basis of annual bonuses? These issues require no new law, just enforcement of existing reporting and disclosure laws. For example the Corporations Act requires a "detailed summary" of performance hurdles for performance pay but is routinely not complied with. The PC merely notes it then fails to make even a suggestion for increased compliance effort on the part of ASIC.

Answer:

1. The Commission did not consider that remuneration disclosure requirements resulted in a ratcheting up of executive pay. That contention was explored in its report (‘Lake Wobegone effect’ on p. 96), but the Commission found little empirical support for it (p. 97).

As noted at the hearings, the Commission’s recommendations 10 and 11 aim to improve transparency and reduce the potential for conflicts of interest when companies engage the services of remuneration advisers.

2. Some participants claimed that there is insufficient disclosure of performance hurdles (related to annual bonuses), others argued that requirements are met. Apart from complications, such as the commercially sensitive nature of some short term hurdles, there is an issue about the extent to which regulators should enforce beyond the letter of the law to meet differing perceptions of the spirit of the law as it relates to ‘detailed summaries’ of performance conditions. The Commission found that:

... mandated disclosure of actual hurdles could lead perversely to the adoption of hurdles that are less closely aligned with improving company performance, or even a reduction in the use of incentive pay. Nevertheless, companies should be encouraged to disclose as much relevant information as possible by including, as ACSI suggests, a narrative about commercially sensitive hurdles and, where feasible, by disclosing them after the event (p. 264)

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To this end, the Commission devoted considerable attention to ways to improve disclosure and the readability of remuneration reports to improve transparency (pp. 241 275; pp. 373 6 and pp. 381 3; and recommendation 8).

In relation to termination payments, that is now subject to new specific legislation (pp. 230-9).