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*The Commission has handed the Government its Final Report on the regulation of the remuneration of directors and executives. The Commission made seventeen recommendations; it was reassuring that a number of the recommendations included changes from the draft report. These reflected submissions from the business community generally and from shareholders. Some of the highlights of the Report are listed below.*

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**For the Recommendations see**

[http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0011/93593/03-recommendations-findings.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0011/93593/03-recommendations-findings.pdf) .

**For the Report see**

[http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0008/93590/executive-remuneration-report.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0008/93590/executive-remuneration-report.pdf)

**Remuneration Committee**

In line with the G20 and APRA initiatives, the Report recommends that the Listing Rules require that all ASX 300 companies have remuneration committees. It also recommends that the ASX Governance Council's recommendations include a requirement for a majority of independent directors on the committee.

This recommendation (Number 3) is supported by Recommendation 16 which suggests that, if the ASX does not give effect to Recommendation 3, the Government should consider amending the legislation accordingly.

**Hedging of unvested equity**

Recommendation 5 is that the Corporations Act should specify that companies prohibit their executives from hedging unvested equity remuneration and vested equity subject to holding locks. This is a welcome response to wide-spread condemnation of the hedging practice used as a way of protecting executives from the effects of the failure of companies to maintain performance before equity can be exercised or sold.

**Complexity of remuneration reports**

The Report reinforces demands for more expert (and explicit) communication in remuneration reports. The Report recommends the establishment of an expert panel to advise on how best to amend the Corporations Act to improve reporting.

**Expert advisers**

The Recommendations focus on the disclosure and independence of the board's advisers. This treats the function of adviser with greater attention and concern

**Negative votes on remuneration reports**

The final Report reflects the submissions made by a number of bodies (including Egan Associates) on this point. It recommends that if a 25 per cent no vote is recorded for a second year in succession, a resolution be put that the elected directors who signed the directors' report for the second meeting stand for re-election at an extraordinary general meeting. Notice of the re-election resolution would have been included in the meeting papers for the AGM. If a no vote of more than 50 per cent is cast, the board would be required to give notice that the EGM would be held within 90 days.

Voting on a remuneration report is a complex matter. The vote cannot indicate the particular aspect of the remuneration report which is being rejected. In many cases, this may be well known but this has the potential to be manipulated as well. It may be interesting to see which directors sign the directors' reports in future.

**Review of effectiveness**

Recommendation 16 proposes a government review of the effectiveness of the Government's response to this Report to take place no later than five years from the introduction of the new arrangements. The review would include not only responses to the Report but also:

- recent legislation on termination payments and tax on share plans, and
- changes to the balance of responsibilities between
  - o the Corporations Act,
  - o the ASX Listing Rules and
  - o the ASX Corporate Governance Council's principles and recommendations.

## SERVICES AVAILABLE

Speak to us if you need advice on

- REMUNERATION PLANNING
- BOARD ADVISORY SERVICES
- CEO REWARD STRATEGY
- INCENTIVE PLAN DESIGN
- RETENTION PLAN DESIGN
- EQUITY INCENTIVES
- IPOs

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### **Comment**

The most challenging aspect of any implementation of these recommendations is the piecemeal way the changes to regulation and taxation are being carried out.

There has been no co-ordination of the process, and boards and their advisers have not only to deal with the complexity of the legislation but also the difficulty of setting up incentive plans which operate well into the future, but establishing them in a climate where further change is inevitable but impossible to predict.