

Implementing Legislative Change in a Corporate Environment

The changes to the Corporations Act 201 to regulate the appointment and giving of advice by remuneration consultants impacts not only our corporate and board clients but Egan Associates as advisers. This brief article looks at one aspect of these changes, who provides advice.

Introduction

Providing Key Management Personnel (KMP)* remuneration advice

The amendments to the Corporations Act 2001 to regulate the appointment and giving of advice by remuneration consultants continue to raise awkward questions.

One question is the identification of 'a remuneration consultant' and 'remuneration advice'. The amendments specifically provide that a remuneration recommendation does not include advice about the operation of the law (including tax law) and advice on the operation of accounting principles (Section 9B). While this might seem an exemption for the legal and accounting professions, it really makes their provision of advice much more complicated.

The proposed amendments do not limit the persons to whom legal and accounting advice is to be provided in regard to executive remuneration. Accordingly, quite properly, executives may be entrusted with the task of providing the Board with a summary of the expert advice of the company's legal and accounting advisers so as to equip non-executive directors for the task of considering the appropriate remuneration structures and quantum. However, this separates those who receive the legal and accounting advice from those who receive the specific KMP remuneration advice.

This is not an argument for further regulation. It is an illustration of one of the dilemmas arising from complicated

regulation. The complexity of commerce means that there is a point where regulation is impossible and we must rely on the integrity of a company's officers and employees. It would appear that this is a good illustration of the problems that can arise when attempts at regulation overlook the need to insist on integrity rather than relying of government regulation at all levels to ensure due process in a complex area where there are multiple stakeholder interests.

**Key management personnel – will include the chief executive officer and his or her principal direct reports.*