

Company Fees : let the bucks stop here

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In the latest Company Director issue both CEO Ralph Evans and Professor Bob Baxt discuss the vexed issue of executive and directors salaries, and the question of binding or non-binding votes by shareholders. They seem to expect the new Labor government to revisit this matter.

The annual reporting season generated another round of complaints at extravagant executive salaries. Many executives and boards are accused of having a 'Marie Antoinette' attitude - wage restraint for the masses, wage excesses for the executives.

We still have boards allowing low or moderate performers to be paid as super stars, and poorly performing executives and directors leaving a company with their pockets stuffed with megabucks, when their performance has left shareholders worse off.

That is not to say that boards have not lifted their game. Corporate law changes and new accounting standards requiring better disclosure have been accompanied by improvements in corporate governance. Remuneration committees and performance rating have improved matters, but the restraint achieved in corporate practice has failed to stop many corporate insiders cashing in at the expense of shareholders.

The recent Annual General meeting season saw several shareholder votes against the remuneration packages proposed by the board.

That is not to say that the Corporations Law's non-binding shareholder vote on remuneration for directors and company officers is useless. It depends on the board affected. The fact is that some people will do whatever they can get away with.

The remuneration packages of executives and directors are separate issues. The packages of the chief executive and key executives is usually decided on or ratified by the Board. That is their responsibility. Practically such decisions cannot await some future shareholder vote. A non-binding vote by shareholders is therefore appropriate.

Directors are another case altogether. Their packages should be ratified by the shareholders. A binding vote by shareholders is appropriate for directors.

Laws are needed which empower the owners of the company, the shareholders. Since boards are accepted as being directly responsible to shareholders, the *Corporations Act* should require board members' remuneration, benefits and retirement packages, including those of executive directors, to be subject to a binding vote of shareholders.

Secondly, make investment and superannuation funds which hold shares on behalf of investors, vote. It is overkill to require them to vote on all company resolutions. But there are three areas they should exercise their fiduciary duty on: votes on constitutional resolutions; the election of directors; and on the remuneration, benefits and retirement packages of directors.

Practical self-regulation would help too. Public companies should consider giving shareholders the option of avoiding conflicts of interest and getting better governance by separating the normal business and internal management functions of the board from vital governance functions of ensuring openness, accountability and good process.

This would mean the main board would continue to concentrate on strategic and operational issues and be elected by the **shareholding** (so those with the greatest financial stake retain power). A separate Corporate Governance Board would be elected directly by **shareholders**, not shareholding, (so those with the greatest numbers gain power).

The CGB would comprise no more than 3 non-executive directors and would have a limited remit to call and chair shareholders meetings; propose changes to the company constitution; resolve conflicts of interest; determine the remuneration of directors and management; achieve independence from main board influence by appointing auditors and other advisers such as valuers; and manage the process of electing directors.

These changes would bring the concepts of corporate democracy and the separation of powers to the corporate structure.