



**AUSTRALIAN BANKERS'
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15 March 2013

Mr David Woods
General Manager
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear David,

Exposure Draft – Corporations Legislation Amendment (Remuneration and Other Measures) Bill 2012

The Australian Bankers' Association (ABA) thanks you for the opportunity to provide a submission on the exposure draft: *Corporations Legislation Amendment (Remuneration and Other Measures) Bill 2012*. ABA members welcome government initiatives to strengthen the disclosure of Australia's executive remuneration framework and to support the interpretation of remuneration reports by shareholders through increased clarity and simplicity of disclosures.

Our submission addresses the areas in the exposure draft specifically related to remuneration report disclosures, including:

- Remuneration governance framework
- Disclosure of number of options lapsed rather than the value of options lapsed
- Benefits on termination
- Past, present and future remuneration outcomes
- Clawback of remuneration
- Relief for unlisted disclosing companies

While members are supportive of the intent of the legislation, there continues to be concern that areas of the exposure draft will add complexity and confusion for shareholders and preparers, in particular with regard to the disclosure of past, present and future remuneration outcomes where there is not clear definition of those terms.

ABA members are of the view that the appropriate approach to any change to remuneration report disclosures should involve a coordinated review of all the relevant legal and other requirements (including Corporations Act, Listing Rules, ASX Corporate Governance Council Principles and Recommendations, Accounting Standards and APRA Prudential Standards) with the aim of producing a cohesive set of requirements. It is recommended that a working group is established, including industry representation, to work with government to review the disclosure of past, present and future

remuneration outcomes, including the provision of clarity on the definition of key terms which will be expressed in the legislation.

The attached table provides ABA responses to the new legislative proposals.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Tony Burke', with a stylized flourish at the end.

Tony Burke

New law	Current law	ABA Response
Remuneration governance framework		
<p>Listed disclosing companies will be required to include in the remuneration report a general description of their remuneration governance framework, to the extent that it is not otherwise disclosed in the annual report. The remuneration governance framework is a description of the company's process for determining the remuneration of KMP.</p>	<p>There is no requirement for disclosing entities to provide a description of their remuneration governance framework.</p> <p>However, certain disclosures may already be required, for example, requirements to disclose details relating to remuneration consultants.</p> <p>The ASX Corporate Governance Principles also contains additional disclosures.</p>	<p>Given the focus on remuneration governance in the financial services sector, ABA members see this change largely as a formalisation of existing approaches to disclosure of remuneration governance frameworks and support the change being principles based.</p>
Options		
<p>For any options that have lapsed in the current financial year, listed disclosing companies will need to disclose the year in which they were granted. The requirement to disclose the value of the lapsed options will be removed from the Corporations Act.</p> <p>The obligation in section 300A(1)(e)(vi) will be removed given that Item 15 of the Corporations Regulation 2M.3.03 adequately requires disclosure of this information.</p>	<p>Section 300A(1)(e)(iv) provides that disclosing entities must disclose, for each KMP, any options that have lapsed in the current financial year, and the value of the options.</p> <p>Section 300A(1)(e)(vi) requires the disclosure of, for each KMP, the percentage of the value of remuneration that consists of options.</p> <p>Item 15 of Corporations Regulation 2M.3.03 requires disclosure of the number and value of any options that have been granted during the reporting period and the number that have vested during that period.</p>	<p>ABA members welcome this change.</p>
Benefits on termination		
<p>Listed disclosing companies will be required to disclose all payments made to KMP upon their retirement or termination from the company.</p> <p>In particular, the remuneration report should disclose amounts paid on termination that reflect statutory and other accumulated payments, amounts paid specifically for termination, and a summary of any post-severance arrangements.</p>	<p>Section 300A(1)(e)(vii) requires disclosure of termination benefits provided for under a contract of employment. It does not cover non-contractual payments on termination, and does not cover an arrangement where the departing director and executive provides consultancy services post termination. It does not require distinct elements of the payment to be separately disclosed.</p>	<p>ABA members see this change as an expansion of existing approaches to disclosure of termination payments and would like to seek definitions of 'non-contractual payments on termination' and 'amounts paid specifically for termination'. However, members have concerns with the exposure draft in relation to the disclosure of post-severance arrangements and would like to seek a definition of 'post-severance arrangements' and clarity of its inclusions.</p>

New law	Current law	ABA Response
Remuneration outcomes		
<p>Listed disclosing companies will be required to disclose, for each KMP:</p> <ul style="list-style-type: none"> • the amount that was granted before the start of the year and paid during the year; • the amount that was granted and paid during the year; and • the amount granted but not yet paid during the year. 	<p>There is currently no requirement governing how remuneration to KMP should be disclosed.</p>	<p>ABA members welcome improved disclosure of remuneration outcomes for shareholders and a consistent approach across ASX listed companies, however, members continue to have significant concerns with the exposure draft in this regard. The majority of past, present and future pay information is currently disclosed on a voluntary basis. Clarity is required as to what will constitute compliance going forward. Below is a summary of key concerns:</p> <ul style="list-style-type: none"> • Overarching concern is that exposure draft will add complexity, confusion and significant length to existing disclosures • The additional disclosures together with the existing statutory disclosures do not align with the Productivity Commission's intentions of 'simplifying executive remuneration.' Additional disclosures will create greater confusion for shareholders in terms of which awards are related to the relevant performance year. • The key objective should be to allow shareholders to accurately and equally compare outcomes across an industry. A lack of explicit definitions, and subsequent variance in interpretation, will result in this object not being achieved. • Clarity required on the relationship between the new reporting requirements and existing statutory reporting requirements – consideration to be given if both sets of reporting requirements are necessary and whether reconciliation to non-IFRS reporting

New law	Current law	ABA Response
		<p>would need to continue to be included</p> <ul style="list-style-type: none"> • Key concern that confusion will arise between the relationship between company and individual performance and the respective reward outcomes related to this performance (i.e. does the definition of 'paid' align to the relevant performance year or is it when the reward is actually paid to the individual?) • Concern re the blurring for shareholders on the vote they are casting in relation to the remuneration report (i.e. where shareholders have previously voted and approved an item such as Executive Director equity, we do not want a subsequent voting decision to be based on this same information). • There is no clear guidance or definitions on key terms, including 'paid', 'value' for the purpose of equity rewards, 'granted', 'total amount', the valuation of non-monetary benefits, the reporting of annual leave (paid versus accrual), the approach for superannuation benefits
Clawback of remuneration		
<p><i>Listed disclosing companies who become aware during the financial year of material mis-statements in any of their three previous financial statements must disclose in the remuneration report whether any overpaid remuneration paid to KMP as a result of the misstatement has been or will be clawed-back. If no remuneration has been clawed-back, an explanation must be provided.</i></p>	<p><i>There is no provision for disclosing entities to disclose their clawback policy in the event of material mis-statements in financial reports</i></p>	<ul style="list-style-type: none"> • Clawback of remuneration is a requirement of APRA Prudential Standard CPS 510, and as such the new law is extending existing requirements with regard to disclosure. • Clarity is requested on the level of flexibility available to the Board in determining what remuneration, if any, would be clawed back in an instance of material mis-statement. • To encourage effective clawback arrangements, it is recommended that

<i>New law</i>	<i>Current law</i>	<i>ABA Response</i>
		government reviews its current approach to taxing unvested equity at termination to support deferral periods being continued beyond termination of employment.
<i>Relieving unlisted companies from preparing a remuneration report</i>		
<i>Unlisted disclosing companies will be relieved from the obligation to prepare a remuneration report.</i>	<i>Both listed and unlisted disclosing entities that are companies need to prepare a remuneration report.</i>	ABA members welcome this change and would like to seek clarity as to whether this new law is applicable for annual reports for a financial year beginning on or after 1 July 2013.