20 January 2011

Mr David Bradbury MP
Parliamentary Secretary to the Treasurer
Parliament House
CANBERRA ACT 2600

Dear Mr Bradbury

Corporations Amendment Bill 2011

The Group of 100 (G100) is an organization of chief financial officers from Australia's largest business enterprises with the purpose of advancing Australia's financial competitiveness.

The G100 is pleased to provide comment on the Corporations Amendment Bill 2011 as follows:

THE 'TWO-STRIKES' TEST

The G100 does not support the 'two-strikes' test. Given the existence of the present test and anecdotal evidence relating to its operation the G100 considers that amendments to strengthen the test are unnecessary. Under the present arrangements it would be foolhardy of a board of directors not to take account of the results of a non-binding vote on executive remuneration. Where a company's remuneration report receives a significant 'no vote' good practice would require that, in the next remuneration report, the directors explain whether or not shareholder concerns have been taken into account and the reasons for its actions.

If the proposal is adopted the G100 believes that the threshold should be 50% as is the case for other resolutions. There is no sound policy reason for setting the voting threshold for the remuneration report at an unprecedented 25% threshold. Setting it at this level places undue emphasis on that remuneration report in terms of the Board's overall activities and means that a minority can have the Board removed over this one issue (causing significant and unnecessary upheaval to an otherwise well run company) and implies that the remuneration report is the most important issue when assessing whether or not a Board has acted in the best interests of shareholders. The Board's many other decisions which are not assessed at this 25% voting threshold are likely to have a far more material impact on shareholder value.

USE OF REMUNERATION CONSULTANTS

The G100 does not support the proposed amendments relating to remuneration consultants. The directors have the primary responsibility for determining company policies including the remuneration levels of executives. In doing so they may, as they do with a diverse range of decisions, seek the advice of consultants in reaching their decisions. The G100 does not believe that making disclosures about such consultation on remuneration should be separately identified for disclosure.

Whether or not a company discloses the use of remuneration consultants should be left to the discretion of the directors. It is not unusual for a consultant to be engaged to provide advice on one or more specific items such as the valuation of share-based remuneration, setting appropriate performance hurdles, determining the components of a remuneration package with reference to the practices of a peer group of employers. In undertaking such activity the consultant would normally be actively engaged with relevant employees as well as the remuneration committee. It is important that the proposed legislation clarifies which activities and the extent of those activities qualify a person/entity to be regarded as a remuneration consultant and therefore subject to disclosure.

The proposed legislation does not take into account that performance hurdles and the composition of remuneration packages almost invariably involve extensive negotiation with KMP which is also likely to involve remuneration consultants at different stages of the process. The impact on Remuneration Committee workload and the complexity of being required to disclose the detail and cost of such advice is significant. It would make the operational management of executive remuneration arrangements very difficult if management were not able to obtain advice directly or even to talk with advisers.

We also believe that if the nature of the advice needs to be disclosed, then it will be difficult for the Committee/Board not to follow that advice. This may lead to Boards trying to develop remuneration arrangements without seeking external advice, and this is completely against the intent of the legislation and would potentially lead to complex, ineffective and/or uncompetitive remuneration arrangements for KMPs.

As such, prohibiting a consultant from providing advice to/liaising with KMPs (only dealing with non-executive directors) would lead to severe constraints on the development of policy and, in practice, impose obstacles to achieving an efficient and effective outcome for all participants.

If the proposals are proceeded with the G100 considers that it is appropriate for the engagement of remuneration consultants, if that occurs, be undertaken by non-executive directors on the remuneration committee in conjunction with management. We also consider that the report should be directed to those responsible for the engagement.

In addition, the G100 considers that it is not necessary to develop a statutory definition of 'executive director'. Rather, it is preferable to rely on the ordinary meaning in common usage and common sense. To do otherwise is to introduce further regulation and red-tape which is unnecessary.

KMP VOTING ON REMUNERATION MATTERS

The G100 agrees that key management personnel should not vote on their own account or on account of undirected proxies on remuneration matters in which they have an interest. However, an unintended consequence of the draft is that the Chairman will not be able to vote undirected proxies on the remuneration report and all other remuneration related resolutions.

For example, for one of our members this would mean somewhere between 20% and 35% of undirected proxies would not be able to be voted on the remuneration report and other remuneration related resolutions including re-appointment of directors following a spill from the "two-strikes" rule. Additionally, it may not be clear to shareholders who do not direct their proxies that they will not get a vote on these issues.

HEDGING OF INCENTIVE REMUNERATION

The G100 supports the prohibition of hedging unvested equity incentive remuneration because such hedging is inconsistent with the underlying reasons for linking remuneration to performance. However, we consider that where the proposal is directed at executives of listed entities a similar outcome (without imposing the burdens and costs associated with criminal prosecution) could be achieved through the listing rules.

We also note that the broad wording of S206(i) could mean that income protection insurance would not be able to be provided to KMP. The G100 suggests that the draft legislation be changed to clarify that it refers to unvested equity-like instruments.

NO VACANCY RULE

The G100 opposes the proposed amendments because the present requirements operate satisfactorily. This proposal, if adopted, also undermines the established corporate law principle of the Board being a single unified decision-making body as it would require individual board members to specify whether they are for/against the no vacancy declaration.

CHERRY PICKING

The G100 supports the proposed amendment because the shareholders' views as indicated in their proxies should be accurately reflected in the outcome of a vote.

PERSONS REQUIRED TO BE NAMED

The G100 supports the proposed amendment to only require disclosure for the KMP of the consolidated entity. Focusing on the consolidated entity is also consistent with recent changes relating to parent entity financial statements.

Yours sincerely
Group of 100 Inc

Peter Lewis
President