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PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

BILLS

**Corporations Amendment (Improving
Accountability on Director and
Executive Remuneration) Bill 2011**

Second Reading

SPEECH

Wednesday, 11 May 2011

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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Questioner
Speaker Ms RISHWORTH

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(Kingston) (NaN.NaN pm)

Ms RISHWORTH (Kingston) (10:50): I rise to support the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011. The global financial crisis around the world put a spotlight on and exposed some of the excessive remuneration packages of company directors and executives.

In Australia in the last 30 years the relativities between the average wage and executive pay have grown exponentially. In fact, CEO salaries of Australia's largest 300 listed companies rose by 28 per cent in 2006-07. This is compared to the average full-time income growth of 3.4 per cent over the same period. So there is a significant difference between the rise in CEO salaries and income growth. The community in Australia has registered its concern about this increase in disparity between the average wage income earner and the rise in CEO salaries.

In the financial year just passed, companies on the S&P ASX 100 that filed remuneration reports revealed an average executive salary rise of 12 per cent with the highest being 93 per cent. These pay rises have all occurred despite difficult times and under difficult conditions, with CEOs, at the same time, calling for wage constraint for ordinary workers. It is important that the community is listened to when it comes to executive remuneration and that steps are taken to ensure that these salaries do get recognised. We need to ensure that regulation is made to make sure that they are fair and right and that shareholders get their voices listened to. I am also certain that members of the House will recall the exposure of unreasonable termination benefits being afforded to departing directors of companies not long after the global financial crisis. The government addressed this issue in its 2009 announcement of reforms aimed at curbing these excessive golden handshake payments. The bill before the House seeks to build on those reforms by further strengthening Australia's remuneration framework. It is disappointing that while the opposition state that they agree with the government their amendments effectively aim to keep the status quo. I do hope that the opposition comes to their senses, listen to community expectations and support the bill before the House.

The bill will amend current limitations in order to provide shareholders with more control over the pay of directors. Shareholders are the legal owners of a company in which they invest. In doing so, they take ownership of the company's risk and also share in the company's profit and loss. Shareholders therefore deserve more control over how the pay of company executives is decided. This bill seeks to empower shareholders to influence their company's remuneration decisions by, firstly, introducing a two-strikes test.

The current Corporations Act requires listed companies to put their remuneration report to a non-binding shareholder vote at an annual general meeting. However, shareholders have no means of recourse should they implement a strong 'no' vote which is then ignored by the company board. Under the bill before the House, the first strike will be initiated in the instance where a company's remuneration report receives a 'no' vote of 25 per cent or more. This results in the company being required to provide direct evidence of the shareholders' concerns having been addressed or an outline as to why they have not. If shareholders remain dissatisfied and another vote results in a 'no' vote of 25 per cent or more then the second strike is triggered. The second strike gives shareholders the opportunity to vote on a resolution to spill the board and subject directors to re-election. If the spill resolution is passed by more than 50 per cent then a spill meeting will provide shareholders with the opportunity to vote on the re-election of each director. The two-strikes test is an important measure that finally holds unresponsive directors accountable for the decisions they make on executive remuneration.

This bill also seeks to ensure that consultation between remuneration consultants and company executives remains transparent. A company's remuneration consultant will be required to declare that their recommendations are free from undue influence. As a means of ensuring further transparency, these recommendations will be provided to non-executive directors or the remuneration committee, rather than to the company's executive directors. The company will also be required to disclose details regarding the consultant used and the amount they were paid. These measures are focused on ensuring accountability and transparency within the remuneration framework. Shareholders have a right to be in a position to assess

any potential conflict of interest, and this bill takes important steps towards ensuring that this remains the case.

As a means of further reducing conflicts of interest, this bill also prohibits company directors and executives from voting on the remuneration report or the spill resolution. Directors and executives no doubt have an interest in approving their own remuneration agreements. Doing so affords them a considerable amount of power concerning their company's remuneration framework. This clearly represents a conflict of interest, and the measures proposed in this bill seek to remove that conflict.

In line with the government's reforms to termination benefits, this bill also seeks to ensure that executive remuneration remains linked to performance. Incentive remuneration is designed to align directors' and executives' interests with those of shareholders; however, the hedging of incentive payments can severely skew this relationship. Directors and executives are currently able to hedge their exposure to incentive remuneration by entering into third-party contracts and effectively mitigating their personal financial interest in their company's success. The use of hedging is completely inconsistent with the values of Australia's remuneration framework. However, perhaps more concerning is the real, as well as the perceived, conflict of interest that arises when a director or executive enters into hedging arrangements. Such an arrangement may stand to see the director or executive benefit from a fall in their company's share price. Hedging by directors or executives distorts their responsibilities to their shareholders. The measures in this bill will ensure that the interests of shareholders and of the company's directors and executives remain synchronised.

The bill also introduces a measure that prevents boards from announcing 'no vacancy' without the approval of its shareholders. This is an important step towards transferring company decision-making power back to shareholders. The no vacancy rule currently allows boards to govern the composition of the board and makes it difficult, if not impossible, for non-board-endorsed candidates to be elected. This promotes unaccountability from directors and executives and leaves shareholders without a voice, given that any candidate seeking to promote change within a company can essentially be prevented from reaching a board position that would allow them to instigate such change.

The bill also introduces an amendment which will ensure the enfranchisement of every shareholder who chooses to vote at an annual general meeting. Currently, all directors except for the chair have the

ability to disregard proxy votes that do not align with their personal views regarding a resolution. Indeed, annual general meetings can be held at times or locations that are not convenient for all shareholders. As such, many shareholders who are unable to attend in person are able to indicate their position by a proxy vote. These votes should be given just as much weighting as a vote from a shareholder present at the meeting. However, instead, these votes can currently be disregarded at a director's discretion. This cherry picking of votes from shareholders who have made specific declarations concerning their vote inevitably results in outcomes that by no means clearly represent the sentiment of shareholders. This bill will ensure that the outcome of a resolution vote reflects shareholder views rather than the cherry picked views of directors. In conclusion, under request from the government, the Productivity Commission undertook a broad review of Australia's remuneration framework. The nine-month review process, which included a total of 170 submissions and a series of public hearings, revealed that Australia's corporate governance and remuneration framework are ranked highly on an international scale. However, it also recommended a range of reforms to further strengthen Australia's remuneration framework.

The bill before the House today effectively responds to these recommendations. It will provide shareholders with a new level of power and ultimately improve the transparency and accountability of company directors and executives. It addresses the conflicts of interest that arise throughout the remuneration process and ensures that the sentiments of shareholders are appropriately represented by directors and executives.

While Australia's remuneration framework is certainly strong, these innovative reforms will eliminate complacency and ensure that it remains effective well into the future. It will better reflect community standards when it comes to remuneration and pay of company executives, and I therefore commend the bill to the House.