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Submission to the Productivity Commission Inquiry into Executive Remuneration

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Abstract

This submission makes ten recommendations to reform the Corporations Act 2001 and three recommendations to reform tax laws in order to prevent future corporate excesses of which high executive remuneration is just one conspicuous example. It also explores the need to bring the Corporations Act 2001 into line with the increasing expectations and concerns of the Australian public, particularly around the economic, social and ecological problems the world now faces.

Keywords: executive remuneration, corporate law reform, corporate governance, tax reform, corporate social responsibility, company law reform, corporations act 2001, termination payment, golden parachute, ceo bonuses

Introduction

This submission strongly supports the Productivity Commission Inquiry into Executive Remuneration in Australia. As a non-current Graduate of the Australian Institute of Company Directors, a former senior executive in several companies, a board member of two non-profit organisations, a former member of the Procurement Review Board of the Northern Territory, author of a book on political governance and a company director since 2000, I welcome the opportunity to comment on the need to review the effectiveness of the Corporations Act 2001.

While the focus of the Commission's Inquiry is executive remuneration, this submission argues that excessive executive remuneration packages are only symptoms of a much wider problem to do with executive decision-making and inadequacies of the Corporations Act. Therefore, while addressing the symptomatic issue of executive remuneration, I also make suggestions for treating the root causes of excessive risk-taking by executives, lack of commitment to the fundamentals of business and other activities that have helped fuel the global economic crisis.

I also put to the Commission that the Corporations Act 2001 in its current form, has not kept pace with the increasing expectations and concerns of the Australian public, particularly around the economic, social and ecological problems the world now faces. At all levels of society, there is a fundamental questioning about who and what businesses are for, as well as how they can be made to better serve the common good.

TOR 1: Trends in Remuneration

Business leaders continually push the idea that remuneration levels for executives need to be high to both attract and retain the best talent in an international market. This would be true if executives were screened on the basis of merit. In reality, the board and executive market (particularly for listed companies) is largely an "old boys" network driven by reciprocity and favouritism. Nine times out of ten, the major requirement for being on the board of a public company is having already served on the board of other public companies.

Job challenge, the opportunity to make major decisions, competition, teamwork, prestige, power and being part of "the executive club" are the driving factors behind board and executive recruitment. Remuneration is only the icing on the cake, not the driving factor many people claim. In fact, the kind of people who value their personal gain over and above the welfare of the organisation are not the kind of people you want running a business.

Twenty to thirty years ago performance meant how profitable a company was. Now, performance is taken to mean improvement in share value. But unlike profit, share value is an abstraction of the real worth of a company. It is determined by a complex mix of variables, not least of which is how much confidence the marketplace has in a particular CEO and Chairperson, which has nothing to do with the real performance of the organisation.

Also, most schemes developed to set executive remuneration suffer from a fundamental flaw in logic. Most assume that directors, CEOs and other officers are somehow "special" and need to be rewarded in a way that is clearly different and proportionately more generous than other company employees.

But let me be clear about this issue. Officers of a corporation are employees: they are hired, work under instruction, get paid a wage and can be sacked just like other employees. It is a gross mistake from a human resources and productivity perspective to treat officers of a company (despite their added responsibility) any differently to the rest of the workforce. Doing so creates an elite within the company that begins to see the rewards and perks of their position as something of a birthright, influencing them to maximise those perks for themselves at the expense of the good of the organisation.

At the same time it sows discontent and frustration amongst the general workforce who see the benefits of their hard work being creamed off the top by "the management". This practice of elitism within companies manifests itself most obviously in industrial relations issues where a board and executive give themselves generous pay increases while begrudging or even thwarting attempts by ordinary employees to gain basic Consumer Price Index (CPI) pay increases.

The net result of remunerating executives differently and unjustifiably more generously, is to create corporate cultures that are inherently schizophrenic, where management goes one way, average employees the other, costs skyrocket, productivity drops and company performance suffers.

Recommendation 1: Executive remuneration and entitlements should be tied to that of the lowest paid employee within the company workforce. Executives should not get entitlements that average workers do not also get and executive wages should be no more than 12 times that of the lowest paid employee. This arrangement is simple to administer, improves transparency, reduces the chance of manipulation for personal gain, while encouraging executives to have a direct concern for the circumstances of their employees. Such a requirement could easily be inserted into Sect 211 - Remuneration and Reimbursement for Officer or Employee of the Corporations Act.

Recommendation 2: Performance bonuses, if offered at all, should be approved by shareholders and not linked in any way to the share price of the company, or to any activity which does not improve the profitability of the organisation, increase energy efficiency, improve work conditions, increase corporate social responsibility activities or reduce the environmental impact of the company. Any bonus package should be held in trust for a period of no less than 18 months after it is calculated. The bonus should only be paid if events in the company and the market confirm the executive's good performance. Any poor performance including significant profit losses which come to light during the 18 month period would void the bonus and the amount held in trust would be dispersed to all current employees in equal amounts. Such a requirement could easily be inserted as a new Section in Division 3 – Procedure for Obtaining Member Approval of the Corporations Act.

TOR 2: Effectiveness of Regulatory Arrangements

The regulations concerning the setting of director and executive remuneration are open to misuse. Companies and their boards have significantly broadened the common understanding of the word "reasonable" as it applies to remuneration. They have used this broadened definition of Sect 202A to sidestep shareholder approval for their own remuneration and under Sect 210J directors have set whatever executive remuneration packages they like, no matter how excessive. They have used the vagueness around termination payments to create golden parachutes for outgoing executives regardless of whether the executive has performed as expected or not, and shareholders have no real mechanism for controlling this unacceptable activity. These issues clearly stem from a weakness in the legislation which should be fixed immediately.

Recommendation 3: Directors' fees should be a straight forward calculation applicable across all industries and all sectors. It should be based on the same hourly rate as the CEO's base salary, multiplied by the number of hours per year spent by the director on board matters. The fee would vary from director to director on a board depending on the amount of work their position on the board demanded. Such a requirement could easily be inserted into Sect 202A – Remuneration of Directors of the Corporations Act, and once modified, this section should no longer be a replaceable rule, so that criminal and civil liability and any injunctions will apply if the rule is not followed.

Recommendation 4: While the Annual Directors' Report of companies includes a remuneration report, this information refers to historical activity over the preceding 12 months. The remuneration report should also give a forward projection of executive remuneration for the coming 12 months and require approval from the shareholders via a binding vote. Any discrepancy between a previous years projection and the actual amount paid should be carefully explained in the annual report. Such a move would allow shareholders to make more informed decisions relating to their shareholding and make executives more accountable to the company owners. Such a requirement could easily be inserted into Sect 300A – Annual Directors' Report-Specific Information to be Provided by Listed Companies of the Corporations Act

Recommendation 5: In line with Recommendation 1, termination payments should be paid to executives in the same way they are calculated for average employees (generally 10 weeks pay plus any entitlements). They should not get "golden parachutes" made up of bonuses or stock options. Again this reduces administrative effort, improves transparency and relieves any management or decision-making burden on shareholders. Such a requirement could easily be inserted into Sect 200A-J – Termination Payments of the Corporations Act.

TOR 3: The Role of Institutional and Retail Shareholders

Prior to the share market being opened up to retail (mum and dad) investors, shares in companies were usually held by large institutional investors who invested over decades for steady and moderate capital growth (called patient money) and regular dividends.

When retail investors were let loose on the market, patient money and moderate returns went out the window. The retail market demanded double digit returns on their shares every quarter no matter what. From this point on, the share market morphed from a useful, reliable and generally stable trade mechanism into a specialised and legalised form of gambling. Lazy investors used share prices as a quick-and-dirty measure of a company's business performance.

Seeing what was possible when executives were put under pressure to produce share value growth, institutional investors jumped on the band wagon with retail investors. Both retail and institutional investors have succeeded in manipulating executive effort away from long-term business management, towards a short-term focus on driving up share value.

Putting caps on executive remuneration or getting shareholders more involved in remuneration decisions, will not get rid of the underlying pressure on executives to achieve share performance. Even now, with many companies experiencing plummeting share prices, executives are making risky short-term decisions in a desperate attempt to retain share value, instead of focussing on effective long-term survival strategies for their businesses.

There is a critical need to decouple the link between executive performance, remuneration and company share price. We need to create a responsible market that does not lead to speculation, where short sighted, cut-and-run "investors" are turned back into responsible company "owners" who have the best interests of the organisation at heart.

Recommendation 6: Fix the price at which a share can be redeemed at the same price it was originally issued for (adjusting for aggregate annual increases or decreases in CPI) regardless of how long the share is held. This would serve several beneficial ends:

- It would discourage excessive executive remuneration because "performance" would no longer be determined by the simplistic and artificial pricing mechanism of share value.
- It would re-establish shareholders as long-term owners instead of short-term investors.
- It would eliminate the ability of fickle markets to drive otherwise profitable and solvent companies into bankruptcy through a plunge in share price.
- It would eliminate, or significantly reduce, speculative share trading (particularly by retail shareholders) and prevent the growth in derivatives markets which add no tangible value to the community or the national interest.

Recommendation 7: Review the definitions of various terms in the Corporations Act such as changing the word "investment" to "ownership." Surprisingly, the Corporations Act contains no definition for the terms "employee", "share" and "shareholder". This should be immediately corrected. Please refer to **Attachment 1** for my suggestions.

TOR 4: Aligning Interests

A large proportion of executives believe they have some deity-given right to carry on a business and run that business anyway they like. They view legislative and regulatory requirements as harsh impositions on their commercial activity, and impediments to growth and profit. Few stop to think that they are only able to carry on a business because the public allows (or licenses) them to via the Australian Constitution.

The Australian Constitution gives Federal Parliament the role of regulating all matters relating to trade and commerce under Section 51. Parliament has exercised this power in the form of the Corporations Act 2001. Essentially, businesses operate at the pleasure of the Australian people, not the other way round. Yet once companies are set up, current legislation does not allow the Australian people to exercise their sovereign right to rescind registration if a company or its officers misbehave.

Also, via the Australian Constitution, the Corporations Act is supposed to create a commercial environment which serves the community interest. The Constitution is about common good, fair distribution of wealth and so forth, not profit at any cost. Yet this is precisely the circumstance the Corporations Act creates – the maximisation of profit. Clearly, there has arisen a misalignment between corporate activity and community interests.

By instilling community imperatives and aspirations into both the Corporations Act and the primary documents that govern a company's activities, this misalignment will disappear so that the interests of boards and executives will reflect those of the wider community they operate within.

Recommendation 8: Each company should create a constitution that is binding on the organisation. A company's activities and interests should be limited specifically to those listed in its constitution (perhaps using ANZSIC, Australian Harmonized Export Commodity Classification (AHECC), Kompass or Dunn & Bradstreet classification systems to pin down the exact industry activity the company is set up to perform) and the constitution should include measurable social, economic and environmental responsibility targets to which all persons associated with the organisation (including shareholders) should work and be held accountable. To achieve this level of governance, the constitution of a company should be made freely and publicly available through as many channels as reasonable to enable the wider public to gauge the organisation's progress. The company should also not be able to deviate from its constitution without a shareholder vote and subsequent rewriting of the constitution. Please refer to **Attachment 2** where I have suggested modifications to existing sections of the Corporations Act in **bold**.

Recommendation 9: Corporations have only those rights and freedoms granted to them by the people through the Australian Constitution. Therefore companies should not act contrary to the good or the will of the people. When a company clearly and repeatedly breaks the law, damages the environment or causes detriment to society, the public should be able to take direct action to appoint an administrator to determine if the company should be wound up. In serious cases of corporate wrongdoing, the administrator would be automatically obliged to assume that the shareholders, officers and employees have failed in their duty to the Australian people and revoke the company's registration, winding it up with any surplus money given to charitable organisations named in their constitution. Please refer to **Attachment 3** where I have suggested a new section be added to the Corporations Act, SECT 5J – Public Initiated Deregistration and Winding Up to deal with this scenario.

Until now, the Corporation Act has been devised as legislation enabling the establishment and legal regulation of companies. Prudential and compliance requirements have been left to a whole raft of federal and state legislation.

To help illustrate the situation, imagine we have a genetic laboratory (the Corporations Act) that creates highly aggressive strains of crops (profit focused companies). To stop these voracious crops from taking over the environment we also have to create complex enclosures and targeted herbicides (regulatory legislation).

Yet only a completely mad or incompetent scientist would go about genetic engineering in this fashion. From every perspective, it is much better to create robust but benign entities which will thrive in the wild, not take over the environment and need few, if any, outside controls.

Recommendation 10: While it is not practical to embed large chunks of controlling legislation (Trade Practice for instance) in the Corporations Act, there is scope to include the essential ideals of some of these control mechanisms. Ideally this should be done in Sections 124 and 125 dealing with company powers and how they are exercised. Next would be a modification of Sections 180-184 dealing with general duties associated with care, diligence, good faith, use of position and use of information. Please refer to **Attachment 2** where I have suggested modifications to existing sections in **bold**.

TOR 5: International Developments

While ignorance of the law may be no excuse, mangling the law in the first place so it becomes incomprehensible to the average business person is equally bad. A strong argument can be made that the complexity and fragmented style of the Corporations Act 2001 has led many executives to either ignore it, focus only on the key points and miss all the detail, or misinterpret what it says.

This paper encourages the commission to investigate steps by various countries, especially the UK, who are undertaking significant company law reform processes. As a priority, these reform agendas involve making corporate legislation easier to understand for company shareholders, directors and executives as well as their advisors by rewriting them in Plain English. They also include clear and comprehensive guidance in the form of supplements, along with consolidated sections that allow small companies to identify the basic day-to-day requirements that apply to them.

TOR 6: Liaise with Australia's Future Tax System Review and APRA

While no one would argue against a person earning a decent wage for the value they contribute and indeed generate within an organisation, everyone is concerned about the amount of unearned wealth being accumulated by executives. Bonuses, share options and all the other perks are windfall gains not directly associated with the effort they personally contribute to the organisation. Company executives have found an easy road to becoming the "new rich" enjoying the substantial tax breaks this class of Australians get.

Therefore I also urge the Commission to consider tax changes that discourage excessive executive and corporate behaviour.

Recommendation 11: Windfall remuneration gains such as bonuses and perks should be taxed heavily. A 50% tax rate has proven to be no disincentive to accumulating this type of unearned wealth. In fact, executives simply negotiate ever higher bonuses, or dishonestly disguise their bonuses as reimbursements, to compensate for the 50% they will loose through tax. Therefore a 75% tax penalty on all bonuses and perks would be much more appropriate in the circumstances for any individual earning over $100,000 in base wages.

Recommendation 12: All legal costs associated with payment of fines and defence against charges brought by third parties should not be tax deductible. Many company directors and executives treat legal action against the organisation as a sort of gentleman's game. Using the considerable financial resources of the organisation, they delay and frustrate the legal process, often over a period of years and at considerable cost to the company in terms of person-hours and disruption of the executives normal business focus. The James Hardie asbestos victims' compensation battle is a recent example.

Recommendation 13: All marketing and advertising activities should not be tax deductible. Given that company directors and executives use advertising to drive consumerism, indebtedness and credit purchasing by customers, it seems logical to discourage its proliferation by using tax measures to alter the behaviour of company decision-makers.

While not directly linked to executive remuneration, but still relevant to community expectations of corporations, is the issue of companies externalising their costs. Under current tax laws, companies can externalise many of their costs. If a company mines a region, they may pay royalties to the state which controls the region, but that amount is pitifully small compared to the cost of the resource in terms of its current and future economic value. If a company cuts down a forest it pays nothing for the privilege, whereas it would pay heavily for a pre-manufactured feedstock like wood pulp. Pollution of all kinds is another example where companies pass the cost of cleaning up or absorbing their waste onto the public.

During these recessionary times, corporations are also externalising their losses by withholding or significantly delaying payments to suppliers and contractors causing financial hardship to trickle down through the economy. The tax laws should be changed to create a strong disincentive for boards and executives to engage in either or both of these damaging behaviours.

Conclusion

This submission is very supportive of the Productivity Commission Inquiry into Executive Remuneration. It also encourages the Commission to delve into the cause and effect links between an inadequate Corporations Act, reckless company officer behaviour, high executive remunerations and the stock market crisis.

The submission recommends to the Commission a list of actions necessary to bring back stability into the market and create a more socially responsible corporate landscape. The recommendations are:

- Set directors' fees at a fixed amount linked the CEO's base salary and approved by shareholders.
- Link executive remuneration and entitlements to that of the lowest paid employee within the company workforce.
- Place any performance bonuses (approved by shareholders) into a trust account for a period of 18 months until the results of an executive's activities can be determined.
- Embed the essential ideals of controlling legislation (like Trade Practices) into the Corporations Act 2001.
- Make company remuneration reports show forward projections of executive remuneration for the coming 12 months and require approval from the shareholders via a binding vote.
- Calculate executive termination payments in the same way they are calculated for average employees, generally 10 weeks pay plus any entitlements.
- Fix the price at which a company share can be redeemed at the same price it was originally issued for (adjusting for aggregate annual increases or decreases in CPI) regardless of how long the share is held.
- Review the definitions of various terms in the Corporations Act like "investment" and "officer" and add definitions for the terms "employee", "share" and "shareholder".
- Make companies create binding constitutions that limit company activity to only those listed in the constitution and include measurable social, economic and environmental responsibility targets.
- Allow the public to appoint an administrator to deregister and wind up a company in the case of serious corporate wrongdoing.
- Set a 75% tax on windfall remuneration gains such as bonuses and perks for any individual earning over $100,000 in base wages.
- Prevent executives from externalising the costs of their companies.
- Make all legal costs associated with payment of company fines and defence against charges brought by third parties against a company, non tax deductible.
- Make all marketing and advertising activities non tax deductible.

Some would claim these measures are better left to associations like the AICD and ASA to sort out amongst their members. However anyone with even a passing interest in law knows that if there is a loophole, people will exploit it. The issues raised in this submission are too important for the future of our corporate world to be left to voluntary codes of conduct and procedural guidelines.

References

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Attachment 1

CORPORATIONS ACT 2001 - SECT 9

DICTIONARY

"employee" means a person who performs work for a corporation and receives remuneration and entitlements under a verbal or written understanding with the corporation.

"officer" of a corporation means an employee who is:

(a) a director, secretary or executive of the corporation; or

(b) a person:

(i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or

(ii) who has the capacity to affect significantly the corporation's financial, legal, or operational standing; or

(iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation);

"share" means any of the equal portions into which the capital stock of a corporation is divided and ownership of which is evidenced by a share certificate. It is an asset belonging to, or due to, or contributed by an individual person or group.

"shareholder" means an owner of a corporation based on their holdings of shares. They own an interest in the corporation rather than specific corporate property. Along with employees and the Australian public, these are the people to whom the company is ultimately accountable for its activities and performance.

NOTE: the word ***"ownership"*** should be substituted in all places throughout the Corporations Act 2001 where the word ***"investment"*** currently appears.

Attachment 2

CORPORATIONS ACT 2001 - SECT 124

LEGAL CAPACITY AND POWERS OF A COMPANY

(1) A company has the legal capacity and powers of an individual **except the right of free speech**, both in and outside this jurisdiction. A company also has all the powers of a body corporate, including the power to:

(a) issue and cancel shares in the company;

(b) issue debentures (despite any rule of law or equity to the contrary, this power includes a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long);

(c) grant options over unissued shares in the company;

(d) distribute any of the company's property among the members, in kind or otherwise;

(e) give security by charging uncalled capital;

(f) grant a floating charge over the company's property;

(g) arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction;

(h) do anything that it is authorised to do by any other law (including a law of a foreign country).

(i) do only what is detailed within its constitution.

CORPORATIONS ACT 2001 - SECT 125

CONSTITUTION **WILL** LIMIT POWERS AND SET OUT OBJECTS

(1) **All companies must create a constitution. Constitutions** may contain an express restriction on, or a prohibition of, the company's exercise of any of its powers. The exercise of a power by the company is **invalid if it is** contrary to an express restriction or prohibition in the company's constitution. **All company constitutions shall contain the following mandatory restrictions:**

(a) no activity shall cause harm to the built or natural environment that is unacceptable to the general public;

(b) no activity shall endanger public health or compromise public health standards;

(c) the company shall not create, sell or promote any unsafe products or services;

(d) the company shall not do anything to restrict competition or engage in unfair or deceptive trade practices;

(e) no activity or action shall endanger the health, safety and livelihood of employees;

(f) the company shall not sell goods or services below cost;

(g) no company activity or action shall reduce the rightful compensation (as determined by a court or arbitration) due to a claimant, nor shall the company fail to act speedily to provide such compensation.

(2) **A constitution will also** set out the company's objects **which must be specific, finite, measurable and directly related to one another.** An act of the company is **invalid if it is** contrary to or beyond any objects in the company's constitution. **A company constitution shall also contain the details of one or more non-profit organisations that will be the beneficiaries of any surplus assets or profits remaining after a public initiated winding up.**

(3) A current version of a company's constitution shall be made freely and speedily available to any member of the public, media or government who requests it.

CORPORATIONS ACT 2001 - SECT 181

GOOD FAITH--CIVIL OBLIGATIONS

Good faith – **shareholders,** directors and other officers

(1) A **shareholder**, director or other officer of a corporation must exercise their powers and discharge their duties:

(a) in good faith in the best interests of the corporation;

(b) for a proper purpose;

(c) within an ethical, legal and social responsibility framework;

(d) with an active concern for the present and the future.

Note 1: This subsection is a civil penalty provision (see section 1317E).

Note 2: Section 187 deals with the situation of directors of wholly owned subsidiaries.

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines involved .

Note 2: This subsection is a civil penalty provision (see section 1317E).

CORPORATIONS ACT 2001 - SECT 182

USE OF POSITION--CIVIL OBLIGATIONS

Use of position-- **shareholders,** directors, other officers and employees

(1) A **shareholder,** director, secretary, other officer or employee of a corporation must **not use** their position to:

(a) gain an advantage for themselves or someone else;

(b) cause detriment to the corporation;

(c) cause detriment to employees (excluding reprimand or termination);

(d) cause detriment to suppliers, customers, consultants, or contractors;

(e) cause detriment to the community, the environment or government.

Note: This subsection is a civil penalty provision (see section 1317E).

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines involved .

Note 2: This subsection is a civil penalty provision (see section 1317E).

CORPORATIONS ACT 2001 - SECT 183

USE OF INFORMATION--CIVIL OBLIGATIONS

Use of information—**shareholders,** directors, other officers and employees

(1) A person who obtains information because they are, or have been, a **shareholder,** director or other officer or employee of a corporation must **not use** the information to:

(a) gain an advantage for themselves or someone else; or

(b) cause detriment to the corporation.

Note 1: This duty continues after the person stops being a **shareholder**, officer or employee of the corporation.

Note 2: This subsection is a civil penalty provision (see section 1317E).

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines involved .

Note 2: This subsection is a civil penalty provision (see section 1317E).

(3) A person who is or has been a shareholder, director, other officer or employee of a corporation must be truthful in gathering, interpreting and presenting information for and about the company, and they must also be open about the processes involved.

CORPORATIONS ACT 2001 - SECT 184

GOOD FAITH, USE OF POSITION AND USE OF INFORMATION--CRIMINAL OFFENCES

Good faith—**shareholders**, directors and other officers

(1) A **shareholder,** director or other officer of a corporation commits an offence if they:

(a) are reckless; or

(b) are intentionally dishonest;

and fail to exercise their powers and discharge their duties:

(c) in good faith in the best interests of the corporation;

(d) for a proper purpose;

(e) within an ethical, legal and social responsibility framework;

(f) with an active concern for the present and the future.

Note: Section 187 deals with the situation of directors of wholly owned subsidiaries.

Use of position—**shareholders,** directors, other officers and employees

(2) A **shareholder**, director, other officer or employee of a corporation commits an offence if they use their position dishonestly:

(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or **causing detriment to employees (excluding reprimand or termination); or causing detriment to suppliers, customers, consultants, or contractors; or causing detriment to the community, the environment or government**; or

(b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation; or **causing detriment to employees (excluding reprimand or termination); or causing detriment to suppliers, customers, consultants, or contractors; or causing detriment to the community, the environment or government.**

Use of information—**shareholders,** directors, other officers and employees

(3) A person who obtains information because they are, or have been, a **shareholder,** director or other officer or employee of a corporation commits an offence if they use the information dishonestly:

(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or

(b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

(4) A person who is or has been a shareholder, director, other officer or employee of a corporation commits an offence if they are not truthful in gathering, interpreting and presenting information for and about the company, and are not open about the processes involved.

Attachment 3

CORPORATIONS ACT 2001 - SECT 5J

PUBLIC INITIATED DEREGISTRATION AND WINDING UP

(1) A corporation with over 40 employees may have an administrator appointed or be deregistered and wound up if it:

(a) repeatedly (more than once a year) breaks international, federal, state or local laws, regulations or by-laws;

(b) commits a serious crime under international, federal, state or local laws;

(c) intentionally or recklessly contaminates the environment, endangers public health or causes public panic;

(d) seriously deceives the public or misrepresents itself, its products or services;

(e) acts in any significant way against the public good or the national interest.

(2) The public may instruct ASIC to appoint an administrator to administer or deregister and wind up a company by:

(a) submitting a petition containing no less than 10,000 signatures of registered voters;

(b) a resolution of the Parliament of Australia;

(c) an order of the High Court of Australia.