## May 2009

#### **SUBMISSION**

## To the Productivity Commission re their

## Inquiry into the

# Regulation of Director and Executive Remuneration in Australia

#### by

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#### Note

The Australian Government's March 2009 terms of reference for this Inquiry into the Regulation of Director and Executive Remuneration in Australia (the Inquiry) and the consequent Productivity Commission (PC) April 2009 Issues Paper (the IP) canvas many perspectives. This submission does not seek to cover all the terms of reference or all the issues arising from the IP. This submission makes general arguments that are influenced by the worst behaviour requiring regulatory correction; as a matter of fairness it should be noted that there are companies, boards, directors and executives who operate to far higher standards and who are not guilty of the corporate excesses that are the subject of this Inquiry.

This is a personal submission by Andrew Murray and does not represent the views of any other individual or entity. For most of his 12 years in the Senate, Andrew Murray was a member of the Joint Standing Committee on Corporations and Financial Services (JSCC&FS) and was the Australian Democrats' Taxation Finance and Corporate Affairs Spokesperson. This submission draws directly on much of that work and experience, as well as on his experience in business.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Andrew Murray has lived and worked in four countries on three continents. His business career included that of an executive and director in large public and private corporations in manufacturing, wholesaling, retailing and service industries, including owning and managing his own businesses.

## **1** Executive Summary

In Australia there are many instances of poorly constructed performance contracts for executives and directors, and excessive remuneration, some leading to market failure, and most imposing unwarranted costs on corporations, present and future shareholders, and the community.

In aggregate such widespread failure and excess has harmed the economy and society. There is a need to better align the interests of shareholders and the community with the performance and reward structures of executives and directors.

This submission argues that restraining bad remuneration practices calls for two key reforms.

Firstly, to build on what is already accepted corporate principle and law, namely that the board is accountable to shareholders and the remuneration of directors is subject to a binding shareholder vote. The recommendation is that above a reasonable level, *all* remuneration however constituted of *all* directors whether executive or non-executive, should be subject to a binding vote by shareholders.

The second recommendation is to make the shareholders voice louder and more effective. Since shareholders' ability to vote is presently circumscribed, reforms are needed to make shareholder voting easier, more transparent, and able to be maximised.

In arguing this case the submission writes of reasserting the interests of shareholders; on the relevance of corporate democracy; of building on accepted corporate practice; about problems with proxies; and on conflicts of interest.

## 2 Reasserting the interests of shareholders

At the heart of the policy debate that instructs the PC's terms of reference from the Government is a general concern that executive and director remuneration is excessive; that it rewards excessive risk-taking that in aggregate has harmed the economy and society; and that it promotes corporate greed by well-placed insiders. There is a perceived need to make the regulatory system more robust and to better align the interests of shareholders and the community with the performance and reward structures of executives and directors.<sup>2</sup>

The concern is valid. Remedies tried to date have largely failed.

Greater transparency and disclosure introduced in the last decade have failed to reign in excessive remuneration practices. Better corporate governance introduced in the last decade has failed to reign in excessive remuneration practices. The non-binding vote<sup>3</sup> introduced in the last decade has failed to reign in excessive remuneration practices.

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<sup>&</sup>lt;sup>2</sup> Some of the key phrases used in this paragraph are taken from the Terms of Reference for the Inquiry.
<sup>3</sup> Section 250R(2) of the *Corporations Act 2001 (Cwlth)* enables shareholders in disclosing entities to exercise a non-binding vote on the director's remuneration report, tabled in accordance with Section 300A. Section 111AC of the Act defines a disclosing entity as having over 100 investors. The remuneration report requires

Given the valid concern at current remuneration practices, logically therefore, further prescriptive regulation is now needed. That cannot mean that power over individual directors and executives remuneration should be exercised by a regulator or by statutory caps; that would not only be too great a departure from the principles and practice of Australian corporate law, but it would be inefficient and unwise from a market perspective.

More robust regulation will be most effective when it is internal not external, if it is particular to the company and not general to business, and if it is effective throughout the economic cycle.

Where increased external regulation can be more effective is in the establishment of general principles, for example rules that require performance remuneration to be based on the long-term and to be paid after a suitable retention period to ensure they remain justified. Requiring the full disclosure of such contracts, rather than just a summary, would aid shareholder and market assessment of disclosing entities.

To be successful and accepted, any change to the regulation of director and executive remuneration in Australia would work best if more power were to be given to those directly affected, namely those whose rights are most at risk, the shareholders. Restraint is best justified when imposed by the owners, the shareholders.

Because many directors and boards have not been acting in the best interests of shareholders in remuneration practices, and because shareholders have found it difficult to respond effectively to that situation, shareholders must be given the means to assert their will.

The corporate framework is simple in concept

- A company is governed by its constitution
- The shareholders own the company
- Directors are authorised to act on behalf of shareholders

Unavoidably, this simple operating framework is made complex by law and regulation imposed in the public and national interest. Understandably, attempts to make regulation more onerous are invariably resisted by directors, and sometimes by shareholders. New regulation is more likely to work and be accepted if it is consistent with past principle and practice.

Company boards have been the problem. It is they who have facilitated excessive executive and director remuneration, unjustified enrichment at the expense of shareholders, and rewarded excessive risk-taking. Asking boards to solve the problem is therefore not the solution.

Market efficiency dictates that remuneration practices need to vary by company, and to be tailored to suit each company's needs. Industry-wide regulation is therefore not the solution.

disclosure of information on the key management personnel of the company and the five most highly remunerated officers (if different).

More robust internal regulation is the better answer, regulation that is particular to each company. This can be provided by reasserting the interests of shareholders and enabling them to exercise more authority and power.

Giving power is one thing, exercising it effectively is another thing altogether. More power being put in shareholders hands can only have effect if shareholders vote to express their view and if that vote matters.

## 3 Corporate democracy

Shareholders exercise their owners' rights through democratic means, principally by exercising voting rights, but corporate democracy has other features too. Political and constitutional language is a helpful tool in discussing corporate democracy, for instance the restraint of power; the notion of checks and balances; regular elections; good voting processes; representative bodies; appointments on merit; transparency, accountability and full disclosure.

Of course there are many differences between parliamentary and corporate democracy.

Companies are owned by shareholders, and shares are generally of equal value, as in a popular democracy, where votes are generally of equal value.

The first difference in a corporate democracy is that shareholders aggregate their shares and accordingly have varying voting power, whereas voters in a parliamentary democracy each have just one vote. Some single shareholders, or a group of like-minded shareholders, can gain effective control of a corporation if they aggregate sufficient shares. Apparently half of all corporations listed on the Australian Securities Exchange (ASX) have a dominant shareholder, and many of the rest have a few dominant shareholders.

A second difference in Australia is that shareholder votes are voluntary, whereas compulsion is used for parliamentary elections, as voters must attend the polls.

A third difference is that voters elect parliaments not governments, and governments are drawn from the majority in the House of Representatives. In contrast shareholders elect their 'parliament' and 'government' as one body – the board.

A fourth difference is that voters directly exercise their vote in a parliamentary democracy, whereas a huge number of shareholders vote indirectly, often thorough proxies, or because their investment is directed through superannuation or investment entities that in turn decide whether to exercise a vote on their investors' behalf.

At the heart of democracy, whether national or corporate, is representation, whereby shareholders vote for their board and voters vote for their parliament. Both boards and parliaments are accountable to shareholders and voters respectively, and there is a testing and affirmation of popular support through regular elections.

Who represents shareholders is particularly important. In a number of public companies large shareholders or the system of nominating and electing company directors allow for patronage and dominance by control groups. That may make it difficult for outsiders,

genuinely independent directors, and minorities (such as women, who are still badly underrepresented on boards), to be candidates, never mind be elected.

The PC has expressed interest in the extent to which existing remuneration levels may be required to encourage an adequate supply of suitable candidates for director and executive positions.<sup>4</sup> A relevant question, but the PC should also look carefully at non-remuneration barriers to entry such as restrictive company constitutional provisions and poor board election processes. To some extent these matters were recently addressed by a joint parliamentary committee.<sup>5</sup>

Boards are the same as governments, as they can be voted out of office if they fail to satisfy the majority of shareholders/voters. In practice whole boards are seldom replaced, unlike governments. Like governments, boards do consult; boards produce annual reports budgets and forecasts; and do submit themselves to periodic examination, to parliaments in the case of governments, and shareholders meetings in the case of boards.

The question for the PC in striving for better outcomes with the performance and reward structures of executives and directors is whether there are aspects of corporate democracy that can benefit from the example of parliamentary democracy. Improving director election processes, enhancing the separation of powers, and making shareholder voting work better might be among such matters worth considering.

## 4 Building on accepted practice

In addressing the problem of excessive executive and director remuneration it is possible to build on accepted principles precedents and practice to achieve tighter regulation.

In law and practice the board is separate from the management, a basic and necessary separation of powers that is designed to protect the shareholders. However this necessary separation is blurred as our law allows executives to be members of boards, which in some instances can result in 'board capture' especially when in the majority of companies the chief executive also chairs the board. Many, perhaps most, directors are former executives, and one in five directors is reported to be a current executive.

The PC should consider whether it is appropriate to recommend that CEOs may not also be the chair in a listed company.

Despite the present blurring of roles between directors and executives, the traditional line of accountability in respect of a company and its shareholders remains valid, in that individual managers, unlike directors, are not and should not be directly accountable to shareholders.

With some companies the rights of shareholders to hold the directors to account are circumscribed where the company constitution, director election methodology, and

<sup>4</sup> Australian Government Productivity Commission Issues Paper: *Regulation of Director and Executive Remuneration in Australia* April 2009 Canberra, page 8.

<sup>&</sup>lt;sup>5</sup> Parliamentary Joint Committee on Corporations and Financial Services *Better shareholders – Better company Shareholder engagement and participation in Australia* report June 2008 Canberra.

shareholder meeting practices prevent or inhibit full accountability of incumbent directors to shareholders.

Despite these inadequacies in law and practice, there is a way forward. Since directors are universally accepted as directly accountable to shareholders, two accepted principles apply here – the remuneration of all directors should be subject to a binding vote by shareholders; and the voting rights of shareholders should be able to be fully exercised.

4.1 The remuneration of all directors should be subject to a binding vote by shareholders

At present the remuneration of directors<sup>6</sup> is subject to a binding shareholder vote<sup>7</sup> (unless it is 'reasonable'...)<sup>8</sup> whereas the appointment and remuneration of the chief executive<sup>9</sup> (and sometimes other senior or key executives) is the responsibility of the board, not shareholders and not management.

However, in recognition of the rightful interest of shareholders in the remuneration packages of executives, relatively recent reform means that shareholders can exercise an indicative vote, known as a non-binding vote, on the remuneration packages of those executives who are included in the board's remuneration report.

The principle that the remuneration terms of directors be subject to a binding shareholder vote is widely ignored. Some remuneration of directors is not subject to a binding shareholder vote. Executives who are also directors (and apparently that is the case for 1 in 5 directors) do not have their whole remuneration terms determined by shareholders.

In common corporate discourse the distinction between executive and non-executive directors is a practical one, but in law it is an artificial distinction. 'Executive' is not defined in the Corporations Act<sup>10</sup>, whereas 'director' is. There is a reason for this; the obligations duties and responsibilities of a director are particularised in the Act and are unaffected if the director concerned is also an executive.

The law needs to be changed to make it crystal clear that the whole remuneration of a director is subject to a binding shareholder vote, whether there is an executive component to it or not. If some executives or some boards do not want to comply with that principle, then executives must not be members of those boards.

It should be quite simple: if you are on the board, you are directly responsible to the shareholders; if you do not want to be subject to the shareholders, get off the board and appear before the board as an executive when the board needs you to.

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<sup>&</sup>lt;sup>6</sup> But not all remuneration; of a director's termination payment at present shareholder approval is only required when the director's termination payment exceeds seven times the annual average of the director's total remuneration package over the past three years. This was far too generous. Rightly so, the Government announced in March 2009 that this will be reduced to one year' base salary.

<sup>&</sup>lt;sup>7</sup> Under ASX listing rules a non-executive director can only receive a fixed-sum payment.

<sup>&</sup>lt;sup>8</sup> Section 202A, (which is a replaceable rule), Corporation Act 2001 (Cwlth).

<sup>&</sup>lt;sup>9</sup> Section 201J Corporation Act 2001 (Cwlth).

<sup>&</sup>lt;sup>10</sup> 'Key management personnel' are subject to the remuneration report and are defined in accordance with the accounting standard.

Such a consequence of executives leaving boards would have the beneficial effect of enhancing the separation of powers in corporations, with directors being separate from and more independent of management, instead of being intertwined with them, and sometimes captured by them, with the consequent conflicts of interest that arise.

The Corporations Act needs to be amended to require board members remuneration, benefits and retirement packages, including the whole remuneration of executive directors, to be subject to the binding vote of shareholders. This is a natural extension of the board being elected by the shareholders and responsible to them.

4.2 The remuneration of key executives should be subject to a binding vote by shareholders

For those who say a binding shareholder vote on remuneration should be confined to directors, they are really saying *some* directors, as nearly every reported case of outrage at excessive remuneration concerns a director who is also an executive.

Corporate resistance to a binding vote for the remuneration packages of key executives is inconsistent, given that key components are already subject to a binding vote.

For instance, there is a common part of executive remuneration that is subject to a binding vote, namely on options. Options may be worth millions of dollars. In corporations law shareholders have a binding vote on options because they directly dilute their shareholdings. Even though historically options have often been almost routinely approved, there have been high-profile instances of rejection.

As a matter of principle all equity issues of whatever kind should be subject to shareholder approval.

There is another common part of executive remuneration that is also subject to a binding vote. Benefits associated with retirement from managerial office above a certain limit require shareholder approval too.<sup>11</sup>

As outlined above, the argument against *excessive* remuneration of key executives being subject to a binding vote by shareholders is weakened because

- there is a precedent for 'reasonable' remuneration (including retirement) of directors packages not to be subject to a binding vote
- binding votes are already required for significant elements of executive packages, such as options or share issues, and retirement benefits

As with retirement benefits, (where the Government has decided to tighten a loose shareholder approval requirement from when the director's termination payment exceeds seven times the annual average of the director's total remuneration package over the past three years to one year' base salary), so it would be desirable to set a base one-year executive package above which a binding shareholder vote would be mandated.

Below that figure would be classified as 'reasonable' and not subject to shareholder vote.

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<sup>&</sup>lt;sup>11</sup> Section 200B (1) *Corporation Act 2001 (Cwlth)*.

A base figure needs to be simple and self-evidently 'reasonable'. Such a base could be an absolute figure, (say) above \$1 million dollars, or (say) where the value of the total remuneration is equal to or exceeds 20 times the full-time adult ordinary time earnings as periodically reported by the Australian Bureau of Statistics.

The value of the latter measure is that it respects and responds to legitimate and widespread community concern where executive salaries exceed a reasonable multiple of average wages.

### 4.3 Making some voting by institutions compulsory

It seems there is strong corporate support for the shareholder vote on director (non-executive) remuneration to remain binding, but for the shareholder vote on executive (director and non-director) remuneration to remain non-binding.

Whatever the merits of that non-binding vote position, (and as outlined in this submission there are valid arguments for making such votes binding), the problem is that the majority of shares in issue are often not voted. If they were voted, then non-binding votes would have much greater force.<sup>12</sup>

It is difficult to see the activism of small retail shareholders improving much, but that is not the case for institutional investors.

In recent years institutional investors have been increasing their participation in votes on company resolutions, and this has had useful effects in a number of important instances on matters ranging from elections of directors to mergers and acquisitions and to executive and director remuneration changes. Nevertheless, the institutional vote is still well below the vote that would result from compulsion.

There is no way to make voting by retail shareholders compulsory, but that is not the case for many institutions. Voting by institutions on behalf of their investors is a different matter, and can be made compulsory, when those votes are held in trust. There should be a requirement in the Corporations Act to exercise that trust.

Voting by institutions should be compulsory in matters of remuneration for shares effectively held in escrow, because escrow means there is a positive duty to exercise a fiduciary responsibility.

The trustees and managers of superannuation funds and managed investment schemes have a fiduciary duty to act in the best interests of their investors, members and beneficiaries. Trustees can only satisfy their fiduciary obligations by taking an active interest in material corporate governance matters affecting their equity investments.

It would be ideal if institutions voted on all resolutions put before shareholders. The Investment and Financial Services Association (IFSA) standard No 13 'requires' (they have no means to enforce it) members to vote on all resolutions and to publish their voting record. Unfortunately the scale and variety of resolutions in a multitude of companies makes voting

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<sup>&</sup>lt;sup>12</sup> Although a board can still ignore a strong vote against a remuneration proposal, as did the Telstra board in 2007 when 66% of shareholders votes were against.

on all resolutions difficult for some institutions to do. The volume of company resolutions across the market would make it doubly difficult for regulators to police, if they had to.

At the very least, as a consequence of fiduciary responsibility, by law the voting record of institutions should be required to be made public.

At this juncture, making voting compulsory by law where shares are effectively held in escrow should be limited to the most important votes. Investment and superannuation funds that hold shares on behalf of investors should be required to do their fiduciary duty and to exercise a vote in three material areas: constitutional resolutions, the election of directors, and on the remuneration, benefits and retirement packages of directors and key executives.

### 5 Proxies

Improving shareholder voting systems will have a material effect on improving the shareholder voice on remuneration matters.

Most shareholder votes are not by attendance at company meetings but are absentee votes, often by proxy. A proxy temporarily transfers a voting right to another party and enables a shareholder to lodge a vote when absent from an annual or extraordinary general meeting. Proxies may either be open, at the discretion of the appointed representative, or directed, where there is no discretion. A proxy who is not the chair is not obliged by law to exercise the option.

There are several problems with the law, including the integrity of proxy voting systems, cherry-picking; vote-recording and storage practices; vote renting; the impediments that exist for exercising a direct vote; and proxy voting by custodians. A recent parliamentary committee report has a useful discussion of these and other issues, <sup>13</sup> which the PC will find helpful to refer to.

Difficulties may arise when the proxy is open. The chair is invariably supportive of board resolutions. The chair holding proxies can vote them at his or her absolute discretion, which can simply ensure the remuneration vote is passed. Should voting papers be required to show how the chair will vote, so that shareholders giving this power to the chair are made aware of the effect of allocating a proxy to the chair?

The ability for shareholders to exercise a direct vote is seriously limited and should be remedied. The parliamentary report had this to say:

4.32 An obvious mechanism for bypassing the proxy voting system and its associated deficiencies is to enable absentee shareholders to vote on resolutions directly. However, the inquiry was told that despite its advantages companies had not been greatly supportive of direct voting. According to CSA [Chartered Secretaries of Australia, Submission 33 page 3] only 13 per cent of the top 200 publicly listed companies had amended their constitutions to allow direct voting.

. . . .

<sup>&</sup>lt;sup>13</sup> Parliamentary Joint Committee on Corporations and Financial Services *Better shareholders – Better company Shareholder engagement and participation in Australia* report June 2008 Canberra; Chapter 4. There has been no Government response to this report at the time of writing this Submission.

4.40 Widespread implementation of direct voting would overcome many of the problems associated with proxy voting as identified during the inquiry. Companies should be encouraged to amend their constitutions to provide for direct absentee voting, which could be assisted by the ASX Corporate Governance Council including an 'if not, why not' provision on direct voting in its Corporate Governance Principles and Recommendations.<sup>14</sup>

It is time to require listed corporations (or at least the top 300) to amend their constitutions to allow direct voting.

Whether votes on remuneration are binding or not, all votes should be clearly identified in effect and intent. Transparency is a basic requirement of any democratic system. The law should be changed so that chairs of shareholders' meetings must disclose at the start of the meeting the results of any proxy votes, and call for a poll if the vote by show of hands does not reflect the votes of proxies received.

#### **6** Conflicts of interest

6.1 Prohibiting directors voting on remuneration packages

The problem with excessive or unwarranted executive and directors remuneration benefits and retirement packages is that the system allows opportunistic insiders to unjustly enrich themselves at shareholder cost. Despite considerable improvements in law, disclosure and governance, the system still allows that to happen. The PC IP also reminds us that this is also an enduring feature of human nature, defined as the 'principal-agent' problem.<sup>15</sup>

For a start the law does not prohibit arrangements where there is a conflict of interest. Good governance should prohibit arrangements where there is a conflict of interest, but whether that principle is followed is up to the particular board. The Corporations act does not prohibit a director from having a conflict of interest in consideration of or in voting on such matters as their pay, nominating for election, or the appointment of auditors. <sup>16</sup> In the wrong hands such power can be a recipe for corruption.

Those who benefit from devising clever, complex, costly and sometimes camouflaged remuneration or retirement packages include the very people who then vote on them at board meetings. Executives do influence such matters. One in five directors is an executive, and overall in approximately two-thirds of companies, the chief executive chairs the board.

Despite the statements by bodies like the ASX and ASIC urging them not to, because of the clear conflict of interest, these people participate in the construction of their packages and often vote to approve their own packages in a breath-taking disregard for their conflict of interest and in mutual acts of aggrandisement with other directors.

<sup>16</sup> On this theme see for instance Dr Shann Turnbull <a href="http://blogs.law.harvard.edu/corpgov/2007/11/08/are-regulators-and-stock-exchanges-irresponsible/">http://blogs.law.harvard.edu/corpgov/2007/11/08/are-regulators-and-stock-exchanges-irresponsible/</a>

<sup>&</sup>lt;sup>14</sup> Parliamentary Joint Committee on Corporations and Financial Services *Better shareholders – Better company Shareholder engagement and participation in Australia* report June 2008 Canberra; Chapter 4 pages 50-52.

<sup>&</sup>lt;sup>15</sup> Australian Government Productivity Commission Issues Paper: *Regulation of Director and Executive Remuneration in Australia* April 2009 Canberra, page 19.

The PC's IP puts the dangers succinctly:

...if entrepreneurial effort is diverted to unproductive 'rent-seeking' behaviour as executives seek ways to maximise and camouflage their remuneration, this can affect not only the performance of a company, but also inhibit the productivity and growth prospects of the economy. Executive remuneration that is many multiples of average earnings may also impact on workers' productivity and make wage restraint more difficult to achieve in periods of economic downturn.<sup>17</sup>

The key to good remuneration practice has to be governance and ethical systems that prevent the conflicts of interests and collegiate conspiracy that allow some corporate insiders to unjustly enrich themselves at shareholders expense.

Good corporate governance would be assisted by enhanced democratic mechanisms in corporations: best practice director elections; compulsory institutional voting in set instances; and better accountability and disclosure. Poor corporate governance is bad for productivity and profitability. It creates situations where major conflicts of interest, mismanagement, and impropriety can go unchecked.

The parliamentary committee was unequivocal in wanting conflicts of interest on remuneration addressed:

4.98 The non-binding remuneration report vote provides an excellent opportunity for shareholders to express their views to the board via a vote, without taking the more drastic measure of replacing the board itself. The committee is of the view, though, that this initiative has the potential to be undermined by the influence of shareholder directors voting on their own remuneration. This is particularly relevant where directors have a substantial holding. Accordingly, the committee considers that the Corporations Act should exclude them from participating in this vote.

Recommendation 20
4.99 The government should amend the Corporations Act to exclude shareholder directors from voting on their own remuneration packages either directly or by directing proxies. 18

This is a worthwhile recommendation.

6.2 Avoiding conflicts of interest by separating powers

There is a view that neither law nor regulation can be effective in policing conflicts of interest in boards so determined, and that it might be better in some companies to take the power to determine remuneration from them. How to do that without changing accountability to shareholders and still keeping such matters internal to the company?

The 'separation of powers' concept is well understood in politics, but not as well understood in business. Its greatest appeal is in better balancing power, or as a restraint or check on power. Many boards like many governments find such restraints irksome, but given the power of some executive teams over their boards, the concept is worth exploring further.

<sup>17</sup> Australian Government Productivity Commission Issues Paper: *Regulation of Director and Executive Remuneration in Australia* April 2009 Canberra, pages 4 and 5.

<sup>&</sup>lt;sup>18</sup> Parliamentary Joint Committee on Corporations and Financial Services *Better shareholders – Better company Shareholder engagement and participation in Australia* report June 2008 Canberra; Chapter 4 page 64.

The proposition is to get companies to give shareholders in public companies the option of requiring a separation of the normal business and internal management functions of the board from vital governance functions of ensuring openness, accountability and good process.

There are three ways to get this into corporate practice:

- impose it
- give the regulator power to impose it in set circumstances
- make it voluntary but facilitate introduction

Experience indicates that it is difficult to get a new concept like the one outlined below into law; in any case it might best be a voluntary scheme to begin with. There is of course nothing to stop companies configuring themselves in this way now, but institutional innovation in the conservative world of corporate constitutions would benefit from PC endorsement and an ASX voluntary rule.

The current responsibilities of a board would be split between a main board and a governance board.

The main board would continue to be elected by *shareholding* and would continue to concentrate on strategic, business and operational issues. Because of its election method it would continue to have a bias towards the dominant or large shareholders.

A small Corporate Governance Board (CGB) would be elected by *shareholders* not *shareholding*, and would be composed of non-executive independent directors (perhaps three). Voting rights to elect these CGB directors would be determined by one-shareholding-one-vote rather than by the usual method of one-shareholding-multiple-votes. Being elected directly by shareholders not shareholding gives shareholders as a group power, and not just those few shareholders with the greatest number of shares.

By making the CGB determined by shareholder not shareholding, it would be completely free from dominant shareholders control or patronage. Because of its election method, it would have a bias towards all shareholders rather than just the large shareholders. It would also be free of the insider influence of executive directors.

The CGB would have a limited remit and would call and chair shareholder meetings; propose changes to the company constitution; resolve conflicts of interest; determine the remuneration of directors and executive management; achieve real independence from main board and dominant shareholder influence by appointing auditors and other advisers such as valuers; and manage the process of electing directors.

Shareholder votes on the resolutions of the CGB at shareholder meetings should continue to be by shareholding, as at present, which means that while the determination process would have become more independent through the CGB, the resolution process would remain dominated by the largest shareholdings that have most at stake financially.