THE AUSTRALIAN MANUFACTURING WORKERS' UNION SUBMISSION TO THE PRODUCTIVITY COMMISSION'S INQUIRY ON EXECUTIVE REMUNERATION IN AUSTRALIA

The Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union ("**AMWU**") is one of Australia's larger trade unions with about 120,000 members employed throughout the country in a diverse range of industries. Most AWMU members are employed in the private sector.

A focus on large, listed companies

At the outset it is pointed out that this submission is principally concerned with large, listed companies which hereafter will simply be referred to as "companies".

Companies in society

The company has proved to be an effective vehicle or construct for harnessing human endeavour and creativity to create innumerable benefits for society. Companies provide many of the goods and services we consume; offer employment; generate wealth for investors; are a source of innovation; and, an indispensable part of our social fabric. In short, there is much about the company to commend.

Reflective of their success, companies have amassed considerable power and influence. Their wealth and the dependence that we have for their assorted benefits can allow companies to exert themselves in ways that may suit the company itself, but may be of detriment to the greater good. Individuals, groups, other companies and even governments can sometimes find the power of companies menacing and detrimental.

Changes

Over time, countervailing forces have pushed back against companies' power. It was the labour movement that was arguably the first of the serious bulwarks against companies' excesses. As said by Oliver Wendell Holmes in the late nineteenth century:

> One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way.[1]

Since then, governments have acted to prevent monopolies and abuse of market power, consumer groups have secured changes to marketing practices, the green movement has seen in environmental laws, and companies are now subjected to human rights and health and safety laws and so on. Companies today face increasing constraints to place them within the bounds of a civil society. Legislators have sought to strike a balance that allows companies to succeed and prosper, but at the same time, for them to serve the broader public interest. Indeed, many companies have reacted positively to such challenges and they actively portray themselves as good corporate citizens.

Internal workings of companies—changes

Another changing dynamic that has accompanied the rise in companies is the shifting of power bases within companies and increasing government regulation of companies' structures, their reporting and transparency requirements, and investments and securities. Governments have strived to keep appropriate checks and balances on the duties and rights of promoters, investors, directors, shareholders etc in order that these groups are able to manage their affairs with appropriate redress in the face of incomplete information flows, fraud or oppression.

Organic evolutionary change

[1] From his dissent in *Vegelahn v Guntner* (1896) 167 Mass. 92.

Over time, the forces of change on companies, internal and external, have seen companies evolve and adapt. Robert C Clark attempted to assign these changes to four "stages" that have emerged over the past two centuries in capitalist societies. Clark says of these stages that they "overlap" and "none are dead" (sic). They are: 1. the entrepreneurialism of the 19th century; 2. the separation of ownership from control and the development of a professional managerial class; 3. the rise of the institutional investor; and 4. in an inchoate state, the era of the "savings planner", which captures how ordinary citizens have part of their recurrent income captured (compulsorily in Australia through superannuation) and invested in companies for the citizens' later consumption.[2]

Constants and balance

Throughout the four stages there have, however, been constants. Governments have largely kept out of the way of companies' commercial decisions. Law and regulations have been directed at ensuring companies' dealings with employees and consumers etc are fair and equitable; and, that companies' internal operations are sufficiently open so as to avoid fraud and undue enrichment. Perhaps it may be said that the ideal is for regulation to find the optimal equilibrium that allows companies to thrive on the dynamism of a free market so as to deliver wealth and prosperity, whilst treating employees, customers and other stakeholders fairly and allowing for investors to make informed decision about where they put their (or their clients') money.

The AMWU submits that, in Australia, there remains a serious deficiency in the internal regulation of companies, and that is the duty on directors to serve the company's interests above all others. In many other advanced capitalist societies, corporations' laws have imposed a broader set of stakeholders for boards to consider, including employees.[3]

Where we're at now

[2] See RC Clark, "The four stages of capitalism: reflections on investment management treatises", (1981) 94 *Harvard Law Review* 561, extracted in P Redmond, *Companies and Securities Law*, LBC, 1992 at pp 81 seqq.

[3] Cf. the *Companies Act 2006* (UK), s 172.

The sharp downturn in economic activity that followed on from the global financial crisis of 2008-09 has wiped out a large slice of the share value on stock exchanges around the world and sharply curtailed markets for companies' products. The speed, width and depth of the economic collapse have taken many governments, markets and companies by surprise. Ordinary workers now see their job security imperilled and yet the executives who were at the helm as this came to pass have reaped windfall compensation.

How come executives' pay is so high?

The exact cause for the significant elevation of executive pay over the past decades is hard to pin down, but some relevant observations may be made.

Large companies are repositories of enormous wealth. Even after the recent crash, BHP Billiton's market capitalisation is $120 billion, up from $21 billion in 1992. Twenty companies listed on the ASX have market capital of about $10 billion or more. These gargantuan enterprises arguably can afford to bestow largesse on a select few. This occurs even though the amounts dwarf the remuneration of high ranking government office holders whose responsibilities are on par with companies' officers.

Beyond the size factor, as touched on above, at this stage of the evolution of companies, the power structures inside companies align to give CEOs an entrée to stratospheric earnings. Company boards are usually behind the setting of CEO pay. Shareholders are often sidelined, and, at any rate, because large companies' shareholders are usually fragmented and diffused, it would be difficult to mobilise enough shareholder solidarity to overturn a board's decision.

This does not mean that shareholders are unwilling or incapable of mounting the occasional protest. Just recently, Royal Dutch Shell faced a shareholder revolt in the Hague and London over executive pay. Almost 60% of shares voting opposing the board's decision (which in turn was based on a remuneration committee) to grant performance based shares to executives notwithstanding the performance criteria were not met. However, the

shareholder vote was merely advisory—as is often the case in Australia—and the board was free to overrule the shareholders' decision.[4]

Even so, boards are ultimately accountable to shareholders, and the company itself, so boards must find some sort of justification for high CEO pay.[5] Moreover, shareholders have another powerful mechanism to voice their disapproval at a board's decisions; viz., the dumping shares. Of course, this is not something that pleases boards so these two bodies are entangled with some degree of mutual interest. All this means that boards will try to make decisions over CEOs' appointments and pay that are pleasing to the market.

So, how is the market kept pleased? The market today seems to be reactive of the opinions of analysts and credit ratings agencies.[6] In the recent bubbles companies have come under pressure to maintain strong earnings and profitability and a growth strategy. Where analysts perceive deficiencies by a company in pursuit of these objectives, analysts would typically advise the selling of the company's shares. Part of what is required of boards to maintain investor confidence and keep share prices up is to have the right CEO. What seems to impress analysts are corporate stars and celebrities, especially those who have a track record of axing underperforming assets, and are adept at balance sheet manipulation and acquisitions.

A paradox has thus sprung up: share markets reward companies for the appointment of a messianic CEO even though he or she may eventually lead a company into failure. There can be no guarantee that the "right" CEO is a

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[4] G Chazan and J Lublin, "Shell feels shareholder heat over executive pay", The Australian, 21 May 2009, p 21.

[5] Depending on a company's constitution it may take some doing to vote down a board's nominees for replacement directors. In the US, Anne Simpson, head of corporate governance and senior portfolio manager for global equities at the California Public Employees' Retirement System has pointed out that this suppression of shareholder democracy perpetuates ineffective boards: see Simpson, "America's governance reform must not be ducked", FT.com, 25 May 2009.

[6] Of course, there are problems here too. Analysts and credit rating agencies (CRAs) sometimes labour with incomplete information. As for CRAs, they typically derive most of their income from the companies they rate. This creates a conflict of interest, and JE Stiglitz, in "Capitalist Fools", *Vanity Fair*, January 2009, pp 52-56 attributed to this conflict a fair portion of the blame for the global financial crisis of 2008-09. For more on this subject see, The Technical Committee of the International Organization of Securities Commissions, *Report on the Activities of Credit Ratings Agencies*, September 2003.

recipe for success; realistically, it will more likely be market forces and changes in technology that will determine the company's fate.

Often, competent company insiders, who have climbed the corporate ladder, are overlooked at a critical juncture of a company's existence when new leadership is required. And so today, share markets, through institutional investor and analysts' pressure will demand a heroic figure to come in and fix the company. This phenomenon is covered with great persuasiveness by Rakesh Khurana in *Searching for a Corporate Savior: The Irrational Quest for Charismatic CEOs.*[7] As Khurana said in an interview published by the Harvard Business School:

> Yet how do other boards justify turning reflexively to sitting CEOs with supposedly proven track records? The pool of these marquee names is limited. Such scarcity naturally drives up wages; the compensation of the ten highest paid CEOs has soared 4,300 percent during the past twenty years, the same period that outside hires grew from 7 percent to 50 percent.[8]

Khurana also details how leading CEOs today market themselves though various forms of self-promotion.

Another factor at play here can be cosy arrangements between directors and CEOs. These persons usually mix in the same circles and share attitudes and affiliations. In the words of the former Chairman of the US Securities and Exchange Commission, Arthur Levitt Jr:

> There is no doubt that some executives have been paid too much. That is, more than they would if it weren't for boards of directors stacked with their cronies and friends, and if it weren't for quirks in our tax laws that favor certain kinds of stock options over other types of pay. Excessive executive compensation of the last decade is, in the words of Alan Greenspan, a system of infectious greed. It's not only patently unfair, but it's also a disservice to shareholders as executives use public companies as their private treasure chests. Some may clamor for Washington to step in. While there are some regulatory changes that could be helpful, such as the expensing of stock options, true reform must

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[7] Princeton University Press, 2002.

[8] An interview conducted on 16 September 2002 with Martha Lagace, viewed at http://hbswk.hbs.edu/item/3095.html on 19 May 2009.

> come from companies themselves. In the end, any hope of reforming executive compensation relies on corporate boards, executives and their peers putting down a marker that it's simply unacceptable for executives to show their faces in public if they've received huge unmerited handouts at the expense of shareholders.[9]

All of the forces here considered combine to allow a select few CEOs attain disproportionate rewards. Recapitulating, the factors set out below pave the paths of CEOs with gold:

1. Large wealthy companies with millions of dollars to spare on CEO pay;
2. Investor and analysts' demands for dynamic and charismatic leadership;
3. Emasculated voice for smaller shareholders in a company's appointment and remuneration of a CEO—but given the market for a company's shares will often spike upwards on the appointment of a (richly rewarded outside) CEO, it may also be the case that the concern of the smaller shareholder is muted given the liquidity of their investment in the company; and
4. A distorted labour market for top rated and celebrity CEOs—a market that has overtaken the fabled internal labour markets of an earlier era of business.

Downsides to excessive CEO pay

It may be said that if a company sees fit to pay its leader generously why should anyone else be concerned? More so if the company is performing well. Decisions about executive compensation are just another commercial decision about a company's operations and shouldn't such decisions be for the company itself?

In rebuttal to such views, firstly, it is to be remembered that companies are a significant part of society, and they play an important role in the mobilising of resources for our benefit. If the captains of industry are seen as overly greedy

[9] Speech to the Commonwealth Club of California, 14 November 2002, viewed at https://www.commonwealthclub.org/archive/02/02-11levitt-speech.html 15 May 2009.

this will undermine social cohesion and faith in an important institution—companies—especially so when they cut back on staff and services or raise the price of their products. Even before the recent economic slump, in 2003 the St James Ethics Centre published a survey on its website that revealed that almost 9 in 10 respondents were concerned about level of CEO pay, and almost 50% of respondents agreed with the capping of executive pay.[10]

When Australians read that former Telstra boss, Sol Trujillo "picked up more than $30 million over his nearly four years at the company as its shares slumped almost 38%",[11] they might rightly be angry—whether those Australians be Telstra workers struggling for job security and improved pay; customers facing painfully slow internet connections; or, investors who have seen their shares decline markedly in value. The high level of compensation the Telstra board saw fit to confer on Mr Trujillo only fans discontent in the community; and with no one person or institution being bigger or better than the community itself, it is proper for the community's representatives, viz., legislators, to intervene.

Going further along this line, it is arguable that Australians associate with the idea that ours is an egalitarian society and we should all be rewarded commensurately with our contribution to the national cause. If executives continue to walk away from their tenures with abject failure in their wake, why should the workers from the company concerned be expected to show any sort of restraint in making pay demands?

From another angle, the formulation and composition of executive pay has been linked to the current economic malaise. The argument goes like this: around the world, companies have sought to extract better performance from CEOs by linking their emoluments to their respective companies' share prices

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[10] The survey was conducted in February 2003 and it was viewed at http://www.ethics.org.au/participate/ethics-polls/ethics-surveys/executive-salaries.html on 15 May 2009.

[11] G Elliott, "Sol Trujillo's postcard from paradise calls broadband plan a bluff", *The Australian* (on line), 21 May 2009, viewed on even date at http://www.theaustralian.news.com.au/business/story/0,28124,25515014-5018020,00.html

through grants of shares or share options. To avoid an excessive focus on the short-term, sound corporate governance principles require that CEO incentives mature over time.[12] Despite this, as well as increased corporate reporting and risk management by boards, there still exists the problem that executives who are compensated to a large extent by shares and options will have "incentives for bad accounting: top management has every incentive to provide distorted information in order to pump up share prices."[13]

Of course there remains the problem that greed can blind a person's better judgment. The temptation that boards and CEOs face in mergers and acquisitions etc where large rewards are on the table can distort decisions towards the prospect of personal gain. In recent times in Australia the key example on this front is the 2007 attempted buy out of Qantas by the private equity group, Airline Partners Australia.

It was reported that the Qantas management team stood to gain $91 million upon the deal going ahead,[14] and while the shareholders would have done well in purely financial terms to accept the $5.60 a share offer (Qantas shares now trade for less than $2), there is little doubt that had the deal gone through Qantas would now be in serious trouble, probably sold to a competitor at a rock bottom price.[15] While hindsight tells us that this would have been a good deal for the shareholders—they would be about $3.60 per share better off had the deal gone through—it is difficult to see how Qantas falling apart over the barrel of unsustainable debts would serve the public interest—it definitely would not have served the interests of Qantas employees.

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[12] OECD, *OECD Principles of Corporate Governance*, 2004, p 61.

[13] The quote comes from Stiglitz, n 6. See also G Kirkpatrick, "The Corporate Governance Lesson from the Financial Crisis", *Financial Market Trends*, OECD, Pre-publication version for Vol. 2009/1, esp. at pp 12 et seqq and 17 et seqq.

[14] S Rochfort and K Askew, "Qantas takeover close to crashing", smh.com.au, 24 March 2007. It was also reported therein that:

> Besides the $91 million in payouts to executives, $8 million of which would have gone to Mr Dixon, on the last day of the old airline, they would have received lucrative cash and share incentives from the new owners, including bonuses of up to 200 per cent of their salaries, a stake in the new company of up to 4.5 per cent, and a performance fee for Mr Dixon of up to $60 million.

[15] Cf. A Schwab, "Dreams averted a Qantas nightmare", *The Age*, 5 May 2009.

It therefore appears that both from a social equity and performance perspective, inflated executive pay fails to deliver. It is ripe for the government to move and stamp out the avarice.

What should the government do?

Governments have numerous levers they can pull to rein in excessive executive remuneration, but of course, there will always be political considerations.

(a) Make executive pay restraint a condition of doing business with the government or receiving government subsidies

Starting where public support and policy considerations might be strongest, it would be open to all governments—federal, state and local—to make executive pay restraint a condition of doing business with the government or receiving government subsidies.

For over a decade various governments in Australia have discriminated in the allocation of construction work contracts over companies' labour practices.[16] This has meant workers in companies that tender for government construction work have had to forgo valuable job benefits, e.g. job security measures, like restrictions on casual employment; and provisions that allow workers to pick up site rates as they move from job to job. This is one limb of the case for this measure, namely, if it is something workers must endure, then those at the top should not be immune from like treatment.

Another limb of this case rests with the ostentatious enrichment of Edmund Groves, the former CEO of ABC Learning Centres. In 2005, ABC was reported as receiving over 40% of its funding, or $2.3 billion, from the Commonwealth government.[17] Mr Groves went on to amass a fortune of over a quarter of a billion dollars out of this childcare business before it went into

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[16] Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, Reissued June 2006.

[17] J Thomson, "Playtime's over", *BRW*, February 9-15, pp 38-41 at p 40.

liquidation with debts of $1.2 billion.[18] That the Commonwealth allowed all this to happen as part of its strategy to deliver childcare to working parents is embarrassing enough, but it was galling when Mr Groves and his girlfriend were seen to have indulged themselves grotesquely at the same time as his former clients were left—literally and figuratively—holding the baby and his ex-staff were wondering whether they would be paid their subsistence wages.[19]

Another pointed example in this theme is Pacific Brands. After Pacific Brands announced the axing of almost 1,900 domestic manufacturing jobs in February 2009 it was revealed that it had received $15 million in government assistance over the past two years[20] and that Pacific Brands' CEO, Sue Morphet, had recently seen her annual pay triple to $1.7 million.[21]

The approach here advocated was given sound support in the US House of Representatives and by the Obama administration in the wake of the bail out of US companies, and apparently this was done with sound public approval.[22] It may be one thing to have companies themselves endow their leaders with exorbitant salaries, but when the taxpayer contributes, there should be restraint.

(b) Use the taxation system to curb excessive CEO pay

A high marginal rate of taxation on CEOs' incomes is one possibility. The threshold would be a political question, but the AMWU suggests that an

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[18] P Weston and K Dibben, "High life for ABC's Eddy groves and his girlfriend", couriermail.com.au, 9 November 2008.

[19] See ibid. for accounts of Mr Groves' lavish lifestyle.

[20] M Cooper, "Hundreds Rally Over Pacific Brands Jobs Cuts", theage.com.au, 5 March 2009.

[21] G Robinson, "Unions plan to block Pacific Brands offshore move" smh.com.au, 27 February 2009. It was also reported:

> The executives' combined pay jump - from $7 million to $15 million - also included the salary of former chief executive Paul Moore, as well as a $3 million retirement bonus he was given upon departure.

[22] C Hulse and DM Herszenhorn, "House Approves 90% Tax on Bonuses After Bailouts", *The New York Times*, 19 March 2009, viewed at http://www.nytimes.com/2009/03/20/business/20bailout.html on 25 May 2009.

appropriate level would be 25 times a company's lowest paid full-time adult employee's wage.[23] The marginal rate could follow from the US example referred to above, i.e. 90%. The appeal with this approach is that the taxpayer shares the CEOs' excessive rewards, but if a CEO seeks to avoid paying such a high level of tax the solution is simple: raise their employees' wages.

Another approach is to remove the tax deductibility of excessive remuneration paid to executives, in the same way that such applies to relatives.[24] Again, a threshold would be required, and what is suggested above could be used here too.

(c) Empower shareholder and other stakeholders

The Commonwealth could make amendments to the *Corporations Law 2001* that would enhance shareholder democracy. Shareholders could be given a full right of veto over a board's decision on executive compensation, and while that would go beyond even Senator Schumer's proposed laws in the US,[25] a shareholder veto right appears to be what the federal opposition suggests as a means of keeping executive pay in check.[26] Indeed, if this really is the

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[23] If the parliament is wary of setting the point at which executive pay outcomes are subjected to a punishing tax regime etc, this function could be delegated to an independent tribunal, perhaps Fair Work Australia.

[24] CCH, *Australian Master tax Guide*, 44th ed., 2009, pp 934 *et seqq*.

[25] Remarked in on Simpson, n 5; and, see P Dvorak and P K Scannell, "Investors, Take Note: New Bill to Target Boards, 'Say on Pay'", WSJ.com, 25 April 2009.

[26] On 2 March 2009 Malcolm Turnbull, Liberal Leader, was reported as saying:

> … I'll tell you what our position is. I have stated last year and I've stated again this year, and I might say this has been my view for many, many years, that the senior executive salaries – certainly, the salary and the remuneration of the chief executive – should be decided by the shareholders. That's to say, it should get the approval of the shareholders. Now, there's plenty of precedent for that. There are many decisions that are taken in companies, particularly public companies, that have to go to shareholders for approval. That simple change, just a little bit of democracy in the corporate world, would ensure that you would not get some of these over the top salaries and, frankly, if shareholders want to pay their chief executives a lot of money, it's their company, they can do it. But what outrages a lot of shareholders, a lot of mums and dads with shares in companies, in their super funds, who have seen the value of their investments plummet, what enrages them is to see executives being paid big money when the shareholders have been losing. It's a sort of heads they win, tails they win situation and that's not fair.

From http://www.liberal.org.au/news.php?Id=2659 viewed on 27 May 2009.

Opposition's position—a position that no doubt would raise hackles in Australia's corporate world—it would be easy for the Federal Government to pass it into law. A senate majority would be assured!

As canvassed above, there are many other stakeholders in a company who have a keen interest in its on-going prosperity, and the body that the AMWU naturally represents is employees, especially employees who are AMWU members.

It is noted that in much of Europe employees have industrial democracy rights and in Germany these right extend to the board level so workers and their unions can actively influence decisions on executive pay.[27] While the AMWU does not press for industrial democracy on a German scale, a conduit for the exchange of views and information from boards to employees and their unions would, it is submitted, lead to improved corporate governance. These thoughts are not simply AMWU socialist rhetoric; they are espoused by the OECD. Here are some extracts from the *OECD Principles of Corporate Governance*:

> **C. Performance-enhancing mechanisms for employee participation should be permitted to develop.**
>
> The degree to which employees participate in corporate governance depends on national laws and practices, and may vary from company to company as well. In the context of corporate governance, performance enhancing mechanisms for participation may benefit companies directly as well as indirectly through the readiness by employees to invest in firm specific skills.
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> Examples of mechanisms for employee participation include: employee representation on boards; and governance processes such as works councils that consider employee viewpoints in certain key decisions. With respect to performance enhancing mechanisms, employee stock ownership plans or other profit sharing mechanisms are to be found in many countries. Pension commitments are also often an element of the relationship between the company and its past and present employees. Where such commitments involve establishing an independent fund, its trustees should be independent of the company's management and manage the fund for all beneficiaries.

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[27] Anon, "Beware, union on board? Why Germany's worker directors need to justify their jobs", *Financial Times*, 30 August 2008, viewed at www.wzb.eu/gwd/into/pdf/vitols/vitols06_ft_uk.pdf on 4 May 2009.

D. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

Where laws and practice of corporate governance systems provide for participation by stakeholders, it is important that stakeholders have access to information necessary to fulfil their responsibilities.

E. Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.

Unethical and illegal practices by corporate officers may not only violate the rights of stakeholders but also be to the detriment of the company and its shareholders in terms of reputation effects and an increasing risk of future financial liabilities. It is therefore to the advantage of the company and its shareholders to establish procedures and safe-harbours for complaints by employees, either personally or through their representative bodies, and others outside the company, concerning illegal and unethical behaviour. In many countries the board is being encouraged by laws and or principles to protect these individuals and representative bodies and to give them confidential direct access to someone independent on the board, often a member of an audit or an ethics committee. Some companies have established an ombudsman to deal with complaints. Several regulators have also established confidential phone and e-mail facilities to receive allegations...[28]

The point being made here flows on from the earlier observations about how companies are constituted under law in Australia. Insofar as those in charge of a company are concerned, the company itself comes first; there is a secondary and subsidiary recognition of the interests of shareholders and other investors; and employees are out in the cold along with the rest of the community. This is so despite shareholders having converging interests with employees on many issues—although, admittedly, there are tensions too: wages eat away profits which in turn reduce potential dividends. Nevertheless, shareholders would be served by ensuring that their boards are not misled or duped by the senior management team which is a board's primary source of information about a company's operations.[29] So there is

[28] See n 12, pp 47-48.

[29] Of course there are other sources such as auditors etc.

something to be gained for shareholders in having their boards informed and appraised by sources other than the company's management, and here is where employee input could be of real value. An engagement by employees in company governance could act to triangulate the information flow and power equation at the top and diffuse the cliques that can manipulate a company's control for personal gain.

A company's employees are the people most actively involved in transforming shareholders' investments into earnings and wealth, so why wouldn't rational shareholders welcome an employee say in how a company is managed? Employees know the business and they are vitally concerned with its continued success. Moreover, there is research that shows that these views are not necessarily controversial and they conform to some corporate and investor practices.[30]

It is beyond the scope of this submission to suggest exactly how the right balance between a company's controllers, shareholders and employees can be reached so as to extract peak performance and prevent the oppression or excessive gain of any one group. However, that executives can get away with the pay deals that they can in the face of shareholder, employee and community anger suggests that the current balance is not quite right.

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[30] See: M Anderson, M Jones, S Marshall, R Mitchell and I Ramsay, *Evaluating the Shareholder Primacy Theory: Evidence From a Survey of Australian Directors* (2007), Centre for Corporate Law and Securities Regulation and Centre for Employment and Labour Relation Law, The University of Melbourne; and K Anderson, S Marshall and I Ramsay, *Do Australian Institutional Investors Aim to Influence the Human Resource Practices of Investee Companies?* (2007), Centre for Corporate Law and Securities Regulation and Centre for Employment and Labour Relation Law, The University of Melbourne.