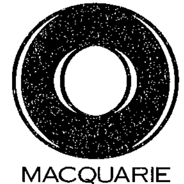
Macquarie Group Limited
ABN 94 122 169 279

No.1 Martin Place
Sydney NSW 2000
GPO Box 4294
Sydney NSW 1164
AUSTRALIA

Telephone (61 2) 8232 3333
Facsimile (61 2) 8232 7780
Internet http://www.macquarie.com.au

29 May 2009

Inquiry into Executive Remuneration
Productivity Commission
Locked Bag 2, Collins St East
Melbourne Vic 8003



Via e-mail: exec_remuneration@pc.gov.au

Inquiry into Executive Remuneration

On behalf of the Board of Directors of Macquarie Group, I would like to take this opportunity to thank the Productivity Commission for allowing us to present our views on its inquiry into executive remuneration.

We encourage the Commission to support a principles-based approach to remuneration that encourages robust governance processes, while allowing Boards of Directors to respond flexibly to the challenges of remunerating executives in ways that encourage their attraction and retention.

We have organised our submission into the following sections:

1. The main submission that sets forth our recommended principles-based approach to executive remuneration, and
2. Our responses to the specific questions raised in the issues paper consistent with the Terms of Reference.

Please do not hesitate to contact me, Dr. Helen Nugent or Mrs. Nicole Sorbara if the Commission wishes to discuss this submission in more detail.

Yours sincerely,

Kevin McCann
Acting Chairman
Macquarie Group Limited

SUBMISSION TO THE PRODUCTIVITY COMMISSION

BACKGROUND

The Commonwealth Government has asked the Productivity Commission to undertake an inquiry into Executive remuneration in Australia in response to its perception that remuneration issues may have been a contributing factor to the global financial crisis.

The Commission has been asked to report within nine months on the framework and structures for remuneration of directors and executives in companies regulated under the Corporations Act. The Commission is to make recommendations on how the existing framework governing remuneration practices in Australia can be improved. In assisting governments "make better policies in the long term interest of the Australian community," the Commission is to "focus on ways of achieving a more productive economy—the key to higher living standards".

To achieve a more productive economy, it is essential that Australian companies have the flexibility to respond to changes in global and local competition, while taking into account the lessons to be learned from the global financial crisis. Getting this balance right is essential for Australian businesses to attract and retain executives and professionals; as well as to be able to attract capital from domestic and international investors. It requires alignment of a company's strategy, organisational structures and systems along with remuneration.

In the case of remuneration, this submission will, therefore, argue that to allow organisations flexibly to respond to the competitive forces of a global and domestic marketplace while recognising risk, the Productivity Commission should recommend a principles-based approach to influencing executive and professional remuneration. More specifically, the following principles are proposed:

1. Allow organisations the flexibility to reward executives and professionals appropriately while recognising risk;
2. Ensure appropriate governance processes continue to exist for setting executive remuneration;
3. Encourage organisations to structure executive remuneration in ways that are aligned with long-term shareholder interests;
4. Ensure consistency of the overall remuneration framework over time;
5. Minimise the unintended consequences of intervention.

Each of these proposed principles is discussed in more detail in the following sections. The focus of this submission will be on the services sector of the economy, particularly financial services.

1. ALLOW ORGANISATIONS THE FLEXIBILITY TO APPROPRIATELY REWARD EXECUTIVES AND PROFESSIONALS WHILE RECOGNISING RISK.

To ensure Australia's ongoing prosperity, Australian knowledge based publicly listed companies must be able to reward key executives and professionals in ways that recognise the market place in which they are competing.

The services sector is important to the economy

The services sector, which includes industries such as healthcare, education, biotechnology, information services, media and financial services, is vitally important to the Australian economy. Together they represent 55 percent of GDP and over the period 1993 to 2008 grew at the rate of 4.0 percent per annum. This compares to the growth in the total economy of 3.6 percent over the same period.

The services sector's success utilises the skills of specific individuals

While differences exist among service sector industries, more than other sectors of the economy, their success over the long term depends on utilising the skills and knowledge of specific individuals. This applies as much to the development of computer software, advanced medical processes, as well as to financial products and services. Such individuals typically have highly specific skills and are very much in demand.

Services sector staff are highly mobile

Such executives and professionals are highly mobile. They are not averse to leaving Australia to seek employment opportunities in other countries. While not specifically related to the services sector, a 2006 ABS survey of Australian expatriates showed that 346,000 Australians over the age of fifteen were living overseas in OECD countries, with 33 percent residing in the United Kingdom and 14 percent in the United States. This is 2.8 percent of the Australian resident population over the age of 15. 44 percent of this group had a high level of educational attainment.

Equally, overseas executives and professionals with specific skills are brought to Australia by local companies. This is often in response to a global search by a Board of Directors that employs an executive search firm, almost all of whom have a global footprint. Boards of Directors employ such firms to benchmark internal talent and to identify other international and domestic candidates.

Remuneration is a major factor in global mobility

Remuneration is a key factor in an executive's decision to relocate. A 2002 ABS emigration survey supports such a statement. 43 percent of expatriates cited “better employment opportunities and professional development” as the reason for leaving Australia. In the same survey, “higher income” was given as the reason why 32 percent of respondents emigrated.

Equally, where it is required that Australian companies attract overseas executives and professionals to Australia, they must be able to pay executives and professionals a level of remuneration commensurate with what they would have earned overseas.

At the same time, remuneration is also a factor in the retention of staff for Australian companies that operate overseas. Such staff have the real option of walking across the road for a similar role in a competing organisation.

Thus, in many parts of the services industry, the market and hence the remuneration that must be offered to executives and professionals is global, not just local.

Remuneration is a major factor in private domestic mobility

In addition, in attracting and retaining executives and professionals, Australian publicly listed companies must compete with private organisations that can reward their executives and professionals well, without being subject to the same level of remuneration scrutiny as publicly listed companies. The last decade saw the rapid growth of such firms. Boutique investment managers, private equity investors and hedge funds have been able to attract senior staff from publicly listed companies and reward them based on the value they create, without such remuneration requiring public disclosure. By investing in such organisations, superannuation funds have facilitated the growth of such firms and the rewards received by their executives, often switching funds from publicly listed companies to alternative asset classes. Indeed, many advisers to superannuation firms insist on incentive based remuneration as a precondition for recommending that a superannuation fund invest in such private organisations.

Flexibility is required to allow publicly listed companies to compete for executives and professionals

One of the roles of management is to manage its staff, including how they are remunerated. Because of the internal conflicts inherent in performing this role, it is critical that Boards of Directors have a significant role in overseeing remuneration arrangements and processes to manage such conflicts. Boards are well placed to assess the level of remuneration that needs to be paid to attract and retain executives, and how remuneration should be structured to recognise risk and ensure returns to shareholders are sustainable over the long term.

The Remuneration Committee of the Board and other members of the Board can draw on their own experience as well as advice from independent experts retained by the Remuneration Committee directly (and not by management), on data, trends, best practice and the like, to determine policies, remuneration structures and actual remuneration levels.

Sometimes this requires that Boards be able to offer a level of remuneration that is globally competitive. In other cases, it necessitates remuneration being structured in a way that minimises the loss of staff to domestic private companies or even the subsidiaries of global organisations that are also not subject to the same level of remuneration disclosure.

This requires that Boards of Directors be able flexibly to respond in a timely way to market circumstances. Such negotiations are often highly delicate and sensitive and need to be undertaken in a timely way.

If such flexibility is constrained by prescriptive regulation or unworkable shareholder voting approval requirements, Australia's ability to attract and retain high talent individuals will be significantly constrained. This will affect the competiveness of Australian companies in global markets.

2. ENSURE APPROPRIATE GOVERNANCE PROCESSES CONTINUE TO EXIST FOR SETTING EXECUTIVE REMUNERATION

The debate over the extent to which remuneration has contributed to the global financial crisis has emanated from the United States and the United Kingdom, where governments have bailed out major financial institutions. As a result, the governance processes that relate to remuneration are increasingly under scrutiny. Australia is in a very different situation. Not only has no financial institution been bailed out, but the governance processes are much more robust.

This section of the paper, therefore, identifies the principles underpinning those aspects of the Australian governance framework that are robust and should be retained. Where relevant, it also identifies where they differ from other jurisdictions.

Maintain primary responsibility for setting executive remuneration with the Board of Directors

The principles should state that it is the role of the Board of Directors to determine remuneration structure, policy and the amounts payable to executives. Australian Boards of Directors are required under the ASX Corporate Governance guidelines to be composed of a majority of independent directors. Typically, the Chairman of the Board is also an Independent Director or a Non-Executive Director. Remuneration Committees are also comprised of a majority of independent directors, chaired by an Independent Director. They do not rely wholly on management for data on remuneration levels, structures or trends. They draw on their own experience and material from independent consultants who revert to them and not management.

In contrast, in the USA, as of June 2008, only 38 percent of S&P companies separated the role of the Chairman and the CEO. Boards of Directors are often selected by the Chairman and seen as lacking independence in setting CEO and executive remuneration. Not surprisingly, the pressure that has emerged from shareholders and governance groups to separate these roles is now reflected in legislation that is pending in the US Senate.

Retain strong remuneration disclosure

Australia has a strong process for remuneration disclosure that has been in place since 2004. That process should be retained, but not extended, given its current comprehensive nature, although some mandatory tables could be made more valuable from a shareholder's point of view. There is a strong case for simplification of the disclosure regime.

In contrast, the disclosure regime in the USA has only recently been improved.

Retain non-binding vote

In Australia, a non-binding vote on remuneration by shareholders has been in place since 2004. This should be retained, but not extended. The non-binding vote of shareholders on remuneration reports has worked well in Australia in practice, as it:

- encourages directors to obtain institutional shareholders views and those of corporate governance experts on remuneration policy structure and levels before implementation. Companies consider that institutional shareholders play an important role in providing feedback on the appropriateness of remuneration arrangements; and
- enables shareholders to vote against a remuneration policy or practices to which they object.

A binding vote by shareholders is not recommended as it ignores the reality of attracting and hiring executives in a global market. Further, it could jeopardise a company's remuneration structure should shareholders vote against a company's remuneration report because of a single element of the company's remuneration policy. Compulsory voting on remuneration reports could also attract protest votes unrelated to remuneration.

While a non-binding vote operates in the UK and Switzerland, the USA has no such provision, except recently for organisations that are in receipt of funding through the American Recovery and Reinvestment Act. (ARRA)

Binding votes are currently only required in Denmark, the Netherlands and Sweden and, even in those locations, it is not truly a binding vote as the vote is restricted to aspects of remuneration policy prior to adoption where limited detail is provided (e.g. Netherlands) or policies generally state remuneration should be market based (e.g. Sweden). In the Netherlands, sometimes supervisory boards submit the remuneration report to the AGM for discussion and/or voting, but such votes are of an advisory nature only.

Retain shareholder's right to approve cap on non-executive director remuneration

Shareholders should retain the right to vote on the overall cap for non-executive director remuneration (including fees for special services), while Directors determine fees for Board and committee work. This is in keeping with good corporate governance.

In summary therefore, Australia has a robust approach to remuneration governance. This has been recognised in surveys by GMI, an American governance body, which ranked Australia number 1 in the world in 2007 and number 4 in 2008.

3. ENCOURAGE ORGANISATIONS TO STRUCTURE EXECUTIVE REMUNERATION IN WAYS THAT ARE ALIGNED WITH LONG-TERM SHAREHOLDER INTERESTS

In response to the global financial crisis, overseas regulators have drafted principles for setting executive remuneration for the financial industry sector. For instance, the UK Financial Services Authority has published a code of practice on remuneration principles, and the Financial Stability Forum has published principles for Sound Compensation Practices.

Apart from those organisations that have received equity injections and help in the sale of impaired assets by governments, regulators have not sought to cap remuneration. Nor is it desirable to do so. In the USA, those organisations that have had their remuneration capped are currently experiencing a loss of executives and professionals to competitors. Australia should not follow that path. US Treasury Secretary Timothy Geithner, recently said "We shouldn't be setting broad caps, I think we should be trying to get the incentives better"[1].

Consistent with the approach adopted overseas, it is suggested that principles be established that better align executive remuneration with shareholder's long term interests, while ensuring that risk is adequately taken into account. Further, it is recommended that, for financial institutions, APRA has responsibility for the oversight of these principles.

To that end, the following principles are suggested for financial institutions.

Provide for a level of fixed remuneration that allows the company to operate a fully flexible profit share policy.

If the fixed component of remuneration is too low, the company will find it difficult to cut or eliminate profit share in a poor financial year. The measure of effectiveness of this principle would be the company's ability to pay no profit share.

Link aggregate variable remuneration to controllable drivers of the organisation's performance

In service organisations, and particularly for investment banks, executives create value for shareholders through their innovation, problem-solving knowledge and experience. Shareholders benefit from the employment of that intellectual property, while staff benefit from the use of the shareholders' capital. The relationship between staff and shareholders is, therefore, more akin to a partnership than the traditional industry operations where large amounts of capital are required and intellectual capital is less important.

In such circumstances, staff should be able to share in the value created for shareholders. However, if the returns for shareholders decrease, the overall rewards for staff should reduce. Public concern in the USA and UK in relation to financial institutions arose primarily from the fact that while shareholders suffered, staff continued to be handsomely rewarded, in many cases in ways that were not transparent.

---

[1] Bloomberg, May18, 2009

The way in which the value created should be assessed will differ from one type of organisation to another and, therefore, the Board of Directors needs to determine what is appropriate for their organisation. However, the following principles are offered for consideration to guide their thinking:

- **Aggregate variable remuneration should reflect the organisation's overall performance having regard to risk**

  Overall remuneration should be truly variable and should reflect the organisation's performance including the risk assumed. As occurred in the USA, variable remuneration often did not reflect long term risk and was paid regardless of the aggregate performance of the organisation. Instead, it appears to have reflected division or individual considerations irrespective of the organisation's overall financial health.

- **Aggregate variable remuneration should reflect the controllable drivers of long term performance**

  Organisations should be encouraged to understand the controllable drivers of their long term total returns to shareholders. While these might differ by industry and sector, in parts of the financial services sector, return on equity and net profit after tax have over time shown a strong correlation with total returns to shareholders. Boards should be encouraged to link such drivers to the creation of the overall level of variable remuneration to encourage strong shareholder alignment.

- **Executives should be motivated to perform by rewarding them for controllable business drivers**

  Senior executive remuneration should be aligned with the longer term value they create for shareholders, taking into account the risk assumed. On an annual basis, this means that an executive's allocated variable remuneration should reflect the controllable drivers of superior returns to shareholders. Moreover, executives should be remunerated primarily on outcomes delivered for shareholders, rather than work-in-process. In contrast, however, caution should be exercised in remunerating executives based on market measurements such as Total Shareholder Returns (TSR). In the short run, TSR might simply reflect market movements or sentiment, rather than genuine value added by an executive.

Structure payments to executives to encourage retention and in ways that align with long run returns

Each organisation should have the flexibility to structure the payment of its remuneration in ways that meet its competitive needs to attract and retain staff. Those needs can differ by industry, by size of company, by geographic location, as well as by the company's stage of development. For instance, a start-up company might wish to pay more remuneration in deferred shares rather than cash. Regardless, however, Boards of Directors should be encouraged to ensure that in structuring remuneration adequate regard is paid to managing risk over the longer term.

However, in examining the way payments are structured, a Board of Directors might consider the following factors:

- **Defer a significant amount of remuneration**

Deferring a significant amount of remuneration offers a number of advantages and is desirable provided it vests over time (e.g. three years). First, it helps with the retention of an executive. In addition, it is a necessary precondition for adjusting variable remuneration from prior periods if it were subsequently found that profits had been overstated or executive action damaged the organisation.

This is particularly relevant for financial services organisations where revenues from loans to customers may accrue immediately, but the risk inherent in the loan remains until the loan is repaid.

The 2009 Ernst & Young Executive and Board remuneration report stated that 52 percent of the 46 companies they surveyed in the ASX 50 had mandatory variable short term incentive deferral mechanisms. This was an increase from 32 percent in the previous year. In aggregate, across the ASX 200 companies, the percentage of companies with mandatory deferral increased from 21 percent to 31 percent. This significant trend suggests that Boards of Directors and Remuneration Committees are increasingly aware of the value of withholding payment of part of an executive's short term incentive.

- **Invest the deferred remuneration in shares so as to align executive interests with those of shareholders**

Requiring that a significant part of deferred variable remuneration be invested in company shares has significant benefits. It assists with aligning the executive's interest with those of shareholders, while providing a strong additional basis for retention. In addition, it can create value for the executive if, as a consequence of the executive's initiatives, the share price rises.

- **Allow for deferred remuneration to be clawed back on retirement or termination to recognise risk and encourage retention**

Executives should not be entitled to deferred variable remuneration where it becomes apparent over time that the executive has acted in a way that has damaged the company or its reputation. Again, such circumstances would be specific to a company, but could include situations such as those that lead to a material financial restatement of a company's accounts, a significant financial loss; significant reputational harm; committing an act of dishonesty; and even leaving to go to a competitor, including approaching other staff.

- **Ensure the taxation system is aligned with the remuneration framework**

Alignment should exist between the taxation system and the remuneration framework. The taxation system should recognise the uncertainty for executives associated with the deferral of remuneration, the investment of such deferred remuneration into shares, and remuneration that is contingent until it is vested and may be forfeited in certain

circumstances including resignation. The tax system should not place Australian companies at a disadvantage relative to other countries in attracting and retaining talent.

4. ENSURE CONSISTENCY OF THE OVERALL REMUNERATION FRAMEWORK OVER TIME

Executive remuneration outcomes are a result of the interplay of government policy on corporate governance and taxation, as well as company level remuneration principles. To put in place an environment where executives are motivated to perform for shareholders over the long term in a way that recognises risk, each of these three policy dimensions need to operate to support each other. This is important for the following reasons:

- **Consistency allows staff to take a longer term view.**

  It allows staff to recognise that "If I achieve this outcome, I will get this level of reward". In this way a more productive work environment results from having certainty. This in turn, helps build staff loyalty over time.

- **Changes divert board and management attention away from adding value for shareholders.**

  The attention of the Board of Directors and executives is diverted to necessary revisions in the remuneration structure. It also requires the rebuilding of trust in response to remuneration changes.

  PricewaterhouseCoopers recognised this issue in a 2008 UK review of executive remuneration. They stated that "many companies seem unable to leave their compensation arrangements untouched even for two years, which can potentially create immense confusion in executives' minds as they have to cope with up to a dozen different sets of performance targets on outstanding plans at any point in time".

In this context, recent taxation policy changes and draft termination benefit regulation have both had unintended consequences and have created significant uncertainty in relation to some of the fundamental building blocks of executive and employee compensation. This has created significant uncertainty for existing remuneration practice.

5. MINIMISE UNINTENDED CONSEQUENCES

In framing recommendations, good public policy dictates that the Inquiry will seek to avoid unintended consequences.

The following are some of the unintended consequences that need to be avoided.

Within a company, it is possible that:

- **Fixed pay might significantly increase**

  Pressure for increased fixed pay can result from imposing restrictions on the variable remuneration as a percent of fixed pay. In such an environment, pressure would build for an increase in fixed pay. Paradoxically, greater transparency in disclosure of

remuneration has been a significant factor in executives negotiating to increase their fixed remuneration. Such an outcome is undesirable. By increasing fixed costs, a company's ability to manage through economic cycles is reduced. In those circumstances, the need to retrench staff also increases in a downturn. With lower levels of fixed pay, employees are more likely to keep their jobs in a downturn, even if they are paid less; while the volatility in shareholder returns is somewhat reduced.

- **A cap on fixed and/or variable remuneration**

If regulation results in a cap on variable remuneration it may constrain Australia's ability to attract and retain talent in the global market place or against private companies.

- **Less alignment might exist between staff and shareholders**

Small changes in the remuneration framework can, for instance, result in changes in company's share ownership plans, with undesirable consequences for both staff and shareholders.

From a national economic perspective, a cap on remuneration may have perverse consequences:

- **The loss of executive and professional staff might accelerate.**

Mobile executives might leave Australia to improve their remuneration arrangements.

- **Shareholder returns might diminish**

The loss of talent in knowledge based industries might affect company development and profits.

- **Australian companies might relocate offshore**

Australian companies might consider relocating offshore to ensure they can continue to attract talented executives and professional staff. This would reduce the number of companies headquartered in Australia with a consequent loss of challenging career opportunities for the next generation of employees. A consequence of this may be to contribute to the progressive shift of the Australian economy to a "branch office" economy. Decisions would be made elsewhere, and stimulating research and business development activities would no longer occur in Australia, reducing career opportunities and encouraging further emigration.

- **Australian companies already operating offshore may become uncompetitive**

Australian companies operating offshore may become uncompetitive as a result of being constrained by the requirement to comply with Australian legislation. A current example is where executives paid by offshore subsidiaries of Australian companies would be subject to the proposed Australian termination pay legislation.

- **<u>Private and foreign company employers might become even more attractive</u>**

Companies might be attracted to "go private". Alternatively staff could be attracted in larger numbers to private and foreign companies and/or establish their own boutique operations.

- **<u>Taxation revenue growth might reduce.</u>**

Reduced taxation would result from companies being less profitable and from talented individuals moving offshore and outside of the Australian taxation system.

****

In summary, the Inquiry is encouraged to support an approach to remuneration that encourages robust governance processes, while allowing Boards of Directors flexibly to respond to the challenges of remunerating executives in ways that encourage their attraction and retention. Further, the Inquiry is encouraged to support remuneration principles that allow remuneration to be structured in ways that are aligned with shareholder interests; that allow for consistency over time; and that minimise the unintended consequences of intervention.

Productivity Commission Question	Response
TOR 1: Trends in remuneration	
How are levels of director and executive remuneration determined?	Non-Executive Director remuneration is fixed fee for service with additional fees for specific Board committee roles. Aggregate level of fees is set by shareholder vote. Individual fees are set in line with market rates for relevant comparable organisations for the time commitment and responsibilities involved. Invariably, Boards use the services of independent external remuneration consultants to obtain robust market data. Market data takes into account time commitment, responsibility to industry regulators (i.e. ASIC/APRA) and increasing levels of individual liability for Directors (in this case D&O insurance may not be available to fully indemnify Directors from such liability). The Company's Board is best placed to assess the level of remuneration that needs to be paid to attract and retain executives, based on experience and on advice from the Board's remuneration committee. Company Boards annually review executive performance. The process of setting executive remuneration is by reference to market factors (i.e. competitor pay for like positions), company performance and executive performance. Base pay is often measured against market indicators for similar size roles. Performance-based remuneration in aggregate should reflect the overall performance of the organisation. An individual's performance-based remuneration should reflect the performance of their business as well as their own performance. Performance considers both quantitative and qualitative factors. Again, external consultants are used and the views of corporate governance organisations and shareholders are taken into account.
What constraints exist, and what is the market's role in determining remuneration levels?	The overriding constraint in setting executive remuneration should be the organisation's performance. An executive's performance should be aligned with long-term shareholder interests. Remuneration is the market price for an executive to perform a given role to achieve a shareholder outcome. The market is, therefore, an important consideration when recruiting executives, and annually when comparing remuneration with market benchmarks. While mindful of market trends, the level of performance-based remuneration for executives should be reflective of the company's and the executive's performance.
What are the major drivers of negotiated outcomes? Have they changed over time?	Negotiated outcomes should be reflective of both the need to be market competitive and the need to reward commensurate with performance. Executives point to market trends when negotiating to join a company or in annual salary reviews. The introduction of mandatory disclosure of executive remuneration for publicly listed companies has contributed to upward pressure on executive pay because the executives have transparent information on remuneration.
What growth in the level of director and executive remuneration has taken place over recent decades, both within Australia and internationally?	Director remuneration increases reflect increasing workloads and liability of Directors. Whilst there has been growth in the level of executive remuneration over recent decades, the focus should be on ensuring that remuneration levels are appropriate today with respect to company and individual performance.

Productivity Commission Question	Response
What factors contributed to this growth?	The factors that have driven increases in executive remuneration include: – globalisation of the market for executive talent, – transparency of who is getting paid what (enhanced since remuneration reports were introduced), – the increasing scope, scale and complexity of large companies requiring higher levels of expertise, growth in profits and returns to shareholders, and – significant increase in profitability of companies in recent years during robust economic conditions. Many publicly listed companies have hired new CEO's or other senior executives externally rather than promoting from within, often from outside Australia. Usually to attract executives to Australia, a higher level of remuneration is set than otherwise would have been had the appointment been made internally. We note that in the financial sector salaries have declined significantly in 2008/09 reflecting the reduced profitability of the sector.
Has the experience differed across different industries or sectors of the economy?	No comment provided.
Is there any relationship between director and executive remuneration, and the remuneration of other company employees?	Directors' remuneration arrangements are different to executive remuneration arrangements. There is no relationship between the two. Directors should not have at risk remuneration and should be paid a fixed fee, which reflects their governance role. There is a relationship between the remuneration of executives and other employees. Executives should be paid a fixed salary plus a high proportion of variable performance based pay aligned with the controllable drivers of shareholder value. Other employees should be paid a fixed salary plus performance based bonuses, with less proportion of total reward being variable pay to reflect their roles in the case of more junior employees.
How important are relativities between executives and other employees?	Remuneration levels and structure should reflect an individual's role, skills, and ability to influence shareholder value.
Are there flow-on effects from executives to other employees?	There are in a performance-based culture. Those employees who can influence or achieve long term shareholder returns will have the greatest level of variable pay.
Do big disparities serve to motivate or de-motivate other employees?	Big disparities in remuneration tend to provide high levels of motivation in a performance-based culture. In such a culture employees are all seeking to find ways of achieving greater reward from demonstrably adding to shareholder value.
Are current director and executive remuneration levels justified? Have increases over recent years been justified?	They are justified where strong governance processes exist and where remuneration is structured in ways that are aligned with long-term shareholder interests. They are clearly not justified if there is no link to performance and shareholder value (i.e. termination payments where there is under performance).

Productivity Commission Question	Response
How should the Commission determine what is 'justified' — what tests should be applied?	The Commission should endorse a principles-based approach to remuneration. Given its charter to help achieve a more productive economy, it is important that the Commission protect and enhance the ability of talented people to be compensated for their talent and the increase in the profitability of companies they lead to the benefit of shareholders, employees and the communities in which they operate. The Commission should consider, when determining what is 'justified': – That appropriate governance processes are in place for setting executive remuneration; – Executive remuneration should be structured in ways that are aligned with long-term shareholder interests; – That Directors are best placed to make judgements on remuneration.
What relationship exists between levels of remuneration and individual and corporate performance?	Corporate, business and individual performance should be directly reflected in performance-based remuneration levels. The total amount of performance-based remuneration at a corporate level should reflect the overall organisation's performance and its success in delivering long-term shareholder returns. The further allocation of performance-based remuneration from the corporate level to business groups and again to the individuals within those groups should reflect the relative contribution of the business groups and the individuals to the overall performance of the organisation.
To what extent are remuneration levels required to generate an adequate supply of suitable directors and executives; that is, are they primarily aimed at hiring and retaining the right person, rather than influencing their performance?	Remuneration policies and remuneration levels are both used to attract and retain the right person and also to influence performance. Remuneration levels must be set recognising many Australian companies are part of a global market. Companies must be able to pay remuneration levels commensurate with what individuals could earn outside Australia, particularly if employed in jurisdictions outside Australia. Remuneration levels are also a factor in the attraction and retention of staff for Australian companies that operate outside Australia. In addition, for Non-Executive Directors liability and reputational risk are factors affecting the supply of Directors who have financial experience.
What are the key drivers of performance for directors and executives?	Key drivers will differ depending on the individual. Beyond a base level of remuneration, Executives are generally motivated by being recognised through remuneration for success in achieving controllable outcomes.
Are there factors other than remuneration that influence their performance?	Yes. In the case of executives, factors include company leadership, company culture, job satisfaction, inspiring leaders, ability to work with a strong team, long-term career prospects such as exciting work and opportunities to work offshore.
What changes have taken place in the type and structure of remuneration over recent decades?	In the case of executive remuneration, there has been a significant move towards performance rewards in place of fixed remuneration with an increasing proportion of total remuneration paid in equity. It is now more common for there to be a deferral of a proportion of the short-term incentive to encourage staff retention, whereas previously this was predominantly paid out in cash.

Productivity Commission Question	Response
	Longer term incentives have become more predominant as a way of aligning the interests of staff and shareholders. Longer term incentives have recently shifted away from option plans to shares, and performance share rights. The introduction of compulsory superannuation has had an influence on the structure of remuneration.
What has driven these changes?	The changes are driven by a desire to better align the interests of staff and shareholders and to retain staff as well as reflecting increased disclosure transparency to shareholders. The shift from option plans to shares and performance share rights has been driven in part by changing accounting standards that required expensing the notional value of option grants through the P&L. More recently option plans have lost favour by the fact that options have fallen out-of-the-money and have become of lesser value in the minds of employees in addition to the loss of their use as a retention hold over employees. In some cases, the funding of the exercise of options through margin loans has created issues when share prices have fallen.
Have changes to the structure of remuneration resulted in inappropriate risk-taking or other forms of director and executive behaviour inconsistent with the interests of the company?	In the case of executive remuneration, there has been evidence in the US, where variable remuneration did not reflect long-term risk, and was paid regardless of the aggregate performance of the organisation. Instead, it appears to have reflected division or individual considerations irrespective of the organisation's overall financial health. Australia's banks are strong relative to their global peers suggesting little evidence of inappropriate risk taking in financial institutions in Australia.
Are particular types of remuneration more likely to produce these outcomes?	Remuneration models that are based on revenue rather than profits and that do not factor in risk may produce inappropriate risk taking where executives are rewarded on generating short term revenue, without any mechanism to claw back remuneration if excessive risk results in credit or other losses.
Has the experience differed across sectors (for example, the finance sector relative to other areas of business)?	Yes. The experience has been most evident in the financial services industry. This appears to have been a significant factor in US financial services where, for example, mortgage brokers and lenders were paid up front commissions for mortgage origination without any claw back arrangements to compensate for bad debts; and investment bankers were paid on revenue generation, not risk adjusted profitability. There was a lack of appropriate controls in place across the industry.
Who should determine what is an appropriate level of risk-taking or an appropriate corporate strategy, and how should this be done?	Executive Management should develop strategies and associated business and financial plans for the approval of the Board of Directors. For specific financing deals to be approved the returns need to exceed a benchmark risk adjusted rate of return on capital. The Board of Directors should set and periodically review levels of risk tolerance and required returns. In a banking environment these may include measures such as required rates of return adjusted for risk, equity ratios, limits on lending to particular industries, value at risk measures for trading businesses.

Productivity Commission Question	Response
	The Chief Risk Officer should be involved in ensuring that the culture of the organisation adequately recognises risks, by ensuring adequate capital is allocated in respect of risks assumed and its impact on any profit share pool and allocation of profit share to various business divisions.
Why and/or when are the dealings between shareholders and companies on remuneration issues a matter of public interest?	Remuneration policy is predominantly a matter for Boards of Directors and Shareholders. However, in exceptional situations (i.e. where the breakdown of companies jeopardises the functioning of a country's financial system), remuneration policy is then rightly a matter of public interest. As seen recently in the US, examples exist of where remuneration practices have contributed to excessive risk taking (home mortgage industry, investment banks and other financial service companies) encouraging executives to behave in a way that threatens public interest. Public interest in Australia has focused on disclosing entities and has ignored executives of foreign companies in Australia, mutuals and partnerships. This has the potential to disadvantage executives at disclosing entities.
What relationship exists between the structure of remuneration and individual and corporate performance?	There is a strong relationship between variable performance-based remuneration and individual and corporate performance. The level of remuneration should reward outstanding individual and corporate performance. The structure of remuneration should ensure that individuals are motivated to perform and also ensure that employees have a direct long-term alignment with shareholder interests. The structure for each individual should reflect their seniority and their ability to influence results.
What arguments, for and against, are there for linking remuneration and the share price?	There are no arguments for linking remuneration to the share price per se, because in the short run executives have no influence over it, regardless of their efforts. It is better to link remuneration to the factors that executives can influence such as Net Profit After Tax and Return on Equity rather than those they cannot influence such as Total Shareholder Return. In the longer run the share price is driven by these underlying performance levers that executives can control.
Are there other useful data sources on director and executive remuneration over time in addition to those noted above?	No.
TOR 2: Effectiveness of regulatory arrangements	
Given that it is ultimately the responsibility of the board to engage a managing director and other key executives, including associated terms and conditions, what changes would assist the board in fulfilling this role, consistent with shareholder interests?	It is pleasing that the Commission acknowledges that it is the role of Company Boards to manage remuneration. A set of remuneration principles as outlined in this submission may be helpful to assist company directors establish remuneration policies and practices that more tightly align with shareholder outcomes.

Productivity Commission Question	Response
How effective are arrangements for director and executive remuneration under the Corporations Act and ASX listing rules and guidelines?	We support the non-binding vote by shareholders on the remuneration report for reasons noted earlier. The mechanisms for setting and approving Non-Executive Director remuneration are effective in Australia. We consider that there is no evidence of systemic factors requiring legislative action.
Do arrangements provide sufficient transparency and accountability on remuneration arrangements and practices?	The significant current level of disclosure has provided clear transparency of remuneration arrangements and practices. Remuneration consultants and Non-Executive Directors argue that the level of disclosure has had the effect of increasing the level of executive remuneration as executives make comparison on absolute level of pay received by peers in similar sized organisations. Directors should place heavy emphasis on a comparison of the underlying performance drivers as a counter point to the absolute level of remuneration. The introduction of the non binding vote on remuneration reports has heightened the responsibility of directors to set remuneration policies and practices that are justified by shareholder returns. The non-binding vote has also encouraged the Directors to engage with shareholders. Remuneration reports could be simplified by legislative change (i.e. material of past years options/equity is not of utility to investors).
How might transparency be increased, and what might be the impacts of this?	Peer performance comparisons of underlying performance drivers could be made in remuneration reports as a means of visibly demonstrating poor or superior performance.
Are the current disclosure requirements in the remuneration report too complex?	Remuneration reports have become lengthy and very detailed. Transparency and accountability could be increased if remuneration report requirements were simplified. Succinct reporting, focussing on how key performance drivers have driven business and remuneration outcomes, may help shareholders see the link between pay and performance.
Is the coverage of executives in the remuneration report appropriate?	Yes.
Would shareholders benefit from access to readily accessible, consolidated information, on director and executive remuneration?	Shareholders would benefit from simplified reporting that is focussed on the link between shareholder performance and executive remuneration. The length and complexity of remuneration reports often mean that this information is less obvious with the focus primarily being on the quantum of pay to each director or executive.
Is there an appropriate balance between legislated requirements and voluntary guidelines?	The ASX Guidelines are an example of voluntary guidelines that are not mandatory but considered best practice. A number of the corporate governance bodies also have their own set of guidelines. APRA's draft principles-based remuneration governance requirements are designed to ensure prudent risk taking. The Corporations Law and the accounting standards are however, mandatory. As more regulatory bodies release their own set of principles, the volume of voluntary or mandatory guidelines will increase which may increase complexity where an organisation operates in multiple jurisdictions with multiple regulators.

Productivity Commission Question	Response
What is the role of voluntary guidelines in governance of director and executive remuneration?	Voluntary guidelines establish what is considered best practice. They play an important role in the overall remuneration governance framework as shareholders can evaluate a company's remuneration policy against them.
Is the case for regulation stronger where government is an active participant in company activities, for example through the use of taxpayer funds to bailout companies in financial difficulty or through other ongoing support activities?	In the US, Financial Services Companies that received government assistance through the American Recovery and Reinvestment Act (ARRA) must provide shareholders with a non binding "say on pay" vote. However, US Treasury Secretary Timothy Geithner, recently said he is not in favour of the federal government placing limits on the compensation of top executives of banks that have received taxpayer funds. As far as possible the public issue should be addressed through existing commercial and governance mechanisms. For example, where government has provided support it should be paid for the service provided e.g. credit rating support for debt issues. If the government elects to provide capital it should do so as a shareholder and participate in the company according to the Corporations Law in the same way as any other shareholder. Government may elect to invest via a special class of share with specific rights. If a company is nationalised by having government owning more than 50% of the shares, it has the power to appoint the CEO and directors, who in turn determine how much the CEO is paid.
Are there any voluntary, good practice guidelines or codes applying internationally that may be of interest in an Australian context?	The Financial Stability Forum has produced remuneration guidelines relevant to Banks and Financial Services organisations. The UK Financial Services Authority has published a draft code of practice on remuneration policies. The European Corporate Governance forum has similarly produced a statement on Director Remuneration. The APRA draft policy on remuneration.
Should Australia consider the adoption of a code of practice?	The Inquiry should recommend in favour of adoption of a set of remuneration principles.
To what extent have remuneration committees been used in Australia? What effect have these had on the linkages between remuneration levels and individual and corporate performance?	Remuneration Committees are normal in Australian companies, particularly larger companies. We do not have any broadly based data to determine correlation of remuneration with company performance segmented between companies with remuneration committees and those without.
Do conflicts of interest arise in the arrangements by which remuneration consultants advise on director and executive remuneration? If so, how significant are they and how might they be addressed?	Conflicts may arise if remuneration consultants are appointed by management but not if appointed by the Board to advise Non-Executive Directors on Directors fees. In the case of executive remuneration, the conflict is eliminated by ensuring that the advice to Non-Executive Directors on executive remuneration is made by a consultant not otherwise engaged by the company. We are not opposed to advice from management retained consultants being made available to Non-Executive Directors.

Productivity Commission Question	Response
TOR 3: The role of institutional and retail shareholders	
What degree of influence should shareholders have in their own right in determining remuneration practices?	The Directors are appointed by the shareholders as their representatives/agents to oversight governance of the company in a manner that will produce the best long run return for them. The directors are best placed to know what is in the best interest of the company in the long run. They get feedback on remuneration via the annual non binding vote on the remuneration report. If the Directors or the Board are not performing, then the shareholders have the opportunity to vote against their appointment or remove them. Shareholders also have the right to determine any overall increase to the fees to be paid to directors for their services in guiding the company in their interest.
Do current regulatory arrangements enable shareholders to be adequately involved? If not, why?	The current legislative framework, including a non binding voting on remuneration reports, provides ample opportunity for shareholders to be adequately involved.
Does the current non-binding vote require strengthening?	No. If shareholders are unhappy about the governance of the company they can vote against reappointment of directors or seek to remove them. A negative vote on remuneration sends a powerful signal to a Board that remuneration arrangements need review. A binding vote on a remuneration report is not workable as it ignores the certainty in service contracts when attracting and hiring and executives in a global market Further, it could jeopardise a company's remuneration structure should shareholders vote against a company's remuneration report because of a single element of the company's remuneration policy. Compulsory voting on remuneration reports could also attract protest votes unrelated to remuneration.
Is it appropriate for directors and executives that are named in the remuneration report, and who hold shares in the company, to be able to participate in the non-binding vote?	Generally speaking it is inappropriate for an interested party to vote where there is a clear conflict of interest. In practical terms the resolution is not binding and for most large corporations the number of votes held by such executives would be small and unlikely to influence the outcome. This would be an issue where a dominant shareholder took excessive remuneration.
To what extent have large institutional investors used their voting rights to influence remuneration practices and other areas where they have voting powers?	Large institutions are using their voting rights to influence management in this area. A group of institutions are shareholders in Regnan – Governance Engagement & Research Pty Limited which provides research services to institutional investors and quantitative data on company environmental, Social and Corporate Governance performance for mainstream funds management.
Are there areas where their rights should be strengthened?	No.
Does institutional voting typically align with the broader interests of shareholders?	Not always. Sometimes the time horizon they are considering is different from the long-term horizon of the Board. Fund Managers make up a large group of shareholders but often their interests are misaligned with shareholders. Fund Managers are generally paid

Productivity Commission Question	Response
	quarterly which encourages behaviours to maximise the value of assets under management at the end of each quarter.
In what aspects of remuneration practices and setting remuneration levels would it be appropriate to increase shareholder involvement?	So long as Directors actively engage with shareholders and are listening and responding where appropriate to shareholder concerns, it is not appropriate to increase shareholder involvement in any aspect of remuneration practices and setting remuneration levels.
How would this be best achieved — without, for example, diluting the intended function of the board in engaging the managing director/chief executive officer?	Any further involvement by shareholders would make the processes of corporate governance unwieldy. It would also risk diluting the appropriate division of responsibility between directors and shareholders. A consequence of this might be that fewer qualified individuals seek to become non executive directors in public companies. This may have the consequence of poorer corporate performance in the future.
TOR 4: Aligning interests	
To what extent do current taxation arrangements influence the level and structure of executive remuneration?	Significantly.
To what extent should bonuses be an allowable tax deduction for companies?	Bonuses should be 100% deductible to the employer, as a bonus is a payment for outcomes of work performed. Failure to allow a tax deduction for bonuses would create perverse and complex outcomes such as increasing fixed remuneration or increased outsourcing of functions.
Should bonuses be subject to special/higher taxation rates?	Bonuses are already taxed at a higher rate as they are more likely to be subject to the top marginal rate of tax rather than benefiting from the progressive tax scale. Australian tax rates are already high on an international scale – lower tax rates overseas have caused a flow of talent to lower tax jurisdictions such as Hong Kong and Dubai. Any increase in the marginal tax rate on bonuses would lead to perverse consequences as employees and companies seek to find alternative methods of making payments.
What evidence or examples indicate that the interests of boards and executives may not be adequately aligned with those of shareholders and the wider community?	The Corporations Law requires that the Board's interest be primarily aligned with shareholder outcomes. Directors are constantly aware of the impact of company activities on all stakeholders and take into account issues such as Corporate Social Responsibility when managing the company. It is noted that the debate particularly on executive remuneration seems to be focussed solely on listed public companies and not on partnerships, foreign companies or mutuals.
What factors have contributed to any misalignment?	Cannot provide comment.
What are the interests of the wider community in relation to director and executive remuneration within a company?	The wider public interest is for Australian companies to grow and prosper, creating fulfilling employment opportunities. The charter of the Productivity Commission states the community interest as being to *"help governments achieve a more productive economy – the key to higher living standards".* Also to foster conditions for Australian

Productivity Commission Question	Response
	companies to compete globally on an effective basis. The community should also be interested in the long run flow of taxes paid by companies and their employees as it is this revenue that provides the public services for our society. These outcomes are most likely to be maximised through companies having superior talent, rewarded for its success.
To what extent do the interests of shareholders and the wider community align? In what circumstances will they not be aligned?	Generally, if shareholders are doing well, the community is doing well and vice versa. Profitable companies are paying dividends benefiting shareholders, as well as company taxes, and employee taxes benefiting the community.
Can cost cutting by companies, including by sacking workers, align with the public interest?	It is always regrettable when companies need to reduce their work forces through staff redundancies. However, there are many factors which lead to this outcome (closure of activities, exit from certain areas due to increased competition and capital investment or new technology leading to reduced labour needs). In a recession, when faced with diminishing orders and revenue this is a necessary part of a Company's strategy to remain financially viable and competitive. The community benefits through the ongoing viability of companies who pay taxes and provide employment. An appropriate drive for efficiency helps Australia achieve a more productive economy. In Australia headcount reductions are invariably accompanied by an appropriate redundancy payment.
Is it reasonable to reward executives for actions that promote shareholder interests but which may not align with the public interest?	Executives and Directors must make decisions in the interest of the Company. The government has a role to facilitate action to ameliorate the impact of such decisions which may impact groups or communities (i.e. unemployment benefits).
What types of performance measures/hurdles could be used to accurately measure performance and align interests of executives and shareholders?	Each industry and company will have a few economic drivers, controllable by management, that are highly correlated to driving shareholder outcomes. These should be the basis of aligning the interests of executives and shareholders. Macquarie has found in its industry that the variables that are most highly correlated are Net Profit After Tax and Return on Equity. These variables drive the share of profits earned by executives and staff.
How can opportunities for executives to 'game' incentives be minimised?	Opportunities to "game" incentives are minimised when: – There are robust risk management and financial controls. – The main basis of performance reward is based on a work group or company basis and not on individual performance. – Independent directors set and approve remuneration policies and practices. – There are clear consequences in the company values where an executive has inappropriately "gamed" the system. Consequences could be the termination of employment, loss of office, claw back of deferred remuneration. – Systems are in place that truly align the interests of shareholders and employees. – Firm oversight by Board of Directors on alignment principles.
Are boards properly exercising their functions on	There is no evidence of systemic failure in the case of Australian remuneration (none of the few instances of failure justify regulating

Productivity Commission Question	Response
behalf of shareholders?	Director decisions).
Are they being unduly influenced by chief executive officers? If so, why?	The Board is ultimately accountable and responsible for executive remuneration. There is no evidence to suggest that Independent Directors are unduly influenced by CEOs.
Are some forms of remuneration more likely than others to promote a misalignment between the interests of boards and executives and those of shareholders and the wider community?	Any form of remuneration that is not performance-based or where risk or long run outcomes are not considered is likely to lead to misalignment. This is very visible in US banks where there were strong incentives to originate mortgages to generate commission income, without any consequence for risk or loss and where there was revenue-based payment.
Are taxation considerations, either from the company's or executive's perspective, driving the design of remuneration packages? If so, what changes are required?	Yes. Employee share plans The opportunity to retain bonuses in company shares, and defer tax until when disposal restrictions and/or forfeiture conditions cease, has been a prominent positive influence in design of share plans to align executive pay with shareholder performance. The proposed changes announced in the 2009 Federal Budget to include shares and rights acquired under an employee share scheme in assessable income in the year of acquisition would have a negative impact on the use of employee share plans. Aspects of the current tax rules applying to employee share plans can prohibit better design as outlined in the following examples: 1. Employee shares and rights may be subject to tax at the time when the employee terminates employment. This discourages share plans which continue disposal restrictions and forfeiture conditions after the employee terminates employment, for example to ensure that no material issues arise after termination. The rules could be changed to continue tax deferral after termination where the shares remain subject to disposal restrictions and/or forfeiture conditions, which would provide better alignment between executives and shareholders. 2. Many employee share plans use an employee share trust to acquire the shares and hold the legal interest in the share to facilitate enforcement of any disposal restrictions and/or forfeiture conditions. The sole purpose of the trust is to acquire shares and deliver these shares to employees under an employee share scheme. Recently the Australian Taxation Office issued a ruling (Class Ruling 2009/20) which stated that in the case of forfeiture, the employee would still have a tax liability arising from a capital gains tax event applying to the cancellation of their interest in the employee share trust. The ruling, based on the ATO's interpretation of how the legislation applies to a particular share plan arrangement, has a wide impact on the operation of this common structure. The rules could be changed to make it clear that the forfeiture of a share in cases where an employee share trust has legal interest in the share does not result in a capital gains tax event for the employee. General tax rates The variance between individual tax rates, company tax rates and superannuation fund tax rates figure prominently in remuneration design.

Productivity Commission Question	Response
	Similarly, the concessional tax treatment of long term capital gains realised by individual taxpayers and the concessional valuation rules for certain fringe benefits under the Fringe Benefits Assessment Act, influence remuneration design.
Is it appropriate that there be separate treatment of financial institutions? If so, why and in what way?	Apart from APRA governance, it is not necessary or appropriate to single out remuneration arrangements for financial institutions. The situation in Australia appears to be materially different to that prevailing in major money centres overseas. Research by Macquarie reveals that many of its Investment banking peers or competitors in the US, UK and Canada pay executives based on revenue, in contrast to Macquarie which pays on Net Profit After Tax and ROE. The current consequence of this is that these investment banks have been contractually obliged to pay large bonuses despite the consequent losses incurred by the companies and shareholders.
Are there any risks from such an approach?	Not from the approach suggested above.
Are there other sectors that would require a differentiated approach?	See above.
If current mechanisms are not serving to align the interests of the board and executives to those of shareholders and the wider community, how could regulatory arrangements and remuneration practices better secure this?	Current mechanisms allow alignment between the executives, the Board and shareholders provided that the Board uses its judgement to ensure that executive reward is driven by factors that will lead to better shareholder outcomes. A set of remuneration principles may be useful to ensure the linkages are tighter.
Should shareholder votes on remuneration reports be (more) binding?	See prior comment on page 8.
Are the current approval processes for equity-based remuneration appropriate?	Shareholder approval is currently required for equity grants to executive voting directors. The ASX also recommends as best practice that companies obtain shareholder approval for any equity-based plans. These current approval processes are appropriate.
What effect does hedging have on aligning interests, and should this practice be permitted?	Hedging may reduce alignment with shareholders, although they too can hedge their position. Hedging should not be permitted on unvested share or option holdings but be permitted on vested share or option holdings.
Is the current regulation of non-recourse loans appropriate?	Non recourse loans are very infrequently used by Australian listed companies and are also discouraged by shareholder groups. As a result, no further regulation should be required.
What is the role of remuneration consultants and what has been their influence on remuneration practices, including levels, growth and structures of remuneration? Do any	Remuneration consultants provide advice and guidance to Boards of Directors, and access peer data. Ultimately the Board should make its own independent assessment of remuneration policy and practice. The advice for Non-Executive Director remuneration should be made by a consultant not otherwise engaged by the company. Ultimately the shareholders control Non-Executive Directors' fees through the

Productivity Commission Question	Response
conflicts of interest exist?	cap on the aggregate fees payable.
Should government have a greater role in regulating remuneration?	Regulation is not an appropriate response in the absence of evidence establishing systemic failure. Directors should determine the most appropriate remuneration policy for a company.
What are the costs and benefits of any options/mechanisms to more closely align the interests of boards and executives with those of shareholders and the wider community?	Prescriptive regulation may make Australian companies less globally competitive for talented executives. Existing rights of shareholders and directors enshrined in the Corporations Law are sufficient and provide the proper balance of cost versus benefit. There is no need to impose any additional regulation, or give shareholders rights over matters which reasonably are the decision right of directors.
What could be some unintended consequences of limiting or more closely regulating executive remuneration in Australia?	– Fixed pay might significantly increase – An implicit cap might be imposed on variable remuneration – Less alignment might exist between staff and shareholders – The loss of executive and professional staff to both overseas or to private companies might accelerate – Shareholder returns might diminish if there is a loss of talent – Australian companies might relocate offshore – Private companies might become even more attractive – Taxation revenue growth might reduce if companies become less profitable, relocated offshore, or where individuals moved offshore. – Australian companies operating offshore become less competitive for talented executives if they cannot attract global talent to Australia.
TOR 5: International developments	
Are there any international approaches particularly applicable to Australia?	The principles outlined by the Financial Stability Forum are generally aligned with the principles proposed by Macquarie.
Are there particular lessons for Australia from international approaches and experience — both successes and failures?	The situation in Australia appears to be materially different to that prevailing in major money centres overseas. Research by Macquarie reveals that many of its Investment banking peers or competitors in the US, UK and Canada pay executives based on revenue, in contrast to Macquarie which pays on Net Profit After Tax and ROE. The current consequence of this is that these investment banks have been contractually obliged to pay large bonuses despite the consequent losses incurred by the companies and shareholders.