

# Kiwi firms in firing line of Aussie pay crackdown

Niko Kloeten

Australia's politicians have taken a hard line on executive pay and this could have major ramifications for New Zealand companies with an Australian presence.

Executive pay has been a controversial issue in Australia, with politicians looking to cash in on popular outrage at the large salary packages dished out to some of that country's top executives.

The Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011, which is scheduled to come into force later this year, will introduce a raft of tough new rules for executive remuneration.

The new law will apply to resolutions held after July 1 on any remuneration report.

## Changes for directors

One of the features of the law is a major change in roles for directors and management when it comes to remuneration.

Under the new rules, boards rather than management will engage remuneration consultants.

Directors and senior executives will also be banned from voting on their own remuneration packages.

Remuneration advice will generally only be provided to non-executive directors, and if a consultant provides information to a prohibited person, they will be guilty of a criminal offence.

The bill also contains a "two strikes rule" that could have a major impact for some companies.

If at least 25% of shareholders in a company reject remuneration recommendations for two years in a row, the whole board can be stood down if a resolution supported by 50% of shareholders is upheld.

## Hedging ban

The bill will also ban hedging of executive and director remuneration.

"The effect of hedging incentive remuneration is to 'de-link' remuneration from company performance," a recent explanatory memorandum of the bill stated.

"This practice is inconsistent with a key principle underlying Australia's remuneration framework that remuneration should be linked to performance.

"There is also a real, as well as perceived, conflict of interest with a director or executive entering into an arrangement where they stand to benefit if the company's

## NEW AUSSIE RULES ON EXECUTIVE PAY

### Key measures include:

- a "two strikes" rule requiring a vote for directors to stand for re-election if 25% of shareholders reject remuneration recommendations two years running;
- requiring non-executive directors rather than management to engage with remuneration consultants;
- preventing directors and executives voting their shares on remuneration resolutions;
- banning hedging of incentive remuneration;
- requiring shareholder approval for declarations of "no vacancy" at an AGM;
- banning proxy holders from "cherry picking" which proxies they exercise, by requiring them to cast all of their directed proxies.



**RISKY ADVICE:** Remuneration consultants could risk jail time if they give advice to the wrong people, under a new law being introduced in Australia to crack down on executive and director pay practices

share price falls."

It also tackles the "no vacancy" rule, meaning that a board can't shrink its numbers if a vacancy appears unless the shareholders approve.

"The 'no vacancy' rule provides boards with considerable power over the composition of the board. In practice, boards can use it to prevent outside nominees being voted onto the board," the report stated.

## Headache for dual listings

"Shareholders currently have limited options to address concerns that their company's board is operating ineffectively," the report says.

Susan Doughty, director of remuneration consultancy firm DSD Consulting, said these tough new rules would present a head-

ache for New Zealand companies that are dual-listed or have Australian parents.

Because of these close economic and business links, these rules would have a big influence on this side of the Tasman regardless of whether New Zealand's government decided to copy them.

Of big concern would be the requirements for non-executive directors to get involved in what is an operational aspect of business, she said.

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Mrs Doughty said another troubling aspect was the harsh



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punishment promised for those who breached the strict conflict of interest provisions in the bill.

"I hesitate to use the word draconian but, just to give some perspective, the penalties are tighter than what you would give to an auditor for a similar offence."

## Higher pay

This, she said, could make it harder to attract directors, who would probably demand higher pay as compensation for the increased risk and responsibility.

"How do you attract directors for what is quite a high-risk job?"

"Directors would argue the extra liability would justify higher pay and, to be fair, I think they've got a case. If you can go to prison you want to be well-paid for the advice you give."