

Senate Economics Legislation Committee

Inquiry into the Corporations Amendment
(Repayment of Directors' Bonuses)
Bill 2002

Submission No. 7

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Attachments? No Attachments



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PRESIDENT
Sharan Burrow
SECRETARY
Greg Combet

30 January 2003

Dr Kathleen Dermody
Secretary
Senate Economics Committee
Parliament House
CANBERRA ACT 2600

Dear Dr Dermody,

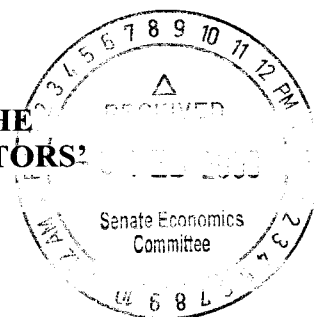
Attached is the ACTU submission to the Committee's Inquiry into the Corporations Amendment (Repayment of Directors' Bonuses) Bill 2002.

I would appreciate the opportunity to supplement the submission by giving evidence to the Committee in person, should a public hearing be held.

Yours sincerely,

Sharan Burrow
PRESIDENT

**SENATE ECONOMICS COMMITTEE INQUIRY INTO THE
CORPORATIONS AMENDMENT (REPAYMENT OF DIRECTORS'
BONUSES) BILL 2002**



SUBMISSION ON BEHALF OF THE ACTU

January 2003

The ACTU welcomes the opportunity to make a submission to the Committee's inquiry into the Corporations Amendment (Repayment of Directors' Bonuses) Bill 2002 ("the Bill").

The ACTU views the Bill as a small and inadequate step in amending the law governing corporations so as to ensure that directors and senior management observe the standards of governance which are expected by shareholders and the community.

The Bill represents the Government's response to the OneTel scandal, where the two managing directors were paid \$7.5 million in a year when the company lost \$291 million.¹ The Royal Commission into HIH has brought to light a significant number of inappropriate transactions involving directors and senior executives. The last year has seen growing community anger at the scale of executive remuneration, including bonuses, share options and severance payments.

Average annual remuneration, excluding retirement benefits, for Australia's top 100 CEOs increased by 38% to \$2 million,² 44 times average weekly earnings, up from 34 times average earnings in the previous year, and amounting to a weekly pay rise of \$10,567.

Examples of questionable remuneration include:

- \$3.5 million termination payment to Gary Toomey, former Ansett chief;
- \$3.3 million salary to AMP CEO Paul Batchelor in a year when the company lost a quarter of its value;³ although he was unsuccessful in an attempt to extend the period for taking up his options in the hope that the depressed share price would rise.⁴
- The rumoured \$20+ million to be paid to Brian Gilbertson following his exit as BHP Billiton CEO after six months in the job. This follows the \$9.8 million severance payment made to his predecessor, Paul Anderson, on top of his \$5 million salary and \$4.4 million short-term share-based compensation.⁵

¹ see Bills Digest No. 79 2002-03 p1

² "Executive Salary Review 2002" *AFR* 6 November 2002

³ Deana Mitchell & Joyce Moullakis "Shares in the red, CEOs rolling in it" *AFR* 6 November 2002 pS4

⁴ Mark Westfield "Batchelor gets hand to finger options" *The Weekend Australian* 24-25 August 2002

p36

⁵ James Thomson "Value for Money" *BRW* 24 October 2002 p60

The issue of subsidisation of excessive remuneration through the taxation system also needs to be examined. For example, the Treasurer has suggested that companies would receive a tax deduction for share options if these were required to be shown as expenses in the company's accounts.⁶ These share options have been estimated to be worth \$1 billion, or \$10.5 million for each CEO or Executive Chair of the top 150 companies.⁷

The Bill goes somewhat further than is suggested by its title, in that it covers "unreasonable director-related transactions", not merely bonuses, occurring up to four years prior to a company being placed into liquidation.

However, the Bill does have a number of serious limitations:

1. While the Bill applies to transactions entered into by directors and their relatives, it does not apply to senior executives who are not directors.
2. It creates uncertainty by not defining "unreasonable transaction" other than as one which it might be expected a reasonable person in the company's circumstances would not have entered into, having regard to the benefits (if any) to the company, the detriment to the company, the respective benefits to other parties to the transaction and any other relevant matter.
3. The Bill does not apply to unreasonable or excessive remuneration of directors or executives in circumstances where the company does not become insolvent, even though its performance may not have justified these payments or transactions, and the cost is borne by shareholders.

The ACTU submits that the Committee should recommend passage of the Bill with the following amendments:

- (i) The Bill should apply to transactions involving senior executives as well as directors.
- (ii) The definition of "unreasonable transition" should be given greater specificity, including a requirement that it be related to performance, together with a *prima facie* presumption of unreasonableness if the person involved had a base annual remuneration package of \$100,000, with the transaction involving an amount or value of at least \$40,000. By providing for transactions involving less than this amount to be voidable, although with a different onus of proof, there would be discouragement of the development of a practice of paying amounts just under the threshold.

⁶Hansard 22 October 2002 pp8235--8236

⁷AFR 6 November 2002

- (iii) The Government should also legislate to bring executive remuneration into line with shareholder and community expectations by:
 - (a) Requiring the boards of public companies to establish remuneration committees comprised of independent directors;
 - (b) Requiring all options packages to be subject to performance benchmarks which are disclosed to shareholders;
 - (c) Requiring performance benchmarks to be applied to all bonuses or other payments exceeding \$40,000 in a year where the recipient's base remuneration exceeds \$100,000;
 - (d) Removing tax deductibility for that portion of remuneration packages which exceeds \$1 million.