Future of Work

Corporate Governance

Background Paper

ACTU CONGRESS 2003

Quick Fact:

The salaries of Australia's top 100 CEOs grew by 38 per cent in 2002, averaging 89 times the Federal Minimum Wage, up from 65 times the FMW in 2001. It should be noted that the average CEO internationally receives 18 times the wage of an ordinary worker.

CONGRESS 2000

1. Congress 2000 endorsed a discussion paper which described developing international and Australian union concern about and activity around the governance practices of major corporations.

2. The paper noted the lack of debate in Australia about the responsibilities of superannuation trustees in relation to the governance of companies in which they invest, reflected in the relatively low level of voting of shares by trustees or their fund managers.

3. The paper concluded by referring to the establishment of a sub-committee of the ACTU Executive to consider these issues, and to the establishment of a network of union elected and appointed trustees, for whom a newsletter is produced several times a year.

DEVELOPMENTS SINCE CONGRESS 2000

4. The last three years has seen corporate governance come from obscurity to perhaps the major issue for business and investors in this country.

5. Much of this was sparked by a number of high profile company collapses, including OneTel, HIH and Ansett. Although the circumstances of each differed, the importance of proper governance by company boards was very clear. These cases also highlighted the

very high remuneration being received by company executives, and the general lack of any link between remuneration and performance.

6. Recent research commissioned by the Labor Council of NSW analysed the performance of companies against three criteria:

   - return on equity,
   - share price change, and
   - change in earnings per share.

7. The researchers found that excessive pay levels of more than 24 times average earnings (around $800,000 pa) coincide with a lower bottom line.

8. Significant public attention was given to a number of chief executives who received enormous remuneration or termination packages in cases where they were seen as being less than successful in their role. For example, Paul Anderson received an $18.3 million exit package from BHP Billiton, with an amount in excess of this paid to his successor, Brian Gilbertson, after only a few months in the job. The salaries of Australia's top 100 CEOs grew by 38 per cent in 2002, averaging 89 times the Federal Minimum Wage, up from 65 times the FMW in 2001. It should be noted that the average CEO internationally receives 18 times the wage of an ordinary worker. Executive packages often include share options, which can operate to encourage a focus on the short-term share price rather than the long-term value.

9. Major corporate collapses in the US, particularly Enron, highlighted the potential for accountants and external auditors to mislead directors and shareholders with overstated profits and valuations.

10. The effects of corporate misbehaviour of this sort have been devastating - not just for shareholders, but for employees, suppliers and other creditors and, in the case of HIH, many thousands of insurance policy holders.

11. The human cost and suffering for these people is immeasurable, and unable to be fully compensated, if it is compensated at all. Workers not only lose their jobs but, in many cases, also their accumulated entitlements, while those who presided over and profited from rorts and mismanagement retain much of their wealth.

12. In response to public and investor outrage over these and other events, much greater attention has been given to corporate governance standards, and to the role of institutional investors, including superannuation funds, in ensuring that companies meet these standards. Traditional corporate governance issues have also been

linked to issues of corporate practices in relation to the environment, human rights, workplace relations and social issues.

ISSUES FOR POLICY AT CONGRESS 2003

13. There have been a number of relevant developments in this debate.

- The establishment of the Australian Council of Super Investors (ACSI) by a number of superannuation funds to provide independent research and education services to superannuation funds in relation to the corporate governance practices of companies in which they invest. ACSI has been able to play an active part in the corporate governance debate, and has released its Corporate Governance Guidelines to assist superannuation funds to benchmark corporate governance practices of listed investee companies. The guidelines cover:

  - director independence;
  - evaluation of board performance and accountability to shareholders;
  - executive and director remuneration;
  - auditor independence; and
  - shareholder rights and proxy voting.

- The release of the ASX Principles of Good Corporate Governance and Best Practice Recommendations based on the following essential principles:

  - a recognition of the roles and responsibilities of board and management which is published;
  - a board which is structured to adequately discharge its responsibilities;
  - decision making which is ethical and responsible;
  - the independent verification of financial reporting;
  - timely and balanced disclosure of all material matters;
  - a respect for shareholder rights and the facilitating of their effective exercise;
  - a recognition and management of risk;
  - the review and encouragement of performance;
  - remuneration which is fair and responsible and where its relationship to performance is defined; and
  - a recognition of stakeholders' legitimate interests.

- The release of Corporate Governance International's detailed guidelines on remuneration for institutions and listed companies.

- The inclusion of a requirement in the Financial Services Reform Act that products with an investment component must disclose the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment. A consultative process has also been established which is being conducted by ASIC for the development of socially responsible investing disclosure guidelines.

- The report of the HIH Royal Commission, which found serious incompetence, mismanagement and rorting amongst directors and executives of the failed insurer and which also made detailed recommendations covering corporate governance and financial reporting.

- The Government's legislation to provide for recovery of unreasonable director-related transactions up to four years prior to a company's insolvency.

- The release by Senator Stephen Conroy, Shadow Minister for Finance, Small Business and Financial Services, of a discussion paper and the introduction of ALP legislation to improve corporate governance, which included:

    - increased penalties for breach of the Corporations Act;
    - improved disclosure of executive remuneration;
    - disclosure of all relevant director interests and relationships; and
    - measures to improve analyst and auditor independence.

- The ACTU seminar on superannuation, which included sessions on corporate governance and socially responsible investment.

- The growing activism by institutional investors, including superannuation funds in monitoring corporate governance. This has led to shareholder rejection of some remuneration packages, and the withdrawal of some remuneration proposals. It has also led to some funds and managers establishing mechanisms by which they can be advised in relation to proxy voting issues so that they can effectively exercise these rights.

- In general, the Government's response can be characterised as too little, too late. Although some initiatives have been taken in relation to improving disclosure and some other issues, there has been no concerted legislative response aimed at ensuring an end to corporate misconduct.