

## Resolution

### SUBJECT: EXECUTIVE PAY

#### Introduction

1. Congress deplores, as a significant cause of the Global Financial Crisis, the irresponsible behaviour of executives that has been fuelled by remuneration packages that reward short term returns or excessive risk taking.
2. Congress draws attention to the ethically unacceptable and economically dangerous increase in executive remuneration in Australia in recent years:
  - a) Between 1990 and 2005, the average cash remuneration of the CEO in the Top 50 listed Australian companies rose by 564 percent to \$3.4 million (10.7% per annum adjusted by inflation), while average full-time earnings only rose in real terms by 1.4% per annum.
  - b) Over the same period, top CEO pay ballooned from a multiple of 18 times average full-time earnings to a multiple of 63.
  - c) In 1993, the bottom 10% of wage earners earned 32% of the median wage, while the top 10% of wage earners earned 180% of the median wage. However, by 2006, the lowest waged workers only earned 26% of the median wage, while the top earners earned 201% of the median wage.
3. Congress notes the understandable community outrage at executive pay which exceeds all reasonable community standards, especially at a time when many working Australians are having their pay frozen or their jobs cut.
4. Congress notes that the Federal Government has asked the Productivity Commission to inquire into executive remuneration in Australian companies.
5. Congress also notes the new legal context, in that the High Court has confirmed the power of the Commonwealth to directly regulate the pay and

conditions of company employees, including executives, through the use of the corporations power of the Australian Constitution.

## Legal Regulation

6. Congress seeks to curb excessive remuneration and inappropriate risk taking by executives through laws that regulate executive remuneration.
7. The base salaries of directors and company executives should be subject to an overall reasonableness requirement. Reasonableness should be determined according to the skills and experience of the executive, the nature of their role, and the size and complexity of the enterprise. An appropriate public oversight mechanism should be established to allow a corporation to determine in advance if a package meets the reasonableness test.
8. The Corporations Law should be amended to establish an absolute cap on the base earnings of an executive of a multiple of ten times the average weekly full time earnings paid to employees of the enterprise.
9. Any additional payments made to directors or executives, or for their benefit, should be prohibited, except for:
  - a) mandatory payments under legislation (including the Fair Work Act and superannuation legislation) or salary sacrifice arrangements;
  - b) reimbursement of legitimate expenses;
  - c) termination payments of up to one year's base salary, paid in accordance with a pre-existing agreement, and not payable in the event of dismissal due to misconduct or poor performance;
  - d) performance payments. Such payments can only be paid in cases where:
    - i. the company has performed better than its peers, over a period of at least five years;
    - ii. the executive personally contributed significantly to the superior performance (rather than chance or the work of others); and
    - iii. the executive's contribution provides the foundation for sustainable business growth over the long term.
10. Payments in excess of the cap on base salary, or unlawful additional payments should be recoverable by the corporation on application of a shareholder or ASIC.

11. To discourage unreasonable payments, the tax laws should provide that any component of remuneration above \$1 million per annum should not be able to be deductible against company income.
12. Additional transparency measures should be imposed as follows:
  - a) The Annual Report and the Annual General meeting of the Company must receive a comprehensive report concerning payments to directors or executives, justifying the payments and certifying that they are consistent with the legislative requirements in respect of both base salaries and additional remuneration; and
  - b) shareholders should be required to approve the remuneration arrangements for directors and senior executives.
13. There should be strong anti-avoidance provisions in the law. Arrangements made to circumvent these restrictions should be prohibited. Benefits provided to executives (such as non-recourse loans) should be treated as if they were part of salary.
14. As recommended by the Corporations and Markets Advisory Committee, existing directors' duties of care, good faith and proper purposes should be extended to executives. Executives should face civil and criminal sanctions for breach of their obligations.