



Grant Thornton

General Manager
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: clawback@treasury.gov.au

28 March 2011

Grant Thornton Australia Limited
ABN 41 127 556 389

Level 17, 383 Kent Street
Sydney NSW 2000
Locked Bag Q800
QVB Post Office
Sydney NSW 1230

T +61 2 8297 2400
F +61 2 9299 4445
E info.nsw@au.gt.com
W www.grantthornton.com.au

Dear Sir

GRANT THORNTON SUBMISSION - THE CLAWBACK OF EXECUTIVE REMUNERATION WHERE FINANCIAL STATEMENTS ARE MATERIALLY MISSTATED

Grant Thornton Australia Limited (Grant Thornton) is pleased to provide the Parliamentary Secretary to the Treasurer the Hon. David Bradbury, with its comments on this Discussion Paper (DP) which was released on 21 December 2010.

Grant Thornton's response reflects our position as auditors and business advisers both to listed companies and privately held companies and businesses, and this submission has benefited with input from our clients, and discussions with key constituents.

Grant Thornton supports the concept of companies being able to 'clawback' performance linked remuneration which is paid or vested to directors and executives where those payments were based on results that with hindsight have been found to be significantly misstated due to wrong doing or malpractice and which it is reasonable for those directors and executives to be aware of at the time the payments were made or vested.

However Grant Thornton is not convinced that there is sufficient flexibility in the Corporations Act to effectively provide for such a clawback, and instead we recommend that there be amendments to the ASX Corporate Governance Principles to require companies to either incorporate a clawback provision for such payments, or be prepared to publicly justify why a clawback provision is not included as a condition for directors and executives remuneration.

On that basis Grant Thornton does not support the proposals in the CP. We suggest that a thorough regulatory impact study would be needed if the reform is pursued further.

Having regards to our earlier comments we consider the following options are the most appropriate.

1 How should the clawback be implemented?

Option A.3 - ASX Corporate Governance Council Principles

2 Who should the clawback provision apply to?

Option B.1 - Current CEO and CFO only

3 How should the clawback event be triggered?

Option C.3 –Earlier of (i) Public announcement of the material misstatement of the erroneous financial statements and (ii) Release of the recast financial statements by the company.

4 How should the clawback amount be determined?

Option D.1 - The amount in excess of what would have been paid under the restated financial results.

5 Should the clawback of remuneration be taken from the executive’s pool of total remuneration, or should the clawback be confined to the executive’s pool of performance-based remuneration only?

Option E.2 - The quantity of remuneration to be clawed back should be determined from the executive’s pool of performance-based remuneration only.

6 An underpayment in the executive’s bonus caused by a material misstatement

Option F.1 - Allow the company to pay to the executive the extra bonus amounts that the executive is entitled to.

7 When would the clawback amount have to be repaid?

Option G.2 -An executive must repay the remuneration following a specified time period.

8 Does there need to be a deliberate intention to mislead or act of misconduct?

Option H.1 - Intention element necessary for the clawback provision to be invoked.

- 9 Should the clawback provisions apply to a situation whereby the financial statements of a company are required to be re-issued due to the occurrence of subsequent events that may materially affect the company's financial accounts for the previous financial year?**

Option I.1 -A subsequent externally-based event should exempt executives from the clawback provision.

- 10 What time frame should be applied to the clawback provision for it to be invoked?**

Option J.2 – A 3 year period preceding the ‘material misstatement’ event.

- 11 Who should be responsible for directly applying the clawback of remuneration?**

Option K.1 - Place the onus on the company to reconcile the bonuses of executives with ASIC intervening only if the company fails to fulfill its responsibility.

If you require any further information or comment please contact me.

Yours sincerely
GRANT THORNTON AUSTRALIA LIMITED



Keith Reilly
National Head of Professional Standards