9 September 2009

CORPORATIONS AMENDMENT (IMPROVING ACCOUNTABILITY ON TERMINATION PAYMENTS) BILL 2009

Second Reading

Mr BRADBURY» (Lindsay) (6:28 PM) —I rise to speak in support of the Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009. This is one of the more important bills that I have had the opportunity to speak on. It is important that this parliament pass this bill because it is above all other things about restoring some sense of justice in the way in which our mixed market system operates. We have seen over the last period some of the excesses. We have also seen how some of those excesses have contributed to the global financial crisis and the global recession that has followed. There needs to be some alignment between the success and profitability of companies and the remuneration of those charged by the shareholders with responsibility of running those companies. There is no question about that.

There are fundamentally two reasons why the measures contained within this bill are necessary. The first one is that termination payments, the ones that we have seen, have been excessive. The second one is that, far too often, these payments have been no reflection of and have had no alignment to the profitability of the companies which those directors, executives or management personnel have been charged with the responsibility of running.

I saw an example in an article written by Clancy Yeates which appeared in the Age of 25 June this year, and I would like to quote that example. The article covered some of the aspects of this bill, but also dealt with what I believe are some of the more egregious examples of these so-called golden handshakes being awarded. In being awarded, they have made a mockery of the principle that there should be some alignment between good practice, performance and the rewards that are on offer for those involved in running these companies. The article says:

In April last year, Transurban paid departing managing director Kim Edwards $5.2 million two months before the company halved distributions and raised capital from shareholders.

So there we have a termination payment in the order of $5.2 million, made only a couple of months before the company which this particular individual was charged with the responsibility of running halved its distributions and then called upon shareholders to provide additional injections of capital. To me, there is something fundamentally wrong with a system that allows a decision of that nature to be taken, and taken without any shareholder involvement in approving it. There is another example cited in the article, relating to the architect of the ill-fated merger between Oxiana and Zinifex to create OZ Minerals. The individual concerned there was Mr Hegarty, who received $8.35 million when he resigned. By any community standard, these amounts of money are phenomenal.

I want to just put that into some context. If we go back to the most recent figures that were collected on this, in the 2006 Australian Bureau of Statistics census, we see that in my electorate of Lindsay the median household income—not individual income; household income—was $57,876 per year. Just to put that into some perspective: if you managed to pull in $57,000 and you worked for 42 years—assuming you worked from 15 to 67, as will soon be required—then we are talking about an income across your lifetime of $2.4 million. Clearly, there are some problems with trying to make an assessment of what a lifetime income would be, based on current year analyses. But we can see the scale of the discrepancy between what an average working person in my electorate can expect to earn through the course of their lifetime compared to the amounts of money that are involved in these one-off termination payments.

Let us also not forget that when an executive or director leaves a company with such a termination payment, more often than not they walk away with the capacity to continue to earn an income by various other means. So it is not as if this is a final payment to set them up into retirement. And even if it were, it would be a pretty generous one. But, in many cases, the individuals concerned go off and take up other appointments or posts and continue to generate incomes of a scale that is truly phenomenal.

I have had a look at figures for some payouts over the years. I see that when Chris Cuffe from the CBA group's Colonial First State left in 2003, his final payout was $32.75 million. At the time, his base salary was $2.82 million. We see that the final payout to Peter Smedley of the Colonial group was around $20 million. John Ellice-Flint from Santos got a final payout of $16.8 million; his base salary was $1.5 million. These are extraordinary amounts of money. Mr Gilbertson from BHP Billiton got $12 million for six months service as the CEO, and a $1.5 million indexed annual pension, for life, for 32 years with the company. Well, at least he contributed 32 years with the company. But that is an enormous payout. His base salary was $2 million. Of course, his base salary is in the same ballpark as the lifetime earnings of a family on the median household income in my electorate. That is just to put this into scale.

I would like to turn to some of the substantive provisions of the bill. It is important to note that this bill is not about setting controls and prohibiting companies from paying termination payments that might be considered excessive. But it does require a lowering of the threshold at which those payments will need shareholder approval. The threshold will be reduced from what it is currently, which is seven times the annual remuneration package—which is a larger and more expansive definition than base salary—to one year's average base salary.

Let us look at the justification for that—and I think that there are strong grounds for it. The first point to make is that I see—from having a look at some of the submissions that were made to the Senate Economics Legislation Committee that inquired into this matter—that there was universal agreement. There was consensus that the current level, of seven times remuneration, is excessive. So the regulations that have been in place, and certainly were in place for the entire period of the previous government, are now universally acknowledged to have been excessive. And some of the payments that I just read out were clearly made during the course of the previous government. It would be fair to say that there was not an appetite for any serious reform of these matters when the previous government was in place.

The 12-month threshold is also something that can be seen as referring back to the findings of a Labor minority report on an inquiry by the Parliamentary Joint Committee on Corporations and Financial Services in 2004. That minority report noted that termination payments for executives and directors exceeding one year's salary should be subjected to shareholder approval. That was a benchmark that was set back in 2004, and clearly there are other justifications for setting it at 12 months.

I note that the Senate Economics Legislation Committee considered the comments of Treasury on this matter. Treasury referred to the RiskMetrics data which was released in November of last year which indicates that the average CEO across the S&P/ASX 100 companies receives just over $3.4 million, or 201 per cent, of their salary as a termination payment. Based on that data Treasury found that 20 of the 33 CEOs included in the sample that was considered by RiskMetrics would exceed the proposed new threshold, with the rate expected to decline for smaller companies. Treasury's conclusion on this point was:

Based on this research, it would appear that between approximately 50 to 60 per cent of termination benefits would be captured by the new threshold, which Treasury considers to be an appropriate level.

I certainly consider it to be an appropriate level.

It is instructive to make the observation that Professor Peetz made in some of evidence that he gave to that inquiry. He reflected upon the disparity between even setting levels at one year and the requirements under the Fair Work Act that would apply to any other employee. Under the National Employment Standards, those provisions in the Fair Work Act provide that, in general, employees will be entitled to one to four weeks notice of termination or payment in lieu, depending on their length of service. So the disparity continues to be a very large one, and a little bit of perspective needs to be maintained by the people that argue that a threshold of 12 months base salary is too harsh or in some way draconian.

Another aspect of the bill is that it expands the scope of those company officers for whom such shareholder approval will be required. This is a very positive development. It expands the range of the individuals concerned to bring some alignment with the list of individuals that would otherwise need to be acknowledged in the remuneration report as part of the annual reporting process of companies. Another reform contained within this bill is the clarification and the expansion of the definition of a termination benefit. The essential underpinning of this element of the reforms is that the determination of the termination benefit is intended to be as broad as possible. Of course, there is also a provision to allow for a regulation-making power to specify particular types of payments as being included within that definition.

Another aspect of the bill involves a prohibition on retiree directors or key management personnel from participating in a shareholder vote in relation to the decision taken in relation to their own termination payment, unless, of course, they are exercising proxies on behalf of others. Notwithstanding these reforms, we will be retaining the existing requirements that the termination benefit be approved by a resolution passed at a general meeting and that the details of the benefit be sent out or accompany the notice of the general meeting—important notice requirements.

Another aspect of the reforms is that there will be a new express obligation introduced. The obligation will be imposed upon the recipient of a termination payment to repay the benefit where the termination benefit was paid in contravention of the requirement to seek shareholder approval. In the context of these reforms and in the context of the existence of these rules in the first place, it is only fair that there be such an express obligation. These reforms also increase the penalties for breaches of these provisions to $19,800 for individuals and $99,000 for corporations. Of course, the new provisions are not retrospective.

It is also important to reflect upon one of the arguments that are made by those opposing these reforms—that is, this measure in some way inhibits our ability to compete internationally in the global marketplace for business leaders. In this regard, I draw the House's attention to an article by Clancy Yeates in the Sydney Morning Herald on 25 June this year which read:

But other research suggests the hunt for talent may not be as global as companies claim. A recent survey of 300 companies by the proxy advisers RiskMetrics found 57 per cent of chief executive replacements came from within the company, with 18 per cent recruited from overseas.

Those figures certainly tell a slightly different story about the source from which individual executives are recruited. The suggestion that this in some way is going to inhibit our international competitiveness is a claim that is vastly overblown.

It is important to remember that, in the context of economies throughout the globe coming to terms with this common problem of executive salaries and the excessive nature of some of the payments that have been made, there will be continued global cooperation to ensure that, in the end, there are standards that are applicable not just in this country but throughout the world to ensure that there is some alignment between performance and reward.

In conclusion, I would make the following observations in relation to the opposition's stance on this particular matter. If the shadow minister has telegraphed the view of the opposition, as I think he has, the opposition believes that these proposals are too harsh and too draconian, but, at the end of the day, they are unlikely to oppose them. Maybe I am giving the opposition too much credit in this regard, but that was certainly my impression from listening to the shadow minister's comments earlier. Even though there is now an acknowledgement from those on the other side that the seven times threshold for the remuneration of an executive or director was excessive, there was absolutely no effort on the part of those on the other side to take any action in their 11½ years in office—and I have to say that some of the more outrageous payments were made during the period of the previous government. So there was no effort. I see that the shadow minister is strenuously objecting, but the fact that these requirements continue to exist on the statute book today tells a very simple story, and that is that those on the other side failed to correct what was clearly an anomaly—and some would say it was a loophole.

We are seeking to redress this anomaly with this bill, and I am confident that it will have the support not only of the House but also of the other place. It is important that we take these steps and that they be complemented by the work of the Productivity Commission and the government's response to that inquiry. What we are talking about here is restoring some sense of fairness to the way in which our economy operates and ensuring that, while those who contribute to a company's profits do receive due reward for their contribution, there is some alignment between their contribution and the profitability of the company they are involved with.