

ALERT

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Reform to proxy voting

The *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011* (Cth) (**Amendment**) came into force on 1 July 2011, amending the existing *Corporations Act 2001* (Cth) (**Act**). This included several reforms to the manner in which proxy votes are to be dealt with.

The newly introduced section 250BD provides that a person who is appointed as a proxy must not exercise any undirected proxies on a resolution connected with the remuneration of key management personnel (**KMP**) if they themselves are, or are closely related to, a member of the KMP. This exclusion will not apply, however, if the person is the chairman and their appointment as proxy expressly authorises them to vote on matters of KMP remuneration.

Unfortunately for all company directors, this section seems to conflict with amendments to section 250R, which deals with voting on the remuneration report. Subsections (4) and (5) state that a vote on a resolution regarding the remuneration report must not be made by a member of the KMP (or a closely related party) in any capacity. KMP is defined as including the chairman. The only exception to this is if the KMP member casts a vote as a proxy where the person appointing them specifies in writing how the proxy is to vote (ie KMP members may cast directed proxies).

Importantly, subsection (10) states that s250R(4) and (5) have effect despite anything else in the Act (which includes section 250BD).

The amended s250R therefore seems to undermine the effect of s250BD regarding the approval of the remuneration report. Section 250BD would give the chairman the power to vote undirected proxies as they see fit (assuming they have been given the necessary authority), but s250R categorically prohibits them from doing so. Consequently, it would seem that the chairman's powers under s250BD are restricted to any votes on remuneration of KMP that are not related to the approval of the remuneration report.

The Amendment also brought in changes to prevent 'cherry-picking' of proxy votes by non-chair proxy holders. Previously, all directed proxy votes held by the chairman had to be voted. However, non-chair proxy holders could choose whether to exercise their directed proxy votes. The Amendment introduced new provisions automatically vesting any directed proxies to the chairman if the original non-chair proxy holder decides not to vote on a particular resolution.

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