

20 January 2011

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

**Email: [executiveremuneration@treasury.gov.au](mailto:executiveremuneration@treasury.gov.au)**

Dear Mr Miller

**Re: Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011**

Woolworths Limited welcomes the opportunity to comment on the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011. These comments follow the submission that Woolworths lodged with the Productivity Commission as part of its inquiry into Executive Remuneration arrangements in Australia undertaken in 2009.

As a leading Australian retailer, Woolworths currently employs over 180,000 team members across our network of more than 3,100 stores, distribution centres and support offices in regional and metropolitan Australia. Our businesses include Woolworths supermarkets, BIG W department stores, Thomas Dux grocery stores, Dick Smith Electronics outlets, BWS and Dan Murphy's liquor outlets and Woolworths Petrol sites.

Woolworths recognises that remuneration is an important factor in attracting, motivating and retaining talented employees, in conjunction with other elements of our approach to people management. Woolworths also acknowledges the importance of having in place a robust governance framework for executive remuneration to ensure that the long term interest of shareholders remains the forefront consideration for corporations. In this regard, Woolworths believes that Australia already has in place such a framework and no significant change is required. Evidence of this is the relatively strong performance of the Australian corporate sector in recent years when compared to the rest of the world.

Woolworths supports a number of measures proposed in the Bill which are aimed at improving transparency in relation to executive remuneration including improving accountability around the use of remuneration consultants, prohibiting key management from voting on remuneration matters as well as outlawing the hedging of incentive remuneration. Woolworths also supports the introduction of laws dealing with "cherry picking" to ensure that proxy holders will be required to cast all of their directed proxies on all resolutions. Woolworths does, however, have concerns regarding the proposed "two-strikes" test and the

introduction of the “no-vacancy” rule – Woolworths does not support either of these proposals.

## **A. Woolworths’ Approach to Remuneration**

Woolworths has an achievement and performance-oriented culture which our remuneration policies drive and support. In recognising the importance of our people to our success, approximately 40,000 Woolworths employees hold shares in Woolworths through participation in various equity based schemes, sharing in Woolworths’ success and aligning their experience with that of other shareholders.

Woolworths’ remuneration policy is aligned with both our financial and strategic business objectives and recognises that people are a major contributor to sustained improvements in performance. More specifically, Woolworths’ remuneration policy for all executives provides that short-term performance incentives are linked to the meeting of rigorous financial and non-financial performance measures and that long-term performance incentives are also aligned with the creation of value for shareholders. Woolworths also actively seeks to protect the interests of the company and promote employment stability through having in place pre-established employment agreements limiting the amount of termination payments.

In terms of governance, the Woolworths People Policy Committee is specifically tasked with responsibility for managing and overseeing Woolworths’ remuneration policy – including reviewing and approving the structure of short-term incentive and long-term incentive plans to ensure individuals are fairly and equitably rewarded whilst the also protecting the long-term interests of Woolworths’ shareholders. Woolworths’ approach to remuneration is in line with principles endorsed by the Australian Institute of Company Directors, Australian Employee Ownership Association and Australian Shareholders Association.

## **B. Woolworths’ Comments on the Proposed Bill**

### **1. Strengthening the Non-Binding Vote - The ‘Two-Strikes’ Test**

Woolworths does not believe there is a sufficient policy justification for the introduction of the “two strikes and re-election” process proposed in the Bill. In this regard, Woolworths believes the current non-binding voting arrangements, together with the standing power that shareholders’ have to remove directors, are sufficient to ensure that Boards are responsive to shareholder concerns regarding excessive or inappropriate executive remuneration. In practical terms, there is already a strong incentive for a Board to ensure that they adequately and transparently respond to any significant “no” vote regarding a Remuneration Report. This incentive being to minimise the reputational damage to the Board, the Board Members themselves and the company in the eyes of the share market. In raising this issue, Woolworths notes that it has history of strong shareholder support for its executive remuneration strategy – since 1997, available shareholder votes in support of the Woolworths Executive Remuneration Report have been at 88% or above.

Should the Government be committed to proceeding with this proposal, Woolworths believes that, at the very least, the 25% voter threshold currently being proposed should be increased to 50% (to be consistent with the voting threshold for all other general resolutions). Woolworths is concerned that a threshold of 25% is too low with a number of unintended consequences – specifically, it creates the risk that a small proportion of shareholders could force a spill of the entire Board creating significant disruption for the Company causing and unnecessary upheaval to an otherwise well run company. Setting the voting threshold at this unprecedented 25% level also, in Woolworths’ view, will have the unintended effect of placing an undue emphasis and focus by both the Board and shareholders on the Remuneration report when assessing overall performance. Corporate Boards make many

significant decisions affecting the value of the company throughout the financial year. Creating a special 25% voting mechanism for the Executive Remuneration Report implicitly suggests that shareholder approval in relation to this issue is more important than the many other decisions of the board made throughout the year - most of which have far greater impact on the long-term company value to shareholders.

As a final comment, Woolworths note that the Bill currently provides that the Managing Director does not need to stand for re-election when the “two-strikes” mechanism is effected. Woolworths believes that in order to ensure business continuity, and to minimise disruption to the company, this exemption from the spill should also extend to other executive directors whose continuing appointment is necessary for the ongoing functioning of the company – the roles that would fall into this category include the Chief Financial Officer and the Company Secretary.

## **2. Improving Accountability on the Use of Remuneration Consultants**

Under the proposed law, remuneration consultations must be engaged by, and report to, non-executive directors. Woolworths supports this proposal which is consistent with Woolworths’ current practice. Woolworths does, however, have concerns regarding the proposed mandatory disclosure requirements in relation to the use of remuneration consultants – particularly the requirements to specify in detail the names of individual consultants providing advice, the name of directors who receive advice, the nature of each individual piece of advice received (and the principles on which that advice was based) as well the detailed overview of the total amount of other work undertaken by a consultant or firm (including the fees paid for that advice). Woolworths is concerned that these particular record keeping requirements are overly onerous and largely unnecessary.

An example of the administrative challenges that will be created relates to the requirement to specify in the Remuneration Report the nature of all work undertaken by a consulting firm for a business in one year (including the fees paid for that work). Firms providing remuneration advice often also provide companies with a suite of other services across a financial year including tax, compliance and audit advice. The requirement to specify the nature of the full range of services provided by that company across the year, as well as the total fees paid each of those services, is likely to involve considerable manual data collection and collation creating additional cost for businesses. This is because many companies’ finance systems (including Woolworths) are not, or cannot readily be configured so as to easily generate reports with this data. A similar record keeping difficulty will arise from the proposed requirement to list the name of each person to whom a remuneration consultant directly gives advice across a year.

Whilst Woolworths is mindful of concerns about potential conflicts of interest involving remuneration consultants, Woolworths considers that this risk is largely mitigated by the new requirement that only non-executive directors engage these consultants (and receive their reports). Therefore, to the extent that there is to be additional reporting requirements regarding their work these disclosure requirements should be proportionate to the risk – a more appropriate approach may be to only require the Remuneration Report to merely list those firms or consultants that had provided remuneration advice in the last financial year.

## **3. Prohibiting Key Management Personnel from Voting on Remuneration Matters**

Woolworths supports this proposal which will prohibit key management personnel and their closely related parties from voting on their own remuneration arrangements.

#### **4. Prohibiting Hedging of Incentive Remuneration**

Woolworths supports this proposal which will prohibit key management personnel from hedging their incentive remuneration.

#### **5. No Vacancy Rule**

Woolworths does not support the measure – it is Woolworths' view that it is appropriate for the Board members to determine, based on the circumstances, whether there are an appropriate number of members on the Board (even where that may be less than the maximum specified in the Company's constitution). It should then be up to the Board, if questioned about this decision, to explain their decision to shareholders.

As an additional issue, Woolworths has considerable concerns regarding the mechanism which would require an explanatory statement being provided from each Director regarding their view as to the need (or not) to fill a Board vacancy. Woolworths is concerned that this requirement not only imposes an unnecessary administrative burden but also runs counter to the well-established corporate law principle of the Board being a singular unified decision-making body for a company. To date it has been only in extreme circumstances that a Board member is required to publicly express a view contrary to the majority of the Board. In undermining this principle, Woolworths is concerned that the ability of Board members to have full and frank discussions in Board meetings could be undermined having the unintended effect of diminishing the quality of Board decision-making process (as opposed to the intended effect of improving it).

#### **6. Cherry Picking**

Woolworths understands that under this proposal, proxyholders will be required to cast all of their directed proxies on all resolutions. Woolworths supports this proposal.

#### **7. Persons Required to be Named in Remuneration Report**

Woolworths supports this proposal under which remuneration disclosures will only be required for key management personnel.

#### **Next Steps**

Woolworths once again thanks the Government for the opportunity to provide feedback regarding these measures which are aimed at strengthening Australia's already robust executive remuneration governance framework. We look forward to providing additional comment as the Government further considers this issue.

Should you have any questions or require further information from Woolworths, please do not hesitate to contact Charlie Beasley, Public Policy Manager on 02 8885 9133 or at [cbeasley@woolworths.com.au](mailto:cbeasley@woolworths.com.au).

Yours sincerely



**Nathalie Samia**  
**Group Manager - Government Relations**  
**Woolworths Limited**