

■ ASIC's friendly call

The Australian Securities and Investments Commission (ASIC) is set to take a 'dialogue first' approach to suspected breaches of directors' continuous disclosure obligations.

"We know, and the AICD often reminds us, that deciding what's material to disclose is a difficult decision for directors to make, says ASIC commissioner Belinda Gibson. "History would show, if you are acting in good faith, it is unlikely that ASIC will take enforcement action against you. But we do want to understand why that decision was made.

"Rather than death by 100 notices and our torture by reading them, ASIC will begin by writing a letter or calling up your company first and asking you for an explanation with supporting documents. There will be an open dialogue first which will help us come to a conclusion on how to take the matter forward. It will be quicker for companies and us, especially if you are open about the problems."

The changes result from a taskforce review of ASIC's activities that will see the corporate regulator take a 'dialogue first' approach in this area and others where good faith is likely to be present.

Areas where directors can expect more notices and intensified activity from ASIC, however, are those concerning market manipulation and insider trading.

"For companies, it's important to keep confidential information constrained. Leaks come from somewhere and we will be going to the market and talking about good practice," says Gibson. "Directors will need to pay attention to keeping information tight and become more active in looking for leaks. It's important for companies to work on a need to know basis and to monitor their staff and advisors."



Contribute feedback

■ Taking the stress out of golden goodbyes

Owen Hegarty is credited with turning mining company Oxiana during the period of a decade from a penny stock to one with a market capitalisation of more than \$7 billion at its peak in late 2007. Yet, most recently, he's been making history being the first Australian CEO to have a golden goodbye voted down by shareholders.

According to Deloitte Touche Tohmatsu partner Joe Tropeano, this isn't the start of a new trend. "Termination or ex-gratia payments have always been a sensitive issue, but we are now seeing the ability of shareholders to wield their influence and have a meaningful impact through stakeholder bodies and proxy votes," he says. "Frankly, the issues around golden handshakes are the same as for other remuneration issues."

Tropeano has a clear strategy for dealing with golden goodbyes. Firstly, he says companies and their remuneration committees need to explain what the nature of the payments are to shareholders. "For example, companies often use words like 'termination payments', but they may be referring to 'benefits accrued'. If you don't explain the nature of the payments, they can be misconstrued or mislabelled," he says.

Secondly, companies need to be clear about the reasons for the payment.

Was it contractual or a settlement, or was it compensatory or in lieu of a future benefit? "If it's not a contractual payment, you need to tell shareholders why you are making the payment and you must have good reasons for making it," says Tropeano.

Thirdly, companies need to question whether the level of payment is reasonable. There needs to be a good rationale that stakeholders will understand and find appropriate."

Once you've worked these questions out, Tropeano says: "You really need to engage stakeholders early, especially on sensitive issues. You should have a stakeholder management program. You should enter into dialogue before the notices of a general meeting go out. If you don't, you won't know until the meeting how stakeholders actually feel.

"If you engage stakeholders before the meeting, and you get their input, you can put the issue to them in a way that they'll find acceptable. If you have a good reason for it, you generally won't come across too many objections."

Finally, Tropeano observes: "Remuneration committees should ensure that they are getting independent input and that this is given with integrity. And, they need to take on board the comments made. Also, they should make sure that those giving the advice are not hired guns giving them the advice that they want to hear."

To find out about the AICD's views on executive termination payments, you can access its position paper on the subject by clicking [here](#).

■ Leading by example on compliance

Setting the tone from the top is essential when striving to embed compliance into an organisation's culture, says Australasian Compliance Institute (ACI) CEO Martin Tolar.

"All the best policies, procedures and frameworks will count for nothing if the organisation's leaders - that is the directors, CEO and senior executives - are not seen to be following the same rules that apply to everyone else," he says.

"Behaviour that breaches compliance requirements should not be tolerated and similarly, compliance practices should be recognised and rewarded. Compliance also needs to be integrated into the business and business decision making and not used as an after thought or bolted onto the business. And, the compliance function needs to be adequately resourced so that it can make a significant contribution to the business and is not seen as something that is paid lip service to."

Tolar says directors should ask themselves some critical questions in order to ensure an effective compliance culture is embedded into their organisations.

These include:

- Does the board of directors sign off and endorse the organisation's compliance plan?
- Is there a compliance committee that reports directly to the board?
- Does the compliance manager have a direct report to the board?
- How often is the organisation's compliance plan or framework reviewed?
- Is the compliance function sufficiently integrated into the business so that business units and all staff can understand, perform and be assessed against their compliance obligations?
- Does compliance form part of business and individual KPIs?

The ACI recently published the *Quick Guide to Compliance, Ethics, Governance, Risk and Corporate Social Responsibility*, which provides further tips on how to embed compliance into an organisation's culture.

■ Mentoring: A weapon in the talent war

Mentoring can be a powerful weapon as companies continue to fight the war for a talent, says Wendy McCarthy, who launched two books on mentoring last week.

She adds: “My experience as a mentee, mentor and company director over many years supports my assertion that good mentors make good company directors. Valuable mentors have good listening and questioning skills, both required attributes of effective company directors.”

McCarthy says directors who wish to foster mentoring in their organisations should lead from the top and create a board environment where respect and trust are valued and practiced, and where continuous learning is valued.

“Offer the CEO a mentor. It has an incremental effect and helps develop a mentoring workplace culture where people are treated with respect and dignity.”

McCarthy says companies need the CEO to be the champion of mentoring and to encourage the senior management team to lead by example. “Make mentoring a KPI,” she says. “High potentials,

new recruits and people moving to new challenges will benefit from having a trusted advisor. But stress that mentoring is a reward and not a remedial program.”

According to McCarthy, one of the largest mistakes companies make when introducing a mentoring program is to select all mentors from within. “When mentors are in a line relationship with the mentee, and thus in a position to determine his or her pay packet or promotion, confidentiality is not possible. Confidentiality is the basic tenet of a creative and strong mentoring relationship.”

In addition, problems can occur when mentee expectations are not identified, mentees don’t know how to drive the relationship or mentors don’t treat the relationship with respect.

Note: The AICD Coach and Mentor Connect program provides a directory of coaches and mentors selected for their breadth of commercial experience and competence across a range of industry sectors and business complexities. For more information, click [here](#).

■ Kicking up a brainstorm

As financial market conditions deteriorate, boards and their CEOs are under unrelenting pressure to find new sources of advantage for their organisations and are looking at how best to tap into the collective creative spirit. The stakes to succeed are high.

“The World Economic Forum in Davos earlier this year clearly put forward the view that innovative products and services, and their speed to market, are increasingly dependent on a firm’s ability to work in an interactive and integrated fashion, linking all its centres of excellence for a common purpose. Companies that excel at collaborating internally and externally will take the lead,” says Dianne Jacobs, founding principal of The Talent Advisors.

“Success in the entrepreneurial space requires both creativity and the ability to execute and take risk. The ante for directors is that innovation must deliver truly improved business performance. Ideas that deliver actual value remain coveted. Technology is a partial enabler. Entrepreneurial talent is the premium.

“The challenges from this are two fold – a need to foster talent with new abilities and the capacity to bring innovation to the fore. It is not an either-or option – talent competence and innovation is linked.”

Jacobs says ideas come through networks – people connecting in sync with a purpose. “Well-performing companies exploit high-

performance teams encouraging no-fault brainstorming, outside-in thinking and cross-boundary intersections for new levels of engagement,” she observes.

“Whether you call these efforts hot teams, unfocus groups, action labs, shadow cabinets or task forces, the best ideas come from collaborative action-learning projects drawing on diverse talent, the technically-experienced, high-potentials, different generations, critics or lateral thinkers from across all areas.”

Jacobs says entrepreneurial talent is identified and fostered when:

- Learning builds real capacity for both internal and external collaborative innovation.
- Skills and mind-sets for new ways of thinking and new ways of working are taught with experiential or action-learning.
- Executives are sourced, selected, evaluated and rewarded on collaborative-innovation traits.
- Cross-functional interdependence that unlocks complexity and enables execution is actively exploited.
- New connections, diversity and constructive conflict are highly valued.
- High-trust cultures use rigorous debate and discussion for deeper exploration, analysis and learning.