

12 March 2013

Mr David Woods  
General Manager  
Corporations and Capital Markets Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [corporations.amendments@treasury.gov.au](mailto:corporations.amendments@treasury.gov.au)

Dear Mr Woods

## EXPOSURE DRAFT - CORPORATIONS AMENDMENTS - IMPROVING DISCLOSURE REQUIREMENTS

On behalf of the Board of Directors of Origin Energy Limited (**Origin**) I welcome the opportunity to provide a submission on the above Exposure Draft (**Draft**), as released by the Parliamentary Secretary to the Treasurer on 14 December 2012.

### Introductory Remarks

Origin's submission focuses on aspects of the Draft that do not give practical effect to Secretary Bradbury's statement on 21 February 2012, and repeated by Secretary Ripoll's statement on 14 December 2012, on behalf of the government, that an intent of the legislative amendment is to "simplify remuneration reports (through) clearer categorisation of pay ... to better enable shareholders to understand the company's remuneration arrangements".

In this context, Origin was amongst the "early adopters" of the principles articulated by the Corporations and Markets Advisory Committee (CAMAC) in relation to the categorisation of pay, incorporating new pay tables in its 2012 Annual Report<sup>1</sup>. Origin subscribes to the stated intent of the legislative amendment, but submits that the Draft will produce results at variance to that intent.

It is important to note that CAMAC's formulation of pay categories into present pay, crystallised past pay, and remuneration granted in the current reporting period but deferred as future pay, was in the context of its parallel recommendation to remove the accounting standard version of measuring pay, and also of the need for shareholders to be able to identify pay components that reflected outcomes from previous financial years<sup>2</sup>.

With respect to the first caveat, "CAMAC is of the view that the application of accounting methodology to the Remuneration Report can confuse and mislead shareholders"<sup>3</sup>. The Productivity Commission observed similarly that the requirement to follow separate

<sup>1</sup> Origin Energy Annual Report 2012, pages 55-56

<sup>2</sup> CAMAC Report into Executive Remuneration, April 2011, page 124

<sup>3</sup> CAMAC Report into Executive Remuneration, April 2011, page 9

prescription in Corporations Act together with other 'black letter' instruments such as the accounting standards risked "unnecessary duplication in reporting requirements"<sup>4</sup>.

Whilst the government did not accept CAMAC's recommendation to remove the application of accounting standards to the pay tables in the Remuneration Report, it is important to consider the interaction of two now competing and alternative views of pay that result from implementation of the Draft in its current form. Failure to consider this appropriately will inevitably result in the additional complexity, confusion and duplication identified by CAMAC and by the Productivity Commission.

This confusion may be minimised if the accounting standards version is contained within the financial reports, and a cross reference provided in the Remuneration Report.

With respect to the second caveat, the key to shareholder understanding of "actual" pay is to be able to identify simply and clearly the link between performance and pay. This involves identification of those pay elements that result from prior decisions and performance in prior financial years, and, of fundamental importance, being able to link the decisions for the current year to the current year performance and outlook.

The most fundamental question that the Remuneration Report should be able to answer is this: Given the performance in the current year, what decisions were made and what pay was granted to the executive? This is pay granted in the current year, and the grant value of pay that might materialise in the future. The Draft fails to facilitate a clear answer to that question, particularly in view of the difficulties identified in the next section.

It is Origin's submission that implementation of the Draft in its current form will add to complexity and make it more difficult for shareholders to understand the company's remuneration arrangements. It will especially make it more difficult to align current year performance and outcomes with current year decisions. Instead of providing improved ability for shareholders to align company performance with remuneration decisions, it will blur that alignment.

### Specific Issues

Issue	Comment
Use of terms "total amount", "granted" and "paid" is not defined	Without clarity of definition of these terms, inconsistencies and misunderstandings may arise.
Elements such as short term incentives awarded for the current year, but paid a short time after the end of that year, are shown as future pay	Short term incentives and bonuses are usually determined shortly after the end of the year when the financial results are known. The Draft fails to recognise this "timing of payment" issue and adopts a cash approach that shifts a current year performance payment into future pay, blurring the alignment of pay decisions to performance outcomes.

<sup>4</sup> Productivity Commission Inquiry Report into Executive Remuneration in Australia, 19 December 2009, page 268  
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Issue	Comment
Share price movement counted as remuneration	<p>The Draft requires presentation of past crystallised pay in terms of value “granted” <i>and</i> “paid” (s. 5 (ca) (i)). The valid remuneration amount is the grant value adjusted for the percentage that has crystallised, and the Draft should be clarified accordingly.</p> <p>It is important that share price movements be separated from remuneration decisions. A \$100 remuneration decision in shares might be worth \$10 or \$10,000 in 5 years time due to share price movement enjoyed by all shareholders. Attributing the share price movement to a remuneration decision by labelling it “paid”, if that is what is intended, is misleading.</p> <p>The Draft will lead to confusion and complexity by making reference to two (undefined) amounts (granted and paid), the second of which runs the risk of confusing share price movement with remuneration decisions.</p>
Future deferred pay definition	<p>If the past (crystallised) pay table uses grant values only, and crystallisation percentage, as suggested above, then it is consistent to show future deferred pay as grant value (whether or not subject to a performance condition). For consistency across tables, and in order to align performance with remuneration decisions, the grant value at the time the decision is made is the key. Mixing valuations and counting share price movement as a remuneration decision is confusing and misleading.</p>
Superannuation and leave accruals	<p>The Draft creates new complexity in respect of the treatment and timing of superannuation and leave accrual “pay”. There is the potential to double-count long service leave both as an accrual for future benefit and as a current year expense when taken. Similarly, company paid or salary sacrificed superannuation should be treated as “received” in the current year only.</p>
Double-counting and additive presentation	<p>The three-category structure necessarily means that the same remuneration is being double-counted in successive reports.</p> <p>The structure leads also to an additive display in which remuneration that is already blurred across multiple periods will be added “across the page” to yield misleading totals. If the accounting value table requirement remains in place, the reader will be left to select from a confusing array of numbers and totals, most likely choosing the biggest possible total “just in case”. The “granted” and “receivable” approach under evaluation in the UK should be considered as an alternative.</p>

It is our submission that the Draft can be readily modified to accommodate the above issues and result in a real and meaningful enhancement to the quality and informativeness of the Remuneration Report. But without such modification, the result is likely to be counterproductive by adding complexity and duplication without providing greater clarity or understandability to the shareholder (or other stakeholders).

Once again we welcome the opportunity to comment on the Draft. Please do not hesitate to contact me if you wish to discuss any of these matters in more detail.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Helen Nugent', with a large, stylized flourish at the end.

Dr Helen Nugent, AO  
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