



# ASX Corporate Governance Council

**Proposed 4<sup>th</sup> edition of the Corporate  
Governance Principles & Recommendations**

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## Outline

- > Background to the 4<sup>th</sup> edition
- > What isn't changing
- > Summary of key changes proposed
- > What next?
- > Upcoming ASX Listing Rule consultation

# Background: about the Council

ASX Corporate Governance Council formed in 2002

Develops and issues the *Corporate Governance Principles and Recommendations* for ASX listed entities

20 member organisations



AUSTRALIAN INSTITUTE of COMPANY DIRECTORS



# Evolution of the *Principles & Recommendations*

## 2003

- > First edition
- > 10 principles and 32 recommendations
- > Separate 'reporting' recommendation under each principle

## 2007

- > Second edition
- > Principles 8 and 10 absorbed into other principles
- > Recommendations that overlapped with Corporations Act and accounting standards removed

## 2010

- > Second edition amended
- > 3 new diversity recommendations
- > Remuneration committee recommendation amended
- > Trading policy recommendation moved to ASX Listing Rules

## 2014

- > Third edition
- > 8 principles and 29 recommendations
- > Major structural changes
- > Risk provisions strengthened
- > Sustainability risks introduced
- > Diversity recommendation strengthened and streamlined

## Impetus for a 4<sup>th</sup> edition

- > Emerging issues around values, culture and social licence to operate
- > Government enquiries on carbon risk, whistleblowing and foreign bribery and corruption
- > A perceived slowing in the rate of progress in achieving gender diversity at board level
- > Cyber risks (not referenced in the 3<sup>rd</sup> edition)
- > Governance issues associated with the internationalisation of ASX listed entities
- > Areas for improvement identified in KPMG's review of the 3<sup>rd</sup> edition
- > Governance concerns raised by ASX about consultancy agreements

## What isn't changing?

- > Non-prescriptive, flexible “if not, why not” disclosure approach
- > Hierarchy: principles, recommendations, commentary
- > 8 core principles remain substantially the same (although principle 3 has been redrafted)
- > Stand-alone section for externally managed entities retained
- > Continued flexibility for listed entities to make relevant disclosures either on their website or in their annual reports

# What is changing?

- > Principle 3 – values, culture and social licence to operate
- > 9 new recommendations
- > Diversity (recommendation 1.5)
- > Environmental and social risks (recommendation 7.4)
- > Director independence (recommendation 2.3)
- > Board skill matrix (recommendation 2.2)
- > Director induction and professional development (recommendation 2.6)
- > Removing ability to disclose a summary of key policies
- > More guidance in the commentary

## Key changes: principle 3

### Current

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#### **Principle 3: Act ethically and responsibly**

A listed entity should act ethically and responsibly

### Proposed

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#### **Principle 3: Instil the desired culture**

A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and in a socially responsible manner



# Principle 3

Supported by 3 new recommendations

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**Recommendation 3.1:** *A listed entity should articulate and disclose its **core values***

**Recommendation 3.3:** *A listed entity should:*

- a) have and disclose a **whistleblower policy** that encourages employees to come forward with concerns that the entity is not acting lawfully, ethically or in a socially responsible manner and provides suitable protections if they do; and*
- b) ensure that the **board is informed of any material concerns** raised under that policy that call into question the culture of the organisation*

**Recommendation 3.4:** *A listed entity should:*

- a) have and disclose an **anti-bribery and corruption policy**; and*
- b) ensure that the **board is informed of any material breaches** of that policy*

# Principle 3

## Existing recommendation 3.1 to become recommendation 3.2

**Recommendation 3.2:** A listed entity should:

- a) have and disclose a code of conduct for its directors, senior executives and employees; and
- b) ensure that the board is informed of:
  - 1) any material breaches of the code by a director or senior executive
  - 2) any other material breaches of that code that call into question the culture of the organisation

# Principle 3

Supported by further amendments to ...

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## **Commentary to recommendation 1.1 (role of board and management):**

- > expanding the usual responsibilities of the board to include:
  - defining the entity's purpose
  - approving the entity's statement of core values and code of conduct to underpin desired culture
  - overseeing management in instilling the entity's values
  
- > clarifying that information provided to the board should not be limited to financial performance but also include:
  - compliance with material legal and regulatory requirements
  - any other material misconduct that is inconsistent with the values or code of conduct of the entity

# Principle 3

## Reasons for changes

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- > A conviction that a listed entity should have regard to the views and interests of a broader range of stakeholders (eg employees, customers, local communities, regulators etc) in order to preserve its social licence to operate and to maximise value to security holders over the longer term
- > To help a listed entity set the tone from the top
- > To provide boards with the information they need to monitor the culture of the organisation through reporting up of material breaches of the entity's code of conduct and whistleblowing and anti-bribery and corruption polices
- > Approximately 10% of ASX listed entities are established outside Australia and therefore not subject to proposed new whistleblowing and anti bribery legislation

# Other new recommendations

## Recommendation 2.7

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*A listed entity with a director who is not fluent in the language in which board or security holder meetings are held or key documents are written should disclose the processes it has in place to ensure the director understands and can contribute to the discussions at those meetings and understands and can discharge their obligations in relation to those documents*

- > Recognises the globalisation of capital markets and the growing number of entities listed on ASX with management and operations based outside Australia
- > Recommendation will not apply if the entity does not have a director who is not fluent in the language in which board or security holder meetings are held or key documents are written

# Other new recommendations

## Recommendation 4.4

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*A listed entity should have and disclose its process to validate that its annual directors' report and any other corporate reports it releases to the market are accurate, balanced and understandable and provide investors with appropriate information to make informed investment decisions*

- > Investors require corporate reports of high quality and integrity to enable them to make informed investment decisions
- > Current recommendations 4.1, 4.2 and 4.3 deal with financial reporting only, whereas principle 4 refers to safeguarding “corporate reporting” more broadly

# Other new recommendations

## Recommendations 5.2 and 5.3

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- > *A listed entity should ensure that its board receives copies of all announcements under Listing Rule 3.1 promptly after they have been made (rec 5.2)*
- > *A listed entity that gives a new investor or analyst presentation should release a copy of the presentation materials on the ASX Market Announcements Platform ahead of the presentation (rec 5.3)*
  - Provides the board with timely visibility of the nature and quality of the information being disclosed to the market and the frequency of such disclosures (rec 5.2)
  - Ensures that all security holders have timely access to the materials provided at investor or analyst presentations (rec 5.3)
  - Improve disclosure practices more generally

# Other new recommendations

## Recommendation 6.4

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*A listed entity should ensure that **all resolutions** at a meeting of security holders are decided by a poll rather than by a show of hands*

- > Allows outcomes of resolutions considered by security holders at a meeting to reflect the true will of the security holders attending and voting at a meeting, whether they attend in person, electronically or by proxy
- > Australia has lagged behind best practice in Asia - listed entities in Hong Kong and Singapore have been required to vote by poll under their listing rules since 2009 and 2015 respectively



# Other new recommendations

## Recommendation 8.4

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*A listed entity should only enter into an agreement for the provision of consultancy or similar services by a director or senior executive or by a related party of a director or senior executive:*

- a) if it has independent advice that:
    - 1) the services being provided are outside the ordinary scope of their duties as a director or senior executive (as applicable);*
    - 2) the agreement is on arm's length terms; and*
    - 3) the remuneration payable under it is reasonable; and**
  - b) with full disclosure of the material terms to security holders*
- > A consultancy (or similar) fee eg for advice, facilitation or introduction, raises issues about conflict of interest and “double dipping” on fees and remuneration

# Diversity

## Changes to recommendation 1.5

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- > Splitting requirement to have diversity policy from requirement to set measurable gender diversity objectives (rec 1.5(a) and (b)(i))
- > Requiring disclosure of diversity policy in full (rec 1.5(a))
- > Clarifying that measurable gender diversity objectives should target senior executive team and workforce as well as the board (rec 1.5(b)(i))
- > Requiring board to charge management with designing, implementing and maintaining programs and initiatives to help achieve measurable objectives (rec 1.5(b)(ii))
- > Requiring board to review with management, at least annually, progress towards achieving measurable objectives and adequacy of entity's programs and initiatives in that regard (rec 1.5 (b)(iii))

# Diversity

## Changes to recommendation 1.5

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- > Requiring board to disclose whether the above review has taken place during the reporting period (rec 1.5 (c)(iii))
- > Adding a requirement that an entity in the S&P/ASX 300 at the start of the reporting period should set a measurable objective to have not less than 30% of its directors of each gender within a specified period
  - Achieve better gender diversity outcomes (eg measurable gender diversity objectives should also target senior executive team and workforce)
  - Remove some confusion around distinction between diversity policy and measurable objectives
  - Address a perceived slowing in the rate of progress in achieving gender diversity at board level

# Diversity

## Suggestions in commentary to recommendation 1.5

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- > Consider disclosing any insights from annual review of entity's progress towards meeting its measurable objectives and any changes made to gender diversity objectives and programs as a result
- > Consider disclosing the outcomes and actions taken as a result of any gender benchmarking against peers or gender pay audits undertaken so as to provide stakeholder with insights into the effectiveness of gender diversity programs and initiatives
- > Diversity policy should express the entity's commitment to embrace diversity at all levels and in all its facets
- > To avoid "groupthink", boards should have regard to other facets of diversity, in addition to gender, when considering their make-up

# Environmental and social risks

## Changes to recommendation 7.4 and commentary

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- > Generally changed to refer to “**environmental and social risks**” rather than “economic, environmental and social sustainability risks”, plus changes to commentary ...
- > Reinforcing the importance of “social licence to operate”
- > Acknowledging that an entity’s social licence to operate can be lost or seriously damaged if the entity conducts its business in a way that is not environmentally or socially responsible
- > Stating that an entity can meet this recommendation by cross referencing reports prepared in accordance with the International IIRC’s *Integrated Reporting <IR> Framework* or a recognised international sustainability standard

# Environmental and social risks

## Changes to commentary to recommendation 7.4

- > Suggesting entities that believe they do not have any material exposure to environmental and social risks consider carefully their basis for that belief and benchmark their disclosures against those made by their peers
- > As recommended in the Senate Economics References Committee report on Climate Risk Disclosure, giving greater guidance on disclosure of carbon risk, including:
  - explaining the different types of climate change risk (physical risks, transition risks and liability risks)
  - noting that many listed entities will be exposed to these types of risks, even where they are not directly involved in mining or consuming fossil fuels
  - suggesting that listed entities with material exposure to climate change risk implement the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures

# Director independence

## Changes to recommendation 2.3 and commentary

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- > Replacing references to “associations” with “affiliations”
- > New example in box 2.3 to cover directors who receive performance based remuneration (including options or performance rights) or participate in an employee incentive scheme
- > Replacing “close family ties” in box 2.3 with “close personal ties”
- > Adding guidance that the board should rule a director **not** to be independent where a director falls within one or more of the examples in box 2.3, unless it is clear that the matter is not material and will not interfere with the director’s capacity to make an independent judgement
- > Suggesting that a listed entity that does not follow the recommendation to have a majority of independent directors should consider having more than one independent director at all times

# Board skills matrix

## Proposed changes to commentary to recommendation 2.2

- > Greater guidance on what should be included in a board skills matrix
- > Noting that boards are increasingly being called upon to address new or emerging issues (eg culture, conduct risk, digital disruption, cyber-security, sustainability and climate change)
- > Suggesting that a board regularly review its skills matrix to make sure it covers the skills needed to address existing and emerging business and governance issues
- > Suggesting possible formats for presenting the board skills matrix
- > Suggesting the entity explain what each skill referenced in the board skills matrix means



# Director induction and professional development

## Proposed changes to recommendation 2.6 and commentary

- > Changing recommendation 2.6 to state that a listed entity should “periodically review whether there is a need for existing directors to undertake professional development” rather than “provide appropriate professional development opportunities” for directors
- > Suggesting that for new directors not familiar with our legal framework, an entity’s induction program should include training on the legal duties and responsibilities of a director under key legislation governing the entity and the Listing Rules
- > Suggesting that the board or the nomination committee should regularly assess whether the directors as a group have the skills, knowledge and experience to deal with new and emerging business and governance issues
- > Suggesting that professional development for directors should be considered where gaps are identified and they are not expected to be addressed in the short term by new appointments

# Key policies to be disclosed in full

## New and amended recommendations

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- > New and amended recommendations will require entities to disclose code of conduct and diversity, whistleblowing, anti bribery and corruption and continuous disclosure policies in full rather than a summary of them
- > An entity may redact from the disclosed policies, personal or confidential information such as the names and contact details of individual staff involved in administering the policy
  - Option to disclose summary of these documents originated when these disclosures had to be included in their annual report – brevity was therefore a virtue
  - Disclosing the full policy removes possibility of an inadvertent omission of material information when providing a summary

## Other amended recommendations

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- > **Recommendation 1.1:** a listed entity should have a [board charter](#)
- > **Recommendation 1.2:** a listed entity should undertake appropriate [background checks on senior executives](#) as well as directors
- > **Recommendation 1.3:** [letters of appointment](#) for directors and service contracts for senior executives should be [with the director or senior executive personally](#) rather than an entity supplying their services
- > **Recommendations 1.6 and 1.7:** [board and management performance reviews](#) should take place “each reporting period” (ie [annually](#)) rather than “periodically” as is currently

## Other amended recommendations

- > **Recommendation 6.2:** a listed entity should “have”, rather than “design and implement”, an investor relations program that facilitates two way communication with investors
- > **Recommendation 6.3:** a listed entity should disclose how it facilitates and encourages participation at meetings of security holders rather than the policies and processes it has in place to do so
- > **Recommendation 7.2:** amended to incorporate 3<sup>rd</sup> edition commentary that the board should satisfy itself that the entity is operating with due regard to the risk appetite set by the board

# What next?

Close of consultation:	Friday 27 July, 2018
Review of submissions and Council deliberations:	August – December 2018
Issue of 4 <sup>th</sup> edition:	Q1 2019
Effective date:	1 July 2019

Entities will report against the 4<sup>th</sup> edition for their first full financial year ending on or after 30 June 2020

# Upcoming ASX Listing Rule consultation

A substantial consultation package will issue shortly covering...

> **Admissions:**

- extending the “good fame and character” requirement for new listings to CEOs
- simplifying notification by profit test listings of continuing profits under rule 1.2.5A
- clarifying working capital requirements for assets test listings in rule 1.3.3
- simplifying the escrow regime for restricted securities

> **Improving market integrity and disclosures:**

- requiring persons responsible for communication with ASX on listing rule issues to undertake an online course provided by ASX and pass an exam on the listing rules
- introducing quarterly activity reports for Appendix 4C reporters
- enhancing disclosures in quarterly activity reports for Appendix 5B reporters
- standardising NTA disclosures by listed investment entities (LICs)

## Upcoming ASX Listing Rule consultation (cont.)

- clarifying rules about disclosure of closing dates for receipt of director nominations
  - standardising disclosure of voting results at meetings of security holders
  - expanding the information disclosed in shareholder distribution schedules
  - fixing inconsistencies regarding the disclosure of underwriting arrangements
- > **Share issuance rules:**
- rationalising the regime for announcing issues of securities and seeking their quotation
  - improving the reporting of CDIs on issue by foreign issuers
  - fixing drafting issues in the 15% placement formula in rule 7.1
  - streamlining the requirements for entities to access the extra 10% placement capacity in rule 7.1A
  - allowing security holders to ratify an agreement to issue securities under rule 7.4
  - rationalising the lists of equity issues that can be made without security holder approval under rules 7.2, 7.6, 7.9 and 10.12 and making them consistent

## Upcoming ASX Listing Rule consultation (cont.)

### > **Related party approvals:**

- amending rule 10.1 to deal more appropriately with agreements to acquire or dispose of substantial assets
- expanding and rationalising the requirements for notices of meetings in chapters 7 and 10
- rationalising the rules dealing with the approval of employee incentive schemes by merging rules 10.15 and 10.15A into the one rule
- providing that securities held by or for an employee incentive scheme must only be voted on a resolution under the listing rules if and to the extent that they are held for the benefit of a nominated participant in the scheme who is not excluded from voting on the resolution under the listing rules and who has directed how the securities are to be voted
- amending the list of voting exclusions in the table in rule 14.11.1 for greater consistency and to give greater certainty as to which parties must have their votes excluded



## Upcoming ASX Listing Rule consultation (cont.)

### > **Compliance measures:**

- giving ASX the power to grant class waivers and removing the need for 7 standard waivers
- enhancing ASX's compliance powers – imposing conditions, requesting information, imposing compliance requirements and publishing censures

### > **Simplification measures:**

- removing a number of forms from the appendices to the rules so they can be kept up to date without a rule amendment
- simplifying the agreements for admission and quotation in Appendices 1A, 1B and 1C
- clarifying the timetables for corporate actions in Appendices 6A and 7A
- a raft of other drafting fixes and improvements

## Upcoming ASX Listing Rule consultation (cont.)

### > Enhanced guidance:

- a substantially updated GN 11 on escrow and restricted securities
- a substantially updated GN 13 on spin-outs
- a new GN 21 on the restrictions on issuing securities in chapter 7
- a substantially updated GN 24 on acquisitions and disposals of substantial assets involving persons in a position of influence
- a new GN 25 on share issues to persons in a position of influence
- changes to GN 12 removing the '2 cent' waiver for back door listings and updating ASX's guidance on the '20 cent' rule and minimum option exercise price
- changes to GN 33 tightening ASX's policy on the automatic removal of long-term suspended entities and shortening period for automatic removal

Any questions?

Thank you