NSW EPA

Our reference: DOC13/71915
Contact: Craig Lamberton

Mr Alan Cameron AO
Chair
ASX Corporate Governance Council
Australian Securities Exchange
Exchange Centre
20 Bridge Street SYDNEY NSW 2000

Dear Mr Cameron

CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS – CONSULTATION DRAFT

I am writing to indicate the Board of the Environment Protection Authority (EPA)'s support for the proposed addition of "Principle 7.4: Disclosure of Environmental and Sustainability Risks" to the ASX Corporate Governance Principles and Recommendations. The Board believes this concept is an important component of an organisation's community licence and is frequently an element of considerable financial obligation that is not apparent to shareholders.

As you would be aware, the EPA is the primary environmental regulator for NSW. Our purpose is to improve environmental performance and waste management for NSW and we seek to achieve this through a wide variety of programs and initiatives. We work with the community, business, industry and government to support sustainable economic growth whilst protecting the environment.

Management of contaminated land and groundwater (contaminated by hazardous substances which pose serious environmental and health risks such as heavy metals, asbestos, chemicals etc), and intractable wastes are an area of considerable complexity and community concern. The failure of some organisations to address these liabilities can have ramifications for the broader business community as these unresolved legacies are often cited as the basis of community opposition to new development proposals.

One of the major challenges we face as a regulator, is when organisations do not evaluate or make provision for the accumulating liabilities they are incurring as a result of inadequate management of intractable wastes, ongoing land contamination or rehabilitation obligations. These obligations can arise from inappropriate waste management practices, ongoing leaks or spills from industrial plant or requirements to rehabilitate land that has been mined. Commonly these liabilities amount to many 10s of millions of dollars. In contaminated land alone, the EPA has required remediation that has amounted to several billion dollars over the last 5 years. We understand the liabilities for un-rehabilitated minesites is an order of magnitude higher.

Accordingly, having listed entities/companies disclose environmental and social sustainability risks to investors in their Corporate Governance statements will help to ensure a more accurate account of the companies' obligations and a more transparent position for shareholders, the financial market and the broader community.

I note in your consultation draft that "environmental and social sustainability risks" are not defined or examples given. The EPA would like to suggest that management of intractable waste and remediation of

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contaminated land be incorporated into the commentary on Principle 7.4 to assist listed companies/entities to identify and plan for significant long term environmental risks:

> "environmental risks include those risks which are likely to have long term economic and social impacts on the community such as the management of intractable wastes, contamination of land or groundwater by hazardous substances and the rehabilitation or restoration of land associated with extractive industries.".

I trust these comments will assist our shared interests of transparency and responsible corporate governance. The EPA would be happy to work with the ASX to further develop or promote these concepts.

Please contact me or contact Mr Craig Lamberton, Director, Hazardous Incidents and Environmental Health on (02) 9995 5588.

Yours sincerely

BARRY BUFFIER
Chair and CEO
<u>Environment Protection Authority</u>

29 OCT 2013

Recommendation 7.2:

The board or a committee of the board should:

(a) review the entity's risk management framework with management at least annually to satisfy itself that it continues to be sound, to determine whether there have been any changes in the material business risks the entity faces and to ensure that they remain within the risk appetite set by the board; and

(b) disclose in relation to each reporting period, whether such a review has taken place.

Commentary

It is important that the board periodically review with management the entity's risk management framework to satisfy itself that it continues to be sound and that the entity is operating within the risk appetite set by the board.

The board may charge an appropriate board committee (such as the risk committee or the audit committee) with this task. If it does, this should be reflected in the charter of the committee in question.

When disclosing whether a review of the entity's risk management framework has been undertaken, where appropriate, the entity should also disclose any insights it has gained from the review and any changes it has made to its risk management framework as a result.

Recommendation 7.3:

A listed entity should disclose:

(a) if it has an internal audit function, how the function is structured and what role it performs; or

(b) if it does not have an internal audit function, that fact and the processes it employs for evaluating and continually improving the effectiveness of its risk management and internal control processes.

Commentary

An internal audit function can assist a listed entity to accomplish its objectives by bringing a systematic, disciplined approach to evaluating and continually improving the effectiveness of its risk management and internal control processes.

If a listed entity has an internal audit function, the head of that function ideally should have a direct reporting line to the board or to the board audit committee to bring the requisite degree of independence and objectivity to the role.

Recommendation 7.4:

A listed entity should disclose whether, and if so how, it has regard to economic, environmental and social sustainability risks.

Commentary

How a listed entity conducts its business activities impacts directly on a range of stakeholders, including security holders, employees, customers, suppliers, creditors, consumers, governments and the local communities in which it operates. Whether it does so sustainably can impact in the longer term on society and the environment.

Listed entities will be aware of the increasing calls globally for the business community to address matters of economic, environmental and social sustainability[30] and the increasing demand from investors, especially institutional investors, for greater transparency on these matters so that they can properly assess investment risk.[31]

Entities that have, or aspire to have, institutional investors on their register should consider making more detailed disclosures about their approach to economic, environmental and social sustainability, including the benchmarks they use to measure performance on issues of sustainability and their achievements against those benchmarks.

30 See, for example, the joint publication by the Australian Council of Superannuation Investors and the Financial Services Council entitled ESG Reporting Guide for Australian Companies: Building the foundation for meaningful reporting (June 2011), available at http://acsi.org.au/images/stories/ACSIDocuments/esg_reporting_guide.pdf. See also the UN Global Compact's ten principles on human rights, labour, the environment and anti-corruption; the OECD's Guidelines for Multinational Enterprises; the Global Reporting Initiative; and the various publications of the International Integrated Reporting Council respectively at:
http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html
http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises
http://www.globalreporting.org
http://www.theiirc.org.

31 Note that paragraph 63 of ASIC Regulatory Guide 247 Effective disclosure in an operating and financial review suggests that a listed entity's operating and financial review "should include a discussion of environmental and other sustainability risks where those risks could affect the entity's achievement of its financial performance or outcomes disclosed, taking into account the nature and business of the entity and its business strategy."