

Transitioning to the Fourth Edition of the Corporate Governance Principles and Recommendations



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Background

The ASX Corporate Governance Council released the fourth edition of its *Corporate Governance Principles and Recommendations* on 27 February 2019. A copy is available online at: <https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf>.

The fourth edition takes effect for a listed entity's first full financial year commencing on or after 1 January 2020. Entities with a 31 December balance date will therefore be required to measure their governance practices against the recommendations in the fourth edition commencing with the financial year beginning 1 January 2020 and ending 31 December 2020. Entities with a 30 June balance date will be required to measure their governance practices against the recommendations in the fourth edition commencing with the financial year beginning 1 July 2020 and ending 30 June 2021.

ASX would encourage listed entities to adopt the fourth edition earlier, if they wish. For those listed entities that do wish to early adopt, an updated and editable Appendix 4G that references the recommendations in the fourth edition is available on the ASX Compliance downloads page at: <https://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

Mark-ups comparing the fourth edition to the consultation draft and to the third edition are also available at: <https://www.asx.com.au/regulation/corporate-governance-council/review-and-submissions.htm>.

Transitioning from the third to the fourth edition

Set out below are the steps a listed entity ("you") that currently complies fully with the recommendations in the third edition of the *Corporate Governance Principles and Recommendations* will need to implement to comply fully with the recommendations in the fourth edition:

- If you don't currently have one, adopt a board charter that sets out the respective roles and responsibilities of your board and management, including those matters expressly reserved to the board and those delegated to management (recommendation 1.1).
- If you don't already do so, update your recruitment practices to require appropriate background checks before engaging a senior executive (recommendation 1.2).¹
- If you have a director or senior executive with whom you do not have a written agreement setting out the terms of their appointment,² enter into an appropriate written agreement with them (recommendation 1.3).
- In relation to your diversity practices (recommendation 1.5):
 - review the content of your diversity policy against the changes to recommendation 1.5 (as part of this, you can remove from the policy the requirement for the board to set measurable diversity objectives – this is now a separate requirement under recommendation 1.5 and does not need to be stated in the diversity policy);

¹ In the third edition, appropriate background checks were only recommended for directors. In the fourth edition, this recommendation has been extended to senior executives.

² For example, if you have engaged the services of a director or senior executive under a consultancy agreement with an entity associated with the director or senior executive without having any written agreement with the director or senior executive personally.

- if you have been disclosing a summary only of your diversity policy, disclose the full policy;³
 - review the measurable gender diversity objectives set by the board or a board committee and confirm they are targeted at achieving gender diversity in the composition of your senior executive team and workforce generally, as well as in the composition of your board;
 - if you don't already do so, update your disclosure practices to disclose in relation to each reporting period your measurable objectives for that period to achieve gender diversity in the composition of your board, senior executives and workforce generally and your progress towards achieving those objectives; and
 - If you are in the S&P/ASX 300 Index, confirm that your measurable objective for achieving gender diversity in the composition of your board is not less than 30% of your directors of each gender within a specified period, or modify it so that it is.
- Consider whether you need to re-classify a director as no longer being independent, given the changes to the criteria for independence in Box 2.3 of the fourth edition, including if the director:
 - receives performance-based remuneration (including options or performance rights) or participates in an employee incentive scheme;
 - is, or has been within the last three years, in a material business relationship as a professional adviser or consultant to you or is an officer of, or otherwise associated with, someone with such a relationship;
 - represents, or is or has been within the last three years an officer or employee of, or professional adviser to, a substantial holder; or
 - has close personal ties with a person who falls within any of the categories listed in Box 2.3 (recommendation 2.3).
 - If you don't already have a program for periodically reviewing the professional development needs of existing directors, adopt one (recommendation 2.6).
 - If you haven't already done so, articulate and disclose your values (recommendation 3.1).
 - If you have been disclosing a summary only of your code of conduct, disclose the full code (recommendation 3.2(a)).⁴
 - If you haven't already done so, adopt and disclose a whistleblower policy (recommendation 3.3(a)).⁵
 - If you haven't already done so, adopt and disclose an anti-bribery and corruption policy (recommendation 3.4(a)).⁶

³ You may redact from the disclosed copy of your diversity policy personal or confidential information such as the names and contact details of individual staff involved in diversity issues.

⁴ You may redact from the disclosed copy of your code of conduct personal or confidential information such as the names and contact details of individual staff involved in conduct issues.

⁵ You should disclose the full whistleblower policy and not a summary of it. However, you may redact from the disclosed copy of your whistleblower policy personal or confidential information such as the names and contact details of individual staff involved in the whistleblower process.

⁶ Your anti-bribery and corruption policy can be a stand-alone policy or form part of your code of conduct. You should disclose the full anti-bribery and corruption policy and not a summary of it. However, you may redact from the disclosed copy of your anti-

- Upgrade your board reporting practices to require material breaches of your code of conduct, material incidents under your whistleblower policy and material breaches of your anti-bribery and corruption policy to be reported to the board or a committee of the board (recommendations 3.2(b), 3.3(b) and 3.4(b)).
- Disclose your processes to verify the integrity of any periodic corporate report you release to the market that is not audited or reviewed by an external auditor (recommendation 4.3).⁷
- If you have been disclosing a summary only of your continuous disclosure compliance policy, disclose the full policy (recommendation 5.1).⁸
- Review your continuous disclosure practices to ensure that:
 - your board receives copies of all material market announcements promptly after they have been made (recommendation 5.2); and
 - if you give a new and substantive investor or analyst presentation, a copy of the presentation materials is released on the ASX Market Announcements Platform ahead of the presentation (recommendation 5.3).
- Review the disclosures you presently make under recommendation 6.3 and, if necessary, expand them to disclose how you facilitate and encourage participation at meetings of security holders.
- If you haven't already done so, change your practices at meetings of security holders to require all substantive resolutions to be decided by a poll rather than by a show of hands (recommendation 6.4).
- If your annual risk review doesn't currently cover these matters, extend the scope of the review to encompass whether the entity is operating with due regard to the risk appetite set by the board (recommendation 7.2).
- If you do not have an internal audit function, review your disclosures under recommendation 7.3(b) to ensure they cover governance as well as risk management and internal control processes.⁹

Additional recommendations that apply only in certain cases

In addition, if you:

- have a director who is not fluent in the language in which board or security holder meetings are held or key documents are written, disclose the processes you have 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 (recommendation 9.1);

bribery and corruption policy personal or confidential information such as the names and contact details of individual staff involved in anti-bribery and corruption issues.

⁷ This can be disclosed in the relevant report itself or more generally in your governance disclosures in your annual report or on your website.

⁸ You may redact from the disclosed copy of your continuous disclosure policy personal or confidential information such as the names and contact details of individual staff involved in the disclosure process.

⁹ Recommendation 7.3(b) now provides that if a listed entity does not have an internal audit function, it should disclose that fact and the processes it employs for evaluating and “continually improving the effectiveness of its governance, risk management and internal control processes”. Previously, it referred to “continually improving the effectiveness of its risk management and internal control processes”.

- are established outside Australia, ensure that your meetings of security holders are held at a reasonable place and time (recommendation 9.2);
- are established outside Australia, or an externally managed listed entity that has an AGM, ensure that your external auditor attends your AGM and is available to answer questions from security holders relevant to the audit (recommendation 9.3); or
- are an externally managed listed entity, review your governance disclosures against the amendments to the section at the back of the fourth edition dealing with externally managed listed entities.

Updated commentary

ASX would strongly encourage you to examine your corporate governance disclosures and practices against the updated commentary in the fourth edition, including:

- If you have a board charter, review the contents of the charter against the updated commentary to recommendation 1.1 suggesting that the board of a listed entity should generally be responsible under its charter (among other things¹⁰) for:
 - defining the entity's purpose;
 - approving the entity's statement of values and code of conduct to underpin the desired culture within the entity;
 - overseeing management in its instilling of the entity's values;
 - approving the appointment and replacement of the company secretary;
 - satisfying itself that the entity has in place an appropriate risk management framework that covers both financial and non-financial risks;
 - satisfying itself that an appropriate framework exists for relevant information to be reported by management to the board;
 - whenever required, challenging management and holding it to account; and
 - satisfying itself that the entity's remuneration policies are aligned with the entity's purpose, values, strategic objectives and risk appetite.
- Review the content of your diversity policy against the changes to the commentary in recommendation 1.5.
- Review your investor relations program against the updated commentary to recommendation 6.2, particularly in relation to engaging with retail investors.
- If you have a risk committee, review the contents of the committee's charter against the updated commentary to recommendation 7.1 suggesting that, generally speaking, a risk committee should be responsible under its charter for:
 - monitoring management's performance against your risk management framework, including whether it is operating within the risk appetite set by the board;

¹⁰ The items listed underneath this paragraph are the additional suggestions included in the fourth edition regarding the usual responsibilities of the board of a listed entity to be reflected in its charter.

- reviewing any material incident involving fraud or a break-down of your risk controls and the “lessons learned”;
 - receiving reports from internal audit on its reviews of the adequacy of your processes for managing risk;
 - receiving reports from management on new and emerging sources of risk and the risk controls and mitigation measures that management has put in place to deal with those risks; and
 - making recommendations to the board in relation to changes that should be made to the entity’s risk management framework or to the risk appetite set by the board.
- Consider whether your risk management framework deals adequately with contemporary and emerging risks such as conduct risk, digital disruption, cyber-security, privacy and data breaches, sustainability and climate change, as per the updated commentary to recommendation 7.2.
 - Review your disclosures about environmental and social risks against the updated commentary to recommendation 7.4 and:
 - if you believe that you do not have any material exposure to environmental or social risks, consider carefully your basis for that belief and benchmark your disclosures in this regard against those made by your peers; and
 - consider whether you have a material exposure to climate change risk by reference to the recommendations of the Financial Stability Board’s Task Force on Climate-related Financial Disclosures (“TCFD”) and, if you do, consider making the disclosures recommended by the TCFD.
 - Generally check that your corporate governance disclosures are in line with the following updated guidance in the section “How to approach corporate governance disclosures” on page 4 of the fourth edition:

“... listed entities should view their corporate governance statement not as a compliance document but rather as an opportunity to demonstrate that their board and management are alive to the importance of having proper and effective corporate governance arrangements and to communicate to security holders and the broader investment community the robustness of their particular approach to corporate governance.

This includes not only outlining the governance arrangements it has in place but also explaining how they are being implemented in practice. For example, where a recommendation calls for a particular policy to be in place, it will aid transparency and promote investor confidence for the entity to disclose, where appropriate, action taken to promote compliance and whether there have been material breaches of the policy during the reporting period and how they have been dealt with. Similarly, where a recommendation calls for a matter to be reviewed or evaluated, investors will find it helpful for the entity to disclose, where appropriate, any material insights it has gained from the review or evaluation and any changes it has made to its governance arrangements as a result.”
