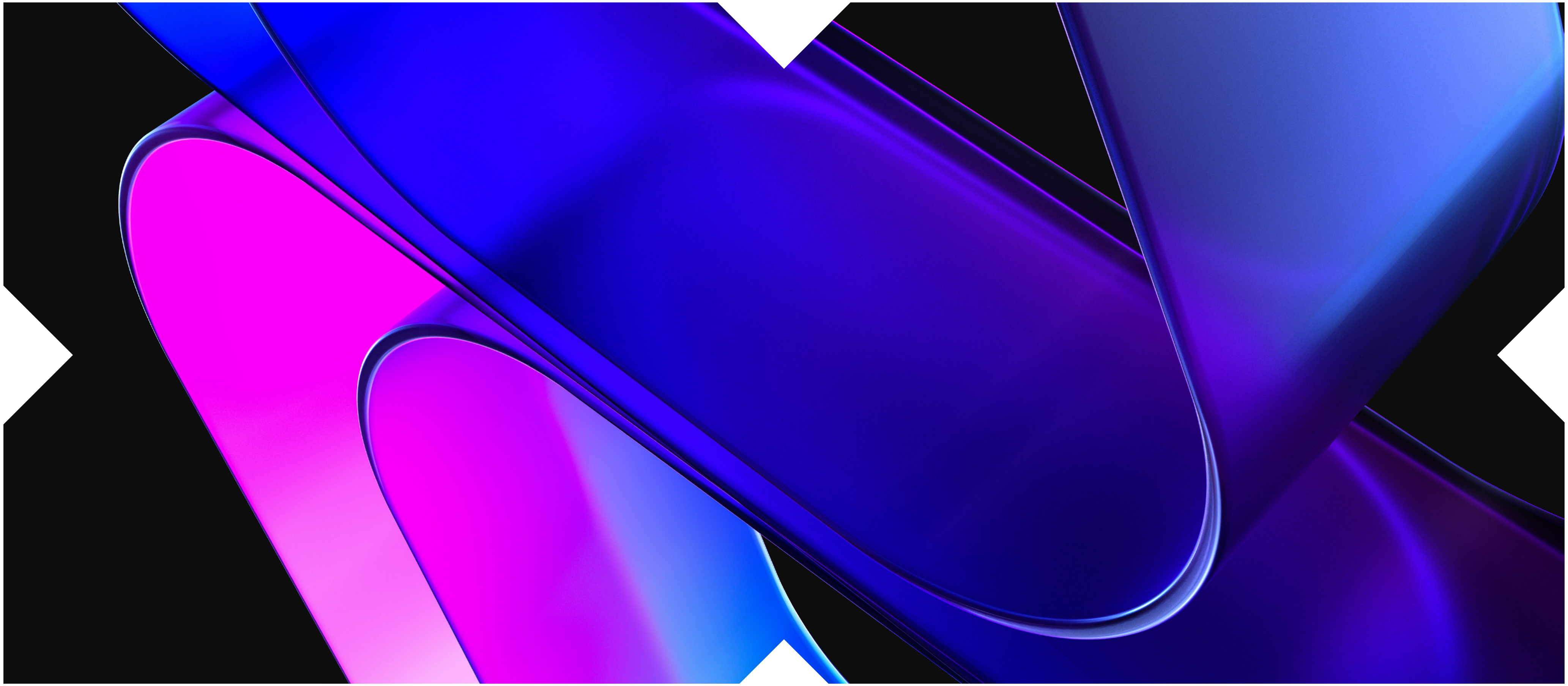
ASX Corporate Governance Principles and Recommendations

ASX

Annexure A: 5th Edition Consultation Draft



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Corporate governance in Australia

Why corporate governance matters

Effective corporate governance enhances a listed entity's long-term value creation, supporting performance and resilience in a lawful, ethical and responsible way. It promotes confidence from investors and other stakeholders, which is essential to an entity's ability to attract capital and to operate successfully. Good corporate governance of listed entities contributes to the operation of a healthy and dynamic capital market in Australia.

'Corporate governance' describes *"the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled within corporations."* It encompasses the mechanisms by which companies, and those in control, are held to account.[1] Importantly, corporate governance provides for the transparent, accountable and risk-conscious oversight of a listed entity.

The role of the board in corporate governance

The board of directors is responsible for an entity's governance practices and ensuring that the entity operates within the law. Each director is expected to apply their skills, experience and judgment to exercise effective oversight of management and the entity's operations. The board should have a clear framework within which to exercise its authority, discharge its statutory and fiduciary duties and guide and monitor management.

Directors' duties are the legal standards of conduct that apply to directors personally. They include statutory duties to act with care and diligence, to act in good faith in the entity's best interests, and for a proper purpose, not to misuse their position or the entity's information, and to prevent insolvent trading. These duties support accountability by ensuring those responsible for an entity's corporate governance are held to appropriate standards of decision making and conduct.

In practice, these duties require directors (for example) to review board materials with an independent and enquiring mind, not to fetter their discretion, to declare and manage conflicts of interest, to ask questions where clarification is needed, to take reasonable care in decision making and to remain sufficiently informed to guide and monitor management.[2]

The role of the Principles, Recommendations and Explanatory Materials in good corporate governance

The **8 Principles** form the foundation for good corporate governance of Australian listed entities. They are intentionally high level, with boards and management expected to consider the intention and spirit of the Principles when designing their own governance structures and practices.

The 8 Principles are supported by 29 practical **Recommendations** that guide entities in designing their own governance practices. The Recommendations are not a mandatory code that entities need to comply with. While following the Recommendations is one way of satisfying the high-level Principles, entities can also satisfy the Principles in other ways. Where listed entities choose alternative arrangements, they are expected to detail those arrangements and their rationale. Accordingly, Listing Rule 4.10.3 of the ASX Listing Rules provides for the Recommendations to be reported against on an *'if not, why not'* basis.

Each of the Recommendations is supported by **Explanatory Materials**, which help to explain the Principles and Recommendations. Importantly, this additional material is not prescriptive guidance, and it is not intended to be reported against. It is designed to help boards and investors design and assess an entity's corporate governance practices.

The 8 Principles are supplemented by a number of additional Recommendations that only apply to particular listed entities, being those established outside Australia or with non-English speaking directors. Additional guidance explains how Recommendations are modified when applied to externally managed entities (Part II).

[1] Commonwealth of Australia, Royal Commission into the Failure of HIH Insurance (Final Report, April 2003), vol 1, xxxiii and Justice Owen, Corporate Governance – Level upon Layer, Speech to the 13th Commonwealth Law Conference 2003 (Melbourne, 13-17 April 2003), 2.
[2] See for example, Australian Securities and Investments Commission v Bekier (Liability Judgment) [2026] FCA 196 at [368]–[375], [380]–[396] and [424]–[433] and Australian Securities and Investments Commission v Healey [2011] FCA 717 (at 346 [229]. These examples are not exhaustive of the law.

Disclosure of corporate governance practices

Reporting and the importance of the 'if not, why not' approach

Listed entities are required to report against the Recommendations. Where they choose to satisfy the broad Principle in an alternative way to that set out in the Recommendation, they need to disclose the details and the rationale. This is a central element to reporting on an 'if not, why not' basis.

The 'if not, why not' approach is a key part of these Principles. It recognises that while there are common foundational elements to good corporate governance, the particular arrangements can be specific to an entity's circumstances, including its scale, size and operational complexity. For example, corporate governance practices may differ between large and small entities or between entities in the financial services sector and those in the natural resources sector.

What is fundamental is that entities consider the spirit and intent of the high-level Principles when designing their own governance practices. Where an entity chooses different practices to those set out in the Recommendations, it should clearly explain its reasons for doing so and the nature of the alternative governance practices. It is ultimately a matter for boards to apply the Principles and Recommendations wisely and in the best interests of the entity. A checklist approach – by either entities or investors – is unlikely to be consistent with this. Clear explanations of corporate governance structures and practices and their rationale is fundamental to investors.

Where a listed entity follows a Recommendation, it will often be useful to explain how the Recommendation is implemented and where any further information can be found. Where a Recommendation is not followed, a clear and informative statement of the reasons, and the details of alternative corporate governance practices will help investors in understanding the entity's approach to governance. Where a departure from a Recommendation is expected to be only temporary, listed entities are encouraged to be transparent about their intentions and anticipated timeframes.

Application

Listed entities must provide 'if not, why not' corporate governance reporting unless exempt,[3] regardless of the legal form they take, whether they are established in Australia or elsewhere, and whether they are internally or externally managed.

This edition of the Principles and Recommendations takes effect for a listed entity's first full financial year commencing on or after 1 July 2027. For entities with a 30 June balance date, this means reporting for the financial year ended 30 June 2028. For entities with a 31 December balance date, this means reporting for the financial year ended 31 December 2028.

Where to report corporate governance practices

Reporting is set out in a corporate governance statement, which must be provided to the ASX as part of the entity's annual report or as a stand-alone document.

At the same time a listed entity gives the ASX its corporate governance statement, it must also give the ASX a completed Appendix 4G (as required by Listing Rule 4.7.3). The Appendix 4G provides a reference guide to assist readers to locate the entity's 'if not, why not' approach to each recommendation.

[Date of issue]

[3] The Principles and Recommendations do not apply to ASX debt listings or ASX foreign exempt listings.

Part I: The eight Principles

Principle 1: Lay solid foundations for management and oversight

The board of a listed entity should oversee the entity's strategy, performance, risk management and compliance. There should be a clear delineation of the respective roles and responsibilities of the board and management and regular review of their performance.

Why this Principle is important:

- Active board oversight of an entity's strategy, performance, risk management and compliance is fundamental to effective governance, supporting long-term value creation.
- A clear delineation between the responsibilities of the board and management promotes accountability, disciplined decision making and effective oversight of management.
- Delineation of responsibilities allows the board to oversee strategy, performance, risk management and compliance, and to focus on governance and the oversight of management, with management responsible for execution and operations.
- Regular evaluation of the board's and management's performance helps drive positive outcomes, including through identifying areas for improvement.

Recommendation 1.1

A listed entity should clearly delineate the roles and responsibilities of board and management. It should have and disclose a board charter setting out:

(a) the respective roles and responsibilities of its board and management; and

(b) those matters expressly reserved for the board.

Explanatory Materials

Laying solid foundations for management oversight is important to the creation of long-term value. These foundations include having a clear governance framework that enables the board to govern effectively and efficiently oversee the entity's strategy, performance, risk management and compliance efficiently.

Responsibility rests with the board to ensure that the governance framework is established and regularly reviewed to support the entity as the business landscape evolves. The board needs to periodically review whether the division of functions between board and management continue to be appropriate to the needs of the entity, including its risk appetite.

Board charter

A key element in a strong governance framework is a formal board charter.

A board charter is a policy document of the board that sets out how the board will function and the allocation of responsibilities between the board and senior management. It helps to clarify the roles and expectations for the board and the senior management team. Disclosure of the charter provides transparency to investors and other stakeholders about how the entity is governed.

Periodic review of the board charter helps to ensure that the governance arrangements continue to be appropriate to the needs of the entity as it evolves. For example, as an entity grows in scale and complexity, a review of the board charter helps to ensure that it remains aligned to its current business model and operating environment.

The role of the board

A board charter typically sets out the key areas the board is responsible for, such as setting or approving the entity's purpose, strategic objectives, values, capital management policy, risk management framework and risk appetite. The charter also sets out the board's ongoing monitoring and oversight responsibilities. This includes responsibility for appointment and removal of the CEO and oversight of performance, risk, culture and disclosure processes.

A board charter typically sets out the roles and responsibilities of the chair of the board, and the role of management, alongside those of a deputy chair or senior independent director (if any) (discussed below).

The role of the chair

The chair is normally responsible for leading the board, facilitating the effective contribution of all directors and promoting constructive and respectful relations between directors and between the board and management.

The chair will also typically be responsible for approving board agendas, facilitating (with the company secretary) the proper information flow to the board and managing board meetings so that appropriate time is available for discussion of all agenda items, including strategic issues and material risks.

To support sound decision making by the board, the chair's responsibilities to facilitate (with the company secretary) the proper, relevant and appropriate information flow can be supported by:

- processes to provide feedback to management about the volume, quality, relevance and timeliness of reporting to the board. For example, some boards allocate time at the end of each board meeting for non-executive directors to discuss and consider feedback on management's reporting and how the meeting functioned. When appropriate, feedback can be provided to the company secretary about opportunities to improve the way information is reported to the board. An alternative approach is to build this feedback into the regular board performance review process (discussed at Recommendation 1.6).
- AI, with appropriate protocols to govern any use of AI by directors. AI can be used to summarise information in board packs and highlight key issues in the board papers. Notwithstanding this, AI is not a substitute for a director exercising their own judgment and inquiry, or the director's obligation to read and understand the board papers fully.

The role of a deputy chair or senior independent director

A deputy chair or senior independent director can assist with the governance of an entity in some situations. These roles can perform the role of the chair if the chair is absent (e.g. if the chair is absent, has a conflict of interest or is not independent) and can facilitate chair succession planning and provide an avenue for appraising the chair's performance.

These roles can also provide an important safeguard. A deputy chair or senior independent director can act as an alternative contact for investors if they have concerns that the chair, or CEO, is not performing well or has an actual or potential conflict of interest. They also offer a neutral point of contact to resolve conflicts between directors or between the board and management.

A deputy chair or senior independent director is appointed by the board.

The role of management

The senior executive team is typically responsible for:

- developing and (once reviewed and approved by the board) implementing the entity's strategic objectives and instilling and reinforcing its values and desired culture, while operating within the values, code of conduct, budget and risk appetite set by the board; and
- providing the board with accurate, timely and clear information on the entity's operations to enable the board to perform its responsibilities. This includes (for example) financial performance of the entity, compliance issues (including interactions with relevant regulators), current and emerging risks, and material issues or themes reflecting the entity's culture. (See, for example, Recommendation 3.2.)

To support the clarity of the roles and responsibilities in the charter and delegation framework, written agreements for senior executive appointments can establish clear lines of accountability that are consistent with the distinct roles and responsibilities set out in this framework.

Recommendation 1.2

The company secretary of a listed entity should be accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board.

Explanatory Materials

The company secretary of an entity plays an important role in supporting the effectiveness of the board and its committees.

Along with the board's chair, the company secretary plays an important role in preserving role boundaries with management, promoting proper director engagement and facilitating the information flow to the board. The role typically includes:

- advising the board and its committees on governance matters;
- monitoring compliance with board and committee policy and procedures;
- coordinating the timely completion and distribution of board and committee papers;
- ensuring that the business at board and committee meetings is accurately captured in the minutes;

- helping to organise and facilitate the induction and professional development of directors; and
- acting as a liaison between the board and management by supporting the flow of efficient and accurate information to the board.

Each director should be able to communicate directly with the company secretary and vice versa.

The decision to appoint or remove a company secretary should be made, or approved, by the board.[5]

Recommendation 1.3

A listed entity should:

(a) have and disclose a process for periodically evaluating the performance of the board, its committees and individual directors; and

(b) disclose for each reporting period whether a performance evaluation has been undertaken in accordance with that process during or in respect of that period.

Explanatory Materials

Establishing and implementing a process to evaluate the performance of the board, committees and individual directors supports continued and effective governance and oversight of the entity's strategy, performance, risk management and compliance. Such evaluations can help identify weaknesses in performance and foster improvements to prevent governance failures. Disclosure of the process and its application promote transparency and confidence in the board.

Board reviews can be designed to consider the performance of the board, its committees and individual directors, and address issues emerging from the review. They can cover the current state of directors' knowledge and skills, and whether directors' other responsibilities are affecting their performance. A board evaluation can also surface matters about board work processes, including quality and size of board papers, to take steps to strengthen the board's ability to effectively monitor and challenge management.

A suitable non-executive director (such as the deputy chair or the senior independent director, if the entity has one) can be responsible for the performance evaluation of the chair, after having canvassed the views of the other directors.

Some boards use an external facilitator to conduct performance reviews and board skills assessments or alternatively these reviews can be conducted with internal resources (see Recommendation 2.2). An external facilitator can bring objectivity, expertise and new ideas to improve the board's performance.

Recommendation 1.4

A listed entity should:

(a) have and disclose a process for evaluating the performance of its senior executives at least once every reporting period; and

(b) disclose for each reporting period whether a performance evaluation has been undertaken in accordance with that process during or in respect of that period.

Explanatory Materials

Regular performance evaluation of senior executives reinforces accountability and supports alignment with the entity's long term interests. Conducting an evaluation at least once every reporting period helps provide a timely response to any identified underperformance or misaligned objectives. Disclosure of the process and its application promote transparency and confidence that a board is performing its role in actively overseeing the performance of management.

Senior executive performance extends to financial and non-financial performance, including whether an individual has acted in accordance with the entity's values, code of conduct and culture. This may be reflected in remuneration outcomes (see Principle 8).

The CEO typically plays a central role in the process and oversight of the performance of an entity's senior executives, while the board's chair will typically lead the annual performance review of the CEO. For larger entities, the board's involvement in the annual performance review process may be supported by relevant committees.

[4] Australian Securities and Investments Commission v Bekier (Liability Judgment) [2026] FCA 196 at 394

[5] For entities established in Australia, this requires a formal resolution of the board: section 204D of the Corporations Act.

Principle 2: Structure the board to be effective

The directors of a listed entity should collectively have a broad range of experience, skills and knowledge for the board to discharge its duties and responsibilities effectively. Board composition should promote diversity of thought and independent judgment.

Why this Principle is important:

- Having an effective board provides the foundation for long-term value creation.
- A board is likely to be more effective if it has a broad range of skills, diversity of perspective and has an appropriate degree of independence from management.
- Regular review and renewal of board skills and composition is fundamental to the board remaining effective in a constantly evolving business landscape.
- Independent directors bring objective judgment to board deliberations and assist in identifying and mitigating conflicts of interest. They support investor and stakeholder confidence by providing impartial oversight of the entity's governance, decision making and risk management.
- Transparent disclosure of the board's collective skills, diversity and independence enable investors to make an informed assessment of the board's composition, capability and independence.

Recommendation 2.1

(a) The board of a listed entity should have a nomination committee with a charter and responsibility for considering succession matters and ensuring that the board has an appropriate balance of collective experience, skills, independence and diversity.

(b) The nomination committee should have at least three members. A majority of the members of the committee and its chair should be independent directors.

(c) A listed entity should disclose the charter of its nomination committee, its members, the number of times the committee met throughout the reporting period and the number of meetings each member attended.

Explanatory Materials

A separate nomination committee brings transparency, focus and independent judgment for the appointment and reappointment of directors to the board. It facilitates the effective functioning of the board and promotes investor confidence.

The role of the nomination committee is usually to review and make recommendations to the board in relation to board, committee, CEO and senior executive succession planning. For boards, this role includes director induction and development (see Recommendation 2.2), performance evaluations and their implementation (see Recommendation 1.4), director recruitment processes, and recommendations for the appointment and re-election of individual directors.

The nomination committee should be of sufficient size and independence to discharge its mandate effectively. An appropriate diversity of membership can also help avoid groupthink and ensure that different perspectives are brought to its responsibilities.

Where the chair of the board chairs the nomination committee, a separate chair is usually appointed when the nomination committee is dealing with the appointment of a successor to the chair. In such cases, the nomination committee typically determines whether the outgoing chair will have a vote on the appointment of their successor.

The charter of a nomination committee typically sets out its role and confers on it all necessary powers to perform that role. In considering nominations for board positions, the committee would typically consider the skills needed, how to bring diversity to the board, and an appropriate balance of executive, non-executive, independent and non-independent directors.

In some cases, the board of an entity may decide that it is able to deal efficiently and effectively with board composition and succession matters without establishing a separate nomination committee. If it does so, it should disclose in the entity's corporate governance statement the processes it uses to address these matters.

The time commitment required of non-executive directors to discharge their responsibilities effectively may evolve as an entity's circumstances change. Regular review by the board or the nomination committee of the time required from non-executive directors and whether directors can meet that requirement, helps ensure directors contribute effectively. Before accepting any new appointment as a director of another listed entity, any other material directorship or any position with a significant time expectation, a non-executive director candidate can discuss the demands of the commitment with the chair of the board and the chair of the nomination committee.

Recommendation 2.2

(a) The board of a listed entity should determine the collective skills, knowledge and experience it needs and assess whether it has them.

(b) A listed entity should:

(i) disclose the process for how the board assesses the collective skills, knowledge and experience of its directors and the outcome of this process;

(ii) provide an induction program for new directors and support all directors in their professional development.

Explanatory Materials

Effective boards have a broad range of skills, knowledge and experience to capably discharge their responsibilities and oversee the entity's strategy, performance, risk management and compliance. The mix will vary depending on the entity's size, complexity, industry, operating environment and strategic priorities.

Board skills assessments

The board is responsible for determining the capability it requires and ensuring that it is maintained over time.

The mix of skills, knowledge and experience will depend on the entity's circumstances. It may include industry and sector knowledge to enable the board to understand the entity's business model, operating environment and key risks, together with executive and people leadership skills, and professional expertise in areas such as finance, technology, legal and regulatory matters, governance and risk.

A board skills matrix is one tool that may assist a board to identify and communicate the mix of skills, knowledge and experience it currently has and may require in the future. It can also assist in identifying gaps, informing succession planning and guiding future board appointments.

An entity should disclose the process used by the board to assess the collective skills, knowledge and experience of its directors and the outcome of that process. Disclosure should enable investors to understand how the board assesses its capability against the entity's needs and strategic priorities.

The board should periodically review whether its collective skills remain appropriate as the entity's business, strategy, risks and operating environment evolve. Where gaps are identified, the entity should consider how they may be addressed, including through board appointments, succession planning, professional development or external advice.

The entity should also explain how the mix of skills is expected to evolve over time, including how identified gaps will be addressed, while having regard to commercially sensitive information.

Director onboarding and ongoing professional development

An entity should support newly appointed directors to understand the entity and contribute effectively to board decision making as soon as practicable after appointment. This will typically include an induction program tailored to the director's existing skills, knowledge and experience.

An induction program may include briefings on the entity's strategy, business model, operations, financial position, governance arrangements, key risks, regulatory environment and reporting framework. It may also include engagement with senior management and, where appropriate, site visits.

Directors should have access to ongoing professional development to enable them to maintain and develop the skills and knowledge needed to discharge their responsibilities. Where needed, this may include appropriate training or guidance about developments in law or regulation, financial reporting, risk management, technology, sustainability and the entity's industry or operating environment.

Each director should be able to engage meaningfully with the entity's key financial, sustainability and other reporting and should satisfy themselves that disclosures are consistent with their knowledge of the entity's affairs.

Recommendation 2.3

(a) The board should disclose how diversity in its composition is incorporated into board succession planning. This includes diversity of thought, experience, perspectives and gender.

(b) For gender diversity, a listed entity should

(i) have and disclose a measurable objective and timeframe for achieving gender diversity in the composition of the board; and

(ii) disclose the entity's progress in achieving the measurable objective in the reporting period.

(c) If the entity was in the S&P/ASX 300 Index at the commencement of the reporting period, the measurable objective for achieving gender diversity in the composition of its board including non-executive and executive directors should be to have a percentage, of not less than 30% of women and 30% of men, within that timeframe.

Explanatory Materials

Diversity of thought, experience and perspective relevant to the business of the entity strengthens the quality of board deliberation and decision making, allowing the board to draw upon different skill sets, life experiences and ways of thinking.

Individual appointment decisions necessarily involve consideration of skills and experience sought, as well as the availability of suitable candidates. As part of board succession planning and appointment decisions, considering diversity helps ensure that issues before the board are considered from multiple perspectives. This aids robust oversight, sustains long term value creation and reduces the risk of groupthink and other cognitive biases.

Diversity can be achieved through consideration of different factors, having regard to an entity's strategy and operating environment (amongst others). For example, having directors of different genders, ages, cultures, demographic backgrounds and personal circumstances brings diversity of thought, experience and perspectives to a board.

The approach to achieve an objective for gender or other modes of diversity is determined by the board. For boards of S&P/ASX 300 entities, their size, scale and organisational maturity generally mean they are well placed to achieve a 30% gender diversity target. For boards of entities of smaller sizes, or that operate in certain sectors, practical challenges in meeting this recommendation may exist. Where this is the case, the entity should explain its approach so that investors can understand its progress in meeting its diversity objectives.

When reporting under Recommendation 2.3 it is not expected that directors' personal information would be disclosed, rather collective information on progress in achieving measurable gender objectives would be disclosed.

Recommendation 2.4

A listed entity should:

(a) have a board with a majority of independent directors; and

(b) disclose which directors it considers to be independent directors and the length of service of each director. Where a director has interests, positions or relationships that the board considers could raise questions about their independence, the entity should disclose the nature of the interest, position or relationship in question, and explain why the board is of the opinion that these factors do not compromise that director's independence.

Explanatory Materials

Independent directors bring independent judgment to bear on issues before the board and can support investor confidence. They can also bring objectivity and an impartial view to the monitoring and review of management.

Having a majority of independent directors typically makes it less likely that an individual or small group of individuals can dominate the board's decision making. It also increases the likelihood that the decisions of the board reflect the best interests of the entity as a whole rather than the interests of management or any other person or group with whom a non-independent director may be associated.

A director would normally be characterised as an independent director if they are free of any interest, position or relationship that might influence, or reasonably be perceived to influence, their capacity to bring independent judgment to bear on issues before the board.

Assessing independence

When assessing the independence of a director, the board may consider that one or more of the following factors raise questions about a director's independence:

- Recent employment in an executive capacity by the entity or any of its child entities.
- Receiving remuneration that is subject to a performance condition.
- A recent material business relationship with the entity or a child entity or being an officer or otherwise associated with someone with such a relationship. This includes as a material supplier, professional adviser, consultant or customer.
- Recently being a substantial (10%) holder, or an officer employee or material professional adviser to a substantial (10%) holder.
- Close personal ties with any person who falls within any of the categories described above.
- Having been a director of the entity for such a period that their independence from management and substantial holders may have been compromised.

In each case, the materiality of the interest, position or relationship needs to be assessed by the board to determine whether it might affect, or might reasonably be seen to affect, the director's capacity to bring independent judgment to bear on issues before the board.

Processes to support independence assessments and associated disclosures

Entities should establish robust processes to ensure the independence of directors. This includes selection, appointment and ongoing obligations for directors to disclose new or material interests, positions and relationships that may impact their independence.

A candidate for election as a director of an entity typically discloses to the entity all interests, positions and relationships that may bear on their independence. Those matters in turn should be disclosed to security holders in the materials given to security holders in support of their election or re-election, together with whether the board considers that the director is independent.

If there is a change in a non-executive director's interests, positions or relationships that could bear upon their independence, the non-executive director should inform the board or the nomination committee at the earliest opportunity.

Periodic assessment of the independence of each non-executive director by the board or the nomination committee helps the independence assessment remain current. For example, an assessment could be made annually at or around the time that the board or the nomination committee considers candidates for election or re-election to the board, or as soon as practicable after the board or the nomination committee becomes aware of a change in the director's interests, positions or relationships.

If the board determines that a director's status as an independent director has changed, that determination should be disclosed and explained to the market in a timely manner when feasible.

Recommendation 2.5

The chair of the board should be an independent director and should not be the same person as the CEO of the entity.

Explanatory Materials

Having an independent chair can provide investors with confidence in the governance of the entity. It can also contribute to a culture of openness and constructive challenge, which foster an effective board.

Some entities will have the CEO chair the board for a period of time. This typically occurs at earlier-stage founder-led entities or when an entity is in a period of crisis. In other circumstances, some entities will have a chair that is not independent, for example where they are a nominee of a cornerstone security holder. In these circumstances, alternative governance arrangements that can support strong governance include:

- the entity appointing an independent director as the deputy chair or as the senior independent director, who can fulfil the role whenever the chair is conflicted. This role can provide a separate channel of communication for security holders – especially where those communications concern the chair.
- Non-executive directors conferring periodically as a group without senior executives present (in the case of an executive chair).

Recommendation 2.6

When appointing a director, a listed entity should:

(a) undertake appropriate checks before appointing a director or putting someone forward for election as a director;

(b) provide security holders with all material information in its possession relevant to a decision on whether or not to elect or re-elect a director; and

(c) have a written agreement with each director, setting out the terms of their appointment.

Explanatory Materials

A thorough appointment process, including pre-appointment checks, helps appoint directors who support the entity's long-term interests and safeguard the entity's reputation.

Before appointment or re-election

Regardless of who nominates a director, a non-executive director candidate would typically provide the board or nomination committee with the necessary information required for a notice of meeting to security holders regarding their appointment or re-election (discussed below), and a consent for the entity to conduct typical background or other checks.

Alongside the board's succession planning, appropriate checks usually include checks on the person's character, experience, education, qualifications, independence, criminal record and bankruptcy history. See the Explanatory Materials to Recommendations 2.2 and 2.4 for details on board skills and independence assessments that can inform the scope of a pre-appointment check.

All candidates for appointment, election or re-election as a director should provide details of their other commitments and they should have sufficient time to fulfil their responsibilities as a director.

In some circumstances an entity will wish to make a provisional appointment of a director or put a resolution to members for the election of a director, pending the completion of outstanding regulatory or other required checks. In these circumstances, the director could give an unequivocal undertaking to resign should the entity receive an outstanding check that it considers is not satisfactory.

Information to security holders

Security holders benefit from sufficient information to make an informed decision on whether or not to elect or re-elect a director candidate. This may include background information, skills, outcomes of background checks, details of other commitments and material directorships, and whether and why they are considered independent.

A statement is typically prepared by the board as to whether it supports the election or re-election of the candidate and a summary of the reasons why. This provides transparency for security holders around the approach to board succession (for example, enhancement to the collective skills of the board) and how the process was conducted.

Written agreements

A written agreement to appoint a non-executive director often takes the form of a letter of appointment.

These agreements are often structured to be with the director personally (rather than an entity supplying their services), so that the director is personally accountable to the entity. This includes where a director of the entity supplies, and is paid for their services, through a personal services company. Listing Rule 3.16.4 requires disclosure of the material terms (and any material variation) of service or consultancy agreements entered into with the entity's directors.

These agreements typically include obligations for non-executive directors to:

- disclose interests and potential matters affecting independence;
- comply with policies (including in relation to approval and notification of share trading);
- seek approval before accepting roles with significant commitments or which may give rise to a conflict of interest; and
- assume ongoing confidentiality obligations.

These agreements may also set out the arrangements for seeking independent professional advice, indemnity and insurance coverage, and ongoing rights of access to corporate information.

Principle 3: Instil and reinforce a culture of acting lawfully, ethically and responsibly

A listed entity should instil and reinforce a culture of acting lawfully, ethically and responsibly.

Why this Principle is important:

- Directors have a legal responsibility to act in the best interests of the entity.
- Acting lawfully and ethically provides a strong foundation for long-term value creation for the entity.
- A positive culture that is underpinned by clear strategic objectives and strong values helps entities succeed. Investors and other stakeholders will have greater confidence and trust in an entity that has a strong culture of doing the right thing that is reinforced by the board and senior executives.
- Better outcomes are likely to be achieved when the board oversees the entity's culture and its alignment with its strategic objectives and values.

Recommendation 3.1

The board of a listed entity should act in the best interests of the entity. It should have regard to its security holders and other stakeholders and disclose its processes for engaging with them.

Explanatory Materials

The interests of an entity, its security holders and other stakeholders are typically consistent over the long term. An entity can support the creation of long-term value by having regard to its impact and interaction with its security holders and other stakeholders.[7]

The creation of long-term value typically requires an entity to be valued, trusted and respected by its security holders and other stakeholders including employees, suppliers, customers, contractors and the communities in which it operates. These relationships can be developed and sustained through a positive culture towards the entity's security holders and other key stakeholders.

It is up to the entity to identify its stakeholders and to manage those relationships. Regular review of those relationships is important to ensure that new and emerging opportunities and issues can be understood and managed.

Reporting key themes and issues affecting security holders and other stakeholders to the board helps ensure the board receives relevant insights to oversee the entity's performance and management's approach to strategy, risk management and compliance. Where information is provided to a board committee, escalation procedures can be employed to ensure that relevant information is communicated to the board.

Disclosures of the processes for engagement with security holders and other stakeholders can assist in building trust and confidence in the culture of the entity.

Recommendation 3.2

A listed entity should articulate and disclose its board-approved values and code of conduct for its directors, senior executives and employees.

Explanatory Materials

Values and a code of conduct are an important foundation for an entity's culture, as they shape board and employee behaviour through articulating the shared principles, conduct and ethical standards that guide an entity's direction, strategy and decision making. Disclosure of values and a code of conduct help to build trust and confidence with the entity's investors and other key stakeholders. This transparency underpins a shared understanding of how an entity is supporting long-term value creation.

[6] For example, see Commonwealth of Australia, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Final Report, February 2019), 402-403 of vol 1

[7] Subject to law (for example, the duty of directors and officers to act in good faith in the best interests of the corporation: section 181 of the Corporations Act). Also see Australian Institute of Company Directors, Directors' "best interests" duty in practice (July 2022) and Bret Walker SC and Gerald Ng, The content of directors' "best interest" duty: Memorandum of advice (22 February 2022).

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The board plays an important role in ensuring an appropriate alignment of the values and code of conduct with the entity's strategic objectives, risk appetite and compliance obligations. A framework to support the board's and management's role in establishing a positive culture through an entity's values and code of conduct may include:

- Articulating the entity's purpose. Purpose is usually broader than a business model and may evolve over time. It can assist an entity to define its time horizons when developing strategy.
- The board approving a statement of values. These are guiding principles and norms that define what type of organisation it aspires to be, and what it requires from its directors, senior executives and employees to achieve that aspiration.
- The board approving an entity's code of conduct. A code of conduct typically articulates the standards of behaviour expected of its directors and employees (including senior executives). An entity's code of conduct should support the lawful, ethical and responsible operations of the entity.
- The board and senior executives modelling behaviour and decision-making consistent with the entity's values and code of conduct (setting the tone from the top).
- The senior executive team being charged with the responsibility of reinforcing values across the organisation.
- Management ensuring employee training in the code of conduct, values and other relevant policies, together with proportionate disciplinary action when appropriate.
- The board overseeing supporting policies (such as a code of conduct, diversity and inclusion policy, whistleblowing policy and anti-bribery and corruption policy) and taking appropriate and timely action in response to breaches or incidents reported.

Recommendation 3.3

A listed entity should reinforce a culture across the entity of acting lawfully, ethically and responsibly, consistent with the entity's values, strategy and risk appetite. It should:

(a) ensure that the board is informed of any material breaches or trends in breaches of key policies supporting its culture (to the extent permitted by law); and

(b) disclose the mechanisms the board has in place to monitor the entity's culture.

Explanatory Materials

The board plays an important role in overseeing an entity's culture to ensure alignment with the entity's strategic objectives, risk appetite and compliance obligations. This is typically achieved through establishing monitoring mechanisms to oversee the entity's culture, which can include a mix of lead and lag indicators to support this oversight.

Monitoring mechanisms to support board oversight of an entity's culture will vary depending on the entity's circumstances. For example, some boards undertake regular site visits across the entity's operating locations, where there are opportunities to engage with employees. Other ways to support board oversight of an entity's culture include:

- Supporting board awareness of its legal responsibilities, including by informing the board of unlawful conduct by the entity that has been detected and the actions taken to prevent or respond to it (for example, on an aggregated basis). These responsibilities may include directors' duties, whistleblower obligations, environmental obligations, work health and safety obligations and duties to prevent workplace sexual harassment and other harmful behaviours.
- Reporting material breaches of the code of conduct and other key policies supporting culture such as those relating to diversity, sexual harassment, unlawful discrimination and bullying. This includes reporting trends and may also include progress being made against some policies, such as diversity and inclusion policies where targets may have been set.
- Overseeing the entity's approach to whistleblowing and the treatment of whistleblowers.
- Reporting the outcomes of workforce engagement surveys, or other similar surveys, that provide insights about the cultural traits of the workforce.

Indicators of a positive organisational culture can include:

- a speak-up culture, which promotes listening to staff and respectful treatment of internal and third-party whistleblowers;
- appropriate escalation of issues from management to the board, or a board committee, including information on patterns of behaviour which may be material when taken as a whole;
- a culture which recognises and has regard to the interests of internal and external stakeholders, to support long-term value creation; and
- a risk culture which supports early reporting and timely remediation of risk, with learning outcomes from those processes.

In each case, people who speak up, report concerns or escalate issues are supported and can do so without consequences.

Disclosing the monitoring mechanisms the board has in place to monitor an entity's culture helps to build trust and confidence that there are strong governance arrangements in place to oversee culture. Transparency can also be enhanced when entities disclose key policies such as the whistleblowing, diversity and anti-bribery and corruption policies on their websites. This assists those outside the organisation, including former employees, to access those policies.

Principle 4: Safeguard the integrity of corporate reports

The board of a listed entity should oversee appropriate processes to verify the integrity of its periodic corporate reports.

Why this Principle is important:

- Australia's public capital markets rely on investors and other stakeholders having access to high-quality information.
- Strong audit and assurance processes provide confidence to investors and other stakeholders in the integrity of corporate information.

Recommendation 4.1

(a) The board of a listed entity should have an audit committee with a charter and responsibilities to independently verify and safeguard the integrity of its periodic corporate reporting, including the processes for the appointment or removal of the external auditor and the rotation of the audit engagement partner.

(b) The audit committee should have at least three members. All members should be non-executive directors, with a majority being independent directors. The audit committee chair should be an independent director, who is not the chair of the board.

(c) A listed entity should disclose the charter of its audit committee and the relevant qualifications and experience of its members. It should disclose, as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings.

Explanatory Materials

Ultimate responsibility for an entity's financial statements rests with the full board. Notwithstanding this, having a separate audit committee can be an efficient and effective way to bring transparency, focus and independent judgment over the financial reporting processes and (depending upon the committee's remit) other corporate reporting processes.

The role of the audit committee is typically to review and make recommendations to the board in relation to corporate reporting and internal controls. This includes financial reporting integrity, the adequacy of the entity's audit and assurance policies and practices (including management and review of the external auditor and any internal audit function), and the appropriateness of the accounting and reporting judgments or choices exercised by management in preparing the entity's financial reports.

Depending upon the committee's remit, it may also review and make recommendations relating to the integrity of the entity's other periodic corporate reports.[8]

The audit committee should have a charter[9] that clearly sets out its role and confers on it all necessary powers to perform its role. This will usually include the right to obtain information, interview management and internal and external auditors (with or without management present), and seek advice from external consultants or specialists where the committee considers that necessary or appropriate.

The committee should be of sufficient size and independence to discharge its responsibilities effectively, with its members between them having accounting and financial expertise and a sufficient understanding of the industry in which the entity operates. There should also be a consideration of committee skills and support required for evolving areas that may fall within the committee's remit (for example, reporting related to climate and other sustainability-related matters). However, oversight of corporate reporting integrity is a matter for the board, with recommendations made by the audit committee.

[8] For example, sustainability reporting. Where this is within the audit committee's responsibilities, this may also be supported by other committees, such as a risk committee or a sustainability committee. Regarding sustainability committees, see for example the joint publication of the Australian Institute of Company Directors and Herbert Smith Freehills Bringing together ESG: Board structures and sustainability (November 2022).

[9] For example, see the sample audit committee charter in Australian Institute of Company Directors, Australian Auditing Standards Board and Institute of Internal Auditors, Audit Committees: A Guide to Good Practice (2017).

An entity which is included in the S&P All Ordinaries Index at the beginning of its financial year is required under Listing Rule 12.7 to have an audit committee during that year. If the entity is included in the S&P/ASX 300 Index at the beginning of its financial year, the composition of its audit committee must also follow Recommendation 4.1(b).

The boards of some entities that are not subject to Listing Rule 12.7 will decide that they are able to oversee the corporate reporting process efficiently and effectively without establishing a separate audit committee. If they do, the entity should disclose in its annual report, or on its website, the fact that it does not have an audit committee and provide an explanation of its alternative processes.

Recommendation 4.2

A listed entity should disclose its process to verify the integrity of any periodic corporate report it releases to the market, which may include the extent to which the report has been the subject of assurance.

Explanatory Materials

Investors rely on a broader range of periodic corporate reports (and other disclosures) than audited or reviewed financial statements to inform their investment decisions.

Periodic corporate reports also include an entity's:

- annual directors' reports;
- sustainability reports;[10]
- quarterly activity reports;
- quarterly cash flow reports; and
- integrated reports.[11]

An entity should have processes to ensure that the narrative and quantitative information in all of its periodic corporate reports is materially correct, balanced and provides investors with appropriate information to make informed investment decisions. Particular care should be taken in areas where practice is still developing, including where recognised terminology, data and reporting frameworks are at varying stages of evolution.

Where some or all of a report has been the subject of internal or external assurance, the nature and extent of that work should be disclosed in the report itself. This includes confirmation that any external assurance practitioner's engagement is in accordance with relevant assurance standards.[12]

The processes should also be disclosed more generally in the entity's governance disclosures in its annual report or on its website. This may include, for example, a discussion of the guiding principles and internal procedures undertaken by an entity, with appropriate detail about the level of work performed. It could also include how different processes apply to each periodic corporate report, for example, some may utilise an internal assurance process while others an external assurance practitioner.

For financial reports in respect of a financial period, it is appropriate for management to also provide an opinion that the reports are based on a sound system of risk management and internal control which is operating effectively.

Ultimately, directors must form their own views on the adequacy of each of an entity's periodic corporate reports and other disclosures. These responsibilities are set out in the Corporations Act, for example, sections 285, 295, 588G, 674 and 1041E. External assurance processes do not remove these responsibilities.

Recommendation 4.3

A listed entity should disclose when the auditor was first appointed and when the engagement of the auditor was last comprehensively reviewed.

Explanatory Materials

Listed entities established in Australia are subject to laws governing the appointment, resignation and removal of external auditors, as well as the rotation of the audit engagement partner.[13] The role of security holders and ASIC in these processes reflects the significance of an entity's appointment of auditor.

Disclosing when an auditor was first appointed helps build trust and confidence in the corporate reports.

The audit committee should periodically undertake a comprehensive review of the external auditor.[14] Comprehensive reviews are in addition to the committee's ongoing review of audit quality, as part of the corporate reporting process for a reporting period.

Comprehensive reviews are to assess the effectiveness and independence of the auditor from board and management, and for the audit committee to consider whether recommendations to, for example, maintain or rotate an audit firm or its lead engagement partner should be made to the board, having regard to the potential benefits that a tender or rotation process may bring, including a fresh perspective on the audit.

Disclosure of the outcomes of the review is encouraged.

[10] This includes mandatory or voluntary sustainability reports.
[11] "Integrated report" has the meaning given in the IFRS Foundation's International Integrated Reporting Framework. The principles of integrated reporting can be used in preparing existing reports, for example, the directors' report or the operating and financial review.
[12] Standards for assurance engagements include Australian Auditing Standards and Standards on Review Engagements (for audits and reviews of historical financial information) and Standards on Assurance Engagements (for other assurance engagements).
[13] Part 2M.4 of the Corporations Act.
[14] See Australian Institute of Company Directors and Auditing and Assurance Standards Board, Periodic Comprehensive Review of the External Auditor Guide for Audit Committees (2022). Also see ASIC, INFO 196 Audit quality – The Role of directors and audit committees, and ASIC, INFO 223 Audit quality – The role of others.

Principle 5: Make timely, balanced and accurate disclosure

A listed entity should have processes to ensure that it makes timely, balanced and accurate disclosure of all matters that a reasonable person would expect to have a material effect on the price or value of its securities.

Why this Principle is important:

- Disclosure promotes fair, equal and timely access to material price sensitive information and supports market confidence.
- Timely, balanced and accurate disclosure enables informed investment decisions.
- Accountability for disclosure is reinforced through effective internal escalation and disclosure processes.

Recommendation 5.1

A listed entity should have and disclose a written policy for complying with its continuous disclosure obligations.

Explanatory Materials

A clearly documented continuous disclosure policy sets out responsibilities and internal escalation processes, helping the entity identify and disclose market-sensitive information promptly, consistently and in a balanced way.

An entity's continuous disclosure policy typically:

- is directed to ensuring that it complies with its continuous disclosure obligations, so that all investors and creditors have equal and timely access to material information concerning the entity – including its financial position, performance, ownership and governance;
- outlines the roles and responsibilities of the board and management in the entity's continuous disclosure system;
- emphasises the need for rapid escalation of potentially price sensitive information by all personnel;
- supports the disclosure of information that is accurate, complete and not misleading; and
- is board-approved and supplemented with training to support roles and responsibilities.

ASX Listing Rules Guidance Note 8 provides guidance to entities on continuous disclosure under the Listing Rules, including the elements of a continuous disclosure policy, when it is permissible to limit disclosure for a period, and the content and presentation of information in market announcements.

Recommendation 5.2

A listed entity should ensure that its board receives copies of all material market announcements promptly after they have been made.

Explanatory Materials

Board visibility of material market announcements supports oversight of the entity's disclosure practices as it helps the board oversee the nature, frequency and quality of information being released to the market. An entity should have arrangements in place to ensure that the board receives copies of such announcements promptly after they have been made.

ASX Guidance Note 8 provides guidance on entities' continuous disclosure obligations under Listing Rule 3.1, including the timely release of material non-public information.

Recommendation 5.3

A listed entity that gives a new and substantive investor or analyst presentation should release a copy of the presentation materials on the ASX Market Announcements Platform ahead of the presentation.

Explanatory Materials

Investor or analyst presentations provide opportunities for entities to assist the market or a group of investors understand, value and trust the entity. They need to be managed carefully to ensure that selective disclosure of material non-public information is made to a limited audience during these presentations.

Copies of new and substantive investor presentations should be released to the ASX Market Announcements Platform in advance of the presentation being made. This applies in addition to an entity's obligation to disclose material non-public information under Listing Rule 3.1 and assists the entity in satisfying its disclosure and reporting obligations.

Examples of substantive presentations include results presentations and the types of presentations typically given at AGMs, investor days and broker conferences. Where presentations have been tailored and provided over a series of meetings without the inclusion of additional material information, they would not typically be considered new for these purposes.

The market announcement should provide clear and balanced disclosure of any new and substantive information, including any material non-public information, contained in the investor presentation.

Where practicable, the entity should consider providing security holders the opportunity to participate in the presentation (including remote access). If that is not practicable, the entity should consider making available on its website a recording or transcript of the presentation as soon as it reasonably can.

Recommendation 5.3 does not apply to private meetings between an entity and an investor or analyst. However, the same rules for avoiding selective disclosure of any new and substantive information apply, including any material non-public information, discussed in those meetings or disclosed in a related document.

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Principle 6: Support the rights of security holders

A listed entity should provide its security holders with appropriate information and facilities to allow them to exercise their rights as security holders effectively.

Why this Principle is important:

- Security holders rely on access to timely, accurate and complete information to exercise their rights effectively.
- Two-way engagement allows security holders to directly voice concerns about the entity's performance, and for the board and management to respond appropriately, strengthening accountability.

Recommendation 6.1

A listed entity should set out information about itself and its governance on its website.

Explanatory Materials

A fundamental underpinning of the corporate governance framework for entities is that security holders should be able to hold the board and, through the board, management to account for the entity's performance.

The rights and expectations of security holders are found in the Corporations Act and ASX Listing Rules. These rights include voting on major decisions, such as the appointment or removal of directors, transactions with a person in a position of influence, and the issue of securities that exceed an entity's placement capacity and are not otherwise exempt. These rights are typically better supported in practice if an entity engages with its security holders and provides the market with thoughtfully prepared information that takes into account that engagement.

Investors expect information about entities to be freely and readily accessible online. An entity's website would typically have an investor relations landing page from where all relevant corporate governance information can be accessed. To easily navigate to this landing page, entities typically provide access to this page in the navigation menu for the entity's website.

Information available through the entity's website could include:

- key corporate documents (including corporate governance materials referred to in these Recommendations); and
- background information on the entity, its board and management (including copies of market announcements, including current and historical corporate reports).

The entity should also include the contact details and a link to its securities registry on its website, so that security holders can access relevant information and forms to manage their security holding.

Recommendation 6.2

A listed entity should have an investor relations program that facilitates effective two-way communication with investors.

Explanatory Materials

An investor relations program allows investors and other stakeholders the opportunity to gain a greater understanding of the entity's business, governance, financial performance and prospects, and to express their views to the entity on matters of concern or interest to them.

An entity's investor relations program should involve two-way communication, facilitating an entity's engagement with its investors, and reporting of material issues and concerns to the entity's board and relevant senior executives. It may also run in tandem with a wider stakeholder engagement program.

Investor relations programs can be tailored to the entity and its circumstances, including the nature of its investor base. For smaller entities it may primarily involve actively engaging with security holders at the AGM, meeting with them upon request and responding to any enquiries they may make from time to time. For larger entities, activities typically involve a detailed program of scheduled and ad hoc interactions with institutional investors, retail investor groups, sell-side and buy-side analysts, proxy advisers and the financial media.

Recommendation 6.3

A listed entity should disclose how it facilitates participation at general meetings of security holders.

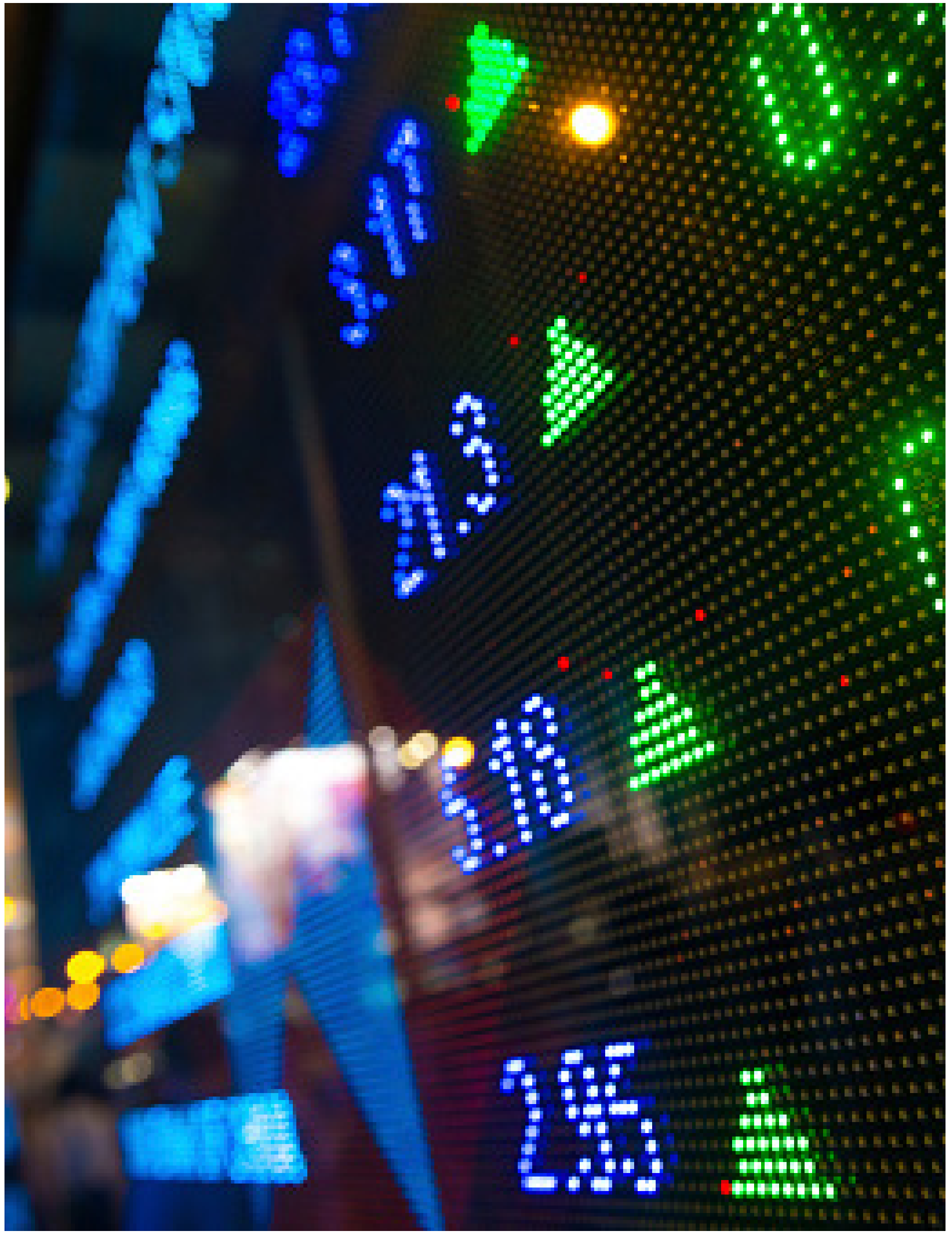
Explanatory Materials

General meetings of security holders are an important forum for two-way communication between an entity and its security holders.

There are various options available to an entity for holding a general meeting, subject to it meeting the relevant statutory and constitutional requirements, including at physical locations, hybrid meetings that involve a physical location and virtual meeting technology, or virtual meetings only. Entities should hold general meetings at a reasonable place and time, and with any technology used giving all security holders a reasonable opportunity to participate. Entities, especially those with large or geographically diverse registers are expected to consider how technology can facilitate the participation of security holders in general meetings, including across time zones.

It is recognised that, regardless of the format of meeting used, not all security holders will be able to attend an entity's AGM. To foster greater participation, an entity may elect to utilise other methods to facilitate such participation. For example, an entity may provide the opportunity for security holders to ask questions about, or make comments on, the management of the entity ahead of the AGM. Where appropriate, these questions and comments can be addressed at the meeting. Meetings held at physical locations only can also be webcast so that security holders who are unable to attend can observe the proceedings.

Disclosure about the available methods to participate in general meetings should be in the relevant notices of meeting, in addition to general disclosure on the entity's website.



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Principle 7: Understand and manage risk

The board of a listed entity should understand its material risks and oversee a sound risk management framework and the periodic review of the effectiveness of that framework.

Why this Principle is important:

- An entity must take risk in order to succeed.
- Effective management and oversight of risk through strong processes is likely to deliver better outcomes.
- The board's periodic review of the risk management framework helps the framework remain relevant in a changing world.
- Investors and other stakeholders are better able to understand a business conducted by an entity when they are able to understand the key risks and opportunities that the business faces.

Recommendation 7.1

(a) The board of a listed entity should have a committee(s) which oversee risk, with responsibilities to oversee the entity's risk management and internal control frameworks.

(b) Such committee(s) should have at least three members. A majority of the members of the committee and its chair should be independent directors.

(c) A listed entity should disclose the charter of each risk committee, its members, the number of times the committee met throughout the reporting period and the number of meetings each member attended.

Explanatory Materials

The board has responsibility to establish the risk framework and to oversee the way that risk is managed in the business.

Ultimate responsibility for an entity's risk management framework rests with the full board. Notwithstanding this, having a risk committee can bring transparency, focus and independent judgment in oversight of the entity's risk management framework (including its internal control framework).

The role of a risk committee is usually to:

- make a recommendation to the board about the entity's risk appetite;
- monitor management's performance against the entity's risk management framework, including whether the entity is operating within the risk appetite (including identified risk metrics);
- review any material incident involving fraud or a breakdown of the entity's risk controls and remediation action plan;
- receive reports from internal audit on its reviews of the adequacy of the entity's processes for managing risk (including internal controls);
- review management's assessment of the main risks facing the firm and how those risks are being managed;
- make recommendations to the board in relation to changes that should be made to the entity's risk management framework; and
- oversee the entity's insurance program, having regard to the entity's business and the insurable risks associated with its business.

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The risk committee(s) could be a stand-alone risk committee, a combined audit and risk committee or a combination of board committees addressing different elements of risk. Where it is a combination of committees, the entity should disclose how it has divided the responsibility for overseeing risk between those different committees.

A risk committee should have a charter that clearly sets out its role and confers on it all necessary powers to perform that role. This will usually include the right to obtain information, interview management and internal and external auditors (with or without management present), and seek advice from internal audit, external consultants or specialists where the committee considers that necessary or appropriate.

A risk committee should be of sufficient size and independence, with its members between them having the necessary technical knowledge and a sufficient understanding of the industry in which the entity operates, to be able to discharge the committee's mandate effectively.

The boards of some entities may decide that they are able to oversee the entity's risk management framework efficiently and effectively without establishing a risk committee. If they do, the entity should disclose in its annual report or on its website the fact that it does not have a risk committee and explain the processes it employs for overseeing the entity's risk management and internal control frameworks.

Recommendation 7.2

The board or a board committee should:

(a) review the entity's risk management and internal control frameworks at least annually to satisfy itself that:

(i) the frameworks continue to be sound, including by addressing the entity's material risks; and

(ii) the entity is operating with due regard to the risk appetite set by the board; and

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

Explanatory Materials

The board's responsibility to set and monitor risk appetite ensures that risk-taking is aligned with the entity's strategic objectives and long-term value creation.

One of the key roles of the board of an entity is to have an appropriate understanding of the entity's material risks and satisfy itself that those risks are being taken and managed with due regard to its risk appetite. This includes monitoring the adequacy of the entity's risk management and internal control frameworks. To effectively monitor the adequacy of these frameworks, the board or a board committee should review them at least annually to ensure they adequately identify, measure, evaluate, monitor, report and control or mitigate the entity's material risks.

Annual reviews typically include consideration of contemporary and emerging risks for the entity. Some examples may be to conduct reviews regarding digital disruption, cyber-resilience, data governance, climate change, biodiversity, worker underpayments and third-party risk management. The board may also consider crisis management and business continuity processes appropriate for the entity's circumstances to satisfy itself that the frameworks address the entity's material risks.

For financial reports in respect of a financial period, boards may require management to provide an opinion that the reports are based on a sound system of risk management and internal control which is operating effectively.

If the board decides to delegate the review role to a board committee, this should be reflected and disclosed in the committee's charter.

Recommendation 7.3

A listed entity should disclose:

(a) whether it has an internal audit function and, if it does, how the function is structured; and

(b) the process it employs for assuring the board of the effectiveness of the entity's governance, risk management and internal control frameworks and making recommendations for improvements.

Explanatory Materials

An internal audit function can assist an entity to accomplish its objectives by bringing an independent and objective assurance and advisory service to systematically evaluate and continually improve the effectiveness of its risk management framework (including its internal control framework).

An entity may outsource the internal audit function (for example, to a professional services firm). This is distinct from the engagement of an external auditor or other external assurance practitioner, to provide assurance for corporate reporting.

If an entity has an internal audit function, the board should ensure that the function has the requisite degree of skill, independence and objectivity by:

- adopting a mandate and a charter;
- appointing a suitably qualified head of function;
- having a direct reporting line to the board or to the audit committee.

Recognised internal audit standards can assist entities structuring their internal audit function, and it can be helpful for an entity to disclose if its function follows such standards.[17]

Periodic review of the function's performance by the board or audit committee can also be useful to an entity as its circumstances change over time. For example as an entity grows it may consider whether the function is insourced, co-sourced or outsourced. If an entity does not have an internal audit function, the board or audit committee may periodically review whether there is a need for such a function.

Recommendation 7.4

A listed entity should disclose (unless unreasonably prejudicial):

(a) its material risks; and

(b) how it manages or intends to manage those risks.

Explanatory Materials

Transparency about risks that are material to the entity's business strategy and future prospects, and how an entity is managing them, informs investment decisions and supports the efficient allocation of capital.

An entity may report upon its material risks with a statement that includes references to disclosures it has already made in accordance with its other reporting obligations. For example, its:

- operating and financial review in its directors' report; or,
- if it prepares a sustainability report or an integrated report, disclosures in those reports.

This recommendation does not require any disclosure that the entity considers to be unreasonably prejudicial or it is otherwise permitted to withhold by law or regulation, such as under s299A(3) of the Corporations Act.[18]

[17] See Institute of Internal Auditors Global Internal Audit Standards™
[18] See ASIC RG 247 Effective disclosure in an operating and financial review | ASIC for guidance on these provisions.

Principle 8: Remunerate fairly and responsibly

A listed entity should remunerate its directors and senior executives fairly and responsibly. Remuneration and security holding arrangements should align with the entity's strategic objectives, risk appetite and values.

Why this Principle is important:

- Remuneration structures often influence conduct, retention and performance, so it is important to align incentives to support long-term value creation.
- Board oversight of senior executive remuneration policy and outcomes supports accountability and investor confidence in the entity.
- To help attract and retain suitably qualified non-executive directors, levels of remuneration for non-executive directors should reflect the time commitment and responsibilities of the role.
- Non-executive director ownership of the entity's securities helps to align their interests with security holders' and the entity's long-term interests.

Recommendation 8.1

(a) The board of a listed entity should have a remuneration committee with a charter and responsibilities to review and make recommendations to the board about the level and structure of remuneration for directors and senior executives, to ensure that such remuneration is fair and reasonable.

(b) The remuneration committee should have at least three members. A majority of the members of the committee and its chair should be independent directors.

(c) A listed entity should disclose the charter of its remuneration committee, its members, the number of times the committee met throughout the reporting period and the number of meetings each member attended.

Explanatory Materials

Remuneration is often a key driver of culture and conduct, as it signals what an entity values.[19] It is also a key focus for investors. Well-designed remuneration arrangements can encourage performance and appropriate risk-taking in a manner aligned with long-term value creation.

Having a separate remuneration committee assists in bringing the focus and independent judgment needed on remuneration decisions. The role of the remuneration committee is typically to review and make recommendations to the board about remuneration arrangements for an entity's directors, senior executives and other employees, including:

- the remuneration packages to be awarded to senior executives, including the exercise of discretion in performance-based remuneration structures, or making recommendations to adjust a performance-based pay outcome;
- the remuneration framework for non-executive directors;
- remuneration plans, including salary sacrifice arrangements or contribution plans;
- superannuation arrangements.

A remuneration committee's role might also include consideration of whether there is any gender or other inappropriate bias in remuneration for directors, senior executives or other employees.

The remuneration committee should have a charter that clearly sets out its role and confers on it all necessary powers to perform that role. This will usually include the right to obtain information, interview management, and seek advice from external consultants or specialists where the committee considers that necessary or appropriate.[20]

[19] As noted by Commissioner Hayne in the Interim Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (28 September 2018) Volume 1, at page 55:
"… staff and others engaged by an entity will treat as important what they believe that the entity values. Rewarding volume and amount of sales is the clearest signal that selling is what the entity values. What staff and others believe that the entity values informs what they do. It is a critical element in forming the culture of the entity."

[20] Listed companies established in Australia should note the provisions in Part 2D.8 of the Corporations Act regarding the engagement of remuneration consultants to advise on the remuneration packages to be awarded to key management personnel.

The remuneration committee should be of sufficient size and independence to discharge its mandate effectively. An entity which is included in the S&P/ASX 300 Index at the beginning of its financial year is required under Listing Rule 12.8 to have a remuneration committee comprised solely of non-executive directors for the entire duration of that financial year.

The boards of some entities may decide that they are able to deal efficiently and effectively with remuneration issues without establishing a separate remuneration committee. If they do, the entity should disclose in its annual report or on its website the fact that it does not have a remuneration committee and explain its alternative processes.

Regardless of whether there is a remuneration committee, no individual director or senior executive should be involved in deciding their own remuneration.[21]

Recommendation 8.2

A listed entity should have the ability to adjust performance-based remuneration outcomes of its senior executives downwards when appropriate.

Explanatory Materials

Senior executive remuneration structures should promote long-term value creation and be aligned to an entity's strategic objectives, risk appetite and values.

These structures should permit the board, supported by the remuneration committee, to exercise discretion in relation to senior executive remuneration outcomes in certain circumstances, subject to applicable law. This may include circumstances where information later becomes available that, had it been known at the time, would reasonably have resulted in a lower outcome. These structures can include, where permitted by law, downward adjustments of performance-based remuneration outcomes after award, payment or vesting, whether issued in cash or securities.

Given existing remuneration reporting requirements for listed entities in the Corporations Act for senior executives who are key management personnel as defined in that Act, that reporting will satisfy any reporting in connection with this Recommendation 8.2, where relevant.

Recommendation 8.3

A listed entity should:

(a) remunerate its non-executive directors by way of only fixed fees (cash and/or shares or units) and superannuation contributions to reflect their time commitment and responsibilities; and

(b) disclose its approach to non-executive director ownership of securities.

Explanatory Materials

Non-executive directors play an important role in the governance of an entity as they contribute independent judgment, constructive challenge and strategic perspective to board decision making and the oversight of management.

Remuneration of non-executive directors

To attract and retain suitably qualified directors, the level of fixed remuneration should be set to reflect the time commitment and responsibilities of the role. Remunerating non-executive directors by way of fixed fees that comprise cash and/or shares or units and superannuation contributions supports remunerating directors fairly and responsibly for the risks associated with their role, and typically supports independent judgment, objective decision making and appropriate board oversight.

In some circumstances, such as entities in an exploration, development, start-up or transformation phase with limited cash reserves, it will be appropriate for an entity to use alternatives to cash and/or shares or units to fairly remunerate its non-executive directors for their time commitment and responsibilities. When doing so, an entity should carefully assess the risks that may be introduced under such an arrangement. These risks include:

- whether the distinction between board oversight and management execution may become compromised, or
- whether a director's objectivity and independence in overseeing management may become impaired.

If after this assessment an entity decides that it is appropriate in its circumstances to remunerate in an alternative way, it should provide an 'if not, why' not explanation. As with any remuneration of non-executive directors, the entity should provide appropriate disclosure and obtain security holder approvals where required. In remuneration disclosures and security holder approval materials, entities should clearly distinguish between equity instruments that carry performance conditions and those that do not.

[21] This statement is not intended to apply to a determination by the board of an entity on how the pool of directors' fees approved by security holders should be split between directors.

Benefits given in connection with retirement as a non-executive director should be limited to superannuation. This reflects the principle that remuneration of non-executive directors should relate to the time commitment and responsibilities of the role while the director holds office. If benefits other than superannuation entitlements are provided, the nature and fair value of those benefits should be disclosed in the entity's annual directors' report.[22]

Non-executive director ownership of securities

Non-executive director ownership of securities in the entity to which they are appointed encourages alignment between the interests of the director, the entity and security holders, reinforcing long-term value creation. Expectations regarding director security ownership may vary depending on factors such as the nature of the role, the size of the entity, and the composition of the board. Where an entity has implemented an approach to non-executive director ownership of securities, this should be disclosed. In designing the entity's approach, consideration should also be given to its impact on the incentive for suitably qualified and diverse candidates for serving as directors.

[22] See s300A of the Corporations Act 2001 and Reg 2M.3.03 item 7 of the *Corporations Regulations 2001*

Part II: Recommendations with limited application

Part II: Recommendations with limited application

Part II discusses additional governance considerations for certain listed entities, including those established outside Australia and those that are externally managed listed entities.

If not, why not reporting requires and allows these entities to explain the extent to which these Recommendations are applied, in the context of their organisation.

Additional Recommendations that apply primarily to entities established outside Australia

Why these Recommendations are important:

- These Recommendations are primarily directed at entities established outside Australia. They help promote a level playing field and consistent governance practices across the ASX market by reflecting requirements that apply under Australian law and regulation. Recommendation 9.1 may also apply to entities established in Australia in particular circumstances, and supports effective board participation and informed decision-making.

Recommendation 9.1

A listed entity, whether established outside or inside Australia, with a director who does not speak the language in which board or security holder meetings are held or key corporate documents are written should disclose the processes it has in place to ensure the director can understand those meetings and documents, contribute effectively to discussions and properly discharge their obligations in relation to those documents.

Recommendation 9.2

A listed entity established outside Australia should ensure that meetings of security holders are held at a reasonable place and time.

Recommendation 9.3

The board of a listed entity established outside Australia should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO a declaration that, in their opinion:

(a) the financial records of the entity have been properly maintained; and

(b) the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity.

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Recommendation 9.4

A listed entity established outside Australia should ensure that all substantive resolutions at a meeting of security holders are decided by a poll rather than by a show of hands.

Recommendation 9.5

A listed entity established outside Australia should give security holders the option to receive communications from, and send communications to, the entity and its security registry electronically.

Recommendation 9.6

A listed entity established outside Australia, and an externally managed listed entity that has an AGM, should ensure that its external auditor attends its AGM and is available to answer questions from security holders relevant to the audit.

Recommendation 9.7

A listed entity established outside Australia which has an equity-based remuneration scheme should have and disclose a policy on whether participants are permitted to enter into transactions (whether through the use of derivatives or otherwise) which limit the economic risk of participating in the scheme or a summary of any other processes or terms which relate to these matters.

Explanatory Materials for additional Recommendations that apply Australian legal concepts to listed entities incorporated in other jurisdictions and processes for directors working in different languages

Recommendation 9.1: Processes for directors working in different languages

Recommendation 9.1 could apply, for example, in the following circumstances:

- to an entity established in Australia that conducts its board meetings in a language other than English[23] and has a director who does not speak that language;
- to an entity established outside Australia that holds its meetings and prepares key documents in a language other than English and has a director who does not speak that language; or
- to an entity established in Australia or elsewhere that holds meetings or prepares key documents in English and has a director who does not speak English.

Key corporate documents include an entity's constitution, prospectus, PDS, corporate reports and continuous disclosure announcements.

Recommendation 9.2 to Recommendation 9.7: applying Australian legal concepts to other entities

Recommendation 9.2, 9.3, 9.4, 9.5 and 9.7 generally reflect governance issues dealt with by legal requirements for listed entities established in Australia.

Recommendation 9.6 reflects a legal requirement on Australian listed companies which is not applicable to externally managed listed entities.

There is an expectation that entities which are not subject to these laws should adopt similar practices.

For example:

- Recommendation 9.4 suggests that substantive resolutions at a meeting of security holders be decided by a poll rather than by a show of hands. Substantive resolutions are those proposed resolutions that appear in a meeting's ballot paper. This reflects the principle of "one security one vote" which is enshrined in the Listing Rules.
- Recommendation 9.6 suggests that an external auditor attend at the AGM and be available to answer questions from security holders relevant to the audit. Listed entities established outside Australia, and listed trusts established in Australia as registered managed investment schemes which have an AGM, may do likewise.
- Recommendation 9.7 recognises that allowing participants in an equity-based remuneration scheme to hedge or otherwise limit the economic risk of participating in the scheme may act counter to the aims of the scheme and blur the relationship between remuneration and performance. This may apply whether the participants in the scheme are directors, senior executives or other employees. An entity established outside Australia which has an equity-based remuneration scheme may wish to implement measures which address hedging behaviour, such as through policies, scheme or employment terms.[24]

[23] For example, because the chair or other directors are more comfortable speaking that language rather than English.
[24] Section 206J of the Corporations Act prohibits the key management personnel of an ASX listed company established in Australia, or a closely related party of such personnel, from entering into an arrangement that would have the effect of limiting their exposure to risk relating to an element of their remuneration that either has not vested, or has vested but remains subject to a holding lock.

The application of the Recommendations to externally managed listed entities

Some recommendations in Part I of this document require modification when applied to externally managed listed entities.

Investors in an externally managed listed entity generally invest in the entity on the basis of the management expertise of the responsible entity. In that context, an appropriate line needs to be drawn between corporate governance matters affecting the responsible entity, which will primarily be a concern for the board and security holders of the responsible entity, and corporate governance matters affecting the listed entity.

Recommendations that apply to externally managed listed entities

Recommendations 2.2, 2.4(b), 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1, 5.2, 5.3, 6.1, 6.2, 6.3, 7.1, 7.2, 7.3, 7.4, 9.3, 9.4, 9.5, apply to an externally managed listed entity.

Recommendation 9.6 will also apply to an externally managed listed entity that has an AGM.

The disclosures in relation to Recommendations 2.2 (director skills), 2.4 (disclosure of independent directors), 3.1 (best interests), 3.2 (values and code of conduct) should be made in relation to the responsible entity in its corporate capacity. In the case of Recommendations 2.2 and 2.4, the collective skills and independence respectively should be assessed and disclosed vis-à-vis the responsible entity rather than the listed entity.

The disclosures in relation to Recommendations 3.3 (culture), 5.1 (disclosure policy), 5.2 (copies of announcements to board), 5.3 (investor and analyst presentations), 6.3 (facilitate participation at meetings of security holders), 7.4 (material risks), 9.4 (vote by poll rather than show of hands), 9.5 (electronic communications) should be made in relation to the listed entity being managed by the responsible entity.

The disclosures in relation to Recommendations 4.1 (audit committee), 4.2 (verification of periodic corporate reports), 4.3 auditor disclosures), 6.1 (website disclosures), 6.2 (investor relations), 7.1 (risk committee), 7.2 (annual risk review) and 7.3 (internal audit), 9.3 (CEO and CFO certification of financial statements) should be made in relation to the specific processes and facilities the responsible entity has put in place to perform its role as the manager of the listed entity.

In relation to Recommendations 4.1 (audit committee) and 7.1 (risk committee), if the entity is a listed trust with a compliance committee, the board of the responsible entity may instead of establishing a separate audit or risk committee, adapt the role of the compliance committee to cover the responsibilities that would ordinarily be undertaken by the audit or risk committee. If it does so, it should make the disclosures mentioned in Recommendations 4.1 and 7.1 in relation to the compliance committee.

In addressing Recommendation 7.2 (annual risk review), the board of the responsible entity should have regard to the guidance given by ASIC about the obligation of a responsible entity to maintain adequate risk management systems in Regulatory Guide 259 Risk management systems of fund operators.

Recommendations that do not apply to externally managed listed entities

Recommendations 1.1, 1.2, 1.3, 1.4, 2.1, 2.3, 2.4(a), 2.5, 2.6, 8.1, 8.2, 8.3, 9.1, 9.2 and 9.7 do not apply to an externally managed listed entity. The entity may simply state that these Recommendations are "not applicable" in its corporate governance statement.

Additional disclosures that an externally managed listed entity should make

In lieu of Recommendation 1.1, an externally managed listed entity should instead comply with the following alternative Recommendation:

Alternative to Recommendation 1.1 for externally managed listed entities:

The responsible entity of an externally managed listed entity should disclose:

(a) the arrangements between the responsible entity and the listed entity for managing the affairs of the listed entity; and

(b) the role and responsibility of the board of the responsible entity for overseeing those arrangements.

Explanatory Materials

The performance of the responsible entity will usually drive the performance of an externally managed listed entity. Investors wish to understand the arrangements between the responsible entity and the listed entity for managing the affairs of the listed entity and also the role and responsibility of the board of the responsible entity for overseeing those arrangements.

In addressing this alternative Recommendation, the responsible entity should disclose the extent to which the responsible entity has outsourced any material aspects of the management of the listed entity and how the responsible entity oversees the performance of the outsourced service provider. (An entity will generally be liable for any acts or omissions committed by the outsourced service provider.)

In lieu of Recommendations 8.1, 8.2, 8.3 and 9.7, an externally managed listed entity should instead comply with the following alternative Recommendation:

Alternative to Recommendations 8.1, 8.2, 8.3 and 9.7 for externally managed listed entities:

An externally managed listed entity should clearly disclose the terms governing the remuneration of the manager.

Explanatory Materials

The management fees (including performance-related fees) payable by an externally managed listed entity to its manager are a key focus for investors. Investors should be able to easily locate a clear and concise summary of the amount and composition of those fees on the entity's website, as well as a cross-reference to the specific clause or clauses in the relevant document which governs the calculation and payment of management fees (for example, the entity's constitution or management agreement).

Disclosing the relevant document on the entity's website, without further information, is not sufficient.

Part III: Glossary

Terms defined in the ASX Listing Rules have the same meaning when used in the ASX Corporate Governance Principles and Recommendations unless separately defined in this Glossary or the context requires otherwise.

AGM: the annual general meeting of security holders.

ASIC: Australian Securities and Investments Commission.

assurance engagement: means an audit by an external auditor, a review by an external auditor or other external assurance practitioner, or a reasonable or limited assurance engagement by an external assurance practitioner, in accordance with relevant audit and assurance standards.

ASX: ASX Limited.

board: in the case of an internally managed listed entity, the directors of the entity acting as a board and, in the case of an externally managed listed entity, the directors of the responsible entity acting as a board.

CEO: in the case of an internally managed listed entity, the chief executive officer of the entity (by whatever title called) and, in the case of an externally managed listed entity, the chief executive officer of the responsible entity (by whatever title called).

CFO: in the case of an internally managed listed entity, the chief financial officer of the entity (by whatever title called) and, in the case of an externally managed listed entity, the chief financial officer of the responsible entity (by whatever title called).

corporate governance statement: the statement made by a listed entity under Listing Rule 4.10.3.

Corporations Act: *the Corporations Act 2001* (Cth) (as amended).

director: in the case of an internally managed listed entity, a director of the entity and, in the case of an externally managed listed entity, a director of the responsible entity.

disclose: when used in a Recommendation, means:

- to include the information in the entity's annual report or on its website; and
- if the Recommendation requires disclosure of a policy, disclosure with any personal or confidential information redacted (such as the names and contact details of individual staff).

employee incentive scheme: the same meaning as in the Listing Rules but does not include a contribution or salary sacrifice plan where a director acquires securities in the entity at their market value.

executive director: in the case of an internally managed listed entity, a director of the entity who is also an executive of the listed entity or a child entity and, in the case of an externally managed listed entity, a director of the responsible entity who is also an executive of the responsible entity or a related body corporate.

Explanatory Material: the discussion headed "Explanatory material" that follows a Recommendation. This material does not form part of the Recommendation and does not give rise to a reporting obligation..

external assurance practitioner: an independent external assurance practitioner, including an auditor.

financial period: includes periods of less than a full financial year.

independent director: a director who is free of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring independent judgment to bear on issues before the board and to act in the best interests of the entity as a whole rather than those of an individual security holder or other party.

internal audit: independent advice and assurance for the board and the senior executives on the effectiveness of governance, risk management, and internal controls aligned to strategic performance.

listed entity: an entity admitted to the official list of ASX as an ASX Listing. The term does not extend to entities admitted to the official list of ASX as an ASX Debt Listing or as an ASX Foreign Exempt Listing (these entities are not subject to Listing Rule 4.10.3).

Listing Rule: an ASX listing rule.

non-executive director: a director who is not an executive director.

periodic corporate report: an entity's annual directors' report, sustainability report, annual and half yearly financial statements, quarterly activity report, quarterly cash flow report, integrated report.

Principle: one of the eight enumerated Principles in this document.

Recommendation: one of the 33 general and 7 additional enumerated recommendations in this document.

security holders: in the case of a listed company means shareholders and in the case of a listed trust means unitholders.

senior executive:

- in the case of an internally managed listed entity, an executive who is in the reporting hierarchy to the CEO of CEO-1;
- in the case of an externally managed listed entity, an executive who is in the reporting hierarchy to the CEO of CEO-1.

senior independent director: an independent director nominated to perform this role.

workforce: the entity's workforce generally, including (for example) employees, independent contractors and labour hire workers.

Get in touch

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