

Corporate Governance Principles and Recommendations Consultation Draft

5th Edition



ASX
Corporate
Governance
Council

The 8 Principles

1. **Lay solid foundations for management and oversight:** A listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance.
2. **Structure the board to be effective and add value:** The board of a listed entity should regularly review its size and its directors' skills, commitment and knowledge of the entity and the industry in which it operates, so that it may discharge its duties effectively and add value.
3. **Instil a culture of acting lawfully, ethically and responsibly:** A listed entity should instil and continually reinforce a culture of acting lawfully, ethically and responsibly, within the organisation and in its dealings with external stakeholders, to create long-term sustainable value.
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.
5. **Make timely, balanced and accurate disclosure:** A listed entity should make timely, balanced and accurate disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.
6. **Respect 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.
7. **Recognise and manage risk:** The board of a listed entity should oversee a sound risk management framework and the periodic review of the effectiveness of that framework.
8. **Remunerate fairly and responsibly:** A listed entity should ensure that its director and executive remuneration policies and practices are fair and responsible. Remuneration of executives should align their interests with the entity's values, strategic objectives and risk appetite, and the creation of long-term sustainable value for security holders.

Table of Contents

The 8 Principles	2
Table of Contents	3
Foreword to Consultation Draft	4
Membership of the Council	4
The purpose of the Principles and Recommendations	5
What is “corporate governance”?	5
The basis of the Principles and Recommendations – the “if not, why not” approach	5
The application of the Principles and Recommendations	6
The structure of the Principles and Recommendations	6
The linkage with ASX’s Listing Rules	6
Where to make corporate governance disclosures	7
How to approach corporate governance disclosures	7
Disclosing the reasons for not following a Recommendation	8
Effective date	8
Principle 1: Lay solid foundations for management and oversight	9
Principle 2: Structure the board to be effective and add value	16
Principle 3: Instil a culture of acting lawfully, ethically and responsibly	24
Principle 4: Safeguard the integrity of corporate reports	32
Principle 5: Make timely, balanced and accurate disclosure	37
Principle 6: Respect the rights of security holders	39
Principle 7: Recognise and manage risk	42
Principle 8: Remunerate fairly and responsibly	48
Additional Recommendations that apply only in certain cases	52
The application of the Recommendations to externally managed listed entities	56
Glossary	58
Resource materials	61

Foreword to Consultation Draft

Corporate governance has been defined as “*the entirety of structures and processes by which an entity is run*”.¹

The ASX Corporate Governance Council was convened in August 2002. It brings together various business, investor and industry groups, each offering valuable insights and expertise on governance issues from the perspective of their particular stakeholders. Its primary work has been the development of the Council’s *Corporate Governance Principles and Recommendations (Principles and Recommendations)*.

The *Principles and Recommendations* was first introduced in 2003; a second edition was published in 2007, a third in 2014, and a fourth in 2019. It was from its outset, and continues to be, a principles-based guide, with recommendations and commentary for listed entities. Throughout the past twenty years our Council members (see list below) have assisted with the preparation of this document, bringing a wide range of perspectives and representing a large number of stakeholders.

The Council developed this fifth edition *Consultation Draft* considering evolving investor and community expectations around issues including corporate conduct, culture, management of risk, stakeholder relationships, reporting and remuneration. It recognises developments in public policy and regulation.

Council members have been actively engaged bringing their perspectives on how our document might meet those challenges. This *Consultation Draft* is now released to encourage feedback. Following consideration of submissions, the Council will finalise the *Principles and Recommendations* and release it in its final form as soon as practicable.

I would like to express my appreciation to the Council members for their significant contributions in maintaining the *Principles and Recommendations* as a leading standard on corporate governance for listed entities.

Elizabeth Johnstone
Chair, ASX Corporate Governance Council

Membership of the Council

At the time of issue of this fifth edition, the members of the Council are:

Association of Superannuation Funds of Australia Limited
ASX Limited
Australasian Investor Relations Association
Australian Council of Superannuation Investors
Australian Institute of Company Directors
Australian Shareholders' Association
Business Council of Australia
Chartered Accountants Australia and New Zealand
CPA Australia Ltd

¹ Commonwealth of Australia, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Final Report, February 2019), 333.

Financial Services Council
Financial Services Institute of Australasia
Governance Institute of Australia
Group of 100
Institute of Internal Auditors - Australia
Institute of Public Accountants
Insurance Council of Australia
Law Council of Australia
Property Council of Australia
Stockbrokers and Investment Advisers Association

Further information about the Council, including a copy of its charter, is available at:
< <https://www.asx.com.au/about/regulation/asx-corporate-governance-council/> >

The purpose of the Principles and Recommendations

The *Principles and Recommendations* sets out recommended corporate governance practices for entities listed on the ASX that, in the Council's view, are likely to achieve good governance outcomes and meet the reasonable expectations of most investors in most situations.

The Council recognises, however, that different entities may adopt different governance practices, based on a range of factors, including their size, complexity, history, corporate culture and stakeholders. For that reason, if an entity does not adopt a Recommendation, it must explain why – the “if not why not” approach.²

What is “corporate governance”?

The phrase “*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.³

Good corporate governance can contribute to the long-term sustainable value of listed entities. It promotes investor confidence, which is crucial to the ability of entities listed on the ASX to compete for capital.

Corporate governance continues to evolve. For example, entities are recognising the significance of their key stakeholders to their governance. This document includes references to Aboriginal and Torres Strait Islander stakeholders, to reflect the Australian context and to acknowledge their potential roles and perspectives as stakeholders.

The basis of the Principles and Recommendations – the “if not, why not” approach

Which governance practices a listed entity chooses to adopt is fundamentally a matter for its board of directors, the body charged with the legal responsibility for managing its business with due care and diligence⁴ and therefore for ensuring that it has appropriate governance arrangements in place.

² Listing Rule 4.10.3.

³ 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.

⁴ Sections 180 (in the case of a listed company) and 601FD(1)(b) (in the case of a listed trust) of the Corporations Act.

Under the *Principles and Recommendations*, if the board of a listed entity considers that a Council Recommendation is not appropriate to its particular circumstances, it is entitled not to adopt it. If it does so, however, it must explain why it has not adopted the Recommendation – the “if not, why not” approach.

This approach ensures that the market receives an appropriate level of information about the entity’s governance arrangements so that investors and other stakeholders can have a meaningful dialogue with the board and management on governance matters and can factor the information provided into their decision on whether or not to invest in the entity and how to vote on particular resolutions.

The “if not, why not” approach is fundamental to the operation of the *Principles and Recommendations*.

The application of the Principles and Recommendations

The *Principles and Recommendations* applies to all entities admitted to the ASX official list as an ASX listing,⁵ regardless of the legal form they take,⁶ whether they are established in Australia or elsewhere, and whether they are internally or externally managed.

The *Principles and Recommendations* is specifically directed at, and only intended to apply to, ASX listed entities. However, as it reflects a contemporary view of appropriate corporate governance standards, other bodies may find them helpful in formulating their governance rules or practices.

The structure of the Principles and Recommendations

The *Principles and Recommendations* is structured around, and seeks to promote, 8 central Principles.

There are 33 specific Recommendations of general application intended to give effect to these Principles, as well as 7 additional Recommendations that only apply in certain limited cases. These additional Recommendations appear immediately after the section dealing with Principle 8.

There is also explanatory commentary with further guidance on each Recommendation.

Some Recommendations require modification when applied to externally managed listed entities (this is set out in the third last section of this document).

The Glossary explains the meaning of a number of key terms, including “disclose”, “executive director”, “non-executive director”, “senior executive”, “10% holder”, “environmental risk”, “social risk” and “governance risk”.

Resource materials appear at the end of this document.

The linkage with ASX’s Listing Rules

Each ASX listed entity is required under Listing Rule 4.10.3 to include in its annual report either a corporate governance statement⁷ that meets the requirements of that rule, or the URL of the page on its website where such a statement is located.⁸

⁵ The *Principles and Recommendations* does not apply to entities admitted to the ASX official list as ASX debt listings or ASX foreign exempt listings.

⁶ That is, whether they are a listed company, listed trust or listed stapled entity.

⁷ “Corporate governance statement” is defined in Listing Rule 19.12 to mean the statement referred to in Listing Rule 4.10.3 which discloses the extent to which an entity has followed the recommendations set by the ASX Corporate Governance Council during a particular reporting period.

⁸ Listing Rule 4.7.4 provides that if an entity’s corporate governance statement is not included in its annual report, the entity must also give ASX a copy of its corporate governance statement at the same time as it gives its annual report to ASX. The corporate governance statement must be current as at the effective date specified in that statement for the purposes of Listing Rule 4.10.3.

The corporate governance statement must disclose the extent to which the entity has followed the Recommendations set by the Council during the reporting period. If the entity has not followed a Recommendation for any part of the reporting period, its corporate governance statement must separately identify that Recommendation and the period during which it was not followed and state its reasons for not following the Recommendation and what (if any) alternative governance practices it adopted in lieu of the Recommendation during that period.

By requiring listed entities to compare their corporate governance practices with the Council's Recommendations and, where they do not conform, to disclose that fact and the reasons why, Listing Rule 4.10.3 acts to encourage listed entities to adopt the governance practices suggested in the Recommendations but does not force them to do so. It leaves a listed entity with the flexibility to adopt alternative governance practices, if its board considers those to be more suitable to its particular circumstances, subject to the requirement for the board to explain its reasons for adopting those alternative practices instead of the Recommendations.

It is this rule which encapsulates the "if not, why not" requirement underpinning the operation of the *Principles and Recommendations* and which serves to ensure that the market receives an appropriate level of information about the governance practices an entity has adopted.

See Listing Rule 4.10 and ASX guidance⁹ for further information on these reporting requirements.

Where to make corporate governance disclosures

Where a Recommendation refers to a listed entity disclosing information, it should be disclosed either in the entity's annual report or on its website.

If a listed entity chooses to publish its governance disclosures (including its corporate governance statement under Listing Rule 4.10.3) on its website rather than in their annual report, those disclosures should be clearly presented and centrally located on, or accessible from, a "Corporate Governance" landing page on its website. There should be an intuitive and easily located link to this landing page in the navigation menu for the entity's website (for example, under an "About Us", "Investor Centre" or "Information for Shareholders/Unitholders" menu item).

Where a listed entity chooses to include its corporate governance statement in its annual report rather than on its website, the Council recommends that the corporate governance statement and any related corporate governance disclosures appear in a clearly delineated "corporate governance" section of the annual report.

It is acceptable for an entity's corporate governance statement to incorporate material by reference (for example, on another part of the entity's website or in another part of its annual report) provided that material is freely available and the statement clearly indicates where interested parties can read or obtain a copy of that material (for example, the URL of the relevant web page or the relevant page or section of the annual report).

How to approach corporate governance disclosures

The Council encourages listed entities to give an informative explanation of their corporate governance arrangements and not to take a pedantic or legalistic approach to their disclosures under Listing Rule 4.10.3, such as simply listing the Recommendations followed and those not followed and why.

In this regard, listed entities should view their corporate governance statement not as a compliance document but rather as an opportunity to demonstrate that their board and management are alive to the importance of having proper and effective corporate governance arrangements and to communicate to

⁹ ASX Compliance, [Guidance Note 9: Disclosure of corporate governance practices](#).

security holders and the broader community the robustness of their particular approach to corporate governance.

This includes not only outlining the governance arrangements it has in place but also explaining how they are being implemented in practice. For example, where a Recommendation calls for a particular policy to be in place,¹⁰ it will aid transparency and promote investor confidence for the entity to disclose, where appropriate,¹¹ action taken to promote compliance and whether there have been material breaches of the policy during the reporting period and how they have been dealt with. Similarly, where a Recommendation calls for a matter to be reviewed or evaluated,¹² investors will find it helpful for the entity to disclose, where appropriate, any material insights it has gained from the review or evaluation and any changes it has made to its governance arrangements as a result.

Disclosing the reasons for not following a Recommendation

An “if not, why not” explanation an entity includes in its corporate governance statement setting out its reasons for not following a Recommendation should:

- be reasonably detailed and informative so that the market understands why it is that the entity has chosen not to follow that Recommendation; and
- disclose what, if any, alternative corporate governance practices the entity may have adopted in lieu of those in the Recommendation, and explain why those practices are considered more appropriate for the entity than the ones in the Recommendation.

Security holders are unlikely to find brief statements – such as “the Recommendation is not considered appropriate, given the entity’s size and circumstances” or, in the case of those Recommendations suggesting that an entity has an audit, risk, nomination or remuneration committee, that “the board as a whole performs the role that such a committee would ordinarily undertake” – to be particularly helpful in understanding why an entity has chosen not to follow a particular Recommendation or what alternative corporate governance arrangements the entity may have instituted to address the underlying Principle to which that Recommendation is directed.

Effective date

This edition of the *Principles and Recommendations* takes effect for an entity’s first full financial year commencing on or after [insert date]. Accordingly, entities with a 31 December balance date will be expected to measure their governance practices against the Recommendations in the fifth edition commencing with the financial year ended 31 December [insert date]. Entities with a 30 June balance date will be expected to measure their governance practices against the Recommendations in the fifth edition commencing with the financial year ended 30 June [insert date].

The Council would encourage listed entities to adopt the fifth edition earlier, if they wish.

¹⁰ As is the case, for example, in Recommendation 3.2 (code of conduct), Recommendation 3.4 (diversity and inclusion policy), Recommendation 5.1 (disclosure policy) and Recommendation 9.7 (policy on hedging equity incentive schemes).

¹¹ Having regard to privacy, confidentiality, defamation and other pertinent legal issues.

¹² As is the case for example in Recommendation 1.5 (board performance reviews) and Recommendation 7.2 (annual risk review).

Principle 1: Lay solid foundations for management and oversight

A listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance.

Recommendation 1.1

A listed entity 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 to the board and those delegated to management.

Recommendation 1.2

A listed entity should:

- (a) undertake appropriate checks before appointing a director or senior executive or putting someone forward for election as a director; and
- (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.

Recommendation 1.3

A listed entity should have a written agreement with each director and senior executive, setting out the terms of their appointment.

Recommendation 1.4

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.

Recommendation 1.5

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.

Recommendation 1.6

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.

Recommendation 1.1

A listed entity 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 to the board and those delegated to management.

Commentary

Generally, the board of a listed entity should be responsible under its charter for:

- demonstrating leadership;
- deciding whether to define the entity's purpose and, if so, approving that purpose;
- setting its strategic objectives;
- approving the entity's statement of values and code of conduct, to underpin a desired culture within the entity that supports the creation of long-term sustainable value;¹³
- appointing the chair and, if the entity has one, the deputy chair and/or the "senior independent director";
- appointing and replacing the CEO;
- approving the appointment and replacement of other senior executives and the company secretary;
- overseeing management in its implementation of the entity's strategic objectives, instilling of the entity's values and desired culture, and performance generally;
- monitoring the culture within the entity, including its alignment with the entity's purpose (if articulated), values, strategic objectives and risk appetite;
- approving operating budgets and major capital expenditure;
- overseeing the integrity of the entity's accounting and corporate reporting systems, including the external audit;
- overseeing the entity's process for making timely and balanced disclosure of all material information concerning the entity that a reasonable person would expect to have a material effect on the price or value of the entity's securities;
- satisfying itself that the entity has in place an appropriate risk management framework (for both financial and non-financial risks) and setting the risk appetite within which the board expects management to operate;
- satisfying itself that an appropriate framework exists for relevant information to be reported by management to the board;
- whenever required, challenging management and holding it to account;
- satisfying itself that the entity's remuneration policies are aligned with the entity's purpose (if articulated), values, strategic objectives and risk appetite; and
- monitoring the effectiveness of the entity's governance practices (including having regard to the entity's key stakeholders).

Where some responsibilities are delegated to a board committee, the board retains the ultimate oversight in respect of those delegated matters.

¹³ See Principle 3.

Strategic objectives should be set by the board. The board should oversee implementation of these strategic objectives to build sustainable value for security holders of the entity. This includes having regard to the interests of the entity's key stakeholders, as appropriate.

The senior executive team should be responsible for implementing the entity's strategic objectives and instilling and reinforcing its values and desired culture, all while operating within the values, code of conduct, budget and risk appetite set by the board.

The senior executive team will also usually be responsible for providing the board with accurate, timely and clear information on the entity's operations to enable the board to perform its responsibilities. This is not just limited to information about the financial performance of the entity, but also (for example) current and emerging risks, the entity's compliance with material legal and regulatory requirements, and matters reflecting the entity's culture.¹⁴

The board charter should set out the role and responsibilities of the chair of the board. Usually, the chair will be 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 should also be responsible for approving board agendas, facilitating (with the company secretary) the proper information flow to the board, and ensuring that adequate time is available for discussion of all agenda items, including strategic issues.

If the listed entity has a deputy chair or senior independent director, the board charter should also set out their roles and responsibilities.

The board charter should state the entity's policy on when and how directors may seek independent professional advice at the expense of the entity. This generally should be whenever directors, especially non-executive directors, judge such advice necessary for them to discharge their responsibilities as directors.

The board should determine and regularly review the division of functions between the board and management, and review governance structures generally, to ensure that they continue to be appropriate to the needs of the entity.

This includes reflecting on the relevance of its key stakeholders to the design and effectiveness of its governance structures and practices. Stakeholders may include, for example, security holders, employees, customers, suppliers, Aboriginal and Torres Strait Islander peoples, local community, law makers and regulators.¹⁵

Recommendation 1.2

A listed entity should:

- (a) undertake appropriate checks before appointing a director or senior executive or putting someone forward for election as a director; and**
- (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.**

Commentary

For these purposes, appropriate checks would usually include checks as to the person's character, experience, education, qualifications, criminal record and bankruptcy history.¹⁶

¹⁴ For example, regular reporting of relevant metrics, and any conduct that is materially inconsistent with the entity's code of conduct. See Recommendation 3.2.

¹⁵ See Recommendation 3.2, Recommendation 3.3 and Principle 6.

¹⁶ For example, see Australian Standard [AS 4811-2022 Workforce screening](#) regarding the types of checks that may be undertaken and how best to undertake them. Also see [AusCheck](#), for security-sensitive critical infrastructure sectors.

The following information about a candidate standing for election or re-election as a director should be provided to security holders to enable them to make an informed decision on whether or not to elect or re-elect the candidate:

- biographical details, including their relevant qualifications and experience and the skills they bring to the board;
- details of any other material directorships currently held by the candidate;
- in the case of a candidate standing for election as a director for the first time:
 - confirmation that the entity has conducted appropriate checks into the candidate's background and experience;
 - if those checks have revealed any information of concern, that information;
 - details 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 in the interests of an individual security holder or other party; and
 - if the board considers that the candidate will, if elected, qualify as an independent director, a statement to that effect;
- in the case of a candidate standing for re-election as a director:
 - the term of office currently served by the director; and
 - if the board considers the director to be an independent director, a statement to that effect; and
- a statement by the board as to whether it supports the election or re-election of the candidate and a summary of the reasons why.

A candidate for appointment or election as a non-executive director should provide the board or nomination committee with the information above and a consent for the listed entity to conduct any background or other checks the entity would ordinarily conduct. (This applies regardless of who nominates the candidate, including where the candidate nominates themselves or is put forward by a security holder.)

All candidates for appointment, election or re-election as a director should also provide details of their other commitments and an indication of time involved, and should specifically acknowledge to the listed entity that they will have sufficient time to fulfil their responsibilities as a director.

The Council acknowledges that some checks take time and there may be cases where a listed entity will wish to make a provisional appointment of a director or senior executive, or put a resolution to members electing a director, subject to receipt of satisfactory outstanding checks. Where a listed entity does this, it should take particular care to ensure that the director or senior executive gives an unequivocal undertaking to resign should the entity receive an outstanding check that it considers is not satisfactory. This is particularly so for a director, since once they are appointed or elected, they can generally only be removed from office against their will by a resolution of security holders.¹⁷

Entities should consider periodically refreshing relevant checks, such as at the time that a director stands for re-election.

¹⁷ Section 203E of the Corporations Act.

Recommendation 1.3

A listed entity should have a written agreement with each director and senior executive, setting out the terms of their appointment.

Commentary

Usually the agreement will take the form of a letter of appointment in the case of a non-executive director and a service contract in the case of an executive director or other senior executive.

The agreement in question should be with the director or senior executive personally rather than an entity supplying their services. This is to ensure that the director or senior executive is personally accountable to the listed entity for any breach of the agreement.

This includes where directors of listed entities supply and are paid for their services through a “personal services company”. A personal agreement with the listed entity should still be put in place, setting out the director’s duties and responsibilities.

For the purposes of this Recommendation, the one exception to a personal agreement is where an entity is engaging a bona fide professional services firm to provide the services of a CFO, company secretary or other senior executive on an outsourced basis. In that case, it is acceptable for the agreement to be between the entity and the professional services firm.

In the case of a non-executive director, the agreement should include:

- the requirement to disclose the director’s interests and any matters which could affect the director’s independence;
- the requirement to comply with key corporate policies, including the entity’s code of conduct,¹⁸ its anti-bribery and corruption policy and its trading policy;¹⁹
- the requirement to notify the entity of, or to seek the entity’s approval before accepting, any new role that could impact upon the time commitment expected of the director or give rise to a conflict of interest;
- the entity’s policy on when directors may seek independent professional advice at the expense of the entity (which generally should be whenever directors, especially non-executive directors, judge such advice necessary for them to discharge their responsibilities as directors);
- indemnity and insurance arrangements;
- ongoing rights of access to corporate information; and
- ongoing confidentiality obligations.

The Listing Rules require disclosure of the material terms (and any material variation) of employment, service or consultancy agreements entered into with the listed entity’s CEO or any of its directors.²⁰

¹⁸ See Recommendation 3.2.

¹⁹ See Listing Rule 12.9.

²⁰ See Listing Rule 3.16.4.

Recommendation 1.4

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.

Commentary

The company secretary of a listed entity plays an important role in supporting the effectiveness of the board and its committees. The role of the company secretary should include:

- advising the board and its committees on governance matters;
- monitoring that board and committee policy and procedures are followed;
- coordinating the timely completion and dispatch of board and committee papers;
- ensuring that the business at board and committee meetings is accurately captured in the minutes; and
- helping to organise and facilitate the induction and professional development of directors.

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.²¹

Recommendation 1.5

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.**

Commentary

The board performs a pivotal role in the governance framework of a listed entity. It is essential that the board has in place a proper process for regularly reviewing, preferably annually, the performance of the board, its committees and individual directors. Particular attention should be paid to addressing issues that may emerge from that review, such as the currency of a director's knowledge and skills or if a director's performance has been impacted by other commitments.

The board should consider periodically using external facilitators to conduct its performance reviews.

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

²¹ For entities established in Australia, this requires a formal resolution of the board: section 204D of the Corporations Act.

Recommendation 1.6

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.

Commentary

The performance of a listed entity's senior executives will usually drive the performance of the entity. It is essential that a listed entity has in place a proper process for regularly reviewing the performance of its senior executives and addressing any issues that may emerge from that review.

Performance extends to financial and non-financial performance, including whether an individual has acted in accordance with the entity's values and code of conduct and otherwise demonstrated and promoted the entity's desired culture. This should be reflected in remuneration outcomes.²²

DRAFT

²² See Principle 8.

Principle 2: Structure the board to be effective and add value

The board of a listed entity should regularly review its size and its directors' skills, commitment and knowledge of the entity and the industry in which it operates, so that it may discharge its duties effectively and add value.

Recommendation 2.1

The board of a listed entity should:

- (a) have a nomination committee which:
 - (1) has at least three members, a majority of whom are independent directors; and
 - (2) is chaired by an independent director,and disclose:
 - (3) the charter of the committee;
 - (4) the members of the committee; and
 - (5) 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; or
- (b) if it does not have a nomination committee, disclose that fact and the processes it employs to address board succession issues and to ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.

Recommendation 2.2

A listed entity should:

- (a) have and disclose a board skills matrix setting out the mix of skills that the board currently has and is looking to achieve in its membership; and
- (b) disclose its process for how it assesses that the relevant skills and experience are held by its directors.

Recommendation 2.3

The board of a listed entity should:

- (a) have and disclose a measurable objective and timeframe for achieving gender diversity in the composition of its board;
- (b) disclose the entity's progress in achieving the measurable objective in the reporting period; and
- (c) if it is considering any other relevant diversity characteristics for its board membership, disclose those diversity characteristics.

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 should be to have a gender balanced board (at least 40% women/at least 40% men/up to 20% any gender).

Recommendation 2.4

A listed entity should disclose:

- (a) the names of the directors considered by the board to be independent directors;**
- (b) if a director has an interest, position or relationship of the type described in Box 2.4 but the board is of the opinion that it does not compromise the independence of the director, the nature of the interest, position or relationship in question and an explanation of why the board is of that opinion; and**
- (c) the length of service of each director.**

Recommendation 2.5

A majority of the board of a listed entity should be independent directors.

Recommendation 2.6

The chair of the board of a listed entity should be an independent director and, in particular, should not be the same person as the CEO of the entity.

Recommendation 2.7

A listed entity should have a program for inducting new directors and for periodically reviewing whether there is a need for existing directors to undertake professional development to maintain the skills and knowledge needed to perform their role as directors effectively.

Recommendation 2.1

The board of a listed entity should:

- (a) have a nomination committee which:**
 - (1) has at least three members, a majority of whom are independent directors; and**
 - (2) is chaired by an independent director,****and disclose:**
 - (3) the charter of the committee;**
 - (4) the members of the committee; and**
 - (5) 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;**
or
- (b) if it does not have a nomination committee, disclose that fact and the processes it employs to address board succession issues and to ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.**

Commentary

A high performing, effective board is essential for the proper governance of a listed entity. The board needs to have an appropriate number of independent non-executive directors who can challenge management and hold them to account, and also represent the best interests of the listed entity and its security holders as a whole rather than those of individual security holders or interest groups.

The board needs to be of sufficient size so that the requirements of the business can be met and changes to the composition of the board and its committees can be managed without undue disruption. However, it should not be so large as to be unwieldy.

Board renewal is also critical to performance.

To facilitate the effective functioning of the board and to promote investor confidence, there should be a formal, rigorous and transparent process for the appointment and reappointment of directors to the board.

Having a separate nomination committee can be an efficient and effective mechanism to bring the transparency, focus and independent judgment needed on decisions regarding the composition of the board.

The role of the nomination committee is usually to review and make recommendations to the board in relation to:

- board succession planning generally;
- induction and continuing professional development programs for directors;
- the development and implementation of a process for evaluating the performance of the board, its committees and directors;
- the process for recruiting a new director, including evaluating the balance of skills, knowledge, experience, independence and diversity on the board and, in the light of this evaluation, preparing a description of the role and capabilities required for a particular appointment;
- the appointment and re-election of directors; and
- ensuring there are plans in place to manage the succession of the CEO and other senior executives.

The nomination 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 seek advice from external consultants or specialists where the committee considers that necessary or appropriate.

The nomination committee should be of sufficient size and independence to discharge its mandate effectively. Consideration should also be given to ensuring that it has an appropriate diversity of membership to avoid entrenching “groupthink” or other cognitive biases.

The chair of the board may chair the nomination committee, however, a separate chair should be appointed if and when the nomination committee is dealing with the appointment of a successor to the chair.

The boards of some listed entities may decide that they are able to deal efficiently and effectively with board composition and succession issues without establishing a separate nomination committee. If they do, the entity should disclose in its annual report or on its website the matters set out in paragraph (b) of Recommendation 2.1.

The board or the nomination committee should regularly review the time required from a non-executive director and whether directors are meeting that requirement.

A non-executive director should inform the chair of the board and the chair of the nomination committee before accepting any new appointment as a director of another listed entity, any other material directorship or any other position with a significant time commitment attached.

Recommendation 2.2

A listed entity should:

- (a) have and disclose a board skills matrix setting out the mix of skills that the board currently has and is looking to achieve in its membership; and
- (b) disclose its process for how it assesses that the relevant skills and experience are held by its directors.

Commentary

Directors require a broad range of attributes, such as judgment, commitment and an ability to work constructively with others. A board “skills matrix” is an effective tool that can help the board determine the technical skills and experience it requires, in addition to those broader desirable attributes required to adequately oversee the affairs of the entity.

The board skills matrix can identify any gaps in the board’s collective skills that should be addressed by providing professional development to existing directors, or as part of its board succession planning. Its disclosure contributes to the accountability of the board.

The board should regularly review its skills matrix to make sure it covers the skills needed to address existing and emerging business and governance issues relevant to the entity, at board and committee levels.²³

There is no prescribed format for a board skills matrix.²⁴ Skills may be reported collectively across the board as a whole. The entity should also disclose the process used to assess that a director holds the relevant skills and experience.²⁵

The matrix should clearly distinguish skills that the board is looking to achieve in its membership (if any) from the skills of existing directors.

Commercially sensitive information can be excluded, such as the fact that the board may be looking to acquire a particular skill as part of an as-yet unannounced and incomplete plan to move into a different field of activity.

Better practice is to include information on the skills of individual directors, and to explain the entity’s assessment methodology: what it means when it refers to a particular skill in its board skills matrix, as well as the criteria a director must meet to be considered to have that skill.

Recommendation 2.3

The board of a listed entity should:

- (a) have and disclose a measurable objective and timeframe for achieving gender diversity in the composition of its board;
- (b) disclose the entity’s progress in achieving the measurable objective in the reporting period; and
- (c) if it is considering any other relevant diversity characteristics for its board membership, disclose those diversity characteristics.

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 should be to have a gender balanced board (at least 40% women/at least 40% men/up to 20% any gender).

²³ Sometimes an external adviser is used to supplement the skills of the entity’s directors. (These arrangements are different to assurance engagements, that act as independent checks in respect of relevant matters: for example, see Recommendation 4.2.)

²⁴ For example, see Governance Institute of Australia, [Good Governance Guide Creating and disclosing a board skills matrix](#). [NB: This publication is being updated by GIA.]

²⁵ Also see Recommendation 1.2(a).

Commentary

An entity's board benefits from a diversity of thinking and perspectives, in addition to skills such as knowledge of the sector in which the listed entity operates. In particular, having directors of different ages, race, backgrounds and personal circumstances can help bring different perspectives and experiences to bear and avoid "groupthink" or other cognitive biases in decision-making.

Gender diversity should be included as a relevant consideration in a board's succession planning. The measurable objective the board or a board committee sets for board gender diversity should include a minimum percentage of female directors.²⁶

Different entities will have different diversity priorities for their boards. Disclosures for the purposes of paragraph (c) of this Recommendation should refer to relevant diversity characteristics which may be considered,²⁷ rather than referencing general diversity characteristics sought across the entity's workforce under its diversity and inclusion policy. Disclosure of these priorities can assist security holders' understanding of how a board is seeking to develop its range of perspectives.

Individual appointment decisions will necessarily involve consideration of skills and experience sought, as well as the availability of suitable candidates.

Diversity characteristics present within a board may also model diversity for the organisation. Diversity and inclusion is discussed further at Recommendation 3.4. An entity may combine its disclosures under this Recommendation with disclosures under Recommendation 3.4.

Recommendation 2.4

A listed entity should disclose:

- (a) the names of the directors considered by the board to be independent directors;**
- (b) if a director has an interest, position or relationship of the type described in Box 2.4 but the board is of the opinion that it does not compromise the independence of the director, the nature of the interest, position or relationship in question and an explanation of why the board is of that opinion; and**
- (c) the length of service of each director.**

Commentary

To describe a director as "independent" carries with it a particular connotation that the director is not aligned with the interests of management or (for example) a significant security holder, and can and will bring independent judgment to bear on issues before the board.

It is an appellation that gives great comfort to security holders and not one that should be applied lightly.

A director of a listed entity should only be characterised and described as an independent director if they are 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.

Some factors that might raise issues about the independence of a director are set out in **Box 2.4**. (A board may also consider that other factors could impact the perception of a director's independence.)

²⁶ Entities should consider laws relating to anti-discrimination, including special measures provisions and exemptions.

²⁷ See Recommendation 3.4 for more information on diversity.

Box 2.4 – Factors relevant to assessing the independence of a director

Some interests, positions and relationships that might raise issues about the independence of a director of an entity include if the director:

- is, or has been, employed in an executive capacity by the entity or any of its child entities, and there has not been a period of at least three years between ceasing such employment and serving on the board;
- receives or holds performance-based remuneration (including options or performance rights) from, or participates in an employee incentive scheme of, the entity;
- is, or has been within the last three years, in a material business relationship (e.g. as a supplier, professional adviser, consultant or customer) with the entity or any of its child entities, or is an officer of, or otherwise associated with, someone with such a relationship;
- is, represents, or is or has been within the last three years an officer or employee of, or material professional adviser to, a 10% holder;
- has close personal ties with any person who falls within any of the categories described above; or
- has been a director of the entity for such a period that their independence from management and 10% 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 interfere, or might reasonably be seen to interfere, with the director's capacity to bring independent judgment to bear on issues before the board.

A candidate for election as a director of a listed entity should disclose 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, together with whether the board considers that the director is independent.²⁸

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.

The board or the nomination committee should regularly assess the independence of each non-executive director. That assessment should be made at least annually at or around the time that the board or the nomination committee considers candidates for election or re-election to the board. In the case of a change in a non-executive director's interests, positions or relationships, the assessment should be made as soon as practicable after the board or the nomination committee becomes aware of the change.

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

In relation to the fourth example in Box 2.4 (is, represents, or is or has been an officer or employee of, or material professional adviser to, a 10% holder), the holding of securities in the entity may help to align the interests of a director with those of other security holders, and such holdings are therefore not discouraged. The example simply reflects and addresses the perception of the materiality of a holding of that size.

In relation to the fifth example in Box 2.4 (close personal ties with someone who is not independent), these ties may be based on family, friendship or other social or business connections.

In relation to the last example in Box 2.4 (length of service as a director), the Council recognises that the interests of a listed entity and its security holders are likely to be well served by having a mix of directors,

²⁸ The board should also make a statement on independence if a director is to be re-elected: see Recommendation 1.2.

some with a longer tenure with a deep understanding of the entity and its business and some with a shorter tenure with fresh ideas and perspective. It also recognises that the chair of the board will frequently fall into the former category rather than the latter.

The fact that a director has served on a board for a substantial period does not mean that the director has become too close to management or (for example) a significant security holder to be considered independent. However, the board should regularly assess whether that might be the case for any director, particularly one who has served in that position for more than 10 years.

Recommendation 2.5

A majority of the board of a listed entity should be independent directors.

Commentary

Investors expect, and the law requires,²⁹ the directors of a listed entity to act in the best interests of the entity as a whole rather than in the interests of an individual security holder or other party.

Having a majority of independent directors makes it harder for any individual or small group of individuals to dominate the board's decision-making and maximises the likelihood that the decisions of the board will reflect the best interests of the entity as a whole and not be biased towards the interests of management or any other person or group with whom a non-independent director may be associated.

Non-executive directors should consider the benefits of conferring periodically as a group without senior executives present.

Recommendation 2.6

The chair of the board of a listed entity should be an independent director and, in particular, should not be the same person as the CEO of the entity.

Commentary

Having an independent chair can contribute to a culture of openness and constructive challenge that allows for a diversity of views to be considered by the board.

Good governance requires an appropriate separation between those charged with managing a listed entity and those responsible for overseeing its managers. Having the role of chair and CEO exercised by the same individual is unlikely to be conducive to the board effectively performing its role of challenging management and holding them to account.

If the chair is not an independent director, a listed entity should consider the appointment of an independent director as the deputy chair or as the "senior independent director", who can fulfil the role whenever the chair is conflicted. Even where the chair is an independent director, having a deputy chair or senior independent director can also assist the board in reviewing the performance of the chair and in providing a separate channel of communication for security holders (especially where those communications concern the chair).

The role of chair is demanding, requiring a significant time commitment. The chair's other positions should not be such that they are likely to hinder effective performance of the role.

²⁹ See sections 180 and 181 (in the case of a listed company) and 601FD(1)(b) and (c) (in the case of a listed trust) of the Corporations Act.

Recommendation 2.7

A listed entity should have a program for inducting new directors and for periodically reviewing whether there is a need for existing directors to undertake professional development to maintain the skills and knowledge needed to perform their role as directors effectively.

Commentary

All new directors should be offered induction training, tailored to their existing skills, knowledge and experience, to position them to discharge their responsibilities effectively and to add value. This could include, for example, having interviews with key senior executives to gain an understanding of the entity's structure, business operations, history, culture and key risks, and conducting site visits of key operations.

If a director is not familiar with the legal or accounting frameworks that apply to the entity, the entity's induction program should include training on the key legislation and standards governing the entity, and the Listing Rules (including ASX's continuous and periodic reporting requirements). This includes directors' duties and responsibilities.

The entity's induction program should also include familiarity with the key accounting issues for the entity. While a diverse range of skills on a board means that not every director on a board will have the same level of accounting skills, it is the duty of every director of an entity to read and understand the financial statements of the entity carefully and to consider whether what they disclose is consistent with the director's own knowledge of the entity's affairs.³⁰

The board or the nomination committee of a listed entity should regularly assess whether the directors as a group have the skills, knowledge and experience to deal with new and emerging business and governance issues, including material risks and opportunities relevant to the entity. Professional development for directors should be considered where gaps are identified and they are not expected to be addressed in the short term by new appointments.

The board or the nomination committee should also ensure that directors receive briefings on material developments in laws, regulations and accounting standards relevant to the entity.

³⁰ See *ASIC v Healey & Ors* [2011] FCA 717.

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

A listed entity should instil and continually reinforce a culture of acting lawfully, ethically and responsibly, within the organisation and in its dealings with external stakeholders, to create long-term sustainable value.

Recommendation 3.1

A listed entity should articulate and disclose its values.

Recommendation 3.2

A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly, including by:

- (a) having and disclosing a code of conduct for its directors, senior executives and employees;
- (b) ensuring that the board or a board committee is informed of any material breaches of the code of conduct; and
- (c) disclosing (on a de-identified basis) the outcomes during the last reporting period of actions taken by the entity in response to material breaches of the code of conduct.

Recommendation 3.3

A listed entity should have regard to the interests of the entity's key stakeholders, including having processes for the entity to engage with them and to report material issues to the board.

Recommendation 3.4

A listed entity should:

- (a) have and disclose a diversity and inclusion policy;
- (b) through its board or a board committee set measurable objectives for achieving gender diversity in the composition of its workforce (including in its senior executive team); and
- (c) disclose in relation to each reporting period the effectiveness of its diversity and inclusion practices, including:
 - (1) the measurable objectives set for that period to achieve gender diversity;
 - (2) the entity's progress towards achieving those objectives; and
 - (3) either:
 - (A) the respective proportions (by gender) of members of the board, in senior executive positions and across the whole workforce (including how the entity has defined "senior executive" for these purposes); or
 - (B) if the entity is a "relevant employer" under the Workplace Gender Equality Act, the entity's most recent "Gender Equality Indicators", as defined in and published under that Act.

Recommendation 3.1

A listed entity should articulate and disclose its values.

Commentary

A listed entity's values are the 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.

In formulating its values, a listed entity should consider the behaviours needed to create long-term sustainable value for its security holders. This includes the need to act lawfully, ethically and responsibly, in order to preserve and protect the entity's reputation and standing in the community and with its key stakeholders.³¹

Values should be aligned with the entity's purpose (if articulated), strategic objectives and risk appetite.

As a result, a listed entity should also consider articulating its purpose.³² 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. Where purpose also reflects responsible business conduct relevant to the entity's activities, this may more effectively drive ethical, lawful and responsible behaviour.³³

The board should approve an entity's statement of values, and model behaviour and decision-making consistent with those values.

The board should charge the senior executive team with the responsibility of inculcating those values across the organisation. This includes ensuring that all employees receive appropriate training on the values and senior executives continually referencing and reinforcing those values in their interactions with staff.

Recommendation 3.2

A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly, including by:

- (a) having and disclosing a code of conduct for its directors, senior executives and employees;
- (b) ensuring that the board or a board committee is informed of any material breaches of the code of conduct; and
- (c) disclosing (on a de-identified basis) the outcomes during the last reporting period of actions taken by the entity in response to material breaches of the code of conduct.

Commentary

It is the role of the board to oversee an appropriate corporate culture, aligned with the entity's values, strategic objectives and risk appetite.³⁴

Indicators of a healthy organisational culture include:

- a "speak-up culture", which promotes listening to staff and respectful treatment of internal and third party whistleblowers;

³¹ See Recommendation 3.2.

³² For example, the entity's purpose may be approved by the board, or may be determined by its constitution.

³³ For example, see OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris (2023). Also see Recommendation 3.2 commentary regarding responsible business conduct.

³⁴ See Australian Council of Superannuation Investors and Australian Institute of Company Directors, *Governing company culture: Insights from Australian directors* (December 2020). See also Institute of Internal Auditors – Australia, The Ethics Centre, the Governance Institute of Australia and Chartered Accountants Australia and New Zealand, *Managing Culture: A good practice guide* (December 2017). [**NB: Update proposed in 2024.**]

- 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 create long-term sustainable value; and
- a risk culture which supports early reporting and timely remediation of risk, with learning outcomes from those processes.

For example, material breaches of the code of conduct, whistleblowing incidents and breaches of the entity's anti-bribery and corruption policy should be promptly reported to the board, or a board committee.³⁵ Where reporting is to a board committee, there should be escalation of issues to the board, where appropriate.

The entity's code of conduct should support the lawful, ethical and responsible operations of the entity, in the best interests of the entity (including having regard to the interests of the entity's key stakeholders).

A code of conduct articulates the standards of behaviour expected of its directors, senior executives and employees. A listed entity may find the suggestions in Box 3.2 helpful in formulating its code.

For a code of conduct to be effective:

- All employees must receive appropriate training on their obligations under the code.
- Directors and senior executives must speak and act consistently with the code (setting the "tone at the top").
- It should be supported by the entity's other cultural processes, such as training in policies relevant to the code of conduct and the availability on its internal and external websites of policies that support the code (such as its whistleblower policy).
- The board or a board committee should be promptly informed of material breaches of the code of conduct,³⁶ and should ensure appropriate action is taken with respect to such breaches.

Appropriate and proportionate disciplinary action reinforces the code's significance. Other associated outcomes from breaches of the code may include, for example, changes to training, policies, risk management processes or stakeholder engagement efforts. Disclosures of outcomes for the purposes of paragraph (c) of this Recommendation are intended to promote a culture of transparency and remediation.

Disclosures of outcomes should generally be on a de-identified basis. An entity may exclude disclosure to the extent they relate to actions which are not finalised (for example, actions which are under investigation or in dispute), or matters which cannot be appropriately de-identified (including under privacy laws).

Entities may also wish to consider published guidelines when considering what constitutes responsible business conduct. This relates to, for example, human rights, rights of Aboriginal and Torres Strait Islander peoples,³⁷ combating bribery and corruption, technology, competition and taxation matters.³⁸

³⁵ Information may be subject to whistleblowing laws.

³⁶ Information may be subject to whistleblowing laws.

³⁷ See Global Compact Network Australia, KPMG Australia and the University of Technology Sydney, *The Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples* (November 2020).

³⁸ For example, see OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris (2023), and United Nations, *Guiding Principles on Business and Human Rights*, HR/PUB/11/04 (2011).

Box 3.2: Suggestions for the content of a code of conduct

- Express or cross-reference the organisation's purpose (if articulated) and values.
- State the organisation's expectation that all directors, senior executives and employees will:
 - act in accordance with the entity's stated values;
 - act in the best interests of the entity, including having regard to the interests of the entity's key stakeholders;
 - act honestly and with high standards of personal integrity;
 - comply with all laws and regulations that apply to the entity and its operations;
 - act ethically and responsibly;
 - deal with customers and suppliers fairly;
 - contribute to an equitable and inclusive workplace culture that promotes and respects gender equality and other diversity;
 - treat fellow staff members with respect and not engage in sexual or other harassment, discrimination, bullying or victimisation (including of whistleblowers)
 - disclose and deal appropriately with any conflicts between their personal interests and their duties as a director, senior executive or employee;
 - not take advantage of the property or information of the entity or its customers for personal gain or to cause detriment to the entity or its customers;
 - not take advantage of their position or the opportunities arising therefrom for personal gain; and
 - report any breaches of the code, misconduct, or improper state of affairs or circumstances in relation to the entity. Reporting should be to the appropriate person or body within the organisation or, where relevant, in accordance with the entity's whistleblower policy.
- State that the code will be periodically reviewed to check that it is operating effectively and whether any changes are required to the code.

Recommendation 3.3

A listed entity should have regard to the interests of the entity's key stakeholders, including having processes for the entity to engage with them and to report material issues to the board.

Commentary

It is in the best interests of an entity to have regard to its impact and interaction with its key stakeholders, as appropriate, to support creation of long-term sustainable value for security holders.³⁹

Stakeholders may include security holders, employees, customers, suppliers, Aboriginal and Torres Strait Islander peoples, local community, law makers and regulators. Aboriginal and Torres Strait Islander stakeholders might be business partners, land owners, host communities, employees, customers, or have other relationships with the listed entity. Stakeholders may also include organisations which represent the interests of stakeholders, such as unions, environmental groups, or consumer groups.

Security holders are the subject of Principle 6 and are not intended to be the subject of this Recommendation. However, the entity's consideration of the interests of other stakeholders should be consistent with the long-term interests of security holders.

An understanding of stakeholder perspectives can inform decision-making throughout the organisation. For example, this could include decision-making in relation to customer policies, governance of data and

³⁹ For example, 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).

technology,⁴⁰ designing remuneration structures which drive appropriate behaviour, or the entity's political lobbying and donation activities.

The listed entity should identify and regularly review the entity's key stakeholders, having regard to the entity's purpose (if articulated), values, strategic objectives and risk appetite.⁴¹ It should consider a form of stakeholder engagement program appropriate for the entity and its circumstances.

The board's activities may include, for example:

- requiring information on serious or systemic workplace incidents or customer complaints;
- approving and monitoring a Reconciliation Action Plan;⁴² and
- overseeing due diligence on the entity's stakeholder relationships, including human rights impacts.⁴³

Where information is provided to a board committee, there should be escalation procedures to ensure that important information and trends are communicated to the board.

Recommendation 3.4

A listed entity should:

- (a) have and disclose a diversity and inclusion policy;
- (b) through its board or a board committee set measurable objectives for achieving gender diversity in the composition of its workforce (including in its senior executive team); and
- (c) disclose in relation to each reporting period the effectiveness of its diversity and inclusion practices, including:
 - (1) the measurable objectives set for that period to achieve gender diversity;
 - (2) the entity's progress towards achieving those objectives; and
 - (3) either:
 - (A) the respective proportions (by gender) of members of the board, in senior executive positions and across the whole workforce (including how the entity has defined "senior executive" for these purposes); or
 - (B) if the entity is a "relevant employer" under the Workplace Gender Equality Act, the entity's most recent "Gender Equality Indicators", as defined in and published under that Act.

Commentary

In this Recommendation, a diversity and inclusion policy refers to one or more policies designed to foster a diversity of backgrounds⁴⁴ in a listed entity's board and broader workforce, equity (fairness) in treatment regardless of background, and an inclusive environment in which those of different backgrounds can participate and contribute to the organisation.

⁴⁰ For example, see the Department of Industry, Science and Resources [Australia's AI Ethics Principles](#) and Governance Institute of Australia, [Good Governance Guide – Ethical Artificial Intelligence](#) (2023).

⁴¹ For example, see Australian Institute of Company Directors, [Elevating stakeholder voices to the board: A guide to effective governance](#) (April 2021).

⁴² See Reconciliation Australia for information on [Reconciliation Action Plans](#): < <https://www.reconciliation.org.au/> >.

⁴³ For example, under the *Modern Slavery Act 2018* (Cth) or otherwise based upon structures in United Nations, *Guiding Principles on Business and Human Rights*. See footnote 38, above.

⁴⁴ Including personal circumstances.

A listed entity may find the suggestions in **Box 3.4** helpful when formulating its diversity and inclusion policy. The Australian Human Rights Commission also provides resources for employers to support diversity, including workplace strategies and managing data collection.⁴⁵

The commentary for this Recommendation discusses gender diversity in some detail. However, this should not detract from the importance of fostering other forms of diversity within an organisation. A listed entity should endeavour to understand the demographics within its workforce (and collect data in a respectful way, in accordance with laws). It should consider the appropriateness of setting, and disclosing, measurable objectives for other diversity characteristics, within the whole or any part of its workforce.⁴⁶

A listed entity should consider the outcomes it can report in order to communicate the effectiveness of its diversity and inclusion practices. For example, this may include information on the prevalence of, and measures taken to address, sex-based harassment and discrimination.

Any diversity objectives the board or a board committee sets should include appropriate and meaningful objectives that are able to be, and are, monitored and measured, and (where appropriate) benchmarked against other relevant organisations.⁴⁷ For gender diversity, these could involve, for example:

- achieving specific numerical targets for the proportion of women on its board,⁴⁸ in senior executive roles, its key operational roles and in its workforce generally within a specified timeframe; or
- achieving specific targets for the “Gender Equality Indicators” in the Workplace Gender Equality Act.

The board or committee may wish to consider setting key performance indicators for senior executives on gender participation within their areas of responsibility and linking part of their remuneration (either directly or as part of a “balanced scorecard”) to the achievement of those KPIs.

An entity may combine its disclosures under this Recommendation with disclosures under Recommendation 2.3. Some further commentary on reporting gender diversity is set out below.

⁴⁵ See the [Australian Human Rights Commission](https://humanrights.gov.au/): < <https://humanrights.gov.au/> >.

⁴⁶ Entities should consider laws relating to anti-discrimination, including special measures provisions and exemptions. For examples of entities reporting other measurable objectives, see KPMG, [ASX Corporate Governance Council: Diversity - Analysis of diversity disclosures made by listed entities between 1 January 2021 and 31 December 2021](#) (2022).

⁴⁷ For example, see Workplace Gender Equality Agency, WGEA Data Explorer for benchmarking information: < <https://www.wgea.gov.au/data-statistics/data-explorer> >.

⁴⁸ See Recommendation 2.3 for board diversity disclosures.

Box 3.4: Suggestions for the content of a diversity and inclusion policy

- Link the policy to the organisation’s statement of values.
- Articulate the corporate benefits of diversity in a competitive labour market and the importance of being able to attract, retain and motivate employees from the widest possible pool of available talent.
- Express the organisation’s commitment to equity and inclusion at all levels of the organisation, regardless of marital or relationship status, family or caring responsibilities, sexual orientation, gender identity, inter-sex status, age, disabilities, race, religious beliefs, cultural background, socio-economic background, circumstances, perspective and experience.
- Emphasise that in order to have an inclusive workplace, discrimination, harassment, vilification and victimisation cannot and will not be tolerated.
- Commit to ensuring that recruitment and selection practices at all levels (from the board downwards) are appropriately structured so that a diverse range of candidates are considered and guarding against any conscious or unconscious biases that might discriminate against certain candidates.
- Commit to designing and implementing programs that will assist in the development of a more diverse pool of skilled and experienced employees.
- Recognise that employees (regardless of gender) at all levels may have family or caring responsibilities and adopt flexible work practices that will assist them to meet those responsibilities.
- Provide opportunities for employees on extended parental leave to maintain their connection with the entity, for example, by offering them the option (without any obligation) to receive all-staff communications and to attend work functions and training programs.
- State that the policy will be periodically reviewed to check that it is operating effectively and whether any changes are required to the policy.

Reporting gender diversity

A listed entity should tailor its gender diversity reporting to reflect its own circumstances.

Those listed entities that do not report under the Workplace Gender Equality Act may wish to consider the Act’s Gender Equality Indicators, how the indicators relate to their workplace practices, and what information can be made available to investors on the effectiveness of its diversity and inclusion practices.

Listed entities should give an accurate and not misleading impression of the relative participation of genders in the workplace and the roles in which they are employed. For example:

- When reporting under Recommendation 3.4(c)(3)(A), listed entities should clearly define how they are using the term “senior executive”. This could be done, for example, by reference to their relativity in terms of reporting hierarchy to the CEO (e.g., CEO - 1, CEO - 2 etc.⁴⁹) or by describing the roles that term covers (e.g., leadership, management or professional speciality).
- The Workplace Gender Equality Act “Gender Equality Indicators” apply to individual employing entities. Data is not published on a consolidated basis across groups of entities, and data relates to Australian-based employees only. As a practical matter, therefore, it may well be that many entities

⁴⁹ CEO-1 refers to the layer of senior executives reporting directly to the CEO, CEO-2 the next layer of management reporting to those senior executives, and so on.

are not able to report meaningfully under Recommendation 3.4(c)(3)(B) and should therefore report under Recommendation 3.4(c)(3)(A).

DRAFT

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.

Recommendation 4.1

The board of a listed entity should:

- (a) have an audit committee which:
 - (1) has at least three members, all of whom are non-executive directors and a majority of whom are independent directors; and
 - (2) is chaired by an independent director, who is not the chair of the board,and disclose:
 - (3) the charter of the committee;
 - (4) the relevant qualifications and experience of the members of the committee; and
 - (5) in relation to each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) if it does not have an audit committee, disclose that fact and the processes it employs that independently verify and safeguard the integrity of its periodic corporate reporting.

Recommendation 4.2

A listed entity should disclose its process to verify the integrity of any periodic corporate report it releases to the market, including the extent to which it has been audited, or otherwise the subject of assurance, by an external assurance practitioner.

Recommendation 4.3

A listed entity should disclose:

- (a) the tenure of the audit firm and audit engagement partner as at the end of the reporting period; and
- (b) when the appointment of the external auditor was last comprehensively reviewed, and the outcomes from that review.

Recommendation 4.1

The board of a listed entity should:

- (a) have an audit committee which:
 - (1) has at least three members, all of whom are non-executive directors and a majority of whom are independent directors; and
 - (2) is chaired by an independent director, who is not the chair of the board,and disclose:
 - (3) the charter of the committee;

- (4) the relevant qualifications and experience of the members of the committee; and
 - (5) in relation to each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) if it does not have an audit committee, disclose that fact and the processes it employs that independently verify and safeguard the integrity of its periodic corporate reporting.

Commentary

While ultimate responsibility for a listed entity's financial statements rests with the full board, having a separate audit committee can be an efficient and effective mechanism to bring the transparency, focus and independent judgment needed to oversee the financial reporting processes and (depending upon the committee's remit) other corporate reporting processes.

The role of the audit committee is usually to review and make recommendations to the board in relation to:

- the adequacy of the entity's corporate reporting processes, and internal control framework;
- the integrity of the entity's financial reporting,⁵⁰ including whether the entity's financial statements reflect the understanding of the committee members of, and otherwise provide a true and fair view of, the financial position and performance of the entity;
- (depending upon the committee's remit) the integrity of reporting for the entity's other periodic corporate reports;⁵¹
- the appropriateness of the accounting and reporting judgments or choices exercised by management in preparing the entity's financial reporting and (as applicable) other periodic corporate reports;
- the entity's audit and assurance policies and practices, including:
 - approaches to internal and external audit and assurance in respect of periodic corporate reports; and
 - for management of external audit and other assurance engagements (including for the undertaking of comprehensive reviews of the external auditor's appointment);
- the appointment or removal of the external auditor, including external audit tenders;
- the fees payable to the auditor for audit and non-audit work;
- the rotation of the audit engagement partner;
- the scope and adequacy of the external audit and (as applicable) other assurance engagements;
- the independence and performance of the external auditor and (as applicable) any other external assurance practitioner;
- any proposal for the external auditor to provide non-audit services and whether it might compromise the independence of the external auditor;
- if the entity has an internal audit function:
 - the appointment or removal of the head of internal audit;
 - the scope and adequacy of the internal audit work plan; and

⁵⁰ Financial reporting includes finance-related narrative disclosures (including, for example, finance-related climate disclosures [*in a sustainability report*]). [NB: This assumes that sustainability reports are introduced as reflected in exposure draft legislation: [Treasury Laws Amendment Bill 2024: Climate-related financial disclosure.](#)]

⁵¹ For example, sustainability reporting. Where this is within the audit committee's responsibilities, this may also be supported by other committees, such as a sustainability committee.

- the independence, objectivity and performance of the internal audit function.

The audit committee should have a charter⁵² 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 external consultants or specialists where the committee considers that necessary or appropriate.

In order to discharge the audit committee's mandate effectively, the committee should be of sufficient size and independence, 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 (for example, reporting related to climate and other sustainability-related matters may be supported by the work of a sustainability committee).⁵³ However, oversight of corporate reporting integrity should remain with the board, with recommendations made by the audit committee.

The boards of some listed entities may decide that they are able to oversee the corporate reporting process efficiently and effectively without establishing a separate audit committee.⁵⁴ 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 explain the processes it employs that independently verify and safeguard the integrity of its corporate reporting (including, but not limited to, audit and assurance policies or practices).

Recommendation 4.2

A listed entity should disclose its process to verify the integrity of any periodic corporate report it releases to the market, including the extent to which it has been audited, or otherwise the subject of assurance, by an external assurance practitioner.

Commentary

Increasingly, investors are relying on a broader range of periodic corporate reports⁵⁵ (and other disclosures) than audited or reviewed financial statements to inform their investment decisions.

Periodic corporate reports may include an entity's:

- annual directors' reports;
- (if prepared) sustainability reports;⁵⁶
- quarterly activity reports;
- quarterly cash flow reports; and

⁵² 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).

⁵³ See Recommendation 2.7 regarding director skills. 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).

⁵⁴ A listed entity which is included in the S&P All Ordinaries Index at the beginning of its financial year is required by the Listing Rules to have an audit committee for the entire duration of that financial year. If it is included in the S&P/ASX 300 Index, it must also comply with certain structure and disclosure requirements. See Listing Rule 12.7.

⁵⁵ "Periodic corporate report" is defined in the Glossary.

⁵⁶ **[Certain entities may be required to prepare sustainability reports, for example, in respect of climate-related financial disclosures under Chapter 2M.3 of the Corporations Act. Other sustainability reporting content may be introduced, or regulated by laws such as those relating to false or misleading statements.] [NB: This assumes that sustainability reports are introduced as reflected in exposure draft legislation: [Treasury Laws Amendment Bill 2024: Climate-related financial disclosure.](#)]**

- (if prepared) integrated reports⁵⁷.

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. Information must not be misleading or deceptive. This is particularly the case for developing areas of reporting.

Where some or all of a report has been the subject of audit or another assurance engagement by an external auditor or other external assurance practitioner,⁵⁸ the nature and extent of that work should be disclosed in the report itself. This includes confirmation that the external assurance practitioner's engagement is in accordance with relevant audit and assurance standards.⁵⁹

The processes should also be disclosed more generally in the entity's governance disclosures in its annual report or on its website. The disclosure should, for example, discuss guiding principles and internal procedures. It should provide more information to investors than, for example, sign-offs being obtained from management, the existence of an audit committee or the fact an unqualified audit opinion has been issued for the relevant financial statements.

For financial reports in respect of a financial period,⁶⁰ management should 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 reports⁶¹ and other disclosures.⁶² Independent assurance processes (including external audit, review or other assurance engagements) do not remove these responsibilities.⁶³

Recommendation 4.3

A listed entity should disclose:

- (a) the tenure of the audit firm and audit engagement partner as at the end of the reporting period; and**
- (b) when the appointment of the external auditor was last comprehensively reviewed and the outcomes from that review.**

Commentary

External auditing acts as an important independent function in relation to financial statements. Its value lies in its independence from the board and management and audit quality.

Listed entities established in Australia have laws governing the appointment and removal of auditors, as well as the rotation of individuals with significant roles in the audit.⁶⁴ The role of security holders and ASIC in removal processes reflects the significance of a change in auditor.

⁵⁷ "Integrated report" has the meaning given in the International Integrated Reporting Council, [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.

⁵⁸ "External assurance practitioner" is defined in the Glossary.

⁵⁹ 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).

⁶⁰ This includes periods less than a financial year.

⁶¹ Including directors' opinions as to compliance of financial statements, whether an entity is solvent and if it is appropriate to prepare accounts on a going concern basis: for example, see sections 285, 295, 588G of the Corporations Act. Also see: [ASIC v Healey & Ors](#) [2011] FCA 717.

⁶² For example, see sections 674 and 1041E of the Corporations Act.

⁶³ See ASIC, [INFO 183 Directors and financial reporting](#).

⁶⁴ Part 2M.4 of the Corporations Act.

The audit committee should periodically undertake a comprehensive review of the effectiveness and independence of the auditor.⁶⁵ (This is in addition to the committee's ongoing review of audit quality, as part of the corporate reporting process for a reporting period.)

The audit committee should consider whether a recommendation should be made to the board to seek removal of the auditor by shareholders, to put the audit to tender, or for rotation of the audit engagement partner.

DRAFT

⁶⁵ 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 make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.

Recommendation 5.1

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

Recommendation 5.2

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

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.

Recommendation 5.1

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

Commentary

Chapter 3 of the Listing Rules sets out a listed entity's continuous disclosure obligations.⁶⁶

A listed entity should have and disclose a written policy directed to ensuring that it complies with these obligations, so that all investors have equal and timely access to material information concerning the entity – including its financial position, performance, ownership and governance.

Information should be accurate, complete⁶⁷ and not misleading. The processes for review and approval of disclosures should ensure:

- the integrity of the information disclosed; and
- that disclosures are balanced in their presentation of that information.

For example, in some circumstances, additional internal or external verification may be required, in order to prevent misleading or deceptive disclosure (including by omission).⁶⁸ Particular care should be taken in areas where practice is still developing, including where recognised terminology, data and reporting frameworks may be at varying stages of evolution;⁶⁹ this may require clarification in the disclosure itself.

ASX provides guidance to listed entities on continuous disclosure under the Listing Rules, including the elements of a continuous disclosure policy, and the content and presentation of information in market announcements.⁷⁰

⁶⁶ Also see section 674 of the Corporations Act.

⁶⁷ "Complete" in this context means not omitting material information.

⁶⁸ See also Recommendation 4.1 (for audit and assurance policy and practices) and Recommendation 4.2.

⁶⁹ For example, see ASIC, *INFO 271 How to avoid greenwashing when offering or promoting sustainability-related products*; ACCC, *Making environmental claims: A guide for business* (December 2023).

⁷⁰ ASX Compliance, *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. (See Annexure C for guidance on policies.) See also ASIC, *Regulatory Guide 62 Better disclosure for investors*.

Recommendation 5.2

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

Commentary

This is to ensure that the board has timely visibility of the nature and quality of the information being disclosed to the market and the frequency of such disclosures.⁷¹

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.

Commentary

This Recommendation is directed to ensuring equality of information among investors and applies regardless of whether the presentation contains new market sensitive information required to be disclosed under Listing Rule 3.1.

Examples of “substantive” presentations caught by this Recommendation include results presentations and the types of presentations typically given at annual general meetings, investor days and broker conferences.

The market announcement should provide clear and balanced disclosure of any new market sensitive information contained in the document (for example, by use of a cover sheet which identifies the relevant information).

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.

This Recommendation is not intended to apply to private meetings between a listed entity and an investor or analyst. However, any entity that has such a meeting must be careful not to disclose in the meeting any information that a reasonable person would expect to have a material effect on the price or value of its securities that has not already been disclosed to the market.

The Council recognises that listed entities may give a series of presentations to analysts and investors over a short period of time that contain materially the same information but have been tailored for each audience. The Council would not regard the second and subsequent presentations in such a series as “new” presentations for these purposes and, provided they do not contain any new market sensitive information, would not expect them to be published on the ASX Market Announcements Platform.

ASX provides guidance to assist listed entities to understand and comply with their continuous disclosure obligations under the Listing Rules.⁷² ASIC publishes guidance on the handling of confidential information, including for unannounced corporate transactions.⁷³

⁷¹ This can be facilitated by the ASX Online Company Portal external notifications feature.

⁷² ASX Compliance, *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

⁷³ See ASIC, *Report 393 Handling of Confidential Information: Briefings and unannounced corporate transactions* (May 2014). Also see Chartered Secretaries Australia (now Governance Institute of Australia) and the Australian Investor Relations Association, *Handling confidential information: Principles of good practice* (2013). **[NB: To be updated.]**

Principle 6: Respect 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.

Recommendation 6.1

A listed entity should provide information about itself and its governance to investors via its website.

Recommendation 6.2

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

Recommendation 6.3

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

Recommendation 6.1

A listed entity should provide information about itself and its governance to investors via its website.

Commentary

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

For this to occur, a listed entity needs to engage with, and provide appropriate information to, its investors.⁷⁴

Investors expect information about listed entities to be freely and readily available online. A listed entity's website should have a "corporate governance" landing page from where all relevant corporate governance information can be accessed. There should be an intuitive and easily located link to this page in the navigation menu for the entity's website.⁷⁵

Information available through the listed entity's website should 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 announcements to ASX and current and historical corporate reports).⁷⁶

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

⁷⁴ References in this recommendation to communicating and interacting with investors include, where securities are held by a custodian or nominee, communicating and interacting with the beneficial owner of the securities.

⁷⁵ For example, under an "About Us", "Investor Centre" or "Information for Shareholders/Unitholders" menu item.

⁷⁶ ASX Compliance, [Guidance Note 9: Disclosure of corporate governance practices](#) [NB: ASX is to update GN9 for 5th Edition.]

Recommendation 6.2

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

Commentary

A listed entity's investor⁷⁷ 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 should allow investors and other financial market participants 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. For example, the entity should consider engagement with investors where a significant number of votes are cast against a resolution put to a general meeting, and (if appropriate) disclosure of any actions taken to understand and respond to that vote.

An investor relations program should be appropriate to the entity and its circumstances, including the nature of its investor base. As a minimum, entities should actively engage with security holders at the AGM, meeting with them upon request and responding to any enquiries they may make from time to time. Larger entities' activities are likely to 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.⁷⁸

The investor relations program may also run in tandem with a wider stakeholder engagement program.⁷⁹ These programs should be aligned with the entity's risk management processes and crisis management planning, and be designed to respond to changing circumstances.

Listed entities should also support the communication choices of their security holders. Security holders should be notified at least annually of their right to elect to receive electronic or physical documents, or to change that election at any time. For annual financial reporting, security holders may elect not to receive the document at all.⁸⁰

Recommendation 6.3

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

Commentary

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

Listed entities should hold general meetings at a reasonable place and time, with any technology used giving security holders as a whole a reasonable opportunity to participate.⁸¹

Investors expect that listed entities with large or geographically diverse registers will use technology to facilitate the participation of security holders in general meetings. This may include holding hybrid meetings

⁷⁷ References in this recommendation to communicating and interacting with investors includes, where securities are held by a custodian or nominee, communicating and interacting with the beneficial owner of the securities.

⁷⁸ For example, see Australasian Investor Relations Association, *Best Practice Investor Relations: Guidelines for Australasian Listed Entities* (Fifth Edition, March 2021). Also see Recommendation 5.3, regarding continuous disclosure and briefings.

⁷⁹ See Recommendation 3.3.

⁸⁰ Sections 110C, 110D and 110K of the Corporations Act.

⁸¹ Sections 249R and 249S (listed companies) and sections 252P and 252Q (listed trusts), Corporations Act. See Governance Institute of Australia, Australian Institute of Company Directors, Australasian Investor Relations Association and Law Council of Australia, *Electronic Governance Reforms: Meetings and Documents* (14 March 2022).

that allow security holders to attend and vote in person or online,⁸² and permitting security holders to submit questions online before or during the meeting.

All listed entities that have an AGM should afford security holders who are not able to attend the meeting and exercise their right to ask questions about, or make comments on, the management of the entity,⁸³ the opportunity to provide questions or comments ahead of the meeting. Where appropriate, these questions and comments should be addressed at the meeting, either by being read out and then responded to at the meeting or by providing a transcript of the question or comment and a written response at the meeting (which should also be made available to those security holders attending online).

Processes should be disclosed in the relevant notices of meeting, in addition to general disclosure under this Recommendation in the entity's annual report or on its website.

DRAFT

⁸² An entity's constitution may require amendment to permit direct voting.

⁸³ Section 250S of the Corporations Act.

Principle 7: Recognise and manage risk

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

Recommendation 7.1

The board of a listed entity should:

- (a) have a committee or committees to oversee risk, each of which:
 - (1) has at least three members, a majority of whom are independent directors; and
 - (2) is chaired by an independent director,and disclose:
 - (3) the charter of the committee;
 - (4) the members of the committee; and
 - (5) 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; or
- (b) if it does not have a risk committee or committees that satisfy (a) above, disclose that fact and 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:
 - (1) the frameworks continue to be sound and address the entity's material risks; and
 - (2) 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.

Recommendation 7.3

A listed entity should disclose:

- (a) if it has an internal audit function, how the function is structured and what role it performs; or
- (b) if it does not have an internal audit function, that fact and the processes it employs for evaluating and continually improving the effectiveness of its governance, risk management and internal control frameworks.

Recommendation 7.4

A listed entity should disclose:

- (a) its material risks (including its material environmental, social and governance risks); and
- (b) how it manages or intends to manage those risks.

Recommendation 7.1

The board of a listed entity should:

- (a) have a committee or committees to oversee risk, each of which:
- (1) has at least three members, a majority of whom are independent directors; and
 - (2) is chaired by an independent director,
- and disclose:
- (3) the charter of the committee;
 - (4) the members of the committee; and
 - (5) 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;
- or
- (b) if it does not have a risk committee or committees that satisfy (a) above, disclose that fact and the processes it employs for overseeing the entity's risk management and internal control frameworks.

Commentary

Recognising and managing risk is a crucial part of the role of the board and management.

While ultimate responsibility for a listed entity's risk management framework rests with the full board, having a risk committee can be an efficient and effective mechanism to bring the transparency, focus and independent judgment needed to oversee the entity's risk management framework (including its internal control framework).

The role of a risk committee is usually to:

- monitor management's performance against the entity's risk management framework, including whether it is operating within the risk appetite set by the board;
- review any material incident involving fraud or a break-down of the entity's risk controls and the "lessons learned";
- receive reports from internal audit on its reviews of the adequacy of the entity's processes for managing risk (including internal controls);
- receive reports from management on new and emerging sources of risk and the risk controls and mitigation measures that management has put in place to deal with those risks;
- make recommendations to the board in relation to changes that should be made to the entity's risk management framework or to the risk appetite set by the board; and
- oversee the entity's insurance program, having regard to the entity's business and the insurable risks associated with its business.

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.⁸⁴ Where it is a combination of committees, the listed entity should disclose how it has divided the responsibility for overseeing risk between those different committees.

⁸⁴ For example, culture, sustainability, or technology committees. In particular, a sustainability committee can look more broadly at risks and opportunities related to sustainability than a risk committee.

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 external consultants or specialists where the committee considers that necessary or appropriate.

A risk committee should be of sufficient size and independence, and its members between them should have 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 listed 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 framework 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:
 - (1) the frameworks continue to be sound and address the entity's material risks; and
 - (2) 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.

Commentary

One of the key roles of the board of a listed entity is to monitor the adequacy of the entity's risk management framework (including its internal control framework) and satisfy itself that the entity is operating with due regard to the risk appetite set by the board.

This includes satisfying itself that the risk management framework identifies and deals adequately with risks which may go to the sustainability of the entity's business model over the short, medium and long term.⁸⁵

There should be consideration of contemporary and emerging risks such as conduct risk,⁸⁶ digital disruption, cyber-resilience, data governance, climate change and third party risk management.

The board should also consider crisis management and business continuity processes. They can assist the coordination of the entity's response to risks which impact across different processes, resources and relationships, should be adaptable to different risks, and should be aligned with investor relations and stakeholder engagement programs.⁸⁷ This includes stress testing against different scenarios, and through simulation exercises.

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

⁸⁵ See Recommendation 7.4.

⁸⁶ As stated in the report of APRA's *Prudential Inquiry into the Commonwealth Bank of Australia* at page 7:

"Conduct risk is 'the risk of inappropriate, unethical or unlawful behaviour on the part of an organisation's management or employees.' At its simplest, conduct risk management goes beyond what is strictly allowed under law and regulation ('can we do it?') to consider whether an action is appropriate or ethical ('should we do it?')."

⁸⁸ This includes periods less than a financial year.

The Council acknowledges that from time to time circumstances may dictate that an entity needs to operate outside of the current risk appetite set by the board. Where that occurs, the matter should be brought to the attention of the board.

The board should also require that, for financial reports in respect of a financial period,⁸⁸ management provides an opinion that the reports are based on a sound system of risk management and internal control which is operating effectively.

Recommendation 7.3

A listed entity should disclose:

- (a) if it has an internal audit function, how the function is structured and what role it performs; or**
- (b) if it does not have an internal audit function, that fact and the processes it employs for evaluating and continually improving the effectiveness of its governance, risk management and internal control frameworks.**

Commentary

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

If a listed entity has an internal audit function, the function should have a mandate and a charter. The head of that function should be suitably qualified and have a direct reporting line to the board or to the board audit committee to bring the requisite degree of skill, independence and objectivity to the role. (Internal audit standards can assist listed entities in understanding how to structure an internal audit function.)⁸⁹

In describing the function's structure, the entity should also disclose if the function follows recognised internal audit standards.

If a listed entity does not have an internal audit function, the board or audit committee should review periodically whether there is a need for such a function.

A listed 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.

Recommendation 7.4:

A listed entity should disclose:

- (a) its material risks (including its material environmental, social and governance risks); and**
- (b) how it manages or intends to manage those risks.**

Commentary

A listed entity should consider the material risks to its business model and strategy.

"Material risk" in this Recommendation relates to a risk which is material to a listed entity's prospects over the short, medium or longer term. The relevant time period will be individual to the circumstances of the entity.⁹⁰

⁸⁸ This includes periods less than a financial year.

⁸⁹ See IIA Global Internal Audit Standards: < <https://www.theiia.org/en/> >.

⁹⁰ For example, see the discussion of prospects and time frames in ASIC, *Regulatory Guide 247 Effective disclosure in an operating and financial review*, 247.55.

Entities may find it useful to consider their reasonably foreseeable risks, as well as their key stakeholders, when developing their reporting. Although paragraph (a) of this Recommendation makes reference to environmental, social and governance risks, it is not necessary to report against each of these categories individually. The use of this terminology is to assist entities in considering the range of risks that may be relevant to their organisation, beyond (for example) short-term financial risk.

In addition, several risks may span more than one category of risk. For example, corporate culture, cyber-resilience, and workplace health and safety issues may be governance or social risks and may develop into financial risks. Entities that believe that their prospects may not be impacted by any material environmental, social or governance risks should consider carefully their basis for that belief.

A listed entity may satisfy this Recommendation with a statement that includes references to disclosures in, for example, its operating and financial review in its directors' report (and, if it prepares a sustainability report⁹¹ or an integrated report⁹², disclosures in those reports).

An operating and financial review should disclose information that members of the listed entity would reasonably require to make an informed assessment of (amongst other matters) the business strategies, and prospects for future financial years, of the entity reported on.⁹³ It is not intended to result in disclosure of generic risks.⁹⁴

While a sustainability report is not expected when reporting under this Recommendation, sustainability concepts may assist an entity in its approach to reporting its material risks. The sustainability of an organisation considers the interactions between the entity, the resources it uses to generate value, and its relationships. For example, this includes capital management, human capital management, considering the impact of technology on business models, the entity's impacts and dependencies on natural resources, and the interests of various stakeholders throughout the entity's upstream and downstream value chain.⁹⁵

Listed entities should consider ongoing developments in sustainability standard setting when making disclosures under this Recommendation. Where no relevant standard as yet applies to the entity, entities may wish to consider global standards in developing their thinking on the material risk issues and metrics that may be relevant to their organisations.⁹⁶ (It may also assist in developing reporting which will become expected of listed entities that are within larger supply chains.)

An entity should have reasonable grounds for making disclosures under this Recommendation, particularly for forward-looking statements.⁹⁷ As a result, an entity may wish to provide relevant context to its forward-looking information.

⁹¹ [Certain entities may be required to prepare sustainability reports, for example, in respect of climate-related financial disclosures under Chapter 2M.3 of the Corporations Act. Entities may also prepare other sustainability reporting content.] [NB: This assumes that sustainability reports are introduced as reflected in exposure draft legislation for climate-related financial reporting: [Treasury Laws Amendment Bill 2024: Climate-related financial disclosure](#).]

⁹² In accordance with the International Integrated Reporting Council's [International Integrated Reporting Framework](#).

⁹³ Section 299A of the Corporations Act.

⁹⁴ For example, see ASIC, [Regulatory Guide 247 Effective disclosure in an operating and financial review](#), 247.61-66.

⁹⁵ For example, sustainability-related risks and opportunities are referred to in sustainability financial-related reporting standards by reference to an entity's value chain of resources and relationships: see [the [Australian Accounting Standards Board](#) for Australian Sustainability Reporting Standards, including [ASRS1: General Requirements for Disclosure of Climate-related Financial Information](#), Aus 2.1, and [IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information](#) (2023), paragraph 2.] [NB: **ASRS are in the course of development.**]

⁹⁶ Generally, governments are seeking to make their regulations and standards on matters such as climate and other sustainability as inter-operable as possible internationally, and for information to be presented in a comparable way. See the [Australian Accounting Standards Board](#) for Australian Sustainability Reporting Standards. Where Australian standards are in the course of development, entities may also find it useful to consider standards and guidance from the [International Sustainability Standards Board](#).

⁹⁷ For example, see section 769C of the Corporations Act.

Information may be omitted to the extent that it is likely to unreasonably prejudice the entity⁹⁸ (for example, by giving a competitor an advantage, or by impacting the effectiveness of cyber risk management). This means that disclosure is expected under this Recommendation except to the extent that the detriment to the listed entity of disclosure is both likely and material.⁹⁹

Some risk examples

Cyber risk spans, for example, strategic, operational, social and governance risks. It includes digital disruption, platform obsolescence, cyber-resilience, the retention and use of data, and the application of artificial intelligence.

Climate change-related risk may also have broad impact, including for those entities not in emission intensive industries. This Recommendation does not require climate-related financial disclosures. However, entities may find it useful to consider definitions and qualitative guidance in relevant standards (for example, in relation to climate-related physical risks and climate-related transition risks) when developing their disclosures under this Recommendation.¹⁰⁰

DRAFT

⁹⁸ For example, see section 299A(3) of the Corporations Act in respect of operating and financial reviews.

⁹⁹ For example, see ASIC, [Regulatory Guide 247 Effective disclosure in an operating and financial review](#), 247.67-81.

¹⁰⁰ See the [Australian Sustainability Reporting Standard \[ASRS 2: Climate-related Financial Disclosures\]](#). [NB: ASRS 2 is in development.]

Principle 8: Remunerate fairly and responsibly

A listed entity should ensure that its director and executive remuneration policies and practices are fair and responsible. Remuneration of executives should align their interests with the entity's values, strategic objectives and risk appetite, and the creation of long-term sustainable value for security holders.

Recommendation 8.1

The board of a listed entity should:

- (a) have a remuneration committee which:
 - (1) has at least three members, a majority of whom are independent directors; and
 - (2) is chaired by an independent director,and disclose:
 - (3) the charter of the committee;
 - (4) the members of the committee; and
 - (5) 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; or
- (b) if it does not have a remuneration committee, disclose that fact and the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.

Recommendation 8.2

A listed entity should not give performance-based remuneration or retirement benefits to non-executive directors.

Recommendation 8.3

A listed entity should:

- (a) have remuneration structures which can clawback or otherwise limit performance-based remuneration outcomes of its senior executives after award, payment or vesting; and
- (b) disclose (on a de-identified basis) the use of those provisions during the reporting period.

Recommendation 8.1

The board of a listed entity should:

- (a) have a remuneration committee which:
 - (1) has at least three members, a majority of whom are independent directors; and
 - (2) is chaired by an independent director,and disclose:
 - (3) the charter of the committee;
 - (4) the members of the committee; and

- (5) 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; or
- (b) if it does not have a remuneration committee, disclose that fact and the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.

Commentary

Remuneration is a key driver of culture¹⁰¹ and a key focus for investors. When setting the level and composition of remuneration, a listed entity needs to balance:

- its desire to attract and retain high quality directors and to attract, retain and motivate senior executives;
- the need to ensure that the incentives for executive directors and other senior executives encourage them to pursue the growth and success of the entity without rewarding conduct that is contrary to the entity's values, strategic objectives or risk appetite;
- the need to ensure that non-executive directors are not remunerated in a manner that may conflict with their obligation to bring independent judgment to matters before the board;
- the implications for its reputation and standing in the community if it is seen to pay excessive remuneration to directors and senior executives; and
- its commercial interest in controlling expenses.

A listed entity should have a formal, rigorous and transparent process for developing its remuneration policy and for fixing the remuneration packages of directors and senior executives.

Having a separate remuneration committee can be an efficient and effective mechanism to bring the focus and independent judgment needed on remuneration decisions. The role of the remuneration committee is usually to review and make recommendations to the board in relation to:

- the entity's remuneration framework for directors, including the process by which any pool of directors' fees approved by security holders is allocated to directors;
- the remuneration packages to be awarded to senior executives, including the exercise of discretion,¹⁰²
- equity-based remuneration plans and other incentive structures for senior executives and other employees;
- superannuation arrangements for directors, senior executives and other employees; and
- 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

¹⁰¹ 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."

¹⁰² See Recommendation 8.3. The individual remuneration packages to be awarded to employees other than senior executives are generally matters left to management.

management, and seek advice from external consultants or specialists where the committee considers that necessary or appropriate.¹⁰³

The remuneration committee should be of sufficient size and independence to discharge its mandate effectively.

A listed 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 listed 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 the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.

Regardless of whether there is a remuneration committee, no individual director or senior executive should be involved in deciding his or her own remuneration.¹⁰⁴

A listed entity is not required under the Corporations Act or the Listing Rules to obtain security holder approval for an equity-based incentive scheme involving the issue of securities to senior executives or other employees who are not directors. Notwithstanding this, a listed entity may find it useful to submit to security holders any proposed equity-based incentive scheme which will involve the issue of securities to senior executives or other employees prior to implementing it. This will provide the board with a timely assurance that the scheme is reasonable and acceptable to security holders.¹⁰⁵

Recommendation 8.2

A listed entity should not give performance-based remuneration or retirement benefits to non-executive directors.

Commentary

Non-executive directors should not receive performance-based remuneration, as it may lead to bias in their decision-making and compromise their objectivity.

It is generally acceptable for non-executive directors to receive securities as part of their remuneration to align their interests with the interests of other security holders. Security holder approval may be required for such equity payments.¹⁰⁶ However, non-executive directors should not receive options with performance hurdles attached or performance rights as part of their remuneration.

No benefits should be given in connection with retirement as a non-executive director, other than superannuation.

Where remuneration or retirement benefits are not in accordance with this Recommendation, the entity should consider obtaining security holder approval.

¹⁰³ 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.

¹⁰⁴ This statement is not intended to apply to a determination by the board of a listed entity on how the pool of directors' fees approved by security holders should be split between directors.

¹⁰⁵ If renewed every 3 years, it will also result in any issues of securities under the scheme not eating into the entity's placement capacity under Listing Rules 7.1 and 7.1A (Listing Rule 7.2 exception 13).

¹⁰⁶ See Listing Rules Chapter 10. (Under section 211 of the Corporations Act, benefits that are "reasonable remuneration" are an exception to the requirement for member approval for financial benefits to related parties under section 208 of the Act.)

Recommendation 8.3

A listed entity should:

- (a) have remuneration structures which can clawback or otherwise limit performance-based remuneration outcomes of its senior executives after award, payment or vesting; and
- (b) disclose (on a de-identified basis) the use of those provisions during the reporting period.

Commentary

A listed entity should have structures which permit the board, supported by the remuneration committee, to exercise discretion in relation to executive remuneration.¹⁰⁷ This includes where performance-based remuneration has been awarded, paid or vested.

Disclosure for the purposes of paragraph (b) of this Recommendation may be on a de-identified basis, and may reference the entity's remuneration report or other financial reporting. The disclosure should, where appropriate, refer to:

- the types of matters which triggered use of these provisions (for example, misconduct or a material misstatement in the entity's financial statements);
- the number of current and previous senior executives impacted by the use of these provisions during the reporting period; and
- the impact on remuneration outcomes for those executives, such as the aggregate value or percentage of performance-based remuneration clawed back, reduced, cancelled or otherwise limited.

An entity may exclude disclosure of outcomes to the extent they relate to actions which are not finalised (for example, actions which are under investigation or are in dispute) or matters which cannot be appropriately de-identified.

A listed entity which provides the information on an identified basis (for example, in its remuneration report disclosures)¹⁰⁸ will be taken to satisfy this Recommendation.

¹⁰⁷ See ASIC, [INFO 245 Board oversight of executive variable pay decisions](#).

¹⁰⁸ See section 300A of the Corporations Act.

Additional Recommendations that apply only in certain cases

The following additional Recommendations apply to the entities described within them.

Recommendation 9.1

A listed entity 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 understands and can contribute to the discussions at those meetings and understands and can 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.

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:

- (a) have 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; and
- (b) disclose that policy or a summary of it.

Recommendation 9.1

A listed entity 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 understands and can contribute to the discussions at those meetings and understands and can discharge their obligations in relation to those documents.

Commentary

This Recommendation could apply to an entity established in Australia that conducts its board meetings in a language other than English¹⁰⁹ and has a director who does not speak that language.

It could also apply 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.

It could further apply 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

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

Commentary

Australian listed entities are required by law¹¹⁰ to hold meetings of security holders at a reasonable place and time. Listed entities established outside Australia should do likewise.

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.**

Commentary

This Recommendation largely mirrors the declaration required by law for listed entities established in Australia.¹¹¹

The board of a listed entity established outside Australia that is not subject to section 295A of the Corporations Act or an equivalent provision under the law of its home jurisdiction should require an equivalent declaration from the CEO and CFO.

¹⁰⁹ For example, because the chair or other directors are more comfortable speaking that language rather than English.

¹¹⁰ Sections 249R and 249S (listed companies) and sections 252P and 252Q (listed trusts) of the Corporations Act.

¹¹¹ Section 295A of the Corporations Act.

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.

Commentary

Substantive resolutions are those proposed resolutions that appear in a meeting's ballot paper.

Australian listed entities have these requirements for voting by law.¹¹² Listed entities established outside Australia should do likewise; this reflects the principle of "one security one vote" which is enshrined in the Listing Rules.

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.

Commentary

Australian listed entities may provide security holders with electronic communications, unless they have elected otherwise.¹¹³ Listed entities established outside Australia should do likewise.

Security holders should be notified at least annually that they may elect to receive electronic or physical documents, or to change that election at any time. For annual financial reporting, security holders may elect not to receive the document at all.

Alternatively, a copy of the notice should appear in the investor section of the entity's website.

The entity should take reasonable steps to ensure that the member's election is complied with.

Communications to security holders from the entity or its security registry should be formatted to be easily readable on a computer screen and other electronic devices commonly used for that purpose and include a printer-friendly option for those security holders who wish to retain a hard copy of the communication.

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.

Commentary

The opportunity for security holders to question a listed entity's external auditor at the AGM is an important safeguard for the integrity of the corporate reporting process.

Australian listed companies have this requirement by law.¹¹⁴ Listed entities established outside Australia, and listed trusts established in Australia as registered managed investment schemes which have an AGM, should do likewise.

¹¹² Section 250JA (listed companies) and section 253J (listed trusts) of the Corporations Act.

¹¹³ Sections 110C, 110D and 110K of the Corporations Act.

¹¹⁴ Sections 250PA, 250RA and 250T of the Corporations Act.

Recommendation 9.7

A listed entity established outside Australia which has an equity-based remuneration scheme should:

- (a) have 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; and
- (b) disclose that policy or a summary of it.

Commentary

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.

A listed entity established outside Australia which has an equity-based remuneration scheme should establish a policy on whether participants can enter into these sorts of transactions and disclose that policy to investors. This applies whether the participants in the scheme are directors, senior executives or other employees. (Australian companies have a similar requirement by law.)¹¹⁵

DRAFT

¹¹⁵ 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

As noted previously, some Recommendations require modification when applied to externally managed listed entities. Investors in an externally managed listed entity generally invest in the listed 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 2.4, 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 2.4 (disclosure of independent directors), 3.1 (values) and 3.2 (code of conduct) should be made in relation to the responsible entity in its corporate capacity. In the case of Recommendation 2.4, independence should be assessed and disclosed vis-à-vis the responsible entity rather than the listed entity.

The disclosures in relation to Recommendations 3.3 (stakeholders), 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 (audit review), 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,¹¹⁶ 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(a) and 7.1(a) 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 obligation¹¹⁷ of a responsible entity to maintain adequate risk management systems in *Regulatory Guide 259 Risk management systems of responsible entities*.

Recommendations that do not apply to externally managed listed entities

Recommendations 1.1, 1.2, 1.3, 1.4, 1.6, 1.7, 2.1, 2.2, 2.3, 2.5, 2.6, 2.7, 3.4, 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.

¹¹⁶ Under section 601JA(1) of the Corporations Act, the responsible entity of a registered managed investment scheme is required to establish a compliance committee if less than half of the directors of the responsible entity are “external directors” (as defined in section 601JA(2) of that Act).

¹¹⁷ See section 912A(1)(h) of the Corporations Act.

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.

Commentary

In the case of an externally managed listed entity, the performance of the responsible entity will usually drive the performance of the listed entity. It is important that investors in the entity 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.¹¹⁸)

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.

Commentary

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 summary of the amount and composition of those fees.

Simply including a copy of the entity's constitution (if that is the relevant document which governs the calculation and payment of management fees) or management agreement on the entity's website is not sufficient for this purpose. There should be a clear and concise summary of the fees payable to the manager on the entity's website, as well as a cross-reference to the specific clause or clauses in the relevant document setting out those fees where investors can go for further details.

¹¹⁸ Section 601FB of the Corporations Act.

Glossary

10% holder:

- in relation to a listed entity that is an Australian company or registered managed investment scheme, a person who has a “substantial holding” in the listed entity under paragraph (a) of the definition of that term in section 9 of the Corporations Act, as if the reference in that paragraph to 5% was a reference to 10%;
- in relation to a listed company that is not an Australian company, a person who would have a “substantial holding” in the company under paragraph (a) of the definition of “substantial holder” in section 9 of the Corporations Act if the references in that paragraph to a company and its securities were references to the foreign company and its securities, and the reference to 5% was a reference to 10%; and
- in relation to a listed trust which is not a registered managed investment scheme or which is a foreign trust, a person who would have a “substantial holding” in the trust under paragraph (a) of the definition of that term in section 9 of the Corporations Act if the references in that paragraph to a scheme and interests in the scheme were references to the trust and units in the trust, and the reference to 5% was a reference to 10%.

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).

commentary: the discussion headed “Commentary” that follows a Recommendation. The commentary does not form part of the Recommendation and does not give rise to a reporting obligation.

corporate governance statement: the statement made by a listed entity under Listing Rule 4.10.3 stating the extent to which it has followed the Council’s Recommendations.

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

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.

environmental risks: the potential consequences (including systemic risks and the risk of regulatory responses) to a listed entity if its activities affect the natural environment or if its activities are affected by changes in the natural environment. This includes the risks associated with the entity polluting or degrading the environment, adding to the carbon levels in the atmosphere, or threatening a region's biodiversity or cultural heritage. It also includes the risks for the entity associated with climate change, reduced air quality and water scarcity.

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.

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

externally managed listed entity: a listed trust or stapled structure that is managed by an external responsible entity.

governance risk: the potential consequences to a listed entity relating to the adequacy of its governance structures, internal processes, people or systems, including by failing to prevent inappropriate, unethical or unlawful behaviour. It may include financial risk and reputational risk.

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.

internally managed listed entity: a listed entity that is not an externally managed listed entity (this includes a listed company and a listed trust or stapled structure that has an internal responsible entity).

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.

market sensitive information: has the meaning given to it in ASX Compliance *Guidance Note 8 Continuous Disclosure: Listing Rules 3.1-3.1B*.

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, or similar periodic report prepared for the benefit of investors.

Principle: one of the 8 enumerated principles in this document.

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

reporting period: the financial period covered by an entity's annual report.

responsible entity: the entity responsible for managing an externally managed listed entity.

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:
 - except in Recommendation 3.4(c)(3)(A), an executive who is a member of the key management personnel of the entity, including an executive director but not including a non-executive director; and
 - in Recommendation 3.4(c)(3)(A), the listed entity should define what it means by “senior executive”; or
- in the case of an externally managed listed entity, an executive who is a member of the key management personnel of the responsible entity, including an executive director but not including a non-executive director.

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

social risks: the potential consequences (including systemic risks and the risk of regulatory responses) to a listed entity if its activities affect human society or if its activities are affected by changes in human society. This includes the risks associated with the entity or its suppliers engaging in modern slavery, aiding human conflict, facilitating crime or corruption, mistreating employees, customers or suppliers, or harming the local community (including from failing to protect data, or the inappropriate application of artificial intelligence). It also includes the risks for the entity associated with large scale mass migration, pandemics or shortages of food, water or shelter.

Workplace Gender Equality Act: the *Workplace Gender Equality Act 2012* (Cth).

DRAFT

Resource materials

How to approach corporate governance disclosures

ASX Compliance, [Guidance Note 9: Disclosure of corporate governance practices](#)

Principle 1: Lay solid foundations for management and oversight

Australian Standard [AS 4811-2022 Workforce screening](#)

Auscheck: < <https://www.auscheck.gov.au/> >

Principle 2: Structure the board to be effective and add value

Cambridge Institute for Sustainability Leadership, [Future of Boards Final Report: Summary and Synthesis, Phase 1, Part 4](#) (2023)

Governance Institute of Australia, [Good Governance Guide Creating and disclosing a board skills matrix](#)

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

ASIC, [REP 758 Good practices for handling whistleblower disclosures](#) (March 2023)

Australian Council of Superannuation Investors and Australian Institute of Company Directors, [Governing company culture: Insights from Australian directors](#) (December 2020)

Australian Government, Department of Industry, Science and Resources, [Australia's AI Ethics Principles](#)

Australian Human Rights Commission : < <https://humanrights.gov.au/> >

Australian Institute of Company Directors, [Directors' "best interests" duty in practice](#) (July 2022)

Global Compact Network Australia, KPMG Australia and the University of Technology Sydney, [The Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples](#) (November 2020)

Institute of Internal Auditors – Australia, The Ethics Centre, the Governance Institute of Australia and Chartered Accountants Australia and New Zealand [Managing Culture: A good practice guide](#) (December 2017) **[NB: Proposed to update in 2024, with AICD.]**

KPMG, [ASX Corporate Governance Council: Diversity - Analysis of diversity disclosures made by listed entities between 1 January 2021 and 31 December 2021](#) (2022)

OECD, [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#), OECD Publishing, Paris (2023)

Reconciliation Australia: < <https://www.reconciliation.org.au/> >

Workplace Gender Equality Agency, WGEA Data Explorer: < <https://www.wgea.gov.au/data-statistics/data-explorer> >

Principle 4: Safeguard the integrity of corporate reports

ASIC, [INFO 183 Directors and financial reporting](#)

ASIC, [INFO 196 Audit quality – The Role of directors and audit committees](#)

ASIC, [INFO 223 Audit quality – The role of others](#)

Australian Institute of Company Directors and Auditing and Assurance Standards Board, [Periodic Comprehensive Review of the External Auditor Guide for Audit Committees](#) (2022)

Australian Institute of Company Directors, Australian Auditing Standards Board and Institute of Internal Auditors, [Audit Committees: A Guide to Good Practice](#) (2017)

Australian Institute of Company Directors and Herbert Smith Freehills [Bringing together ESG: Board structures and sustainability](#) (November 2022)

Australian Government, [AUASB Standards](#)

Principle 5: Make timely, balanced and accurate disclosure

ASIC, [Regulatory Guide 62 Better disclosure for investors](#)

ASIC, [INFO 271 How to avoid greenwashing when offering or promoting sustainability-related products](#)

ASIC, [REP 393 Handling of Confidential Information: Briefings and unannounced corporate transactions](#) (May 2014)

ASX Compliance, [Guidance Note 8: Continuous Disclosure: Listing Rules 3.1 – 3.1B](#)

Australian Competition and Consumer Commission, [Making environmental claims: A guide for business](#) (December 2023)

Chartered Secretaries Australia (now Governance Institute of Australia) and the Australian Investor Relations Association, [Handling confidential information: Principles of good practice](#) (2013) **[NB: Being updated.]**

Principle 6: Respect the rights of security holders

ASIC, [FAQs – Virtual meetings for companies and registered schemes](#)

Governance Institute of Australia, Australian Institute of Company Directors, Australasian Investor Relations Association and Law Council of Australia, [Electronic Governance Reforms: Meetings and Documents](#) (14 March 2022)

Principle 7: Recognise and manage risk

APRA, [Prudential Inquiry into the Commonwealth Bank of Australia](#) (April 2018)

ASIC, [Regulatory Guide 247 Effective disclosure in an operating and financial review](#) (August 2019)

Australian Accounting Standards Board, [Australian Sustainability Reporting Standards](#)

Australian Institute of Company Directors and Herbert Smith Freehills [Bringing together ESG: Board structures and sustainability](#) (November 2022)

IIA Global Internal Audit Standards: < <https://www.theiia.org/en/> >

International Organization for Standardization [ISO 31000 Risk Management](#)

World Economic Forum, [The Global Risks Report 2024 19th Edition: Insight Report](#) (10 January 2024)

Principle 8: Remunerate fairly and responsibly

ASIC, [INFO 245 Board oversight of executive variable pay decisions](#)

DRAFT

© 2024 ASX Corporate Governance Council

All rights reserved 2024.