



27 November 2013

Mr A Cameron AO  
Chairman  
ASX Corporate Governance Council  
20 Bridge Street  
SYDNEY NSW 2000

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Dear Mr Cameron

### **Review of Corporate Governance Principles and Recommendations**

The Group of 100 (G100) is an organization of chief financial officers from Australia's largest business enterprises with the purpose of advancing Australia's financial competitiveness. We are pleased to provide comments on the proposed changes to the principles in recommendations.

The G100 welcomes the review and the streamlining of the presentation, the updated ordering, the improved integration of the principles and recommendations and the removal of duplication. While experience in Australia during the global financial crisis demonstrated that corporate governance in Australia is in robust good health, the G100 considers that reviewing and refreshing the principles and recommendations is necessary in order to ensure that the corporate governance regime in Australia continues to be of a high standard and appropriate to our circumstances and business environment.

We strongly support the proposal that reporting on the principles can be located on the company website rather than in the annual report. This change provides companies with greater flexibility and contributes towards reducing the volume of information in the annual report particularly where there are few changes from year to year.

Our comments focus on the proposals in respect of Principle 7: Recognise and Manage Risk. We are concerned about the potential implications of the recommendations being expressed in more explicit terms.

The G100 believes that the current requirements on the discussion of financial and non-financial risks are adequate to deal with these issues which may also embrace the management of environmental and sustainability risks. The proposals seek to introduce more directive requirements. With the success of previous versions of the Principles and Recommendations and the high level of compliance, as identified in ASX analyses, the items which are addressed on an "if not, why not" basis tend to be regarded as mandatory requirements as practice evolves. Given expectations about compliance with the guidelines we are concerned that the more specific proposals in respect of Principle 7 will be regarded as mandatory with shareholders and their advisors expecting reporting similar to the proposed integrated report.

Our specific comments are:

**PRINCIPAL 7**

**a. Recommendation 7.1 – risk committee**

We believe that whether or not a company establishes a risk committee is a matter for directors to determine in view of the particular circumstances and the nature of the activities undertaken by the company. The establishment of a risk committee may not provide similar efficiencies for all companies if such matters are already dealt with within the charter and brief of another committee. A risk committee is more appropriate under specific circumstances or in certain industries where there are complex regulatory and other risks requiring the utilisation of a dedicated risk committee to efficiently deal with ongoing material matters that arise.

Each business will have differing risk profiles and materiality considerations based on the nature of operations and, as such, it is appropriate that directors are charged with decisions regarding how risk committees are structured (if and where required) so as to ensure that they fulfil their stewardship obligation under the Corporations Act.

Under present arrangements companies may establish a specific risk committee or have those matters addressed within the brief of another committee such as the audit committee. To "require" a risk committee is too prescriptive and impinges on the exercise of judgment by the directors. The emphasis of the proposals should be on how a company manages material risk exposures and not the vehicle for doing so.

**b. Recommendation 7.2 – risk management framework**

The G100 supports the retention of the present Recommendation 7.2 as this already delineates the respective responsibilities of the board and management, namely, that the board establishes the risk appetite of the company and charges management with the responsibility for implementing an appropriate system of risk management and internal controls which is subject to board oversight.

We are concerned that the use of the term 'risk management framework' (as opposed to 'risk management and internal control system to manage material business') is less precise as could be misinterpreted as the board only be concerned with risk at a policy level rather than having oversight of the reported outcome of those policies.

**c. Recommendation 7.3 – internal audit function**

Whilst consistent with some overseas practice, the G100 questions whether this disclosure warrants significance as a recommendation. We believe that the current guidance is adequate.

**d. Recommendation 7.4 – economic, environmental and social sustainability risks**

The G100 acknowledges that addressing economic, environmental and sustainability risk is attracting increasing attention in the investment community and companies are seeking, in various ways, to provide relevant and material information. However, the G100 believes that the existing requirements relating to financial and non-financial risks are appropriate and, as indicated above, are concerned that recommendations over time come to be regarded as mandatory requirements.

We are concerned that the proposed recommendation will be used by some parties and organisations to expect the presentation of a sustainability type report or an integrated report as currently proposed by the International Integrated Reporting Committee. The G100 believes that the development of an international framework is in its infancy and agrees the CGC's assessment that it is too early to expect companies to provide such a report.

We consider that following the guidance issued by ASIC the presentation of the operating and financial review dealing with material items affecting the company would address these issues, their impact on the company and how they are managed.

**OTHER COMMENTS:**

**Bribery and corruption:** In view of recent cases relating to bribery and corruption it is suggested that, if retained, the commentary accompanying Principle 3: Promote ethical and responsible decision-making, include a reference to bribery and corruption as part of being 'a good corporate citizen' in addition to the suggested items to be included in a code of conduct.

**Recommendation 2.1: Board independence:** We do not think it is helpful to include a tenure limit of 9 years in the factors that indicate a director's potential lack of independence and propose that this be removed. The majority of listed companies do not necessarily apply arbitrary limits on tenure. Whilst we acknowledge that the continuing independence of a long-serving director may require closer scrutiny, the mere fact that an arbitrary number of years have elapsed does not necessarily indicate that the director can no longer be regarded as independent.

**Recommendation 8.3: Clawback:** Many listed companies include a clawback mechanism in the individual share plan applicable to executives under the employee share plan, or within individual contracts of employment. CEO contracts often make reference to clawback and these are disclosed to the market through the ASX announcements platform.

We suggest that the proposed recommendation be amended to reflect that a listed entity be required to 'have a 'clawback policy' or other mechanism which sets out the circumstances in which an entity may claw back performance based remuneration from its senior executives'. In our view, it is unlikely that fixed remuneration can be clawed back from a practical perspective and accordingly, wish to highlight that the commentary in Recommendation 8.3 be amended to reflect this (currently refers to executives paying back remuneration). We suggest that where the commentary lists examples of how remuneration can be clawed back, it refer to the equity based components of performance based remuneration.

Yours sincerely  
**Group of 100 Inc**



**Terry Bowen**  
President