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5 July 2018

ASX Corporate Governance Council
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To the ASX Corporate Governance Council

CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS
4TH EDITION, CONSULTATION DRAFT

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors and self-managed superannuation fund (SMSF) trustees. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

Overview

ASA supports the changes introduced in the consultation draft of the 4th edition of the *Corporate Governance Principles and Recommendations* (Consultation Draft). The changes go to the heart of the social licence to operate of entities listed on the Australian Securities Exchange (ASX). Moreover, we believe that some of the proposed changes could be further strengthened. Throughout this submission we use "companies" to include all types of listed entities, notably trusts, and "shareholders" to include investors in those other listed entities.

Australian investors have been appalled by the BBSW rigging and a series of life insurance and financial planning wrongdoings at the big four banks and the scandal at the Commonwealth Bank in breaching its anti-money laundering compliance obligations. The current Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has also revealed widespread unethical and possibly illegal behaviour. While the Royal Commission is limited to the financial services sector, the revelations have added to growing public unease that some of our major companies are focused on profit at almost any cost, disregard norms of acceptable behaviour and are run for the primary benefit of the people who manage them, rather than their shareholders and other stakeholders.

Some commentators suggest that unethical behaviour has been motivated by "putting shareholders first". To suggest that executive misconduct is in the search of shareholder returns can only be considered as misguided and an attempt to defray responsibility for individual executive actions. Shareholders are neither indifferent to how corporate profit is generated, nor do they want or seek unethical behaviour or misconduct to generate returns. Indeed, shareholders have been central in putting trust front and centre in their relationship with a company. Holding directors to account and seeking transparency of disclosure are key to how shareholders engage with boards of directors on governance and the stewardship of other people's money. Shareholders monitor how directors manage those stewardship responsibilities and will use their votes at annual general meetings (AGMs) when they believe that directors have not fulfilled their duties adequately. Shareholders have for many years demonstrated through their voting at AGMs that their trust cannot be taken for granted.

ASA therefore welcomes a new edition of the *Corporate Governance Principles and Recommendations* that 'puts flesh on the bones' of matters relating to culture and social licence to operate. The new recommendations, such as those requiring boards to articulate and disclose the core values of the company, and that shareholders be informed if there has been any breach by directors or senior managers of the code of conduct or a whistleblowing, anti-bribery or corruption policies, are appropriate and important. They demand that boards be responsible for instilling an ethical culture and providing transparency to the market should the core values of the company be called into question.

ASA also supports the 'if not, why not' approach of the *Corporate Governance Principles and Recommendations*, as it allows boards to disclose to the market their decisions in relation to a governance framework. Investors expect boards to fully explain why the governance framework they have implemented is appropriate to the circumstances of the company at the particular stage of its lifecycle and is capable of supporting their stewardship responsibilities. Investors do not want 'boilerplate' disclosures: they seek genuine transparency as to how directors are fulfilling their stewardship responsibilities and providing accountability for their decisions, and in terms that are appropriate to the context of each individual entity. Shareholders also expect that boards will not hide behind legalistic interpretations of the Recommendations, but make disclosures that are genuinely in the 'spirit' of the Principles.

ASA is of the view that listed companies in Australia should instil confidence in investors by providing as much transparency as possible about their accountability frameworks. ASA has been a member of the Council since its inception in 2002 and has developed its own governance guidelines, which it uses when engaging with ASX200 companies. In many instances these accord with the *Corporate Governance Principles and Recommendation* but they often go further to ensure that boards of listed entities take account of the needs of their retail shareholders to the same degree as the needs of wholesale investors. Other bodies have governance guidelines that align in many instances with those issued by the Council. ASA refers to both our own guidelines and those issued by Council when engaging with listed companies. It is therefore of importance to ASA that the *Corporate Governance Principles and Recommendations* continue to evolve to encourage higher standards and address emerging domestic and global issues in governance.

Many not-for-profit and public sector bodies use the *Corporate Governance Principles and Recommendations* as a model for the development of sector-specific governance guidelines.

Therefore, the reach of the Principles and Recommendations is significant in its impact on Australian organisations. The proposed changes in the Consultation Draft, which seek to inculcate an ethic of stewardship and faithful agency, are therefore supported by ASA in their application both to listed entities and Australian organisations in general.

Our detailed comments follow.

Where we have not commented on a particular recommendation, it can be taken that we support that Recommendation as drafted.

Detailed comments

ASA supports the introduction of the nine new recommendations in the Consultation Draft.

ASA also supports the revisions to existing recommendations as set out in the Consultation Draft. However, there are instances where we believe that matters dealt with in the commentary should be elevated to Recommendations, because the Recommendations require disclosure.

Principle 1

Recommendation 1.1 (revision of existing recommendation)

ASA supports the introduction of the amendment to the commentary to Recommendation 1.1 requiring listed entities to define their purpose and have the board approve the statement of core values and code of conduct.

The relationship of trust that boards must engender should extend beyond shareholders to the other stakeholders that engage with or are affected by companies — customers, employees, suppliers, regulators, the environment and the community in which any company operates. The role of the corporation in society will reflect the broader economic, social, and political context and so will evolve. Companies needs to maintain trust with all stakeholders; clarifying their purpose assists in this undertaking. Purpose is not vision, or mission, or values, although all of those remain important. Purpose is about what a company is doing for someone else — why it exists. At its core, purpose represents how corporations contribute to the wellbeing of society in multiple ways and this is an intrinsic part of driving sustainable shareholder value.

ASA also supports the commentary clarifying that information supplied to the board by management should not be limited to financial performance of the entity, but also confirm its compliance with legal and regulatory requirements and report any material misconduct that is inconsistent with the values or code of conduct of the entity.

Recommendation 1.2 (revision of existing recommendation)

ASA supports the amendment to Recommendation 1.2 that a listed entity should undertake background checks on senior executives, as well as directors, before engaging them.

In relation to point (b) of the Recommendation, ASA strongly recommends that the commentary be expanded to provide guidance that in the case of a candidate standing for re-election as a director, the company should also restate to investors details of any interest, position, association or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity and its security holders generally.

Recommendation 1.3 (revision of existing recommendation)

ASA supports the amendment to the commentary to Recommendation 1.3 that the contract of appointment with a director or senior executive should be with the director or senior executive personally rather than an entity supplying their services, to ensure personal accountability by the person for any breach of that agreement.

Recommendation 1.5 (revision of existing recommendation)

ASA supports the amendments to Recommendation 1.5 (diversity):

- splitting the requirement to have a diversity policy from the requirement to set measurable gender objectives
- making it clear that measurable gender objectives should be targeted at the composition of the senior executive team and workforce generally as well as the composition of the board
- stating that for ASX300 entities the measurable objective should be to have not less than 30% of their directors of each gender - ASA notes that our *Voting & engagement guidelines*, issued in March this year, include the same objective
- requiring the board to undertake an annual review with management of the entity's progress toward achieving its measurable gender objectives and requiring the entity to disclose whether such a review took place
- requiring the entity to disclose its diversity policy in full rather than a summary of it. ASA notes that as policies can be disclosed on an entity's website in a corporate governance section (rather than in the corporate governance statement in the annual report) there is no need for a summary of any policy. A summary has the potential to distort or confuse the assessment of a policy and how it will apply.

ASA notes that it is vital that the policy include the full commitment expressed in paragraph 2 in the draft commentary.

ASA also supports the additional commentary to this Recommendation suggesting that entities:

- disclose insights from the review of progress towards attaining the measurable gender objectives
- disclose the outcomes and actions taken as a result of any gender benchmarking they do against their peers or gender pay audits
- express a commitment to diversity at all levels in all its facets in the diversity policy and have boards consider these other facets of diversity when considering board composition.

Recommendation 1.6 (revision of existing recommendation)

ASA supports the amendment to Recommendation 1.6 that listed entities should have and disclose a process for annual board evaluation.

However, ASA is of the view that the amendment to the commentary encouraging a board to disclose any insights it has gained from the evaluation, and any governance changes it has made as a result, should form a Recommendation, which would bring with it a disclosure requirement.

The disclosure should pick out two or three outcomes of a board evaluation that the board has agreed to address. Boards should then address those themes and report the following year that they have done so. From ASA's perspective, there is otherwise no sanction that is feasible from shareholders, and no accountability and no time lines in place for the board. In a management performance review, there is always a timeframe for improvement and it should be no different for boards. Disclosing broad themes should not compromise either confidential or commercial information, but will provide greater accountability. In the UK, under a similar disclosure regime, there is a greater requirement to focus on outcomes with year-on-year monitoring of outcomes and follow-up. From the long-term perspective, investors need to know what the board issues are and if they are being addressed.

Principle 2

Recommendation 2.2 (revision of existing recommendation)

ASA supports the amendment to the commentary giving greater guidance on what should be included in a board skills matrix, and suggestions for possible formats. A skills matrix not only identifies the skills, knowledge, experience and capabilities that the board needs for the current challenges facing the entity, but should also address how the board believes it should be constituted to address the future challenges and strategic direction of the company. It is a valuable window for investors to ascertain — to some degree — whether the skillset of the board is appropriate not only to meet current performance requirements but also to create long-term value creation.

Investors recognise that it may be detrimental to disclose gaps in current board skills. ASA is of the view that recognition of insufficient skills is evidence that the board is actively engaged in considering its current and future needs, but disclosure of such could be misinterpreted as a board revealing incapacity. Nonetheless, boards should be as complete as possible in clarifying to investors how the skillset of directors can meet the needs of the entity.

Recommendation 2.3 (revision of existing recommendation)

ASA supports the revision to Recommendation 2.3 on the factors relevant to assessing the independence of a director.

ASA recommends that Box 2.3 expand to include additional guidance on when there can be no doubt that independence has been compromised, for example, after 12 years on the board.

Recommendation 2.4 (revision to existing recommendation)

ASA supports the amendment to the commentary that, if a listed entity does not have a majority of independent directors, it should have more than one independent director. ASA agrees with the Council that having a single, independent director could lead to that director being isolated and less effective in holding management to account.

ASA clarifies in our *Voting & engagement guidelines* that "Where there is not a clear majority of independent directors, ASA may oppose the re-election of directors classified as 'not independent'."

Recommendation 2.6 (revision to existing recommendation)

ASA supports the amendment to Recommendation 2.6 and its accompanying commentary providing for ongoing review of directors' skills and knowledge to ascertain if further professional development is required. Shareholders need to have confidence that directors are keeping abreast of evolving issues ranging from governance to cyber-security, digital disruption and other matters.

Recommendation 2.7 (new recommendation)

ASA supports the new recommendation that, where a director is not fluent in the language in which the board and shareholder meetings are held or key corporate documents written, the entity should disclose what process is in place to ensure that that director understands and can contribute to the discussion at board and shareholder meetings. Shareholders would be concerned that directors might participate in board decision-making without adequate capacity to understand or engage in the discussion leading to the decision, and that directors might issue documents on which investors rely when the director has little or no understanding of the contents of the documents. At no point should directors be able to claim non-comprehension of or capacity to speak in English as a reason for non-participation in board discussion or review of disclosures to investors.

ASA recommends that this disclosure requirement should be included in the Listing Rules, so that investors can have confidence that all directors can fulfil their duties.

Principle 3

Recommendation 3.1 (new recommendation)

ASA supports Recommendation 3.1 seeking a disclosure from listed entities concerning their core values. See our comments in Overview.

Recommendation 3.2 (revision of existing recommendation)

ASA supports the amendment to the former Recommendation 3.1 (now 3.2) requiring:

- the entity to disclose its code of conduct in full, rather than a summary of it — see our earlier comments on the potential for distortion of a policy/code of conduct when a summary is provided
- all breaches of the code of conduct by a director or senior executive and any other material breaches of the code to be escalated to the board.

While we support the amendments, ASA is of the view that the Recommendation should include a requirement seeking transparency from boards as to the sanctions or penalties imposed if a director or senior executive breaches the code of conduct. This should not be left to the commentary.

We note that the commentary has been amended to encourage a board to disclose general actions it has taken to enforce its code of conduct (recognising that legal and other constraints may prevent it from disclosing specific details of any individual action). However, from ASA's point of view, boards have codes of conduct that are intended to be meaningful statements of core values and it becomes a governance matter for shareholders to know how the board responded to the breach.

It is particularly relevant if it is the CEO who breaches the code of conduct. If there are no sanctions or penalties when a CEO breaches a code of conduct, it sends a message to the rest of the organisation that breaches of the code of conduct may be overlooked or ignored, and that the stated core values are meaningless. Improved transparency of actions taken where breaches have occurred will send a strong message to employees about what behaviours or actions are unacceptable. If directors are made aware of a breach of the code of conduct, the sanction or penalty needs not only to be applied but also disclosed.

Box 3.2

ASA recommends adding "or their related parties" to the final bullet point.

Recommendation 3.3 (new recommendation)

ASA supports the new Recommendation requiring a listed entity to have and disclose a whistleblowing policy and to ensure that the board is informed promptly of any material concerns raised under that policy.

While draft legislation is currently before Parliament that, if introduced, will make it mandatory for listed companies to have a whistleblower policy, with penalties applying to those companies that fail to do so, ASA is of the view that the new Recommendation 'puts flesh on the bone' in terms of encouraging employees to come forward with concerns that the entity is not acting lawfully, ethically or in a socially responsible manner. This goes to the heart of ensuring a sound corporate culture based on core values. The draft legislation does not fully address this issue.

Recommendation 3.4 (new recommendation)

ASA also supports the new Recommendation requiring a listed entity to have and disclose an anti-bribery and corruption policy, and to ensure that the board is informed of any material breaches of that policy. See our comments earlier on the need for boards to take accountability for instilling an ethical culture and providing transparency to the market should the core values of the company be called into question.

ASA recommends that the commentary be expanded to provide guidance that any political donations and expenses should be disclosed in the annual report or on the company's website, as well as any non-trivial gifts to directors or senior executives.

Principle 4

ASA supports the change in Principle 4 from 'safeguarding corporate reporting' to 'producing corporate reports of high quality and integrity'. This shifts the focus from an internal perspective to ensuring that investors are informed and can take confidence in the integrity and completeness of the information reported.

Recommendation 4.1

ASA recommends that Recommendation 4.1 (b) be expanded to state that the audit committee should determine and publish a maximum limit on fees (as a percentage of audit fees) for non-audit services that may be provided by the auditor or its associates in a financial year.

Recommendation 4.4 (new recommendation)

ASA supports the new recommendation that a listed entity (a) should have and disclose its process to validate that its annual directors' report and any other corporate reports that it releases to the market are accurate, balanced and understandable, and provide investors with appropriate information to make informed investment decisions; and (b) with commentary that an entity's corporate reports for these purposes include any quarterly activity reports and quarterly cash flow reports that the entity may be required to provide under the Listing Rules and, if the entity produces them, an integrated report or sustainability report.

Retail shareholders in particular are reliant on the annual directors' report and other corporate reports issued to the market. They are not full-time investors with specialist teams dedicated to analysing all available information on companies on a daily basis. It is therefore of the utmost importance that corporate reports are not only accurate and balanced (which means providing information on the 'bad' as well as the 'good'), but also understandable.

Australia has the strongest culture in the world for individual direct sharemarket investment by ordinary citizens. Many of our large, listed companies have significant numbers of retail shareholders on the register. Individuals invest in shares so that the benefits of corporate prosperity can be spread, and use their savings to finance equity in Australian companies. It is essential, therefore, that corporate reports provide appropriate information to independent investors so that they can make informed investment decisions.

Importantly, ASA recommends that the commentary should be expanded to note that companies should explain in their annual reports that only the financial statements and remuneration report have been subject to audit assurance, unless the company has sought audit assurance of other sections of the annual report, in which case that should also be disclosed.

Principle 5

Recommendation 5.1 (revision to existing recommendation)

ASA supports the new recommendation requiring the entity to disclose its continuous disclosure policy in full rather than a summary of it. Our reasons for supporting disclosure of the full policy are set out above.

Recommendation 5.2 (new recommendation)

ASA supports the new recommendation requiring a listed entity to ensure that its board receives copies of all announcements under Listing Rule 3.1 promptly after they have been made. Directors should be fully apprised of all announcements made to the market and approve those of a material nature. ASA recommends that "and immediately" replace "promptly".

Recommendation 5.3 (new recommendation)

ASA supports the new recommendation requiring a listed entity that gives a new investor or analyst presentation to release a copy of the presentation materials on the ASX Market Announcements Platform ahead of the presentation.

This goes to the heart of continuous disclosure and ensuring that the market is fully informed on an equal basis. It is vital that retail shareholders have equal access to investor or analyst briefings.

ASA recommends that Recommendation 5.3 be expanded to require a listed entity to post webcasts and transcripts of the full Q&A session at such analyst briefings in the investor relations/corporate governance section of the company's website.

Principle 6

Recommendation 6.2 (revision of existing recommendation)

ASA strongly supports the addition of the statement in the Principle that, while the focus of many investor relations programs will be on larger investors and financial market participants who service larger investors, listed entities should also seek opportunities to engage with retail investors and the organisations that represent them, to understand the matters of concern or interest to smaller investors. See our comments above on the size of the retail investor base in Australia.

ASA also supports the amendments to Recommendation 6.2:

- referring to proxy advisers to be added to the list of possible stakeholders to be included in the investor relations program of a larger listed entity
- adding a suggestion that a listed entity should also consider monitoring popular social media forums used by retail investors for comments about the entity, and
- adding a statement that where significant comments or concerns are raised by investors, they should be conveyed to the entity's board and relevant senior executives.

Recommendation 6.3 (revision of existing recommendation)

ASA supports the amendment to Recommendation 6.3 that strengthens the requirement for a listed entity to disclose how it facilitates and encourages participation at meetings of shareholders. We also support the additional commentary that recommends that companies should:

- choose a venue for a meeting of shareholders that is reasonably accessible to those who wish to attend the meeting in person or by proxy, and

- if it has a large or geographically diverse register, consider having hybrid meetings that allow shareholders to attend and vote in person, by proxy or online.

ASA recommends that Recommendation 6.3 be expanded to include an additional bullet point requiring listed entities to make available in the investor relations/corporate governance section of the website the full transcript of the AGM, including the Q&A session.

ASA also recommends that the commentary be expanded to encourage all listed entities to hold AGMs, even in case where there may be no resolutions on which investors will vote (for example, non-stapled trusts). The annual general meeting is the primary opportunity for a listed entity to inform and engage with its retail investors and the form of the entity's legal structure should not be an excuse for some listed entities to avoid this engagement.

ASA accepts that, while the AGM is a key aspect of the governance framework and the prime forum for engagement with retail shareholders, listed companies are struggling to attract shareholder participation. Computershare research over some years shows that shareholder attendance at AGMs is down 25 percent over ten years. In 2017 only 0.15 per cent of shareholders attended company meetings (Computershare's *AGM Intelligence Report 2017*).

ASA therefore strongly supports Recommendation 6.3 and its commentary encouraging the use of technology in general meetings. In 2017 and 2018, ASA held hybrid AGMs, which were very successful in attracting participants online as well as those physically able to attend the meeting. ASA is encouraging all listed companies to follow our lead and hold a traditional AGM that allows remote attendance, voting and questioning. Directors should not avoid being 'eyeballed' by their shareholders — the face-to-face meeting remains a key aspect of governance. But our view is that enabling geographically challenged shareholders to participate will help to reinvigorate shareholder participation at the AGM.

ASA also recommends that the commentary be expanded to encourage companies to be genuinely interested in investor questions and feedback at general meetings, rather than seeing the annual general meeting as a "compliance exercise".

Recommendation 6.4 (new recommendation)

ASA supports the new Recommendation 6.4 that requires a listed entity to hold a vote on all resolutions at a general meeting on a poll rather than a show of hands.

ASA's *Voting & engagement guidelines* recommend voting on a poll rather than a show of hands. To quote from our guidelines: "A show of hands does indicate the voting intentions of those present, but it does not usually reflect shareholder intent indicated by proxy votes. A poll reflects the wishes of shareholders present at the meeting as well as those shareholders who have lodged proxies."Deciding the vote on resolutions by poll provides transparency and preserves the integrity of the voting.

Proposed additional recommendation

ASA recommends that Principle 6 be expanded to include a new recommendation that all directors (except the managing director) of ASX200 companies should stand for election annually at the annual general meeting. This has been a requirement of FTSE350 companies under the UK Corporate Governance Code since 2011 (and already applies to the very small number of dual-listed companies).

Principle 7

ASA supports the change to the commentary to Principle 7 stating that a sound risk management framework is based on an informed understanding of the key drivers of an entity's long-term success and a thorough assessment of the material risks inherent in its business model and strategy. We support the change to the commentary stating that the risk management framework should address financial and non-financial risks, as well as risks with a short, medium or long-term horizon.

Retail investors are frequently long-term, loyal shareholders, seeking long-term, sustainable value creation. Companies should value loyal shareholders, although ASA notes that unconditional loyalty – staying with a company, irrespective of whether it is destroying long-run value – does not support good governance and simply entrenches management. Retail shareholders offer companies conditional loyalty: staying with a company, even if short-term earnings are low, but only if the company is pursuing long-term value. A comprehensive description of the material risks inherent in the business model and strategy will provide retail investors the information they need to ascertain if they will offer this conditional loyalty.

ASA recommends an amendment to the introduction to Principle 7, which currently states that "It is the role of the board to oversee the risk management framework and satisfy itself that the framework is sound and that management is operating with due regard to the risk appetite set by the board". ASA believes that the statement about risk appetite should align with Recommendation 7.1, which states that the role of the risk management committee is 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". That is, the introduction should also state that it is the role of the board to satisfy itself that "management is operating within the risk appetite set by the board".

Recommendation 7.1 (revision to existing recommendation)

ASA supports the amendment to Recommendation 7.1 adding more detail about the role of the risk committee.

Recommendation 7.2 (revision of existing recommendation)

ASA supports the amendment to Recommendation 7.2 adding a further requirement that the board satisfy itself as part of its annual review of the entity's risk management framework that the entity is operating with due regard to the risk appetite set by the board, but noting our comments above, Recommendation 7.2(a) should be amended to align with Recommendation 7.1, that "management is operating within the risk appetite set by the board" (not with due regard to it).

This has implications for the commentary, which currently states that "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". While acknowledging that the framework should be robust and flexible, given that circumstances can change rapidly, ASA has serious concerns that the commentary allows for management to operate outside the risk appetite and only inform the board afterwards. ASA is of the view that the board or risk committee should approve operation by management outside the risk appetite before the exception occurs. ASA recommends amendment to the commentary to note that the matter should be approved by the board or risk committee.

Recommendation 7.3 (addition of footnote to existing recommendation)

ASA supports the addition of the footnote referencing the International Standards for the Professional Practice of Internal Auditing.

ASA recommends that "periodically" should be amended to "annually" in the commentary.

Recommendation 7.4 (revision to existing recommendation)

ASA supports the amendment to Recommendation 7.4 to refer to 'environmental and social risks' rather than 'economic, environmental and social risks'. Environmental and social risks are part of ESG risks and commonly accepted terminology.

Importantly, we support the new emphasis on social licence to operate in the commentary, and the suggestion that companies which form the view that they do not have any material exposure to environmental and social risks should consider carefully their basis for that belief and benchmark their disclosures in this regard against those made by their peers.

ASA also supports additional commentary on companies giving greater guidance on the disclosure of climate change risk, as recommended in the Senate Economics References Committee report on Climate Risk Disclosure. Developments in Australia and abroad have placed climate-related financial risks firmly in sight.

ASA is of the view that the suggestion that listed entities with material exposure to climate change risk implement the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures should be strengthened. Companies with exposure to such risks should be encouraged, rather than it being merely a *suggestion* that they implement the recommendations of the Taskforce. Several years ago, G20 Finance Ministers and Central Bank Governors perceived that a lack of company transparency on climate risks was impeding investment, credit and underwriting decisions and obscuring potentially systemic climate-related risks. The business-led final report issued by the Taskforce recommends a voluntary, practical, global framework for improving a wide spectrum of climate-related disclosures and aims to improve information for investors, lenders and insurance underwriters.

ASA also points to the release in November 2016 in Australia by the Centre for Policy Development and the Future Business Council of an influential legal opinion on company directors' legal obligations to consider the impacts of climate change. The opinion was authored by barrister Noel Hutley SC, who stated that company directors who fail to properly consider and disclose foreseeable climate-related risks to their business could be held personally liable for breaching their statutory duty of due care and diligence under the Corporations Act. This supports our contention that companies facing climate-change related risks should be encouraged to make disclosures rather than it being only a suggestion. This is further supported by the Australian Prudential Regulatory Authority (APRA) stating that some climate risks are distinctly "financial" in nature, and that many of these risks are foreseeable, material and actionable now.

ASA recommends that further guidance be provided in the commentary as to where disclosures against Recommendation 7.4 be made, for example, in the annual report or on the company's website.

Principle 8

ASA supports the clarification in the commentary to Principle 8 (and also in the guidelines for executive remuneration in Box 8.2 under Recommendation 8.2) that remuneration should be aligned with the creation of value for shareholder over the short, medium and longer term. We also support:

- adding a statement that when setting the level and composition of remuneration an entity should not reward conduct that is contrary to the entity's values or risk appetite — ASA believes this could be strengthened and recommends that the commentary be amended to state that an entity's remuneration policy should *discourage* conduct that is contrary to the entity's values or risk appetite
- adding a reference to the implications for an entity's social licence to operate if it is seen to pay excessive remuneration to directors and senior executives — ASA also believes that this could be strengthened and recommends that the commentary be amended to state that when setting the level and composition of remuneration an entity should consider the detrimental impact on an entity's social licence to operate if it is seen to be paying excessive remuneration to directors and senior executives
- adding the suggestion that a listed entity should benchmark its remuneration against those of its peers to verify that it is not excessive.

Recommendation 8.2

ASA recommends that Recommendation 8.2 be expanded to require companies to disclose if the directors have a "skin in the game" policy, as well as its requirements if one is in place. ASA believes that non-executive directors should have alignment with shareholders through a meaningful equity investment in the company.

Recommendation 8.4 (new recommendation)

ASA supports the new recommendation that a listed entity should only enter into an agreement for the provision of consultancy or similar services by a director or by a related party of a director, but only in terms of application to directors, and so it would read as follows:

- if it has independent advice that:
  - the services being provided are outside the ordinary scope of their duties as a director
  - the agreement is on arm's length terms, and
  - the remuneration payable under it is reasonable, and
- with full disclosure of the material terms to shareholders.

However, ASA does not support the inclusion of senior executives in this Recommendation. ASA strongly believes that a senior executive position is full-time and very demanding and that any consulting or similar service outside the scope of that role is not appropriate and cannot be justified as requiring additional remuneration. The agreement between a company and a senior executive should be with the individual and not their consultancy or company.

ASA recommends that Recommendation 8.4 be amended to apply to directors only and that the recommendation be expanded to state that a listed entity should not enter into an agreement with a senior executive on the basis of a consultancy arrangement or similar.

Other changes

ASA supports the other changes to the introduction, the section dealing with externally managed entities and the glossary.

Conclusion

ASA is of the view that the changes set forth in the Consultation Draft are appropriate and desirable given changed shareholder and community expectations in relation to company culture and the social licence to operate of our corporations. Indeed, as set out above, we believe that some of the proposed changes could be further strengthened.

If you have any questions about this submission, please do not hesitate to contact me on (02) 92524244.

Yours sincerely

Judith Fox
Chief Executive Officer