

2 August 2018

Ms Mavis Tan
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Dear Ms Tan

Review of the ASX Corporate Governance Principles and Recommendations ('Principles')

I refer to my telephone conversation with Mr Kevin Lewis last week after returning from Australia and overseas travels, where I requested an extension of time to lodge a submission. This extension of time was granted.

Since the request for an extension of time I have now had the opportunity of reading submissions by other organisations including Herbert Smith Freehills, the Australian Institute of Company Directors and the Corporate Governance Institute.

We agree in substance with many of these Submissions and wish to reiterate or reemphasise our opposition to concepts such as "social licence to operate" or "acting in a socially responsible manner." Also, we would like to warn against the very slippery nature and concept of "corporate culture".

"Social licence"

There is no place, in our view, for a concept like "social licence" in the Principles which acts as a quasi-legal document and which regulates (on an if not, why not basis) corporate governance for listed entities on the ASX. It also has a best practice reputation in corporate governance for other organisations.

As pointed out in other submissions, one of the fundamental principles of Australian company law is that directors owe their duty to the company and not others. To introduce a concept such as "social licence" with its total lack of clarity as to whom and what this may cover would not only be a retrograde step but would be impossible for directors and companies to comply with. Directors could in some circumstances, for example, be liable for breach of their duty to the company. It would also be to the detriment of shareholders, debt providers and Regulators. It would, in our view, severely compromise the Principles and the ASX Corporate Governance Council and lessen the excellent reputation both have in Australia and overseas.

"Culture"

The use of the word "Culture" in the Principles and in the commentary is also very problematic. There is no accepted definition of what "organisational culture" is and no accepted method of measuring it other than by indirect attempts such as absenteeism, employee surveys etc. These may or may not be useful, depending on the question being asked. It also assumes that managers and Boards can change "culture" to suit a company's needs easily. This is not the case. As McKinsey has pointed out, approximately seventy per cent of organisational changes fail.

I attach a copy of an article by James Argent and myself titled "Corporate and personal liability for "culture" in corporations?" (2016) 34 C&SLJ 30 for your further



consideration in this regard.

In our view the Principle 3 as amended in the Draft should be deleted together with the Commentary. All references to "culture", "social licence" and "social responsibility" should also be deleted if not already included in the above.

This however is not to denigrate the work needed to be done by management and Boards in this area, quite the opposite. It is essential they look at this issue and work out what, if anything, needs to be done from a management point of view. However, "culture" should not be regulated by laws including the Principles.

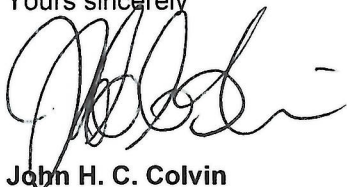
Virtually all the dot points in Principle 3 are covered by existing legislation and are therefore largely compliance with legislation issues. Others belong to general public policy including welfare.

The same applies to 3.3 and 3.4 where legislation is in force now or is mooted to become law soon. Both could easily be deleted.

Recommendation 4 relating to a process to validate its annual Directors Report seems to be superfluous given the current processes required for Annual Reports and would provide a more bureaucratic process with further confusion and little advantage.

Thank you again for the opportunity to provide these comments on the Draft Principles.

Yours sincerely



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