



**MS ELIZABETH JOHNSTONE
CHAIR
ASX CORPORATE GOVERNANCE COUNCIL
20 BRIDGE STREET
SYDNEY NSW 2000**

07 AUGUST 2018

Dear Ms Johnstone,

Re: Submission to the ASX Corporate Governance Council and ASX consultations on proposed 4th edition of the ASX Corporate Governance Principles and Recommendations.

The Ethics Centre appreciates the opportunity to comment on the current review of the ASX Corporate Governance Principles and Recommendations 4th Edition (Principles and Recommendations), which is being undertaken by the ASX Corporate Governance Council.

About The Ethics Centre:

The Ethics Centre is an independent not-for-profit organisation that has been working for over 25 years to help people navigate the complexity and uncertainty of difficult ethical issues. We deliver innovative programs, services and experiences, designed to bring ethics to the centre of professional and personal life, and align actions with values and principles.

We design and deliver services, provide progressive advice and practical support to develop ethical capabilities at the individual, organisation and industry levels. These services guide people through highly sensitive and difficult decisions, from tailored ethics guidance to military personnel being deployed overseas, to advising leaders in some of Australia's largest companies. Our free ethics helpline, Ethi-call, provides a confidential and safe space for people to explore ethical challenges and seek support to make sound, ethical decisions.

Our online content and events – including the IQ2 debate series and the Festival of Dangerous Ideas – take ethics to the wider community and encourage rich dialogue and healthy debate about complex ethical issues that are on the collective mind. Throughout our 29 year history we have also established major social impact initiatives such as Primary Ethics and the Banking & Finance Oath.

The world is shaped by our choices. By learning to navigate and recover from the most distressing ethical problems, individuals and organisations acquire the insights and tools to make ethical decisions throughout their daily lives. In this way, our work goes beyond relieving the symptoms of ethical failure – we also help to prevent its causes, empowering people to shape our world for the better.

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Principle 1: Lay solid foundations for management and oversight

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.*

Comments

This principle introduces the language of principles and values. But they also occur throughout the document. This recommendation is in relation to Principle 1, but also its use throughout the document.

Throughout the principles and recommendations there is an overlapping of language around purpose and values. Sometimes 'purpose' is used alone. Sometimes 'values' is used alone. Sometimes 'core values' is used. Sometimes 'purpose and values' are used together.

We recommend using consistent language, defining the language and proving a complete ethical framework. As such, we also recommend including the language of principles – making it “purpose, values and principles”: or an “ethical framework”.

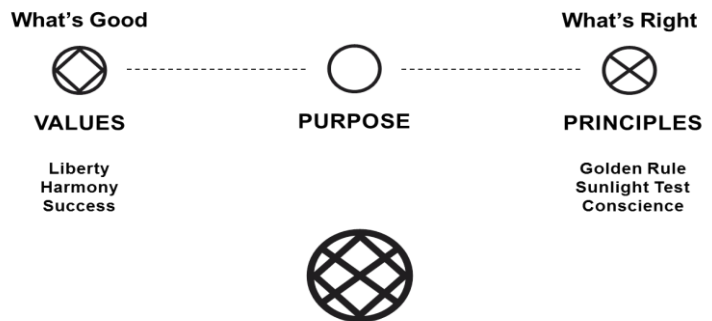
An ethical framework is a central, defining expression of what a company believes in and seeks to uphold. It is more than an aspirational statement of intent. The best companies bring cohesion to their business decisions by showing their people how these core ideals guide everyday business decision making. It consists of three parts: purpose, values and principles.

Purpose

Organisations describe their purpose in a simple and concise statement to explain 'why' they exist. This statement goes beyond self-interest and profit motives, to demonstrate its ethical core. It explains how an organisation seeks to improve people's lives and make a contribution to a better society or world.

A purpose statement is different from an organisation's vision or mission. A mission describes what an organisation does - it's a focused and clear statement defining the business you are in. A vision describes what an organisation wants to be - it's inspirational and future oriented. Purpose describes why an organisation exists - it's aspirational and provides meaning. It fuels passion and creates a binding culture. It is the shared language, stories and practices that underpin everything the organisation

WHAT OUGHT ONE TO DO?



The core foundations of culture and choice



does. This historical narrative of an organisation is critical to creating a successful purpose statement.

Values and Principles

Values and principles together form the bedrock for all decisions and therefore the foundation for the culture and conduct of organisations.

Values are an expression of what we think to be *good*. If you allow a person an unconstrained choice they will always choose the option they think is good or best. This is the first element in the basic structure of ethics. An obvious second question then is: 'What is or should count as "good"?'

Principles are an expression of what we think to be *right*. Their task is to shape the means by which we obtain the things that are good. If values tell us where to go, principles tell us how to get there.

There are two types of principles, and in an ethical framework we are concerned mainly with the latter.

- + Formal Principles – setting the parameters for how to decide (e.g. consider the interests of all relevant stakeholders). Formal principles are useful for ensuring that the decision-making process is in order. However, they do not guide the actual decision. The principles articulated in the *Principles and Recommendations* are an example of formal principles.
- + Normative Principles – Set the parameters for what ought to be decided. Normative principles establish one of the foundations for making decisions that an organisation deems to be 'right'.

Examples of principles include things like: 'do unto others as you would have them do unto you', 'only do those things you would be proud to do in the full light of day', 'treat every colleague as if they are your friend' and so on.

Confusion often arises about the difference between values and principles. The best way to explain the difference is to distinguish between 'thick' and 'thin' content. Values have thick content in that their central meaning is independent of the particular circumstances in which people find themselves. For example, the value of 'friendship' can be expressed in different ways in different cultures, but the central idea—that of affection, affinity, and reciprocal obligation beyond family—is held in common. On the other hand, despite their considerable power to affect conduct, principles have only 'thin' content.

This becomes clear if we look at three classic principles:

- + The golden rule: Do unto others as you would have them do unto you.
- + The sunlight test: We should do only those things we would be proud to be seen doing by those whose options we respect.
- + Conscience: We should act only according to a well-informed (and well-formed) conscience.

Each of these principles has its own history, and each provides a different basis for making practical decisions about how to secure the things we deem to be good. What they have in common, however, is that they do not provide any detailed information about how we should treat people, what we should be proud to do, or what a particular conscience might decide in a particular situation. When it comes to principles, the thin content leaves a large amount of room for us to make decisions. Thus, one person's view of how they would like to be treated might differ from another person's: a member of a criminal syndicate might value only the esteem of other criminals; one



doctor might in good conscience perform an assisted suicide, whereas another might not.

In view of this, one might be inclined to question the point of principles: if their content is so thin, why bother with them at all? They do provide freedom, but it doesn't make them less powerful. If you claim for yourself the golden rule (Do unto others ...) there is no escaping the conclusion that you do wrong if you treat someone in a way you would not like to be treated.

There are many other principles an organisation might adopt, and it is possible to uphold many at the same time as long as they are not mutually contradictory. For example, you could replace the golden rule, the sunlight test and conscience with alternative principles:

- + The iron rule—Do unto others before they do it to you.
- + The shadow test—Don't get caught.
- + Convenience—Do whatever feels good at the time.

A person who upheld these principles would make choices that are radically different from those made by someone adopting the first trio of principles. It is for this reason that a complete guide to good conduct must include both values and principles. Only when both components are present can we hope to shape the basis for human choice.

Together, values and principles operate as the two strands of 'organisational DNA'. They shape our choices and therefore the organisations we make. If the values and principles are changed, then the organisation changes with them. They are the most powerful determinant in shaping good decisions.

There are many values and principles from which a company might choose. In order to make a proper selection, a company needs to understand its defining purpose (the reason that it exists) and the conditions under which it is likely to prosper.

Recommendation

That the language and concept of 'purpose, values and principles' or 'ethical framework' be adopted and used consistently throughout the *Principles and Recommendations*.



Principle 3: Instil the desired culture

A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and in a socially responsible manner.

Comments

The Ethics Centre defines “culture” as consisting of the common values, mindsets, beliefs, understandings and priorities that are learned in the workplace and that shape the decisions and practices of employees. Culture is also expressed in and reproduced in the workplace through routine work practices and organisational artefacts.

Including ethics within a ‘desired culture’ has the unintended effect of confining ethics to sitting as a subset of culture. We argue that ethics gives shape to culture and not vice versa. It is higher order.

Similarly, ethics is not only the core foundation of a desired culture but also the core foundation of good decision making. By placing ethics as a sub-set of culture it may unintentionally be siloed to an activity of a human resources culture team, rather than giving effect to all choice across the business and effectively owned by the executive and board. It is these choices, driven by ethics, which shapes the world around us and shape our culture.

In our experience in working on ethics with many listed entities, we work not only to shape *culture*, but also to help businesses consider specific high impact decisions, which would not sit within the traditional HR culture landscape. This might include, for example:

- + Determining appropriate compensation payments to customers harmed by historical process failures
- + Navigating the ethical dilemmas that are raised when adopting artificial intelligence and new technology
- + Investigating ethical dilemmas and decision making processes surrounding issues of corporate social responsibility
- + Determining appropriate engagement and decisions surrounding harm to landholders and the community

Recommendation

We recommend that this principle be reverted back to that of the 3rd edition - Act ethically and responsibly.

Thank you for the opportunity to provide this submission.

Regards,

VICTORIA WHITAKER
CO-HEAD, ADVICE & EDUCATION