ASX Corporate Governance Council

Corporate Governance Principles and Recommendations

4th edition
Consultation draft

[Inside cover]

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 disclose how their performance is monitored and evaluated.

2. **Structure the board to be effective and add value:** A listed entity should have a board of an appropriate size, composition, skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.

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.

4. **Produce corporate reports of high quality and integrity:** A listed entity should have formal and rigorous processes to validate the quality and integrity of its corporate reporting.

5. **Make timely and balanced 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.

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 owners effectively.

7. **Recognise and manage risk:** A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.

8. **Remunerate fairly and responsibly:** A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders over the short, medium and longer term.

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Foreword

The ASX Corporate Governance Council Principles and Recommendations ("Principles and Recommendations") were first introduced in 2003. A second edition was published in 2007 and a third in 2014.

In 2017, the ASX Corporate Governance Council ("Council") agreed that it was an appropriate time to commence work on a fourth edition of the Principles and Recommendations to address, among other things, emerging governance issues around corporate culture and social licence to operate. The fourth edition comes into force for financial years commencing on or after 1 July 2019.

I would like to express my appreciation to the Council for its work in maintaining the Principles and Recommendations as a world-leading standard on corporate governance by listed entities.

Elizabeth Johnstone
Chair, ASX Corporate Governance Council
[Date] 2019

About the Council

The Council was convened in August 2002. It brings together various business, shareholder 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 Principles and Recommendations.

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 Financial Markets Association
Australian Institute of Company Directors
Australian Institute of Superannuation Trustees
Australian Shareholders' Association
Business Council of Australia
Chartered Accountants Australia and New Zealand
CPA Australia Ltd
Financial Services Council
Financial Services Institute of Australasia
Governance Institute of Australia
Group of 100
Institute of Internal Auditors - Australia
Institute of Public Accountants
Law Council of Australia
Property Council of Australia
Stockbrokers and Financial Advisers Association Limited

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

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."[1]

Good corporate governance promotes investor confidence, which is crucial to the ability of entities listed on the ASX to compete for capital.

The purpose of the Principles and Recommendations

These Principles and Recommendations set 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 legitimately adopt different governance practices, based on a range of factors, including their size, complexity, history and corporate culture. For that reason, the Principles and Recommendations are not mandatory and do not seek to prescribe the corporate governance practices that a listed entity must adopt.

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 diligence[2] and therefore for ensuring that it has appropriate governance arrangements in place.

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 a reasonable level of information about the entity's governance arrangements so that:

- security holders and other stakeholders in the investment community can have a meaningful dialogue with the board and management on governance matters;
- security holders can factor that information into their decision on how to vote on particular resolutions; and
- investors can factor that information into their decision on whether or not to invest in the entity's securities.

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

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1 Justice Owen in the HIH Royal Commission, *The Failure of HIH Insurance Volume 1: A Corporate Collapse and Its Lessons*, Commonwealth of Australia, April 2003 at page xxxiv.

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

The application of the Principles and Recommendations

The Principles and Recommendations apply to all entities admitted to the ASX official list as an ASX listing,[3] regardless of the legal form they take,[4] whether they are established in Australia or elsewhere, and whether they are internally or externally managed.

Some recommendations require modification when applied to externally managed listed entities. There is a separate section immediately after the recommendations below explaining how externally managed listed entities should apply and make disclosures against the recommendations.

The Principles and Recommendations are specifically directed at, and only intended to apply to, ASX listed entities. However, as they reflect 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 are structured around, and seek to promote, 8 central 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 disclose how their performance is monitored and evaluated.

2. **Structure the board to be effective and add value:** A listed entity should have a board of an appropriate size, composition, skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.

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.

4. **Produce corporate reports of high quality and integrity:** A listed entity should have formal and rigorous processes to validate the quality and integrity of its corporate reporting.

5. **Make timely and balanced 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.

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 owners effectively.

7. **Recognise and manage risk:** A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.

8. **Remunerate fairly and responsibly:** A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders over the short, medium and longer term.

There are 38 specific recommendations intended to give effect to these general principles, as well as explanatory commentary in relation to both the principles and the recommendations. There is also a glossary at the end which explains the meaning of a number of the key terms used throughout this

[3] The Principles and Recommendations do not apply to entities admitted to the ASX official list as ASX debt listings or ASX foreign exempt listings.

[4] That is, whether they are a listed company, listed trust or listed stapled entity.

document, including "executive director", "non-executive director", "senior executive" and "substantial holder".

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 statement[5] that meets the requirements of that rule, or the URL of the page on its website where such a statement is located.[6]

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 Council's 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 Council's 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 a reasonable level of information about the governance practices an entity has adopted.

An entity's corporate governance statement must specify the date at which it is current, which must be the entity's balance date or a later date specified by the entity and state that it has been approved by the board of the entity.[7]

Each ASX listed entity must provide to ASX with its annual report a completed Appendix 4G, which has a key to where the various disclosures suggested in the recommendations or required under Listing Rule 4.10.3 can be found.[8]

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.[9]

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5 "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.

6 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.

7 Or, in the case of a trust, the board of the responsible entity of the trust.

8 Listing Rule 4.7.3.

9 Listing Rule 4.7.4.

Again, these requirements apply to all ASX listed entities regardless of the legal form they take, whether they are established in Australia or elsewhere, and whether they are internally or externally managed.

The disclosures required under Listing Rule 4.10.3 and referenced in Appendix 4G relate specifically to the 38 recommendations in the Principles and Recommendations. The principles themselves, and the commentary about the principles and recommendations, do not form part of the recommendations and therefore do not trigger any specific disclosure obligations under Listing Rule 4.10.3.[10]

Where to make corporate governance disclosures

Where these Principles and Recommendations refer to a listed entity disclosing information, it should be disclosed either in the entity's annual report or on its website.

The Council expects that many listed entities will streamline their annual report by choosing to publish their governance disclosures, including their corporate governance statement under Listing Rule 4.10.3, on their website rather than in their annual report.[11] If they do so, 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 a holistic and informative explanation of their corporate governance framework 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 security holders and the broader investment community the robustness of their particular approach to corporate governance.

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[10] Although note the comment on page 6 below that: "Where a listed entity adopts a suggestion in the commentary to a recommendation, it will be helpful and informative for investors and other stakeholders for it to mention that in its disclosures about that recommendation."

[11] As noted previously, if a listed entity includes its corporate governance statement on its website, the Listing Rules require its annual report to mention the URL where the statement can be found.

Disclosing the fact that a recommendation is followed

Where a listed entity follows a recommendation, rather than simply state that fact, it should explain what policies and practices it has in place in that regard and, where applicable, point readers to where they can find further information about those policies and practices. For example, readers are likely to find a statement that:

> *The board has established an audit committee. It has 3 members, all of whom are non-executive directors. A majority of the committee members are independent directors. The committee is also chaired by an independent chair, who is not chair of the board. A copy of the charter of the audit committee is available on the corporate governance page on the company's website at [insert URL]. Information about the members of the audit committee, their relevant qualifications and experience, the number of times the committee met throughout the most recent reporting period and the individual attendances of members at those meetings is also set out on the corporate governance page on the company's website.*

to be more engaging and illuminating than:

> *The entity complies with recommendation 4.1 of the ASX Corporate Governance Council Principles and Recommendations.*

Where a listed entity adopts a suggestion in the commentary to a recommendation, it will be helpful and informative for investors and other stakeholders for it to mention that in its disclosures about that recommendation. As an example, a listed entity might disclose the following in relation to recommendation 1.4:

> *The board has appointed a company secretary. The company secretary reports to the CEO but is accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board. This includes being responsible for:*
> - *advising the board and its committees on governance matters;*
> - *monitoring that board and committee policy and procedures are followed;*
> - *coordinating the timely completion and despatch 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 is able to communicate directly with the company secretary and vice versa.*

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.

Recommendations that are not applicable

The Council understands that a considerable number of listed entities will wish to demonstrate their commitment to good governance by stating in their corporate governance statement that they follow all of the Council's recommendations. This raises the issue of how an entity should address a recommendation that technically does not apply to it.[12]

In such a case, the Council has no issue with an entity stating that it follows all of the Council's recommendations provided, of course, it does in fact follow all of the Council's recommendations apart from those that technically do not apply to it, and it meets the disclosure standards set out above for all of the recommendations that it does follow.

Effective date

This edition of the Principles and Recommendations takes effect for an entity's first full financial year commencing on or after 1 July 2019. Accordingly, entities with a 30 June balance date will be expected to measure their governance practices against the recommendations in the fourth edition commencing with the financial year ended 30 June 2020. Entities with a 31 December balance date will be expected to measure their governance practices against the recommendations in the fourth edition commencing with the financial year ended 31 December 2020.

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

Acknowledgments

The Principles and Recommendations have benefited from the invaluable contributions made by a number of industry associations, corporate governance experts, listed entities and other stakeholders. The Council is most grateful for their input.

[12] Examples of recommendations that might not apply to an entity include recommendation 2.7 (which will not apply if the entity does not have a director who is not fluent in the language in which board or security holder meetings are held or key documents are written), 8.3 (which will not apply if the entity does not have an equity-based remuneration scheme) or 8.4 (which will not apply if the entity has not entered into an agreement for the provision of consultancy or similar services by a director or senior executive or by a related party of a director or senior executive).

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 disclose how their performance is monitored and evaluated.

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

Usually the board of a listed entity will be responsible under its charter for:

- demonstrating leadership;
- defining the entity's purpose and setting its strategic objectives;
- approving the entity's statement of core values and code of conduct to underpin the desired culture within the entity;[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;[14]
- overseeing management in its implementation of the entity's business model, achievement of the entity's strategic objectives, instilling of the entity's values and performance generally;
- 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;
- ensuring that the entity has in place an appropriate risk management framework and setting the risk appetite within which the board expects management to operate;
- ensuring that the entity's remuneration framework is aligned with the entity's purpose, values, strategic objectives and risk appetite; and

[13] See recommendation 3.1 below.

[14] In relation to the appointment and removal of the company secretary, see note 25 below.

- monitoring the effectiveness of the entity's governance practices.[15]

The senior executive team will usually be responsible for implementing the entity's business model, achieving its strategic objectives and instilling and reinforcing its values, 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 its compliance with material legal and regulatory requirements and any material misconduct that is inconsistent with the values or code of conduct of the entity.

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 will also usually be responsible for approving board agendas 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 nature of matters reserved to the board and those delegated to management will depend on the size, complexity and ownership structure of the entity, and will be influenced by its history and culture, and by the respective skills of its directors and management. These may vary over time as the entity evolves. The board should regularly review the division of functions between the board and management to ensure that it continues to be appropriate to the needs of the entity.

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

A listed entity should ensure that appropriate checks are undertaken before it appoints a director or senior executive or puts someone forward to security holders for election as a director. These should include checks as to the person's character, experience, education, criminal record and bankruptcy history.[16]

[15] Some of these matters may be delegated to a committee of the board, with the board retaining the ultimate oversight and decision-making power in respect of the matters so delegated.

[16] Listed entities may find the guidance in Australian Standard AS 4811-2006 *Employment screening* helpful in understanding the types of checks that may be undertaken and how best to undertake them.

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 and the outcome of those checks;
    - details of any interest, position, affiliation 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 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[17] 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.

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.

Recommendation 1.3:

A listed entity should have a written agreement with[18] each director and senior executive setting out the terms of their appointment.[19]

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[17] This applies regardless of who nominates the candidate for appointment or election as a director, including where the candidate nominates himself or herself or is put forward by a security holder or holders (for example, under section 249D, 249F, 252B or 252D of the Corporations Act).

[18] The reference in this recommendation to a listed entity having a written agreement *with* a director or senior executive means having an agreement with the director or senior executive personally rather than with an entity supplying their services (see the commentary below).

[19] It should be noted that a listed entity is required under Listing Rule 3.16.4 to disclose the material terms of any employment, service or consultancy agreement it or a child entity enters into with its CEO (or equivalent), any of its directors, and any other person or entity who is a related party of its CEO or any of its directors. It is also required to disclose any material variation to such an agreement.

Commentary

The directors and senior executives of a listed entity should have a clear understanding of their roles and responsibilities and of the entity's expectations of them and this should be reduced to a written agreement. Usually this 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.

In the case of a non-executive director, the agreement should generally set out:

- the term of appointment;
- the time commitment envisaged, including any expectations regarding involvement with committee work and any other special duties attaching to the position;
- remuneration, including superannuation entitlements;
- 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,[20] its anti-bribery and corruption policy[21] and its trading policy;[22]
- 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);
- the circumstances in which the director's office becomes vacant;
- indemnity and insurance arrangements;
- ongoing rights of access to corporate information; and
- ongoing confidentiality obligations.

In the case of an executive director or other senior executive, the agreement should generally set out the information above (to the extent applicable), as well as:

- a description of their position, duties and responsibilities;
- the person or body to whom they report;
- leave entitlements;
- the circumstances in which their service may be terminated (with or without notice); and
- any entitlements on termination.

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[20] See recommendation 3.2.

[21] See recommendation 3.4.

[22] Listing Rule 12.9 requires a listed entity to have a trading policy covering its directors and other key management personnel and regulating trading in its securities during certain "prohibited periods".

In each case, the agreement should be with the director or senior executive personally rather than an entity supplying their services.[23] This is to ensure that the director or senior executive is personally accountable to the listed entity for any breach of the agreement.[24]

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 despatch 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.[25]

Recommendation 1.5:

A listed entity should:

(a) have and disclose[26] a diversity policy;

(b) through its board or a committee of the board:

(i) set measurable objectives for achieving gender diversity in the composition of its board, senior executives and workforce generally;

(ii) charge management with designing, implementing and maintaining programs and initiatives to help achieve those measurable objectives; and

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[23] For example, under a consultancy agreement between the listed entity and an entity associated with the director or senior executive agreeing to provide their services as a director or senior executive. See also recommendation 8.4 in relation to agreements for consultancy or similar services by directors or senior executives or their related parties involving services outside the ordinary scope of their duties as a director or senior executive.

[24] The Council is aware that some directors of listed entities supply their services through a "personal services company" and have their fees paid to that company rather than to the director personally. Provided the director has a personal letter of appointment with the listed entity setting out the director's duties and responsibilities, such an arrangement is not inconsistent with this recommendation. However, listed entities and directors should be cognisant of the perception that such an arrangement may create of the director being afforded preferential treatment.

[25] Listed companies established in Australia should note section 204D of the Corporations Act, which requires the appointment of a company secretary to be formally resolved, rather than simply approved, by the board.

[26] An entity may redact from the disclosed copy of its diversity policy personal or confidential information such as the names and contact details of individual staff involved in diversity issues.

(iii) review with management at least annually the entity's progress towards achieving those measurable objectives and the adequacy of the entity's programs and initiatives in that regard; and

(c) disclose in relation to each reporting period:

(i) the measurable objectives for achieving gender diversity set by the board or a committee of the board;

(ii) the entity's progress towards achieving the measurable objectives;

(iii) whether the review referred to in (b)(iii) above has taken place; and

(iv) either:

(A) the respective proportions of men and women on 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.[27]

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 not less than 30%[28] **of its directors of each gender within a specified period.**

Commentary

Diversity is increasingly seen as an asset to listed entities and a contributor to better overall performance, particularly in a competitive labour market.

A listed entity should have a diversity policy that expresses its commitment to embrace diversity at all levels and in all its facets, including gender, marital or family status, sexual orientation, gender identity, age, physical abilities, ethnicity, religious beliefs, cultural background, socio-economic background, perspective and experience.

Research has shown, in particular, that better gender balance on boards and in senior management is associated with better financial performance.[29] The promotion of gender diversity can broaden the pool for recruitment of employees, enhance employee retention, foster a closer connection with and

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[27] The Workplace Gender Equality Act applies to non-public sector employers with 100 or more employees in Australia. The Act requires such employers to make annual filings with the Workplace Gender Equality Agency (WGEA) disclosing their "Gender Equality Indicators". These reports are filed annually in respect of the 12 month period ending 31 March.

For an entity which chooses to follow recommendation 1.5(c)(iv)(B), publishing the URL of the webpage on the WGEA website where its latest "Gender Equality Indicators" are available will be taken to meet that particular recommendation.

The Council notes that "Gender Equality Indicators" apply to individual employing entities and are not published on a consolidated basis across groups of entities. They also do not apply to employing entities with less than 100 employees in Australia, nor to employees overseas. As a practical matter, therefore, it may well be that many entities are not able to report meaningfully under recommendation 1.5(c)(iv)(B) and should therefore report under recommendation 1.5(c)(iv)(A).

For further information about the Workplace Gender Equality Act, see the WGEA website: http://www.wgea.gov.au/.

[28] For the avoidance of doubt, a listed entity may set a higher percentage than 30% and meet this recommendation.

[29] For example, see KPMG Enterprise's report *Secrets to success of the ASX 300+: Six priorities of opportunity and challenge* (available online at https://assets.kpmg.com/content/dam/kpmg/au/pdf/2017/secrets-to-success-asx-300-mid-market-enterprises.pdf). The report studied the 2015 and 2016 results of 626 local and 38 foreign companies listed in Australia and found that female CEOs delivered a 9% increase in revenue in 2016, compared to a group-wide average of 0.5%, and that companies with women on their board achieved higher revenue growth, profitability and shareholder returns in 2016.

better understanding of customers, and improve corporate image and reputation. For these reasons, this recommendation has a number of provisions focussed specifically on gender diversity, including that the board of a listed entity or a committee of the board should set measurable objectives for achieving gender diversity in the composition of its board, senior management and workforce generally and charge management with designing, implementing and maintaining programs and initiatives to help achieve those measurable objectives.

If the board decides to delegate to a committee of the board (such as the nomination or remuneration committee) the task of setting the entity's gender diversity objectives, this should be reflected in the charter of the committee in question.

The diversity objectives the board or a committee of the board sets should include appropriate and meaningful benchmarks that are able to be, and are, monitored and measured. These could involve, for example:

- achieving specific numerical targets for the proportion of women on its board, in senior executive roles and in its workforce generally within a specified timeframe;
- achieving specific numerical targets for female representation in key operational roles within a specified timeframe with the view to developing a diverse pipeline of talent that can be considered for future succession to senior executive roles; or
- achieving specific targets for the "Gender Equality Indicators" in the Workplace Gender Equality Act.

Recent reviews suggests that diversity policies are most effective when a listed entity sets numerical targets to be achieved within a specified timeframe, outlines the initiatives it is introducing to help meet those targets and then reports regularly on its progress in meeting those targets.[30] Non-numerical objectives such as "introducing a diversity policy" or "establishing a diversity council", and aspirational objectives such as "achieving a culture of inclusion", while individually worthwhile, are unlikely to be effective in improving gender diversity unless they are backed up with appropriate numerical targets.

To focus management's attention on achieving the diversity objectives the board or a committee of the board has set, 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.

To improve transparency and promote investor confidence, the Council suggests that a listed entity consider disclosing any insights from the annual review conducted by the board or a committee with management and any changes the entity has made to its gender diversity objectives and programs as a result.

A listed entity should tailor its gender diversity reporting to reflect its own circumstances and to give an accurate and not misleading impression of the relative participation of women and men in the workplace and the roles in which they are employed. In particular, when reporting the proportion of women in senior executive positions under recommendation 1.5(c)(iv)(A), listed entities should clearly define how they are using the term "senior executive". This could be done, for example, by reference

[30] See the report by KPMG *ASX Corporate Governance Council Principles and Recommendations on Diversity: Analysis of disclosures for financial years ended between 1 January 2015 and 31 December 2015*, available on the ASX website at https://www.asx.com.au/documents/asx-compliance/asx-corp-governance-kpmg-diversity-report.pdf.

to their relativity in terms of reporting hierarchy to the CEO (eg, CEO - 1, CEO - 2 etc[31]) or by describing the roles that term covers (eg, leadership, management or professional speciality).

The board of a listed entity should also include gender diversity as a relevant consideration in its succession planning.

The Council would encourage larger listed entities with significant numbers of employees to show leadership on gender diversity issues and to provide more granular disclosures of the relative participation of women and men in senior executive roles than the base levels set out in this recommendation. This includes:

- where they define "senior executive" for the purposes of recommendation 1.5(c)(iv)(A) to include more than one level within the organisation (eg, CEO – 1 and CEO - 2), reporting the numbers of women at each level rather than, or as well as, cumulatively across all levels; and
- reporting the relative participation of women and men in management roles immediately below senior executive (eg, down to CEO - 3 and CEO - 4).[32]

Each of these measures will allow readers to gain a better understanding of the progress of women in the organisation through the different levels of management and of the "pipeline" of candidates potentially available for higher management roles.

The Council would also encourage listed entities to benchmark their position on gender diversity against their peers, to undertake gender pay equity audits, and to disclose the outcomes and actions taken as a result so that security holders and other stakeholders gain an insight into the effectiveness of the entity's gender diversity programs and initiatives.

The Council would suggest that boards of listed entities have regard to other facets of diversity in addition to gender when considering the composition of the board. In particular, having directors of different ages and ethnicities and from different cultural or socio-economic backgrounds can help bring different perspectives and experiences to bear and avoid "groupthink" in decision making.

A listed entity may find the suggestions in Box 1.5 helpful when formulating its diversity policy.

Box 1.5: Suggestions for the content of a diversity policy

1. 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.
2. Express the organisation's commitment to diversity at all levels and in all its facets, including gender, marital or family status, sexual orientation, gender identity, age, physical abilities, ethnicity, religious beliefs, cultural background, socio-economic background, perspective and experience.
3. Emphasise that in order to have a well-functioning diverse workplace, discrimination, harassment, vilification and victimisation cannot and will not be tolerated.

[31] 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.

[32] Listed entities interested in understanding leading practice in diversity reporting should refer to the release entitled "*Male Champions of Change Raise the Bar on Gender Reporting*" available online at https://www.humanrights.gov.au/male-champions-change-raise-bar-gender-reporting.

4. 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.

5. Commit to designing and implementing programs that will assist in the development of a broader and more diverse pool of skilled and experienced employees and that, over time, will prepare them for senior management and board positions.

6. Recognise that employees (female and male) at all levels may have domestic responsibilities and adopt flexible work practices that will assist them to meet those responsibilities.

7. 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.

Recommendation 1.6:

A listed entity should:

(a) have and disclose a process for evaluating the performance of the board, its committees and individual directors for each reporting period; and

(b) disclose, for each reporting period, whether a performance evaluation was undertaken in accordance with that process.

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 formal and rigorous process for regularly reviewing 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.

To improve transparency and promote investor confidence, the Council would encourage the board of a listed entity not only to disclose whether a board performance evaluation has been undertaken but also any insights it has gained from the evaluation and any governance changes it has made as a result.[33]

Recommendation 1.7:

A listed entity should:

(a) have and disclose a process for evaluating the performance of its senior executives for each reporting period; and

[33] See the joint publication by Chartered Secretaries Australia (now Governance Institute of Australia) and Boardroom Partners entitled *Anything to declare? A report examining disclosures about board reviews* available online at: http://www.governanceinstitute.com.au/advocacy-research/survey-reports/board-reviews/.

(b) disclose, for each reporting period, whether a performance evaluation was undertaken in accordance with that process.

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 formal and rigorous process for regularly reviewing the performance of its senior executives and addressing any issues that may emerge from that review.

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

A listed entity should have a board of an appropriate size, composition, skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.

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 act in the best interests of the listed entity as a whole rather than in the interests of an individual security holder or other party.

The board should 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.

Recommendation 2.1:

The board of a listed entity should:

(a) have a nomination committee which:

(1) has at least three members,[34] 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

Board renewal is critical to performance. 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 judgement needed on decisions regarding the composition of the board.

[34] The Council recognises that a number of listed entities have nomination committees comprising the entire board. Provided the nomination committee otherwise has an appropriate charter and meets as a committee outside of normal board meetings, this practice complies with recommendation 2.1(a).

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 fact that it does not have a nomination committee and explain 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.

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 have and disclose a board skills matrix setting out the mix of skills that the board currently has or is looking to achieve in its membership.

Commentary

A board "skills matrix" is a useful tool that can help the board identify any gaps in its collective skills that should be addressed by providing professional development to existing directors[35] or taking on new directors. It can also assist the board in its succession planning.

Disclosing the board skills matrix gives useful information to investors and helps to increase the accountability of the board in ensuring it has the skills to discharge its obligations effectively and to add value.

A board skills matrix should address the full range of skills that the board considers desirable in its membership. In this regard, boards are increasingly being called upon to address new or emerging issues including around culture, conduct risk, digital disruption, cyber-security, sustainability and climate change. 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.

There is no prescribed format for a board skills matrix.[36] It can set out either the mix of skills that the board currently has or the mix of skills that the board is looking to achieve in its membership.

In the former case, the board skills matrix will usually take the form of a table listing all of the skills the board thinks it should have and indicating the presence or absence of those skills among existing board members. This need only be done collectively across the board as a whole, without identifying the presence or absence of particular skills by a particular director. Commercially sensitive information, 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, can be excluded.

In the latter case, the board skills matrix is likely to be in the form of a statement rather than a table. The statement should make it clear that it is a description of the mix of skills the board is looking to achieve in its membership and not a representation of the existing skills the board has. It should also summarise the steps the board is taking to acquire those skills.

Whichever format it follows, the entity should explain what it means when it refers to a particular skill in its board skills matrix and the criteria a director must meet to be considered to have that skill.

Recommendation 2.3:

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, affiliation or relationship of the type described in Box 2.3 but the board is of the opinion that it does not compromise the independence of the director, the nature of the interest, position, affiliation or relationship in question and an explanation of why the board is of that opinion; and

(c) the length of service of each director.

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[35] See recommendation 2.6 below.

[36] Guidance on what should be included in a board skills matrix can be found in the Governance institute of Australia's Good Governance Guide *Creating and disclosing a board skills matrix*, available online at: https://www.governanceinstitute.com.au/media/762794/ggg_creating_disclosing_board_skills_matrix.pdf.

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 a substantial holder and can and will bring an independent judgement 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 he or she is free of any interest, position, affiliation 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 as a whole rather than in the interests of an individual security holder or other party.

Examples of interests, positions, affiliations and relationships that might raise issues about the independence of a director are set out in box 2.3. Where a director falls within one or more of these examples, the board should rule the director ***not*** to be independent unless it is clear that the interest, position, affiliation or relationship in question is not material and will not interfere with the director's capacity to bring an independent judgement 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.

Box 2.3 – Factors relevant to assessing the independence of a director

Examples of interests, positions, affiliations and relationships that might raise issues about the independence of a director 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 performance based remuneration (including options or performance rights) or participates in an employee incentive scheme;
- is, or has been within the last three years, in a material business relationship (eg 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 otherwise affiliated with, a substantial 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 substantial holders may have been compromised.

In each case, the materiality of the interest, position, affiliation 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 an independent judgement 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.

A candidate for election as a director of a listed entity should disclose to the entity all interests, positions, affiliations 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.

If there is a change in a non-executive director's interests, positions, affiliations 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, affiliations 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 third example in Box 2.3 (is, represents, or is otherwise affiliated with, a substantial 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 a perception that:

- a director who is a substantial holder in the entity is likely to have such a proportion of their personal wealth tied up in that holding that they have a qualitatively different interest to security holders generally; while
- a director who represents, or is otherwise affiliated with, a substantial holder is likely to have a bias towards the individual interests of that substantial holder rather than the interests of security holders generally.

In relation to the fourth example in Box 2.3 (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 2.3 (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, 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 mere 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 a substantial holder to be considered independent. However, the board should regularly assess whether that might be the case for any director who has served in that position for more than 10 years.

Recommendation 2.4:

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

Commentary

Investors expect, and the law requires,[37] 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

[37] 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.

interests of management or any other person or group with whom a non-independent director may be associated.

Without detracting in any way from the preferred position that a listed entity should have a majority of independent directors, if a listed entity chooses not to follow this recommendation, the Council suggests that it have more than one independent director at all times. Having a single independent director can lead to that director being isolated and less effective in holding management to account.

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

Recommendation 2.5:

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 demands 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.

Recommendation 2.6:

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 and culture and conducting site visits of key operations.

If a director is not familiar with the legal framework that governs the entity, the entity's induction program should include training on their legal duties and responsibilities as a director under the key legislation governing the entity and the Listing Rules (including ASX's continuous and periodic reporting requirements).

If a director does not have accounting skills or knowledge, the entity's induction program should also include training on key accounting matters and on the responsibilities of directors in relation to the entity's financial statements.[38]

As mentioned previously, boards are increasingly being called upon to address new or emerging issues including around culture, conduct risk, digital disruption, cyber-security, sustainability and climate change.

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. 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.

Recommendation 2.7:

A listed entity with a director who is not fluent in the language in which board or security holder meetings are held or key 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

With financial markets becoming increasingly global, it is not uncommon for a listed entity to have a director who is not fluent in the language in which board or security holder meetings are held. If it does, it should disclose the processes it has in place to ensure the director understands and can contribute to the discussions at those meetings.

It is also not uncommon for a listed entity to have a director who is not fluent in the language in which key documents (such as the entity's constitution, prospectuses, PDSs, financial statements and continuous disclosure announcements) are written. If it does, it should disclose the processes it has in place to ensure the director understands and can discharge their obligations in relation to those documents.

[38] In *ASIC v Healey & Ors* [2011] FCA 717 (available online at: http://www.austlii.edu.au/au/cases/cth/FCA/2011/717.html), the Federal Court held that it is the duty of every director of an entity subject to section 344 of the Corporations Act (which includes public companies, registered managed investment schemes and disclosing entities) to read 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. It is important that a listed entity's board have a diverse range of skills and experience and this necessarily means that not all directors will have the same level of accounting skills and experience. Nevertheless, it is in the interests of a listed entity and its security holders (and also in the personal interests of the director concerned) that each director of the entity has an appropriate base level of understanding of accounting matters.

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.

Commentary

A listed entity's "social licence to operate" is one of its most valuable assets. That licence can be lost or seriously damaged if the entity or its officers or employees are perceived to have acted unlawfully, unethically or in a socially irresponsible manner.

Preserving an entity's social licence to operate requires the board and management of a listed entity to have regard to the views and interests of a broader range of stakeholders than just its security holders, including employees, customers, suppliers, creditors, regulators, consumers, taxpayers and the local communities in which it operates. Long term and sustainable value creation is founded on the trust a listed entity has earned from these different stakeholders. Security holders understand this and expect boards and management to engage with these stakeholders and to be, and be seen to be, "good corporate citizens".[39] This may include, for example:

- respecting the human rights of its employees,[40] including by paying a "living wage" to employees and not employing bonded, forced or compulsory labour or young children, even in jurisdictions where that may be lawful;
- maintaining a safe and non-discriminatory workplace;
- offering employment to people with disability or from socially disadvantaged groups in society;
- dealing honestly and fairly with customers and suppliers;
- not engaging in aggressive tax minimisation strategies;
- not dealing with those involved in or who finance crime, corruption, human conflict or terrorism;
- acting responsibly towards the environment; and
- only dealing with business partners who demonstrate similar lawful, ethical and socially responsible business practices.

Recommendation 3.1:

A listed entity should articulate and disclose its core values.

Commentary

A listed entity's core 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

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[39] The need for listed entities to be, and be seen to be, good corporate citizens is at the heart of *The Ten Principles of the UN Global Compact* (available online at https://www.unglobalcompact.org/what-is-gc/mission/principles) and the *OECD Guidelines for Multinational Enterprises* (available online at http://www.oecd.org/daf/inv/mne/48004323.pdf). ISO 26000 also provides guidance on how businesses and organisations can operate in a socially responsible way that contributes to the health and welfare of society. It helps clarify what social responsibility is, helps businesses and organisations translate principles into effective actions and shares best practices relating to social responsibility. ISO 26000 is available at: https://www.iso.org/iso-26000-social-responsibility.html.

[40] See the publication of the UN Human Rights Commission *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (available online at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

aspiration. They create a link between the entity's purpose (why it exists) and its strategic goals (what it hopes to do) by expressing the standards and behaviours it expects from its directors, senior executives and employees to fulfil its purpose and meet its goals (how it will do it).

An entity's statement of core values is often closely allied to, but is different from, a code of conduct, which tends to be more detailed and prescriptive statement of dos and don'ts for directors, senior executives and employees.

An entity's statement of core values will often encompass ideals such as innovation, courage, passion, curiosity, honesty, integrity, accountability, teamwork, and so on. Given the importance of an entity's social licence to operate, it will also usually include a commitment by the entity to complying fully with its legal obligations and to acting ethically and in a socially responsible manner.

Management should draft, and the board should approve, an entity's statement of core values. Once approved, management should be charged with inculcating those values across the organisation. This includes ensuring that all employees receive appropriate training on the values and management continually referencing and reinforcing those values in their interactions with staff (ie setting the "tone at the top").

Properly implemented, a statement of core values can help shape the entity's culture and drive good decision making. It can also be an important recruitment and retention aid.

To achieve this, however, a statement of core values must be more than a poster on a wall. The listed entity must be seen to live and breathe those values. To this end, the board and senior executives must consistently demonstrate leadership when it comes to the entity's stated values. This includes ensuring that their own actions and decisions are consistent with the entity's stated values and that any conduct by others within the organisation that is inconsistent with those values is dealt with appropriately and proportionately.

Recommendation 3.2:

A listed entity should:

(a) have and disclose[41] a code of conduct for its directors, senior executives and employees; and

(b) ensure that the board is informed of:

(1) any material breaches of that code by a director or senior executive; and

(2) any other material breaches of that code that call into question the culture of the organisation.

Commentary

Good corporate governance depends on the personal integrity of those on boards and in management. Personal integrity cannot be legislated. However, it can be encouraged and engendered by a listed entity clearly articulating the standards of behaviour expected from directors, senior executives and employees in a code of conduct.[42]

A listed entity's code of conduct can help to instil a culture of acting lawfully, ethically and in a socially responsible manner. To be effective in this regard, directors, senior executives and employees must receive appropriate training on their obligations under the code. Senior executives must also

[41] An entity may redact from the disclosed copy of its code of conduct personal or confidential information such as the names and contact details of individual staff involved in conduct issues.

[42] International Federation of Accountants, International Good Practice Guidance on Defining and Developing an Effective Code of Conduct, 2007.

continually and consistently enforce the code, including by taking appropriate and proportionate disciplinary action against those who breach it.

Given its leadership and oversight role on matters of corporate culture, the board should ensure that it is informed of any material breach of the entity's code of conduct by a director or senior executive and of any other material breaches of that code that call into question the culture of the organisation.

To improve transparency and promote investor confidence, the Council would encourage a listed entity to disclose in general terms the actions it has taken to enforce its code of conduct (recognising that legal and other constraints may prevent it disclosing specific details of any individual action).

A listed entity should review its code of conduct at least once every 3 years to ensure it remains "fit for purpose" and addresses any emerging conduct issues.

A listed entity may find the suggestions in Box 3.2 helpful when formulating its code of conduct.

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

1. Express or cross-reference the organisation's core values.
2. State the organisation's expectation that all directors, senior executives and employees will:
   - act in accordance with the entity's stated values and in the best interests of the entity;
   - act honestly and with high standards of personal integrity;
   - comply with all laws and regulations that apply to the entity and its operations;
   - not act in an unethical or socially irresponsible manner;
   - treat fellow staff members with respect and not engage in bullying, harassment or discrimination;
   - deal with customers and suppliers fairly;
   - 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; and
   - not take advantage of their position or the opportunities arising therefrom for personal gain.

Recommendation 3.3

A listed entity should:

(a) have and disclose[43] a whistleblower policy[44] that encourages employees to come forward with concerns that the entity is not acting lawfully, ethically or in a socially responsible manner and provides suitable protections if they do; and

[43] An entity may redact from the disclosed copy of its whistleblower policy personal or confidential information such as the names and contact details of individual staff involved in the whistleblower process.

[44] [It should be noted that a listed company established in Australia is required under section 1317AI of the Corporations Act to have a policy with information about the protections available to whistleblowers, as well as how the company will ensure fair treatment of persons who are mentioned in whistleblower disclosures, and to make this policy available to people who may be eligible whistleblowers in relation to the company. Eligible whistleblowers include officers, employees, suppliers and certain family members and dependants.]

(b) ensure that the board is informed of any material concerns raised under that policy that call into question the culture of the organisation.

Commentary

In most cases, the best source of information about whether a listed entity is living up to it values are its employees. They are often key to identifying and being able to address potentially damaging behaviour.

Listed entities should instil and continually reinforce a culture within the organisation of "speaking up". To facilitate this, employees need to be able to raise concerns about possible unlawful, unethical or socially irresponsible behaviour or other improprieties without fear of retaliation or otherwise being disadvantaged.

A listed entity's whistleblower policy should:

- clearly identify the types of concerns that may be reported under the policy and how and to whom reports may be made;
- explain how the confidentiality of the whistleblower's identity is safeguarded and the whistleblower is protected from retaliation or victimisation;
- outline the processes to follow up and investigate reports made under the policy;
- provide for the training of employees about the whistleblower policy and their rights and obligations under it;
- provide for the training of managers and others who may receive whistleblower reports about how to respond to them; and
- incorporate a periodic audit or review of the policy and related procedures to check if whistleblower reports were appropriately recorded, investigated and responded to and whether any changes are required to the entity's whistleblower policy or .procedures

Recommendation 3.4

A listed entity should:

(a) have and disclose[45] an anti-bribery and corruption policy; and

(b) ensure that the board is informed of any material breaches of that policy.

Commentary

Giving bribes or other improper payments or benefits to public officials is not only a serious criminal offence, it can do major damage to a listed entity's social licence to operate.

A listed entity's anti-bribery and corruption policy should:

- acknowledge the serious criminal and civil penalties that may be incurred and the reputational damage that may be done if the organisation is involved in bribery or corruption;
- prohibit the giving of bribes or other improper payments or benefits to public officials;

[45] An entity may redact from the disclosed copy of its anti-bribery and corruption policy personal or confidential information such as the names and contact details of individual staff involved in anti-bribery and corruption issues.

- prohibit the payment of secret commissions to those acting in an agency or fiduciary capacity;
- include appropriate controls around political donations and offering or accepting gifts, entertainment or hospitality;
- provide for the training of managers and employees likely to be exposed to bribery or corruption about how to recognise and deal with it; and
- incorporate a periodic audit or review of the policy and related procedures to check if reports of breaches were appropriately recorded, investigated and responded to and any changes are required to the entity's anti-bribery and corruption policy or procedures.

Principle 4: Produce corporate reports of high quality and integrity

A listed entity should have formal and rigorous processes to validate the quality and integrity of its corporate reporting.

Commentary

For investors to make informed investment decisions, a listed entity needs to provide corporate reports of high quality and integrity. Those reports should give the reader a reasonable understanding of the entity's business model, strategy, risks[46] and opportunities, remuneration policies and practices and governance framework, as well as its financial performance.

Recommendation 4.1:

The board of a listed entity should:

(a) have an audit committee[47] 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 corporate reporting, including the processes for the appointment and removal of the external auditor and the rotation of the audit engagement partner.

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[46] It should be noted that a listed entity established in Australia is required under section 299A of the Corporations Act to include in the operating and financial review in its annual directors' report information that security holders would reasonably require to make an informed assessment of the entity's prospects for future financial years. ASIC interprets this as requiring (among other things) a discussion of the main internal and external risk sources that could adversely affect the entity's prospects for future financial years (see paragraph 60-64 of ASIC Regulatory Guide 247 *Effective disclosure in an operating and financial review*.

[47] It should be noted that a listed entity which is included in the S&P All Ordinaries Index at the beginning of its financial year is required under Listing Rule 12.7 to have an audit committee for the entire duration of that financial year. If it is included in the S&P/ASX 300 Index at the beginning of its financial year, it must also comply with the structure and disclosure requirements in paragraph (a) of recommendation 4.1 for the whole of that financial year, unless it had been included in that index for the first time less than 3 months before the beginning of that financial year. An entity that is included in the S&P/ASX 300 Index for the first time less than 3 months before the first day of its financial year but did not comply with the structure and disclosure requirements in paragraph (a) of recommendation 4.1 at that date must take steps so that it complies with those requirements within 3 months of the beginning of the financial year.

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 judgement needed to oversee the corporate reporting process.

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 financial controls;
- 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;
- the appropriateness of the accounting judgements or choices exercised by management in preparing the entity's financial statements;
- the appointment or removal of the external auditor;
- the rotation of the audit engagement partner;
- the scope and adequacy of the external audit;
- the independence and performance of the external auditor;
- 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
    - the objectivity and performance of the internal audit function.

The audit 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.

The audit committee should be of sufficient size and independence, and its members between them should have the accounting and financial expertise 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 corporate reporting process efficiently and effectively without establishing a separate audit committee. 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, the appointment or removal of the external auditor and the rotation of the audit engagement partner).

Recommendation 4.2:

The board of a listed entity 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, the financial records of the entity have been properly maintained and that 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 and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.

Commentary

Section 295A of the Corporations Act requires each person who performs the CEO or CFO function in a listed entity established in Australia to provide a declaration that, in their opinion, the financial records of the entity for a financial year have been properly maintained in accordance with the Act and that the financial statements and the notes for the financial year comply with the accounting standards and give a true and fair view of the financial position and performance of the entity. The declaration must be given before the directors approve the financial statements for the financial year.[48]

Similar requirements may apply to listed entities established in other jurisdictions under their local law.

This recommendation largely mirrors the declaration required under section 295A but extends it to include a declaration by the CEO and CFO that their opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively. It also extends it to apply to the financial statements for any financial period, not just for the financial year.

The board of a listed entity subject to section 295A of the Corporations Act or an equivalent provision under the law of its home jurisdiction can receive the one declaration from the CEO and CFO that meets both the requirements of that Act or law and this recommendation.

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 nonetheless require an equivalent declaration from the CEO and CFO.

Recommendation 4.3:

A 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. That opportunity is afforded to security holders in listed companies established in Australia by sections 250PA, 250RA and 250T of the Corporations Act.[49]

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[48] For these purposes, "approve" means make the declaration required of directors under section 295(4) of the Corporations Act that (amongst other things) the financial statements comply with accounting standards and give a true and fair view. Note that the fact that the directors receive such a declaration from the CEO and CFO does not derogate from their responsibility for ensuring that the financial statements comply with the Corporations Act (section 295A(8)).

[49] Section 250PA empowers a member of a listed company who is entitled to cast a vote at the AGM to submit a written question to the auditor that is relevant to the content of the auditor's report or the conduct of the audit.

Section 250RA requires a listed company's auditor to be represented at the company's AGM by a suitably qualified member of the audit team who is in a position to answer questions about the audit.

Listed entities established outside Australia that are not subject to these provisions of the Corporations Act, or equivalent provisions under the law of their home jurisdiction, should make arrangements to enable security holders to ask questions of the auditor relevant to the audit at, or ahead of, its AGM.

Listed trusts established in Australia as registered managed investment schemes are not required by the Corporations Act to have an AGM, although some do. Nor are they subject to sections 250PA, 250RA and 250T of the Corporations Act. If a listed trust established in Australia does have an AGM, again it should make arrangements to enable security holders to ask questions of the auditor relevant to the audit at, or ahead of, the AGM.

Recommendation 4.4:

A listed entity should have and disclose its process to validate that its annual directors' report and any other corporate reports it releases to the market are accurate, balanced and understandable and provide investors with appropriate information to make informed investment decisions.

Commentary

To understand a listed entity's performance and prospects, in addition to the historical financial information included in its annual financial report, the market needs the current and forward looking information usually included in the annual directors' report.

For listed entities established in Australia, the operating and financial review included in the annual directors' report must contain information that security holders reasonably require to make an informed assessment of the entity's operations, financial position, business strategies and prospects for future financial years.[50]

Some entities use the principles of "integrated reporting"[51] as a useful framework for preparing operating and financial reviews to provide the market with information about a listed entity's future prospects, risks and opportunities, strategy and business model. Some are required under the Listing Rules to prepare quarterly activity reports and quarterly cash flow reports that are not typically subject to audit or review by the entity's external auditor. Some also release to the market other corporate reports, such as a "sustainability report", to provide insights into other aspects of their operations.

Where an entity's annual directors' report, integrated report, quarterly activity report, quarterly cash flow report or other corporate report is not subject to assurance by the entity's external auditor,[52] the entity should have an appropriate process in place to validate that the report is accurate, balanced[53] and understandable and provides the market with appropriate information to make informed investment decisions.

These processes should be disclosed to assist the market in assessing the quality of the information included in these corporate reports.

Section 250T of the Corporations Act requires the chair of the AGM to allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor's representative questions relevant to the conduct of the audit, the preparation and content of the auditor's report, the accounting policies adopted by the company in relation to the preparation of the financial statements, and the independence of the auditor in relation to the conduct of the audit.

50 See section 299A(1) of the Corporations Act.

51 Available online at: http://integratedreporting.org/wp-content/uploads/2013/12/13-12-08-THE-INTERNATIONAL-IR-FRAMEWORK-2-1.pdf.

52 The Council notes that under Australian Auditing Standard 720 *The Auditor's Responsibilities Relating to Other Information*, a listed entity's annual report will generally be subject to review by its auditor but this review is undertaken for limited purposes and is not an assurance of the annual report (see paragraph 8 of that Standard).

53 In this context, "balanced" means disclosing both positive and negative information.

Principle 5: Make timely and balanced 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.

Commentary

For investors to make informed investment decisions, a listed entity needs to make timely and balanced disclosure of information 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[54] a written policy for complying with its continuous disclosure obligations under Listing Rule 3.1.

Commentary

Listing Rule 3.1 requires a listed entity, subject to certain exceptions, to disclose to ASX immediately any information concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.

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

In designing its disclosure policy, a listed entity should have regard to ASX Listing Rules Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* and to the 10 principles set out in ASIC Regulatory Guide 62 *Better disclosure for investors*.

The disclosure policy should include vetting and authorisation processes designed to ensure that announcements by the entity are accurate, balanced[55] and expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions.

The disclosure policy should address:

- the roles and responsibilities of directors, officers and employees in complying with the entity's disclosure obligations;
- safeguarding confidentiality of corporate information to avoid premature disclosure; [56]
- media contact and comment;
- external communications such as analyst briefings and responses to security holder questions; and
- measures for responding to or avoiding the emergence of a false market in the entity's securities.

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[54] An entity may redact from the disclosed copy of its continuous disclosure policy personal or confidential information such as the names and contact details of individual staff involved in the disclosure process.

[55] Again, in this context, "balanced" means disclosing both positive and negative information.

[56] See the joint publication by Chartered Secretaries Australia (now Governance Institute of Australia) and the Australian Investor Relations Association entitled *Handling confidential information: Principles of good practice* available online at: http://www.governanceinstitute.com.au/knowledge-resources/good-governance-guides/?categoryid=8031.

Recommendation 5.2:

A listed entity should ensure that its board receives copies of all announcements under Listing Rule 3.1 promptly after they have been made.

A listed entity should ensure that its board receives copies of all announcements under Listing Rule 3.1 promptly after they have been made so that it has timely visibility of the nature and quality of the information being disclosed to the market and the frequency of such disclosures.

Recommendation 5.3:

A listed entity that gives a new investor or analyst presentation should release a copy of the presentation materials on the ASX Market Announcements Platform ahead of the presentation.

Commentary

A listed entity that gives a new[57] investor or analyst presentation should ensure that all security holders have timely access to the materials provided at those presentations.

At a minimum, the entity should release a copy of the presentation materials on the ASX Market Announcements Platform ahead of the presentation.

Where practicable, the entity should consider providing a live webcast of the presentation so that security holders can view and hear the presentation online. If that is not practicable, it 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.

[57] The Council recognises that listed entities may give a series of presentations to analysts and investors over a short period that contain materially the same information but have been tailored for each presentation. The Council would not regard any 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.

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 owners effectively.

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 its security holders and provide them with appropriate information and facilities to allow them to exercise their rights as security holders effectively. This includes:

- giving them ready access to information about the entity and its governance;
- providing them with high quality corporate reporting and continuous disclosure;
- communicating openly and honestly with them; and
- facilitating and encouraging their participation in meetings of security holders.

Recommendation 6.1:

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

Commentary

In the digital age, investors expect information about listed entities to be freely and readily available online.

A listed entity should have a website with 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.[58]

A listed entity should include in the corporate governance area of its website links to:

- the names, photographs and brief biographical information for each of its directors and senior executives;
- its constitution, its board charter and the charters of each of its board committees;
- a statement of the entity's core values;[59]
- the corporate governance policies and other corporate governance materials referred to in these recommendations.

A listed entity should also include in an appropriate area of its website links to:

- copies of its annual directors' reports, financial statements and other corporate reports;
- copies of its announcements to ASX;
- copies of notices of meetings of security holders and any accompanying documents;

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

[59] See recommendation 3.1 above.

- copies of any documents tabled or otherwise made available at meetings of security holders and, if it keeps them, a recording or transcript of the meetings; and
- copies of any materials distributed at investor or analyst presentations and, if it keeps them, a recording or transcript of the presentations,

and keep this material available on its website for a reasonable period.

Investors will also find it helpful if a listed entity includes in an appropriate area of its website:

- an overview of the entity's current business;
- a description of how the entity is structured;
- a summary of the entity's history;
- a key events calendar showing the expected dates in the forthcoming year for:
    - results presentations and other significant events for investors and analysts;
    - the AGM;
    - books closing dates for determining entitlements to dividends or distributions; and
    - ex-dividend and payment dates for dividends or distributions;
- once they are known, the time, venue and other relevant details[60] for results presentations and the AGM;
- if the entity has different classes of securities on issue, a brief description of those different classes and the rights attaching to them;
- historical information about the market prices of the entity's securities;
- a description of the entity's dividend or distribution policy;
- information about the entity's dividend or distribution history;
- copies of media releases the entity makes;
- contact details for enquiries from security holders, analysts or the media;
- contact details for its securities registry; and
- links to download key security holder forms, such as transfer and transmission forms, dividend or distribution reinvestment plan forms etc.

Recommendation 6.2:

A listed entity should have an investor relations program that facilitates effective two-way communication with investors.[61]

[60] Such as the dial-in details for a conference call on a results presentation and a link to the URL for a web-cast of an AGM.

[61] References in this recommendation to communicating and interacting with security holders include, where securities are held by a custodian or nominee, communicating and interacting with the beneficial owner of the securities.

Commentary

A listed entity's investor relations program should be tailored to the individual circumstances of the entity. For smaller entities, it may involve little more than actively engaging with security holders at the AGM, meeting with them upon request and responding to any enquiries they may make from time to time. For larger entities, it is likely to involve a detailed program of scheduled and ad hoc interactions with institutional investors, private investors, sell-side and buy-side analysts, proxy advisers and the financial media.

A primary aim of an investor relations program should be to allow investors and other financial market participants to gain a greater understanding of the entity's business, governance, financial performance and prospects. However, it should not just involve one way communication from the entity to the market but also provide an opportunity for investors and other financial market participants to express their views to the entity on matters of concern or interest to them.

A listed entity's investor relations program may also run in tandem with a wider stakeholder engagement program involving interactions with politicians, bureaucrats, regulators, unions, consumer groups, environmental groups, local community groups and other stakeholders.

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. A listed entity should also consider monitoring popular social media forums used by retail investors for comments about the entity.

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:

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

Commentary

Meetings of security holders are an important forum for two-way communication between a listed entity and its security holders. They provide an opportunity for a listed entity to impart to security holders a greater understanding of its business, governance, financial performance and prospects, as well as to discuss areas of concern or interest to the board and management. They also provide an opportunity for security holders to express their views to the entity's board and management about any areas of concern or interest for them.

A listed entity should choose a venue for a meeting of security holders that is reasonably accessible to security holders who wish to attend the meeting in person or by proxy.

Listed entities with large or geographically diverse registers should consider how technology can be used to facilitate the participation of security holders in meetings. This may include, for example, live webcasting of meetings so that security holders can view and hear proceedings online, holding meetings across multiple venues linked by live telecommunications, and hybrid meetings that allow shareholders to attend and vote in person, by proxy or online.

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,[62] the opportunity to provide questions or comments ahead of the meeting. Where

[62] Section 250S of the Corporations Act.

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.

Recommendation 6.4:

A listed entity should ensure that all resolutions at a meeting of security holders are decided by a poll rather than by a show of hands.

Commentary

The principle of "one security one vote" is enshrined in the Listing Rules. Deciding votes of security holders on the basis of a show of hands, regardless of the number of securities held, is inconsistent with this principle.

It is the responsibility of the person chairing a meeting of security holders to ascertain the true will of the security holders attending and voting at a meeting, whether they attend in person, electronically or by proxy or other representative. This can only be achieved with certainty by calling a poll on all resolutions to be considered by security holders.

Recommendation 6.5:

A listed entity should give security holders the option to receive communications from, and send communications to, the entity and its security registry electronically.

Commentary

Most security holders appreciate the speed, convenience and environmental friendliness of electronic communications, compared with more traditional methods of communication. Listed entities should provide security holders with the option to receive communications from, and send communications to, the entity and its security registry electronically.

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.

Principle 7: Recognise and manage risk

A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.

Commentary

Being given sufficient information to understand and assess investment risk is crucial to the ability of investors to make informed investment decisions. Recognising and managing risk is a crucial part of the role of the board and management.

A failure by a listed entity to recognise or manage risk can adversely impact not only the entity and its security holders but also many other stakeholders, including employees, customers, suppliers, creditors, consumers, taxpayers and the local communities in which the entity operates.

Good risk management practices can not only help to protect established value, they can assist in identifying and capitalising on opportunities to create value.

The board of a listed entity is ultimately responsible for setting the entity's risk appetite, that is, the nature and extent of the risks the entity is willing to take to meet its objectives.

To enable the board to do this, the entity must have an appropriate framework[63] to identify and manage risk on an ongoing basis.[64]

It is the role of management to design and implement that framework and to ensure that the entity operates within the risk appetite set by the board. 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.

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. It should address financial and non-financial risks, as well as risks with a short, medium or longer term horizon.

Recommendation 7.1:

The board of a listed entity should:

(a) have a committee or committees to oversee risk,[65] 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:

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[63] Australian/New Zealand Standard AS/NZS ISO 31000:2009 *Risk management – Principles and guidelines* defines "risk management" as "coordinated activities to direct and control an organization with regard to risk" and "risk management framework" as a "set of components that provide the foundations and organizational arrangements for designing, implementing, monitoring, reviewing and continually improving risk management throughout the organization".

[64] There is a range of guidance available on risk management frameworks, including the Australian/New Zealand Standard AS/NZS ISO 31000:2009 *Risk management – Principles and guidelines*, available at www.standards.org.au and the COSO *Enterprise Risk Management – Integrated Framework (2004)* and related materials published by the Committee of Sponsoring Organisations of the Treadway Commission, available at www.coso.org.

[65] 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. 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.

(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 framework.

Commentary

While ultimate responsibility for a listed entity's risk management framework rests with the full board, having a risk committee (be it a stand-alone risk committee, a combined audit and risk committee or a combination of board committees addressing different elements of risk) can be an efficient and effective mechanism to bring the transparency, focus and independent judgement needed to oversee the entity's risk management 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";
- approve the internal audit plan and receive reports from internal audit on its reviews of the adequacy of the entity's processes for managing risk;
- 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.

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**.**

Recommendation 7.2:

The board or a committee of the board should:

(a) review the entity's risk management framework at least annually to satisfy itself that it continues to be sound and that 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 and validate that the entity is operating with due regard to the risk appetite set by the board.

The board may charge an appropriate board committee (such as the risk committee or the audit committee) with this task. If it does, this should be reflected in the charter of the committee in question.

The review of the entity's risk framework should have regard to the considerations set out in the commentary to principle 7.

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.

To improve transparency and promote investor confidence, the Council would encourage the board of a listed entity not only to disclose that it has reviewed the entity's risk management framework but also any insights it has gained from the review and any changes it has made to that framework as a result.

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 risk management and internal control processes.

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 and internal control processes.

If a listed entity has an internal audit function,[66] 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.

[66] Listed entities that have or wish to have an internal audit function may find the International Standards for the Professional Practice of Internal Auditing published by the International Internal Audit Standards Board helpful in determining how best to structure and staff that function.

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.

Recommendation 7.4:

A listed entity should disclose whether it has any material exposure[67] to environmental or social risks[68] and, if it does, how it manages or intends to manage those risks.

Commentary

As mentioned above in the commentary to principle 3, a listed entity's "social licence to operate" is one of its most valuable assets. That licence can be lost or seriously damaged if the entity conducts its business in a way that is not environmentally or socially responsible.

Investors recognise this and increasingly are calling for greater transparency on the environmental and social risks faced by listed entities,[69] so that they in turn can properly assess the risk of investing in those entities.

To make the disclosures called for under this recommendation does not require a listed entity to publish an "integrated report" or "sustainability report". However an entity that does publish an integrated report in accordance with the International Integrated Reporting Council's *International <IR> Framework*,[70] or a sustainability report in accordance with a recognised international standard,[71] may meet this recommendation simply by cross-referring to that report.

Entities that believe they do not have any material exposure to environmental or social risks should consider carefully their basis for that belief and benchmark their disclosures in this regard against those made by their peers.

One particular source of environmental risk relates to climate change. This is also referred to generically as "carbon risk"[72] and includes:

- physical risks, such as the risk of assets being destroyed or rendered unproductive, or business operations being disrupted, by extreme weather events or long term shifts in climate patterns;

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[67] "Material exposure" in this context means a real possibility that the risk in question could materially impact the listed entity's ability to create or preserve value for security holders over the short, medium or longer term.

[68] The terms "environmental risks" and "social risks" are defined in the glossary.

[69] See, for example, the joint publication by the Australian Council of Superannuation Investors and the Financial Services Council entitled *2015 ESG Reporting Guide for Australian Companies*, available online at: https://acsi.org.au/images/stories/ACSIDocuments/ESG_Reporting_Guide_Final_2015_single_page.pdf.

[70] See note 51 above.

[71] Such as:

- the Global Reporting Initiative's standards, available online at: https://www.globalreporting.org/standards/gri-standards-download-center/;
- the various sustainability accounting standards published by the Sustainability Accounting Standards Board, accessible online from https://www.sasb.org/; or
- the Climate Disclosure Standards Board's *Framework for reporting environmental and natural capital*, available online at: https://www.cdsb.net/sites/cdsbnet/files/cdsb_framework_for_reporting_environmental_information_natural_capital.pdf.

[72] See the report from Senate Economics References Committee dated April 2017 entitled *Carbon risk: a burning issue*, available online at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Carbonriskdisclosure45/~/media/Committees/economics_ctte/Carbonriskdisclosure45/report.pdf.

- transition risks, such as the risks arising from changes in legislation or government policy, or the need to adopt new technologies, seeking to mitigate the effects of climate change or facilitating the shift to a lower carbon economy; and
- liability risks, where people who suffer damage caused by climate change, or a failure to respond to climate change, seek redress from those they believe are responsible.

Many listed entities will be exposed to these types of risks, even where they are not directly involved in mining or consuming fossil fuels.

The Council would encourage entities that have a material exposure to climate change risk to consider implementing the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD).[73]

[73] The TCFD is an industry-led task force set up to develop voluntary, consistent climate-related financial disclosures useful to investors, lenders and insurance underwriters in assessing and pricing climate-related risks and opportunities. The TCFD's recommendations and related materials are available online at: https://www.fsb-tcfd.org/publications/.

Principle 8: Remunerate fairly and responsibly

A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders over the short, medium and longer term.

Commentary

Remuneration is 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 over the short, medium and longer term, without rewarding conduct that is contrary to the entity's values or risk appetite;
- the need to ensure that the incentives for non-executive directors do not conflict with their obligation to bring an independent judgement to matters before the board;
- the implications for its social licence to operate 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 rigorous and transparent process for developing its remuneration policy and for fixing the remuneration packages of directors and senior executives. That process should include benchmarking the remuneration of directors and senior executives to that paid by the entity's peers to verify that it is not excessive.

No individual director or senior executive should be involved in deciding their own remuneration.[74]

The relationship between remuneration and performance and how it is aligned to the creation of value for security holders over the short, medium and longer term should be clearly articulated to investors.

Recommendation 8.1:

The board of a listed entity should:

(a) have a remuneration committee[75] which:

(1) has at least three members, a majority of whom are independent directors; and

(2) is chaired by an independent director,

and disclose:

[74] This statement is not intended to apply to a determination by the board of a listed entity on how the maximum aggregate remuneration of directors approved by security holders should be applied.

[75] It should be noted that a listed entity which is included in the S&P/ASX 300 Index at the beginning of its financial year is required under the Listing Rule 12.8 to have a remuneration committee comprised solely of non-executive directors for the entire duration of that financial year.

(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;[76] 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

Having a separate remuneration committee can be an efficient and effective mechanism to bring the transparency, focus and independent judgement 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;[77]
- equity-based remuneration plans 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 management, and seek advice from external consultants or specialists where the committee considers that necessary or appropriate.[78]

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

If the remuneration committee includes an executive director, they should not be involved in deciding their own remuneration. The committee should also be alive to the potential conflict of interest in an executive director being involved in setting the remuneration for other executives that may indirectly affect their own (for example, through setting a benchmark or because of relativities).

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

[76] An Australian listed company subject to section 300(10) of the Corporations Act must also include in its annual report information about each director's attendance at remuneration committee meetings.

[77] The individual remuneration packages to be awarded to employees other than senior executives are generally matters left to management.

[78] Listed companies established in Australia should note the provisions of sections 206K-206M regarding the engagement of remuneration consultants to advise on the remuneration packages to be awarded to key management personnel.

for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.

Recommendation 8.2:

A listed entity should separately disclose its policies and practices regarding the remuneration of non-executive directors and the remuneration of executive directors and other senior executives.

Commentary

As mentioned previously, remuneration is a key focus for investors. To facilitate an open dialogue with its security holders on this topic, listed entities should clearly articulate and separately disclose their respective policies and practices regarding the remuneration of non-executive directors on the one hand and the remuneration of executive directors and other senior executives on the other.

Those policies and practices should appropriately reflect the different roles and responsibilities of non-executive directors compared with executive directors and other senior executives. In this regard, listed entities may find the following guidelines useful in formulating their remuneration policies and practices:

Guidelines for executive remuneration	**Guidelines for non-executive director remuneration**
Composition: remuneration packages for executive directors and other senior executives should include an appropriate balance of fixed remuneration and performance-based remuneration.	**Composition:** non-executive directors should be remunerated by way of cash fees, superannuation contributions and non-cash benefits in lieu of fees (such as salary sacrifice into superannuation or equity).
Fixed remuneration: should be reasonable and fair, taking into account the entity's obligations at law and labour market conditions, and should be relative to the scale of the entity's business. It should reflect core performance requirements and expectations.	**Fixed remuneration:** levels of fixed remuneration for non-executive directors should reflect the time commitment and responsibilities of the role.
Performance-based remuneration: should be linked to clearly specified performance targets. These targets should be aligned to the entity's short, medium and longer term performance objectives and should be consistent with its circumstances, purpose, strategic goals, values and risk appetite.	**Performance-based remuneration:** non-executive directors should not receive performance-based remuneration as it may lead to bias in their decision-making and compromise their objectivity.

Guidelines for executive remuneration	Guidelines for non-executive director remuneration
Equity-based remuneration: well-designed equity-based remuneration, including options or performance rights, can be an effective form of remuneration, especially when linked to hurdles that are aligned to the entity's short, medium and longer-term performance objectives. Care needs to be taken in the design of equity-based remuneration schemes, however, to ensure that they do not lead to "short-termism" on the part of senior executives or the taking of undue risks.	**Equity-based remuneration:** 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.[79] However, non-executive directors generally should not receive options with performance hurdles attached or performance rights as part of their remuneration as it may lead to bias in their decision-making and compromise their objectivity.
Termination payments: termination payments, if any, for senior executives should be agreed in advance and the agreement should clearly address what will happen in the case of early termination.[80] There should be no payment for removal for misconduct.	**Termination payments:** non-executive directors should not be provided with retirement benefits other than superannuation.

In determining the entity's remuneration policies and practices, the board or its remuneration committee should have regard to the considerations set out in the commentary to principle 8.

The disclosures regarding the remuneration of executive directors and other senior executives should include a summary of the entity's policies and practices regarding the deferral of performance-based remuneration and the reduction, cancellation or clawback of performance-based remuneration in the event of serious misconduct or a material misstatement in the entity's financial statements.

Listed companies established in Australia are required under the Corporations Act[81] to make detailed disclosure in their remuneration reports of their remuneration policies for key management personnel.[82] Those reports are subject to an advisory vote by security holders[83] and a "two-strikes rule".[84]

[79] Note that an issue of securities to a director will require security holder approval under Listing Rule 10.11 unless it falls within the exceptions set out in Listing Rule 10.12.

[80] Note also the restrictions that apply under sections 200-200J of the Corporations Act to termination payments by companies incorporated in Australia (and their associates) to those who hold a managerial or executive office in the company or in a related body corporate.

[81] Section 300A of the Corporations Act.

[82] Accounting Standard AASB 124 defines "key management personnel" of an entity as "those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity".

[83] Section 250R(2) of the Corporations Act.

[84] Sections 250U-250Y of the Corporations Act. Under that rule, if 25% of the votes cast at two consecutive AGMs oppose the adoption of the remuneration report, then at the second AGM, shareholders can require that the board stand for re-election at a further general meeting to be held within 90 days. Shareholders can exercise this power if 50% or more of votes cast at the second AGM are in favour of a "spill". The requirement to stand for re-election does not apply to the managing director or any director appointed since the remuneration report was approved by the board.

A listed entity which is not subject to these Corporations Act requirements[85] should separately disclose the information referred to in this recommendation in its annual report or on its website.

Under the Listing Rules, a listed entity is required to obtain security holder approval for the issue of securities to directors or their associates under any equity-based incentive scheme.[86]

A listed entity is not required under the Corporations Act[87] or the Listing Rules[88] 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.[89]

Recommendation 8.3:

A listed entity 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;[90] 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 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.

Recommendation 8.4:

A listed entity should only enter into an agreement for the provision of consultancy or similar services by a director or senior executive or by a related party of a director or senior executive:

(a) if it has independent advice that:

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[85] For example, a listed trust established in Australia which is not externally managed or an entity established outside Australia.

[86] Listing Rule 10.14. Note that this requirement does not apply to securities purchased on-market under the terms of a scheme that provides for purchases of securities by or on behalf of employees or directors (Listing Rule 10.16).

[87] 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.

[88] Assuming it has sufficient headroom to issue securities without security holder approval under Listing Rules 7.1 and 7.1A. If it does not, then the employee incentive scheme will require security holder approval under Listing Rule 7.2 Exception 13.

[89] 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).

[90] It should be noted that 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.

(i) the services being provided are outside the ordinary scope of their duties as a director or senior executive (as applicable);

(ii) the agreement is on arm's length terms; and

(iii) the remuneration payable under it is reasonable; and

(b) with full disclosure of the material terms to security holders.

Commentary

Directors and senior executives of listed entities are expected to bring to their role the acumen, skills, experience and connections they possess in the interests of the entity and its security holders.

To pay a director or senior executive, or someone related to a director or senior executive, a consultancy or similar fee (such as an advice, facilitation or introduction fee) raises issues around conflicts management and "double-dipping" on fees and remuneration.

The board of a listed entity should only enter into an agreement for the provision of consultancy or similar services[91] by a director or senior executive, or by a related party of a director or senior executive, if it has independent advice from someone suitably qualified to give that advice that the services being provided are outside the ordinary scope of their duties as a director or senior executive (as applicable), the agreement is on arm's length terms and the remuneration payable under it is reasonable. It should also make full disclosure of the material terms of the agreement to security holders.

[91] Again, it should be noted that a listed entity is required under Listing Rule 3.16.4 to disclose the material terms of any service or consultancy agreement it or a child entity enters into with its CEO (or equivalent), any of its directors, and any other person or entity who is a related party of its CEO or any of its directors. It is also required to disclose any material variation to such an agreement.

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 2.3, 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 4.4, 5.1, 5.2, 5.3, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 7.3 and 7.4 apply to an externally managed listed entity.

The disclosures in relation to recommendations 2.3 (disclosure of independent directors), 3.1 (core values), 3.2 (code of conduct), 3.3 (whistleblower policy) and 3.4 (anti-bribery and corruption policy) should be made in relation to the responsible entity in its corporate capacity. In the case of recommendation 2.3, independence should be assessed and disclosed vis-à-vis the responsible entity rather than the listed entity.

The disclosures in relation to recommendations 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), 6.4 (vote by poll rather than show of hands), 6.5 (electronic communications) and 7.4 (environmental and social risks) 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 (CEO and CFO certification of financial statements), 4.4 (validation of other corporate reports), 6.1 (website disclosures), 6.2 (investor relations), 7.1 (risk committee), 7.2 (annual risk review) and 7.3 (internal audit) 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,[92] 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 obligation[93] of a responsible entity to maintain adequate risk management systems in Regulatory Guide 259 *Risk management systems of responsible entities*.

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[92] 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).

[93] See section 912A(1)(h) of the Corporations Act.

Recommendations that may or may not apply to externally managed listed entities

Recommendation 4.3 only applies to an externally managed listed entity if it holds an AGM. If the entity does not hold an AGM, then recommendation 4.3 does not apply and the entity may simply state that this recommendation is "not applicable" in its corporate governance statement.

Recommendations that do not apply to externally managed listed entities

Recommendations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.1, 2.2, 2.4, 2.5, 2.6, 2.7, 8.1, 8.2, 8.3 and 8.4 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.

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 aspects of the management of the listed entity and how the responsible entity oversees the performance of the outsourced service provider.[94]

In lieu of recommendations 8.1, 8.2, 8.3 and 8.4, an externally managed listed entity should instead comply with the following alternative recommendation:

Alternative to recommendations 8.1, 8.2, 8.3 and 8.4 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.

[94] Noting that the entity will generally be liable for any acts or omissions committed by the outsourced service provider under section 601FB of the Corporations Act.

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.

Glossary

AGM: the annual general meeting of security holders.

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 principle or recommendation. The commentary does not form part of a principle or 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.

environmental risks: the potential negative consequences to a listed entity arising from its impact or perceived impact on the natural environment. It includes the risks associated with pollution, environmental degradation, adding to the carbon levels in the atmosphere, and threats to a region's biodiversity or cultural heritage.

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.

externally managed listed entity: a listed entity (such as a trust or stapled structure) that is managed externally by a responsible entity in its corporate capacity rather than by a board of directors that is subject to election by security holders of the entity.

independent director: a director who is free of any interest, position, affiliation 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 as a whole rather than those of an individual security holder or other party.

internally managed listed entity: a listed company and any other listed entity (such as a trust or stapled structure) that is managed by a board of directors (by whatever title called) that is subject to election by security holders of the 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.

non-executive director: a director who is not an executive director.

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

recommendation: one of the 38 enumerated recommendations in this document.

related party: has the same meaning as in the Listing Rules.

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 1.5(c)(iv)(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 1.5(c)(iv)(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 negative consequences to a listed entity arising from its impact or perceived impact on social groups (including employees, customers, suppliers and local communities) or from it being seen to operate outside accepted community standards. It includes the risks that can lead to the loss of an entity's "social licence to operate" mentioned in the commentary to principle 3 above.

substantial 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;
- 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
- 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.

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

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