

DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES

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| <p>The purpose of this Guidance Note</p> | <ul style="list-style-type: none"> To assist listed entities to comply with the disclosure and other requirements in Listing Rules 4.7.3, 4.7.4, 4.10.3, 12.7 and 12.8 regarding corporate governance practices |
| <p>The main points it covers</p> | <ul style="list-style-type: none"> The requirement for a listed entity to produce a corporate governance statement disclosing the extent to which it has followed the recommendations set by the ASX Corporate Governance Council and to disclose that statement in its annual report or on its website The structure and content of the ASX Corporate Governance Council's <i>Corporate Governance Principles and Recommendations</i> Where to make your corporate governance disclosures What to disclose if you follow an ASX Corporate Governance Council recommendation What to disclose if you do not follow an ASX Corporate Governance Council recommendation The requirement for a listed entity to lodge an Appendix 4G with ASX at the same time as lodging its annual report Instructions on completing an Appendix 4G Guidance on Council recommendations 1.5 (diversity), 2.2 (board skills matrices), 4.2 (CEO and CFO certification of financial statements), 4.3 (process to verify integrity of periodic corporate reports), 5.3 (investor and analyst presentations), 7.4 (environmental and social risks) and 8.3 (policy on hedging equity incentive schemes) The requirements in Listing Rules 12.7 and 12.8 for entities of a certain size to have an audit committee and a remuneration committee ASX enforcement practices and listed entity compliance practices The governance disclosures required by applicants seeking admission to the official list as an ASX Listing |
| <p>Related materials you should read</p> | <ul style="list-style-type: none"> The fourth edition of the ASX Corporate Governance Council's <i>Corporate Governance Principles and Recommendations</i> (available online at: https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf) |

History: Guidance Note 9 amended 01/01/20. Previous versions of this Guidance Note were issued in 09/01, 02/12, 07/14 and 12/16.

Important notice: ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the ASX Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX Listing Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and listed entities should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

Table of Contents

| | |
|----------------------------------------------------------------------------------------------------|----|
| 1. Introduction | 2 |
| 2. The requirement for a corporate governance statement | 3 |
| 3. The Corporate Governance Principles and Recommendations | 3 |
| 4. The policy objectives of Listing Rule 4.10.3 | 4 |
| 5. Where to make your corporate governance disclosures | 7 |
| 6. What to disclose if you follow a Council recommendation | 7 |
| 7. What to disclose if you do not follow a Council recommendation | 8 |
| 8. The requirement for an Appendix 4G | 9 |
| 9. Instructions on completing an Appendix 4G | 9 |
| 10. Guidance on disclosure of governance policies | 11 |
| 11. Guidance on Council recommendation 1.5 | 12 |
| 12. Guidance on Council recommendation 2.2 | 12 |
| 13. Guidance on Council recommendation 4.2 | 13 |
| 14. Guidance on Council recommendation 4.3 | 13 |
| 15. Guidance on Council recommendation 5.3 | 15 |
| 16. Guidance on Council recommendation 7.4 | 15 |
| 17. Guidance on Council recommendation 8.3 | 16 |
| 18. Audit committees | 17 |
| 19. Remuneration committees | 18 |
| 20. ASX's enforcement practices | 19 |
| 21. Listed entity compliance practices | 20 |
| 22. Applicants seeking admission to the official list | 20 |
| Annexure A: The Council's recommendations | 22 |
| Annexure B: The application of the Council's recommendations to externally managed listed entities | 29 |

1. Introduction

This Guidance Note is published to assist listed entities admitted to the official list as an ASX Listing¹ to comply with Listing Rules 4.7.3, 4.7.4, 4.10.3, 12.7 and 12.8.

Listing Rule 4.10.3 requires each listed entity to include in its annual report either a corporate governance statement that meets the requirements of that rule or the URL of the page on its website where such a statement is located.

Listing Rule 4.7.4 provides that if a listed 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.

Listing Rule 4.7.3 requires a listed entity to give ASX a completed Appendix 4G at the same time as it gives ASX its annual report.

Listing Rules 12.7 and 12.8 require listed entities of a certain size to have audit and remuneration committees that meet certain requirements.

¹ These Listing Rules do not apply to entities admitted to the official list as an ASX Debt Listing or as an ASX Foreign Exempt Listing (see Listing Rules 1.10 and 1.15.1). References in this Guidance Note to a listed entity or entity mean an entity admitted to the ASX official list as an ASX Listing.

2. The requirement for a corporate governance statement

As mentioned previously, Listing Rule 4.10.3 requires a listed entity to include in its annual report either a corporate governance statement² that meets the requirements of that rule or the URL of the page on its website where such a statement is located.

The corporate governance statement must disclose the extent to which the entity has followed the recommendations set by the ASX Corporate Governance Council (“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.

The corporate governance statement must also:

- specify the date at which it is current, which must be the entity’s balance date or a later date specified by the entity;³ and
- state that it has been approved by the board of the entity (in the case of a trust, the board of the responsible entity of the trust).

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.⁴ 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.

3. The Corporate Governance Principles and Recommendations

The ASX Corporate Governance Council’s *Corporate Governance Principles and Recommendations* (“*Principles and Recommendations*”) were originally introduced in 2003. A second edition was issued in 2007, a third in 2014 and a fourth in 2019.⁵

The current version of Listing Rule 4.10.3 was also adopted in 2003 and modified in 2010 and again in 2014 to underpin the operation of the *Principles and Recommendations*.

The *Principles and Recommendations* are structured around, and seek to promote, eight central principles:

1. A listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance.
2. The board of a listed entity should be of an appropriate size and collectively have the 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.

² “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.

³ The flexibility for a listed entity to choose an effective date for a corporate governance statement that is later than its balance date is intended to allow the entity, for example, to choose as the effective date the same date as the directors’ declaration under section 295(4) of the Corporations Act. This would allow the board to sign off on the entity’s financial statements and its corporate governance statement at the same time.

⁴ The requirement for an entity to give ASX a copy of a corporate governance statement that is published on its website rather than in its annual report is intended to cater for the fact that an entity’s website is likely to change over time. Compliance with the requirement ensures that there is a contemporaneous and permanent record of that statement kept on the Market Announcements Platform. This in turn improves the ability of investors and other interested parties to locate a copy of that statement in the form it was in as at its effective date and also to follow changes in an entity’s governance practices from year to year.

⁵ The *Principles and Recommendations* are available online at: <https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf>

3. A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly.
4. A listed entity should have appropriate processes to verify the integrity of its corporate reports.
5. 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. A listed entity should provide its security holders with appropriate information and facilities to allow them to exercise their rights as security holders effectively.
7. A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.
8. 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 and with the entity's values and risk appetite.

The *Principles and Recommendations* set out 35 recommendations of general application on how a listed entity might implement these principles, as well as 3 additional recommendations that only apply in certain limited cases. It is these 38 recommendations that listed entities are required to report against under Listing Rule 4.10.3.

The *Principles and Recommendations* also expressly recognise 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. ...

... 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.⁶

The Council's recommendations are accompanied by further explanatory material under the heading 'commentary'. The principles themselves, and commentary on the recommendations, do not form part of the recommendations and therefore do not trigger any specific disclosure obligations under Listing Rule 4.10.3.⁷

To assist listed entities to identify and comply with their reporting obligations under Listing Rule 4.10.3, ASX has set out in the Annexure A to this Guidance Note the text of the Council recommendations that they are required to report against under that rule, stripped of the accompanying commentary. ASX has also summarised in Annexure B to this Guidance Note how the Council recommendations apply to externally managed listed entities.

4. The policy objectives of Listing Rule 4.10.3

Apart from the requirements in:

- Listing Rules 12.7 and 12.8 for entities of a certain size to have audit and remuneration committees;
- Listing Rules 12.9-12.12 for entities to have trading policies for key management personnel; and
- various other Listing Rules for certain matters to be submitted to security holders for approval,⁸

⁶ *Principles and Recommendations*, pages 1 and 2. For this reason, Listing Rule 4.10.3 is commonly referred to as the “if not, why not” reporting requirement. In other jurisdictions with similar requirements (such as Germany, Hong Kong, New Zealand, Singapore and the UK), the equivalent rule is often referred to as “comply or explain”.

⁷ *Principles and Recommendations*, page 3.

⁸ See, for example, Listing Rules 6.23, 7.1, 7.1A, 10.1, 10.11, 10.14, 10.17, 10.19, 11.1.2 and 11.2.

the Listing Rules, like the *Principles and Recommendations*, do not seek to prescribe the corporate governance practices that a listed entity must adopt.

As the *Principles and Recommendations* acknowledge:

*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 and therefore for ensuring that it has appropriate governance arrangements in place.*⁹

The underlying policy objective of Listing Rule 4.10.3 (which is also furthered by Listing Rule 4.7.3 and Appendix 4G¹⁰) is to ensure that the market receives a reasonable level of information about the corporate governance practices an entity has adopted so that:

- security holders and other stakeholders in the investment community¹¹ can have a meaningful dialogue with the board and management on corporate 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.

Listing Rule 4.10.3 seeks to achieve this objective by requiring listed entities to compare their corporate governance practices to the Council's recommendations and, where they do not conform, to disclose that fact and the reasons why. It acts to encourage listed entities to adopt the corporate 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 corporate 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 not the role of ASX under Listing Rule 4.10.3 to pass judgment on the quality or effectiveness of the corporate governance policies and practices that a listed entity may have adopted (whether to give effect to the Council's recommendations or otherwise), nor on the reasons an entity may give for not adopting a particular Council recommendation. Those judgments are initially for the entity's board, and then ultimately for its security holders and the broader investment community, to make. The role of ASX under Listing Rule 4.10.3 is to ensure that a listed entity meets its disclosure obligations under that rule so that security holders and the broader investment community have the information they need to make those judgements.

An entity which follows all of the Council's recommendations will necessarily have articulated and disclosed in its annual report or on its website (among other things):

- a board charter setting out the respective roles and responsibilities of the board and management, including those matters expressly reserved to the board and those delegated to management;¹²
- a board skills matrix setting out the mix of skills that the board currently has or is looking to achieve in its membership;¹³
- which of its directors are considered to be independent;¹⁴
- if a director has an interest, position or relationship of the type described in Box 2.3 of the *Principles and Recommendations* but the board is of the opinion that it does not compromise the independence of the

⁹ *Principles and Recommendations*, page 2.

¹⁰ See '8. The requirement for an Appendix 4G' on page 9 and '9. Instructions on completing an Appendix 4G' on page 9.

¹¹ Such as fund managers, analysts, brokers, proxy advisers and the financial press.

¹² Council recommendation 1.1.

¹³ Council recommendation 2.2.

¹⁴ Council recommendation 2.3(a).

director, the nature of the interest, position or relationship in question and an explanation of why the board is of that opinion;¹⁵

- the length of service of each director;¹⁶
- its process for evaluating the performance of the board, its committees and individual directors;¹⁷
- its process for evaluating the performance of senior executives;¹⁸
- whether performance evaluations of its board and senior executives were undertaken for the reporting period in accordance with the disclosed processes;¹⁹
- its corporate values;²⁰
- its code of conduct;²¹
- its whistleblower policy;²²
- its anti-bribery and corruption policy;²³
- its continuous disclosure compliance policy;²⁴
- its diversity policy, the measurable gender diversity objectives that the board or a committee of the board has set, and its progress towards achieving those objectives;²⁵
- if it has an internal audit function, how the function is structured and what role it performs or, 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;²⁶
- whether it has any material exposure to environmental and social risks and, if it does, how it manages or intends to manage those risks;²⁷
- its policies and practices regarding the remuneration of non-executive directors and the remuneration of executive directors and other senior executives;²⁸
- if it has an equity-based remuneration scheme, its 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;²⁹ and

¹⁵ Council recommendation 2.3(b).

¹⁶ Council recommendation 2.3(c).

¹⁷ Council recommendation 1.6(a).

¹⁸ Council recommendation 1.7(a).

¹⁹ Council recommendations 1.6(b) and 1.7(b).

²⁰ Council recommendation 3.1.

²¹ Council recommendation 3.2.

²² Council recommendation 3.3.

²³ Council recommendation 3.4.

²⁴ Council recommendation 5.1.

²⁵ Council recommendation 1.5.

²⁶ Council recommendation 7.3.

²⁷ Council recommendation 7.4.

²⁸ Council recommendation 8.2.

²⁹ Council recommendation 8.3.

- if it has a director who does not speak the language in which board or security holder meetings are held or key documents are written, 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.³⁰

It will also have established an audit committee,³¹ risk committee or committees,³² nomination committee³³ and remuneration committee³⁴ and disclosed their charters, membership and the attendance records of members at committee meetings, or else have disclosed the alternative arrangements the board has put in place to perform the responsibilities normally undertaken by such committees.

An entity which does not follow all of the Council's recommendations will need to identify in its corporate governance statement each recommendation it does not follow and state its reasons for not following the recommendation and what (if any) alternative governance practices it has adopted in lieu of the recommendation.

Hence, Listing Rule 4.10.3 elicits the disclosure of a significant amount of information about a listed entity's governance practices, whether it follows the Council's recommendations or not.

5. Where to make your corporate governance disclosures

Listing Rule 4.10.3 requires an entity's corporate governance statement to be published in its annual report or on its website. The *Principles and Recommendations* likewise suggest that information about an entity's corporate governance practices should be disclosed either in its annual report or on its website.³⁵

Where an entity publishes its governance disclosures in its annual report, those disclosures should appear in a clearly delineated "corporate governance" section of the annual report.

Where an entity publishes its governance disclosures on its website, 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).

It is acceptable for an entity's corporate governance statement to incorporate material by reference (for example, in another part of its annual report or on another part of the entity's website) 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 relevant page or section of the annual report or the URL of the relevant web page).

6. What to disclose if you follow a Council recommendation

On a strict literal reading of Listing Rule 4.10.3, an entity which follows all of the Council's recommendations need only state that fact in its corporate governance statement and nothing more (although, as noted above, the fact that an entity does follow the Council's recommendations will necessarily mean that it has disclosed substantial information about its corporate governance practices in its annual report or on its website).

To comply with the spirit, intention and purpose of Listing Rule 4.10.3³⁶ – which, as mentioned above, is to ensure that the market receives a reasonable level of information about the corporate governance practices an entity has adopted – a listed entity should give a holistic and informative explanation of its corporate governance framework

³⁰ Council recommendation 9.1.

³¹ Council recommendation 4.1.

³² Council recommendation 7.1.

³³ Council recommendation 2.1.

³⁴ Council recommendation 8.1.

³⁵ As noted previously, if a listed entity publishes its corporate governance statement on its website rather than in its annual report, Listing Rule 4.10.3 requires its annual report to mention the URL where the statement can be found.

³⁶ As listed entities are required to do under Listing Rule 19.2.

and not take a pedantic or legalistic approach to its disclosures under Listing Rule 4.10.3, such as simply listing the recommendations followed and those not followed and why.

As the *Principles and Recommendations* state:³⁷

... 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.

This includes not only outlining the governance arrangements it has in place but also explaining how they are being implemented in practice. For example, where a recommendation calls for a particular policy to be in place,³⁸ it will aid transparency and promote investor confidence for the entity to disclose, where appropriate,³⁹ action taken to promote compliance and whether there have been material breaches of the policy during the reporting period and how they have been dealt with. Similarly, where a recommendation calls for a matter to be reviewed or evaluated,⁴⁰ investors will find it helpful for the entity to disclose, where appropriate, any material insights it has gained from the review or evaluation and any changes it has made to its governance arrangements as a result. ...

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 on the corporate governance page on the company's website.

to be much more engaging and illuminating than:

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

7. What to disclose if you do not follow a Council recommendation

Again, to comply with the spirit, intention and purpose of Listing Rule 4.10.3,⁴¹ any statement an entity includes in its corporate governance statement explaining its reasons for not following a Council 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.

³⁷ *Principles and Recommendations*, page 4.

³⁸ As is the case for example in recommendations 1.5 (diversity), 3.2 (code of conduct), 3.3 (whistleblower policy), 3.4 (anti-bribery and corruption policy), 5.1 (disclosure policy) and 8.3 (policy on hedging equity incentive schemes).

³⁹ Having regard to privacy, confidentiality, defamation and other pertinent legal issues.

⁴⁰ As is the case for example in recommendations 1.6 (board performance reviews) and 7.2 (annual risk review).

⁴¹ See note 36 and the accompanying text.

Security holders are unlikely to find brief statements – such as “the recommendation is not considered appropriate, given [the entity]’s size and circumstances” – to be particularly helpful in understanding why an entity has chosen not to follow a particular Council recommendation or what alternative corporate governance arrangements the entity may have instituted to address the underlying principle to which that recommendation is directed.

8. The requirement for an Appendix 4G

As mentioned previously, Listing Rule 4.7.3 requires a listed entity to give ASX a completed Appendix 4G at the same time as it gives ASX its annual report. The Appendix 4G serves a dual purpose. It acts as a key designed to assist readers to locate the governance disclosures made by a listed entity under Listing Rule 4.10.3 and under the Council’s recommendations. It also acts as a verification tool for listed entities to confirm that they have met the disclosure requirements of Listing Rule 4.10.3.

An editable version of Appendix 4G is available on ASX Online and on the ASX website at:
<http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

The Appendix 4G is not a substitute for, and is not to be confused with, the entity’s corporate governance statement. They serve different purposes and an entity must produce each of them separately.

If an entity includes its corporate governance statement in its annual report, it must provide to ASX an Appendix 4G at the same time as it lodges its annual report with ASX (with lodgement of the annual report effectively being taken to be lodgement of the corporate governance statement).

If an entity does not include its corporate governance statement in its annual report, it must provide to ASX *both* an Appendix 4G *and* a copy of its corporate governance statement, at the same time as it lodges its annual report with ASX.

9. Instructions on completing an Appendix 4G

The front page of the Appendix 4G asks an entity to indicate where its corporate governance statement for the reporting period can be found (ie on what pages of its annual report or at what URL on its website) and to insert the effective date of its corporate governance statement. It includes an attestation that the corporate governance statement is accurate and up to date as at the effective date and has been approved by the entity’s board.

The Appendix 4G must be dated and have the name of the officer who authorised its lodgement with ASX inserted on the front page of the form.

The balance of the Appendix 4G is an annexure that serves as a key to where the entity has made its governance disclosures. The annexure takes the form of a table divided into 3 columns:

- The first column lists all of the Council’s recommendations.
- The second column contains check boxes to indicate that the entity has followed the applicable recommendation in full for the whole of the reporting period and that this has been disclosed in the entity’s corporate governance statement.

Where the Council recommendation in question has a disclosure obligation attached, the second column will also ask the entity to insert the location where that disclosure has been made.⁴² If it has been made:

- in the entity’s corporate governance statement, the entity need only insert “our corporate governance statement”;

⁴² See, for example, recommendation 3.1 that a listed entity “should articulate *and disclose* its values”. The second column in the Appendix 4G for that recommendation asks the entity to check the box to confirm that the entity has followed the recommendation in full for the whole of the reporting period and also to insert the location where its values have been disclosed.

- in the entity's annual report, the entity should insert the page number(s) of its annual report (eg "pages 10-12 of our annual report"); or
- on the entity's website, it should insert the URL of the web page where the disclosure has been made or can be accessed (eg "www.entityname.com.au/corporate-governance/charters/").
- The third column contains check boxes to indicate that the entity has not followed the applicable recommendation in full for the whole of the reporting period and points to the reasons why. In some cases this may be because the recommendation in question is not applicable, while in others it may be because the entity has simply chosen not to follow it. In the latter case, the entity will be required to check a box indicating that its reasons for not following the recommendation are set out in its corporate governance statement.

Where there are two or more options to select in an individual cell in column 2 or 3, an entity can, if it wishes, delete any option that is not applicable and just retain the option that is applicable.

So, for example, some recommendations have alternatives for compliance.⁴³ These generally take the form of numbered or lettered paragraphs in the recommendation separated by the word "or". An entity that complied in full with one of the alternatives for the whole of the reporting period can check the box in column 2 and complete any other data fields required in relation to that alternative to indicate compliance. If it wishes, it can also remove the entries related to the other (not applicable) alternative(s) to help simplify and shorten its Appendix 4G.

Likewise, an entity that has followed all of the Council's recommendations **in full** for the **whole** of the reporting period can, if it wishes, delete the third column from the Appendix 4G and re-format it to make it simpler and shorter.

An entity should only check a box in the second column of the Appendix 4G if it has followed the relevant recommendation **in full** for **the whole of the reporting period**. Otherwise, it should check the applicable box in the third column of the Appendix 4G to indicate that it has not followed the recommendation in full for the whole of the reporting period.

Some recommendations have multiple parts that need to be satisfied for the entity to follow that recommendation in full. Sometimes these parts are set out in a series of numbered or lettered paragraphs separated by the word "and", while in others they are expressed within a single paragraph.

An example of a recommendation that has multiple parts in separate paragraphs is recommendation 1.2, which provides that 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.

The entity must follow both (a) and (b) above if it wishes to represent in its corporate governance statement and in its Appendix 4G that it follows recommendation 1.2. If it follows one of (a) or (b) but not the other, it should check the applicable box in the third column of its Appendix 4G to indicate that it has not followed the recommendation in full for the whole of the reporting period.

An example of a recommendation that has multiple parts within a single paragraph is recommendation 5.1, which provides that a listed entity should have and disclose a written policy for complying with its continuous disclosure obligations under Listing Rule 3.1. If an entity wishes to represent in its corporate governance statement and in its Appendix 4G that it follows recommendation 5.1, it must: (i) have a continuous disclosure policy; and (ii) disclose that policy on its website or in its annual report.⁴⁴ If it does not do both (i) and (ii), it cannot claim to comply with

⁴³ See, for example, recommendations 2.1, 4.1, 7.1, 7.3 and 8.1.

⁴⁴ Note that the glossary to the *Principles and Recommendations* defines the term "disclose", when used in respect of a Council recommendation, to mean "to include the information in the entity's annual report or on its website".

recommendation 5.1 in full and therefore should check the applicable box in the third column of its Appendix 4G to indicate that it has not followed the recommendation in full for the whole of the reporting period.

As mentioned above, where a Council recommendation has a disclosure obligation attached, the second column of Appendix 4G will ask the entity to insert the location where that disclosure has been made. ASX is aware of one listed entity that ticked the box in the second column its Appendix 4G to indicate that it followed a Council recommendation requiring a governance policy to be disclosed but stated as the location of the policy in that column “in our internal records”. That is not a proper disclosure for the purposes of the *Principles and Recommendations*.⁴⁵ The entity should have ticked the applicable box in the third column of its Appendix 4G to indicate that it did not follow the recommendation and included a comment in its corporate governance statement that it did not follow the recommendation and the reasons why.

10. Guidance on disclosure of governance policies

Council recommendations 1.5, 3.2, 3.3, 3.4 and 5.1 respectively call for a listed entity to have and disclose a diversity policy, code of conduct, whistleblower policy, anti-bribery and corruption policy, and continuous disclosure policy.

The fourth edition of the *Principles and Recommendations* requires these policies to be disclosed in full. The option allowed in earlier editions of the *Principles and Recommendations* for an entity to disclose a summary of the relevant policy instead of the full policy⁴⁶ was removed in the fourth edition.

For these purposes, “disclose” means “to include the information in the entity’s annual report or on its website”.⁴⁷

Most entities will comply with recommendations 1.5, 3.2, 3.3, 3.4 and 5.1 by simply including a link to a copy of the relevant policy in the governance section of their website.

ASX is aware that some entities document some of their governance arrangements in a relatively short high-level statement of principles, and a supplementary document with more detail on the steps staff must take to comply with the statement of principles. The high-level statement of principles is typically styled as a “policy”, while the supplementary document is often styled as a “process”, “procedure” or “guide”. This raises the question as to what should be disclosed under recommendations 1.5, 3.2, 3.3, 3.4 and 5.1 if an entity’s governance arrangements have been documented in this way.

ASX expects entities to comply with the spirit, intention and purpose of the Council’s recommendations.⁴⁸ The evident purpose of recommendations 1.5, 3.2, 3.3, 3.4 and 5.1 is to provide investors with sufficient information about an entity’s key governance policies to assess the quality and integrity of its governance arrangements.

The commentary to recommendations 1.5, 3.2, 3.3, 3.4 and 5.1 includes suggestions for the contents of the policies the subject of those recommendations.⁴⁹

If the entity’s policy document addresses the bulk of the issues in the suggested contents for such a policy and the supplementary document simply addresses matters of process or detail, ASX will generally be satisfied with just the policy being disclosed.

However, if the bulk of the issues in the suggested contents for a policy are addressed in the supplementary document rather than the entity’s formal policy document, ASX will expect both the policy and the supplementary

⁴⁵ See note 44 above.

⁴⁶ The option to disclose a summary of a policy instead of the full policy applied to an entity’s diversity policy, code of conduct and continuous disclosure policy. The recommendations to have a whistleblower policy and anti-bribery and corruption policy were added in the fourth edition.

⁴⁷ See note 44 above.

⁴⁸ Cf Listing Rule 19.2.

⁴⁹ See boxes 1.5, 3.2, 3.3, 3.4 and 5.1 in the commentary to the *Principles and Recommendations*.

document to be disclosed so that investors have the information they need to assess the quality and integrity of the entity's governance arrangements.

11. Guidance on Council recommendation 1.5

Council recommendation 1.5 provides that:

A listed entity should:

- (a) *have and disclose a diversity policy;*
- (b) *through its board or a committee of the board set measurable objectives for achieving gender diversity in the composition of its board, senior executives and workforce generally; and*
- (c) *disclose in relation to each reporting period:*
 - (1) *the measurable objectives set for that period to achieve gender diversity;*
 - (2) *the entity's progress towards achieving those objectives; and*
 - (3) *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.*

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% of its directors of each gender within a specified period.

The 30% figure in this last paragraph is a minimum. A listed entity in the S&P/ASX 300 Index may set a higher percentage if it wishes to do so.

If an entity wishes to represent in its corporate governance statement and in its Appendix 4G that it follows recommendation 1.5, it must comply with each of paragraphs (a), (b) and (c) above and, if it was in the S&P/ASX 300 Index at the commencement of the reporting period, with the concluding paragraph above.

Among other things, this means that the board or a committee of the board must have set measurable objectives for achieving gender diversity not only in the composition of the entity's board but also in the composition of its senior executives and workforce generally. It must also disclose for each reporting period what its measurable objectives were for that period and the entity's progress towards achieving them.

An entity that has met its measurable diversity objectives in an earlier reporting period and has not set new objectives must still disclose what those objectives were for the current reporting period and confirm that it continued to meet them over that period.

12. Guidance on Council recommendation 2.2

Council recommendation 2.2 provides that:

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.

The commentary to recommendation 2.2 acknowledges that:

There is no prescribed format for a board skills matrix. 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.

If an entity chooses to do the former, 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.⁵⁰

ASX has noted some instances of a listed entity purporting to comply with recommendation 2.2 by simply cross-referring to the short biographies of its directors in its annual report or on its website. This does not comply with recommendation 2.2.

Entities that wish to improve their understanding of what should be disclosed in a board skills matrix under recommendation 2.2 are encouraged to read the Governance Institute of Australia's Good Governance Guide *Creating and disclosing a board skills matrix*.⁵¹

13. Guidance on Council recommendation 4.2

Council recommendation 4.2 provides that:

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.

On its face, this recommendation applies to all financial statements that the board of a listed entity may approve. This includes not only annual and half-year financial statements under the Corporations Act (or equivalent legislation overseas) but also:

- quarterly cash flow (Appendix 5B) reports of mining exploration entities and oil and gas exploration entities under Listing Rule 5.5; and
- quarterly cash flow (Appendix 4C) reports of entities subject to Listing Rule 4.7B.

Therefore, if an entity is required to give quarterly reports to ASX under the Listing Rules and it wishes to comply with recommendation 4.2, before the board approves those quarterly reports, it should be receiving a declaration from its CEO and CFO in the terms set out in that recommendation.

14. Guidance on Council recommendation 4.3

Council recommendation 4.3 provides that:

A listed entity should disclose its process to verify the integrity of any periodic corporate report it releases to the market that is not audited or reviewed by an external auditor.

The purpose of this recommendation is explained in the commentary to recommendation 4.3:

Increasingly, investors are relying on a broader range of periodic corporate reports than audited or reviewed financial statements to inform their investment decisions. This includes an entity's annual directors' reports, quarterly activity reports, quarterly cash flow reports and, in some cases, integrated reports (if prepared as a separate annual report) and sustainability reports.

⁵⁰ *Principles and Recommendations*, page 13.

⁵¹ Available online at: <https://www.asx.com.au/documents/asx-compliance/creating-disclosing-board-skills-matrix.pdf>.

Where a corporate report of this type is not subject to audit or review by an external auditor, it is important that investors understand the process by which the entity has satisfied itself that the report is materially accurate, balanced and provides investors with appropriate information to make informed investment decisions.

This can be disclosed in the report itself or more generally in the entity's governance disclosures in its annual report or on its website.

"Periodic corporate report" is defined in the glossary to the *Principles and Recommendations* to mean:

an entity's annual directors' report, annual and half yearly financial statements, quarterly activity report, quarterly cash flow report, integrated report, sustainability report, or similar periodic report prepared for the benefit of investors.

The definition of periodic corporate report is deliberately specific. For a publication to fall within that definition, it must be one of the reports expressly mentioned in the definition or a report of a similar character.

Hence, recommendation 4.3 does not apply to reports that are prepared on a one-off, irregular or ad hoc basis. Nor does it apply to materials such as slide decks produced for an annual general meeting, an annual or half-year results announcement, or an annual or other periodic investor day presentation, even though these may be said to be produced on a periodic basis.

Of course, the fact that recommendation 4.3 does not apply to a publication does not mean that an entity need not have processes in place to verify the integrity of the information in the publication. Issuing a false or misleading publication to the market can have very significant legal ramifications.⁵²

Typically, an entity's annual financial statements and remuneration report will be audited, and its half-year financial statements will either be reviewed or audited, by the entity's external auditor and hence recommendation 4.3 will not apply to those documents.

However, an entity's annual directors' report typically is not audited or reviewed (in the sense that word is used in recommendation 4.3 and in general accounting parlance) by its external auditor. The auditor's examination of the entity's annual directors' report will be limited to reading the report to determine whether there is any material inconsistency with the entity's audited financial statements.⁵³ Indeed, the auditor's report will typically include an express disclaimer that the auditor's opinion does not cover the "other information" in the annual report and that the auditor does not express an audit opinion or any form of assurance conclusion on that information.

Where that is the case, to comply with recommendation 4.3, the entity should include in its annual report or on its website a description of the process it undertakes to verify the integrity of the information in its annual directors' report.⁵⁴

Likewise, the quarterly activity reports and quarterly cash flow reports produced by an entity subject to the quarterly reporting regimes in Listing Rules 4.7B – 4.7C or 5.1 – 5.5 ordinarily are not audited or reviewed by its external auditor.⁵⁵ Where that is the case, to comply with recommendation 4.3, the entity should include in each quarterly cash flow report, or in its annual report or on its website, a description of the process it undertakes to verify the integrity of the information in its quarterly cash flow reports.

⁵² It may, for example, contravene section 180, 1041E, 1041H or 1309 of the Corporations Act.

⁵³ See Auditing Standard ASA 720 *The Auditor's Responsibilities Relating to Other Information* (especially at paragraphs 14 and 22(c)).

⁵⁴ This might include, for example, having each material statement in the annual directors' report verified by relevant senior management and the report reviewed by the entity's board and/or its audit committee.

⁵⁵ Although an entity's external auditor would generally examine relevant quarterly activity reports and quarterly cash flow reports as part of its work plan for the audit or review of the entity's half-year and annual financial statements: see Auditing Standard on Review Engagements ASRE 2410 *Review of a Financial Report Performed by the Independent Auditor of the Entity* and Auditing Standard ASA 315 *Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment* (especially at paragraph A18).

An integrated report will typically include information about an entity's strategy, governance, performance and prospects that may or may not be audited or reviewed by an external auditor, as well as the entity's audited financial statements and audited remuneration report. To the extent the information in an integrated report is not audited or reviewed by an external auditor,⁵⁶ to comply with recommendation 4.3, the entity should include in each integrated report, or in its annual report (if that is a separate document to its integrated report) or on its website, a description of the process it undertakes to verify the integrity of the information in its integrated reports.

The reference in the definition of "periodic corporate report" to a sustainability or similar report will generally capture reports styled as an "ESG report" or "CSR report", as well as those styled as a "sustainability report". Again, to the extent that these types of periodic reports contain any information that is not audited or reviewed by an external auditor,⁵⁷ to comply with recommendation 4.3, the entity should include in each such report, or in its annual report or on its website, a description of the process it undertakes to verify the integrity of the information in these reports.

The definition of "periodic report" in the Principles and Recommendations does not specifically mention the half-year directors' report prepared under section 306 of the Corporations Act. In ASX's view, this is a report of a similar character to those specifically mentioned in that definition and, therefore, recommendation 4.3 also applies to an entity's half-year directors' report. Accordingly, the entity should include in each such report, or in its annual report or on its website, a description of the process it undertakes to verify the integrity of the information in these reports.

15. Guidance on Council recommendation 5.3

Council recommendation 5.3 provides that:

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

ASX recognises that entities may give a series of presentations to investors and analysts over a short period that contain materially the same information but have been tailored for each audience. In such a case, ASX would expect the entity to release the presentation materials for the first presentation in the series on the ASX Market Announcements Platform ahead of that presentation. ASX would not expect any subsequent presentations in the series to be published on the ASX Market Announcements Platform, provided they do not contain any new market sensitive information.⁵⁸

16. Guidance on Council recommendation 7.4

Council recommendation 7.4 provides that:

A listed entity should disclose whether it has any material exposure to environmental or social risks⁵⁹ and, if it does, how it manages or intends to manage those risks.

⁵⁶ Note that this could be a different external auditor to the one that audits or reviews the entity's financial statements.

⁵⁷ Again, note that this could be a different external auditor to the one that audits or reviews the entity's financial statements.

⁵⁸ This is consistent with the commentary to recommendation 5.3 and the guidance in section 7.7 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

⁵⁹ The terms "environmental risk" and "social risk" are defined in the glossary to the *Principles and Recommendations*.

"Environmental risk" is defined to mean the potential negative consequences (including systemic risks and the risk of consequential regulatory responses) to a listed entity if its activities adversely affect the natural environment or if its activities are adversely affected by changes in the natural environment. This includes the risks associated with the entity polluting or degrading the environment, adding to the carbon levels in the atmosphere, or threatening a region's biodiversity or cultural heritage. It also includes the risks for the entity associated with climate change, reduced air quality and water scarcity.

"Social risk" is defined to mean the potential negative consequences (including systemic risks and the risk of consequential regulatory responses) to a listed entity if its activities adversely affect human society or if its activities are adversely affected by changes in human society. This includes the risks associated with the entity or its suppliers engaging in modern slavery, aiding human conflict, facilitating crime or corruption, mistreating employees, customers or suppliers, or harming the local community. It also includes the risks for the entity associated with large scale mass migration, pandemics or shortages of food, water or shelter.

“Material exposure” is defined to mean “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.”⁶⁰

The commentary to recommendation 7.4 acknowledges that meeting this recommendation does not require an 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*,⁶¹ or a sustainability report in accordance with a recognised international standard,⁶² may meet this recommendation simply by cross-referring to that report.

ASX has noted some instances of a listed entity purporting to comply with recommendation 7.4 by simply cross-referring to its operating and financial review (OFR).⁶³ This is fine provided the OFR in fact specifically addresses whether the entity has any material exposure to environmental and social risks and, if it does, how it manages or intends to manage those risks. If the OFR only has general disclosures about risks, this does not comply with recommendation 7.4.

17. Guidance on Council recommendation 8.3

Council recommendation 8.3 provides that:

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; and*
- (b) *disclose that policy or a summary of it.*

To comply with this recommendation, an entity with an equity-based remuneration scheme must have a policy on whether participants are permitted to enter into transactions limiting the economic risk of participating in the scheme, and also disclose that policy or a summary of it.

ASX has noticed some instances of entities claiming to comply with recommendation 8.3 and simply disclosing the rules of the equity-based remuneration scheme, when those rules don’t actually include any reference to the entity’s policy on limiting the economic risk of participating in the scheme.

Often this policy will be stated in the entity’s securities trading policy under Listing Rule 12.9. If that is the case, to comply with recommendation 8.3, the entity should disclose its trading policy or an extract of the relevant part of that policy.

An entity which does not have an equity-based remuneration scheme, can simply check the box in column 3 of its Appendix 4G to indicate that it does not have an equity-based remuneration scheme and this recommendation is therefore not applicable.

⁶⁰ See footnote 63 of to the *Principles and Recommendations*.

⁶¹ Available online at: <https://integratedreporting.org/wp-content/uploads/2013/12/13-12-08-THE-INTERNATIONAL-IR-FRAMEWORK-2-1.pdf>.

⁶² Such as:

- the Global Reporting Initiative’s *G4 Sustainability Reporting Guidelines*, available online at: <https://www.globalreporting.org/resource/library/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf>;
- the various sustainability accounting standards published by the Sustainability Accounting Standards Board, accessible online at <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.

⁶³ Noting that paragraph 63 of ASIC Regulatory Guide 247 *Effective disclosure in an operating and financial review* suggests that a listed entity’s operating and financial review “should include a discussion of environmental and other sustainability risks where those risks could affect the entity’s achievement of its financial performance or outcomes disclosed, taking into account the nature and business of the entity and its business strategy.”

18. Audit committees

Listing Rule 12.7 provides:

An entity which was included in the S&P All Ordinaries Index at the beginning of its financial year must have an audit committee during that year. If the entity was included in the S&P/ASX 300 Index at the beginning of its financial year it must also comply with the recommendations set by the ASX Corporate Governance Council in relation to composition and operation of the audit committee 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 recommendations set by the ASX Corporate Governance Council in relation to composition and operation of the audit committee at that date must take steps so that it complies with those recommendations within 3 months of the beginning of the financial year.

The specific Council recommendations dealing with the composition and operation of audit committees that an entity in the S&P/ASX 300 Index must comply with under Listing Rule 12.7 are in Council recommendation 4.1(a), which recommends that the board of a listed entity should have an audit committee 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.*

An entity in the S&P/ASX 300 Index at the beginning of its financial year should therefore be reporting in its annual corporate governance statement for that financial year that it follows Council recommendation 4.1(a).⁶⁴ It cannot “if not, why not” report against (that is, not follow and give its reasons for not following) that recommendation as that would amount to a breach of Listing Rule 12.7.

An entity in the S&P All Ordinaries Index, but not in the S&P/ASX 300 Index, at the beginning of its financial year should be reporting in its annual corporate governance statement for that financial year that it has an audit committee and therefore follows the opening paragraph of Council recommendation 4.1(a). It cannot “if not, why not” report against that part of recommendation 4.1(a) as that would amount to a breach of Listing Rule 12.7. It should also be reporting under Listing Rule 4.10.3 whether it follows the specific suggestions in subparagraphs (1) – (5) of Council recommendation 4.1(a) about the composition and operation of the audit committee and, if not, give its reasons for not doing so.

An entity which is not in the S&P All Ordinaries Index at the beginning of its financial year should be reporting under Listing Rule 4.10.3 whether it follows Council recommendation 4.1(a) or (b) and, if not, give its reasons for not doing so. Recommendation 4.1(b) deals with the situation of those listed entities which decide that they are able to oversee the financial reporting process efficiently and effectively without establishing a separate audit committee. In that case, to comply with recommendation 4.1(b), 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

⁶⁴ If the entity was included in the S&P/ASX 300 Index for the first time less than three months before the first day of its financial year, it has three months from the start of the financial year to implement processes to comply with Council recommendation 4.1(a). If this means that the entity has not complied with Council recommendation 4.1(a) for the whole of the financial year, it should report in its corporate governance statement which part of the financial year that it did comply with that recommendation 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.

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.

19. Remuneration committees

Listing Rule 12.8 provides:

An entity, which was included in the S&P/ASX 300 Index at the beginning of its financial year, must have a remuneration committee, comprised solely of non executive directors, for the entire duration of that financial year.

The term “remuneration committee” is defined in Listing Rule 19.12 as “a committee formed by an entity to advise that entity on matters pertaining to the remuneration of its key management personnel.”⁶⁵

The Council recommendation relevant to remuneration committees is recommendation 8.1(a), which recommends that the board of a listed entity should have a remuneration committee which:

- (1) *has at least three members, 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) *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.*

An entity in the S&P/ASX 300 Index at the beginning of its financial year therefore should be reporting in its corporate governance statement that it has a remuneration committee and therefore follows the opening paragraph of Council recommendation 8.1(a). It cannot “if not, why not” report against that part of recommendation 8.1(a) as that would amount to a breach of Listing Rule 12.8. In addition, it should be reporting under Listing Rule 4.10.3 whether it follows the specific suggestions in sub-paragraphs (1) – (5) of Council recommendation 8.1(a) about the composition and operation of the remuneration committee and, if not, give its reasons for not doing so. It should also be stating in its corporate governance statement that its remuneration committee is comprised solely of non-executive directors and has been in place for the whole of the financial year, so as to record its compliance with Listing Rule 12.8 (noting that Council recommendation 8.1 recommends that a *majority* of the members of the remuneration committee are *independent* directors, whereas Listing Rule 12.8 requires *all* of the members of the remuneration committee to be *non-executive* directors).

An entity which is not in the S&P/ASX 300 Index at the beginning of its financial year should be reporting under Listing Rule 4.10.3 whether it follows Council recommendation 8.1(a) or (b) and, if not, give its reasons for not doing so. Recommendation 8.1(b) deals with the situation of those listed entities which decide that they are able to deal efficiently and effectively with remuneration issues without establishing a separate remuneration committee. In that case, to comply with recommendation 8.1(b), 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 for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.

⁶⁵ The term “key management personnel” is defined in Listing Rule 19.12 to have the same meaning as in Accounting Standard AASB 124 *Related Party Disclosure*, which requires subject entities to disclose the remuneration and shareholdings of, and various other transactions involving, key management personnel. AASB 124 defines “key management personnel” 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.”

20. ASX's enforcement practices

In assessing whether an entity has complied with its disclosure obligations under Listing Rule 4.10.3, ASX looks beyond form to substance to see if the entity has made disclosures which are consistent with the spirit, intention and purpose of the rule⁶⁶ and which reveal a reasonable level of information about the corporate governance practices an entity has adopted.

ASX reviews the corporate governance statement of each listed entity to confirm that it materially complies with its disclosure obligations under Listing Rule 4.10.3. If the entity was in the S&P/ASX 300 Index or S&P All Ordinaries Index at the beginning of its financial year, ASX also checks that the entity has complied with the applicable audit committee and remuneration committee requirements under Listing Rules 12.7 and 12.8.

If an entity:

- fails to include in its annual report a corporate governance statement, or the URL of the page on its website where a corporate governance statement is located, in breach of Listing Rule 4.10.3;
- omits information from its corporate governance statement that should have been included under Listing Rule 4.10.3 and ASX considers the omission to be a substantial one (in the sense of not meeting the underlying policy objective of ensuring that the market has a reasonable level of information about an entity's corporate governance practices); or
- fails to have an audit committee or remuneration committee when it is required to do so under Listing Rules 12.7 and 12.8,

ASX will bring that matter to the attention of the entity and ask it to take immediate action to rectify the breach. In the first two cases above, this will usually involve the entity making an announcement to the market to correct the omission and, in the third case, the entity making an announcement that it has established the required audit committee or remuneration committee. If the entity does not respond appropriately to ASX's request, ASX may issue a written direction to the entity under Listing Rule 18.8 requiring it to rectify the breach.⁶⁷ Depending on the circumstances, ASX may also suspend trading in the entity's securities until it rectifies the breach.⁶⁸

If it appears to ASX that an entity has omitted information from its corporate governance statement that should have been included under Listing Rule 4.10.3 but ASX considers the omission not to be a substantial one, ASX may deal with the matter more informally by simply requesting the entity to correct the omission in its next annual corporate governance statement.

If ASX has concerns that a listed entity may have:

- omitted material information that ought to have been included in its corporate governance statement under Listing Rule 4.10.3; or
- lodged a materially false or misleading corporate governance statement,

ASX may ask the entity to provide it with any information, document or explanation (including an updated version of an Appendix 4G) to enable ASX to be satisfied that the entity is in compliance with its obligations under the Listing Rules.⁶⁹ ASX can require the information, document or explanation to be verified under oath.⁷⁰ The entity must comply with any such that request from within the time specified by ASX.⁷¹

⁶⁶ As listed entities are required to do under Listing Rule 19.2.

⁶⁷ Listing Rule 18.8. Such a direction will usually be published on the ASX Market Announcements Platform.

⁶⁸ Listing Rules 17.3.1 and 17.3.2.

⁶⁹ Listing Rule 18.7.

⁷⁰ Listing Rule 18.7.

⁷¹ Listing Rule 18.7.

Depending on the nature of the information requested, ASX may require that information to be released to the market. ASX's request for the information will make it clear whether ASX is intending to release, or reserves the right to release, the information to the market so that the entity will have the opportunity to respond in a suitable form.⁷²

21. Listed entity compliance practices

Listed entities should exercise due care to ensure that the information in their corporate governance statements is correct and not misleading. An officer or employee of a listed entity who gives, or authorises or permits the giving of, materially false or misleading⁷³ information to ASX under the Listing Rules:

- knowingly, potentially breaches section 1309(1) of the Corporations Act, which is a criminal offence punishable by a fine of up to 200 penalty units and/or imprisonment for up to 5 years; or
- without taking reasonable steps to ensure that the information was not false or misleading, potentially breaches section 1309(2) of the Corporations Act, which is a criminal offence punishable by a fine of up to 100 penalty units and/or imprisonment for up to 2 years.

ASX therefore encourages listed entities to complete their corporate governance statements and their Appendix 4G carefully to confirm that the disclosures in them are correct.

It should be noted that if ASX has reason to suspect that a listed entity or any other person (such as a director, secretary or other officer of a listed entity) has committed a significant contravention of the Corporations Act, it is required under section 792B(2)(c) to give a notice to ASIC with details of the contravention. The purpose of such a notice is so that ASIC can then consider what action (if any) it may wish to take under its various enforcement powers.

If a listed entity provides a corporate governance statement to ASX that is essentially fabricated or contains material falsehoods, ASX is likely to regard that as a "significant" contravention of section 1309 for these purposes and refer the matter to ASIC under section 792B(2)(c).

22. Applicants seeking admission to the official list

Listing Rule 1.1 sets out the conditions for an entity to be admitted to the official list as an ASX Listing. Condition 16 requires an applicant for listing to produce a corporate governance statement of the type required annually under Listing Rule 4.10.3.⁷⁴ The statement must disclose the extent to which the applicant will follow the Council's recommendations as at the date of its admission to the official list. If the entity does not intend to follow all of the Council's recommendations, the statement must separately identify each recommendation that will not be followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it intends to adopt in lieu of the recommendation.

If an applicant for listing will be subject to Listing Rules 12.7 or 12.8 upon its admission to the official list, Conditions 17 (in the former case) and 18 (in the latter case) also require the applicant to demonstrate to ASX that it will comply with those rules as at the date of its admission. Hence, if the entity will be included in the S&P All Ordinaries Index upon admission, it must confirm in the materials lodged with its listing application⁷⁵ that it will have an audit committee in place when it is admitted to the official list. If it will be in the S&P/ASX 300 Index upon admission, it must also confirm in the materials lodged with its listing application⁷⁶ that it will comply with the

⁷² Listing Rule 18.7A.

⁷³ This includes omitting material which renders the information given to ASX misleading in a material respect.

⁷⁴ Typically, most applicants for listing will include this statement in the prospectus, PDS or information memorandum that they lodge with their listing application under Listing Rule 1.1 Condition 3. If they do not, ASX will require the lodgement of a separate corporate governance statement as a condition of admission to the official list.

⁷⁵ Again, most applicants for listing will typically include a statement confirming their compliance with Listing Rule 12.7 in the prospectus, PDS or information memorandum that they lodge with their listing application under Listing Rule 1.1 Condition 3.

⁷⁶ Again, most applicants for listing will typically include a statement confirming their compliance with Listing Rule 12.8 in the prospectus, PDS or information memorandum that they lodge with their listing application under Listing Rule 1.1 Condition 3.

Council's recommendations relating to composition and operation of the audit committee and that it will have a remuneration committee comprised solely of non-executive directors in place when it is admitted to the official list.

Annexure A: The Council's recommendations

Principle 1 - Lay solid foundations for management and oversight

Recommendation 1.1:

A listed entity should have and disclose a board charter setting out:

- (a) the respective roles and responsibilities of its board and management; and
- (b) those matters expressly reserved to the board and those delegated to management.

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.

Recommendation 1.3:

A listed entity should have a written agreement with⁷⁷ each director and senior executive setting out the terms of their appointment.

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.

Recommendation 1.5:

A listed entity should:

- (a) have and disclose a diversity policy;
- (b) through its board or a committee of the board set measurable objectives for achieving gender diversity in the composition of its board, senior executives and workforce generally; and
- (c) disclose in relation to each reporting period:
 - (1) the measurable objectives set for that period to achieve gender diversity;
 - (2) the entity's progress towards achieving those objectives;
 - (3) 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.

⁷⁷ 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. This is to ensure that the director or senior executive is personally accountable to the listed entity for the performance of their duties and for any breach of the agreement.

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% of its directors of each gender within a specified period.

Recommendation 1.6:

A listed entity should:

- (a) have and disclose a process for periodically evaluating the performance of the board, its committees and individual directors; and
- (b) disclose for each reporting period whether a performance evaluation has been undertaken in accordance with that process during or in respect of that period.

Recommendation 1.7:

A listed entity should:

- (a) have and disclose a process for evaluating the performance of its senior executives at least once every reporting period; and
- (b) disclose for each reporting period whether a performance evaluation has been undertaken in accordance with that process during or in respect of that period.

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

Recommendation 2.1:

The board of a listed entity should:

- (a) have a nomination committee which:
 - (1) has at least three members, 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.

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.

Recommendation 2.3:

A listed entity should disclose:

- (a) the names of the directors considered by the board to be independent directors;⁷⁸
- (b) if a director has an interest, position 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 or relationship in question and an explanation of why the board is of that opinion; and
- (c) the length of service of each director.

Recommendation 2.4:

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

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.

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.

Principle 3 - Instil a culture of acting lawfully, ethically and responsibly

Recommendation 3.1:

A listed entity should articulate and disclose its values.

Recommendation 3.2:

A listed entity should:

- (a) have and disclose a code of conduct for its directors, senior executives and employees; and
- (b) ensure that the board or a committee of the board is informed of any material breaches of that code.

Recommendation 3.3

A listed entity should:

- (a) have and disclose a whistleblower policy; and
- (b) ensure that the board or a committee of the board is informed of any material incidents reported under that policy.

Recommendation 3.4

A listed entity should:

- (a) have and disclose an anti-bribery and corruption policy; and
- (b) ensure that the board or a committee of the board is informed of any material breaches of that policy.

⁷⁸ The definition of “independent director” is set out in the Glossary to the *Principles and Recommendations*.

Principle 4 - Safeguard the integrity of corporate reports

Recommendation 4.1:

The board of a listed entity should:

- (a) have an audit committee 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.

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.

Recommendation 4.3:

A listed entity disclose its process to verify the integrity of any periodic corporate report it releases to the market that is not audited or reviewed by external auditor.

Principle 5 - Make timely and balanced disclosure

Recommendation 5.1:

A listed entity should have and disclose a written policy for complying with its continuous disclosure obligations under listing rule 3.1.

Recommendation 5.2:

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

Recommendation 5.3:

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

Principle 6 - Respect the rights of security holders

Recommendation 6.1:

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

Recommendation 6.2:

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

Recommendation 6.3:

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

Recommendation 6.4:

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

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.

Principle 7- Recognise and manage risk

Recommendation 7.1:

The board of a listed entity should:

- (a) have a committee or committees to oversee risk,⁷⁹ 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:
 - (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.

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.

⁷⁹ The risk committee may be a stand-alone risk committee, a combined audit and risk committee or a combination of board committees addressing different elements of risk (see the commentary to Council recommendation 7.1).

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 governance, risk management and internal control processes.

Recommendation 7.4:

A listed entity should disclose whether it has any material exposure⁸⁰ to environmental or social risks⁸¹ and, if it does, how it manages or intends to manage those risks.

Principle 8- Remunerate fairly and responsibly

Recommendation 8.1:

The board of a listed entity should:

- (a) have a remuneration committee which:
 - (1) has at least three members, 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 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.

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.

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; and
- (b) disclose that policy or a summary of it.

⁸⁰ "Material exposure" in this context means a real possibility that the risk in question could substantively impact the listed entity's ability to create or preserve value for security holders over the short, medium or longer term.

⁸¹ The terms "environmental risk" and "social risk" are defined in the glossary to the Principles and Recommendations.

Additional recommendations that apply only in certain cases

Recommendation 9.1:

A listed entity with a director who does not speak the language in which board or security holder meetings are held or key corporate documents⁸² 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.

Recommendation 9.2

A listed entity established outside Australia should ensure that meetings of security holders are held at a reasonable place and time.

Recommendation 9.3:

A listed entity established outside Australia, and an externally managed 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.

⁸² "Key corporate documents" include an entity's constitution, prospectus, PDS, corporate reports and continuous disclosure announcements.

Annexure B: The application of the Council's recommendations to externally managed listed entities

The following table summarises how the Council's recommendations apply to externally managed listed entities:

| Recommendation | Applicable to externally managed listed entities |
|-----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.1 (role of board and management) | No, however the <i>alternative recommendation</i> below applies |
| 1.2 (background checks) | No |
| 1.3 (written contracts of appointment) | No |
| 1.4 (company secretary) | No |
| 1.5 (diversity) | No |
| 1.6 (board performance reviews) | No |
| 1.7 (management performance reviews) | No |
| 2.1 (nomination committee) | No |
| 2.2 (board skills matrix) | No |
| 2.3 (disclose independence and length of service of directors) | Yes, in relation to the responsible entity in its corporate capacity |
| 2.4 (majority of directors independent) | No |
| 2.5 (chair independent and not CEO) | No |
| 2.6 (director induction and professional development) | No |
| 3.1 (values) | Yes, in relation to the responsible entity in its corporate capacity |
| 3.2 (code of conduct) | Yes, in relation to the responsible entity in its corporate capacity |
| 3.3 (whistleblower policy) | Yes, in relation to the responsible entity in its corporate capacity |
| 3.4 (anti-bribery and corruption policy) | Yes, in relation to the responsible entity in its corporate capacity |
| 4.1 (audit committee) | Yes, 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 |
| 4.2 (CEO and CFO certification of financial statements) | Yes, 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 |
| 4.3 (process to verify integrity of periodic corporate reports) | Yes, 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 |
| 5.1 (disclosure policy) | Yes, in relation to the listed entity being managed by the responsible entity |
| 5.2 (copies of announcements to board) | Yes, in relation to the listed entity being managed by the responsible entity |
| 5.3 (investor and analyst presentations) | Yes, in relation to the listed entity being managed by the responsible entity |

| | |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6.1 (information on website) | Yes, 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 |
| 6.2 (investor relations program) | Yes, 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 |
| 6.3 (facilitate participation at meetings of security holders) | Yes, in relation to the listed entity being managed by the responsible entity |
| 6.4 (vote by poll rather than show of hands) | Yes, in relation to the listed entity being managed by the responsible entity |
| 6.5 (facilitate electronic communications) | Yes, in relation to the listed entity being managed by the responsible entity |
| 7.1 (risk committee) | Yes, 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 |
| 7.2 (annual risk review) | Yes, 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 |
| 7.3 (internal audit) | Yes, 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 |
| 7.4 (environmental and social risks) | Yes, in relation to the listed entity being managed by the responsible entity |
| 8.1 (remuneration committee) | No, however the <i>alternative recommendation</i> below applies |
| 8.2 (disclosure of executive and non-executive director remuneration policies) | No, however the <i>alternative recommendation</i> below applies |
| 8.3 (policy on hedging equity incentive scheme entitlements) | No, however the <i>alternative recommendation</i> below applies |
| 9.1 (directors who do not speak the language used in meetings or key documents) | No |
| 9.2 (time and place of meetings) | No |
| 9.3 (external auditor available at AGM) | Yes, but only if the entity has an AGM |

Additional/alternative recommendations that apply to an externally managed listed entity

The following two additional recommendations apply to externally managed listed entities:

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;
- (b) the role and responsibility of the board of the responsible entity for overseeing those arrangements.

Alternative to Recommendations 8.1, 8.2 and 8.3 for externally managed listed entities:

An externally managed listed entity should clearly disclose the terms governing the remuneration of the manager.

Externally managed listed entities should consult the section headed “The application of the recommendations to externally managed listed entities” in the *Principles and Recommendations* for further guidance on how they should apply and make disclosures against the recommendations.