



May 2019

Corporate Governance Principles and Recommendations

Fourth Edition

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Outline

1. Corporate Governance Principles and Recommendations (CGPR) 4th edition:
 - > Useful links and resources
 - > What has not changed
 - > Key changes around culture and values
 - > Other new recommendations
 - > Other substantive changes
 - > Effective date and early adoption
2. ASX Listing Rule consultation

Corporate Governance Council members



If you remember nothing else ...

- > ASX Compliance downloads page on the ASX website:

<https://www.asx.com.au/regulation/compliance/compliance-downloads.htm>

- > Under the heading “*Corporate Governance Disclosures*”:

- CGPR 4th edition
- ASX guide on transitioning to 4th edition
- Updated Guidance Note 9, effective 1 January 2020
- Editable Appendix 4G for 4th edition

And other useful materials ...

- > Corporate Governance Council “reviews and submissions” page on the ASX website:

<https://www.asx.com.au/regulation/corporate-governance-council/reviews-and-submissions.htm>

- ❑ CGPR 4th edition
- ❑ Consultation response
- ❑ Mark up of 4th edition to consultation version
- ❑ Mark up of 4th edition to 3rd edition
- ❑ These presentation slides

What has not changed

- > Non-prescriptive, flexible “if not, why not” disclosure approach
- > Hierarchy: principles, recommendations, commentary
- > 8 core principles remain substantially the same, apart from principle 3
- > Stand-alone section for externally managed entities retained
- > Continued flexibility for listed entities to make relevant disclosures either on their website or in their annual reports

High level changes at a glance

- > 7 new recommendations of general application, including 3 addressing culture and values
- > A new section 9 containing 3 recommendations (2 new) that apply to a small subset of listed entities
- > Governance codes and policies to be disclosed in full where a recommendation requires their disclosure
- > Commentary for principles 2, 3, 7 and 8 removed/relocated

Culture and values – principle 3

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

A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly

Culture and values – 3 new recommendations

Rec. 3.1: *A listed entity should articulate and disclose its values*

Rec. 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*

Rec. 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*

Culture and values – updated rec. 3.2

Rec. 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*

[Note: previously rec. 3.1]

Culture and values – updated board expectations

Commentary to rec. 1.1 (role of board and management) expanded to include in the usual responsibilities of the board:

- > *defining the entity's purpose*
- > *approving the entity's values and code of conduct to underpin the desired culture within the entity*
- > *overseeing management in its implementation of the entity's strategic objectives, instilling of the entity's values and performance generally*
- > *satisfying itself that the entity has in place an appropriate risk management framework covering both financial and non-financial risks ...*

Culture and values – updated board expectations (cont.)

- > *satisfying itself that an appropriate framework exists for relevant information to be reported by management to the board*
- > *whenever required, challenging management and holding it to account*
- > *satisfying itself that the entity's remuneration policies are aligned with the entity's purpose, values, strategic objectives and risk appetite*

Culture and values – updated management expectations

Commentary to rec 1.1 (role of board and management) expanded to include in the usual responsibilities of the senior executive team:

- > *instilling and reinforcing the entity's values*
- > *operating within the values, code of conduct and budget (as well as the risk appetite) set by the board*
- > *providing information to the board not only about the entity's operations and financial performance but also:*
 - *compliance with material legal and regulatory requirements, and*
 - *any other conduct that is materially inconsistent with the values or code of conduct of the entity*

Culture and values – why?

- > To recognise the responsibility of the board and senior management to set “the tone from the top”
- > To provide boards with the information they need to monitor the culture of the organisation through reporting up of material breaches of the entity’s code of conduct, and whistleblowing and anti-bribery and corruption polices

Is this bogging the board down with “compliance”?

Re Caremark International Inc. Derivative Litigation (1996) 698 A.2d 959
(Delaware Court of Chancery)

“Boards of directors have an obligation to be reasonably informed concerning the corporation and that includes an obligation to assure themselves that information and reporting systems exist in the corporation that are reasonably designed to provide to senior management and to the board itself timely, accurate information sufficient to allow management and the board, each within its scope, to reach informed judgments concerning *both* the corporation's compliance with law and its business performance”

Corporate reporting – updated principle 4

Principle 4: *Safeguard the integrity of corporate reports*

A listed entity should have appropriate processes to verify the integrity of its corporate reports

Corporate reporting – new rec. 4.3

Rec. 4.3: *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*

- > “Periodic corporate report” defined as the 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
- > Process can be disclosed in the report itself, or in the entity’s governance disclosures in its annual report or on its website

[Former rec. 4.3 (attendance of auditor at AGM) moved to new section 9 “Additional recommendations that apply only in certain cases”]

Disclosure - new recs 5.2 and 5.3

Rec 5.2: *A listed entity should ensure that its board receives copies of all material market announcements promptly after they have been made*

Rec. 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*

- > Substantive presentations include results presentations and the types of presentations typically given at AGMs, investor days and broker conferences
- > Excludes subsequent presentations in a series containing materially the same information but which have been tailored for a different audience
- > Does not apply to private meetings between a listed entity and an investor or analyst provided no new and material information is disclosed at the meeting

Voting – new rec. 6.4

Rec. 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*

- > Does not apply to procedural resolutions

Diversity – changes to rec. 1.5

- > Splitting requirement to have diversity policy (rec. 1.5(a)) from requirement to set measurable gender diversity objectives (rec. 1.5(b))
- > Requiring disclosure of diversity policy in full (rec. 1.5(a))
- > Extending measurable gender diversity objectives to cover senior executives and workforce as well as the board (rec. 1.5(b))
- > An entity in the S&P/ASX 300 at the start of the reporting period should set a measurable objective to have not less than 30% of its directors of each gender within a specified period

Diversity – changes to commentary

- > Consider setting specific numerical targets for female representation in key operational roles within a specified timeframe (encouraging a “pipeline” of female talent)
- > Consider setting KPIs for senior executives on gender participation within their areas of responsibility and linking part of their remuneration to the achievement of those KPIs
- > Consider disclosing emerging themes or actions taken as a result of any gender benchmarking against peers or gender pay audits undertaken to provide insights into the effectiveness of gender diversity programs and initiatives
- > Consider other facets of diversity, in addition to gender, when considering the composition of the board

Director independence – changes to box 2.3

- > New example – directors who receive performance based remuneration or participate in an employee incentive scheme
- > Examples covering material business relationships and professional advisers and consultants combined
- > Example covering relationships with a substantial holder extended to their professional advisers
- > Example covering “close family ties” replaced with “close personal ties”
- > Example addressing independence having been compromised by long tenure clarified – this means independence from management and substantial holders

Director independence – changes to rec. 2.3 commentary

- > Guidance that the board should rule a director **not** to be independent where a director falls within one or more of the examples in box 2.3, unless it is clear that the interest, position or relationship in question is not material and will not interfere with the director’s capacity to make an independent judgement
- > Expanded commentary around why being or representing a substantial holder is considered to compromise independence
- > Commentary that “close personal ties” may be based on “family, friendship or other social or business connections”

Risk – changes to principle 7

- > Expanded commentary in rec. 7.1 on the usual responsibilities of the risk committee
- > Rec. 7.2 amended to incorporate 3rd edition commentary that the board or a committee of the board should satisfy itself that the **entity is operating with due regard to the risk appetite set by the board**
- > New commentary in rec. 7.2 suggesting that the board should consider if the entity's risk management framework deals adequately with contemporary and emerging risks such as conduct risk, digital disruption, cyber-security, privacy and data breaches, sustainability and climate change

Risk – changes to principle 7 (cont.)

- > Rec. 7.4 now refers to “environmental and social risks” rather than “economic, environmental and social sustainability risks”
- > New commentary that an entity can meet this recommendation by cross referencing reports prepared in accordance with the International IIRC’s *Integrated Reporting <IR> Framework* or a recognised international sustainability standard
- > New commentary suggesting entities that believe they do not have any material exposure to environmental and social risks consider carefully their basis for that belief and benchmark their disclosures against those made by their peers

Risk – changes to principle 7 (cont.)

- > Guidance on disclosure of risks relating to climate change, including:
 - explaining the different types of climate change risk (transition risks and physical risks)
 - noting that many listed entities will be exposed to these types of risks, even where they are not directly involved in mining or consuming fossil fuels
 - encouraging listed entities to consider whether they have a material exposure to climate change risk by reference to the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures and, if they do, to make the disclosures recommended by the TCFD

Governance codes and policies to be disclosed in full

- > New and amended recommendations will require listed entities to disclose their code of conduct (rec. 3.2) and their diversity (rec. 1.5), whistleblowing (rec. 3.3), anti bribery and corruption (rec. 3.4) and continuous disclosure (rec. 5.1) policies in full rather than a summary of them
- > An entity may redact from the disclosed codes and policies, personal or confidential information such as the names and contact details of individual staff involved in administering the code/policy

Other amended recommendations

- > **Rec. 1.1:** *A listed entity should have a board charter*
- > **Rec 1.2:** *A listed entity should undertake appropriate background checks on senior executives as well as directors*
- > **Rec. 1.3:** *Have a written agreement with each director and senior executive (personally) that sets out the terms of their appointment*
- > **Rec. 1.7:** *evaluation of senior executive performance should take place at least once each reporting period (rather than “periodically” in the 3rd edition)*

Other amended recommendations (cont.)

- > **Rec. 2.6:** *A listed entity should periodically review whether there is a need for existing directors to undertake professional development*
- > **Rec. 6.3:** *A listed entity should disclose how it facilitates and encourages participation at meetings of security holders*
- > **Rec. 7.3(b):** *If a listed entity does not have an internal audit function, its disclosures should include the alternative processes it employs to evaluate and continuously improve its governance processes, as well as its risk management and internal control processes*

Additional recs that only apply in certain cases

Rec. 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 documents are written should disclose the processes it has in place to ensure the director understands and can contribute to the discussions at those meetings and understands and can discharge their obligations in relation to those documents (new)*

Rec. 9.2: *A listed entity established outside Australia should ensure that meetings of security holders are held at a reasonable place and time (new)*

Rec. 9.3: *A listed entity established outside Australia, and an externally managed listed entity that has an AGM, should ensure that its external auditor attends its AGM and is available to answer questions from security holders relevant to the audit (previously rec. 4.3)*

Note new introductory guidance ...

- > Disclosure of governance practices ideally should explain how they are being implemented in practice eg ...
- > Where a rec. calls for a particular policy to be in place disclose, where appropriate, 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
- > Where a rec. calls for a matter to be reviewed or evaluated disclose, where appropriate, any material insights gained from the review or evaluation and any changes made to governance arrangements as a result

Effective date and early adoption

- > 4th edition changes take effect for first full financial year commencing on or after 1 January 2020:
 - 31 December reporters – FY ended 31/12/20
 - 31 March reporters – FY ended 31/3/21
 - 30 June reporters – FY ended 30/6/21
 - 30 September reporters – FY ended 30/9/21
- > Listed entities can early adopt if they wish

ASX Listing Rules consultation

- > Consultation “*Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules*”:
 - closed 1 March 2019
 - 48 submissions received
 - draft consultation response and revised rules with ASIC for review
 - > Subject to receipt of necessary regulatory approvals:
 - final rule amendments
 - amended Appendices 4C and 5B
 - 18 new/amended guidance notes
- will be released September/October 2019 and take effect 1 December 2019

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Any questions?

Thank you