



ASX Corporate Governance Council

2011 REVIEW OF PRINCIPLES AND RECOMMENDATIONS

This document outlines the outcomes of the ASX Corporate Governance Council's recent review of its Corporate Governance Principles and Recommendations ("Principles").

As part of the review, roundtable discussions were held throughout the country with representatives of directors, management, institutional and retail shareholders, proxy advisers and others with an interest in the development of corporate governance practices. The purpose was to ascertain whether there were emerging governance issues which warranted the issue of a third edition of the Principles containing new areas of guidance.

The consultations did not reveal any systemic problems which would warrant revisions to the Principles. On the contrary, the Council heard consistently that the Principles remain relevant to large and small companies alike and were structured in such a way that enabled very differently sized businesses to adopt approaches that were simultaneously consistent with the Principles and yet tailored to the level of complexity of the particular business.

There was continuing strong support for the coupling of principle-based recommendations with an ASX listing rule obliging listed companies to either adopt those recommendations or explain why they had not done so. Both institutional investors and organisations representing retail investors highlighted how this "if not, why not" mechanism and the range of matters dealt with in the Principles provided a useful trigger for constructive engagement with company representatives about governance practices. The corporate governance disclosures, particularly the disclosures of why a company was not adopting a particular Recommendation, were also said to have provided useful insight to investors concerning the management of the company.

A very important part of the process of testing whether additional guidance would be welcomed in particular areas involved revisiting issues which have been the subject of vigorous debate and contested views in the past. For example, the Council considered in some depth the issues around reporting on non-financial risks to the sustainability of the business. A newer variant on this issue is the call for companies to consider producing a report which reflects an integration of management processes and reporting relating to all material business risks, including environmental and social issues, whether or not they are ones that can be sufficiently reliably estimated to be reflected in financial statements.

Without foreclosing the possibility of the Council being the appropriate forum within Australia within which to monitor and progress this debate, the Council considered that, with no internationally accepted framework having yet emerged as to what constitutes an "integrated report", it would be premature for the Council, at this stage, to advocate adoption by all listed companies of a principle-based concept of 'integrated reporting'. In arriving at this position, Council recognised that there is valuable experimentation underway – within a number of the larger, more complex organisations to which this initiative is most relevant – around reporting their performance across an increasing range of issues. Council also committed to undertake further work on updating its existing guidance supplementing its Recommendations around

risk management processes to take account of new developments. Carbon pricing developments provide a topical example of issues that need to be reviewed by companies with a view to satisfying themselves that their risk mitigation strategies and reporting practices are applied appropriately to each new development that represents a material business risk to the company.

It was evident from our consultations that whilst there is an appetite from boards and management to present meaningful information that would be valued by a company's stakeholders – both historical information and projections of future performance – this is tempered by a strong reluctance to continue making ever more comprehensive disclosures without offsetting Government action in a number of areas. In particular, valuable comments were received around the need for modification of the liability regime with respect to forward looking statements. Similarly, the level of prescription involved in some existing legislative requirements as to matters to be included annually in directors reports – which was seen as contributing to information being presented in a form that does not readily contribute to an understanding by shareholders of the company's policies and performance – were also referenced as appropriate candidates for revisiting by Government.

There were also calls for Government to take greater account, when considering introduction of legislation touching on corporate governance, of the serious efforts made by boards and management to respond to the pace of change of the environment in which companies operate and the demands of the stakeholders. The flexibility of the Principles was seen to have allowed companies to respond to the changing business environment and continue to allow companies to refine their corporate governance arrangements as appropriate.

The Council has drawn these outcomes to the attention of the Prime Minister and relevant Ministers.

Malcolm Starr
Chair

15 July 2011



ASX Corporate Governance Council

ABOUT THE ASX CORPORATE GOVERNANCE COUNCIL

The ASX Governance Council¹ (the Council) brings together 21 business, investment and shareholder groups to oversee the principles-based and industry wide framework it developed for corporate governance – the *Corporate Governance Principles and Recommendations* (Principles and Recommendations).

The Council was formed in 2002 and has been chaired by the ASX Group since its inception. The Council's diverse membership and its modus operandi of striving for consensus facilitates maintaining balance in the regulatory and reporting affairs associated with the Principles and Recommendations.

The overriding objective of the Council is to ensure that the Principles and Recommendations remain relevant and continue to provide a practical guide for listed companies, their investors and the wider Australian community on good corporate governance practices.

The Council released the most recent revisions to the Principles and Recommendations on 30 June 2010. The *Corporate Governance Principles and Recommendations with 2010 Amendments* became effective on 1 January 2011.

The Principles and Recommendations are not prescriptive. If a listed company considers that a particular Recommendation is inappropriate to its particular circumstances, it has the flexibility not to adopt it, but this flexibility is tempered by a requirement to explain why the Recommendation has not been followed – the “if not, why not” approach.

Under Listing Rule 4.10.3, listed companies are required to provide a statement in their annual report disclosing the extent to which they have followed the Recommendations in the reporting period. Where companies have not followed all of the Recommendations, they must identify the Recommendations that have not been followed and give reasons for not following them.

Importantly, the reporting requirements under the Listing Rules provide for transparency with respect to the corporate governance practices of listed companies that better position investors to make informed investment decisions. Ultimately, it is for the market to pass judgement on the corporate governance practices of Australian companies, not the Council or ASX.

¹ The council is made up of members from the following organisations:

- Association of Superannuation Funds of Australia Ltd
- Australasian Investor Relations Association
- Australian Council of Superannuation Investors
- Australian Financial Markets Association
- Australian Institute of Company Directors
- Australian Institute of Superannuation Trustees
- Australian Shareholders' Association
- ASX Group
- Business Council of Australia
- Chartered Secretaries Australia
- CPA Australia Ltd
- Financial Services Institute of Australasia
- Group of 100
- Institute of Actuaries of Australia
- The Institute of Chartered Accountants in Australia
- Institute of Internal Auditors Australia
- Financial Services Council
- Law Council of Australia
- National Institute of Accountants
- Property Council of Australia
- Stockbrokers Association of Australia