

## ASX Corporate Governance Council

Principles of Good Corporate Governance  
and Best Practice Recommendations

March 2003





# Foreword

The ASX Corporate Governance Council was formed on 15 August 2002, bringing together 21 groups from disparate business backgrounds and carrying the varying aims and priorities that accompany those constituencies.

Despite their differing perspectives, the Council's overriding mission was commonly held: to develop and deliver an industry-wide, supportable and supported framework for corporate governance which could provide a practical guide for listed companies, their investors, the wider market and the Australian community.

The size, complexity and operations of companies differ, and so flexibility must be allowed in the structures adopted to optimise individual performance. That flexibility must, however, be tempered by accountability – the obligation to explain to investors why an alternative approach is adopted – the “if not, why not?” obligation.

The enhancement of corporate accountability and the adoption of this framework for reporting is a major evolution in corporate governance practice in Australia. The impact on Australian companies must not be underestimated. The ASX Corporate Governance Council is committed to an early assessment of the implementation experiences of listed companies and the reactions of investors. To facilitate this, a separate Implementation Review Group will be formed to report to the Council.

This document is not the final and complete guidance – it is offered as guidance only in the sense that any corporate governance regime must be sufficiently flexible to cope with a constantly changing environment. Just as a healthy and robust business environment evolves with circumstances, so too must any guidelines for corporate governance best practice. The ongoing relevance and effectiveness of these guidelines will be periodically reviewed by the ASX Corporate Governance Council.

As with the ASX Listing Rules, where the spirit and intention outweighs the letter of the law, so must these guidelines be applied: maintaining an informed and efficient market and preserving investor confidence remain the constant imperatives.

**Karen Leslie Hamilton**  
*Chairperson*  
*ASX Corporate Governance Council*



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# Corporate governance in Australia



## What is corporate governance?

Corporate governance is the system by which companies are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimised.

Good corporate governance structures encourage companies to create value (through entrepreneurship, innovation, development and exploration) and provide accountability and control systems commensurate with the risks involved.

## How is good corporate governance achieved?

What constitutes good corporate governance will evolve with the changing circumstances of a company and must be tailored to meet those circumstances. Best practice must also evolve with developments both in Australia and overseas.

There is no single model of good corporate governance. This document articulates 10 core principles that the ASX Corporate Governance Council believes underlie good corporate governance. Each principle is explained in detail, with implementation guidance in the form of best practice recommendations.

Although the Council's recommendations are not mandatory and cannot, in themselves, prevent corporate failure or mistakes in corporate decision-making, they can provide a reference point for enhanced structures to minimise problems and optimise performance and accountability.

### The fundamentals

Fundamental to any corporate governance structure is establishing the roles of management and the board (Principle 1), with a balance of skills, experience and independence on the board appropriate to the nature and extent of company operations (Principle 2). There is a basic need for integrity among those who can influence a company's strategy and financial performance, together with responsible and ethical decision-making (Principle 3).

Meeting the information needs of a modern investment community is also paramount in terms of accountability and attracting capital. Presenting a company's financial and non-financial position requires processes that safeguard, both internally and externally, the integrity of company reporting (Principle 4), and provide a timely and balanced picture of all material matters (Principle 5). The rights of company owners, that is shareholders, need to be clearly recognised and upheld (Principle 6).

Every business decision has an element of uncertainty and carries a risk that can be managed through effective oversight and internal control (Principle 7). Keeping pace with the modern risks of business and other aspects of governance requires formal mechanisms that encourage enhanced board and management effectiveness (Principle 8).

Rewards are also needed to attract the skills required to achieve the performance expected by shareholders (Principle 9). The impact of company actions and decisions is increasingly diverse and good governance recognises the legitimate interests of all stakeholders (Principle 10).

Each principle is of equal importance.

## Why is it important to Australia?

Demonstrably good corporate governance practices are increasingly important in determining the cost of capital in a global capital market. Australian companies must be equipped to compete globally and to maintain and promote investor confidence both in Australia and overseas. In an examination of our corporate governance practices, Australia starts from a position of strength. However, it is important that we continue to review those practices to ensure they continue to reflect local and international developments and position Australia at the forefront of best practice.

## The ASX Corporate Governance Council

As a central reference point for companies to understand stakeholder expectations, in order to promote and restore investor confidence, ASX convened the ASX Corporate Governance Council in August 2002. Its purpose is to develop recommendations which reflect international best practice. The Council includes representatives of:

- Association of Superannuation Funds of Australia Ltd
- Australasian Investor Relations Association
- Australian Council of Superannuation Investors
- Australian Institute of Company Directors
- Australian Institute of Superannuation Trustees
- Australian Shareholders' Association
- Australian Stock Exchange Limited
- Business Council of Australia
- Chartered Secretaries Australia
- CPA Australia
- Group of 100
- Institute of Actuaries of Australia
- Institute of Chartered Accountants in Australia
- Institute of Internal Auditors Australia
- International Banks and Securities Association of Australia
- Investment and Financial Services Association
- Law Council of Australia
- National Institute of Accountants
- Property Council of Australia
- Securities & Derivatives Industry Association
- Securities Institute of Australia



# Disclosure of corporate governance practices (applying the “if not, why not?” approach)

## How to approach adoption of the best practice recommendations

The best practice recommendations are not prescriptions. They are guidelines, designed to produce an efficiency, quality or integrity outcome. This document does not require a “one size fits all” approach to corporate governance. Instead, it states aspirations of best practice for optimising corporate performance and accountability in the interests of shareholders and the broader economy. If a company considers that a recommendation is inappropriate to its particular circumstances, it has the flexibility not to adopt it – a flexibility tempered by the requirement to explain why<sup>1</sup>.

Companies are encouraged to use the guidance provided by this document as a focus for re-examining their corporate governance practices and to determine whether and to what extent the company may benefit from a change in approach, having regard to the company’s particular circumstances. There is little value in a checklist approach to corporate governance that does not focus on the particular needs, strengths and weaknesses of the company.

The Council recognises that the range in size and diversity of companies is significant and that smaller companies may face particular issues in attaining all recommendations from the outset. Performance and effectiveness can be compromised by material change that is not managed sensibly. Where a company is considering widespread structural changes in order to meet best practice, the company is encouraged to prioritise its needs and to set and disclose best practice goals against an indicative timeframe for meeting them.

## Disclosure requirements

Under ASX Listing Rule 4.10, companies are required to provide a statement in their annual report disclosing the extent to which they have followed these best practice recommendations in the reporting period. Where companies have not followed all the recommendations, they must identify the recommendations that have not been followed and give reasons for not following them.

Annual reporting does not diminish the company’s obligation to provide disclosure under ASX Listing Rule 3.1.

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<sup>1</sup> An exception regarding audit committees applies to companies comprising the S&P/ASX All Ordinaries Index. The ASX Listing Rules mandate the establishment of audit committees by those companies and require that the composition, operation and responsibility of the audit committee comply with the Council’s best practice recommendations.



## What disclosures are necessary?

It is only where a recommendation is not met or where a disclosure requirement is specifically identified that a disclosure obligation is triggered. Each recommendation is clearly identified as such.

The commentary and guidance that follows each recommendation does not form part of the recommendation. It is provided to assist companies to understand the reasoning for the recommendation, highlight factors which may be relevant for consideration, and make suggestions as to how implementation might be achieved.

## Where should disclosure be made?

Specific guidance is given at the end of each principle as to what disclosure the company is required or encouraged to make and where.

In some cases the company is required to set out the relevant disclosure in a separate corporate governance section of the annual report. Where the Corporations Act requires particular information to be included in the directors' report, the company has the discretion to include a cross-reference to the relevant information in the corporate governance section of the annual report rather than replicating that information.

For more general information, there are requirements to make information publicly available, ideally by provision on the company's website. This information should be clearly presented in a dedicated corporate governance information section within the website. The corporate governance section of the annual report should contain appropriate website references, links or instructions to enable shareholders to readily access this information.

Where a company does not have a website, this information must be made publicly available by other means. For example, a company may provide the information on request by email, facsimile or post.

## What is the disclosure period?

The change in reporting requirement applies to the company's first financial year commencing after 1 January 2003. Accordingly, where a company's financial year begins on 1 July, disclosure will be required in relation to the financial year 1 July 2003 – 30 June 2004 and will be made in the annual report published in 2004.

Companies are encouraged to make an early transition to the best practice recommendations and are requested to consider reporting by reference to the recommendations in their corporate reporting this year.

## ASX Corporate Governance Council website

The ASX Corporate Governance Council has established a website to assist companies with regard to these principles and best practice recommendations. The site contains links to useful reference material and websites of Council members. It is located at [www.asx.com.au/corporategovernance](http://www.asx.com.au/corporategovernance).

## Audit committees

Specific requirements apply in relation to audit committees for companies within the S&P/ASX All Ordinaries Index.

Those companies are subject to ASX Listing Rule 12.7, which requires that an entity that was included in the S&P/ASX All Ordinaries Index at the beginning of its financial year have an audit committee during that year. The composition, operation and responsibility of the audit committee must comply with the best practice recommendations of the ASX Corporate Governance Council. These are set out in Principle 4.

This rule applies for the first financial year of an entity commencing after 1 January 2003<sup>2</sup>.

## What entities are affected?

The best practice recommendations have been articulated to apply to companies and other types of listed entities. Where appropriate, the term "company" is used in the best practice recommendations to encompass any listed entity, including listed managed investment schemes (trusts), listed stapled entities, and listed foreign entities. Also where appropriate, references to "shareholders" and "investors" will include references to unitholders of unit trusts.

Specific application of the recommendations for trusts has been highlighted.

## Monitoring implementation and change

This document represents the first iteration of the ASX Corporate Governance Council's views about best practice. Corporate governance practices must be evolutionary and responsive to the information needs of local and international investors. The ASX Corporate Governance Council is committed to a continuing review of these principles and best practice recommendations to ensure that they remain relevant, take account of local and international developments, and continue to reflect international best practice.

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<sup>2</sup> For all entities included in the S&P/ASX All Ordinaries Index as at 1 April 2003, the following applies:

Financial year:	The entity must have a complying audit committee during FY commencing:
1 April – 31 March	1 April 2003
1 July – 30 June	1 July 2003
1 January – 31 December	1 January 2004

Companies and investors are encouraged to provide feedback about the implementation and impact of these recommendations to their ASX Corporate Governance Council representative.

The ASX Corporate Governance Council will also establish a separate Implementation Review Group to report back to the Council on the experience of companies and investors.

The ASX Corporate Governance Council will formally review the impact of these principles and best practice recommendations following collation and examination of disclosures made in annual reports and consideration of feedback received, including the reports from the Implementation Review Group.

## Acknowledgements

The ASX Corporate Governance Council's principles and best practice recommendations have benefited from the invaluable contributions made by a number of industry associations, corporate governance experts and listed companies, their directors and chairpersons. The Council is most grateful for their input, and for invaluable editorial contributions and assistance.



## The essential corporate governance principles



## The essential corporate governance principles

<b>A company should:</b>	<b>Page</b>
<b>1. Lay solid foundations for management and oversight</b> Recognise and publish the respective roles and responsibilities of board and management.	<b>15</b>
<b>2. Structure the board to add value</b> Have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties.	<b>19</b>
<b>3. Promote ethical and responsible decision-making</b> Actively promote ethical and responsible decision-making.	<b>25</b>
<b>4. Safeguard integrity in financial reporting</b> Have a structure to independently verify and safeguard the integrity of the company's financial reporting.	<b>29</b>
<b>5. Make timely and balanced disclosure</b> Promote timely and balanced disclosure of all material matters concerning the company.	<b>35</b>
<b>6. Respect the rights of shareholders</b> Respect the rights of shareholders and facilitate the effective exercise of those rights.	<b>39</b>
<b>7. Recognise and manage risk</b> Establish a sound system of risk oversight and management and internal control.	<b>43</b>
<b>8. Encourage enhanced performance</b> Fairly review and actively encourage enhanced board and management effectiveness.	<b>47</b>
<b>9. Remunerate fairly and responsibly</b> Ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to corporate and individual performance is defined.	<b>51</b>
<b>10. Recognise the legitimate interests of stakeholders</b> Recognise legal and other obligations to all legitimate stakeholders.	<b>59</b>







## Best practice recommendations





## Principle 1: Lay solid foundations for management and oversight

Recognise and publish the respective roles and responsibilities of board and management.

The company's framework should be designed to:

- enable the board to provide strategic guidance for the company and effective oversight of management
- clarify the respective roles and responsibilities of board members and senior executives in order to facilitate board and management accountability to both the company and its shareholders
- ensure a balance of authority so that no single individual has unfettered powers.

### How to achieve best practice

**Recommendation 1.1:** Formalise and disclose the functions reserved to the board and those delegated to management.

#### Commentary and guidance

##### *Role of the board and management*

It is suggested that the board adopt a formal statement of matters reserved to it or a formal board charter that details the functions and responsibilities of the board. Another alternative is a formal statement of delegated authority to management.

The nature of matters reserved to the board and delegated to management will necessarily depend on the size, complexity and ownership structure of the company, and will be influenced by its tradition and corporate culture, and by the skills of directors and managers.

Disclosing the division of responsibility assists those affected by corporate decisions to better understand the respective accountabilities and contributions of board and management of the particular company. That understanding can be further enhanced if the disclosure includes an explanation of the balance of responsibility between the chairperson, the lead independent director (if any) and the chief executive officer (or equivalent).

The division of responsibility may vary with the evolution of the company. Regular review of the balance of responsibilities may be appropriate to ensure that the division of functions remains appropriate to the needs of the company.

### *Responsibilities of the board*

Usually the board would be responsible for:

- oversight of the company, including its control and accountability systems
- appointing and removing the chief executive officer (or equivalent)
- ratifying the appointment and, where appropriate, the removal of the chief financial officer (or equivalent) and the company secretary
- input into and final approval of management's development of corporate strategy and performance objectives
- reviewing and ratifying systems of risk management and internal compliance and control, codes of conduct, and legal compliance
- monitoring senior management's performance and implementation of strategy, and ensuring appropriate resources are available
- approving and monitoring the progress of major capital expenditure, capital management, and acquisitions and divestitures
- approving and monitoring financial and other reporting.

### *Allocation of individual responsibilities*

It is also appropriate that directors clearly understand corporate expectations of them.

To that end, formal letters of appointment for directors setting out the key terms and conditions relative to that appointment are very useful.

Suggestions for the contents of a letter of appointment are contained in Box 1.1.

#### **Box 1.1 Content of a director's letter of appointment**

- Term of appointment.
- Time commitment envisaged.
- Powers and duties of directors.
- Any special duties or arrangements attaching to the position.
- Circumstances in which an office of director becomes vacant.
- Expectations regarding involvement with committee work.
- Remuneration and expenses.
- Superannuation arrangements.
- Requirement to disclose directors' interests and any matters which affect the director's independence.
- Fellow directors.
- Trading policy governing dealings in securities (including any share qualifications) and related financial instruments by directors, including notification requirements.
- Induction training and continuing education arrangements.
- Access to independent professional advice.
- Indemnity and insurance arrangements.
- Confidentiality and rights of access to corporate information.
- A copy of the constitution.

Similarly, the chief executive officer (or equivalent) and the chief financial officer (or equivalent) should have a formal job description and letter of appointment describing their term of office, duties, rights and responsibilities, and entitlement on termination. Box 9.2 (Principle 9) provides further guidance on the matter of termination entitlements.

## Guide to reporting on Principle 1

The following material should be included in the corporate governance section of the annual report:

- an explanation of any departure from best practice recommendation 1.1.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- the statement of matters reserved for the board or a summary of the board charter or the statement of delegated authority to management.

### Further guidance

*A Guide to Directors and Officers Liability Insurance*, 1st edition, June 2001, authors C.Smith, N.Milne, F.Morris. Published by Australian Institute of Company Directors.

### Application of Principle 1 in relation to trusts

References to "board" and "directors" should be applied as references to the board and directors of the responsible entity of the trust.

A trust should clarify the relationship between the responsible entity and the parent company where relevant, and articulate the relevant roles and responsibilities of the board and management of the responsible entity.

Trusts should also be aware of the correlation between external directors and compliance committee requirements in Part 5C.5 of the Corporations Act.







## Principle 2: Structure the board to add value

Have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties.

An effective board is one that facilitates the efficient discharge of the duties imposed by law on the directors and adds value in the context of the particular company's circumstances. This requires that the board be structured in such a way that it:

- has a proper understanding of, and competence to deal with, the current and emerging issues of the business
- can effectively review and challenge the performance of management and exercise independent judgement.

Ultimately the directors are elected by the shareholders. However the board and its delegates play an important role in the selection of candidates for shareholder vote.

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### How to achieve best practice

**Recommendation 2.1:** A majority of the board should be independent directors<sup>3</sup>.

#### Commentary and guidance

##### *Assessment of independence*

An independent director is independent of management and free of any business or other relationship that could materially interfere with – or could reasonably be perceived to materially interfere with – the exercise of their unfettered and independent judgement.

A definition of independence is contained in Box 2.1.

##### *Disclosure of independence*

The board should regularly assess the independence of each director in light of interests disclosed by them. So that it can do this, each independent director should provide to the board all relevant information.

Directors considered by the board to be independent should be identified as such in the corporate governance section of the annual report. The board should state its reasons if it considers a director to be independent notwithstanding the existence of relationships listed in Box 2.1. In this context, it is important for the board to consider materiality thresholds<sup>4</sup> from the perspective of both the company and its directors, and to disclose these.

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<sup>3</sup> Independence is defined in Box 2.1.

<sup>4</sup> For example, a board may decide that affiliation with a business which accounts for, say, less than X% of the company's revenue is, as a category, immaterial for the purpose of determining independence. If the company discloses the standard it adopts and makes a general statement that the relevant director meets that standard, investors are better informed about the board's reasoning.

The tenure of each director is important to an assessment of independence. The board should disclose the period of office of each director in the corporate governance section of the annual report.

Where the independent status of a director is lost, this should be immediately disclosed to the market.

#### *Independent decision-making*

All directors should bring an independent judgement to bear in decision-making.

To facilitate this, there should be a procedure agreed by the board for directors to take independent professional advice if necessary, at the company's expense.

Non-executive directors should consider the benefits of conferring regularly at scheduled sessions without management present. Their discussions can be facilitated by the chairperson or lead independent director.

#### **Box 2.1: Assessing the independence of directors<sup>5</sup>**

An independent director is a non-executive director (ie is not a member of management) and:

1. is not a substantial shareholder<sup>6</sup> of the company or an officer of, or otherwise associated directly with, a substantial shareholder of the company
2. within the last three years has not been employed in an executive capacity by the company or another group member, or been a director after ceasing to hold any such employment
3. within the last three years has not been a principal of a material professional adviser or a material consultant to the company or another group member, or an employee materially associated with the service provided
4. is not a material supplier or customer of the company or other group member, or an officer of or otherwise associated directly or indirectly with a material supplier or customer
5. has no material contractual relationship with the company or another group member other than as a director of the company
6. has not served on the board for a period which could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interests of the company
7. is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interests of the company.

Family ties and cross-directorships may be relevant in considering interests and relationships which may compromise independence, and should be disclosed by directors to the board.

<sup>5</sup> The definition in Box 2.1 is adapted from the definition of independence given by *Corporate Governance, A Guide for Fund Managers and Corporations – Blue Book*, Investment and Financial Services Association, December 2002. [www.ifsa.com.au](http://www.ifsa.com.au)

<sup>6</sup> For this purpose a "substantial shareholder" is a person with a substantial holding as defined in section 9 of the Corporations Act.

The UK Higgs report<sup>7</sup> nominates 10 years in relation to director tenure considerations, but has not yet been adopted in the UK. The Council will continue to monitor developments in other jurisdictions in this area.

**Recommendation 2.2:** The chairperson should be an independent director.

**Commentary and guidance**

*Role of chairperson*

The chairperson is responsible for leadership of the board, for the efficient organisation and conduct of the board's function, and for the briefing of all directors in relation to issues arising at board meetings.

It is important that the chairperson facilitate the effective contribution of all directors and promote constructive and respectful relations between board members and between board and management.

Where the chairperson is not an independent director, it may be beneficial to consider the appointment of a lead independent director.

It is vital that the chairperson commit the time necessary to discharge that role effectively. In that context the number of other positions, and time commitment associated with them, should be taken into account.

**Recommendation 2.3:** The roles of chairperson and chief executive officer should not be exercised by the same individual.

**Commentary and guidance**

There needs to be a clear division of responsibility at the head of the company.

The division of responsibilities between the chairperson and the chief executive officer should be agreed by the board and set out in a statement of position authority.

The chief executive officer should not go on to become chairperson of the same company.

**Recommendation 2.4:** The board should establish a nomination committee.

**Commentary and guidance**

*Purpose of the nomination committee*

Particularly in larger companies, a nomination committee can be a more efficient mechanism for the detailed examination of selection and appointment practices meeting the needs of the company.

The existence of a nomination committee should not be seen as implying a fragmentation or diminution of the responsibilities of the board as a whole.

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<sup>7</sup> *Review of the Role and Effectiveness of Non-Executive Directors*, Derek Higgs, January 2003

It is recognised that for smaller boards, the same efficiencies may not be apparent from a formal committee structure.

#### *Composition of nomination committee*

The nomination committee should:

- consist of a minimum of three members, the majority being independent directors
- be chaired by the chairperson of the board or an independent director.

#### *Charter*

The nomination committee should have a charter that clearly sets out its role and responsibilities, composition, structure and membership requirements.

#### *Responsibilities*

Responsibilities of the committee should include:

- assessment of the necessary and desirable competencies of board members
- review of board succession plans
- evaluation of the board's performance
- recommendations for the appointment and removal of directors.

#### *Selection process*

A formal and transparent procedure for the selection and appointment of new directors to the board helps promote investor understanding and confidence in that process.

#### *Director competencies*

Corporate performance is enhanced when there is a board with the appropriate competencies to enable it to discharge its mandate effectively. An evaluation of the range of skills, experience and expertise on the board is therefore beneficial before a candidate is recommended for appointment. Such an evaluation enables identification of the particular skills, experience and expertise that will best complement board effectiveness.

The nomination committee should consider developing and implementing a plan for identifying, assessing and enhancing director competencies.

The nomination committee should also consider whether succession plans are in place to maintain an appropriate balance of skills, experience and expertise on the board.

#### *Composition and commitment*

It is important that the board be of a size and composition that is conducive to making decisions expediently, with the benefit of a variety of perspectives and skills, and in the best interests of the company as a whole rather than of individual shareholders or interest groups. The size of the board should be limited so as to encourage efficient decision-making.



It is also important that individual board members devote the necessary time to the important tasks entrusted to them. In this context, all directors should consider the number and nature of their directorships and calls on their time from other commitments.

In support of their candidature for directorship, non-executive directors should provide the nomination committee with details of other commitments and an indication of time involved. Non-executive directors should specifically acknowledge to the company prior to appointment or being submitted for election that they will have sufficient time to meet what is expected of them.

The nomination committee should regularly review the time required from a non-executive director, and whether directors are meeting this. A non-executive director should inform the chairperson and the nomination committee before accepting any new appointments.

#### *Election of directors*

The guidelines in Attachment A concerning notices of meeting are designed to facilitate better communication with shareholders. They contain guidance about how to frame resolutions for the election of directors.

The names of candidates submitted for election as director should be accompanied by the following information to enable shareholders to make an informed decision on their election:

- biographical details, including competencies and qualifications and information sufficient to enable an assessment of the independence of the candidate
- details of relationships between:
  - the candidate and the company
  - the candidate and directors of the company
- directorships held<sup>8</sup>
- particulars of other positions which involve significant time commitments
- the term of office currently served by any directors subject to re-election
- any other particulars required by law.

#### *Term of directorship*

Non-executive directors should be appointed for specific terms subject to re-election and to the ASX Listing Rules and Corporations Act provisions concerning removal of a director.

Re-appointment of directors should not be automatic.



**Recommendation 2.5:** Provide the information indicated in *Guide to reporting on Principle 2*.

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<sup>8</sup> These are directorships required to be disclosed by law, and any other directorships relevant to an assessment of independence.



## Guide to reporting on Principle 2

The following material should be included in the corporate governance section of the annual report:

- the skills, experience and expertise relevant to the position of director held by each director in office at the date of the annual report
- the names of the directors considered by the board to constitute independent directors and the company's materiality thresholds
- a statement as to whether there is a procedure agreed by the board for directors to take independent professional advice at the expense of the company
- the term of office held by each director in office at the date of the annual report
- the names of members of the nomination committee and their attendance at meetings of the committee
- an explanation of any departures from best practice recommendations 2.1, 2.2, 2.3, 2.4 or 2.5.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- a description of the procedure for the selection and appointment of new directors to the board
- the charter of the nomination committee or a summary of the role, rights, responsibilities and membership requirements for that committee
- the nomination committee's policy for the appointment of directors.

### Application of Principle 2 in relation to trusts

References to "board" and "directors" should be applied as references to the board and directors of the responsible entity of the trust.

There may be technical conflict in implementing the recommendations that the chairperson be an independent director or a lead independent director, where the responsible entity is a wholly-owned subsidiary of a fund manager and all the directors are employees of the parent. This should be discussed and clarified in any explanation of departure from the best practice recommendations included in the corporate governance section of the annual report.

Refer also to section 601JA(2) of the Corporations Act, which sets out the criteria for independence of a director of a responsible entity.

Note also that Part 5C.5 of the Corporations Act in relation to compliance committees for trusts provides under section 601JA(1) that a responsible entity must establish a compliance committee if less than half the directors of the responsible entity are external directors.



## Principle 3: Promote ethical and responsible decision-making

Actively promote ethical and responsible decision-making.

The company should:

- clarify the standards of ethical behaviour required of company directors and key executives (that is, officers and employees who have the opportunity to materially influence the integrity, strategy and operation of the business and its financial performance) and encourage the observance of those standards
- publish its position concerning the issue of board and employee trading in company securities and in associated products which operate to limit the economic risk of those securities.

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### How to achieve best practice



**Recommendation 3.1:** Establish a code of conduct to guide the directors, the chief executive officer (or equivalent), the chief financial officer (or equivalent) and any other key executives<sup>9</sup> as to:

- 3.1.1 the practices necessary to maintain confidence in the company's integrity
- 3.1.2 the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.

#### Commentary and guidance

Good corporate governance ultimately requires people of integrity. Personal integrity cannot be regulated. However, investor confidence can be enhanced if the company clearly articulates the practices by which it intends directors and key executives to abide.

Each company should determine its own policies designed to influence appropriate behaviour by directors and key executives. A code of conduct is an effective way to guide the behaviour of directors and key executives and demonstrate the commitment of the company to ethical practices.

It is not necessary for a separate code for directors and key executives to be adopted. Principle 10 also recommends corporate codes of conduct. Depending on the nature and size of the company's operations, the code of conduct for directors and key executives may stand alone or be part of the corporate code of conduct recommended in Principle 10.

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<sup>9</sup> That is, any employee or officer who has the opportunity to materially influence the integrity, strategy and operation of the business and its financial performance.

A code of conduct may usefully address the issues set out in Box 3.1.

**Box 3.1: Suggestions for the content of a code of conduct**

1. Conflicts of interest – managing situations where the interest of a private individual interferes or appears to interfere with the interests of the company as a whole.
2. Corporate opportunities – preventing directors and key executives from taking advantage of property, information or position, or opportunities arising from these, for personal gain or to compete with the company.
3. Confidentiality – restricting the use of non-public information except where disclosure is authorised or legally mandated.
4. Fair dealing – by all employees with the company’s customers, suppliers, competitors and employees.
5. Protection of and proper use of the company’s assets – protecting and ensuring efficient use of assets for legitimate business purposes.
6. Compliance with laws and regulations – active promotion of compliance.
7. Encouraging the reporting of unlawful/unethical behaviour – active promotion of ethical behaviour and protection for those who report violations in good faith.



**Recommendation 3.2:** Disclose the policy concerning trading in company securities by directors, officers and employees.

**Commentary and guidance**

Public confidence in the company can be eroded if there is insufficient understanding about the company’s policies governing trading by “potential insiders”. The law prohibits insider trading, and the Corporations Act and the ASX Listing Rules require disclosure of any trading undertaken by directors or their related entities in the company’s securities.

In the interests of investor confidence, companies should consider complementing these requirements with a formal policy governing trading practices.

For the purpose of this policy a “potential insider” is a person likely to possess inside information and includes the directors, the chief executive officer (or equivalent), the chief financial officer (or equivalent), staff members who are involved in material transactions concerning the company, and any other member of staff who is likely to be in the possession of inside information.

“Inside information” is information concerning the company’s financial position, strategy or operations, which, if made public, would be likely to have a material impact on the price of the company’s securities.

The company should consider introducing appropriate compliance standards and procedures to facilitate implementation of any code of conduct and trading policy adopted, and an internal review mechanism to assess compliance and effectiveness. This review may involve an internal audit function.

Suggestions for the content of such a policy are set out in Box 3.2.

**Box 3.2: Suggestions for the content of a trading policy**

1. Clearly identify the directors, officers, employees or group of employees who are restricted from trading ("designated officers").
2. Identify and raise awareness about the prohibitions under the law and the requirements of the policy. This should include an awareness that it is inappropriate for the designated officer to procure others to trade when the designated officer is precluded from trading, and an awareness of the need to enforce confidentiality against external advisers.
3. Require designated officers to provide notification to an appropriate senior member of the company (for example, in the case of directors, to the chairperson) of intended trading except for dividend reinvestment plans and the like.
4. Require subsequent confirmation of the trading that has occurred.
5. Identify whether trading windows or black-outs are used and if so, details of their application.
6. Specify whether there is any discretion to permit trading by designated officers in specific circumstances (eg financial hardship), details of such circumstances, and the basis upon which discretion is applied.
7. Specify whether the company prohibits designated officers from trading in financial products issued or created over the company's securities by third parties, or trading in associated products.
8. Specify whether the company prohibits designated officers from entering into transactions in associated products which operate to limit the economic risk of their security holdings in the company.



**Recommendation 3.3:** Provide the information indicated in *Guide to reporting on Principle 3*.

## Guide to reporting on Principle 3

The following material should be included in the corporate governance section of the annual report:

- explanation of any departures from best practice recommendations 3.1, 3.2 or 3.3.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- any applicable code of conduct or a summary of its main provisions. This disclosure may be the same as that required under Principle 10.
- the trading policy or a summary of its main provisions.

### Further guidance

*Code of Conduct for Chief Financial Officers*, Group of 100, December 2002.  
[www.group100.com.au](http://www.group100.com.au). Further guidance may be found at [www.csaust.com](http://www.csaust.com) and [www.companydirectors.com.au](http://www.companydirectors.com.au).

*ASX Listing Rule 3.19A*: regarding disclosure by the company of directors' notifiable interests within five business days.

### Application of Principle 3 in relation to trusts

References to "directors" and "employees" of a company should be applied as references to directors and employees of the responsible entity, and the relevant trading is in securities of the trust.



# 4

## Principle 4: Safeguard integrity in financial reporting

Have a structure to independently verify and safeguard the integrity of the company's financial reporting.

This requires the company to put in place a structure of review and authorisation designed to ensure the truthful and factual presentation of the company's financial position. The structure would include, for example:

- review and consideration of the accounts by the audit committee
- a process to ensure the independence and competence of the company's external auditors.

Such a structure does not diminish the ultimate responsibility of the board to ensure the integrity of the company's financial reporting.

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### How to achieve best practice

**Recommendation 4.1:** Require the chief executive officer (or equivalent) and the chief financial officer (or equivalent) to state in writing to the board that the company's financial reports present a true and fair view, in all material respects, of the company's financial condition and operational results and are in accordance with relevant accounting standards.

#### Commentary and guidance

This statement is complemented by the statement required in recommendation 7.2 relating to the underlying risk management system.

#### *Interaction with Corporations Act*

The requirement to make this statement encourages management accountability and provides an underpinning for the statements required by the directors under the Corporations Act in relation to the company's financial reports.

**Recommendation 4.2:** The board should establish an audit committee.

#### Commentary and guidance

#### *Purpose of the audit committee*

Particularly for larger companies, an audit committee can be a more efficient mechanism than the full board for focusing the company on particular issues relevant to verifying and safeguarding the integrity of the company's financial reporting.



The existence of an audit committee should not be seen as implying a fragmentation or diminution of the responsibilities of the board as a whole.

It is recognised that for smaller boards, the same efficiencies may not be apparent from a formal committee structure.

#### *Importance of the audit committee*

The existence of an independent audit committee is recognised internationally as an important feature of good corporate governance.

If there is no audit committee, it is particularly important that the company disclose how its alternative approach assures the integrity of the financial statements of the company and the independence of the external auditor, and why an audit committee is not considered appropriate.

Companies within the S&P/ASX All Ordinaries Index are subject to ASX Listing Rule 12.7, which requires that an entity included in that index at the beginning of its financial year have an audit committee during that year. The composition, operation and responsibilities of the audit committee must comply with the recommendations below.



**Recommendation 4.3:** Structure the audit committee so that it consists of:

- only non-executive directors
- a majority of independent directors<sup>10</sup>
- an independent chairperson, who is not chairperson of the board
- at least three members.

#### **Commentary and guidance**

The audit committee should be of sufficient size, independence and technical expertise to discharge its mandate effectively.

#### *Importance of independence*

The ability of the audit committee to exercise independent judgement is vital. International best practice is moving towards an audit committee comprised of only independent directors<sup>11</sup>. The ASX Corporate Governance Council encourages companies to move towards such a composition within the next three years and will be monitoring audit committee composition and international developments in this area.

#### *Technical expertise*

The audit committee should include members who are all financially literate (ie are able to read and understand financial statements); at least one member who has financial expertise (ie is a qualified accountant or other financial professional with experience of financial and accounting matters); and some members who have an understanding of the industry in which the entity operates.

<sup>10</sup> For further guidance on the concept of an independent director, refer to Box 2.2 and to recommendation 2.1.

<sup>11</sup> For example, IFSA adopts this position (*Corporate Governance, A Guide for Fund Managers and Corporations – Blue Book*, Investment and Financial Services Association, December 2002. [www.ifsa.com.au](http://www.ifsa.com.au)).

### Transitional arrangements for companies within the All Ordinaries Index

Companies within the S&P/ASX All Ordinaries Index are required by ASX Listing Rule 12.7 to comply with the best practice recommendations of the Council concerning the composition, operation and responsibility of audit committees in respect of full reporting periods commencing after 1 January 2003.

While such companies should aspire to satisfy recommendation 4.3 as soon as practicable, in order to avoid undue disruption, it need not be applied until 1 July 2005. Instead, prior to 1 July 2005:

- the audit committee may comprise a majority of non-executive directors
- at least one member of the audit committee must be independent.

It is preferable that the chairperson of the committee be independent.

**Recommendation 4.4:** The audit committee should have a formal charter.

#### Commentary and guidance

##### *Charter*

The charter should clearly set out the audit committee's role and responsibilities, composition, structure and membership requirements.

The audit committee should be given the necessary power and resources to meet its charter. This will include rights of access to management and to auditors (external and internal) without management present and rights to seek explanations and additional information.

##### *Responsibilities*

The audit committee should review the integrity of the company's financial reporting and oversee the independence of the external auditors.

A detailed guide to the responsibilities of the audit committee is provided in *Best Practice Guide – Audit Committees*, Auditing & Assurance Standards Board of The Australian Accounting Research Foundation, Institute of Internal Auditors, Australian Institute of Company Directors, 2nd edition, August 2001. [www.aarf.asn.au](http://www.aarf.asn.au).

The independence and objectivity of the auditor is considered in *Professional Statement FI – Professional Independence*, The Institute of Chartered Accountants in Australia and CPA Australia 2002, and in *Pronouncement 1, "Code of Ethics"* of the National Institute of Accountants.

##### *Meetings*

The audit committee should meet often enough to undertake its role effectively.

The audit committee should keep minutes of its meetings and these should ordinarily be included in the papers for the next full board meeting after each audit committee meeting.

### *Reporting*

The audit committee should report to the board. The report should contain all matters relevant to the committee's role and responsibilities, including:

- assessment of whether external reporting is consistent with committee members' information and knowledge and is adequate for shareholder needs
- assessment of the management processes supporting external reporting
- procedures for the selection and appointment of the external auditor and for the rotation of external audit engagement partners
- recommendations for the appointment or removal of an auditor
- assessment of the performance and independence of the external auditors and whether the audit committee is satisfied that independence of this function has been maintained having regard to the provision of non-audit services
- assessment of the performance and objectivity of the internal audit function
- the results of its review of risk management and internal compliance and control systems. Principle 7 provides further guidance on this matter.



**Recommendation 4.5:** Provide the information indicated in *Guide to reporting on Principle 4*.

## Guide to reporting on Principle 4

The following material should be included in the corporate governance section of the annual report:

- details of the names and qualifications of those appointed to the audit committee, or, where an audit committee has not been formed, those who fulfil the functions of an audit committee
- the number of meetings of the audit committee and the names of the attendees
- explanation of any departures from best practice recommendations 4.1, 4.2, 4.3, 4.4 or 4.5.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- the audit committee charter
- information on procedures for the selection and appointment of the external auditor, and for the rotation of external audit engagement partners.

### Application of Principle 4 in relation to trusts

References to "board" and "directors" should be applied as references to the board and directors of the responsible entity of the trust.

It is recognised that for a trust to convene an audit committee as required by the recommendations, and to convene a compliance committee as may be required by the law, may create an overlap and an administrative burden – the two committees will serve substantively similar purposes. Trusts that are required under the law to convene a compliance committee may wish to consider using the compliance committee to also serve the function of the audit committee, with any necessary adaptations in accordance with the best practice recommendations.

Refer also to section 601JA(2) of the Corporations Act that sets out the criteria for independence of a director of a responsible entity.





## Principle 5: Make timely and balanced disclosure

Promote timely and balanced disclosure of all material matters concerning the company.

This means that the company must put in place mechanisms designed to ensure compliance with the ASX Listing Rule requirements such that:

- all investors have equal and timely access to material information concerning the company – including its financial situation, performance, ownership and governance
- company announcements are factual and presented in a clear and balanced way. “Balance” requires disclosure of both positive and negative information.

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### How to achieve best practice



**Recommendation 5.1:** Establish written policies and procedures designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior management level for that compliance.

#### Commentary and guidance

There should be vetting and authorisation processes designed to ensure that company announcements:

- are made in a timely manner
- are factual
- do not omit material information
- are expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions.

Box 5.1 on the following page contains suggestions for the content of these policies and procedures.



**Box 5.1: Continuous disclosure policies and procedures**

The policies and procedures should address:

- the type of information that needs to be disclosed
- internal notification and decision-making concerning the disclosure obligation
- the roles and responsibilities of directors, officers and employees of the company in the disclosure context; in particular, who has primary responsibility for ensuring that the company complies with its disclosure obligations and who is primarily responsible for deciding what information will be disclosed
- promoting understanding of compliance
- monitoring compliance
- measures for seeking to avoid the emergence of a false market in the company's securities
- safeguarding confidentiality of corporate information to avoid premature disclosure
- media contact and comment
- external communications such as analyst briefings and responses to shareholder questions.

*Commentary on financial results*

Companies should include commentary on their financial results to enhance the clarity and balance of reporting. This commentary should include information needed by an investor to make an informed assessment of the entity's activities and results. A guide to the use and form of this commentary is contained in the Group of 100's publication *Guide to the Review of Operations and Financial Condition*. [www.group100.com.au](http://www.group100.com.au).

ASX Listing Rule 4.10.17 requires a company's annual report to include a review of operations and activities. Although not specifying the contents of that report, the rule endorses the Group of 100 publication which is reproduced in *ASX Guidance Note 10 – Review of Operations and Activities*.



**Recommendation 5.2:** Provide the information indicated in *Guide to reporting on Principle 5*.



## Guide to reporting on Principle 5

The following material should be included in the corporate governance section of the annual report:

- explanation of any departures from best practice recommendation 5.1 or 5.2.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- a summary of the policies and procedures designed to guide compliance with Listing Rule disclosure requirements.

### Further guidance

*Better Disclosure for Investors – Guidance Rules*, Australian Securities and Investments Commission, 2000.

*Best Practice Guidelines for Communication between Listed Entities and the Investment Community*, Australasian Investor Relations Association, August 2001.

*Guidance Note 8 – Continuous Disclosure: Listing Rule 3.1*, Australian Stock Exchange, January 2003.





## Principle 6: Respect the rights of shareholders

Respect the rights of shareholders and facilitate the effective exercise of those rights.

This means that a company should empower its shareholders by:

- communicating effectively with them
- giving them ready access to balanced and understandable information about the company and corporate proposals
- making it easy for them to participate in general meetings.



### How to achieve best practice

**Recommendation 6.1:** Design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at general meetings.

#### **Commentary and guidance**

Publishing the company's policy on shareholder communication will help investors to access the information.

#### *Electronic communication*

Companies should consider how best to take advantage wherever practicable of new technologies that provide:

- greater opportunities for more effective communications with shareholders
- improved access for shareholders unable to be physically present at meetings.

See Box 6.1 for suggestions how to improve shareholder participation and enhance market awareness through electronic means.

#### *Meetings*

Consider how to use general meetings effectively to communicate with shareholders and allow reasonable opportunity for informed shareholder participation.

The ASX Corporate Governance Council was asked to develop guidelines for improving shareholder participation through the design and content of notices and through the conduct of the meeting itself. These guidelines are in Attachment A. Note that they are guidelines only, not reporting requirements.

### *Communication with beneficial owners*

Companies may wish to consider allowing beneficial owners to choose to receive shareholder materials directly; for example, by electronic means.

#### **Box 6.1: Using electronic communications effectively**


Use your website to complement the official release of material information to the market. This will enable broader access to company information by investors and stakeholders. For example:

- Place all relevant announcements made to the market, and related information (eg information provided to analysts or media during briefings), on your website after they have been released to ASX.
- Consider web-casting or tele-conferencing analyst or media briefings and general meetings, or posting a transcript or summary to the website.
- Place the full text of notices of meeting and explanatory material on the website (see Guideline 12 in Attachment A).
- Provide information about the last three years' press releases/announcements plus at least three years of financial data on the website.
- Use email to provide information updates to investors.

All substantial companies are strongly encouraged to have a website.

### *Website*

Companies are encouraged, but not required, to maintain a company website, and to communicate with shareholders via electronic methods. If the company does not have a website it must make relevant information available to shareholders by other means; for example, a company may provide the information on request by email, facsimile or post.



**Recommendation 6.2:** Request the external auditor to attend the annual general meeting and be available to answer shareholder questions about the conduct of the audit and the preparation and content of the auditor's report.

### **Commentary and guidance**

Section 249K of the Corporations Act requires that a company provide its auditor with notice of a general meeting and related communications that a member of the company is entitled to receive.

The auditor is entitled to attend the general meeting and be heard at that meeting on any business item that concerns them in their capacity as auditor<sup>12</sup>.

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<sup>12</sup> Section 249V of the Corporations Act.

Section 250T of the Corporations Act requires that if the company's auditor or their representative attends the annual general meeting, the chairperson of that meeting must allow a reasonable opportunity for members to ask questions of the auditor or their representative concerning the conduct of the audit and the preparation and content of the auditor's report.

If the company requests the auditor to attend the annual general meeting, this strengthens the role of the auditor and the auditor's accountability to shareholders.

## Guide to reporting on Principle 6

The following material should be included in the corporate governance section of the annual report:

- explanation of any departures from best practice recommendations 6.1 or 6.2.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- a description of the arrangements the company has to promote communication with shareholders.

### Application of Principle 6 in relation to trusts

The annual general meeting is the central forum by which companies can effectively communicate with shareholders, provide them with access to information about the company and corporate proposals, and enable their participation in decision-making. The Corporations Act does not, however, require trusts to hold annual general meetings, although they may do so. Trusts should consider the range of means by which they may achieve the same ends, including the possibility of convening general meetings.





## Principle 7: Recognise and manage risk

Establish a sound system of risk oversight and management and internal control.

This system should be designed to:

- identify, assess, monitor and manage risk
- inform investors of material changes to the company's risk profile.

This structure can enhance the environment for identifying and capitalising on opportunities to create value.

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### How to achieve best practice

**Recommendation 7.1:** The board or appropriate board committee should establish policies on risk oversight and management.

#### Commentary and guidance

##### *Purpose of the committee*

Particularly for larger companies, a committee can be a more efficient mechanism than the full board for focusing the company on risk oversight and management and on internal control. The appropriate board committee may be the audit committee, the risk management committee or other relevant committee.

The existence of a committee should not be seen as implying a fragmentation or diminution of the responsibilities of the board as a whole.

It is recognised that for smaller boards, the same efficiencies may not be apparent from a formal committee structure.

##### *Policies*

The policies should clearly describe the roles and respective accountabilities of the board, audit committee (or other appropriate board committee), management and any internal audit function.

They should include the following components: oversight; risk profile; risk management; compliance and control; and assessment of effectiveness.

##### *Oversight of the risk management system*

It is part of the board's oversight role to oversee the establishment and implementation of the risk management system, and to review at least annually the effectiveness of the company's implementation of that system.



### *Risk profile*

The risk profile should be a description of the material risks facing the company. Material risks include financial and non-financial matters.

The risk profile should be regularly reviewed and updated.

### *Risk management and compliance & control*

Management should establish and implement a system for identifying, assessing, monitoring and managing material risk throughout the organisation.

This system will include the company's internal compliance and control systems.

In establishing appropriate procedures management can take into account *AS/NZS4360 – Risk Management within the Internal Audit Process*, The Institute of Internal Auditors Australia and Standards Australia, 2002. [www.standards.com.au](http://www.standards.com.au) and [www.iaa.org.au](http://www.iaa.org.au).

### *Assessment of effectiveness*

A company will require some means of analysing the effectiveness of its risk management and internal compliance and control system and of the effectiveness of their implementation.

This will generally be undertaken by the internal audit function, but an alternative mechanism may be employed to achieve the same outcome depending on the company's size and complexity and the types of risk encountered.

A company, particularly a substantial company, is encouraged to have an internal audit function.

### *Internal audit function*


Guidance on the internal audit function is found in the Technical Information and Guidance section on [www.iaa.org.au](http://www.iaa.org.au).

The audit committee should recommend to the board the appointment and dismissal of any chief internal audit executive.

The internal audit function should be independent of the external auditor.

The internal audit function should report to management and should have all necessary access to management and the right to seek information and explanations.

The audit committee should oversee the scope of the internal audit and should have access to the internal audit function without the presence of management. In order to enhance the objectivity and performance of the internal audit function, companies should consider a second reporting line from the internal audit function to the board or relevant committee.




**Recommendation 7.2:** The chief executive officer (or equivalent) and the chief financial officer (or equivalent) should state to the board in writing that:

7.2.1 the statement given in accordance with best practice recommendation 4.1 (the integrity of financial statements) is founded on a sound system of risk management and internal compliance and control which implements the policies adopted by the board

7.2.2 the company's risk management and internal compliance and control system is operating efficiently and effectively in all material respects.

**Commentary and guidance**

The integrity of the company's financial reporting depends on the existence of a sound system of risk oversight and management and internal control. The requirement to make this statement encourages management accountability in this area.



**Recommendation 7.3:** Provide the information indicated in *Guide to reporting on Principle 7*.

### Guide to reporting on Principle 7

The following material should be included in the corporate governance section of the annual report:

- explanation of any departures from best practice recommendations 7.1, 7.2 or 7.3.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- a description of the company's risk management policy and internal compliance and control system.

#### Application of Principle 7 in relation to trusts

References to "board" and "directors" should be applied as references to the board and directors of the responsible entity of the trust.

It is recognised that for a trust to convene an audit committee as required under the recommendations, and a compliance committee that may be required under the law, may create an overlap and an administrative burden – the two committees will serve substantially similar purposes. Trusts that are required under the law to convene a compliance committee may wish to consider using the compliance committee to also serve the function of the audit committee, with any necessary adaptations in accordance with the best practice recommendations.

Refer also to section 601JA(2) of the Corporations Act, which sets out the criteria for independence of a director of the responsible entity.





## Principle 8: Encourage enhanced performance

Fairly review and actively encourage enhanced board and management effectiveness.

This means that directors and key executives<sup>13</sup> should be equipped with the knowledge and information they need to discharge their responsibilities effectively, and that individual and collective performance is regularly and fairly reviewed.

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### How to achieve best practice

**Recommendation 8.1:** Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives.

#### Commentary and guidance

##### *Performance review*

The performance of the board and key executives should be reviewed regularly against both measurable and qualitative indicators.

The nomination committee should take responsibility for evaluating the board's performance.

For guidance concerning performance evaluation processes, refer to *Directors' Professional Education Package, Board Composition and Conduct*, CCH, 2002.

##### *Facilitating performance by education*

The company should implement induction procedures designed to allow new board appointees to participate fully and actively in board decision-making at the earliest opportunity.

New directors cannot be effective until they have a good deal of knowledge about the company and the industry within which it operates. An induction program should be made available that enables directors to gain an understanding of:

- the company's financial, strategic, operational and risk management position
- their rights, duties and responsibilities
- the role of the board committees.

The nomination committee should be responsible for ensuring that an effective induction process is in place, and should regularly review its effectiveness.

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<sup>13</sup> That is, any employee or officer who has the opportunity to materially influence the integrity, strategy and operation of the business and its financial performance.

Similar induction processes may also be desirable for key executives.

Directors and key executives should have access to continuing education to update and enhance their skills and knowledge.

This should include education concerning key developments in the company and within the industry and environments within which it operates.

#### *Access to information*

The board should be provided with the information it needs to efficiently discharge its responsibilities. In particular it is important that:

- there be a procedure agreed by the board for directors to take independent professional advice if necessary, at the company's expense
- all directors have access to the company secretary
- the appointment and removal of the company secretary be a matter for decision by the board as a whole.

Management should supply the board with information in a form, timeframe and quality that will enable the board to effectively discharge its duties.

Directors should be entitled to, and prepared to request, additional information where they consider that the information supplied by management is insufficient to support informed decision-making.

#### *Role of the company secretary*

The company secretary plays an important role in supporting the effectiveness of the board by monitoring that board policy and procedures are followed, and coordinating the completion and despatch of board agenda and briefing materials.

The company secretary should be accountable to the board, through the chairperson, on all governance matters.

## Guide to reporting on Principle 8

The following material should be included in the corporate governance section of the annual report:

- whether a performance evaluation for the board and its members has taken place in the reporting period and how it was conducted
- an explanation of any departure from best practice recommendation 8.1.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- a description of the process for performance evaluation of the board, its committees and individual directors, and key executives.

### Further guidance

The importance of the support role and independence of the company secretary is considered in:

*Corporate Practices and Conduct*, Australian Institute of Company Directors, 3rd edition, 1995. [www.companydirectors.com.au](http://www.companydirectors.com.au).

and

*Corporate Governance and the Role of the Company Secretary*, Chartered Secretaries Australia, 3rd edition, 2003. [www.csaust.com](http://www.csaust.com).

### Application of Principle 8 in relation to trusts

References to "board" and "director" should be applied as references to the board and directors of the responsible entity.







## Principle 9: Remunerate fairly and responsibly

Ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to corporate and individual performance is defined.

This means that companies need to adopt remuneration policies that attract and maintain talented and motivated directors and employees so as to encourage enhanced performance of the company. It is important that there be a clear relationship between performance and remuneration, and that the policy underlying executive remuneration be understood by investors.

### How to achieve best practice



**Recommendation 9.1:** Provide disclosure in relation to the company's remuneration policies to enable investors to understand (i) the costs and benefits of those policies and (ii) the link between remuneration paid to directors and key executives<sup>14</sup> and corporate performance.

#### Commentary and guidance

##### *Reporting*

Disclosing the remuneration policy is a fundamental requirement for remuneration reporting. The interests of shareholders and the market are best served through a transparent and readily understandable framework for executive compensation and its costs and benefits.

Transparency as to the remuneration policy should be complemented by full and effective disclosure, in keeping with the spirit and intent of the Corporations Act and the ASX Listing Rules, of the remuneration paid to directors and senior management.

##### *Annual disclosure*

The Corporations Act requires annual disclosure by a listed company of the details of the nature and amount of each element of the fee or salary of:

- each director
- each of the five highest-paid officers<sup>15</sup> of the company.

This includes disclosure in respect of non-monetary components such as options.

To facilitate consistency and clarity of reporting, Box 9.1 contains content guidelines.

<sup>14</sup> That is, any employee or officer who has the opportunity to materially influence the integrity, strategy and operation of the business and its financial performance.

<sup>15</sup> "Officer" is defined in section 6 of the Corporations Act.

**Box 9.1: Disclosure of remuneration policy and procedures**

The corporate governance statement of the annual report should contain the following information concerning remuneration:

1. The broad structure and the objectives of the remuneration policy and its relationship to company performance.
2. The amount of remuneration, and all monetary and non-monetary components, for each of the five highest-paid (non-director) executives during the year (discounting accumulated entitlements), and for all directors. This disclosure would include, for example:
  - salary
  - fees
  - non-cash benefits
  - bonuses accruing in respect of that year, regardless of payment date
  - profit share accruing in respect of that year, regardless of payment date
  - superannuation contributions
  - other payments in relation to termination and retirement from office
  - the value of shares issued and options granted, according to an established and recognised method of valuation
  - sign-on payments.

Disclosure should focus on the remuneration components that are related to continuing employment with the company or other companies in the same group. Accordingly, if an executive has been terminated during the year and the termination and other benefits paid classify that executive as one of the five highest-paid executives, the relevant disclosure should include the five highest-paid executives continuing in employment.

Any loans to executives and directors (other than those made on commercial terms) should be included with this disclosure, including the amount and the interest rate.

Benefits such as motor vehicles, rent, travel and relocation allowances and other benefits should also be included.

Effective disclosure requires valuing the various components and describing the valuation techniques used.

3. Statements on the expected outcomes of the remuneration structures referring to *Executive Share and Option Scheme Guidelines, IFSA Guidance Note*, Investment and Financial Services Association, 2000.
4. Where discretion is exercised by the board in relation to payment of bonuses, stock options and other incentive payments, a statement about this and explanation of the basis for the exercise of that discretion.

### *Continuous disclosure*

Entering employment agreements with key executives, or obligations under these agreements falling due, may trigger a continuous disclosure obligation under ASX Listing Rule 3.1. Where this is the case, disclosure to the market should include a summary of the main elements and terms of the agreement, including termination entitlements.

In considering the appropriate matters for disclosure to the market and fostering a constructive relationship with shareholders, the sensitivities of significant payments to key executives should be considered.

### *Improving corporate behaviour*

Australia needs a framework for disclosure that will produce sustainable improvements in corporate behaviour concerning remuneration practices. The issues associated with the establishment of such a framework are complex. The right framework requires:

- clarification of the disclosure policy and requirements of the Corporations Act relative to matters such as the value of stock options and disclosure of accruals of termination and other payments
- complementary AASB standards, including finalisation of the proposed AASB standard on director, executive and related-party disclosures
- a careful balance in the amount and type of disclosure, so that its outcome is relevant information to investors, and not simply enhanced market conditions for increasing levels of individual remuneration to the detriment of shareholders.

The enhanced framework for determining, reviewing and reporting on remuneration of directors and executives outlined in this document is a significant step in improving the information available to investors and influencing corporate behaviour. However, the Council has agreed as a matter of priority to examine the need for additional disclosure, including for a wider range of executives.

The Council encourages companies to restore investor confidence by adopting disclosure practices designed to enhance awareness of key aspects of the remuneration framework and its link to performance.

### *Eliminating surprise*

Shareholder concern about executive payments is often exacerbated by a lack of information concerning core entitlements when they are agreed. This can be alleviated if, for example, the nature of the termination entitlements of the chief executive officer (or equivalent) is disclosed to the market at the time they are agreed as well as at the time the actual payment is settled.



**Recommendation 9.2:** The board should establish a remuneration committee.

**Commentary and guidance**

*Purpose of the remuneration committee*

Particularly for larger companies, a remuneration committee can be a more efficient mechanism than the full board for focusing the company on appropriate remuneration policies which are designed to meet the needs of the company and to enhance corporate and individual performance.

The existence of a remuneration committee should not be seen as implying a fragmentation or diminution of the responsibilities of the board as a whole.

It is recognised that for smaller boards, the same efficiencies may not be apparent from a formal committee structure.

*Composition of remuneration committee*

The remuneration committee should:

- consist of a minimum of three members, the majority being independent directors
- be chaired by an independent director.

*Charter*

The remuneration committee should have a formal charter that clearly sets out its role and responsibilities, composition, structure and membership requirements.

*Responsibilities*

The responsibilities of the remuneration committee should include a review of and recommendation to the board on:

- executive remuneration and incentive policies
- the remuneration packages of senior management
- the company's recruitment, retention and termination policies and procedures for senior management
- incentive schemes
- superannuation arrangements
- the remuneration framework for directors<sup>16</sup>.

*Remuneration policies*

The company should design its remuneration policy in such a way that it:

- motivates directors and management to pursue the long-term growth and success of the company within an appropriate control framework
- demonstrates a clear relationship between key executive performance and remuneration.

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<sup>16</sup> The remuneration framework for directors is often addressed by the nomination committee rather than the remuneration committee.



The remuneration committee may seek input from individuals on remuneration policies, but no individual should be directly involved in deciding his/her remuneration.

The remuneration committee should ensure that the board, management and the remuneration committee are provided with sufficient information to ensure informed decision-making.

Executive remuneration packages should involve a balance between fixed and incentive pay, reflecting short and long-term performance objectives appropriate to the company's circumstances and goals.

A proportion of executive directors' remuneration should be structured in a manner designed to link rewards to corporate and individual performance.

Guidance on an appropriate framework for determining executive remuneration packages is contained in Box 9.2.

**Box 9.2: Content of executive remuneration packages**

Most executive remuneration packages will involve a balance between fixed and incentive pay.

Companies may find it useful to consider the following components in formulating packages to meet the circumstances and goals of their business:

**1. Fixed remuneration**

This should be reasonable and fair, taking into account the company's legal and industrial obligations and labour market conditions, and should be relative to the scale of business. It should reflect core performance requirements and expectations.

**2. Performance-based remuneration**

Performance-based remuneration linked to clearly specified performance targets can be an effective tool in promoting the interests of the company and shareholders.

Incentive schemes should be designed around appropriate performance benchmarks that measure relative performance and provide rewards for materially improved company performance.

**3. Equity-based remuneration**

Appropriately designed equity-based remuneration, including stock options, can be an effective form of remuneration when linked to performance objectives or hurdles.

Nonetheless, equity-based remuneration has limitations and can contribute to 'short-termism' on the part of executives. Accordingly it is important to design appropriate schemes. For guidance as to principles relevant to such design, refer to *Executive Share and Option Scheme Guidelines, IFSA Guidance Note*, Investment and Financial Services Association, 2000.

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#### 4. Termination payments

Termination payments for chief executive officers should be agreed in advance, including detailed provisions in case of early termination, except for removal for misconduct.

Agreements should include a clear articulation of performance expectations.

Consideration must be given to the consequences of an appointment not working out, and to the costs and other impacts of early termination.

**Recommendation 9.3:** Clearly distinguish the structure of non-executive directors' remuneration from that of executives.

#### Commentary and guidance

Box 9.3 contains guidelines for appropriate practice in non-executive director remuneration.

Where schemes for retirement benefits for non-executive directors are in place, their existence and terms should be clearly disclosed in the corporate governance section of the annual report, including the provision accrued each year together with the total amount accrued to date. The relevant amount should be disclosed as a component of each participating director's remuneration.

#### Box 9.3: Guidelines for non-executive director remuneration

1. Non-executive directors should normally be remunerated by way of fees (in the form of cash, non-cash benefits, superannuation contributions or equity); they should not participate in schemes designed for the remuneration of executives.
2. Non-executive directors should not receive options or bonus payments.
3. Non-executive directors should not be provided with retirement benefits other than statutory superannuation.

**Recommendation 9.4:** Ensure that payment of equity-based executive remuneration is made in accordance with thresholds set in plans approved by shareholders.

**Recommendation 9.5:** Provide the information indicated in *Guide to reporting on Principle 9*.



## Guide to reporting on Principle 9

The following material should be included in the corporate governance section of the annual report:

- disclosure of the company's remuneration policies referred to in best practice recommendation 9.1 and in Box 9.1
- the names of the members of the remuneration committee and their attendance at meetings of the committee
- the existence and terms of any schemes for retirement benefits, other than statutory superannuation, for non-executive directors
- an explanation of any departures from best practice recommendations 9.1, 9.2, 9.3, 9.4 or 9.5.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- the charter of the remuneration committee or a summary of the role, rights, responsibilities and membership requirements for that committee.

### Further guidance

*Commission on Public Trust and Private Enterprise – Findings and Recommendations Part 1: Executive Compensation*, The Conference Board, 2002.

*Corporate Governance, A Guide for Fund Managers and Corporations – Blue Book*, Investment and Financial Services Association, December 2002. [www.ifsa.com.au](http://www.ifsa.com.au).

*Executive Share and Option Scheme Guidelines – Guidance Note 12*, Investment and Financial Services Association, 2000. [www.ifsa.com.au](http://www.ifsa.com.au).

### Application of Principle 9 in relation to trusts

Under the Corporations Act, remuneration and indemnity for costs and expenses of the responsible entity is required to be disclosed in a trust's constitution. This may overlap to an extent with the best practice recommendations and should be taken into account by trusts.



# 10

## Principle 10: Recognise the legitimate interests of stakeholders

Recognise legal and other obligations to all legitimate stakeholders.

Companies have a number of legal and other obligations to non-shareholder stakeholders such as employees, clients/customers and the community as a whole. There is growing acceptance of the view that organisations can create value by better managing natural, human, social and other forms of capital. Increasingly, the performance of companies is being scrutinised from a perspective that recognises these other forms of capital. That being the case, it is important for companies to demonstrate their commitment to appropriate corporate practices.

### How to achieve best practice

**Recommendation 10.1:** Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.

#### Commentary and guidance

Most companies are subject to a number of legal requirements that affect the way business is conducted. These include trade practices and fair dealing laws, consumer protection, respect for privacy, employment law, occupational health and safety, equal employment opportunity, superannuation, environment and pollution controls. In several areas, directors and officers are held personally responsible for corporate behaviour inconsistent with these requirements, and penalties can be severe.

Aside from the need to effectively manage risk and support compliance with the company's legal obligations, there is the broader issue of enhancement of corporate reputation. In this context, consultation with the governments and communities in whose territory business is conducted is important.

Public or social accountability by corporations is generally based on notions of legitimacy, fairness and ethics. The board has a responsibility to set the tone and standards of the company and to oversee adherence to these. Company codes of conduct which state the values and policies of the company can assist the board in this task and complement the company's risk management practices.

#### *Corporate code of conduct*

Codes of conduct should address matters relevant to the company's compliance with its legal obligations to stakeholders. Box 10.1 contains some suggestions for the content of these.

A code of conduct should enable employees to alert management and the board in good faith to potential misconduct without fear of retribution, and should require recording and investigation of such alerts.

The company should have a system for ensuring compliance with its code of conduct and for dealing with complaints. In devising and implementing that system, the laws concerning defamation and privacy need to be considered.

**Box 10.1: Guidelines for the content of a code of conduct**

1. *Clear commitment by board and management to the code of conduct.* This is often linked to statements about the aspirations or objectives of the company, its core values, and its views about the expectations of customers, shareholders, staff and the broader community.
2. *Responsibilities to shareholders and the financial community generally.* This might include reference to the company's commitment to delivering shareholder value and how they will do this, the company's approach to accounting policies and practices, and disclosure.
3. *Responsibilities to clients, customers and consumers.* This might include reference to standards of product quality or service, commitments to fair value, and safety of goods produced.
4. *Employment practices.* This might include reference to occupational health and safety; employment opportunity practices; special entitlements above the statutory minimum; employee security trading policies; training and further education support; policies on giving and acceptance of business courtesies; prohibitions on the offering and acceptance of bribes, inducements and commissions and on the misuse of company assets and resources; handling of conflicts of interest; and policy and practice on drug and alcohol usage and on outside employment.
5. *Obligations relative to fair trading and dealing.*
6. *Responsibilities to the community.* This might include environmental protection policies, support for community activities, donation or sponsorship policies.
7. *Responsibilities to the individual.* This might include the company's privacy policy, the use of privileged or confidential information, how conflicts of interest are addressed.
8. *How the company complies with legislation affecting its operations.* For company operations outside of Australia, particularly in developing countries, the code of conduct should state whether those operations comply with Australian or local legal requirements regarding employment practices, responsibilities to the community and responsibilities to the individual, particularly if the host country adopts lower standards than those prescribed by Australian law or international protocols.
9. *How the company monitors and ensures compliance with its code.*

## Guide to reporting on Principle 10

The following material should be included in the corporate governance section of the annual report:

- an explanation of any departure from best practice recommendation 10.1.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- any applicable code of conduct or a summary of its main provisions.

### Further guidance

*AS3806 – Compliance Programs*, Standards Australia, 1998. [www.standards.com.au](http://www.standards.com.au).

*Draft DR03027 (Project ID: 4303) – Organisational Codes of Conduct*, Standards Australia, 2003. [www.standards.com.au](http://www.standards.com.au).

*Draft DR03028 (Project ID: 4304) – Corporate Social Responsibility*, Standards Australia, 2003. [www.standards.com.au](http://www.standards.com.au).

*Draft DR03029 (Project ID: 4305) – Whistleblowing Systems for Organisations*, Standards Australia, 2003. [www.standards.com.au](http://www.standards.com.au).

### Application of Principle 10 in relation to trusts

It is recognised that trusts may have already convened a compliance committee which is responsible for compliance with the Corporations Act and the constitution of the trust. Trusts should consider broadening the scope of the compliance committee to incorporate the best practice recommendations. Refer to section 601HA of the Corporations Act.








Attachment A  
Guidelines for  
notices of meeting





## Guidelines for notices of meeting

1. Notices of meeting must be honest, accurate and not misleading. Relevant information should not be withheld or presented in a manner designed to mislead shareholders or the market as a whole.
2. Notices must clearly state and, where necessary, explain, the nature of the business of the meeting. They should be prepared in accordance with the following:
  - 2.1 If the resolutions are mandated by the Corporations Act, the company's constitution or the ASX Listing Rules, explanatory notes on each resolution should be provided to shareholders.
  - 2.2 A notice of meeting must comply with the relevant principles of the Corporations Act, including the requirements of sections 249L and 249Q, the common law and the ASX Listing Rules. Section 249L requires a notice of meeting to state the general nature of the meeting's business and section 249Q requires that a meeting of a company's shareholders must be held for a "proper purpose".
3. Notices must set a reasonable time and place for the meeting. Accordingly:
  - 3.1 Reasonable notice must be given. Section 249HA of the Corporations Act requires that at least 28 days notice be given of a meeting.
  - 3.2 Meetings should be held during normal business hours and at a place convenient for the greatest possible number of shareholders to attend. Usually this place would be in the city where the head office of the company is situated or where the majority of individual shareholders reside. Companies may also periodically hold meetings in other places where a significant number of shareholders reside.
  - 3.3 Companies should use their best endeavours to use relevant technology to enable a maximum number of shareholders to attend and participate (as far as technology effectively allows) at meetings.
4. Notices should encourage shareholders' participation through the appointment of proxies. Accordingly:
  - 4.1 The notice of meeting should include a clear reference to the shareholders' rights to appoint a proxy.
  - 4.2 Companies should consider allowing shareholders to lodge proxies electronically, subject to the adoption of satisfactory authentication procedures.
  - 4.3 Companies should encourage shareholders appointing a proxy to consider how they wish to direct the proxy to vote. That is, whether the shareholder wishes the proxy to vote "for" or "against", or abstain from voting on, each resolution, or whether to leave the decision to the appointed proxy after discussion at the meeting.
  - 4.4 Proxy forms should be drafted in such a way as to ensure the shareholder clearly understands how the chairperson of the meeting intends to vote undirected proxies.

- 4.5 Companies are encouraged to take guidance from the Chartered Secretaries Australia best practice proxy form available on that organisation's website, [www.csaust.com](http://www.csaust.com).
5. Companies should adopt best practice drafting methods for notices of meeting. These include:
- using plain English to clearly and simply communicate relevant information
  - avoiding legal archaisms such as "aforesaid", "abovementioned", "hereafter", "hereinafter", "hereunder", "herewith", "thereby" and "pursuant"
  - avoiding unnecessary repetition
  - employing a structure and format that ensures readability and ease of understanding by shareholders; this would include making use of layout elements such as:
    - appropriate spacing, indenting, highlighting, headings and numbering
    - a uniform and easily legible font
    - correspondingly sequential treatment of resolutions in any explanatory statements.
6. Companies should combine or "bundle" resolutions in a notice of meeting only in limited circumstances and in accordance with the following guidelines:
- 6.1 Companies should avoid "bundling" resolutions unless the resolutions are interdependent and linked so as to form one significant proposal. An example of an appropriately bundled resolution is one that incorporates a number of uncontroversial changes to a company's constitution.
- 6.2 Where resolutions are "bundled", the company should ensure the notice clearly explains the primary purpose of the bundled resolution and the material implications of each of its components.
- 6.3 The following categories of resolution should not be bundled, but always be dealt with as separate items of business, each with a distinct explanation provided.
- a. To issue options with participation rights, under Listing Rule 6.20.3.
  - b. To issue unquoted options with exercise price variation terms not in accordance with Listing Rule 6.22.2, under Listing Rule 6.22.3.
  - c. To change options under Listing Rules 6.23.2 or 6.23.4.
  - d. To approve an issue under an employee incentive scheme, under Listing Rule 7.2 Exception 9(b).
  - e. To approve a transaction with, or issue of securities to, a person in a position of influence under Listing Rules 10.1 (acquisition and disposal of substantial assets), 10.11 (issues of securities to related parties), 10.14 (issues of securities to related parties under an employee incentive scheme), 10.17 (non-executive directors' remuneration) or 10.19 (termination benefits).
  - f. To approve the terms of issue of preference shares not provided for in the company's constitution (section 254A(2) Corporations Act), or a change to the company's constitution that has the same effect.

- g. To issue a new class of shares not already provided for in the company's constitution (section 246C(5) Corporations Act), or a change to the company's constitution that has the same effect.
- h. To approve a buy-back (sections 257C or 257D Corporations Act).
- i. To approve the giving of financial assistance (section 260B Corporations Act).
- j. To appoint or remove directors – each candidate for appointment or removal will require a separate resolution (see guidelines 7 and 8 below).
- k. Other resolutions in relation to which a director or senior executive has an interest.

This list is not exhaustive; bundling of resolutions should always be considered by reference to the general guidelines set out above.

7. Companies should give clear guidance in notices of meeting containing resolutions for the election of directors, as follows:
  - 7.1 Companies should ensure that each candidate for election be considered separately in a distinct resolution, except as contemplated by 7.2.
  - 7.2 Where the number of candidates for election exceeds the number of available positions on the board, the notice should provide clear guidance on the voting method by which the successful candidates will be selected at the meeting as well as the method to be used for the counting of votes.
  - 7.3 Notices of meeting for election or removal of directors should fairly and equitably represent the views of candidates.
8. Companies should give clear guidance in notices of meeting containing resolutions for the removal of directors.
  - 8.1 Companies should ensure that each candidate for removal be considered separately in a distinct resolution.
  - 8.2 Companies should be aware that they are required to circulate to all shareholders any written statement provided by a director named in a removal resolution under section 203D(4) of the Corporations Act representing his or her views on the proposal.
9. Companies should ensure notices give clear guidance on directors' recommendations on resolutions.
  - 9.1 Where recommendations are specifically required, notices should contain adequate representation of the views of all assenting and dissenting directors on specific resolutions. Notices should make it clear whether represented views are those of an executive director, a non-executive director or an independent director. The notice should present a balanced view on the merits of the proposal.
  - 9.2 Companies would not be expected to present the contrary view in a notice of meeting where directors unanimously support a resolution, but the notice of meeting should, nevertheless, present a balanced view and be forthcoming about any significant disadvantages.

- 9.3 Guidance on directors' recommendations should be placed at the end of the explanatory note on each resolution.
10. Companies should give particular attention to notices containing complex resolutions.
- 10.1 Examples of complex resolutions include those requiring an independent expert's report under the Corporations Act takeover provisions or ASX Listing Rule 10.1, those seeking to amend companies' constitutions in respect of proportional takeovers, and resolutions seeking to alter companies' capital structures.
- 10.2 Notices containing such resolutions should always include a "short form" explanatory statement setting out concisely and clearly the nature of the meeting business and its ramifications for the company.
- 10.3 Companies should encourage independent experts to preface their reports with a concise executive summary of their findings. Companies should not provide their own summaries of independent experts' findings in explanatory statements.
11. Companies should ensure notices give clear guidance on shareholders' conflicts of interest to the extent that they are known to the company and clearly state which shareholders will be excluded from voting or have their votes disregarded.
- 11.1 Any conflicts of interest of directors and their associates and senior management should be clearly outlined. The Corporations Act and ASX Listing Rules contain specific provisions outlining those parties who may be excluded from voting on a resolution in which they may have an interest or receive a benefit disproportionate to other shareholders.
- 11.2 The question of who may be excluded from voting or whose votes will be disregarded can be an important factor in a shareholder's determination whether to attend a meeting or appoint a proxy. Best practice would require voting exclusion statements to be contained in the notice itself and be located immediately adjacent to the relevant resolution.
- 11.3 It is quite acceptable, but not essential, for voting exclusion information to be also contained in any explanatory statement.
12. Companies should endeavour to send notices of meeting to shareholders by electronic means if requested, and should place the full text of notices and accompanying explanatory material on the company website. Companies should also consider distributing explanatory material by other means, so that shareholders who do not have access to the Internet and other forms of electronic communication are not disadvantaged.
- 12.1 Companies should encourage shareholders to request that notices of meeting be sent to them by electronic means on an "opt-in" basis. Shareholders must be able to change that election at any time, and have the right to request a paper version of a document that has been sent electronically.
- 12.2 Companies are required by the ASX Listing Rules to release full notice documentation to the ASX Companies Announcements Office.



- 12.3 In addition, companies should place this material on their website in a prominent and accessible position for shareholders and other market participants who may be considering an investment in the company, or should refer to the ability to download the notice from ASX's website, [www.asx.com.au](http://www.asx.com.au).
- 12.4 Material should be kept by the company in such a way that it can be reproduced in written form at any time. The material should also be presented in a way that will allow recipients to keep a copy of it so that they have ready access to it in the future.





Attachment B  
Disclosure



# Disclosure

## Best practice recommendations

- 
- 1.1 Formalise and disclose the functions reserved to the board and those delegated to management.
- 
- 2.1 A majority of the board should be independent directors.
- 2.2 The chairperson should be an independent director.
- 2.3 The roles of chairperson and chief executive officer should not be exercised by the same individual.
- 2.4 The board should establish a nomination committee.
- 2.5 Provide the information indicated in *Guide to reporting on Principle 2*.
- 
- 3.1 Establish a code of conduct to guide the directors, the chief executive officer (or equivalent), the chief financial officer (or equivalent) and any other key executives as to:
- 3.1.1 the practices necessary to maintain confidence in the company's integrity
- 3.1.2 the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.
- 3.2 Disclose the policy concerning trading in company securities by directors, officers and employees.
- 3.3 Provide the information indicated in *Guide to reporting on Principle 3*.
- 
- 4.1 Require the chief executive officer (or equivalent) and the chief financial officer (or equivalent) to state in writing to the board that the company's financial reports present a true and fair view, in all material respects, of the company's financial condition and operational results and are in accordance with relevant accounting standards.
- 4.2 The board should establish an audit committee.
- 4.3 Structure the audit committee so that it consists of:
- only non-executive directors
  - a majority of independent directors
  - an independent chairperson, who is not chairperson of the board
  - at least three members.

- 4.4 The audit committee should have a formal charter.
- 4.5 Provide the information indicated in *Guide to reporting on Principle 4*.
- 
- 5.1 Establish written policies and procedures designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior management level for that compliance.
- 5.2 Provide the information indicated in *Guide to reporting on Principle 5*.
- 
- 6.1 Design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at general meetings.
- 6.2 Request the external auditor to attend the annual general meeting and be available to answer shareholder questions about the conduct of the audit and the preparation and content of the auditor's report.
- 
- 7.1 The board or appropriate board committee should establish policies on risk oversight and management.
- 7.2 The chief executive officer (or equivalent) and the chief financial officer (or equivalent) should state to the board in writing that:
- 7.2.1 the statement given in accordance with best practice recommendation 4.1 (the integrity of financial statements) is founded on a sound system of risk management and internal compliance and control which implements the policies adopted by the board
- 7.2.2 the company's risk management and internal compliance and control system is operating efficiently and effectively in all material respects.
- 7.3 Provide the information indicated in *Guide to reporting on Principle 7*.
- 
- 8.1 Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives.
- 
- 9.1 Provide disclosure in relation to the company's remuneration policies to enable investors to understand (i) the costs and benefits of those policies and (ii) the link between remuneration paid to directors and key executives and corporate performance.
- 9.2 The board should establish a remuneration committee.
- 9.3 Clearly distinguish the structure of non-executive directors' remuneration from that of executives.



- 9.4 Ensure that payment of equity-based executive remuneration is made in accordance with thresholds set in plans approved by shareholders.
- 9.5 Provide the information indicated in *Guide to reporting on Principle 9*.

- 
- 10.1 Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.



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