CORRS CHAMBERS WESTGARTH
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Schedule 1 – Table of Responses
Review of the Corporate Governance Principles and Recommendations (Principles)
Public Consultation

Recommendation		Response
General		We fully support the move to afford greater flexibility to listed entities to make corporate governance disclosures on their website rather than in their annual report. In our view, annual reports are in many cases excessively lengthy documents which are not read in full by investors. We support the removal of the separate reporting recommendations headed 'Guide to Reporting on Principle [X]' under each of the Principles. This amendment improves the readability and applicability of the Recommendations. We support the proposal to introduce a unified section of Recommendations for externally managed listed entities. We think it is imperative that changes to the disclosure requirements provide clear benefits to entities and/or investors that outweigh the cost of compliance. Therefore we do not in general support the elevation of commentary to Recommendations or the addition of Recommendations in the absence of compelling evidence-based reasons to require additional reporting. We do not support Recommendations which reflect existing legal obligations under the *Corporations Act 2001 (Cth)* (**Corporations Act**) or elsewhere. We do not think that listed entities should be required to report under the Recommendations where they are obliged to meet requirements elsewhere, as this imposes an unnecessary additional layer of regulation. However, we have no objection to such Recommendations applying to listed entities which are not subject to the Corporations Act. In our view, the Council should avoid increasing regulation of small-cap entities in particular unless there are clear benefits to Australian investors in doing so. Smaller entities (for example those outside the ASX 200 index) expend considerable resources in meeting existing regulatory requirements. Additional regulation may deter entities from participation in the Australian market.
1.1	(role of board and	We support the Commentary that 'The board charter should set out the entity's policy on when directors may

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	management)	seek independent professional advice at the expense of the entity' but suggest that the following words '(which generally should be whenever directors, especially non-executive directors, judge such advice necessary for them to discharge their responsibilities as directors)' should be deleted. We do not consider that it is the Council's role to recommend the content of the policy. Any such policy is a matter for agreement between the entity and its directors, taking into account the relevant circumstances.
1.2	((a) background checks on directors and (b) information to be given for election of directors)	There may be occasions where there is an urgent need to fill a casual vacancy on the Board and time may not permit checks to be undertaken. We also note the potential difficulty in conducting timely checks for international candidates. If the Recommendation is retained, we suggest that the Commentary include a note that the checks undertaken before appointment should be those which are appropriate in the circumstances, generally reflecting the requirement to make appropriate background enquiries where time permits. In any event, enquiries could be conducted before board appointments are ratified by shareholders at the subsequent annual general meeting. Recommendation 1.2(b) reflects a general law requirement to seek fully-informed consent for any resolution proposed to security holders. On this basis, we do not support a requirement to report about whether all material information is provided about a candidate for election as director. If the Recommendation is retained, we recommend that the requirement in the Commentary to include material information revealed by checks about new candidates for election should only apply if adverse information is revealed and should therefore be addressed. The Commentary that a candidate for election as a director should provide the board or nomination committee with details of other time commitments and an acknowledgement that he or she will have sufficient time for the role creates, in our view, an unnecessary additional documentary requirement without any evidence of the likely benefit.
1.3	(written contracts of appointment)	We are not opposed to encouraging entities to document the terms of appointment of directors and senior executives. However, we suggest that any requirement be limited to new appointments, and therefore phased in over time, in order to avoid the administrative burden for entities to create or amend documentation for

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		existing appointments. In relation to the Commentary that agreements with non-executive directors should set out the term of the appointment, we suggest that this requirement should acknowledge that directors may be appointed with an indefinite term, consistent with the ASX Listing Rules and subject to re-election by shareholders as required by the ASX Listing Rules. In addition, please note our comments about the proposed requirement for a 'clawback' policy which we have addressed in relation to proposed Recommendation 8.3. We support the Commentary that 'The board charter should set out the entity's policy on when directors may seek independent professional advice at the expense of the entity' but suggest that the following words '(which generally should be whenever directors, especially non-executive directors, judge such advice necessary for them to discharge their responsibilities as directors)' should be deleted, as any policy is a matter for agreement between the entity and its directors, taking into account the relevant circumstances.
1.4	(company secretary)	We suggest that this Recommendation be limited to governance matters.
1.5	(diversity)	We support the ability of entities to meet the disclosure requirement in Recommendation 1.5(c)(2)(B) by complying with its disclosure obligations under the *Workplace Gender Equality Act 2012*.
1.6	(board reviews)	Recommendation 1.6(b) should clarify that annual reporting only is required.
1.7	(management reviews)	Recommendation 1.7(b) should clarify that annual reporting only is required.
2.1	(disclose independence and length of service of directors)	We have no comment on this Recommendation.
2.2	(majority of directors independent)	We recommend that the requirement to disclose the nature of any interest, position, association or relationship of the type described in Box 2.1 should apply only where the independence of the relevant director is considered to be compromised. Disclosure of every interest, position, association or relationship is

Recommendation		Response
		unhelpful where there is no actual or perceived impact on independence. This would exclude non-material relationships which no reasonable person would consider might influence the director. We consider that the word 'material' should be reinserted before the words 'professional adviser' and before the word 'consultant' in the second bullet point in Box 2.1.
2.3	(chair independent and not CEO)	We have no comment on this Recommendation.
2.4	(nomination committee)	We support the move to recognise that certain entities are not required to have a nomination committee if disclosure is provided of the relevant procedures adopted by the entity. However, we question whether this change will result in any substantial change in the manner in which these entities previously disclosed their reasons for non-compliance.
2.5	(statement of board skills and diversity)	We have no comment on this Recommendation.
2.6	(induction and professional development)	Many directors of listed entities serve on a number of boards. We recommend that Recommendation 2.6 be modified to clarify that listed entities may, in developing a suitable program, take into account professional development opportunities provided to directors other than by the entity itself.
3.1	(code of conduct)	We have no comment on this Recommendation.
4.1	(audit committee)	We support the move to recognise that certain entities are not required to have an audit committee if disclosure is provided of the relevant procedures adopted by the entity. However, we question whether this change will result in any substantial change in the manner in which these entities previously disclosed their reasons for non-compliance.
4.2	(CEO and CFO	We do not support the inclusion of this Recommendation for listed companies which are already regulated in

Recommendation		Response
	certification of financial statements)	relation to this matter by the Corporations Act. Requiring entities to report about compliance with existing requirements of the Corporations Act is unnecessary additional regulation. Further, we do not support the use of the Principles to increase the extent of regulation imposed by the Corporations Act. If reform is warranted in relation to the financial statements of listed entities, amendment of the Corporations Act, rather than the Principles, should be proposed.
4.3	(external auditor available at AGM)	We do not support the inclusion of this Recommendation for listed companies which are already regulated in relation to this matter by the Corporations Act. Requiring entities to report about compliance with existing requirements of the Corporations Act imposes unnecessary additional regulation.
5.1	(disclosure policy)	We have no comment on this Recommendation.
6.1	(information on website)	We consider the Commentary in relation to website content to be overly prescriptive and onerous, particularly for smaller entities. For example, the suggestion that listed entities should provide webcasts or transcripts of general meetings imposes a considerable administrative burden and may impact the willingness of security holders to freely express views at meetings. The suggestion that entities should publish a calendar of events for the following year is not, in our view, practicable for many listed entities and may result in unnecessary confusion as the year unfolds.
6.2	(investor relations program)	We question whether the reformulation of this Recommendation will reduce the tendency to 'boilerplate' disclosure which the Council seeks to redress.
6.3	(facilitate participation at meetings of security holders)	We note that the outcome of the review currently being conducted by the Corporations and Markets Advisory Committee ('The AGM and shareholder engagement') may impact this Recommendation and its Commentary.
6.4	(facilitate electronic	We have no comment on this Recommendation.

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	communications)	
7.1	(risk committee)	We support the move to recognise that certain entities are not required to have a risk committee if disclosure is provided of the relevant procedures adopted by the entity.
7.2	(annual risk review)	We recommend that Recommendation 7.2(b) should clarify that annual reporting only is required.
7.3	(internal audit)	We support the move to recognise that certain entities are not required to have an internal audit function if disclosure is provided of the relevant procedures adopted by the entity.
7.4	(sustainability risks)	We understand this Recommendation is intended to encourage consideration of and disclosure about corporate responsibility. We support a proposal to include reporting on contributions to society, as it will help better inform Australian investors on how their companies are 'giving back' and assisting our communities. However, we suggest that the intended scope of the Recommendation is not apparent and the Commentary does not provide helpful guidance as to what is expected. We suggest that this Recommendation may be more suitably located in Principle 3: Promote ethical and responsible decision-making, with the word 'risks' deleted from the end of the Recommendation. If the proposed Recommendation is intended to require disclosure of matters other than the types of matters described in the introductory Commentary in Principle 3, we recommend clarification of what is contemplated. In any event, we suggest that the Recommendation be restricted to large ASX-listed entities only (eg ASX 200 entities). We make this suggestion because entities outside this group: • have fewer resources; • may not be in a good position to undertake any significant initiatives outside of their business to

Recommendation		Response
		contribute to society; and • have investors that do not expect these entities to make contributions to society at this stage of their development (and may even be concerned about them using their cash resources for non-core business purposes). In our view, the Council should avoid increasing regulation of small-cap entities in particular unless there are clear benefits to Australian investors in doing so.
8.1	(remuneration committee)	We support the move to recognise that certain entities are not required to have a remuneration committee if disclosure is provided of the relevant procedures adopted by the entity. However, we question whether this change will result in any substantial change in the manner in which these entities previously disclosed their reasons for non-compliance.
8.2	(disclosure of executive and non-executive director remuneration policy)	We do not think that entities which are subject to the Corporations Act should be subject to this Recommendation. The proposed Recommendation imposes an unnecessary layer of regulation for companies which are subject to the Corporations Act.
8.3	(clawback policy)	Recommendation 8.3 requires listed entities to have a 'clawback' policy for executive remuneration. Although such a policy may be commendable in theory, the formulation and implementation of such a policy may be impracticable. The Recommendation assumes that an identifiable proportion of remuneration reflects an aspect of financial performance, the adjustment of which should result in a clearly applied adjustment to the earned remuneration. As performance-based remuneration often reflects a variety of factors, adjustment of remuneration if there is a misstatement in the entity's accounts may be very difficult or impossible to apply. Although entities may adopt a policy in general terms if necessary to comply with the proposed Recommendation, implementation of the policy may prove difficult or impossible and therefore its value is

Recommendation		Response
		arguably questionable. The difficulties we foresee include: • the cost for entities in formulating a policy; • defining the circumstances which should give rise to a right to claw back performance-based remuneration; • calculating the amount of remuneration to be clawed back; • a reduction in the acceptability of performance-based remuneration which is tied to financial performance; • difficulty in enforcing a clawback right, particularly in the cases of remuneration paid to former executives and where the remuneration has been disbursed; and • clawing back remuneration which has been issued in the form of shares or options. In our view the detailed requirements to disclose the basis of performance-based remuneration which are currently contained in the Corporations Act, combined with the rights of shareholders to vote in relation to the remuneration report, are adequate in this regard. Any further regulation should be the domain of the Corporations Act. As an alternative to this Recommendation, consideration could be given to expanding the Commentary in relation to Recommendation 8.2 to suggest that entities give consideration to the possibility of clawing back overpaid remuneration.
8.4	(policy on hedging equity incentive schemes)	We do not think that entities which are subject to the Corporations Act should be subject to this Recommendation. The proposed Recommendation imposes an unnecessary layer of regulation for such companies.

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Schedule 2 – Table of Responses
Proposed changes to ASX Listing Rules and Guidance Note 9
ASX Public Consultation

Listing Rule	Response
1.1 Condition 13	We have no objection to the proposed amendments.
3.16	We support the proposed amendments.
3.19B	We consider that the requirement to disclose any increase in directors' interests under Listing Rule 3.16 to be adequate regulation in this regard. We do not think that separate disclosure of on-market purchases, often conducted by trustees under share plans during permitted trading periods, is warranted. As ASX has noted, on-market purchases do not have a dilutionary effect. No reason has been provided for this additional requirement. We do not think that disclosure should be required in relation to on-market purchases for employees other than directors. In most cases the terms of the relevant employee incentive scheme have previously been approved by shareholders (for example, for the purpose of relying on Listing Rule 7.2 Exception 9).
4.7	We fully support the move to afford greater flexibility to listed entities to make corporate governance disclosures on their website rather than in their annual report. We do not support the requirement for entities to complete and lodge an Appendix 4G for the reasons set out in relation to that proposed document below.
4.10	We fully support the move to afford greater flexibility to listed entities to make corporate governance disclosures on their website rather than in their annual report. We have no objection to the proposed amendments to Listing Rule 4.10, other than the requirement for the corporate governance statement to state that it has been approved by the board of the entity. We do not support any increase in the responsibility and potential liability of directors for statements

Listing Rule	Response
	previously included in the annual report over and above the Corporations Act requirements for directors to make declarations in relation to the financial statements. The new requirement may have unintended impacts on the exposure of directors for misleading and deceptive conduct and breach of duty and their ability to rely on defences available where functions are reasonably delegated. There is likely to be an increased risk of exposure to claims by ASIC and governance-related class actions. We recommend deletion of the requirement for the corporate governance statement to state that it has been approved by the board. We suggest that the word 'be' be deleted from the second sentence of the rule the second time it appears.
10.1	We have no objection to the proposed amendments.
10.14	We have no objection to the proposed amendments.
10.16	We have no objection to the proposed amendments..
12.7	We support the proposed amendments.
14.11	We have no objection to the proposed amendments, but query the necessity for the note.
19.12	We have no objection to the proposed changes. We note that the word 'on' where it first appears in the note following the definition of 'corporate governance statement' should be 'of'.
Appendix 4G	For the reasons discussed in relation to Listing Rule 4.10 above, we recommend the deletion of the words 'and has been approved by the board' from page 1.

Listing Rule	Response
	We do not support the requirement for entities to complete and lodge Appendix 4G. The requirement to complete and lodge this additional form, while of assistance to ASX and to proxy advisers in monitoring compliance, imposes a considerable additional administrative burden on entities and encourages a 'tick the box' approach which is not in the interests of investors or the market. It suggests that governance is a compliance issue rather than a cultural one. It is not possible to assess whether an entity's corporate governance regime is appropriate in the absence of understanding the entity's business, structure and operations, which necessarily involves considering the entity's website and annual reports rather than a pro forma form. We are not in favour of any move to increase the already onerous administrative obligations of listed entities.
Guidance Note 9	As the proposed amendments to the guidance note will reflect the final form of the third edition of the Principles, we do not have any additional comments on the proposed amendments.