

# LATEST ASX CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS

## 4TH EDITION CHANGES

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The latest ASX Corporate Governance Principles and Recommendations have been released and listed entities will be required to comply with them from the first full financial year commencing on or after 1 January 2020.

Members of CPA need to be aware of the steps that the board and management need to take to be compliant and also recognise that many unlisted entities will use the revised Principles and Recommendations as a guide to best practice.

Changes range across culture and values, whistle-blower policy, integrity of periodic corporate reporting, the board's role in company announcements, voting by poll rather than show hands at shareholder meetings, diversity targets, director independence, reporting of breaches of code of conduct to the board, operating within agreed risk appetite, and the disclosure and management of environmental and social risks.

The ASX Corporate Governance Council make it clear that the Principles and Recommendations are for guidance and are not intended to be prescriptive. The changes are aligned however with the broad findings and community expectations arising from the recent Royal Commission.

There is a significant opportunity for CPA Members to be an integral part of this transformation.

# KEY CHANGES

## Culture (Principle 3)

There has been a significant shift in focus to instilling a culture of acting lawfully, ethically and responsibly, resulting in 3 new recommendations:

- **Values (Recommendation 3.1)**

A listed entity needs to articulate and disclose its values.

- **Whistle-blower policy (Recommendation 3.3)**

A listed entity needs to develop and disclose a whistle-blower policy with material occurrences reported to the board or a board committee. Given the new laws in this area passed by the Federal Parliament in February 2019, this recommendation relating to a whistle-blower policy will need to be a particular priority.

- **Anti-bribery and corruption policy (Recommendation 3.4)**

A listed entity needs to have and disclose an anti-bribery and corruption policy and ensure that any material breaches of that policy are reported to the board or a board committee.

The shift in the 4th Edition towards an entity's culture and other non-financial value drivers appears to strengthen the case to rethink the entity's corporate reporting portfolio and to more fully engage with integrated reporting as an efficient means of articulating these non-financial value drivers and provide a holistic link to corporate strategy. At present only 7 ASX 200 companies use integrated reporting principles and 48% have partially adopted such principles.<sup>1</sup>

## Periodic corporate reports (Recommendation 4.3)

A listed entity should disclose its process to verify the integrity of any periodic corporate report it releases to the market that is not audited or reviewed by an external auditor. Essentially, it is necessary to demonstrate to investors the steps taken to satisfy the entity that the report is "materially accurate, balanced and provides appropriate information to make informed investment decisions." The disclosures may be in the report, the entity's disclosures on governance in the annual report or on the corporate website.

The definition of a periodic corporate report includes "the annual director's report, annual and half yearly financial statements, quarterly activity report, quarterly cash flow report, integrated report, sustainability report, or similar periodic report prepared for the benefit of investors." The latter is quite broad encompassing all reports going beyond traditional financial reports.

## Company announcements

Disclose continuous disclosure policy in full and Recommendations 5.2 and 5.3, provide that all material ASX announcements are to be sent to the board promptly after they have been made and that copies of new and substantive investor or analyst presentation materials should be released on the ASX Platform ahead of the presentation.

## Voting by poll

Recommendation 6.4 provides that all substantive resolutions at a meeting of security holders be decided by a poll rather than by a show of hands.

Additionally, two new recommendations that are likely to only impact a small subset of entities make provisions where a director does not speak the language in which meetings are held or key corporate papers are written (recommendation 9.1) and the location and timing of meetings of security holders of foreign entities (recommendation 9.2).

<sup>1</sup>Ridehalgh, N. and M. Bray (2019), "The Whole Picture," Company Director.

# REVISIONS TO PRIOR RECOMMENDATIONS

The 4th Edition also makes a large number of revisions to the principles and recommendations to the previous 3rd Edition. Some of the more significant changes are summarised below:

- **Diversity (Recommendation 1.5)**

There is an expansion of the recommendations around disclosure of a diversity policy in full and for the first time the Principles and Recommendations have a “hard-coded” target in respect of gender diversity. Specifically, any entity in the S&P/ASX 300 at the commencement of the reporting period have, as a measurable objective, at least 30% of directors of each gender on its board.

- **Director independence (Box 2.3)**

The factors relevant to assessing the independence of a director has been amended to state that a director’s independence may be impacted if they receive performance-based remuneration or participate in an employee incentive scheme.

- **Code of conduct (Recommendation 3.2)**

The existing requirement to have a code conduct has been extended to disclosure of the policy in full and recommend that any material breaches of the code are reported to the board or a board committee.

- **Risk appetite (Recommendation 7.2)**

That the board or a committee should satisfy itself that the entity is operating with due regard to the risk appetite set by the board at least annually. This was previously part of the commentary to recommendation 7.2 but now is an explicit recommendation.

- **Disclosure of environmental and social risks (Recommendation 7.4)**

The amended recommendation requires entities to disclose any material exposure to “environmental or social risks” (and how it manages or intends to manage those risks) rather than “economic, environmental and social sustainability risks.” If the entity publishes a report in accordance with the International Integrated Reporting Council’s framework, this recommendation may be met by cross-referring to such a report.

- **Executive remuneration (Recommendation 8.1)**

The commentary now indicates that remuneration is a key driver of culture and links it to an entities reputation and standing in the community. There is an emphasis of the need to avoid reward of conduct contrary to the organisation’s values and risk appetite.

## SIGNIFICANT ITEMS NOT ADOPTED IN THE FINAL VERSION OF THE 4TH EDITION

Recommendation 8.4 of the Consultation Draft regarding director or senior management consultancy arrangements has not been included following feedback that it would be difficult and costly to obtain independent advice beforehand that the services to be provided by a director or senior executive were outside their ordinary scope.

The inclusion in the consultation draft of 'social license to operate' raised concern with a number of parties including the lack of definition of what constitutes acting in a 'socially responsible manner'. Instead the 4th edition chose to use the terms 'reputation', 'standing in the community' and 'responsibly'.

## IMPLEMENTATION TIMETABLE

Listed entities are required to comply with the 4th Edition from the first full financial year commencing on or after 1 January 2020. In practical terms this means:

- entities with a 31 December financial year end will be required to comply with the 4th Edition for the financial year beginning 1 January 2020; and
- entities with a 30 June financial year end will be required to comply with the 4th Edition for the financial year beginning 1 July 2020.

It should be noted that the ASX encourages early adoption of some, or all, of the new recommendations and other changes in the 4th Edition.

## REFERENCES

Further information can be found in the following references:

**ASX Corporate Governance Council Communique Corporate Governance Principles and Recommendations 4th Edition February 2019**

<https://www.asx.com.au/documents/asx-compliance/cgc-communique-27-feb-2019.pdf>

**ASX Corporate Governance Council Corporate Governance Principles and Recommendations 4th Edition February 2019**

<https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf>

**Allens Linklaters summary of ASX Corporate Governance Principles and Recommendations 4th Edition changes**

<https://www.allens.com.au/pubs/cg/cucg01mar19.htm>

**Herbert Smith Freehills 4th Edition ASX Corporate Governance Principles and Recommendations changes**

<https://www.herbertsmithfreehills.com/latest-thinking/4th-edition-asx-corporate-governance-principles-and-recommendations>