



Corporate Governance Principles and Recommendations

4th Edition

February 2019

The 8 Principles

1

Lay solid foundations for management and oversight:

A listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance.

2

Structure the board to be effective and add value:

The board of a listed entity should be of an appropriate size and collectively have the skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.

3

Instil a culture of acting lawfully, ethically and responsibly:

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

4

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

5

Make timely and balanced disclosure: A listed entity should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.

6

Respect the rights of security holders: A listed entity should provide its security holders with appropriate information and facilities to allow them to exercise their rights as security holders effectively.

7

Recognise and manage risk: A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.

8

Remunerate fairly and responsibly: A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders and with the entity's values and risk appetite.

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> Foreword

The Corporate Governance Principles and Recommendations (“Principles and Recommendations”) were first introduced in 2003. A second edition was published in 2007 and a third in 2014.

In 2017, the ASX Corporate Governance Council (“Council”) agreed that it was an appropriate time to commence work on a fourth edition of the Principles and Recommendations to address emerging issues around culture, values and trust, fuelled by recent examples of conduct by some listed entities falling short of community standards and expectations. The fourth edition comes into force for financial years commencing on or after 1 January 2020.

I would like to express my appreciation to the Council for its work in maintaining the Principles and Recommendations as a world-leading standard on corporate governance by listed entities.

Elizabeth Johnstone,
Chair, ASX Corporate Governance Council

About the Council

The Council was convened in August 2002. It brings together various business, shareholder and industry groups, each offering valuable insights and expertise on governance issues from the perspective of their particular stakeholders. Its primary work has been the development of the Principles and Recommendations.

The members of the Council are:

- Association of Superannuation Funds of Australia Limited
- ASX Limited
- Australasian Investor Relations Association
- Australian Council of Superannuation Investors
- Australian Institute of Company Directors
- Australian Institute of Superannuation Trustees
- Australian Shareholders' Association
- Business Council of Australia
- Chartered Accountants Australia and New Zealand
- CPA Australia Ltd
- Financial Services Council
- Financial Services Institute of Australasia
- Governance Institute of Australia
- Group of 100
- Institute of Internal Auditors - Australia
- Institute of Public Accountants
- Law Council of Australia
- Property Council of Australia
- Stockbrokers and Financial Advisers Association Limited

Further information about the Council, including a copy of its charter, is available at: www.asx.com.au/regulation/corporate-governance-council.htm

What is “corporate governance”?

The phrase “corporate governance” describes “the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled within corporations. It encompasses the mechanisms by which companies, and those in control, are held to account.”¹

Good corporate governance promotes investor confidence, which is crucial to the ability of entities listed on the ASX to compete for capital.

The purpose of the Principles and Recommendations

These Principles and Recommendations set out recommended corporate governance practices for entities listed on the ASX that, in the Council’s view, are likely to achieve good governance outcomes and meet the reasonable expectations of most investors in most situations.

The Council recognises, however, that different entities may legitimately adopt different governance practices, based on a range of factors, including their size, complexity, history and corporate culture. For that reason, the Principles and Recommendations are not mandatory and do not seek to prescribe the corporate governance practices that a listed entity must adopt.

¹ Justice Owen in the HIH Royal Commission, The Failure of HIH Insurance Volume 1: A Corporate Collapse and Its Lessons, Commonwealth of Australia, April 2003 at page xxiv.

The basis of the Principles and Recommendations – the “if not, why not” approach

Which governance practices a listed entity chooses to adopt is fundamentally a matter for its board of directors, the body charged with the legal responsibility for managing its business with due care and diligence² and therefore for ensuring that it has appropriate governance arrangements in place.

Under the Principles and Recommendations, if the board of a listed entity considers that a Council recommendation is not appropriate to its particular circumstances, it is entitled not to adopt it. If it does so, however, it must explain why it has not adopted the recommendation – the “if not, why not” approach.

This approach ensures that the market receives an appropriate level of information about the entity’s governance arrangements so that investors and other stakeholders can have a meaningful dialogue with the board and management on governance matters and can factor the information provided into their decision on whether or not to invest in the entity and how to vote on particular resolutions.

The “if not, why not” approach is fundamental to the operation of the Principles and Recommendations.

The application of the Principles and Recommendations

The Principles and Recommendations apply to all entities admitted to the ASX official list as an ASX listing,³ regardless of the legal form they take,⁴ whether they are established in Australia or elsewhere, and whether they are internally or externally managed.

The Principles and Recommendations are specifically directed at, and only intended to apply to, ASX listed entities. However, as they reflect a contemporary view of appropriate corporate governance standards, other bodies may find them helpful in formulating their governance rules or practices.

² Sections 180 (in the case of a listed company) and 601FD(1)(b) (in the case of a listed trust) of the Corporations Act.

³ The Principles and Recommendations do not apply to entities admitted to the ASX official list as ASX debt listings or ASX foreign exempt listings.

⁴ That is, whether they are a listed company, listed trust or listed stapled entity.

The structure of the Principles and Recommendations

The Principles and Recommendations are structured around, and seek to promote, 8 central principles:

- 1 Lay solid foundations for management and oversight:** A listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance.
- 2 Structure the board to be effective and add value:** The board of a listed entity should be of an appropriate size and collectively have the skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.
- 3 Instil a culture of acting lawfully, ethically and responsibly:** A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly.
- 4 Safeguard the integrity of corporate reports:** A listed entity should have appropriate processes to verify the integrity of its corporate reports.
- 5 Make timely and balanced disclosure:** A listed entity should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.
- 6 Respect the rights of security holders:** A listed entity should provide its security holders with appropriate information and facilities to allow them to exercise their rights as security holders effectively.
- 7 Recognise and manage risk:** A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.
- 8 Remunerate fairly and responsibly:** A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders and with the entity’s values and risk appetite.

There are 35 specific recommendations of general application intended to give effect to these principles, as well as 3 additional recommendations that only apply in certain limited cases. These additional recommendations are included in the third last section of this document, immediately after the section dealing with principle 8.

There is also explanatory commentary with further guidance on the recommendations.

Some recommendations require modification when applied to externally managed listed entities. The second last section of this document explains how externally managed listed entities should apply and make disclosures against the recommendations.

The last section is a glossary which explains the meaning of a number of key terms, including “executive director”, “non-executive director”, “senior executive”, “substantial holder”, “environmental risk” and “social risk”.

The linkage with ASX’s listing rules

Each ASX listed entity is required under listing rule 4.10.3 to include in its annual report either a corporate governance statement⁵ that meets the requirements of that rule, or the URL of the page on its website where such a statement is located.⁶

The corporate governance statement must disclose the extent to which the entity has followed the recommendations set by the Council during the reporting period. If the entity has not followed a recommendation for any part of the reporting period, its corporate governance statement must separately identify that recommendation and the period during which it was not followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it adopted in lieu of the recommendation during that period.

By requiring listed entities to compare their corporate governance practices with the Council’s recommendations and, where they do not conform, to disclose that fact and the reasons why, listing rule 4.10.3 acts to encourage listed entities to adopt the governance practices suggested in the Council’s recommendations but does not force them to do so. It leaves a listed entity with the flexibility to adopt alternative governance practices, if its board considers those to be more suitable to its particular circumstances, subject to the requirement for the board to explain its reasons for adopting those alternative practices instead of the Council’s recommendations.

It is this rule which encapsulates the “if not, why not” requirement underpinning the operation of the Principles and Recommendations and which serves to ensure that the market receives an appropriate level of information about the governance practices an entity has adopted.

An entity’s corporate governance statement must specify the date at which it is current, which must be the entity’s balance date or a later date specified by the entity and state that it has been approved by the board of the entity.⁷

Each ASX listed entity must provide to ASX with its annual report a completed Appendix 4G, which has a key to where the various disclosures suggested in the recommendations or required under listing rule 4.10.3 can be found.⁸

If an entity’s corporate governance statement is not included in its annual report, the entity must also give ASX a copy of its corporate governance statement at the same time as it gives its annual report to ASX. The corporate governance statement must be current as at the effective date specified in that statement for the purposes of listing rule 4.10.3.⁹

Again, these requirements apply to all ASX listed entities regardless of the legal form they take, whether they are established in Australia or elsewhere, and whether they are internally or externally managed.

The disclosures required under listing rule 4.10.3 and referenced in Appendix 4G relate specifically to the recommendations in the Principles and Recommendations. The principles themselves, and the commentary on the recommendations, do not form part of the recommendations and therefore do not trigger any specific disclosure obligations under listing rule 4.10.3.

Where to make corporate governance disclosures

Where these Principles and Recommendations refer to a listed entity disclosing information, it should be disclosed either in the entity’s annual report or on its website.

The Council expects that many listed entities will streamline their annual report by choosing to publish their governance disclosures, including their corporate governance statement under listing rule 4.10.3, on their website rather than in their annual report. If they do so, those disclosures should be clearly presented and centrally located on, or accessible from, a “corporate governance” landing page on its website.

5 “Corporate governance statement” is defined in listing rule 19.12 to mean the statement referred to in listing rule 4.10.3 which discloses the extent to which an entity has followed the recommendations set by the ASX Corporate Governance Council during a particular reporting period.

6 Listing rule 4.7.4 provides that if an entity’s corporate governance statement is not included in its annual report, the entity must also give ASX a copy of its corporate governance statement at the same time as it gives its annual report to ASX. The corporate governance statement must be current as at the effective date specified in that statement for the purposes of listing rule 4.10.3.

7 Or, in the case of a trust, the board of the responsible entity of the trust.

8 Listing rule 4.7.3.

9 Listing rule 4.7.4.

There should be an intuitive and easily located link to this landing page in the navigation menu for the entity's website (for example, under an "About Us", "Investor Centre" or "Information for Shareholders/Unitholders" menu item).

Where a listed entity chooses to include its corporate governance statement in its annual report rather than on its website, the Council recommends that the corporate governance statement and any related corporate governance disclosures appear in a clearly delineated "corporate governance" section of the annual report.

It is acceptable for an entity's corporate governance statement to incorporate material by reference (for example, on another part of the entity's website or in another part of its annual report) provided that material is freely available and the statement clearly indicates where interested parties can read or obtain a copy of that material (for example, the URL of the relevant web page or the relevant page or section of the annual report).

How to approach corporate governance disclosures

The Council encourages listed entities to give an informative explanation of their corporate governance arrangements and not to take a pedantic or legalistic approach to their disclosures under listing rule 4.10.3, such as simply listing the recommendations followed and those not followed and why.

In this regard, listed entities should view their corporate governance statement not as a compliance document but rather as an opportunity to demonstrate that their board and management are alive to the importance of having proper and effective corporate governance arrangements and to communicate to security holders and the broader investment community the robustness of their particular approach to corporate governance.

This includes not only outlining the governance arrangements it has in place but also explaining how they are being implemented in practice. For example, where a recommendation calls for a particular policy to be in place,¹⁰ it will aid transparency and promote investor confidence for the entity to disclose, where appropriate,¹¹ action taken to promote compliance and whether there have been material breaches of the policy during the reporting period and how they have been dealt with. Similarly, where a recommendation calls for a matter to be reviewed or evaluated,¹² investors will find it helpful for the entity to disclose, where appropriate, any material insights it has gained from the review or evaluation and any changes it has made to its governance arrangements as a result.

Disclosing the fact that a recommendation is followed

Where a listed entity follows a recommendation, rather than simply state that fact, it should explain what policies and practices it has in place in that regard and, where applicable, point readers to where they can find further information about those policies and practices. For example, readers are likely to find a statement that:

The board has established an audit committee. It has 3 members, all of whom are non-executive directors. A majority of the committee members are independent directors. The committee is also chaired by an independent chair, who is not chair of the board. A copy of the charter of the audit committee is available on the corporate governance page on the company's website at [insert URL]. Information about the members of the audit committee, their relevant qualifications and experience, the number of times the committee met throughout the most recent reporting period and the individual attendances of members at those meetings is also set out on the corporate governance page on the company's website.

to be more illuminating than:

The entity complies with recommendation 4.1 of the ASX Corporate Governance Council Principles and Recommendations.

Disclosing the reasons for not following a recommendation

An "if not, why not" explanation an entity includes in its corporate governance statement setting out its reasons for not following a recommendation should:

- be reasonably detailed and informative so that the market understands why it is that the entity has chosen not to follow that recommendation; and
- disclose what, if any, alternative corporate governance practices the entity may have adopted in lieu of those in the recommendation, and explain why those practices are considered more appropriate for the entity than the ones in the recommendation.

¹⁰ As is the case for example in recommendations 1.5 (diversity), 3.2 (code of conduct), 3.3 (whistleblower policy), 3.4 (anti-bribery and corruption policy), 5.1 (disclosure policy) and 8.3 (policy on hedging equity incentive schemes).

¹¹ Having regard to privacy, confidentiality, defamation and other pertinent legal issues.

¹² As is the case for example in recommendations 1.6 (board performance reviews) and 7.2 (annual risk review).

Security holders are unlikely to find brief statements – such as “the recommendation is not considered appropriate, given the entity’s size and circumstances” or, in the case of those recommendations suggesting that an entity has an audit, risk, nomination or remuneration committee, that “the board as a whole performs the role that such a committee would ordinarily undertake” – to be particularly helpful in understanding why an entity has chosen not to follow a particular recommendation or what alternative corporate governance arrangements the entity may have instituted to address the underlying principle to which that recommendation is directed.

Effective date

This edition of the Principles and Recommendations takes effect for an entity’s first full financial year commencing on or after 1 January 2020. Accordingly, entities with a 31 December balance date will be expected to measure their governance practices against the recommendations in the fourth edition commencing with the financial year ended 31 December 2020. Entities with a 30 June balance date will be expected to measure their governance practices against the recommendations in the fourth edition commencing with the financial year ended 30 June 2021.

The Council would encourage listed entities to adopt the fourth edition earlier, if they wish.

Acknowledgments

The Principles and Recommendations have benefited from the invaluable contributions made by a number of industry associations, corporate governance experts, listed entities and other stakeholders. The Council is most grateful for their input.

Principle 1 /

Lay solid foundations for management and oversight

A listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance.

Recommendation 1.1

A listed entity should have and disclose a board charter setting out:

- (a) the respective roles and responsibilities of its board and management; and
- (b) those matters expressly reserved to the board and those delegated to management.

Commentary

Generally speaking, the board of a listed entity should be responsible under its charter for:

- demonstrating leadership;
- defining the entity's purpose and setting its strategic objectives;
- approving the entity's statement of values and code of conduct to underpin the desired culture within the entity;¹³
- appointing the chair and, if the entity has one, the deputy chair and/or the "senior independent director";
- appointing and replacing the CEO;
- approving the appointment and replacement of other senior executives and the company secretary;¹⁴
- overseeing management in its implementation of the entity's strategic objectives, instilling of the entity's values and performance generally;
- approving operating budgets and major capital expenditure;

- overseeing the integrity of the entity's accounting and corporate reporting systems, including the external audit;
- overseeing the entity's process for making timely and balanced disclosure of all material information concerning the entity that a reasonable person would expect to have a material effect on the price or value of the entity's securities;
- satisfying itself that the entity has in place an appropriate risk management framework (for both financial and non-financial risks) and setting the risk appetite within which the board expects management to operate;
- satisfying itself that an appropriate framework exists for relevant information to be reported by management to the board;
- whenever required, challenging management and holding it to account;¹⁵
- satisfying itself that the entity's remuneration policies are aligned with the entity's purpose, values, strategic objectives and risk appetite; and
- monitoring the effectiveness of the entity's governance practices.¹⁶

The senior executive team will usually be responsible for implementing the entity's strategic objectives and instilling and reinforcing its values, all while operating within the values, code of conduct, budget and risk appetite set by the board.

The senior executive team will also usually be responsible for providing the board with accurate, timely and clear information on the entity's operations to enable the board to perform its responsibilities. This is not just limited to information about the financial performance of the entity, but also its compliance with material legal and regulatory requirements and any conduct that is materially inconsistent with the values or code of conduct of the entity.

¹³ See recommendation 3.1 below.

¹⁴ In relation to the appointment and removal of the company secretary, see note 28 below.

¹⁵ As noted by Commissioner Hayne in the Final Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry 1 February 2019, Volume 1, at page 396: "Boards cannot operate properly without having the right information. And boards do not operate effectively if they do not challenge management."

¹⁶ Some of these matters may be delegated to a committee of the board, with the board retaining the ultimate oversight and decision-making power in respect of the matters so delegated.

The board charter should set out the role and responsibilities of the chair of the board. Usually, the chair will be responsible for leading the board, facilitating the effective contribution of all directors and promoting constructive and respectful relations between directors and between the board and management. The chair will also usually be responsible for approving board agendas and ensuring that adequate time is available for discussion of all agenda items, including strategic issues.

If the listed entity has a deputy chair or senior independent director, the board charter should also set out their roles and responsibilities.

The board charter should state the entity's policy on when and how directors may seek independent professional advice at the expense of the entity. This generally should be whenever directors, especially non-executive directors, judge such advice necessary for them to discharge their responsibilities as directors.

The nature of matters reserved to the board and those delegated to management will depend on the size, complexity and ownership structure of the entity, and will be influenced by its history and culture, and by the respective skills of its directors and management. These may vary over time as the entity evolves. The board should regularly review the division of functions between the board and management to ensure that it continues to be appropriate to the needs of the entity.

Recommendation 1.2

A listed entity should:

- (a) undertake appropriate checks before appointing a director or senior executive or putting someone forward for election as a director; and
- (b) provide security holders with all material information in its possession relevant to a decision on whether or not to elect or re-elect a director.

Commentary

For these purposes, appropriate checks would usually include checks as to the person's character, experience, education, criminal record and bankruptcy history.¹⁷

The following information about a candidate standing for election or re-election as a director should be provided to security holders to enable them to make an informed decision on whether or not to elect or re-elect the candidate:

- biographical details, including their relevant qualifications and experience and the skills they bring to the board;
- details of any other material directorships currently held by the candidate;
- in the case of a candidate standing for election as a director for the first time:
 - confirmation that the entity has conducted appropriate checks into the candidate's background and experience;
 - if those checks have revealed any information of concern, that information;
 - details of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity as a whole rather than in the interests of an individual security holder or other party; and
 - if the board considers that the candidate will, if elected, qualify as an independent director, a statement to that effect;
- in the case of a candidate standing for re-election as a director:
 - the term of office currently served by the director; and
 - if the board considers the director to be an independent director, a statement to that effect; and
- a statement by the board as to whether it supports the election or re-election of the candidate and a summary of the reasons why.

A candidate for appointment or election as a non-executive director¹⁸ should provide the board or nomination committee with the information above and a consent for the listed entity to conduct any background or other checks the entity would ordinarily conduct.

Candidates for appointment, election or re-election as a director should also provide details of their other commitments and an indication of time involved, and should specifically acknowledge to the listed entity that they will have sufficient time to fulfil their responsibilities as a director.

¹⁷ Listed entities may find the guidance in Australian Standard AS 4811-2006 *Employment screening* helpful in understanding the types of checks that may be undertaken and how best to undertake them.

¹⁸ This applies regardless of who nominates the candidate for appointment or election as a director, including where the candidate nominates himself or herself or is put forward by a security holder or holders (for example, under section 249D, 249F, 252B or 252D of the Corporations Act).

The Council acknowledges that some checks take time and there may be cases where a listed entity will wish to make a provisional appointment of a director or senior executive, or put a resolution to members electing a director, subject to receipt of satisfactory outstanding checks. Where a listed entity does this, it should take particular care to ensure that the director or senior executive gives an unequivocal undertaking to resign should the entity receive an outstanding check that it considers is not satisfactory. This is particularly so for a director, since once they are appointed or elected, they can generally only be removed from office against their will by a resolution of security holders.¹⁹

Recommendation 1.3

A listed entity should have a written agreement with²⁰ each director and senior executive setting out the terms of their appointment.²¹

Commentary

Usually the agreement will take the form of a letter of appointment in the case of a non-executive director and a service contract in the case of an executive director or other senior executive.

With one exception, the agreement in question should be with the director or senior executive personally rather than an entity supplying their services.²² This is to ensure that the director or senior executive is personally accountable to the listed entity for any breach of the agreement.²³

The one exception is where an entity is engaging a bona fide professional services firm²⁴ to provide the services of a CFO, company secretary or other senior executive on an outsourced basis. In that case, it is acceptable for the agreement to be between the entity and the professional services firm.

In the case of a non-executive director, the agreement should include:

- the requirement to disclose the director's interests and any matters which could affect the director's independence;
- the requirement to comply with key corporate policies, including the entity's code of conduct,²⁵ its anti-bribery and corruption policy²⁶ and its trading policy;²⁷
- the requirement to notify the entity of, or to seek the entity's approval before accepting, any new role that could impact upon the time commitment expected of the director or give rise to a conflict of interest;
- the entity's policy on when directors may seek independent professional advice at the expense of the entity (which generally should be whenever directors, especially non-executive directors, judge such advice necessary for them to discharge their responsibilities as directors);
- indemnity and insurance arrangements;
- ongoing rights of access to corporate information; and
- ongoing confidentiality obligations.

Recommendation 1.4

The company secretary of a listed entity should be accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board.

Commentary

The company secretary of a listed entity plays an important role in supporting the effectiveness of the board and its committees. The role of the company secretary should include:

- advising the board and its committees on governance matters;
- monitoring that board and committee policy and procedures are followed;

¹⁹ Section 203E of the Corporations Act.

²⁰ The reference in this recommendation to a listed entity having a written agreement *with* a director or senior executive means having an agreement with the director or senior executive personally rather than with an entity supplying his or her services (see the commentary to this recommendation).

²¹ It should be noted that a listed entity is required under listing rule 3.16.4 to disclose the material terms of any employment, service or consultancy agreement it or a child entity enters into with its CEO, any of its directors, and any other person or entity who is a related party of its CEO or any of its directors. It is also required to disclose any material variation to such an agreement.

²² For example, under a consultancy agreement between the listed entity and an entity associated with the director or senior executive agreeing to provide his or her services as a director or senior executive.

²³ The Council is aware that some directors of listed entities supply their services through a "personal services company" and have their fees paid to that company rather than to the director personally. Provided the director has a personal letter of appointment with the listed entity setting out the director's duties and responsibilities, such an arrangement is not inconsistent with this recommendation. However, these arrangements do raise other issues that listed entities and directors should consider and take advice on.

²⁴ For the avoidance of doubt, "firm" includes a sole practitioner.

²⁵ See recommendation 3.2.

²⁶ See recommendation 3.4.

²⁷ Listing rule 12.9 requires a listed entity to have a trading policy covering its directors and other key management personnel and regulating trading in its securities during certain "prohibited periods".

- coordinating the timely completion and despatch of board and committee papers;
- ensuring that the business at board and committee meetings is accurately captured in the minutes; and
- helping to organise and facilitate the induction and professional development of directors.

Each director should be able to communicate directly with the company secretary and vice versa.

The decision to appoint or remove a company secretary should be made or approved by the board.²⁸

Recommendation 1.5

A listed entity should:

- (a) have and disclose²⁹ a diversity policy;
- (b) through its board or a committee of the board³⁰ set measurable objectives for achieving gender diversity in the composition of its board, senior executives and workforce generally; and
- (c) disclose in relation to each reporting period:
 - (1) the measurable objectives set for that period to achieve gender diversity;
 - (2) the entity's progress towards achieving those objectives; and
 - (3) either:
 - (A) the respective proportions of men and women on the board, in senior executive positions and across the whole workforce (including how the entity has defined "senior executive" for these purposes); or
 - (B) if the entity is a "relevant employer" under the Workplace Gender Equality Act, the entity's most recent "Gender Equality Indicators", as defined in and published under that Act.³¹

If the entity was in the S&P/ASX 300 Index at the commencement of the reporting period, the measurable objective for achieving gender diversity in the composition of its board should be to have not less than 30%³² of its directors³³ of each gender within a specified period.

Commentary

Diversity is increasingly seen as an asset to listed entities and a contributor to better overall performance, particularly in a competitive labour market.

The diversity objectives the board or a committee of the board sets should include appropriate and meaningful benchmarks that are able to be, and are, monitored and measured. These could involve, for example:

- achieving specific numerical targets for the proportion of women on its board, in senior executive roles and in its workforce generally within a specified timeframe;
- achieving specific numerical targets for female representation in key operational roles within a specified timeframe with the view to developing a diverse pipeline of talent that can be considered for future succession to senior executive roles; or
- achieving specific targets for the "Gender Equality Indicators" in the Workplace Gender Equality Act.

Non-numerical objectives such as "introducing a diversity policy" or "establishing a diversity council", and aspirational objectives such as "achieving a culture of inclusion", while individually worthwhile, are unlikely to be effective in improving gender diversity unless they are backed up with appropriate numerical targets.

The board or committee may wish to consider setting key performance indicators for senior executives on gender participation within their areas of responsibility and linking part of their remuneration (either directly or as part of a "balanced scorecard") to the achievement of those KPIs.

²⁸ Listed companies established in Australia should note section 204D of the Corporations Act, which requires the appointment of a company secretary to be formally resolved, rather than simply approved, by the board.

²⁹ An entity may redact from the disclosed copy of its diversity policy personal or confidential information such as the names and contact details of individual staff involved in diversity issues.

³⁰ If the board decides to delegate this role to a committee of the board (such as the nomination or remuneration committee), this should be reflected in the charter of the committee in question.

³¹ The Workplace Gender Equality Act applies to non-public sector employers with 100 or more employees in Australia. The Act requires such employers to make annual filings with the Workplace Gender Equality Agency ("WGEA") disclosing their "Gender Equality Indicators". These reports are filed annually in respect of the 12 month period ending 31 March. For an entity which chooses to follow recommendation 1.5(c)(3)(B), publishing the URL of the webpage on the WGEA website where its latest "Gender Equality Indicators" are available will be taken to meet that particular recommendation. The Council notes that "Gender Equality Indicators" apply to individual employing entities and are not published on a consolidated basis across groups of entities. They also do not apply to employing entities with less than 100 employees in Australia, nor to employees overseas. As a practical matter, therefore, it may well be that many entities are not able to report meaningfully under recommendation 1.5(c)(3)(B) and should therefore report under recommendation 1.5(c)(3)(A). For further information about the Workplace Gender Equality Act, see the WGEA website: www.wgea.gov.au.

³² For the avoidance of doubt, a listed entity may set a higher percentage than 30% and meet this recommendation.

³³ This includes both executive and non-executive directors.

A listed entity should tailor its gender diversity reporting to reflect its own circumstances and to give an accurate and not misleading impression of the relative participation of women and men in the workplace and the roles in which they are employed. In particular, when reporting the proportion of women in senior executive positions under recommendation 1.5(c)(3)(A), listed entities should clearly define how they are using the term “senior executive”. This could be done, for example, by reference to their relativity in terms of reporting hierarchy to the CEO (eg, CEO - 1, CEO - 2 etc³⁴) or by describing the roles that term covers (eg, leadership, management or professional speciality).

The board of a listed entity should also include gender diversity as a relevant consideration in its succession planning.

The Council would encourage larger listed entities with significant numbers of employees to show leadership on gender diversity issues and to provide more granular disclosures of the relative participation of women and men in senior executive roles than the base levels set out in this recommendation. This includes:

- where they define “senior executive” for the purposes of recommendation 1.5(c)(3)(A) to include more than one level within the organisation (eg, CEO - 1 and CEO - 2), reporting the numbers of women at each level rather than, or as well as, cumulatively across all levels; and
- reporting the relative participation of women and men in management roles immediately below senior executive (eg, down to CEO - 3 and CEO - 4).

Each of these measures will allow readers to gain a better understanding of the progress of women in the organisation through the different levels of management and of the “pipeline” of candidates potentially available for higher management roles.

The Council would encourage listed entities to benchmark their position on gender diversity against their peers and to undertake gender pay equity audits to gain a stronger insight into the effectiveness of their gender diversity programs and initiatives and to consider disclosing any emerging themes or actions taken as a result.

The Council would also recommend that boards of listed entities consider other facets of diversity in addition to gender when considering the composition of the board. In particular, having directors of different ages, ethnicities and backgrounds can help bring different perspectives and experiences to bear and avoid “groupthink” or other cognitive biases in decision making.

A listed entity may find the suggestions in Box 1.5 helpful when formulating its diversity policy.

Box 1.5 / Suggestions for the content of a diversity policy

- Link the policy to the organisation's statement of values.
- Articulate the corporate benefits of diversity in a competitive labour market and the importance of being able to attract, retain and motivate employees from the widest possible pool of available talent.
- Express the organisation's commitment to inclusion at all levels of the organisation, regardless of gender, marital or family status, sexual orientation, gender identity, age, disabilities, ethnicity, religious beliefs, cultural background, socio-economic background, perspective and experience.
- Emphasise that in order to have an inclusive workplace, discrimination, harassment, vilification and victimisation cannot and will not be tolerated.
- Commit to ensuring that recruitment and selection practices at all levels (from the board downwards) are appropriately structured so that a diverse range of candidates are considered and guarding against any conscious or unconscious biases that might discriminate against certain candidates.
- Commit to designing and implementing programs that will assist in the development of a broader and more diverse pool of skilled and experienced employees and that, over time, will prepare them for senior management and board positions.
- Recognise that employees (female and male) at all levels may have domestic responsibilities and adopt flexible work practices that will assist them to meet those responsibilities.
- Provide opportunities for employees on extended parental leave to maintain their connection with the entity, for example, by offering them the option (without any obligation) to receive all-staff communications and to attend work functions and training programs.
- State that the policy will be periodically reviewed to check that it is operating effectively and whether any changes are required to the policy.

³⁴ CEO - 1 refers to the layer of senior executives reporting directly to the CEO, CEO - 2 the next layer of management reporting to those senior executives, and so on.

Recommendation 1.6

A listed entity should:

- (a) have and disclose a process for periodically evaluating the performance of the board, its committees and individual directors; and
- (b) disclose for each reporting period whether a performance evaluation has been undertaken in accordance with that process during or in respect of that period.

Commentary

The board performs a pivotal role in the governance framework of a listed entity. It is essential that the board has in place a proper process for regularly reviewing, preferably annually, the performance of the board, its committees and individual directors. Particular attention should be paid to addressing issues that may emerge from that review, such as the currency of a director's knowledge and skills or if a director's performance has been impacted by other commitments.

The board should consider periodically using external facilitators to conduct its performance reviews.

A suitable non-executive director (such as the deputy chair or the senior independent director, if the entity has one) should be responsible for the performance evaluation of the chair, after having canvassed the views of the other directors.

Recommendation 1.7

A listed entity should:

- (a) have and disclose a process for evaluating the performance of its senior executives at least once every reporting period; and
- (b) disclose for each reporting period whether a performance evaluation has been undertaken in accordance with that process during or in respect of that period.

Commentary

The performance of a listed entity's senior executives will usually drive the performance of the entity. It is essential that a listed entity has in place a proper process for regularly reviewing the performance of its senior executives and addressing any issues that may emerge from that review.

Structure the board to be effective and add value

The board of a listed entity should be of an appropriate size and collectively have the skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.

Recommendation 2.1

The board of a listed entity should:

(a) have a nomination committee which:

- (1) has at least three members,³⁵ a majority of whom are independent directors; and
- (2) is chaired by an independent director,

and disclose:

- (3) the charter of the committee;
- (4) the members of the committee; and
- (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or

(b) if it does not have a nomination committee, disclose that fact and the processes it employs to address board succession issues and to ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.

Commentary

A high performing, effective board is essential for the proper governance of a listed entity. The board needs to have an appropriate number of independent non-executive directors who can challenge management and hold them to account, and also represent the best interests of the listed entity and its security holders as a whole rather than those of individual security holders or interest groups.

The board needs to be of sufficient size so that the requirements of the business can be met and changes to the composition of the board and its committees can be managed without undue disruption. However, it should not be so large as to be unwieldy.

Board renewal is also critical to performance.

To facilitate the effective functioning of the board and to promote investor confidence, there should be a formal, rigorous and transparent process for the appointment and reappointment of directors to the board.

Having a separate nomination committee can be an efficient and effective mechanism to bring the transparency, focus and independent judgement needed on decisions regarding the composition of the board.

The role of the nomination committee is usually to review and make recommendations to the board in relation to:

- board succession planning generally;
- induction and continuing professional development programs for directors;
- the development and implementation of a process for evaluating the performance of the board, its committees and directors;
- the process for recruiting a new director, including evaluating the balance of skills, knowledge, experience, independence and diversity on the board and, in the light of this evaluation, preparing a description of the role and capabilities required for a particular appointment;
- the appointment and re-election of directors; and
- ensuring there are plans in place to manage the succession of the CEO and other senior executives.

The nomination committee should have a charter that clearly sets out its role and confers on it all necessary powers to perform that role. This will usually include the right to seek advice from external consultants or specialists where the committee considers that necessary or appropriate.

³⁵ The Council recognises that a number of listed entities have nomination committees comprising the entire board. Provided the nomination committee otherwise has an appropriate charter and meets as a committee outside of normal board meetings, this practice complies with recommendation 2.1(a).

The nomination committee should be of sufficient size and independence to discharge its mandate effectively. Consideration should also be given to ensuring that it has an appropriate diversity of membership to avoid entrenching “groupthink” or other cognitive biases.

The chair of the board may chair the nomination committee, however, a separate chair should be appointed if and when the nomination committee is dealing with the appointment of a successor to the chair.

The boards of some listed entities may decide that they are able to deal efficiently and effectively with board composition and succession issues without establishing a separate nomination committee. If they do, the entity should disclose in its annual report or on its website the fact that it does not have a nomination committee and explain the processes it employs to address board succession issues and to ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.

The board or the nomination committee should regularly review the time required from a non-executive director and whether directors are meeting that requirement.

A non-executive director should inform the chair of the board and the chair of the nomination committee before accepting any new appointment as a director of another listed entity, any other material directorship or any other position with a significant time commitment attached.

Recommendation 2.2

A listed entity should have and disclose a board skills matrix setting out the mix of skills that the board currently has or is looking to achieve in its membership.

Commentary

A board “skills matrix” is a tool that can help the board identify any gaps in its collective skills that should be addressed by providing professional development to existing directors³⁶ or taking on new directors. It can also assist the board in its succession planning.

Disclosing the board skills matrix gives useful information to investors and helps to increase the accountability of the board in ensuring it has the skills to discharge its obligations effectively and to add value.

The board should regularly review its skills matrix to make sure it covers the skills needed to address existing and emerging business and governance issues relevant to the entity.

There is no prescribed format for a board skills matrix.³⁷ It can set out either the mix of skills that the board currently has or the mix of skills that the board is looking to achieve in its membership or both.

If an entity chooses to do the former, this need only be done collectively across the board as a whole, without identifying the presence or absence of particular skills by a particular director. Commercially sensitive information, such as the fact that the board may be looking to acquire a particular skill as part of an as-yet unannounced and incomplete plan to move into a different field of activity, can be excluded.

Whichever format it follows, it would be helpful to investors for the entity to explain what it means when it refers to a particular skill in its board skills matrix and the criteria a director must meet to be considered to have that skill.

Recommendation 2.3

A listed entity should disclose:

- (a) the names of the directors considered by the board to be independent directors;
- (b) if a director has an interest, position or relationship of the type described in Box 2.3 but the board is of the opinion that it does not compromise the independence of the director, the nature of the interest, position or relationship in question and an explanation of why the board is of that opinion; and
- (c) the length of service of each director.

Commentary

To describe a director as “independent” carries with it a particular connotation that the director is not aligned with the interests of management or a substantial holder and can and will bring an independent judgement to bear on issues before the board.

It is an appellation that gives great comfort to security holders and not one that should be applied lightly.

A director of a listed entity should only be characterised and described as an independent director if he or she is free of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity as a whole rather than in the interests of an individual security holder or other party.

³⁶ See recommendation 2.6 below.

³⁷ Guidance on what should be included in a board skills matrix can be found in the Governance Institute of Australia's Good Governance Guide *Creating and disclosing a board skills matrix*, available online at: www.governanceinstitute.com.au/boardskillsmatrix.

Examples of interests, positions and relationships that might raise issues about the independence of a director are set out in Box 2.3. Where a director falls within one or more of these examples, the board should rule the director not to be independent unless it is clear that the interest, position or relationship in question is not material and will not interfere with the director's capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity as a whole rather than in the interests of an individual security holder or other party.

A candidate for election as a director of a listed entity should disclose to the entity all interests, positions and relationships that may bear on their independence. Those matters in turn should be disclosed to security holders in the materials given to security holders in support of their election.

Box 2.3 / Factors relevant to assessing the independence of a director

Examples of interests, positions and relationships that might raise issues about the independence of a director of an entity include if the director:

- is, or has been, employed in an executive capacity by the entity or any of its child entities and there has not been a period of at least three years between ceasing such employment and serving on the board;
- receives performance-based remuneration (including options or performance rights) from, or participates in an employee incentive scheme of, the entity;
- is, or has been within the last three years, in a material business relationship (eg as a supplier, professional adviser, consultant or customer) with the entity or any of its child entities, or is an officer of, or otherwise associated with, someone with such a relationship;
- is, represents, or is or has been within the last three years an officer or employee of, or professional adviser to, a substantial holder;
- has close personal ties with any person who falls within any of the categories described above; or
- has been a director of the entity for such a period that their independence from management and substantial holders may have been compromised.

In each case, the materiality of the interest, position or relationship needs to be assessed by the board to determine whether it might interfere, or might reasonably be seen to interfere, with the director's capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity as a whole rather than in the interests of an individual security holder or other party.

If there is a change in a non-executive director's interests, positions or relationships that could bear upon their independence, the non-executive director should inform the board or the nomination committee at the earliest opportunity.

The board or the nomination committee should regularly assess the independence of each non-executive director. That assessment should be made at least annually at or around the time that the board or the nomination committee considers candidates for election or re-election to the board. In the case of a change in a non-executive director's interests, positions or relationships, the assessment should be made as soon as practicable after the board or the nomination committee becomes aware of the change.

If the board determines that a director's status as an independent director has changed, that determination should be disclosed and explained in a timely manner to the market.

In relation to the fourth example in Box 2.3 (is, represents, or is an officer or employee of, or professional adviser to, a substantial holder), the holding of securities in the entity may help to align the interests of a director with those of other security holders, and such holdings are therefore not discouraged. The example simply reflects and addresses a perception that:

- a director who is a substantial holder in the entity is likely to have such a proportion of their personal wealth tied up in that holding that they have a qualitatively different interest to security holders generally; while
- a director who represents, or is or has been within the last three years an officer or employee of, or professional adviser to, a substantial holder is likely to have a bias towards the individual interests of that substantial holder rather than the interests of security holders generally.

In relation to the fifth example in Box 2.3 (close personal ties with someone who is not independent), these ties may be based on family, friendship or other social or business connections.

In relation to the last example in Box 2.3 (length of service as a director), the Council recognises that the interests of a listed entity and its security holders are likely to be well served by having a mix of directors, some with a longer tenure with a deep understanding of the entity and its business and some with a shorter tenure with fresh ideas and perspective. It also recognises that the chair of the board will frequently fall into the former category rather than the latter.

The mere fact that a director has served on a board for a substantial period does not mean that the director has become too close to management or a substantial holder to be considered independent. However, the board should regularly assess whether that might be the case for any director who has served in that position for more than 10 years.

Recommendation 2.4

A majority of the board of a listed entity should be independent directors.

Commentary

Investors expect, and the law requires,³⁸ the directors of a listed entity to act in the best interests of the entity as a whole rather than in the interests of an individual security holder or other party.

Having a majority of independent directors makes it harder for any individual or small group of individuals to dominate the board's decision-making and maximises the likelihood that the decisions of the board will reflect the best interests of the entity as a whole and not be biased towards the interests of management or any other person or group with whom a non-independent director may be associated.

Non-executive directors should consider the benefits of conferring periodically as a group without senior executives present.

Recommendation 2.5

The chair of the board of a listed entity should be an independent director and, in particular, should not be the same person as the CEO of the entity.

Commentary

Having an independent chair can contribute to a culture of openness and constructive challenge that allows for a diversity of views to be considered by the board.

Good governance demands an appropriate separation between those charged with managing a listed entity and those responsible for overseeing its managers. Having the role of chair and CEO exercised by the same individual is unlikely to be conducive to the board effectively performing its role of challenging management and holding them to account.

If the chair is not an independent director, a listed entity should consider the appointment of an independent director as the deputy chair or as the "senior independent director", who can fulfil the role whenever the chair is conflicted. Even where the chair is an independent director, having a deputy chair or senior independent director can also assist the board in reviewing the performance of the chair and in providing a separate channel of communication for security holders (especially where those communications concern the chair).

The role of chair is demanding, requiring a significant time commitment. The chair's other positions should not be such that they are likely to hinder effective performance of the role.

Recommendation 2.6

A listed entity should have a program for inducting new directors and for periodically reviewing whether there is a need for existing directors to undertake professional development to maintain the skills and knowledge needed to perform their role as directors effectively.

Commentary

All new directors should be offered induction training, tailored to their existing skills, knowledge and experience, to position them to discharge their responsibilities effectively and to add value. This could include, for example, having interviews with key senior executives to gain an understanding of the entity's structure, business operations, history, culture and key risks, and conducting site visits of key operations.

If a director is not familiar with the legal framework that governs the entity, the entity's induction program should include training on their legal duties and responsibilities as a director under the key legislation governing the entity and the listing rules (including ASX's continuous and periodic reporting requirements).

If a director does not have accounting skills or knowledge, the entity's induction program should also include training on key accounting matters and on the responsibilities of directors in relation to the entity's financial statements.³⁹

The board or the nomination committee of a listed entity should regularly assess whether the directors as a group have the skills, knowledge and experience to deal with new and emerging business and governance issues. Professional development for directors should be considered where gaps are identified and they are not expected to be addressed in the short term by new appointments.

The board or the nomination committee should also ensure that directors receive briefings on material developments in laws, regulations and accounting standards relevant to the entity.

³⁸ See sections 180 and 181 (in the case of a listed company) and 601FD(1)(b) and (c) (in the case of a listed trust) of the Corporations Act.

³⁹ In *ASIC v Healey & Ors* [2011] FCA 717 (available online at: www.austlii.edu.au/au/cases/cth/FCA/2011/717.html), the Federal Court held that it is the duty of every director of an entity subject to section 344 of the Corporations Act (which includes public companies, registered managed investment schemes and disclosing entities) to read the financial statements of the entity carefully and to consider whether what they disclose is consistent with the director's own knowledge of the entity's affairs. It is important that a listed entity's board have a diverse range of skills and experience and this necessarily means that not all directors will have the same level of accounting skills and experience. Nevertheless, it is in the interests of a listed entity and its security holders (and also in the personal interests of the director concerned) that each director of the entity has an appropriate base level of understanding of accounting matters.

Principle 3 /

Instil a culture of acting lawfully, ethically and responsibly

A listed entity should instil and continually reinforce a culture⁴⁰ across the organisation of acting lawfully, ethically and responsibly.

Recommendation 3.1

A listed entity should articulate and disclose its values.

Commentary

A listed entity's values are the guiding principles and norms that define what type of organisation it aspires to be and what it requires from its directors, senior executives and employees to achieve that aspiration. Values create a link between the entity's purpose (why it exists) and its strategic goals (what it hopes to do) by expressing the standards and behaviours it expects from its directors, senior executives and employees to fulfil its purpose and meet its goals (how it will do it).

Investors and the broader community expect a listed entity to act lawfully, ethically and responsibly and that expectation should be reflected in its statement of values.

In formulating its values, a listed entity should consider what behaviours are needed from its officers and employees to build long term sustainable value for its security holders. This includes the need for the entity to preserve and protect its reputation and standing in the community and with key stakeholders, such as customers, employees, suppliers, creditors, law makers and regulators.⁴¹

The board should approve an entity's statement of values and charge the senior executive team with the responsibility of inculcating those values across the organisation. This includes ensuring that all employees receive appropriate training on the values and senior executives continually referencing and reinforcing those values in their interactions with staff (ie setting the "tone at the top").

Recommendation 3.2

A listed entity should:

- (a) have and disclose⁴² a code of conduct for its directors, senior executives and employees; and
- (b) ensure that the board or a committee of the board is informed of any material breaches of that code.

Commentary

A listed entity should articulate the standards of behaviour expected of its directors, senior executives and employees in a code of conduct.

The board or a committee of the board should be informed of any material breaches of the entity's code of conduct, as they may be indicative of issues with the culture of the organisation.

For a code of conduct to be effective, all employees must receive appropriate training on their obligations under the code. Directors and senior executives must speak and act consistently with the code (again, setting the "tone at the top") and reinforce it by taking appropriate and proportionate disciplinary action against those who breach it.

A listed entity may find the suggestions in Box 3.2 helpful in formulating its code of conduct.

40 Listed entities may find the guidance in *Managing Culture: A good practice guide*, First edition 2017 helpful. This is a joint publication of the Institute of Internal Auditors - Australia, The Ethics Centre, the Governance Institute of Australia and Chartered Accountants Australia and New Zealand.

41 To paraphrase Commissioner Hayne from the Interim Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry 28 September 2018, Volume 1, at pages 54-55: *'As [a commercial enterprise], [a listed] entity... rightly pursues profit. Directors and other officers of the entities owe duties to shareholders to do that. But the duty to pursue profit is one that has a significant temporal dimension. The duty is to pursue the long term advantage of the enterprise. Pursuit of long term advantage (as distinct from short term gain) entails preserving and enhancing the reputation of the enterprise... And, lest there be any doubt, it also entails obeying the law. But to preserve and enhance a reputation... the enterprise must do more than not break the law. It must seek to do 'the right thing:'*

42 An entity may redact from the disclosed copy of its code of conduct personal or confidential information such as the names and contact details of individual staff involved in conduct issues.

Box 3.2 / Suggestions for the content of a code of conduct

- Express or cross-reference the organisation's values.
- State the organisation's expectation that all directors, senior executives and employees will:
 - act in accordance with the entity's stated values and in the best interests of the entity;
 - act honestly and with high standards of personal integrity;
 - comply with all laws and regulations that apply to the entity and its operations;
 - act ethically and responsibly;
 - treat fellow staff members with respect and not engage in bullying, harassment or discrimination;
 - deal with customers and suppliers fairly;
 - disclose and deal appropriately with any conflicts between their personal interests and their duties as a director, senior executive or employee;
 - not take advantage of the property or information of the entity or its customers for personal gain or to cause detriment to the entity or its customers;
 - not take advantage of their position or the opportunities arising therefrom for personal gain; and
 - report breaches of the code to the appropriate person or body within the organisation.
- State that the code will be periodically reviewed to check that it is operating effectively and whether any changes are required to the code.

Recommendation 3.3

A listed entity should:

- (a) have and disclose⁴³ a whistleblower policy; and
- (b) ensure that the board or a committee of the board is informed of any material incidents reported under that policy.

Commentary

In most cases, the best source of information about whether a listed entity is living up to its values are its employees. They should be encouraged to speak up about any unlawful, unethical or irresponsible behaviour within the organisation through an appropriate whistleblower policy.

The board or a committee of the board should be informed of material incidents reported under the entity's whistleblower policy, as they may be indicative of issues with the culture of the organisation.

A listed entity may find the suggestions in Box 3.3 helpful in formulating its whistleblower policy.

Box 3.3 / Suggestions for the content of a whistleblower policy

- Link the policy to the organisation's statement of values.
- Clearly identify the types of concerns that may be reported under the policy and how and to whom reports may be made (including to senior executives and the board).
- Explain how the confidentiality of the whistleblower's identity is safeguarded and the whistleblower is protected from retaliation or victimisation.
- Outline the processes to follow up and investigate reports made under the policy.
- Provide for the training of employees about the whistleblower policy and their rights and obligations under it.
- Provide for the training of managers and others who may receive whistleblower reports about how to respond to them.
- State that the policy will be periodically reviewed to check that it is operating effectively and whether any changes are required to the policy.

⁴³ An entity may redact from the disclosed copy of its whistleblower policy personal or confidential information such as the names and contact details of individual staff involved in the whistleblower process.

Recommendation 3.4

A listed entity should:

- (a) have and disclose⁴⁴ an anti-bribery and corruption policy; and
- (b) ensure that the board or a committee of the board is informed of any material breaches of that policy.

Commentary

Giving bribes or other improper payments or benefits to public officials is a serious criminal offence and can damage a listed entity's reputation and standing in the community.

The board or a committee of the board should be informed of any material incidents of bribery or corruption, as they may be indicative of issues with the culture of the organisation.

A listed entity's anti-bribery and corruption policy can be a stand-alone policy or form part of its code of conduct.

A listed entity may find the suggestions in Box 3.4 helpful in formulating its anti-bribery and corruption policy.

Box 3.4 / Suggestions for the content of an anti-bribery and corruption policy

- Link the policy to the organisation's statement of values.
- Acknowledge the serious criminal and civil penalties that may be incurred and the reputational damage that may be done if the organisation is involved in bribery or corruption.
- Prohibit the giving of bribes or other improper payments or benefits to public officials;
- Prohibit the payment of secret commissions to those acting in an agency or fiduciary capacity.
- Include appropriate controls around political donations and offering or accepting gifts, entertainment or hospitality.
- Provide for the training of managers and employees likely to be exposed to bribery or corruption about how to recognise and deal with it.
- Require breaches of the policy to be reported to the appropriate person or body within the organisation.
- State that the policy will be periodically reviewed to check that it is operating effectively and whether any changes are required to the policy.

⁴⁴ An entity may redact from the disclosed copy of its anti-bribery and corruption policy personal or confidential information such as the names and contact details of individual staff involved in anti-bribery and corruption issues.

Safeguard the integrity of corporate reports

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

Recommendation 4.1

The board of a listed entity should:

(a) have an audit committee⁴⁵ which:

- (1) has at least three members, all of whom are non-executive directors and a majority of whom are independent directors; and
- (2) is chaired by an independent director, who is not the chair of the board,

and disclose:

- (3) the charter of the committee;
 - (4) the relevant qualifications and experience of the members of the committee; and
 - (5) in relation to each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) if it does not have an audit committee, disclose that fact and the processes it employs that independently verify and safeguard the integrity of its corporate reporting, including the processes for the appointment and removal of the external auditor and the rotation of the audit engagement partner.

Commentary

While ultimate responsibility for a listed entity's financial statements rests with the full board, having a separate audit committee can be an efficient and effective mechanism to bring the transparency, focus and independent judgement needed to oversee the corporate reporting process.

The role of the audit committee is usually to review and make recommendations to the board in relation to:

- the adequacy of the entity's corporate reporting processes and internal control framework;
- whether the entity's financial statements reflect the understanding of the committee members of, and otherwise provide a true and fair view of, the financial position and performance of the entity;
- the appropriateness of the accounting judgements or choices exercised by management in preparing the entity's financial statements;
- the appointment or removal of the external auditor;
- the fees payable to the auditor for audit and non-audit work;
- the rotation of the audit engagement partner;
- the scope and adequacy of the external audit;
- the independence and performance of the external auditor;
- any proposal for the external auditor to provide non-audit services and whether it might compromise the independence of the external auditor;
- if the entity has an internal audit function:
 - the appointment or removal of the head of internal audit;
 - the scope and adequacy of the internal audit work plan; and
 - the independence, objectivity and performance of the internal audit function.

⁴⁵ It should be noted that a listed entity which is included in the S&P All Ordinaries Index at the beginning of its financial year is required under listing rule 12.7 to have an audit committee for the entire duration of that financial year. If it is included in the S&P/ASX 300 Index at the beginning of its financial year, it must also comply with the structure and disclosure requirements in paragraph (a) of recommendation 4.1 for the whole of that financial year, unless it had been included in that index for the first time less than 3 months before the beginning of that financial year. An entity that is included in the S&P/ASX 300 Index for the first time less than 3 months before the first day of its financial year but did not comply with the structure and disclosure requirements in paragraph (a) of recommendation 4.1 at that date must take steps so that it complies with those requirements within 3 months of the beginning of the financial year.

The audit committee should have a charter⁴⁶ that clearly sets out its role and confers on it all necessary powers to perform that role. This will usually include the right to obtain information, interview management and internal and external auditors (with or without management present), and seek advice from external consultants or specialists where the committee considers that necessary or appropriate.

The audit committee should be of sufficient size and independence, and its members between them should have the accounting and financial expertise and a sufficient understanding of the industry in which the entity operates, to be able to discharge the committee's mandate effectively.

The boards of some listed entities may decide that they are able to oversee the corporate reporting process efficiently and effectively without establishing a separate audit committee. If they do, the entity should disclose in its annual report or on its website the fact that it does not have an audit committee and explain the processes it employs that independently verify and safeguard the integrity of its corporate reporting (including, but not limited to, the appointment or removal of the external auditor and the rotation of the audit engagement partner).

Recommendation 4.2

The board of a listed entity should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.

Commentary

Section 295A of the Corporations Act requires each person who performs the CEO or CFO function in a listed entity established in Australia to provide a declaration that, in their opinion, the financial records of the entity for a financial year have been properly maintained in accordance with the Act and that the financial statements and the notes for the financial year comply with the accounting standards and give a true and fair view of the financial position and performance of the entity. The declaration must be given before the directors approve the financial statements for the financial year.⁴⁷

Similar requirements may apply to listed entities established in other jurisdictions under their local law.

This recommendation largely mirrors the declaration required under section 295A but extends it to include a declaration by the CEO and CFO that their opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively. It also extends it to apply to the financial statements for any financial period, not just for the financial year.

The board of a listed entity subject to section 295A of the Corporations Act or an equivalent provision under the law of its home jurisdiction can receive the one declaration from the CEO and CFO that meets both the requirements of that Act or law and this recommendation.

The board of a listed entity established outside Australia that is not subject to section 295A of the Corporations Act or an equivalent provision under the law of its home jurisdiction should nonetheless require an equivalent declaration from the CEO and CFO.

Recommendation 4.3

A listed entity should disclose its process to verify the integrity of any periodic corporate report⁴⁸ it releases to the market that is not audited or reviewed by an external auditor.

Commentary

Increasingly, investors are relying on a broader range of periodic corporate reports than audited or reviewed financial statements to inform their investment decisions. This includes an entity's annual directors' reports, quarterly activity reports, quarterly cash flow reports and, in some cases, integrated reports (if prepared as a separate annual report)⁴⁹ and sustainability reports.

Where a corporate report of this type is not subject to audit or review by an external auditor, it is important that investors understand the process by which the entity has satisfied itself that the report is materially accurate, balanced and provides investors with appropriate information to make informed investment decisions.

This can be disclosed in the report itself or more generally in the entity's governance disclosures in its annual report or on its website.

⁴⁶ Listed entities may find the sample audit committee charter in *Audit Committees: A Guide to Good Practice, Third Edition (2017)* helpful. This is a joint publication of the Australian Institute of Company Directors, the Australian Auditing Standards Board, and the Institute of Internal Auditors - Australia.

⁴⁷ For these purposes, "approve" means make the declaration required of directors under section 295(4) of the Corporations Act that (amongst other things) the financial statements comply with accounting standards and give a true and fair view. Note that the fact that the directors receive such a declaration from the CEO and CFO does not derogate from their responsibility for ensuring that the financial statements comply with the Corporations Act (section 295A(8)).

⁴⁸ "Periodic corporate report" is defined in the glossary.

⁴⁹ "Integrated report" has the meaning given in the International <IR> Framework, available online at: www.integratedreporting.org/wp-content/uploads/2013/12/13-12-08-THE-INTERNATIONAL-IR-FRAMEWORK-2-1.pdf. The principles of integrated reporting can be used in preparing existing reports, for example, the directors' report or the operating and financial review.

Principle 5 /

Make timely and balanced disclosure

A listed entity should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.

Recommendation 5.1

A listed entity should have and disclose⁵⁰ a written policy for complying with its continuous disclosure obligations under listing rule 3.1.

Commentary

Listing rule 3.1 requires a listed entity, subject to certain exceptions, to disclose to ASX immediately any information concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.

A listed entity should have a written policy directed to ensuring that it complies with this obligation so that all investors have equal and timely access to material information concerning the entity – including its financial position, performance, ownership and governance.

In designing its disclosure policy, a listed entity should have regard to ASX Listing Rules Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* and to the 10 principles set out in ASIC Regulatory Guide 62 *Better disclosure for investors*.

A listed entity may find the suggestions in Box 5.1 helpful in formulating its continuous disclosure policy.

Recommendation 5.2

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

Commentary

This is to ensure that the board has timely visibility of the nature and quality of the information being disclosed to the market and the frequency of such disclosures.

Box 5.1 / Suggestions for the content of a continuous disclosure policy

- Highlight the importance of the entity's market announcements being accurate, balanced and expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions.
- Outline the roles and responsibilities of directors, officers and employees in complying with the entity's disclosure obligations.
- Set out the entity's processes to review and authorise market announcements.
- Highlight the importance of safeguarding the confidentiality of corporate information to avoid premature disclosure.⁵¹
- Set out or cross-refer to the entity's policy on media contact and comment.
- Address the potential disclosure issues associated with analyst briefings and responses to security holder questions.
- Set out the entity's processes for responding to or avoiding the emergence of a false market in its securities.
- State that the policy will be periodically reviewed to check that it is operating effectively and whether any changes are required to the policy.

⁵⁰ An entity may redact from the disclosed copy of its continuous disclosure policy personal or confidential information such as the names and contact details of individual staff involved in the disclosure process.

⁵¹ See the joint publication by Chartered Secretaries Australia (now Governance Institute of Australia) and the Australian Investor Relations Association entitled *Handling confidential information: Principles of good practice* available online at: www.governanceinstitute.com.au/confidentialprinciples.

Recommendation 5.3

A listed entity that gives a new and substantive investor or analyst presentation should release a copy of the presentation materials on the ASX Market Announcements Platform ahead of the presentation.

Commentary

This recommendation is directed to ensuring equality of information among investors and applies regardless of whether the presentation contains material new information required to be disclosed under listing rule 3.1. Examples of “substantive” presentations caught by this recommendation include results presentations and the types of presentations typically given at annual general meetings, investor days and broker conferences.

Where practicable, the entity should consider providing security holders the opportunity to participate in the presentation, for example, by providing them with dial-in details or providing a link to a live webcast. If that is not practicable, the entity should consider making available on its website a recording or transcript of the presentation as soon as it reasonably can.

This recommendation is not intended to apply to private meetings between a listed entity and an investor or analyst. However, any entity that has such a meeting must be careful not to disclose in the meeting any information that a reasonable person would expect to have a material effect on the price or value of its securities that has not already been disclosed to the market.

The Council recognises that listed entities may give a series of presentations to analysts and investors over a short period of time that contain materially the same information but have been tailored for each audience. The Council would not regard the second and subsequent presentations in such a series as “new” presentations for these purposes and, provided they do not contain any new market sensitive information, would not expect them to be published on the ASX Market Announcements Platform.

Principle 6 /

Respect the rights of security holders

A listed entity should provide its security holders with appropriate information and facilities to allow them to exercise their rights as security holders effectively.

Recommendation 6.1

A listed entity should provide information about itself and its governance to investors via its website.

Commentary

A fundamental underpinning of the corporate governance framework for listed entities is that security holders should be able to hold the board and, through the board, management to account for the entity's performance. For this to occur, a listed entity needs to engage with its security holders and provide them with appropriate information and facilities to allow them to exercise their rights as security holders effectively. This includes:

- giving them ready access to information about the entity and its governance;
- communicating openly and honestly with them; and
- encouraging and facilitating their participation in meetings of security holders.

In the digital age, investors expect information about listed entities to be freely and readily available online.

A listed entity should have a website with a "corporate governance" landing page from where all relevant corporate governance information can be accessed. There should be an intuitive and easily located link to this page in the navigation menu for the entity's website.⁵²

A listed entity should include in the corporate governance area of its website links to:

- the names, photographs and brief biographical information for each of its directors and senior executives;
- its constitution, its board charter and the charters of each of its board committees;
- a statement of the entity's values;⁵³

- the corporate governance policies and other corporate governance materials referred to in these recommendations.

A listed entity should also include in an appropriate area of its website links to:

- copies of its annual directors' reports, financial statements and other corporate reports;
- copies of its announcements to ASX;
- copies of notices of meetings of security holders and any accompanying documents;
- copies of any documents tabled or otherwise made available at meetings of security holders and, if it keeps them, a recording or transcript of the meetings; and
- copies of any materials distributed at investor or analyst presentations and, if it keeps them, a recording or transcript of the presentations,

and keep this material available on its website for a reasonable period.

Investors will also find it helpful if a listed entity includes in an appropriate area of its website:

- an overview of the entity's current business;
- a description of how the entity is structured;
- a summary of the entity's history;
- a key events calendar showing the expected dates in the forthcoming year for:
 - results presentations and other significant events for investors and analysts;
 - the AGM;
 - books closing dates for determining entitlements to dividends or distributions; and
 - ex-dividend and payment dates for dividends or distributions;
- once they are known, the time, venue and other relevant details⁵⁴ for results presentations and the AGM;
- if the entity has different classes of securities on issue, a brief description of those different classes and the rights attaching to them;
- historical information about the market prices of the entity's securities;

⁵² For example, under an "About Us", "Investor Centre" or "Information for Shareholders/Unitholders" menu item.

⁵³ See recommendation 3.1 above.

⁵⁴ Such as the dial-in details for a conference call on a results presentation and a link to the URL for a web-cast of an AGM.

- a description of the entity's dividend or distribution policy;
- information about the entity's dividend or distribution history;
- copies of media releases the entity makes;
- contact details for enquiries from security holders, analysts or the media;
- contact details for its securities registry; and
- links to download key security holder forms, such as transfer and transmission forms, dividend or distribution reinvestment plan forms etc.

Recommendation 6.2

A listed entity should have an investor relations program that facilitates effective two-way communication with investors.⁵⁵

Commentary

A listed entity's investor relations program should be tailored to the individual circumstances of the entity. For smaller entities, it may involve little more than actively engaging with security holders at the AGM, meeting with them upon request and responding to any enquiries they may make from time to time. For larger entities, it is likely to involve a detailed program of scheduled and ad hoc interactions with institutional investors, retail investor groups, sell-side and buy-side analysts, proxy advisers and the financial media.

A primary aim of an investor relations program should be to allow investors and other financial market participants to gain a greater understanding of the entity's business, governance, financial performance and prospects. However, it should not just involve one way communication from the entity to the market but also provide an opportunity for investors and other financial market participants to express their views to the entity on matters of concern or interest to them.

A listed entity's investor relations program may also run in tandem with a wider stakeholder engagement program involving interactions with politicians, bureaucrats, regulators, unions, employees, consumer groups, environmental groups, local community groups and other stakeholders.

While the focus of many investor relations programs will be on larger investors and financial market participants who service larger investors, listed entities should also seek opportunities to engage with retail investors and the organisations that represent them, to understand the matters of concern or interest to smaller investors.

Where significant comments or concerns are raised by investors or their representatives, they should be conveyed to the entity's board and relevant senior executives.

Recommendation 6.3

A listed entity should disclose how it facilitates and encourages participation at meetings of security holders.

Commentary

Meetings of security holders are an important forum for two-way communication between a listed entity and its security holders. They provide an opportunity for a listed entity to impart to security holders a greater understanding of its business, governance, financial performance and prospects, as well as to discuss areas of concern or interest to the board and management. They also provide an opportunity for security holders to express their views to the entity's board and management about any areas of concern or interest for them.

The Council would encourage listed entities with large or geographically diverse registers to consider how technology can be used to facilitate the participation of security holders in meetings. This may include, for example, live webcasting of meetings so that security holders can view and hear proceedings online, holding meetings across multiple venues linked by live telecommunications, and hybrid meetings that allow shareholders to attend and vote in person, by proxy or online.

All listed entities that have an AGM should afford security holders who are not able to attend the meeting and exercise their right to ask questions about, or make comments on, the management of the entity,⁵⁶ the opportunity to provide questions or comments ahead of the meeting. Where appropriate, these questions and comments should be addressed at the meeting, either by being read out and then responded to at the meeting or by providing a transcript of the question or comment and a written response at the meeting.

Recommendation 6.4

A listed entity should ensure that all substantive⁵⁷ resolutions at a meeting of security holders are decided by a poll rather than by a show of hands.

Commentary

The principle of "one security one vote" is enshrined in the listing rules. Deciding votes of security holders on the basis of a show of hands, regardless of the number of securities held, is inconsistent with this principle.

⁵⁵ References in this recommendation to communicating and interacting with security holders include, where securities are held by a custodian or nominee, communicating and interacting with the beneficial owner of the securities.

⁵⁶ Section 250S of the Corporations Act.

⁵⁷ This recommendation does not apply to procedural resolutions. Whether a poll is called on a procedural resolution is generally a matter for the chair of the meeting.

It is the responsibility of the person chairing a meeting of security holders to ascertain the true will of the security holders attending and voting at the meeting, whether they attend in person, electronically or by proxy or other representative. In most situations, this can only be achieved with certainty by conducting a poll.

Recommendation 6.5

A listed entity should give security holders the option to receive communications from, and send communications to, the entity and its security registry electronically.

Commentary

Most security holders appreciate the speed, convenience and environmental friendliness of electronic communications, compared with more traditional methods of communication. Listed entities should provide security holders with the option to receive communications from, and send communications to, the entity and its security registry electronically.

Communications to security holders from the entity or its security registry should be formatted to be easily readable on a computer screen and other electronic devices commonly used for that purpose and include a printer-friendly option for those security holders who wish to retain a hard copy of the communication.

Principle 7 /

Recognise and manage risk

A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.

Recommendation 7.1

The board of a listed entity should:

(a) have a committee or committees to oversee risk,⁵⁸ each of which:

- (1) has at least three members, a majority of whom are independent directors; and
- (2) is chaired by an independent director,

and disclose:

- (3) the charter of the committee;
 - (4) the members of the committee; and
 - (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) if it does not have a risk committee or committees that satisfy (a) above, disclose that fact and the processes it employs for overseeing the entity's risk management framework.

Commentary

Recognising and managing risk is a crucial part of the role of the board and management.

While ultimate responsibility for a listed entity's risk management framework rests with the full board, having a risk committee (be it a stand-alone risk committee, a combined audit and risk committee or a combination of board committees addressing different elements of risk) can be an efficient and effective mechanism to bring the transparency, focus and independent judgement needed to oversee the entity's risk management framework.

The role of a risk committee is usually to:

- monitor management's performance against the entity's risk management framework, including whether it is operating within the risk appetite set by the board;
- review any material incident involving fraud or a breakdown of the entity's risk controls and the "lessons learned";
- receive reports from internal audit on its reviews of the adequacy of the entity's processes for managing risk;
- receive reports from management on new and emerging sources of risk and the risk controls and mitigation measures that management has put in place to deal with those risks;
- make recommendations to the board in relation to changes that should be made to the entity's risk management framework or to the risk appetite set by the board; and
- oversee the entity's insurance program, having regard to the entity's business and the insurable risks associated with its business.

A risk committee should have a charter that clearly sets out its role and confers on it all necessary powers to perform that role. This will usually include the right to obtain information, interview management and internal and external auditors (with or without management present), and seek advice from external consultants or specialists where the committee considers that necessary or appropriate.

A risk committee should be of sufficient size and independence, and its members between them should have the necessary technical knowledge and a sufficient understanding of the industry in which the entity operates, to be able to discharge the committee's mandate effectively.

The boards of some listed entities may decide that they are able to oversee the entity's risk management framework efficiently and effectively without establishing a risk committee. If they do, the entity should disclose in its annual report or on its website the fact that it does not have a risk committee and explain the processes it employs for overseeing the entity's risk management framework.

⁵⁸ The risk committee(s) could be a stand-alone risk committee, a combined audit and risk committee or a combination of board committees addressing different elements of risk. Where it is a combination of committees, the listed entity should disclose how it has divided the responsibility for overseeing risk between those different committees.

Recommendation 7.2

The board or a committee of the board⁵⁹ should:

- (a) review the entity's risk management framework at least annually to satisfy itself that it continues to be sound and that the entity is operating with due regard to the risk appetite set by the board; and
- (b) disclose, in relation to each reporting period, whether such a review has taken place.

Commentary

One of the key roles of the board of a listed entity is to monitor the adequacy of the entity's risk management framework and satisfy itself that the entity is operating with due regard to the risk appetite set by the board.

This includes satisfying itself that the risk management framework deals adequately with contemporary and emerging risks such as conduct risk,⁶⁰ digital disruption, cyber-security, privacy and data breaches, sustainability and climate change.

The Council acknowledges that from time to time circumstances may dictate that an entity needs to operate outside of the current risk appetite set by the board. Where that occurs, the matter should be brought to the attention of the board.

Recommendation 7.3

A listed entity should disclose:

- (a) if it has an internal audit function, how the function is structured and what role it performs; or
- (b) if it does not have an internal audit function, that fact and the processes it employs for evaluating and continually improving the effectiveness of its governance, risk management and internal control processes.

Commentary

An internal audit function⁶¹ can assist a listed entity to accomplish its objectives by bringing a systematic, disciplined approach to evaluating and continually improving the effectiveness of its risk management and internal control processes.

If a listed entity has an internal audit function,⁶² the head of that function should be suitably qualified and have a direct reporting line to the board or to the board audit committee to bring the requisite degree of skill, independence and objectivity to the role.

If a listed entity does not have an internal audit function, the board or audit committee should review periodically whether there is a need for such a function.

Recommendation 7.4

A listed entity should disclose whether it has any material exposure⁶³ to environmental or social risks⁶⁴ and, if it does, how it manages or intends to manage those risks.

Commentary

How an entity manages environmental and social risks can affect its ability to create long-term value for security holders. Accordingly, investors increasingly are calling for greater transparency on the environmental and social risks faced by listed entities,⁶⁵ so that they in turn can properly assess the risk of investing in those entities.

To make the disclosures called for under this recommendation does not require a listed entity to publish an "integrated report" or "sustainability report". However an entity that does publish an integrated report in accordance with the International Integrated Reporting Council's *International <IR> Framework*,⁶⁶ or a sustainability report in accordance with a recognised international standard,⁶⁷ may meet this recommendation simply by cross-referring to that report.

⁵⁹ If the board decides to delegate this role to a committee of the board, this should be reflected in the charter of the committee in question.

⁶⁰ As stated in the report of APRA's Prudential Inquiry into the Commonwealth Bank of Australia at page 7: "Conduct risk is 'the risk of inappropriate, unethical or unlawful behaviour on the part of an organisation's management or employees.' At its simplest, conduct risk management goes beyond what is strictly allowed under law and regulation ('can we do it?') to consider whether an action is appropriate or ethical ('should we do it?')."

⁶¹ For the avoidance of doubt, despite the word "internal", a listed entity may outsource the internal audit function (for example, to a professional services firm).

⁶² Listed entities that have or wish to have an internal audit function may find the International Standards for the Professional Practice of Internal Auditing published by the International Internal Audit Standards Board helpful in understanding how that function should perform.

⁶³ "Material exposure" in this context means a real possibility that the risk in question could materially impact the listed entity's ability to create or preserve value for security holders over the short, medium or longer term.

⁶⁴ The terms "environmental risks" and "social risks" are defined in the glossary.

⁶⁵ See, for example, the joint publication by the Australian Council of Superannuation Investors and the Financial Services Council entitled *2015 ESG Reporting Guide for Australian Companies*, available online at: www.acsi.org.au/images/stories/ACSI/ACSI/ESG_Reporting_Guide_Final_2015_single_page.pdf.

⁶⁶ See note 49 above.

⁶⁷ Such as:

- the Global Reporting Initiative's standards, available online at: www.globalreporting.org/standards/gri-standards-download-center/;
- the various sustainability accounting standards published by the Sustainability Accounting Standards Board, accessible online from www.sasb.org/; or
- the Climate Disclosure Standards Board's *Framework for reporting environmental and natural capital*, available online at: www.cdsb.net/sites/cdsbnet/files/cdsb_framework_for_reporting_environmental_information_natural_capital.pdf.

The Council would encourage entities that believe they do not have any material exposure to environmental or social risks to consider carefully their basis for that belief and to benchmark their disclosures in this regard against those made by their peers.

One particular source of environmental risk relates to climate change.⁶⁸ This includes:

- risks related to the transition to a lower-carbon economy, including policy and legal risks, technology risk, market risk and reputation risk; and
- physical risks, such as changes in water availability, sourcing, and quality; food security; and extreme temperature changes affecting an organisation's premises, operations, supply chains, transport needs, and employee safety.

Many listed entities will be exposed to these types of risks, even where they are not directly involved in mining or consuming fossil fuels.

The Council would encourage entities to consider whether they have a material exposure to climate change risk by reference to the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures ("TCFD")⁶⁹ and, if they do, to consider making the disclosures recommended by the TCFD.

⁶⁸ See the report from Senate Economics References Committee dated April 2017 entitled *Carbon risk: a burning issue*, available online at: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Carbonriskdisclosure45/-/media/Committees/economics_ctte/Carbonriskdisclosure45/report.pdf.

⁶⁹ The TCFD is an industry-led task force set up to develop voluntary, consistent climate-related financial disclosures useful to investors, lenders and insurance underwriters in assessing and pricing climate-related risks and opportunities. The TCFD's recommendations and related materials are available online at: www.fsb-tcfd.org/publications/. Listed entities can find useful resources on climate change risk at the TCFD Knowledge Hub at: www.tcfhub.org/.

Principle 8 /

Remunerate fairly and responsibly

A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders and with the entity's values and risk appetite.

Recommendation 8.1

The board of a listed entity should:

(a) have a remuneration committee⁷⁰ which:

- (1) has at least three members, a majority of whom are independent directors; and
- (2) is chaired by an independent director,

and disclose:

- (3) the charter of the committee;
 - (4) the members of the committee; and
 - (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) if it does not have a remuneration committee, disclose that fact and the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.

Commentary

Remuneration is a key driver of culture⁷¹ and a key focus for investors. When setting the level and composition of remuneration, a listed entity needs to balance:

- its desire to attract and retain high quality directors and to attract, retain and motivate senior executives;
- the need to ensure that the incentives for executive directors and other senior executives encourage them to pursue the growth and success of the entity without rewarding conduct that is contrary to the entity's values or risk appetite;
- the need to ensure that the incentives for non-executive directors do not conflict with their obligation to bring an independent judgement to matters before the board;
- the implications for its reputation and standing in the community if it is seen to pay excessive remuneration to directors and senior executives; and
- its commercial interest in controlling expenses.

A listed entity should have a formal, rigorous and transparent process for developing its remuneration policy and for fixing the remuneration packages of directors and senior executives.

Having a separate remuneration committee can be an efficient and effective mechanism to bring the focus and independent judgement needed on remuneration decisions. The role of the remuneration committee is usually to review and make recommendations to the board in relation to:

- the entity's remuneration framework for directors, including the process by which any pool of directors' fees approved by security holders is allocated to directors;
- the remuneration packages to be awarded to senior executives;⁷²
- equity-based remuneration plans for senior executives and other employees;
- superannuation arrangements for directors, senior executives and other employees; and
- whether there is any gender or other inappropriate bias in remuneration for directors, senior executives or other employees.

The remuneration committee should have a charter that clearly sets out its role and confers on it all necessary powers to perform that role. This will usually include the right to obtain information, interview management, and seek advice from external consultants or specialists where the committee considers that necessary or appropriate.⁷³

⁷⁰ It should be noted that a listed entity which is included in the S&P/ASX 300 Index at the beginning of its financial year is required under listing rule 12.8 to have a remuneration committee comprised solely of non-executive directors for the entire duration of that financial year.

⁷¹ As noted by Commissioner Hayne in the Interim Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry 28 September 2018, Volume 1, at page 55:
"... staff and others engaged by an entity will treat as important what they believe that the entity values. Rewarding volume and amount of sales is the clearest signal that selling is what the entity values. What staff and others believe that the entity values informs what they do. It is a critical element in forming the culture of the entity."

⁷² The individual remuneration packages to be awarded to employees other than senior executives are generally matters left to management.

⁷³ Listed companies established in Australia should note the provisions in sections 206K-206M of the Corporations Act regarding the engagement of remuneration consultants to advise on the remuneration packages to be awarded to key management personnel.

The remuneration committee should be of sufficient size and independence to discharge its mandate effectively.

If the remuneration committee includes an executive director, they should not be involved in deciding their own remuneration. The committee should also be alive to the potential conflict of interest in an executive director being involved in setting the remuneration for other executives that may indirectly affect their own (for example, through setting a benchmark or because of relatives).

The boards of some listed entities may decide that they are able to deal efficiently and effectively with remuneration issues without establishing a separate remuneration committee. If they do, the entity should disclose in its annual report or on its website the fact that it does not have a remuneration committee and explain the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.

Regardless of whether there is a remuneration committee, no individual director or senior executive should be involved in deciding his or her own remuneration.⁷⁴

Recommendation 8.2

A listed entity should separately disclose its policies and practices regarding the remuneration of non-executive directors and the remuneration of executive directors and other senior executives.

Commentary

A listed entity's remuneration policies and practices should appropriately reflect the different roles and responsibilities of non-executive directors compared with executive directors and other senior executives. In this regard, listed entities may find the guidelines in Box 8.2 on page 31 useful in formulating their remuneration policies and practices.

The disclosures regarding the remuneration of executive directors and other senior executives should include a summary of the entity's policies and practices regarding the deferral of performance-based remuneration and the reduction, cancellation or clawback of performance-based remuneration in the event of serious misconduct or a material misstatement in the entity's financial statements.

The disclosures regarding the remuneration of non-executive directors should include a summary of the entity's policies and practices regarding any minimum shareholding ("skin in the game") requirements for those directors.

Under the listing rules, a listed entity is required to obtain security holder approval for the issue of securities to directors or their associates under any equity-based incentive scheme.⁷⁵

A listed entity is not required under the Corporations Act⁷⁶ or the listing rules⁷⁷ to obtain security holder approval for an equity-based incentive scheme involving the issue of securities to senior executives or other employees who are not directors. Notwithstanding this, a listed entity may find it useful to submit to security holders any proposed equity-based incentive scheme which will involve the issue of securities to senior executives or other employees prior to implementing it. This will provide the board with a timely assurance that the scheme is reasonable and acceptable to security holders.⁷⁸

Recommendation 8.3

A listed entity which has an equity-based remuneration scheme should:

- (a) have a policy on whether participants are permitted to enter into transactions (whether through the use of derivatives or otherwise) which limit the economic risk of participating in the scheme;⁷⁹ and
- (b) disclose that policy or a summary of it.

Commentary

Allowing participants in an equity-based remuneration scheme to hedge or otherwise limit the economic risk of participating in the scheme may act counter to the aims of the scheme and blur the relationship between remuneration and performance. A listed entity which has an equity-based remuneration scheme should establish a policy on whether participants can enter into these sorts of transactions and disclose that policy to investors. This applies whether the participants in the scheme are directors, senior executives or other employees.

⁷⁴ This statement is not intended to apply to a determination by the board of a listed entity on how the pool of directors' fees approved by security holders should be split between directors.

⁷⁵ Listing rule 10.14. Note that this requirement does not apply to securities purchased on-market under the terms of a scheme that provides for purchases of securities by or on behalf of employees or directors (listing rule 10.16).

⁷⁶ Under section 211 of the Corporations Act, benefits that are "reasonable remuneration" are an exception to the requirement for member approval for financial benefits to related parties under section 208 of the Act.

⁷⁷ Assuming it has sufficient headroom to issue securities without security holder approval under listing rules 7.1 and 7.1A. If it does not, then the employee incentive scheme will require security holder approval under listing rule 7.2 exception 13.

⁷⁸ If renewed every 3 years, it will also result in any issues of securities under the scheme not eating into the entity's placement capacity under listing rules 7.1 and 7.1A (listing rule 7.2 exception 13).

⁷⁹ It should be noted that section 206J of the Corporations Act prohibits the key management personnel of an ASX listed company established in Australia, or a closely related party of such personnel, from entering into an arrangement that would have the effect of limiting their exposure to risk relating to an element of their remuneration that either has not vested or has vested but remains subject to a holding lock.

Box 8.2 / Suggested guidelines for: Executive remuneration	Non-executive director remuneration
Composition: remuneration packages for executive directors and other senior executives should include an appropriate balance of fixed remuneration and performance-based remuneration.	Composition: non-executive directors should be remunerated by way of cash fees, superannuation contributions and non-cash benefits in lieu of fees (such as salary sacrifice into superannuation or equity).
Fixed remuneration: should be reasonable and fair, taking into account the entity's obligations at law and labour market conditions, and should be relative to the scale of the entity's business. It should reflect core performance requirements and expectations.	Fixed remuneration: levels of fixed remuneration for non-executive directors should reflect the time commitment and responsibilities of the role.
Performance-based remuneration: should be linked to clearly specified performance targets. These targets should be aligned to the entity's short, medium and longer term performance objectives and should be consistent with its circumstances, purpose, strategic goals, values and risk appetite. Discretion should be retained, where appropriate, to prevent performance-based remuneration rewarding conduct that is contrary to the entity's values or risk appetite.	Performance-based remuneration: non-executive directors should not receive performance-based remuneration as it may lead to bias in their decision-making and compromise their objectivity.
Equity-based remuneration: well-designed equity-based remuneration, including options or performance rights, can be an effective form of remuneration, especially when linked to hurdles that are aligned to the entity's short, medium and longer-term performance objectives. Care needs to be taken in the design of equity-based remuneration schemes, however, to ensure that they do not lead to "short-termism" on the part of senior executives or the taking of undue risks.	Equity-based remuneration: it is generally acceptable for non-executive directors to receive securities as part of their remuneration to align their interests with the interests of other security holders.⁸⁰ However, non-executive directors generally should not receive options with performance hurdles attached or performance rights as part of their remuneration as it may lead to bias in their decision-making and compromise their objectivity.
Termination payments: termination payments, if any, for senior executives should be agreed in advance and the agreement should clearly address what will happen in the case of early termination.⁸¹ There should be no payment for removal for misconduct.	Termination payments: non-executive directors should not be provided with retirement benefits other than superannuation.

⁸⁰ Note that an issue of securities to a director will require security holder approval under listing rule 10.11 unless it falls within the exceptions set out in listing rule 10.12.

⁸¹ Note also the restrictions that apply under sections 200-200J of the Corporations Act to termination payments by companies incorporated in Australia (and their associates) to those who hold a managerial or executive office in the company or in a related body corporate.

Additional recommendations that apply only in certain cases

The following additional recommendations apply to the entities described within them.

Recommendation 9.1

A listed entity with a director who does not speak the language in which board or security holder meetings are held or key corporate documents⁸² are written should disclose the processes it has in place to ensure the director understands and can contribute to the discussions at those meetings and understands and can discharge their obligations in relation to those documents.

Commentary

This recommendation could apply to an entity established in Australia that conducts its board meetings in a language other than English⁸³ and has a director who does not speak that language.

It could also apply to an entity established outside Australia that holds its meetings and prepares key documents in a language other than English and has a director who does not speak that language.

It could further apply to an entity established in Australia or elsewhere that holds meetings or prepares key documents in English and has a director who does not speak English.

Recommendation 9.2

A listed entity established outside Australia should ensure that meetings of security holders are held at a reasonable place and time.

Commentary

Australian listed entities are required under the Corporations Act⁸⁴ to hold meetings of security holders at a reasonable place and time. Listed entities established outside Australia should do likewise.

Recommendation 9.3

A listed entity established outside Australia, and an externally managed listed entity that has an AGM, should ensure that its external auditor attends its AGM and is available to answer questions from security holders relevant to the audit.

Commentary

The opportunity for security holders to question a listed entity's external auditor at the AGM is an important safeguard for the integrity of the corporate reporting process. That opportunity is afforded to security holders in listed companies established in Australia by provisions in the Corporations Act.⁸⁵

These Corporations Act provisions do not apply to listed entities established outside Australia.

Listed trusts established in Australia as registered managed investment schemes are not required by the Corporations Act to have an AGM and, even if they do, they also are not subject to these Corporations Act provisions.

Despite this, a listed entity established outside Australia, and an externally managed listed entity that has an AGM, should ensure that its external auditor attends its AGM and is available to answer questions from security holders relevant to the audit.

82 "Key corporate documents" include an entity's constitution, prospectus, PDS, corporate reports and continuous disclosure announcements.

83 For example, because the chair or other directors are more comfortable speaking that language rather than English.

84 Section 249R (listed companies) and section 252P (listed trusts).

85 Sections 250PA, 250RA and 250T.

The application of the recommendations to externally managed listed entities

As noted previously, some recommendations require modification when applied to externally managed listed entities.⁸⁶ Investors in an externally managed listed entity generally invest in the listed entity on the basis of the management expertise of the responsible entity. In that context, an appropriate line needs to be drawn between corporate governance matters affecting the responsible entity, which will primarily be a concern for the board and security holders of the responsible entity, and corporate governance matters affecting the listed entity.

Recommendations that apply to externally managed listed entities

Recommendations 2.3, 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 4.3, 5.1, 5.2, 5.3, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 7.3 and 7.4 apply to an externally managed listed entity.

Recommendation 9.3 will also apply to an externally managed listed entity that has an AGM.

The disclosures in relation to recommendations 2.3 (disclosure of independent directors), 3.1 (values), 3.2 (code of conduct), 3.3 (whistleblower policy) and 3.4 (anti-bribery and corruption policy) should be made in relation to the responsible entity in its corporate capacity. In the case of recommendation 2.3, independence should be assessed and disclosed vis-à-vis the responsible entity rather than the listed entity.

The disclosures in relation to recommendations 5.1 (disclosure policy), 5.2 (copies of announcements to board), 5.3 (investor and analyst presentations), 6.3 (facilitate participation at meetings of security holders), 6.4 (vote by poll rather than show of hands), 6.5 (electronic communications) and 7.4 (environmental and social risks) should be made in relation to the listed entity being managed by the responsible entity.

The disclosures in relation to recommendations 4.1 (audit committee), 4.2 (CEO and CFO certification of financial statements), 4.3 (verification of corporate reports), 6.1 (website disclosures), 6.2 (investor relations), 7.1 (risk committee), 7.2 (annual risk review) and 7.3 (internal audit) should be made in relation to the specific processes and facilities the responsible entity has put in place to perform its role as the manager of the listed entity.

In relation to recommendations 4.1 (audit committee) and 7.1 (risk committee), if the entity is a listed trust with a compliance committee,⁸⁷ the board of the responsible entity may instead of establishing a separate audit or risk committee, adapt the role of the compliance committee to cover the responsibilities that would ordinarily be undertaken by the audit or risk committee. If it does so, it should make the disclosures mentioned in recommendations 4.1(a) and 7.1(a) in relation to the compliance committee.

In addressing recommendation 7.2 (annual risk review), the board of the responsible entity should have regard to the guidance given by ASIC about the obligation⁸⁸ of a responsible entity to maintain adequate risk management systems in Regulatory Guide 259 *Risk management systems of responsible entities*.

Recommendations that do not apply to externally managed listed entities

Recommendations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.1, 2.2, 2.4, 2.5, 2.6, 8.1, 8.2, 8.3, 9.1 and 9.2 do not apply to an externally managed listed entity. The entity may simply state that these recommendations are “not applicable” in its corporate governance statement.

Additional disclosures that an externally managed listed entity should make

In lieu of recommendation 1.1, an externally managed listed entity should instead comply with the following alternative recommendation:

Alternative to recommendation 1.1 for externally managed listed entities:

The responsible entity of an externally managed listed entity should disclose:

- (a) the arrangements between the responsible entity and the listed entity for managing the affairs of the listed entity; and
- (b) the role and responsibility of the board of the responsible entity for overseeing those arrangements.

⁸⁶ “Externally managed listed entity” is defined in the glossary.

⁸⁷ Under section 601JA(1) of the Corporations Act, the responsible entity of a registered managed investment scheme is required to establish a compliance committee if less than half of the directors of the responsible entity are “external directors” (as defined in section 601JA(2) of that Act).

⁸⁸ See section 912A(1)(h) of the Corporations Act.

Commentary

In the case of an externally managed listed entity, the performance of the responsible entity will usually drive the performance of the listed entity. It is important that investors in the entity understand the arrangements between the responsible entity and the listed entity for managing the affairs of the listed entity and also the role and responsibility of the board of the responsible entity for overseeing those arrangements.

In addressing this alternative recommendation, the responsible entity should disclose the extent to which the responsible entity has outsourced any material aspects of the management of the listed entity and how the responsible entity oversees the performance of the outsourced service provider.⁸⁹

In lieu of recommendations 8.1, 8.2 and 8.3, an externally managed listed entity should instead comply with the following alternative recommendation:

Alternative to recommendations 8.1, 8.2 and 8.3 for externally managed listed entities:

An externally managed listed entity should clearly disclose the terms governing the remuneration of the manager.

Commentary

The management fees (including performance-related fees) payable by an externally managed listed entity to its manager are a key focus for investors. Investors should be able to easily locate a summary of the amount and composition of those fees.

Simply including a copy of the entity's constitution (if that is the relevant document which governs the calculation and payment of management fees) or management agreement on the entity's website is not sufficient for this purpose. There should be a clear and concise summary of the fees payable to the manager on the entity's website, as well as a cross-reference to the specific clause or clauses in the relevant document setting out those fees where investors can go for further details.

⁸⁹ Noting that the entity will generally be liable for any acts or omissions committed by the outsourced service provider under section 601FB of the Corporations Act.

Glossary

AGM: the annual general meeting of security holders.

ASX: ASX Limited.

board: in the case of an internally managed listed entity, the directors of the entity acting as a board and, in the case of an externally managed listed entity, the directors of the responsible entity acting as a board.

CEO: in the case of an internally managed listed entity, the chief executive officer of the entity (by whatever title called) and, in the case of an externally managed listed entity, the chief executive officer of the responsible entity (by whatever title called).

CFO: in the case of an internally managed listed entity, the chief financial officer of the entity (by whatever title called) and, in the case of an externally managed listed entity, the chief financial officer of the responsible entity (by whatever title called).

commentary: the discussion headed "Commentary" that follows a recommendation. The commentary does not form part of a recommendation and does not give rise to a reporting obligation.

corporate governance statement the statement made by a listed entity under listing rule 4.10.3 stating the extent to which it has followed the Council's recommendations.

Corporations Act: the *Corporations Act 2001* (Cth).

director: in the case of an internally managed listed entity, a director of the entity and, in the case of an externally managed listed entity, a director of the responsible entity.

disclose: when used in a recommendation, means to include the information in the entity's annual report or on its website.

employee incentive scheme: the same meaning as in the listing rules but does not include a contribution or salary sacrifice plan where a director acquires securities in the entity at their market value.

environmental risks: the potential negative consequences (including systemic risks and the risk of consequential regulatory responses) to a listed entity if its activities adversely affect the natural environment or if its activities are adversely affected by changes in the natural environment. This includes the risks associated with the entity polluting or degrading the environment, adding to the carbon levels in the atmosphere, or threatening a region's biodiversity or cultural heritage. It also includes the risks for the entity associated with climate change, reduced air quality and water scarcity.

executive director: in the case of an internally managed listed entity, a director of the entity who is also an executive of the listed entity or a child entity and, in the case of an externally managed listed entity, a director of the responsible entity who is also an executive of the responsible entity or a related body corporate.

externally managed listed entity: a listed trust or stapled structure that is managed by an external responsible entity.

independent director: a director who is free of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity as a whole rather than those of an individual security holder or other party.

internally managed listed entity: a listed entity that is not an externally managed listed entity (this includes a listed company and a listed trust or stapled structure that has an internal responsible entity).

listed entity: an entity admitted to the official list of ASX as an ASX Listing. The term does not extend to entities admitted to the official list of ASX as an ASX Debt Listing or as an ASX Foreign Exempt Listing (these entities are not subject to listing rule 4.10.3).

listing rule: an ASX listing rule.

non-executive director: a director who is not an executive director.

periodic corporate report: an entity's annual directors' report, annual and half yearly financial statements, quarterly activity report, quarterly cash flow report, integrated report, sustainability report, or similar periodic report prepared for the benefit of investors.

principle: one of the 8 enumerated principles in this document.

recommendation: one of the 35 general and 3 additional enumerated recommendations in this document.

reporting period: the financial period covered by an entity's annual report.

responsible entity: the entity responsible for managing an externally managed listed entity.

security holders: in the case of a listed company means shareholders and in the case of a listed trust means unitholders.

senior executive:

- in the case of an internally managed listed entity:
 - except in recommendation 1.5(c)(3)(A), an executive who is a member of the key management personnel of the entity, including an executive director but not including a non-executive director; and
 - in recommendation 1.5(c)(3)(A), the listed entity should define what it means by “senior executive”; or
- in the case of an externally managed listed entity, an executive who is a member of the key management personnel of the responsible entity, including an executive director but not including a non-executive director.

senior independent director: an independent director nominated to perform this role.

social risks: the potential negative consequences (including systemic risks and the risk of consequential regulatory responses) to a listed entity if its activities adversely affect human society or if its activities are adversely affected by changes in human society. This includes the risks associated with the entity or its suppliers engaging in modern slavery, aiding human conflict, facilitating crime or corruption, mistreating employees, customers or suppliers, or harming the local community. It also includes the risks for the entity associated with large scale mass migration, pandemics or shortages of food, water or shelter.

substantial holder:

- in relation to a listed entity that is an Australian company or registered managed investment scheme, a person who has a “substantial holding” in the listed entity under paragraph (a) of the definition of that term in section 9 of the Corporations Act;
- in relation to a listed company that is not an Australian company, a person who would have a “substantial holding” in the company under paragraph (a) of the definition of “substantial holder” in section 9 of the Corporations Act if the references in that paragraph to a company and its securities were references to the foreign company and its securities; and
- in relation to a listed trust which is not a registered managed investment scheme or which is a foreign trust, a person who would have a “substantial holding” in the trust under paragraph (a) of the definition of that term in section 9 of the Corporations Act if the references in that paragraph to a scheme and interests in the scheme were references to the trust and units in the trust.

Workplace Gender Equality Act: the *Workplace Gender Equality Act 2012* (Cth).



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