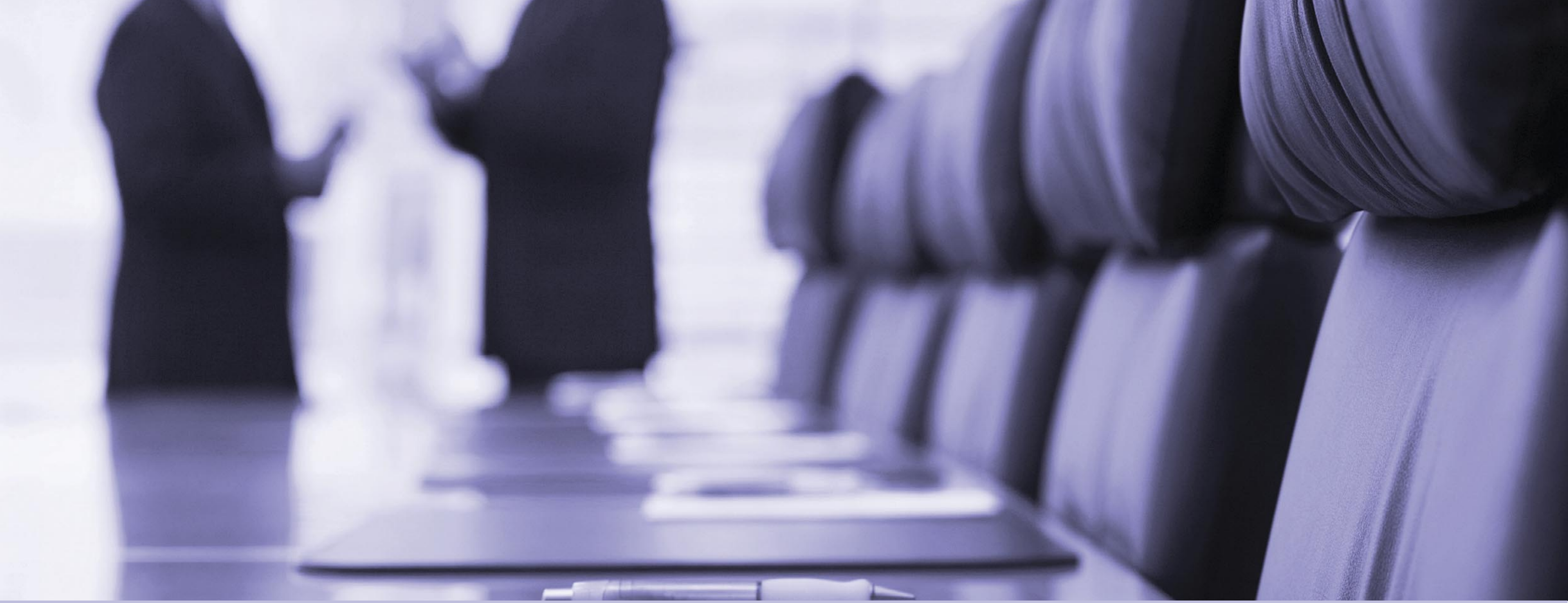

The International Comparative Legal Guide to:

Corporate Governance 2019

12th Edition

A practical cross-border insight into corporate governance

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EDITORIAL

Welcome to the twelfth edition of The International Comparative Legal Guide to: Corporate Governance.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

It is divided into two main sections:

Seven general chapters. These are designed to provide an overview of key issues affecting corporate governance law, particularly from a multi-jurisdictional perspective.

The guide is divided into country question and answer chapters. These provide a broad overview of common issues in corporate governance laws and regulations in 33 jurisdictions.

All chapters are written by leading corporate governance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Sabastian V. Niles & Adam O. Emmerich of Wachtell, Lipton, Rosen & Katz for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Chapter 8

Australia

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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

The main type of corporate entity in Australia is the company, a body incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**). Companies limited by shares are the most common type of companies, although it is possible to establish companies limited by guarantee, unlimited liability companies and no liability companies.

A company limited by shares may be a proprietary or a public company. Generally, proprietary companies are more closely held and have restrictions on fundraising activities and maximum shareholder numbers.

The focus of corporate governance regulation in Australia is therefore on public companies, which are subject to stricter reporting and disclosure requirements. Public companies listed on the Australian Securities Exchange (**ASX**) are subject to additional governance requirements under the ASX Listing Rules and the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (**ASX Principles**). These are also often voluntarily adopted by large non-listed public companies as a matter of best-practice corporate governance.

The Corporations Act, ASX Listing Rules and ASX Principles apply to certain ASX-listed trusts, which are predominantly active in the real estate and infrastructure sectors. They share many of the governance features of listed companies.

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

The Corporations Act and the regulations made under it form the main statutory regime for corporate governance. They deal with matters such as directors' duties, members' and directors' meetings, and disclosure and reporting. Some of these provisions are 'replaceable rules' and can be replaced by constitutional provisions adopted by a company.

Listed entities are also subject to the ASX Listing Rules, which set out the requirements that a company must satisfy on listing and continue to satisfy while it remains listed. The ASX Listing Rules require companies to disclose immediately materially price sensitive information about themselves (the 'continuous disclosure' obligation), require certain transactions (including equity incentive grants to directors) to be approved by shareholders, and prescribe rules relating to the remuneration and audit committees of the 300 largest ASX-listed companies. Compliance with the ASX Listing Rules is mandatory. In enforcing the ASX Listing Rules, the ASX can suspend or delist a listed entity.

Listed entities are also expected to comply with the ASX Principles, which set out 'best practice' governance practices in 38 recommendations based around eight key principles. Among other matters, they deal with board independence, board and board committee composition and responsibilities, risk management, culture, and corporate reporting. Compliance is on an 'if not, why not' basis in that, while compliance is not compulsory, a listed entity must report annually on whether it has complied with them, and if not, explain the reasons for non-compliance.

In addition, Australia's corporate regulator, the Australian Securities and Investments Commission (**ASIC**), publishes regulatory guides. While these do not have the force of law, they explain how ASIC interprets the law and will exercise its statutory powers, describe the principles underlying its regulatory approach, and provide additional practical guidance on compliance.

Additional governance requirements apply to companies in certain industry sectors. Financial institutions that are regulated by the Australian Prudential Regulation Authority (**APRA**) must comply with APRA's Prudential Standards, some of which deal with governance matters. For example, Prudential Standard CPS 520 requires APRA-regulated entities to have directors and senior managers who are 'fit and proper' persons.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

A key emerging challenge for boards is the growing gap between, on the one hand, the expectation of governments, regulators, the media and the community that non-executive directors should be held responsible for conduct deficiencies within a large organisation, and, on the other, non-executive directors' actual role in corporate governance. Underlying this are tensions between short-termism and sustainable value creation, and between shareholder primacy and recognition of broader stakeholder interests.

This has particularly been the case following an APRA inquiry into a major bank and the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Financial Services Royal Commission**), which uncovered evidence of poor corporate behaviour in the financial services industry. The final report of the Financial Services Royal Commission recommended the extension of the Banking Executive Accountability Regime

(**BEAR**) (a regime, similar to the UK's Senior Managers and Certification Regime and Hong Kong's Manager-In-Charge regime, which currently applies to banks only) to all financial services providers, and giving APRA a role in supervising culture.

The impact of the Financial Services Royal Commission on corporate governance is not limited to the financial services industry. Corporate regulators, in particular APRA and ASIC, were criticised for not taking a sufficiently vigorous approach to enforcement. As a result, ASIC is adopting a 'why not litigate' approach that de-emphasises 'soft' enforcement tools such as enforceable undertakings. It has also launched a Corporate Governance Taskforce to improve its understanding of what good and poor corporate governance involves. This has so far involved ASIC compulsorily requesting access to internal governance documents and conducting interviews with key officers of selected listed companies. Similarly, APRA has announced a new enforcement approach which will see it become more willing to use its formal powers and less patient with uncooperative entities in remediating issues.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short-termism and the importance of promoting sustainable value creation over the long-term?

While this has been a concern for many years, recently there has been a growing recognition of the role of boards and institutional investors in promoting long-term sustainable value as a priority. The final report of the Financial Services Royal Commission observed that '[t]he longer the period of reference, the more likely it is that the interests of shareholders, customers, employees and all associated with any corporation will be seen as converging on the corporation's continued long-term financial advantage'. Recent comments by the chair of Industry Super Australia, a body which represents 15 industry superannuation funds that collectively manage more than A$600 billion of assets on behalf of 5 million members, suggest that major institutional investors are now prepared to exercise their significant voting power and public influence to force Australian companies to shift their focus away from immediate shareholder returns to environmental, social and governance (**ESG**) matters, with a view to optimising value creation in the long-term.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

Legally, the ultimate right of shareholders is to vote on director elections and to vote on constitutional amendments. Beyond that, shareholders generally have limited rights in relation to the strategic direction, operation and management of the entity in which they invest. The power of management is almost always vested by company constitutions in the board and delegated to the executive management team to the exclusion of shareholders.

The separation of ownership and management has been recently tested and confirmed by the Full Court of the Federal Court of Australia, which upheld a board's decision to dismiss a shareholder-requisitioned resolution that purported to direct the board on exercising its management powers. To be effective, a power for shareholders to give the board directions would need to be included in a company's constitution. This is not the case in any major Australian listed company. So far, all attempts by shareholders to amend listed companies' constitutions to enable this to occur have failed.

Nevertheless, as a matter of practice, institutional shareholders and other significant shareholders often exert significant influence through direct engagement with the board and management. In addition, a shareholder who controls approximately 15% at least of voting power will by convention typically be entitled to appoint a nominee director to the board.

2.2 What responsibilities, if any, do shareholders have as regards to the corporate governance of the corporate entity/entities in which they are invested?

In Australia, there is no legislative requirement for the shareholders of a company to have an active involvement in relation to the company. For example, it is not mandatory for shareholders to vote in Australia, although a majority now do. Furthermore, shareholders may exercise their voting rights in their own interests (or those of their own investors), without having any active duty to consider the interests of the company or its other shareholders.

While groups of institutional shareholders, including those represented by the Australian Council of Superannuation Investors, have adopted principles that are similar to a stewardship code, Australia does not have a formal stewardship code as in the UK.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have as regards to such meetings?

A public company must hold an annual general meeting (**AGM**) at least once a year. Proprietary companies must hold such meetings if required to by their constitution. Companies can also hold extraordinary general meetings (**EGM**) from time to time. These are less common and tend to be transaction-driven.

Shareholders have a right to be given notice of general meetings, which must include information about the business of the meeting and sufficient information to enable them to make an informed decision on the matters being considered at the meeting.

Holders of voting shares have a right to attend, speak and vote at meetings. Shareholders of public companies (and most proprietary companies) also have the right to appoint proxies to attend meetings, speak and vote on their behalf.

Shareholders holding at least 5% of the votes in a company have a right to request the directors to convene a general meeting. Alternatively, they may do so themselves at their own expense.

Further, shareholders holding at least 5% of the votes in a company or any 100 shareholders have a right to requisition resolutions to be put to a general meeting and to request a company to distribute a members' statement relating to the business of a general meeting to other shareholders.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

In Australia, shareholders are entitled to act in their own best interests and do not owe duties to other shareholders or to the company. Even majority shareholders do not owe duties to other shareholders, unless they effectively act as a shadow director (i.e. where the properly appointed directors are accustomed to act in accordance with the shareholder's instructions or wishes). There are no stewardship principles, laws or fiduciary requirements regulating the conduct of shareholders similar to those that exist in some foreign jurisdictions.

However, statutory remedies are available where, among other things, the conduct of a company's affairs is oppressive to, unfairly prejudicial to, or unfairly discriminatory against a minority shareholder. If such conduct is established, a court may grant remedies including modifying or repealing the company's constitution, regulating the conduct of the company's affairs in the future, and, in extreme situations, winding it up.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

Yes. In addition to the statutory remedy discussed in question 2.4 above, the following actions are available to shareholders:

- Where the company is the proper plaintiff (e.g. in an action against a director for a breach of the director's duties), shareholders may be granted the right by a court to institute a statutory derivative action in the name of the company where the company is unlikely to do so.
- Under the Corporations Act, a company's constitution functions as a contract between shareholders and the company. Subject to certain constraints, shareholders can bring court proceedings to enforce the constitution.
- Shareholders have a statutory right to seek an injunction to prevent a person from contravening the Corporations Act.
- In limited circumstances, the Corporations Act allows a shareholder to apply to wind up a company.
- Any person, including a shareholder, who suffers damage as a result of a person's contravention of certain civil penalty provisions of the Corporations Act (which include breaches of continuous disclosure obligations) may apply for a compensation order.

The ability to seek compensation for breaches of continuous disclosure obligations, coupled with Australia's facilitative class action regime, has led to an increase in securities-based shareholder class actions in Australia.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

Yes. The takeover provisions in the Corporations Act prohibit a shareholder from acquiring a 'relevant interest' in the voting securities of a listed company (or of an unlisted company with more than 50 members) where the acquisition would bring their voting power to above 20%, unless an exception applies (e.g. launch of a formal takeover bid). The concepts of 'relevant interest' and 'voting power' are defined broadly to capture the interests of affiliated persons and entities.

Additional ownership limits are imposed for companies in sensitive or strategic industries, including banking, telecommunications, aviation and the media. Further, approval by the Foreign Investment Review Board may be required in certain circumstances for foreign entities and persons acquiring shares in Australian companies.

A person who acquires, or ceases to have, a substantial holding (generally a 'voting power' of at least 5%) in an ASX-listed company must give the company and ASX a substantial holding notice. If they already have a substantial holding, they also need to disclose each time there is a movement of at least 1% in their holding.

Listed companies may also issue tracing notices, requiring shareholders (or persons named in previous tracing notices) to disclose their interests in the company, together with information about any other persons who may have a relevant interest or other interest in their shares. The company must keep a public register of all information received in response to tracing notices.

The ASX Listing Rules further require listed companies to disclose information about their substantial holders and the 20 largest shareholders in their annual report.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

Australian law does not impose on shareholders a general requirement to disclose their intentions in relation to a company. However, in the context of a control transaction, shareholders will need to disclose their intentions for the company. Under a takeover bid (which, subject to a number of exceptions, must be launched if a shareholder wishes to increase its shareholding to above 20%), the Corporations Act requires the acquirer to prepare a bidder's statement which will be released to the market and lodged with ASIC. The bidder's statement must include, among other things, details of the acquirer's intention regarding the continuation of the business of the target entity, any major changes to be made to the business of the target entity, and the future employment of the present employees of the target entity. Similar disclosure requirements apply where the acquirer proceeds by way of scheme of arrangement.

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Shareholder activism has led to an increased level of engagement around non-financial issues among major listed companies. Traditionally, shareholder activists have focused on environmental issues. In recent years, they have also highlighted other social and governance issues, in particular human rights.

Institutional activism, while present in Australia, is relatively less influential than it is in Europe and the US. International activist hedge funds are finding it challenging to adopt the 'wolf pack' strategy that is common elsewhere, in part due to stricter insider trading laws that apply to any information with a material effect on share prices that is not generally available, including a 'lead' activist's intentions, rather than only information emanating from inside a company.

Shareholder activists do not owe any duties as such to a company, and may instead act to advance their own interests or those of the person or group on behalf of whom they act. A person does not need to hold an Australian financial services licence to engage in shareholder activism and activists are generally not otherwise regulated beyond the requirement that they may not engage in misleading and deceptive conduct. Australian corporations law is relatively facilitative from a shareholder activist's perspective.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

Constitutions of Australian companies almost always vest the power of management in the board. However, as a matter of practice, a board will typically delegate most of their management powers to the chief executive officer (**CEO**) (who may or may not be a member of the board), and through the CEO, members of the senior management team. The board will reserve for itself a power to withdraw or vary that delegation if deemed fit, and retain responsibility for oversight of the performance of the CEO and management.

The ASX Principles recommend that listed companies have a board charter that sets out the respective roles and responsibilities of board and management. Typically, company board charters will contain more detail about allocation of responsibilities between board and management.

3.2 How are members of the management body appointed and removed?

Generally, directors can be appointed by ordinary resolution of shareholders at a general meeting. In addition, the board will usually have the right to appoint a director to fill a casual vacancy or as an additional director (up to the constitutional limit on board size).

For a listed company, the ASX Listing Rules require a person appointed to fill a casual vacancy or as an additional director to seek election at the first AGM following their appointment. In addition, all directors other than the managing director must retire (and if they wish, may seek re-election) by the third AGM at which they were last elected or re-elected, unless they are required to retire earlier due to a constitutional director rotation requirement.

Generally, public company directors can only be removed by shareholders. In some circumstances, directors can also be removed by a regulator (e.g., ASIC can seek a court order to disqualify a director).

Generally, at the management level, the CEO will be appointed and removed by the board. Similarly, the board will appoint and remove the company secretary. Other members of the management team will usually be appointed by the CEO, although senior executive appointments and removals often involve consultation with, or approval by, the board.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

There are a range of laws and regulations that have an impact on director and executive remuneration.

Under the ASX Listing Rules, increases to the fee pool available to directors and any equity grants to directors must be approved by shareholders. Detailed information relating to these matters must be disclosed in the notice of meeting to shareholders.

Under the Corporations Act, listed companies must make detailed disclosure of their remuneration arrangements and policies for directors and other key management personnel in a remuneration report, which forms part of the annual report and is presented to shareholders at AGMs for a non-binding vote. Under the 'two strikes rule', if 25% of the votes cast at two consecutive AGMs oppose the adoption of the remuneration report, at the second AGM, a 'spill resolution' must be put to shareholders which, if passed, will require all directors other than the managing director to stand for re-election at a special 'spill meeting' to be held within 90 days.

The payment of termination benefits to persons who hold managerial or executive office is also regulated. Generally, unless shareholder approval is obtained or another exemption applies, a company may not pay termination benefits that exceed 12 months' base remuneration to a person who holds such office.

In addition, in relation to authorised deposit-taking institutions, the BEAR requires a portion of accountable persons' remuneration to be deferred for a minimum of four years, and reduced proportionately to any failure to meet their accountability obligations.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

The ASX Listing Rules require listed companies to notify the ASX of changes in directors' interests in securities within five business days. This rule does not apply to key members of management who are not directors, unlike the position in the UK.

The obligation to notify ASX arises when:

- a director is appointed;
- changes occur in a director's relevant interests; and
- the director ceases to be a director.

3.5 What is the process for meetings of members of the management body?

Board meetings

A company's constitution will generally provide for a large degree of flexibility over the convening and conduct of board meetings. The Board will meet as often as it considers necessary, usually around nine times a year. Advance notice of board meetings must be provided to directors. Typically, this is the company secretary's responsibility.

At a board meeting, the directors will consider agenda items and vote on resolutions. To ensure they are adequately briefed before making a decision and are kept up to date with ongoing matters, management will prepare board papers setting out relevant information and, if appropriate, points for approval. Board minutes are taken at the meeting, generally by the company secretary, and must accurately record the business of the meeting and decisions made.

Board committee meetings

Board committee meetings are held as and when required. A listed company will generally have a remuneration committee, nominations committee, risk committee and audit committee, which typically meet quarterly. In many cases, a single committee will cover a combination of these roles.

Management meetings

There are no legally mandated procedural requirements for meetings of managers other than directors, and typically management meetings are conducted informally.

3.6 What are the principal general legal duties and liabilities of members of the management body?

Directors and officers are subject to statutory duties to:

- exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in the corporation's circumstances, and occupied the same office and had the same responsibilities as the director or officer;
- act in good faith in the best interests of the company and for a proper purpose; and
- not improperly use information or their position to gain an advantage for themselves or someone else or to cause detriment to the company.

These statutory duties are also broadly in line with directors' fiduciary and other duties at general law. Directors who breach their directors' duties will be liable to civil remedies, including an obligation to compensate the company or account to it for profits. If a director or officer breaches their statutory duties in a sufficiently serious way, they can also be subject to financial penalties and imprisonment.

Directors also have a statutory duty to prevent their company from trading or incurring further debt while insolvent, failing which they can be personally liable for the company's debts in addition to the consequences mentioned above. A defence to a civil penalty insolvent trading action is available where debt is incurred by a company in connection with a course of action that is reasonably likely to provide a better outcome for the company than its immediate liquidation or external administration.

Directors also have obligations arising under other legislation in relation to specific matters, including environmental protection, occupational health and safety, competition and consumer protection, and taxation.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

The main responsibility of the board is to exercise oversight over corporate governance. Directors must take reasonable steps to place themselves in a position to guide and monitor the management of a company. This typically involves approving an effective corporate governance framework and holding management to account for its implementation.

A current key challenge faced by boards is an increasing expectation from governments, regulators, the media and the community for boards to ensure the adequate management of non-financial risks (in particular, the risk of customers and other stakeholders suffering prejudice as a result of unethical or unreasonable conduct), where such expectation does not properly distinguish between the supervisory nature of a board's role and the more involved nature of management's role in risk management. This challenge has heightened following recent developments in corporate governance, including the Financial Services Royal Commission.

Other senior executives have traditionally attracted less public criticism for failings in corporate governance unless their conduct specifically involved a breach of the law. A challenge facing senior executives is the increasing amount of regulatory attention being focused on their roles and responsibilities.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

Yes. While Australian companies are prohibited from exempting a person from a liability to the company (in contrast with the position under Delaware law), a company may indemnify its officers for liabilities to third parties except where the liability is in respect of a pecuniary penalty order or compensation order, or where the liability did not arise out of conduct in good faith. The indemnity cannot operate in respect of any liability to the company or a related body corporate, which in practice is often the most significant liability, particularly in an insolvency scenario. Further, an indemnity for legal costs is not permitted where the director is found guilty or liable in criminal proceedings or in proceedings brought by ASIC.

A company is permitted to pay premiums for directors' and officers' insurance provided that such insurance does not cover liability arising out of conduct involving a wilful breach of duty in relation to the company or a contravention of directors' duties in relation to the proper use of position and information.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

Most listed companies' (and other larger companies') board charters recognise that the board plays a key role in relation to corporate strategy. However, in practice, strategy is typically developed by the management team, led by the CEO, and subsequently approved by the board after the board has provided its input as appropriate. The CEO and the other members of the management team are then responsible for implementing the approved strategy, with the board holding them accountable through remuneration outcomes, and, where appropriate, performance management (and ultimately, succession planning).

A change in strategy proposed by management will typically require board approval. Alternatively, if the board loses confidence in the CEO and their strategy, the board could itself initiate a change in strategy, which would often also involve replacing the CEO.

4 Other Stakeholders

4.1 What, if any, is the role of employees in corporate governance?

Employees do not have any embedded or official role in relation to governance of their employer company. For example, employees do not have a right to board representation.

In some instances, an employee (e.g., the company secretary) will be delegated responsibility for an aspect of corporate governance by the board. Senior executives, who are responsible for corporate governance on a day-to-day basis, are typically employees of a company.

4.2 What, if any, is the role of other stakeholders in corporate governance?

Other stakeholders, such as employees and customers of a company, and the community, have a limited direct role in corporate governance. However, their interests are often important factors that directors take into account through the lens of long-term sustainability and corporate reputation.

There are also a number of proxy advisor groups in Australia that advise institutional investors and are taking an increasingly active role in agitating for corporate governance change. Retail shareholder lobby groups provide similar services on behalf of retail clients.

In addition, special interest groups often use their rights as shareholders to promote their causes, which are typically community-based rather than based on the best interests of the company.

Regulators also take an interest in matters of corporate governance in a regulatory and compliance capacity.

4.3 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Directors only have a duty to consider corporate social responsibility (**CSR**) matters to the extent such matters have an impact on a company's reputation, and ultimately, its financial performance. Australian law is generally not prescriptive about CSR or ESG, as directors' duties are owed to the company, which courts have interpreted to mean 'shareholders as a whole'.

Nevertheless, CSR and ESG have become mainstream concepts in Australian corporate governance disclosure and practice, in line with global developments in this area. Many companies publish annual sustainability reports on a voluntary basis, either as a stand-alone document or as part of their annual report.

For listed companies, the ASX Principles recommend that they disclose whether they have any material exposure to environmental or social risks, and, if so, how they manage or intend to manage those risks. Listed companies are also encouraged to make the disclosures recommended by the Financial Stability Board's Task Force on Climate-related Financial Disclosures.

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency?

The board of a company is ultimately responsible for ensuring the timely disclosure of information about itself through periodic and continuous disclosure. Many companies have a market disclosure policy that is adopted and regularly reviewed by the board. Typically, such a policy will put in place a general delegation of the day-to-day aspects of the disclosure process to management, members of the investor relations or communications team, a disclosure committee and/or designated disclosure officers. The board will reserve for itself responsibility for holding management to account for ensuring the company's compliance with its market disclosure policy and any applicable laws and ASX Listing Rules relating to disclosure and transparency.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

The ASX Listing Rules require Australian listed entities to report annually on their compliance with the ASX Principles. Each listed entity is required to file an ASX Principles compliance checklist in a prescribed form. They are also required to publish a corporate governance statement (**CGS**) either in the annual report or in an intuitive and easily accessible section of its website. If a company has not complied with any of the ASX Principles, it must disclose the reasons for the non-compliance, the period of non-compliance, and the alternative governance practices (if any) that it has taken in lieu of the recommendation during that period.

The ASX Principles recommend that a listed entity provide information about itself and its governance on its website, including information about its directors and senior executives, its key corporate governance documents (including its constitution, board and committee charters, policies, and statement of values), and copies of key market communications (including financial reports, ASX announcements and notices of meeting).

5.3 What is the role of audit and auditors in such disclosures?

Australian public companies and large proprietary companies are required to have their financial statements externally audited. The auditor is required to report to shareholders on whether they are of the opinion that a company's financial statements are in compliance with the applicable accounting standards, and whether they present a 'true and fair' view of a company's financial position and performance. In providing auditing services, auditors are subject to standards of independence, diligence and skill. Governance disclosures are not subject to external audit.

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HSF's Mergers & Acquisitions (**M&A**) team is Australia's leading M&A team, consistently ranked #1 in the Australian market both by number and value of deals. We have a long history of advising on the largest, most strategic and most complex transactions in the market and are the firm of choice for clients seeking innovative and reliable advice on their M&A matters.

HSF's Head Office Advisory Team (**HOAT**) specialises in strategic corporate governance issues, including board reporting and advice, market disclosure, director and executive appointments, remuneration and disclosure, and shareholder communications and relations. HOAT has established an unparalleled reputation for providing focused advice and guidance on not only legal and regulatory requirements but also market practice and emerging trends. HOAT now advises 60% of the 20 top ASX companies on corporate governance issues and approximate 40% of the 100 top ASX companies.