

4TH EDITION ASX CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS

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Legal Briefings - By **Lauren Selby and Alex Lorenzi**

The ASX Corporate Governance Council has released the final version of the 4th Edition Corporate Governance Principles and Recommendations. Listed entities will need to consider what steps they need to take in order to be compliant with the 4th Edition.

IN BRIEF

- The 4th Edition will take effect for a listed entity's first full financial year commencing on or after 1 January 2020.
- The key changes reflected in the 4th Edition is a shift towards recognising the importance of monitoring and taking responsibility for culture, conduct and behaviour within the corporate group, as well as focussed management of non-financial risks, in addition to the traditional focus on financial risks and performance.
- Following consultation feedback, references to 'social licence to operate' have been removed from the 4th Edition and replaced with references to 'reputation' and 'standing in the community'.
- Listed entities should consider what steps need to be taken to update corporate governance policies and practices to ensure compliance with the 4th Edition.

TIMING FOR IMPLEMENTATION

The 4th Edition will take effect for a listed entity's first full financial year commencing on or after 1 January 2020. This means that:

- entities with a 31 December financial year end will be required to measure their governance practices against the new recommendations for the financial year beginning 1 January 2020; and
- entities with a 30 June financial year end will be required to measure their governance practices against the new recommendations for the financial year beginning 1 July 2020.

As with previous revisions to the Principles and Recommendations, early adoption of new aspects of the 4th Edition has been encouraged by the ASX Corporate Governance Council and we expect to see some 30 June year end companies early adopt aspects of the 4th Edition for their FY19 corporate governance statement.

CHANGES FROM THE 3RD EDITION

KEY CHANGES

Consistent with the consultation draft and international developments in governance regulation, the key changes reflected in the 4th Edition Corporate Governance Principles and Recommendations (**Recommendations**) is a shift towards:

- recognising the importance of monitoring and taking responsibility for culture, conduct and behaviour within the corporate group; and
- focussed management of and disclosure in relation to non-financial risks, including ESG risks, in addition to the traditional focus on financial risks and performance.

This shift in focus is predominately seen in the redraft of Principle 3 (a listed entity should act ethically and responsibly) which addresses emerging issues around corporate values and culture, and standing in the community. This principle is re-worded as “a listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly”. The new recommendations are directed to setting “the tone from the top” and ensuring that the board is provided with the information it needs to monitor the culture of the organisation.

Following consultation feedback, references to 'social licence to operate' have been removed from the 4th Edition Principles and Recommendations and replaced with references to 'reputation' and 'standing in the community'. The ASX Corporate Governance Council has stated that it regards the concepts as synonymous.

NEW RECOMMENDATIONS

The 4th Edition Principles and Recommendations includes 9 new recommendations which are summarised below:

- *Culture* - As part of the 4th Edition's focus on conduct and behaviour, 3 new recommendations are included under Principle 3:
 - Values - A listed entity should articulate and disclose its values.
 - Whistleblower policy - A listed entity should have and disclose a whistleblower policy and ensure that the board or a committee of the board is informed of any material incidents reported under that policy.
 - Anti-bribery and corruption policy - A listed entity should have and disclose an anti-bribery and corruption policy and ensure that the board or a committee of the board is informed of any material breaches of that policy.
- *Corporate reports* - New recommendation 4.3 provides that a listed entity should disclose its process to verify the integrity of any periodic corporate report it releases to the market that is not audited or reviewed by an external auditor. Unlike similar provisions in the 3rd Edition Principles and Recommendations, this new recommendation extends beyond financial reports to ensure the highest standards in all corporate reporting.
- *Company announcements* - Under recommendations 5.2 and 5.3, it is recommended that a listed entity ensure that its board promptly receives copies of all material market announcements and requires copies of new and substantive investor or analyst presentation materials to be released on the ASX Platform ahead of the presentation.

- *Voting by poll* - New recommendation 6.4 provides that all substantive resolutions at a meeting of security holders be decided by a poll rather than by a show of hands.
- *International directors* - New recommendation 9.1 requires a listed entity with a director who does not speak the language in which meetings are held or key corporate documents are written to disclose the processes it has in place to ensure the director understands and can contribute to the discussions and can discharge their obligations.
- *Meetings of security holders of foreign entities* - New recommendation 9.2 states that a listed entity established outside Australia should ensure that meetings of security holders are held at a reasonable place and time.

ENHANCEMENTS TO EXISTING RECOMMENDATIONS

The 4th Edition Principles and Recommendations also include a large number of enhancements to the existing 3rd Edition Principles and Recommendations. Some of the significant changes are summarised below:

- *Background checks for senior executives* - Under recommendation 1.2 it is recommended that a listed entity undertake appropriate checks on senior executives, as well as directors, before engaging them.
- *Diversity* - A new provision has been included in recommendation 1.5 recommending that an entity in the S&P/ASX 300 have, as a measurable objective, at least 30% of directors of each gender on its board.
- *Director independence* - Box 2.3 has been amended to state that a director's independence may be impacted if they receive performance based remuneration.
- *Code of conduct* - In addition to requiring a listed entity to have a code of conduct, recommendation 3.2 now also recommends that the board or a committee of the board is informed of any material breaches of the code.
- *Risk appetite* - Previous commentary to recommendation 7.2, providing that a board should satisfy itself that the entity is operating with due regard to the risk appetite set by the board, has been elevated so that it forms part of the recommendation.
- *Sustainability disclosures* - Under amended recommendation 7.4, entities will only be asked to disclose whether they have material exposure to environmental or social risks, rather than economic, environmental and social sustainability risks.

WHERE TO FROM HERE?

In order to be compliant with the 4th Edition, listed entities will need to think about their current governance policies and practices and consider whether any changes are required. For example, listed entities will need to begin thinking about the following matters:

- *Policies* – If not already in place, entities will need to prepare and adopt a Whistleblower Policy and Anti-Bribery and Corruption Policy and disclose both policies on their website. The Whistleblower Policy must also be compliant with the Treasury Laws Amendment (enhancing Whistleblower Protections) Bill 2018.
- *Corporate reporting validation* – Consideration will need to be given to how entities will disclose the process taken to verify the integrity of any periodic corporate report it releases to the market that is not audited or reviewed by an external auditor.
- *Diversity* – Entities will need to set measurable objectives for achieving gender diversity in the composition of the Board, senior executives and workforce generally. If the entity is part of the S&P/ASX 300, the entity should have a measurable objective of 30% of directors of each gender – Thought will need to be given to how implementation of these new objectives is proposed and how any non-compliance will be explained in the corporate governance statement.
- *Risk appetite* – Consideration will need to be given to how the Board will satisfy itself that the entity is operating with due regard to the risk appetite set by the Board, if the Board does not already do so, and how it will be communicated in the corporate governance statement.
- *Values* – A listed entity should articulate and disclose its values. If entities do not already have established values, thought will need to be given to what the values of the entity are and how they will be expressed and disclosed.
- *Board and Committee Charter* – Board and Committee Charters may require updating to reflect amendments to the 4th Edition.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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