

Article Information

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Fourth edition of ASX corporate governance principles and recommendations published

The much anticipated fourth edition of the ASX Corporate Governance Principles and Recommendations was released on 27 February 2019. The revised principles and recommendations will take effect for an entity's first full financial year commencing on or after 1 January 2020. The final document adopted the majority of the proposals from the 2018 consultation draft, however there have been some notable exceptions.

The fourth edition of the ASX Corporate Governance Principles and Recommendations take effect for an ASX listed entity's first full financial year commencing on or after 1 January 2020.

As with the previous edition, the principles and recommendations comprise eight core principles, supporting recommendations, and commentary with guidance on implementing the recommendations. The non-mandatory status of the principles and recommendations has also been retained, with ASX listed entities required only to disclose the extent to which they have followed the principles and recommendations, and if an entity has chosen not to follow a principle or recommendation, it must identify what has not been followed, why it has not been followed, and identify the alternative governance practices it has adopted. In the ASX's words an 'if not, why not' approach to disclosure.

The fourth edition has an increased emphasis on entities adopting practices that have a substantive approach to achieving good corporate governance, rather than merely 'box-ticking'. Further, the revised principles and recommendations have focussed on ASX listed entities putting in place measures that place accountability for governance firmly in the hands of directors, but that also provide directors with sufficient information to monitor compliance. Directors are expected to satisfy themselves that this framework is operating effectively and that they are holding management appropriately to account.

Here are some of the other key take-aways.

1. Culture, values and the 'social licence to operate'

While the fourth edition has not adopted the controversial concept of an ASX listed entity maintaining its 'social licence to operate' that was contemplated in the consultation draft, there is a clear emphasis on reporting entities being 'good' corporate citizens who take care to preserve their 'reputation' and 'standing in the community'.

Recommendations 1.1, 3.1 and 3.2 focus on mechanisms through which a listed entity can 'instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly'. This includes requirements for entities to have and disclose a board charter that fully articulates and discloses values, defines aspirations, and a code of conduct that is clear as to expected standards of employee conduct.

Importantly, the board and management of listed entities are now encouraged to take account of a range of stakeholders beyond just shareholders, including employees, customers, suppliers, creditors, regulators, consumers and the communities in which they operate. The interaction of this aspect of the principles and recommendations has already generated significant debate with respect to its interaction with the duties of directors under the Corporations Act and other legislation.

Finally, Recommendation 8.1 focusses on aligning remuneration with culture to encourage decision making that is long-term in outlook, ethical and consistent with the 'values' and risk appetite of the organisation.

2. Policies for monitoring and reporting breaches

Culture is further addressed in the fourth edition through a number of principles and recommendations aimed at requiring specific policies for areas such as whistleblowing, corruption and any-bribery, and requiring board reporting of material breaches of those policies and other codes of conduct.

Recommendation 3.3 provides that a whistle-blower policy should identify the types of concerns that may be reported under the policy, explain how the confidentiality of the whistle-blower will be safeguarded and how they will be protected from victimisation, and provide training on employee rights and managerial responsibilities under the policy.

Similar recommendations are provided under Recommendation 3.4 in respect of anti-bribery and corruption, with those policies needing to identify processes for investigation of corruption, requirements for periodic review, and training for employees on recognising and dealing with corruption.

3. Composition of board

Principle 2 in the fourth edition requires the board of a listed entity to 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. While the Recommendations under this section are very similar to the previous edition, there is a new emphasis on each board member's knowledge of the entity itself and the industry in which it operates.

Recommendation 2.6 requires the board to periodically review whether there is a need for existing directors to undertake professional development to maintain the skills and knowledge needed to perform their roles effectively. This is in addition to the existing requirement that there be induction programs for new directors. Professional development programs should now extend to include ongoing training on the material developments on the legal framework governing the entity as well as updates to accounting standards. The board or nomination committee of a listed entity must regularly assess the directors as a group to identify any gaps in skills, knowledge and experience for this purpose.

Further refinements to the test for independence have also been included in the commentary to Recommendation 2.3.

4. Emphasis on diversity

Recommendation 1.5 in the fourth edition is targeted at improving diversity amongst board and senior executive positions, acknowledging that diversity is an 'asset to listed entities and a contributor to better overall performance'. To this end, the Recommendation emphasises the use of 'meaningful benchmarks' that can be 'monitored and measured'. For example, it introduces an objective for entities in the S&P/ASX 300 to have new minimum target of not less than 30% of its directors of each gender within a specified period. It is recommended that non-numerical, aspirational objectives like 'introducing a diversity policy' and 'achieving a culture of inclusion' are insufficient unless backed up with numerical targets.

5. Conduct of meetings

The fourth edition has made amendments to the recommendations for meetings of security holders to encourage greater participation and transparency. Recommendation 6.3 requires ASX-listed entities to disclose how they facilitate and encourage participation at meetings of security holders. Recommendation 6.4 requires all 'substantive' resolutions to be voted on by a poll, rather than a show of hands, to ensure consistency with the actual voting rights attached to the securities being voted.

6. Consideration of exposure to risks, in particular environmental and social risks

Recommendation 7.2 requires entities to evaluate whether they are operating with 'due regard' to the risk appetite set by the board, and that the risk framework adequately addressed emerging risks (including digital and data risks).

The new edition introduces a revised definition of 'environmental and social risks', which is considered under Recommendation 7.4. This new definition is much more detailed, mentioning specific risks that need to be considered including risks associated with climate change, pollution and degradation of the environment, water scarcity, increased carbon levels in the atmosphere, and threatening a region's biodiversity or cultural heritage. Where an entity does not consider these risks to be relevant, it is encouraged to set out clearly the basis for reaching that conclusion.

There have been a number of significant changes in the fourth edition of the ASX Corporate Governance Principles and Recommendations that boards of listed entities will need to start considering this year. With this in mind, some key steps that should be taken in preparation for the implementation of the new edition include:

- revise your board charter and code of conduct to ensure it fully articulates your organisation's values, aspirations, and the expectations of your employees and board members in achieving this;

- ensure that the board is receiving all the information it requires for monitoring and enforcing compliance, including procedures through which material breaches or incidents relating to any of the abovementioned policies can be raised with the board;
- review and update your whistle-blower, anti-bribery and corruption policies, and procedures for dealing with material breaches or incidents;
- review your board composition and individual competencies regularly;
- review and update your procedures for holding meetings of security-holders;
- review and update your diversity policy to include concrete, measurable targets; and
- reconsider your environmental and social risks under the new definition.ate