



ASX Corporate Governance Council

COMMUNIQUE

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Release of third edition of the Corporate Governance Principles and Recommendations

The ASX Corporate Governance Council (Council) today released the third edition of its [Corporate Governance Principles and Recommendations](#). The new edition captures and reflects developments in corporate governance, both in Australia and internationally, since the second edition was published in 2007. The first edition was issued in March 2003.

The Council also released today:

- a document entitled [Consultation Response](#) summarising the main submissions the Council received on the consultation version of the third edition and explaining the changes it has made in the final version
- a [mark-up](#) showing the changes made to the consultation version of the third edition to generate the final version
- [translation tables](#) showing the linkages between the new recommendations in the third edition and the old recommendations in the second edition, and vice versa.

Public consultation

The release of the third edition follows an extensive public consultation that began in August 2013. The Council received 69 submissions: 64 non-confidential submissions and 5 confidential submissions. Copies of the non-confidential submissions are available at: <http://www.asx.com.au/regulation/corporate-governance-council/review-and-submissions.htm>.

The things that haven't changed

The third edition maintains the non-prescriptive, flexible, 'if not, why not' approach to disclosure as the previous editions. It also has the same hierarchy – core principles, with supporting recommendations, and commentary providing additional guidance on both the principles and recommendations.

The 8 core principles and the 22 substantive recommendations in the second edition have largely been retained and carried across into the third edition – although there have been some drafting changes to clarify their intent and, in some cases, to draw a clearer link between the recommendations and the core principles they support.

There are now a total of 29 recommendations in the third edition compared to 30 (22 substantive recommendations and 8 reporting recommendations) in the second edition. However, the Council has made some significant structural changes to the *Principles and Recommendations* that have enabled it to introduce 9 new substantive recommendations into the third edition.

New recommendations

The 9 new recommendations in the third edition are:

- [Recommendation 1.2](#): A listed entity should:

- (a) undertake appropriate checks before appointing a person, or putting forward to security holders a candidate 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.
- Recommendation 1.3: A listed entity should have a written agreement with each director and senior executive setting out the terms of their appointment.
- 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.
- Recommendation 2.6: A listed entity should have a program for inducting new directors and provide appropriate professional development opportunities for directors to develop and maintain the skills and knowledge needed to perform their role as directors effectively.
- Recommendation 4.3: A 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.
- Recommendation 6.1: A listed entity should provide information about itself and its governance to investors via its website.
- Recommendation 6.4: A listed entity should give security holders the option to receive communications from, and send communications to, the entity and its security registry electronically.
- 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, the processes it employs for evaluating and continually improving the effectiveness of its risk management and internal control processes.
- Recommendation 7.4: A listed entity should disclose whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages those risks.

Of these, recommendations 1.2(b), 1.3, 1.4, 2.6, 4.3, 6.1, 6.4 and 7.3 appeared in one form or another as guidance in the commentary in the second edition and so are not completely 'new'. They have been elevated from commentary in the second edition to recommendations in the third edition, on the basis that the Council believes that they should now be considered contemporary governance standards rather than matters of mere guidance.

Other key changes

Other key changes in the third edition include:

- The recommendations on risk (recommendations 7.1 – 7.4) have been substantially enhanced to reflect the lessons of the GFC. The Council would encourage all listed entities to review the enhanced risk recommendations carefully and to consider whether they need to upgrade their corporate governance practices in this area.
- With supporting changes to the ASX Listing Rules, listed entities will now have much greater flexibility to make their governance disclosures on their website rather than in their annual report – this should allow listed entities to streamline their annual reports.
- The recommendations dealing with nomination, audit, risk and remuneration committees and internal audit (recommendations 2.1, 4.1, 7.1, 8.1 and 7.3 respectively) now allow for listed entities to adopt and report alternative practices. This recognises that different listed entities (particularly, but not only, smaller ones)

may legitimately adopt different governance practices and will enable a larger number of listed entities to report positively that they have complied with the recommendations in question rather than report negatively that they did not comply and why.

- The recommendations on diversity (recommendation 1.5) have been modified to:
 - o allow listed entities that are 'relevant employers' under the Workplace Gender Equality Act 2012 to report their 'Gender Equality Indicators' instead of reporting the respective proportions of men and women on the board, in senior executive positions and across the whole organisation
 - o provide that where a listed entity chooses to report the respective proportions of men and women on the board, in senior executive positions and across the whole organisation, it should disclose how it has defined 'senior executive' for these purposes
 - o provide enhanced commentary on the meaning of 'measurable objectives' and on the steps a listed entity can take to measure its achievements against the diversity objectives it has set.
- The box setting out the indicators of director independence (Box 2.3) has been amended to:
 - o expand the references to material suppliers and customers to cover those relationships, and other material business relationships, going back 3 years
 - o include in the Box, rather than in the commentary, having a close family tie with another person who would not be considered independent as a potential indicator of non-independence
 - o include overly long service as a director as a potential indicator of non-independence (although without prescribing any period in this regard).
- Recommendation 7.3 in the second edition (CEO/CFO certification of financial statements) has been upgraded and moved to recommendation 4.2 in the third edition. The revised recommendation states that 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. Unlike recommendation 7.3 in the second edition, this will apply to financial statements for any reporting period and not just to year-end financial statements.
- A number of recommendations have been modified or expanded to recognise that not all ASX-listed entities are incorporated in Australia and subject to the Corporations Act, and to recommend that listed entities incorporated outside Australia comply with some of the governance practices that entities incorporated in Australia must conform to under the Corporations Act.

Effective date

The third edition of the *Principles and Recommendations* takes effect for an entity's first full financial year commencing on or after 1 July 2014. Accordingly, entities with a 30 June balance date will be expected to measure their governance practices against the recommendations in the third edition commencing with the financial year ending 30 June 2015. Entities with a 31 December balance date will be expected to measure their governance practices against the recommendations in the third edition commencing with the financial year ending 31 December 2015. However, the Council encourages listed entities to adopt the third edition earlier.

Related changes to the ASX Listing Rules

Some changes are needed to the ASX Listing Rules to give effect to the reforms in the third edition of the *Principles and Recommendations*. ASX released a supplementary consultation paper on 21 February 2014 in relation to those changes, which is available at <http://www.asx.com.au/regulation/public-consultations.htm>. Responses to the supplementary consultation are due by tomorrow. ASX will be making a separate announcement about those changes shortly thereafter.

It is expected that the Listing Rule changes will come into effect on 1 July 2014 and apply for an entity's first full financial year commencing on or after that date, so as to align with the third edition of the *Principles and Recommendations*.

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More information about the ASX Corporate Governance Council is available at:
<http://www.asx.com.au/regulation/corporate-governance-council.htm>

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