



SUPPORTING AND
EMPOWERING YOU
EVERY STEP OF THE WAY

ASX CORPORATE GOVERNANCE PRINCIPLES (fourth edition)

Culture, Values & Trust

WHAT'S HAPPENING?

- The fourth edition of the ASX Corporate Governance Council's Corporate Governance Principles was released on 27 February 2019
- For companies with a 30 June year end it comes into effect 30 June 2021



WHAT'S CHANGED?

The eight principles remain in place but there are now 35 recommendations (previously 29).

The key changes are:

- Recommendations that encourage listed entities to focus on the organisation's culture of "acting lawfully, ethically and responsibly". This takes into account of a range of stakeholders **beyond just shareholders** (Principle 3)
- Recommendations that require specific action, such as **articulating company values** and **adopting a whistleblower policy** and an **anti-bribery and corruption policy**
- Recommendations directed at improving corporate governance practices, including **Board reporting of:**
 - Code of conduct breaches
 - Material whistleblower disclosures
 - Anti-bribery and corruption breaches

TAKE AWAY: IT'S ALL ABOUT CULTURE & VALUES

Disclosure and transparency

1. The Royal Commission is a public example of unethical and unlawful behaviours going unchecked
2. The prescriptive ASX principle supports measures to make breaches transparent and to support employees who courageously disclose wrongdoing
3. If your organisation hasn't created this 'environment of disclosure' you need to act quickly.
4. Short pulse surveys of your employees' attitudes can assist in identifying what teams are placing your values at risk?
5. Whilst the Social Licence to Operate concept was not adopted, organisations that take a 'shareholder only' approach are exposing themselves to the risk of not meeting community expectations.
6. The Board and Management must have mechanisms to consider impacts on other stakeholders.
7. Should remuneration schemes have bonus 'claw backs' for breaches or conduct that contradicts your values/risk appetite?
8. Keep the Board focused on significant matters and not distracted by administrative oversights.
9. Ensure the Board also considers environmental, climate change and social risks as part of its strategic risk assessment.

"In the longer term, the interests of all stakeholders associated with the entity converge...pursuit of the best interests of an entity is a more complicated task than choosing between the interests of shareholders and the interests of customers." – *Commissioner Hayne*

EXPLANATION OF CHANGES

1. Board Responsibilities

Recommendation 1.1 of the Principles has been amended to include a number of additions to the suggested scope of the Board's role described in a Board charter, namely:

- Defining the purpose of an entity
- Approving the statement of values which should underpin the desired culture
- Oversight of management's installation of values
- Satisfying itself in relation to financial and non-financial risks
- Obtaining relevant information to support decisions and actions
- Challenging management and holding it to account
- Satisfying itself that remuneration policies align with the entity's purpose, values, strategic objectives and risk appetite

2. Diversity

Recommendation 1.5 has been revised to extend measurable objectives for achieving gender diversity to senior executives and the workforce generally. For example, for entities in the S&P/ASX 300 index the measurable gender objective for the Board should be not less than 30% of each gender within a specified period.

3. Independent Directors

The commentary now indicates that the Board should determine a director not independent where a specified one of the interest, position or relationship exists, unless it is clear that it is not material and will not interfere with the director's independent judgment and capacity to act in the best interests of the company as a whole.

In addition:

- The term "material business relationships" now extends to relationships such as "professional advisers and consultants"
- The term "close personal ties" has replaced "close family ties" and is intended to capture ties such as a "family, friendship or other social or business connections"
- The reference to "independent" by length of tenure has been clarified as referring to independence from management and substantial holders

4. Board Skills Matrix

The commentary under Recommendation 2.2 has been expanded to note that investors find it helpful if an entity better explains specific skills in its skills matrix, and the criteria a director must meet to be considered to have that skill.

5. Culture and values

One of the most notable changes in the Fourth Edition is Principle 3's emphasis on the importance of culture and values, and the role that the Board and senior management play in approving those values and instilling them across the organisation. This is reiterated throughout the document including:

- Recommendation 1.1's commentary around the respective roles of the Board and management in relation to culture and values in the linkages to an entity's values statement and code of conduct
- Recommendation 3.1 requirement for articulation and disclosure of an entity's values
- Principle 8 on remuneration

6. Policies

6.1 Code of Conduct

Recommendation 3.2 requires not only disclosure of the code but also that the Board or a Board Committee is informed of material breaches of the code.

6.2 Whistleblower Policy

New Recommendation 3.3 requires that entities to have and disclose a whistleblower policy (now a requirement under the amended Corporations Act 2001) including a process for the Board or a Board Committee to be informed of material incidents under the policy.

6.3 Anti-Bribery and Corruption Policy

New Recommendation 3.4 requires entities have and disclose an anti-bribery and corruption policy. The Board or a Board Committee is to be informed of any material breaches of the policy.

7. Market announcements, release of analysts' presentations and voting by poll

These recommendations require the prompt provision of market announcements to Boards and release of substantive investor or analyst presentations ahead of the presentation.

Recommendation 6.4 requires that all substantive resolutions be decided through a poll, rather than a show of hands.

8. Recognise and manage risk

The definitions of "economic sustainability" and "social sustainability" have been removed and replaced with "environmental risks" and "social risks". These terms capture a broader range of issues:

- "Environmental risks" are specifically defined as "risks for the entity associated with climate changes, reduced air quality and water scarcity"



- “Social risks” also capture a broad range of issues including the “risk of regulatory responses” associated with the entity engaging in “modern slavery, aiding human conflict, facilitating crime or corruption, mistreating employees, customers and suppliers, or harming the local community”

Recommendation 7.4 considers a range of frameworks for reporting material exposures to environment of social risks including:

- The Global Reporting Initiative standards
- The Sustainability Accounting Standards Board standards
- Climate Disclosure Standards Board framework

Where entities consider they do not have material exposures to these risks, they are encouraged to benchmark their disclosures against peers. The commentary also encourages entities to consider whether they have material exposure to climate change risks by reference to the Financial Stability Board’s Task Force on Climate-related Financial Disclosures.

9. Overview of proposed steps

In preparation for the commencement date, companies will need to:

- Review or prepare the following policies and procedures
 - Statement of values
 - Code of conduct
 - Whistleblower policy
 - Anti-bribery and corruption policy
 - Diversity policy

and prepare to disclose such policies and procedures.

- Consider existing practices, policies and systems that facilitate information flow between management and the Board, and put in place new escalation mechanisms to the extent required to comply with the revised reporting recommendations, including:

- Regarding the Code of Conduct, incidents under the whistleblower policy and anti-bribery and corruption policies
- Ensuring the Board receives copies of all material market announcements promptly after they have been made

- Consider reviewing the Board skills matrix to ensure it covers the skills needed to address existing and emerging business and governance issues relevant to the entity
- Consider exposure to environmental risk and social risk (based on the new definitions in the fourth edition)
- Review policies in relation to the ongoing professional development of directors, particularly in light of the emerging risks and governance issues detailed in the fourth edition
- Consider the process to verify the integrity of periodic corporate reports
- Review remuneration arrangements to consider whether they reflect company values and risk appetite and, in the case of executive remuneration, whether the entity retains the discretion to prevent performance-based executive remuneration rewarding conduct that is contrary to company values or risk appetite

