

APPENDIX – AICD COMMENTS ON THE DRAFT ASX PRINCIPLES – 27 JULY 2018

- This table should be read in conjunction with the substantive comments outlined in the AICD's submission dated 27 July 2018.
- As a general statement, the AICD encourages review of all proposed commentary to reduce detail and prescription.

Consultation Draft Reference	AICD comments and suggestions
Preface More detailed guidance in the preface to the recommendations on what should be disclosed by entities that follow the Council's recommendations including a new section dealing with proposed recommendations not likely to be relevant to the majority of listed entities.	<ul style="list-style-type: none"> • We suggest that, given the increase in detail and prescription proposed in commentary, the note at the end of '<i>The linkage with ASX Listing Rules</i>' section, that states that the principles and commentary do not trigger any specific disclosure obligations, be supported by a further statement. This should explicitly clarify that the commentary is intended to be explanatory only, to avoid any risk of the expanded commentary being interpreted as establishing new requirements or expanding reporting expectations.
Principle 1: Lay solid foundations for management and oversight. A listed entity should establish and disclose <u>clearly delineate</u> the respective roles and responsibilities of its board and management and <u>disclose</u> how their performance is monitored and evaluated.	
Recommendation 1.1: Have and disclose a board charter setting out roles and responsibilities. Commentary 1.1: Adding to the list of 'usual responsibilities of the board' (purpose, code of conduct, remuneration alignment, and others)	<ul style="list-style-type: none"> • The AICD supports the amendment to require listed entities to have a board charter • The AICD supports explanatory commentary outlining suggested inclusions for consideration. • We query use of 'usually', given the additions proposed on new issues such as core values and code of conduct, and suggest this be re-framed. We note that not all listed entities require all senior executive appointments to be approved by the board and suggest this be separated from the re-stating of the legal requirement for the company secretary to be appointed by the board. We note inconsistency in use of 'core values' and 'values' and suggest this be resolved.
Recommendation 1.2: Add 'senior executive'. Commentary 1.2: New wording on disclosure of the outcomes of checks, and addition of 'reasons why' to board statement on director candidates.	<ul style="list-style-type: none"> • The AICD supports the amendment to Recommendation 1.2. • The AICD suggests that the new wording on disclosure of the outcomes of checks be removed, or at a minimum, re-framed, to avoid privacy and reputation issues. Encouraging statements of the reasons why candidates are recommended is sufficient.
Recommendation 1.3: No change. Commentary 1.3: Appointment letters should require director to notify or seek approval before accepting any new role.	<ul style="list-style-type: none"> • The AICD suggests that the proposed wording clarify that approval be sought from the chair as the representative of the entity.

APPENDIX – AICD COMMENTS ON THE DRAFT ASX PRINCIPLES – 27 JULY 2018

Consultation Draft Reference	AICD comments and suggestions
Letters of appointment should be with individuals, not entities, with footnote.	<ul style="list-style-type: none"> The AICD supports the proposed amendments to explanatory commentary that letters of appointment should be with individuals and the associated footnote.
<p>Recommendation 1.5: Significant change as outlined in the consultation paper.</p> <p>Commentary 1.5: Significant change as outlined in the consultation paper.</p>	<ul style="list-style-type: none"> The AICD supports listed entities in the ASX 300 having a minimum measurable objective of gender diversity of 30%, noting that timeframes and strategies to achieve this goal would be at the discretion of the entity. The AICD suggests that consideration be given to applying this to all listed entities. The AICD supports including senior executive roles and the workforce generally. The AICD recommends that explanatory commentary include a statement clarifying that the skills and expertise of individual directors, and the board collectively, are the context for the commentary. The AICD queries whether the level of detail and prescription proposed for the explanatory commentary is required, including, for example, commentary on KPIs. Footnotes or reference to external groups with expertise in these matters is preferable to including this text in the Principles. The AICD does not support commentary encouraging listed entities to disclose insights gained from the annual review and changes made to its objectives and programs.
<p>Recommendation 1.6: New requirement for annual reviews of board, committees and directors.</p> <p>Commentary 1.6: Addition of currency of director's knowledge and impact of other commitments.</p>	<ul style="list-style-type: none"> The AICD supports requiring listed entities to have and disclose a process for evaluating the performance of governance bodies. The AICD does not support mandating that evaluations be conducted on an annual basis for the board, all committees and individual directors. In our view, this is too prescriptive, particularly for smaller cap entities. Periodic evaluations as determined by the board would be preferable. The AICD does not support commentary encouraging boards to disclose insights gained from the evaluation as a matter of course.
Recommendation 1.7: New requirement that senior executive reviews be conducted annually.	<ul style="list-style-type: none"> The AICD supports the proposed revision, which we note is market practice and expectation.
Principle 2. Structure the board to be effective and add value: A listed entity should have a board of an appropriate size, composition, skills and, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.	
Recommendation 2.2: No change	

APPENDIX – AICD COMMENTS ON THE DRAFT ASX *PRINCIPLES* – 27 JULY 2018

Consultation Draft Reference	AICD comments and suggestions
Commentary 2.2: Significant new commentary, including emerging risk areas and detail on format.	<ul style="list-style-type: none"> The AICD suggests that the Council revisit proposed wording, per section 3.3 of our submission.
Recommendation 2.3: 'Association' replaced with 'affiliation'. Commentary 2.3: Significant additions including more prescriptive framing of expectations of directors in determining independence based on Box 2.3 factors.	<ul style="list-style-type: none"> The AICD supports the proposed revision, subject to clarification that no scope change is intended. The AICD suggests that the new explanatory commentary proposed ahead of Box 2.3 be revisited, to reduce the level of prescription and be expressed more clearly as <i>explanatory</i> guidance. The AICD supports the revisions proposed to Box 2.3.
Recommendation 2.4: No change Commentary 2.4: New wording encouraging listed entities that do not follow the recommendation to have at least more than one independent director.	<ul style="list-style-type: none"> The AICD recommends that this wording be removed from the explanatory commentary, so that the focus remains on the recommendation that a majority of the board be independent, with listed entities reporting on an 'if not, why not' basis. If the ASX or regulators wish to impose minimum representation levels, we suggest these should be covered in the Listing Rules (or legislation). We are concerned that the wording may lead some entities to form the view that two independent directors is sufficient.
Recommendation 2.6: Add periodic review of need for professional development of directors. Commentary 2.6: More prescriptive commentary.	<ul style="list-style-type: none"> The AICD supports the proposed recommendation.
Recommendation 2.7: New recommendation that a listed entity with a director who is not fluent in the language in which meetings are held or key documents written should disclose the processes it has in place to ensure the director understands and can contribute to discussions at those meetings.	<ul style="list-style-type: none"> The AICD does not support the addition of this new recommendation. In our view, this re-states directors' duties, supported by recent case law and compliance action. It will not be relevant to the majority of listed entities and seeks to address a concern that is more appropriately targeted through compliance activities by relevant regulators.
Principle 3. Act ethically and responsibly. Instil the desired culture. A listed entity should act ethically and responsibly. A listed entity should instil and continuously reinforce a culture across the organisation of acting lawfully, ethically and in a socially responsible manner.	
New commentary proposed referencing social licence to operate, acting in a socially	<ul style="list-style-type: none"> The AICD has significant concerns about the change to Principle 3 and proposed commentary. As outlined in section 4 of our submission, the AICD does not support the proposed change.

APPENDIX – AICD COMMENTS ON THE DRAFT ASX PRINCIPLES – 27 JULY 2018

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responsible manner and providing more details on 'good corporate citizen' conduct.	<ul style="list-style-type: none"> In particular, the proposed changes to Principle 3 introduce ambiguous concepts such as acting in a "socially responsible manner" and a "social licence to operate" which are highly subjective and will vary over time. The AICD suggests that the Principle refer simply to "acting lawfully and ethically". There is no reference in the commentary to existing statutory and general law duties to act in the best interests of the company, which may confuse some directors and purport to place stakeholders on the same footing as shareholders. The AICD recommends this be clarified. New examples of good corporate citizenship proposed in the commentary are highly subjective, e.g.: "aggressive tax minimisation" and "paying a living wage", and should be removed.
Recommendation 3.1: New requirement to articulate and disclose core values. Commentary 3.1: New commentary describing considerations in articulating core values.	<ul style="list-style-type: none"> The AICD supports the proposed recommendation. The AICD recommends that the explanatory commentary be redrafted to focus on a brief description of core values, removing some of the detail and direction in the current wording.
Recommendation 3.2: New requirements to ensure the board is informed of material breaches of the code of conduct Commentary 3.2: New detail including requiring three year reviews of codes of conduct.	<ul style="list-style-type: none"> The AICD supports the proposed recommendation, however we do not support the commentary introducing an expectation that entities disclose actions they have taken to enforce their code of conduct. Entities are already subject to continuous disclosure obligations. Disclosure of code of conduct enforcement is likely to lead to undue focus on immaterial matters, and could encourage entities to ignore breaches for fear of then needing to disclose them. The commentary and Box 3.2 should also remove reference to "socially responsible" per the comments in section 4 of our submission. The AICD does not support the inclusion of a three-year review timeframe for review of codes of conduct. We suggest replacing this with 'periodic' to allow entities to determine the appropriate timeframe.
Recommendation 3.3: Whistleblowing policy Recommendation 3.4: Anti-bribery and corruption	<ul style="list-style-type: none"> The AICD has concerns with this recommendation, per section 2.1 of our submission. While we support strong policies in these areas, we query highlighting these areas over other, also important, policy areas. We also note that law reform is underway in relation to both substantive areas.
Principle 4: Safeguard integrity in corporate reporting. Produce corporate reports of high quality and integrity. Commentary that a listed entity should provide corporate reports of <u>high quality and integrity</u> that give the reader a <u>reasonable understanding of the entity's business model, strategy, risks and opportunities, remuneration policies and practices and governance framework, as well as its financial performance</u> .	

APPENDIX – AICD COMMENTS ON THE DRAFT ASX *PRINCIPLES* – 27 JULY 2018

Consultation Draft Reference	AICD comments and suggestions
Recommendation 4.4: Have and disclose processes to validate corporate reporting.	<ul style="list-style-type: none"> The AICD suggests redrafting of this new recommendation and commentary, per section 6 of our submission, including clarifying that prospectus-level verification is not expected of listed entities.
Principle 5: Make timely and balanced disclosure. New commentary clarifies that this means timely and balanced disclosure of information that a reasonable person would expect to have a material effect on the price or value of its securities.	
Recommendation 5.1 Now requiring listed entities to disclose continuous disclosure policies in full.	<ul style="list-style-type: none"> The AICD does not support the proposed recommendation. Full disclosure of the policy is not necessarily more useful to investors than a summary. Given the volume of material disclosed to the market, it should remain at the company's discretion whether or not to disclose in full or summary.
Recommendation 5.2: New recommendation that listed entity boards receive all Listing Rule 3.1 announcements promptly as they are made.	<ul style="list-style-type: none"> The AICD supports this recommendation but suggests that the drafting of commentary be revisited to ensure that listed entities have full flexibility in the manner in which copies are made available.
Recommendation 5.3: New requirement that investor briefings be released ahead of time.	<ul style="list-style-type: none"> The AICD supports the proposed recommendation.
Principle 6: Respect the rights of security holders. A listed entity should respect the rights of provide its security holders by providing them with appropriate information and facilities to allow them to exercise these their rights as owners effectively.	
Recommendation 6.1: No change Commentary 6.1: Addition of links to other corporate reports and core values on website.	<ul style="list-style-type: none"> The AICD supports the proposed commentary.
Recommendation 6.2: Minor change Commentary 6.2: Adds reference to proxy advisers and retail investors.	<ul style="list-style-type: none"> The AICD supports the proposed additions to commentary, in particular recognition of retail investors.
Recommendation 6.3: Change from disclosing policies and processes to disclosing how the entity facilitates and encourages participation at security holder meetings. Commentary 6.3: Encouragement to choose reasonably accessible meeting venues and consider use of technology.	<ul style="list-style-type: none"> The AICD supports the proposed recommendation. The AICD supports the intent of the commentary and suggests it be clearly expressed as encouragement and guidance (for example, replace 'should' with encouragement to consider).

APPENDIX – AICD COMMENTS ON THE DRAFT ASX PRINCIPLES – 27 JULY 2018

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Recommendation 6.4: New Recommendation that all meetings be decided by poll. Commentary 6.4: States that certainty on will of meeting can only be determined by poll.	<ul style="list-style-type: none"> The AICD supports the proposed recommendation. We recommend that consideration be given to drafting the recommendation so that it applies to contested, material resolutions. The AICD suggests that the explanatory commentary clarify expectations for procedural resolutions and remove the statement that certainty is only delivered by poll.
Principle 7: Recognise and manage risk. New commentary added: <i>A sound risk management framework...should address financial and non-financial risk, as well as risks with a short, medium or long-term horizon.</i>	
Recommendation 7.1: No change Commentary 7.1: New detail on risk committee.	<ul style="list-style-type: none"> The AICD queries whether the degree of detail proposed to be included is necessary or helpful.
Recommendation 7.2: Inclusion of risk appetite statement reference. Commentary 7.2: New wording on risk appetite statements and disclosure of risk review outcomes.	<ul style="list-style-type: none"> The AICD suggests that the commentary be amended to reinstate the qualification of 'where appropriate' in relation to disclosure of the outcomes of risk reviews.
Recommendation 7.3: No change Commentary 7.3: Encouragement to establish internal audit function, plus new footnote.	<ul style="list-style-type: none"> The AICD supports the proposed commentary, and suggests that it be made explicit in commentary that an internal audit function can be out-sourced (a common market practice).
Recommendation 7.4: Change to environmental and social risks (rather than economic, environmental and social sustainability risks). Commentary 7.4: Social risks and climate change	<ul style="list-style-type: none"> The AICD does not support the drafting of the recommendation, in particular reference and commentary on social risks, per section 7 of our submission. The AICD generally supports the climate change references proposed in commentary, with the suggestion that the commentary be clearly expressed as explanatory guidance.
Principle 8: Remunerate fairly and responsibly. Commentary changed to add ' <i>over the short, medium and longer-term</i> ' to value creation, note the risk of rewarding conduct contrary to values or risk appetite, and the implications for social licence if entities are perceived to be remunerating 'excessively'.	
New commentary with reference to social licence to operate risk from excessive remuneration.	<ul style="list-style-type: none"> The AICD does not support including social licence for reasons discussed in section 4 of our submission. We suggest inclusion of 'competitive' as a further consideration in the explanatory commentary.

APPENDIX – AICD COMMENTS ON THE DRAFT *ASX PRINCIPLES* – 27 JULY 2018

Consultation Draft Reference	AICD comments and suggestions
Recommendation 8.4: New proposal to require that entities should only enter into agreements for consultancy services with directors/officers if they have independent advice on several matters.	<ul style="list-style-type: none">The AICD does not support the proposed recommendation. We consider related party disclosure and compliance with the law adequately addresses this concern and consider the new requirement unduly prescriptive were it to apply in all instances (particularly for smaller cap entities).

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