



# mertons

corporate governance specialists

## ***Mertons' Update – 3<sup>rd</sup> edition of the ASX Corporate Governance Principles and Recommendations and amendments to the ASX Listing Rules.***

This Mertons' Update is intended to provide you with a summarised guide to recent or upcoming corporate governance matters. If you would like further information or assistance with the matter raised here or to discuss how it may affect your business, please contact:

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### **ASX Corporate Governance Principles and Recommendations (CGPR)**

The third edition of the ASX CGPR will replace the second edition that was released in 2007 (with subsequent amendments related to diversity introduced in 2010). There has been an extended consultation period on the proposed changes and the final version of the third edition was released on 27 March 2014.

It is proposed that the third edition will take effect from the first full financial year commencing 1 July 2014. Therefore for those with a reporting year to 30 June this would be 30 June 2015. Entities will have the option of early adoption.

Whilst it maintains the “comply and explain” framework and the eight main principles remain, there are some changes that boards and their advisors should be aware of including:-

**Principle 1** – Lay solid foundations for management and oversight - Recommendation 1.2(a) deals with the entity undertaking appropriate checks before appointing a director with consideration to be given to the level of scrutiny (e.g. criminal records, bankruptcy, education etc.).

**Principle 2** – Structure the Board to add value - Recommendation 2.6 (elevated from commentary in previous edition) dealing with the program for inducting new directors and providing appropriate professional development opportunities.

**Principle 7** - Recognise and manage risk – Recommendation 7.1, 7.2 & 7.4 requires the Board or a Risk committee of the Board should perform an annual review to confirm that the risk management framework continues to be sound and disclose that review. Emphasis placed on reporting against economic, environmental and social sustainability risks. Recommendation 7.3 requires disclosure on the performance of the internal audit function or in the absence of an internal audit function the procedures in place to evaluate and improve internal control processes.

### **Alternative Governance Practices**

The ASX has used the consultation process to highlight instances of pro forma and standardised statements when an entity is in non-compliance with the CGPR, whereas the spirit of the CGPR is to give an accurate and granular picture of the actual practices. When drafting the '**why not**' explanations consideration should be given to:

- the disclosure of alternative practices in place to ensure adherence to good governance; and
- a more in-depth explanation to demonstrate why those practices are considered more appropriate in the entity's circumstances than the recommendation.

**Listing Rules** – second round consultation considerations are currently being reviewed against the proposed amendments to the Governance-Related Listing Rules. The proposed listing rule concerning disclosure of on-market security purchases by or on behalf of employees or directors has been dropped in favour of one-off disclosure in the Annual Report and an amendment on the definition of Associate in LR 10.14, 10.16 & 19.12 due to the result of consultation. The ASX issued a further supplementary consultation paper on 21 February 2014.

**Listing Rule 4.7 & 4.10.3 – Introduction of the Appendix 4G & changes to the corporate governance statement**

A new Appendix 4G is to be given to the ASX at the same time as an entity's Annual Report and acts as a locational key to corporate governance disclosures, the rationale being to:

- help listed entities verify that the correct disclosures have been made; and
- help investors and regulators locate specific disclosures and simplify comparison.

**Corporate Governance Statement**

The refinement of the Corporate Governance Statement (LR 4.10.3) includes:

- identifying non-compliance with recommendations for part of the reporting period;
- specifying the date at which the corporate governance statement is current;
- a requirement that the corporate governance statement is approved by the Board of an entity; and
- the option to maintain the corporate governance statement on an entity's website, with a copy of the statement provided at the same time the entity provides its Annual Report and Appendix 4G to the ASX.

**Practical Considerations**

- the relative benefits of removing the corporate governance statement from the Annual Report against maintaining an up-to-date corporate governance statement on an entity's website given the statement requires lodgement with the ASX at the same time as the Annual Report; and
- including the approval of the corporate governance statement and Appendix 4G in the Annual Report verification and approval process.

**Additional Changes suggested in the supplementary consultation paper include:**

LR	Changes
All	reference to "market price" has been clarified throughout.
4.10.22	one-off disclosure in the Annual Report regarding all securities purchased on-market by an entity under the terms of an employee incentive scheme by or on behalf of employees/directors or to fulfil entitlements through the issue of performance rights or options.
10.17	improve the drafting describing the payment of directors' fees.
14.2	refinement to the current standard proxy form and the removal of the requirement for a "chairman's tick box".