

# Corporate Governance Disclosure Guidelines

Practice Note 14

Issued: 2021



# Corporate Governance Disclosure Guidelines

---

## Practice Note 14

---

### **The purpose of this Practice Note**

This practice note outlines NSX expectations with respect to Issuers' corporate governance disclosure obligations under Section IIA 6.9, Section IIB 6.7 and Section IIC 6.9 (the **Rules**) of the NSX Listing Rules. The Rules require that the inclusion of a corporate governance statement (the **CGS**) in the Issuer's annual report which outlines the corporate governance practices that the Issuer had in place during the relevant period.

NSX has adopted a 'Principled' rather than a 'prescriptive' approach to the disclosures expected under the Rules. This involves Issuers ensuring compliance with the Principles of corporate governance (**PCG**). NSX tests compliance with PCG by reference to whether the policies and procedures of the Issuer support: the adoption of transparent corporate structures and operations, the application of robust risk management and internal control structures and ensures board accountability to shareholders and stakeholders (the **Principles**).

By promoting a principled rather than prescriptive approach, NSX is not advocating less disclosure than would be required by other Recognised Exchange; rather NSX expects Issuers to become actively involved in the development of good corporate governance practices as may be advocated by various and relevant industry groups. This approach recognises that good corporate governance cannot be achieved by a 'one size fits all' approach. Rather, directors must consider the individual characteristics of the Issuer with respect to the size, type, scale and scope of the business' activities. Directors should develop policies and procedures that ensure the Issuer adheres to the Principles described in this document.

Nominated Advisers also play a role in helping the Issuer with these obligations.

This practice note is not a substitute for the Issuer seeking its own professional advice. There may be differences in each and every case that the Issuer needs to fully consider as to the ultimate requirements for listing procedures, adhering to the NSX Rules, conditions of listing and adhering to the Australian Corporations Act.

---

### **The main points**

1. The meaning of corporate Governance
  2. Listing Rule and Corporations Act Disclosures
  3. Nominated Adviser Role
  4. NSX's Approach to the Application of the Principles
  5. A Regulatory Perspective
  6. Approaches to Corporate Governance Disclosure
  7. Further Information
- Annexure 1: Suggested Content of Disclosure  
Annexure 2: Timetable for Disclosures
-



---

**Related materials**

For further information on disclosure requirements and guides to policies, procedures and governance standards please refer to the following sources:

- NSX Practice Note 3: Continuous Disclosure
- NSX Practice Note 9: Periodic Disclosure
- Governance Institute of Australia (GIA)<sup>1</sup>
- Australian Institute of Company Directors (AICD)<sup>2</sup>
- Organisation for Economic Cooperation and Development (OECD) Principles of Corporate Governance<sup>3</sup>

---

## Guidance

---

The NSX issues practice notes to promote commercial certainty, reduce costs to business and assist market participants, and we are available to discuss any questions you have in relation to a practice note.

NSX may replace practice notes at any time. Issuers should contact NSX to ensure that they have the latest version of a practice note. As a practice note is only a guide to NSX practice, Issuers are advised to contact NSX to discuss their particular circumstances and the application of the listing rules. NSX cannot give legal advice to Issuers and recommends that they consider taking advice from a qualified professional person.

---

<sup>1</sup> <https://www.governanceinstitute.com.au/resources/what-is-governance/>

<sup>2</sup> <https://aicd.companydirectors.com.au/>

<sup>3</sup> <https://www.oecd.org/corporate/principles-corporate-governance/>



# Section 1 – The meaning of Corporate Governance

---

1. NSX interprets the term corporate governance broadly and adopts the Organisation for Economic Co-operation and Development (OECD) definition referred to in the G20/OECD Principles of Corporate Governance<sup>4</sup>, namely:

*“Corporate governance involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”*

2. The Organisation for Economic Cooperation and Development (OECD), in its Principles of Corporate Governance also states that:

*“The Principles do not intend to prejudice or second-guess the business judgment of individual market participants, board members and company officials. What works in one company or for one group of investors may not necessarily be generally applicable to all of business or of systemic economic importance.”*

3. Each of these definitions highlights the broad nature of corporate governance. Given the broad issues involved, Issuers need to develop a broad range of policies and procedures to adequately deal with these important structural and operational issues.
4. NSX has identified the following corporate governance issues, with respect to which Issuers are likely to be obligated to develop policies and procedures and consequently, be required to disclose in the annual directors’ report:
  - a) Policies and procedures adopted to ensure that the Issuer acts according to law, including satisfying its reporting obligations under the Act and Listing Rules;
  - b) Policies and procedures adopted to ensure that the Issuer’s board acts with due care and diligence and in the interests of shareholders;
  - c) Policies and procedures adopted to adequately identify and deal with conflicts of interest at board, management and employee levels;
  - d) Policies and procedures adopted to protect shareholder interests, including: access to information, voting rights, share of profits, equitable treatment; and
  - e) Policies and procedures adopted to protect the interests of stakeholders including: employees, creditors, and the wider community;
  - f) Whistleblower policies and procedures;
  - g) Diversity and Inclusion policies; and
  - h) Sustainability and environmental policies.

---

<sup>4</sup> Page 15 of the OECD Principles.



## Section 2 – Listing Rules and Corporations Act Disclosures

---

1. Both the Corporations Act 2001 (Cth) (the **Act**) and NSX Listing Rules refer to a number of specific and general disclosures that must be disclosed in the annual directors' report. Although this practice note deals with the general disclosures required under the Listing Rules, Issuers should also familiarise themselves with the specific disclosures required under the Act.
2. Listing Rule 6.9 states that the directors' operations report must include a statement of the main corporate governance practices that the issuer had in place during the relevant period. NSX interprets this rule broadly to place an obligation on Issuers to develop and disclose the corporate governance practices which ensure that the company is able to adhere to the principles discussed in this practice note.
3. NSX considers that the disclosure obligation has four aspects. First, the Issuer must consider what good corporate governance means to the Issuer in its own specific circumstances. Secondly, the Issuer must formulate policies and procedures relevant to the individual Issuer, which support adherence with the principles. Thirdly, the Issuer must regularly revise its policies and procedures to ensure ongoing compliance with the principles. Fourth, the Issuer should disclose its Corporate Governance Statement as a summary within its Annual Report, in full on the NSX announcements platform at the time of lodging the Annual Report and on the Issuer's website.

## Section 3 – Nominated Adviser Role<sup>5</sup>

---

1. Nominated Advisers play a large role in advising Issuers of their obligations under the NSX listing rules. Many of the Nominated Advisers are also able to assist Issuers with policies and procedures to implement effective corporate governance standards for their businesses.
2. NSX expects Nominated Advisers themselves to be available at all times to advise and guide the directors of the Issuer as to their responsibilities and obligations to ensure compliance by the Issuer with the Listing Rules on an ongoing basis.
3. Nominated Advisers have to maintain standards of conflict of interest with the Issuers that they advise.

## Section 4 – NSX's approach to the application of the Principles

---

1. As recognised by the Governance Institute of Australia<sup>6</sup>

*"Governance encompasses the system by which an organisation is controlled and operates, and the mechanisms by which it, and its people, are held to account. Ethics, risk management, compliance and administration are all elements of governance."* [GIA]

---

<sup>5</sup> For more information please refer to NSX Practice Note 22: Nominated Advisers

<sup>6</sup> <https://www.governanceinstitute.com.au/resources/what-is-governance/>



2. It is these twin principles, of accountability and performance, that NSX is seeking to promote by adopting its principled approach to corporate governance disclosure.

*“Corporate governance involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.” [OECD]<sup>7</sup>*

3. By obligating boards to consider how to achieve compliance with PCG, in the specific circumstances of their corporation, Issuers will be more than just complying with a prescribed list of disclosures, instead boards will be actively promoting their accountability to shareholders and stakeholders a like.
4. NSX considers that given the increasingly complex structures being adopted in Australian financial markets, the Issuers themselves are in the best position to know what policies and procedures are necessary to achieve: transparency in structure and operations, application of appropriate risk management and internal control structures and accountability to shareholders and stakeholders.
5. It is the expectation of NSX that by considering application of robust policies and procedures, that Issuers will be in a position to satisfy their disclosure obligations under the Rules.

## Section 5 – A regulatory perspective

---

1. In order for Issuers to understand NSX’s approach to testing compliance with disclosure obligations under the rule, it is relevant to outline NSX regulatory interests as an Australian Market Licensee.
2. As a market licensee, NSX is obligated to ensure that the market operates in a fair, orderly and transparent manner<sup>8</sup>. Where Issuers comply with the rule, by formulating and disclosing appropriate corporate governance practices and procedures, relevant to PCG, this assists NSX to ensure that the market operates in a fair, orderly and transparent manner.
3. Failure by Issuers to comply with disclosure obligations is treated seriously by the NSX and can result in notification to Australian Securities and Investment Commission (ASIC), fines, censure, suspension or removal from the Official List.
4. From time to time, aspects of good corporate governance principles become so important that they are enshrined in law. For instance, all Australian listed Issuers are required, from 1 July 2019, to have a Whistleblower Policy<sup>9</sup>. A summary of the arrangements that Issuers have in place should be included in their Corporate Governance Statement.
5. Also depending on business size, Issuers in Australia are also required to have a Modern Slavery Policy.
6. Financial Services licencees will also be required to have Anti-Money Laundering/Counter terrorism policies.

---

<sup>7</sup> <https://www.oecd.org/corporate/principles-corporate-governance/>

<sup>8</sup> ASIC Regulatory Guide 172 Financial Markets: Domestic and Overseas

<sup>9</sup> <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing>



## Section 6 – Approaches to Corporate Governance Disclosure

---

1. The Issuer must consider what good corporate governance means in its own specific circumstances. This involves the board and management considering what policies and procedures must be adopted, in the specific circumstances of the Issuer, to ensure: the adoption of transparent corporate structures and operations, the application of a robust risk management and internal control structure and board accountability to shareholders and stakeholders.
2. **Annexure 1** outlines recommended policies and procedures and related issues which may assist Issuers to develop and review relevant policies and procedures for their organisation. Once these policies and procedures are developed and disclosed, Issuers should have systems in place to regularly review these documents to ensure ongoing compliance with their obligations under the Rules.
3. NSX also advises that Issuers may find assistance in developing appropriate policies and procedures by referring to relevant and equivalent standards that are acceptable to NSX for disclosure.
4. Depending on the Issuer and the Corporate Governance standards that the Issuer wishes to adopt, NSX will generally accept equivalent standards based on:
  - a) G20/OECD Principles;
  - b) NSX Recognised Exchanges<sup>10</sup> Corporate Governance Principles;
  - c) Australian Institute of Company Directors; or
  - d) Governance Institute of Australia.

Along with relevant advice from the Issuer's Nominated Adviser, the above groups provide substantial reference material for the development and application of Corporate Governance Standards.

## Section 7 – Further Information

---

1. Further information can be obtained by contacting:

Market Operations

National Stock Exchange of Australia Limited

Email: [trading@nsx.com.au](mailto:trading@nsx.com.au)

---

<sup>10</sup> see Appendix 3 NSX Business Rules for the list of NSX Recognised Exchanges



# Annexure 1: Suggested Corporate Governance Disclosure

---

This annexure is intended to provide a brief outline of the content and scope of the various disclosures, policies and procedures that Issuers may need to disclose in the directors' report on corporate governance practices. Disclosure can also be made in a separate Corporate Governance Statement document as long as there is a valid reference to the document within the Annual Report (and brief summary) and the full Corporate Governance Statement is lodged at the same time as the Annual Report is lodged.

## **A. Policies and procedures adopted to ensure that the Issuer acts according to law, including satisfying its reporting obligations under the Act and Listing Rules**

### **1. Code of conduct and ethical behaviour**

Such a document would outline the high standard of corporate and individual behaviour expected of the Issuer, the board, management and employees and may deal with such issues as:

- (i) Responsibilities to shareholders;
- (ii) Issuer's obligation to act with care and due diligence;
- (iii) Policy on identifying and dealing with conflicts of interest;
- (iv) Policy on confidentiality;
- (v) Policy on fair dealing in company shares;
- (vi) Policy on use of company assets;
- (vii) Policy on shareholder and stakeholder privacy';
- (viii) Policy on monitoring and reporting on the code;
- (ix) Policy on diversity and inclusion;
- (x) Anti-money laundering and Counter Terrorism policy;
- (xi) Policy on Whistleblowing; and
- (xii) Policy on anti-slavery (if applicable).

### **2. Charter of Audit and Compliance/Risk Committee**

Such a document would outline the role of the committee in ensuring that the Issuer has the appropriate structures in place to ensure ongoing compliance with listing rules and other regulatory requirements.

- (i) Responsibilities of committee;
- (ii) Members of the committee;
- (iii) Timing and content of reporting responsibilities;
- (iv) Appointment to the committee;
- (v) Interaction with external auditors; and
- (vi) Independence of the committee.

## **B. Policies and procedures adopted to ensure that the Issuer's board acts with due care and diligence and in the interests of shareholders.**

### **1. Board charter**

Such a document would outline the duties, powers and structure of the board of directors. The charter may cover the following issues:

- (i) Board responsibilities;





- (ii) Term of membership of the board;
- (iii) The role of chairman;
- (iv) Separation of functions between Chairman and Chief Executive Officer;
- (v) Restriction on activities of Chief Executive Officer and Chairman;
- (vi) The role of the Company Secretary;
- (vii) Scope of activities of the Board; and
- (viii) Reporting activities of the board.

## **2. Procedure for the appointment of directors**

Procedure should outline the process for the recruitment and appointment of directors to the board. Issues it may cover include:

- (i) Receipt of relevant documentation from appointee;
- (ii) ASIC database checks;
- (iii) Application to NSW police freedom of information unit for police check;
- (iv) Approval by NSX Board; and
- (v) Letter of notice sent to ASIC concerning appointment.

## **3. Procedure for dealing in company securities**

Procedure should outline approach for ensuring that directors, management or employees do not unlawfully deal in company securities.

- (i) Responsibilities of directors, management or employees not to engage in insider trading;
- (ii) Implications for non-compliance with procedure;
- (iii) Nature of legal obligations;
- (iv) Prohibitions under the Corporations Act;
- (v) When dealing in company shares is or is not permitted; and
- (vi) Procedures for dealing in company shares.

## **4. Procedures for the provision of services by directors and/or related parties to the company**

Procedures should outline the requirement that where director-related parties enter into commercial arrangements with the company, they do so on commercial terms on an arm's length basis. Procedure document may include reference to:

- (i) Policy of conducting business in a manner accountable to shareholders;
- (ii) Requirement for all paid services provided by director-related Issuers to be approved by the board; and
- (iii) All transactions involving director related Issuers must be entered into on arm's length terms.

## **C. Policies and procedures adopted to adequately identify and deal with conflicts of interest at board, management and employee levels.**

### **1. Policy on conflicts of interests**

This document should outline the Issuer's approach to identifying and dealing with conflicts of interest at the board, management and employee levels. Issues covered may include:

- (i) Issuer's definition of what is meant by conflicts of interests;
- (ii) Examples of practical steps to be taken to identify and avoid potential conflicts of interests;
- (iii) Board, management and Employee responsibilities for avoiding conflicts of interest; and
- (iv) Procedures for identifying and reporting conflicts of interests.



## **2. Policy on the maintenance of a conflicts of interest register.**

This document should outline the approach adopted by the Issuer for maintaining a record of any relevant board, management of employee level conflicts of interest. Topics covered may include:

- (i) Procedures for the declaration by directors of their personal interests; and
- (ii) Procedures for the updating and recording of these interests.

## **D. Policies and procedures adopted to protect shareholder interests, including: access to information, voting rights, share of profits, equitable treatment.**

### **1. Communication policy with shareholders**

This policy outlines the Issuer's policy with respect to informing shareholders of material matters which affect their interests, issues covered in the policy may include:

- (i) Issuer's commitment to keeping shareholders informed;
- (ii) Timing and content of disclosures;
- (iii) Use of internet and or other medium to keep shareholders informed;
- (iv) Process for informing shareholders of meetings; and
- (v) Policy on protecting privacy of shareholders.

### **2. Policy on dealing with risk**

This policy should outline the board's strategy with dealing with the various types of risk faced by the organization. The policy may include reference to the following issues:

- (i) Identify the various categories of risk faced by the organisation, financial, business, asset, legal, political, competitive, external, internal etc.; and
- (ii) Developing systems and procedures to ensure that the Issuer is able to respond effectively to threats from these key risk areas.

## **E. Policies and procedures adopted to protect the interests of stakeholders including: employees, creditors, and the wider community.**

### **1. Remuneration policy**

This policy should outline the board's approach to remuneration of employee's topics covered may include:

- (i) Level of remuneration;
- (ii) Salary packaging;
- (iii) Use of options or share purchase plans; and
- (iv) Performance component of salary package.

### **2. See policy on 'Code of Conduct and Ethical Behaviour' as noted above**



## Annexure 2: Timetable of Disclosures

This timetable outlines maximum lodgement dates for June 30 balance date Issuers. Issuers with different year ends should modify the dates accordingly. Also note that dates are subject to public holidays and weekends in which cases lodgement should be the no later than the business day before the final lodgement date. Refer to Practice Note 9: Periodic Disclosure for more information on various disclosures required under the NSX Listing Rules.

Month	Reporting Requirement	Market Event
January	Quarterly Cashflow and Activities Reports	31 January quarterly cashflow and activities reports due.
February		
March	Half Yearly Report (Audited) Preliminary Final Reports	Half Yearly reports due for 30 June Issuers, usually 16 March (75 days) Preliminary statements due for 31 December balance date Issuers, usually 16th March (75 days)
April	Quarterly Cash Flow and Activities Reports	30 April quarterly cashflow and activities reports due.
May	Audit Management Review	Review of upcoming audit with Auditors for 30 June Issuers
June		End of Financial Year for 30 June balance Date Issuers
July	Quarterly Cash Flow and Activities Reports	31 July Quarterly Cash Flow and Activities Reports due.
August		
September	Lodge Annual Financial Report with ASIC and NSX Lodge Annual Regulatory Report with ASIC	13 September, Preliminary Appendix 3 Statements due for 30 June Issuers 13 September, Half yearly statutory and appendix 3 reports due for 31 December balance date Issuers 30 September Statutory Directors' Financial Report due for 30 June balance date Issuers
October	Post out Annual report to shareholders plus Notice of Meeting, report to NSX.	31 October, last date for Notice of meeting and annual report to be sent to shareholders for 30 June balance date Issuers Any reports not previously lodged with NSX must be lodged.
November	Last month to hold Annual General Meeting (5 months from balance date)	30 November – last date for AGM to be held for 30 June balance date Issuers Lodge with NSX results of meeting including information required by section 251AA
December		End of Financial year for 31 December balance date Issuers