

Australian Securities and Investments Commission

PGPA Act and Rule Independent Review – draft report response

Thank you for the opportunity to comment on the draft report.

ASIC generally supports the recommendations in the draft report and would offer the following comments and suggested amendments around risk management and audit committees.

Managing and engaging with risk

As an entity with complex risks - managing both operational and regulatory risks - we would support recommendation 13 but would question the need for the separate risk committee/s to be independently chaired.

ASIC currently has two separate risk committees (one focussing on internal operational risks and the other on regulatory risks in the environment that ASIC regulates). Both committees are separate from the audit committee (which has a majority of independent members) and their membership is entirely comprised of management. This structure continues to serve ASIC well and we would observe that being comprised of senior executives this has:

- assisted in embedding a high level of risk ownership and awareness by management across ASIC;
- enabled the risk committees to influence staff behaviour directly and take more timely action, including diversion of resources; and
- provided a deeper understanding of the risks and nuances of the entity.

ASIC has established a number of external panels and committees comprised of members drawn from various industry sectors, from professional associations and from entities of various sizes and locations. ASIC uses these panels to gain a deeper understanding of developments and systemic and emerging risks in the various sectors that we regulate.

In this context we would not see an imperative for separate risk committees to be independently chaired.

Audit Committees

In respect of recommendation 15 we would consider that independence has been too narrowly defined to exclude officials or employees of a Commonwealth entity.

Whilst we support the suggestion that audit committees should be strengthened by requiring all audit committee members to be independent and that senior management be actively engaged with audit committees, we also see considerable benefit and value from the opportunity for senior executives of Commonwealth entities with similar mandates and responsibilities being audit committee members. For example, we would see considerable benefit from senior executives in peer regulatory agencies being members of their respective entities' audit committees.

To define independence so as to exclude officials or employees of a Commonwealth entity is to deny audit committees access to a valuable source of Government experience, knowledge and technical skills.

We propose that the definition of independence in relation to non-corporate Commonwealth audit committees be amended to enable audit committees to include officials from other Commonwealth entities as members. The audit committee could still maintain a majority of non-Commonwealth entity members and access the knowledge and experience of Commonwealth officials or employees.

Anecdotally, it has been suggested that narrowly defining independence to exclude officials or

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employees of a Commonwealth entity may place greater demands on what is perceived to be a relatively small pool of qualified potential independent audit committee members. If the recommendations in the draft report were seeking to address such an issue we would suggest that a threshold could be placed on the number of non-corporate Commonwealth audit committees to which any one individual could be appointed.

Finally, we note several references throughout the draft report to the ASX Corporate Governance Principles and Recommendations. Whilst we agree that the practices of Commonwealth entities should be consistent with the standards expected of ASX listed companies, where appropriate, we would note that these Principles are not mandatory and that perhaps a better approach might be to adopt an 'if not, why not' approach to their application.

We would be happy to expand on any of the above points should that be required.

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