



XSTATE RESOURCES LIMITED

ABN 96 009 217 154

CORPORATE GOVERNANCE

POLICIES

INDEX

Board Charter	3
Code of Conduct	11
Business Risk Management and Internal Controls	12
Continuous Disclosure	14
Trading in the Company's Securities	22

BOARD CHARTER

Introduction

The purpose of the Board Charter is to set out the role, composition and responsibilities of the Board of the Company within the corporation governance framework and to ensure:

- (a) that the roles and responsibilities of the Board are clear and understood by all relevant stakeholders;
- (b) the operation of the Board and the relationship between the Board and management is clearly understood; and
- (c) all Directors have a clear understanding of the manner in which the Board will conduct itself and the Company's expectations of them as Directors.

Role of the Board

The Board is responsible for the overall corporate governance of the Company. The Board recognises the need for the highest standards of behaviour and accountability. The Board's responsibilities encompass the following:

- establishing the long term goals of the Company and strategic plans to achieve these goals;
- monitoring the achievement of these goals;
- reviewing management accounts and reports to monitor the progress of the Company;
- reviewing and adopting budgets for the financial performance of the Company and monitoring the results on a regular basis to assess performance;
- reviewing and approving annual and half-year financial reports;
- ensuring that effective risk management and internal compliance and control systems are in place to protect the Company's assets, together with appropriate monitoring of these systems;
- nominating and monitoring the external auditor;
- setting specific limits of authority for the executive management to commit to new expenditure and enter into new contracts without prior Board approval;
- approving all significant business transactions;
- monitoring compliance with regulatory requirements;
- appointing and monitoring senior management;
- all remuneration, performance and succession issues relating to the Board and senior management; and
- ensuring that the shareholders are informed of all major developments affecting the Company's state of affairs.

The Board has delegated the authority for the operations and administration of the Company to the Managing Director.

Specific Powers of the Board

In addition to matters expressly required by law to be approved by the Board, powers specifically reserved for the Board are as follows:

- (a) appointing and removing the Chief Executive Officer and determining his or her terms and conditions of employment (including remuneration);

- (b) reviewing and ratifying the systems of risk management and internal control and compliance, codes of conduct and legal compliance, financial and other reporting and major capital expenditure, capital management, and acquisitions and divestitures;
- (c) any matters in excess of discretions that, from time to time, it may have delegated to the Chief Executive Officer and senior management; and
- (d) approving each of the following, on the recommendation of the Chief Executive Officer where appropriate:
 - the strategic plan, at least annually;
 - the budget presented to the Board;
 - the appointment and, where appropriate, the removal of the Chief Financial Officer, Company Secretary and other senior executives reporting to the Chief Executive Officer;
 - the acquisition, establishment, disposal or cessation of any significant business of the Company;
 - the issue of any shares, options, equity instruments or other securities in the Company;
 - any public statements which reflect significant issues of the Company policy or strategy; and
 - any changes to the discretions delegated from the Board.

Board Membership

The Company's Constitution provides that it shall at all times have at least three Directors and there is no maximum number of Directors. There is no requirement for any Director's shareholding qualification.

The Board believes that it has an appropriate level of independence to meet the needs of all stakeholders. It is the Company's intention to appoint additional independent Directors to the Board at the time when the Company is sufficiently large and complex enough to warrant the needs of their services. The Board will review this requirement from time to time.

The composition of the Board is subject to review in the following ways:

- The Company's Constitution provides that at every Annual General Meeting, one third of the Directors (excluding the Managing Director) are to retire from office. Each retiring Director under the Constitution is eligible for re-election.
- The full Board considers its composition on a regular basis to ensure that it has available an appropriate mix of skills and experience to ensure the interests of shareholders are served. The performance of the Board as a whole and that of individual Directors is subject to continuous assessment by the Chairperson.

Membership of the Board shall be disclosed in the annual report.

Independence

An independent Director is a non-executive Director (ie. is not a member of management) and:

- (a) is not a substantial shareholder of the Company or an officer of, or otherwise associated directly with, a substantial shareholder of the Company;
- (b) within the last three years has not been employed in an executive capacity by the Company or another group member, or been a Director of the Company within three years after ceasing to hold any such employment;

- (c) within the last three years has not been a principal of a material professional adviser or a material consultant to the Company or another group member, or an employee materially associated with the service provided whereby:
 - (1) a “material professional adviser” does not include a professional adviser providing less than 25% of professional advisory services of a same or similar nature to the Company and its group members; and
 - (2) the guidelines contained in Australian Accounting Standard AA5 “Materiality” are followed in determining whether a supplier or customer is a “material supplier or customer”;
- (d) is not a material supplier or customer of the Company or other group member, or an officer of or otherwise associated directly or indirectly with a material supplier or customer;
- (e) has no material contractual relationship with the Company or another group member other than as a Director of the Company;
- (f) has not served on the Board for a period which could, or could reasonably be perceived to, materially interfere with the Director’s ability to act in the best interests of the Company; and
- (g) is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the Director’s ability to act in the best interests of the Company.

Meetings

The Board of Directors meet as often as required but at least twice a year. Board and committee papers are provided to Directors, where possible, one week prior to the relevant meeting.

Minutes of proceedings and resolutions of Board meetings are kept by the Company Secretary.

Board Committees

The Board may from time to time establish committees to assist it in carrying out its responsibilities, and adopt Charters setting out matters relevant to the composition, responsibilities and administration of such committees, and other matters that the Board may consider appropriate.

Due to the size and lack of complexity of the business, the Company has not formally constituted any further committees. The Board as a whole is able to address governance aspects of the Company’s activities and ensure that it adheres to appropriate ethical standards. The Board will follow the Company’s procedures and policies including the remuneration and nomination procedures as outlined below. The need for establishing additional committees shall be reviewed by the Board from time to time.

Remuneration and Nomination Procedures

The Company is not of a sufficient size and complexity to establish a remuneration or nomination committee. The Board as a whole is able to address these aspects of the Company’s activities and will follow the procedures detailed below when determining the remuneration and nomination of Directors.

In determining the remuneration and nomination of Directors, the Board has a responsibility to its shareholders to ensure that:

- (a) the Board comprises individuals best able to discharge the responsibilities of Directors having regard to the law and the highest standards of governance; and
- (b) the Company has remuneration policies and practices which enable it to attract and retain Directors and executives who will best contribute towards achieving positive outcomes for shareholders.

In determining the composition of the Board, the Directors are required to:

- (a) assess the skills required to discharge competently the Board's duties having regard to the Company's performance, financial position and strategic direction;
- (b) take into account as and when it considers appropriate, such factors as independence, complexity and size of operations and assess the skills represented on the Board by the non-executive Directors and determine whether those skills meet the skills identified as required;
- (c) if required implement a process to identify suitable candidates for appointment as Directors; and
- (d) review the process for identifying suitable candidates.

A majority of Directors must agree to the appointment of a new Director to the Board.

In determining the remuneration of the chief executive officer and any executive Directors, the Directors are required to:

- (a) determine executive remuneration policy at least annually;
- (b) consider the remuneration and other conditions of service of the chief executive officer and executive Directors, if any;
- (c) review the performance of the executive management team;
- (d) make decisions on the remuneration of non-executive Directors within the aggregate approved by shareholders in general meeting from time to time;
- (e) at their discretion, consult appropriately qualified consultants for advice on remuneration and other conditions of service;
- (f) fairly and responsibly reward executives, having regard to the performance of the Company, the performance of the executive and the general pay environment;
- (g) require that remuneration of non-executive Directors be determined by all the members of the Board; and
- (h) ensure compliance with the provisions of the ASX Listing Rules and Corporations Act 2001.

A majority of non-executive Directors must approve the following prior to implementation:

- (a) changes to the remuneration or contract terms of executive Directors;
- (b) the design of new, or amendments to current, equity plans or executive cash-based incentive plans; and
- (c) termination payments to executive Directors.

Chairperson

The Directors are to elect one of their number to the office of Chairperson and may determine the period for which that Director is to be Chairperson. The role of the Chairperson will normally include:

- ensuring the Board obtain consensus on various matters;
- establishing the Board agenda;
- presiding over Board minutes and directing Board discussions to effectively and efficiently use the time available to address the critical issues facing the entity;
- ensuring that the Board minutes properly reflect Board decisions;
- making certain that the Board has necessary information to undertake effective decision making;
- developing an ongoing relationship with the CEO; and
- presiding over the annual process of Board and Director evaluation.

The Chairperson presides over meetings of the Board and general meetings of shareholders and the Chairperson is responsible for leading and managing the Board in the discharge of its duties.

The Chief Executive Officer

The Chief Executive Officer's duties are to:

- devote the whole of his or her time, attention and skill during normal business hours and at other times as reasonably necessary, to the duties of the office;
- be accountable for planning, coordinating and directing the operations of the Company to achieve strategic, financial and operating objectives as agreed with the Board;
- formulate and recommend business and financial strategies and plans to develop the Company's business and to implement these plans to achieve agreed performance targets;
- promote the interests of the Company; and
- faithfully and diligently perform these duties and exercise power.

In fulfilling his or her duties, the Chief Executive Officer:

- reports directly to the Board;
- provides prompt and full information to the Board regarding the conduct of the business of the Company; and
- complies with reasonable directions given by the Board.

The Company Secretary

The Company Secretary is generally responsible for carrying out the administrative and legislative requirements of the Board. In particular the Company Secretary supports the effectiveness of the Board by:

- maintaining strict independence and impartiality in dealing with all matters pertaining to the role;
- ensuring the Board agenda is developed in a timely and effective manner for review and approval by the Chairperson;
- co-ordinating, organising and attending meetings of Board and shareholders;
- drafting and maintaining Board minutes;
- in conjunction with the CEO and other senior management, carrying out instructions of the Board and giving practical effect to the Board's decisions;
- allowing all Directors and officers to have access to advice and services;
- meeting the statutory requirements required by relevant legislation and listing rules; and
- working with the Directors to establish and deliver best governance practice.

The Company Secretary is responsible to the Board, through the Chairperson, on all governance matters.

Duties of Directors

Directors are expected to accept all duties and responsibilities associated with the running of a public company, to act in the best interests of the Company and to carry out their duties and responsibilities with due care and diligence.

Directors are required to take into consideration conflicts when accepting appointments to other Boards. Accordingly, Directors wishing to accept appointment to other Boards must first seek approval from the Board, which will not be unreasonably withheld.

Board Performance

The Board undertakes an annual performance evaluation of itself that:

- compares the performance of the Board with the requirements of its Charter; and
- effects any improvements to the Board Charter deemed necessary or desirable.

The performance evaluation is conducted in such manner as the Board deems appropriate.

Appointment

A letter of appointment together with induction material shall be sent out to all new Directors appointed to the Board. The letter of appointment sets out the key terms and conditions relative to the appointment. The newly appointed Directors are required to be aware of their duties and responsibilities.

Term of Office

Directors newly appointed by the Board will hold office until re-appointment at the next annual general meeting. The new Directors are eligible for election as a Director at this meeting and, if elected, will be subject to retirement by rotation.

At any time during an individual Director's tenure including when he or she becomes subject to re-election, his or her performance as a Director may be reviewed in accordance with processes agreed by the Board from time to time. The Director will be allowed to participate in any review of his or her performance. A recommendation as to the Director's re-appointment may be made in notices of meeting or other material provided to shareholders.

A Director may cease to hold office as Director at any time that he or she resigns by written notice. It is desirable that the Board is given reasonable forewarning of the resignation so that the Company can plan for succession of skills and experience on the Board.

Reporting

Proceedings of all meetings are minuted and signed by the Chairperson or the Chairperson of the meeting. Minutes of all Board meetings are circulated to Directors and approved by the Board at the subsequent meeting.

Independent Professional Advice

The Board has determined that individual Directors may, in appropriate circumstances engage outside advisers at the Company's expense. The engagement of an outside adviser is subject to the prior approval of the Board, which will not be unreasonably withheld.

Compensation Arrangements

The current total aggregate remuneration that can be paid by way of Directors' fees as approved by shareholders is \$200,000. The Constitution provides that the total quantum of Directors' fees can only be increased pursuant to a resolution at a general meeting.

The Board is responsible for reviewing and negotiating the compensation arrangements of senior executives and consultants.

Interested Directors

All Directors must be aware that they occupy a position of trust and confidence and that as a consequence of this, certain fiduciary and statutory duties are owed to the Company. These fiduciary duties exist at general law, but have, to a large extent, become embodied in Sections 180, 181, 182 and 183 of the Corporations Act 2001 (Cth).

The following information is to inform Directors of the procedures which must be undertaken by them when they possess an interest (financial or otherwise) in any proposed transaction being considered or contemplated by the Company. Directors must be aware that a failure to comply with these procedures may not only give rise to personal liability, but may also adversely affect shareholder and public perception of the Company.

At general law, each Director owes the following fiduciary duties to the Company:

- duty to act bona fide in the interests of the Company – this duty is a subjective duty and Directors are obliged to act in a manner that they honestly believe to be in the interests of the Company;
- duty to exercise power for proper purposes – this duty may be breached if the purpose which actually motivates an exercise of power by a Director is improper given the purpose for which the power was conferred; and
- duty to avoid conflicts of interest – a Director is not entitled to enter into transactions in which they would have a personal interest conflicting with or which may possibly conflict with the interests of the Company unless they have the fully informed consent of the Company and its members.

These duties are codified in Sections 180, 181, 182 and 183 of the Corporations Act 2001 (Cth), which provides that:

- directors must exercise the degree of care and diligence that a reasonable person in a like position in a corporation would exercise in the corporation's circumstances;
- directors must exercise their powers and discharge their duties in good faith in the best interest of the company and for a proper purpose;
- directors must not make improper use of their position to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Company; and
- directors must not make improper use of information acquired by virtue of their position as a Director to gain either directly or indirectly, an advantage for themselves or others or cause detriment to the Company.

In light of the above duties, it is apparent that where a Director has a non-disclosed personal interest in a transaction being considered by the Company, this will clearly constitute a breach of that Director's duties to the Company.

In addition to these duties, Section 195 of the Corporations Act 2001 (Cth) provides that where a Director of a public company has a material personal interest in a matter, the Director must not vote on the matter and cannot be present while the matter is being considered by the Board of Directors. However, this restriction will not apply if the Board of Directors passes a resolution that identifies the Director, the nature or extent of his or her interest in the matter and that the Directors voting for the resolution are satisfied that the interest should not disqualify the Director from voting on the matter or being present.

To avoid the possibility of a Director acting in breach of his or her duties, the Company has an established procedure in Clause 14.15 of the Company's Constitution which must be followed where a Director has a material interest in a matter. All Directors should acquaint themselves with this procedure and ensure compliance with its terms.

It should be noted that where the Board is considering giving approval to a Director with a Material Interest, the Director may not cast any vote on that approval, but if present, he or she may be counted in the quorum for the Board meeting considering that approval.

Financial Benefits to Related Parties

Part 2E of the Corporations Act 2001 (Cth) also restricts the ability of the Company to provide financial benefits to related parties. A related party is defined in Section 228 and *includes a Director of the Company or of a body corporate that is a parent entity of the Company, and a spouse, defacto spouse, parent or child of such Director.*

Examples of financial benefits which are prohibited by Part 2E include:

- making a loan, guaranteeing a loan or providing security for a loan;
- forgiving a debt;
- buying, selling or leasing an asset;
- acquiring or supplying services;
- issuing shares or granting options; and
- giving money or property.

However, the following forms of benefits are excluded from this prohibition:

- the provision of “reasonable” remuneration to the related party;
- advances to Directors or spouses up to \$2,000;
- transactions on terms and conditions which are no more favorable to the related party than if they were on arm’s length terms in the same circumstances;
- financial benefits given to members in their capacity as members; and
- financial benefits provided under court order.

If a proposed benefit is prima facie prohibited by the provisions of Part 2E, the Company still may provide the benefit to the related party if:

- a resolution of the Company permits the benefit to be given; and
- the resolution was passed within fifteen months before the benefit is given; and
- certain other procedures and conditions prescribed by the Corporations Act 2001 (Cth) are followed.

It is essential that all Directors be acquainted with the provisions of Part 2E of the Corporations Act 2001 (Cth) to ensure that prohibited financial benefits are not given by the Company to related parties. If a contravention of Part 2E occurs, the related party and any person involved in or concerned with the contravention may be liable.

Disclosure of Director Interests

Directors should ensure that their interests in contracts and transactions with the Company are disclosed in the Directors’ Report produced at the end of each accounting period. The Corporations Act 2001 (Cth) requires this report to contain details of each Director of the Company, including details of each Director’s interests in the shares of the Company and particulars of any interests that a Director has in relation to a contract or proposed contract with the Company as well as the level of remuneration paid to each Director. The report must also set out whether a Director has received or is entitled to receive any benefit as a result of any contracts made by the Company.

CODE OF CONDUCT

The Board recognises the need to observe the highest standards of corporate practice and business conduct. Our code of conduct establishes the minimum standards to be followed by our employees and our contractors in the course of their duties and when representing the Company. The standards are as follows:

Act with Honesty, Integrity and Fairness

- We aim to exceed our customers' expectations.
- We strive to provide a prompt, courteous and efficient service to our customers and to respond to our customers' needs.
- We always act ethically in our dealings with our customers and others.
- In all our dealings we follow an approach which is honest, fair and maintains our integrity.
- We act in a manner to promote a workplace free from discrimination.
- We do not act in a manner likely to bring discredit upon the Company.

Act in Accordance with the Law

- We abide by all laws that apply to our business.
- We immediately report to our supervisor (or their General Manager or Executive Manager) any breach of the law that occurs in the course of conducting the Company's business.
- We immediately report to our supervisor (or their General Manager or Executive Manager) any breach of the law whenever it occurs which may impact upon our ability as employees to carry out our duties.

Use the Company's Resources and Property Appropriately

- We maintain a safe working environment and in carrying out our duties we do so in a manner to ensure the safety of others and ourselves.
- We maintain the confidentiality of the Company's and our customers' information unless required to make disclosure by law.
- We use the Company's property and resources only for purposes directly relating to its business.
- We avoid situations where our private interests or associations could conflict or could appear to conflict with our duties as employees.
- We do not use the Company's funds to provide unreasonable benefits (such as unreasonable gifts or entertainment) for ourselves or others.
- We keep proprietary information obtained in the course of our duties confidential.

BUSINESS RISK MANAGEMENT AND INTERNAL CONTROLS

Responsibilities in Respect of Accounts

The Directors are required by Australian Company Law to prepare financial statements for each financial period which give a true and fair view of the state of affairs of the group as at the end of the financial period and of the profit or loss for that period.

The Directors are responsible for maintaining proper accounting records in accordance with the Corporations Act 2001 (Cth), and have general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the Company, and prevent and detect fraud and other irregularities. The following policies are designed to ensure that Directors maintain appropriate financial controls and accounting records.

Internal Control

The Company should have in place an internal financial control system with a view to provide reasonable assurance regarding:

- the safeguarding of assets against unauthorised use or disposition; and
- the maintenance of proper accounting records and the reliability of financial information used within the business or for publication.

Control Environment

Whilst the Board retains ultimate control and direction over the Company's major strategic, financial and organisational issues, it is usual to delegate appropriate authorities to executive Directors and to put in place an appropriate organisational structure with clearly defined divisions of responsibility and reporting relationships.

The Company has adopted a formal code of conduct to ensure that employees pursue the highest standards of integrity and ethical values.

Identification and Evaluation of Risk Control Objectives

The Company regularly evaluates and monitors its business risks. Depending upon the activities of the Company, the business risks will vary and may include such matters as:

- technical development;
- commodity price volatility;
- environmental;
- community relations;
- health and safety;
- political; and
- financial.

The Company may establish various committees of the Board and Executive to receive and consider reports on these matters from time to time.

Information and Communication

Detailed short and long term operating, capital expenditure and cash flow budgets will be prepared and be subject to review by the Board and by any special committees formed for that purpose.

The Board and Senior Executives will be provided on a regular basis with actual results compared with budgets, prior year figures and revised forecasts to the end of the year.

Control Procedures

The Company should establish written procedures to safeguard the Company's assets and to ensure that financial transactions are properly recorded. Accounting policies and practices are disseminated throughout the Company to any segments of its business. Any significant business unit should document the control procedures which are specific to its operation.

Internal Management Controls

The Company's main assets are located in Australia. The Managing Director under the supervision of the Board exercises control over the operations.

The Board also monitors the performance of outside consultants engaged from time to time to complete specific projects and tasks.

Identifying Significant Business Risks

The Board regularly monitors the operational and financial performance of the Company's activities. It monitors and receives advice on areas of operation and financial risk and considers strategies for appropriate risk management. All operational and financial strategies adopted are aimed at improving the value of the Company's shares.

CONTINUOUS DISCLOSURE

The Company's Obligation of Disclosure

As an entity listed on the Australian Stock Exchange, the Company must comply with certain continuous disclosure obligations imposed by the Corporations Act 2001 (Cth) ("Corporations Act") and the ASX Listing Rules. Chapter 3 of the ASX Listing Rules requires that the Company provide the ASX with immediate notice of certain material information.

The general disclosure rule imposed on the Company is contained in clause 3.1 of the ASX Listing Rules:

- 3.1 Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.
- 3.1A This rule does not apply to particular information while all of the following are satisfied.
- 3.1A.1 A reasonable person would not expect the information to be disclosed.
- 3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential.
- 3.1A.3 One or more of the following applies:
- It would be a breach of a law to disclose the information.
 - The information concerns an incomplete proposal or negotiation.
 - The information comprises matters of supposition or is insufficiently definite to warrant disclosure.
 - The information is generated for the internal management purposes of the entity.
 - The information is a trade secret.

The provisions of clause 3.1 are reinforced by Chapter 6CA of the Corporations Act. In particular, section 674(2) provides that:

If:

- (a) (provisions of the listing rules of a listing market in relation to an entity require the entity to notify the market operator of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market);
- (b) the entity has information that those provisions require the entity to notify to the market operator; and
- (c) that information:
 - (i) is not generally available; and
 - (ii) is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of securities of the entity;

the entity must notify the market operator of that information in accordance with those provisions.

It is therefore essential that Directors acquaint themselves not only with their personal obligations of disclosure, but also the disclosure obligations imposed on the Company.

When is the Company aware of information?

The Listing Rules provide that the Company is aware of information if a Director or executive officer has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a Director or executive officer of the Company.

An “executive officer” of the Company means a person who is concerned in, or takes part in, management of the Company. A person can be an executive officer regardless of his or her designation, and irrespective of whether or not the person is a Director.

What information has a material effect on price?

The effect of information on the price or value of the Company’s securities is to be judged by the expectations of a “reasonable person”. A reasonable person would expect information to have a material effect on the price or value of the Company’s securities if the information would, or would be likely to, influence investors who commonly invest in the securities in deciding whether or not to deal in the Company’s securities.

Exemption from disclosure

It must be noted that the above exemption from the requirement to make disclosure in Listing Rule 3.1A **only operates while all three elements are satisfied**. If any of the requirements cease to be satisfied, the entity must disclose the information immediately.

Each of the three elements that must be established for information to be exempt from disclosure are discussed in more detail as follows:

A reasonable person would not expect the information to be disclosed (Listing Rule 3.1A.1)

A reasonable person would not expect information to be disclosed if the result would be to cause unreasonable prejudice to the entity. Similarly, a reasonable person would not expect disclosures of an inordinate amount of detail.

Confidentiality (Listing Rule 3.1A.2)

Listing Rule 3.1A.2 requires that the information that is not to be disclosed be confidential. “Confidential” in this context has the sense of secret, and generally implies control by the Company of the use that can be made of the information.

The mere fact that a confidentiality agreement has been entered into will not automatically satisfy this element. Confidential means that no one in possession of the information is entitled to trade in the Company’s securities. Unusual activity in the Company’s securities may suggest that the information is no longer confidential.

The ASX accepts that confidentiality is not breached if information is given to the Company’s advisers, a person with whom the Company is negotiating, or other regulatory authorities, if it is given on a basis which restricts its use to the stated purpose.

One of the Elements in Listing Rule 3.1A.3

One of the five elements in Listing Rule 3.1A.3 must also be established. These elements are:

- It would be a breach of the law to disclose the information;
- The information concerns an incomplete proposal or negotiation;
- The information comprises matters of supposition, or is insufficiently definite to warrant disclosure;

- The information is generated for internal management purposes of the Company; or
- The information is a trade secret.

Applying the exemption in practice

The exemption from disclosure would apply, for example, to information which is confidential, which a reasonable person would not expect to be disclosed, and which falls within any one of the following descriptions:

- Proposed acquisitions or disposals or other commercial arrangements in the process of negotiation;
- Internal budgets and forecasts;
- Management accounts;
- Business plans;
- Internal market intelligence;
- Information prepared for lenders;
- Dispute settlement negotiations.

It is possible to foresee, however, matters which are commercially sensitive, the disclosure of which would be **detrimental** to the Company, which may be required to be disclosed because they do not fall within the exemptions. For example:

- A serious claim against the Company prior to the commencement of proceedings;
- An investigation or allegation by a regulatory body (that is not being disputed by the Company);
- Information about a “complete” proposal;
- Terms of settlement of a dispute which the parties wish to keep confidential, and which is not supported by a Court order of confidentiality;
- Material terms of a trading agreement with a major supplier.

Whether these sorts of matters will fall within any of the exemptions will depend on, and require, an assessment of particular facts.

The Listing Rules and Guidance Notes issued by the ASX provide a number of examples of matters that may require disclosure. These examples are set out in Appendix 2.

Ramifications of Failing to Comply

The ramifications of failing to comply with the continuous disclosure obligations under Listing Rule 3.1 are extremely serious, and may result in the following actions being taken:

Removal from the ASX

The ASX may at any time remove an entity from the Official List of the Exchange if the entity breaks a Listing Rule.

Criminal Liability

Under the Corporations Law, a failure to make a disclosure under Listing Rule 3.1, intentionally or recklessly, amounts to a criminal offence, and may result in a fine of \$100,000 for a corporation.

In addition, individuals who are “involved” in the contravention (who would include officers or advisers who aid, abet, counsel, procure or are knowingly concerned in the contravention) are also liable. The maximum penalty for individuals is \$20,000, or imprisonment for five years, or both.

A negligent failure to make a disclosure under Listing Rule 3.1 is a contravention of the Corporations Law, but will not amount to a criminal offence.

Civil Liability

Civil liability arises if the failure to disclose is intentional, reckless or negligent. A person who suffers loss or damage as a result of such failure may recover that loss or damage from the Company, or against “any person involved in the contravention”. This could include the Directors or executive officers of the Company.

ASX Policy

The ASX has issued a Guidance Note in relation to Listing Rule 3.1. The ASX states that the Guidance Note is only a guide as to ASX practice, and that entities should contact the ASX to discuss their particular circumstances and the application of the Listing Rules. Set out below are some of the highlights from the Guidance Note.

Prime Importance

The ASX states that timely disclosure of relevant information is of prime importance to the operation of an efficient market. The fundamental principle under which the Listing Rules operate is that “*timely disclosure must be made of information in which security holders, investors and ASX have a legitimate interest*”.

Continuous Disclosure Practice

The Listing Rules make it clear that all Listing Rules (including Listing Rule 3.1) must be complied with in the “spirit” of continuous disclosure. The ASX states that the Listing Rules are not intended to be interpreted in a legalistic or restrictive manner.

Market Speculation

The ASX notes that from time to time it may be necessary to respond to speculation in order for the market to remain properly informed.

The ASX states that it does not expect companies to respond to all comments made in the media, or to respond to all market speculation. However, when the comment or speculation becomes reasonably specific, or the market moves in a way that appears to be referable to the comment or speculation, the Company should make a statement in response, to ensure the market remains properly informed.

It is ASX policy that whatever the information, and however much it might otherwise have been reasonable not to disclose it, the information should be released to the whole market once it becomes known to any part of the market.

Disclosure of Information to Brokers and Press

Listing Rule 15.7 has the effect that the Company must not release information which is for release to the market to any person (including the media, even on an embargoed basis) until it has given the information to the ASX, and has received an acknowledgement that the ASX has released it to the market.

With respect to analysts, the ASX states that a company must only disclose public information in answering analysts' questions, or reviewing analysts' draft reports. The ASX states that it is inappropriate for a question to be answered, or a report corrected, if doing so involves providing material information that is not public. The ASX states that when analysts visit the company, care should be taken to ensure that they do not obtain material information that is not public.

Internal Disclosure

Employees will have access to information that is confidential. The employees with such access should be made aware of its confidential nature. The ASX notes that companies should ensure that confidential information does not find its way into "in house" publications.

Analyst and Institutional Briefings

In November 1999 ASIC issued its draft "Heard it on the Grapevine..." Guidance Paper dealing with the selective disclosure of information to institutional investors and analysts.

This Guidance Paper addresses ASIC's concern that "ordinary" shareholders have a perception that significant information is disclosed by listed companies to analysts and institutions such that they can profit by trading on that information at the expense of the "ordinary" shareholders. ASIC is concerned that this perception could cause "ordinary" shareholders to lose trust in the fairness of the market place.

In this regard, ASIC notes that documents lodged with the ASX are often supplemented with more comprehensive background information provided to analysts and institutions at private briefings.

ASIC specifically identifies the following situations at which there is a risk that selective disclosure may occur:

- Analyst briefings, roadshows and presentations;
- Individual analyst briefings;
- Ad hoc communications with analysts and institutions;
- Reviewing draft analyst reports; and
- Informal social events.

ASIC states that it wishes to see companies exploring ways of improving investor access, both to:

- their ASX announcements; and
- all significant information provided at private briefings to analysts or institutions (regardless of whether it is viewed as price sensitive).

To this end, ASIC suggests:

- Information disclosed to the ASX be added to the releasing company's website (following ASX acknowledgement of receipt and release to the market);
- Non-material information and supplementary material made available to institutions and analysts to be made available to shareholders and the wider investment community on the disclosing company's website.

ASIC notes that some companies are giving investors access via the internet to live broadcasts of analyst briefings and are posting transcripts of briefings (including questions and answers) on their web sites. ASIC states that it encourages other companies to follow these practices. ASIC in this Paper suggests a number of procedures to ensure that:

- Price sensitive material is disclosed to the ASX;
- Briefings do not disclose price sensitive material that has not been released; and
- Information disclosed at private briefings is captured for disclosure to “ordinary investors”,

such that there is equal access to information for all investors. Certain of these ASIC suggestions are incorporated in the Disclosure Programme set out in item 9 below.

ASIC’s focus is on giving investors access to all significant information disclosed to analysts or institutions that is not already publicly available, regardless of whether it is considered price sensitive. ASIC considers it is good practice to provide shareholders with access to all significant background information that is provided to analysts and institutions.

Information Disclosure Programme Procedures

As will be apparent from the above, it is essential for the Company to design a disclosure system to ensure:

- A breach of Listing Rule 3.1 does not occur; and
- That information is made available to all investors equally.

The Reporting Group

Each of the following personnel (the “Reporting Group”) will need to participate in the “continuous disclosure” system, because information in their possession will need to be considered in order to comply with the continuous disclosure obligation:

- Directors; and
- Company Secretary.

Overseeing and Co-ordinating Disclosure

The Managing Director and Company Secretary will be responsible for:

- ensuring the Company complies with its continuous disclosure obligations (ie. market sensitive material);
- overseeing and co-ordinating disclosure of information to the ASX; and
- reviewing information to be provided to analysts, brokers, the media and the public, in order to be able to ensure any market sensitive material has been released to the ASX.

Information collecting procedures to ensure market sensitive information is identified

The responsibilities of each member of the Reporting Group are:

- To ensure all notifiable (market sensitive) information is kept confidential within the Reporting Group;
- To collect and forward to the Company Secretary all information which is, or may be required to be disclosed, and consult with him or her if in doubt.
- To make senior personnel within his or her area of responsibility aware of the Company’s disclosure obligations to ensure that all relevant information is provided to him or her.

Releasing information to the ASX

The system for releasing information to the ASX for the Company is as follows:

- (i) When any of the Reporting Group becomes aware of information which they believe may need to be disclosed on the basis of the principles described in this document, they should immediately contact and give full details to the Company Secretary.
- (ii) The Company Secretary will take the following steps in relation to information forwarded to him or her:
 - Assess whether disclosure is required;
 - Consult the Managing Director and other advisers (including the ASX) as necessary;
 - Prepare a market release for provisions to the ASX; and
 - Forward the release to the ASX.
- (iii) Prior to each Board Meeting, the Company Secretary should contact the executive members of the Reporting Group to confirm that there is no material requiring disclosure.
- (iv) For each set of Board Papers, there should be an agenda item entitled “Continuous Disclosure”. In this item, the Company Secretary should either:
 - Confirm that there was no material brought to his or her attention requiring disclosure for the preceding period; or
 - Outline material which has been disclosed.

Company Spokespersons

In order to maintain control over disclosures, the following persons only will be authorised to speak on the Company’s behalf to analysts, brokers and institutional investors, and to respond generally to shareholder queries:

- Chairperson;
- Managing Director; and
- Company Secretary.

In order to safeguard against inadvertent disclosure of non-public information to brokers, investors, analysts and institutions prior to it being disclosed to the ASX, contact must be made with the Company Secretary prior to making contact with these persons in order that he or she may provide a briefing of what has been disclosed by the Company to the ASX.

Authorising Disclosures in Advance

Again, in order to avoid an inadvertent breach of the continuous disclosure obligations, materials to be presented and issues to be discussed at external presentation must be discussed with the Company Secretary prior to presentation in order that he or she may confirm no non-public material information is being disclosed.

Handling Rumours, Leaks and Inadvertent Disclosures

It should be noted that any unauthorised leak of information may place the Company in breach of the Listing Rules and could expose persons to allegations of insider trading.

If external contact is made seeking clarification of a rumour in the market place, the enquiry should be referred to either the Chairperson, the Managing Director, or the Company Secretary. The recommended response to such query is that “the Company does not respond to market rumours”. Consideration will then be given by the Company Secretary as to whether a public announcement is required.

The Reporting Group should notify the Company Secretary of any unauthorised disclosure of information (even if regarded as non-price sensitive). Consideration will then be given to the need to make an ASX disclosure.

Reviewing Discussions

In order to ensure no price sensitive material has been inadvertently disclosed, the Company Secretary should be kept apprised of the contents of any substantive contact with analysts, brokers and institutional investors.

Draft Financial Statement and Reports

Typically, analysts will seek to obtain the Managing Director's review of draft analyst reports. It is permissible to comment on errors in factual information and underlying assumptions, but comment on price sensitive information should be avoided.

As an example, any statement to an analyst that his or her profit forecast is too high or low may be price sensitive information if it indicates that the Company's current market projections are inaccurate. The Corporations Law and ASX Listing Rules require the Company to correct its earning forecast or any other projections that may affect its share price before responding to the analyst.

TRADING IN THE COMPANY'S SECURITIES

When a Director or employee trades in the securities of the Company it is important to ensure that these transactions do not reflect badly on either the Director, the employee or the Company. This Policy is designed to ensure that Directors and employees do not deal in the securities of the Company at inappropriate times or in inappropriate circumstances.

Insider Trading

When buying or selling securities in the Company, Directors and employees must ensure that they do not contravene the insider trading provisions contained in Part 7.10 of the Corporations Act 2001 (Cth) ("Corporations Act").

Inside information is information that is not generally available, which could reasonably be expected to have a material effect on the price or value of securities of a body corporate. Information is taken to have a "material effect" on the price or value of a security if it would be likely to influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy, or sell the securities. Thus, to constitute inside information the information must be both price sensitive and not generally available.

Directors and employees of the Company, in the course of carrying out their duties, often possess information which would be regarded as inside information under the Corporations Act. The following are examples of information which could be regarded as inside information:

- proposed strategic business acquisition;
- financial records not yet released to the market; and
- a proposed takeover not yet announced to the market.

Where Directors or employees possess inside information, they must not engage in dealings with the securities of the Company and cannot, either directly or indirectly, communicate the inside information to other persons. Directors and employees can be liable for insider trading if they recommend the Company's shares to other persons while they are in possession of price sensitive information which is undisclosed to the general public. Directors and employees should be aware that they can also be liable for insider trading by communicating inside information to other persons, for example their spouse, family or friends. This liability arises notwithstanding the fact that the Director or employee has not dealt with the securities of the Company. Spouses, family or friends who learn inside information and subsequently act on it before the information becomes public can also be held liable for insider trading.

In addition, it is possible that Directors and employees could be aware of non-public price sensitive information relating to other listed companies which, if shares in that company were purchased, could breach the insider trading restrictions (for example, a company with which Ellendale is considering entering into a major contract).

It is therefore essential that all Directors and employees avoid direct or indirect communication of price sensitive information before it enters the public domain. It is equally essential that Directors and employees refrain from trading in shares of the Company whilst they possess such information.

Under the Corporations Act, an offence of the insider trading or tipping prohibitions is punishable by a fine up to \$200,000, or five years' jail, or both.

Restrictions on Directors' and Employees' Dealings in Company Securities

As a general policy, before engaging in transactions involving the securities of the Company, a Director or employee must notify the Managing Director (or in his/her absence the Chairperson) of the intended transaction. The Director or employee must then provide subsequent confirmation that the trading has occurred.

The Company's policy regarding dealings by Directors and employees in the Company's securities is that Directors and employees should not enter into transactions in the following circumstances:

- when they are in possession of price sensitive information not yet released by the Company to the market;
- for a period of seven days prior to release by the Company of half yearly and annual reports or such shorter periods as may be approved by the Board of Directors after receipt of notice of intention to buy or sell by a Director to other members of the Board.

In relation to the half-yearly and annual reports, it is apparent that these reports will contain financial information concerning the Company. It is generally the case that at some time before the public disclosure of the audited half-yearly and annual reports, some or all of the Directors will have access to the financial figures based on data contained in the management accounts, which may, in some circumstances, be price sensitive information, not yet released. For example, a Company may have glowing half-year profit at the commencement of the half-year and then find, based on its management accounts that it fell well behind or will fall well behind (as the case may be) those profit forecasts. That would classically be a case when any Directors or employees in possession of such information could not deal in the Company's securities.

However, Directors and employees will generally be permitted to engage in trading (subject to due notification being given to the Managing Director) at the following times:

- for a period commencing four hours after the release of half yearly and annual reports to the market;
- for a period commencing four hours following the release of price sensitive information to the market, which allows a reasonable period of time for the information to be disseminated among members of the public.

It is strongly recommended that at least four hours be allowed on the basis that under the Corporations Act, Directors and employees will only be protected following disclosure to the market of price sensitive information, if that information has become generally available. The Corporations Act contains no specific definition, but does indicate that information is "generally available" if it has been known in a manner that would or would be likely to bring it to the attention of persons who commonly buy and sell shares in companies of a kind whose price or value might be affected by the information that has been released.

Notification to ASX of Directors' Interests

Directors must also be aware that pursuant to the provisions of the Corporations Act, they are obliged to provide the ASX with appropriate notifications of their interests in the Company.

Pursuant to section 205G of the Corporations Act, Directors must notify the ASX of their:

- (a) relevant interests in securities of the Company or a related body corporate;
- (b) contracts:
 - (i) to which the Director is a party or under which the Director is entitled to a benefit; and
 - (ii) that confer a right to call for or deliver shares in, debentures of, or prescribed interests made available by, the Company or a related body corporate.

Directors must also ensure that the above interests are notified to the ASX in accordance with Listing Rule 3.19A. In particular:

- (a) where a Director is appointed, the Company must notify the ASX of the above interests within five business days of the appointment (the appropriate form is Appendix 3X);
- (b) where a change in the above interests of a Director occurs, the Company must outline the change in the Director's interests to the ASX no more than five business days after the change occurs (the appropriate form is Appendix 3Y); and
- (c) where a Director ceases to be a Director, the Company must notify the ASX of the interests of the Director at the time the Director ceases to be a Director, no more than five business days after the Director ceases to be a Director (the appropriate form is Appendix 3Z).

Directors should also be aware of the substantial shareholder provisions contained in section 671B of the Corporations Act, which require certain notices to be served on the Company and the ASX when a shareholder is entitled to at least 5% of the issued shares in the Company and for any changes of more than 1% to those holdings.