Law Council
OF AUSTRALIA
Business Law Section

ASX's public consultation on reforming the ASX Listing Rules

ASX Limited
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About the Law Council of Australia

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The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

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- Ms Pauline Wright, Treasurer
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- Dr Jacoba Brasch QC, Executive Member
- Mr Tony Rossi, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Executive Summary

ASX Limited (**ASX**) released a public consultation paper calling for submissions to simplify, clarify and enhance the integrity and efficiency of the ASX Listing Rules on 28 November 2018. The Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity from ASX to make a submission in response to the public consultation paper and has provided the following submissions to assist the ASX to achieve its intended outcomes. The following table sets out the submissions of the Committee.

ASX reforms table

#	ASX change	Law Council responses
2. Improving market disclosures and other market integrity measures		
2.1	**Quarterly reporting** – enhancing the quarterly reporting regime. ASX is keen to receive feedback on the changes to the quarterly reporting regime proposed above. Do stakeholders support the concept of requiring rule 4.7B quarterly reporters to lodge quarterly activities reports? Are the proposed informational requirements for quarterly activity reports in the new rule 4.7C and in the amendments to rule 5.3 and 5.4 appropriate, in terms of their reach and content? Are there any other matters that should be required to be included in quarterly activities reports?	The Committee is supportive of this proposal.
2.3	**Disclosure by listed investment entities of their NTA backing –** improving the disclosures by listed investment companies (**LICs**) and listed investment trusts (**LITs**) of their NTA backing ASX is keen to receive feedback on the changes to the reporting requirements for LICs and LITs proposed above. Are they appropriate, in terms of their reach and content? Might there be any unintended consequences if they are adopted? Are there any other matters that LICs and LITs should be required to report to the market on a periodic basis?	The Committee has no comments.
2.4	**Disclosure of closing dates for the receipt of director nominations –** fixing issues with the drafting of rule 3.13.1. ASX is keen to receive feedback on the changes to rule 3.13.1 proposed above. Do stakeholders agree that listed entities should disclose the closing date for the receipt of director nominations to the market? Will this requirement be burdensome to comply with? Might	The Committee believes that this is a sensible suggestion and that it will not be burdensome to comply with. Given that failure to provide the relevant notice does not invalidate a meeting or election the Committee does not believe that unintended consequences will arise if the changes are adopted.

ASX reforms table

#	ASX change	Law Council responses
	there be any unintended consequences if these changes are adopted?	
2.5	**Disclosure of voting results at meetings of security holders –** amending rule 3.13.2 to standardise the disclosure of voting results at meetings of security holders. ASX is keen to receive feedback on the changes to rule 3.13.2 proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	The Committee is supportive of the change. The standardisation and amendments are in line with the level of detail that large entities currently prepare when disclosing the results of securityholder meetings.

ASX reforms table

#	ASX change	Law Council responses
2.6	**Disclosure of underwriting agreements –** amending various rules to achieve consistent disclosure of the key features of underwriting agreements, including the name of the underwriter, the extent of the underwriting, the fee or commission payable, and a summary of the material circumstances where the underwriter has the right to avoid or change its obligations. ASX is keen to receive feedback on the changes to the disclosures required in relation to underwriting arrangements proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	The proposed information is of the type that is commonly included in disclosure materials. The preparation of prospectuses normally follows the guidance of ASIC in this regard as set out in ASIC RG 228. For this reason, the Committee suggests that the changes should be aligned with ASIC's requirements under RG 228.166 – in particular, that *"a summary of the material circumstances where the underwriter has the right to avoid or change its obligations"* should be amended to read *"any significant termination rights"*. This will: • still achieve ASX's desired objective of summarising the key termination events; • ensure consistency across the regulatory requirements; • prevent any misinterpretation that conditions precedent and other provisions need to be summarised; and • prevent any negative connotations from the use of the phrasing *"avoid or change"*, particularly given that termination of an underwriting agreement is in our experience incredibly rare. The Committee notes that in practice, the proposed information about the underwriting agreement is rarely included in investor presentations (perhaps except for acquisition funding and related party underwriting). The Committee requests ASX to clarify whether it proposes this information should now be included in investor presentations and if this information is included in investor presentations, whether it needs to be included in the Appendix 3B.

ASX reforms table

#	ASX change	Law Council responses
		The Committee also submits that it should be made clear that disclosure of sub-underwriting agreements should not be required for the purposes of Exception 2 to rule 7.1.
2.7	**Good fame and character –** expanding the "good fame and character" requirement in the conditions for admission as an ASX Listing (rule 1.1 condition 20) to cover an entity's CEO or proposed CEO as well as its directors and proposed directors.	The Committee is supportive of this proposal. The Committee believes that it is as important that the CEO be of good fame and character as it is that directors satisfy this requirement. The Committee notes that while in the case of trusts, the proposal would extend to the CEO of a responsible entity. However, it is not clear whether the proposal will extend to the CEO of a fund (e.g. in scenarios where the responsible entity has no employees and management is outsourced). The Committee seeks clarification from ASX as to the scope of the proposal.

ASX reforms table

#	ASX change	Law Council responses
2.8	**Persons responsible for communication with ASX on listing rule issues –** improving listing rule compliance by requiring the persons appointed by listed entities to be responsible for communication with ASX on listing rule issues to have demonstrated an adequate level of knowledge of the listing rules. ASX is keen to receive feedback on the educational requirements proposed above for persons appointed on or after 1 July 2019 to be responsible for communication with ASX on listing rule issues. Do stakeholders support the concept of having educational requirements for such persons? What concerns do stakeholders have about the proposal? Do stakeholders have a view on the scope and content of what should be covered in the approved education course?	The Committee is supportive of this proposal. The Committee notes it is proposed that persons appointed to be responsible for communications with ASX on listing rule matters prior to 1 July 2019 will be grandfathered from this requirement. The Committee suggests that ASX consider whether this grandfathering concept should be extended so that if a person has fulfilled this role at an ASX listed entity prior to 1 July 2019, they could be appointed to carry out that role for a different entity post 1 July 2019 without the need to complete the examination. The Committee suggests that ASX consider whether the proposed educational requirements are suitable for those entities which have a secondary listing on ASX where there may be a number of exempt foreign listings in place which exempt the entity from the operation of a number of the listing rules proposed to be covered by the educational course. In those cases, the Committee suggests that rather than requiring the completion of an educational course being the default option it may be more appropriate for ASX to be given the discretion to require the completion of an educational course if ASX is not satisfied with the arrangements that the entity has put in place to ensure compliance with applicable listing rules.

ASX reforms table

#	ASX change	Law Council responses
2.9	**Voting by employee incentive schemes** – adding a new rule 14.10 providing that securities held by or for an employee incentive scheme must only be voted on a resolution under the listing rules if and to the extent that they are held for the benefit of a nominated participant in the scheme who is not excluded from voting on the resolution under the listing rules and who has directed how the securities are to be voted. ASX is keen to receive feedback on the voting restrictions proposed in new rule 14.10 for securities held by or for an employee incentive scheme. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	The Committee is supportive of this proposed new restriction and does not believe it will be burdensome for entities to comply with. Any listed entity that relies on the relief provided by ASIC Class Order [CO14/1000] to make their employee incentive scheme offers is already complying with an equivalent restriction.
2.10	**Market announcements** – amending rule 15.5 to make it clearer how a document should be given to ASX and to add a requirement suggested by the Australian Investor Relations Association (**AIRA**) that if the document is for release to the market, it should include, or be sent under a covering letter including, the name, title and contact details of a person who security holders and other interested parties can contact if they have any queries.	The Committee submits that ASX could alternatively update the company information section and require an email address for queries and/or a contact person.

ASX reforms table

#	ASX change	Law Council responses
2.11	**Distribution schedules** – acting upon a further suggestion from AIRA that the information collected by ASX and released to the market via 'distribution schedules' at the point of listing, upon quotation of a new class of securities, and in annual reports, could usefully include the total percentage of securities held by holders in each category. ASX is proposing to include this requirement in new rule 3.10.5(b) for distribution schedules relating to the quotation of a new class of securities. It is also proposing to amend its Information Form and Checklist (ASX Listings) to require equivalent information for new listings and rule 4.10.7 to require equivalent information in annual reports.	The Committee has no comments.
3. Making the rules simpler and easier to follow		
3.1	**Announcing issues of securities and seeking their quotation** – simplifying and rationalising the current process for announcing issues of securities and applying for their quotation. This involves changes to existing rules 2.7, 2.8 and 3.10.3 and Appendix 3B; the replacement of rule 3.10.5; and the introduction of new rules 3.10.3A, 3.10.3B and 3.10.3C and a new Appendix 2A.	The Committee is supportive of the proposed amendments. However, the Committee notes that the section 707(3) warranty is required to be given under both the Appendices 2A and 3B (the same warranty is also required under Appendices 1A, 1B and 1C). In our view, it is more appropriate for: • this warranty to be given at the time of filing the Appendix 2A once the number of securities to be issued are known and the market has been cleansed (and not at the time of the filing of the Appendix 3B); and • the wording to be revised from: *"We warrant to ASX that…An offer of the securities for sale within 12 months after their issue will not require disclosure under section 707(3) or section 1012C(6) of the Corporations Act."*

ASX reforms table

#	ASX change	Law Council responses
		to: *"We warrant to ASX that…the entity has conducted the issue and taken all reasonable steps to ensure either that the securities are tradeable free of any limitation under section 707(3) or section 1012C(6) of the Corporations Act or appropriate arrangements have been otherwise directly agreed with the allottee(s)*." The issue with the existing language is that it assumes that all securities are freely tradeable as and from the time of issue. However, sections 707(3) and 1012C(6) do not operate in that way. Specifically, they apply to resales within 12 months of issue to retail investors. Entities can make direct arrangements with recipients of securities to the effect that there will be no re-sale within 12 months or that the securities will only be traded amongst institutional investors for that period. This is extremely common in global securities issues and the Committee regularly see it in Australia. In our view, this revised formulation: • would give entities and allottees additional flexibility; • recognises that certain institutional securityholders may be comfortable to receive an allotment of securities and not trade them for 12 months. As mentioned, the Committee sometimes see entities

ASX reforms table

#	ASX change	Law Council responses
		requesting comfort from allottees that this will be the case (e.g. through warranties confirming that the allottee will not dispose of the securities for 12 months except by offers that do not need disclosure); • recognises that other institutional securityholders may agree only to transfer the securities to other securityholders that have the benefit of a section 708 exemption (and so on); and • also recognises that some entities and institutional securityholders may agree that a subsequent on-sale within 12 months will be accompanied by the requisite disclosure to investors. Given this, the Committee submit that ASX amend the warranty as proposed above. The Committee also submit that this warranty in other forms (e.g. Appendices 1A, 1B and 1C) also should be amended in this manner. In addition, the Committee also welcome clarity in relation to announcing issues of securities and applying for their quotation. In relation to rule 2.8, it would be helpful if the timing for lodgement of applications for ASX Debt Listings under rule 1.9 could be stated (i.e. the timing for lodgement of an Appendix 1B under rule 1.9 needs to be made clear – otherwise rule 2.8.7 could apply to ASX Debt Listings). The Committee expects that the timing for lodgement of an Appendix 1B should be on or prior to the issue date for the debt securities. The Committee notes that under rule 2.7, ASX has explained that if following lodgement

ASX reforms table

#	ASX change	Law Council responses
		of an Appendix 1B there is a change in the number of securities to be quoted, then the applicant must give ASX a completed Appendix 2A *"by no later than midday (Sydney time) at least one business day prior to the intended date for quotation of the securities"*. So in our view timing for lodgement of the Appendix 1B should be stated as well. In relation to rule 3.10.3, the Committee notes the following: • that rule 3.10.5 will now only apply to equity securities (i.e. that an issuance of debt securities will not need to be announced); and • rule 3.10.3 will be amended so that proposed issuances of all securities (other than an issue to be made under a dividend or distribution plan or an employee incentive scheme or as a consequence of the conversion of any convertible securities) must be made to ASX on an Appendix 3B. The Committee interpret the amended rule 3.10.3 to mean that a listed entity must announce proposed issues of all debt securities (i.e. whether or not they are to be quoted on ASX). This means, for instance, that listed entities who are frequent issuers of debt securities (including, in the case of banks and insurers, Tier 2 Capital securities) to wholesale investors in domestic and offshore markets would be required to announce every issuance once an agreement is reached to do so (i.e. following execution of the relevant subscription or purchase agreement in relation to the debt securities). The Committee understands that many issuers have not to date generally made announcements of that nature

ASX reforms table

#	ASX change	Law Council responses
		because their understanding has been that ASX has not required those announcements under rule 3.10.3. The Committee submit that rule 3.10.3 should not apply to "business as usual" issuances of debt securities (including Tier 2 Capital securities) to domestic and offshore investors in the ordinary course of the issuer's business (unless those debt securities are listed on ASX or where they are offered under a prospectus or PDS in accordance with the relevant disclosure requirements under the Corporations Act 2001 (Cth) (**Corporations Act**)). The Committee also note the addition of rule 3.22 (which would require entities to notify ASX "immediately it decides to pay interest on a debt security or convertible debt security or makes a decision that interest will not be paid…"). Is this intended to mean that entities are required to make an announcement (using Appendix 3A.2) in relation to every interest payment on every ASX-listed debt security and convertible debt security? The terms of such securities generally contain a contractual obligation to pay interest on interest payment dates, so technically, an entity doesn't make a decision to pay interest on each interest payment date. There are some debt securities which give the entity the option not to pay interest in certain circumstances, and notification to holders would be given in any event (if the option were to be exercised). ASX should clarify when (and to which securities) rule 3.22 is intended to apply.

ASX reforms table

#	ASX change	Law Council responses
3.2	**Working capital** – clarifying the working capital requirement for assets test listings by adding a definition of "working capital" in rule 19.12 and amending the "working capital test" in rule 1.3.3 to make it clearer and easier to apply.	The Committee has no comments.
3.3	**Chess Depositary Interests** – introducing a new rule 4.11 requiring entities that have CDIs issued over their quoted securities to notify ASX of the number of CDIs on issue on a monthly basis. This notification will be made via a new Appendix 4A.	The Committee has no comments.
3.4	**The additional 10% placement capacity in rule 7.1A** – implementing the changes foreshadowed in *Strengthening Australia's equity capital markets: ASX Listing Rule 7.1A after three years* and some other changes to simplify and rationalise aspects of rule 7.1A.	The Committee is supportive of these amendments.
3.5	**Issues of equity securities without security holder approval** – rationalising the lists of equity issues that can be made without security holder approval under rules 7.2, 7.6, 7.9 and 10.12 and making them consistent.	The Committee has no comments.
3.6	**Notices of meeting** – expanding and rationalising the requirements for notices of meetings in rules 7.3, 7.3A, 7.5, new rule 10.5, 10.13 and 10.15.	The Committee has no comments.
3.7	**Employee incentive schemes** – rationalising the rules dealing with the approval of issues to directors and their associates under employee incentive schemes by merging rules 10.15 and 10.15A into the one rule (rule 10.15). The new rule 10.15 will be substantially based on rule 10.15A, but with some additional changes to clarify its	Given that the changes largely reflect the existing rule 10.15A, the Committee does not consider that these would be overly burdensome to comply with. However, the Committee suggests that further clarification is included in the rule or in related GN 25 on what constitutes a director's current total remuneration package, for instance that this is limited to salary, STI and LTI.

ASX reforms table

#	ASX change	Law Council responses
	intended operation and to make it consistent with rules 7.3, 7.5 and 10.13. This includes some re-ordering of the provisions. ASX is keen to receive feedback on the changes to rule 10.15 proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	
3.8	**Voting exclusions** – amending the list of voting exclusions in the table in rule 14.11.1 for greater consistency and to give greater certainty as to which parties must have their votes excluded. ASX is keen to receive feedback on the changes to voting exclusions proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	The Committee is generally supportive of the proposed amendments to the voting exclusion table – particularly in respect of rule 7.1A The Committee does not expect that the inclusion of persons who will obtain a material benefit in the exclusions for rules 10.1 and 11.4 will be burdensome or difficult to comply with, and the proposed amendment is consistent with the existing exclusions for rules 7.1, 11.1 and 11.2.
4. Efficiency measures		
4.1	**Escrow** – streamlining the escrow regime in chapter 9 and Appendices 9A and 9B to substantially reduce the administrative burden for applicants seeking to list on ASX and for ASX. ASX is keen to receive feedback on the changes to the escrow regime proposed above. Do stakeholders support simplifying the escrow regime? Will the changes reduce the workload currently involved in obtaining escrow agreements from all holders of restricted securities? Are there any other changes ASX could sensibly make to	The Committee is supportive of the proposed amendments to chapter 9 and Appendices 9A, 9B and new 9C, as well the revised GN 11.

ASX reforms table

#	ASX change	Law Council responses
	reduce the burden of the escrow requirements and still maintain the integrity of its escrow regime?	
4.2	**Notification by profit test entities of continuing profits** – amending rule 1.2.5A to allow the statement required from the directors of a 'profit test' listing that they have made enquiries and nothing has come to their attention to suggest that the economic entity is not continuing to earn profit from continuing operations, to be included in the entity's listing prospectus, PDS or information memorandum, rather than having to be provided separately to ASX.	The Committee expects that, despite the proposed amendment, most entities will continue separately to provide the required confirmation to ASX, rather than electing to include it in their prospectus, PDS or information memorandum.
4.3	**Agreements for admission and quotation** – separating the application forms for admission to the official list in existing Appendices 1A, 1B and 1C from the formal listing agreements included in those Appendices.	The Committee submits that it is important that Appendix 1B is amended to make clear that although it is the trustee that applies for the debt listing, the entity that will be included in the ASX Official List is the trust and not the trustee. This is an important distinction as it impacts on whether the relevant entity will fall under the definition of "disclosing entity" under the Corporations Act and therefore would be required to prepare half year reports under the Corporations Act. While it is clear that under the ASX listing rules half year reports do not have to be provided to ASX in respect of debt listings, if the trustee (as opposed to the trust) is included in the ASX Official List or mistakenly interpreted as being on the ASX Official List, the requirement to prepare half year reports may be triggered under the Corporations Act. The Committee is aware of instances where uncertainty has been created because of this lack of clarity.

ASX reforms table

#	ASX change	Law Council responses
4.4	**Eliminating the need to apply for a number of standard waivers** – amending a number of rules to remove the need for listed entities to apply for standard waivers of those rules.	The Committee has no comments.
4.5	**Standard forms** – removing a number of standard forms from the appendices to the listing rules and making them available on ASX Online.	The Committee has no comments regarding ASX's proposal to remove a number of standard forms from the appendices to the listing rules and to move them online. However, the Committee submits that changes to the online forms should take place either within the formal rule change process prescribed in the Corporations Act or subject to effective consultation in all cases.
5. Updating the timetables for corporate actions		
5.0	**General comments on corporate action timetables**	The Committee is supportive of proposed changes to the corporate action timetables.

ASX reforms table

#	ASX change	Law Council responses
		One suggestion is to adopt interactive timetables, similar to those adopted by NZX for rights offers. NZX introduced this to assist issuers with rights issue planning. These electronic timetables are in an Excel format and permit an automatically generated timetable once the relevant allotment date is entered. This has received great support in the NZ market, from issuers and market participants. The Committee would make the following comment in respect of the rights issue timetables (Appendix 7A sections 2-6): ASX has inserted the following note: *"Note: If all of these steps have not been completed prior to the commencement of trading, day 0 will be deemed to be the next business day and all subsequent dates in the timetable will be adjusted accordingly."* The Committee considers that this works for non-accelerated rights issues (sections 2-3) where there is no trading halt. However, it may be problematic to delay the whole timetable for any of the accelerated structures (sections 4-6) if the issuer goes into trading halt and launch after the market open for whatever reason. Where the issuer was to launch a raising after market close, it would still generally consider that to be the launch day and not require an extra day at the back end. Having the record date at "Business Day 2" (as it is drafted) also provides scope

ASX reforms table

#	ASX change	Law Council responses
		for some trading to have occurred on "Day 0" before an issuer went into halt. The Committee also notes that the accelerated rights issue timetables allow institutional offer periods of anywhere between 1-3 days, irrespective of structure. That is fine as it allows flexibility depending on the circumstances, but for the AREO (section 5) and PAITREO (section 6) timetables, the most common day for announcing the institutional offer and coming out of trading halt would be "Business day" 3 (not Business day 2 as currently drafted). The Committee appreciates the "Business day" references are more examples/indicative vs. the 'Time Limits' which are the key constraints, but it may be worth clarifying. The Committee would also like to confirm that the accelerated timetables allow (but don't require) a gap of up to 2 days between retail offer shortfall announcement and the associated bookbuild. It is usual practice to hold the bookbuild immediately post the retail shortfall announcement. The Committee seeks confirmation that the proposed timing does not require a 2 day gap.
5.1	**Dividends and distributions** – shortening the date currently in section 1 of Appendix 6A for issuing and applying for quotation of securities issued under a dividend or distribution plan to 5 business days after the dividend or distribution payment date. It is currently 10 business days after the dividend or distribution payment date.	The Committee has no comments.
5.2	**Interest payments dates** – simplifying the provisions currently in section 2 of Appendix 6A dealing with interest payments on quoted debt securities and convertible debt securities.	The Committee has no comments.

ASX reforms table

#	ASX change	Law Council responses
5.3	**Satisfaction of interest payments by the issue of quoted securities** – adding an entry to the timetable for interest payments in section 2 of Appendix 6A providing that if an interest payment is to be satisfied by the issue of quoted securities, the last day for the entity to issue the securities and apply for their quotation is 5 business days after the due date for the interest payment.	The Committee has no comments.
5.4	**Option expiry notices** – adding a new clause 5.3 to Appendix 6A providing that an entity is not required to send a notice to the holder of quoted options that are about to expire where the options are substantially out of the money (defined to mean where the current market price for the underlying security is less than 50% of the option exercise price and the highest market price at which the underlying security has traded on ASX in the preceding 6 months is less than 75% of the option exercise price).	The Committee has no comments.
5.5	**Conversion of expiry of convertible securities** – shortening the period for applying for quotation of securities issued upon the conversion or expiry of convertible securities in section 6 of Appendix 6A to 5 business days after the conversion or expiry date.	The Committee has no comments.
5.6	**Opening date of an issue to existing security holders** – re-drafting and shifting into rule 7.10 the requirement that currently appears in section 1 of Appendix 7A that the opening date of an issue of securities to existing security holders which is not a pro rata issue must be at least 10 business days after the disclosure document or PDS is sent to them, unless the disclosure document or PDS is lodged with ASIC and given to ASX at least 7 days before the opening date.	The Committee has no comments.

ASX reforms table

#	ASX change	Law Council responses
5.7	**Bonus securities** – shortening the period for issuing and applying for quotation of bonus securities in section 2 of Appendix 7A to 5 business days after the record date.	The Committee has no comments.
5.8	**Offers of specific entitlements** – deleting the requirement currently in clause 3.2 of Appendix 7A that if an entity offers a specific entitlement to holders of securities, the offer must be pro rata without restriction on the number of securities to be held before entitlements accrue. Instead, ASX proposes to put that requirement into rule 7.11.6, where it will have greater prominence, and to extend it to all pro rata issues of securities in the entity and not just to standard non-renounceable pro rata issues.	The Committee has no comments.
5.9	**Non-court approved reorganisations of capital** – splitting out the timetable for non-court approved reorganisations of capital currently in section 8 of Appendix 7A into separate timetables for splits/consolidations, cash returns of capital and returns of capital by way of in specie distribution of securities in another entity.	The Committee has no comments.
5.10	**Court-approved reorganisations of capital** – replacing the existing generic timetable for court-approved reorganisations of capital in section 9 of Appendix 7A with a new timetable specifically for mergers or takeovers effected via a court approved scheme of arrangement.	The Committee has no comments.
5.11	**Other issue dates** – deleting the existing timetable headed “Issue dates” in section 10 of Appendix 7A (this timetable is not currently used by ASX).	The Committee has no comments.

ASX reforms table

#	ASX change	Law Council responses
5.12	**Equal access buy backs** – updating the timetable currently in section 11 of Appendix 7A for an entity buying back securities under an equal access buy back to specify a time limit by which the entity must update its register to cancel the securities bought back, lodge an ASIC Form 484 notifying the number of securities that have been cancelled due to the buy back with ASIC and give a copy of that form to ASX.	The Committee has no comments.
5.13	**Security Purchase Plans** – updating the timetable currently in section 12 of Appendix 7A for an entity issuing securities under a securities purchase plan (SPP) to specify time limits by which the entity must: (a) announce the results of the SPP; and (b) issue the securities purchased under the SPP and lodge an Appendix 2A with ASX applying for their quotation. These time limits will be, respectively, 3 business days and 5 business days, after the SPP closing date. ASX is keen to receive feedback on the proposed changes to the timetables for corporate actions mentioned in sections 5.1 - 5.13 above, including in particular the changes to the timetable for interest payments mentioned in section 5.2. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?	The Committee has no comments.
5.14	**Deferred settlement trading** – the CHESS Replacement Settlement Enhancements Working Group recently requested that ASX consider shortening and standardising the timeframes for deferred settlement trading markets, and removing conventions for deferred settlement trading where they are no longer relevant.	• The Committee is supportive of ASX retaining deferred settlement trading in securities affected by corporate actions. • The Committee agrees with ASX and see a number of benefits from the current practice of allowing deferred settlement trading, including permitting investors to

ASX reforms table

#	ASX change	Law Council responses
	ASX is keen to receive feedback from stakeholders, including listed entities, investors, brokers and corporate advisers, on: • the importance or otherwise of ASX allowing deferred settlement trading in securities affected by corporate actions; • any costs, risks or disadvantages associated with deferred settlement trading and how they might be mitigated; and • any changes that could be made to improve the operation of deferred settlement markets.	manage their exposure to market risk on the securities they expect to receive in a corporate action, and greater to permit greater liquidity and timelier price discovery for those securities. • Accordingly, the Committee considers that deferred settlement trading should be retained for all corporate actions, including IPOs. • While there may be benefits in standardising the timeframes for deferred settlement trading markets, and removing conventions for deferred settlement trading where they are no longer relevant, the Committee considers that it is preferable to retain flexibility in timeframes, as applicable to the relevant corporate action.
6. Monitoring and enforcing compliance with the listing rules		
6.1	**Waivers** – amending rule 1sec8.1 to make it clear that ASX can grant waivers to a specific class of entities or to all entities generally.	The Committee has no comments.
6.2	**Conditional no-action letters** – amending rule 18.5 to make it clear that ASX can impose conditions in connection with its decision not to take action against an entity for breaching the listing rules and, if it does impose any such conditions, the entity must comply with them.	The Committee has no comments.
6.3	**Powers and discretions** – adding a new rule 18.5A to make it clear that ASX can exercise, or decide not to exercise, any power or discretion conferred under the listing rules in relation to an entity in its absolute discretion. The new rule will also make it clear that ASX may do so on conditions and, if it does, the entity must comply with the conditions.	Except as noted below, the Committee is supportive of the proposed new rule 18.5A. The purpose of new rule 18.5A is *"to make it clear that ASX can exercise, or decide not to exercise, any power or discretion conferred under the listing rules in relation to an entity in its absolute discretion"*.

ASX reforms table

#	ASX change	Law Council responses
		The ASX Listing Rules bind listed entities contractually by the terms set out in Appendix 1A (**ASX Listing Application and Agreement**). In addition, the ASX listing rules also have a public law status under various provisions of the Corporations Act (e.g. see Part 7.2 Division 3 and in particular, section 793C; see also section 1101B). While it has been held that discretionary decisions by ASX under the ASX listing rules do not fall within the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**), they are arguably, and should be, subject to the general law requirements of procedural fairness and principles of administrative law, including Wednesbury unreasonableness (*Chapmans Ltd v Australian Stock Exchange Ltd (No 2)* (1995) 17 ACSR 524; generally, see Ashley Black et al., ASX Listing Rules Commentary (Australian Corporations Law, Principles and Practice, Volume 3 at [10.1.0940]-[10.1.0955]). The fact that the ASX Listing Application and Agreement includes a clause by which the applicant agrees that ASX has absolute discretion with respect to quotation, conditions of quotation and removal from the official list, arguably does not exclude the application of administrative law principles deriving from the quasi-statutory force of the ASX listing rules. Proposed rule 18.5A, a new provision, appears designed to exclude judicial review by providing that ASX may exercise its discretions under the listing rules in its "absolute discretion". If that provision were to succeed, it would be contrary to basic principles of administrative law. As French CJ, Gummow, Hayne, Crennan and Bell JJ said in *Wotton v Queensland* (2012) 246 CLR 1 at 10, *"[T]he notion of 'unbridled discretion' has no place in*

ASX reforms table

#	ASX change	Law Council responses
		the Australian universe of discourse". Worse still, some of the discretions to which proposed rule 18.5A would apply offer no criteria for their exercise. As Lord Sumption said in *R (Nicklinson) v Ministry of Justice* [2015] AC 657 at 837 [238]: *"The problem about law whose application depends on administrative discretion is that, unless the criteria for the exercise of that discretion are made clear in advance, it offers no protection against its inconsistent and arbitrary application."* The Committee submits that proposed rule 18.5A should be amended as follows: *"ASX may exercise, or decide not to exercise, any power or discretion conferred under the listing rules in relation to an entity and may do so on any conditions and, if it does so, the entity must comply with the conditions, provided the entity may do so lawfully and in accordance with any contractual obligations it may have."* If, contrary to this submission, ASX proceeds with proposed rule 18.5A, steps should be taken to amend the ADJR Act so that, notwithstanding the wording of proposed rule 18.5A, the ADJR Act applies. The Committee notes that this submission is consistent with the view expressed by the Committee of Australia in a letter published on its website and in a letter to Commissioners of ASIC dated 29 April 2016, after ASX excluded listing rule appeals from the appeal procedure now found in the ASX Enforcement and

ASX reforms table

#	ASX change	Law Council responses
		Appeals Rules. The absence of any appeal rights within the ASX regulatory system makes it all the more important to preserve, and indeed reinforce, the general law regarding judicial review.
6.4	**Requests for information** – amending rule 18.7 to clarify and broaden ASX's powers to require information to be provided to ASX and to be disclosed to the market.	The Committee has no comments.
6.5	**Compliance requirements** – amending rule 18.8 to list specific examples of the types of requirements ASX may impose on a listed entity under that rule to ensure compliance with the listing rules.	Except as noted below in relation to proposed rule 18.8(c)-(d) and 18.8(k)-(m), the Committee is supportive of the proposed change to rule 18.8. In particular, the Committee is supportive of ASX requiring an entity to do or not to do the matters referred to in proposed rule 18.8(a)-(b) and 18.8(e)-(j). In relation to proposed rule 18.8(c)-(d), the Committee would suggest that ASX consider the potential impact on listed entities, market participants and contractual counterparties more broadly of requiring an entity to cancel or reverse an agreement or transaction (proposed rule 18.8(d)), or to not perform an agreement or transaction (proposed rule 18.8(c)), and whether ASX should exercise discretion to require an entity to in that manner. Of course, whether it is appropriate for ASX to require an entity to do (or refrain from doing) these acts will depend on the circumstances, however the Committee notes that the stock exchanges of London, Hong Kong, Shanghai, Shenzhen and Singapore do not have an equivalent express power. Unless these powers are linked to the rules (as proposed in the new proposed rule 18.8(f), for example, which states "to include specified information in a notice of meeting proposing a resolution

ASX reforms table

#	ASX change	Law Council responses
		under these rules"), further thought may need to be given to the legal basis of the powers proposed to be expressed in proposed rule 18.8(c)-(d). In any case, the Committee submits that ASX could consider deleting proposed rule 18.8(d) in its entirety. Under the proposed rule 18.8(d), a contractual party cannot unilaterally cancel or reverse a contract that it has validly entered into, unless the contract authorises it to do so. The listed entity could repudiate the contract, allowing the other party to accept the breach and sue for damages, but there can be no assurance that it would do so. Further, since ASX's direction could relate to a major and valuable agreement or transaction to which the listed entity is a party, the proposed LR 18.8(d) would place ASX in a position in which it could cause great harm to the listed entity, and even to destroy its business. It might be thought that listed entities could adequately protect themselves by ensuring that their contracts contain a provision allowing them to terminate should ASX exercise its power under LR 18.8. But there will be contract negotiations in which such a clause would be commercially unacceptable because of the uncertainty it would create. To address this, the Committee submits that the introductory words of proposed rule 18.8 should be altered to read: "ASX may require an entity to use its best endeavours to do or refrain from doing any act or thing that, in ASX's opinion, is necessary to ensure or facilitate compliance with the listing rules, including (~~without limitation~~ *provided the entity may do so lawfully and in accordance with any contractual obligations it may have*): ….".

ASX reforms table

#	ASX change	Law Council responses
		The Committee also acknowledges ASX has similar powers in relation to Listing Rule 10.9.1 to require an entity to cancel a transaction if it contravenes Listing Rule 10.1 (which requires approval for certain acquisitions or disposals). The Committee submits that the proposed rule 18.8(d) is too broad given that it applies to all transactions and is not confined to a transaction that contravenes a Listing Rule in a similar way to Listing Rule 10.9.1. In relation to proposed rule 18.8(k)-(m) (which relate to introducing or updating compliance policies and processes, reviewing compliance policies and processes and causing officers or employees to undertake a compliance education program), the Committee would suggest that these powers should again be linked to the rules (as proposed in the new proposed rule 18.8(f), for example). The Committee would be concerned if ASX sought to require a listed entity to introduce a compliance process (for example) in relation to an area of law or practice regulated by another body (such as ASIC or APRA), in duplication or overlap with the compliance required by another regulator.
6.6	**Censures** – adding a new rule 18.8A giving ASX the power to formally censure a listed entity that breaches the listing rules, or a condition imposed under the listing rules, and to publish the censure and the reasons for it to the market.	Except as noted below in respect of the need for an effective review mechanism, the Committee is generally supportive of the addition of new rule 18.8A. When read with proposed rule 18.5A, proposed rule 18.8A would give ASX power to make a decision that may be likely to have highly prejudicial consequences for the listed entity's security holders, without any effective review mechanism prior to or after the publication of the censure.

ASX reforms table

#	ASX change	Law Council responses
		The Committee submits that it is important to introduce protective procedures for the exercise of the power to censure, even if proposed rule 18.5A is withdrawn, particularly bearing in mind the abolition of appeal rights from ASX's decisions in listing matters. For example, the London Stock Exchange has a power to censure an issuer publicly or privately, but the Executive Panel can only issue a private censure, while the Disciplinary Committee (composed of independent members) can issue a private censure or public censure, and may publish reasons for its decisions. There is also an appeal process. Additionally, the Listing Committee of the Hong Kong Stock Exchange also has the power to issue a public censure but a party can request written reasons and has the right to refer the decision back to the Listing Committee for review. The Listing Committee has members representing the interests of investors, listed issuers and market participants. The Committee therefore acknowledges that this new power broadly consistent with the power of the stock exchanges of London, Hong Kong, Shanghai, Shenzhen, Singapore and Johannesburg to publicly censure or reprimand a listed entity or other person, however notes that in some cases the rules of those exchanges contemplate a decision of a disciplinary (or similar) committee being made prior to the censure. The Committee recommends that ASX provide guidance on: the types of "egregious" breaches that may cause ASX publicly to censure a listed entity;

ASX reforms table

#	ASX change	Law Council responses
		any process ASX would adopt before deciding whether to exercise its power under new rule 18.8A; and a suitable review mechanism that would be available prior to or after the publication of the censure.
7. Correcting gaps or errors in the listing rules		
7.1	**Time limits to apply for quotation of securities** – fixing gaps in rule 2.8.	The Committee has no comments.
7.2	**Employee incentive scheme issuances** – amending the concluding paragraph of rule 2.8 to address a problem that stems from the fact that currently an Appendix 3B is used by many listed entities both for announcing issues of securities and for seeking their quotation.	The Committee has no comments.
7.3	**Listing rule 7.1 and 7.1A placement capacities** – correcting a flaw in the definition of variable "A" in rule 7.1 (the base on which an entity's 15% placement capacity in rule 7.1, and if applicable its additional 10% placement capacity in rule 7.1A, is calculated).	The Committee has no comments.
7.4	**Ratifying an agreement to issue securities** – amending rules 7.4 and 7.5 to allow a listed entity to have an agreement to issue securities ratified by security holders.	The Committee has no comments.
7.5	**Agreements to acquire or dispose of substantial assets** – amending rule 10.1 to deal more appropriately with agreements to acquire or dispose of substantial assets, similar to the way in which	The Committee has no comments.

ASX reforms table

#	ASX change	Law Council responses
	rules 7.1 and 10.11 currently deal with agreements to issue securities.	
7.6	**Substantial holders under rule 10.1.3** – correcting a potential drafting ambiguity in rule 10.1.3 that arises from the way in which "substantial holder" is defined.	The Committee has no comments.
7.7	**The exceptions to rule 10.1** – correcting a number of issues with the exceptions in rule 10.3 from the requirement in rule 10.1 for security holders to approve an acquisition or disposal of a substantial asset from/to a person in a position of influence.	The Committee has no comments.
7.8	**Voting exclusions** – removing the reference in rule 14.11 to votes cast by a person chairing a meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.	The Committee considers that the proposed amendment may inadvertently remove the ability for the chair to vote undirected proxies in respect of certain remuneration-related resolutions, even where the chair has an express authority to do so (and is therefore permitted to vote under section 250BD of the Corporations Act) – e.g. a resolution under Listing Rule 10.11 or 10.17. The Committee have suggested the following drafting amendments in italics and underline in addition to the suggested revised wording provided by ASX in the consultation: **Voting exclusion statement** The entity will disregard any votes cast in favour of the resolution by or on behalf of: ▪ the (named) person (or class of persons) excluded from voting; or

ASX reforms table

#	ASX change	Law Council responses
		▪ an associate of that person (or those persons). This does not apply to a vote cast as proxy or attorney for another person who is entitled to vote on the resolution, in accordance with directions given to the proxy or attorney to vote in favour of the resolution*, or to a vote cast by the chair of the meeting as proxy or attorney for another person who is entitled to vote on the resolution if the appointment expressly authorises the chair to exercise the vote*. It also does not apply to a vote cast by a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met: ▪ the beneficiary provides written confirmation to the holder that they are not excluded from voting, and are not an associate of a person excluded from voting, on the resolution; and ▪ the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in favour of the resolution.
7.9	**Fees** – amending rule 16.4 to confirm ASX's practice not to charge an additional listing fee when quoted partly paid securities become quoted fully paid securities.	The Committee has no comments.
7.10	**Interpretation** – amending rule 19.3.1 to specify that a reference to an ASIC Class Order in the rules includes any amendment or replacement of that Class Order.	The Committee has no comments.

ASX reforms table

#	ASX change	Law Council responses
7.11	**Associate** – modifying the definition of "associate" in rule 19.12 to differentiate better between the associates of a natural person and the associates of an entity (with "entity" for these purposes defined to mean a body corporate, partnership, unincorporated body or a trust and including, in the case of a trust, the responsible entity (**RE**) of the trust).	The Committee has no comments.
7.12	**Child entity** – modifying the definition of "child entity" in rule 19.12 to correct an error in the existing definition.	The Committee has no comments.
7.13	**Control** – introducing a definition of "control" into rule 19.12.	The Committee has no comments.
7.14	**Related party** – amending the definition of "related party" in rule 19.12, which currently incorporates by reference the provisions of sections 208 and 601LA of the Corporations Act, to correct two drafting flaws in those sections, in so far as they apply to trusts/managed investment schemes.	The Committee have no specific comments on the proposed changes to the definition of related party in so far as they apply to trusts and managed investment schemes. In our experience, the proposed changes reflect the way the industry has generally applied this definition to date.
7.15	**Warranties** – expanding the warranties currently in clause 2 of the Appendix 1A, 1B and 1C applications for admission and clause 2 of the Appendix 3B application for quotation of securities.	Subject to the comments below, the Committee is supportive of this proposal. In relation to the proposed inclusion in Appendix 1A, 1B and 1C of an authorisation to allow ASX to disclose to any third party all information that has been provided to ASX in connection with the listing, the Committee suggests that this authorisation is framed too broadly and would allow ASX to disclose information that the entity considers to be confidential or commercially sensitive information to third parties without prior consultation with the

ASX reforms table

#	ASX change	Law Council responses
		entity. This may create a disincentive for entities seeking admission to provide full and frank disclosure to ASX. This risk is made more acute by the greater level of information that ASX is requiring in connection with new listings, particularly in relation to those entities which ASX considers to be higher risk (e.g. tech start-ups). In relation to the proposed inclusion in Appendix 1A, 1B and 1C of an authorisation for third parties to provide ASX with any information relating to the entity seeking admission or its employees, officers or agents, the Committee questions the legal effectiveness of the entity giving this authorisation on behalf of all of its employees, officers and agents. The Committee suggests that ASX consider whether this authorisation could be narrowed so that it applies to information relating to the entity, its directors, CEO and company secretary. It would be more practicable for an entity to seek consent for giving that authorisation from this narrower pool of people. In relation to all of these forms, the Committee notes the proposed warranty given by the entity on lodgement that the information given in connection with the admission of the entity or the quotation of securities is or will be "accurate, complete and not misleading". The Committee suggests that ASX considers adopting an approach similar to ASIC's Email Lodgement Service Terms and Conditions. Under those terms, the person who makes the lodgement agrees to "provide information that is complete, true and accurate, to the best of their knowledge" – this assists with

ASX reforms table

#	ASX change	Law Council responses
		the delineation between the liability of the entity and the liability of the individual who lodges the relevant document.
8. General drafting improvements		
8.1	In addition to the changes mentioned above, ASX is proposing a number of minor drafting changes to the listing rules to improve their clarity.	The Committee is supportive of the proposed drafting changes.
9. New and amended guidance		
9.1	GN 1 *Applying for Admission – ASX Listings*	The Committee has no comments.
9.2	GN 11 *Restricted Securities and Voluntary Escrow*	See item 4.1.
9.3	GN 12 *Significant Changes to Activities*	Subject to the comments above, the Committee is generally supportive of the proposed amendments to GN 12.
9.4	GN 13 *Spin-outs of Major Assets*	The Committee is supportive of new GN 13. Our only comment is in section 3.2 where a 25% threshold is used, measured against particular metrics that are the same as those used in guidance to rule 11.1. In that section, the Committee suggests that it be made clearer that this is the threshold at which discussions with ASX are required, rather than (as presently drafted) it would be felt that the requirement for a pro rata offering or securityholder approval exists. This would not only align better with the rule 11.1 guidance, it would operate more efficiently where, for example, there are short term blips in

ASX reforms table

#	ASX change	Law Council responses
		one of the metrics and therefore the 25% is triggered inappropriately. The Committee feel that there is a danger in the current formulation because it would empower external parties to point to one-off triggers or other abnormal results where ASX would not generally see rule 11.4 as having been triggered. While ASX can grant a waiver, it would be better to have broader ASX discretion.
9.5	GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules* ASX is keen to receive feedback on this proposed guidance. Do stakeholders agree with the guidance? Will complying with the guidance be burdensome? Might there be any unintended consequences if ASX adopts the guidance?	The Committee is supportive of new GN 21. In particular, the Committee welcomes ASX's guidance regarding the treatment of convertible security issues (and worked examples) when calculating an entity's placement capacity, which will be useful to issuers of hybrid securities that contain a conversion formula linked to a measure of market price, or more than 1 conversion formulae. The Committee suggests that: • in the circumstances where an Appendix 2A or 3B worksheet must be submitted to an ASX Listings Compliance officer to confirm available placement capacity, ASX provide guidance as to the applicable review times so that these can be factored into the issuer's timetables (sections 2.10 and 8 of GN 21); • in relation to rule 7.2 – exception 13 (approved issues under employee incentive schemes), ASX provide

ASX reforms table

#	ASX change	Law Council responses
		guidance (including by way of examples) as to what types of amendments ASX considers comprise a *"material"* change to the terms of the scheme which will require fresh approval by securityholders as an exception under rule 7.2 (section 4.13); • Listing Rule 7.1 and GN 21 should not regulate the granting of a put option by a third party to a listed entity for the right to issue equity securities to the third party. At the time the put option is granted, there is no issue of an equity security and no agreement on the part of the issuer to equity securities. The Committee suggests that ASX provide clarity as to whether rule 7.1 and GN 21 should apply in this event; and • ASX clarify the definitions of "convertible debt security", "convertible security", "equity security" and "security", which are used throughout GN 21. These should be clearly defined to avoid ambiguity as the Corporations Act contains multiple definitions of "security".
9.6	GN 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence* ASX would welcome feedback on the policy position above, the appropriateness of the waivers referred to in sections 8.2 – 8.4 of GN 24 and whether there are any other specific cases where ASX should consider granting a waiver of rule 10.1.	The Committee is supportive of the revisions to GN 24. The Committee notes the following: • as Chapter 2E also has an "arms' length" exception it is not necessary to align the $5,000 de minimus threshold with the small benefits exception in Chapter 2E. The Committee suggests using a higher de minimus threshold such as $50,000 (section 3.2 of GN 24); and

ASX reforms table

#	ASX change	Law Council responses
		• it would be helpful if a waiver for granting security would allow a change that does not *"materially benefit the 10.1 party"* (section 8.4 of GN 24). In addition, the Committee understands ASX has made a broader change in policy that it will no longer issue waivers from rule 10.1 to listed trusts or fund managers, relieving them from the obligation to obtain securityholder approval for the transfer of significant assets to/from listed trusts from/to other funds or mandates managed by the responsible entity of that listed trust. The Committee notes that those waivers would typically include conditions that the responsible entity procure an independent valuation of the relevant assets being transferred and that related parties of the listed entity did not hold a significant stake in the unlisted entity to/from which the assets were being sold. The Committee does not agree with ASX's change in position regarding the issuance of these waivers. The Committee considers that granting the waiver remains an appropriate course of action where: • the relevant responsible entity owes significant fiduciary duties to the listed unitholder, reducing the possibility of a conflict of interest; • there is no cross-holding between significant investors in the listed entity and the fund (so that the waiver cannot be used to avoid the usual operation of rule 10.1 on significant investors); and

ASX reforms table

#	ASX change	Law Council responses
		• there is no possibility for shifting value away from the listed fund, given that any transfer has to be supported by an independent valuation. This change in policy has already had, and is likely to continue to have, a significant impact on fund managers and listed trusts who also operate unlisted funds. The Committee submit that there is no reason why listed trusts or fund managers should not be able to sell assets to an unlisted fund managed by the same responsible entity where those sales are subject to the terms of the previously issued waivers. Many listed fund managers and trusts warehouse significant assets ahead of selling them to unlisted funds. This comprises a significant part of their business model. Requiring those trusts to seek approval now makes warehousing risky and, in many circumstances, impractical. The Committee are happy to have a call with ASX to discuss this in more detail, as this is an important issue that needs to be resolved.
9.7	GN 25 *Issues of Equity Securities to Persons in a Position of Influence* ASX would welcome feedback on the policy position above and whether there are any specific cases where ASX should consider granting a waiver of rule 10.11.	The Committee is supportive of the revisions to GN 25. The Committee notes the following: • section 3.2 of GN 25: the Committee suggests that related parties are allowed to participate in a shortfall facility for a pro rata offer up to a sensible cap. This will allow more funds to be raised when needed, but still maintain the integrity of the exception (section 3.2 of GN 25). The Committee suggests that an acceptable market fall

ASX reforms table

#	ASX change	Law Council responses
	ASX would also welcome feedback on the policy positions above and whether there are any specific cases where ASX should consider granting a waiver of rule 10.14.	percentage is outlined here (section 3.3 of GN 25) and this should clarify whether the jurisdictions in footnote 60 are acceptable (as is provided in ASIC relief) (section 3.6 of GN 25); • section 3.13 of GN 25: ASX has indicated a holding of over 30% of an entity's ordinary securities or holding a percentage of an entity's ordinary securities that provide a right to appoint a director is likely to mean the entity will be considered a related party by ASX. In practice, the relevant threshold for being determined a "related party" was traditionally 25% - 30% plus an additional right (e.g. right to appoint a director). The Committee submits that it would be helpful if ASX could clarify its position and specify a percentage below which the presumption would be against the party being a related party, even if that party has a right to appoint a director. In any case, ASX should confirm if its intention is that regardless of a party's shareholding in a company, if that party held board appointment rights in the company, then that party would be a related party of the company; and • section 4.1 of GN 25: the Committee suggests that ASX reconsider whether it is appropriate to treat performance rights as options or equity securities. The Committee submits that this should be left to an analysis of the particular performance rights as many performance rights are not options but are rather, derivatives. The Committee notes that certain performance rights it has previously

ASX reforms table

#	ASX change	Law Council responses
		observed would not have been equity securities as they did not have a right to shares.
9.8	GN 33 *Removal of Entities from the ASX Official List* ASX would welcome feedback on the proposed changes to GN 33.	The Committee is supportive of the proposed changes to GN 33, and discusses its consideration of each proposed change in more detail below. The Committee is supportive of the proposed changes to sections 2.1 to 2.6, 2.8-2.10 and 2.12-2.15 (inclusive). In respect of section 2.7 of GN 33, the Committee is supportive of ASX clarifying the cases in which voting exclusions may apply when securityholders vote on a removal resolution, subject to the following comments: • footnote 35 indicates that directors and senior managers would generally be considered to have a material informational advantage – the Committee is supportive of security holders who will have a material informational advantage from being excluded from voting however, given this is a relatively new concept and the market will develop in relation to it, queries whether ASX should start by indicating that directors, the CEO and CFO of the listed entity will generally have a material informational advantage, and that ASX may expand the application of this voting exclusion over time. In particular, the Committee: • considers that the example of "senior managers" may be open to interpretation; and

ASX reforms table

#	ASX change	Law Council responses
		• queries whether there may be other categories of security holders who have a material informational advantage arising from their rights under an agreement with the entity – the Committee considers that these categories may emerge as this concept of a "material informational advantage" matures; and • it would be helpful if an example could be provided of those that may be subject to a voting exclusion due to a concern they are likely to obtain another material benefit (or the circumstances that may give rise to that type of benefit). The Committee also notes that there could be greater consistency regarding the need to make (and communicate) what, if any, arrangements will be in place to enable securityholders to sell or otherwise realise their securities in the lead up to, and after, an entity's removal from the official list (see for example, section 2.2 cf section 2.7(b)), particularly in circumstances in which some entities and industry participants are concerned about "grey markets" and whether certain proposed post-delisting arrangements may be regulated. The Committee queries whether there should be a distinction between removing an entity from the official list which has (i) ordinary shares and (ii) a class or classes of securities other than ordinary shares ("non-ordinary shares") that would influence ASX to impose a condition that the removal not take place for a

ASX reforms table

#	ASX change	Law Council responses
		minimum period if there are non-ordinary shares (but not impose the condition if there are only ordinary shares). If ASX considers that it may impose conditions that the removal not take place for a minimum period where an entity has only ordinary shares, ASX may wish to consider repeating the paragraph in section 2.8 of GN 33 in section 2.7 of GN 33. In respect of section 2.11 of GN 33, the Committee is supportive of ASX adopting a more prescriptive approach to the matters that are required to be included in a notice of meeting fully and fairly to inform security holders. However, the Committee considers that ASX should consider whether an explanation of oppression remedies (noting that the Committee assumes the reference to Part 2.1 of the Corporations Act should be a reference to Part 2F.1 of the Corporations Act) should be included in the notice. The Committee considers that this may give undue weight to statutory oppression (in circumstances where shareholders have other rights and remedies that are not explained and where oppression has almost never been ordered in a similar context) and may tend to a more litigious approach to delisting (which the Committee assumes ASX would not wish to encourage). In respect of section 3.2 of GN 33, the Committee notes that ASX proposes to amend the reference to "simply failing" to pay an annual listing fee to "refusing" to pay an annual list fee. The Committee queries whether ASX is making a distinction between an entity that is incapable (e.g. due to its cash position) of paying its annual listing fee and an entity that wilfully determines not to pay its annual listing fee. If ASX is not proposing to draw that

ASX reforms table

#	ASX change	Law Council responses
		distinction, the Committee would suggest that the language regarding "failing" to pay an annual listing fee remain. The Committee is supportive of the proposed changes to sections 3.3, 3.4 and 5 of GN 33 (including the proposed changes to the time periods for automatic removal).
9.9	There will be consequential changes required to GNs 4, 5, 17, 19, 20, 23, 29, 30 and 34 to reflect the proposed listing rule changes mentioned above.	The Committee has no comments.
10. Accompanying documents		
10	ASX is keen to receive feedback on the contents of the proto-type Appendix 2A, 3B and 4A forms included in Annexures K, L and M respectively, including in particular the requirement mentioned above for any entity relying on its placement capacity under rule 7.1 or 7.1A to make an issue of equity securities without security holder approval to complete the applicable worksheet and send it to ASX. Will this requirement be burdensome to comply with? Might there be any unintended consequences if it is adopted?	The Committee is supportive of the proposed interactive nature of the proto-type Appendix 3B and note that this feature is a helpful addition. The Committee have no comments regarding Appendices 2A or 4A other than as otherwise set out in this submission. The Committee welcomes ASX reviewing the placement capacity worksheet in the specified scenarios, but suggests ASX clarifies the timeframe for ASX's review so this step can be factored into relevant timetables.