

# Corporate Governance

for the year ended 30 June 2010

## Corporate Governance at Downer

Downer's corporate governance framework provides the platform from which:

- the Board is accountable to shareholders for the operations, performance and growth of the company;
- Downer management is accountable to the Board;
- the risks of Downer's business are identified and managed; and
- Downer effectively communicates with its shareholders and the investment community.

To assist Downer to maintain an effective system of corporate governance, the Board (under the oversight of the Nominations and Corporate Governance Committee) commissioned an extensive review of the company's corporate governance structure and systems in FY2009.

We are pleased to report that following on from the review, the company has enhanced its corporate governance framework, and is continuing to update ancillary frameworks to ensure we continue to promote leading corporate governance practices.

### ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*

It is the Board's opinion that throughout the year ended 30 June 2010, Downer complied with the recommendations contained in the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* ('ASX Principles').

Our corporate governance statement sets out details of compliance with the ASX Principles, and is arranged in order of the ASX Principles.

## Principle 1: Lay solid foundations for management and oversight

### Role and responsibilities of the Board and management

In 2010, Downer adopted a revised *Board Charter*, which sets out the functions and responsibilities of the Board and describes the functions delegated to management. The *Board Charter* is available on the Downer website at [www.downergroup.com](http://www.downergroup.com).

Under the *Board Charter*, the role of the Board is to provide strategic guidance for the company and to effectively oversee management of the company. Among other things, the Board is responsible for:

- overseeing the company, including its control and accountability systems;
- appointing and removing the Chief Executive Officer and Managing Director and senior executives, and monitoring performance of the Chief Executive Officer and Managing Director and senior executives; and
- reviewing, ratifying and monitoring systems of risk management and internal control, codes of conduct and legal compliance.

The primary goal set for management by the Board is to focus on enhancing shareholder value.

### Evaluation of senior executives

The Board has adopted an improved induction process for directors and senior executives. The induction process provides new directors and senior executives with information and materials to allow them to participate fully and actively in their roles with the company.

The performance of Downer's senior executives is regularly reviewed against appropriate measures, including individual performance targets linked to the business plan and overall corporate objectives. Downer's senior executives participate in periodic performance evaluations pursuant to which they receive feedback on progress against these targets.

## Principle 2: Structure the board to add value

### Board composition

During the 2010 financial year, the Board comprised the Chairman (Peter Jollie, an independent, non-executive director), five independent, non-executive directors and one executive director (the Chief Executive Officer and Managing Director, Geoff Knox). Details of the members of the Board, including their skills, experience, status and their term of office are set out in the Directors' Report and are available on the Downer website at [www.downergroup.com](http://www.downergroup.com).

The Chairman is an independent, non-executive director. He is appointed by the Board to provide leadership to the Board and to ensure that a high standard of values, processes and constructive interaction is maintained. The Chairman represents the views of the Board to our shareholders and conducts the Annual General Meeting.

The composition of the Board is assessed by the Nominations and Corporate Governance Committee to ensure the requisite balance of skills for the business is represented on the Board.

### Board independence

Each director has an overriding duty to act in the best interests of the company, to avoid situations of conflict of interest and not use their position for personal benefit.

Each director is required to promptly disclose actual and possible conflicts of interest, any interests in contracts, other directorships or offices held, related party transactions and any dealing in the company's securities.

The ASX Principles recommend that the Board comprise a majority of independent directors. Under the *Directors' Independence Policy*, the Board is responsible for determining whether a director is independent. The *Directors' Independence Policy* sets out the criteria to which the Board has regard when determining the independent status of a director. The *Directors' Independence Policy* reflects the ASX Principles.

### Period of office

Each director is required to retire by rotation, with one third of the Board retiring at each Annual General Meeting. No non-executive director can serve more than three years without offering themselves for re-election.

### Board meetings

The Board meets regularly for scheduled meetings and on other occasions to deal with specific matters that require attention between meetings. In addition to attending Board and Committee meetings, non-executive directors allocate time for strategy and budget sessions, preparation for meetings and inspection of operations.

The agenda for meetings is prepared in conjunction with the Chairman and the Chief Executive Officer and Managing Director. The regular business of the Board includes review of business performance and plans, Zero Harm (including safety, environment and sustainability issues), shareholder value (including financial performance), people and culture matters, client engagement issues, major strategic issues and investments, governance and compliance matters and regular presentations by operational management.



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## Committees of the Board

The Board has established a number of committees to assist the Board to effectively and efficiently execute its responsibilities. The Board Committees review matters on behalf of the Board and make recommendations for consideration by the full Board.

As part of its commitment to leading corporate governance practice, a review of the Board Committee charters was undertaken. Following on from the review, in early 2010, the Board adopted enhanced charters for each of the Board Committees.

A list of the main Board Committees and their membership is set out below:

Board Committee	Chairman	Members
Audit Committee	Annabelle Chaplain	John Humphrey Peter Jollie Chris Renwick
Zero Harm Committee	Chris Renwick	Mike Harding John Humphrey Grant Fenn Grant Thorne
Nomination and Corporate Governance Committee	Peter Jollie	Lucio Di Bartolomeo John Humphrey Chris Renwick
Remuneration Committee	Lucio Di Bartolomeo	Annabelle Chaplain Peter Jollie
Risk Committee	Mike Harding	Lucio Di Bartolomeo Annabelle Chaplain
Disclosure Committee	John Humphrey	Peter Jollie Grant Fenn
Listed Company Transactions Committee	John Humphrey	Peter Jollie Grant Fenn
Tender Review Committee	As appointed by the Board from time to time	As appointed by the Board from time to time

The number of meetings and the attendances by each of the members of the various Board Committees to which they have been appointed is set out in the Directors' Report.

## Nominations and Corporate Governance Committee

The Nominations and Corporate Governance Committee's primary purpose is to support and advise the Board on fulfilling its responsibilities to shareholders by ensuring that the Board is comprised of individuals who are best able to discharge the responsibilities of directors having regard to the law and leading corporate governance practice. The Committee's responsibilities include:

- assessing the skills and competencies required on the Board;
- from time to time, assessing the extent to which the required skills are represented on the Board;
- establishing processes for the review of the performance of individual directors and the Board as a whole;
- establishing processes for the identification of suitable candidates for appointment to the Board;
- recommending the appointment and appropriateness of directors; and
- reviewing the company's corporate governance policies and procedures.

The Nominations and Corporate Governance Committee is comprised of a minimum of three independent, non-executive directors.

### Board performance evaluation

As part of its commitment to leading corporate governance practice, the Board undertakes improvement programs which include periodic reviews of its performance in consultation with an external consultant. The most recent external review was conducted in 2009.

### Facilitation of Board performance

Downer's senior management team provides detailed papers and attends Board meetings to give presentations and answer any questions the directors may have. Divisional chief executive officers present the divisional business plans to the Board as part of the annual business planning cycle and when larger or complex tenders relating to their respective divisions are being considered.

Directors are encouraged to continually build on their exposure to the company's business and a formal program of director site visits has been implemented during the year. Further, Board meetings are scheduled at various locations, a practice which permits a more detailed view of operations. Since the last Annual Report, three Board meetings have been held at divisional operations.

### New directors

All new directors are given a formal letter of appointment which sets out their roles, responsibilities and various other corporate information. The purpose of this practice is to assist each director to successfully carry out his or her duties with the company. Directors are also given an induction presentation by the Company Secretary and an induction pack containing information about the company and its business, Board and Committee charters and company policies. New directors also meet with key senior executives to gain an insight into the company's business operations and the Downer group structure.

### Directors' continuing education

Directors are encouraged to attend appropriate training and professional development courses to update and enhance their skills and knowledge.

During the year, a continuing education program was formally adopted by the Board. The Company Secretary, various senior executives and external advisers have presented a number of information sessions to the Board during the year.

### Access to information and independent professional advice

Pursuant to the *Board Charter*, directors are entitled to full access to information required to discharge their responsibilities. With the prior approval of the Chairman, each director has the right to seek independent legal and other professional advice at the company's expense in connection with his or her position as a director. The directors also have access to the Company Secretary for all Board and governance related issues.

### Principle 3: Promote ethical and responsible decision making

Downer strives to attain the highest standards of behaviour and business ethics when engaging in corporate activity. The company currently has a *Directors' Code of Conduct* and a *Corporate Code of Conduct*, both of which set out the company's expected standards of conduct.

The *Directors' Code of Conduct* requires directors to act honestly, in good faith and observe the duties and exercise the powers vested in them with due care and diligence, whilst the *Corporate Code of Conduct* sets out the standards of behaviour required from all Downer employees. The *Corporate Code of Conduct* also sets out the responsibility and accountability of individuals for reporting and investigating reports of conduct which is contrary to the standards expected at Downer. A summary of the *Directors' Code of Conduct* and main provisions of the *Corporate Code of Conduct* are available on the Downer website at [www.downergroup.com](http://www.downergroup.com).

The company is currently reviewing these Codes, and aims to finalise its review and implement the new code of conduct in the upcoming financial year.

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## Securities trading policy

The company has recently reviewed its *Securities Trading Policy* which is in line with leading practice. The *Securities Trading Policy* stipulates 'trading windows' for designated employees and formalises a process which all employees are required to adhere to when dealing in securities. A copy of the *Securities Trading Policy* is available on the Downer website at [www.downergroup.com](http://www.downergroup.com).

Current shareholdings of directors and key management personnel of the company are shown in Note 33 (page 106) of the Financial Statements.

## Principle 4: Safeguard integrity in financial reporting

The company has in place a structure of review and authorisation which independently verifies and safeguards the integrity of its financial reporting.

### Audit Committee

The Downer Audit Committee assists the Board to fulfil its responsibility relating to the quality and integrity of the accounting, auditing and reporting practices of the company.

The Audit Committee's role includes a particular focus on the qualitative aspects of financial reporting to shareholders.

The Audit Committee and the Board are responsible for the appointment, compensation and oversight of the external auditors engaged to prepare an audit report on the financial statements of the company as well as the appointment and oversight of the internal audit function.

The Audit Committee comprises four directors with relevant financial, commercial, legal and risk management experience. In keeping with leading international practice, the chair and each member of the Audit Committee are independent directors. The Audit Committee reports to the Board about the matters for which it is responsible.

The *Audit Committee Charter* sets out the responsibilities of the Audit Committee and clearly delineates its role in reviewing the integrity of the company's financial reporting and oversight of the independence of the external auditors. A copy of the *Audit Committee Charter* is available on the Downer website at [www.downergroup.com](http://www.downergroup.com).

Downer strengthened its internal audit function during the year, following on from the various practices and processes introduced in FY2009.

## Principle 5: Make timely and balanced disclosure

As part of its commitment to providing timely, full and accurate disclosure to the market, shareholders and investors, the company adopted a new *Disclosure Policy* during the year. The *Disclosure Policy* sets out processes which assist the company to ensure that all investors have equal and timely access to material information about the company and that company announcements are factual and presented in a clear and balanced way. A copy of the *Disclosure Policy* is available on the Downer website at [www.downergroup.com](http://www.downergroup.com).

The *Disclosure Policy* also sets out the procedures for identifying and disclosing material and price-sensitive information in accordance with the Corporations Act 2001 (Cth) and the ASX Listing Rules.

### Disclosure Committee

The company has formally established a Disclosure Committee consisting of two independent, non-executive directors (one of whom is the Chairman) and the Chief Executive Officer and Managing Director. The Disclosure Committee oversees disclosure of information by the company to the market and the general investment community, pursuant to its mandate in the *Disclosure Committee Charter*.

The Disclosure Committee meets on an informal basis as required throughout the year, including for the purpose of receiving and approving the company's results announcements.

## Principle 6: Respect the rights of shareholders

### Communications

The Board has updated and enhanced its guidelines for shareholder communications to assist in facilitating the rights of the company's shareholders. The *Downer Communications Policy* is available on the Downer website at [www.downergroup.com](http://www.downergroup.com).

The company publishes corporate information on the Downer website at [www.downergroup.com](http://www.downergroup.com), including half yearly and annual reports, ASX announcements and media releases.

Downer also encourages shareholder participation at Annual General Meetings through its use of electronic communication, including audio casting of Annual General Meetings and investor presentations.

### Attendance of external auditor at Annual General Meetings

As standard procedure, Downer's external auditor attends the company's Annual General Meeting and is available to answer any questions which shareholders may have about the conduct of the external audit for the relevant financial year and the preparation and content of the Audit Report.

## Principle 7: Recognise and manage risk

### Risk Committee

Downer has established a Risk Committee to assist the Board in its oversight of Downer's risk profile and risk policies, the effectiveness of the systems of internal control and framework for risk management and Downer's compliance with applicable legal and regulatory requirements.

The *Risk Committee Charter* is available on the Downer website at [www.downergroup.com](http://www.downergroup.com).

As part of its mandate, the Risk Committee seeks to identify and minimise potential risks and exposure of Downer, both internally and externally, to ensure that appropriate management focus is given to risk identification, measurement and reporting and that strategies are in place for mitigation of risk.

### Risk management

To mitigate the risks that arise through its activities, Downer has risk management policies and guidelines in place that cover interest rate management, foreign exchange risk management, credit risk management and operational and decision-making risk management.

Downer has an established corporate compliance team to monitor risk management and uses external consultants to assist with the ongoing review of risk management across the Downer group. Downer has also established principles for the company to follow to ensure that contract formation and contract management processes are maintained and improved.

Management reports regularly to the Board on the effectiveness of Downer's management of its material business risks.

### Internal controls

Downer has controls at the Board, executive and business unit levels that are designed to safeguard Downer's interests and ensure the integrity of reporting (including accounting, financial reporting, environment, occupational health and safety, and other internal control policies and procedures). These controls are designed to ensure that Downer complies with regulatory requirements and community standards.

### Sign-off by the Chief Executive Officer and Managing Director and the Chief Financial Officer

The integrity of the company's financial reporting depends upon the existence of a sound system of risk oversight and management and internal controls. The Board has received assurances from the Chief Executive Officer and Managing Director and the Chief Financial Officer that the declaration provided in accordance with section 295A of the Corporations Act 2001 (Cth), is founded on a sound system of risk management and internal control and that the system is operating effectively in all material respects in relation to financial reporting risks.

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## Principle 8: Remunerate fairly and responsibly

The Nominations and Corporate Governance Committee and the Remuneration Committee are together responsible for recommending and reviewing remuneration arrangements for the Chief Executive Officer and Managing Director, executive directors, non-executive directors and senior executives of the company.

### Remuneration Committee

The role of the Remuneration Committee is to review and make recommendations to the Board in respect of various matters relating to:

- executive remuneration and incentive policy;
- the remuneration of the Company Secretary, all senior executives reporting directly to the Chief Executive Officer and Managing Director and all employees of the company whose base remuneration exceeds (currently) \$500,000 per annum;
- executive incentive plans;
- equity-based incentive plans;
- superannuation arrangements;
- recruitment, retention, performance measurement and termination policies and procedures for the Chief Financial Officer, the Company Secretary and all senior executives reporting directly to the Chief Executive Officer and Managing Director; and
- retirement payments.

The *Remuneration Committee Charter* requires that the Committee will comprise at least three members, consisting of a majority of independent non-executive directors.

The remuneration of the Chief Executive Officer and Managing Director, executive directors and the non-executive directors forms part of the responsibilities of the Nominations and Corporate Governance Committee.

### Structure of remuneration

The maximum aggregate fee approved by shareholders that can be paid to non-executive directors is \$2,000,000 per annum. This cap was approved by shareholders on 30 October 2008. The Directors' Report shows the amount of remuneration paid to executive directors and non-executive directors. The total amount of remuneration paid to non-executive directors during the 2010 financial year was \$1,420,868.

The company's Constitution currently allows for retiring non-executive directors to receive a retiring allowance, subject to the limitations under the Corporations Act 2001 (Cth). Consistent with the ASX Principles, the right to retirement benefits, where applicable, was frozen in 2005. However, because remuneration arrangements for some non-executive directors were in place prior to 2005, where such retirement benefits have been paid, information about the payments has been fully provided in the financial statements. Directors entitled to a retirement benefit were paid a reduced fee. Once a director's accumulated reduction in base fees has reached the value of the retirement benefit, the applicable base fee reverts to the general fee level. This has been applied to Mr Humphrey from 1 July 2009. The retirement benefit has not been offered to non-executive directors appointed subsequently.

Non-executive directors do not participate in any equity incentive schemes.

The remuneration structure for executive directors and senior executives is designed to achieve a balance between fixed and variable remuneration, taking into account the performance of the individual and the performance of the company. Executive directors receive payment of equity-based remuneration as short and long-term incentives.

Further details about remuneration of executive directors and senior executives are set out in the remuneration report.

Key features of the current Downer employee share plans and details of Downer shares beneficially owned by directors are provided in the Directors' Report.