

**ICGN**

International Corporate Governance Network

inspiring good governance & stewardship

Elizabeth Johnstone, Chair
Corporate Governance Council
Australian Securities Exchange
20 Bridge Street
Sydney NSW 2000
Australia

3 May 2024

Dear Ms Johnstone,

Subject: 5th Edition of the Corporate Governance Council Principles and Recommendations

The International Corporate Governance Network (ICGN) appreciates the opportunity to comment on the Australian Securities Exchange (ASX) Corporate Governance Council (“the Council”) consultation on the 5th edition of its Corporate Governance Council Principles and Recommendations (“Principles and Recommendations”).

ICGN advances the highest standards of corporate governance and investor stewardship to preserve and create long-term value, thereby contributing to sustainable economies and capital market effectiveness. Our response to the Council’s consultation draws from the ICGN Global Governance Principles¹ which are often referred to by regulators and standard setters as an international benchmark in the development of national policies. The ICGN Principles are also used by ICGN members, who collectively represent around \$77 trillion in assets under management, in the exercise of their stewardship responsibilities.

Australia is regarded by many capital market participants around the world as a jurisdiction with the highest standards of corporate governance and investor stewardship. We congratulate the Council for its leadership in developing ongoing national reforms and for your wider contribution to the evolution of international policies and practices.

ICGN’s commentary in this letter is drafted in response to the specific questions raised in the consultation. We have taken the liberty of setting out some general comments below with more detailed answers provided in the annex.

General comments

Long-term sustainable value creation

We are pleased that the Principles and Recommendations explicitly reference that “good corporate governance can contribute to the long-term sustainable value of listed companies”. This is at the heart of ICGN’s mission, and we fully agree with this statement. We also support the emphasis on the importance of companies having due regard to their stakeholders, ensuring there are appropriate engagement processes, and that any material issues arising are reported to the board. We note that the list of stakeholders in the Principles and Recommendations refers to ‘employees.’ The term ‘workforce’ might be more appropriate to ensure that the stakeholders considered also includes contractors and other non-employee workers. We also welcome the inclusion of reference to “deal with customers and suppliers fairly” in Box 3.2, reflecting the importance of the equitable treatment of stakeholders in the pursuance of the company’s purpose and long-term strategy.

Board oversight

¹ ICGN, *Global Governance Principles* (2021)

We appreciate the clarification that where some board responsibilities have been delegated to a board committee, the board as a whole retains ultimate oversight in respect to those delegated matters. We recommend strengthened language regarding section 4.1 on audit, as the current wording (4.1.b) seems to imply that it is acceptable for a company not to have an audit committee. ICGN encourages all listed companies to have an audit committee, given its key role in ensuring the quality and integrity of corporate reporting, accounting, and statutory audit.

Internal controls

We encourage the Council to retain current recommendation 4.2. requiring the CEO and CFO for a declaration “that, in their opinion, the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity, and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively”. Ensuring that the financial statements are accurate is an integral part of the CEO and CFO’s responsibility in promoting the long-term success of the company. We also encourage the Council to highlight the importance of internal controls in the recommendations rather than in the commentary.

Corporate culture

We welcome the emphasis on instilling and continually reinforcing a culture across the organisation of acting lawfully, ethically, and responsibly. We support the new approach and wording in the commentary, that the board should monitor the culture within the company, including its alignment with the entity’s purpose, values, strategic objectives, and risk appetite. We also support the requirement to disclose material breaches of conduct, and the outcomes of actions taken in response to these breaches.

Hybrid AGMs

The Annual General Meeting (AGM) is an important forum for shareholders to hold the board and management accountable for preserving and enhancing long-term corporate value. Ideally AGMs should allow for the physical presence of participants, including provision for voting electronically by proxy, and ensure live interaction is possible between shareholders and the board and management. ICGN generally discourages virtual-only AGMs given that this minimises a shareholder’s ability to directly engage with the board by asking questions or making statements. We instead recommend that companies provide for hybrid AGMs to allow investors to have the option of virtual or live participation. We were pleased that the Council also recommends hybrid AGMs in its commentary.

Sustainability reporting

We recommend that the Council encourages companies to report their exposure to material sustainability related risks and opportunities, how these are managed, and relevant performance metrics. We encourage specific reference to the standards developed by the International Sustainability Standards Board (ISSB), which provide a global baseline for sustainability-related corporate disclosures and build on the work of the Taskforce for Climate-related Financial Disclosures (TCFD). The work of the ISSB is widely supported by investors globally, who welcome comparable, reliable, and verifiable corporate sustainability disclosures to make informed stewardship and investment decisions.²

Thank you again for the opportunity to share our perspective. If you would like to follow up with questions or comments, please contact our Global Policy Director, Séverine Neervoort (severine.neervoort@icgn.org) or Policy Executive, Wendela Rang (wendela.rang@icgn.org).

Yours faithfully,

² ICGN, *Letter to the International Sustainability Standards Board (ISSB) on the inaugural global sustainability disclosure standards* (26 June 2023)



Kerrie Waring
Chief Executive Officer, ICGN

Appendix: Responses to the consultation questions

1. Do you support deletion of the following 4th Edition Recommendations, on the basis that there is significant regulation under Australian law?

- a. Recommendation 3.4 (disclosure of anti-bribery and corruption policy)?**
- b. Recommendation 4.2 (CEO and CFO declaration for financial statements)?**
- c. Recommendation 6.4 (substantive security holder resolutions on a poll)?**
- d. Recommendation 6.5 (offering electronic communications to security holders)?**
- e. Recommendation 8.2 (separate disclosure of remuneration policies for non-executive directors, other directors and senior executives)?**
- f. Recommendation 8.3 (policy on hedging of equity-based remuneration)?**

If there is significant regulation which applies to all ASX listed companies, we understand the rationale for deleting some of these recommendations. However, in the event that there is not significant regulation covering the issues within these recommendations, the Council should retain them. Regardless, we encourage the Council to maintain the requirement 3.4. for companies to have an anti-bribery and corruption policy, which should be communicated to shareholders and relevant stakeholders, as well as 4.2. regarding CEO and CFO declaration for financial statements and 8.3 policy on hedging of equity-based remuneration.

2. In particular, the Council encourages feedback on the proposed deletion of Recommendation 3.3 (disclosure of whistleblower policy). Would you prefer to retain this Recommendation?

We suggest retaining this recommendation. It is important that the board ensures that the company has in place an independent, confidential mechanism whereby a worker, supplier, shareholder, customer, or relevant stakeholder can (without fear of retribution) raise issues of particular concern regarding potential or suspected breaches of a company's code of ethics or local/national law.

3. Recommendation 2.2: The Council already recommends disclosure of a board skills matrix or skills a board is looking for. Do you support disclosure of the following information about board skills?

- a. Recommendation 2.2(a): current board skills and skills that the board is looking for?**
- b. Recommendation 2.2(b): the entity's process for assessing that the relevant skills and experience are held by its directors?**

We support both proposals. ICGN encourages corporate boards to establish formal and transparent procedures in the director selection process. The director selection criteria articulated in the skills matrix should be relevant and objective and align with the company's long-term strategy, succession planning and diversity policy. We also suggest adding to this recommendation a requirement for disclosure around the process for identifying which skills are needed on the board. In addition to skills and experience, Recommendation 2.2 (b) should include "capacity", referring to the time commitment required to the exercise of their functions.

4. **Recommendation 2.3: Women hold approximately 35% of all S&P/ASX300 directorships. This exceeds the existing measurable objective of at least 30% of each gender for those boards. Do you support raising the S&P/ASX300 measurable objective to a gender balanced board?**

We welcome this recommendation. ICGN believes that boards should strive towards achieving appropriate gender diversity. We note that Australia is a jurisdiction that has made “considerable progress” to achieve gender diversity on boards, according to the OECD. We commend the Council for having contributed to this achievement through its Corporate Governance Principles.

5. **Recommendation 2.3(c): The Council already recommends disclosure of a board’s approach and progress on gender diversity. Do you support the proposed disclosure of any other relevant diversity characteristics (in addition to gender) which are being considered for the board’s membership?**

ICGN supports disclosure of other diversity characteristics on the board, beyond gender. Disclosures on diversity are used by investors when assessing a company’s value and represent financially material information. A board or senior management team that comprises a genuinely diverse group of individuals, with a broad range of perspectives, is likely to make better business decisions. It is also more likely to enjoy greater legitimacy among the company’s stakeholders including its workforce and customers. This is key to the long-term success of a company. Investors, depending on their mandates, are also increasingly interested in understanding the impact of a company on society. Diverse boards and management teams can help advance efforts to reduce discrimination, systemic racism, and social inequality more broadly.

6. **Recommendation 3.4(c): The Council already recommends disclosure of an entity’s diversity and inclusion policy and disclosure of certain gender metrics. Do you support the proposal to also recommend disclosure of the effectiveness of an entity’s diversity and inclusion practices?**

Yes, we see the benefits of such an approach. According to ICGN Global Governance Principle 3.1 Diversity, equity, and inclusion, “Boards should disclose and report against the company’s policy on diversity, equity and inclusion to the extent permitted by law, which should include measurable goals and period for achievement.”

7. **Recommendation 2.4: Do you support increasing the security holding reference included in Box 2.4 (factors relevant to assessing the independence of a director) from a substantial holder (5% or more) to a 10% holder (10% or more)?**

We do not support this proposal.

8. **Recommendation 3.2(c): The Council already recommends that a listed entity should have a code of conduct and report material breaches of that code to its board or a board committee. Do you support the proposed disclosure (on a de-identified basis) of the outcomes of actions taken by the entity in response to material breaches of its code?**

Yes, we do.

9. **Principle 3: Do you support the proposed amendments to Principle 3 (acting lawfully, ethically and responsibly), to include references to an entity’s stakeholders?**

We are pleased to see the addition of “good corporate governance can contribute to the long-term sustainable value of listed companies” in the Foreword. This reflects ICGN’s long-standing position that high standards of corporate governance contribute to long-term value creation for sustainable economies, societies, and the environment. We also support the reference to a company’s stakeholders, to which our Principles also refer.

10. **Recommendation 3.3: Does this new Recommendation appropriately balance the interests of security holders, other key stakeholders, and the listed entity?**

“A listed entity should have regard to the interests of the entity’s key stakeholders, including having processes for the entity to engage with them and to report material issues to the board.”

Yes. We support the emphasis on these elements, as they are the foundation for sound corporate governance.

11. **Recommendation 4.2: Do you support the proposed disclosure of processes for verification of all periodic corporate reports (including the extent to which a report has been the subject of assurance by an external assurance practitioner)?**

Yes, we do. In the commentary, the Council could highlight the importance of ethics and independence, when it comes to audit and assurance engagements – referring, for instance, to the standards developed by the International Ethics Standards Board’s (IESBA).

12. **Recommendation 4.3: Do you support the proposed disclosure of an entity’s auditor tenure, when the engagement was last comprehensively reviewed and the outcomes from that review?**

Yes. In our view, the board should explain the work of the audit committee in the annual report, which should inform shareholders on the committee’s oversight of the effectiveness of the audit process including audit tender, auditor and audit firm tenure, independence, fees, and the provision of any non-audit services.³ This is important to ensure the shareholders’ approval of the auditor’s appointment and remuneration. ICGN recommends that companies publish a policy on audit firm tendering including how matters such as audit rotation and tenure are considered. The audit committee should be responsible for the procurement process for external auditors.

13. **Recommendation 7.4: The Council is seeking to enhance the quality of existing reporting of material risks to an entity’s business model and strategy, such as in the operating and financial review in its directors’ report. Do you support the proposal that the entity identify and disclose its material risks, rather than identifying specific risks for all entities to disclose against?**

We agree that companies are best placed to identify their material risks. Regarding sustainability-related risks, we encourage the Council to ask companies to report information according to the International Sustainability Standards Board’s (ISSB) standards (both IFRS S1 and S2, and upcoming standards). We are aware that in 2025, disclosures in line with the IFRS S2 Climate-related Disclosures will become mandatory for large companies, and, in the following years, for mid-sized and small companies. Furthermore, we recommend that the Council includes a definition of what constitutes an internal control framework.

14. **Recommendation 8.2: This proposed Recommendation reflects and simplifies existing commentary in the 4th Edition. Do you support this proposed Recommendation that non-executive directors not receive performance-based remuneration or retirement benefits?**

Yes, we do. ICGN discourages the use of share options or any form of performance-based remuneration for non-executive directors or chairs, to preserve their independence. According to ICGN Global Governance Principles, Principle 5.9. Non-executive director remuneration, the board, or shareholders as required by law in some jurisdictions, should determine levels of pay for non-executive directors and the non-executive chair and ensure that it is structured in a way which ensures independence, objectivity, and alignment with the long-term interests of the company and all its shareholders. Remuneration paid to non-executive directors should be publicly disclosed.

³ ICGN, *Global Governance Principles* (2021), Principle 8.4 Audit Committee report

15. Recommendation 8.3: Do you support the following proposed clawback Recommendations?

a. Recommendation 8.3(a): remuneration structures which can clawback or otherwise limit remuneration outcomes for senior executive performance-based remuneration?

b. Recommendation 8.3(b): disclosure of the use of those provisions (on a de-identified basis) during the reporting period?

Yes, we do. Companies should include provisions in their incentive plans that enable the company to withhold the payment of any malus or recover through a clawback provision in the event of serious misconduct or a material misstatement in the company's financial statements.⁴

16. Do you support the inclusion of the following new Recommendations for entities established outside Australia, on the basis that these Recommendations generally reflect expectations under Australian law?

a. Recommendation 9.3 (CEO and CFO declaration for financial statements)?

b. Recommendation 9.4 (substantive security holder resolutions on a poll)?

c. Recommendation 9.5 (offering electronic communications to security holders)?

d. Recommendation 9.7 (policy on hedging of equity-based remuneration)?

Yes, we support this.

17. Should any new or amended Recommendations in the *Consultation Draft* apply differently to externally managed entities, compared to the manner proposed in *The application of the Recommendations to externally managed listed entities*?

We do not wish to make a comment.

18. Do you support an effective date for the Fifth Edition of the first reporting period commencing on or after 1 July 2025?

Yes, we do.

19. Do you wish to provide any other comments on the content of the *Consultation Draft*, including any other changes you would propose?

We note that the current draft refers to diversity and inclusion (D&I) rather than diversity, equity, and inclusion (DE&I). Equity is an important term, and we recommend that the Council includes an explicit reference to it.

Finally, we appreciate the inclusion of Recommendation 6.2 in terms of considering engagement with investors, where a significant number of votes are cast against a resolution put to a general meeting.

⁴ ICGN, *Global Governance Principles* (2021), Principle 5.4 Malus and clawback