SUBMISSION

Submission to the ASX Corporate Governance Council – Principles and Recommendations – Fifth Edition

7 May 2024

The Association of Superannuation Funds of Australia Limited
Level 11, 77 Castlereagh Street
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T +61 2 9264 9300
1800 812 798 (outside Sydney)
F 1300 926 484
W www.superannuation.asn.au

ABN 29 002 786 290 CAN 002 786 290

File: 2024/24

ASX Corporate Governance Council
Exchange Centre
20 Bridge Street
Sydney NSW 2000

Lodged via the ASX portal [Qualtrics Survey | Qualtrics Experience Management]

7 May 2024

Dear Sir/Madam,

Proposed fifth edition of the *Corporate Governance Council Principles and Recommendations*

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to your consultation on the proposed fifth edition of the *Corporate Governance Council Principles and Recommendations*.

ABOUT ASFA

ASFA, the voice of super, has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

GENERAL COMMENTS

ASFA is generally supportive of the proposed fifth edition of the *Corporate Governance Council Principles and Recommendations*.

Our member organisations have, however, made a number of observations and recommendations, as outlined in our Specific Comments section below.

ASFA seeks to ensure that member outcomes are appropriate, optimised and there are no unintended consequences flowing from policy decisions relating to superannuation. We also endeavour to ensure operational effectiveness of the superannuation system – that is, that the system delivers, at a reasonable cost, services of a type and standard that meet the needs and expectations of fund members and help them develop confidence in the system.

SPECIFIC COMMENTS

In reviewing the proposed fifth edition of the *Corporate Governance Council Principles and Recommendations* (Proposed 5th Edition) our member organisations have made the following observations and recommendations.

1. **Principle 1: Lay solid foundations for management and oversight**

    1.1. **Recommendation 1.1 – Board Charter – Succession planning as a key board responsibility**

Member organisations have welcomed the refinements made to recommendation 1.1, in particular the inclusion of language with respect to purpose, strategic objectives, culture, and the relevance of key stakeholders to the design and effectiveness of its governance structures and practices.

Members have indicated, however, that they consider succession and contingency planning with respect to the board chair and chairs of board committees to be a critical responsibility of the board and, as such, that this could be drawn out through the commentary through including references to succession planning.

1.2. Recommendation 1.2 – Director appointment/election – Acknowledgement time commitment

Member organisations have observed that, given rapidly evolving regulatory environments and an increasing number of systemic risks and opportunities faced by companies over the past decade, the time commitment of a board director today has increased significantly.

Given this, members have indicated that ideally a director's acknowledgment that they will have sufficient time to fulfil their responsibilities as director should be made to stakeholders, as well as to the company, and that the commentary with respect to a director's acknowledgment should be strengthened. Members have suggested that consideration could be given to the assessment of time commitments being made with respect to a 'stressed', as opposed to a 'Business As Usual' (BAU), scenario.

2. Principle 2: Structure the board to be effective and add value

2.1. Recommendation 2.2 – Board skills matrix

Member organisation have welcomed the addition of recommendation 2.2(b) to disclose how the board assesses the relevant skills and experience of its directors.

This additional disclosure will serve to provide investors with greater confidence in the nomination process and assist them in assessing the suitability of the company's directors. Members have recommended that, in addition to board views with respect to how it will achieve the right mix of skills and experience going forward, subject to commercial sensitivity it would be helpful for companies to disclose the time horizons for expected future changes, which would provide investors with confidence about board refreshment.

2.2. Recommendations 2.3 – Diversity

Member organisations have indicated that they strongly support measures to improve board diversity and the need for inclusion and diversity policies.

They have welcomed the additional language with respect to recommendation 2.3(a) regarding gender diversity and noted that it is consistent with research that demonstrates how gender diversity in board and executive leadership positions is related to long-term, sustainable, value creation.

Members have identified that, while they recognise the importance of gender diversity with respect to board effectiveness, they are concerned that there needs to be more emphasis placed on a broader range of diversity considerations beyond gender and that the proposed principles may not go far enough.

Given this, members have encouraged the inclusion of stronger language with respect to recommendation 2.3(c) regarding 'other relevant diversity considerations' to ask that boards consider, and report, on a range of diversity characteristics including, but not limited to, ethnicity/race; First Nations; cultural and linguistic diversity; age; gender identity; sexual orientation; disability; neurodiversity; parental status; religious beliefs; and socioeconomic background. They consider that disclosure around board consideration of diversity will provide an insight into the range of board perspectives that will support sound decision-making and mitigate the risk of 'group think'.

Further to this, members have recommended that any assessment of the effectiveness of a company's diversity and inclusion practices should be disclosed.

In this regard, we endorse the submissions made by Australian LGBTQ+ Board and Executive Inclusion (ALBEI) and by the Australian Council of Superannuation Investors (ACSI).

3. Principle 3: Instil a culture of acting lawfully, ethically and responsibly

3.1. Recommendation 3.2 – Code of Conduct – Human Rights

Member organisations have indicated that the observance of Human Rights should be included in the Code of Conduct, consistent with the principle of acting lawfully, ethically and responsibly.

This would capture a range of issues, important for investors, where violations would have the potential to expose a company to material regulatory focus/consequences and reputational damage.

Members have observed that the proposed disclosure of instances of material human rights breaches, and the company's response, would provide further insight into a company's culture. They have noted that some companies already are providing disclosures that support investors' understanding of how their corporate codes of conduct are being implemented.

3.2. Box 3.2 – Suggestions for the content of a code of conduct – UN Guiding Principles on Business and Human Rights

Member organisations have suggested that this guidance could be strengthened by the inclusion of the UN Guiding Principles on Business and Human Rights and the reporting of incidents of modern slavery in the supply chain.

3.3. Recommendation 3.3 – Key stakeholders

Member organisations welcome the proposed changes under Principle 3 to include references to a company's key external stakeholders, recognising the link to long-term, sustainable, value creation, and to provide companies with flexibility to decide how to engage with their key stakeholders.

Companies rely on a broad range of stakeholders –shareholders, employees, customers, First Nations peoples, local communities, suppliers, and government/regulators – to be successful and to contribute positively to social and economic development. Given this, members agree that companies should have a process to engage meaningfully with its key stakeholders and to report material issues to the board.

Members support the concept that a board's activities include overseeing due diligence on the company's stakeholder relations, including human rights impacts, and believe there would be value in adding weight to this by extending it to reflect a broader range of rights, such as community, and labour rights.

Members have suggested that the Council give more prominence to the United Nations Declaration on the Rights of Indigenous Peoples, and the concept of free, prior and informed consent, to strengthen the consideration of First Nations people as key stakeholders.

In addition, members have suggested that the Council strengthen the commentary under Recommendation 3.3. by referring to expectations of the key issue of board oversight of workplace health and safety issues, including information on fatalities and injuries, in addition to systemic workplace incidents and customer complaints.

3.4. Recommendation 3.4 – Diversity and inclusion policy – Gender pay gap

Members have welcomed the additional commentary and suggest including that companies should have measurable objectives for achieving and disclosing progress on its gender pay gap, as such data is an indicator of diversity, equity, and inclusion.

They have suggested that this could be achieved in Box 3.4. through stating that companies commit to designing and disclosing equitable gender pay arrangements.

4. Principle 6 – Respect the rights of security holders

4.1. Recommendation 6.2 – Investor Relations Programme – Significant votes against resolution

Members have welcomed the additional commentary that a company should consider engagement with investors to understand and respond to instances where a significant number of votes are cast against a resolution, including the disclosure of subsequent actions.

They have suggested that a significant vote could, for example, be specified as 20 percent or more votes against a resolution.

Members believe there is value in recognising that a company's engagement with investors is not just at the Annual General Meeting but takes the form of year-round/multi-year communication, allows companies to consider feedback before finalising decisions/resolutions.

Furthermore, members suggest that the Council consider not removing the list of various stakeholders from the draft Principles and Recommendation so that the commentary on this recommendation is clear, consistent and aligned with other sections. A company's ongoing engagement with its broader stakeholders, including its employees, customers, First Nations peoples, local communities, suppliers, and government/regulators is critical to the ongoing success of the company and the deletion of these stakeholders diminishes the important voice that key groups such as these can bring to the table.

4.2. Recommendation 6.3 – Participation of security holders at AGMs

Member organisations have welcomed the commentary stating that hybrid meetings must permit security holders to attend and vote in person, or to attend online, and must allow security holders to submit questions online before or during the meeting, as this is vital to protect security holders' rights.

5. Principle 7 – Recognise and manage risk

5.1. Recommendation 7.2 – Review of risk management and internal controls framework

Member organisations are supportive of the proposition that the board, or a board committee, review the company's risk management and internal control framework at least annually, to satisfy itself that the framework continues to be sound and addresses the company's material risks.

Members have raised that there should be increased emphasis on Environmental, Social and Governance (ESG) considerations in board reviews of the risk and internal controls framework, and associated disclosure. Members believe this could be strengthened with the addition of a reference to the effect that material risks include an entity's material (ESG) risks, and would ensure consistency with Recommendation 7.4.

Member have queried why the commentary references 'contemporary and emerging risks such as conduct risk, digital disruption, cyber resilience, data governance, climate change and third-party risk management' but does not explicitly include ESG risks and suggest, to avoid potential confusion and/or limitation, that ESG risk be included.

5.2. Recommendation 7.4 – Material ESG risks

Member organisations support the extensive description provided under Recommendation 7.4.

Members have indicated that, in the context of board oversight responsibilities of ESG risk and ESG disclosure, there should be a focus on human, community, and labour rights and have recommended that the United Nations Guiding Principles on Business and Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples should be given prominence.

Member organisations have suggested that disclosure with respect to social risks could be improved **–** in particular, information about how companies are overseeing and managing workers in their global supply chain, to enable superannuation fund investors to understand the effect that their investments have on the broader environment, society and economy in which their members work and retire.

****

If you have any queries with respect to the content of our submission, please contact Fiona Galbraith, Director Policy, on 0431 490 240 or by email fgalbraith@superannuation.asn.au.

Yours sincerely

Mary Delahunty
Chief Executive Officer