

ASX Corporate Governance Council

Via Electronic Submission

6 May 2024

## Consultation Draft for a 5th Edition of the ASX Corporate Governance Council's Principles and Recommendations

Thank you for the opportunity to provide a submission to the ASX Corporate Governance Council's Principles and Recommendations 5th Edition Consultation Draft (Principles and Recommendations).

Australian Retirement Trust (ART) is one of Australia's largest superannuation funds. Over 2.3 million Australians trust us to take care of more than \$295 billion of their retirement savings. With over \$50 billion invested in ASX-listed companies, ART relies on the good corporate governance practices of the ASX-listed companies in which we invest to preserve value and promote accountability on behalf of our members.

ART supports the majority of the proposed changes to the 4<sup>th</sup> Edition Recommendations outlined in the Principles and Recommendations. In particular, ART supports the uplifts to recommendations 2.3, 6.2 and 7.4 and commends the ASX Corporate Governance Council for these considered recommendations.

In the remainder of ART's submission, we focus on proposed changes where ART considers a different approach to be more appropriate.

### **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)?

ART acknowledges that bribery and corruption are criminal offences under Australian law. However, Australian law does not define what are adequate procedures to prevent bribery and corruption, though we note that the Attorney-General's Department has released draft guidance on the matter. Given that this guidance has not been formalised, we consider it appropriate to maintain the recommendation to have an anti-bribery and corruption policy together with the commentary which includes suggestions for the content of an anti-bribery and corruption policy. In addition, ART considers it particularly important to retain Recommendation 3.4 for foreign listed entities, noting that not all foreign jurisdictions will have as robust laws as Australia, which increases the importance for investors to have transparency about the policies and processes in place at foreign investee companies. As an investor, ART considers it important for investee companies to disclose their policies because that transparency enables investors to assess what governance processes investee companies have in place to guard against bribery and corruption.

#### b. Recommendation 4.2 (CEO and CFO declaration for financial statements)?

ART notes that the commentary to Recommendation 4.2 in the 4<sup>th</sup> Edition states, "*This recommendation largely mirrors the declaration required under section 295A [of the Corporations Act 2001] but extends it to include a declaration by the CEO and CFO that their opinion has been formed on the basis of a sound system of risk management and internal*

*control which is operating effectively. It also extends it to apply to the financial statements for any financial period, not just for the financial year.”* ART does not see the benefit of removing the recommendation that the opinion of the CEO and CFO be formed on the basis of a sound system of risk management and internal control, given that the recommendation extends beyond the legal requirements. As an investor, ART considers that the current recommendation that the CEO and CFO declarations extend to “a sound system of risk management and internal control”, promotes investor confidence in these matters. ART finds this particularly valuable for non-Australian investee companies.

**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?**

ART acknowledges that the Corporations Act 2001 requires listed entities (as well as other covered entities) to have a whistleblower policy and to make that policy available to officers and employees of the company, and that ASIC also released Regulatory Guide 270 *Whistleblower policies* that contains guidance and good practice tips on establishing and implementing a whistleblower policy and program. However, from its own review of whistleblower policies<sup>1</sup>, ASIC expressed concern that many policies do not fully address the relevant requirements under the law. In addition, ART notes that current Recommendation 3.3 provides for listed entities to disclose their whistleblower policies. We see value in public disclosure of whistleblower policies, noting that public disclosure would reach potential third party whistleblowers such as former employees and suppliers. Greater transparency and accessibility assist in companies unearthing and addressing more complaints, which allows investors to manage their investments more effectively. In that regard, we consider it may be premature to remove this recommendation from the 5<sup>th</sup> Edition.

Chris Ramsay, Senior Manager Policy and Government Relations is the primary Australian Retirement Trust contact regarding our submission and can be contacted at [Christopher.Ramsay@art.com.au](mailto:Christopher.Ramsay@art.com.au).

Yours sincerely,



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<sup>1</sup> <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-267mr-asic-calls-on-australian-ceos-to-review-whistleblower-policies/>