

ASX Corporate Governance Reform Submission

Australian Sustainable Finance Institute | May 2024



1. Introduction, acknowledgement and thanks

We commend ASX's efforts to revise its Corporate Governance Principles and Recommendations to align with evolving corporate responsibility and transparency standards. In response to the proposed reforms, we want to emphasise the importance of elevating First Nations perspectives within the governance framework and disclosure practices outlined in the consultation paper.

For thousands of years, Aboriginal and Torres Strait Islander people have asserted their collective rights regarding self-governance, culture, and country. Australia's First Nations people are the world's oldest political designers and governance architects, having produced socio-political order for thousands of years. We recognise the insights that First Nations Australians share with governance experts today and thank them for the ongoing contributions they make to organisational governance models and our society more broadly.

2. About ASFI

ASFI welcomes the opportunity to provide feedback to the ASX Corporate Governance Council on the proposed fifth edition of the Corporate Governance Council Principles and Recommendations. ASFI is a not-for-profit organisation committed to aligning the Australian financial system with a sustainable, resilient, inclusive Australia. Our members are 44 of Australia's leading financial institutions – including major banks, superannuation funds, insurers, asset managers, and financial services firms. ASFI members collectively hold over AU\$ 22 trillion in assets under management and are committed to allocating capital to create positive social and environmental outcomes.

As an organisation whose mission is to transform Australia's finance system to become more sustainable, resilient and inclusive, our response is focused on the proposed reforms most relevant to one of ASFI's focus areas: elevating First Nations peoples, perspectives and outcomes in finance. This focus area originated in the recommendations outlined in the Australian Sustainable Finance Roadmap¹. In 2023, we undertook scoping work to establish ASFI's First Nations focus area and developed our First Nations Work Program. The priority actions identified within this focus area are:

1. Elevating First Nations voices, lived experiences and perspectives into all ASFI work programs,
2. Connecting, convening and coordinating First Nations activity in the finance sector,
3. Improving First Nations disclosures and,
4. Policy and regulatory engagement.

As a non-First Nations-led organisation, our First Nations Reference Group, a diverse and nationally represented group of First Nations Traditional Owners, First Nations finance and industry professionals, and ASFI members, is critical to ASFI's First Nations work program. The Reference Group operates consultatively with ASFI, and Traditional Owners are remunerated for their knowledge, skills, and guidance. Our member's expertise includes Indigenous governance and leadership, finance, land management, and community engagement; organisational and business strategy, Indigenous science and ESG. Our First Nations Reference Group members are listed on our website [here](#).

¹ ASFI, Australian Sustainable Finance Roadmap, [The Roadmap — ASFI](#)



3. Focus of this submission

Our submission focuses on the following areas outlined in the ASX Corporate Governance Council's Consultation Paper:

- Diversity (in particular Recommendations 2.3(c) and 3.4 and corresponding Consultation Questions 5 and 6)
- Stakeholder relationships (in particular Recommendation 3.3 and Consultation Questions 9 and 10)

Our recommendations detailed in the following section are as follows:

1. Elevate First Nations perspectives in ASX Corporate Governance Council
2. Broaden diversity disclosures to include First Nations
3. Expand recommendations regarding stakeholder relationships and diversity policies to include First Nations

4. ASFI Recommendations

Diversity

ASFI Recommendation 1: Elevate First Nations Perspectives in ASX Corporate Governance Council

The reconciliation movement in Australia has notably influenced the finance and business sectors, emphasising the essential role of inclusion and reconciling with Australia's First People. The 2020 Reconciliation Australia Barometer report highlights that a growing majority of both Indigenous and non-Indigenous Australians view the involvement of First Nations peoples in business as key to better outcomes across [industries](#). With this perspective in mind, we recommend the ASX Governance Council review and update its composition to better incorporate First Nations representatives and perspectives. Doing so would align with best practices and better reflect modern Australia.

We recommend a strategic review and restructuring of the Council's composition to include First Nations organisations. Updating the Council's composition to include First Nations organisations would directly represent First Nations perspectives and deepen the Council's understanding of First Nations communities. This insight is invaluable, enhancing the Council's decision-making capabilities and contributing to more robust and informed governance.

Elevating First Nations Australians in governance aligns with principles of equity and representation and brings tangible benefits to organisations. Research has consistently shown that diversity in leadership and governance leads to better decision-making and enhanced financial performance². For example, ASFI actively elevates First Nations perspectives in all our work programs, advisory groups, and on our board. This inclusive approach enhances the richness of our organisation's culture and improves the quality of our work. Such elevation ensures that diverse perspectives are considered in decision-making, leading to more robust and comprehensive outcomes that benefit all stakeholders.

Emerging trends in relation to corporate responsibility and sustainability are aligned with and reflective of Indigenous Governance principles. For example, Bagordo (2001) argues that the egalitarian, consensus-driven, gender-inclusive, and character-based leadership principles inherent in traditional Indigenous leadership are fundamental to addressing current leadership challenges globally³.

² According to McKinsey & Company's report "Diversity Wins" (2020), companies in the top quartile for ethnic diversity on executive teams were 36% more likely to experience above-average profitability than companies in the fourth quartile.

³ Bagordo, P. 2001. *The Integration of First Nations Leadership Principles and Practices into the Master of Arts in Leadership and Training Program at Royal Roads University*. National Library of Canada, Ottawa



ASFI Recommendation 2: Broaden diversity disclosures to include First Nations

In governing Australia's publicly listed companies, the ASX Governance Council has a strategic opportunity to broaden the scope of diversity and inclusion considerations to encompass the impact of organisations' activities on First Nations people. This move is not merely an act of compliance but an integral part of reconciliation and ethical governance, aligning corporate activities with broader societal values and investor expectations.

We recommend broadening of disclosures to include First Nations, both in respect of disclosures regarding Board membership and characteristics (recommendation 2.3(c) and consultation question 5), and an entity's diversity and inclusion practices (recommendation 3.4(c) and consultation question 6).

By mandating First Nations disclosures, these rules would require companies to be transparent about their engagements and impacts on First Nations communities. If a company deviates from this recommendation, it would provide a rationale, thereby ensuring higher accountability and transparency in corporate governance.

Why are First Nations Disclosures important?

- Disclosures are crucial to meet increasing stakeholder demands for high-quality, comparable information from businesses and financial institutions.
- There's a need for significantly better data collection and analysis on First Nations-related risks, opportunities, and outcomes across corporate Australia.
- Enhanced data reporting will improve understanding of business and financial institutions' interactions with First Nations peoples and communities, identifying potential risks and opportunities for supporting better outcomes through business strategies.
- The evolution of climate disclosures shows that increased expectations for reporting can lead to better integration of climate issues into business strategies.

What are the potential outputs of First Nations disclosures?

In collaboration with our First Nations Reference Group, ASFI will lead the development of an industry-wide First Nations disclosures project to drive a shift across the financial system so that it better integrates First Nations impacts and outcomes into financial decision-making. This will allow financial institutions to manage risks better while strengthening outcomes for First Nations through investments, loans, and underwriting practices.

Proposed areas to be included in this project are:

- How free prior and informed consent has been integrated
- Indigenous employment outcomes
- Indigenous leadership and representation
- Indigenous customer outcomes
- Economic, social and cultural outcomes of products and services for Indigenous businesses and organisations.

ASFI welcomes the opportunity to discuss this initiative with the ASX and other members of the Corporate Governance Council to inform the development of this project and support the integration of First Nations disclosures into the overall corporate governance reforms.



Stakeholder relationships

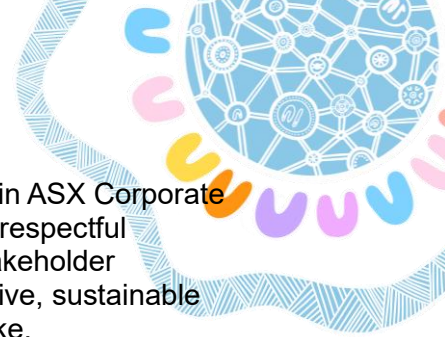
ASFI Recommendation 3: Expand recommendations regarding stakeholder relationships and diversity policies to include First Nations

Recommendation 3.3 of the ASX Corporate Governance Principles outlines that a listed entity considers key stakeholders' interests, incorporating processes to engage with them and report material issues to the board. While we support this recommendation, we propose a significant enhancement by integrating First Nations as a critical and unique stakeholder group. This recommendation aligns with evolving business expectations and recognises First Nations peoples' unique position and contributions as a crucial stakeholder group. An entity's engagement with First Nations stakeholders should also be captured under disclosure requirements proposed in recommendation 3.4(c) regarding diversity and inclusion practices.

First Nations communities as a unique stakeholder group

First Nations people represent a unique stakeholder group in Australia due to their distinct culture, history, and authority to hold Native Title. Recognising them specifically in corporate governance frameworks addresses several key factors:

- **Historical Significance:** First Nations communities are the original custodians of Australia, and their history predates modern business and governance structures of tens of thousands of years. Their deep-rooted connection to the land and its resources underpins their unique stakeholder status, as their traditional knowledge and practices offer invaluable insights into sustainable environmental stewardship.
- **Native Title and Land Rights:** First Nations people have distinct legal rights recognised under Australian law, including native title and land rights. These rights directly impact various sectors such as mining, agriculture, and real estate, making their involvement crucial in shaping business operations that affect their traditional lands. Engaging with First Nations groups as key stakeholders helps ensure that business practices comply with these legal frameworks and respect their rights to land and self-determination.
- **Cultural Integrity:** First Nations communities' cultural practices, languages, and traditions enrich Australia's national identity. Respecting and elevating these elements is a matter of cultural respect and adds value to corporate governance's social and ethical dimensions. Companies that engage with and learn from the cultural wealth of First Nations people can foster a more inclusive corporate culture that reflects the broader Australian societal values.
- **Social and Economic Impacts:** First Nations communities often face significant socio-economic disparities. By treating them as key stakeholders, companies can proactively address disparities through targeted corporate social responsibility (CSR) initiatives, employment opportunities, and partnerships that deliver collective benefits.
- **Reconciliation and Social License to Operate:** Through the efforts of Reconciliation Australia, there is a growing public and consumer expectation that businesses contribute to reconciliation efforts between First Nations peoples and broader Australian society. By formally recognising First Nations peoples as key stakeholders, companies can enhance their social license to operate, building trust and goodwill with these communities, the general public, and market consumers who value ethical standards.
- **Innovation and Insights:** First Nations perspectives can lead to innovative approaches to business challenges, from sustainable resource management to unique product offerings that resonate with culturally conscious consumers. Their integration into stakeholder engagement strategies can unlock new opportunities and drive creativity within corporate strategies. In particular, elevating First Nations Australians' environmental and sustainability knowledge is also imperative to addressing our dual climate and nature crises. At present, however, First Nations peoples are underrepresented in corporate leadership and governance.



Acknowledging First Nations peoples as key stakeholders, specifically within ASX Corporate Governance Principles, underscores a commitment to ethical governance, respectful engagement, and reconciliation in corporate Australia. This strengthens stakeholder relationships and corporate reputation and aligns companies with progressive, sustainable business practices increasingly demanded by investors and consumers alike.

Momentum towards better engagement and transparency with First Nations stakeholders

In recent years, investor expectations concerning First Nations communities have significantly shifted, with a growing focus on investors' role in protecting cultural heritage. Investors increasingly demand transparency and ethical conduct, particularly concerning the treatment of First Nations communities. By aligning the ASX listing rules with these expectations, listed companies enhance their attractiveness to investors and meet the growing demand for socially responsible and ethical business practices.

Some notable recent examples of this momentum include:

- The [Dhawura Ngilan Business and Investor Initiative](#), a partnership between the Responsible Investment Association of Australasia (RIAA), the First Nations Heritage Protection Alliance and the Global Compact Network of Australia, which has produced guidance and toolkits for investors on Indigenous Peoples' Rights and Cultural Heritage Protection
- Work by the Australian Council of Superannuation Investors (ACSI) to publish a [practical guide](#) for companies to establish investor expectations for companies that engage with First Nations People.