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ASX Corporate Governance Council  
C/O ASX Limited  
PO Box H224 Australia Square  
SYDNEY NSW 2000

Submitted electronically via: ASX Portal

### **Submission on Corporate Governance Principles and Recommendations 5<sup>th</sup> Edition Consultation 2024**

Ernst & Young (**EY**) welcomes the opportunity to provide our response to the *Corporate Governance Principles and Recommendations 5<sup>th</sup> Edition Consultation 2024* (**Consultation**).

Overall, EY is supportive of the ASX Corporate Governance Council (**Council**) responding to evolving and developing issues and expectations with respect to the corporate governance of ASX-listed companies, by updating the Council's Corporate Governance Principles and Recommendations into a 5<sup>th</sup> edition. We are particularly supportive of the Council's recommendations on diversity and risk management. In fact, we have recommended a more aspirational target of 40:40:20 for gender diverse Boards, within appropriate timeframes. We also appreciate the Council's approach towards removing unnecessary duplication with other Australian law.

There are some proposed recommendations we have not supported, and this is generally where we are of the view that such proposed recommendations would reduce flexibility, not create any meaningful disclosures and/or where the information would best be disclosed elsewhere.

We have responded to the Consultation by addressing the recommendations that are relevant for our clients, and where we have insight and experience into the issues. Where we have chosen not to respond to a particular recommendation, we have noted this in our submission.

Should you wish to discuss our comments further, please contact me at [rohan.connors@au.ey.com](mailto:rohan.connors@au.ey.com) or 02 9248 4318.

Yours sincerely

A handwritten signature in blue ink that reads 'Rohan Connors'.

Rohan Connors  
Partner

## EY submission on the Corporate Governance Principles and Recommendations 5th Edition Consultation Draft

The table below summarises EY’s position in respect of each of the proposed recommendations in the Consultation. We have only responded to selected recommendations that we have formed a view on based on our expertise and are directly relevant to the scope of the services we provide to our clients.

Further detail and explanation of our response with respect to each of the recommendations is set out in the “Detailed submission” section that follows.

### Executive Summary

Ref	Question	EY view
<b>Reducing regulatory overlap</b>		
1	<b>Deletion of 4<sup>th</sup> Edition Recommendations</b>	<ul style="list-style-type: none"> <li>▶ Recommendation 3.4 – no comment</li> <li>▶ Recommendation 4.2 – supportive</li> <li>▶ Recommendation 6.4 – no comment</li> <li>▶ Recommendation 6.5 – no comment</li> <li>▶ Recommendation 8.2 – supportive</li> <li>▶ Recommendation 8.3 – supportive</li> </ul>
2	<b>Deletion of Recommendation 3</b>	▶ No comment
<b>Board skills</b>		
3	<b>Disclosure of information regarding board skills</b>	<ul style="list-style-type: none"> <li>▶ Recommendation 2.2(a) – not supportive</li> <li>▶ Recommendation 2.2(b) – not supportive</li> </ul>
<b>Diversity</b>		
4	<b>Raising the S&amp;P/ASX300 measurable objective to a gender balanced board</b>	▶ Recommendation 2.3 – supportive



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Ref	Question	EY view
5	<b>Disclosure of any other relevant diversity characteristics (in addition to gender) which are being considered for the board's membership</b>	▶ Recommendation 2.3(c) – not supportive
6	<b>Proposal to recommend disclosure of the effectiveness of an entity's diversity and inclusion practices</b>	▶ Recommendation 3.4(c) – somewhat supportive
<b>Independence of directors</b>		
7	<b>Increasing the security holding reference (factors relevant to assessing the independence of a director) from a substantial holder (5% or more) to a 10% holder (10% or more)</b>	▶ Recommendation 2.4 – no comment
<b>Corporate conduct and culture</b>		
8	<b>Proposed disclosure (on a de-identified basis) of the outcomes of actions taken by the entity in response to material breaches of its code</b>	▶ Recommendation 3.2(c) – somewhat supportive
<b>Stakeholder relationships</b>		
9	<b>Proposed amendments to Principle 3</b>	▶ Principle 3 – no comment
10	<b>Whether Recommendation 3.3 appropriately balances the interests of security holders, other key stakeholders, and the listed entity</b>	▶ Recommendation 3.3 – no comment
<b>Periodic corporate reports and assurance</b>		
11	<b>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)</b>	▶ Recommendation 4.2 – not supportive

Ref	Question	EY view
12	<b>Proposed disclosure of an entity's auditor tenure, when the engagement was last comprehensively reviewed and the outcomes from that review</b>	▶ Recommendation 4.3 – supportive
<b>Management of risk</b>		
13	<b>Proposal that the entity identify and disclose its material risks, rather than identifying specific risks for all entities to disclose against</b>	▶ Recommendation 7.4 – somewhat supportive
<b>Remuneration</b>		
14.	<b>Support of proposed Recommendation that non-executive directors not receive performance-based remuneration or retirement benefits?</b>	▶ Recommendation 8.2 – not supportive
15.	<b>Proposed clawback Recommendations</b>	▶ Recommendation 8.3(a) – not supportive ▶ Recommendation 8.3(b) – not supportive
<b>Additional recommendations that apply only in certain cases</b>		
16.	<b>Inclusion of the new Recommendations for entities established outside Australia</b>	▶ Recommendation 9.3 – supportive ▶ Recommendation 9.4 – no comment ▶ Recommendation 9.5 – no comment ▶ Recommendation 9.7 – somewhat supportive
<b>Externally managed entities</b>		
17.	<b>Whether any Recommendations in the Consultation Draft apply differently to externally managed entities, compared to the manner proposed in <i>The application of the</i></b>	▶ No comment



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Ref	Question	EY view
	<b><i>Recommendations to externally managed listed entities</i></b>	
<b>Effective date</b>		
18.	<b>Support for an effective date for the Fifth Edition of the first reporting period commencing on or after 1 July 2025</b>	▶ Supportive
<b>Other comments</b>		
19.	<b>Additional comments on the content of the Consultation Draft</b>	▶ See additional comments at our response to question 19.

## Detailed submission

We have set out our responses to the Consultation below. We would be happy to discuss any of our responses with you, or provide relevant additional responses if requested.

### A. Reducing regulatory overlap

#### 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)?*

No comment.

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

EY response:

An additional disclosure under the ASX Principles and Recommendations is duplicative and does not provide any further information than what is already publicly available. We therefore support the Council's proposal to remove Recommendation 4.2

c) *Recommendation 6.4 (substantive security holder resolutions on a poll)?*

No comment.

d) *Recommendation 6.5 (offering electronic communications to security holders)?*

No comment.

e) *Recommendation 8.2 (separate disclosure of remuneration policies for non-executive directors, other directors and senior executives)?*

EY response:

We agree with the Council's proposal to delete 4th Edition Recommendations that overlap with separate requirements under Australian law. This will reduce the annual administrative burden for ASX listed companies (Companies).

The remuneration policy for non-executive directors (NEDs), directors and other key management personnel (KMP) is disclosed in a Company's annual remuneration report, as required under s.300A of the Corporations Act 2001 (Cth) (Corporations Act). The remuneration policy is required to be presented to the Company's shareholders, where the shareholders have an advisory vote at the annual general meeting. The remuneration policy is also disclosed in the Company's annual report.

On this basis, an additional disclosure under the ASX Principles and Recommendations is duplicative and does not provide any further information than what is already publicly available. We therefore support the Council's proposal to remove Recommendation 8.2.

f) *Recommendation 8.3 (policy on hedging of equity-based remuneration)?*

EY response:

The Corporations Act prohibits the hedging of remuneration by KMP (s.206J). KMP of companies incorporated in Australia are prohibited from entering into an arrangement that would limit their exposure to risk in respect of their remuneration.

We note this prohibition does not require a Company to establish a policy which bans the hedging of remuneration, as is currently required under the 4th Edition Recommendation principles. However, the Corporations Act prohibition on hedging is sufficient to deter KMP from entering into such arrangements, especially as a breach of s.206J of the Corporations Act is an offence of strict liability, pursuant to section 6.1 of the Criminal Code Act 1995 (Cth).

We support the Council's proposal to remove Recommendation 8.3.

**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?**

No comment.

## **B. Board Skills**

**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?*

EY response:

Recommendation 2.2(a) may potentially limit a Company's flexibility to appoint board members that are appropriate and relevant for the business, taking into account: (i) the composition of the current board; (ii) available candidates; and (iii) expertise of the available candidates and how they can complement the composition of the board.

Whilst we agree that a Company will identify any gaps in current board skills when looking for new board members, we do not agree that current board skills, together with board skills that the Company is looking for, should be required to be disclosed.



The Council should be aware a Company may identify a skills gap but address that gap other than by appointing a new director. For example, through training existing board members, engaging external advisors, or by establishing a specialist committee.

Board members are recruited based on their skills and expertise as a whole, taking into consideration the effectiveness of the board's current composition. We do not support recruiting board members via a "tick box" exercise, solely to address a particular skills shortage.

We understand the importance of Companies maintaining an internal framework to evaluate their Board's current composition and identify external candidates with the requisite skills. However, we also appreciate that this is a flexible exercise, taking into account factors such as current challenges, the Company's business trajectory and the effectiveness of the current board. We are of the view that reporting board skills shortages is too simplistic a view of a board's effectiveness, and takes attention away from a holistic approach to board composition. It may also create a point of focus for any litigation against a company, where the party could point to the Board's lack of skill in a particular area.

We do not support a disclosure of current board skills and skills that the board is looking for. However, we are supportive of the provision of commentary or guidance on the skills that a Board may be seeking, to cover identified risks, in line with the Board's approach to risk management.

*b) Recommendation 2.2(b): the entity's process for assessing that the relevant skills and experience are held by its directors?*

EY response:

The addition of Recommendation 2.2(b) adds an unnecessary administrative burden on Companies. It poses a risk of restricting operational flexibility, as these processes may evolve to adapt to changing circumstances and strategic needs. Additionally, disclosed processes may become misleading if the criteria or methodology changes.

Please also see our response to Recommendation 2.2(a) with respect to our comments generally on assessing and identifying the effectiveness of a board. We are concerned that the creation and disclosure of a specified process would detract from the flexibility and adaptability required when assessing director skills, how these might change over time, and whether they align to Company requirements.

We do not support a disclosure of an entity's process for assessing the relevant skills and experience held by its directors.



## C. Diversity

- 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?**

EY response:

We support raising the S&P/ ASX 300 measurable objectives to a gender balanced board. We consider that the 30% objective set during the 4th edition of the Principles and Recommendations has materially contributed to an increase of women on Boards, and given the progress made on this objective the timing is right for the objective to be reset.

We are supportive of the increase to 35%, and would suggest a more aspirational goal of 40% of either gender, with a longer timeframe to work towards this. We suggest that the goal is required to be completed within shorter milestones. For example, a three-year timeframe as follows:

- ▶ 30% by end of the first year;
- ▶ 35% by end of the second year; and
- ▶ 40% by end of the third year.

The milestones could then be taken into account when Boards are considering tenure and succession planning.

Whilst we are supportive of the gender diversity approach, we note that there are other aspects of diversity which are reflective of Australian society, and we would urge Boards to consider “diversity” in this broader form.

- 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?**

EY response:

We understand that the Council is seeking to remove existing Recommendations where similar regulation exists. In this regard, we note that the Workplace Gender Equality Agency (WGEA) has outlined that it will in the future collect and disclose broader diversity information. The Council may wish to consider whether it will wait for these reforms before introducing this Recommendation 2.3.

Nonetheless, it should be noted that WGEA is a blunt reporting tool as compared to the Corporate Governance Principles and Recommendations, which allow Companies to elaborate on the gender diversity narrative. We also note the progress made on gender diversity since gender objectives were introduced into the Recommendations.

To avoid overlap, where certain information has already been reported under WGEA (or any other relevant disclosures), we would suggest that Companies could include a reference to such disclosures.

**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?**

EY response:

We consider that this Recommendation would add meaningfully to the existing diversity and inclusion policy disclosure, as it would assist companies in demonstrating their positive improvement.

With reference to existing regulation, the WGEA Act does not specifically require the disclosure of information in relation to diversity and gender metrics. WGEA requires Companies to disclose their actions in support of gender equality, including policies, initiatives and strategies in the workplace. However, it does not require Companies to report on the effectiveness of such strategies.

Additionally, WGEA requires Companies to disclose gender composition in the workforce, gender pay equality metrics and gender pay gaps. Indirectly this gives insight to the effectiveness of Companies' strategies.

The amendments to Recommendation 3.4(c) could bridge the gap of what's implied in Australia's current regulatory framework, enhancing the overall clarity and effectiveness of governance. However, we would support reporting only to the extent that the information is not already required to be disclosed by Companies under the WGEA reporting requirements. The appropriate timeframes for this reporting should also be considered.

## **D. Independence of directors**

**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)?**

No comment.

## **E. Corporate conduct and culture**

**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?**

EY response:

We do not support the reporting of material breaches of the code on a de-identified basis and question the value of such reporting. Reporting breaches publicly on a de-identified basis does not assist in determining the effectiveness of the policy or the oversight functions.

We do however support reporting of how the Company oversees its code of conduct and the processes for ensuring that it is complied with. The Board could report aggregate number of actions taken, by response category, with respect to material breaches.

## **F. Stakeholder relationships**

### **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?**

No comment.

### **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."**

No comment.

## **G. Periodic corporate reports and assurance**

### **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)?**

EY response:

We do not support the proposed disclosure of processes for verification of all periodic corporate reports, including the extent to which a report has been subject to external assurance.

While we consider that the existence of assurance from external assurance practitioners and internal auditors (if applicable) enhances the quality of corporate reports and we do support that, reference made to assurance procedures could result in misrepresentation or misinterpretation by users of the nature of the assurance provided and their ability or inability to rely upon the assurance reports.

### **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?**

EY response:

We support the disclosure of an entity's auditor tenure when it is presented in the context of a broader disclosure that sets out how the directors monitor and manage audit quality and audit independence.

We believe that such a disclosure should ideally be provided in the directors' report as requirement of the Corporations Act, for listed entities only.

We support the proposed disclosure by Companies'/ audit committees' assessments of audit quality and auditor performance. This disclosure emphasises the critical role audit committees play in audit quality and assessing auditor performance. Again, we believe this disclosure should be provided in the directors' report as a Corporations Act requirement for listed entities.

## H. Management of risk

### **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?**

EY response:

We support the proposed disclosure of "material risks" in Recommendation 7.4 rather than designating disclosure of specific categories of risk. The ability for a Company to determine and disclose its material risks based on its business model, operations, strategy and industry context is a sensible change. It also reflects the increased understanding and integration of non-financial and financial risk. It is important to ensure that the breadth of consideration of risk to include consideration of environmental, social and governance risks remains a focus of this recommendation and we are encouraged by the inclusion of relevant considerations in the draft commentary.

This recommendation needs to be considered in light of emerging legislation such as the ASRS/ISSB standards in order to manage duplication of reporting and the connectivity between non-financial (climate) risk and financial impacts. We support the inclusion of cross referencing the draft commentary to manage duplication of effort and recommend consideration of additional guidance and examples of risks which may be considered and determined to be "material" over the short, medium and long term.



## I. Remuneration

### 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?

EY response:

We do not support the Recommendation that NEDs do not receive performance-based remuneration or retirement benefits. We note that such arrangements are utilised by mid-cap and small-cap companies to attract high-performing directors.

Such a prohibition would limit the ability of smaller Companies to offer appropriate incentives to NEDs upon joining their board, particularly where the Company is unable to offer NED fees that are competitive in the market, due to lower cash reserves.

We are aware of the perceived conflicts of interest, where NEDs who receive performance-based remuneration may expose the company to greater risk in order for their remuneration to vest. However, this perceived objectivity and bias in decision-making is largely overcome by the various disclosures required to be made on vesting outcomes, together with the information in the Company's remuneration report (which is put to shareholders at each annual general meeting, in accordance with the Corporations Act) and the requirement for NED equity awards to be approved by shareholders (where they are to be settled with newly issued shares), in accordance with the ASX Listing Rules. We are of the view that such awards and vesting outcomes would already be required to be sufficiently robust, and have adequate oversight and NEDs have appropriate accountability. We take this view on the basis that the NED performance-based remuneration and retirement benefits would already be publicly disclosed, and we support the requirement for these arrangements to be publicly disclosed.

### 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?*

EY response:

We are not supportive of a general requirement for clawback arrangements to be mandated for remuneration outcomes, beyond the legal and regulatory requirements (for example, those applying to Companies in the financial services sector).

We support the flexibility for Companies to determine, based on their own requirements, the outcomes of performance-based remuneration for senior executives, where certain significant events occur.

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

EY response:

Recommendation 8.3(b) may not be appropriate in all circumstances and could create unintended confidentiality risks. Despite de-identification, it could be obvious to determine who the clawback was exercised against. We note that Companies are free to disclose such information, and there are already certain disclosures to be made when clawback is exercised. Nonetheless, there are more relevant places to disclose this information rather than a corporate governance report. On this, EY does not support the addition of Recommendation 8.3(b).

However, we do support the disclosure of the use of clawback provisions, and the relevant consequences, in a Company's remuneration report. We believe that general disclosure of the use of these provisions aids confidence in the market.

## **J. Additional recommendations that apply in certain cases**

### **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)?*

EY response:

We support this recommendation as it brings the CEO and CFO declaration requirement for overseas companies in line with Australian requirements.

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

No comment.

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

No comment.

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

EY response:

We note that companies who are listed on the ASX but established overseas are not subject to the ban on hedging equity-based remuneration under the Corporations Act. We therefore appreciate that this requirement would bring such overseas companies in line with Australian requirements.

However, on the basis that the ASX is recommending the removal of the general requirement for a policy on hedging of equity-based remuneration (see Recommendation 1(f)), we would support, rather

than a policy, a confirmation that the Company bans hedging of equity-based remuneration, and that such a ban is included in the terms of the equity-based remuneration.

This aligns with the current practice of Australian Companies, who tend to include this prohibition in the terms of their equity awards, and therefore avoids the need to create and maintain an additional policy.

## **K. Externally managed entities**

**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?**

No comment.

## **L. Effective date**

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

EY response:

EY is supportive of the effective date proposed.

## **M. Other comments**

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

We appreciate the Council's approach towards removing duplication with other Australian law. However, to note the importance of the prohibition on the hedging of equity-based remuneration, the Council might consider acknowledging that this is an important prohibition, but that no disclosures are required due to the overlap with the prohibition under the Corporations Act. This would confirm the Council's view, and protect the position, should there be any changes to the Corporations Act in future which may impact this prohibition.