6 May 2024

Chair
ASX Corporate Governance Council

Corporate Governance Council Principles and Recommendations – Fifth Edition Consultation Draft

Dear Chair,

The Financial Services Council welcomes the opportunity to provide feedback on the consultation draft for the fifth edition of the ASX Corporate Governance Principles and Recommendations.

Our members as institutional investors and shareholders recognise the importance of good corporate governance to deliver long term value, and the risk that poor corporate governance can lead to financial losses for Australians. As such, our members have an interest in ensuring good governance and will often engage with companies via stewardship activities and work with them where concerns are identified.

The Australian business community has in recent times become increasingly focused on a wider range of material governance risks, recognising the need for appropriate governance structures in place to ensure that important ethical values and the needs of stakeholders are adequately reflected in their business operations and business decision making. Poor governance can lead to poor corporate culture and conduct, poor treatment of customers and a disregard for important ethical concerns. These 'non-financial' risks can quickly become real financial risks, impacting significantly on the value of a company and therefore its attractiveness as a long-term investment.

The FSC is supportive of the changes in this draft fifth edition. This latest draft strikes the right balance, pointing to important trends in corporate governance that meet contemporary expectations and are helpful to investors in assessing governance risk, while allowing appropriate flexibility for entities of different sizes, complexities and corporate cultures on an 'if not why not' basis. The changes generally add helpful details and context and remove ambiguity.

We are particularly supportive of the following enhancements:

- Recommendation 2.2: Additional disclosure of board skills and how they are assessed is a welcome step in helping to assess a company's ability to oversee its business strategy and risks.
- Recommendation 2.3: The raising of the measurable objective for gender diversity on boards for S&P/ASX 300 directorships from 30% of each gender to at least 40% women, at least 40% men and up to 20% any gender.
- Recommendation 2.3(c): The disclosure of whether other diversity characteristics are being considered by the board. We note that diversity considerations should ordinarily consider people from culturally diverse backgrounds.
- Recommendation 3.2(c): The identification of actions taken to address material breaches of the code of conduct on a de-identified basis will help provide insight into the company's culture and whether the board and management are reinforcing a culture of acting lawfully and ethically.
- Recommendation 3.4(b): The addition of 'senior executive team' in the measurable

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objectives for achieving diversity in the composition of the company's workforce so that consideration of the importance of gender diversity in senior leadership roles is explicit.

- Recommendation 3.4(c): The disclosure of the effectiveness of an entity's diversity and inclusion practice will help enhance the consideration of diversity and gender balance on boards by focusing the attention of the company on execution and measurement of their policy and targets, not merely having a target in existence.
- Recommendation 7.4: The broadening of disclosures to include all material risks (including material environmental, social and governance risks) and how they are being overseen and mitigated, which will help investors understand a broader range of risks and price them in appropriately.
- Recommendation 8.2: Non-executive directors not receiving performance-based remuneration or retirement benefits given this could impair their independence and objectivity and potentially align them with the interests of the executives as opposed to shareholders. We are supportive of the commentary that it is acceptable for non-executive directors to receive securities as part of their remuneration as this helps to align their interests with shareholders. Some further clarity would be welcome on the use of options, as the commentary states that non-executive directors should not receive options with performance hurdles, but a share price hurdle for the option could be seen as a 'performance hurdle'.
- Recommendation 8.3: Remuneration structures which can claw back or limit remuneration outcomes for senior executive performance-based remuneration. We would request further guidance on commonly expected conditions triggering clawback.

Finally, the Council should always remain mindful of maintaining a balance between established best practice in corporate governance and activist views on how governance practices could evolve. The FSC supports establishing a strong evidence-based approach to changes to the principles given they play an important role in guiding public perceptions of what practices are appropriate.

For funds management and superannuation businesses that are listed companies, considerations around external stakeholders and meeting diversity targets are important and often are consistent with their primary fiduciary duties. However, care must be taken to ensure that these governance considerations enhance, rather than contradict, the fund members' best financial interests.

Sincerely,

Chaneg Torres
Policy Director
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