


Q5.

A banner with a dark blue background featuring a glowing globe on the right side. The text is white and centered. A thin vertical blue line is on the left side.

ASX Corporate Governance Council *Principles and Recommendations* 5th Edition Consultation 2024

The ASX Corporate Governance Council has released the following [consultation materials for a 5th Edition of the Council's *Corporate Governance Principles and Recommendations* \(*Principles and Recommendations*\)](#):

- a communique
- *Background Paper and consultation questions*
- *Consultation Draft* of a proposed 5th Edition of the *Principles and Recommendations*
- a mark-up of the *Consultation Draft*, against the 4th edition of the *Principles and Recommendations*.

The *Background Paper and consultation questions* includes commentary for the individual consultation questions appearing in this online questionnaire.

Council members have been actively engaged, bringing their perspectives on how the 5th Edition might respond to current governance developments and challenges. Members do not hold identical views on all matters; some of those matters are the subject of specific consultation questions. The Council encourages your participation in this consultation process.

How to participate

Submissions to the Council may be made by the end of **Monday 6 May 2024**, via this ASX portal.

This portal will permit you to make a submission as an online questionnaire, or by uploading your submission in PDF or Word.

The online questionnaire includes multiple choice responses. You may also include additional comments for each consultation question (up to approx. 250 words per comment) and at the conclusion of the survey (up to approx. 1,000 words).

Your work in progress will be saved if you return to the survey in the same browser and device. You can download a copy of your submission, when completed.

Please note that you will be asked to confirm that you have not made another submission in this process.

Please press Next to participate in this consultation.

Q4. About you

These introductory questions will help us manage submissions.

If you would like your submission to be treated as confidential, please indicate this clearly. The Council may choose to publish submissions (in whole or in part) on the [ASX website](#), but will not do so where a submission is clearly marked confidential.

Q5. A. Is your submission confidential?

(Confidential submissions will be handled as set out above)

- Yes
- No

Q6. B. [REDACTED]
(Required fields are marked with *)

Name*	Graham Bradley AM
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Q48. C. Please confirm on whose behalf you are making this submission.

- On behalf of my organisation
- On my own behalf

Q7. D. Please choose one category which best describes the capacity in which you are making this submission

- ASX market retail investor
- ASX market institutional investor
- S&P/ASX300 listed entity
- Other ASX listed entity
- Non-executive director: S&P/ASX300
- Non-executive director: other ASX listed entity
- Professional adviser (please specify)
- Industry association
- Academic
- ASX Corporate Governance Council member
- Other ASX market stakeholder (please specify)
- Other stakeholder (please specify)

Q49. E. Please confirm that you have not made another submission in this process.
(Only one submission will be accepted)

Yes, this is my only submission

No, I have made another submission (Note: This will conclude this questionnaire.)

Q9. Submission process

Q10. F. Would you like to complete this online questionnaire or upload your submission?

I would like to complete this online questionnaire

I would like to upload my submission

Q8. Please upload your submission here, in PDF or Word.

(Once you attach your submission and press *Next*, this will conclude and record your response.)

This question was not displayed to the respondent.

Q11. Reducing regulatory overlap

Q13. 1. Do you support deletion of the following 4th Edition Recommendations, on the basis that there is significant regulation under Australian law?

	Support deletion	Mostly support deletion	Do not support deletion	No comment
a. Recommendation 3.4 (disclosure of anti-bribery and corruption policy)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Recommendation 4.2 (CEO and CFO declaration for financial statements)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Recommendation 6.4 (substantive security holder resolutions on a poll)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d. Recommendation 6.5 (offering electronic communications to security holders)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Recommendation 8.2 (separate disclosure of remuneration policies for non-executive directors, other directors and senior executives)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f. Recommendation 8.3 (policy on hedging of equity-based remuneration)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q43. Your comments.

Elimination of Recommendations that duplicate regulatory requirements is a welcome simplification.

Q17. 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?

- Support retention
- Mostly support retention
- Do not support retention
- No comment

Q44. Your comments.

There is no reason to replicate in the recommendations the obligations imposed on companies and the liabilities imposed on company directors by the whistleblower laws.

Q15. Board skills

Q51. 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?

	Yes	Yes in principle, but...	No	No comment
a. Recommendation 2.2(a): current board skills and skills that the board is looking for?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Recommendation 2.2(b): the entity's process for assessing that the relevant skills and experience are held by its directors?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Q16. Your comments.

The existing Recommendation 2.2 is more than adequate to assist investors to form a view on the appropriateness of the collective skills and experience of the company's directors. In my experience, investors do not hesitate to convey to company's any concerns about board composition. I do not support the proposed 2.2(b). Assessment of a director's skills is highly subjective and involves judgements about the relevance and relative value of academic, professional, industry and governance experience. For this reason I do not favor the practice of some companies in reporting how it rates the skills of individual directors as distinct from commenting on the collective skills of the board. I disagree that this is the 'better' practice and suggest that wording be changed to "one approach". Proposed 2.2(b) will compound this problem and will not add materially to investor's assessment of the adequacy of the board's collective skills. 2.2(b) is an unnecessary addition.

Q18. Diversity

Q19. 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?

- Yes
- Yes in principle, but...
- No
- No comment

Q55. Your comments.

Targeting 40% for each gender is an immaterial change but I submit strongly that this target should only apply to Non-Executive Directors and not include Executive Directors (usually only the CEO and sometimes the CFO). This is because the board has in my view a fiduciary duty to appoint the very best person as CEO regardless of gender considerations. For example, if a board with a majority of women directors chooses to appoint a woman CEO, it should be irrelevant that the appointment results in the proportion of men on the board falling below 40%. On the other hand the board can appropriately manage the gender balance of its NEDs whenever a new director appointment is made.

Q20. 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?

- Yes
- Yes in principle, but...
- No
- No comment

Q56. Your comments.

I do not support the proposed Recommendation 2.3(c) because it risks putting undue emphasis on personal characteristics (age, education, ethnicity, place of residence etc) which will in most cases be secondary to the key attributes that boards should seek in appointing directors such as personal integrity, directorial and governance experience and proven performance, industry knowledge, functional/ technical expertise and business judgement. Accordingly I submit that 2.3 (c) is unnecessary.

Q21. 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?

- Yes
- Yes in principle, but...
- No
- No comment

Q57. Your comments.

The effectiveness judgement being required by proposed 3.4(c) is highly subjective and even frank disclosure would not in my submission be in the interests of shareholders. Moreover an assessment of effectiveness in an annual report will likely be outdated by the time the document is released but will stay on the record for a year. It is for the board to assess effectiveness and take corrective action. Having to discuss effectiveness publicly may inhibit frank and fearless board evaluation.

Q22. **Independence of directors**

Q23. **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)?**

- Yes
- Yes in principle, but...
- No
- No comment

Q58. Your comments.

Q24. **Corporate conduct and culture**

Q25. **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?

- Yes
- Yes in principle, but...
- No
- No comment

Q70. Your comments.

I strongly oppose the proposed Recommendation 3.2(c) for several reasons. It is not in the interests of shareholders (or I would submit any other stakeholder) to have such details disclosed. Responsible boards will have implemented corrective action well before such disclosure is made in annual reports. Individual breaches will very rarely have a material effect on company performance such as to warrant immediate disclosure , but if it were so then immediate disclosure would already be required under the law. Also there is no such thing as a “de-identified” disclosure in this context: ANY statement , however hedged, will set of an internal guessing game to identify the transgressor, and for larger companies a press frenzy of speculation, none of which is in the interests of shareholders. Consider: even the simplest of “de-identified” disclosure (eg During the year the company terminated 2 employees for breaches of the company’s code of values) will give rise to rampant speculation and in most cases effectively identify the individuals concerned. Take heed for the Higgins/ Lehmann saga. This may also risk breaching appropriate confidentiality agreements in the case if contested termination.

Q26. Stakeholder relationships

Q27. 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?

- Yes
- Yes in principle, but...
- No
- No comment

Q59. Your comments.

The proposed Recommendation 3.3 as worded is appropriate but the some of the associated commentary makes the change problematic and invites unnecessary litigation risks. Specifically , I strongly opposed considering lawmakers and regulators as stakeholders. This perverts the notion of stakeholder which should connote parties with a direct financial or material personal stake in the company’s success and performance. Politicians and regulators have no such stake. Indeed it is inconsistent with the regulator’s role to have a stake in the company in this sense.It should be indifferent in the administration of its regulatory function. Similarly I do not support including as stakeholders (much less “key”stakeholders) unions,environmental activist groups, and consumer groups, for similar reasons. In our litigious age, naming these groups as stakeholders implies standing to take legal action against the company on the basis that their interests as “stakeholders” have not been sufficiently considered by the company. This is an unnecessary risk. Finally, most company decisions and operations involve trade-off between the interest of stakeholder groups and it is the directors’ job to make such judgements and they are not bound to accommodate all the interest of all stakeholders, which in most cases is impossible. Accordingly the Commentary should include a statement to the effect that “having regard to the interest “ does not imply a requirement to satisfy or act in the best interests of all stakeholders.

Q28. 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.”

- Yes
- Yes in principle, but...
- No
- No comment

Q60. Your comments.

See Question 9 comments above.

Q29. **Periodic corporate reports and assurance**

Q30. **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)?**

- Yes
- Yes in principle, but...
- No
- No comment

Q61. Your comments.

Q31. **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?**

- Yes
- Yes in principle, but...
- No
- No comment

Q62. Your comments.

Q32. **Management of risk**

Q35. **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?

- Yes
- Yes in principle, but...
- No
- No comment

Q64. Your comments.

The change is sensible but the definitions of Social Risk and Environmental Risk in the Glossary are in my submission overly detailed, unhelpful, and replete with vague and value-laden expressions. For example : “ if its activities are affected by changes in human society”, “Inappropriate application of artificial intelligence”, and “ if its activities affect the natural environment” these definitions should be shortened and it should be left to companies to judge how it wishes to define and articulate its “material risks”.

Q36. **Remuneration**

Q37. 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?

- Yes
- Yes in principle, but...
- No
- No comment

Q65. Your comments.

Q40. 15. Recommendation 8.3: Do you support the following proposed clawback Recommendations?

	Yes	Yes in principle, but	No	No comment
a. Recommendation 8.3(a): remuneration structures which can clawback or otherwise limit remuneration outcomes for senior executive performance-based remuneration?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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



Q66. Your comments.

I do not support Recommendation 8.3 (b) for reasons that parallel my objection to Recommendation 3.2 above. It is virtually impossible to make disclosure of this kind on a de-identified basis. Clawbacks will usually be rare and attract high levels of speculation that is not in the interest of the company or its shareholders. If the clawback involves current or recently terminated Key Management Personnel this will likely have to be disclosed in the Remuneration Report in any event. It should be left to companies to decide on the materiality and merits of any wider disclosure

Q41. **Additional Recommendations that apply only in certain cases**

Q42. **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?**

	Yes	Yes in principle, but...	No	No comment
a. Recommendation 9.3 (CEO and CFO declaration for financial statements)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Recommendation 9.4 (substantive security holder resolutions on a poll)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Recommendation 9.5 (offering electronic communications to security holders)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d. Recommendation 9.7 (policy on hedging of equity-based remuneration)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q71. Your comments.

Q43. **Externally managed entities**

Q44. **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*?**

- Yes
- Yes in principle, but...

No

No comment

Q68. Your comments.

Q45. **Effective Date**

Q46. **18. Do you support an effective date for the Fifth Edition of the first reporting period commencing on or after 1 July 2025?**

Yes

Yes in principle, but...

No

No comment

Q69. Your comments.

Q46. **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? (**Approx. 1,000 word limit**)

In addition to my submission on the substantive Recommendations, I wish to suggest several minor but important wording change, mostly in the Commentary: . Page 5. I would delete the third paragraph under What is Corporate Governance. The reference to ATSI people as “ key stakeholders “ is inconsistent with Recommendation 3.3 in so far as it implies that ATSI people have a special status as stakeholder beyond their interest as shareholders, employees, customer , supplier or members of the local community affected by the company’s policies or operations. There is no need to single out one group of citizens from others in this way. .Page 11.The first paragraph should more accurately say that strategic objectives should be approved by the board. The last sentence in this paragraph is unnecessary as it is repeated and more fully explained in Recommendation 3.3 . Page 11. The last sentence in the 4th paragraph contains two problematic expressions: ‘facilitating” and ‘ensuring” (which usually means guaranteeing).Bearing in mind Beach J in ASIC v Healy, better wording would be :The chair should also approve board agendas and manage board meetings so that adequate time is available for due consideration of all significant agenda items supported by appropriate information.”.Page 11. I suggest deleting the 8th paragraph as being unnecessary and repetitive with the Commentary under Recommendation 3.3 .Page 12. The words in parenthesis in the 2nd paragraph are unnecessary . Page 16. The word “collective” should be inserted before “skills”. This important concept has been lost in the redraft. . Page 19. In the first sentence of the Commentary, the effectiveness of skills matrices can be debated (See the Hilmer critique). I suggest better wording would be ...”may be a useful tool to help the board determine...” . Page 19.The last words of recommendation 2.3 should perhaps read “ either gender “ rather than “any gender “, as in the 4th edition . Page 25. The word “model” in paragraph 5 is ambiguous: is it a verb or an adjective? Better wording would be “...and reflect those values in its behaviors and decisions.”.Page 42. The expression “control frameworks “ in 7.1(b) would be better expressed as “control policies and practices”. Frameworks is a vaguer term: it is the substance , not just the skeleton of controls that matter. Ditto 7.2 . Page 45. I suggest deleting the word “model” in the first sentence of 7.4 Commentary. The term is unnecessarily limiting. A business model may be sound but the business may be at risk for other reasons.For example, providing grain export facilities to farmers may be a sound business model but a drought may reduce demand for the service, imperilling business viability. .

Location Data

Location: [\(-33.8349, 151.2325\)](#)

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