

Q5.

A banner for the ASX Corporate Governance Council's 5th Edition Consultation 2024. The background is dark with a glowing blue globe on the right side. The text is white and centered.

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 *)

[Redacted]	[Redacted]
[Redacted]	[Redacted]
Organisation (if applicable)	Guerdon Associates
[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.

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.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q16. Your comments.

Split 2.2(a) into 2 as likely responses will provide one matrix. That is, 2.2(a) what is has, 2.2(b) what the board seeks to have. Commentary could suggest a company describe how it proposes to close the gap (NED addition, replacement or training/development) and over what time frame for each skill gap.

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.

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.

As worded, disclosure of other diversity characteristics "only required if they are considered". Why not just "2.3(c) disclose other diversity characteristics"

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.

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.

Only if it can be on a de-identified basis. Apply an out if it cannot be.

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.

"lawfully, ethically and responsibly" is sufficient. Director duties under law would require them to be cognisant of maintaining the company's license to operate.

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.

The wording is okay, but commentary should not the importance of shareholders as stakeholders, as many seem to assume security holders are not stakeholders. This is unfortunate as it is common. But they are are probably the most important stakeholders. A director's duties would inherently balance the needs, and security holders are critical stakeholder for company sustainability.

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.

It would be useful for commentary to consider the extent that tenure could be compromised by conflicts of interest

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.

Under US standards there is more frank disclosure as there is a safe harbour to permit baring all without blowback on the board.

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.

suggest qualification: "non-executive directors not receive performance-based remuneration or retirement benefits other than to meet compliance requirements". As with all recommendations, suggest applicability only to ASX 300, as exceptions re performance based rem may be applicable for start ups and explorers where there is a fine line between NED and executive activities. ALSO THE PRINCIPLE TO 8 HAS BEEN RESTATED TO REMOVE "ATTRACT, RETAIN AND MOTIVATE" WITH "FAIR AND RESPONSIBLE" WHAT IS "FAIR". AND FAIR MAY NOT BE EFFECTIVE. "RESPONSIBLE" ALREADY SUBSUMED WITHIN S211 OF THE CORPS ACT. STICK WITH ATTRACT, RETAIN AND MOTIVATE AS THESE CAN BE MORE OBJECTIVELY ASSESSED.

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 type="radio"/>	<input type="radio"/>	<input checked="" 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?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Q66. Your comments.

From direct experience we know clawback is almost unworkable in the ASX 20 and banks, even with all their resourcing. It should be sufficient to require "8.3 remuneration structures that can limit remuneration outcomes for senior executives after award, payment or vesting". Commentary can discuss in period adjustment, malus (use that term please as most listed company directors know it), and clawback.

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*)

The principle to 8 has been restated to remove "attract, retain and motivate" with "fair and responsible" what is "fair". And fair may not be effective. "responsible" already subsumed within s211 of the corps act. Stick with attract, retain and motivate as these can be more objectively assessed. Limit recommendations to ASX 300 for comply and explain, as compliance burdens too high for smaller entities. It does not preclude them from applying principles.

Location Data

Location: [\(-33.8715, 151.2006\)](#)

Source: GeoIP Estimation

