



6 May 2024

ASX Corporate Governance Council Principles and Recommendations – 5<sup>th</sup> Edition  
Consultation

This submission is made in response to the ASX Corporate Governance Council's consultation dated February 2024. This submission is made by our public equities business, Melior Investment Management.

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## 1. Introduction

This submission is made in response to the ASX Corporate Governance Council's consultation dated February 2024. This submission is made by our public equities business, Melior Investment Management (**Melior**).

## 2. About Melior Investment Management

Melior Investment Management is a specialist equities manager founded in Australia in 2018 and is manager of the Melior Australian Impact Fund. Melior seeks to deliver long term competitive returns and contribute positively to the United Nations Sustainable Development Goals (**SDGs**).

Melior's investment philosophy is that investing in companies that contribute to the SDGs, and have strong financial and ESG credentials, has the potential for benchmark outperformance over time. Melior seeks to contribute to the SDGs through allocating its investment capital to positive impact companies, engaging management, and boards to improve their sustainability practices and company impact and publicly advocating for better social and environmental outcomes.

## 3. Focus of our submission

As a specialist equities manager, we have chosen to focus our submission on matters relating directly to Principles 2 and 3 of the ASX Corporate Governance Principles and Recommendations (**Recommendations**), particularly in light of our philosophy of actively engaging with boards to improve their sustainability practices and impact.

Over a number of years, we have experienced frustrations in our dealings with company boards by reference to the Recommendations (and the information given by companies in relation to corporate governance). This is not to say that the Recommendations are not fit for purpose. They are and have served corporate Australia for many years and allowed uniform expectations on which ASX listed companies can and should be judged (noting a one size fits all approach is not possible or appropriate). ASX is to be commended for its efforts around continued improvements but we believe that refinements and improvements can be made.

As such, we have chosen not to make submissions on all questions posed by ASX.

Question	Submission
3	<p>We agree with ASX's recommendations. In our experience, we have found the board skills matrix of limited utility and so any refinements to improve the quality of information around the skills and expertise of directors is welcomed.</p> <p>That said, we do not believe the ASX recommendations go far enough. We remain concerned that boards can be reluctant to set out full information in a skills matrix in an honest and open manner. One primary reason for this is concern around director liability – a skills matrix arguably sets the standard by which the board can be judged should there be allegations of a breach by one or more of the directors of their duties, particularly their duty to exercise their powers and discharge their duties with care and diligence under s180(1) of the</p>

Corporations Act 2001 (Cth) (**Corporations Act**). For the same reason, we understand there can be concern around individual directors attesting to their individual skills. We are sympathetic to these concerns, but we do not seek to use a skills matrix in that way. As an equities manager, it is imperative that we understand, and can assess, the capability and skills individual directors bring to a company.

In our opinion, if a skills matrix does not faithfully and honestly record the skills of the board, this leaves investors and their advisers in a difficult position. How else can they assess the skills and capability of boards and individual directors, especially non-executive directors?

Whilst relevant for all Directors appointed to listed company boards, we have particular concerns around the assessment of Directors without previous experience on a listed company board. We find that, whilst being asked to make a voting decision, we have limited insight to their experience, capabilities and suitability (except for the board skills matrix and a brief biography in the Annual Report or Notice of Meeting).

To address this, we believe the ASX Corporate Governance Council should consider recommendations that allow stakeholders to engage with proposed Directors to understand their skill set, and what they bring to the board, ahead of the voting deadline for the general meeting where they are to be elected. Currently, notices of meeting include a short biography of a director's qualifications and career achievements (without much detail on their skills) and proposed directors can (but are not required) to make a short statement at the general meeting at which they are to be elected, with the ability for attending shareholders to ask limited questions. We believe this is deficient. Being asked to vote on the basis of a short biography is sub-optimal and meeting a director at the general meeting at which they are to be elected is invariably too late in any event - proxies will have been lodged days before and so the outcome of the vote will already have been decided days before.

As such, we propose that the Recommendations include guidance that new directors be recommended to meet key stakeholders in the period between dispatch of the Notice of Meeting and deadline for proxies. The intent of such a meeting is to provide new directors with an opportunity to engage effectively and efficiently with key stakeholders of a company, and to help these stakeholders form a view as to their suitability for the position. It may also be relevant to hear from the Board (via the Chair or Chair of the Nominations committee) regarding the selection process and appropriateness of the candidate against the identified key criteria. It would not be a forum to discuss voting but focus on the skills and attributes of the candidate. It could be moderated by an independent third party, such as a law firm or investor relations firm.

We believe this will have the following tangible benefits:

- Directors and companies will be able to understand the investor interest and perspective early on in the appointment and election cycle.
- It provides an ability to engage with a number of key stakeholders in the one meeting.

	<ul style="list-style-type: none"> <li>• Investors gain a better understanding of the candidate and how their relevant skill set will add to overall board composition (over and above the skills matrix).</li> <li>• It will improve communication between key stakeholders and directors of ASX listed boards, with the outcome being a ‘new breed’ of director/investor relationships. The intent is to assist directors to be more aware of investor perspectives and able to be more forward-looking in their role as a result.</li> </ul> <p>Another important matter that we believe is not adequately addressed in the Recommendations is “overboarding”. Overboarding occurs when one person sits on too many boards, which diminishes their ability to serve the organisation effectively.</p> <p>There is currently no mandated cap on the number of boards on which a director can sit. Directors, and the boards on which they do or will form a part, are rather subject to the broad Principle 2 that boards “<i>be of an appropriate size and collectively have the skills, <u>commitment</u> and knowledge of the entity and the industry in which it operates, <u>to enable it to discharge its duties effectively and to add value</u></i>” (our emphasis added). There is then no guidance in the recommendations and guidance on Principle 2 of the Recommendations on how boards should meet that fundamental requirement regarding commitment.</p> <p>To date, we believe that the issue has been left to individual directors not to over-commit themselves and resign from boards where they or boards have concerns or they are required to do so by reason of conflicts etc.</p> <p>We are not advocating for a cap, but believe that directors must not take on too many roles and therefore be compromised in their ability to bring that commitment. That should be assessed each year and we believe that boards should publicly confirm in their Corporate Governance Statement that they believe that the number of other board roles each director holds is appropriate having regard to Principle 2.</p> <p>Perhaps, similar to the question of independence in Recommendation 2.3, there be a rebuttal presumption that a director has too many roles where they sit on more than four listed company boards in Australia or elsewhere, with the ASX listed entity being required to explain why the board believes that fact does not materially adversely impact the director’s ability to discharge his or her duties effectively and add value?</p> <p>We believe that ASX listed entities would benefit from the ASX Corporate Governance Council’s views on overboarding, as the market globally shows increasing concern in this space. For example, several large asset management firms, such as Blackrock and Vanguard, have changed their voting policies to apply stricter rules to directors serving on multiple boards<sup>1</sup> and adopted voting policies accordingly.</p>
4	We agree with ASX’s recommendation.

<sup>1</sup> See for example the following article: [What is overboarding? - The Corporate Governance Institute](#)

5.	We agree with ASX's recommendations, which we note is consistent with the 2024 changes to the UK Corporate Governance Code.
6.	We believe this data and disclosure would be useful. In this regard we note that certain companies now disclose the ethnicity of their employees against the broader population.
7.	<p>We don't see the need for this change. 5% remains the relevant threshold for substantial shareholder disclosure and one can assume that most listed companies have few substantial shareholders. As such, it is not a significant imposition to require companies to turn their minds to independence in that regard.</p> <p>We note this is consistent with the UK position which notes that independence can be called into question where a director "represents a significant shareholder."</p>
8.	We agree with ASX's recommendation.
9.	We agree with ASX's recommendation.
10.	We agree with ASX's recommendation.