



**SUBMISSION TO THE ASX
CORPORATE GOVERNANCE
COUNCIL CONSULTATION ON
THE CORPORATE GOVERNANCE
PRINCIPLES AND
RECOMMENDATIONS 5th
EDITION**

The information set out in this submission is not intended as, and does not constitute, legal advice.

Ms Elizabeth Johnstone
Chair
ASX Corporate Governance Council

Dear Ms Johnstone

We are pleased to provide this submission to support the ASX Corporate Governance Council's consultation on the 5th Edition of the Corporate Governance Principles and Recommendations.

This submission draws on our extensive experience working with businesses, investors, government, and other stakeholders, including civil society organisations, to implement globally recognised business and human rights standards and related regulation, including the *Modern Slavery Act 2018* (Cth). The recommendations set out in this submission address selected elements of the Consultation Draft relevant to our experience.

We trust this submission will assist the ASX Corporate Governance Council in its consultation and we thank you for the opportunity to contribute to these timely discussions. We would be pleased to engage with the ASX Corporate Governance Council further as appropriate, including to discuss this submission.

Warm regards



Vanessa Zimmerman
CEO, Pillar Two

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About Pillar Two

[Pillar Two](#) is a specialist business and human rights advisory firm with extensive global experience supporting businesses and other organisations to identify, assess and develop effective responses to their human rights risks, and to meaningfully engage internal and external stakeholders, including employees, business partners, investors and civil society organisations, around their human rights approaches. We take a principled, integrated and practical approach founded on international frameworks, national laws and policies, evolving stakeholder expectations, and leading practice.

We advise public and private companies about human rights across multiple sectors, including mining, energy, technology and telecommunications, education, retail, food and beverage, tourism and transport, fashion, professional services, infrastructure, banking and property. This includes a diverse range of ASX listed entities, as well as publicly listed companies in overseas jurisdictions. Our key areas of practice involve advising companies about: human rights strategy and policy development; risk assessment and management; grievance and incident response; and industry and stakeholder engagement. This includes support relating to specific human rights issues such as modern slavery risk management and reporting, including under the *Modern Slavery Act 2018 (Cth)* (**MSA**). We also work closely with the investor sector, including to support them to engage with investee companies on human rights issues. For example, we have partnered with the Australian Council of Superannuation Investors to conduct two benchmarks of modern slavery reporting by ASX200 companies.

Our team has deep business and human rights expertise and is based across Australia, Europe, Asia and North America. Our CEO was a member of the team that drafted the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#), and is Chair of Human Rights at the UN Global Compact Network Australia. She has been appointed to several Australian Government expert advisory groups including the Modern Slavery Expert Advisory Group (representing the Institute for Human Rights and Business), the National Roundtable on Human Trafficking and Slavery (representing the Law Council of Australia) and the Governance and Advisory Board to the Australian National Contact Point under the OECD Guidelines for Multinational Enterprises for Responsible Business Conduct (**OECD Guidelines**) based in Cth Treasury, amongst other advisory roles. Our team also includes former Australian Government officials closely involved in the development, implementation, and review of the MSA and the broader operation of the Australian Government's modern slavery response.

Introduction

The ASX Corporate Governance Principles and Recommendations (**Principles and Recommendations**) sets out recommended corporate governance practices for ASX listed entities aiming to achieve good governance outcomes. The Principles and Recommendations apply on an “if not, why not” basis, which requires an entity to provide reasons if it chooses not to adopt a specific Recommendation. As such, the Principles and Recommendations are an important instrument to promote lawful, ethical, and responsible business conduct.

The 5th review of the Principles and Recommendations presents an opportune moment to ensure that the recommended governance practices align with core international responsible business conduct standards and related evolving stakeholder expectations for ASX listed entities. From a business and human rights perspective, relevant standards include the UNGPs, the authoritative global standard for addressing and preventing business-related adverse human rights impacts,¹ and the OECD Guidelines.

ASX listed entities are operating in a complex global and domestic business and human rights landscape, which has changed significantly since the last update to the Principles and Recommendations. For example, key domestic developments have included the review of the MSA and introduction of the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth), as well as increased scrutiny of listed entities following high profile human rights issues relating to impacts on Indigenous cultural heritage, data breaches, reported sexual harassment of workers and alleged worker underpayment. Globally, human rights related legislation is also continuing to evolve, including moves to mandatory human rights due diligence in the European Union (EU), while companies’ human rights performance is subject to increasing shareholder scrutiny. For example, in the US, the Interfaith Centre on Corporate Responsibility reported filing almost 350 resolutions related to human rights in 2024 as of February 2024. Companies that fail to manage their human rights risks may also face increasing litigation and reputational risks.

The recommendations below focus on potential updates to Recommendation 2.2 and Principle 3 (including Recommendations 3.2 and 3.3). They highlight opportunities for the ASX Corporate Governance Council to promote corporate respect for human rights by further aligning the Principles and Recommendations with relevant human rights standards

¹ All businesses have an internationally recognised responsibility to respect human rights. This responsibility is set out in the UNGPs. Unanimously endorsed by the Human Rights Council in 2011, the UNGPs are supported by Australia and other international governments. Importantly, the UNGPs have informed the development of relevant legislation globally and in Australia, including the MSA and related Guidance from the Australian Government. A report published by Pillar Two and the UN Global Compact Network Australia in September 2023 found that 56% of ASX200 entities have made a public commitment to respect “all internationally recognised human rights” in line with the UNGPs, while a further 20% have made a ‘partial’ commitment, such as to “relevant human rights” or “human rights standards” (<https://unglobalcompact.org.au/wp-content/uploads/2023/09/Business-integration-of-human-rights-due-diligence-in-Australia-August-2023.pdf>).

and stakeholder expectations. Our recommendations also underscore the importance of the ASX Corporate Governance Council considering opportunities to support ASX listed entities to understand and apply any human rights related updates made to the Principles and Recommendations, including additional guidance for entities on the implementation of the human rights related recommendations.

If implemented, we consider these changes would: promote awareness among listed entities of their responsibility to respect human rights and related standards including the UNGPs; better equip listed entities to meet evolving legislative requirements both in Australia and overseas and stakeholder expectations around respect for human rights; and support these entities to manage their human rights risks more effectively. This would, in our view, benefit not only listed companies, but also their investors and other stakeholders, including rights-holders.

Recommendation 2.2: Board skills matrix

Inclusion of a reference to human rights skills in board skills matrices

The current Consultation Draft Recommendation 2.2 states: “A listed entity should: (a) have and disclose a board skills matrix setting out the mix of skills that the board currently has and is looking to achieve in its membership; and (b) disclose its process for how it assesses that the relevant skills and experience are held by its directors.”

In the current Consultation Draft, there is no express reference to human rights skills as a skill to be included in the board skills matrix. However, given the important role that directors play in managing human rights risks for listed entities and the increasing legal and reputational consequences for listed entities that do not appropriately manage these risks, we believe that it is timely to consider this inclusion. Doing so would encourage good practice by ASX listed entities in this area and, in our view, better equip Boards to engage with and manage human rights risks more effectively.

We consider that human rights could be referred to generally as a skill and that the Principles would not need to specify expertise in particular areas of human rights. This would reflect that the required human rights skills would vary depending on the operating context of the company, including their supply chain and customer relationships. For example, for a telecommunications company, the relevant expertise might include experience on the right to privacy and the right to freedom of expression. Conversely, for a mining company, the relevant expertise might include experience on Indigenous Peoples’ rights. The backgrounds and experience of people able to provide human rights expertise at Board level would also vary. However, examples of the type of expertise that could be relevant may include a person who has led a sustainability function supporting human rights risk management, a former civil society representative, or a person who has previously worked at an international organisation with a focus on business and human rights.

In recent years, there have been several examples of situations where ASX listed entities have experienced legal, reputational, and financial damage due to involvement in adverse human rights impacts. For example, this includes adverse impacts relating to Indigenous cultural heritage sites and high profile data breaches.² More broadly, there has also been scrutiny of ASX listed entities in certain sectors in relation to other human rights issues, such as reported systemic sexual harassment in the workplace and alleged underpayment of workers. These examples highlight the importance of entities having Board members with relevant human rights expertise to support decision-making around these issues.

We recommend:

- The ASX Corporate Governance Council considers including an express reference to “human rights” as a specific skill that should be included in board skills matrices.

² Among other human rights, data breaches impact affected persons’ right to privacy and can also have additional impacts, such as where they involve disclosure of information about vulnerable groups, such as persons who have experienced domestic violence.

Principle 3 and Recommendations 3.2 and 3.3: Acting responsibly, committing to respect human rights, and engaging with stakeholders

Defining “acting responsibly” to include reference to the UNGPs and OECD Guidelines

The current Consultation Draft Principle 3 states: “A listed entity should instil and continually reinforce a culture of acting lawfully, ethically and responsibly, within the organisation and in its dealings with external stakeholders, to create long-term sustainable value.”

The current Consultation Draft does not expressly define “acting responsibly” in Principle 3. Given the potentially subjective nature of this term, stakeholders may have different interpretations of what this might include and the extent to which it encompasses respect for human rights. In our view, referring to accepted international norms for responsible business conduct, including core business and human rights standards like the UNGPs and OECD Guidelines, would provide greater clarity to listed entities and other stakeholders on this expectation. It would also encourage listed entities to proactively manage their human rights risks in line with those standards, meet evolving stakeholder expectations in this area, and better equip them to manage risks to people alongside other legal, reputational, operational, and financial risks to the business.

At a minimum, we believe the UNGPs are important to refer to in defining “acting responsibly”. The UNGPs are the authoritative global standard on the corporate responsibility to respect human rights and are commonly used to inform the development of legislation and other initiatives relevant to human rights. Referring to the UNGPs would send a deeper message around respect for human rights for entities that are not yet aware of the UNGPs, while reinforcing the efforts of entities that are already using them to guide their efforts to act responsibly.

In our view, the OECD Guidelines could also be helpful in explaining this definition, as the corporate responsibility to respect human rights section in the UNGPs has been incorporated in full in the OECD Guidelines. We also note that as a member of the OECD, the OECD Guidelines express the Australian Government’s (as an adhering government) expectations with respect to responsible business conduct.

We recommend:

- The ASX Corporate Governance Council considers including an express reference to the UNGPs and the OECD Guidelines to inform the interpretation of “acting responsibly” in Principle 3. For example, Principle 3 could state: “A listed entity should instil and continually reinforce a culture of acting lawfully, ethically and responsibly, within the organisation and in its dealings with external stakeholders, to create long-term sustainable value. *In this context, acting responsibly includes*

respecting human rights in line with the expectations set out in the UNGPs and OECD Guidelines” (suggested additions italicised).

Policy commitment to respect human rights

The current Consultation Draft Recommendation 3.2 states: “A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly, including by: (a) having and disclosing a code of conduct for its directors, senior executives and employees ...”

The current Consultation Draft does not expressly reference the importance of a policy commitment to respect human rights in line with core business and human rights standards including the UNGPs as a way for listed entities to “instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly.” Importantly, the UNGPs advise that, as the basis for embedding their responsibility to respect human rights, businesses should express their commitment to meet this responsibility through a public statement of policy. This policy commitment can help entities to communicate internally and externally about their expectations, and (consistent with the intent of Draft Recommendation 3.2) support them to instil and reinforce a culture across the organisation of acting responsibly and respecting human rights.

As noted above, a report published by Pillar Two and the UN Global Compact Network Australia in September 2023 found that 56% of ASX200 entities have made a public commitment to respect “all internationally recognised human rights” in line with the UNGPs, while a further 20% have made a ‘partial’ commitment, such as to “relevant human rights” or “human rights standards”.³ These findings highlight the importance of providing greater clarity to entities about the importance of making a policy commitment to respect human rights and promoting good practice in this area.

We recommend:

- The ASX Corporate Governance Council considers updating Recommendation 3.2 to also include “a policy commitment to respect human rights” in line with the UNGPs and OECD Guidelines (in addition to the code of conduct), as a way for the listed entity to “instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly”.
- The ASX Corporate Governance Council considers updating “Box 3.2: Suggestions for the content of a code of conduct” to include express reference to respect for human rights in line with the UNGPs and OECD Guidelines.⁴ For example, this section could

³ See further: <https://unglobalcompact.org.au/wp-content/uploads/2023/09/Business-integration-of-human-rights-due-diligence-in-Australia-August-2023.pdf>.

⁴ For the same reasons as above, we recommend that, at a minimum, the ASX Corporate Governance Council considers including an express reference to the UNGPs as the authoritative global standard on the corporate responsibility to respect human rights.

be updated to “Express or cross-reference the organisation’s purpose (if articulated), *commitment to respect human rights (if articulated)*, and values” (suggested additions *italicised*). Similarly, the list in the second bullet point that articulates the organisation’s expectations for directors, senior executives and employees could be amended to include a statement that they “*will act in a manner that is consistent with the organisation’s responsibility to respect human rights*” (suggested additions *italicised*).

Stakeholder engagement

The current Consultation Draft Recommendation 3.3 states: “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.”

The Commentary to Recommendation 3.3 states: “Stakeholders may include security holders, employees, customers, suppliers, Aboriginal and Torres Strait Islander peoples, local community, law makers and regulators. Aboriginal and Torres Strait Islander stakeholders might be business partners, land owners, host communities, employees, customers, or have other relationships with the listed entity. Stakeholders may also include organisations which represent the interests of stakeholders, such as unions, environmental groups, or consumer groups.”

The current Consultation Draft includes a comprehensive list of stakeholders who may be engaged with. However, there are a number of other rights-holders and their representatives, with whom it may be relevant for entities to engage when considering their impact. These include types of civil society organisations not referenced above and suppliers’ workers, as well as consumers (noting consumers may be broader than just a company’s direct customers).

Civil society groups, suppliers’ workers and consumers may be well placed to provide insights to listed entities about material issues (including adverse human rights impacts) that may be relevant to the entity. The importance of meaningful stakeholder engagement is also underscored by the UNGPs, which emphasise the need for businesses to engage with “potentially affected groups” (which could include suppliers’ workers and consumers) and, where direct consultation is not possible, with “credible independent expert resources” (which is defined as including “human rights defenders and others from civil society”). For example, in the context of the MSA, it is important that businesses consider opportunities to engage with suppliers’ workers and civil society groups to inform their understanding of potential modern slavery risks and how they could be addressed.

We recommend:

- The ASX Corporate Governance Council considers updating the reference to potential stakeholders to refer specifically to consumers, suppliers' workers, and civil society groups. For example, potential wording could include: "Stakeholders may include security holders, employees, customers *including consumers, suppliers and suppliers' workers*, Aboriginal and Torres Strait Islander peoples *and other* local community *members*, law makers and regulators. Aboriginal and Torres Strait Islander stakeholders might be business partners, land owners, host communities, employees, customers, or have other relationships with the listed entity. Stakeholders may also include organisations which represent the interests of stakeholders such as unions, environmental groups, consumer groups *and other civil society groups representing rights-holders*" (suggested additions *italicised*).

The role of the board in overseeing the listed entity's human rights due diligence activities

The Commentary to Recommendation 3.3 states: "The board's activities may include, for example: ... overseeing due diligence on the entity's stakeholder relationships, including human rights impacts", and includes a footnote that states: "For example, under the *Australian Modern Slavery Act 2018* (Cth) or otherwise based upon structures in the United Nations, *Guiding Principles on Business and Human Rights* [sic]."

While we consider the inclusion of the UNGPs in the footnote to be helpful, we believe that this section could be further strengthened by clarifying the UNGPs' expectations around human rights due diligence, and what this involves. As defined in the UNGPs, "human rights due diligence is the process companies should undertake to identify, prevent, mitigate and account for how they address their adverse human rights impacts". It involves four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating how impacts are addressed. Importantly, the UNGPs recognise that the approach taken by entities to human rights due diligence will vary based on their size and circumstances, including their risk profile.

Some jurisdictions globally are moving to establish legislation to require companies to undertake human rights due diligence. For example, the recently adopted EU *Corporate Sustainability Due Diligence Directive* will require certain large companies to undertake mandatory human rights and environmental due diligence from 2027. National level laws are also already in place in certain countries, including France and Germany. These laws (at EU and national level) may directly apply to some ASX listed entities, as well as to ASX listed entities' international suppliers and customers. Significantly, the Australian Government is also considering a recommendation from the independent review of the MSA to establish a "modern slavery due diligence system".

In view of the factors outlined above, we consider that there is an opportunity to better align the examples provided for Board activities in Recommendation 3.3 with the UNGPs by

including a direct reference to human rights due diligence in the body text. This would reinforce the importance of human rights due diligence to listed entities and help ASX listed entities operating in Australia and internationally to meet evolving stakeholder expectations and legislative requirements in this area.

We recommend:

- The ASX Corporate Governance Council considers updating the Commentary to Recommendation 3.3 to expressly state that the role of the board may include “overseeing the listed entity’s human rights due diligence activities to identify, prevent, mitigate and account for how they address their adverse impacts on human rights”, with a reference to the UNGPs Guiding Principle 15 (noting that this process should be proportionate to the entity’s size and circumstances).⁵

⁵ UNGPs Guiding Principle 15 states: “In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: ... A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.” We note that this is also incorporated into the OECD Guidelines, which have adopted the full text of the corporate responsibility to respect section in the UNGPs, but have recommended the UNGPs reference here as the global authoritative standard.

Support for listed entities

Alongside the above recommendations, we recommend that the ASX Corporate Governance Council consider opportunities to support listed entities as they seek to apply any human rights related updates to the Principles and Recommendations.

For example, this could include highlighting relevant resources, such as the UNGPs and OECD Guidelines, as well as considering whether additional guidance materials may be required. Additional guidance could include relevant information to support enterprises with any human rights related updates. For example, this could include commentary from the ASX Corporate Governance Council or third parties on particular human rights skills that could be useful at Board level and the types of people who could be approached for these roles, guidance on human rights due diligence steps, including stakeholder engagement, and information about what should be included in a policy commitment to respect human rights. There are also examples of other securities exchanges that provide guidance and capacity building to listed entities on managing human rights risks. For example, the Stock Exchange of Thailand has developed [guidance on identifying, addressing and reporting on modern slavery risks](#) and an [e-learning module on human rights due diligence for entities](#), and Bursa Malaysia (the Malaysian Stock Exchange) hosted a [Human Rights Impact Assessment Masterclass in 2018](#).

The ASX Corporate Governance Council could also consider recommending that listed entities consider collaborative opportunities for sharing good practice and learning from peers. For example, the UN Global Compact Network Australia has established a Modern Slavery Community of Practice which brings together companies from across sectors. There may also be scope to explore potential opportunities to support initiatives aimed at training Directors of ASX listed entities about human rights to further build knowledge and expertise in this area.

Conclusion

This consultation provides a timely opportunity to consider how the ASX Corporate Governance Council can continue to promote corporate respect for human rights through the Principles and Recommendations. As the international and domestic business and human rights landscape continues to evolve significantly, it is increasingly important that Australian listed entities are able to know and show that they respect human rights across their own activities and business relationships.