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Mavis Tan  
ASX Corporate Governance Council  
C/O ASX Limited  
PO Box H224 Australia Square NSW 1215  
By email: [mavis.tan@asx.com.au](mailto:mavis.tan@asx.com.au)

## ACSI SUBMISSION ON THE PROPOSED FOURTH EDITION OF THE CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS

On behalf of the Australian Council of Superannuation Investors (ACSI), I am pleased to make this submission to the ASX Corporate Governance Council (Council) on the fourth edition of the Corporate Governance Principles and Recommendations (Principles and Recommendations).

As an active member of the Council, and a representative of long-term investors who invest more than \$2.2 trillion on behalf of beneficiaries, we have a strong interest in ensuring that the corporate governance policies, practices and disclosures of Australian listed companies are robust.

We welcome the proposed fourth edition of the Principles and Recommendations, which reflect evolving perspectives in best practice corporate governance and include a greater emphasis on values, ethics and broader stakeholder accountability.

We strongly support the proposed amendments which we consider will strengthen the Principles and Recommendations and successfully address a range of contemporary governance concerns. We welcome the Council's proposed improvements in the following topics:

- Social licence to operate.
- Corporate values and culture.
- Whistleblower rules.
- Anti-bribery and corruption policies.
- Improving diversity.
- Corporate reporting.
- Climate-related disclosures.

In our view, the proposed amendments and additions will provide investors and other stakeholders with improved insight into the robustness and effectiveness of the entities that they invest in.

This submission provides our perspective on key sections of the amended Principles and Recommendations which we believe warrant individual comment.

## RESPONSE TO NEW AND AMENDED PRINCIPLES AND RECOMMENDATIONS

### Recommendation 1.5: Diversity policies, measurable objectives, management responsibilities and disclosure

For many years we have been a strong supporter of greater board gender diversity in ASX-listed companies. This is based on the view that skilled and suitably diverse boards make for better-governed companies and higher value investments for our members.

We consider that a properly structured board should include appropriately skilled and experienced directors who bring diversity of thought to board decision making. This is more likely to occur when directors are drawn from sufficiently diverse backgrounds, including gender, ethnicity and age, in addition to core skills and experience.

Gender diversity has been a major challenge for Australian boards. By the end of April 2018, women still represented fewer than 28 per cent of ASX200 directors on average. The lack of progress by many companies is contrasted by the fact that 30 companies in the ASX200 now have boards with 40 per cent or more women. We also note that there are still close to 60 ASX200 companies with just one woman on their board – many of which have remained that way for some time. Disappointingly, progress has been slower in smaller cap companies, in the ASX201-300 there are more than 25 boards without any women.

ACSI strongly supports the amendments to Recommendation 1.5, including:

- The requirement that entities in the S&P/ASX300 set a measurable objective to have a minimum of 30 per cent of directors of each gender on their boards by a specified date.
- Guidance in the commentary that boards of listed entities should have regard to other facets of diversity in addition to gender when considering their make-up, and that having directors of different ages and ethnicities and from different cultural or socio-economic backgrounds can help bring different experiences and perspectives to bear and avoid 'groupthink' in decision making.

The revisions also require boards or relevant committees to charge management with designing, implementing and maintaining programs and initiatives to help achieve those measurable objectives and requires an annual review of the company's progress towards its gender objectives. From an accountability perspective and to ensure that programs and initiatives remain live issues both at Board and management level, we welcome the additional suggestions in the commentary that a listed entity consider disclosing any insights from the annual review and any changes the entity has made to its gender diversity objectives and programs as a result.

### Recommendation 1.6: Have and disclose a process for evaluation of board, committee and director performance and disclose whether an evaluation has been undertaken

To improve transparency and promote investor confidence, we welcome the extension of commentary encouraging boards to disclose whether a board performance evaluation has been undertaken and any insights it has gained from the evaluation and any governance changes it has made as a result. From an investor's perspective, it is insufficient for an entity to simply report an evaluation process and that an evaluation has taken place. To truly provide insight into the effectiveness of the evaluation process, investors require information regarding insights gained and changes made. This issue was highlighted in ACSI's 2010 research on director evaluation processes and disclosures in the ASX200. While some progress has been made since that time, we note significant gaps in disclosure remain.

### Recommendation 2.3: Director independence

We welcome the inclusion in Box 2.3 a director who “receives performance based remuneration (including options or performance rights) or participates in an employee incentive scheme”, as an example of a circumstance which might raise issues about their independence. This is consistent with the guidelines for non-executive director remuneration in Recommendation 8.2: “However, non-executive directors generally should not receive options with performance hurdles attached or performance rights as part of their remuneration as it may lead to bias in their decision-making and compromise their objectivity.”

### Principle 3: Instill the desired culture

We strongly support the expansion of Principle 3 to include instilling and continually reinforcing a culture across the organisation of acting lawfully, ethically and in a socially responsible manner.

A listed entity’s social licence to operate is one of its most valuable assets. It can be lost or seriously damaged if the entity or its officers or employees are perceived to have acted unlawfully, unethically or in a socially irresponsible manner.

Companies rely on a range of stakeholders to operate and succeed, including: governments, employees, communities, investors, consumers and suppliers. Effectively engaging with stakeholders is crucial to maintaining this licence to operate. The Council’s proposed changes are particularly timely given the current focus on improving corporate culture and the declining trust in corporations and major institutions. We view improved transparency as one way of rebuilding this trust among investors and a broader group of stakeholders.

Recent examples demonstrate that corporate misconduct can have dire consequences for shareholder value. Conversely, a strong corporate culture can contribute to the attraction and retention of talent, the development and maintenance of reputation and trust, as well as supporting the effectiveness and efficiency of operational management. These elements can contribute to financial strength and resilience.

In March 2018, we released a research report entitled ‘[Codes of Conduct, Whistleblowing and Corporate Culture](#)’. This research compares codes of conduct and whistleblowing systems of ASX200 companies against a set of leading practice indicators and identifies key gaps in their coverage and content. Our research noted that codes of conduct and whistleblowing systems are key foundations of corporate culture and ethical conduct. Effective design and implementation encourages ethical performance by employees and protects against inappropriate behaviour, but the quality and implementation of these resources is critical.

Good disclosures in relation to codes of conduct, whistleblowing and anti-corruption and bribery policies include disclosures regarding implementation, number of cases, category of cases and actions taken. It is worthwhile noting that some companies already provide implementation insight. An example of code of conduct implementation disclosure can be found in [Woodside Petroleum Limited, Sustainable Development Report 2015](#) and whistleblower policy implementation examples can be found in [ANZ’s 2017 Corporate Sustainability Review](#) and the [NAB Sustainability Report 2017](#).

We welcome commentary that encourages a company to disclose in general terms the actions it has taken to promote its code of conduct to its workforce and a recommendation that its code be reviewed every 3 years to ensure it remains fit for purpose.

[Recommendation 4.4: A listed entity should have and disclose its process to validate that its annual directors' report and any other corporate reports](#)

We agree that to understand a listed company's performance and prospects, in addition to historical financial information included in its annual financial report, the market needs further information usually included in the annual directors' report. We welcome this new recommendation.

We support the acknowledgement in the commentary of 'integrated reporting' as a useful framework for providing information about a listed entity's future prospects, risks and opportunities, strategy and business model. Integrated reporting is an emerging global reporting framework which is worthy of inclusion in the Principles and Recommendations.

We support the focus of this new recommendation on ensuring that the annual director's report and other corporate reports which are not subject to external assurance, are subject to appropriate process to validate that the report is accurate, balanced and understandable in order to facilitate informed investment decision making. Further clarification by entities regarding validation will provide investors with greater confidence regarding the quality of these reports. As drafted, this new recommendation strikes the right balance between prescribing assurance and allowing companies to adopt a fit for purpose validation process.

[Recommendation 6.4: A listed entity should ensure that all resolutions at a meeting of security holders are decided by a poll rather than by a show of hands.](#)

We strongly support the introduction of Recommendation 6.4 that all resolutions should be decided by a poll. We support a 'one share, one vote' capital structure and agree that deciding votes on the basis of a show of hands, regardless of the number of securities held, is inconsistent with this principle.

Historically, we have heard from company directors that deciding resolutions on a show of hands is a way of engaging retail shareholders that attend company annual general meetings (AGMs). We are of the view that there are alternative ways to improve retail shareholders engagement which are equitable to all shareholders. With improvements in technology, poll voting is now easy to implement.

We support the recommendation and are of the view that poll voting should be elevated to a mandatory regulatory requirement.

[Recommendation 7.4: A listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks.](#)

Entities must already comply with s299A(3) of the *Corporations Act 2001* (Cth) which requires them to describe in the operating financial review, the material business risks that could adversely affect the achievement of the financial performance or financial outcomes described. Repeating the need to cover economic risks in recommendation 7.4 creates duplication and misunderstanding of what is required when reporting against Recommendation 7.4. We therefore welcome the limitation of Recommendation 7.4 to material exposure to environmental or social risks.

We support the amendments to the commentary that when an entity does not believe it has material exposure to environmental and social risks that it consider carefully the basis for that belief and benchmark their disclosures against their peers. In our experience, there are some companies that say they have no exposure to environmental or social risks. This is inappropriate in our view. For example, we consider the retention and attraction of talent to be a social risk, which is relevant to all companies.

As fiduciaries, our members are required to maximise long-term investment returns for their beneficiaries. Improved disclosure of climate-related risk enables them to make decisions about climate-related exposure in their investment portfolios. Based on our research, ['2016 Corporate Sustainability Reporting in Australia'](#), the level of climate-related disclosures lags that of sustainability reporting more generally. As such we strongly endorse the inclusion in the commentary of:

- Reference to climate change risks.
- Acknowledgement that many listed entities will be exposed to these types of risks, even where they are not directly involved in mining or consuming fossil fuels.
- Reference to the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD) framework.

The TCFD framework recommends that companies disclose their governance and risk management processes for identifying, assessing and managing climate-related risks and opportunities. Where companies identify climate change risks as material, it is our view that disclosures should extend to discussing the strategy, as well as metrics and targets used to manage the risk. The TCFD framework also recommends that companies consider describing how related performance metrics are incorporated into remuneration policies.

Over the next few years, we expect companies materially exposed to climate change risk to make substantive improvements in their climate-related reporting with reference to the TCFD recommended disclosures.

We further welcome the definition of social risks and the elevation of integrated reporting from a footnote to inclusion within the commentary.

## CONCLUSION

We will be following the progress of the consultation with interest. Please contact me if you wish to discuss any aspect of our submission.

Yours sincerely



Louise Davidson  
Chief Executive Officer