Increasing the visibility of workforce issues in company corporate governance

ACTU submission to the Review of the ASX Corporate Governance Council's Principles and Recommendations

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Introduction

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For 90 years the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 1.5million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

Our interest in the ASX Corporate Governance Principles and Recommendations

The ACTUs stakeholder interest in the ASX Corporate Governance Principles and Recommendations derives from three core functions of the ACTU.

The first is that we represent the interests of the workforce of ASX listed companies. Notwithstanding that company workforces (human capital) is equally as important as the financial capital inputs to company performance, productivity and wealth creation, their voice, contribution, and value creation potential is consistently undervalued or is considered of secondary importance in corporate governance practice. This is revealed for example by the almost complete absence of a workforce voice on boards of ASX companies in Australia as well as the lack of acknowledgement of labour or human capital expertise in the skills matrices of listed companies. There is also a lack of workforce representation on advisory bodies to governance boards and the methodologies for ascertaining social factor performance of ASX listed companies is poorly developed, relative to the emerging and improved focus on environmental and governance performance of ASX companies;

The second is that as the peak trade union council for the nation's workforce, we have a responsibility to promote and ensure compliance of a raft of international treaties and norms to which Australia is a signatory, including the ILO Core Labour Conventions and key guidance provided by United Nations bodies, including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multi-National Enterprises.

Lastly , it's because we provide professional support and advice to member appointed/elected and labour organisation appointed trustee directors on the superior performing industry and public-sector superannuation fund governance boards. In this role, the ACTU assists trustee directors in performance of their fiduciary duty, one aspect of which is assessing investee ESG risk and integrating that into portfolio selection and asset stewardship practice. Listed equities form a large component of the investee companies of those superannuation funds.

Our comments on the proposed amendments to the ASX Corporate Governance Principles and Recommendations as set out in the Consultation Paper

Principle 1: Lay solid foundations for management and oversight

Recommendation 1.1

We propose that the commentary section make clear that an aspect of board responsibility is oversight of the 'responsible' deployment of the company's assets including its financial capital and human capital and that it should report on its responsible investment policy, but more importantly its practice, in a separate annual sustainability report or an identifiable section of its annual report including publication on its website. An important feature of a company's social licence to operate is the way it responsibly deploys the capital provided by shareholders and the way its treats its workforce, including in its upstream and downstream supply chains.

In addition, we propose that the Commentary section indicate that listed companies should now be appointing a Responsible Investment and Sustainability Committee of the board as standard operating practice.

Principle 2: Structure the board to add value

Recommendation 2.1

We strongly support the proposal to amend Principle 2 (structure the board to be effective and to add value) to recognise the importance of the board having directors with "knowledge of the entity and the industry in which it operates" Directors from the "financial sector" are overrepresented on boards, and invariably lack diverse knowledge of the range of industries and supply chains that the listed entity operates within, and its stakeholder interests, all of which can impact on value creation.

Additionally, this amendment is required to reinforce the point made in our introduction that there is an almost complete absence of directors from a workforce background, who derive their skills and expertise from employment within the company or industry of the company.
We note that the UK Corporate Governance Code of July 2018, includes a Principle that "The board should ensure that workforce policies and practices are consistent with the company's values and support its long-term sustainable success. The workforce should be able to raise any matters of concern. In order for the workforce to participate, Provision 5 specifies that:

> "For engagement with the workforce, one or a combination of the following methods should be used:
>
> - a director appointed from the workforce;
> - a formal workforce advisory panel;
> - a designated non-executive director.
>
> If the board has not chosen one or more of these methods, it should explain what alternative arrangements are in place and why it considers that they are effective."

In addition, Provision 6 specifies "There should be a means for the workforce to raise concerns in confidence and – if they wish – anonymously. The board should routinely review this and the reports arising from its operation. It should ensure that arrangements are in place for the proportionate and independent investigation of such matters and for follow-up action."

We propose that the ASX Corporate Governance Principles include a similar provision.

The ACTU Congress 2018 endorsed a position to strongly advocate for a change in corporate governance and potentially legislation in Australia that would result in the appointment of workforce representatives on the boards of public companies.

Recommendation 2.2

We concur with the changes prosed to the current recommendation, but we would strongly suggest the addition of the words "workforce engagement and remuneration models" and "supply chain risk" in the following proposal so it reads as follows:

> "noting that boards are increasingly being called upon to address new or emerging issues including around culture, conduct risk, digital disruption, cyber-security, workforce engagement and remuneration models, supply chain risk, modern slavery, sustainability, and climate change and suggesting that the board regularly review its skills matrix to

> make sure it covers the skills needed to address existing and emerging business and governance issues"

Principle 3: A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and in a socially responsible manner

We support all the proposed changes to Principle 3.

In addition, we propose that the Commentary be updated by altering the reference from "employees" to "workforce" to acknowledge that increasingly company workforces are not directly employed, but indirectly employed through labour hire or other workforce engagement platforms, and that companies have an obligation to uphold the human rights of the workforce across its supply chains. We therefore suggest that bullet point 1 be amended to read as follows:

> "respecting the human rights of its employees, workforce, and those engaged by its contractors and suppliers (for instance, by not employing forced or compulsory labour or young children even where that may be legally permitted)"

We also propose the inclusion of a new bullet point in the Commentary section that captures the International Labour Organisation (ILO) core Labour Conventions regarding the right to collective bargaining and freedom of association, to be expressed as a commitment to social dialogue, now regarded in the investment community as central to value creation and high performing companies. We suggest the text of the new bullet point read as follows:

> "establishing workforce engagement and consultation mechanisms that support collective bargaining and the right to organise, and which provide grievance/remedy processes for addressing employment and workforce change issues such as introduction of new technologies and new workforce organisational structures"

We would also like to see the inclusion of a new bullet point in the Commentary section that mirrors the US Securities and Exchange Commission (SEC) CEO pay ratio disclosure rule, which is contained in Item 402(u) of SEC Regulation S-K, requiring public companies to disclose: (i) the median of the annual total compensation of all US and non-US employees, other than the chief executive officer; (ii) the annual total compensation of the chief executive officer; and (iii) the ratio of these amounts. We suggest the text of a new bullet point read as follows:

> "reporting annually the CEO's pay as a ratio of the median of the pay of all direct company employment"

Principle 4: Produce corporate reports of high quality and integrity

We propose inclusion of a new recommendation that refers to production of an annual sustainability report to accompany the company annual report. It is our view that a company sustainability report should address the economic, environmental and social impacts caused by the company's everyday activities. A sustainability report is also the place to present the company's values and governance model, and demonstrates the link between its strategy and its commitment to a sustainable global economy.

Principle 5: Principle 5: Make timely and balanced disclosure

No comment.

Principle 6: Respect the rights of security holders

Shareholders, particularly larger institutional shareholders like superannuation funds, acting as in-house investment managers, or where investment management is outsourced, thorough asset managers, are increasingly expecting company disclosure on the company's ESG performance.

Consistent disclosure methodologies using standardised metrics is rapidly emerging with the aid of frameworks like the Climate Disclosure Project (CDP), the Global Reporting Initiative (GRI), the Corporate Human Rights Benchmark (CHRB), the Sustainability Accounting Standards Board (SASB) and the Share Action Workforce Disclosure Initiative (WDI). Shareholder engagement, including voting, is also seeking to improve ESG performance and is increasingly being guided by the disclosed information from these reporting frameworks. We believe there should be greater transparency of company information on the engagement priorities as articulated by shareholders or their third-party representatives.

Recommendation 6.1

We propose that an additional bullet point be included in the section commencing "A listed entity should also include in an appropriate area of its website links to:" which would read as follows:

> "The key environmental, social and governance (ESG) and sustainability issues raised by shareholders or their representatives in engagement processes"

Alternatively, this could be addressed by enhancing Recommendation 7.4 under Principle 7.

Principle 7: Recognise and manage risk

Recommendation 7.4

We support the proposed amendments to Principle 7, though we suggest a different approach to Para 3 under the Commentary section that could nevertheless be built in to the proposed amendment.

In addition, we propose that the reference to employees in Para 1 under Commentary be altered to refer "its workforce" to reinforce the point we made under Principle 3 that increasingly, company workforces are not directly employed (as employees), but indirectly employed through labour hire or other workforce engagement platforms.

We therefore propose that Para 1 read as follows:

> "How a listed entity conducts its business activities impacts directly on a range of stakeholders, including security holders, its workforce, customers, suppliers, creditors, consumers, governments and the local communities in which it operates."

Consistent with the view that we put in relation to Principe 4 that companies should produce an annual sustainability report, we suggest a slightly more positive wording to Para 3 in the Commentary, so it reads as follows:

> "To meet this recommendation does not require a listed entity to publish a sustainability report, though publication of a sustainab*ility report is recommended*. However, an entity that does publish a sustainability report may *provide a mechanism to* meet this recommendation simply by cross-referring to that report."

Principle 8: Remunerate fairly and responsibly

No comment

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