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To the ASX Corporate Governance Council,

## Submission on the Corporate Governance Principles and Recommendations Draft 4<sup>th</sup> Edition

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Thankyou for the opportunity to provide a submission on the draft fourth edition of the Corporate Governance Principles and Recommendations. I have provided more general input to the revised Principles via a member body of the Council.

This submission, however, is focussed on two of the recommendations, 8.4 and 1.5.

### **SUBMISSION A – in relation to recommendation 8.4 re Consulting agreements**

In relation to the new Recommendation 8.4, I acknowledge and accept the rationale for the inclusion of this new recommendation. Where there may be a committed intent to defraud in this manner though, I question if this recommendation will deter the kind of people that engage in this behaviour. They might feel they can get around it by simply NOT entering into any formal agreement.

I would suggest that some clarity on what is appropriate disclosure under 8.4 eg immediate or annual, would be useful.

Notwithstanding my support for the intent of Recommendation 8.4, I feel it could benefit from some improved drafting. I have a concern that the recommendation as it is currently worded, may in some instances have inadvertently captured classes of professional service providers who regularly provide expertise on a part-time contract basis in situations where the listed entity is not yet of sufficient size to be able to warrant or to afford the full-time services of such persons. The most common example of part-time service providers to smaller listed companies are Company Secretaries (but it can include other specialists with other expertise or more than one area of valued expertise eg Company Secretary/CFOs; Company Secretary/Legal Counsel; pure CFOs and perhaps it also extends to specialist engineers or geologists for some companies). For the purposes of this submission, I wish to focus on contract Company Secretaries, who like directors, are classified as “officers” under the Corporations Act (and many other Acts), and are regarded as having higher levels of accountability in some aspects of law irrespective of number of hours spent in the role.

It is conceivable, that for some smaller listed entities, the part-time contract Company Secretary may be classified as a senior executive depending on the breadth of their duties, influence and decision-making authority, and in many instances (due to their assumed knowledge, expertise and presence in the boardroom where decisions are being made), they are likely to be regarded and judged in a courtroom scenario as an “officer” of the entity with “senior executive” knowledge, capabilities and obligations.

Most contract Company Secretaries operate under a consulting services contract with their various clients, most often via a Pty Ltd entity. This is useful and recommended for liability, legal, insurance, accounting and taxation purposes.

**In the large majority of instances these contract Company Secretaries will be providing services to their client companies that fit within the “ordinary scope” of duties normally expected of this role.**

If a contract Company Secretary should be regarded as a senior executive for a listed entity, then the way in which Rec 8.4 is currently worded creates a quandary not only for the Company Secretary, but also for the listed entity itself. The wording as it stands, implies that the entity should NOT enter into an agreement with the Company Secretary or their Pty Ltd company UNLESS:

- The listed entity first obtains independent advice, and
- Secondly that the advice says the services are “outside the ordinary scope of duties”.

In this scenario, this requirement does not make any sense. There needs to be some acknowledgement that “services provided WITHIN THE NORMAL SCOPE OF DUTIES” are not caught by his recommendation.

I am sure it was not the intention of Recommendation 8.4 to interfere with normal, legitimate, part time consultancy arrangements of this nature. If the Council agrees, it would be appreciated if this could be clarified. It is unclear to me if this would be better dealt with either as an amendment to the drafting of the Recommendation 8.4 itself, or as a clarifying paragraph in the Commentary.

If the latter, then suggested additional paragraphs in the commentary might be:

**Long option**

“It is acknowledged that some listed entities (usually small to medium in size) do enter into contractual arrangements with some executives (or their related entities), usually for a fixed term or on a part-time basis, where the executive brings required skills and knowledge to the entity, and that this is likely to occur where the entity is not yet of sufficient size as to be able to warrant the services of those executives on a full-time basis. A common example is the contract Company Secretary who provides essential skills but whose services may not be required on a full-time basis.

In most instances it is unlikely that these part time service providers will be classified as a senior executive of the entity and as such their services or consulting agreement will not be subject to this recommendation. However, in instances where the breadth of that service provider’s duties and the extent of their decision-making authority in an entity does result in that person being classed as a “senior executive” then, provided: the services being provided by that service provider are within the ordinary scope of duties normally required for that role; the agreement is on arm’s length terms and the remuneration payable under it is reasonable, then Recommendation 8.4 does not apply to that service provider.”

Or

**Short option**

“This recommendation is not intended to apply to part-time contract Company Secretaries [*consider here if you want to extend this to part time professions other than CoSecs*] (who, notwithstanding the part-time nature of their role, might be considered in some listed entities to be a “senior executive”) where they or their related party are providing services that are WITHIN the ordinary scope of their duties as a Company Secretary or senior executive, and where the services agreement is on arm’s length terms and the remuneration payable under it is reasonable.”

**SUBMISSION B – In relation to Recommendation 1.5 re Diversity**

I commend the Council on its ongoing efforts to require listed entities to address gender diversity and diversity generally. I agree that progress has been disappointingly slow and has in fact stalled for some companies who have run out of creative options for enhancing their floundering statistics.

I have been concerned for some time that there is one critical area of gender diversity that is being overlooked in this drive for change and which if left unaddressed, has serious implications for ongoing gender pay inequalities and the ongoing imbalance of males to females on most ASX listed Boards.

It relates to the lack of women being promoted in line management roles compared to advisory roles. Line management roles are the ones with most operational responsibility and the most influence on an organisation’s financial successes and failures. They are usually the more highly paid roles, with the most opportunities for career progression as well as having the greatest STI and LTI upside. They are the roles that most often lead to senior executive/KMP positions, which in turn lead to Executive Director/CEO and ultimately, they provide the most assured pathway to prime Board roles. As long as these decision-making line roles continue to be dominated by one gender, so it will be for our Boards, and the entrenched behaviours of our organisations will not change.

If one analyses the roles of the majority of the women being reported as "senior executive" in the diversity statistics, you will find that a significant majority fall into functional/advisory roles including Company Secretary, HR Manager, PR Manager, Corporate Affairs Manager, Audit Manager, Chief Legal Counsel and combinations of these mostly advisory functions. This is not to demean the importance of these roles; but just to highlight the inequity and lack of genuine access to women across the full spectrum of roles in an organisation. Corporate insiders have long been aware of these inequities. But the current diversity statistics allow it to remain hidden.

Furthermore, if you compare the remuneration of the senior executive women in these functional roles with men in identical functional roles, you will generally find a significant disparity between how men and women are remunerated when in comparable roles ie sometimes men are remunerated at more than twice the remuneration of their female equivalent. The companies will claim to justify this at an individual level with carefully-crafted position descriptions. But they cannot justify the overwhelmingly skewed industry statistics which have prevailed on this scale for so long.

It is pleasing to see that Chief Executive Women Ltd (CEW) is an organisation that, through its Senior Executive Census commenced in 2017, appears to have recognised the need to highlight the proportion of women in "line" roles versus "functional" roles; having observed that "line roles are those that directly drive commercial outcomes in a business and usually involve profit and loss accountability". CEW's annual analysis is to be based on reviews of the ASX200 websites. Unfortunately, websites are not all equal; and in the hands of the entity's "spin doctors", websites reveal little about remuneration inequality between comparable roles; or the true decision-making capacity of the individuals elevated to the "senior management" photos page; and predictably, these websites reveal even less about any matters that might cause an organisation's leadership some embarrassment.

I therefore believe there needs to be greater regulated transparency over some of the underlying gender statistics such as:

1. The percentage/numbers of senior executive women versus men in line roles as well as those in functional roles, and how the balance between each evolves (or not), both over time and under the watch of an entity's respective CEOs. (What better way is there to acknowledge those CEOs making a genuine difference?)
2. How the remuneration compares for women and men within comparable functional roles; and how it compares for each gender in comparable line roles. This can be based on a "per hour" comparison pay rate if there is a tendency for one gender to be represented by more part-timers.
3. How the golden handshakes for departing female senior executives typically compare to those of their male counterparts.
4. The retention rate (or expiry date) within an organisation of senior executive women vs senior executive men. ie "How many (or the percentage of) executive men past 55 are retained, compared to executive women past 55?". Other age statistics eg 50 or 60, might also be relevant.

**In summary, I am recommending that the diversity disclosure obligations require greater granularity of the statistics in terms of gender dominance in certain types of roles (especially line vs functional for senior executive males and females), as well as more information on the pay differentials that prevail according to how those roles are allocated between genders.**

Perhaps this can be dealt with in the commentary. It would be even better if it could be incorporated into the measurable objectives and "best practice" reporting expectations.

Yours sincerely



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