



**AIGI**

**AIGI SUBMISSION ON THE 5TH  
EDITION OF THE ASX  
CORPORATE GOVERNANCE  
COUNCIL PRINCIPLES AND  
RECOMMENDATIONS**

JUNE 2024





# ACKNOWLEDGEMENT

The Australian Indigenous Governance Institute acknowledges the Traditional Owners of all lands upon which we live and work. We honour and celebrate their Elders past, present and emerging.

# DISCLAIMER

AIGI may use the terms Indigenous, First Nations and Aboriginal and Torres Strait Islander interchangeably. We acknowledge and respect that terms preferred in different jurisdictions and locations may vary.



**AIGI**

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# AIGI SUBMISSION

*ASX Corporate Governance Council, a proposed fifth edition of the Principles and Recommendations*

The Australian Indigenous Governance Institute (AIGI) welcomes the opportunity to make a written submission in contribution to the review of the proposed updated Corporate Governance Council Principles and Recommendations (the ASX Principles).

Incorporating Indigenous Governance principles into the ASX Principles carries with it several benefits, such as:

- Minimises organisation's risk: Not adhering to community values comes with significant risk, and company executives can be held accountable for unethical decision-making.<sup>1</sup>
- Large and growing industry: Indigenous businesses contribute \$16 Bn in revenue to the economy<sup>2</sup>, and organisations continue to grow, including from significant investments from groups such as NAB - \$1Bn.<sup>3</sup> Listed entities' engagement with these businesses will continue to grow as this sector develops. Wider respect for, understanding of, and incorporation of two-way governance<sup>4</sup> structures will allow for more productive engagement.

## About AIGI

AIGI brings 10+ years of expertise to this review as an independent, Aboriginal and Torres Strait Islander-led centre for governance knowledge and excellence. To meet their self-determined governance needs, we connect Aboriginal and Torres Strait Islanders to world-class governance practice, resources, and professional development. Our services are

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<sup>1</sup> David Chau and Michael Janda, 'Rio Tinto Boss Jean-Sebastien Jacques Quits over Juukan Gorge Blast - ABC News', 2020, <https://www.abc.net.au/news/2020-09-11/rio-tinto-boss-jean-sebastien-jacques-quits-over-juukan-blast/12653950>.

<sup>2</sup> University of Melbourne, 'Indigenous Business Snapshot Reveals Significant Value to Australian Economy', 2024, <https://www.unimelb.edu.au/newsroom/news/2024/april/indigenous-business-snapshot-reveals-significant-value-to-australian-economy>

<sup>3</sup> NAB, 'NAB Announces First Nations Business Growth Ambition with a \$1 Billion Lending Target - NAB News', 2023, <https://news.nab.com.au/news/first-nations-business-growth/>

<sup>4</sup> Two-way governance is 'Aboriginal and Torres Strait Islander peoples working to balance their cultural integrity and self-determination with ensuring their models of governance meet the requirements of the wider environment. AIGI, 'Effective Indigenous Governance', 2022, <https://aigi.org.au/toolkit/effective-indigenous-governance>.



designed to improve social, cultural, and economic outcomes for Aboriginal and Torres Strait Islander Peoples.

We envision a future where Aboriginal and Torres Strait Islander Peoples, communities, and First Nations experience self-determination and enjoy political, social, cultural, and economic development through strong self-governance. To fulfil our vision, we:

- leverage research and on-the-ground practice to develop a knowledge base that encourages and highlights effective Indigenous governance;
- facilitate and implement training and education within communities and regions;
- mentor, coach, and support Indigenous groups, individuals, and organisations over the long term to build their governance capacity;
- lead sector-wide collaboration and work with networks and partners to develop practical, culturally informed governance tools and resources; and
- lead advocacy for policy debate and change regarding Indigenous governance.

## AIGI governance expertise

Our extensive work with Indigenous organisations, communities, and individuals in the space of Indigenous governance informs AIGI's submission:

- AIGI is co-convenor with Reconciliation Australia (RA) of the biennial Indigenous Governance Awards (IGAs). The IGAs recognise and celebrate outstanding stories of success and best practices in Indigenous governance throughout Australia. Since 2014, AIGI has published the *Stories of Success* series, which analyses IGAs finalists' governance practices, models, and innovative solutions. The multi-year analyses identify key research findings, overarching narratives of Indigenous governance, determinants of success and emerging trends.
- AIGI maintains Australia's only online *Indigenous Governance Toolkit* of case-study information and resources for Indigenous governance-building initiatives.<sup>5</sup>
- In 2021, AIGI, in collaboration with the *Common Roots, Common Futures Indigenous Governance Network* (CRCF), published *Developing Governance and Governing Development: International Case Studies of Indigenous Futures*, a seminal publication which provides 'a taste of the remarkable stories that First Nations are telling, in their own voices, about the home-based solutions they are designing to rebuild their nations, collective governance and futures'.<sup>6</sup>

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<sup>5</sup> AIGI, 'Indigenous Governance Toolkit', 2022, <https://aigi.org.au/toolkit>.

<sup>6</sup> D. E. Smith et al., eds., *Developing Governance and Governing Development: International Case Studies of Indigenous Futures*, Indigenous Nations and Collaborative Futures (Lanham: Rowman & Littlefield, 2021), <https://rowman.com/ISBN/9781538143636/Developing-Governance-and-Governing-Development-International-Case-Studies-of-Indigenous-Futures>.



- AIGI convenes Masterclasses focusing on different Indigenous governance topics and emerging themes. AIGI also convenes tailored facilitated professional development workshops and mentoring programs with Aboriginal and Torres Strait Islander organisations and communities.
- AIGI also undertakes fee-for-service engagements, including cultural and corporate governance reviews, facilitation and workshop delivery, and tailored training and development.

## The importance of Indigenous governance

Practical, effective, and culturally legitimate governance is the fundamental building block for real change. Effective and legitimate governance benefits families, communities, and First Nations. It is a powerful predictor of economic and community development success and maximising self-determination for Aboriginal and Torres Strait Islander Peoples<sup>7</sup>.

## Integrating the features of Indigenous governance

At the foundation of Indigenous governance in Australia is a set of deep underlying features of Aboriginal and Torres Strait Islander law and culture specific to the culture that is being governed. For example, there are unique ways in which Aboriginal and Torres Strait Islanders build relationships and networks, make decisions, hold each other accountable, and demonstrate leadership.<sup>8</sup>

These features tell the story of each Aboriginal and Torres Strait Islander group and their links to the land and each other. They are evident in everyday life and how people get things done.<sup>9</sup>

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<sup>7</sup> Daryle Rigney et al., 'Indigenous Nation Building and the Political Determinants of Health and Wellbeing: Discussion Paper', PDF (Lowitja Institute, 2022), p.41 <https://doi.org/10.48455/9ACE-AW24>.

Theresa L Petray and Janine Gertz, 'Building an Economy and Building a Nation: Gugu Badhun Self-Determination as Prefigurative Resistance', n.d.

<sup>8</sup> AIGI, 'Develop Your leadership', 2022, <https://aigi.org.au/toolkit/develop-your-leadership>.

<sup>9</sup> AIGI, 'Indigenous Governance', 2022, <https://aigi.org.au/toolkit/indigenous-governance>.



## Submission Overview

While this submission represents AIGI's views, we recognise that Aboriginal and Torres Strait Islander Peoples, communities, and Traditional Owner groups are best placed to speak about their unique experiences, circumstances, and ambitions. We also acknowledge and value the diversity of voices amongst Aboriginal and Torres Strait Islander Peoples.

This submission will address the ASX Principles most relevant to AIGI's expertise. We acknowledge that all work on Aboriginal and Torres Strait Islander Land requires adherence to cultural protocols and working with Traditional Owners. Therefore, we recommend that a larger body of cultural experts be convened to provide advice on the revised edition.

As AIGI's research, expertise, and knowledge lie in Indigenous governance, attention will be directed towards strengthening governance. To that end, this submission addresses the following principles and recommendations:

- **Principle 3:** Lawful, ethical, and responsible behaviour should explicitly mention Aboriginal and Torres Strait Islander Peoples. To avoid any intentional or unintentional exclusion.
- **Recommendation 1.1:** Aboriginal and Torres Strait Islander Peoples must be considered key stakeholders. Cultural Authority positions need to be identified and respected by listed entities.
- **Recommendation 2.2:** The skills held and valued by Aboriginal and Torres Strait Islander People must be highlighted in the board skills matrix to allow for the inclusion and recognition of the skills brought to a listed entity's board.
- **Recommendation 2.3:** Aboriginal and Torres Strait Islanders bring significant skills to boards that must be appreciated and understood; reporting on this metric will improve this recognition. Aboriginal and Torres Strait Islander Peoples are underrepresented in board rooms; defined metrics will improve this representation.
- **Recommendation 3.2:** The code of conduct of listed entities must recognise the unique position of Aboriginal and Torres Strait Islanders as staff and external stakeholders.
- **Recommendation 3.3:** Listed Entities must adhere to the accountability of Aboriginal and Torres Strait Islander stakeholders.
- **Recommendation 3.4:** Diversity and Inclusion Policies must extend to additional policies to ensure that Aboriginal and Torres Strait Islander workers are included and respected in the workplace.

## AIGI's Comments

Cultural accountability for Aboriginal and Torres Strait Islander Peoples requires a broader inclusion of their voices in the recommendations.



In this submission, we provide commentary on the three Recommendations that specifically mention Aboriginal and Torres Strait Islander Peoples. In addition to this, we also provide commentary on three other Recommendations that would benefit from the inclusion of Indigenous Governance principles.

AIGI is well placed to assist the ASX Council in navigating the inclusion of Indigenous Governance principles into Western governance models, as AIGI has done for many Indigenous and non-Indigenous organisations during its 12+ years of operation.

AIGI can provide further written advice on the recommendations if required. Further, we are willing to engage in further consultation and input to ensure that all recommendations include Indigenous Governance Principles.

## Stronger wording for better engagement

Recommendations 1.1, 3.2 and 3.3. mention Aboriginal and Torres Strait Islander Peoples in their commentaries. AIGI supports all three of these updates in principle, but encourages updated wording to reflect legitimate and appropriate consultation.

AIGI recommends that Aboriginal and Torres Strait Islander Peoples be enabled and empowered to identify matters of significant impact on them. Where matters are identified as potentially significant, we submit that such a designation should trigger a “*requirement to consult with Aboriginal and/or Torres Strait Islander Peoples.*” This phrasing emphasises the autonomy of Aboriginal and Torres Strait Islander Peoples and removes the risk of listed entities opting out of consultation requirements.

The following three principles provide guiding practices for respectful engagement with Aboriginal and Torres Strait Islander Communities. These principles demonstrate the importance of stronger wording when encouraging listed entities to engage with Aboriginal and Torres Strait Islander stakeholders.

- Truth Telling and Accountability
- Data Sovereignty
- Ethical Approach

### *Truth Telling and Accountability*

Truth Telling involves showing up and effectively listening to Aboriginal and Torres Strait Islander perspectives and experiences. It requires honest communication and time.<sup>10</sup> This communication creates respectful relationships with Aboriginal and Torres Strait Islander Peoples.

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<sup>10</sup> Kate Warner, Tim McCormack, and Fauve Kurnadi, ‘Pathway to Truth-Telling and Treaty’ (Tasmanian Government, 2021), [https://www.dpac.tas.gov.au/data/assets/pdf\\_file/0029/162668/Pathway\\_to\\_Truth-Telling\\_and\\_Treaty\\_251121.pdf](https://www.dpac.tas.gov.au/data/assets/pdf_file/0029/162668/Pathway_to_Truth-Telling_and_Treaty_251121.pdf)





Respectful relationships with Aboriginal and Torres Strait Islander communities encompass two-way accountability.<sup>11</sup>

To have a respectful relationship between Aboriginal and Torres Strait Islander stakeholders, and a listed entity, the relationship must have the following:

- Have clear boundaries in policy documents for different roles, their responsibilities, and their power.
- Reinforce a broad understanding and appreciation of the group's policies and the roles and responsibilities of positions, for example, through inductions, cultural competency training, and regular review of codes of conduct.
- Realise the importance of clear communication – including making the time to meet and discuss issues and allowing for regular feedback opportunities.
- Have processes to deal with behaviour outside what's expected or acceptable within a particular role.<sup>12</sup>

Aboriginal and Torres Strait Islander Peoples value internal accountability and mutual responsibility, while non-Indigenous meanings may emphasise 'upwards' accountability, financial management and compliance reporting.<sup>13</sup>

Ensuring that these dual forms of accountability are upheld can be challenging. For example, if a stakeholder's expectations around decision-making or sharing benefits are different to a listed entity's desire.

Effective two-way accountability mechanisms work well with Indigenous and non-Indigenous governance values and practices, even when they differ.<sup>14</sup>

AIGI strongly recommends that the ASX Corporate Council confer with the Aboriginal and Torres Strait Islander peak organisations to develop principles of Truth-Telling and accountability that can be included in the Principles and Recommendations.<sup>15</sup>

### *Data Sovereignty*

In 2023, AIGI convened the Indigenous Data Summit in partnership with the Maiam nayri Wingara Indigenous Data Sovereignty Collective.<sup>16</sup> Out of this Summit, the following principles were asserted by the attendees that Aboriginal and Torres Strait Islanders have a right to:

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<sup>11</sup> AIGI, 'Effective Indigenous Governance', 2022, <https://aigi.org.au/toolkit/effective-indigenous-governance>.

<sup>12</sup> AIGI, 'Indigenous Governance Toolkit: Relationships', 2022, <https://aigi.org.au/toolkit/relationships>

<sup>13</sup> AIGI, 'Defining Governance', 2022, <https://aigi.org.au/toolkit/defining-governance>.

<sup>14</sup> AIGI, 'Indigenous Governance Toolkit: Centre Your Culture', 2022, <https://aigi.org.au/toolkit/centre-your-culture>

<sup>15</sup> Coalition of Peaks, 'Coalition of Peaks', 2020, <https://www.coalitionofpeaks.org.au/>

<sup>16</sup> Maiam Nayri Wingara and AIGI, '2023 Summit — Maiam Nayri Wingara', 2023, <https://www.maiamnayriwingara.org/2023-summit>



- “Exercise control of the data ecosystem, including creation, development, stewardship, analysis, dissemination, and infrastructure.
- Data that is contextual and disaggregated (available and accessible at individual, community, and First Nations levels).
- Data that is relevant and empowers sustainable self-determination and effective self-governance.
- Data structures that are accountable to Indigenous Peoples and First Nations.
- Data that is protective and respects our individual and collective interests.”<sup>17</sup>

These principles must be respected as part of any consultation process. This will ensure that information and data are not just taken from Aboriginal and Torres Strait Islander communities and kept by listed entities. Stakeholders must remain autonomous decision-makers regarding what is being shared and ensure that cultural knowledge is not jeopardised or misused.

AIGI strongly recommends incorporating these rights into the ASX Corporate Council’s Principles and Recommendations.

### *Ethical Approach*

Consulting ethically with Aboriginal and Torres Strait Islanders involves ensuring that the listed entity’s approach aligns with the cultural and workplace demands of the stakeholders. Consulting with stakeholders in the Principles and Recommendations does not mention a specific ethical approach. AIGI recommends that more information be provided in the Principles and Recommendations to ensure that the approach to consultation is ethical and respectful to the Aboriginal and Torres Strait Islander community.

- **Remuneration:** Non-Indigenous organisations have historically expected Aboriginal and Torres Strait Islander Peoples to consult and work with either no remuneration or wholly inadequate levels of remuneration. Ensuring full participation and creating a turning point in the relationship means appropriately valuing Aboriginal and Torres Strait Islander peoples’ time, perspectives, expertise, and knowledge.
- **Cultural Authority:** Listed entities should consult with people with the right cultural authority to speak on the issues. This requires listed entities to engage with the relevant traditional owners and elders of the lands on which they operate. This will ensure that the advice they receive comes from a place of cultural authority.
- **Time:** Listed Entities must allow sufficient time for consultations. The nature of consultations are likely to depend on context and subject matter. In some instances, stakeholders will need to consult with communities or individuals across a wide geographical area. This time must be factored into planning.
- **Internal Stakeholders:** If stakeholders are internal members of a listed entity, then this must include adequate provisions in their plans and KPIs to minimise the workload on

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<sup>17</sup> Maïam nayri Wingara and Australian Indigenous Governance Institute, ‘Indigenous Data Sovereignty: Communique’, 2018, <https://aigi.org.au/news/indigenous-data-sovereignty-communique>



these members. In 2020, it was found that 39% of Aboriginal and/or Torres Strait Islander workers carry the burden of a high cultural load, which means an increase in workload and a higher risk of burnout.<sup>18</sup>

AIGI strongly recommends that wording in the ASX Corporate Governance Council's Principles and Recommendations is amended to include sufficient guidance for listed entities undertaking consultation with Aboriginal and Torres Strait Islander Peoples to ensure that respectful relationships are formed.

## **Recommendation 1.1:**

### *Consultation Question 19*

*Do you wish to provide any other comments on the content of the Consultation Draft, including any-other changes you would propose?*

AIGI can provide specific advice on Recommendation 1.1 and the respective commentary.

AIGI commends the ASX corporate council's addition of stakeholder consultation when boards reflect on their governance structures and practices, including the specific mention of Aboriginal and Torres Strait Islander Peoples. AIGI supports this inclusion in principle, but we are providing specific advice on the wording of this inclusion to ensure that Aboriginal and Torres Strait Islander stakeholders are consulted respectfully and that their consultation does not become burdensome or undermine cultural structures. For Aboriginal and Torres Strait Islander communities, essential areas of responsibility are often tied to cultural systems of family and kinship, land and sea ownership, and law.

Ethical and effective consultation with Aboriginal and Torres Strait Islander Peoples will ensure that Listed Entities improve their community reputation and ultimately make better decisions.<sup>19</sup> Therefore, we submit that the recommendations AIGI has provided above should be incorporated into the commentary for Recommendation 1.1.

The word choice 'reflecting on the relevance' and 'Stakeholders may include' does not provide any form of accountability to these stakeholders. The commentary does not set out when Aboriginal and Torres Strait Islander Peoples would be key stakeholders and, therefore, leaves space for the community to be disregarded. The Council should adopt stronger wording to eliminate this risk, such as '*Stakeholders must include Aboriginal and Torres Strait Islander Peoples when deemed relevant by the community affected.*'

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<sup>18</sup> Diversity Council Australia, 'Gari Yala (Speak the Truth)', 2020, <https://www.dca.org.au/research/gari-yala-speak-truth>

<sup>19</sup> Australian Human Rights Commission, 'Appendix 3: Principles for Effective Consultation and Engagement', Native Title Report, 2009, <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/native-title-report-2009>



## Recommendation 3.2:

### *Consultation Question 8*

*Recommendation 3.2(c): The Council already recommends that a listed entity should have a code of conduct and report material breaches of that code to its board or a board committee.*

*Do you support the proposed disclosure (on a de-identified basis) of the outcomes of actions taken by the entity in response to material breaches of its code?*

AI GI, in principle, supports the inclusion in Recommendations 3.2(c) and 3.4(c) but only if an entity's code of conduct or other key governance documents set an expectation of respectful behaviour towards Aboriginal and Torres Strait Islander Peoples and culture.

AI GI recommends that instead of 'may wish to consider', stronger wording of this principle's commentary is used to ensure Aboriginal and Torres Strait Islander Peoples' culture, tradition, and themselves are respected in the organisation's code of conduct.

Consultation should be undertaken with the relevant Aboriginal and Torres Strait Islander communities to develop their code of conduct, including what is considered a breach of the Code and who determines this. Therefore, AI GI recommends updating the wording in the commentary as "Entities must consider published guidelines and should engage with Stakeholders when developing their code of conduct that will affect Aboriginal and Torres Strait Islander Peoples. In addition, Listed Entities whose operations have the potential to significantly impact Aboriginal and Torres Strait Islander Peoples should have specific governance structures in place that allow for direct input by affected communities."

The Minderoo Foundation Indigenous Employment index found that only 5% of employers surveyed fell into their highest-performing Indigenous employment and practices category. A company culture that doesn't include diverse voices outlines substantial investment risk, as more diverse companies outperform less diverse ones.<sup>20</sup>

"76% of employers have Indigenous employment targets, of which only 67% report regularly on progress. Organisations that reported regularly on progress had more than double the share of indigenous employees than those that did not."

*Indigenous Employment Index, Minderoo Foundation.*<sup>21</sup>

Within the commentary to this recommendation, there is a reference that 'entities may wish to consider guidelines when considering what constitutes responsible business conduct', including for Aboriginal and Torres Strait Islander Peoples. This commentary references the

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<sup>20</sup> Minderoo Foundation, 'Indigenous Employment Index', 2022, <https://www.minderoo.org/indigenous-employment-index>

<sup>21</sup> *Ibid.*



guide created for the Global Compact Network Australia by KPMG Australia and the University of Sydney.<sup>22</sup>

In addition, AIGI suggests that an entity's code of conduct should include measures that reflect respectful behaviours towards Aboriginal and Torres Strait Islander cultures and values. When developing these inclusions, entities should consult with their organisation's Aboriginal and Torres Strait staff and peak bodies to ensure they encompass a wide range of appropriate behaviours. This will ensure that an entity's workplace is genuinely inclusive to its Aboriginal and Torres Strait Islander staff.<sup>23</sup> Therefore, AIGI recommends that the wording in the commentary be edited to reflect these considerations.

For example, 'Entities must include the rights and respectful behaviour towards Aboriginal and Torres Strait Islander Peoples and cultures in developing or updating a code of conduct. These behaviours should be informed by published guidelines and consultation with Aboriginal and Torres Strait Islander staff members.'

### **Recommendation 3.3:**

#### *Consultation Question 10*

*Recommendation 3.3: Does this new Recommendation appropriately balance the interests of security holders, other key stakeholders, and the listed entity?*

*"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."*

AIGI does not believe the new recommendation appropriately balances the parties' interests. AIGI recommends that the language be edited to reflect a more robust inclusion of respect for and consideration of Aboriginal and Torres Strait Islander Peoples and Cultures.

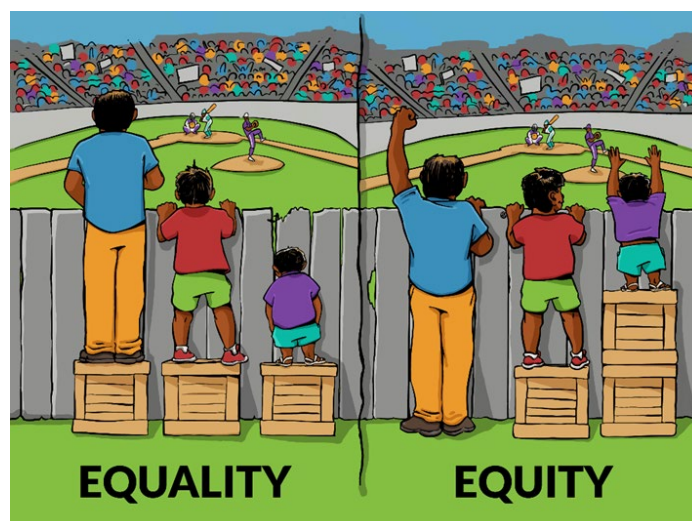
AIGI believes in ensuring equity when discussing issues of inclusion.

Equity is about fairness and justice. It's the quality of being fair and reasonable in a way that encourages equal treatment. This principle is partly about social justice and the idea that each person has value to contribute. Therefore, balancing the security holders, stakeholders, and the listed entity requires a considered approach. To ensure that the power imbalance between the three is made to be a level playing field rather than just balanced between the inclusion of their interest.

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<sup>22</sup> Global Compact Network Australia, KPMG, and University of Technology Business School, 'The Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples', 2020, [https://unglobalcompact.org.au/wp-content/uploads/2020/11/Australian-Business-Guide-to-Implementing-the-UN-Declaration-on-the-Rights-of-Indigenous-People\\_FINAL.pdf](https://unglobalcompact.org.au/wp-content/uploads/2020/11/Australian-Business-Guide-to-Implementing-the-UN-Declaration-on-the-Rights-of-Indigenous-People_FINAL.pdf)

<sup>23</sup> Anindilyakwa Land Council, 'Code of Conduct', 2013, [https://toolkit.aigi.com.au/wp-content/uploads/2013/02/ALC\\_Code-of-Conduct.pdf](https://toolkit.aigi.com.au/wp-content/uploads/2013/02/ALC_Code-of-Conduct.pdf).



Source: [Interaction Institute for Social Change](#) | Artist: [Angus Maguire](#)

Consultation Question 10 does not appear to incorporate principles of equity, and the interpretation of the principle could result in entities not appreciating the value of Aboriginal and Torres Strait Islander stakeholders.

AIGI recommends clarifying the processes stakeholders could utilise to engage with key decision-makers within listed entities. Accountability within Aboriginal and Torres Strait Islander culture can look different to different companies, and allowing for greater engagement ensures that organisations are well-informed in their decision-making and are more likely to make decisions that lead to better outcomes for Aboriginal and Torres Strait Islander Peoples.

Further, the Recommendation should adopt a similar reporting measure as Recommendation 3.2(c). Disclosures of not following stakeholders' considerations should be considered on the same level as the breach of an entity's code of conduct. There is a deep public interest in ensuring that listed entities adhere to ethical standards, which includes taking stakeholder engagements seriously. Aboriginal and Torres Strait Islander Peoples engagement requires considerable workload for the stakeholders, and breaches of this trust should be reported to relevant stakeholders. This would enable greater transparency to communities and ensure that organisations maintain accountability to their stakeholders in their decision-making.

To ensure that companies have governance structures that are fair and equitable, AIGI requests that the ASX Corporate Council update the principle and commentary to reflect these values. AIGI suggests that an additional sub-point be added to Recommendation 3.3, "3.3(a) A listed entity that operates on Aboriginal and/or Torres Strait Islander land or engages with these communities, then an entity must have regard of the respected cultural authority holders as key stakeholders, including having processes for the entity to engage with them, to report issues to the board and have disclosure mechanisms available for stakeholders."



## Principle 3

### *Consultation Question 9*

*Principle 3: Do you support the proposed amendments to Principle 3 (Lawfully, ethically and responsibly), to include referenced to an entity's stakeholders?*

AI GI commends the ASX Council's ethical considerations in its principles. The revised version makes strides in including sustainability. We support the updated language of Principle 3, but we would encourage the ASX Corporate Council to expand its approach to this principle.

AI GI recommends adding wording to Principle 3 to ensure organisations engage ethically with Aboriginal and Torres Strait Islander Peoples. Sustainability and ethical engagement with Aboriginal and Torres Strait Islanders need to coexist.

The traditional custodians of Country are best placed to ensure that the land is well-managed and provides an environment for our native flora and fauna to flourish.<sup>24</sup> Therefore, including specific mention of respecting Aboriginal and Torres Strait Islander Peoples and Cultures is the first step in ensuring a sustainable future. Aboriginal and/or Torres Strait Islanders willing and able to assert self-governing power have significantly increased their chances of sustainable economic, cultural, social and community development.

National and international research evidence indicates that effective and legitimate governance is a 'development enabler'. For instance, the United Nations Development Program (UNDP) suggests that the capacity for governance is at the heart of sustainable human development.<sup>25</sup>

For many Aboriginal and Torres Strait Islander Peoples, the internal metrics of sustainability in development initiatives involve considering the following:<sup>26</sup>

- The kind of future that is being built for current and future generations.
- The role collective culture will play in economic initiatives and how this might change over time.
- The benefit of economic development and whether the benefits of current development will still be available for future generations.
- The kinds of development that will help maximise self-determination in the long run.

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<sup>24</sup> Australia State of the Environment, 'Caring for Country', 2021,

<https://soe.dcceew.gov.au/indigenous/management/caring-country>

<sup>25</sup> United Nations Development Programme, 'Capacity Development: A UNDP Primer', 2009,

<https://www.undp.org/publications/capacity-development-undp-primer>

<sup>26</sup> AI GI, 'Nation Building in Practice, 2022, <https://aigi.org.au/toolkit/nation-building-in-practice>.



To ensure that listed entities achieve ethical and sustainable measures, we suggest that the ASX Council include Aboriginal and Torres Strait Islanders at the heart of Principle 3.

In the long term, the Corporate Council should consider whether an additional Principle and specific recommendations be added under this Principle. This Principle and Recommendations must be created alongside other peak Aboriginal and Torres Strait Islander Organisations to ensure they encapsulate all points of view.

## Recommendation 2.2

### *Consultation Question 19*

*Recommendation 2.2: The Council already recommends disclosure of a board skills matrix skills a board is looking for. Do you support disclosure of the following information about board skills?*

- a. Recommendation 2.2(a): current board skills and skills that the board is looking for?*
- b. Recommendation 2.2(b): the entity's process for assessing that the relevant skills and experience are held by its directors?*

AI GI supports both these measures in principle, but we would like to see the Recommendation and Commentary mention the inclusion of values that resonate with Aboriginal and Torres Strait Islander governance principles.

These skills could be garnered through identified roles, recognition of lived experience, evidence of engagement with Aboriginal and Torres Strait Islander Peoples, and cultural competency.

AI GI submits that all listed entities should endeavour to incorporate Aboriginal and Torres Strait Islander specific skills and experience on their boards, to advance reconciliation but also to avoid the possible risks that can flow from not properly engaging with Aboriginal and Torres Strait Islander stakeholders.<sup>27</sup>

For example, the following is a sample of some of the skills that are used to assess the skills mix for the AI GI board:

- “Experience or knowledge of Indigenous Nations, communities, and organisations.
- Experience or knowledge of governance specific to Indigenous Nations, communities, and organisations.
- Practical experience in Indigenous community development and governance rebuilding.

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<sup>27</sup> Rio Tinto, ‘Rio Tinto Juukan Gorge - A Breach of Our Values’, 2023, <https://www.riotinto.com/en/news/trending-topics/juukan-gorge>





- Lived experience or evidence of engagement with or acting culturally appropriate, cultural competency.”

We note that at present, AIGI’s board is fully Indigenous. In any event, inclusion of these skills emphasise active engagement with Aboriginal and Torres Strait Islander communities, allowing AIGI’s stakeholders to trust that we are being led by culturally competent directors.

Therefore, AIGI suggests including the following as an additional subpoint in Recommendation 2.2: “2.2(c) disclosure of a board’s cultural competency of Aboriginal and Torres Strait Islander Cultures.”

The commentary development would require larger consultation with various peak organisations; however, the sample skills provided by AIGI will hopefully provide some guidance to the ASX Corporate Governance Council.

## Recommendation 2.3 & 3.4

### *Consultation Question 5*

*Recommendation 2.3(c): The Council already recommends disclosure of a board’s approach and progress on gender diversity.*

*Do you support the proposed disclosure of any other relevant diversity characteristics (in addition to gender) which are being considered for the board’s membership?*

### *Consultation Question 6*

*Recommendation 3.4(c): The council already recommends disclosure of an entity’s diversity and inclusion policy and disclosure of certain gender metrics.*

*Do you support the proposal to also recommend disclosure of the effectiveness of an entity’s diversity and inclusion practices?*

AIGI supports disclosing relevant diversity characteristics for a board’s membership (2.3(c)) and disclosing the effectiveness of an entity’s diversity and inclusion practices (3.4(c)). This will ensure that Aboriginal and Torres Strait Islander Women of the cultures relevant to the listed entity have an active reflection of their values in board rooms and entities. To provide the Corporate Council with further measures that can be reflected in their recommendations and commentary, AIGI provides the following information.

AIGI endorses the ‘10 truths to centre Indigenous Australians’ voice to create workplace inclusion’ as outlined in the Diversity Council of Australia submission.<sup>28</sup> Building this trust,

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<sup>28</sup> Diversity Council Australia, ‘Aboriginal and Torres Strait Islander Peoples - Leading Practice’, 2023, <https://www.dca.org.au/resources/aboriginal-and-torres-strait-islander-Peoples/aboriginal-and-torres-strait-islander-Peoples-leading-practice>



reflected outward in mandatory reporting, will improve an organisation's community trust and sustainability.

The ASX Corporate Governance Council could assist entities in their diversity and inclusion policies by disclosing and reporting on an entity's Aboriginal and Torres Strait Islander Employee Reference Groups (ERG). ERGs are a strategic asset in helping employers achieve D&I goals, driving positive change, and fostering a diverse, equitable, and inclusive workplace. Their role in supporting racial minority employees is critical, and the Principles and Recommendations should recognise and support ERGs in their mission to create a more inclusive environment.

Alongside diversity characteristics, the ASX Corporate Governance Council must understand the intersections of Aboriginal and Torres Strait Islander Identities and gender. This will allow for improvements to the recommendations and governance structures that emphasise the value of Aboriginal and Torres Strait Islander women (inclusive of Sistergirls, trans and cis women).

Further emphasis could be placed on developing the leadership capabilities of Aboriginal and Torres Strait Islander women. Leadership is critical to achieving and maintaining effective governance and achieving positive social, economic, and cultural outcomes.

Aboriginal and Torres Strait Islander women have the right and capability to participate in and shape Indigenous governance for the better actively. They also better represent the diversity of needs, viewpoints, skills, and experiences an entity requires to ensure its sustainability into the future.

AI GI encourages the ASX Corporate Council to consider how the efforts of numerous Indigenous women with strong leadership capabilities may guide the future development of the Principles and Recommendations. Aboriginal and Torres Strait Islander women have always had influential leadership responsibilities for Country, Law and collective identity in accordance with Indigenous cultural traditions. Many continue to hold deep gender-based knowledge based on such responsibilities. In doing so, they provide profound and impactful leadership. Today, senior women are often the bedrock of community and family well-being and are active in many leadership and governance roles. This cultural background provides an understanding of the need for an entity to understand its inclusion practices, particularly for Aboriginal and Torres Strait Islander women.

AI GI believes and supports the reporting of an entity's board's gender and diversity characteristics and the effectiveness of its diversity and inclusion policies.

AI GI encourages reporting a board's diversity characteristics, as it has been shown that improved diversity increases an organisation's performance and is best practice.



## Conclusion

AIGI commends the development made in the ASX Corporate Governance Council's Principles and Recommendations 5<sup>th</sup> edition. The inclusion of Aboriginal and Torres Strait Islander Peoples is a positive step in the right direction. However, as highlighted in this submission, AIGI still holds concerns regarding whether Aboriginal and Torres Strait Islander people are genuinely being heard and accounted for in this process. The recommendations proposed in this submission are guided towards ensuring the revised edition results in governance structures that allow for full, equal, effective, and positive participation of Aboriginal and Torres Strait Islander Peoples in an Entity's structure.

AIGI is happy to provide support throughout this process. Please do not hesitate to contact us with any questions or further details.

Yours sincerely,

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