



Tuesday, 7 May 2024

The ASX Corporate Governance Council
Via [online portal](#)

ASX Corporate Governance Council Principles and Recommendations 5th Edition Consultation Draft

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback to the ASX Corporate Governance Council's consultation draft of its principles and recommendations 5th edition (consultation paper).

CA ANZ is a founding member of the ASX Corporate Governance Council (the Council) and voluntarily adopts the ASX Corporate Governance Council Principles and Recommendations (ASX principles and recommendations) which are applied within our governance arrangements (where relevant and appropriate).

Our feedback outlined below has been formed through member and stakeholder outreach and is independent from our role on the Council.

Commencement

Australia's mandatory climate-related financial disclosures regime is expected to commence from 1 January 2025 for Australia's largest entities. This will require significant focus for many ASX listed entities and will involve substantive new disclosures. Whilst we appreciate the importance of entities applying the 5th edition of the ASX principles and recommendations (the 5th edition) as soon as possible, we are concerned that the current proposed commencement date of 1 July 2025 could overload entities in Group 1 for the climate-related disclosure regime with June and September year-ends. Therefore, we recommend that the 5th edition take effect for financial years commencing on or after 1 January 2026 whilst enabling entities to early adopt.

Enforcement

The principles and recommendations, as outlined by the Council, are a core component of the broader Australian corporate reporting system, however to date, there has been no evidence of the ASX carrying out supervisory activities to ensure that disclosures are meeting the 'if not why not' approach to the ASX principles and recommendations. We also question whether the lack of supervisory activity by the ASX has also affected the way in which some entities may view the ASX principles and recommendations, e.g. as a tick box exercise.

To maintain the credibility and high standing of the substance and intent of the ASX principles and recommendations, it is critical that appropriate and effective surveillance and enforcement mechanisms are in place.

Further, we note that the Council has not been considered as a part of Government's definition of the Australian Financial Reporting System in Part 12 of the *Australian Securities and Investments Commission Act 2001*. We believe that the Council has appropriate standing to be defined alongside Treasury, the Financial Reporting Council, ASIC, the Australian Accounting Standards Board and Australian Auditing and Assurance Standards Board as a part of the Australian Financial Reporting System.

Recommendations and commentary

The consultation paper outlines recommendations and 'explanatory commentary with further guidance on each recommendation'. We understand that in practice, although commentary has been included in the ASX principles and recommendations to provide guidance to reporting entities (i.e., these are not mandatory requirements), there is an (underlying) expectation that reporters will provide detailed information aligned to both recommendations and commentary. We suggest the following sentence on page 6 '*There is also explanatory commentary with further guidance on each recommendation*' is expanded to provide further detail on the purpose of the explanatory commentary as well as clearly stating that it is not a mandatory requirement.

General Comments

Our members are generally supportive of the amendments and additions in the 5th edition and acknowledge that they reflect a current view of contemporary corporate governance practice.

We appreciate the important function that corporate governance standards provide to ASX listed entities. However, we encourage the Council to also consider the 5th edition in a holistic way together with current and future mandatory reporting for these entities. As outlined in our detailed feedback to the questions below, we consider that there are some specific areas of improvement to the 5th edition, such as providing appropriate flexibility for entities to determine the most relevant disclosures for their users in areas such as diversity and inclusion.

If you have any questions about our submission, please contact Karen McWilliams (CA ANZ) at karen.mcwilliams@charteredaccountantsanz.com.

Sincerely,

Simon Grant FCA
Group Executive
Advocacy and International

Karen McWilliams FCA
Sustainability and Business Reform Leader
Advocacy

Attachment

Consultation questions

1. Do you support deletion of the following 4th Edition Recommendations, on the basis that there is significant regulation under Australian law?

- a. Recommendation 3.4 (disclosure of anti-bribery and corruption policy)?**
- b. Recommendation 4.2 (CEO and CFO declaration for financial statements)?**
- c. Recommendation 6.4 (substantive security holder resolutions on a poll)?**
- d. Recommendation 6.5 (offering electronic communications to security holders)?**
- e. Recommendation 8.2 (separate disclosure of remuneration policies for non-executive directors, other directors and senior executives)?**
- f. Recommendation 8.3 (policy on hedging of equity-based remuneration)?**

We support the deletion of the recommendations from the 4th edition which are already subject to significant regulation under Australian law (as outlined in points a to f).

2. In particular, the Council encourages feedback on the proposed deletion of Recommendation 3.3 (disclosure of whistleblower policy). Would you prefer to retain this Recommendation?

The proposed deletion of Recommendation 3.3, disclosure of whistleblower policy, is appropriate considering that it is a matter of focus by ASIC. We do not consider duplication necessary in recommendations when addressed in other areas of regulation under Australian law.

3. Recommendation 2.2: The Council already recommends disclosure of a board skills matrix or 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?

Yes, we support the continued disclosure of information in relation to the current board skills and skills that the board is seeking. However, some of our stakeholders have expressed concerns in relation to wording included in the explanatory commentary for recommendation 2.2(a) of 'Skills may be reported collectively across the board as a whole' in relation to the format for a board skills matrix. The inclusion of 'may' in recommendation 2.2(a) could result in an entity disclosing individual directors' specific skills within the board's skills matrix, which may not be reflective of the full breadth of the directors' experience. We recommend an amendment be considered from *may* to *should* (within explanatory commentary for recommendation 2.2(a)) to clarify that although there is no prescribed format, the board information presented **should** be at a 'whole of board' level.

b. Recommendation 2.2(b): the entity's process for assessing that the relevant skills and experience are held by its directors?

The current skills and experience held by an entity's board are important to the fundamental governance structure of an organisation. The disclosure of the process of assessing skills and experience held by directors will be relevant to provide confidence to stakeholders that a process has been undertaken to ensure the most appropriate level of skills and experience is represented on the entity's board and potential gaps.

4. Recommendation 2.3: Women hold approximately 35% of all S&P/ASX300 directorships. This exceeds the existing measurable objective of at least 30% of each gender for those boards.

Do you support raising the S&P/ASX300 measurable objective to a gender balanced board?

Yes, we support the adjusted measurable objective to a gender balanced board for S&P/ASX300 entities. However, we note that gender diversity is just one factor for board composition and there are a number of other diversity factors as well as relevant skills and experience.

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?

We consider the proposed disclosure of any other relevant diversity characteristics to be an appropriate recommendation. As disclosures develop over time, analysis could be undertaken to understand the diversity characteristics disclosed and for this recommendation to be explored further in supporting guidance and/or refined in the next iteration of the principles and recommendations.

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?

We are concerned that the effectiveness of an entity's diversity and inclusion practices will be difficult to disclose in a clear and consistent manner. We recommend the proposal is amended to instead include disclosure of the process the board undertakes to determine the effectiveness of their diversity and inclusion policy as well as disclosure of the process the board undertakes in relation to recommendation 3.4(c)(2), where an entity is to disclose progress towards achieving objectives.

7. Recommendation 2.4: Do you support increasing the security holding reference included in Box 2.4 (factors relevant to assessing the independence of a director) from a substantial holder (5% or more) to a 10% holder (10% or more)?

We consider the reference to a 'substantial holder' to be an appropriate reference in assessing the independence of a director as it provides scalability for the range of entities on the ASX.

We do not support an increase to 10% however we consider 5%/substantial holder to be a consideration for assessing independence as opposed to a definitive level.

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?

We understand that some entities already disclose information in relation to material breaches of their code.

We are pleased that the explanatory commentary highlights that some smaller entities may not be able to appropriately de-identify disclosures and therefore can exclude them in these circumstances.

9. Principle 3: Do you support the proposed amendments to Principle 3 (acting lawfully, ethically and responsibly), to include references to an entity's stakeholders?

Yes, we support the proposed amendments to principle 3 to include reference to an entity's stakeholders as an organisations internal culture will translate to external behaviour.

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."

As noted in our response to question 9 above, we support the proposed amendment.

11. Recommendation 4.2: Do you support the proposed disclosure of processes for verification of all periodic corporate reports (including the extent to which a report has been the subject of assurance by an external assurance practitioner)?

Yes, we support the proposed disclosure of the processes for verification of all periodic corporate reports.

12. Recommendation 4.3: Do you support the proposed disclosure of an entity's auditor tenure, when the engagement was last comprehensively reviewed and the outcomes from that review?

Yes, we support the proposed disclosure, this information will enable a user to comprehensively understand governance deliberations and oversight on audit quality and independence and mitigate the risk of a focus on a single metric, such as length of tenure. However, we recommend that the explanatory commentary specifically addresses how auditor tenure should be disclosed in circumstances where the audit firm or entity has changed their structure over time.

13. Recommendation 7.4: The Council is seeking to enhance the quality of existing reporting of material risks to an entity’s business model and strategy, such as in the operating and financial review in its directors’ report.

Do you support the proposal that the entity identify and disclose its material risks, rather than identifying specific risks for all entities to disclose against?

We support the revision to recommendation 7.4 in the 5th edition to not specify risks or categories of risks to be disclosed. The proposal for an entity to identify and disclose its material risks will allow an entity to exercise their judgement to determine the relevant factors, which may be unique to their entity and/or industry. The proposal will also encompass broader sustainability risks, which is an important focus in current capital markets as well as other operational risks.

14. Recommendation 8.2: This proposed Recommendation reflects and simplifies existing commentary in the 4th Edition.

Do you support this proposed Recommendation that non-executive directors not receive performance- based remuneration or retirement benefits?

Yes, we support the proposed recommendation that non-executive directors do not receive performance-based remuneration or retirement benefits to promote good governance and transparency for key stakeholders.

15. Recommendation 8.3: Do you support the following proposed clawback Recommendations?

a. Recommendation 8.3(a): remuneration structures which can clawback or otherwise limit remuneration outcomes for senior executive performance-based remuneration?

Yes, we support recommendation 8.3(a) however, we recommend that the reference to ‘senior executive’ is replaced with ‘Key Management Personnel (KMP)’ to align with remuneration report disclosures. **b. Recommendation 8.3(b): disclosure of the use of those provisions (on a de-identified basis) during the reporting period?**

We support recommendation 8.3(b) however, In line with our commentary to recommendation 8.3(a) above, we recommend that specific reference is made to Key Management Personnel (KMP)’. We suggest the following amendment to recommendation 8.3(b): “A listed entity should disclose (on a de-identified basis) the use of those provisions in relation to its key management personnel during the reporting period.

16. Do you support the inclusion of the following new Recommendations for entities established outside Australia, on the basis that these Recommendations generally reflect expectations under Australian law?

- a. Recommendation 9.3 (CEO and CFO declaration for financial statements)?**
- b. Recommendation 9.4 (substantive security holder resolutions on a poll)?**
- c. Recommendation 9.5 (offering electronic communications to security holders)?**
- d. Recommendation 9.7 (policy on hedging of equity-based remuneration)?**

Yes, we support the inclusion of these new recommendations for entities established outside Australia. Given these represent existing recommendations from the 4th edition that the Council is proposing to delete to avoid duplication with Australia law, we consider it appropriate for these recommendations to be retained for those entities not subject to Australian law directly.

17. Should any new or amended Recommendations in the Consultation Draft apply differently to externally managed entities, compared to the manner proposed in The application of the Recommendations to externally managed listed entities?

No, we do not believe that any new or amended recommendations should apply differently to externally managed entities.

18. Do you support an effective date for the Fifth Edition of the first reporting period commencing on or after 1 July 2025?

As noted above, whilst we appreciate the importance of entities applying the 5th edition as soon as possible, we are concerned that the current proposed commencement date of 1 July 2025 could overload entities with June and September year-ends in Group 1 for the climate-related disclosure regime.

Therefore, we recommend that the fifth edition of the Principles and Recommendations (fifth edition) take effect for financial years commencing on or after 1 January 2026, whilst enabling entities to early adopt.

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

Our outreach indicates that there are still mixed perceptions of the ASX Principles and recommendations and the 5th edition.

Structure of the ASX principles and recommendations

Some stakeholders have questioned the length of the ASX principles and recommendations document and have noted that although the 5th edition (at 63 pages) seems to be an improvement on past editions, it still remains lengthy with a complicated layout which is difficult to navigate when compared to other jurisdictions Corporate Governance Codes such as the United Kingdom (20 pages).

The Council could consider if publication of the principles and recommendations separately to commentary (i.e., in a supplementary document) would make navigation of the principles and recommendations easier for users and preparers. Navigation between two documents could also come with its own challenges, however, may provide the Council with the ability to update the explanatory commentary on a more timely basis, if required, to keep up with contemporary governance practices.

Recommendation 3.4

We support the inclusion of a diversity and inclusion policy and the disclosure of progress, and measurable objectives as outlined in recommendation 3.4. However, we believe that this recommendation should not be focused on workforce as a whole but separately capture the workforce, senior management and the board. Capturing diversity and inclusion progress across all levels of an entity will be important as it will provide a true reflection of diversity.

Further, we consider the two (options a and b) measures of effectiveness outlined in point (c)(3) to be overly prescriptive without providing the flexibility for an entity to disclose what is relevant for them. We suggest an additional option is included (i.e., option c) for entities to disclose the measure most appropriate for their diversity and inclusion policy.

Appendix

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 136,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.