

Q5.

A banner with a dark background featuring a glowing blue globe on the right side. The text is white and centered, with a thin vertical blue line on the left side.

## ASX Corporate Governance Council *Principles and Recommendations* 5<sup>th</sup> Edition Consultation 2024

The ASX Corporate Governance Council has released the following [consultation materials for a 5th Edition of the Council's \*Corporate Governance Principles and Recommendations\* \(\*Principles and Recommendations\*\)](#):

- a communique
- *Background Paper and consultation questions*
- *Consultation Draft* of a proposed 5th Edition of the *Principles and Recommendations*
- a mark-up of the *Consultation Draft*, against the 4th edition of the *Principles and Recommendations*.

The *Background Paper and consultation questions* includes commentary for the individual consultation questions appearing in this online questionnaire.

Council members have been actively engaged, bringing their perspectives on how the 5th Edition might respond to current governance developments and challenges. Members do not hold identical views on all matters; some of those matters are the subject of specific consultation questions. The Council encourages your participation in this consultation process.

### How to participate

Submissions to the Council may be made by the end of **Monday 6 May 2024**, via this ASX portal.

This portal will permit you to make a submission as an online questionnaire, or by uploading your submission in PDF or Word.

The online questionnaire includes multiple choice responses. You may also include additional comments for each consultation question (up to approx. 250 words per comment) and at the conclusion of the survey (up to approx. 1,000 words).

Your work in progress will be saved if you return to the survey in the same browser and device. You can download a copy of your submission, when completed.

Please note that you will be asked to confirm that you have not made another submission in this process.

**Please press Next to participate in this consultation.**

### Q4. About you

These introductory questions will help us manage submissions.

If you would like your submission to be treated as confidential, please indicate this clearly. The Council may choose to publish submissions (in whole or in part) on the [ASX website](#), but will not do so where a submission is clearly marked confidential.

### Q5. A. Is your submission confidential?

(Confidential submissions will be handled as set out above)

- Yes
- No

**Q6. B.** [Redacted]  
(Required fields are marked with \*)

[Redacted]	[Redacted]
[Redacted]	[Redacted]
Organisation (if applicable)	Lunnon Metals
[Redacted]	[Redacted]
[Redacted]	[Redacted]
Telephone	

**Q48. C. Please confirm on whose behalf you are making this submission.**

- On behalf of my organisation
- On my own behalf

**Q7. D. Please choose one category which best describes the capacity in which you are making this submission**

- ASX market retail investor
- ASX market institutional investor
- S&P/ASX300 listed entity
- Other ASX listed entity
- Non-executive director: S&P/ASX300
- Non-executive director: other ASX listed entity
- Professional adviser (please specify) [Redacted]
- Industry association
- Academic
- ASX Corporate Governance Council member
- Other ASX market stakeholder (please specify) [Redacted]
- Other stakeholder (please specify) [Redacted]

**Q49. E. Please confirm that you have not made another submission in this process.**  
(Only one submission will be accepted)

Yes, this is my only submission

No, I have made another submission (Note: This will conclude this questionnaire.)

## Q9. Submission process

### Q10. F. Would you like to complete this online questionnaire or upload your submission?

I would like to complete this online questionnaire

I would like to upload my submission

### Q8. Please upload your submission here, in PDF or Word.

(Once you attach your submission and press *Next*, this will conclude and record your response.)

*This question was not displayed to the respondent.*

## Q11. Reducing regulatory overlap

### Q13. 1. Do you support deletion of the following 4th Edition Recommendations, on the basis that there is significant regulation under Australian law?

	Support deletion	Mostly support deletion	Do not support deletion	No comment
a. Recommendation 3.4 (disclosure of anti-bribery and corruption policy)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
b. Recommendation 4.2 (CEO and CFO declaration for financial statements)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
c. Recommendation 6.4 (substantive security holder resolutions on a poll)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
d. Recommendation 6.5 (offering electronic communications to security holders)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Recommendation 8.2 (separate disclosure of remuneration policies for non-executive directors, other directors and senior executives)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
f. Recommendation 8.3 (policy on hedging of equity-based remuneration)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

### Q43. Your comments.

To the extent these overlap with the law, they are good box checking exercises and summary of key governance requirements. It also assists international shareholders, where these requirements may not be law in other jurisdictions. Electronic shareholder requirement should be removed as this is common practice anyhow given it is simplest and makes economic sense.

**Q17. 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?**

- Support retention
- Mostly support retention
- Do not support retention
- No comment

**Q44. Your comments.**

It is a good box checking exercises and summary of key governance requirements. It also assists international shareholders, where these requirements may not be law in other jurisdictions.

**Q15. Board skills**

**Q51. 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?**

	Yes	Yes in principle, but...	No	No comment
a. Recommendation 2.2(a): current board skills and skills that the board is looking for?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Recommendation 2.2(b): the entity's process for assessing that the relevant skills and experience are held by its directors?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Q16. Your comments.**

How to assess the relevant skills is extremely subjective and is primarily based on experience. It's easy to point to experience or skills linked to experience but assessing actual capability is incredibly hard. Setting requirements is likely just to result in lengthy details of experience in a skill or scenario, without any meaningful understanding of actual capability.

**Q18. Diversity**

**Q19. 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
- Yes in principle, but...
- No
- No comment

Q55. Your comments.

While gender diversity is admirable, it also needs to be balanced with obtaining the requisite skills. In mining, which has been and continues to be historically male dominated in the core geology, mining and metallurgy fields, it can be difficult to find suitably skilled female Directors who don't have conflicting or overloaded directorships.

**Q20. 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?**

- Yes
- Yes in principle, but...
- No
- No comment

Q56. Your comments.

For larger companies, this may be an option to consider but for smaller companies with smaller boards, finding directors with the requisite skills is crucial.

**Q21. 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?**

- Yes
- Yes in principle, but...
- No
- No comment

Q57. Your comments.

This should be limited to ASX300 companies and companies with at least 100 people. Otherwise, the effectiveness of an entity's diversity and inclusion practices is unlikely to be representative (sample size simply too small and changes may not have any causal connection with actual effectiveness). For smaller companies, there is likely to be less role flexibility (with smaller teams), less roles (with roles being more generalist than specialised), and less attractions and amenities due to limited scale, meaning smaller companies are ultimately forced to be less selective (particularly in times of near full employment)

## Q22. Independence of directors

**Q23. 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)?**

- Yes
- Yes in principle, but...
- No
- No comment

Q58. Your comments.

This aligns with other references and other jurisdictions' definition of substantial (for example Toronto Stock Exchange). For smaller companies, there is a higher likelihood of higher shareholding percentages due to initial founders/investors selling down or institutional investors having minimum dollar positions to make their equity position meaningful to their fund.

## Q24. Corporate conduct and culture

**Q25. 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?**

- Yes
- Yes in principle, but...
- No
- No comment

Q70. Your comments.

This should be limited to companies in the ASX300 and with more than a certain number of employees (at least 100). Otherwise, it may be possible to identify employees despite the de-identified basis. Practically, the Company may also be prevented from any disclosure under the terms of any negotiated settlement. Commonly, dismissals for breaches of the code result in claims for unfair dismissal. These are often settled via mediation through the Fair Work Commission with no disparagement and no disclosure, with the employee being allowed to "resign" and statement by the company to that effect.

Q26. Stakeholder relationships

Q27. 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
- Yes in principle, but...
- No
- No comment

Q59. Your comments.

Q28. 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.”*

- Yes
- Yes in principle, but...
- No
- No comment

Q60. Your comments.

Q29. Periodic corporate reports and assurance

Q30. 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

- Yes in principle, but...
- No
- No comment

Q61. Your comments.

If anything, this should be limited to ASX300 companies. External assurance is a growing area (particularly ESG) but consideration needs to be given to the availability and capability of this assurance (noting pressures already on audit firms to obtain and retain quality staff). A process involving internal assurance is valuable but likely something only companies with more financial and human resources are capable of.

**Q31. 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
- Yes in principle, but...
- No
- No comment

Q62. Your comments.

Despite not intending to introduce tenure limits, this is ultimately likely to driving an increase in changes in auditors. This increases the cost to the company, and loss of productivity for auditors - ultimately driving up audit costs further. It would be better for companies to outline the policy and process of review of auditors performance and circumstances that may lead to a change in auditor, and whether any of these circumstances have been triggered in the reporting period.

Q32. **Management of risk**

**Q35. 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?**

- Yes
- Yes in principle, but...
- No
- No comment

Q64. Your comments.



Material risks differ significantly from sector to sector. Companies should be reporting material risks that apply to their business which will help investors understand current concerns or priorities between differing organisations and sectors. A focus on reporting contemporary new risks often distracts an organisation from focusing on materiality, and leads to a perception that these risks may be material than they actually are.

**Q36. Remuneration**

**Q37. 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
- Yes in principle, but...
- No
- No comment

**Q65. Your comments.**

On remuneration for non-executive directors, it would be helpful to clarify what is performance based remuneration. For example, are options with an exercise price materially above the current share price considered performance based? An element of performance based remuneration for non-executive directors may be warranted for smaller companies where directors are more intimately involved with the Company and the Company's success is more dependent on non-executive's involvement. Secondly, the Company may not have ongoing adequate funds to attract and retain appropriately qualified directors - simple service rights may lead to significant dilution over the longer term.

**Q40. 15. Recommendation 8.3: Do you support the following proposed clawback Recommendations?**

	Yes	Yes in principle, but	No	No comment
a. Recommendation 8.3(a): remuneration structures which can clawback or otherwise limit remuneration outcomes for senior executive performance-based remuneration?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Recommendation 8.3(b): disclosure of the use of those provisions (on a de-identified basis) during the reporting period?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Q66. Your comments.**

A de-identified basis may not be possible given the number of employees entitled to performance based remuneration. Additionally, settlement of disputes may require no disclosure.

**Q41. Additional Recommendations that apply only in certain cases**

**Q42. 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?**

	Yes	Yes in principle, but...	No	No comment
a. Recommendation 9.3 (CEO and CFO declaration for financial statements)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Recommendation 9.4 (substantive security holder resolutions on a poll)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Recommendation 9.5 (offering electronic communications to security holders)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
d. Recommendation 9.7 (policy on hedging of equity-based remuneration)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q71. Your comments.

**Q43. Externally managed entities**

**Q44. 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*?**

- Yes
- Yes in principle, but...
- No
- No comment

Q68. Your comments.

**Q45. Effective Date**

**Q46. 18. Do you support an effective date for the Fifth Edition of the first reporting period commencing on or after 1 July 2025?**

- Yes
- Yes in principle, but...
- No
- No comment

**Q69. Your comments.**

**Q46. Other comments**

19. Do you wish to provide any other comments on the content of the Consultation Draft, including any other changes you would propose? (*Approx. 1,000 word limit*)

**Location Data**

**[REDACTED]**

**Source:** GeoIP Estimation

**[REDACTED]**