The Principles

Principle 1: Lay solid foundations for management and oversight

ACSI supports references to the board overseeing strategy, performance, risk management and compliance. While these are existing board responsibilities in practice, we welcome the clear articulation in the draft 5th edition. We welcome the comments as to why the Principle is important, in particular the link between effective governance and long-term value creation, which is consistent with ACSI's Governance Guidelines.

Principle 2: Structure the board to be effective

ACSI supports a focus on director experience, skills, knowledge, diversity and independence. Shareholders elect directors to act in the best interests of the company, and also play a critical role on behalf of shareholders, who are best served by well-constructed boards driving better decision making and long-term value creation.

In forming the board, consideration should be given to skills, independence and diversity, both individually and collectively, as well as in the context of current and future strategic direction. Boards should include enough members to reflect the company's context, maturity and complexity, desired specific experience and to ensure sufficient cognitive diversity[1].

The structure of the board and the quality of directors is fundamental to the entity's ability to create sustainable value. We have a number of recommendations to strengthen the Recommendations within Principle 2 that are set out below.

Recommendation 2.2: Board skills, knowledge and experience

We welcome the focus on board skills, experience, knowledge, diversity and independence of the board, which are fundamental to shareholder value.

We support the reference in the 'Why this Principle is important' section that '*Transparent disclosure of the board's collective skills, diversity and independence enable[s] investors to make an informed assessment of the board's composition, capability and independence*'. ACSI's Governance Guidelines provide information on better practice disclosure on board composition, including a focus on the provision on meaningful information.

The updated Recommendation has some capacity to provide useful information to investors, where entities thoughtfully engage in the process and are guided by the Explanatory Material. This includes references to enabling investors to understand how the board assesses its capability against the entity's needs and strategic priorities, both now and into the future. The proposal to remove the Recommendation to have and disclose a skills matrix is based on the idea that it is 'just one tool' to support assessment and disclosure of director skills and experience. However, we caution against the removal by listed entities of skills matrix disclosures without at least providing similar information in another form.

We propose that the Recommendation be updated to encourage disclosure of meaningful information on both the process for assessing collective skills, knowledge, experience as well as the outcome.

[1] ACSI Governance Guidelines Section 1.3

Recommendation 2.3: Gender diversity

With the proportion of women directors on the ASX200 currently at 38%, retaining a measurable objective of 30% women directors encourages a lack of ambition. Given the 'if not, why not' nature of the Recommendations and the ability to explain repeatedly emphasised, there is sufficient flexibility for entities that determine the objective is not appropriate to them to explain their alternative approach. With this context, there is significant risk that the 30% measurable objective is interpreted as a goal rather than a floor.

Commentary in the Consultation Paper and quotes in the media suggest that the 30% recommendation has been retained to enable a focus on other aspects of diversity. Entities can and should be capable of setting a measurable objective for gender balance (40/40/20) on the board while also taking other aspects of diversity into account in board composition and succession planning.

ACSI expects boards to consider how to support cognitive diversity, ideally through an assessment of the presence of different backgrounds, experiences, education and perspectives on the board[2]. Extensive research links diversity to better financial outcomes. In general, diversity in board and senior executive teams is correlated with better financial performance, as well as more innovation, higher retention rates and reputational benefits[3]. The presence of diversity alone is not sufficient to support better performance. To support the realisation of diversity benefits on a sustainable basis, there needs to be inclusive and equitable cultures. For example, policies supporting inclusion focus on enabling all board members or employees to feel respected, valued, a sense of belonging, and that it is 'safe' to speak up without fear of reprisal or judgement[4].

Recommendation 2.4: Director independence

We support the reference in the 'Why this Principle is important' section on the importance of independent directors.

We note that factors relevant to assessing the independence of a non-executive director (previously contained in Box 2.3 in the 4th Edition) are proposed to be amended and included in the Explanatory Materials for proposed Recommendation 2.4. The updated draft Explanatory Materials remove the existing references to specific time periods relevant to assessing independence. In considering factors that go to director independence, the draft 5th Edition of the Principles refers to 'recent' (instead of 'within the last three years') when considering former material business relationships or executive appointments. In considering whether tenure has affected independence, it is proposed that references to directors 'serving more than 10 years' are replaced with references to 'such a period that their independence…may have been compromised'.

The Recommendation operates on an 'if not, why not' basis, and the specific time periods serve only as a trigger for the board to consider a director's independence and accompanying disclosure, rather than as a determinant for independence. This approach is reinforced by market participants, for example ACSI's Governance Guidelines that state:

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[2] ACSI Governance Guidelines

[3] See, for example, Miller and Triana, 2009, "Demographic Diversity in the Boardroom: Mediators of Board Diversity – Firm Performance Relationship," Journal Of Management Studies, and Catalyst, 2020, .Why Diversity and Inclusion Matter (Quick Take).

[4] Lowy Institute, 2023, Diversity and inclusion: Australia's global aim to walk the talk, *The Interpreter* and Diversity Council Australia, 2023, Diversity and inclusion explained

Independence indicators are useful, however, while a director may not meet strict independence guidelines they may have a proven record of exercising independent judgement. In such cases, a director should not automatically be considered inappropriate to serve on the board, however the board should explain why they are an appropriate candidate.

While the ASX is seeking to avoid prescription, the removal of references to specific time frames is vague and risks undermining transparency on director independence. The time frames are also not determinative, and therefore not prescriptive.

Consequently, we recommend that relevant specific time frames are re-inserted into the 5th edition of the Principles.

Principle 3: Instil and reinforce a culture of acting lawfully, ethically and responsibly

ACSI welcomes the recognition of organisational culture as an active board-level responsibility, and the proposed new Recommendation to disclose the mechanisms the board has in place to monitor culture.

The proposed new Recommendation 3.1 regarding security holders and other stakeholders is also welcome, recognising that long-term value creation depends on an entity being valued, trusted and respected by security holders and other stakeholders, including employees, suppliers, customers, contractors and the communities in which it operates. This is consistent with ACSI's Governance Guidelines. Process disclosure is a helpful start. Investors are looking for comfort that the risks and opportunities are well managed. To that end, the Recommendation can be interpreted sensibly to provide information for investors on the aims of the process and how it works in practise, rather than detailed step by step descriptions. Helpful disclosure would also include whether the process is effective in achieving its aims, and how that supports the organisation's strategy and/or risk management.

Recommendation 3.3 should be enhanced with Explanatory Materials that direct entities to guidance on well-respected standards of corporate responsibility such as the UN Guiding Principles on Business and Human Rights and relevant OECD Guidelines. Responsible business conduct is not just a matter for subjective corporate judgement. These frameworks have become a principal benchmark against which corporate conduct is assessed by investors, regulators, civil society and affected stakeholders. Adherence to these standards can help companies mitigate reputational risks and reduce exposure to adverse investor and community sentiment and therefore contribute to long term sustainable value creation. Accordingly, the concept of acting responsibly should not be left undefined or solely determined by individual entities but should also be informed by established international standards of responsible business conduct.

We note also the removal of specific Recommendations to have and disclose whistleblowing, diversity, and anti-bribery and corruption policies. The proposed Explanatory Material notes disclosure of such policies can enhance transparency, and we recommend the ASX strengthen these references. Trust is also enhanced when entities can demonstrate that their policies and practices align to drive consistent outcomes.

Principle 4: Safeguard the integrity of corporate reports

It is proposed that the existing Recommendation that the CEO and CFO provide declarations as to the integrity of the financial statements, be removed due to overlap with section 295A of the Corporations Act. However, section 295A does not extend to risk management and internal control. We note the board's responsibility to review the entity's risk management and internal control framework is addressed under Principle 7, and we recommend that the Explanatory Materials clearly articulate the benefits of management declarations and in stronger terms than is presently proposed.

Principle 5: Make timely and balanced disclosure

We recommend the insertion of stronger language reflecting the fundamental importance of continuous disclosure into the 'Why this Principle is important' section.

The ASX's own Guidance Note 8 articulates that compliance with disclosure obligations is 'critical to the integrity and efficiency of the …market'[5], however the proposed language in the Principles refers to disclosure 'promoting' fair, equal and timely access to material price sensitive information. Accordingly, we recommend strengthening the reasons why the principle is important to reflect the fundamental significance of continuous disclosure.

Principle 6: Support the rights of security holders

ACSI supports removing recommendations relating to a show of hands at general meetings and electronic communications, as these matters are now addressed by the Corporations Act.

Principle 7: Understand and manage risk

ACSI supports the focus on material risks disclosure, however we are concerned by the proposed removal of references to specific kinds of risks, in particular 'environmental and social risks'. While we understand the ASX's rationale — that ASIC Regulatory Guide 247 and Regulatory Guide 280 already address disclosure of environmental, social and governance risks and sustainability reporting — we are not convinced that consideration of sustainability risks is sufficiently embedded across the market to justify removing the explicit reference at this stage.

We support focussing on material risks generally, with sustainability risk treated as an essential part of that analysis, and welcome the retained references to sustainability and integrated reporting in the Explanatory Material. We recommend that the Explanatory Materials provide clearer guidance to listed entities on the range of risks that can be material is broad, for example by including language like '*Material risks are broadly defined and may include financial, non-financial, strategic, operational, environmental, social, governance or other risks*''.

Principle 8: Remunerate fairly and responsibly

ACSI supports the continued focus on fair and responsible remuneration aligned with strategy, risk appetite and values. Our view is that remuneration is key to aligning management with company strategy and performance. Well-structured remuneration can support the long-term success of a company. Conversely, excessive pay, performance-related remuneration that is not genuinely at risk, persistently high bonuses or a misalignment with shareholders can adversely affect a company's long-term performance and licence to operate.

[5] https://www.asx.com.au/content/dam/asx/documents/listings/listed@asx-documents/gn08-continuous-disclosure.pdf

We welcome the proposed new recommendation recognising that boards should have the ability to adjust performance-based remuneration downwards when appropriate. This is consistent with our existing Governance Guidelines which ask boards to set remuneration structures that allow them to withhold, or clawback, variable pay in some circumstances and to apply downwards discretion to the pay outcomes where this is warranted.

We are concerned that the Explanatory Material accompanying Principle 8 has removed suggested guidelines for executive and non-executive director remuneration. We recommend that the Principles refer to credible industry guidance in this respect, for example ACSI's Governance Guidelines.

Responses to ASX's consultation questions

ACSI's responses to the specific questions set out in the Consultation Paper are below. Where a question raises an issue addressed more fully above, we cross-reference rather than repeating in full.

Question 1: *Do you support the proposed ways to reinforce the 'if not, why not' approach? Are there ways ASX could make this approach work better for listed entities and investors? Are there any third-party resources or materials that are helpful to entities when considering how to implement a recommendation that ASX could make available on its dedicated webpage?*

ACSI response: ACSI supports the 'if not, why not' approach.

We consider that explaining why each Principle matters will assist entities in articulating how their practices meet the underlying rationale of the Principle. We encourage ASX to ensure the dedicated webpage supporting implementation is comprehensive and kept up to date, particularly given the reduction in guidance within the Principles themselves. This webpage should also link to established investor stewardship resources, including ACSI's Governance Guidelines, as a source of practical guidance for entities.

We also recommend including the UN Guiding Principles on Business and Human Rights and relevant OECD Guidelines, as the leading international frameworks for corporate responsibility, as set out in our comments on Principle 3 above.

Question 2: *Are there other recommendations that have a substantial overlap with other regulatory disclosure and reporting obligations that could be removed or moved? If so, please identify the recommendation and the overlapping obligation.*

ACSI response: ACSI has not identified further Recommendations for removal on duplication grounds at this stage. While we support initiatives that genuinely streamline duplication, we are cautious where messaging suggests that governance is a form of red tape. Effective governance aligns company decision making with sustainable long-term performance and clear accountability supports better strategic decision making and oversight.

Question 3: *Recommendation 2.2 (board skills, knowledge and experience): Do you support the replacement of the recommendation of a board skills matrix with a recommendation that the board determines and discloses the mix of skills, knowledge and experience it needs?*

ACSI response: ACSI is cautious about this change. As set out above, we are concerned that some sectors of the market are not equipped or do not see the importance of providing meaningful disclosure. We recommend the Explanatory Material set clear expectations for a focus on meaningful disclosure, including the level of detail and comparability expected in the disclosed assessment outcome.

Question 4: *Recommendation 2.3 (diversity): Do you support maintaining the existing target for gender diversity on boards of S&P/ASX300 entities?*

ACSI response: The 30% measurable objective, now lags the 38% of women directors already on ASX200 boards. We recommend ASX adopt a measurable objective of gender balance (40/40/20).

Question 5: *Recommendation 2.4 (independence): Do you support the revised approach to Recommendation 2.4?*

ACSI response: As set out above, we do not support removing the specific time-based reference points (recent relationships, ten years' tenure) from the factors relevant to assessing independence, as this approach risks reduced transparency and consistency for investors.

Question 6: *Do you support the proposed shifting of emphasis to Principle 3? In what other ways should this principle be updated?*

ACSI response: ACSI supports the emphasis on the board's active role in instilling and reinforcing culture, and the new Recommendation to disclose stakeholder engagement processes and culture monitoring mechanisms. As set out above, we propose strengthening the Recommendations to clarify that disclosure of key policies that support culture remains a building block and that trust is also enhanced when entities can demonstrate that their policies and practices align to drive consistent outcomes.

Question 7: *Do you support the proposed changes to Principle 8, including the two new Recommendations? Are there any practical issues with implementation and/or unintended consequences?*

ACSI response: ACSI supports the two new Recommendations on downward adjustment mechanisms for senior executive performance pay and on non-executive director remuneration and security holdings. However, as set out above, the much briefer Explanatory Material removes suggested remuneration guidelines, reducing the guidance to listed entities at a time when remuneration structuring remains a significant area for investor scrutiny.

Question 8: *Are there additional areas of corporate governance that have evolved since the 2019 edition that could be addressed in the next edition, or that the Advisory Group on Corporate Governance could further focus on following the release of the next edition?*

ACSI response: Many governance practises and disclosures go to providing investors with comfort as to the effectiveness and ability of the Board. We encourage the ASX to provide this context and reinforce the importance and value of listed entities being appropriately transparent, in order to provide confidence to investors. ACSI encourages the Advisory Group to continue to monitor the adequacy of broader sustainability governance disclosures. We note the Corporations Act focus on climate reporting, and we still see a risk we still see a risk that consideration and disclosure on other sustainability risks is de-prioritised, despite their materiality. We would also welcome the Advisory Group's ongoing attention to board oversight of artificial intelligence and technology-related risk as an emerging governance issue relevant to future editions.

Question 9: *Are there any additional new reporting or compliance obligations that ASX should take into account when setting an implementation timeframe?*

ACSI response: ACSI supports the proposed implementation timeframe, which appropriately sequences the new Principles to avoid overlapping with entities' implementation of the Chapter 2M sustainability reporting requirements. We are not aware of other specific obligations that should further inform the timeframe.

Question 10: *Do any of the proposed changes to the recommendations create a significant cost or resource burden? If so, please identify the recommendation, explain the new governance practice it would require that the entity does not already have in place, and provide an estimate of the cost or resource impost.*

ACSI response: While consideration should always be given to cost and resourcing, we caution against framing governance practices as costly or burdensome. Fit for purpose governance that promotes transparency, accountability and fair treatment of investors helps support long-term value creation, bolstering Australia's reputation as a trusted investment destination.

Question 11: *Do you support the revised Appendix 4G?*

ACSI response: ACSI supports simplification of Appendix 4G in principle, if it continues to provide a reliable key to locate an entity's disclosures against the Recommendations and continues to support verification that Listing Rule 4.10.3 disclosure requirements have been met.

Question 12: *What do you see as the arguments for and against continuing with Appendix 4G and what alternative reporting arrangements would be useful?*

ACSI response: Appendix 4G helps investors to efficiently locate entities' governance disclosures. Listed entities remain responsible for choosing appropriate governance settings and the 'if not, why not' nature of the Principles has been reinforced. ACSI's preference is to retain a simplified Appendix 4G, rather than remove it, given the practical value it provides to investors in navigating disclosures across a large number of entities.

Question 13: *What is the best way for stakeholders to obtain easy access to the disclosures underlying the Recommendations (such as policies and explanations of processes that can be disclosed on the website rather than in the corporate governance statement itself)?*

ACSI response: ACSI supports a consistent, centrally-indexed location on each entity's own website for governance-related policies and process disclosures, cross-referenced and hyperlinked from the corporate governance statement and Appendix 4G.

Question 14: *Are there any unintended consequences arising from the other changes to the Listing Rules and Guidance Notes covered in this consultation?*

ACSI response: While we recognise that the focus on a principles-based approach provides listed entities with flexibility and may result in useful information for investors. However, we are concerned it will see some listed entities provide less meaningful information to investors. We encourage the ASX to consider how it can encourage entities to thoughtfully consider their governance practices using the Principles and promote better practice disclosure.