



8 May 2024

Elizabeth Johnstone  
Independent Chair  
ASX Corporate Governance Council  
Exchange Centre  
105/20 Bridge St  
SYDNEY NSW 2000  
Email: Elizabeth.Johnstone@asx.com.au

Dear Ms Johnstone,

**CONSULTATION DRAFT OF THE CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS 5TH EDITION**

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia. We appreciate the opportunity to respond to the Australian Securities Exchange (ASX) Corporate Governance Council's consultation draft of the Corporate Governance Principles and Recommendations 5<sup>th</sup> Edition.

We represent over 150 members, including bank and non-bank lenders, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry. We are the voice for advancing a world-class finance industry and our members are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes and create a resilient, inclusive and sustainable future. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

AFIA's membership includes ASX listed entities that abide by the 4<sup>th</sup> Edition of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, published in February 2019. As per Listing Rule 4.10.3, ASX listed entities are required to benchmark their corporate governance practices against the Council's recommendations.

AFIA supports the guidance in the principles and recommendations issued by the Council as contributing to enhancing corporate governance best practices across ASX-listed companies, and more broadly, influencing corporate governance across corporate Australia.

However, we believe that these principles and recommendations should be targeted and avoid where possible, repeating similar standards across principles, duplicating with legal obligations or placing unnecessary burdens upon entities.

We believe that streamlining the guidance would help listed entities meet the standards and reduce the length of the guidance. Importantly, the guidance should continue to maintain an 'if not, why not' approach, which enables the guidance to be applied flexibly to different business models.

Although we support the bulk of the recommendations put forward in the consultation draft, there are some recommendations we have identified as either being duplicative, too granular, representing an unnecessary compliance burden, or requiring further clarification in order to provide an informed response.

Recommendations from the 5<sup>th</sup> edition consultation draft that AFIA has responded to are:

- **Recommendation 2.2 (a) and (b)** – AFIA recommends maintaining the status quo in relation to skills matrixes as currently provided for under the 4th edition.<sup>1</sup>
- **Recommendation 3.3** – AFIA requests clarification on the definitions of both 'stakeholders' and 'material issues'.<sup>2</sup>
- **Recommendation 4.2** – AFIA recommends the status quo on audit reporting be maintained as provided for under recommendations 4.1 and 4.2 of the 4th edition.<sup>3</sup>
- **Recommendation 4.3 (a) and (b)** – AFIA recommends maintaining the status quo on auditing processes as provided for currently under the 4th edition.<sup>4</sup>
- **Recommendation 7.4 (a) and (b)** – AFIA recommends maintaining the status quo around risk disclosure and management as provided for under the 4th edition.<sup>5</sup>
- **Recommendation 8.2** – AFIA recommends maintaining the status quo on remuneration and other associated benefits for non-executive directors.<sup>6</sup>
- **Recommendation 8.3 (a) and (b)** – AFIA recommends against implementing the proposed recommendations on incorporating clawback or other limitation provisions into the remuneration structures of listed entities under the updated 5th edition.<sup>7</sup>

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<sup>1</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations Consultation Draft 5th Edition*, Recommendation 2.2, 19.

<sup>2</sup> Ibid Recommendation 3.3, 27.

<sup>3</sup> Ibid, Recommendation 4.2, 34.

<sup>4</sup> Ibid, Recommendation 4.3, 35.

<sup>5</sup> Ibid, Recommendation 7.4, 45.

<sup>6</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations Consultation Draft 5th Edition*, Recommendation 8.2, 50.

<sup>7</sup> Ibid, Recommendation 8.3, 51.

## CLOSING COMMENTS

Good corporate governance standards and practices are critical to ensuring market integrity, but more broadly, to drive better governance, accountability and transparency across corporate Australia and to ensure listed companies are meeting evolving community expectations.

AFIA welcomes further dialogue with the ASX Corporate Governance Council on the consultation draft of the Corporate Governance Principles and Recommendations 5<sup>th</sup> Edition.

Should you wish to discuss our submission or require additional information, please contact Sebastian Reinehr, Policy Director, at [Sebastian.Reinehr@afia.asn.au](mailto:Sebastian.Reinehr@afia.asn.au) or 0474 704 992.

Yours sincerely

A handwritten signature in grey ink, appearing to read 'S Reinehr', is positioned above the printed name and title.

**Sebastian Reinehr**  
Policy Director

## ATTACHMENT A:

### AFIA'S DETAILED RESPONSES AND RECOMMENDATIONS TO THE ASX GOVERNANCE COUNCIL DRAFT ON CORPORATE GOVERNANCE PRINCIPLES FIFTH EDITION

Recommendation 2.2 refers to skills matrixes, and indicates that a listed entity should:

- a) have and disclose a board skills matrix setting out the mix of skills that the board currently has and is looking to achieve in its membership; and
- b) disclose its process for how it assesses that the relevant skills and experience are held by its directors.<sup>8</sup>

#### Background and considerations on ASX Recommendation 2.2

- AFIA notes that the disclosure of a skills matrix is already provided for under recommendation 2.2 of the ASX CGC Corporate Governance Principles and Recommendations 4<sup>th</sup> Edition<sup>9</sup> (hereafter referred to as the '4<sup>th</sup> edition').<sup>10</sup>
- As noted under recommendation 2.2 in the 4<sup>th</sup> edition, 'there is no prescribed format for a board skills matrix. It can set out either the mix of skills that the board currently has or the mix of skills that the board is looking to achieve in its membership or both.'<sup>11</sup>
- As also noted under recommendation 2.2 in the 4<sup>th</sup> edition:<sup>12</sup>

*[C]ommercially sensitive information, such as the fact that the board may be looking to acquire a particular skill as part of an as-yet unannounced and incomplete plan to move into a different field of activity, can be excluded.*

- AFIA notes that the current commentary under the 4<sup>th</sup> edition recommendation 2.2 provides listed entities the flexibility of disclosing either the skills a board currently has OR is looking to achieve OR both, and that requiring the disclosure of skills the board is looking for would inherently conflict with the 4<sup>th</sup> edition ASX commentary around commercially sensitive information which is eligible for exclusion.
- AFIA notes that relevant skills and expertise a listed entity is looking for can often depend on what business phase an entity is in, or what transition an entity is undertaking at any given point in time.

Operating environments for listed entities are inherently fluid, and to this end, difficulties may arise in attempting to conclusively define the mix of skills an entity is seeking for future periods in its board of directors.

- AFIA also notes skills and experience held by directors can be gained from a variety of avenues, meaning skills could be assessed in a multitude of ways, making it difficult to provide a single, exhaustive list of assessment avenues<sup>13</sup>.

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<sup>8</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations Consultation Draft 5th Edition*, Recommendation 2.2, 19.

<sup>9</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations 4th Edition*, Recommendation 2.2 (2019), 13.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Oven, Carey and Caroline Schoenecker, *Analyzing the Skills Gap in the Boardroom* ([December 2021](#)).

- AFIA also notes that a ‘skills or capabilities gap’ can be addressed via avenues outside of the addition of a new director, such as third-party consultants and both internal and external skills training and development<sup>14</sup>.

### Corresponding ASX question

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?
- b. Recommendation 2.2(b): the entity’s process for assessing that the relevant skills and experience are held by its directors?<sup>15</sup>

### AFIA response and recommendation

AFIA does not support recommendation 2.2(a) for the following reasons:

1. Boards need to maintain flexibility across forward periods, where future conditions can often be unpredictable and operating environments can evolve rapidly.
2. Board composition is not one size fits all, and both skills and experience can be defined in a variety of ways.

For the reasons above, AFIA recommends maintaining the status quo in relation to skills matrixes as currently provided for under the 4<sup>th</sup> edition.

Recommendation 3.3 refers to entities having regards to the interests of stakeholders and suggests 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.<sup>16</sup>

### Corresponding ASX question

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.*<sup>17</sup>

### AFIA response

- AFIA requests clarification on the definition of both ‘stakeholders’ and ‘material issues’ in respect to recommendation 3.3.
- Without the aforementioned clarification of the identified terms, AFIA is unable to support recommendation 3.3.

<sup>14</sup> Shaw, Elise, ‘How to Fill the Skills Gap in the Boardroom - AICD’, *Aicd.com.au* (2023).

<sup>15</sup> ASX Corporate Governance Council, *Principles and Recommendations 5<sup>th</sup> Edition Consultation Draft: Background paper and consultation questions* (2024), 6.

<sup>16</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations Consultation Draft 5th Edition*, Recommendation 3.3, 27.

<sup>17</sup> ASX Corporate Governance Council, *Principles and Recommendations 5th Edition Consultation Draft: Background paper and consultation questions* (2024), 9.

Recommendation 4.2 refers to a listed entity disclosing its process to verify the integrity of any periodic corporate report it releases to the market, including the extent to which it has been audited, or otherwise the subject of assurance, by an external assurance practitioner.<sup>18</sup>

### Background and considerations on ASX Recommendation 4.2

- AFIA notes that as per recommendation 4.1 (a) of the 4<sup>th</sup> edition<sup>19</sup>, the board of a listed entity should have an audit committee, and that as stated under 4.1 (b), if a listed entity does not have an audit committee, that it should: <sup>20</sup>

*[D]isclose that fact and the processes it employs that independently verify and safeguard the integrity of its corporate reporting, including the processes for the appointment and removal of the external auditor and the rotation of the audit engagement partner.*

- Recommendation 4.1 (a), subsections (3)-(5), require listed entities to disclose – respectively – the charter of the committee, the relevant qualifications and experience of the members of the committee, and, in relation to each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meeting.<sup>21</sup>
- AFIA also notes that as stated under recommendation 4.2 of the 4<sup>th</sup> edition and in respect to the financial element of corporate reporting: <sup>22</sup>

*[A] listed entity should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.*

- This recommendation duplicates the legislative requirement for CEO and CFO declaration under section 295A of the *Corporations Act*.<sup>23</sup>
- Listed entities presently must also comply with auditing and disclosure requirements around corporate reporting of Australian financial regulators, including the Australian Securities and Investments Commission (ASIC), which affords additional safeguards for the integrity of corporate reporting.<sup>24</sup>

### Corresponding ASX question

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)?<sup>25</sup>

### AFIA response and recommendation

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<sup>18</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations Consultation Draft 5th Edition*, Recommendation 4.2, 34.

<sup>19</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations 4th Edition*, Recommendation 4.1 (2019), 19.

<sup>20</sup> Ibid

<sup>21</sup> Ibid.

<sup>22</sup> Ibid, Recommendation 4.2 (2019), 20.

<sup>23</sup> [Corporations Act 2001](#) (Cth).

<sup>24</sup> Australian Securities and Investments (ASIC), 'Users of Financial Reports' ([20 October 2014](#)).

<sup>25</sup> ASX Corporate Governance Council, *Principles and Recommendations 5th Edition Consultation Draft: Background paper and consultation questions* (2024), 10.

- AFIA suggests this recommendation unnecessarily duplicates auditing requirements relating to corporate reporting under the 4<sup>th</sup> edition, in addition to relevant legislative requirements and the auditing and disclosure requirements of other Australian financial regulators.
- AFIA recommends the status quo on audit reporting be maintained as provided for under recommendations 4.1 and 4.2 of the 4<sup>th</sup> edition.

Recommendation 4.3 refers to a listed entity disclosing both the tenure of the audit firm and audit engagement partner as at the end of the reporting period, and when the appointment of the external auditor was last comprehensively reviewed, and the outcomes from that review.<sup>26</sup>

### Background and considerations on ASX Recommendation 4.3

- As noted under the commentary of recommendation 4.1 in the 4<sup>th</sup> edition, the role of the audit committee of a listed entity will generally include review and recommendation functions regarding:
  - the appointment or removal of the external auditor;
  - the fees payable to the auditor for audit and non-audit work;
  - the rotation of the audit engagement partner;
  - the scope and adequacy of the external audit;
  - the independence and performance of the external auditor.
- AFIA notes that listed entities in the finance industry are already required to provide comprehensive audit information to Australian financial regulators, such as the Australian Prudential Regulatory Authority (APRA) via *Prudential Standard APS 310 Audit and Related Matters*.<sup>27</sup>

### Corresponding ASX question

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?<sup>28</sup>

### AFIA response and recommendation

- AFIA suggests recommendation 4.3 given is unnecessarily duplicative, as these obligations already apply to listed entities elsewhere.
- Listed entities already produce comprehensive audit information throughout any given financial year, and that listed entities hold prescribed AGM's wherein shareholders can voice requests for audit information, and that entities also regularly report such information to financial regulators.
- AFIA recommends maintaining the status quo on auditing processes as provided for currently under the 4<sup>th</sup> edition.

<sup>26</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations Consultation Draft 5th Edition*, Recommendation 4.3, 35.

<sup>27</sup> [\*Banking \(Prudential Standard\) Determination No. 16 of 2022\*](#).

<sup>28</sup> ASX Corporate Governance Council, *Principles and Recommendations 5th Edition Consultation Draft: Background paper and consultation questions* (2024), 10.

Recommendation 7.4 refers to a listed entity disclosing its material risks (including its material environmental, social and governance risks), and how it manages or intends to manage those risks.<sup>29</sup>

#### Background and considerations on ASX Recommendation 7.4

- While AFIA broadly supports making improvements to governance frameworks to promote better risk management practices and reporting, it should be noted that risk environments for large entities are complex, fast-evolving, and inherently fluid, and can often shift without warning, as can the responses and management approaches to those risks.<sup>30</sup>
- AFIA also notes that the responsibility of managing risk and responsibility for the development of risk management plans and frameworks can also span numerous areas of a single organisation, and can involve management which sits below the board, further complicating the task of disclosing concrete risk management plans at the board level.<sup>31</sup>
- In addition, risk environments require continuous monitoring and assessment, and as such, management plans may require frequent updates during periods of high-intensity risk adjustments.
- For such a recommendation to be workable, further clarification would also be required on the specific definition of 'material risks'.
- Disclosure against a specified list of risks would likely result in a tick-a-box approach to reporting and undermine the intent of promoting better risk management governance.

#### Corresponding ASX question

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?<sup>32</sup>

#### AFIA response and recommendation

- AFIA does not support recommendation 7.4 (a) or (b), considering the aforementioned elements of contemporary risk environments and the complexities involved in the development of risk management plans and strategies, coupled with the lack of definition around 'material risk'.
- AFIA recommends maintaining the status quo around risk disclosure and management as provided for under the 4<sup>th</sup> edition.

Recommendation 8.2 refers to a listed entity not giving performance-based remuneration or retirement benefits to non-executive directors.<sup>33</sup>

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<sup>29</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations Consultation Draft 5th Edition*, Recommendation 7.4, 45.

<sup>30</sup> Celia Huber & Olivia White, 'How can boards navigate the new complex risk environment?', *Boards, strategy and the new risk environment* (December 2020).

<sup>31</sup> EY, Sutherland, Sharon, Tonny Dekker and Kris Pederson, 'What If the Difference between Adversity and Advantage Is a Resilient Board?' (26 July 2023).

<sup>32</sup> ASX Corporate Governance Council, *Principles and Recommendations 5th Edition Consultation Draft: Background paper and consultation questions* (2024), 11

<sup>33</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations Consultation Draft 5th Edition*, Recommendation 7.4, 45.

## Background and considerations on ASX Recommendation 8.2

- AFIA notes that during periods of high market competition for non-executive directors, not being able to provide performance-based remuneration or other benefits could adversely affect competition dynamics between different entities and between listed entities and overseas competitors.<sup>34</sup>
- It is also commonly accepted that there is often 'a cost to paying less', particularly in relation to the costs associated with hiring, training, onboarding, and other initiating elements in cases where individuals choose to switch employers.<sup>35</sup>
- Research from the World Economic Forum in 2022 showed that the majority of countries in North America, Southeast Europe, Western Europe, Latin America, Central and Eastern Europe, the Middle East and Asia, and the Asia Pacific, are increasing their salaries in aggregate terms.<sup>36</sup>
- Performance-based remuneration should align the interests of non-executive directors with the listed entity's strategic priorities, longer term performance and growth ambitions, shareholder, employee and other stakeholder interests, and other relevant factors.

## AFIA response and recommendation

- AFIA would encourage consideration of the potential adverse effects on competition dynamics between different entities, along with the potential subsequent impacts on the ability of listed entities to attract and retain individuals employed at the non-executive director level.

Recommendation 8.3 refers to the establishment of clawback or other limitation provisions within remuneration structures, and asserts that listed entities should:

- (a) have remuneration structures which can clawback or otherwise limit performance-based remuneration outcomes of its senior executives after award, payment or vesting; and
- (b) disclose (on a de-identified basis) the use of those provisions during the reporting period.<sup>37</sup>

## Background and considerations on ASX Recommendation 8.3

- AFIA notes that under section 300A of the *Corporations Act 2001*,<sup>38</sup> listed companies must present a remuneration report to shareholders at every annual general meeting (AGM) showing the board's policies for determining the nature and amount of remuneration paid to key management personnel (including directors), the relationship between the policies and company performance, and actual remuneration paid to key management personnel.<sup>39</sup>
- The *Corporations Act 2001*<sup>40</sup> was amended from 1 July 2011 to provide for the 'two strikes' rule in relation to the remuneration report. At the AGM, shareholders must vote approval or otherwise of the remuneration report. The first strike is when a company's remuneration report receives a 'no' vote of 25 per cent or more. Should this occur, the company's subsequent remuneration report must explain if shareholders' concerns have

<sup>34</sup> Half, Robert, 'The High Cost of Low Salaries: Why Paying a Competitive Salary Is Important', *English* ([1 February 2023](#)).

<sup>35</sup> Indeed, 'What Is Competitive Pay?' ([viewed 5 May 2024](#)).

<sup>36</sup> Armstrong, Martin, 'Can You Expect a Raise in 2022?', *World Economic Forum* ([26 January 2022](#)).

<sup>37</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations Consultation Draft 5th Edition*, Recommendation 8.3, 51.

<sup>38</sup> *Corporations Act 2001* (Cth).

<sup>39</sup> AICD, 'Director Remuneration', ([Viewed 4 May 2024](#)).

<sup>40</sup> *Corporations Act 2001* (Cth).

been taken into account, and either how they have been taken into account or why they have not been taken into account.<sup>41</sup>

- The 'second strike' occurs where the company's subsequent remuneration report receives a 'no' vote of 25 per cent or more. Where this occurs, shareholders will vote at the same AGM to determine whether directors will need to stand for re-election within 90 days. If this resolution passes with 50 per cent or more of eligible votes, then the 'spill meeting' will take place within 90 days. At the spill meeting, those individuals who were directors when the report was considered at the most recent AGM will be required to stand for re-election.
- As stated by Treasury in 2012:

*[S]hareholders who are not satisfied with a company's claw-back policy can take action through the 'two-strikes' mechanism introduced by the Government last year.<sup>42</sup>*

### **AFIA response and recommendation**

- In considering the current legislative requirements on remuneration reports, including the subsequent amendments in 2011 in respect of the 'two strikes' rule, AFIA posits that not only are there already effective mechanisms in place to govern remuneration structures of listed companies, including from a shareholder and stakeholder perspective, but an avenue of redress already exists to clawback or otherwise limit performance-based remuneration outcomes.
- Shareholders are already entitled to vote at Annual General Meetings to express any concerns they might have regarding remuneration issues. Furthermore, broader stakeholders are also entitled to express their views in public fora in order to influence outcomes.
- With this being said, it would stand to reason that recommendation 8.3 (a) and (b), if implemented, would be unnecessarily duplicative in nature.
- AFIA recommends against implementing the proposed recommendations on incorporating clawback or other limitation provisions into the remuneration structures of listed entities under the updated 5<sup>th</sup> edition.

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<sup>41</sup> AICD, 'Director Remuneration', ([Viewed 4 May 2024](#)).

<sup>42</sup> Ministers, Treasury, 'Exposure Draft of the Corporations Legislation Amendment (Remuneration and Other Measures) Bill 2012 ([8 July 2019](#))'.