

27 July 2018



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By email

mavis.tan@asx.com.au

Dear Mavis and Council,

Thank you for the opportunity to comment on the proposed fourth edition of the ASX Corporate Governance Council Principles and Recommendations.

As a founding member of the ASX CGC, FINSIA is proud of its input into the design of the principles over the past decade and the contribution that the principles make to Australia's global standing in corporate governance.

FINSIA commends the work that the drafting committee and the council has completed to date to prepare the draft fourth edition for consultation. Our association has worked to raise awareness of the current consultation with our 8000 plus members across the financial services industry and encourage their feedback on the proposed changes.

Overall, the proposed draft ably addresses a number of new and emerging issues of importance to boards, executives and shareholders to raise standards of public reporting. FINSIA does however note the jump in the number of recommendations from 29 to 38 in this edition and the increasing length and detail of the supporting commentary. Many entities seek to fulfil their reporting obligations to the letter of the recommendations and the supporting commentary, and the proposed fourth edition may have the consequence of raising their obligations considerably.

In the submission below, FINSIA comments on proposed changes by exception.

Recommendation 1.5

FINSIA supports the recommendation that entities in the ASX 300 and above have a measurable objective to have not less than 30% of its directors of each gender within a specified period. It is noted that research supports gender diversity on boards leading to improved decision making, and that 30% representation is a tipping point to realise meaningful change.

Ideally, all listed entities would seek to attain similar levels of gender diversity on boards; however, FINSIA accepts the focus in the principles and recommendations on larger entities as these are more likely to also be covered by the Workplace Gender Equality Agency reporting obligations.

Redraft of Principle 3

The council's stated aim of this redraft — to help arrest loss of trust in business — is a noble one. By professionalising the financial services industry, FINSIA has a similar goal to

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restore consumer trust in banks and financial institutions, and is seeking to work with industry stakeholders to implement the following recommendations:

1. Establish professional standards of conduct and competence for the industry.
2. Require completion of professional qualifications at defined roles and levels of seniority.
3. Implement an annual certification process to provide a Statement of Professional Standing.

As the inquiries of the Financial Services Royal Commission progress it has become increasingly evident that boards and executive management in companies across the financial services sector have failed to instil cultures where ethical behaviour and duty to serve the best interests of customers are paramount. For this reason, FINSIA agrees that reforms to stem the erosion of trust are timely.

FINSIA also acknowledges the context of the recent Senate enquiries into whistleblowing and foreign bribery, and the impetus these provide for the ASX CGC to work to address gaps in accountability in management of listed entities across all industries.

Social licence to operate

FINSIA supports the principle that an entity's social licence to operate is demonstrated by its officers and employees acting in a lawful and ethical manner. The recommendations that entities disclose their core values (3.1), and that directors, senior executives and employees are bound by a code of conduct (3.2) are essential to support this principle.

However, FINSIA queries the reference to social responsibility in the proposed redraft of Principle 3. An entity, while acting lawfully and having ethical business practices, may not be perceived to be socially responsible having regard to the products and services it provides — for example, tobacco, processed food, or gaming. This exposes the subjective dimension of the principle as presently drafted, and undermines its meaningful application to entities across all industries.

The examples given in the overall commentary for Principle 3 are welcome, and relevant to listed entities if the wording of the principle is revised to refer only to entities acting in a lawful and ethical matter. It is worth noting, however, that living and minimum wages are different and that the standard of a living wage is higher than that required by law. The example as currently worded may pose hurdles for entities that otherwise comply with Australian law.

Finally, FINSIA cautions that the commentary for Principle 3 is at odds with the Corporations Act in requiring an entity to have regard to stakeholders beyond security holders. This raises concern about the additional obligations imposed on directors by the principles and recommendations. It is noted that the UK Corporate Governance Code primarily is directed to company obligations to shareholders. Where that instrument refers to wider obligations it simply makes reference to "contributing to wider society". FINSIA would support the adoption of similar wording in the Australian principles to make them less proscriptive and applicable to entities across all industries.

Recommendation 4.4

FINSIA appreciates the rationale behind this proposed new recommendation about the validation of non-financial reporting by a listed entity, and expects that entities should report accurate and balanced information consistent with acting in a lawful and ethical manner to security holders and the public. FINSIA recommends that the supporting commentary for

this principle provide greater flexibility for entities to provide a summary of the processes in place to validate this information.

Conclusion

FINSIA again commends the council on its work to date on the proposed draft of the fourth edition of the principles and recommendations, and looks forward to working with the council to finalise the new edition for release.

Should there be further queries relating to this submission, please contact Caroline Falshaw A Fin, Policy Consultant: c.falshaw@finsia.com.

With kind regards,

A handwritten signature in black ink, appearing to read 'Chris Whitehead', written in a cursive style.

Chris Whitehead F Fin
CEO and Managing Director, FINSIA