

20 July 2018

Via email: mavis.tan@asx.com.au

ASX Corporate Governance Council
c/o ASX Limited
PO Box H224
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Sydney Australia

**Submission - ASX Corporate Governance Council's Principles and Recommendations, 4th edition
Consultation draft**

CGI Glass Lewis Pty. Limited ("CGI Glass Lewis") appreciates the opportunity to comment on the 4th edition Consultation draft of the ASX Corporate Governance Council's (the "Council") Principles and Recommendations (the "Principles").

CGI Glass Lewis has been providing in-depth proxy research and analysis on ASX-listed companies from its Sydney headquarters since 1994, and is a subsidiary of Glass, Lewis & Co. ("Glass Lewis"), a leading independent governance services firm that provides proxy voting research and recommendations to a global client base of over 1,300 institutional investors that collectively manage more than US\$25 trillion in assets.

Clients use Glass Lewis (and CGI Glass Lewis) research to assist them with their proxy voting decisions and to engage with companies before and after shareholder meetings. Glass Lewis' web-based vote management system, Viewpoint, provides clients with the ability to reconcile and vote ballots according to custom voting guidelines and to audit, report and disclose their proxy votes. Glass Lewis is an independent wholly-owned subsidiary of the Ontario Teachers' Pension Plan ("OTPP") and Alberta Investment Management Corp. ("AIMCo").

We are generally supportive of the changes proposed and have therefore only provided commentary and recommendations where appropriate, as set out below.

Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully submitted,

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Proposed new Recommendations 3.1 (re. core values), 3.3 (re. whistleblower policy) & 3.4 (re. anti-bribery and corruption policy) and proposed amendment to existing recommendation 3.1 (re. code of conduct, to be renumbered 3.2)

We support these proposed new recommendations, especially in light of the growing interest in corporate culture and social license to operate, both domestically and overseas. For example, corporate culture has been a focus of ongoing The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and the recent Prudential Inquiry into the Commonwealth Bank of Australia conducted by the Australian Prudential Regulation Authority, the final report of which was published in April 2018.

CGI Glass Lewis has been researching the disclosure of “culture” for companies in the S&P/ASX 100 Index, both at a company and board-level, for an upcoming white paper. We have found the disclosure around corporate culture to be inconsistent, even at the big end of town. In light of our own research and market trends, we believe it is prudent for companies to disclose more information on key indicators of corporate culture. At a minimum, such disclosures would require companies to think through their policies and practices that could have a material impact on corporate culture.

We also believe how a company responds to breaches of these policies speaks volumes to the culture and quality of governance at that issuer. As such, we see value in the public disclosure of breaches and how the issuer remediated the breach¹. Further, we encourage the Council to provide more guidance to issuers around materiality under Recommendations 3.3 and 3.4.

Proposed new Recommendation 4.4 (re. corporate reporting)

We are supportive of the Council’s intention to expand the Principles’ emphasis from primarily financial reporting to broader “corporate reporting”. In light of this move, we would encourage the Council to include in the explanatory commentary a reference to emerging frameworks that take a broader view of corporate reporting, such as the Integrated Reporting <IR> Framework². In general, we have found that companies that use the <IR> Framework have corporate reporting that is clear, easy to follow and of high quality.³

Another area where the Council may wish to provide guidance is what constitutes “balanced” corporate reporting. Under Corporations Act, listed entities are required to disclose in the Directors’ Report information that shareholders would reasonably require to make an informed assessment of the entity’s operations; financial position; and business strategies and prospects for future financial years⁴. However, a discussion on prospects should be balanced by an assessment of the risks that could jeopardize those prospects. The Australian Securities and Investments Commission (“ASIC”) has also issued guidance that a company’s Operating and Financial Reviews (“OFR”) should describe the material business risks that could adversely affect the achievement of the financial performance or financial outcomes described in the OFR.⁵ Despite this guidance, we believe there is an underreporting

¹ A recent example of public disclosure and discussion on remediation of breaches is the “consequences management” disclosure in Macquarie Group Limited’s 2018 Remuneration Report.

² <http://integratedreporting.org/resource/international-ir-framework/>

³ A recent example of a high-quality annual report following the <IR> Framework is Lendlease Group’s 2017 Integrated Annual Report.

⁴ See Section 299A(1), Australian Corporations Act 2001: https://www.legislation.gov.au/Details/C2018C00031/Html/Volume_2#_Toc504660309

⁵ See ASIC Regulatory Guide 247: Effective disclosure in an operating and financial review: <https://download.asic.gov.au/media/1247147/rg247.pdf>

of risks among ASX-listed companies, including but not limited to environmental and social risks that could impact the company's future cash flows.

Proposed new Recommendation 6.4 (re. voting by poll)

We are strongly supportive of new recommendation 6.4 which would require S&P/ASX 300 entities to conduct poll voting for all resolutions put up for vote at securityholder meetings. CGI Glass Lewis strongly advocates the view that all ASX-listed companies should move away from voting on a show of hands towards the use of poll voting, which is a more accurate voting system due to its inclusion of: (i) votes cast by persons physically present at the meeting; (ii) any direct votes/proxies cast before the meeting; and (iii) online votes cast during the meeting. We believe poll voting is not burdensome to issuers given that votes are already tallied and that the benefits of poll voting outweigh the financial costs incurred by listed entities to conduct a poll vote.

Proposed new Recommendation 8.4 (re. consultancy agreements)

We believe the proposed recommendation will allow for a more informed assessment of the impact of related party transactions on a director's independence status. We encourage the Council to provide guidance as to what constitutes the material terms of any such related party transactions.

CGI Glass Lewis' approach to related party transactions between entities and directors has been to classify a director as affiliated when there has or had within the past three years a material business relationship between the director and the company. In our view, "material" typically means a relationship where the dollar value exceeds:

- (i) A\$60,000 for S&P/ASX200 companies (A\$30,000 for ex S&P/ASX 200 companies) (or where no amount is disclosed) for NEDs who personally receive remuneration for a service they have agreed to perform for the company, outside of their service as a NED, including professional or other services; or
- (ii) A\$200,000 for S&P/ASX 200 companies (A\$100,000 for ex S&P/ASX 200 companies) (or where no amount is disclosed) for NEDs employed by a professional services firm such as an accounting firm, consulting firm, law firm or investment bank where the firm is paid for services but not the individual directly.

Proposed amendment to existing Recommendation 1.5(re. gender diversity)

We are supportive of the proposal to introduce a measurable objective of at least 30% of directors of each gender on a board within a specified period. This proposed recommendation should be taken in the context of recent efforts in the Australian market. In 2015, the Australian Council of Superannuation Investors ("ACSI") announced an initiative to aim for women to comprise 30% of all S&P/ASX 200 boards by 2017, and indicated that would advise its member funds to vote against male directors up for election where there are no female board members⁶. We believe that this, coupled with the advocacy done by the Australian branch of the "30 percent club" and the Australian Institute of Company Directors ("AICD"), has set a precedent within the Australian market with regards to the accepted target for diversity. According to statistics gathered by the AICD, 27.9% of directors at S&P/ASX 200 company boards are female as at 30 June 2018, up from 8.3% in 2009, and there are only five boards in the S&P/ASX 200 that do not have any female directors⁷. Notwithstanding the considerable progress that has been made in the past decade, we believe the proposed amendment

⁶ http://www.acsi.org.au/images/stories/ACSIDocuments/MediaReleases/05.02.15.Media_Release.WoB_Policy.pdf

⁷ <http://aicd.companydirectors.com.au/advocacy/board-diversity/statistics>

to Recommendation 1.5 will serve to bolster efforts to further promote gender diversity at board level, which we believe will contribute to companies' future prosperity.

We note that our parent entity, Glass Lewis, has changed its voting policy regarding the absence of female board members for companies in the United States, Canada and Japan. Beginning in 2019, Glass Lewis will generally recommend voting against the nominating committee chair of a board that has no female members for the United States⁸ and Canadian⁹ markets. For constituents comprising the TOPIX Core 30 and TOPIX Large 70 in Japan, Glass Lewis will generally recommend voting against the chair of the company (or most senior executive in the absence of a company chair) under the two-tier board or one-tier with one committee structure or the nominating committee chair under a one-tier with three committees structure of a board that has no female members¹⁰.

Up to this point, CGI Glass Lewis' policy in Australia has been to consider recommending a vote against the chair of the nomination committee or the board chair if a board has a poor record on the issue of board diversity, but we are reviewing our policy in advance of the 2018 AGM season with a view to aligning our approach to other markets.

⁸ http://www.glasslewis.com/wp-content/uploads/2018/01/2018_Guidelines_UNITED_STATES.pdf

⁹ http://www.glasslewis.com/wp-content/uploads/2017/11/Canada_2018_Guidelines.pdf

¹⁰ <http://www.glasslewis.com/wp-content/uploads/2017/12/2018-Guidelines-JAPAN.pdf>