

ASX Corporate Governance Council
c/o ASX Limited
PO Box H224
Australia Square NSW 1215

27 July 2018

Attention: Mavis Tan

Dear Ms Tan,

***Review of the ASX Corporate Governance Council's Principles and Recommendations:
Diversity and Inclusion***

Greenwoods & Herbert Smith Freehills (**G&HSF**) welcomes the opportunity to provide comments, as part of the consultation process for the proposed fourth edition (**Consultation Paper**) of the ASX's Corporate Governance Principles and Recommendations (**Principles and Recommendations**).

G&HSF is Australia's largest specialist tax advisory firm, with offices in Sydney, Melbourne and Perth. We advise dozens of ASX-listed companies, including many of the largest, and other Australian businesses, as well as foreign investors and international financiers with interests in Australia. Earlier this year, the internationally recognised *Best Lawyers* organisation named G&HSF as Australia's best tax law firm.

We only wish to comment on one aspect of the Principles and Recommendations, being the topic of diversity and inclusion.

In summary, we strongly urge the ASX Corporate Governance Council to:

- *expand existing Recommendation 1.5 to explicitly include all forms of diversity, and not just gender; and*
- *recommend that listed entities have a diversity **and inclusion** policy, and not just a diversity policy.*

Earlier this year, I undertook the Australian Institute of Company Directors (**AICD**) flagship Company Director Course (**CDC**). During the CDC, the AICD emphasised the importance of the ASX's influential Principles and Recommendations – not just for listed entities, but for their flow-on effect throughout the Australian business world and other sectors including not-for-profits and Government entities.

Knowing the importance and stature of the Principles and Recommendations, I was surprised to see that the current Recommendation 1.5 on diversity only specifically addresses *gender* diversity, and not other forms of diversity, and that there is no reference to *inclusion*. I was even more surprised to see that remedying these omissions does not appear to be within the scope of the proposed fourth edition of the Principles and Recommendations, having regard to the contents of the Consultation Paper.

It is acknowledged that the existing commentary to Recommendation 1.5, including Box 1.5 which has "suggestions" for the content of an entity's diversity policy, does refer to other forms of diversity. However, with respect, this is far from adequate. The text of the

Recommendations, including Recommendation 1.5 set out what listed entities “should” do. The commentary provides additional background and suggestions as to what a listed entity “could” do. There is considerable difference, in practice, between the Recommendations themselves and the commentary, including in how they are referenced and used by other parties. For example, in the CDC materials (the “bible” for new company directors), the AICD only reproduces the Recommendations themselves, and not the commentary. This really highlights to new company directors the ASX’s apparent priority/focus on gender issues, over other forms of diversity.

Further, the great bulk of the commentary to Recommendation 1.5 relates to gender diversity, rather than other forms of diversity. The brief reference to other forms of diversity at the end of the commentary, after the extensive discussion on gender diversity appears, in context, to be almost an after-thought.

Cultural, ethnic and other forms of diversity

Although it is remarkable that no other forms of diversity apart from gender (which is clearly important) are specifically mentioned in Recommendation 1.5, it is particularly surprising that there is no reference to cultural diversity. As the Australian Human Rights Commission’s April 2018 *Leading for Change: A blueprint for cultural diversity and inclusive leadership revisited (AHRC Report)*¹ points out:

Australia is widely celebrated as a multicultural triumph, but any such success remains incomplete. There remains significant under-representation of cultural diversity in the senior leadership of Australian organisations. Our society does not yet appear to be making the most of its diverse talents.

The AHRC Report notes that its study examined the cultural backgrounds of chief executive officers of ASX 200 companies, federal ministers, heads of federal and state government departments, and vice-chancellors of universities. It also examined the cultural backgrounds of senior management at the level directly below chief executives and equivalent including group executives of ASX 200 companies. About 95 per cent of senior leaders in Australia have an Anglo-Celtic or European background. Although those who have non-European and Indigenous backgrounds make up an estimated 24 per cent of the Australian population, such backgrounds account for only 5 per cent of senior leaders.

The absence of cultural diversity from the ASX’s Recommendations is particularly stark when the results of research are considered.

As the AHRC Report notes, McKinsey & Company has recently found that companies with the most ethnically diverse executive teams (in both absolute representation and also in ethnic mix) are 33 per cent more likely to outperform their peers on profitability. In addition, there is a penalty for not being ethnically diverse: those in the fourth quartile of ethnic diversity for their executive teams are 29 per cent more likely to underperform their peers on profitability.

McKinsey’s findings indicate that the correlation between ethnic diversity and profitability may be even higher than that between gender diversity and profitability. The top quartile of companies for gender diversity on their executive teams were only 21 per cent more likely to experience above-average profitability (compared with 33 per cent for the top quartile of ethnically diverse executive teams).

Why does the ASX have detailed guidelines in the existing Recommendation 1.5 itself (which will become even more detailed/prescriptive if the proposals in the Consultation Paper are adopted) on what listed entities should do about gender diversity, but say nothing about actions which should be taken as regards cultural and other forms of diversity?

¹ <https://www.humanrights.gov.au/our-work/race-discrimination/publications/leading-change-blueprint-cultural-diversity-and-inclusiv-0> at page 3.

Inclusion

As noted further below, international best practice, and the practice generally adopted by ASX companies and other entities, is for an organisation to have a diversity **and inclusion** policy, and not just a diversity policy.

There is an overwhelming body of research to the effect that without inclusive leadership, diversity of itself (and in any form) may not yield benefits for organisations, or individuals.

Some companies, including BHP, regard inclusion as so important that they have *Inclusion and Diversity* policies, rather than Diversity and Inclusion policies.

As BHP notes at section 1.9.2 of its 2017 Annual Report, under the heading Inclusion and Diversity:

At BHP, we believe all employees should have the opportunity to fulfil their potential and thrive in an inclusive and diverse workplace. We employ, develop and promote based on merit and we do not tolerate any form of unlawful discrimination, bullying or harassment. Our systems, processes and practices support fair treatment.

International best practice

The *Global Diversity & Inclusion Benchmarks (Benchmarks)*, published and updated from time to time by The Centre for Global Inclusion are widely regarded as the leading international and gold standard in the area of diversity and inclusion. The Benchmarks emphasise the importance of inclusion as well as diversity, and do not seek to “prioritise” gender diversity over other types of diversity.

The current edition² of the Benchmarks contain these definitions:

Diversity refers to the variety of similarities and differences among people, including but not limited to: gender, gender identity, ethnicity, race, native or indigenous origin, age, generation, sexual orientation, culture, religion, belief system, marital status, parental status, socio-economic difference, appearance, language and accent, disability, mental health, education, geography, nationality, work style, work experience, job role and function, thinking style, and personality type. Inclusion of various diversity dimensions may vary by geography or organization.

Inclusion is a dynamic state of operating in which diversity is leveraged to create a fair, healthy, and high-performing organization or community. An inclusive environment ensures equitable access to resources and opportunities for all. It also enables individuals and groups to feel safe, respected, engaged, motivated, and valued, for who they are and for their contributions toward organizational and societal goals.

Our approach at G&HSF

In our firm, we are strongly and proudly committed to diversity (*in all its forms*) and inclusion. As our D&I policy states³:

To accomplish our vision, we rely on a diverse team of professionals who will resonate with the needs of our client base and have the capability to drive innovation in the Firm.

To this end we commit to cultivating a diverse and inclusive workplace and to position our Firm as an employer of choice with the ability to attract and retain the best talent. This will enable us to deliver the highest level of service to our clients.

We define diversity as follows:

² <http://centreforglobalinclusion.org/> at page 1.

³ <http://www.greenwoods.com.au/media/1835/greenwoods-diversity-and-inclusion-policy.pdf>

Diversity refers to the variety of our people and thinking. Diversity of our people includes gender, ethnicity, sexual orientation, disability, age and generation, religion and belief, national cultures, socioeconomic background, family and marital and civil partnership status. Diversity of thinking refers to the differing knowledge, perspectives and investigative techniques contributed by each individual.

A great opportunity for the ASX to show leadership!

The AHRC Report notes the vital importance of leadership, in helping to overcome the clear lack of cultural diversity in senior roles in Australian business. As that Report notes⁴:

The profile of cultural diversity as an organisational issue has grown over the past two years. But more is needed from those in leadership positions to set the right example.

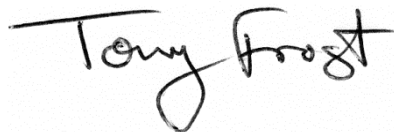
For chief executives and other senior leaders, taking opportunities to speak about cultural diversity help to signal to others a commitment to the issue.

The proposed update to the highly influential Principles and Recommendations provides an excellent opportunity for the ASX to lead the way: to make it clear, beyond any doubt, that diversity extends beyond gender. The best way to do this is to specifically reference *all* forms of diversity (and inclusion) in the updated Recommendation 1.5 itself, and not just in the commentary.

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Please do not hesitate to contact the writer if you would like to discuss any aspect of this submission.

Yours sincerely,



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The Hon Malcolm Turnbull MP, Prime Minister
The Hon Scott Morrison MP, Treasurer
The Hon Kelly O'Dwyer, Minister for Women, Minister for Revenue and Financial Services; and Minister Assisting the Prime Minister for the Public Service
Dr Tim Soutphommasane, Race Discrimination Commissioner, Australian Human Rights Commission

⁴ <https://www.humanrights.gov.au/our-work/race-discrimination/publications/leading-change-blueprint-cultural-diversity-and-inclusiv-0> at page 16.