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Review of the ASX Corporate Governance Council's Consultation on the Fourth Edition of the Corporate Governance Principles and Recommendations

Submission by the Responsible Investment Association Australasia

The Responsible Investment Association Australasia (RIAA) welcomes the opportunity to make a submission to the ASX Corporate Governance Council (the Council) on its update to the Corporate Governance Principles and Recommendations (Principles and Recommendations).

About RIAA and our members

RIAA is the industry body representing responsible, ethical and impact investors across Australia and New Zealand. RIAA has over 220 members who manage more than \$9 trillion AUM globally. Our membership comprises superannuation funds, asset consultants, fund managers, financial advisers, dealer groups, banks, researchers and analysts, impact investors, venture capital investors, property managers, infrastructure investors and others involved in the finance industry, across the full value chain of institutional to retail investors.

RIAA works to shift more capital into sustainable assets and enterprises, and shape responsible financial markets to underpin strong investment returns and a healthier economy, society and environment.

Our members are primarily long-term investors who require a complete and strategic view of companies including their approach to and management of environmental, social and governance (ESG) risks and opportunities. This ESG information is needed about the construct and operation of the board and management, how culture is set in an organisation, how employees are incentivised for what outputs, and how an organisation deals with suppliers, regulators, customers and other stakeholders. Many of the recommended revisions to the Principles and Recommendations, as well as commentary if adopted, would help to provide this information for investors.

Overall feedback

Overall, RIAA commends the sentiment and direction taken by the Council in its Review published on May 2, 2018 and encourages the Council to fully consider the opportunity of providing clarity around independent verification over extra-financial data and endorsing the TCFD framework by recommending its use in the Principles and Recommendations.

In this submission, RIAA seeks to amplify those areas of value to investors and address the areas where further amendments should be considered to continue to reflect local and international expectations around corporate governance and promote high standards of transparency about the corporate governance practices of ASX listed entities.

This submission only includes those areas of interest and concern to RIAA's strategic agenda being: 1.1, 1.5, 1.6, 2.2, 2.6, 3.3, 3.4, 6.2, and 7.4. RIAA strongly supports the revision of Principles 3 and 4. Whilst we see these issues also as important, RIAA does not have expertise to comment on: Recommendation 1.7, 6.3 and Principles 5 and 8.

Principle 1 - Lay solid foundations for management oversight

Recommendation 1.1 (role of board and management)

Requiring a listed entity to have and disclose a board charter, plus amendments to the commentary:

- to add to the list of usual responsibilities of the board:
 - defining the entity's purpose;
 - approving the entity's statement of core values and code of conduct to underpin the desired culture within the entity;
 - overseeing management in its implementation of the entity's business model, achievement of the entity's strategic objectives, instilling of the entity's values and performance generally; and
 - ensuring that the entity's remuneration framework is aligned with the entity's purpose, values, strategic objectives and risk appetite;
- to clarify that the information provided to the board by the senior executive team should not be limited to information about the financial performance of the entity, but also its compliance with material legal and regulatory requirements and any material misconduct that is inconsistent with the values or code of conduct of the entity;
- to provide additional guidance on the role and responsibilities of the chair;

Comment: RIAA supports the amendments to Recommendation 1.1, and it is in line with movements from French (Corporate Governance Code) and New Zealand (Code for Professional Conduct for Financial Advice Services) law and regulation makers.

Recommendation 1.5 (diversity)

To achieve better gender diversity outcomes, including a new provision recommending that an entity in the S&P/ASX 300 have as a measurable objective at least 30% of directors of each gender on its board within a specified period. To achieve better diversity outcomes, including for gender, an entity in the S&P/ASX 300 have as a measurable objective for board diversity such as at least 30% of directors of each gender on its board within a specified period.

Comment: RIAA supports this addition making it clear that a listed entity's measurable gender diversity objectives should be targeted at achieving gender diversity in the composition of the entity's senior executive team and workforce generally, as well as in the composition of the board.

Furthermore, we support the guidance provided in the commentary that boards of listed entities should consider board diversity beyond gender, to also encourage diversity of skills, qualifications, age and ethnicity. We believe that representation of diverse skills, experience and qualifications will deliver well-rounded and better-informed decision-making.

Recommendation 1.6 (board reviews)

To state that an entity should have and disclose a process for evaluating the performance of the board, its committees and individual directors “each reporting period” (i.e. annually)

Comment: RIAA welcomes this amendment bringing the Principles and Recommendations in line with international leading practice by the French (French Corporate Governance Code of Listed Companies, June 2018) and the UK (UK Corporate Governance Code, July 2018) this year. Both these new requirements require evaluations to be carried out regarding the board’s performance and provides investors and other key stakeholders with a deeper level of confidence in the suitability, quality and effectiveness of board representatives and their decisions.

Principle 2 – Structure the board to add value

Recommendation 2.2 (board skills matrix)

Amendments to the commentary on recommendation 2.2 (board skills matrix):

- giving greater guidance on what should be included in a board skills matrix;
- noting that boards are increasingly being called upon to address new or emerging issues including around culture, conduct risk, digital disruption, cyber-security, sustainability and climate change and suggesting that the board regularly review its skills matrix to make sure it covers the skills needed to address existing and emerging business and governance issues;
- suggesting possible formats for presenting the board skills matrix; and
- stating that an entity should explain what it means by each skill referenced in its board skills matrix.

Comment: RIAA supports each of these proposed amendments especially given the ever-increasing focus on boards to have to address emerging and materially strategic issues to financial stability, such as climate change – both physical and policy impacts.

Recommendation 2.6 (director induction and professional development)

So that it now reads: “[a] listed entity should have a program for inducting new directors and for periodically reviewing whether there is a need for existing directors to undertake professional development to maintain the skills and knowledge needed to perform their role as directors effectively”.

Comment: If the Council adopts its own recommendations for updating the guidelines to require entities (boards and management) to act lawfully, ethically and in a socially responsible manner, then this should be explicitly added to the induction and professional development aspect under recommendation 2.6.

“...to main the skills and knowledge needed to perform their role as directors effectively and in a lawful, ethical and socially responsible manner.”

Principle 3 – Instil the desired culture

The primary change to the principles on which the Council is consulting is a substantial redraft of principle 3, currently worded in its abbreviated form as “act ethically and responsibly” and in its longer form as “[a] listed entity should act ethically and responsibly”. This is proposed to be reworded as “instil the desired culture” and “[a] listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and in a socially responsible manner” respectively.

Comment: RIAA strongly supports this strengthened focus on corporate culture in Principle 3 being core to business value; the value in this is evidenced in the current hearings broadcast as part of the Royal Commission into misconduct in the financial sector.

RIAA’s own working groups, including the Corporate Engagement Working Group and the Human Rights Working Group convene members around leadership, culture and systems concerns related to listed entities. From systems to identify and manage modern slavery, to cultures that celebrate whistleblowing and leadership attitudes to anti-bribery and corruption, these topics have increasingly occupied working group agendas and matter to investors as proxies for overall quality of management of listed entities.

Comment: This item could be strengthened by attaching the more appropriate noun to the activity and outcomes sought. The entity cannot act ethically and responsibly, rather people do this and if the Council aims to have this revision of the Principles and Recommendations to improve accountability then a clear delegation must be given for this task. Accordingly, the Council should consider wording that places **Board/management** as the responsible for this activity so that it may read

“the board/management of a listed entity should install a desired culture and have formal systems in place (including the use of incentives) to reinforce a culture across the organisation of acting lawfully, ethically, in a socially-responsible manner and in the best interests of the business’s stakeholders.

Recommendation 3.3: (whistle-blower policy)

A listed entity should:

- have and disclose a whistle-blower policy that encourages employees to come forward with concerns that the entity is not acting lawfully, ethically or in a socially responsible manner and provides suitable protections if they do; and
- ensure that the board is informed of any material concerns raised under that policy that call into question the culture of the organisation.

Comment: RIAA welcomes this recommendation and suggests the addition of this text “... policy and mechanisms that encourages employees”. The additional text stresses the requirement that policies have the appropriate systems in place to underpin performance-tracking and reporting.

Recommendation 3.4: (anti-bribery and corruption policy)

A listed entity should:

- have and disclose an anti-bribery and corruption policy; and
- ensure that the board is informed of any material breaches of that policy.

Comment: RIAA welcomes this recommendation and suggests the addition of this text “... Policy and system”. The additional text stresses the requirement that policies have the appropriate systems in place to underpin performance-tracking and reporting.

Principle 4 – Safeguard integrity in corporate reporting

Proposed change “produce corporate reports of high quality and integrity” and an addition to the commentary acknowledging that for investors to make informed investment decisions, a listed entity needs to provide corporate reports of high quality and integrity and those reports should give the reader a reasonable understanding of the entity’s business model, strategy, risks and opportunities, remuneration policies and practices and governance framework, as well as its financial performance.

Comment: RIAA strongly supports this recommended amendment to Principle 4 particularly the proposed changes in **Recommendation 4.4** seeking to broaden the scope to cover aspects of annual reporting and other corporate reports not subject to external assurance. By subjecting these other areas of investor and public reporting to appropriate processes, it maximises the likelihood of data being reliable, accurate and relevant – key for sound investor decision-making.

Comment: Nonetheless Principle 4 could be made stronger by requiring listed entities to submit extra-financial data (such as those concerning the entity that a reasonable person would expect to have a material effect on price or value of its securities, i.e. lost time injury, carbon pricing exposures and other ESG aspects) to independent assurance, as it currently does for historic financial data.

Principle 6 – Respect the rights of security holders

RIAA welcomes the acknowledgement that the provision of high quality corporate reporting and continuous disclosure are important for security holders to be able to exercise their rights as owners effectively. Broadly RIAA regards respecting the rights of securities holders and the measures of achieving this important; for example, the ability for security holders to ask questions at AGMs, and the ability for them to put resolutions to an AGM. We see these aspects as preserving security holder rights and strengthening stewardship efficacy, which is essential for sustainable, long-term focussed companies, stable markets and a prosperous economy more broadly.

Recommendation 6.2 (investor relations program)

So that it now reads “[a] listed entity should have an investors relations program that facilitates effective two-way communication with investors”.

Comment: As noted at the beginning of this submission, RIAA’s members include actors across the full investment value-chain. Accordingly, RIAA has a strong interest in this proposed recommendation for the improved function it may deliver especially for retail investors. RIAA is witnessing a swift rise in the number of Self-Managed Super Funds, listing of Exchange Traded Funds and advent of fin-tech platforms and solutions meaning retail investors are investing directly rather than through intermediaries. Accordingly, this proposed guidance for listed entities to have an investor relations program should go some way to providing better access to investor information for all types of shareholders.

Principle 7 – Recognise and manage risk

Recommendation 7.4 (sustainability disclosures)

A listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks.

Comment: Improved company disclosure of environmental and social risks enables investors to make better informed decisions risk exposure and opportunities in their investment portfolios, and therefore execute their fiduciary duty to act in the best interests of clients and beneficiaries.

RIAA calls out ACSI’s research on corporate sustainability reporting in Australia from 2017 which identifies climate-related disclosures lagging general sustainability reporting. Given the significance of climate-related impacts – physical, policy or otherwise – to the stability of the economy and markets, RIAA fully supports the Senate Economics Reference Committee report on Climate Risk Disclosure urging that listed entities with material exposure to climate change risk implement the recommendations of the Financial Stability Board’s TCFD.

RIAA recommends that the Council endorses the TCFD framework and encourages its use through the Principles and Recommendations. This would also bring the ASX in step with the NZX and other stock exchanges that have moved to specifically call out the TCFD as a new standard to guide climate risk (including transition risk) disclosures.

Comment: To imbue the full remit of fiduciaries and to be complete and accurate, this recommendation should include “opportunities” as well as “risks”.

Conclusion:

RIAA continues to strongly support the work of the ASX and commends its effort to regularly revise and update its Principles and Recommendations ensuring they in turn remain abreast with evolving norms and expectations surround corporate governance. This is key to retaining trust in how listed entities operate and enabling investors to make informed decisions regarding the risk and opportunities of certain investments for themselves or their respective clients.

RIAA has also provided comment to 2016 review of the NZ Stock Exchange Corporate Governance Reporting Requirements as well as the Guidelines supporting these published in 2017.

We welcome the advent of the fourth edition of the Principles and Recommendations by the Council and look forward to continuing to work alongside this organisation over the coming years.



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