

8 May 2024

ASX Corporate Governance Council
 C/- ASX Limited
 PO Box H224
 Australian Square NSW 12125
 Email: ASXCorporate.GovernanceCouncil@asx.com.au



**VIC and
National Office**

L22, 130 Lonsdale St
Melbourne 3000



PO Box 24231
MELBOURNE VIC 3001

Proposed fifth edition of the ASX Corporate Governance Principles and Recommendations

Cbus welcomes the proposed fifth edition of the Principles and Recommendations and commend the Council's efforts to reflect in the evolution of sound corporate governance practices.

Background

Cbus is one of Australia's largest super funds, providing superannuation and income stream accounts to approximately 910,000 members and managing over \$90 billion of our members' money (as of 31 January 2024).

As stewards of our members' superannuation savings, one of the Trustee's fundamental beliefs is that responsible investment reduces risk over time and can improve long term returns. The Trustee believes it has an obligation to identify, monitor and manage environmental, social and governance matters that could materially, or be highly likely to affect, business or investment performance which is in our members' best financial interest. Responsible investment is one of the fundamental investment beliefs the Trustee considers necessary to deliver long term value creation for beneficiaries. The Trustee believes that responsible investment practices are consistent with its long-term return objectives and in accordance with acting in the best financial interests of the Fund's members under its fiduciary duties and the sole purpose test.

Submission overview

Our key recommendations for further enhancements to the principles and recommendations, so that they better meet the needs of investors, are detailed in the following sections are as follows:

1. Strengthening the focus on human, community, and labour rights as board oversight responsibilities and also to bring more prominence to the United Nations Guiding Principles on Business and Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples.
2. Elevating the need for engagement between an entity and its stakeholders as well as in response to significant votes against.

ACT

2 Badham St
Dickson 2602

NSW

L25, 44 Market St
Sydney 2000

NT

1/29 Daly St
Darwin 0800

QLD

L3A, 300 Adelaide St
Brisbane 4000

NORTH QLD

Unit 2,
31 Thuringowa Dr
Kirwan 4817

SA

Ground Floor,
50 Flinders St
Adelaide 5000

TAS

PO Box 2001
North Hobart 7002

WA

L 1, 82 Royal St
East Perth 6004

Detailed Feedback

We believe the proposed additions and amendments strengthen the Principles and Recommendations and address a range of contemporary governance concerns that we are broadly supportive of. However, we note that in our feedback to the fourth edition review, in 2018, we encouraged the Council to consider the evolution and improvement of social risk disclosures and metrics. We suggested the consideration of global supply chains, and how companies are managing workers, together with the disclosures that could enable us to understand the impact that our investments have on the broader economy, environment, and society in which our members work and retire. We consider there is opportunity for these aspects to be more strongly accounted for in the latest revision.

Please find the following comments in relation to the specific areas we believe would benefit from further enhancement.

Principle 3: Instil a culture of acting lawfully, ethically and responsibly

Cbus supports the proposed changes to include references to external stakeholders and the link to sustainable long-term value creation in Principle 3, and to allow companies flexibility in deciding how to engage with key stakeholders. We recognise that companies rely on a broad range of stakeholders – shareholders, employees, customers, Aboriginal and Torres Strait Islander peoples, local communities, suppliers, and governments – to be successful and to contribute to positive social and economic development. This is why we believe it is also important that an entity have a process to meaningfully engage with its key stakeholders and to report material issues from this engagement to the board¹.

- Recommendation 3.2 and human rights

We believe the inclusion of Human Rights in this text is consistent with this Principle. It captures a range of important issues for investors that have the potential to expose a company to material reputational damage and regulatory impacts. It is also a topic that provides further insight into an organisation's culture and we would welcome the disclosure of instances of material human rights breaches and the company's response which could expose the company to regulatory and/or reputation damage.

Whilst we appreciate the desire for confidentiality in certain circumstances, we also note that several companies, including BHP² in relation to sexual harassment and Macquarie's consequence management and policies³ are already providing disclosures that would support investor understanding of how codes of conduct are being implemented, rather than seeking to identify particular breaches.

Box 3.2 – Suggestions for content of a code of conduct that could strengthen this guidance include recognition of a company's responsibilities towards the UN Guiding Principles on Business and Human Rights and the reporting of incidents of modern slavery in the supply chain. We believe this is consistent with other suggestions here.

- Recommendation 3.3 and human rights

We welcome the reference to an entity's key stakeholders. However, we encourage the Council to give more prominence here to the United Nations Declaration on the Rights of Indigenous Peoples, and the concept of free prior and informed consent, to strengthen the consideration of Aboriginal and Torres Strait Islander people as key stakeholders in an Australian context.

Cbus also supports the commentary under Recommendation 3.3 that a board's activities include overseeing due diligence on the entity's stakeholder relations, including human rights impacts.

¹ OECD Guidance [Extractive Sector Stakeholder Engagement](#) April 2015

² BHP sexual harassment reporting includes the number of cases that were identified and investigated, the manner of these cases in addition to how they were resolved. This disclosure can be found on page 41 of the [2023 Annual Report](#).

³ Macquarie Group discloses their consequence management policies in addition to how these policies have been enacted to respond to breaches of their Code of Conduct on page 117 of their [2023 Annual Report](#).

However, we believe there is value in extending this to reflect a broader range of stakeholders – namely - human, community, and labour rights for the avoidance of doubt and to add weight to this activity.

In addition, we encourage the Council to strengthen the Commentary under Recommendation 3.3. by including reference that the board activities also include information on fatalities and injuries in addition to other systemic workplace incidents or customer complaints. This aligns to investor expectations of board oversight of health and safety issues together with our members' expectation on these key issues.

- Recommendation 3.4 – we welcome the additional narrative and would also encourage including text that companies have measurable objectives for achieving and disclosing progress on gender pay gap data as a key indicator of diversity, equity, and inclusion. This could be achieved in Box 3.4. stating that companies commit to designing and disclosing equitable gender pay arrangements.

Principle 6: Respect the rights of security holders.

Cbus welcomes the additional commentary under Recommendation 6.2 that an entity should consider engagement with investors, and the disclosure of subsequent actions, to understand and respond to instances where a significant number of votes are cast against a resolution. For the avoidance of doubt, a significant vote could be specified, as per the experience in comparable jurisdictions (i.e. as 20% or more votes cast against⁴).

We believe there is value in recognising that engagement is a year around and multi-year communication between an entity and its investors, and not just at the AGM. This allows sufficient time for an entity to fairly consider the feedback before decisions are finalised for or at the AGM.

Furthermore, Cbus encourages the Council to consider listing the various stakeholders in this section that have been removed in the latest draft revisions so that it is clear and consistent with other sections. A company's ongoing engagement with its broader stakeholders including its employees, customers, Aboriginal and Torres Strait Islander peoples, local communities, suppliers, and governments is also critical to the ongoing success of the entity. The removal of listing these stakeholders we believe diminishes the important voice that key groups such as employees and communities can bring.

We are pleased that the commentary under Recommendation 6.3 states that hybrid meetings must permit security holders to attend and vote in person, or online, and permit security holders to submit questions online before or during the meeting – this is vital to protect shareholder rights.

As a final note, Cbus also encourages the ongoing evolution and improvement of disclosure in relation to social risks and metrics - in particular, companies' labour relations across their global supply chains; and that enable investors to understand the impact that our investments have on the broader economy, environment and the society in which our members work and retire.

We have also provided input into ACSI's submission and endorse its submission.

⁴ [GC100 Directors remuneration reporting guidance 2016 \(deloitte.com\)](https://www.deloitte.com/au/insights/industry/corporate-governance/gc100-directors-remuneration-reporting-guidance-2016)