



ASX Corporate Governance Council Principles & Recommendations fifth Edition Consultation Draft

KPMG submission

KPMG Australia, May 2024
[KPMG.com.au](https://www.kpmg.com.au)

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Executive summary

“The proposed changes will lead to greater transparency and thus, a higher level of trust in corporations. In addition the changes are aligned with the goal of reducing compliance costs, increasing productivity, and promoting transparency and diversity in corporate governance.”

As a leading professional services firm, KPMG Australia (KPMG) is committed to meeting the requirements of all our stakeholders – not only the organisations we audit and advise, but also employees, governments, regulators – and the wider community.

KPMG welcomes the opportunity to respond to the ASX Corporate Governance Council’s Consultation Draft for the fifth edition of its Corporate Governance Principles and Recommendations. We welcome the Consultation Draft’s strong focus on evolving investor and community expectations in relation to corporate conduct, culture, risk management, stakeholder relationships, reporting, and remuneration.

At KPMG, we have been on our own journey to enhance our governance, accountability and culture as well as enhancing our transparency. We are proud of our achievements which are disclosed annually in our Impact Plan and much like the Consultation Draft we look forward to building on these for the benefit of our clients, our people and the community.

Overall, KPMG considers the changes set out in the Consultation Draft as valuable in driving contemporary best practice governance aligned to the dynamic nature of the environment in which Australian listed entities operate within. The proposed changes will lead to greater transparency and thus, a higher level of trust in corporations. In addition, the changes are aligned with the goal of reducing compliance costs, increasing productivity, and promoting transparency and diversity in corporate governance.

The proposed edition's most significant changes are to Principle 3 (instil a culture of acting lawfully, ethically and responsibly), echoing the focus globally on environmental, societal and governance considerations. The amendments proposed for this Principle are however, not entirely supported due primarily to the need for more clarity in the wording of the Principle and the underlying commentary.

Overall, KPMG strongly supports the measures that reduce compliance costs and increase productivity. The removal of duplicative reporting requirements is sensible and ensures consistency with statutory requirements.

KPMG’s submission notes the firm’s strong support for gender equality on boards and supports a gender-balanced board within a specified period. It also advocates for considering cultural diversity to achieve true diversity of thought in the boardroom and decision making which considers key stakeholders. KPMG also supports disclosing the effectiveness of diversity and inclusion practices.

KPMG also supports the current code of conduct reporting requirements although argues against additional whole of workforce reporting requirements that may increase costs with little overall benefit.

KPMG supports disclosing auditor tenure in annual financial reports and recommends clarifying the definition of auditor tenure and providing transparency on how the tenure duration is determined.

We would be pleased to discuss our comments with the ASX Council at any time and look forward to working with our clients on this important matter.

Yours sincerely,

Martin Sheppard

National Chairman,

KPMG Australia

Caron Sugars

Partner, Governance, Risk &
Compliance,

KPMG Australia

Background

About KPMG

KPMG is a global organisation of independent professional firms, providing a full range of services to organisations across a wide range of industries, governments and not-for-profit sectors. We operate in 146 countries and territories and have more than 227,000 people working in member firms around the world. In Australia, KPMG has a long tradition of professionalism and integrity combined with our dynamic approach to advising clients in a digital-driven world.

KPMG research in partnership with the ASX

In 2022, KPMG Australia undertook comprehensive research, on behalf of the ASX, based on publicly available reporting across a large sample of ASX listed entities as to their adoption of the ASX's Corporate Governance Council's amended fourth edition Corporate Governance Principles and Recommendations (fourth edition)¹.

The reports were based on examining public disclosures of approximately 600 ASX-listed companies covering the top 200; the next tier 201-500; and those below the top 500. They follow two similarly commissioned studies done by KPMG in 2016 on adoption of the third edition of the Principles and Recommendations in 2015.

The commentary in this document has taken into account learnings from this research as well as our experience and observations from working with organisations of all sizes and complexity within Australia. We believe that this enables us to bring a pragmatic and informed base to provide our observations which have been included in both responding to the questions asked by the Council as well as in a separate section of this document which discusses the marked up amendments proposed for the fifth edition.

¹ [ASX Corporate Governance Principles and Recommendations - KPMG Australia](#)

Section 1:

KPMG findings

QUESTION 1:

Do you support deletion of the following fourth Edition Recommendations, on the basis that there is significant regulation under Australian law?

- Recommendation 3.4 (disclosure of anti-bribery and corruption policy)?
- Recommendation 4.2 (CEO and CFO declaration for financial statements)?
- Recommendation 6.4 (substantive security holder resolutions on a poll)?
- Recommendation 6.5 (offering electronic communications to security holders)?
- Recommendation 8.2 (separate disclosure of remuneration policies for non-executive directors, other directors and senior executives)?
- Recommendation 8.3 (policy on hedging of equity-based remuneration)?

 Supported by KPMG with some caveats noted

QUESTION 2:

In particular, the Council encourages feedback on the proposed deletion of Recommendation 3.3 (disclosure of whistleblower policy).

 Supported by KPMG

QUESTION 3:

Recommendation 2.2: The Council already recommends disclosure of a board skills matrix or skills a board is looking for. Do you support disclosure of the following information about board skills?

- Recommendation 2.2(a): current board skills and skills that the board is looking for?
- Recommendation 2.2(b): the entity's process for assessing that the relevant skills and experience are held by its directors?

 Supported by KPMG with some caveats noted

QUESTION 4:

Recommendation 2.3: Women hold approximately 35% of all S&P/ASX300 directorships. This exceeds the existing measurable objective of at least 30% of each gender for those boards. Do you support raising the S&P/ASX300 measurable objective to a gender balanced board?

 Supported by KPMG

QUESTION 5:

Recommendation 2.3(c): The Council already recommends disclosure of a board's approach and progress on gender diversity. Do you support the proposed disclosure of any other relevant diversity characteristics (in addition to gender) which are being considered for the board's membership?

 Supported by KPMG

QUESTION 6:

Recommendation 3.4(c): The Council already recommends disclosure of an entity's diversity and inclusion policy and disclosure of certain gender metrics. Do you support the proposal to also recommend disclosure of the effectiveness of an entity's diversity and inclusion practices?

 Supported by KPMG

QUESTION 7:

Recommendation 2.4: Do you support increasing the security holding reference included in Box 2.4 (factors relevant to assessing the independence of a director) from a substantial holder (5% or more) to a 10% holder (10% or more)?

 Not supported by KPMG for reasons provided

QUESTION 8:

Recommendation 3.2(c): The Council already recommends that a listed entity should have a code of conduct and report material breaches of that code to its board or a board committee. Do you support the proposed disclosure (on a de-identified basis) of the outcomes of actions taken by the entity in response to material breaches of its code?

 Supported by KPMG with some caveats noted

QUESTION 9:

Principle 3: Do you support the proposed amendments to Principle 3 (acting lawfully, ethically and responsibly), to include references to an entity's stakeholders?

 Supported by KPMG

QUESTION 10:

Recommendation 3.3: Does this new Recommendation appropriately balance the interests of security holders, other key stakeholders, and the listed entity? "A listed entity should have regard to the interests of the entity's key stakeholders, including having processes for the entity to engage with them and to report material issues to the board."

 Supported by KPMG

QUESTION 11:

Recommendation 4.2: Do you support the proposed disclosure of processes for verification of all periodic corporate reports (including the extent to which a report has been the subject of assurance by an external assurance practitioner)?

 Supported by KPMG

QUESTION 12:

Recommendation 4.3: Do you support the proposed disclosure of an entity's auditor tenure, when the engagement was last comprehensively reviewed and the outcomes from that review?

 Supported by KPMG

QUESTION 13:

Recommendation 7.4: The Council is seeking to enhance the quality of existing reporting of material risks to an entity's business model and strategy, such as in the operating and financial review in its directors' report. Do you support the proposal that the entity identify and disclose its material risks, rather than identifying specific risks for all entities to disclose against?

 Supported by KPMG

QUESTION 14:

Recommendation 8.2: This proposed Recommendation reflects and simplifies existing commentary in the 4th Edition. Do you support this proposed Recommendation that non-executive directors not receive performance based remuneration or retirement benefits?

 Supported by KPMG

QUESTION 15:

Recommendation 8.3: Do you support the following proposed clawback Recommendations? a. Recommendation 8.3(a): remuneration structures which can clawback or otherwise limit remuneration outcomes for senior executive performance-based remuneration? b. Recommendation 8.3(b): disclosure of the use of those provisions (on a de-identified basis) during the reporting period?

 Supported by KPMG with some caveats noted

QUESTION 16:

Do you support the inclusion of the new Recommendations for entities established outside Australia, on the basis that these Recommendations generally reflect expectations under Australian law?

 Supported by KPMG

QUESTION 17:

Should any new or amended Recommendations in the Consultation Draft apply differently to externally managed entities, compared to the manner proposed in the application of the Recommendations to externally managed listed entities?

 Supported by KPMG with some caveats noted

QUESTION 18:

Do you support an effective date for the Fifth Edition of the first reporting period commencing on or after 1 July 2025?

 Supported by KPMG with some caveats noted

QUESTION 19:

Do you wish to provide any other comments on the content of the Consultation Draft, including any other changes you would propose?

 Supported by KPMG with some caveats noted at the appendix

KPMG Insights: Responses to consultation questions

We have worked across KPMG to consider our broad client base in responding to the questions that the Council asked. The questions together with the respective answers are included in this section and summarised as either being:

- Supported by KPMG
- Supported by KPMG with some caveats noted
- Not supported by KPMG for reasons provided

Reducing regulatory overlap

- 1 Do you support deletion of the following fourth Edition Recommendations, on the basis that there is significant regulation under Australian law?
 - Recommendation 3.4 (disclosure of anti-bribery and corruption policy)?
 - Recommendation 4.2 (CEO and CFO declaration for financial statements)?
 - Recommendation 6.4 (substantive security holder resolutions on a poll)?
 - Recommendation 6.5 (offering electronic communications to security holders)?
 - Recommendation 8.2 (separate disclosure of remuneration policies for non-executive directors, other directors and senior executives)?
 - Recommendation 8.3 (policy on hedging of equity-based remuneration)?
- 2 In particular, the Council encourages feedback on the proposed deletion of Recommendation 3.3 (disclosure of whistleblower policy). Would you prefer to retain this Recommendation?

KPMG Response

● Question 1

KPMG is generally supportive of measures that lower the cost of compliance and increase productivity. Where reporting requirements are duplicative to current legislative requirements, the benefit in removing these requirements appears sensible and ensures there is no inconsistency with corresponding statutory requirements. For example, we support deleting Recommendation 4.2 as this requirement is included in the Corporations Act 2001 and is therefore duplicative of this requirement.

The only caveat to the above is that we support the retention of Recommendation 6.4, as it reflects the contemporary views of fairness in respect of shareholding voting, in that it requires a vote to be carried by way of a poll, as opposed to by a show of hands (noting company constitutions can still permit a vote to be carried on a show of hands).

● Question 2

KPMG believes it is important for whistleblower policies to be disclosed such that they are accessible to disclosers outside of the entity. However, given that ASIC's Regulatory Guide 270 states that such policies should be disclosed on an entity's external website,² we are comfortable that this requirement does not need to be duplicated in the Recommendations and that the proposed deletion is appropriate.

Board skills

- 3 Recommendation 2.2: The Council already recommends disclosure of a board skills matrix or skills a board is looking for. Do you support disclosure of the following information about board skills?
 - Recommendation 2.2(a): current board skills and skills that the board is looking for?
 - Recommendation 2.2(b): the entity's process for assessing that the relevant skills and experience are held by its directors?

KPMG response

● Question 3

Disclosure of the board skills matrix or skills that the board is looking for has enabled stakeholders to obtain a better understanding of suitability of the board. KPMG supports the concept that skills required

² RG 270.138

should be regularly reviewed and training and succession planning adjusted accordingly. Aligned to this, we believe that it is beneficial for stakeholders to understand how the skills and experience assessment is conducted and hence support Recommendation 2.2(b). However, we do not support the expansion of Recommendation 2.2(a) to include disclosure of skills that the board is looking for where a skills matrix has been disclosed. It is our view that the risks of providing this information will outweigh the benefits.

Focusing on achieving greater diversity of directors may initially result in directors with less comparative board experience and tenure potentially being considered for roles. Consideration should be given as to whether disclosure of each individual director's skills and experience is accordingly an impediment to achieving greater diversity. To this end, KPMG encourages the ASX to consider the merits of providing guidance regarding the fact that the board is a collective and its decision making process reflects the collective skills of the board as a whole which in turn means that there should be diversity in the nature as well as the depth and breadth of skills and experience of the directors.

Diversity

- 4 Recommendation 2.3: Women hold approximately 35% of all S&P/ASX300 directorships. This exceeds the existing measurable objective of at least 30% of each gender for those boards. Do you support raising the S&P/ASX300 measurable objective to a gender balanced board?
- 5 Recommendation 2.3(c): The Council already recommends disclosure of a board's approach and progress on gender diversity. Do you support the proposed disclosure of any other relevant diversity characteristics (in addition to gender) which are being considered for the board's membership?
- 6 Recommendation 3.4(c): The Council already recommends disclosure of an entity's diversity and inclusion policy and disclosure of certain gender metrics. Do you support the proposal to also recommend disclosure of the effectiveness of an entity's diversity and inclusion practices?

KPMG response

Question 4

We acknowledge that much has been done to create an infrastructure and pathways for women to be represented on the board and we would encourage new thresholds for gender equality that support a gender balanced board (being at least 40% women, at least 40% men and up to 20% any gender), within a period specified by the entity. Enabling the entity to specify a period of time during which, as a whole, this target is achieved (for example, achievement of the goal when considering directors on the board over three years) provides some agility during times of director transition.

Questions 5 and 6

To achieve true diversity of thought in the boardroom as well as to build a more equal society, it is important to, not only focus on gender diversity, but to recognise the homogeneity of ASX listed company boards still prevails through a lack of cultural diversity, and other broader diversity measures.

Inclusion, diversity and equity must be measured with an intersectional lens and, most immediately, it is recommended that cultural diversity targets also be considered in addition to gender. Intersectionality refers to how a person's experience of the world is shaped by the intersection of various features of social identity like gender, race/ethnicity, sexuality, social class, age, ability, and other unique features. Although women are disproportionately represented on boards - gender is only one attribute that should be considered and as such KPMG supports expansion of current disclosure to include other relevant characteristics as well in line with the proposed wording for amended Recommendation 2.3(c).

Question 6

Further to what is described above, the proposal to also recommend disclosure of the effectiveness of an entity's diversity and inclusion practices through amended Recommendation 3.4(c) is also supported. Demonstrating the effectiveness of the practices enables stakeholders to conclude on how invested the entity is in achieving stated objectives and creates greater accountability to stakeholders.

We note that KPMG's annual *Our Impact Plan* reports disclose several objectives related to diversity and inclusion, along with our progress towards these objectives. This includes data on the gender pay gap within the firm, percentage of women in partnership, percentage of culturally diverse partners, and the number of Indigenous people hired.

Independence of directors

- 7 Recommendation 2.4: Do you support increasing the security holding reference included in Box 2.4 (factors relevant to assessing the independence of a director) from a substantial holder (5% or more) to a 10% holder (10% or more)?

KPMG response

● Question 7

True independence is represented by a director being able to bring an independent judgement to the issues at hand. However, we very much appreciate that Box 2.4 provides a framework of what factors to consider when the board ultimately determines whether or not a director is independent. In this regard, the director's security holding in the company is only one factor of many to consider in respect of that director's independence.

Historically, the 5% threshold has aligned with what the Corporations Act constitutes as a substantial holding in the relevant company. Our view is that increasing the threshold to 10% (doubling the current threshold) creates a misalignment between what the law considers a substantial shareholder and what the ASX would frame as part of a director's independence criteria.

For these reasons, we support retaining the current threshold of 5%.

Corporate conduct and culture

- 8 Recommendation 3.2(c): The Council already recommends that a listed entity should have a code of conduct and report material breaches of that code to its board or a board committee. Do you support the proposed disclosure (on a de-identified basis) of the outcomes of actions taken by the entity in response to material breaches of its code?

KPMG response

● Question 8

KPMG agrees that the foundation of good governance is a strong corporate culture. The current Recommendation 3.2(c) is considered to provide what is needed by recommending that a listed entity should have a code of conduct and report material breaches of that code to its board or a board committee. It is our view that this is sufficient as it enables the board to determine if actions taken were appropriate and won't create the risk that information reported is unintentionally identifiable thereby affecting legal privilege or privacy considerations.

Further to our earlier commentary regarding reducing the cost of compliance so as to enable greater productivity, we consider this an opportunity to not further increase reporting requirements given the costs/risks may outweigh the benefits.

Notwithstanding this, if this amendment garners strong support from stakeholders, the ASX could potentially consider whether the proposed disclosure be limited to only Key Management Personnel as it is likely to be the conduct of these individuals specifically that external stakeholders will be interested in, rather than employees on low incomes.

For example, KPMG's annual Impact Report³ discloses a range of conduct related information. The 2023 Impact Report disclosed that one in four people that were the subject of a conduct complaint were exited from the firm. The remaining employees received a warning, counselling and as applicable an adverse impact to their end of year rating and payments. Conduct complaints are split into code of conduct breaches and sexual harassment. This approach demonstrates that an entity can disclose outcomes in a non-identifiable method, however this approach may not be practical for larger workplaces with significantly more conduct related matters.

Stakeholder relationships

- 9 Principle 3: Do you support the proposed amendments to Principle 3 (acting lawfully, ethically and responsibly), to include references to an entity's stakeholders?
- 10 Recommendation 3.3: Does this new Recommendation appropriately balance the interests of security holders, other key stakeholders, and the listed entity? *"A listed entity should have regard to the interests*

³ [Our Impact Plan 2023 \(kpmg.com\)](https://www.kpmg.com/au/impact)

of the entity's key stakeholders, including having processes for the entity to engage with them and to report material issues to the board."

KPMG response

● Question 9

Aligned with KPMG's Elevate Reconciliation Action Plan, our view is that meaningful positive impact to the community requires intentional focus on the community. Extending Principle 3 to reference stakeholders is thus supported.

● Question 10

KPMG agrees that it is important to consider whether the interests of security holders, other key stakeholders, and the listed entity itself are being balanced. The current proposed wording, which recommends that the entity needs to identify who the 'key stakeholders' are, articulates this well as it facilitates consideration of stakeholder materiality but leaves the entity to determine how to achieve this balance based on the entity's individual circumstances at any point in time.

This approach is also consistent with better practice stakeholder management which describes that an entity should identify the material risks and concerns pertinent to the key stakeholders so as to develop an effective stakeholder engagement strategy. Stakeholder engagement in this way enables informed decision making that considers competing stakeholders' interests and the related risks more thoroughly which should in turn deliver better governance outcomes.

KPMG applied this stakeholder engagement approach during the material topics assessment for the firm's *Our Impact Plan 2023* report. When reviewing and refreshing our list of material topics for the report, we interviewed external stakeholders to inform a deeper understanding of our current and emerging ESG impacts, in addition to consulting senior leaders and experts within KPMG. We engaged with clients, suppliers, alliance partners, and representatives of non-governmental and community organisations. The outputs of this material topics assessment informed the material topics and commitments presented in the report, which were reviewed and approved by our Board and National Executive Commitment.

We note that the Singaporean Code of Corporate Governance (Principle 13) has a similar recommendation and there are learnings from this that the Council may consider. For example, enhancing the wording to stress the need to focus on the best interests of the entity itself. This may be achieved by the addition of the following words (or words to this effect) at the end of the recommendation: 'as part of its overall responsibility to ensure that the best interests of the company are served'.

Periodic corporate reports and assurance

- 11 Recommendation 4.2: Do you support the proposed disclosure of processes for verification of all periodic corporate reports (including the extent to which a report has been the subject of assurance by an external assurance practitioner)?
- 12 Recommendation 4.3: Do you support the proposed disclosure of an entity's auditor tenure, when the engagement was last comprehensively reviewed and the outcomes from that review?

KPMG response

● Question 11

With expanding expectations from investors and requirements of different periodic reports, e.g., forthcoming mandatory sustainability reporting, an understanding of an entity's processes for verification of all periodic reports will assist stakeholders in understanding the processes an entity has in place to provide a level of assurance over all periodic reporting. The extent to which a report has been the subject of assurance by an external assurance practitioner will gain further importance as the assurance proposals for the new sustainability reports (currently under consideration) comprise a mixture of limited and reasonable assurance across the one report over a three year period, in a phased approach. Investors, and stakeholders more broadly, will therefore gain an understanding of the extent to which the disclosures and information have been subject to external assurance, supporting informed decision making.

● Question 12

KPMG has been a long-standing proponent of such disclosures and publicly supported a move to such disclosure following the Parliamentary Joint Committee (PJC) led Inquiry into the Regulation of Auditing in Australia in 2019/2020. We consider disclosure is a key part of our commitment to enhance transparency and promote public trust in the auditing profession. KPMG's Example Public Financial Statements 2023-2024⁴ includes an example of a voluntary illustrative disclosure. Although this disclosure is not required, KPMG considers that it is best practice to disclose auditor tenure, of both the auditor and the lead partner, in the annual financial report.

A definition of auditor tenure and how it should be measured was not considered by the PJC recommendations. Guidance from other jurisdictions define auditor tenure as the number of consecutive years of service provided by the current audit firm and lead audit partner. Determining the period of auditor tenure which, in many cases is not addressed by any definitive guidance, can be complex and will require professional judgement. For example, determining the commencement date of the current auditors' tenure has been challenging where the audit firm, or the entity, have been involved in previous mergers, acquisitions and/or changes in ownership structure. For this reason, transparency is key to assist users of the annual financial report to understand how the entity arrived at the current auditor tenure duration.

Management of risk

- 13 Recommendation 7.4: The Council is seeking to enhance the quality of existing reporting of material risks to an entity's business model and strategy, such as in the operating and financial review in its directors' report. Do you support the proposal that the entity identify and disclose its material risks, rather than identifying specific risks for all entities to disclose against?

KPMG response

Question 13

KPMG considers that it is not unusual for internal executive and board reporting to be unrelated to what is disclosed externally, in conformance with Principle 7, which creates confusion and duplication of work in creating the Principle 7 reporting. Consistent with our commentary earlier in this report regarding streamlining of reporting and not increasing reporting and compliance costs, KPMG concur that restructuring Recommendation 7.4 to enable alignment with the entity's existing reporting is a positive change.

Whilst recommending that entities consistently disclose their exposure to specific risks does enable a level of comparability across entities, the variation in the nature and complexity of ASX listed organisations reduces the value of such comparison and is likely to ultimately become a "box-ticking" exercise. Conversely, the proposed approach of rather recommending that entities disclose their own material risks provides greater insight into what the board and executive are focused on. The onus is then on stakeholders to ascertain whether they believe this is appropriate.

Remuneration

- 14 Recommendation 8.2: This proposed Recommendation reflects and simplifies existing commentary in the fourth Edition. Do you support this proposed Recommendation that non-executive directors not receive performance based remuneration or retirement benefits?
- 15 Recommendation 8.3: Do you support the following proposed clawback Recommendations?
- Recommendation 8.3(a): remuneration structures which can clawback or otherwise limit remuneration outcomes for senior executive performance-based remuneration?
 - Recommendation 8.3(b): disclosure of the use of those provisions (on a de-identified basis) during the reporting period?

KPMG response

Question 14

⁴ [Example Public Company Limited – Guide to annual reports \(kpmg.com\)](#) - see Page 20, Note 14 of the Directors' Report.

KPMG supports the principle to not provide performance-based remuneration or retirement benefits to non-executive directors (NEDs). In general, this should prevent any perception of bias in NED decision making, for example where their performance is assessed and rewarded on the same basis as executives.

The commentary on the principle should make it clear that NEDs receiving securities as part of their remuneration is not at odds with the Recommendation. Encouraging NEDs to increase their shareholding should increase their alignment with other security holders. However, performance-based equity awards (e.g. performance rights) may create issues of bias as noted above. In line with listing rules, companies should also seek shareholder approval in advance of equity issues to directors.

We note that there may be situations for smaller listed companies and start-ups where using equity is key to their ability to attract sufficiently experienced NEDs. In these cases there may be rationale for using, for example, market exercise priced options. Whether these are seen as 'performance based' should be clarified. If they are viewed as performance based, then consideration should be given to situations where these may be appropriate to provide alignment and note that the inherent performance hurdle is increasing share price which should align with shareholder interests. Some balance must be struck to avoid the perception that NEDs would act solely in self interest if provided with market exercise priced options.

● Question 15

KPMG notes that clawback and other remuneration adjustment tools are required by other regulatory regimes (e.g. APRA regulated entities must meet requirements of CPS 511 and the Financial Accountability Regime). Beyond financial services, larger listed entities have introduced these provisions as part of better practice remuneration oversight.

KPMG supports the intent of ensuring that organisations should have discretionary tools that they can use to mitigate against misconduct and other behavioural and management failures. However, the current wording of the Recommendation could be more specific in its application to refer to key management personnel rather than senior executives (which is very broad). The commentary should also clarify that:

- clawback is not the only tool available and it should only be applied in proportion to the event and to the extent that it is legally enforceable; and
- other tools such as in year adjustments and malus (ie a clause in a remuneration agreement that allows an entity to adjust an award downwards during its vesting period, if matters arise that indicate the award previously granted is no longer appropriate) are also useful.

The disclosure of the application of these remuneration adjustment tools is also required for regulated financial services organisations. Extending this disclosure requirement to all listed entities may enhance transparency for shareholders, allowing them to understand where the organisation has applied consequences. However, it could also have unintended consequences, such as creating an impression that there are significant problems at an entity whereas the application of remuneration adjustment tools may evidence better oversight or improved risk culture. This recommendation does require judicious application to ensure that appropriate risk-taking is not discouraged and culture affected (i.e. if I make a mistake I will be punished and publicly shamed). It is also possible that incorrect conclusions could be reached through attempts by shareholders (or other stakeholders) to draw correlations between the disclosure on remuneration adjustments and the recommended disclosure on code of conduct breaches (see Q8).

Additional Recommendations that apply only in certain cases

16 Do you support the inclusion of the following new Recommendations for entities established outside Australia, on the basis that these Recommendations generally reflect expectations under Australian law?

- Recommendation 9.3 (CEO and CFO declaration for financial statements)?
- Recommendation 9.4 (substantive security holder resolutions on a poll)?
- Recommendation 9.5 (offering electronic communications to security holders)?
- Recommendation 9.7 (policy on hedging of equity-based remuneration)?

KPMG response

● Question 16

A foreign incorporated entity that is listed on the ASX as a primary listing and is not otherwise a foreign exempt listing has to meticulously work through the Listing Rules and the Corporations Act 2001 (Cth) to ensure it can comply (as may be needed) or otherwise seek waivers from the Listing Rules as part of its listing application process. This is because a foreign incorporated entity is governed under a different law. On this basis, as the Recommendations operate on an 'if not, why not?' disclosure basis, KPMG supports the proposal as it helps in setting a standard for what the Australian regulatory capital markets regime considers best practice in respect of management oversight of financial reporting.

Externally managed entities

17 Should any new or amended Recommendations in the Consultation Draft apply differently to externally managed entities, compared to the manner proposed in *The application of the Recommendations to externally managed listed entities*?

KPMG response

Question 17

We would encourage the same approach taken in respect of the application of the existing Recommendations in the fourth edition, including Recommendation 1.5 in the fourth edition, to the new Recommendations proposed in the fifth edition. We note in particular the existing fourth edition clearly carves out certain Recommendations, including Recommendation 1.5, from applying to externally managed entities.

However, we would encourage direct consultation with externally managed entities for this purpose in order to gauge whether committing externally managed entities to, specifically, the same diversity governance criteria (as proposed under new Recommendation 3.4) as other listed entities could be achieved in the near term.

Effective date

18 Do you support an effective date for the Fifth Edition of the first reporting period commencing on or after 1 July 2025?

KPMG response

Question 18

KPMG supports the effective date of 1 July 2025, however we note that some recommendations may require a longer lead time for example conduct reporting.

Other matters

19 Do you wish to provide any other comments on the content of the Consultation Draft, including any other changes you would propose?

KPMG response

Please refer to the [Appendix](#) of this response for further feedback on proposed amendments.

Appendix: Commentary on proposed amendments

KPMG notes the following in relation to the marked-up changes proposed for the fifth edition.

Principal 1 – Lay solid foundations for management and oversight

Fourth edition wording	Proposed fifth edition wording	Commentary
<p>Recommendation 1.1</p> <p>Commentary included a paragraph stating that “The nature of matters reserved to the board and those delegated to management will depend on the size, complexity and ownership structure of the entity, and will be influenced by its history and culture, and by the respective skills of its directors and management. These may vary over time as the entity evolves.” (pg 7)</p>	<p><This wording has been removed></p>	<p>It is KPMG’s view that the wording that has been removed provided important context to directors and reflected that not all boards, and hence matters reserved for the board and delegations to management, are the same. This wording created clarity as to the nuances that impact the decisions around delegated authority.</p> <p>When undertaking the review requested by the ASX regarding how the fourth edition amendments had been implanted, one of the areas KPMG noted that could be expanded further was this particular paragraph. We identified that risk appetite was not referred to as one of the driving factors as to what level of delegation should be provided to management. One of the reasons we often see risk appetite not being effectively used in organisations is because it has not been a driver to the delegations framework and hence is not embedded into decision making.</p> <p>KPMG’s view is that the wording that has been removed should be reinstated and expanded so as to include the important consideration of risk appetite. An example of how this may be approached is as follows:</p> <p>“The nature of matters reserved to the board and those delegated to management will depend on the size, complexity and ownership structure of the entity, and will be influenced by its history and culture, and by the respective skills of its directors and management as well as by the risk appetite. These may vary over time as the entity evolves. The board should regularly review the division of functions between the board and management to ensure that it</p>

		continues to be appropriate to the needs of the entity and aligned to risk appetite as this is updated over time.”
<p>Commentary to recommendation 1.1:</p> <p>“Generally speaking, the board of a listed entity should be responsible under its charter for:</p> <ul style="list-style-type: none"> demonstrating leadership; defining the entity’s purpose and setting its strategic objectives;” 	<p>Commentary to recommendation 1.1:</p> <p>“Generally, the board of a listed entity should be responsible under its charter for:</p> <ul style="list-style-type: none"> demonstrating leadership; deciding whether to define the entity’s purpose and if so approving that purpose...” 	<p>This amendment suggests that the board needs to decide whether to define the entity’s purpose. If the board decides not to define the purpose it is not clear what the alternative is. Accordingly, KPMG suggests that the fourth edition wording be retained.</p>

Principal 3 – Instil a culture of acting lawfully, ethically and responsibly

<i>Fourth edition wording</i>	<i>Proposed fifth edition wording</i>	<i>Commentary</i>
<p>A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly.</p>	<p>A listed entity should instil and continually reinforce a culture of acting lawfully, ethically and responsibly, within the organisation and in its dealings with external stakeholders, to create long-term sustainable value.</p>	<p>It is noted that whilst the ASX has particularly asked for feedback regarding the consideration of “external stakeholders” in this Principle, that no feedback was requested in relation to the addition of the wording “to create long-term sustainable value”. In relation to this addition, KPMG would like to comment that it is not clear whether the statement pertains to the creation of long-term sustainable value for the external stakeholders or for the entity itself. Whilst it is agreed that directors should pursue the objective of long-term sustainable value for the entity, this may not be possible in all instances for all external stakeholders and hence we caution on the potentially unintentional impact that this amendment may have. Further to this, the ASX may find it beneficial to reference established standards on responsible business conduct such as the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines to support consistency of understanding and application.</p>
<p>Recommendation 3.2</p> <p>A listed entity should:</p>	<p>Recommendation 3.2</p> <p>A listed entity should instil and continually reinforce a culture across the organisation of acting</p>	<p>Further to the question posed (and answered in this document) by the Council, KPMG observes that better practice in reporting</p>

<p>a) have and disclose a code of conduct for its directors, senior executives and employees; and</p> <p>b) ensure that the board or a committee of the board is informed of any material breaches of that code.</p>	<p>lawfully, ethically and responsibly, including by:</p> <p>(A) having and disclosing a code of conduct for its directors, senior executives and employees;</p> <p>(B) ensuring that the board or a board committee is informed of any material breaches of the code of conduct; and</p> <p>(C) disclosing (on a de-identified basis) the outcomes during the last reporting period of actions taken by the entity in response to material breaches of the code of conduct.</p>	<p>breaches of the code of conduct is not to only report material breaches but to also report themes of breaches being observed (regardless of materiality). This enables the board to understand any cultural issues that may be developing and potentially make changes sooner thereby preventing a material breach from occurring. Accordingly, we would suggest that the wording be amended to support the board in having greater visibility of all breaches and not just those that are deemed material.</p>
<p>Recommendation 3.3</p> <p>A listed entity should:</p> <p>a) have and disclose a whistleblower policy; and</p> <p>b) ensure that the board or a committee of the board is informed of any material incidents reported under that policy.</p>	<p>Recommendation 3.3</p> <p>A listed entity should have regard to the interests of the entity’s key stakeholders, including having processes for the entity to engage with them and to report issues to the board.</p>	<p>Aligned with United Nations Guiding Principles on Business and Human Rights and the Commentary on the OECD Guidelines⁵, the ASX may consider a slight amended to the wording as follows “A listed entity should have regard to the interests of the entity’s key stakeholders, including having processes for the entity to meaningfully engage with them and to report material issues to the board.”</p> <p>Further to this, the commentary to this Recommendation describing what constitutes a stakeholder would be enhanced by including references to “human rights groups” and adding “(including their workers)” after the word suppliers as follows:</p> <p>“Stakeholders may include security holders, employees, customers, suppliers (<i>including their workers</i>), Aboriginal and Torres Strait Islander peoples. local community, <i>human rights groups</i>, law makers and regulators.”</p> <p>This aligns with public guidance that KPMG has developed with industry representative bodies, such as the Property Council of Australia on human rights</p>

⁵ OECD Guidelines (2023) pp.14, 15 and 20

		grievance and remedy ⁶ , and the modern slavery sector guidance developed with the Australian Human Rights Commission, which provide practical steps on how to meaningfully incorporate worker voice into corporate human rights due diligence.
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Principal 7 – Recognise and manage risk

Fourth edition wording	Proposed fifth edition wording	Commentary
<p>Recommendation 7.2</p> <p>The board or a committee of the board should:</p> <p>a) review the entity's risk management framework at least annually to satisfy itself that it continues to be sound and that the entity is operating with due regard to the risk appetite set by the board; and</p> <p>b) disclose, in relation to each reporting period, whether such a review has taken place.</p>	<p>Recommendation 7.2</p> <p>The board or committee should:</p> <p>a) review the entity's risk management and internal control frameworks at least annually to satisfy itself that;</p> <ul style="list-style-type: none"> • the frameworks continue to be sound and address the entity's material risks: and • the entity is operating with due regard to the risk appetite set by the board; and <p>b) disclose, in relation to each reporting period, whether such a review has taken place.</p>	<p>KPMG notes that the amended wording implies that the board or committee are responsible for ensuring that the risk management and internal control frameworks address only the material risks of the organisation. This is a departure from the fourth edition that describes the need for the board or committee to satisfy itself that the risk management framework is sound.</p> <p>It is KPMG's view that the board and committee have ultimate responsibility for ensuring that the risks of the entity are appropriately managed. By amending the wording to focus only on material risks there may be an unintended consequence that boards and committees pivot their focus from managing risks holistically to only considering material risks. Similar to our commentary regarding material breaches of the code of conduct, focusing only on material risks may reduce the board or committees' ability to influence risks to prevent them from becoming material. Further, this language fails to recognise that multiple immaterial risks may cumulatively form a material risk exposure and hence risk management should consider the risk environment in its entirety notwithstanding that risk management activities may vary depending on whether a risk is within or outside of appetite.</p>

⁶ [Human rights grievance mechanisms and remediation - KPMG Australia](#)



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