



Research / Engage / Influence /

# Governance Guidelines

A guide to investor expectations  
of listed Australian companies

December 2023

Eleventh edition

# About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues.

Our members include Australian and international asset owners and institutional investors with more than \$1 trillion in funds under management.

Through our research, engagement, advocacy and voting recommendations, ACSI supports members in exercising active ownership, which aims to enhance the long-term value of the retirement savings entrusted to them to manage.

ACSI members can achieve value for their beneficiaries through genuine and permanent improvements to the ESG practices of the companies in which they invest.

Our staff undertake a year-round program of research, company engagement, voting advice and advocacy. These activities provide a solid basis for our members to independently exercise their ownership rights.



## Research

We identify the most significant ESG issues for long-term investors.



## Company engagement

We engage directly with the boards of ASX listed companies to discuss, understand and improve corporate governance practices and ESG performance.



## Voting advice

We provide our members with voting recommendations that are consistent with the principles set out in these Guidelines. In determining our voting recommendations we take into account our engagement work and consider the issues as they apply to each company on a case-by-case basis. Our advice is developed independently from our members.



## Policy and advocacy

We engage with government, regulators and other system-wide market participants to support policy reform and markets that are focused on the long term and best serve our members' beneficiaries.

Further details about us, our publications, policy positions and membership are available on our website at [www.acsi.org.au](http://www.acsi.org.au).

## Acknowledgement of Country

We acknowledge and respect the traditional lands and cultures of First Nations people in Australia and globally and pay our respects to Elders past and present. We recognise First Nations peoples' longstanding and ongoing spiritual connections to land, sea, community and Country. Appreciation and respect for the rights and cultural heritage of First Nations peoples is essential to the advancement of our societies and our common humanity.

# Table of Contents

|   |    |
|---|----|
| Introduction.....   | 4  |
| 1. Board and director responsibilities .....              | 9  |
| 1.1 Director responsibilities.....                        | 11 |
| 1.2 Promoting good governance .....                       | 12 |
| 1.3 Investor expectations of non-executive directors..... | 12 |
| 1.4 Role of the board chair .....                         | 12 |
| 1.5 Board oversight of related-party transactions.....    | 13 |
| 1.6 Risk management .....                                 | 13 |
| 1.7 Corporate culture .....                               | 13 |
| 1.8 Board composition .....                               | 15 |
| 1.9 Board process.....                                    | 17 |
| 1.10 Financial integrity .....                            | 19 |
| 1.11 Tax practices.....                                   | 20 |
| 2. Remuneration .....                                     | 21 |
| 2.1 Executive remuneration .....                          | 21 |
| 2.2 Non-executive director remuneration.....              | 24 |
| 3. Oversight of ESG risks and opportunities .....         | 25 |
| 3.1 ESG disclosure .....                                  | 25 |
| 3.2 Climate change .....                                  | 26 |
| 3.3 Circular Economy.....                                 | 29 |
| 3.4 Nature and Biodiversity .....                         | 30 |
| 3.5 Workforce and human rights .....                      | 31 |
| 3.6 Cyber Security .....                                  | 37 |
| 4. Capital structure and shareholder rights .....         | 38 |
| 4.1 Capital raisings .....                                | 38 |
| 4.2 Share buybacks.....                                   | 39 |
| 4.3 Mergers and acquisitions .....                        | 39 |
| 4.4 Voting rights .....                                   | 40 |
| 4.5 Company meetings.....                                 | 42 |
| 4.6 Assessment of shareholder resolutions.....            | 42 |
| 4.7 Stapled and externally managed entities .....         | 43 |

# Introduction

ACSI's Governance Guidelines ('Guidelines') articulates the issues that we focus on in our engagement with companies, and the factors we take into consideration when determining our voting recommendations.

Constructively engaging with portfolio companies is one way our members work to improve and preserve investment outcomes for their beneficiaries. While the Guidelines are developed in consultation with our members, they are a reflection of ACSI's views and provide guidance as to how ACSI factors governance considerations into our activities and recommendations. The Guidelines are a useful reference point for our members but are not binding upon them.

The Guidelines assume that companies are aware of, and are complying with, all relevant aspects of Australian corporate law and guidance, including the Corporations Act 2001 (Cth), the ASX Listing Rules and the ASX Corporate Governance Council's Principles and Recommendations. These Guidelines build upon, rather than duplicate, these provisions.

Each topic is assigned a chapter, which discusses the key overarching principles followed by more specific guidance on good governance practices.

The Guidelines are divided into sections, but many areas of risk and opportunity are interconnected. We therefore encourage companies to consider their environmental, social and governance practices holistically.

For example, in the words of Justice Hayne:

*Culture, governance and remuneration march together. Improvements in one area will reinforce improvements in others; inaction in one area will undermine progress in others.<sup>1</sup>*

**Justice Hayne**

These Guidelines are updated every two years in consultation with our members and a broad group of stakeholders, to reflect the evolving regulatory and governance landscape.

<sup>1</sup> Justice Hayne in [Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), February 2019 Volume 1 Page 412.



## Stewardship

In developing its Sustainable Finance Strategy, the Commonwealth Treasury recognised investor stewardship, articulating it as 'the active exercise of asset ownership rights to advance the long-term interests of beneficiaries.'<sup>2</sup>

In their efforts to harmonise responsible investment terms, several industry bodies propose that stewardship is defined as the 'use of investor rights and influence to protect and enhance overall long-term value for clients and beneficiaries, including the common economic, social and environmental assets on which their interests depend.'<sup>3</sup>

Stewardship can include activities such as voting, company engagement and public policy advocacy. The stewardship activity undertaken will differ depending on the risks identified, and circumstances of the company.

ACSI engages in stewardship activity and supports ACSI members in their stewardship activities. ACSI's stewardship activity includes company engagement, providing voting recommendations and public policy advocacy, all of which are informed by a program of research.

ACSI engages with companies to seek improvements in their governance and management of material ESG risks. Engagement is an ongoing, context-driven process and does not always result in linear progress.

When we are concerned that a company is not adequately managing a material risk, ACSI and its members will seek improvement. Where there is a clear discrepancy between our expectations and company practice, with minimal improvement, willingness to improve or willingness to engage, we will consider additional activity. This can include, for example, discussion with the company's board and/or Chair, public statements and/or reflection of the issues in ACSI's voting recommendations. Asset owners may also consider other stewardship activities.

Where we see market or sector wide issues, we advocate for change in the relevant public policy settings to support better financial outcomes for our members' beneficiaries.

We consider financially material ESG risks and opportunities to be those that could be reasonably expected to affect the company's financial performance, whether in the short or long term. For company disclosures, we consider materiality in line with the International Sustainable Standards Board and the definition of materiality provided in the IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information. The ISSB classifies information as material if 'omitting, misstating or obscuring that information could reasonably be expected to influence the decisions that investors make on the basis of the information.'<sup>4</sup>

For more information on stewardship activities please refer to the Australian Asset Owners Stewardship Code.

**One principle underpins everything we do. We are focused on financially material ESG risks and opportunities over the long-term, to protect and enhance the retirement savings that are entrusted to ACSI's members.**

<sup>2</sup> Australian Government Treasury [Sustainable Finance Strategy Consultation](#) Paper November 2023

<sup>3</sup> UN PRI, CFA Institute and Global Sustainable Investment Alliance [Definitions for Responsible Investment Approaches](#) November 2023

<sup>4</sup> International Sustainability Standards Board [IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information](#), 2023

## Core principles

The following core principles underpin the Guidelines:

### Board oversight of all material risks

Good governance requires boards to consider and oversee material ESG risks at the company, sector and market-wide level.

### Sustainable, long-term value creation

Effective board governance contributes shareholder value and creates the conditions in which sustainable long-term investment can prosper. ACSI engages with companies to encourage the adoption of good governance, improved disclosure and effective risk management practices to improve investment outcomes for our members and their beneficiaries, in line with the duty of superannuation funds to act in the best financial interests of their beneficiaries.

### Investor stewardship

Investor stewardship seeks to preserve investment value. It includes institutional investors using ownership rights to influence the governance, policies, practices and management of the entities in which they invest. Investor activities include exercising the voting rights attached to shareholdings, engagement with the boards and management of portfolio companies and advocacy for public policy settings aligned with the interests of long-term investors.

### Transparency

Companies should properly disclose their performance in relation to material ESG factors which could impact shareholder value. Companies are more likely to attract long-term capital if they disclose sufficient information to give investors confidence in the identification and management of key ESG risks.

### Social license to operate

Companies rely on a range of stakeholders to operate and succeed, including:

- Governments
- Employees
- Communities and broader society
- Investors
- Consumers and suppliers.

Effectively engaging with stakeholders is key to maintaining a social license to operate.

### Materiality

In conducting stewardship activities, ACSI is focused on material ESG risks and opportunities. Not all ESG risks are material for all companies. ACSI focuses on the most material risks applicable to each company to promote efficient and effective stewardship.

## ACSI's approach to company engagement and voting advice

We do not approach our work with a 'one-size-fits-all' mindset, nor do we regard ESG monitoring as a 'box ticking' exercise.

We recognise that every company is different, and we expect boards and management to consider and adopt the most appropriate policies and practices and clearly articulate their rationale for doing so.

We take a pragmatic and commercial approach that considers the specific circumstances of each company on a case-by-case basis. ACSI has over 300 meetings with directors from ASX300 companies each year.

When assessing a company's performance against these Guidelines to determine our voting recommendations, we take into account a broad range of factors including the materiality of the issue, the context in which the issue arises and the size of the company.

We also consider time over which any shortcomings have occurred, any history of dialogue with the company on the issue, whether there have been any improvements in company behaviour and responsiveness to engagement. Depending on circumstances, other factors may be taken into account when exercising our judgement in determining specific recommendations.

These factors are set out in our voting research and recommendations, so that subscribers can consider them when determining their voting position. In addition to publishing these Guidelines, ACSI regularly:

- seeks to engage with a company's board to understand the company's position before providing voting advice;
- provides a copy of our voting advice to the companies that are the subject of the research and recommendations.

We seek to notify companies of issues ACSI considers to be contentious ahead of making recommendations.

## Reference to other standards and organisations

We recognise that there is a range of principles and frameworks that investors have regard to when considering governance and broader ESG issues. Common examples of other initiatives and organisations to which Australian asset-owners may have regard include:

- [Principles for Responsible Investment \(PRI\)](#)
- [Investor Group on Climate Change \(IGCC\)](#)
- [United Nations Sustainable Development Goals](#)
- [Australian Securities Exchange \(ASX\) Corporate Governance Council](#)
- [International Financial Reporting Standards Foundation \(IFRS\)](#)
- [Responsible Investment Association Australasia](#)
- [Australian Institute of Company Directors \(AICD\)](#)
- [International Corporate Governance Network \(ICGN\) Global Governance Principles](#)

# What's new in this edition of the Guidelines?

The updates in this eleventh edition of the Guidelines are in response to issues we see across the market or observations made through company engagements.

As generally accepted principles of good governance have progressed since the early editions of the Guidelines, in this version we have removed some of the detail where principles are now well accepted and common practice.

We continue to support foundational principles of good governance, and widely accepted principles of good governance can be found elsewhere including in the ASX Listing Rules and the ASX Corporate Governance Council's Principles and Recommendations.

Key updates in this edition include:

## ► Diversity

The diversity sections reflect contemporary gender diversity targets and further articulate broader concepts of diversity.

## ► Cyber Security

A new section on board oversight and governance of cyber security.

## ► Nature and Biodiversity

A new section outlines nature-related risks. We refer companies to the Taskforce on Nature-related Financial Disclosures (TNFD).

## ► Safety

There remains a wide variation in safety reporting practices among companies, including where companies have experienced fatalities. We have included expectations of companies on safety disclosures and noted the importance of companies considering mental health as part of workforce safety.

## ► Climate-related Risks

Additional text outlines our expectations for companies as to how they should address certain climate-related risks. This includes any transition plans and associated policies on just transitions and offset use.

## ► Circular Economy

New text on this topic to include our expectations for companies' disclosure of any resource use and waste management strategies resulting from the growing recognition of the benefits of circular economic models.

## ► Director Elections

We have further articulated our position on director elections and recommend that companies hold director elections on an annual basis.

## ► Guidelines Structure

We have reviewed the overall structure, order and length of the Guidelines to support ongoing relevance and usefulness.



# 1. Board and director responsibilities

Directors are elected by shareholders to act in the best interests of the company and should be responsive to the interests of diverse stakeholders. As Justice Hayne outlined:

The longer the period of reference, the more likely it is that the interests of shareholders, customers, employees and all associated with any corporation will be seen as converging on the corporation's continued long-term financial advantage. And long-term financial advantage will more likely follow if the entity conducts its business according to proper standards, treats its employees well and seeks to provide financial results to shareholders that, in the long run, are better than other investments of broadly similar risk.<sup>5</sup>

**Justice Hayne**

The role of individual directors is central to achieving high standards of corporate governance and delivering improved, sustainable shareholder returns. The existence of policies and procedures for good corporate conduct is necessary but not sufficient. Director leadership on governance issues is fundamental to investors.

We do not recommend or encourage the adoption of a uniform approach to governance standards or to companies. We encourage directors to be innovative in their approach, recognising that each company will necessarily differ on the details. We expect directors to explain why their company's approach to governance is the most suitable in the circumstances.

The board must maintain oversight of the Chief Executive Officer (CEO) and senior management. As such, the board is as accountable for the company's strategy as the CEO and executives. The selection, appointment and renewal of non-executive directors must therefore be aligned and relevant to company strategy.

Directors must be adequately informed about key business issues and properly skilled and equipped to oversee management's delivery of the company strategy. Boards should have sufficient training and appropriate expertise on a given subject area, or access to the necessary expertise, commensurate to the level of risk for the company.

A board should be able to demonstrate how it is guiding innovation, considering and addressing emerging material risks and opportunities.

The best interests of a company are served by directors making decisions that emphasise long-term financial sustainability. The appropriate management of ESG risks and opportunities is key to achieving this financial sustainability over the longer term.

In addition to the guidance set out in this section, we also expect companies to disclose appropriately against the ASX Corporate Governance Principles and Recommendations.

<sup>5</sup> Justice Hayne in the [Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), February 2019 Volume 1 at page 403.

## Board accountability

Accountability encourages performance, promotes ongoing effectiveness and instils confidence and trust with a company's stakeholders.

A demonstration of corporate accountability acknowledges responsibility for actions and decisions and the importance of stakeholder views.

Boards must demonstrate accountability for their organisations. This includes a preparedness to seek the right information, the character, confidence and strength to challenge management, and take appropriate remedial action if things go wrong.

## Director elections

ACSI recommends that each director submit themselves for election on an annual basis. Annual director elections drive better accountability and allow a regular and timely opportunity for boards and investors to consider director performance. Annual elections assist in maintaining a culture of engagement with investors and promotes responsiveness.

ACSI also encourages companies to disclose their practices for director elections, such as how candidates are selected for election or re-election.

### Box 1.1: Assessing director election or re-election proposals

When we formulate recommendations on director election or re-election proposals, we consider factors relating to the performance and accountability of the individual candidate and the performance of the company.

We consider the individual's:

- skills, qualifications and experience
- performance of the director on the company's board or other boards (as evidence of their skills and experience)
- engagement with shareholders and responsiveness to material issues
- evidence of the exercise of independent judgement
- the director's attendance at board and committee meetings
- capacity and workload
- the length of the director's tenure on the company's board, in light of average overall board tenure and company performance
- progress on the board's diversity
- progress on the company's management of material climate-related risk; and
- any relevant, publicly-known conduct of the director.

In relation to board composition, we consider:

- performance of the company under the incumbent board and its committees, including management of material risks
- oversight of management process and remuneration arrangements
- how the director fits within the board's skills matrix and diversity considerations
- the proportion of independent non-executive directors; and
- how the board undertook the process to identify and select new board members.

These issues are not considered in isolation. In all cases, our recommendation will be based on an assessment of the likely best outcome for the company.

## 1.1 Director responsibilities

Directors are entrusted to oversee the company's business and, in conjunction with management, to formulate the company's strategies and policies.

In discharging these duties, directors must critically analyse the advice of management and external advisers. This responsibility was highlighted by Justice Middleton in the Centro case:

What each director is expected to do is to take a diligent and intelligent interest in the information available to him or her, to understand that information, and apply an enquiring mind to the responsibilities placed upon him or her.<sup>6</sup>

**Justice Middleton**

In practice, this means that directors must not blindly follow the advice of experts and should critically assess all matters put before them. Although there is long-standing law and guidance for directors, evidence consistently indicates that this approach is not always implemented in practice, and that continued vigilance is required. As Justice Hayne observed in the Financial Services Royal Commission:

The evidence before the Commission showed that too often, boards did not get the right information about emerging non-financial risks; did not do enough to seek further or better information where what they had was clearly deficient; and did not do enough with the information they had to oversee and challenge management's approach to these risks.<sup>7</sup>

**Justice Hayne**

Some responsibilities of a director include:

- exercising independent judgement over the company's business strategy, performance, financial statements, resources, standard of conduct and ethics
- the selection, appointment and performance management of the CEO and other senior executives
- establishing and maintaining CEO and key management personnel succession plans
- determining appropriate remuneration arrangements for the CEO and relevant executives
- determining appropriate authorities of the CEO and relevant executives
- reviewing the company's accounts and certifying that they comply with Australian accounting standards and represent a true and fair view of the affairs of the company
- setting the company's risk appetite and seeking regular assurance that management is operating within that risk appetite, including in respect of ESG risks
- ensuring the maintenance of financial integrity, including the approval of budgets
- overseeing the company's commitment to environmental and social standards
- establishing and reviewing key performance benchmarks
- overseeing the company's system of internal controls and disclosure
- ensuring that proper accountability mechanisms and systems are in place, and that shareholders and stakeholders are informed in accordance with continuous and other disclosure obligations
- involvement and participation in board subcommittees; and
- having regard to the interests of customers (such as product impact on vulnerable consumers), suppliers, employees and the community and the environment at large when making decisions.

<sup>6</sup> See case law, ASIC v Healey & Ors [2011] FCA 717.

<sup>7</sup> Justice Hayne in the [Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), February 2019 at page 395.

## 1.2 Promoting good governance

ACSI expects the board to formulate and apply high standards of governance. Directors should:

- develop and maintain a publicly disclosed charter, or code, on governance and ethics
- ensure that risks are properly and regularly identified and managed and integrated into its strategy
- articulate and disclose the company's values to underpin the desired culture and demonstrate alignment between expected and actual behaviour
- ensure that the constitution does not include any features or proposed changes that may diminish or impinge upon the rights of shareholders; and
- provide opportunities for shareholder engagement at regular intervals throughout the year, not only at Annual General Meetings (AGMs), and adequately address shareholder questions.

## 1.3 Investor expectations of non-executive directors

Directors should ensure that they are personally familiar with the company's operations and do not rely solely on information provided by executives or external advisers. With regard to director capacity, we expect that:

- each director should devote sufficient time and effort to their duties as a director
- The board will review the workload of their directors as part of their appointment and in performance assessment processes. A director's capacity to properly discharge their responsibilities will be assessed by investors on a case-by-case basis; and
- the nature of any legal proceedings (past, present or anticipated) that the director is involved in or otherwise implicated should be disclosed. This disclosure should occur prior to appointment or when the board becomes aware of such an issue.

A serving CEO of a listed company may add value as a non-executive director of another listed company board, subject to their ability to manage their primary responsibilities as an executive. This can also enhance their understanding and insight into directors' duties and board responsibilities of the company where they serve as an executive.

## 1.4 Role of the board chair

The chair must ensure that the board functions effectively and should provide leadership to all directors in the governance of the company. The chair is also responsible for ensuring that appropriate board procedures and structures are in place, so that all relevant issues are considered by the board.

The chair should be selected from the pool of independent non-executive directors on the board. The roles of chair, CEO and executive director should be separated to avoid a concentration of power. Where the chair is an affiliated or executive director, the independent non-executive directors should nominate a lead independent non-executive director, or equivalent, to perform the chair's responsibilities where there are real or perceived conflicts arising from the chair's position.

### Chair workload and capacity

The chair's role is time intensive. To ensure the chair has adequate capacity to do the job, the board should:

- limit the number of other board and chair positions held by the chair and
- consider any other commitments that may compromise the chair's capacity to fully engage in periods of high workload (such as significant corporate action).

ACSI will consider, on a case-by-case basis, the capacity of a chair to fulfill their role, taking into account competing commitments, including other directorships and chair roles.

## 1.5 Board oversight of related-party transactions

Oversight of related-party transactions is a critical role of the board. The board should disclose its policy for managing potential related-party transactions and may need to form specific committees to assess related-party transactions.

The actions taken to manage all material related-party transactions should be disclosed by the company. This includes disclosing how the relevant director(s) manages any conflict(s) of interest during the board's consideration and decision making relating to the transaction.

In interpreting what constitutes a related party, the board should not only observe the law but also its underlying purpose. Transparency around these transactions is critical, even where transactions are conducted on arm's length terms.

## 1.6 Risk management

Risk oversight is a critical responsibility of the board. We will engage with companies about the company's risk framework, including its risk appetite, and the processes for identification, monitoring and management of all material risks. Our focus is on seeking assurance that the board has effective oversight of ESG risks and opportunities. Companies should demonstrate alignment across risk appetite, risk monitoring, and outcomes. Chapter 3 discusses the oversight of ESG risks and opportunities in more detail.

## 1.7 Corporate culture

Corporate culture plays a key role in driving performance and good outcomes for employees, customers and stakeholders. History demonstrates that corporate misconduct can have material negative consequences for shareholder value. Poor corporate culture can facilitate misconduct, which can adversely affect a company's social licence to operate. In its most extreme form, misconduct can result in bankruptcy.

Conversely, a robust corporate culture can contribute to the attraction and retention of talent, the development and maintenance of reputation and trust, as well as supporting the effectiveness and efficiency of operations. All these elements can contribute to financial strength and resilience. Research has made the link between positive company cultures and better long-term company performance.

In the same way that companies protect their financial capital, they should also protect, value and develop their workforce. The health, wellbeing and engagement of a company's workforce can strongly influence the success of a company. As companies increasingly move to more flexible ways of working, companies should be particularly careful that corporate culture is robust and well managed.

Boards are equally as responsible for oversight of culture as they are for financial performance, and directors play a critical role in governing culture. Understanding the company's actual culture and devising a roadmap to the desired culture is crucial. Directors have access to a breadth of different metrics and should take a sophisticated approach to interrogating and synthesising this data. We expect directors to be curious, persistent and willing to synthesise many formal and informal sources of information when overseeing the company's culture.

### Sources of investment risk and opportunity

Corporate culture presents a set of unique, often intangible, risks and opportunities which can be challenging to identify, manage and measure. Unhealthy corporate cultures can develop within departments or operational 'silos.' If high risk behaviours go unchecked, this can lead to major financial impacts. Corporate culture can influence behaviours throughout an organisation, and can, for example, link to workforce, compliance and safety issues (see also section 3.5).



| Aspects of corporate culture that can create risks | Potential financial and reputation impacts  |
|--|---|
| Remuneration                                       | Remuneration structures serve to reward what the organisation treats as important and therefore must be aligned with an entity's values, strategy, desired culture and risk appetite. Remuneration structures can create perverse incentives. For example, they can incentivise an excessive drive for sales at the expense of customer outcomes, adversely affecting value over the long-term.   |
| Bribery and corruption                             | Increased regulatory scrutiny, more sophisticated tracking of financial transactions and electronic information has resulted in greater awareness of exposure to bribery and corruption risks. <sup>8</sup> In addition to the regulatory issues, allegations or instances of bribery or corruption cause reputational harm that can adversely affect the long-term value for investors.  |
| Whistle-blowing                                    | Weak whistle-blowing processes can hamper early detection of inappropriate corporate behaviour, allowing it to persist.   |
| Lack of diversity                                  | Lack of diversity in a workforce can lead to stagnant ways of thinking and ingrained biases. Diversity (in all senses, including diversity of thought, culture, ethnicity, age, skills and other characteristics) can lead to more understanding and respectful corporate cultures that better mitigate the risk of misconduct and discrimination. Companies that promote diversity are also more likely to attract and retain a wider pool of talent, which can improve performance. |

### ► Our expectations on corporate culture

We expect companies to:

- articulate their purpose and values through the creation and enforcement of codes of conduct that are tailored to the risks faced by the business. Companies should also have a whistleblowing policy and a bribery and corruption policy. Policies should be regularly reviewed and adjusted as needed
- articulate and disclose their behavioural expectations of employees, contractors, suppliers and other partners
- invest adequate resources into training staff
- encourage a 'speak-up' culture where boards, executives, managers and employees can safely raise concerns (e.g., through a confidential mechanism) and ensure there is robust investigation, internal reporting and disciplinary action as necessary, where poor behaviours are detected
- encourage a culture supported by the board and the CEO, where the organisation is quick to learn from mistakes and change practices; and
- promote all forms of diversity across the workforce and work to support a workforce that is reflective of the diverse demographic and society in which the company operates.

### The role of the board and senior management

The board and senior management set the tone from the top and should monitor the drivers that shape culture (including breaches of relevant policies).

The board should oversee regular assessments of corporate culture to identify any issues or opportunities and act accordingly. The board should consider a wide range of measures in overseeing culture, including employee feedback and external inputs.

Boards should challenge actions and decisions by asking whether they are consistent with the desired corporate culture. There is often a risk that management may present an overly optimistic picture of corporate culture, so directors should not become overly reliant on management's perspective.

When selecting a CEO, sufficient weight should be given to the CEO's capacity to deliver a strong culture.

Consequence management processes should lead to reduced remuneration, warnings and/or termination for CEO and/or senior executives as appropriate.

Directors should ensure that they have oversight of the non-disclosure agreements (NDAs) that are being signed by the company, the reasons NDAs are being signed, and which party is requesting the NDA. Directors should be particularly sensitive to the risks involved in establishing NDAs related to breaches of conduct, including the potential for NDAs to be used to silence victims.

<sup>8</sup> See PWC report '[Assessing the risk of bribery and corruption to your business](#)', 2016.

## Disclosure

When disclosing information about their corporate culture, companies should:

- make meaningful disclosures in relation to their corporate culture, for example regarding assessments of culture, relevant policies, and action taken to promote compliance with corporate values and policies
- consider reporting the number of breaches of the code of conduct and the related consequences, including terminations and remuneration consequences
- disclose whether the board has an oversight process in place regarding NDAs; and
- disclose relevant metrics to reflect their workforce. Like financial statements, workforce reporting should provide investors with information that is material to investment decisions. This includes the overall scope and composition of human resourcing available to management, as well as the opportunities and risks in attracting, developing, and retaining a productive workforce.

Workforce indicators will naturally differ from company to company but may include measures related to employee and customer satisfaction levels, training and development, turnover, absenteeism, diversity and remuneration.

### Further references

- Research published by ACSI and AICD in 2020 on '[Governing company culture](#)'.
- For further information on bribery and corruption policies, we refer to the [ICGN's Guidance on Anti-Corruption Practices](#) and the [ASX Corporate Governance Principles and Recommendations \(Recommendation 3.4\)](#). Principles for Responsible Investment (PRI) [guidance on whistleblowing](#) and [guidance on anti-bribery and corruption](#).

## 1.8 Board composition

The board should be comprised of individuals who are able to work together effectively to efficiently steer a profitable and sustainable company.

### Independence

A board should consist of a majority of independent non-executive directors who are sufficiently motivated and skilled to provide independent oversight of the company's activities. A person regarded as an independent non-executive director is expected to be able to make decisions in a manner independent of management and free of any actual or potential conflicts of interests and business (or other) relationships that could materially interfere with their judgement.

### Assessment of independence

ACSI recognises that independence is determined predominantly by an individual's character and integrity. While independence indicators are useful to highlight potential constraints to a director acting in the best interests of the company over the long-term, written guidelines will not always address particular circumstances. For example, a director may not meet strict independence guidelines but may have a proven record of exercising independent judgement.

In such cases, they should not automatically be considered inappropriate to serve on the board, however the board should explain why they are an appropriate candidate.

We encourage companies to disclose how potential conflicts of interest or affiliations are mitigated by the board.

Where potential conflicts of interest arise at the board level, directors with material conflicts of interest should be excluded from decision-making and independent non-executive directors should be assigned the lead. This process is particularly important when the board considers related-party transactions.

As a guide, the following table outlines some circumstances in which directors could be considered to be affiliated and non-independent. The table is not exhaustive. We evaluate each director on a case-by-case basis.

### Box 1.2: Assessing independence

| Relevant relationships and activities                            | Factors that may compromise independence  |
|--|---|
| Relationship to executives and advisers                          | Employment within the company in the past three years   |
|  | Senior employment by a significant professional adviser in the past three years   |
|  | Concurrent service between a non-executive director and executive or adviser.   |
| Relationship to substantial shareholders                         | Ownership of more than 5% of the voting rights in the company's shares.   |
|  | Being, or having been, an officer, director, representative or employee of such a shareholder   |
| Relationship to customers, suppliers and other service providers | Being a major supplier or customer to the company (or their representative or executive).   |
|  | Having a material contractual relationship with the company   |
|  | Receiving fees for services to the company at a level indicative of either significant involvement in a company's affairs, or significant in relation to the salaries received by directors.  |
| Relationships which may impact decision-making                   | Relationships (including other directorships past or present).  |
|  | Benefiting from a related-party transaction.  |
| Incentive pay  | Participation in performance incentive schemes, including options that are also granted to executives.  |
| Relationship with a related-party                                | Being a spouse, de facto spouse, parent or child of affiliated directors, executive directors, senior executives or advisers.   |
| Participation in a takeover bid                                  | Participating in the bid for the counterparty (either as buyer or seller).  |
| Length of tenure   | Where the director has served for a significant period on the board, independence may be affected, although not necessarily in all cases. Many boards consider the impact on independence where a director has served a period of 10 years or more (also reflected in the ASX Corporate Governance Council's Principles and Recommendations). We will consider individual tenure in light of broader board renewal. |

Substantial or founding shareholders who are members of a board, or nominate specific persons as directors, may perform an important role in the oversight of a company and can make significant contributions. To provide evidence that all shareholder interests are considered, we expect that boards clearly articulate the checks and balances in place.

## Diversity

Companies are likely to be most successful when they harness collective intelligence and approach problems with cognitive diversity. Diversity of thought assists boards to set and challenge company strategy and to better understand the markets in which they operate.

In selecting directors, the board should consider a range of diversity factors that could add value to board decision-making through varied perspectives, including but not limited to:

- Gender
- Age
- LGBTQI+ identity
- Education and professional experience
- Socio-economic background
- Religion
- Ethnicity
- Experience living with disability.

We encourage companies to disclose how they take all facets of diversity into account, along with information on the diversity of the board (across all areas).

### Gender Diversity

We strongly support efforts to improve gender diversity on boards and in management teams.

We expect that no gender occupies less than 30% of board positions in an ASX-listed company. In addition, companies should set a realistic timeframe within which they will achieve gender balance (40:40:20) on their boards.

Gender balance typically refers to a minimum of:

- 40% people who identify as men;
- 40% people who identify as women; and
- 20% unallocated to allow for any gender.

We work with companies to understand their plans to meet these targets. Our preference is for companies to manage their board's composition in line with the targets on a voluntary basis.

ACSI encourages companies to advance gender diversity at executive level and to disclose the actions that they are taking to achieve this, by:

- committing to achieve gender balance (40:40:20) in executive leadership by 2030
- setting measurable interim gender targets in the lead up to 2030 and beyond
- making the plan public; and
- reporting annually on performance against targets.

Our policy for proxy voting recommendations is updated periodically and available on our website at <https://acsi.org.au/policies/acsi-gender-diversity-voting-policy>.

## 1.9 Board process

### Board evaluation

A process for evaluating the board should be established, consistent with the ASX Corporate Governance Principles and Recommendations. In addition to the elements in the ASX Principles and Recommendations, the evaluation should also assess the board's performance in managing corporate culture, as well as shareholder and stakeholder expectations.

### Director skills and performance assessment

The assessment of director skills and performance should:

- be relevant and aligned to the company strategy, including the material risks
- be robust and independent. Directors should not be solely responsible for assessing their own skills. The assessment should be conducted by an external party; and
- be communicated to shareholders.

### Board succession

The board should disclose its processes for renewal and composition, including its skills matrix. We encourage entities to provide meaningful information on the mix of skills and experience the board has, and is looking to achieve, along with how the board's composition aligns to the company's strategy and key risks, including material ESG risks.

Boards should ensure that the following factors are considered in director appointment, succession and nomination processes:

- any skill gaps and the experience of current directors relevant to the company and its strategy
- the size of the board should be sufficient to ensure an adequate number of skilled and independent non-executive directors
- directors should disclose their involvement in any legal proceedings (past, present or anticipated)
- the board should not limit the ability of shareholders to nominate and elect additional directors
- there should be sufficient overlap in director, board chair and committee chair succession so that gaps in skills, experience, subject matter expertise or corporate memory do not occur. Boards should also consider contingency plans to address unforeseen turnover or absence.

### Length of service as a director

We believe a mix of directors with varying lengths of tenure improves board decision making.

Where a company has long-serving directors, we encourage the board to disclose the board renewal process.

### Board committees

The board should ensure that it establishes audit, risk, remuneration and nomination committees, and any other committees as appropriate for the nature of its business. A company should disclose clearly where the responsibility for oversight of ESG issues lies, for example with specific committee(s), as well as the board as a whole.

In general, the following expectations apply:

- a committee should be a reasonable size, taking into account the size of the board
- the chair of any board committee should be an independent non-executive director
- committees should be majority independent, except the audit committee which should have only independent directors

- although it may be appropriate for committees to invite executives and executive directors to be present at meetings, committees should meet regularly without executives present
- committees should have the opportunity to select their own service providers and advisers at a reasonable cost to the company
- companies are encouraged to disclose which material service providers the board and/or committees have appointed, the types of services those service providers have supplied, and the types of services supplied by the same service providers to other parts of the company; and
- during takeovers and related-party transactions, all committees formed should only comprise directors that are not associated with the counterparty to the transaction.

### Existence of controlling shareholders

Where companies have controlling shareholders, adequate safeguards for minority and non-controlling shareholders should be built into board structures and the company constitution as follows:

- there should be disclosure in the annual report and accounts of all connections and relationships (past and present) between directors and controlling shareholders
- the existence of any relationship agreements between a company and its controlling shareholder should be disclosed; and
- the chair should not have any connection to the controlling shareholder.

Where the controlling shareholder owns or controls, singly or jointly, more than 50% of the voting rights, the board should be sensitive to the votes and interests of the non-controlling shareholders, particularly where there is significant misalignment between the controlling shareholder and other shareholders. Companies should also disclose how the board will manage any other competing interests that may arise from the existence of a controlling shareholder.



## 1.10 Financial integrity

Companies must provide an accurate and true representation of their financial management, performance and reporting in line with relevant legal and accounting standards.

As Justice Middleton held in the Centro Case:

All directors must carefully read and understand financial statements before they form the opinions which are to be expressed in the declaration required... Such a reading and understanding would require the director to consider whether the financial statements were consistent with his or her own knowledge of the company's financial position. This accumulated knowledge arises from a number of responsibilities a director has in carrying out the role and function of a director.<sup>9</sup>

**Justice Middleton**

The audit committee and auditors execute many responsibilities regarding financial integrity. However, each director remains ultimately responsible for the oversight of a company's financial integrity. Where there is a material failure in oversight of financial integrity, we will consider recommending a vote against the re-election of relevant directors.

### Audit committee

#### Role

The audit committee's role is to assist the board to discharge its responsibilities in connection with the financial management, performance and financial reporting of the company.

#### Composition

Our composition expectations include:

- ensuring adequate technical expertise to maintain diligent independent oversight and scrutiny
- all audit committee members be independent directors, notwithstanding that the ASX Corporate Governance Principles require only a majority of the audit committee members be independent directors; and
- ensuring discussions with external and internal auditors can occur without executives and executive directors present.

<sup>9</sup> See case law, ASIC v Healey & Ors [\[2011\] FCA 717](#).

## Auditor responsibilities

Auditors play a key role in assisting the audit committee to discharge its responsibilities and so must meet appropriate, ongoing competency requirements established by the audit committee. Auditors must provide reports of their activities to the audit committee and must be present at AGMs to answer shareholders' questions.

## Auditor independence

### General requirement

External auditors (including the firm and individual members of the audit team) must be, and be perceived to be, independent of the company (including its directors and executives as individuals). To be independent, there should be no significant financial, business or employment relationship (defined below) between the company and the audit partner or the audit firm:

- financial relationships arise where the auditor:
  - directly invests in the company
  - has a material indirect investment in the company; and
  - is involved in loans to or from the company.
- business relationships arise where the auditor has a business relationship with the company that is not insignificant to the auditor
- employment relationships arise where the company employs:
  - current or former partners or employees of an auditor; and
  - an immediate family member of one of the auditors who can affect the audit.
- the law requires auditors to provide an annual statement of independence detailing whether there were any circumstances that may affect independence. If there are such circumstances, an assurance should be provided that the audit has not been materially compromised.

## Non-audit services

An audit firm can provide a limited range of non-auditing services. The law requires listed companies to disclose fees paid to an audit firm for non-audit services and the level and nature of the non-audit services performed. Auditors must provide reports to the audit committee outlining the provision and quantum of non-audit services. The audit committee must approve these.

The ratio of audit to non-audit fees is a useful metric in assessing whether the provision of non-auditing services affects independence. Boards should ensure that this ratio always remains low to reduce potential, or perceived, conflicts of interest. Where the amount paid for non-audit services is persistently higher than 50% of the total fees paid to the auditor, we expect the board to explain why this is the case. We will consider these issues when recommending on the re-election of audit committee members.

Some non-audit services should never be provided as they may compromise independence. These include:

- preparing accounting records and financial statements
- valuation services
- internal audit services
- strategic taxation advice; and
- services that may result in the situation where the auditor is required to audit its own work.

## Familiarity and rotation

Signing audit partners must be rotated every five years in accordance with the law. If boards decide to extend the audit partner's tenure, they should disclose their reasons for doing so. Companies should rotate audit firms every 10 to 12 years. If the board decides not to rotate audit firms, they should disclose their reasons for not doing so.

## 1.11 Tax practices

In a global economic landscape, the issue of adopting aggressive tax planning strategies has become a key focus area for governments, international regulators and civil society.

### Sources of investment risk

An aggressive corporate approach to tax planning is a concern for long-term investors as it has the potential to:

- create earnings risks and lead to governance problems
- damage reputation and brand value; and
- cause macroeconomic and societal distortions.

### ► Our expectations on tax practices

Investors benefit from an enhanced level of corporate income tax-related disclosure addressing tax policy, governance and risk management, and performance. We encourage companies to adopt the Board of Taxation's Voluntary Tax Transparency Code.

Comprehensive disclosure about tax practices include:

- disclosure of a tax policy signed by board-level representatives outlining the company's approach to taxation and how this approach is aligned with its business and sustainability strategy
- evidence of tax governance as part of the risk oversight mandate of the board and management of the tax policy and related risks; and
- details of tax strategies, tax-related risks, inter-company debt balances, material tax incentives, detail on any gap between the effective tax rate and the statutory tax rate, country-by-country activities and current disputes with tax authorities.

### Further references

We refer companies to the PRI's [Investors' Recommendations on Corporate Income Tax Disclosures](#) for elaboration on the above points.

## 2. Remuneration

Executive remuneration should be designed to promote sustainable long-term performance and shareholder value creation.

In setting remuneration structures, the board should identify the company's long-term value drivers and how these can be best reflected in the remuneration structure and performance hurdles. To encourage robust oversight of remuneration policy, a remuneration committee should be comprised only of independent non-executive directors of the company, and the committee should actively seek investors' views.

The board should regularly assess the effectiveness of remuneration structures, including in respect of managing risk, promoting the desired culture, and reducing the risk of misconduct.

The manner in which executives are remunerated provides investors with an insight into the relationship between the board and executives.

We expect remuneration arrangements to be cost effective for the company, and outcomes should be the result of bona fide commercial negotiations between the board and key executives. Excessive pay, persistently high variable reward outcomes, and lack of alignment with shareholders can each adversely affect a company's reputation and social licence to operate. Companies should regularly assess pay parity, monitor for discriminatory pay practices and meaningfully disclose findings and action taken. Following practice in other markets, we support companies disclosing the CEO's pay ratio against that of their workforce's median, 25th and 75th percentile pay.

Performance-related remuneration must be truly 'at risk' and based on transparent and measurable objectives. We support the use of a range of measures including financial, strategic and ESG measures where they are transparently disclosed and clearly linked to the delivery of long-term performance.

### Binding vote on pay

We believe that the vote on the remuneration report and the two strikes rule should be supplemented with a binding vote on pay policy every three years. We recognise the importance of the board retaining discretion (and the accompanying accountability) to formulate a pay policy appropriate to their company. Nonetheless, a company's pay policy should describe its components so that investors have appropriate information to assess how the policy might work in practice, and potential outcomes. The current vote on remuneration outcomes remains important to provide feedback to a company's board on how the pay policy is implemented. We will continue to undertake a careful review to assess implementation and outcomes of remuneration structures in determining voting recommendations.

### 2.1 Executive remuneration

We do not prefer one particular remuneration structure over another, rather we focus on how the remuneration structures support long-term success. The reasonableness of executive pay will be a function of structure, quantum and application in practice.

#### Fixed remuneration

Once the amount is set, fixed remuneration is paid without a direct link to individual or company performance. Companies should explain why fixed remuneration amounts are appropriate.

Increases in fixed remuneration have the potential to significantly inflate total remuneration, particularly where other components of pay are determined as a ratio to fixed remuneration. For example, a fixed pay increase may also increase respective variable remuneration sizes, termination entitlements and superannuation contributions.

Companies should avoid creating perverse incentives for executives by linking fixed pay to company size or simply following benchmarks provided by external advisers. A clear rationale should be provided for any material increase in fixed remuneration.

## Variable remuneration

Variable remuneration may include short-term incentives (such as an annual payment in cash, deferred equity or a combination of both) and long-term incentives (such as share options or share-based incentives).

When using variable remuneration, companies need to clearly explain:

- the purpose of the variable component(s)
- the relevant performance indicators or hurdles, including the use of gateways where applicable
- the rationale and expectations for payment at the relevant levels of performance (such as threshold, target, and exceptional performance or their equivalent measures)
- the proportion of the variable component that is genuinely at risk (for example where 'at target' performance achieves an 80% pay out of maximum variable opportunity, that would suggest that only the remainder of the opportunity is a true 'bonus' component for outperformance and only that 'bonus' component is genuinely at risk)

- the minimum and maximum payment amounts; and
- how the variable pay component(s) align with the company's strategy and values and the interests of long-term investors.

We expect to see fluctuation in pay outcomes from year to year. There should also be genuine potential for zero outcomes, (including for the 'at target' component) where performance indicates that this is appropriate.

### Malus and claw-back mechanism

Boards should be able to withhold, or clawback, variable pay in the event of poor performance, excessive risk-taking or misconduct. We encourage companies to disclose any malus and claw-back mechanisms they may have in place.

### Box 2.1: ACSI's expectations on executive remuneration

ACSI's high-level expectations when it comes to executive remuneration are as follows.

Fixed pay should be set no higher than required to retain or attract executives. Increases in fixed pay for incumbent executives should be minimal, given increases in executive fixed pay usually flow through into incentive pay potential.

Variable remuneration for executives should be weighted toward measures assessed over three or more years with most of the variable pay delivered through equity. In ACSI's experience 'long-term incentives' are more correlated with shareholder outcomes than 'short-term incentives' assessed over a single year.

Incentive measures should be set at sufficiently challenging levels to ensure high executive incentive outcomes reflect outperformance rather than 'business as usual'.

If incentive targets are not clearly disclosed and/or explained, it is difficult for investors to assess if they are sufficiently demanding and aligned with their interests. In cases where commercial sensitivities make disclosure in advance difficult, retrospective disclosure is essential.

Any adjustments made to incentive targets – whether these targets are based on earnings, revenue or non-financial measures such as safety or emissions performance – should be clearly disclosed. Boards should not adjust incentive targets to shield management teams from accountability for their own decisions by, for example, excluding 'below the line' costs.

When setting incentive targets and incentive levels, boards should be wary of creating perverse incentives – such as encouraging management teams to make debt-funded acquisitions to achieve EPS growth targets – and of the potential for management teams to de-risk themselves through selling vested equity and/or receiving large cash awards.

Recruitment incentives – so-called 'sign-on awards' - should be consistent with a commercial negotiation with an incoming executive, taking into account not only the value of incentives foregone, but the total remuneration package being received in the new role. Any sign-on award should be delivered in equity vesting over time to ensure it provides some ongoing alignment with shareholders.

## Box 2.2: Remuneration practices we oppose

We generally oppose the following practices:

- incentive pay, including options, for non-executive directors
- the payment of incentives for making acquisitions, rather than as a measure of the value delivered to shareholders over time
- fixed pay increases which simply represent a 'catch up' for executives in cases where a pay freeze has been applied
- the use of normalised or adjusted, earnings figures in incentive plans which shield executives from costs incurred by the company. We will assess the board's rationale for adjustment on a case-by-case basis, including whether adjustments are applied consistently over time and transparently disclosed
- the payment of dividends to executives on unvested (and therefore unearned) incentive shares
- retention payments made without a clear and robust rationale
- waiving of performance requirements and time conditions on a change of control. We are, however, prepared to consider vesting pro-rata for the length of the performance period completed
- long-term incentives without performance hurdles (tenure is not considered an appropriate hurdle), even where the grant includes options with a premium exercise price. These will be assessed on a case-by-case basis, taking into account the company's particular circumstances; and
- measures such as relative TSR where vesting commences when performance is below the median percentile of the company's peers.

## Box 2.3: Assessing termination pay resolutions

Termination payments are a cost to the company. The board should therefore seek to limit termination payments. We do not support termination pay outcomes that can be regarded as a reward for mediocre performance or failure.

Termination benefits awarded must be consistent with the termination benefits previously disclosed by the company.

We do not support guaranteed termination payments that exceed 12 months' fixed pay. We will assess other termination payments in light of the surrounding circumstances.

We will consider the terms of all termination benefits or long-term incentives, which exceed the statutory threshold of 12 months' fixed pay, on a case-by-case basis.

ACSI will generally oppose termination payment resolutions if approval is not limited to a specific period of time (typically 3-4 years).

Where approval is being sought for the continuation of long-term incentives for 'good leavers' on termination or genuine retirement, our general expectation is that incentives will be tested on a pro-rata basis, with the board maintaining discretion to reduce or cancel incentives, depending on the circumstance.



## Two strikes

The 'two strikes' rule has been successful in increasing engagement between Australian boards and their shareholders on issues of executive remuneration and has led to greater levels of accountability on the part of boards.

We support the 'two strikes' rule as a mechanism to assist shareholders in holding the board and/or individual directors accountable where a company has received substantial 'against' votes on remuneration reports in consecutive years.

We expect all companies receiving a first strike, or a high vote, falling short of a strike, against to respond to investor concerns by engaging with investors to address material remuneration issues and publicly explaining its proposed response. We will assess remuneration reports independently of board spill resolutions at companies which have received a first strike.

### Box 2.4: Assessing board spill resolutions

We consider each board spill resolution on a case-by-case basis. We will assess board spill resolutions with regard to:

- company performance and the performance of the board and management
- shareholder engagement and changes made by the board to address investor concerns; and
- the materiality of underlying remuneration issues at the company.

In all cases, our recommendation will be based on our assessment of what will provide the best outcome for shareholders, taking into account all known circumstances at the company

## 2.2 Non-executive director remuneration

Non-executive directors should generally be remunerated by way of reasonable fixed fees only. Remuneration in shares is acceptable but we do not support the payment of share options and other incentives which introduce leverage into non-executive remuneration.

We support policies that require non-executive directors to hold a significant amount of company shares, noting that holdings may vary based on individual circumstances. Such policies should also require that directors participate in capital raisings on a pro-rata basis only. Companies should disclose their policies, and compliance by directors.

### 3. Oversight of ESG risks and opportunities

Our view is that well-governed companies that effectively manage their environmental and social impact are more sustainable over the long term.

Accordingly, alongside other risk and return factors, consideration of ESG issues and their management form part of our members' analysis when evaluating the operational performance and financial prospects of investee companies.

Companies are more likely to attract equity finance if they provide investors with accurate, timely, and relevant information demonstrating that ESG risks and opportunities material to the business are being well managed.

We expect the board to maintain robust oversight of all ESG issues that materially affect the business. We expect that the board will:

- ensure ESG risk is integrated into the company's risk frameworks, including ensuring that ESG risks are included in the company's risk appetite
- recognise that companies are dependent on their social license to operate and therefore rely on a range of stakeholders (including communities, consumers, suppliers, employees, governments, investors, regulators, and suppliers) to operate and succeed, and that acting in the best interests of the company over the long-term requires considering a range of interests and the protection of the environment and natural capital
- clearly identify their key stakeholders and have a strategy for effective engagement
- ensure that it receives quality information to impartially identify and assess environmental and social risks and opportunities material to the company's short and long-term value. For example, whether the board receives regular briefings or advice from internal and external topic experts and whether knowledge of ESG issues considered in the selection and training of directors;

- regularly assess the significance of current or emerging social and environmental issues relevant to the business and ensure there is adequate time to discuss ESG risks and opportunities at board meetings; and
- ensure the company has effective oversight and management systems in place for environmental, social and governance issues. For example, audit and performance assessment systems, as well as appropriate remuneration incentives.

#### 3.1 ESG disclosure

Disclosing information on a range of material ESG issues provides an opportunity, beyond the achievement of short-term financial targets, for the company's board and management to demonstrate strategic thinking in relation to long-term financial sustainability.

ASX listed companies must disclose on an 'if not, why not' basis whether they have any material exposure to environmental or social risks and, if so, how they manage or intend to manage those risks.<sup>10</sup> Further, a company's operating and financial review should include a discussion of environmental and other sustainability risks where those risks could affect the company's achievement of its financial performance or outcomes disclosed, taking into account the nature and business of the company and its business strategy.<sup>11</sup>

<sup>10</sup> ASX Corporate Governance Council, [Corporate Governance Principles and Recommendations](#), 4th Edition, Recommendation 7.4.

<sup>11</sup> ASIC, Regulatory Guide 247 '[Effective disclosure in an operating and financial review](#)', issued 12 August 2019.

Effective ESG disclosure should:

- identify the environmental, social and governance issues that may have a material impact on the company's value over the short, medium and long term
- provide both data and a supporting narrative explaining why the issue is material and where the material impact occurs in the value chain
- be accessible, consistent and provide accurate, comparable and where possible, verified data.<sup>12</sup> As appropriate, companies should disclose the degree of reliability of their ESG data (for example, audited, verified, estimated) as well as any limitations and underlying assumptions<sup>13</sup>
- recognise the company's impact on stakeholders and articulate how the company takes into account stakeholder views and interests
- describe policies and procedures for managing environmental or social impact over the short and long term and demonstrate how policies and procedures are implemented; and
- include information about how the company evaluates whether its ESG management systems are effective, including performance against metrics and targets.

#### Reference guides

Every company is expected to have processes for identifying ESG issues relevant to its operations. Some leading frameworks that can help guide companies in the identification of material ESG issues for management and reporting include:

- The International Sustainability Standards Board sustainability disclosure requirements ([IFRS S1 and S2](#)).
- Global Reporting Initiative's [Sustainability Reporting Standards](#)
- Guides prepared by [the United Nations' Global Compact Network Australia](#), and the [Principles for Responsible Investment](#)
- [The OECD Guidelines for Multinational Enterprises](#)
- the [Sustainable Development Goals](#)

<sup>12</sup> Understanding the data needs of responsible investors: The PRI's investor data needs framework | Policy report | PRI (unpri.org).

<sup>13</sup> For more information on providing verifiable data, see paragraphs D21-D24 in the [IFRS S1 General Requirements for sustainability-related financial information](#).

<sup>14</sup> For more information on climate-related financial risk, see the [TCFD overview report](#), December 2022.

<sup>15</sup> See for example, [APRA Prudential Practice Guide CPG 229 Climate Change Financial Risks November 2021](#).

On the following pages, we discuss five ESG issues that impact the majority of ASX200 companies. The issues are not dealt with comprehensively and are included in these Guidelines by way of example. The issues are:

- ▶ Climate change
- ▶ Circular Economy
- ▶ Nature and Biodiversity
- ▶ Workforce and human rights
- ▶ Cyber Security

## 3.2 Climate change

Unmitigated climate change would have catastrophic impacts across the globe, including impacts on human health, biodiversity, water availability and disruption of ecosystems. Climate change, therefore, also presents significant financial risk to the global economy. To mitigate the impacts of climate change on investment portfolios, and the financial system as a whole, ACSI supports the Paris Agreement aim of limiting global warming to 1.5 °C.

### Sources of investment risk and opportunity

Climate change presents financial risks and opportunities for business and investors.<sup>14</sup> There are physical risks associated with rising mean global temperatures (including rising sea levels and increased severity of extreme weather events), transitional risks and opportunities as the economy adjusts to a lower-carbon future.

Financial system participants and regulators around the world have acknowledged the significant and systemic financial risks associated with climate change.<sup>15</sup> The risks are deeply embedded across the financial system and therefore will influence the value of our members' investments. The economic transition is underway and is accelerating.

## ► Our expectations on climate change

Companies materially exposed to climate change-related risks should set their strategy to adapt to a low-emission future. This includes identifying climate risks and opportunities, assessing the materiality of these risks for the company, and demonstrating how they are integrated into its governance, strategy and risk management processes.

Diverse companies and sectors will need to take differentiated approaches to managing climate risk, and ACSI does not specify pathways for company responses. Instead, we focus on how a company communicates to investors that its pathway is credible and Paris-aligned. We expect companies' responses to be informed by a science-based assessment of the carbon constraints required to avoid dangerous climate change.

We believe a planned transition to a low carbon economy is preferable to a disorderly transition on the basis that a planned transition will result in better economic outcomes, is better able to take account of the needs of various stakeholders, and better manage uncertainty and volatility.

ACSI encourages companies to disclose their transition plans, including how the company is supporting a just transition for affected workers and communities. Transition plans should show how a company intends to manage its processes, supply chains and interactions with stakeholders in line with their climate-related targets, to mitigate physical and transition risks as the economy shifts towards net zero emissions.<sup>16</sup>

Better practice disclosures will include information on how its business model, capital allocation and/or technology investment support its transition plan and emission reduction targets.<sup>17</sup>

These disclosures should also include progress against any climate-related targets. Companies should also disclose the role offsets will play in their transition to a low-emission economy. Companies should disclose the level of board oversight of the use of offsets, the transition plan and just transition policies. Companies should also disclose the processes by which the board monitors this transition.

Where companies face material climate-related risks, we expect companies to adopt the risk assessment and reporting framework in the [Financial Stability Board's Taskforce on Climate-related Financial Disclosure \(TCFD\)](#) and make substantive climate-related disclosures according to this framework.

ACSI expects companies to demonstrate how they are integrating these risks and opportunities into their governance, strategy and risk management processes.

For more detail on ACSI's approach to climate risk and expectations of companies, please see [ACSI's Climate Change Policy](#) and [ACSI's research on just transitions](#).

<sup>16</sup> Australian Government Treasury [Sustainable Finance Strategy Consultation](#) Paper November 2023

<sup>17</sup> For more information on credible transition plans and target setting, see ACSI's research paper ["Chasing 1.5°C The ASX200 – on the right trajectory?" November 2022](#).

The table below outlines the standards that we expect relevant companies to be meeting or demonstrating concrete progress towards meeting.

### Box 3.1: Assessing climate risk management

ACSI analyses companies' disclosure and management of climate change across the following seven core principles, which are drawn from ACSI's Climate Change Policy.

**TCFD disclosure:** whether the company has adopted the Task Force on Climate-related Financial Disclosures (TCFD) risk assessment and reporting framework. In line with TCFD, this includes whether the company has effective board oversight and governance structures to manage climate risk, and whether it discloses its trends in Scope 1, 2 and 3 emissions. The International Sustainability Standards Board (ISSB) has assumed oversight of companies' reporting against the TCFD. The ISSB has also released its disclosure standard, which incorporates the recommendations of the TCFD. It is proposed that Australia implement a mandatory climate disclosure regime based on the ISSB standard, consequently we anticipate that market and investor expectations will evolve accordingly.

**Alignment of corporate strategy:** whether the company's corporate strategy is aligned with the Paris Agreement. These standards should be integrated into capital-allocation decisions, financial reporting and, where appropriate, remuneration practices. A company should disclose its roadmap and long-term strategy, including key levers and annual disclosure of progress.

**Scenario analysis:** whether the company stress-tests its portfolio and strategy resilience against a range of plausible but divergent climate futures, including a Paris-aligned 1.5°C scenario and physical-risk scenarios based on current warming trajectories. A company should disclose the key assumptions and signposts used, as well as both qualitative and quantitative disclosure of impacts.

**Paris-aligned targets:** whether the company has set short, medium and long-term emissions-reduction targets aligned to the Paris Agreement. This may include investing in partnerships, research and development, or other areas to address material risks.

**Physical risk management:** whether the company undertakes analysis of physical risks to portfolio assets. Assessment should be detailed and include asset-level and/or industry-level exposures and resilience plans, including estimated costs.

**Policy and advocacy activity:** whether the policy and advocacy activity of both the company and the industry associations to which it belongs are consistent with Paris Agreement goals. We expect disclosure of any material policy differences (on an issue-by-issue basis) between a company and its industry associations, and how the company intends to respond to these differences.

**Planning for equitable transitions:** whether the company incorporates impacts on employees, communities and other stakeholders into transition strategy and planning. This includes whether the company engages effectively with stakeholders and how it discloses the key risks and measures being considered to minimise negative impacts.

The list above should not be considered prescriptive or exhaustive, but rather a guide on the types of information that ACSI will take into account. The ways that companies manage climate risks and opportunities will necessarily vary, so the materiality of individual factors will be considered in the context of a specific company, depending on their particular risk and opportunity profile. In assessing companies' approaches, ACSI will consider all elements holistically, exercise informed judgment, and avoid a one-size-fits all or 'tick the box' evaluation.



## 'Say on Climate' vote

ACSI supports the provision of a 'Say on Climate' vote whereby companies that are materially exposed to climate risk provide investors with an advisory vote on the company's management of climate-related risks and opportunities. A 'Say on Climate' vote facilitates greater transparency, accountability and focus on material risks and opportunities. At a minimum, materially exposed companies should be holding a 'Say on Climate' vote on their climate strategy every three years. Where a three-year cycle is adopted, companies should come back to shareholders sooner if climate strategy, or a company's assets, change materially or there is a substantial shareholder vote against the endorsement of the company's climate strategy. Internationally, the emerging better practice is for materially exposed companies to also hold an annual vote (in between the triennial strategy votes) on progress, implementation and any significant updates of the climate strategy. ACSI supports this better practice standard.

Given the pace at which climate change must be addressed, it is important for investors to have an annual opportunity to express their views on a company's management of climate-related risks and whether climate strategies are effectively implemented.

Where a company has adopted a 'Say on Climate', this vote and the company's climate strategy will be the primary focus for ACSI's company engagement and analysis. ACSI will assess other shareholder resolutions on a case-by-case basis, taking into account whether they relate to issues not already adequately covered by a 'Say on Climate' resolution.

### Assessment of climate reports

Our voting recommendations on climate-related risk will take into account qualitative and quantitative factors. ACSI will also integrate the progress a company has made, and compare a company's performance against peers, the sector and best-in-class examples.

In assessing annual progress votes, ACSI will consider a company's progress against climate targets, transition plan, status of implementation and other information that may be required by reporting frameworks such as the ISSB IFRS S1 and S2 disclosure standards and the TCFD.

ACSI will apply the principles set out in Box 3.1 when determining its recommendations on companies' climate reports. ACSI acknowledges that progress will not always be linear, and we will therefore assess both company and shareholder resolutions on a case-by-case basis, considering a company's strategic plans and outcomes holistically as well as the company's existing climate-related disclosures.

### Response to shareholder votes

Where a company receives a significant (20% or greater) 'against' vote on a 'Say on Climate' or other climate-related resolution, ACSI expects that the company will engage with shareholders, be responsive to concerns and where relevant, update its climate strategy and put it to another 'Say on Climate' vote at the next AGM (see section 4.6 for responding to shareholder resolutions). When determining our voting recommendations, ACSI will consider how a company has responded to the outcome of previous 'Say on Climate' votes or other climate-related resolutions the company or shareholders have put forward.

### Director elections

In line with ACSI's Climate Change Policy, where companies consistently fall short of our expectations, ACSI may recommend that our members vote against directors on a case-by-case basis.

Our recommendations will focus on the individual directors most accountable for oversight of climate-change related risks, for example company Chairs, and the Chairs of the Risk and Sustainability committees or similar.

## 3.3 Circular Economy

There is increasing pressure on the availability of finite resources, especially as the global population and consumption continues to grow.<sup>18</sup> Internationally, companies and governments are increasingly recognising the importance of a more efficient use of resources and of waste reduction to reduce costs and relieve the dependency and burden on finite resources.<sup>19</sup> Failure to do so is likely to risk resource shortages (and associated price shocks), disruption to supply chains, damage to nature and biodiversity from resource extraction and climate impacts from the carbon footprint of resource use. These risks may be material in a diverse range of sectors and industries, such as manufacturing, consumer goods and mining.<sup>20</sup>

<sup>18</sup> KPMG Report: [Linear Risk](#) 2021.

<sup>19</sup> Australian Trade and Investment Commission [Circular Economy](#).

<sup>20</sup> Ellen MacArthur Foundation, [Financing the Circular Economy: Capturing the opportunity](#) 2021.

To mitigate these risks, markets will need to transition from a linear 'take-make-waste' approach to a circular approach, which keeps resources in use for as long as possible and reduces wastage. Not only can this mitigate the financial risks of a linear economy, it also creates significant opportunities. Circular approaches can preserve the value of a company's resources, as well as reduce a company's costs, greenhouse gas emissions and impacts on nature. Circular models should therefore be considered as a key enabler to meet climate targets.

Companies should be considering their risks and opportunities related to resource use and waste. Once they have assessed risks and opportunities, companies should build circular principles into their design of products, services and strategies. This means establishing and implementing plans to use resources more efficiently and reduce waste.

Companies should disclose how they are incorporating circular economic models into their strategy and risk management processes.

This could include disclosing:

- how waste management and reduction is incorporated into corporate strategy
- any actions that the company is taking to reduce and manage waste
- how a company allocates capital to effectively manage the use of resources, reduce waste and develop circular practices
- how the company is working to reduce its use of virgin materials
- any targets set in relation to waste management and resource use
- how a company measures progress in adopting circular practices
- how a company is advocating for a circular economy at the government and regulatory levels; and
- any alignment to relevant, sector-based standards and initiatives.

### 3.4 Nature and Biodiversity

Biodiversity loss and ecosystem collapse have been identified as one of the top five global risks facing markets in the coming decade.<sup>21</sup> Nature-related risk poses a significant financial risk to companies with operations that are dependent on, or impact, biodiversity. These impacts and dependencies can also manifest in physical, transition and market wide risks. A loss in biodiversity results in a fall of natural capital stocks, reducing access to ecosystem services that many companies and communities depend on. Companies with a high impact on nature and biodiversity face legal and reputational risks as regulation surrounding nature and biodiversity tightens.

The adoption of the Kunming-Montreal Global Biodiversity Framework sets clear targets for the protection and restoration of nature globally, and companies should be designing their strategies to align with, and contribute to, the global targets.

Where a company's impacts and dependencies on nature present material financial risks, ACSI expects a company to identify, mitigate and disclose these risks by utilising the guidance of the Taskforce on Nature-related Financial Disclosures (TNFD) framework. Examples of these risks and their dependencies can be found in the table below sourced from ACSI's research on biodiversity.<sup>22</sup>

ACSI recommends that companies disclose:

- in line with the TNFD framework as far as possible, with a timeline for increasing implementation of the framework
- how biodiversity and nature considerations are factored into their corporate strategy and governance
- any nature or biodiversity science-based targets they have or will have in place over various time horizons
- how, or whether, the company's strategy and targets are aligned to the Global Biodiversity Framework, including any actions a company may be taking to halt and reverse biodiversity loss; and
- where applicable; a target, plan, and timeline for assessing deforestation risk and where applicable, ensuring their operations or supply chain are free from deforestation.

<sup>21</sup> The World Economic Forum's 2021 [Global Risk Report](#).

<sup>22</sup> ACSI [Biodiversity Research Report](#) 2021.

| Risks  | Examples   |
|--|--|
| <b>Physical:</b> Arise from biodiversity changes which reduce the availability or quality of the ecosystem services on which a company depends.  | Common physical risks include productivity loss, reduced availability of raw materials, and business and supply chain disruptions.   |
| <b>Transition:</b> Arise from changes in the legal, societal and economic expectations of a company's impact on nature   | For example, companies in the mining sector may face reduced scope to develop greenfield sites due to tougher biodiversity-related regulation.   |
| <b>Market wide:</b> Arise from economy-wide dependencies and impacts on nature from company operations that affect critical natural systems or financial stability at the portfolio or system level. | The loss of a keystone species that has a critical impact on an ecosystem is a market wide risk. For example, many food crops are dependent on bees for pollination. With species of wild bees declining, this creates a systemic risk to food production. <sup>23</sup> |

#### Further references

We refer companies to the following sources for further information.

- [Taskforce on Nature-related Financial Disclosures \(TNFD\) framework](#)
- [Kunming-Montreal Global Biodiversity Framework](#)

## 3.5 Workforce and human rights

### Human rights and modern slavery

Safeguarding human rights is vital for businesses to build long-term sustainability, as poor practice can expose companies to significant reputational and financial risk. It is widely accepted that companies have a responsibility to respect the human rights of any people they impact, including their workforce, communities, customers and end-users.<sup>24</sup> We expect companies to ensure that their human rights risks are mitigated, whether in the company's direct operations or in their value chains.

Ensuring the protection of human rights also creates opportunities for companies, for example to improve relationships with key stakeholders, reduce the potential for conflict, and create a company culture that attracts talent.

We encourage companies to recognise all relevant human rights impacts that can arise in their operations or value chains. This includes modern slavery risks, as well as other types of human rights risks, for example through harm to First Nations and other communities, displacement or undermining the right to personal safety and security.

Management of human rights risks should extend to digital risks, including data privacy. Companies should work to ensure that digital tools are not used to suppress, limit or violate rights (e.g. through online harassment, discrimination, censorship or surveillance).

Modern slavery represents a material investment risk because of its potential to undermine shareholder value. We expect companies to genuinely engage with the issue, and work with suppliers, contractors and partners along the supply chain to identify and respond to modern slavery risk and address incidents where they occur.

<sup>23</sup> When Bee Foundation 'About Bees Pollination'; The Guardian 29 July 2020 report '[Loss of bees causes shortage of key food crops, study finds](#).'  
<sup>24</sup> UN Guiding Principles on Business and Human Rights.

Companies should be particularly sensitive to human rights risks to vulnerable groups (including, for example, Indigenous Peoples, women, children, ethnic and religious minorities) in locations where the domestic legal frameworks inadequately protect human rights. If there is misalignment between local human rights laws or practices and international standards, companies should adhere to international standards at a minimum.

A company's board should oversee and have ultimate accountability for the company's human rights practices. To do so, the board should ensure it receives sufficient information to be able to assess and manage the risks.

We refer companies to the internationally recognised [International Bill of Human Rights](#), the ILO's [Declaration on Fundamental Principles and Rights at Work](#) and the [UN Guiding Principles on Business and Human Rights](#), which clarify how companies should carry out their responsibility to respect human rights.

### Sources of investment risk and opportunity related to human rights

| Examples of investment risks related to human rights   | Potential financial impacts  |
|--|--|
| Regulatory: standards, laws, exposure to litigation.   | Increased costs associated with regulatory compliance, civil penalties, compensation, or criminal sanctions for workforce exploitation and human rights violations, as well as loss of social license to operate.                                      |
| Operations: allegations of workforce exploitation or human rights abuses; serious injury or loss of life.  | Increased risk of operational shutdowns or disruptions, board and management attention diverted from operational activities to respond and sub-optimal productivity.   |
| Reputation: greater consumer awareness and concern about workforce exploitation and human rights violations; increased shareholder scrutiny; increased pressure from concerned stakeholders. | Loss of market share as consumers move to purchase products from companies that respect human rights and that have appropriate monitoring systems in place.  |
| Market: growth of global supply chains and Australia's significant economic reliance on imports from countries highly vulnerable to labour exploitation.                                     | Increased likelihood that companies are implicated in forced labour through increasingly global supply chains and increased cost of capital as investment markets continue to understand the risks and integrate them into investment decision-making. |

#### ► Our expectations on human rights and modern slavery

Each company will face a different set of risks and opportunities which is why it is important for companies to have robust processes to identify, prevent, respond, assess and disclose adverse human rights impacts and modern slavery risk. This should apply in relation to all permanent and casual workforces and throughout the supply chain, regardless of the sector, operational context or structure of the company.

We expect companies to:

- avoid causing or contributing to adverse human rights impacts and modern slavery in their own operations; and
- understand and mitigate the risks of adverse human rights impacts and modern slavery in their supply chains.

To effectively manage human rights and modern slavery risks, companies should undertake the actions outlined in the table below.

### Effective management of human rights and modern slavery risks

|                                  |   |
|----------------------------------|---|
| Identify risks                   | <ul style="list-style-type: none"> <li>Identify the risks in the company's operations and supply chains through effective risk assessments, conducted by credible professionals and involving relevant stakeholders and rights-holders. Risk assessments should be reviewed on a regular basis and should be incorporated into decision-making.</li> <li>Companies should be particularly sensitive to procurement and labour practices that increase the risk of modern slavery, such as complex and long supply chains (e.g. use of several intermediaries or agents) and extreme timeline and price pressures. See also the section below on poor labour standards and precarious workers.</li> </ul>  |
| Establish policies and standards | <ul style="list-style-type: none"> <li>Set clear standards through policies that express commitment to respect rights in a company's operations and supply chain and adhere to international standards.</li> </ul>  |
| Take action                      | <ul style="list-style-type: none"> <li>Implement practices that aim to prevent adverse human rights and modern slavery impacts. This should include: <ul style="list-style-type: none"> <li>an effective human rights due diligence process</li> <li>independent third-party audits of the supply chain</li> <li>active education and engagement with employees, contractors, customers, suppliers and other relevant stakeholders to ensure understanding of human rights risks and to mitigate the risk of adverse impacts</li> <li>ensuring that information and complaints are considered and acted upon at the appropriate level of the company, including escalation of serious risks and complaints to the board where necessary</li> <li>engagement with peers and industry associations to improve practices on human rights and modern slavery risk.</li> </ul> </li> </ul> |
| Respond to adverse impacts       | <ul style="list-style-type: none"> <li>Respond to adverse human rights and modern slavery impacts by: <ul style="list-style-type: none"> <li>ensuring that effective grievance mechanisms are in place to uncover and address complaints. Grievance mechanisms should adhere to the standards set out in the UN Guiding Principles on Business and Human Rights and must be trusted by and accessible to all relevant stakeholders. Companies must carefully ensure that workforce and human rights incidents are dealt with in a way that does not put survivors or other relevant people at risk</li> <li>establishing clear accountability mechanisms for employees or contractors if they fail to meet company standards.</li> </ul> </li> </ul>  |
| Remediate                        | <ul style="list-style-type: none"> <li>Provide for, or cooperate in, remediation for adversely impacted individuals and communities where the company has caused or contributed to these impacts.</li> </ul>  |
| Evaluate                         | <ul style="list-style-type: none"> <li>Assess the effectiveness of the company's actions on a regular basis.</li> </ul>   |



Public reporting is important because it allows investors to assess their level of investment risk. We expect companies to disclose their material risks related to human rights and modern slavery and how the company effectively manages the risks (i.e. how it complies with the expectations outlined above). A company with better practice is one that transparently reports cases of modern slavery or adverse human rights impacts discovered in its operations or supply chains (including both direct and indirect suppliers) and how it is addressing them. ACSI supports companies disclosing identified human rights and modern slavery incidents in a way that does not put survivors or other relevant people at risk.

Companies should provide information that goes beyond generic high-level risk factors, such as country and sector risks. It is useful for companies to describe how they may potentially be involved in modern slavery by using the 'cause', 'contribute', 'directly linked' continuum set out in the UN Guiding Principles on Business and Human Rights.

Companies should be transparent in relation to their wider workforces, including casual and contracted workers, as well as permanent workers. Disclosure should include how the company uses and expands its existing leverage with suppliers and other business partners to address modern slavery and human rights risks. Companies should provide meaningful information about consultation with owned or controlled entities and other reporting entities (where relevant).

In relation to modern slavery specifically, ACSI will be assessing the extent to which modern slavery statements show improvement in companies' year-on-year performance. If there is a gap between reporting and implementation, this can present a significant investment risk.

### Further references

We refer companies to the following sources for further information.

*On human rights:*

- the [United Nations Guiding Principles on Business and Human Rights](#) and the [United Nations Guiding Principles Reporting Framework](#) provide further detail on how to establish effective policies, due diligence processes, access to remedy, grievance mechanisms and other areas.
- for extractive sector companies, the [Voluntary Principles on Security and Human Rights](#) are also relevant.

*On modern slavery:*

- ACSI research undertaken in 2023, [Compliance without ambition: Taking stock of ASX200 reporting under Australia's Modern Slavery Act](#)

### Labour standards and precarious workforces

There is growing evidence that poor labour standards can create financial risk to companies, and that a motivated, well-supported workforce can improve business performance.<sup>25</sup> Failure to uphold workforce rights can cause significant damage to a company's reputation, leading to material financial costs. With the rise of informal and increasingly globalised workforces, there are growing risks involved in precarious and casual employment. Certain workers (such as migrant workers and those employed through labour hire companies and/or where freedom of association is prohibited) may be more vulnerable and face heightened risks to their safety and wellbeing.

Insecure workers may face:

- low levels of rights protection
- unacceptably poor or dangerous working conditions
- impediments to collective bargaining
- unfair wages and underpayment; and
- unfair/unprotective contract terms (e.g. through 'sham' contracting).

<sup>25</sup> See, for example: UN Global Compact, 'Realization of Decent Work for All'.

### ► Our expectations on labour standards and precarious workforces

As with human rights and modern slavery, we expect that companies identify and mitigate risks related to labour rights and precarious workforces. We also expect companies to disclose:

- how the company ensures safe working conditions, fair pay and contract terms, and supports the health and wellbeing of its workers
- any underpayments discovered, their remediation, and the systems the company has in place to avoid underpayments
- any labour hire practices, including identification of labour hire suppliers and the grievance mechanisms in place for labour hire workers and contracted employees
- how the company engages with its workforce, tracks the satisfaction of workers and responds to negative feedback
- any policies regarding freedom of association and collective bargaining
- how the company invests in the skills and satisfaction of its workforce, for example through training, career progression, leave and flexible working arrangements; and
- retention levels.

#### Further references

We refer companies to the following sources for further information.

- [ILO Declaration on Fundamental Principles and Rights at Work](#)

### Engagement with First Nations people and the protection of cultural heritage

According to international standards and ACSI expectations, companies have a responsibility to respect the rights and cultural heritage of First Nations people. Failure to do so can carry a significant human and social cost. Companies can face financial costs, through reputational damage, production implications, project delays, litigation, poor retention and engagement of employees, and physical damage where conflict arises.

We expect companies to effectively assess and manage their risk, and the board is ultimately accountable for this. To do so, companies should engage in good faith and work to build constructive, fair and long-term relationships with First Nations people.

ACSI has clear expectations for companies in their engagement with First Nations people. These expectations are set out in ACSI's Policy on Company Engagement with First Nations people.

#### Further references

We refer companies to the following sources for further information:

- [UN Declaration on the Rights of Indigenous Peoples](#)
- [ACSI policy on company engagement with First Nations people.](#)
- [ACSI research report on company engagement with First Nations people.](#)

### Safety

There are wide divergences in the safety information disclosed by companies, even among those where it is a more material risk factor. A lack of transparency may mask the extent of workplace harm and slow the identification of systemic risk. Comprehensive company reporting helps demonstrate to investors that health and safety is being managed effectively.

Safety reporting should include contractors and employees and distinguish between the two groups.

Workforce safety relates not only to workers' physical safety but also their mental health, and companies should ensure that there is adequate support for workers' psychosocial wellbeing.

### ► Our expectations on safety

When preparing safety reports or statements, ACSI expects that:

- companies immediately disclose any fatal incidents involving employees, contractors, or members of the public, preferably via the ASX Announcements platform. It is also important to provide information on consequence management and improvements that a company has made to its safety culture and framework following a fatal incident
- companies update investors on the status and findings of any internal and external investigations, as well as the provision of support to immediate families
- companies disclose leading safety indicators relating to the severity of incidents and the potential of incidents (near-misses), as this provides information on harm prevention and safety management
- companies disclose lagging safety indicators such as lost-time injury frequency rate (LTIFR) and total-recordable injury frequency rate (TRIFR)
- companies provide separate disclosures relating to the safety outcomes of contractors
- when a company uses a safety metric in its variable remuneration structure, it should disclose the safety performance data used for assessing that metric; and
- disclose how the company is working to support and improve the psychosocial safety of its workforce.

### Sexual harassment

All organisations need to approach sexual harassment seriously, have measures in place to prevent it and to deal with it effectively when it arises. This is a fundamental part of providing a safe workplace for all employees. There is strong contemporary evidence of companies that fail to appropriately manage this issue suffering significant damage. Long-term investors have an interest in ensuring that the companies they invest in are well run, safe for their employees, and have cultures that prevent and address, workplace sexual harassment.

### ► Our expectations on sexual harassment

Boards have a responsibility to ensure that they are receiving the information needed to appropriately respond to, and prevent, sexual harassment. Stakeholders increasingly expect companies to manage this material risk. The Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 places a positive duty on businesses and employers “to take reasonable and proportionate measures to eliminate unlawful sex discrimination, including sexual harassment, as far as possible.”<sup>26</sup> Consequently, companies must make all reasonable efforts to proactively prevent sexual harassment. It is not sufficient to respond to sexual harassment on a reactive basis.

We expect companies to:

- demonstrate visible leadership from the board and senior management, to create a culture of trust and respect. Directors must prioritise and embed good company culture within their organisations, and act immediately where there are instances of misconduct or unethical behaviour
- establish systems for proactive risk identification and mitigation. This should include:
  - robust reporting to the board, allowing directors to make informed decisions based on data. Internal reporting should also be used to improve learning and behaviours in the company
  - ensuring that the organisation has the appropriate skills and experience to prevent and respond to sexual harassment
  - impactful training for staff; and
  - clear responsibilities and accountability.
- establish effective and accessible grievance mechanisms and respond to complaints. Companies should adopt a victim-centred approach to the way investigations are conducted and ensure that employees are supported and feel comfortable to report sexual harassment; and
- disclose their policies and risk management practices, as well as their performance.

<sup>26</sup> See Anti-discrimination and human rights legislation amendment ([Respect at Work](#)) bill 2022.

## Racism and other forms of discrimination

Racism, other forms of discrimination, and harassment impact employee health, wellbeing and job satisfaction. It is crucial to establish a safe and inclusive working environment for all people.

Companies can perpetrate racial and other discrimination not only within their workforce culture, but also through their products, services, marketing, public policy activities and other actions. We expect companies to identify these risks and be proactive in ensuring that their culture and operations promote and enhance respect, inclusion and equality.

It is good practice for companies to review current policies and practices, and establish clear values and expectations related to racism and other forms of discrimination. Companies should engage with employees and key stakeholders to identify discriminatory practices and areas of risk, as well as opportunities to enhance inclusion and equity.

### Further references

On sexual harassment, racism, and other forms of discrimination

- [Research published by the Australian Human Rights Commission and ACSI](#) in June 2021 on sexual harassment in the workplace.
- The Australian Human Rights Commission's [Respect@Work: Sexual Harassment National Inquiry Report](#) (2020) and [Guidance on the Positive Duty under the Sex Discrimination Act](#)
- AICD, '[A director's guide to preventing and responding to sexual harassment at work](#)', 2021.
- For further guidance on effective grievance mechanisms, see the [United Nations Guiding Principles on Business and Human Rights](#).
- International law and standards, including the [International Covenant on Civil and Political Rights](#); the [Convention on the Elimination of All Forms of Discrimination against Women](#); [International Labour Organisation Convention \(No. 111\) Concerning Discrimination in Respect of Employment and Occupation](#), and the International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>27</sup> PRI [Stepping Up Governance of Digital Security](#) 2018.

<sup>28</sup> Morpohsis and RICS report: [Crossing the threshold – a primer for sustainable digitalisation in real estate and cities, 2018](#).

<sup>29</sup> EC-Council, [What is Ethical Hacking?](#).

## 3.6 Cyber Security

Cyber security will present a more material threat to some companies and their consumers than others, for example where companies are responsible for critical infrastructure or sensitive information.<sup>27</sup>

Companies should consider disclosing their governance processes with regard to cyber and information security. This could include:

- how a company intends to reduce social harm, protect its stakeholders (such as employees and consumers) through its data collection, storage, utilisation and privacy policies and whether or not an appropriate (relative to the organisation's risk exposure) cyber strategy is in place<sup>28</sup>
- the role of the board and level of board oversight of cyber security (including how a board is notified of a cyber security or data breach)
- the digital security expertise held by a director and/or the external expertise the board has access to for advice and assurance
- the role of management and the processes in place to identify, protect against and rectify cyber security risks and data breaches and whether cyber security risk is appropriately embedded within the organisation's risk management program
- how the organisation promotes a culture of cyber security, from board and management levels down throughout the organisation, which may include an overview of cyber security education and testing practices to promote and strengthen the resilience of the organisation to cyber security incidents
- how companies manage and store their data relative to their data privacy policies
- if and how companies use scenario testing within their risk management program, including whether or not the scenario testing includes the use of an independent third-party and ethical penetration testing.<sup>29</sup> ACSI encourages companies to incorporate these verification mechanisms into their cyber security governance policies; and
- how a company will respond to a cyber security incident including how they will identify and notify affected customers or stakeholders.

ACSI also encourages companies that have experienced a cyber breach to provide stakeholders with information as to how they will rectify and adjust their practices to protect against further breaches in the future. Breaches in digital security that constitute material information should be disclosed through the ASX Announcements platform.

## 4. Capital structure and shareholder rights

Major equity capital raisings, share buybacks and mergers and acquisitions have the potential to inequitably transfer or destroy shareholder value. They may also increase the potential for conflicts of interest between shareholders and company executives or their advisers. It is the board's responsibility to exercise independent judgement to ensure that these major transactions are conducted in accordance with existing shareholders' interests.

### 4.1 Capital raisings

The board must maintain effective oversight of management and external advisers in equity capital raisings to ensure they are conducted in the best interests of shareholders.

The board should seek to minimise the costs of raising new equity, and to ensure that the fees paid to advisers, including investment banks and underwriters, reflect the actual value delivered and the risks incurred.<sup>30</sup>

We provide the following guidance to boards on oversight of capital raisings.

#### Respecting shareholders' interests

Equity capital raisings have the potential to dilute shareholders' investments. As such, companies should respect the interests of existing shareholders by raising new equity capital in such a way that all existing shareholders have an opportunity to maintain their interest or be compensated for the dilution of their interest. We consider that a renounceable rights issue (also known as an entitlement offer) best meets this requirement.

#### Non pro-rata capital raisings

Where equity capital is allocated without regard to existing shareholders' interests (or where no compensation has been offered for dilution, as in the case of a non-renounceable entitlement offer) companies should provide disclosure to the market (within 5 business days) of:

- how the board oversaw the capital-raising process
- how the capital raised was priced
- whether best efforts were made to allocate pro-rata to existing shareholders, and, if not, why this was not possible
- the identity of advisers and underwriters
- the fees paid to advisers and underwriters; and
- any differential in the fees paid to underwriters and those paid to sub-underwriters.

#### Box 4.1: Assessing capital raising proposals

Boards play a critical role in the governance of capital-raising processes. Where companies seek approval for capital raisings that are not pro rata, we will consider a range of issues including:

- the board's oversight of the capital-raising process to ensure existing shareholders' interests are considered
- the context and reason for the type of capital raising, such as the need to raise capital quickly
- the ability for existing shareholders to participate in the raising process; and
- the price paid by subscribers relative to market and the dilution caused by the capital-raising process.

<sup>30</sup> King, Wood and Mallesons, [Raising Equity Capital – Issues for Directors](#) 2019.



Where capital raisings, such as selective placements, do not adequately respect existing shareholders' interests, we will generally recommend voting against the capital raising in the post-facto approval process. Selective placements are unfair and dilutive to non-participating shareholders, and there is no regulatory limit on the discounts at which shares may be issued.

Where an unfair and dilutive capital raising is not put up for shareholder approval at a shareholder meeting, we will generally recommend voting against the directors present at the time the placement was agreed.

## 4.2 Share buybacks

As with capital raisings, the board must maintain effective oversight of management and external advisers to ensure any buyback is conducted in the best interests of shareholders. Directors should consider the potential control implications of any share buybacks.

Companies should generally conduct pro-rata buybacks where shareholders' ability to participate in the buyback is directly proportional to their shareholding. Where a selective buyback is proposed, the Corporations Act requires approval by special resolution of shareholders not involved in selling shares (or their associates).

### Box 4.2: Assessing selective buybacks

We will evaluate whether the buyback is in the interests of shareholders not involved in selling shares. In doing so, we will consider:

- the board's oversight of the buyback to ensure all shareholders' interests are considered
- the purpose of the buyback, and whether there are valid reasons why a pro-rata buyback could not achieve that purpose; and
- the value of the benefit: the premium to the market price being offered to the buyback participant(s), including the potential value of franking credits.

## 4.3 Mergers and acquisitions

Mergers and acquisitions (M&A) have the potential to increase or decrease shareholder value. During M&A activity, there is increased potential for misalignment between the interests of shareholders and executives, and between shareholders and advisers.

The board is responsible for managing these possible conflicts and ensuring that executives and advisers always act in the interests of shareholders.

### Board oversight of mergers and acquisitions

The board plays a critical role during M&A activity. Accordingly, the board should establish appropriate protocols that set out the procedure to be followed if there is an offer for the company, including any communication between insiders and the bidder. These protocols should include the option of establishing an independent takeover committee, its likely composition and implementation.

The establishment of an independent takeovers committee, comprised of non-conflicted directors, is critical where the executive management or directors are involved with a bidding party in a takeover.

### Transactions structures which disenfranchise shareholders

A merger should not be structured in a way which unduly disenfranchises the shareholders of one of the entities. The starting presumption is that existing shareholders will be able to vote on any company-changing transactions, particularly where they will become a minority holder of the merged entity.

### Box 4.3: When making voting recommendations relating to M&A activity

In assessing the governance issues related to the M&A activity (such as a takeover or scheme of arrangement), we will consider:

- the process followed by the board to arrive at the proposal, including consideration of alternative transactions
- the risks associated with the transaction
- the governance of the proposed merged entity, including board representation, proposed executive team, management structures and any control implications
- the proposed benefits to shareholders under the transaction, assessed against the likely consequences of the transaction being rejected;

- the management of related-party risks, including any benefit accruing to related parties; and
- any other issue relevant to the particular transaction.

Where shareholders do not have the opportunity to vote on an acquisition (a reverse takeover), we will consider, on a case-by-case basis, recommending a vote against the re-election of directors who decided to commence the reverse takeover.

## 4.4 Shareholder rights

Participation in company meetings is a fundamental right of shareholders and a cornerstone of corporate governance.

Corporate governance structures and practices should protect and enhance the board's accountability to shareholders. Companies should not take any actions which disenfranchise shareholders or inhibit shareholder participation in company meetings.

We support a 'one share, one vote' capital structure. We do not support the existence of non-voting shares.

We support the use of technology to improve shareholders' access to AGMs. ACSI supports a hybrid model for AGMs, whereby participants have the option to attend in-person or virtually. The use of technology should not compromise shareholders' ability to actively participate in AGMs.

## Voting

Voting is an important means by which shareholders can hold directors accountable for their actions and the future direction of the company.

Voting is a key mechanism by which shareholders play a role in the governance of the company. Accordingly, shareholders have a legitimate expectation that companies will provide them with efficient access to the voting process.

We support company initiatives designed to overcome impediments and constraints to more active shareholder involvement.

We are guided by the core principle that shareholders should not have to meet unduly difficult thresholds to call general meetings, propose resolutions or otherwise exercise their shareholder rights.

## Voting rights and meeting process

All directors, senior executives and the external auditor should attend AGMs and be available, when requested by the chair, to answer shareholders' questions. We support:

- confidential shareholder voting
- voting separately where issues are unrelated – resolutions should not be bundled
- chairs exercising proxies in accordance with the way they are directed
- secure electronic voting, not paper-based voting
- the creation of an audit trail by which shareholders can receive confirmation that their votes have been processed
- shareholders having the right to vote on corporate governance decisions, such as director election or re-election, executive and director remuneration policy, appointment of external auditor and all constitutional changes
- shareholder approval for the award of securities to a director, unless it is under a bona fide salary sacrifice arrangement from a director's fixed remuneration
- all substantive items of business being decided by poll
- procedures to ensure votes are properly counted and recorded and;
- ASX-listed companies domiciled outside of Australia voluntarily submitting resolutions for a shareholder vote in alignment with the requirements for Australian domiciled companies, including remuneration reports.

## Disclosure of trading and voting rights in company shares

A company should disclose its policy on trading and voting in company securities by directors, officers and employees. The policy should set out:

- the rules that apply to directors and senior executives who enter into margin loans over the company's shares
- the requirements that such loans be made known to the company; and
- the policy of the company towards the disclosure of such loans to the market where the holdings or exposures are material.

In addition to any applicable regulatory requirements, we consider that disclosure should extend to:

- where shares are purchased on market to fund employee share schemes, the cash costs of these transactions should be provided within the company's cash flow statement as an operating cost
- companies disclosing on their website information about beneficial holding details (when they are obtained) within two days of receiving the information. This complements the statutory requirement for companies to make the information publicly accessible
- the board disclosing directors' and senior executives' (including the CEO's) share trading within two days
- the policies which restrict the times directors may trade shares to specific 'trading windows.' We generally support an approach that would include:
  - a director not dealing in any securities of a listed company during a 'closed period', which is a period of:
    - o two months immediately preceding the preliminary announcement of the company's annual results
    - o two months prior to announcement of half yearly reports; and
    - o one month prior to announcement of quarterly results
  - a director dealing outside the closed period following receipt of clearance by the board; and
  - a director not applying to buy or sell shares (either directly or indirectly) of another company about which they have price-sensitive information, whether or not it arises from their directorship of the company.

## 4.5 Company meetings

### Information disclosure

In relation to company meetings, we support:

- provision of adequate, accurate, unbiased and timely information to enable informed decisions by shareholders
- additional information regarding a general meeting item being made available upon request
- shareholders having reasonable access to minutes of general meetings
- detailed announcements of results within 24 hours of the closure of the meeting; and
- appropriate disclosure in relation to how undirected proxies have been voted by the chair.

### Adjournment of company meetings

Appropriate notice of shareholder meetings, including notice concerning any change in meeting date, time, and place or shareholder action, should be given to shareholders in a manner and within time frames which will ensure that shareholders have a reasonable opportunity to exercise their vote. We support the retention of a 28-day notice of general meeting for listed companies.

Companies should not adjourn a meeting for the purpose of soliciting more votes. Adjourning a meeting should only be done for compelling reasons, such as security, vote fraud, problems with the voting process or lack of a quorum. If there is evidence that a company meeting has been adjourned for improper reasons, we will consider recommending against the re-election of the chair or any non-executive directors as appropriate.

### Board accountability to shareholders at company meetings

Corporate governance structures and practices should protect and enhance board accountability. As such, the board should submit any proposal that alters the fundamental relationship between shareholders and the board for prior shareholder approval and action.

For example, major corporate changes, which in substance or effect may impact shareholder equity or erode share ownership rights, should be submitted to a vote by shareholders.

Sufficient time and information (including balanced assessment of relevant issues) should be given to shareholders to enable them to make informed judgements on these resolutions.

All director election and re-election resolutions should be decided by a majority shareholder vote. The board should not employ a 'no vacancy' policy or seek to utilise a statutory board-limit resolution where the size of the board is below the maximum size defined in the company's constitution.

### 4.6 Assessment of shareholder resolutions

The ability to propose resolutions at a company meeting is an important shareholder right. In practice, shareholder resolutions often require a proposal to amend a company's constitution. This process is not the most effective means for shareholders to comment on a range of matters, including governance or other ESG issues.

We support the development of a right for shareholders to bring non-binding proposals in the Australian market, subject to appropriate controls or support (such as the 5% or '100 member' rule). Such a policy change could see shareholder proposals which are not framed as constitutional amendments, and due to their non-binding nature, would not disrupt the board's role.

Any shareholder proposal supported by a majority of votes (regardless of the constitution amendment resolution) should be adopted by the board or a detailed explanation of the board's progress towards implementing the proposal included in the company's next annual report.

### Box 4.4 Assessing Shareholder Resolutions

We will assess shareholder resolutions on a case-by-case basis, in the context of how they support value creation over the long term.

Resolutions should be linked to improved governance or transparency within the company and promote effective management of risk over the long-term. We will consider each resolution based on what is in the best interests of shareholders over the long term and a thorough assessment of any potential impacts on the company.

We will generally favour proposals that result in the disclosure of information which is useful to shareholders and not overly prejudicial to the company's commercial interests.

We expect the board to reasonably consider the substance of shareholder resolutions and to offer to engage with their proponents. If the board recommends an 'against' vote, we expect it to explain publicly why its position better serves shareholders' long-term interests.

When assessing resolutions, we will consider any communication and commitments made by the company.

We will take the following into account when evaluating shareholder proposals:

- Would adopting this proposal protect or increase long-term shareholder value or increase shareholder rights?
- Does the proposal address a material issue?
- Has the company already responded adequately to the shareholder concerns outlined in the proposal?
- Can the issue be dealt with more effectively through legislation or regulation?
- How does the company's approach to addressing the issue compare with its peers or standard industry practice?
- In instances where the proposal is seeking increased disclosure or transparency, Is there already adequate information publicly available from the company?
- Would adopting the proposal require the company to reveal commercially sensitive information.

## 4.7 Stapled and externally managed entities

Stapled and externally managed entities should:

- have boards that comprise a majority of directors who are independent of the external manager and are not appointed by the external manager
- appoint auditors who are separate from the auditors of the external manager; and
- ensure that remuneration arrangements for the external manager are aligned with shareholder interests and disclose the basis on which management fees are calculated - including the potential termination fees which would be payable.



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