

The Australian LGBTQ+ Board & Executive Inclusion (ALBEI) Forum is a not-for-profit organisation with the purpose of fostering diversity in all its forms in Australian boardrooms and C-suites, with a particular focus on enabling representation and access for people identifying as LGBTQ+.

We believe that the proposed ASX Corporate Governance Principles (the Principles) in relation to the diversity of boards are not providing adequate incentives for boards to pursue diversity beyond gender. If the current proposals are implemented, ASX listed boards will have virtually no incentive to consider diversity in its broadest sense and boards will continue to be drawn from limited pools of candidates. Many talented board ready people will continue to be denied the opportunity to contribute at senior levels in Australia.

There is compelling global research that shows that diverse boards make better decisions. Greater diversity and inclusion at all levels can create better outcomes for consumers, work cultures, reducing groupthink, and considerably expanding the available talent pool. It has also been found that more diverse boards are important for governance by supporting more effective and prudent decision-making and a better understanding of the risks facing a firm along with better approaches to risk management.

ALBEI believes that policy development should be based on robust data and research. It would be very useful to understand the research and data used by the Council that underpin the proposed Principles.

In the UK, both the Financial Conduct Authority and the Prudential Regulation Authority believe that diversity and inclusion are regulatory concerns.¹ This has been based on extensive, robust, detailed research and data which shows that diversity considerations should go beyond gender. It is unfortunate that the ASX Corporate Governance Council (the Council) has dismissed this as merely representing the diversity “priorities” in that jurisdiction.

With the stubbornly low representation of many groups on ASX Boards we are at a loss to understand why the Council believes other aspects of diversity are not seen as a priority for Australian listed boards.

The ASX Corporate Governance Principles and Recommendations are an important benchmark for the governance of companies in Australia. Over the years, the recommendations on gender have created a substantial increase in female representation on boards and can be considered an ongoing success. We support the proposal that we need to increase gender representation on ASX boards. However, to have gender as effectively the sole diversity objective will have the outcome that under-represented groups will still face barriers to participating in Australia’s corporate leadership. With almost 91%² of directors on ASX300 boards being of Anglo-Celtic background, boards do not reflect the composition of the Australian population.

We now need to build on this success of increased female representation and provide serious incentives for boards to tap the talent from under-represented communities. If we consider the current composition of boards in Australia there is a significant **“Underrepresentation Multiple”** which in respect of under-represented groups on ASX 300 boards in Australia is as follows:

Under-represented group	Percentage of Group in Australian population ³ (Pop)	Percentage of ASX300 Board seats held by the group ⁴ (Rep)	Underrepresentation Multiple (Pop divided by Rep)
Women	50.7%	37%	1.37x
Culturally Diverse People (Non-Anglo Celtic)	46%	8.8%	5.22X
LGBTQ+ people	8% ⁵	0.2%	40X
Indigenous People	3%	0.2%	15x
Disabled People	Data unavailable as disability is generally not self-disclosed		

The higher the multiple the less that group of people is represented on ASX300 Boards. Many talented people are not being given the opportunity to contribute to Australia’s businesses at the senior levels. Further, many people in under-represented communities do not self-identify that they are part of their community often due to the fear of being excluded from opportunities. It is frequently reported that candidate pools are insular and that potential board candidates are sourced from the same limited pools of people with very similar backgrounds.

While we welcome the move by the Council to attempt to embrace broader forms of diversity on boards – we believe it does not go far enough for the following reasons:

1. The proposed drafting means it is only required in respect of boards which are already considering diversity;

This is really preaching to the converted - boards who are not considering diversity beyond gender and which need to break out of their traditional appointment processes are given no imperative to do so and no reporting requirements will arise.

We have serious concerns with the concept of a “relevant” diversity characteristic as drafted by the Council and how boards can consider whether aspects of diversity are “relevant” to their overall governance and strategy setting. As mentioned earlier, there is compelling global research that all forms of diversity contribute to better returns and better decision making and so all forms of diversity must be considered “relevant” when considering board renewal. Further, how will boards decide that a

certain aspect of diversity is “irrelevant” without being seen to be discriminatory and attempting to exclude certain people from consideration?

2. No measurable objectives will result in no measurable improvement;

“What gets measured gets done” using the success of gender reporting we need to require that diversity targets beyond gender are developed and reported against.

3. Australia will be lagging behind comparable jurisdictions such as the UK, NASDAQ in the USA and Canada;

The ASX Corporate Governance Council has dismissed offshore developments in this area as “diversity priorities in their jurisdictions”. This statement diminishes and undermines the research, work and extensive consultations that have been carried out in these jurisdictions. We don’t understand why Australia would have different diversity priorities.

With major international investors looking at diversity of boards we run the risk that Australia may be less attractive for global investments. The current stubbornly low representation of under-represented groups on Australian boards points to the need to prioritise diversity beyond gender.

4. The proposals have the potential create a hierarchy of diversity characteristics;

Given the current lack of diversity on Australian boards we are perplexed that broad diversity as a whole is not being pursued. We need to avoid some under-represented groups being bypassed in favour of pursuing a gender balanced board.

While boards should develop their own measurable objectives on diversity beyond gender, given that the 40:40:20 rule has been adopted by 77 companies in the ASX200⁶ it could be modified so that the 20% refers to under-represented groups of either gender. This would produce very similar results to the NASDAQ listing requirements in the USA.

5. Diversity characteristics are not expressly listed;

We believe that they should be listed to exemplify best practice (and be consistent with other jurisdictions). We believe the following ought to be listed: age, cultural and linguistic diversity, disability, ethnicity, First Nations, gender identity, neurodiversity, parental status (carer responsibilities), religious beliefs, sexual orientation; and socioeconomic background.



6. Neglects the impact of multiple diversity characteristics, or intersectionality.

The lack of consideration of intersectionality to date has manifested in the concentration of board roles, where 19% of all female directors hold 45% of board seats occupied by women. Given the high proportion of directors with an Anglo Celtic background we believe that women who hold other diversity characteristics including but not limited to, their cultural background, sexuality, gender identity, age or socioeconomic circumstances, remain significantly under-represented. With only 4 First Nations people and 4 openly disclosed LGBTQ community members on ASX300 Boards in Australia diversity in all its forms needs to be prioritised.

ALBEI research into ASX200⁷ companies in January 2024 found that there are 129 companies which have broad and inclusive definitions of diversity. Of these 129 companies with broad and inclusive definitions of diversity there are 67 who have policies which apply to the board itself. The other 62 apply a different policy at the board level.

We do not understand the rationale for boards applying a diversity and inclusion policy in respect of their workforces but applying a lower standard to their own boards. It is difficult to understand that a company would actively promote broad diversity and inclusion amongst their workforce but refuse to apply it when it comes to board renewal and composition. ALBEI believes that if a company has a broad diversity and inclusion policy it should apply equally to the board and their workforce and should be reported against.

The vast majority of the 67 companies where the diversity and inclusion policy applies to the board do not report on the compliance with their own policies. There are only 2 companies in the ASX200 who report broad diversity characteristics beyond gender, namely Woodside Energy (WDS) and Block Inc (SQ2).

We believe that companies should have diversity and inclusion policies which apply to both the workforce and the board and should report on their effectiveness at all levels of the organisation (including the board). We understand that given the size of boards that we cannot have everyone represented all of the time but the board renewal policies need to provide all talented people with the opportunity to participate.

In conclusion, ALBEI believes that the Councils proposed recommendations regarding diversity should be amended as follows:

Recommendation 2.3 –

Measurable objectives regarding diversity beyond gender need to be mandated in the same manner as gender and include the development of measurable objectives.



The use of the term “relevant diversity characteristics” needs to be removed and a requirement that all aspects of diversity be considered.

While Boards need to develop their own measurable objectives, they may want to consider that the 40:40:20 rule be modified so that the 20% represents a measurable target for under-represented groups in a similar manner to the NASDAQ requirements.

Recommendation 3.4 –

- A listed entity should have an over-arching diversity and inclusion policy which applies to both the workforce and the board.
- The board must develop measurable objectives for its workforce and the board itself for achieving gender diversity and the representation of broader diversity characteristics in respect of under-represented groups (which should be defined to include listed age, cultural and linguistic diversity, disability, ethnicity, First Nations, gender identity, neurodiversity, parental status, religious beliefs, sexual orientation; and socioeconomic background).
- The company must report on the effectiveness of the policy at the board and workforce level which includes reporting on the representation of all under-represented groups. If there is concern about privacy or identification issues, reporting at the board and senior executive level can be consolidated to avoid people being identified.

ALBEI also finds it very disappointing and somewhat concerning that the Diversity Resource page on the Council’s website focuses almost solely on gender diversity. Any reference to other forms of diversity is incidental. We believe that the page should be either renamed to “Gender Diversity” or that the page be upgraded to include resources on all aspects of diversity. KPMG in reporting to the Council on disclosures during 2021 noted that:

“Diversity no longer focuses solely on gender, with the overwhelming majority of entities including race/ethnicity, religion, age, sexual orientation, and disability, in their diversity definition.”

Unfortunately, the Council appears to have outdated views on what constitutes diversity and a more progressive approach is needed in the Principles which aligns to global developments, investor needs, societal expectations and the need to create improved shareholder returns by virtue of better decision making on ASX300 boards.

This is a summary of our formal submission to the ASX Corporate Governance Council along with our suggested changes to 2.3 and 3.4. The full submission is on our website at.

If you wish to discuss ALBEI’s views please email mark.baxter@albei.org or info@albei.org

References

¹ Financial Conduct Authority – Consultation Paper CP23/20 “Diversity and inclusion in the financial sector – working together to drive change” – September 2023

² Watermark Search & Governance Institute of Australia – 2024 Board Diversity Index

³ Australian Bureau of Statistics – 2021 Australian Population Census and Media Diversity Australia “Who Gets to Tell Australian Stories”

⁴ Watermark Search & Governance Institute of Australia – 2024 Board Diversity Index.

⁵ Based on 2021 census data conducted by the ABS which only counts the number of same sex couples living together – it did not count LGBTQ+ community members who are single or are not co-habiting. This proportion is ,therefore, understated.

⁶ “Australia’s Business Elite leadership – Why are we Excluded?” ALBEI January 2024.

⁷ “Australia’s Elite Business Leadership – Why are we Excluded?” ALBEI January 2024.

