THE NEW PACE OF CHANGE

AUSTRALIAN GOVERNANCE SUMMIT 2021

READER

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Introduction

The Australian Governance Summit 2021 will be a defining moment for the director community as we accelerate towards a post-pandemic world. It will shape the governance conversation for the coming twelve months and inform the governance agenda for the coming years.

As organisations grapple with changing business models, the shifting risk and strategy landscape, new dimensions of WHS and the increasing pace of change, the summit presents attendees with the chance to take stock of current governance issues, share knowledge with fellow directors, leading experts and organisational leaders and reflect on the leadership our organisations require from us.

As in past years, this Australian Governance Summit 2021 Reader broadly follows the summit program and provides a selection of expert presenter submissions and recently published articles and extracts from the Australian Institute of Company Directors. The purpose of this collection is to enhance attendee's participation by providing contextual background to the current director and governance landscape as it relates to the themes explored in this year's summit.

1 Accelerate

1.1 Sustaining our hopes for 2021

Angus Armour FAICD | "Sustaining our hopes for 2021", *Company Director*, February 2021, AICD.

A bitter US election contest was determined in November, but an orderly transition has been frustrated as the outcome was contested. COVID-19 vaccines are being administered against a backdrop of [outbreaks], surging cases in Europe and a mutating virus. The extent of a Russian cyber attack against US companies and federal agencies is undetermined, as globally we continue to embrace technology that allows us to 'work from anywhere'. Australia's relationship with our largest trading partner remains fraught, as the EU and China sign an investment agreement and the New York Stock Exchange begins delisting Chinese firms suspected to have military links.

Many Australians have endured another summer of anxiety. A year ago, we were confronted by devastation wreaked by bushfires. This summer COVID-19 outbreaks have disrupted the holiday season. Despite the outbreaks, we can be cautiously optimistic about our economic recovery. The early availability of vaccines brings us closer to the Commonwealth Treasury's upside scenario in its budget forecasts. The Mid-Year Economic and Fiscal Outlook (MYEFO) revised the growth forecast for 2021 to 4.5 per cent, up from the budget's baseline forecast of 4.25 per cent. According to the MYEFO, 85 per cent of the 1.3 million people who lost their jobs or were stood down to zero hours in April 2020 are back at work.

Even with that more promising outlook, directors cannot rely on the tailwind of catch-up growth. Outbreaks will threaten to halt the recovery and constrain our daily lives. Global growth will continue to be subdued and the impact on Australia may be exacerbated by the deterioration in our trading relationship with China. The timing of stimulus withdrawal also hangs over the Australian and global economies. For every organisation, clarity around long-term strategy and resilience planning will be vital given the uncertainty and downside risks.

We host the [2021] Australian Governance Summit in a hybrid format for the first time. We are excited to extend the reach of the AICD's landmark annual event, particularly to regional communities.

This year's program – based around the theme "Accelerate" – will consider the roles of directors and boards in response to these remarkable times. Speakers include many of Australia's top directors, including Margie Seale FAICD, Gordon Cairns, Nev Power MAICD, Christine McLoughlin FAICD and Phil Chronican GAICD

The summit will be a chance for the director community to share what they have learned over the past year and lead the conversation on the post-COVID recovery. There are reasons to be hopeful that 2021 will be a better year, but that hope is fragile. We have turned the page, but we are far from turning the corner. The confidence of our community must be sustained by strong, focused and ethical leadership.

2 Creating an achievement culture

2.1 Directors, are you ready for a culture check?

Louise Petschler GAICD | "Directors, are you ready for a culture check?", *Company Director*, February 2021, AICD.

The AICD is pleased to have collaborated with the Australian Council of Superannuation Investors (ACSI) on important new research – **Governing Company Culture: Insights from Australian Directors**. Launched in December 2020, this joint project is a first of its kind between investors and directors to examine how culture is overseen, assessed and influenced in organisations.

Governance of culture remains a key challenge for directors of all entities, from the largest listed companies through to small community organisations and startups. Two years ago, the Hayne Royal Commission issued its final report, pointing to the need for boards to lift their intensity of oversight of non-financial risk and culture. High-profile failings of significant corporations over the past year demonstrate this issue is timely and critical for boards in all sectors, not just financial services.

The message is being heard. In our most recent **Director Sentiment Index**, almost 90 per cent of directors reported actively working to improve their organisational culture. Feedback from directors in the AICD's **Forward Governance Agenda** review also shows it is a top priority.

The Governing Company Culture joint report reflects the seriousness with which directors are approaching culture. The report gives insights on governance practice, with directors providing their views on the formal and informal processes that support board oversight of culture. The report examines why culture matters and how boards discharge their role, including the importance of defining desired organisational culture, the importance of role modelling and setting the tone from the top, formal and informal indicators that support boards as pieces of the culture puzzle, and insights on mentoring and challenging senior management, and the pivotal role of the CEO. Key report findings include:

- Culture is the responsibility of directors, not just senior management. Directors use a range of practical methods to exert significant influence over company culture.
- Company culture is an increasingly high priority. There has been a significant shift over recent years, with culture now firmly in the spotlight for directors.
- Directors see the link between culture and long-term performance. Directors feel that culture is extremely important to the long-term performance of a company.
- Effective oversight of culture requires active and curious directors. Directors must be curious, persistent and willing to synthesise the many formal and informal sources of data relating to culture. Directors must be alert to an overly optimistic picture of culture from management.

2.2 Governing Company Culture: Insights from Australian Directors

9 December 2020, Governing Company Culture: Insights from Australian Directors, *Policy Research*, AICD.

Corporate culture can have a profound impact on an organisation's performance, governance and reputation. At the heart of many – if not all – of the high-profile governance failures over the past decade have been examples of poor company culture or sub-cultures.

Boards are as responsible for cultural oversight as they are for the financial performance of an organisation.

Insights from Australian directors

By providing real-world insights from the boardrooms of some of Australia's largest companies and examining the relevant challenges from a director perspective, the **Governing Company Culture: Insights from Australian Directors** report provides directors with practical guidance on some of the key issues and questions boards should seek to explore.

Guidance for boards

The report takes an in-depth look at why culture matters and the board's oversight role including:

- why defining the desired culture is critical;
- how the dynamics of the board impact culture;
- formal and informal techniques for assessing culture;
- how leading directors model desired behaviours;
- the relationship between executive remuneration and culture; and
- the emerging challenges created by COVID-19.

Key findings for directors

The research surfaced the following key findings:

- Culture is the responsibility of directors, not just senior management. Directors can use a range of practical methods to exert significant influence over company culture.
- Company culture is an increasingly high priority. There has been a significant shift over recent years, with culture now firmly in the spotlight for directors.
- Directors see the link between culture and long-term performance. Directors feel that culture is extremely important to the long-term performance of a company.
- Effective oversight of culture requires active and curious directors. Directors must be curious, persistent and willing to synthesise the many formal and informal sources of data relating to culture. Directors must be alert to an overly optimistic picture of culture from management.
- There is limited public disclosure on culture. Investors would value greater disclosure to discern companies' cultural strengths and weaknesses. Yet practices amongst ASX 50 companies show wide variance in public disclosure and there is a lack of market consensus as to the most valuable metrics to report against.

3 Changing fortunes for the lucky country

3.1 Setting the path to a smarter future

Christine McLoughlin FAICD |
Chairman, Suncorp

COVID-19, the catalyst

We are at a crossroads in Australia. The opportunity now is for policy makers, business and community leaders to draw from the many lessons learned in navigating the global health and economic crisis to drive meaningful reform that will serve our nation well for years to come.

The way all sectors, including business and governments, worked together to manage and contain the COVID-19 crisis has been remarkable. And this challenge is still with us. As a country we presently have a competitive advantage so how can we best collaborate to use that for prosperity? As we rebuild our economy and businesses, it is vital we do so more effectively and dynamically, with the same energy, resourcefulness and sense of purpose and urgency that helped us navigate the pandemic. As leaders, we have a responsibility to ensure 2020 is not a lost year; that it truly counts and is the catalyst for a new era of governance, leadership and economic prosperity.

A time to reflect and re-set

The lessons learned from 2020 highlight some 'unders' and 'overs' for our nation. There are critical areas that COVID-19 and other disasters such as the bushfire crisis in Australia have laid bare as being either under-valued, under-estimated, under-invested, over-complicated or over-reliant. The very fabric of our society has been tested, exposing clear opportunities to re-prioritise, re-set and re-balance for the benefit of all Australians.

The areas we have been deeply informed about are widespread and include sectors such as aged care and disability, education, childcare and our health system, which have been under-valued and their importance under-estimated. It has taken a crisis of such proportion to truly appreciate our scientists, medical researchers, health professionals and epidemiologists, who have become powerful and widely respected voices in our country.

Likewise, we have under-valued and underutilised the rich knowledge and land management techniques of our First Nations peoples, who have protected and preserved the land and waters in this country for more than 60,000 years. This became evident as the bushfire crisis unfolded and we must better recognise their significant role in guiding us to create a sustainable future for our environment.

The under-investment in critical capabilities such as technology, climate resilience and the future proofing of our workforce have become starkly apparent. The opportunity to embrace innovation beyond a few pockets of our economy has never been more prominent.

We have gained a deeper understanding of our supply chains and industry base, with the disruption highlighting our over-reliance on a limited number of trading partners and markets to supply critical goods, services and labour. We had an expectation of free and open international and domestic borders and an over-reliance on the ease of immigration. And our business, regulatory and industrial relations environments have become over-complicated, particularly for large businesses.

While there is no doubt our strong financial services sector helped our country navigate both the global financial crisis and COVID-19 pandemic better than most, the impact of legacy issues relating

to the competitive landscape of this sector have been underestimated. For example, non-major banks continue to grapple with the unlevel playing field and disproportionate costs of regulation, compounded by the current slow growth, low interest environment. All Australians would benefit if meaningful steps were taken to encourage greater competition in the banking system.

Our nation's under-investment in disaster mitigation and community resilience is highlighted through every natural disaster encountered and exacerbated by our changing climate. Suncorp has advocated for change in this area for many years. We know that addressing the imbalance in Government spending on disasters (with 97 per cent spent on recovery, versus only three per cent on prevention and resilience building) will not only better protect our communities, but also provide jobs in our regional economies and help ensure insurance remains affordable and accessible.

The pandemic has highlighted more than ever the importance of business, government and community sectors working together to actively address large scale societal issues. Widening inequality, the prevalence of mental health issues, affordability and cost of living pressures, climate change and human rights issues, cyber risk and data ethics, and social isolation are prime examples of issues the business sector must increasingly look to be part of the solution for.

The pandemic also brought to light the extent of the digital divide and the impacts on education, particularly for some 1.2 million children and young people who were already living in poverty in this country prior to the outbreak of COVID-19. At the height of the health crisis, Suncorp donated $1 million to The Smith Family, to provide access to a digital device, internet connection and technical support and ensure vulnerable students and families were not left behind as learning moved online at home.

Finally, the socially binding value of sport, music and the arts were under-estimated until border closures, social distancing and lockdowns brought our passions to a grinding halt. Each of the sporting codes found new and exciting ways of continuing through COVID-19 and may emerge stronger because of it. Our musicians and artists adapted and delivered to us in different ways. There is much we can learn from these sectors about resilience and adaptability.

Governance in 2021 and beyond

For boards and leaders around the country, the pandemic has changed the way we think and act, and re-set expectations. While response and recovery has been the focus to date, many like Suncorp are also re-imagining the future. A future where hybrid working models are the norm; where leaders must find new ways to connect, engage and be 'visible'; where the rapid adoption of digital and automation will underpin success, where balancing the demands of today with longer term requirements for a broad range of stakeholders must become second nature. A future that relies on accelerated action by all to address climate risk and support the transition to a net-zero economy.

The governance implications for this 'new normal' are immense; from redefining risk and culture settings, to ensuring a responsible and orderly business transition through robust cyber risk management and a focus on building the skills and diversity for a successful workforce of the future, the complexities are significant. Addressing the growing investor demand for comprehensive disclosure by companies on how they are creating long term value for stakeholders, particularly how they are managing climate risk and opportunities, will become front and centre. As BlackRock's Larry Fink highlights in his **2021 letter to CEOs**, "there is no company whose business model won't be profoundly affected by the transition to a net-zero economy… we are asking companies to disclose a plan for how their business model will be compatible."

One thing is for certain – building and maintaining trust through greater transparency and accountability will remain core. According to the **Edelman 2021 Trust Barometer** the business sector has made significant strides in restoring trust over the past year through its active response to the pandemic. We must continue to drive momentum by using the lessons learned through this challenging time to reprioritise and set the path to a smarter future.

3.2 Preparing for a post-COVID-19 business environment

Peter Hay FAICD | Chairman, Newcrest, Melbourne Airport

Australian organisations, across almost every sector, are currently grappling with the question of how to initiate the next era of prosperity. The answer to this question can be considered through two lenses. Inbound, where we look into our organisation and identify what we need to adapt in order to be ready for whatever the post-COVID-19 world throws at us. And outbound, where we evaluate the external factors affecting the environment in which our business operates, many of which are policy settings that are in the domain of governments but which, of course, greatly affect the way businesses are run.

Organisational culture

We live in a constantly changing environment. Many claim that the pace of change is accelerating. Directors therefore need to be insistent on a culture that is focused on change as a positive force – something that generates excitement more than fear, and spurs innovation.

There are lessons from the COVID-19 experience as to how things should be done in organisations – how they should be run in crisis and how to get the best from people (many of whom are challenged not only at work but by new situations outside work). Some of these lessons will continue to be useful after the pandemic subsides.

Our organisations have had to cope with the unsuitability of some habitual processes, such as the annual planning cycle. We have had to do a great deal more scenario planning due to unpredictability of the extent and timing of recovery. We have had to set up whole systems of work that are new and ensure proper governance and quality control are not compromised in that process. My observation is that during the pandemic the level of care for one's fellow workers increased markedly, with a much greater emphasis on mental wellbeing.

These examples of culture-defining behaviour brought about by the COVID-19 pandemic help reinforce the key cultural attributes of a healthy organisation:

- Resilient
- Accountable
- Collaborative
- Innovative
- Caring

To me, these words encapsulate the behaviours that have seen the companies with which I am associated successfully negotiate the business crisis arising from the closure of workplaces, the curtailment of travel and, in one case, the dramatic change in financial performance flowing from COVID-19 leading to a clear focus on planning for regeneration and sustainable growth.

Sustainability

While there have undoubtedly been sustainability lessons from the COVID-19 crisis, sustainability is of such obvious benefit to business owners and workers, indeed all stakeholders, that I often wonder why it receives so much air play.

With the possible exception of our private equity friends, most people who strive to create or maintain successful businesses do so with a long-term outlook. Such an outlook necessitates building mutually beneficial relationships with stakeholders of every hue. Building such relationships involves engendering trust. It has never occurred to me, in my more than thirty years as a listed public company NED, that one could build a business for long-term or sustainable success without looking after the legitimate interests of employees, shareholders, customers, suppliers and communities, thereby engendering trust.

In recent times I find myself being guided by investors as to the need to think sustainably. This is a wonderful paradox, as the institutions themselves – or their predecessors – have been among the main voices I have heard urging greater emphasis on the short-term in priority to the long-term. This investor

conversion is, however, to be welcomed, as it makes it easier for companies to demonstrate alignment with, in particular, shareholder interests.

The pandemic did throw up some excellent examples of long-term thinking. One is that many organisations suffering a degree of pandemic-induced stress continued to employ the majority of their workers in spite of the short-term cost of doing so, commonly driving them into short-term losses. There are few better signals of long-term intent.

I am personally proud of an initiative of the management team at Newcrest Mining to establish, at the beginning of 2020 when the seriousness of the impact of the pandemic became evident, a community fund of $20,000,000 to assist local communities in practical ways such as by providing essential goods and medical services (including converting a mining camp at Lihir into an isolation facility), and donating to vaccine research.

Technological disruption

The term technological disruption is often used in the context of threat or risk identification. While that is not illegitimate, it expresses negatively what can also be seen as a positive. The question boards and directors should be asking is – how can we develop, acquire and deploy technology to disrupt markets in a manner that is positive to our organisation? Innovation has always been the best source of competitive advantage, and technological advances are just one kind of innovation.

As broad examples, technological disruption recast as opportunity can include:

- the availability and analysis of richer (big) data;
- artificial intelligence, machine learning and robotics;
- new energy thinking (for example hydrogen and battery technology);
- 3D printing;
- bioscience;
- crypto currencies;
- blockchain;
- autonomous vehicles; and
- quantum computing.

Societal factors

We are all very lucky to be living and working in Australia. We enjoy the right (and obligation) to vote at every tier of government, a large measure of freedom of expression (though far from absolute), the right to own private property, majority acceptance of the rule of law, a largely uncorrupted justice system, abundant clean air and water, abundant natural resources (animal, vegetable and mineral) and more or less universal access to education and health services.

Against this, however, according to the Legatum Prosperity Index, in 2020 we were ranked #16 in the world. That index ranks prosperity by measuring countries' performance in twelve so-called 'pillars':

1. Safety and security;
2. Personal freedom;
3. Governance;
4. Social capital;
5. Investment environment;
6. Enterprise conditions;
7. Market access and infrastructure;
8. Economic quality – how well an economy is equipped to generate wealth sustainably and with full participation of the workforce;
9. Living conditions;
10. Health;
11. Education; and
12. Natural environment.

Australia made the top ten in relation to only one pillar – governance. The main problem areas for Australia were said to be declining performance, relative to other countries, in economic quality, market access and infrastructure, and enterprise conditions (regulation).

There is huge room for improvement. And now, as mass vaccination and improved testing techniques give hope that the intensity of the pandemic will soon wane, is the time for planning such improvements. The cliché "never waste a crisis" springs to mind.

Policies needing review

There is a long list of policy settings, and other factors affecting the business environment, that need either improvement or better management. Policies that could benefit from being reviewed include:

- finding better ways to manage the Australian federation;
- lowering, and persuading other countries to also lower, barriers to free trade (with an emphasis on cross-border trade in services);
- promoting innovation;
- rebuilding trust in public institutions such as the public service, the courts and regulatory and law enforcement authorities;
- reinvigorating education (being the best, if not a perfect, tool for decreasing social inequality);
- being far more imaginative about energy policy;
- promoting cybersecurity;
- caring for the natural environment by reducing pollution and recycling waste wherever possible, and by promoting biodiversity and the wise use of water;
- promoting diversification of supply sources, especially reducing our exposure to a currently erratic China;
- continuing to invest in disease prevention and vaccination;
- strengthening society's capacity to foster mental health;
- strengthening society's capacity to care for vulnerable people;
- making our taxation system internationally competitive, especially by widening and increasing the GST to facilitate the reduction/abolition of less efficient taxes;
- simplifying our complex labour laws; and
- sensible defence procurement.

This article began on the subject of growth and a central aspiration for Australia should be to increase its prosperity, by turning to some of the internal and external examples outlined above. It should be possible for governments and businesses to work together towards achieving this aspiration. And with this in mind, there is much to be gained from greater cooperation between governments and businesses.

3.3 Critical economic questions for the year ahead

Mark Thirlwell MAICD | "Critical economic questions for the year ahead", *Company Director*, December 2020, AICD.

The year 2020 was devastating for the Australian economy and much worse for many of our advanced-economy peers. Looking back to its opening months, the early sense was that, for Australia, much of the year's business would involve grappling with the lessons from last summer's terrible bushfires.

The fires sparked in our hottest and driest year on record burnt more than 17 million hectares of land and resulted in the deaths of at least 33 people, the loss of huge numbers of animals, the destruction of thousands of homes, choking air pollution, a direct financial cost of more than $10 billion and a total economic cost likely to be far larger.

Significant subplots for 2020 were expected to include ongoing US-China trade wars abroad and any collateral damage for us, the search for faster growth and greater economic dynamism here at home, and a policy tug-of-war between a Reserve Bank focused on easy monetary policy to combat below-target inflation and employment and a government targeting fiscal policy at a much-promised budget surplus.

Instead, we got a worldwide pandemic, the deepest global recession since the 1930s and a major shift in priorities.

The International Monetary Fund's (IMF) latest estimate is that world output will shrink 4.4 per cent in 2020 – a calamitous outcome that dwarfs the 0.1 per cent contraction associated with the global financial crisis (the worst outcome for global growth in the postwar period to date) and one the IMF believes could tip around 90 million people into extreme poverty and supercharge inequality.

The economic destruction has been widespread: more than 85 per cent of the world's economies will see real output decline in 2020, with China the only major economy expected to achieve positive growth.

The policy response has been almost as dramatic as the economic shock. Collective global fiscal measures announced as of early September are around US$11.7 trillion, or nearly 12 per cent of world GDP. That, in turn, will push global public debt close to a record-breaking 100 per cent of GDP in 2020. Monetary policy has been put to work, too, as the world's leading central banks first reprised their GFC playbooks and then went even further.

The key economic question for the global economy in 2021 is whether all this policy support, plus a huge public health effort, will be enough to restore confidence and growth. The IMF's view is that the world economy will expand by 5.2 per cent in 2021, but this forecast is conditional on continued progress with controlling the pandemic and developing a vaccine, the maintenance of sustained policy support and the successful avoidance of significant non-COVID-related risks, including financial market flux, geopolitical turmoil and domestic political unrest.

Australia's economic and public health performance in 2020 has been superior to that of many advanced economies. Even so, the pandemic and government lockdowns have resulted in a heavy economic cost. In July, for example, Treasury estimated that, relative to a pre-pandemic economy, the restrictions that were in place from late March to mid-May had cost the economy around $4b a week. More recently, it put the daily economic cost of Victoria's lockdown at around $100m, including the loss of an average of 1200 jobs per day during August and September. Real output is forecast to contract 3.75 per cent, marking Australia's deepest recession in the postwar period.

Like their global counterparts, both Canberra and Martin Place have been aggressive in their policy response. Pre-crisis dreams of a balanced budget have been banished for at least a decade, with the government rolling out an incredible $257b in direct budgetary support – an effort that will see gross government debt climb above $1 trillion by next financial year and stabilise at around 55 per cent of GDP in the medium term. Meanwhile, the cash rate has been slashed to a record low of 0.1 per cent and the RBA's deployment of unconventional monetary policy measures, including yield curve control and aggressively expansionary forward guidance, has now been augmented by quantitative easing in the form of a promise to purchase $100b of government bonds over the next six months.

Treasury's best guess is that this will help deliver economic growth of 4.25 per cent in 2021. But again, this assumes that any future localised outbreaks of COVID-19 are largely contained and that a population-wide Australian COVID-19 vaccination is fully in place by late 2021. That in turn would allow the lifting of most state border restrictions, followed first by a gradual return of international students and permanent migrants and later a gradual recovery in international tourism.

Two of the most critical economic questions for 2021 will be whether Treasury's assumptions regarding the trajectory of the pandemic are on the money and whether the front-loaded budgetary support that's been delivered to date will prove sufficient to buttress private sector spending.

The answer to the first will play a large part in determining the answer to the second. While the pandemic and its consequences look set to determine the economic course of the year ahead, the lessons of the 2019-20 bushfires should not be forgotten. Both disasters can be linked to our anthropogenically challenged global environment and both are potent examples of a cost-benefit trade-off that

strongly favours prevention and insurance. The Royal Commission into National Natural Disaster Arrangements, completed in October, warned that extreme weather events have already become more frequent and more intense due to climate change and that with further global warming "inevitable" over the next two to three decades, Australia will face even greater challenges ahead.

The commission judged that "natural disasters are expected to become more complex, more unpredictable and more difficult to manage" and that we're more likely to see "compounding natural disasters on a national scale with far-reaching consequences", including the challenge of "cascading effects" that would threaten "not only lives and homes, but also the nation's economy, critical infrastructure and essential services". COVID-19 and the bushfires both suggest that working towards recovery and building national resilience should be priorities for 2021.

3.4 AICD Advocacy on key issues for 2021

Louise Petschler GAICD | "AICD Advocacy on key issues for 2021", *Company Director*, December 2020, AICD.

The COVID-19 crisis triggered significant and novel regulatory challenges for boards and directors across all sectors. The dramatic early disruption of the pandemic demonstrated all too clearly that many of our regulatory settings were outdated, excessively punitive and overly complex.

The AICD has been a vocal and active advocate for regulatory relief and reform in support of governance, viability and jobs across all sectors. We have successfully pursued urgent relief on issues from insolvent trading relief to not-for-profit (NFP) fundraising reform and electronic document execution.

What's needed now is a permanent regulatory reset to deliver a modernised and fit-for-purpose environment that supports boards and directors to govern through recovery, adaptation and growth.

In our 2020 **Director Sentiment Index (DSI) survey**, AICD members have highlighted the importance of JobKeeper and related federal government assistance to their organisations.

We have been on the front foot in encouraging these measures and calling for phased wind-back of support given the ongoing impact of COVID-19 across the economy.

One of the most accessed topics in the AICD's **COVID-19 Resource Hub**, and a measure we were firmly in favour of, has been temporary relief for directors from personal liability for insolvent trading. Following advocacy by the AICD and others, this and additional temporary relief has been extended from its initial six-month application.

We also were heartened by the early stance of key regulators ASIC, ACNC and APRA on hard reporting deadlines and "business as usual" obligations, welcoming "no action" positions and recognition of the COVID-19 disruption on governance and corporate obligations.

The AICD teamed up with professional accounting bodies CA ANZ and CPA to produce **guidance** on how to approach financial reporting and make disclosures on COVID-19.

Governance challenges

Backing the NFP sector was also a priority. The AICD called on federal, state and territory ministers to provide a stronger rescue and support package for NFPs. While we welcome moves on charity fundraising, much more work is needed. The AICD's **Not-for-Profit Governance and Performance Study 2020** reflects this call to action.

The shift to remote working also created very practical issues – given the Corporations Act 2001 remains drafted for wet signatures and physical meetings. Temporary changes to permit virtual annual general meetings for the 2020 reporting season, as well as electronic communication, were crucial; their extension to May 2021 continues to be critical to provide certainty for planning.

Resetting the agenda

The AICD has identified regulatory reset priorities that we are prosecuting to deliver an agile, updated and fit-for-purpose regulatory environment. These are:

- Better balanced director liability settings that encourage diligent directors to govern for growth, not excessive personal liability risks.
- Modernised laws that support virtual governance and operations.
- Reducing the risk of opportunistic securities class actions for Australian organisations.
- NFP funding reform to provide certainty to the sector.

Securities class actions

An early concern for listed directors was the risk associated with the potential rise in securities class action as a consequence of COVID-19 uncertainty. The **AICD advocated for urgent regulatory relief** and welcomed the government's temporary changes to reintroduce a "fault" element into continuous disclosure breaches.

Shareholder class actions were also in the spotlight throughout 2020. This time last year, the first judgment in a shareholder class action was handed down by Justice Beach of the Federal Court in the Myer case. At the time of writing, Australia's second shareholder class action judgment was handed down, by Justice Gleeson of the Federal Court, in *Crowley v Worley Limited*.

With 2020 bookended by these two significant cases and punctuated by a parliamentary inquiry into the class action industry, the debate around Australia's continuous disclosure regime will be ongoing. The AICD will continue to push for sensible reform as part of our regulatory reset priorities.

Ongoing issues

Corporate governance standards and community expectations remain central to the debate.

The bushfires that opened 2020 drew fresh focus on climate change risk as a policy and governance issue. Climate change is one of the top five issues "keeping directors up at night", according to the DSI survey. It remains a key policy frustration for them and is rated in the survey as the highest priority for federal government action in the short and long term. Workplace sexual harassment was in the spotlight, too, with the Australian Human Rights Commission's **Respect@Work** report highlighting systemic issues, plus high-profile cases such as AMP highlighting a gap in governance practice and community expectations.

The year also saw the largest-ever proposed settlement of a civil penalty case in Australia for Westpac's breaches of the AML/CTF Act. The bank published its own review-panel findings of governance and accountability.

Rio Tinto's response to the **destruction of the Juukan Gorge** caves also saw questions raised about governance and accountability, with an initial board review and financial sanctions replaced with management departures after shareholder and community dissatisfaction.

Governance and accountability are common threads across these examples and, as community expectations continue to grow, boards will face increasing demands in these areas.

2021 regulation and priorities

As we head into the new year, directors continue to favour a radical reset to drive COVID-19 economic recovery.

In our 2020 Director Sentiment Index, directors said they want a smarter, more innovative Australia that invests in infrastructure and green energy. Directors want governments to act on climate change and energy policy settings as priorities, while acknowledging their own need to focus on the governance of culture.

Regulatory issues include:

- **Director IDs:** Significant changes to Australian directorship will advance, with pilots of new mandatory director IDs. These will stay with directors for life, verifying identification and providing scope to address the AICD's longstanding privacy concerns about accessibility of directors' personal information.
- **Governance of culture:** The spotlight will continue to shine on corporate conduct and culture. Regulatory interventions, including director liability, will be proposed where gaps between community expectations and practice continue.
- **Governance of remuneration:** Listed entities and financial services companies can expect a new APRA standard, as well as a continued focus on consequence management and remuneration decisions by boards.
- **Insolvency reform:** As COVID-19 relief expires, further reform to Australia's insolvency settings will be considered, including a review of safe harbour protections.
- **ACNC review:** The deferred Australian Charities and Not-for-profits Commission review recommendations – including proposals to introduce direct duties for charity directors – will require action.
- **Aged care governance:** New governance standards and obligations have been proposed to respond to the serious issues identified in the current Royal Commission.
- **Underpayment of wages:** New federal and state laws to counter serious underpayment issues in companies – including new criminal offences.
- **WHS reform:** The recommendations of the Boland review and adjustments for COVID-19 requirements will drive further reform of national and state settings.

3.5 What's your board's renewal plan?

Tim Nelson and Alexandra Goodfellow | "What's your board's renewal plan?", *Company Director*, October 2020, AICD.

The "new normal" is that there is no "new normal". The ability to deal with ambiguity, to be agile and resilient has quickly escalated to the top of the skills and characteristics required of chairs and non-executive directors. Korn Ferry interviewed chairs of prominent organisations and other leaders on the challenges shaping board effectiveness, composition and the skills and experience of chairs and non-executive directors. They discussed what best equips boards and the companies they serve to manage an uncertain and potentially erratic future.

Since 2012, the risk focus of boards has increased substantially and with it, the spotlight on NEDs has increased, particularly the public profile of the chair. Four key issues that will be prevalent in 2025 were identified by most leaders interviewed – technology, ESG, regulation and diversity.

Technological forces will continue to have a major impact on how companies conduct business in the coming years, and chairs will ensure the NEDs on their boards have the right mix of experience and understand the challenges and opportunities that a greater reliance on and exposure to various aspects of technology will bring. The challenge is to anticipate, rather than react to the speed of change.

Colonial First State Investments and Redbubble chair Anne Ward FAICD cited a broad and deep understanding of technology and the opportunities that come from technology as an important quality for chairs and NEDs – now and in the lead-up to 2025. "Digital, machine learning and AI all present disruptive challenges, but also huge opportunities," she said. "Often, there's quite a small window to grasp an opportunity and boards need to be able to understand and meet the challenges of technology and, more importantly, use the often small window of time available to grab opportunities."

That's not to say that chairs of the future, or their fellow NEDs, need to have specialist backgrounds in technology. None of the chairs advocated for "digital directors" – preferring all directors understood operations through a digital lens.

"Technology is the biggest global risk," noted Robert Murray, chair of Metcash and Southern Cross Austereo. "I haven't seen a single industry I'm involved in that hasn't been fundamentally disrupted in the past five years. And it's happening so fast for all of us because the growth of technology is exponential – the machines are inventing the machines."

Environment, social and governance (ESG) reporting has been growing in prominence and will be more dominant in 2025. Social licence to operate, which is linked to ESG, requires deeper understanding by corporate Australia. Shareholder activism will also increase, and chairs will need to manage divergent shareholder interests and community expectations.

The chairs interviewed, when asked for their view on global challenges impacting risk, all identified environment as a major risk for now and in the future. To tackle climate change and other ESG issues, a long-term, outward-looking focus is required. As HESTA CEO Debby Blakey observed: "You can't expect people to be tackling climate change if they are worried completely about next quarter's performance rather than the 10-year horizon."

Directors need to be in tune with community expectations of the companies they represent and their governance role. Australian business operates in a highly regulated environment, which will continue. The amount of compliance a board addresses increases most years, and this has in turn increased the workload of directors. Complexity of board work is expanding, and every skill required won't be found among seven or eight directors. This may increase the need for specialist board advisers.

The chair needs to balance the needs of the business across different time frames and be able to make sound judgement on what is needed most and when. The chair of the future will be a skilled communicator and experienced at managing diverse shareholder interests. They will also understand the importance and influence of stakeholders who are not investors, but who, through their connection to the company – as employees, community, consumers or affected by decisions made by the company – deserve to be heard.

Chairs working deeper

While COVID-19 has temporarily drawn chairs into day-to-day decisions for the business, many noted that in recent years they have needed to work more deeply. For some, it was to better inform themselves in their board committee work by engaging directly with those responsible for a particular area. For others it was to support the CEO and the business by working as a mentor and sounding board to the leaders.

The tendency in recent times of the chair needing to be closer to business operations than previously does not mean they are becoming more operational. It relates more to the focus on non-financial risk, and clear lines of responsibility for the culture of the company, reaching up to board level.

"I've been a CEO and I'm conscious that I don't want to be seen as a meddling chairperson, but the truth is that finding good contact points within the business, whether they be strategy days or meeting staff or clients who are important to the success of the company, does help," says Hamish McLennan, chair of REA Group, Rugby Australia and HT&E.

Strategic chair succession

The relationship between the chair and the CEO is the most important workplace partnership in any company, and boards work to limit a situation where both roles retire in the same year. Chair succession has not had the high profile of CEO succession, yet the role of the chair in the performance and stability of the company is of equal importance. During the past decade, the CEO succession process has become more planful, less so for the role of the chair. Some chairs are reluctant to move on and their board reluctant to have the conversation. Others stay on longer than intended because there is no obvious successor or an external event necessitates stability. There are, of course, long-term

chairs presiding over high-performing boards, and companies with no appetite from board or investors for change.

There isn't a set tenure for chairs, nor does the ASX recommend one. Some chairs expected tenure to be tightened over the next few years with the generally accepted 12 years moving to nine. Others were less fussed about the tenure and more about the ability of the chair to lead a strong board. "You always want to be building a board where you think you have one or two potential successors for chair from within," says NAB chair Philip Chronican GAICD. "But it's not completely uncommon to have chair succession from outside and you need to be open to that... it is about having the right set of skills for the company at the time."

Necessary traits

Courage, collaboration, resilience and agility were the traits interviewees said were found in the most effective non-executive directors. These traits, when combined with a high EQ, diversity of ideas, pragmatism, a clear head and good listening skills, paint a picture of a NED who works to strengthen the team effectiveness of a board – but not to the detriment of their core role as custodians of governance.

Courage was mentioned often, particularly in relation to contesting accepted thinking on a board by being willing to put forward a different point of view. Not, as Carsales.com chair Pat O'Sullivan MAICD described, "just for the hell of having a devil's advocate, but because they truly have a different perspective."

Having the courage to ask tough questions is most valued when constructively applied. This view was shared by many chairs, who were dismissive of questions that add little, or just echo those previously asked by others. Collaborative, rather than individualistic, was considered one of the most important drivers of board effectiveness.

Much is made of the relationship between management and the board, but the relationship among board members is equally important. "NEDs need to challenge, but should always be constructive," said Coca-Cola Amatil chair Ilana Atlas AO MAICD. "They have to put the interests of the company first, which may sound trite, but particularly in the current world where we're talking about significant numbers of stakeholders, is actually quite challenging."

Resilience has arguably never been as important as it has been this year, needing to be built into the business model and also to be a feature of leadership. Bank of Queensland chair Patrick Allaway noted that resilience is always needed on a board. "We're in a world that changes very quickly and the impact of that change on businesses is very fast," he said. "Whether it be this current crisis or continued business disruption, boards are going to need to be resilient."

Agility is found in people who act and think quickly, who step in when needed. In an environment of constant change, complexity and ambiguity, learning agility has become mission critical. "The future is likely to be very different to the past, there will be need for careful rethinking of strategy, together with an agile and continual review approach to strategy," said Cochlear chair Rick Holliday-Smith FAICD.

3.6 Recapping the Essential Director Update 2020

Shelley Dempsey and Jane Southward | "Recapping the Essential Director Update 2020", *Company Director*, October 2020, AICD.

The AICD hosted the 14th annual Essential Director Update (EDU) on 7 October 2020.

Lisa Chung AM FAICD, a director of Australian Unity Limited, The Front Project and Artspace, said key issues for directors were workplace health and safety challenges that have arisen under COVID-19, along with increasing complexities when it comes to the board's oversight of culture.

Leading into 2021, she said, directors should consider how they can "activate our ingenuity to come out better on the other side", as well as how the workplace is evolving as a result of changed work practices and what that means for future workforce planning. She nominated two challenges for directors in 2021: the reset and the need for "legacy thinking".

"It's been a momentous year by any measure and the events we have witnessed are triggering the biggest reset opportunity in a generation," she said. "How ready is your board for what's next? Do you have the right skills on your board and executive to take advantage of the changed world? Are you a maker or a taker?"

When it comes to legacy thinking, she said directors should think carefully about how they conduct themselves as leaders, especially in times of crisis. "Our responses to these times of crisis will be remembered by our staff, customers and other stakeholders and will shape behaviours and culture in many ways into the future. What do we want our legacy to be?"

Chung outlined issues for directors:

1. Workplace health and safety

In response to recommendations of the Safe Work Australia Boland Review, the offence of industrial manslaughter now exists, or is proposed, in legislation in all states and territories except South Australia and Tasmania. "The manslaughter legislation differs in important ways between states and territories, including different definitions of key concepts and different standards of proof for the manslaughter offence, such as requiring gross negligence or just negligence," said Chung. "Directors potentially face prison terms under the laws and, under some state and territory legislation, including NSW, directors and companies are prohibited from entering into insurance arrangements that purport to cover monetary WHS penalties and legal costs."

Chung said boards should undertake a review of D&O insurance terms to ensure they do not breach the new restrictions on WHS penalty indemnities and directors should be aware of potential personal exposure.

2. Board oversight of culture

Chung said there was little doubt COVID-19 has been the ultimate stress test of organisational cultures, with issues ranging from redundancies, lay-offs, job and financial insecurity, juggling work and personal responsibilities, health concerns and uncertainty as to the future.

She pointed to Deloitte's 2020 Global Human Capital Trends report, which named wellbeing and belonging as the top global trends for the year. She urged directors to discuss how to factor these into their boards' consideration of culture.

3. Reputation and stakeholder engagement

Chung said many things can impact reputation, noting recent controversies at AMP and Rio Tinto. "What these two case studies highlight, is that issues we might once have categorised under corporate social responsibility and ESG, have become concerns which strike firmly at the very heart of a company's reputation and, arguably, highlight cultural weaknesses," said Chung.

"They follow the same path as the approach to climate change, which has transitioned from being regarded as an ESG issue to becoming one that many, if not most companies, now treat as a significant financial risk issue."

She said boards should carefully consider the use of non-disclosure agreements in settling complaints, unless it is a requirement of a complainant, for example, for reasons of privacy.

4. Innovation and creativity

Chung said COVID-19 demonstrated Australian organisations' ability to innovate and that they and their workers can be highly adaptive.

In September 2019, AICD published the report Driving Innovation: The Boardroom Gap. The study found that a risk-averse corporate culture is preventing boards from prioritising innovation, leaving Australian directors lagging behind their international counterparts.

In addition to responding to the ongoing urgent needs arising from COVID-19, said Chung, many boards are also turning their attention to longer-term issues, particularly how to navigate to the "other side" – including imagining what a post-COVID "new normal" will look like for their industry or organisation.

5. Post-pandemic workplace

Chung pointed to research showing that in most sectors, workplaces transitioned quickly to working from home where that was viable. Chung said boards and management can no longer rely on the often-erroneous assumption that because a team member is at their assigned desk in the office, they are being productive. "Presenteeism is out and managers will have to determine what outcomes and results they are seeking from their team, how these will be assessed and measured, and communicate this clearly," she said.

6. Financial challenges for NFPs

Chung said nearly all parts of the not-for-profit (NFP) sector have experienced significant financial and other challenges during the bushfire emergency and COVID-19. "Solvency and liquidity concerns, resourcing constraints in terms of employees and volunteers, together with other operational issues, have weighed heavily on the collective minds of NFP boards," she said.

"Many boards have revisited their purpose in light of the challenges of COVID-19 and made adjustments, after asking themselves "What do we want to look like on the other side?" How will we reshape ourselves?"

Graham Bradley AM FAICD spoke on developments affecting large and listed companies and the lessons for directors. COVID-19 has brought many challenges for directors, including managing loss of revenue in some organisations, said Graham Bradley, non-executive chair of HSBC Bank Australia, EnergyAustralia Holdings, GrainCorp and Virgin Australia International Holdings, and a director of Hongkong and Shanghai Banking Corporation and GI Dynamics.

"As a director of a subsidiary of Virgin Australia, I've experienced my first voluntary administration," said Bradley. "As a director of Ensemble Theatre, I have worked with management to implement redundancies, stand-downs and applications for government relief and the challenge of rescheduling theatrical performances that were booked 18 months ahead. As a director of Tennis Australia, I have participated in ever-changing scenario analysis to determine how to preserve the organisation's financial soundness in the face of possible inability to stage our main revenue-generating event, the Australian Open, next January. Every director I know has faced similar issues."

He said the "stand-out lessons" had been the importance of board and management working together as a team and directors' "considerably more intense engagement" in short-term operational management.

"This crisis has demonstrated the great advantage of Australian directors' willingness to engage during a crisis and it is a strength of corporate governance in this country," he said.

Managing financial exposure had been crucial, with Bradley listing key to-do items for boards in 2021, including:

- Focus close attention on cash and cashflow and receive more frequent reports. "Recall the One. Tel case, where the court indicated that prudent directors of a company with severe insolvency issues should, at a minimum, receive weekly cashflow statements, not monthly."
- Take a good look at debt repayment trends. "Is there an increase in delinquency and aged debtors, and is the credit quality of debtors adequate to ensure collection?"
- Monitor the company's payments to suppliers to ensure that management is not delaying payment to creditors excessively to preserve cash – a technique that may hide incipient insolvency risk.
- View spikes in revenue with caution, such as those experienced by some retailing companies during periods of panic buying, in case these "sugar hits" fade or reverse rapidly, leaving unsustainable costs and inventories in place.
- Test carrying values of assets, make impairments where necessary and look to the adequacy of provisioning; for example, bad debt provisioning.
- Bring a degree of scepticism to management forecasts lest they be overly optimistic about the recovery of business flows.
- Carefully review ongoing and proposed capital commitments in the event these overstretch company solvency, financing lines and resources.

"Despite the COVID crisis, it seems that around the world the expectations of director performance continue to mount year by year," said Bradley.

He added that D&O insurance quotes had increased by between 200 and 400 per cent, noting the legal liability regime on company directors is "uniquely burdensome".

Looking ahead, questions for directors include:

1. Did our corporate culture serve us well in this crisis?
2. Can we embed and maintain newly found innovation and agility, which companies have displayed in coping with the crisis?
3. Given the need for directors to engage more intensely in the management of company operations during the crisis, did our directors understand operations well enough to contribute constructively to this challenge? If not, how can we better arm directors with knowledge to improve our business strategies and risk management?
4. Do we need to change the operating business model radically? For some boards, this will be crystal clear – changed consumer preferences will force changed business models.
5. Is our management still looking at its feet and do we directors need to raise their sights to the horizon, and the opportunities and challenges of the post-COVID period? Are we leaving enough time in our board discussions for looking beyond the near term to the real challenges faced by most businesses over the next five years?
6. Is our company ready for the next black swan event?

4 Leading in a post-pandemic world

4.1 Tesla chair Robyn Denholm's tips for driving a culture of innovation

Beverley Head | "Tesla chair Robyn Denholm's tips for driving a culture of innovation", *Company Director*, November 2020, AICD.

When Robyn Denholm MAICD left Juniper Networks in mid-2016 after nine years as its CFO/COO, she intended to take a year off to play golf and consider her next career steps. Things didn't go exactly to plan. Within months, she was offered the role as Telstra's chief operations officer – she accepted, and returned to Australia after being in the United States for almost 17 years.

In late 2018, three months after being announced as Telstra's CFO and head of strategy, she was asked to take on the role as chair of automotive and energy disruptor Tesla – she accepted.

Denholm had joined the board of Tesla in 2014 to chair the audit committee. In November 2018, she was asked to take over as chair after co-founder, CEO and then-chair Elon Musk stepped down as part of a settlement with the US Securities and Exchange Commission after he posted tweets about his proposal to take the listed electric-car maker private.

For eight months she juggled roles as Telstra CFO and Tesla chair until leaving Telstra at the end of June 2019.

Sydney-based, Denholm had been visiting the US at least twice a quarter since becoming chair. Now she engages online with early morning video and phone calls to executives and fellow directors – who beside Elon Musk and his brother, Kimbal Musk, include Oracle founder Larry Ellison and James Murdoch.

The strong professional relationships she forged face-to-face with fellow directors and the executive team have sustained her ability to connect and communicate online throughout the pandemic, says Denholm. And just to be clear: she likes cars, red cars, electric Teslas. She's now onto her third.

Robyn Denholm on catalysing innovation

- Work with the management team to discover areas where they have good ideas; give them room to experiment and fail fast and move on. Or iterate on the idea until they are satisfied they should be going in a particular direction.
- Invest a certain proportion of expenditure on R&D every year, irrespective of industry. Spend time reviewing the progress, the successes and failures of R&D.
- All industries are going through some form of innovation or disruption. Learn what startups are doing in the space or adjacent spaces to see what trends the company is missing or ignoring.
- My favourite technique is to have the board role-play during strategy reviews. Put them in the shoes of competitors or startups. What would they do if they had a blank sheet of paper?

Risk and reward

At Telstra, Denholm had oversight of a program to modernise the company's IT systems and telecommunications networks, ensuring they were future-ready and 5G-enabled. She also managed the delivery of Telstra's commercial agreements with NBN Co. The catalyst for her return to Australia was family, says Denholm, but she was also eager to share her experience of innovation with local firms.

In the foreword to the **StartupAUS Crossroads 2020** report, billed as "an action plan to develop a world-leading tech ecosystem in Australia", Denholm advocated for a more mature approach to risk, quoting US founding father Thomas Jefferson: "With great risk comes great reward."

Denholm argued that while fundamental to an innovative and growing economy, "the willingness to take risks… is not fully ingrained in the Australian mentality. Yet. Maybe it is that we have become complacent as a result of 25 years of unprecedented uninterrupted economic growth."

Pause, then rewind

The pandemic put paid to Australia's long run of growth. When Company Director spoke with Denholm, Australia had entered its first recession since 1990–91. That was when Denholm was working for Toyota in Australia, and five years before she first headed to Silicon Valley. So, does she still want directors to hone their appetite for risk, to invest in long-term R&D, partner with innovative young companies and adopt new technologies fast? You bet.

"That is as relevant today as it was then; in fact more so," says Denholm. "Because with a world that has changed, and an Australian economy that has changed significantly because of COVID and the bushfires before that, it is more incumbent on boards to make sure their businesses are looking at the upside as well as the downside potential of using new technologies.

"There are four quadrants of risk: the financial, regulatory, compliance-related risk, and then strategic risk. A lot of boards spend a lot of time on the first three because they are easier and more tangible to measure and manage in the short term. The strategic risk is the most important risk. Particularly in a technology company, you can do really well on the other three and fail on the strategy – and the company won't be around anymore."

Denholm says it's critical that boards focus more on strategic risk, on what is happening in the marketplace and what startups are doing. To ask: "What would you do if you had a blank sheet of paper and no legacy encumbrances?" To ask: "What would you do differently if you didn't have the success that you have had to date?"

She emphasises that the prosperity Australia has enjoyed over the past 30 years means the nation is due a rethink from both industry and government about how Australia should look 30 years hence. The combination of the pandemic, geopolitical flux and environmental concerns makes 30-year horizons feel extraordinarily distant, but that should not daunt directors, says Denholm.

"You may not get it right in terms of the trends over the next five, 10, 30 years. But you at least have to have a point of view and then check in with that point of view over successive revisions of your strategy; you do have to take a long-term horizon," she says, adding that the environmental, social and governance (ESG) aspects of the strategy must also be considered. To do that she recommends directors spend time with startups in their industry – or an adjacent one – and embrace diversity of thought.

Tesla AGM

During Tesla's September AGM and Battery Day, a virtual event that attracted 270,000 online viewers, Denholm – who is one of just two women on Tesla's nine-person board – noted that the "board members pride ourselves on adaptability and diversity of thought and experience."

She expects that new ways of working forced by the pandemic will prompt more diversity. "If you have technology that encourages broader participation with different demographics and socio-economic groups, it creates more opportunity and innovation," she says. "We will look back and say, 'Yes, there was a pandemic, economic disruption, but look at the innovation that has come out of it.' History has proven that before and that will happen again." However, Denholm also acknowledges, "there is always a risk that people will retreat to what they are comfortable with."

That, she says, would be folly. "A board plays a significant role to ensure a company culture enables it to focus on innovation. Although not obvious, innovation and 'permission to fail' go hand in hand. A board expecting to have everything be successful all the time can stifle innovation. If you're innovating as a company, you're going to have some failures… Obviously, ensuring the 'blast zone' of the failures are contained is really important, but from a culture perspective, it is really important to celebrate the successes and the failures that help to progress the company forward. It's also important to note I'm talking about experimenting and innovating in the strategic and operational pillars, primarily."

4.2 Three ASX chairs speak out on recovery

Shelley Dempsey | 10 December 2020, "Three ASX chairs speak out on recovery", *Membership Update*, AICD.

How is your organisation addressing resilience and recovery at the board level? At a recent AICD event in Perth, three chairs of top ASX-listed companies outlined their perspectives on recovery and how their boards are taking action. Michael Chaney AO FAICD, Chair of Wesfarmers, Richard Goyder AO FAICD, Chair of Qantas and Woodside, and Rebecca McGrath FAICD, Chair of Oz Minerals, outlined how their companies are meeting and overcoming the challenges posed by the crisis in 2020 and looking to the future.

"The board of Qantas has devised a three-year plan of action for their COVID-19 recovery which takes into account not only short-term planning but also the long-term horizon," says Qantas chair Richard Goyder.

"I think, at a board level, we're just going to have to look at a broader range of scenarios," he said at the event, titled 'Governance resilience and recovery in an ongoing pandemic world'.

"We need to make important decisions that support the brand and all our stakeholders within that uncertainty."

On a global level, the challenge will be how we all think about the next one to five years, particularly in light of what is currently occurring in Europe in the US, because planning must be not just for a very steep recovery but also about the consequences of monetary and fiscal policy initiatives, he said.

The long road back for Qantas

Qantas itself went into the crisis with 29,000 staff. Six and a half thousand were made redundant by October, with a further 2,000 baggage handlers made redundant in the last week of October. This year, 15,000 staff have been stood down including some highly skilled pilots. "A whole bunch of them are headed down to Esperance in Western Australia to drive harvesters," said Goyder. "So their careers have been turned upside down."

In the future it will be a priority for Qantas to help them return to the airline, he said. "And how they rebuild with us, having had such a dramatic change."

Goyder also said expectations of listed companies are going to increase within the community and from stakeholders such as investors, who are demanding a greater focus on climate change and other areas of social responsibility such as gender equity and workforce participation. "And as a consequence, I think the risks are increasing as well."

Directors' and officers' insurance is incredibly difficult and expensive to obtain, which further increases risk, he told participants.

However, he added that seasoned directors had proven their worth during the crisis and would continue to do so during recovery. The Qantas directors who had been through the 2013 shutdown and through the SARS crisis got through this year well because they had those "scars".

Looking after staff and young people is of major importance in the recovery, he said. "There's still a disconnect between what we're trying to do in this country and what the jobs of future are going to be. I think that's probably going to be exacerbated this year and we owe it to kids who are finishing high school to do further study or whatever they are doing to ensure they've got the skills for jobs in future."

Oz Minerals fights back with innovation

Oz Minerals has put innovation at the core of its recovery plan, according to Rebecca McGrath FAICD.

"At Oz minerals, how we do things, the time they might take, the hurdles that we put up and the way we operationalise our projects, certainly has changed. And I think there is a new amount of agility that will allow us to potentially achieve greater things than we might have previously from the same sorts of projects."

The board has tried to put an equal footing emphasis on opportunities as well as threats. "And so one of the things that we fully enacted – I think much more significantly in the last six months [to] nine months – is putting more time to these discussions. So the board pack gives us an update on all the key opportunities ... risk management is about threats, but it's also about opportunities."

Health has also been a major focus for the board this year because of its global operations. Whilst most of Oz Minerals' operations are in South Australia, they also have an operation with hundreds of people in Brazil, which has been strongly affected by COVID-19.

"We've had more than 50 people who have suffered COVID-19. I'm delighted that all of them have recovered," she told participants at the event.

The board had focused on people, on maintaining liquidity, and on scenarios involving shutdowns and supply chains.

But some staff have made remarkable sacrifices to stay on site. "We've had some amazing contributions by employees who offered to stay on the site when they know that they can leave. Sometimes it's been for four weeks to continue the site operations and offer leadership, which is a tremendous commitment. I know that's had quite profound effects on families."

Another valuable advance in technology had been for the board to conduct virtual site visits. "That was terrific, because it meant we got to meet with the leadership teams and use the technology that they deployed. They had drones with cameras, so we went down underground in real time with the mining team in South Australia."

The virtual site visits were an example of the way technology can be used to engage and converse with staff.

"I would encourage those companies with operations that they need to visit to think about how they can use technology like this in an ongoing fashion."

Investment in culture and purpose has never been more important and Oz Minerals is reaping the benefits of previous investment in these areas. "Our purpose is going beyond what's possible to make lives better, which very much links to the way we do things as well as what we do and what we produce."

The board has reflected on going beyond what's possible and in the last few months have spurred innovation and creativity that is now allowing it to accelerate strategy. The company has looked at ways it can move faster, and will do that by measuring how it works, the way it works and the methods it uses.

"In the culture area, we have had a lot of barriers and we actually held a number of sessions during the peak of the pandemic amongst employees and with the board to identify those barriers and remove them. And so now we are at a point where we can move very quickly and confidently."

Wesfarmers invests for the long-term

Michael Chaney AO FAICD, Chair of Wesfarmers, said that when the Victorian lockdown occurred, the company announced it would continue to pay staff for the course of the lockdown. When six weeks became 12 weeks, it had a significant effect on the bottom line, but this was regarded as a long-term investment, he said.

"Similarly, we went out to our community partners, particularly the arts companies," he said, and gave them extra money to see them through the crisis. "Again, we think that's in the company's interest in terms of corporate social responsibility."

Another major effect of the crisis was to open the eyes of many leaders to different types of risk, he said. Wesfarmers has this year, for the first time, taken on a group Risk Officer to make sure that the board is across risk for the whole group of operations.

"The one takeaway for me (from the crisis) was that this is about balancing the books and that if you have a healthy balance sheet in the good times, you're more likely to be able to cope with the bad times." Governments in Australia have reacted well to the crisis, he added. "Compared to the US, we're a thousand times better off and they are a thousand times worse off in terms of death and infections. And that's not a small thing."

4.3 How trust changed in 2020 and what it means for businesses and their boards

Clare Payne | 19 November 2020, "How trust changed in 2020 and what it means for businesses and their boards", *Membership Update*, AICD.

The COVID-19 global pandemic has led to profound shifts in trust across the globe. Edelman were propelled to produce a Spring Update in May, following the January launch of their well-known Trust Barometer which had quickly become redundant. They described the trust shifts since January as 'remarkable', identifying a surge in trust in government, positioned as the most trusted institution for the first time in the 20-year history of the initiative. In Australia, the trust shift to government was described as 'newfound', particularly as trust in government, which was already low, had further declined following the bushfire response and despite 28 years of consecutive economic growth.

Trust in news sources shot up to an all-time high as people searched for reliable information (although calls for credible and unbiased journalism have continued to gain strength). The rise of trust in, and reliance on, experts has continued. In contrast to these trust rises, there has been a 'marked disappointment' in the performance of business, particularly during the early months of the crisis. A moment of 'reckoning' for business was declared - the outcome of which is still to be decided.

The trust pressure points for business

In recent year, trust surveys have identified an expectation that CEO's and business should lead on positive change in society, and yet in surveys since COVID-19, CEOs have ranked last indicating they are not meeting these expectations. Academics have ranked first, followed by government. Perhaps, these shifts are to be expected given the nature of the pandemic, involving health and economic impacts across the whole of society. However, it's worth understanding where people believe business is falling short.

Areas that have been identified, and echoed through media scrutiny, include:

- putting profits before people;
- not safeguarding enough jobs;
- not protecting the financial wellbeing of staff and customers; and
- not doing enough to assist suppliers, contractors and business customers to stay in business.

The challenge for businesses and their boards

Business leaders and their boards have had to quickly become accustomed to meeting virtually and making decisions on rapid timeframes. It's therefore understandable that some view the criticism of their response to the pandemic as unfair. Many have quite simply been dealing with the pressing issue of staying in business.

However, as businesses and boards now navigate the 'new normal', they will be called on to support employees, most notably there is pressure to avoid workforce reductions or at minimum manage them fairly, and support customers and suppliers, particularly those experiencing vulnerability.

These expectations are beyond what might have historically been reasonably expected and apply most absolutely to those with market power.

The pandemic has brought to the fore, in a way that can't be ignored, the inequity that exists in even the most developed economies. Practices that had otherwise become accepted, such as widening CEO and staff pay differentials, and profit concentrations made possible through the use of shadow workforces comprised of contractors and gig workers, will continue to be called into question. Finally, the decisions of boards will be judged by changed expectations and in an environment where people are considering who deserves their trust.

Ethics and trust remain inextricably linked, the challenge for leaders is therefore to maintain both as they face the year ahead.

4.4 AICD and GIA report: Key learnings from the COVID-19 crisis

11 September 2020, *AICD & Governance Institute report: Key learnings from the COVID-19 crisis*, Policy Research, AICD.

Almost every aspect of our lives has been disrupted by COVID-19, and the boardroom has been no exception. Boards have changed the way they operate, their focus, and how they govern.

To capture these shifts, the AICD and the Governance Institute of Australia (GIA) have partnered to produce a new report that takes an in-depth look at the impact of the pandemic on board processes and how the learnings from the crisis can help boards improve their governance practices.

With input from directors and company secretaries across a range of sectors, the **Governing Through a Crisis: Lessons from COVID-19** report identifies key learnings and recommendations to help organisations ensure they are better prepared for future crises.

The report looks at:

- The foundations that must be in place for the board and company secretary to add value in a crisis;
- Effective crisis and continuity planning – what it looks like in practice;
- The impact and future of virtual meetings; and
- How the pandemic has changed the way boards engage with stakeholders.

To help organisations develop stronger resilience and navigate their way out of the pandemic, the report also offers:

- Recommendations that address each of the key learnings;
- Practical tips to help boards operate and govern in the new environment;
- Insights from prominent directors; and
- Case studies exploring the virtual and hybrid AGM experience.

5 Accelerating innovation: How boards can shape the future

5.1 Directors, get on board with technology

Narelle Hooper MAICD | "Directors, get on board with technology", *Company Director*, December 2020, AICD.

From rapid digitalisation at Pos Malaysia (Malaysia Post), to internet pivots at Museums Victoria and Singularity University in the United States, and round-the-clock collaboration at the global vaccine alliance GAVI, 2020 tested the capacity of board and executive teams to respond to immense risk and volatility, and clearly highlighted the role of technology and leadership.

The AICD's Governance of Innovation and Technology Panel, set up in 2017 and chaired by Kee Wong FAICD, consists of 28 strategy and technology specialists whose work spans the globe. It provides expert guidance to the AICD's ongoing innovation work in deepening the culture in Australian boardrooms for appropriate risk-taking.

When members of the panel met in March, boards were dusting off their crisis management plans, and the findings of **Driving Innovation: The Boardroom Gap** were fresh in their minds. The 2019 AICD-University of Sydney study – Australia's first in-depth look into director practices on innovation – revealed that while boards recognised the importance of innovation, most were struggling to prioritise and implement it. Directors lacked digital literacy and organisations were lagging behind their international counterparts.

Survival vs opportunity

During subsequent months, directors and executives lived gripping real-time examples of strategic innovation that will become a source of learning for years to come.

In September, the AICD panel met again and Gavin Slater GAICD, CEO of Melbourne SME finance startup Nimble and former CEO of the federal government's Digital Transformation Agency, noted that the year had highlighted two types of responses from organisations: survival innovation and opportunity innovation.

Commonly, directors related that many digital transformation and improvement initiatives already underway suddenly had to accelerate when COVID-19 hit. "We had it on the plate, but it was not moving as fast," said Yasmin Mahmood, chair of Pos Malaysia. "We literally had to dive into innovation and new ways of doing things."

On the one hand, parcel post was booming, but costs were also up, while voice calls were coming in at three times the normal volume. A special board committee was set up – drawn from directors and the executive team – to examine cashflow, customer service and handling. The board hunkered down on strategy and innovation. Chatbots were brought in to help with customer responses. Realising that digital signatures would be the "killer app", Pos Malaysia quickly went to "proof of concept", chose a strategic partner and put the organisation in a position to launch.

"We are still on this journey but, on the good side, we feel innovation is finally touching this legacy organisation," said Mahmood.

Steve Leonard, a director of boards in Singapore and Hong Kong, became CEO of Singularity University, a US-based global learning community, mid-pandemic. "Singularity University's model changed overnight," he said. "We had to completely reimagine our own business from one that was based on person-to-person discussion to one that was entirely virtual. It's been a tremendously challenging time and one we would have liked to have gone through more thoughtfully rather than in 20 days."

Industry Innovation and Science Australia chair Andrew Stevens said that since March, Australia has had the highest level of non-R&D investment in its history and the events that transpired were an acceleration of major trends. "The competitive frontier has moved dramatically," he said.

Nicholas Davis, a special innovation adviser to global vaccine alliance GAVI, said he'd seen an executive focus on five areas: foresight, workforce strategy, stakeholder engagement, cybersecurity, analytics and data. Non-R&D innovation still requires strong innovation management, he said. "It's about finding and implementing tested solutions from elsewhere or finally making full use of applications and systems."

Louise McElvogue FAICD, a non-executive director of Healthdirect and industry professor at the University of Technology Sydney, said she had seen the biggest changes in her health and education roles; for example, a government board that stood up a COVID-19 helpline in two weeks and pivoted to contact tracing. Responding to the crisis required leadership and courage at a time when "one of the strongest emotions was real fear", she said. "You had to make really tough decisions."

According to Bronte Adams AM GAICD, a member of the federal government's Australian Broadband Advisory Council and a director of Museums Victoria, the response was "much more about leadership than technology and innovation".

Said Adams, "The best leaders I see are putting a disproportionate emphasis on the people side."

Forced experimentation

After the forced experimentation of COVID-19, the issue is to what degree the changes are likely to be temporary or more lasting. Panel members believe hard work is required to build a sustainable innovation framework for what comes next.

"[The question is] can boards be equally effective or even more swift and effective with our opportunity innovation?" said Stevens.

Wendy Stops GAICD, a director of supermarket group Coles and charity Fitted for Work, noted that the best-placed organisations will be those that capitalise on their achievements and embed them into how they do things. "What concerns me most about 'legacy' organisations is that when things revert to a more 'normal' environment, the DNA naturally reverts to the more traditional, structured way of decision-making," she said.

Whole board or committee?

Many panel members said that deepening an organisation's culture of strategic innovation should be a whole-of-board focus, although some believe there is a role for a separate committee to focus on technology at a deeper level than what a whole board can typically have time to address in a busy agenda.

"Boards need to think hard as to whether they are supporting the new or the old DNA – and the consequences," said Kathleen Bailey-Lord FAICD, a non-executive director of the Bank of Queensland, Melbourne Water and QBE Insurance Australia, New Zealand and the Pacific.

"Innovation is an operating model," offered Dr Peter Wilton, a senior lecturer at the University of California, Berkeley's Haas School of Business. "There is an innovation maturity curve and we need to understand where we are on that. That is not an innovation committee or a function."

Dr Michael Hartmann, a professor of medicine and management at the DeGroote School of Business at Canada's McMaster University, said the old systems and ways of doing things will kick in for many legacy organisations unless the incentive structures are realigned to the "new" ways of doing. "Agile is no longer a buzzword; it is a cliche," said Hartmann. "There is a requirement to unlearn a lot of the things we've done before."

5.2 Driving Innovation: The Boardroom Gap

18 September 2019, *Driving Innovation: The Boardroom Gap*, Policy Research, AICD.

The AICD, in partnership with the University of Sydney Business School, completed Australia's first in-depth look into director practices on innovation. The **Driving Innovation: The Boardroom Gap** study revealed a sobering picture of Australian boardrooms struggling to prioritise innovation and lagging their international counterparts.

Finding 1: Australian directors recognise the importance of innovation, but more needs to be done to prioritise its delivery.

- Australian boards play a key role in fostering, driving, and monitoring innovation – but there remains a significant gap between strategy formulation and strategy implementation.
- Comparatively, directors' responses indicated Australian boards are not prioritising innovation or disruption risks to the extent seen in overseas boardrooms, suggesting Australian boards under-estimate looming strategic risks.
- Directors identified key barriers to innovation as: human talent shortages; limited financial resources; and a focus on short-term financial performance. Directors see Australia's regulatory environment as contributing to a risk-averse corporate culture.

Finding 2: Australian boardrooms have low innovation and digital literacy levels.

- Australian boards lack critical technical and innovation skills, and need to increase access specialist advice. More must be done to broaden the director talent pool to include individuals with science and technology backgrounds, as well as bringing in stronger international experience.
- While boards can take steps to address these specialist skills gaps by, for example establishing a specialist committee or advisory panel, it remains each director's responsibility to understand how technology will impact their organisation.

Finding 3: Board-Executive collaboration leads to better performance.

- Boards that collaborate with their executive team to set and oversee an organisations innovation strategy are much more likely to realise their innovation objectives. This includes ensuring innovation features regularly on board agendas.

AICD CEO and Managing Director, Angus Armour, said this study comes at an important time with Australia experiencing low productivity growth.

"The study tells us that innovation is often missing from Australian boardroom agendas. It reveals that traditional risks are the focus rather than the risks – and opportunities - associated with innovation and disruption".

The research found that while Australian directors recognised the strategic importance of innovation, more needed to be done to prioritise its delivery.

"It is encouraging to see that directors are acknowledging the importance of innovation, but directors need to make sure that innovation is more than just a sporadic item on board agendas," Mr Armour said.

Recommendations for boards

The report outlines five key recommendations to ensure innovation is prioritised by boards:

1. Lift directors' technology and digital literacy.
2. Set clear expectations of management regarding calculated risk-taking to drive innovation.
3. Develop a shared language with management, and clear narrative for investors/members on innovation.
4. Ensure innovation features regularly on boardroom agendas.
5. Establish a budget and executive incentives for long-term innovation.

6 Culture shock: The new ways of work

6.1 How we use and deliver infrastructure services will never be the same

Julieanne Alroe MAICD |
Chair, Infrastructure Australia

In December 2020, Infrastructure Australia released **Infrastructure beyond COVID-19: A national study on the impacts of the pandemic on Australia**, a study on the emerging impacts of the pandemic on Australia, produced in collaboration with L.E.K. Consulting.

The study noted that critical services and networks were able to reconfigure quickly and deliver differently, showing a great resilience. However, the pandemic prompted profound changes to the way people moved, consumed and worked.

The study identified several key trends:

- **Digitisation.** Online retail was six times more than in 2019. 90 per cent of Australian firms adopted new technology, including collaboration tools and improved cybersecurity.
- **Decentralisation.** There was a 200 per cent increase in net migration from capital to regional areas, with increased use of local infrastructure with more people walking and cycling.
- **Innovations in service delivery.** Examples of this wide-ranging trend include increased cleaning and real-time occupancy data on public transport, greater use of telehealth (from 0.04 to 35 per cent of Medicare schedule services), and the transfer of teaching curricula online.
- **Repurposing infrastructure and quickly scaling up latent capacity.** Broadband capacity increased by 40 per cent, with the NBN releasing latent capacity. The health sector's response included a 291 per cent increase in ICU capability. There was a 23 per cent increase in use of national parks and green spaces.

While the uncertainty of our environment makes it difficult to make predictions, the study identified a number of key trends that are likely to last and impact on ways of working. These trends show a redistribution of demand, mode switch or an acceleration of existing long-term shifts:

- **Travel restrictions** will continue to impact business travel. Already, they have resulted in increased online business collaboration, saving time and cost. While face-to-face engagement can be more effective for complex and strategic matters, it is unlikely that business travel will return to pre-COVID levels for some years. Travel restrictions have also impacted access to skilled labour and with an aging workforce to be considered, the focus has shifted to the need to train and develop the local workforce.
- **Supply chain disruption** was less than anticipated (due to rapid and collaborative changes to domestic freight movements), but we must consider local manufacturing capability, inventory holdings and further adaptation of supply chains.
- **Health and hygiene requirements** have increased costs, reduced capacity, increased waste and changed consumer practices. How these risks are managed in the future will impact the financial viability of many industries and services.
- **Flexible working arrangements** became normalised for office staff, although it is not yet clear the level of staff that will continue to work from home.
- **Hybrid educational models** with online learning are likely to remain, although the models require evolution and changes in that sector remain unclear.

- **Hybrid conferences** are likely to remain, supporting high value face-to-face participation while extending participation to those who would not otherwise attend.
- **Higher use of digital technology** will drive higher consumer expectations on the reliability and functionality of the infrastructure, as well as access and cost.

Seizing the opportunities from these trends

The study makes clear how rapidly our infrastructure sectors can respond and evolve under pressure. Now that we have seen the wide-spread and seismic change that is possible, we should seize this opportunity to reshape and strengthen these sectors.

We have learned from the repurposing of assets during the pandemic that capital is not always needed to solve everything. New ways of working, led by providers and employees, and new ways of accessing services, led by customers, can deliver the changes needed.

Additionally, local collaboration can be the key to greater flexibility and business continuity, as we saw across health, education and transport.

Increasing decentralisation and digitisation also offer great opportunities. Migration to our regions shows that we can revitalise regional development and strengthen regional city hub and spoke models to improve affordability. The shift to digitisation is a chance to transform the delivery of services in new and novel ways and to improve efficiency.

Additionally, our national green and blue spaces became more precious during the pandemic, with a renewed focus on local amenities. This renewed value recognition could improve planning and policy in this area and drive greater sustainability.

Key challenges we must address

The study also identified trends that emerged during the pandemic that now present urgent challenges to be addressed:

- Increased car use and ownership as public transport use decreased, with the sale of second-hand cars rising. This will increase urban congestion if safe alternatives to driving are not encouraged.
- Increased consumer waste plus the waste export ban coming into effect in 2021, means that greater emphasis is now needed to improve waste economics and introduce circular economy reforms.
- Revitalising Australian CBDs will be sluggish until staff return to offices and tourism returns. Efforts to repurpose real estate and reinvigorate CBDs will be required.
- Timely data has been difficult to secure from public and national databases. Better data for public sector decision makers should be a priority.

Remembering the bigger picture

After the last year, it can be hard to remember that the COVID-19 pandemic is not the only thing changing the way we work.

The impacts of climate change are already being seen across the globe and an urgent response is required to respond to these risks and safeguard our quality of life. Our ways of working in the future will need to be embedded in sustainability principles, a focus on resilience and a readiness to respond to shocks.

Globalisation has already driven many changes, and now include downside risks such as nationalism and protectionist movements. Technology will continue to be the biggest driver of change in how we work. Better use of data, artificial intelligence, the internet of things and robotics are just a few of the near-term innovations that are reshaping our economy. They present opportunities but require a transition in ways of working.

However, there are some things what won't change. More than ever, we will need good leadership and vision, good people managers, community engagement and endorsement, a customer-centric focus, communications skills and financial skills.

6.2 Can you have a healthy culture without seeing the people you work with every day?

Dr Kirstin Ferguson FAICD | Non-Executive Director, Adjunct Professor at the QUT School of Business and QUT Colin Brain Corporate Governance Fellow

While corporate governance has never had a reputation for being the sexiest of topics, the issues that give rise to corporate governance failures never fail to attract mainstream attention. All too often these failures arise from the culture of the organisation, that is, 'the way things are done around here'.

Boards and senior leaders have long been guardians of culture and the behaviour a board might tolerate from their CEO or throughout their organisation speaks volumes about the culture you are likely to find embedded throughout that business. Culture is something that is impossible to neatly package, fix with a budget or write a policy on. However, we all know the impact of culture, positive and negative, when we see it.

For board members, traditionally one way to stay abreast of a company's culture has been to be physically present through attending meetings in person, conducting site visits or receiving presentations from members of the business you might not ordinarily meet. Along with all the usual documented indicators like engagement reports, pulse surveys, retention rates or customer complaints there is nothing like being able to make your own observations of what you see and hear on the ground.

Being a director that can adequately assess corporate culture requires skills such as curiosity, empathy and active listening, and COVID-19 has made those strategies much more difficult over Zoom.

We are all well aware that culture is the responsibility of the board and is not something that should be left to senior management to deal with. Clear expectations need to be set by a board around what a strong, healthy and effective culture should look like and senior managers need to be held to account on those expectations. COVID-19 has not just changed this, but it has opened up new cultural expectations and opportunities.

Boards and management teams are still assessing the impact of COVID-19 on their culture, yet we know that you can have a healthy corporate culture without seeing the people you work with every day. In PwC Australia's recent **Future of Work** report, their research found 51 per cent of employees say their company's culture has changed for the better, 41 per cent of employees now have a greater sense of purpose and 72 per cent of employees feel confident about the future of work.

This is an opportunity for boards and senior leaders to seize upon.

As we have seen, employees (and boards for that matter) have discovered new preferences for working and are demanding change. For most businesses, the expectation that every board meeting had to be face-to-face or that employees could simply rely on a workplace flexibility policy written a decade ago, will no longer cut it.

Employers of Choice will be those employers who actually provide a choice for how work is done. The success of these initiatives will rely on role-modelling by senior leaders which in turn will be a significant determinant of company culture moving forward. Boards can be active in ensuring that the policies which are being put in place are cascading through the organisation effectively.

Boards also need to ensure management is being pro-active in having discussions with employees and truly listening to the responses about how employees would like their future workspaces and workplaces to be shaped. As most research has shown, most employees fall into roughly one of three groups:

- those who wish to work back in the office all of the time;
- those who wish to work back in the office some of the time (hybrid working); and
- those who wish to continue to work from home.

Creating bespoke, flexible ways of working will be essential for those organisations that have already found that their employees remain as productive as they had been in the office before COVID-19. Overwhelmingly, productivity levels remained high during COVID-19, debunking any latent concerns that working from home somehow meant not working at all. At the other end of the spectrum, burnout by employees working much longer hours at home is an issue for boards to be asking management about as they address employee wellbeing.

These questions are ones that every board needs to be tackling as we ease back into the workplace. Resilience isn't about bouncing back to exactly where we were before a crisis. It is about acknowledging we have all been transformed by the crisis and using that transformation to not only change the way we do things, but to thrive.

6.3 The new normal: what do workplaces look like in 2021?

Suzanne Storrie GAICD | Jarden Australia Advisory Board, Independent Director Surf Life Saving Australia

The strongest companies embracing the COVID-19 pandemic have induced change and reimagined their workplaces, thoughtfully avoiding a wholesale return to their old ways of working. Organisations should reflect on sustainable workplaces and practices before deciding what is right for them and implementing at scale.

Power of purpose

Organisations with a laser focus on their purpose – and with a strong alignment of operating principles and practices – were able to drive decisions and implement their COVID-19 responses at pace, with greater acceptance and trust from their key stakeholders.

Conversely, some organisations struggled to articulate their purpose and missed the opportunity to lift engagement and motivation of employees, and risked scepticism from their customer base and other stakeholders.

Questions for boards and management:

- Is there a clearly defined and lived purpose? Are employees inspired by it and resources aligned to it?
- What needs to be true to enable the purpose?

Where do I work now?

The concept of work being something you do rather than a place you go to is not new for knowledge workers, but COVID-19 exposed the great divide between those who were part of the rapid mass migration to working from home (WFH) and those who were deemed essential workers, and those who had access to high speed internet and technology at home and those who didn't.

The World Economic Forum says 20 per cent of the workforce in advanced economies can work just as effectively from home, but McKinsey found most workers globally can't work a full day from home without suffering productivity losses.

Many organisations previously allowed workplace flexibility, however for some it was highly dependent on the predisposition of individual leaders and their level of trust and perceptions about remote working productivity. Despite some challenges, research indicates up to 90 per cent of workers who can WFH would prefer a hybrid working model – part-remote and part-office working – going forward. Employees who plan to continue to WFH may need better, more permanent spaces in their homes if it is part of their new normal and to accommodate ongoing government health responses.

Employers will need to determine frameworks, boundaries and expectations for all employees, with the needs of the business and the customer in mind. There may be opportunities for organisations to reduce or reshape property footprints but some global organisations who were early adopters of remote working have moved to have employees back onsite to improve collaboration, so hasten slowly.

Questions for boards and management:

- What work can be deconstructed to enable highly productive remote work and what should be prioritised to be onsite?
- Is the remote work strategy employee or employer led?
- How is productivity measured? What is your position on monitoring it?
- Is there an opportunity to level the technology playing field for employees and their families to improve equity and productivity?

When do I work now?

Even those who were able to rapidly migrate to WFH didn't find it easy. WFH was impacted by caring responsibilities, the inability to create effective work/life boundaries and isolation for those living in single person households.

Mental health will continue to be an area of focus with a MIT study finding 94 per cent of employees experienced stress in the last 12 months. The third quarter phenomenon may continue to impact employees, with poor behaviours a clear sign of distress. Employers need to support leaders and employees to prevent burnout and to maintain their physical and mental wellbeing.

Questions for boards and management:

- How is employee wellbeing measured? Are solutions for 'at risk' employees (for example, from domestic and family violence, or health risks including mental health and burnout) working? Has flexibility for caring responsibilities been embedded?
- What plans are in place to revitalise and re-energise teams to thrive, not just survive?
- What is the role of 'place' (work location) in creating a sense of belonging and creating culture?

What's for breakfast?

COVID-19 highlighted better ways of working: the speed at which people adjusted to new norms; the increased pace of decision making without the constraint of layers of committees; more frequent and empathetic communication; flatter, cross functional teams focused on outcomes; improved resource allocation. The challenge will be to retain it.

The role and expectation of modern leaders is enormous. It is not enough to drive higher performance and results over the short term. The famous quote "culture eats strategy for breakfast" will continue to be relevant and it's important to understanding which leaders are truly excellent (1 in 10 according to Gallup) in building and maintaining inspiring cultures. Gallup reports a 70 per cent variation in employee engagement scores due to manager quality. Great leadership is a rare combination of discipline and care, "head and heart".

Leading distributed and diverse teams well may require an uplift of existing leadership skills. Leaders need to be visible, provide clarity and confidence and be comfortable knowing they don't have all the answers.

Questions for boards and management:

- Have better ways of working been retained?
- How are exceptional leaders identified? What investments are being made in developing current and future leaders?
- Did COVID-19 impact momentum on the diversity, inclusion and belonging strategies? What are the measures of success in 2021?

Foot on the pedal

COVID-19 saw an acceleration of automation and digitisation (two years of transformation in two months and three years of online growth in a year) in response to unprecedented travel restrictions and changes in consumer behaviour. With 85 per cent of executives expecting a significant acceleration of employee collaboration tools and 67 per cent expecting increased automation and AI, job losses are expected along with the creation of new and different roles.

Employers can build skills, trust and loyalty by investing in 'needed now' and 'needed in the future' skills, with the WEF estimating half of the workforce needs significant reskilling or upskilling by 2022 and 87 per cent of employers realising they have a current or near future skills gap. In an environment where top talent has choice, more sophisticated approaches to creating and managing workforce ecosystems to fill gaps and meet peak demand will be required, including consideration of the physical and cybersecurity risks.

With the changing nature of work and careers, support for employees to own their careers and skills will be even more important. While there will continue to be a place for individual online learning (with more access than ever to appropriate courses, including micro credentials), there will also need to be consideration of the role of onsite master/apprentice style learning.

Questions for boards and management:

- Has the talent strategy adapted to be more flexible?
- What investment is being made to build skills to meet business needs today (and in 5 years' time)?
- What are the known issues, trends and emerging cyber threats as a result of changes in ways of working? Do insurance policies cover these environments?

Preparing for the next crisis

Most countries and organisations were in crisis response mode for the majority of 2020. COVID-19 continues to stretch resources, requiring communities to balance public health with economic recovery, even as employees start returning to workplaces.

Questions for boards and management:

- Is the organisation prepared for the next pandemic or crisis? What else needs to be done to build in required resilience and adaptability?

6.4 Workplace 2021: The new hybrid office model

Shelley Dempsey | 19 October 2020, "Workplace 2021: The new hybrid office model", *Membership Update*, AICD.

With the great working from home experiment still in full swing, but with many CEOs and staff also needing and wanting to return to the office, a number of companies are looking at new hybrid work models - where staff will work both from the office and at home.

Nearly half of all staff surveyed in August this year by financial services firm EY say they prefer a mix of office and home settings, reports EY People Partner Kate Hillman. "What our people are telling us is they miss that camaraderie and collaboration in the office," she told AICD in an interview. "So we know there's a desire that when they're in the office they want to connect and to co-create. But they're also telling us that the remote working is really facilitating their ability to focus and to do deep concentration activities as well. So it's going to be good to be able to provide both."

According to the survey results, 48 per cent of EY employees in Australia and NZ want a mix of office and home settings and 44 per cent want to work remotely from now on and use the office for specific purposes, like client meetings, team building and social events. Around 87 per cent agree there needs to be a rethink of how office space is used.

As a result, possible downsizing of office space is now under consideration by EY, adds Hillman. "As long as we're going to have social distancing we can't downsize – we need all the space," she said. "But there will be changes, of course, whether it's the repurposing of the space we have, or whether it's reduction of the real estate footprint." Across Australia, the return to work plan for EY varies state-by-state. By September this year, in Adelaide, 23 per cent of EY staff had returned to the office, compared to 15 per cent in Perth, 12 per cent in Brisbane, 8 per cent in Canberra and 4 per cent in Sydney.

We miss the water cooler

Interestingly, international research from Atlassian shows that Australians are missing their workplaces more than those from other countries. The research found that the remote working environment has left many yearning for workplace banter. Three in four (77 per cent) Australians missed the energy of their workplace, which is significantly higher than the 50 per cent of global workers longing for water cooler conversations, says the report titled Reworking Work: Understanding the Rise of Work Anywhere. Conducted by Australian research agency Paper Giant, more than 5,000 participants from Australia, France, Germany, Japan and the US were surveyed on working from home.

Importantly, the research found people are closer to their teams but more distant from their organisations, with connections to colleagues and the wider organisation weaker. Three key factors were also found to influence people's ability to adapt to distributed styles of work: household complexity, role complexity and network quality. However, the report warns that remote work may lead to an innovation drought due to more formal connection and structured communication, and that people fear remote work may prevent career progression.

The overseas picture

Overseas, the return-to-work picture is mixed. Many large technology companies – including Fujitsu, Google and Siemens – have committed to long-term remote work plans. While others such as Twitter, Netflix, Facebook and Atlassian are allowing staff to continue to work from home (although Atlassian staff can return to the office in January if they wish).

However, Netflix head Reed Hastings is one CEO who has made it clear he is not in favour of working from home. In an interview with the Wall Street Journal, Hastings said: "No. I don't see any positives. Not being able to get together in person, particularly internationally, is a pure negative." (For now, all 8,600 Netflix employees will continue to work remotely until an approved coronavirus vaccine becomes available).

Facebook is looking for a director of remote work as it plans for a more permanent shift to working from home. Facebook staff will continue working from home until July 2021, and the firm will provide a $US1,000 bonus for employees to set up a home office. CEO Mark Zuckerberg says he expects half the company's global workforce of 48,000 to work remotely within the next 10 years and that many will be allowed to work from home permanently.

ANZ

Managing nearly 40,000 staff during the crisis across 32 countries which have different geographical COVID-19 requirements has been no easy task for the Australia and New Zealand Banking Group (ANZ). ANZ was one of the first corporations to shut down travel as its exposure to overseas locations such as China meant it saw how serious the crisis was early on. It adapted risk management and other lessons from overseas in Australia to manage the crisis. ANZ still has many staff members in the Philippines and India who continue to work from home.

"We were able to really learn quickly from Hong Kong and China," said Group Executive for Talent and Culture Kathryn van der Merwe. "This was because we have the teams on the ground there that were living it."

She says 40 per cent of staff in Adelaide had returned to the office by September this year on a rotation basis and 30 per cent in Sydney on rotation. Branch frontline staff everywhere including in Melbourne have worked in the office or branches all along, however, as they are deemed an essential service.

"In those cities that have been open for a while, I think people feel more comfortable coming back now, but our position all along has been that it's really up to staff and what they feel comfortable to be doing," she says. "We are not pushing people back into the office."

Two-thirds of ANZ staff surveyed say they prefer a model where they can work a few days in the office and a few days from home. In the future, for most roles there will be a combination of working from home and working from an office location, van der Merwe told AICD in an interview. "I think people have learned through this time that they can work productively from home. They value time in the office, particularly around kind of connecting and collaborating. And watercooler conversations, plus the energy around being there. Also, obviously not everybody is in a home setup that's ideal."

In its offices, ANZ has imposed COVID-19 restrictions, such as halting use of communal areas, and is using a temperature check machine upon entry to the staff floors in major sites. It has also restricted movement around the building and offers mandatory training for those who return to work so they know what the rules are.

Staff need to realise that the office environment is not what it was once was, she adds. "I think one of the questions that we have at the moment is: 'What's the value proposition of being in an office? Because of all the social distancing, and splitting teams obviously to mitigate risks, what's great about being in an office environment isn't actually present at the moment. I think that's one of the big challenges."

The ANZ strategy to organise staff to work from home and now return to the office is being managed by the executive team which is divided into sub teams. Van der Merwe is part of the 'Adapt' team, which includes their deputy CEO, chief risk officer and chief technology officer.

IAG

IAG is Australia's largest general insurer and most of its 11,000 staff have been told they can continue to work from home until the end of January next year. Staff are located in Australia, New Zealand and Singapore.

"From an overarching perspective across the country, we are currently not anticipating large-scale return to sites before the end of January and to provide certainty for our employees we have advised that if they wish to continue to work from home until 31 January 2021, then they can," Suzanne Storrie, IAG Crisis Director COVID-19 told the AICD in an interview.

IAG provided a $400 payment to every employee to help them to set up a workstation at home at the start of the pandemic and since then, has provided a $40 per month allowance as a contribution to working from home expenses.

A June staff survey showed less than five per cent of staff want to return to an office site full time and that most want to continue to work from home on a regular basis after sites safely re-open. A hybrid model of work will be used next year. "... we anticipate that a hybrid model of work, involving working from home and the office, will be desirable for many of our people and our existing flexibility approach will accommodate those that choose to work this way," says Storrie.

The return to the office will be managed by a dedicated COVID-19 response team headed by Storrie.

The insurer is also introducing a desk booking system to ensure physical distancing when staff return to offices and has provided guidance around meeting safely with colleagues and customers, including live video assessments for claims.

City of Sydney

The City of Sydney has 2,000 staff (plus casuals and contractors) who began returning to the office in July on a phased one day a week basis. From October, staff are working two days a week in the office and the rest from home under a hybrid model, says Susan Pettifer, Head of People.

The workforce reports to Sydney City Council and this year has had to adjust health and safety requirements not only for staff but also the tens of thousands of citizens and visitors who attend big events such as Chinese New Year.

Around 80 to 90 per cent of all staff are expected to be back in the office by February next year and this year have been offered incentives such as free car parking in the Sydney CBD for essential workers to ease the transition back to the workplace.

Some staff have expressed fears due to health concerns and travelling on public transport. City of Sydney has organized altered start times for staff and staggered shifts to manage capacities and encourage non-peak travel. "We've measured every meeting room," says Pettifer.

Fulltime remote working is not a sustainable long-term strategy for City of Sydney, she says. Research shows remote teams tend to have a stronger sense of connection of belonging to the team, but not to the wider whole organisation. According to a recent staff survey, most staff like the idea of a hybrid arrangement for the future, according to Pettifer. "The vast majority like the idea of a hybrid arrangement with some days in the office to stay connected with peers and to collaborate and some days working from home."

Maintaining culture and connection has been one of the biggest challenges this year, says Pettifer. "I think everybody's asking the question - or should be asking the question, what does that mean for organisational culture, when people don't see each other as often," she told the AICD during an interview.

"It means we have to be much more intentional about managing it. I think we can lose people in the process. It's hard to read whether somebody is really engaged or is not feeling a sense of connection or belonging or when you're just operating remotely."

"We did a huge amount of risk analysis," says Pettifer. Every manager was required to put together a service and workplace recovery plan and prepare a COVID-19 risk assessment and plan, to include meeting room limits, rules for lifts, extra cleaning and management of visitors.

City of Sydney also wants to get office staff back to work in its main building which houses 1,200 because it is trying to reinvigorate the CBD, which has been very hard hit by COVID-19, says Pettifer. A COVID-19 recovery plan to bring the city centre back to life, with 24-hour alfresco dining and other options, has been developed by the City of Sydney and the NSW government. "We want to lead by example."

Atlassian

As the pandemic rolls on, software giant Atlassian is giving its 5,000 workers globally the option of returning to the office if they want to in January. The company has announced TEAM Anywhere, a hybrid work model that allows the choice to work from any combination of home, office or other locations.

"We're already doing a very small pilot in Australia (Sydney), with a small percentage of people, testing out opening our office. So there are less than 10 per cent of our people in there right now," Work Futurist, Dom Price told the AICD in an interview. "The thing we want to avoid is an accidental two-tier system, where the in-office people benefit from line of sight or different treatment. "We want it to be equitable."

As at October this year, Atlassian staff in Australia and overseas were still mostly working from home. The firm gave staff in Australia $750 to set up a home office.

According to the Atlassian survey Reworking Work: Understanding the Rise of Work Anywhere, 43 per cent of workers surveyed across five countries would prefer to work completely from home, especially caregivers. "There's this overarching theme in this research, a sort of positivity towards the work from home experiment," says Price. "I think a lot of people have felt liberated by it, but also a little bit frustrated, because I think for a lot of people, they felt like they could have been working from home before COVID-19."

Three in four Australians interviewed for the survey reported feeling annoyed that it took a pandemic for them to be able to work mostly from home. Seventy-seven per cent noted they now spend much more time coordinating with others via email, SMS and other messaging platforms. Over half (66 per cent)

spend more time reporting to clients and managers. Sixty-nine per cent noted they feel lost without their general work routines of getting dressed and commuting. And 73 per cent agreed the pandemic improved their personal satisfaction with their company's leadership.

However, Australian miss their offices much more than their overseas counterparts. "I think in Australia, I don't know if it's the demographic or something unique there, but it seems like actually we kind care about our teammates, that we kind of like them," says Price. "Australians are very social animals, but I also think it's a massive testament to the workplaces we've built in Australia. We've always had a focus on culture and values and inclusion, and a rich tapestry of people from very different backgrounds."

Likewise, there are many business managers out there who want staff to return to an office where they can see them, observes Price. "In the time that we've had COVID, one of the highest-growing software segments in the world is surveillance software," he said. "Basically, you roll out software to all your people's machines, and it takes a screenshot of workers every 10 minutes. It then analyzes what it sees on the screen and gives the worker a productivity score."

Due to the changed nature of work, leaders need to tune into staff preferences much more and develop a different and more empathic leadership approach to take into account individual circumstances, says Price. Atlassian itself has rolled out a team of coaches internally to build and trial a play exercise which teaches managers how to build empathy with their staff. "The strange thing about the office was that it was a great leveler," says Price. "Everyone had the same desk same screens and laptops and toilets and Wi-Fi."

But now with remote distributed workforces, leaders need to take into account other factors such as background and personal situations such as household complexity.

One major benefit of having a distributed workforce is giving hiring managers access to a more diverse workforce away from cities, who may have disabilities, and different socioeconomic status. "Those people will make my teams more diverse," says Price. "The right teams are more innovative, and my customers will be happier. That is a win-win situation."

NAB

NAB, with 34,000 staff, had returned between 20 and 46 per cent of employees to offices across Australia by September this year (excluding Victoria). "Since March, we have enabled more than 85 per cent of our 34,000 colleagues to work from home, some of whom had never worked from home previously," Susan Ferrier, NAB Group Executive - People & Culture told the AICD in an interview.

"While we manage through this transition in the short term, we are also looking ahead to what the new normal will look like for businesses like ours in the long term," she added. While stopping short of saying when all staff would return to the office, she said NAB is finding solutions to provide flexibility for staff to work and collaborate in different ways, while providing banking services to customers and the community.

The latest regular staff survey results show that 68 per cent feel their health, wellbeing and happiness has improved or stayed the same this year (but 21 per cent said it had decreased). Eighty-three per cent felt their productivity had improved or stayed the same (but 11 per cent said it had decreased). Eighty-two per cent felt their ability to serve customers had improved or stayed the same (but 12 per cent reported a decrease). "With the exception of business-critical and branch colleagues, we have not directed anyone to return to the office so far – all colleagues that have returned to the office have done so voluntarily. As restrictions ease, we are carefully planning a return to work strategy that is designed to maintain a high level of productivity while taking our colleagues' personal concerns and preferences into account."

Safety measures introduced into NAB's commercial buildings include on-site nurse stations, thermal cameras to measure body temperatures, lift management for social distancing, a ceasing of hot-desking, booking of desks via an online booking tool, the closure of most meeting rooms and collaboration/communal spaces, touchless water taps, and removal of communal crockery and cutlery from kitchens. "While many things will feel familiar, there are some aspects that will look different, such as wearing face masks, maintaining a 1.5m distance and not shaking hands," says Ferrier. Since February, NAB had also installed around 260 hygiene screens and guards (sneeze screens) across branches, business banking centres and commercial sites and issued more than 50,000 bottles of hand sanitiser.

6.5 How have directors' WHS obligations changed?

Denise Cullen | "How have directors' WHS obligations changed?" *Company Director*, October 2020, AICD.

When the scale and size of the COVID-19 pandemic became apparent, Liesel Wett FAICD, chair of Goodwin Aged Care Services and CEO of Australian Pathology, and on the AICD board, felt an overwhelming mix of emotions. "There was fear, there was exhaustion, and like many directors, I was very anxious about what was happening and what was unfolding," she says.

As Goodwin's board sought to protect their vulnerable population of aged care residents while communicating ever-changing protocols to worried family members and staff, new challenges loomed around every corner – financial risks, workforce shortage risks, and health and safety risks. "There's also a massive reputational risk arising out of this for the entire aged care sector and many things we're going to have to get our heads around at a national level," says Wett.

A board's basic duty of care for work health and safety (WHS) has taken on an acute focus as the COVID-19 crisis continues. Yet while the virus has forced us to view handshakes, hugs and myriad other aspects of life through a new lens, directors' obligations in relation to work, health and safety remain unchanged.

"One of directors' core responsibilities is to understand the health and safety risks their people face, and to put in place appropriate processes to minimise them," says Diane Smith-Gander FAICD, chair of Safe Work Australia.

Smith-Gander says that while she usually handles stress very well, she did lose some sleep early on. "I woke frequently with my mind turning to the right sequence of steps to address radical revenue loss at one company," she says. "I certainly wasn't on the top of my game following those nights, but once I felt fully across the right steps, and had printed out legal advice on safe harbour and restructuring plans and stuck it on my study wall, I moved past that phase."

The challenges for directors have been heightened because an understanding of risk is constantly changing as knowledge increases, demanding an iterative rather than a set-and-forget approach. With COVID-19, for example, at least daily cleaning and disinfection of surfaces has been recommended from when the pandemic started gathering steam. Yet Nathan Winter GAICD, president of the International Network of Safety and Health Professional Organisations, points out an article published in the medical journal The Lancet in July, which reports that studies suggesting the coronavirus lives for days on surfaces were based on extremely high concentrations of the virus in "studies that have little resemblance to real-life scenarios".

Winter says organisations need to assess and respond to the level of presenting risk. "Requiring people to wear masks in a state where there's currently no exposure to the hazard, because there are no active cases of COVID-19, would be like saying, 'We're going to turn on the water for our fire sprinklers now because there's a bushfire on the east coast of Australia'," he says.

COVID-19's longer-term implications also remain unknown, but emerging research suggests infected people of all ages may be prone to developing heart disease, diabetes and other chronic conditions.

"When you have something that becomes a new phenomenon around workplaces, it takes a while for all of the insurance and measurement messages to catch up," says Smith-Gander. She hypothesises that a young person who contracts COVID-19 at work and sees their future ability to work impacted may have a loss of earnings-type claim. "So even if it's a small number, it could, multiplied over a long period of time, turn into a very large claim. Directors need to be alert to these potential future risks."

According to Safe Work Australia, a director's WHS obligation would require demonstrating that they asked the right questions of management and were satisfied that all alternative means open to the organisation in the circumstances had been explored.

Gown and glove

In 2011, Safe Work Australia developed a single set of "model" WHS laws designed to provide a nationally consistent framework. To date, these have been implemented in all jurisdictions except Victoria and Western Australia. Safe Work Australia has released industry-specific protocols, covering a range of measures we're fast becoming used to, including rosters limiting the number of workers present in the office at any one time, ample handwashing facilities, and rigorous cleaning and disinfection procedures.

The organisation points out that employers have no obligation to provide personal protective equipment (PPE) unless there is a specific legislative requirement applying to the sector, or expert advice that compels the use of such equipment. If work requires the use of PPE, which could not be provided, organisations need to explore alternative means to carry out the work safely without PPE.

Directors must be mindful that any perception by workers that their safety is unimportant may lead to reputationally damaging industrial action. In August, Sydney bus drivers threatened to strike as they demanded mandatory mask use for commuters; while Brisbane abattoir staff called out their employer over limited access to disposable gloves. In more exposed sectors such as healthcare, debate rages over whether federal guidelines from the Infection Control Expert Group – which often require surgical masks only – are sufficient.

Between 70 and 80 per cent of infected Victorian healthcare workers contracted COVID-19 at work. Naomi Kemp MAICD, chair of the Australian Institute of Health and Safety, says this suggests minimum standards weren't enough. "Directors need to answer that question of, 'What is reasonable for us to do that goes beyond the minimum standard?' and then put those controls in place," says Kemp. "In the first wave, surgical masks managed to control things. But in the second wave, with so much more infection, we need to say, 'Something's not working, let's understand what it is, and improve it'."

Amid the intense focus on physical safety, it is vital not to overlook workers' psychological safety, says Michelle Gibbings GAICD, founder and managing director of consulting firm Change Meridian. Cultivating an environment in which employees feel free to speak openly and know they will not be victimised or bullied is particularly challenging as COVID-19 has caused business slow-downs and shutdowns.

"I've had people say to me, 'Before COVID, I would have been comfortable to speak up about that," says Gibbings. Now employees hesitate to flag risks because job insecurity is much higher, she says. "If you don't have an environment where people feel safe to talk about what's really going on, that is a fertile breeding ground for risk issues down the track."

Gibbings recommends providing paths of escalation, such as whistleblowing hotlines, to encourage employees to disclose concerning practices that might come back to bite the board.

Working from home

Data from the Australian Bureau of Statistics indicates that nearly half of all Australian employees were working from home soon after the pandemic began. Not all employees are being recalled as restrictions ease, with companies such as software giant Atlassian announcing its workers can continue working from home indefinitely.

Working from home has its comforts. In a survey of more than 750,000 employees worldwide, Perceptyx found that just four per cent of those asked wanted to return to the office full-time once the worst of COVID-19 is over.

Smith-Gander says organisations needed to consider the new circumstances and risks involved, and review their policies to make sure they are "robust and fit for purpose". "I would expect diligent directors would have said, 'Let's have another look at our workplace flexibility policy and our working from home policy' and if there aren't two separate policies, that's red flag number one, because they're two different questions," she says. "Directors need to consider, 'In the past, maybe I only had a very senior population working from home, but now I've got 300 call centre operators working from home, so I need to do things differently, and provide a slightly different level of support'."

Research has identified that people working from home are labouring for longer and drinking more. One in eight Australians says they have been drinking every day since the coronavirus outbreak began, according to an Alcohol and Drug Foundation study. McCrindle Research found one in four people reported an inability to switch off was a downside to working from home. Others risks include poor ergonomic practices, breaches of confidentiality, privacy and data security, reduced social support from managers and colleagues, and psychosocial risks such as fatigue and online harassment.

To manage these risks, organisations could provide guidance on what a good workstation set-up looks like, maintain daily communication through phone, email or Skype, and offer continued access to an employee assistance program. Organisations commonly have workers complete audits or checklists to verify their home-based set-up is safe, but there are other things they could do. "One is to set up a video call and get the employee to talk through their work environment, how they're working and whether they have any concerns," says Gibbings.

In some circumstances, employers may need to explore other mechanisms to ensure worker safety. The WorkSafe Guardian app supports lone workers out in the field, such as in-home health workers and mobile lenders. The app "checks in" on users at predetermined time frames. If there's no response, an alert to an around-the-clock monitoring centre is automatically triggered and the user will receive a phone call. If that call fails to raise the user, a predetermined escalation process is initiated, which might include anything from managers calling workers' private numbers through to the dispatch of private security officers or police or ambulance services.

"We've all heard about the person who had a heart attack at the office and people say, 'Thank God they were at the office because there was someone close by to ring triple-0 and that's why there's no permanent damage'," says Greg Lindner, who developed the app. "What happens now if that person is by themselves when they have the heart attack, or burn themselves heating their lunch up, or forgets something in the oven and the house catches on fire?"

Due diligence

Asking the right questions and getting people across the entity to present at board meetings is another way of gleaning valuable insights, says Gibbings. "Your role in governance work is really to understand what's going on – if you're not comfortable about the level of information you're getting, you say so, and ask for more."

Smith-Gander points out that directors could previously gain ample information by moving around the business, visiting different sites and directly asking workers for their opinions. "But at the moment, they can't go out and smell the smoke, because we don't want casual visitors onsite, even if they're in the role of a non-executive director seeking to discharge their obligations."

She recommends measuring one level of detail more than you usually would, particularly given COVID-19's potential to throw curveballs down the track. For example, if you usually reviewed statements on a quarterly basis, consider shortening the time period of your investigation by viewing them on a monthly basis. "The second thing is the level of detail," she says. "How do I take that to a more granular level? So if I normally look at state-based data, I'm now

going to go down to the regions within the state. What I'm trying to do is to get more insight – an earlier warning if I need it."

Danger ahead

The COVID-19-related implications of industrial manslaughter laws in the ACT, Queensland, Victoria and the NT (as well as currently before parliament in WA), have concentrated the minds of directors and management. According to Queensland's independent WHS prosecutor Aaron Guilfoyle, it is possible that directors of businesses who fail to take adequate precautions to protect workers from contracting COVID-19 may face these criminal charges in the future. "Only time will tell whether a case arises where the acts or omissions of a business were both negligent and can properly be said to have caused by way of substantial contribution the death of one of its workers," he says.

Following Victorian hotel quarantine breaches, it's been foreshadowed that parts of the Victorian public service and members of Premier Daniel Andrews' cabinet may be exposed to penalties for unsafe work practices that contribute to deaths. Such rumblings are a sobering reminder that taking a directorship means one may be held personally responsible for the actions of their company or business.

Kemp recommends that directors formulate a personal due diligence plan, which covers directors' six main obligations and actions they will undertake for each. "The penalties (for failing to meet these obligations) are really high – it's money and it's imprisonment," Kemp says. "They can only put a human in prison, they can't put a business in prison. That's why it's personal."

In Victoria, an industrial manslaughter conviction carries a maximum penalty of 25 years (individuals) and a $16.5m fine (body corporates).

Industrial manslaughter laws

The Dreamworld fatalities, along with the deaths of two workers at Eagle Farm Racecourse in the same month, triggered the Queensland government's introduction of an industrial manslaughter offence under the Work Health and Safety and Other Legislation Amendment Act 2017 No.38 (Qld). Under this Act, the industrial manslaughter offence requires a low fault element of "gross negligence" as to causing the death of a worker and does not include a prohibition on insurance and other indemnities in relation to WHS penalties. The offence carries a maximum penalty of 20 years' imprisonment for an officer and $10m fine for bodies corporate.

Australia's first convictions for industrial manslaughter under the new legislation were handed down in June 2020, following the death of a worker at Brisbane Auto Recycling in May 2019. The Brisbane District Court heard that the company lacked basic safety systems such as a traffic management plan. The company's two directors pleaded guilty to engaging in reckless conduct and were sentenced to 10 months' imprisonment (wholly suspended for 20 months) and fined $3m. Their convictions have rung alarm bells for directors and served as a reminder of the significance that regulators attach to those who govern businesses.

Guilfoyle says the case offered little guidance on where the threshold lay for board members in terms of their responsibilities to identify and control risks because Brisbane Auto Recycling was a small company in which directors "did almost nothing towards ensuring safety". What constituted sufficient action to meet WHS obligations and avoid criminal liability in larger companies, in which board members were further removed from day-to-day operations, thus remained unknown and untested, he added.

"We'll need more litigation in order to scrutinise the operations and decisions of boards in larger companies, as well as expert evidence from experts in board governance to assist courts to determine whether or not directors have fallen short of the mark," he says. To date, there have been very few industrial manslaughter prosecutions initiated in Australia.

7 Not if but when: Building cyber resilient organisations

7.1 The cultural change required for cyber resilience

Alice Williams FAICD | Director, Djerriwarrh Investments, Defence Health

Cybercrime is increasing exponentially with rising levels of severity and sophistication, impacting organisations regardless of their size and cyber controls. The Australian Cybersecurity Centre recently reported that one cybercrime report was received every 10 minutes in the last year. In recognition of these risks, the Commonwealth Government announced in June 2020 a $1.35 billion package to boost protections and cyber resilience for Australia.

The COVID-19 pandemic has exacerbated this situation, as employees are working from home on IT systems with variable levels of cybersecurity. In addition, organisations are relying on third parties for many outsourced functions. For example, data storage may be outsourced or may be stored in an external cloud environment. Third party suppliers may also have digital access to a company's systems and data, creating a further avenue for cyber-criminal access and theft.

Directors have clear obligations to ensure risk frameworks are in place. Listed entities have defined responsibilities for establishing a sound risk management framework and periodically reviewing its effectiveness, as outlined in Principle 7 of the ASX Corporate Governance Council's **Corporate Governance Principles and Recommendations.** The Australian Prudential Regulation Authority (APRA) also provides guidance to regulated financial services entities on safeguarding IT assets, and reinforces the responsibilities and expectations for boards and senior management in its **Prudential Practice Guide, CPG 234 Information Security**. Furthermore, all organisations must comply with the Privacy Act 1988, which specifically covers the protection of personal information and reporting obligations. Personal information is an area of high risk from data security hacks as it is a globally traded commodity on the dark web.

Directors have traditionally relied on assurances from the Chief Information Officer (CIO), cyber-related internal audits and penetration tests regarding the effectiveness of cyber defences. Given the prevalence of cyber attacks, directors now need to have a greater depth of understanding of the risks, potential threat actors and defences available. Directors also need to ensure the organisation is structured appropriately for the management of cyber risks and an ongoing cultural awareness program is undertaken throughout the organisation.

Organisational structure and culture

A primary requirement for managing cyber risks is to ensure the appropriate organisational structure is in place and resourced. There is a growing trend internationally to the appointment of a Chief Information Security Officer (CISO) whose primary function is managing cyber risk. However, in Australia this is a relatively new role. In the absence of a CISO, many companies appoint a CIO with primary functional responsibility for cybersecurity.

Companies need to ensure that cybersecurity becomes an embedded practice culture throughout the organisation and not left to the IT department to exclusively manage. This is required as most cyber attacks occur due to inadvertent human error such as:

- opening a phishing email;
- logging onto a false website;
- social engineering;
- spear phishing attacks; and
- brute force attacks seeking systems access via non-complex passwords.

Organisation-wide awareness and ongoing training programs are required to ensure the company has a strong understanding of cyber threats and develops a culture of cyber risk awareness and of raising concerns when a risk is initially identified.

Risk management analysis

Directors need to ensure an appropriate level of resources is applied to manage cyber risks. Typically, cybersecurity budgets are underfunded, especially with regards to employee awareness training.

Boards need to understand where the areas of risk are with the IT systems. The **CIA triad** is a sound model for analysing these risks. The CIA methodology aims to define risks as relating to the confidentiality, integrity and availability of IT systems and data. Under each of the risk parameters in the CIA methodology, further analysis is required to categorise issues or risks. This methodology is applied across the broad IT categories of hardware, software and information.

Once the CIA triad is determined, boards should seek to look externally at potential threat actors to these assets. Cyber criminals range from lone actors to hacktivists, petty criminals, organised crime syndicates to nation state actors and importantly may also be insiders. Understanding potential threat actors assists in determining the most important assets to protect and the avenues of cybersecurity vulnerability that require monitoring.

A useful exercise that boards and management can undertake to assess cyber risks is threat tree analysis. Threat trees enable a structured approach to brainstorming risk across an organisation. It creates a hierarchical order of risks to ensure all significant risks are identified across a range of dimensions. This analysis should cover financial and non-financial risks which may include operational events, reputation risks and technology risks.

Assurance standards

Boards, alongside management, need to determine the level of industry assurance required for cybersecurity. There are a range of industry and regulatory assurance standards for cybersecurity. These include ISO27001, the ASD Essential 8 and APRA CPG234. These standards cover information security policies, organisational controls, security arrangements and incident management.

Importantly, many of a company's customers and third-party suppliers may require that the organisation is also compliant with cybersecurity industry standards.

Board reporting

Board reporting should identify where the organisation sits in terms of mitigating its key risks relative to the target risk appetite. High level metrics reported to the board could include:

- compliance with cybersecurity policies;
- organisation-wide results of cybersecurity exercises;
- analysis of intrusion detection and prevention logs;
- breaches and notifiable incidents; and
- analysis of security breaches.

Insurance

Cyber insurance is an emerging form of insurance and it may be difficult to obtain cover that adequately covers risks. As a consequence, many companies currently tend to self-insure for cyber risks. Given the losses from a major cyber attack may be substantial, organisations should consider obtaining insurance to cover damage or loss of assets, business interruption costs, forensic investigation costs, customer compensation claims, breach response costs, extortion costs and potentially fines incurred.

7.2 The board's role in cybersecurity assurance

Rachel Falk | 29 July 2020, "The board's role in cybersecurity assurance", *Membership Update*, AICD.

Cybersecurity breaches are a clear and present threat, no matter how large or small an organisation. Cybersecurity system weakness, combined with human error, make it simple for cyber criminals to penetrate IT systems, access valuable data and impact an organisation's stakeholder trust and reputation. A simple truth is that whether you are a global business, a small business or an individual connected to the internet, you and your valuable data are at cyber risk.

It seems that every day we hear of data breaches, hacks and ransomware attacks. These must serve as a reminder to all organisations to ensure their systems are up-to-date and that appropriate controls are in place. And this also must be clearly understood throughout the organisation – from the board to management to staff. All must understand the vital role they play in stopping breaches and protecting valuable data and systems.

Amid the barrage of policies and technical guidance, it is often forgotten that the reality of cyber breaches is surprisingly simple. In most cases, it comes down to the number '1'. That is the number of people a hacker needs to trick to gain access to data.

Already in 2020, we have seen high-profile attacks on Toll Holdings, Lion Drinks and Beverages and BlueScope Steel. The Federal Government sent out a clarion call to organisations, businesses and individuals on 19 June - in its **Statement on malicious cyber activity against Australian networks** – warning of a spike in cyber attacks by threat actors and the need for everyone to be prepared. In addition, the government has announced **record cybersecurity spending**.

What are threat actors and what do they want?

Threat actors in cyberspace can be groups, individuals or nation states who undertake unauthorised activity on digital networks for their own gain. Some well-known examples are hackers, terrorists and cyber criminals. Various typologies of threat actors have been developed, which classify actors according to their cyber capabilities, levels of sophistication and motivation. Of these, 'sophisticated state-based actors' frequently demonstrate the highest level of scope, skills and resources.

Although financial gain or access to intellectual property may be primary drivers for some threat actors, other actors such as hacktivists, seek to upset the status quo or draw attention to various social causes.

Vast troves of personal data held by government agencies and companies are also motivating factors. Equifax, the global consumer reporting agency, holds sensitive data on 820 million consumers. In 2017, the agency suffered a **massive cyber breach** which was later attributed to Chinese state-sponsored hackers.

Strategic disruption to critical infrastructure and supply chains remains a substantive catalyst for threat actors,1 with potentially catastrophic effects for economies and society alike. The pivotal stance taken by Federal Government to ban high-risk vendors from Australia's burgeoning 5G network indicates the gravity and scale of potential risks involved.

Why cybersecurity should be a top priority for directors

Directors should treat their organisation's online assets with the same level of care and attention that they pay to their organisation's real-world assets. Both are inextricably linked.

Boards must use the same oversight that has applied to financial reporting and governance issues and apply it to how their organisation is effectively managing valuable data. Often that data is held across multiple connected repositories, with multiple vendors in multiple jurisdictions and boards must be satisfied that data assets are stored and protected appropriately.

Boards need to be aware of the risks to their data assets, ensure appropriate frameworks are in place and to foster a culture throughout their organisation that cybersecurity really does matter. If directors consistently and visibly demonstrate that cybersecurity matters, it will have a trickle-down effect and it will be a priority for the whole organisation.

It is timely to note that Australian directors increasingly bear personal exposure to cyber risk liability. Directors should familiarise themselves with the requisite legislation and the risks unique to their business. The key pieces of legislation that impact directors and their cybersecurity responsibilities are the Privacy Act 1988 (Cth) and the Corporations Act 2001 (Cth).

Privacy Act 1988

In 2018, changes to the **Privacy Act 1988** came into effect, amending it to include the **Notifiable Data Breaches (NDB) scheme**. The scheme applies to any organisation or agency covered by the Privacy Act 1988.

Under the scheme, an eligible data breach occurs when:

- there is unauthorised access to or unauthorised disclosure of personal information;
- a reasonable person would conclude it is likely to result in serious harm to any of the individuals whose personal information was involved in the data breach; and
- the entity has not been able to prevent the likelihood of serious harm through remedial action.

If an entity suspects that an eligible data breach has occurred, they must undertake an assessment into the relevant circumstances. And if an entity is aware that there are reasonable grounds to believe that there has been an eligible data breach, they must **notify** affected individuals and the Office of the Australian Information Commissioner (OAIC) as soon as practicable.

Under the scheme, the Information Commissioner has a number of **enforcement powers**. These include:

- accept an enforceable undertaking (s 33E) and bring proceedings to enforce an enforceable undertaking (s 33F);
- make a determination (s 52) and bring proceedings to enforce a determination (ss 55A and 62);
- seek an injunction to prevent ongoing activity or a recurrence (s 98);
- apply to court for a civil penalty order for a breach of a civil penalty provision (s 80W), which includes a serious or repeated interference with privacy (s 13G).

Another amendment to the Privacy Act 1988 has been the introduction of the **Treasury Laws Amendment (Consumer Data Right) Act 2019**. The **Consumer Data Right (CDR)** provides consumers with improved access to and control over their data and will be phased in sector-by-sector, beginning with the banking sector before being rolled out across other sectors including energy and telecommunications.

Implementation of the CDR is the joint responsibility of the Australian Competition and Consumer Commission (ACCC), which will accredit providers and enforce the rules of the CDR, and the OAIC.

The **ACCC/OAIC Compliance and Enforcement Policy for the Consumer Data Right** establishes how the ACCC and OAIC will respond to breaches of the CDR regulatory framework. Enforcement measures include court enforceable undertakings and court proceedings.

Corporations Act 2001

Under **s 180** of the Corporations Act 2001 (Act), directors have an obligation under civil law to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- were a director or officer of a corporation in the corporation's circumstances; and
- occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

Accordingly, if care and diligence is not exercised in relation to a company's cybersecurity posture and protection of key assets (which could include data), they could be found in breach of the Act.

Furthermore, the Australian Security and Investment Commission's (ASIC) **Cyber resilience: Health Check** report states "If you are a board of a listed entity, among other things, the [ASX Corporate Governance Council's] Corporate Governance Principles [and Recommendations] recommend that you should establish a sound risk management framework and periodically review the effectiveness of that framework."

The report goes on to state that organisations should consider whether cyber risks form part of a prospectus, periodic disclosure of cyber risks, disclosure of material business risks and, for listed entities, continuous disclosure of market-sensitive information.

Ask cybersecurity assurance questions

One of the key challenges for all non-executive directors is knowing what good looks like in cybersecurity and testing that in board papers. It is important for directors to ask questions and probe the practices used by management to ensure that the company's cybersecurity posture is set up to effectively manage cyber risk.

Cybersecurity can appear technical and complex but just like other aspects of any company, asking questions and understanding the business is key.

Key questions boards should be asking about their organisation's cybersecurity include:

- Who would our organisational data be valuable to? Who would want to steal it and what data would cause our organisation damage should we lose access to this data?
- Who can access organisational data and who has 'super user' administrative privileges, both inside and outside the organisation? Do we regularly check who has access and restrict it to those that only need it to do their job?
- Where is our data stored? Onshore, offshore or in a cloud? Is there a service provider and have they shared information with third parties?
- Who is protecting our data and how is it being protected?
- How well is data being protected? What security systems currently exist, where they are, and how they can be contacted in the event of a breach?

Directors should encourage independent assessment of organisational cybersecurity protections.

Importantly, compliance and desktop audits do not equal security. All too often management can get distracted with ensuring the organisation is compliant with a particular standard and hold the belief that a compliance tick equals effective security. Not all cybersecurity frameworks are the same. Similarly, a cyber update dashboard in board papers with all green traffic lights does not necessarily mean an organisation has good operational security. It is vital that operational security is checked and validated so the dashboard matches the actual security settings.

The Australian Cybersecurity Centre's (ACSC) **Essential Eight** provides a baseline for organisational cybersecurity implementation, which strengthens systems and encourages maturation.

Hacking back

Active defence, hacking back, or retaliatory hacking, is illegal in Australia. While it may seem like a viable option to an organisation under cyber attack, it should not be part of any cybersecurity strategy.

In 2018, former Australian Signals Directorate Director-General Mike Burgess, **said** "an obligation to protecting corporate assets does not extend to breaking the law". Burgess instead recommended that organisations seek to identify and manage their cyber risks effectively.

As part of the **Prime Minister's cybersecurity warning on 19 June 2020**, the Defence Minister offered protection advice to all Australian organisations who might be concerned about their vulnerability to sophisticated cyber compromise, including becoming an ACSC partner to ensure access to the latest cyber threat advice.

What next?

There is no silver bullet when it comes to cybersecurity. Risk can never be completely avoided but it can be mitigated.

That is why boards must educate themselves, set aside the dashboards in board meetings and ask questions of the management team. Assume nothing.

It is important that boards carry out at least one cybersecurity-based crisis management incident per year. Nothing can prepare a board better than having to work together on an exercise that involves theft of critical data and the media bearing down for answers in an ever hungry 24-hour news cycle.

Regular penetration testing, 'ethical hacking' to identify system vulnerabilities, is also essential.

Staff should be taken through cybersecurity policies regularly, as a matter of company practice. Such policies should not be seen as 'tick and flick' documents and should be put into practice.

Above all, directors should understand the potential risks to their organisation and how these issues can be effectively addressed. Make sure your organisation and board are educated and prepared. This is not just good practice – it is good business.

7.3 Why SMEs are a juicy target for cyber criminals

Shelley Dempsey | 14 December 2020, "Why SMEs are a juicy target for cyber criminals", *Membership Update*, AICD.

All organisations are targets for online crime and fraud, but SMEs are especially vulnerable because they don't 'think' they'll be a target, they don't have in-house expertise and they don't believe there is anything affordable they can do to take smart action. According to US-based cyber risk specialist Terry Roberts, who is CEO of ASX-listed cybersecurity firm Whitehawk, the average cyber event costs an organisation $1-$2 million.

It's a sobering statistic. Nearly half of all cyber attacks target small business, according to a US survey. "It's easy to target SMEs because most of them have not locked their windows and doors and aren't listening to the Neighborhood Watch," Roberts told the AICD in an interview.

"They haven't done the cybersecurity fundamentals. So most criminals can hit 50 to 100 SMEs and make some nice money. Online crime and fraud are very difficult to investigate, build a case and prosecute - it takes a long time."

The Australian Cybersecurity Centre (ACSC) received one cybercrime report every 10 minutes between July 2019 and June 2020, according to it's Annual-Cyber-Threat-Report. The report shows that over the last year, the ACSC responded to 2,266 cybersecurity incidents and received 59,806 cybercrime reports, at an average of 164 cybercrime reports per day, or one report every 10 minutes.

Global online scams have increased this year due to COVID-19 with criminals taking advantage of the disruption and distraction of executives, says Roberts. "Because criminals follow the money, and Australia has a great economy, it is a target," says Roberts, who is a former Deputy Director of US Naval Intelligence.

"What's important to understand is most cyber events that we see - around 70 to 80 per cent - are perpetrated by cyber criminals. This is just good old-fashioned crime and fraud that moved online."

Australia spent a total of $5.6 billion on cybersecurity in 2020, which is projected to reach $7.6 billion by 2024, according to the Australian Cybersecurity Growth Network.

In her interview, Roberts outlined what SMEs can do to protect themselves on the cyber front and why digital age risk is one of the biggest, gravest and most likely threats to impact companies, organisations and boards of all sizes.

What do the best boards and companies do in terms of cybersecurity?

Cyber risk is one of the biggest risks that businesses of all sizes face today. I would say that the majority of companies, especially SMEs, are really back at the starting line in identifying and mitigating these vulnerabilities. They may be thinking strategy, but in order to think strategy, you need to start with examining the digital age risks that impact your organisation the most. In other words, you look at the company or organisation's key dependencies in the global digital environment. So for instance, if your members interact with you via your website and if your website's down for 48 to 72 hours, that can be a huge hit to your reputation, and/or your revenue. That's a key risk for the organisation. Or if you have a lot of client or member proprietary data, personal data, that's a key target and a key risk. So it's really teasing out what your linkages and dependencies are, then prioritizing those and mapping your strategy and limited resources to your most critical risks. Another area I think is equally important, is getting cyber liability insurance. So understand your key risks and mitigate those risks and put some resilience in place. You need to be covered for when you have a cyber event, so you are able to pay for response services and preparation of your communications and restoration campaign. The impact of any cyber breach can run between few hundred thousand to a few million dollars, depending upon the size of your organisation and how dramatic the breach was.

In terms of COVID-19 this year, what are the key cyber threat trends?

COVID-19 scams across businesses and organisations are rampant. What the criminals do is take advantage of a crisis and disruption, while your attention is pulled in a lot of different directions, which makes you and your employees more vulnerable to these scams. So you do need to focus on them, because you don't want to compound the impacts of COVID-19 to your business and employees with having a cyber event, a ransomware event, or a fraud perpetrated upon your business. So please do start taking those initial steps.

Is Zoom the new battleground in terms of cyber threats? Recently in Australia, a hedge fund had to close down after opening a fake Zoom invitation. In terms of cyber risk at a national level, is Australia as a country up there high on the list, and is China a factor here?

Yes, Australia is a target for state actors, as is the US. There are state actors that have no rules when it comes to cyber espionage, or any kind of cyber disruption on private industry. You need to protect yourself, because in terms of Iran, North Korea and others, there are a cast of nation states that have no limitations regarding cybercrime and disruption.

In terms of directors, do boards need to have cyber specialists and do we need more in Australia?

I actually think it's more about having directors with a risk background. So yes, you may want a consultant and depending upon your company size, you might want to employ a cyber risk service, but on the board itself, I think it's about a 360-degree holistic perspective on risks impacting your operations, revenue and reputation. Which is why I think a lot of businesses are creating and hiring Chief Risk or Security Officers (CRO/CSO). When you just give the responsibility to the cyber guy or gal, or the IT director, you're thinking of it in a one-dimensional way.

So, as an issue, cyber needs to be elevated to the board level, and needs to be covered by a specific strategy?

Absolutely. Digital age risk is a primary task and area of focus for all boards. And if they're not being reviewed regularly from risk identification, prioritisation and mitigation - they're not doing their job. The biggest losses over the last few years in the US started with the Target data breach in 2015. It was the first time that a CEO was fired and the first time that a breach really had an impact on their share price. And they have never totally recovered from that. So that was an awakening to the fact that this isn't just about cyber, this is business. And that it can impact even the big guys who have large teams of smart people. This is the New World Order and it's not going to change. It's only going to become more critical and impactful going forward. And it's never too late to start.

The Australian Government has this year published its Cybersecurity Strategy 2020. What are the key takeaways for SMEs?

I think there's a lot of great enablement in Australia's 2020 cybersecurity strategy. For SMEs, I think it's critical to focus on the fact there is going to be a holistic approach to recording cybercrime and fraud and disruption and to having the foundations in place. So it's never too soon to get started. It does take a little bit of time but the cost of the average event is between $1 million and $2 million and will impact on your organisation's or company's revenue bottom line. So, it's important to get ahead of the regulatory curve by starting today and using that as a differentiator. And as you put protections in place, talk about it, get it out there and let your members and clients and customers know that you think digital age risk is important and that you're putting extra protections in place, regarding your services or their data sets. Use it to your advantage in the marketplace because most SMEs do not. It can put you ahead of your competition, if you think of it in a business-minded way. And then, it can work for you, not so much as a cost centre but as cost avoidance, and as a differentiator or a marketing tool.

What three pieces of advice would you give SMEs in terms of cybersecurity?

I think for SMEs, it is important to get ahead of digital age risks, because it really is about the real risk to your revenue and reputation. So firstly, you need to engage your executive team, your management team and your board today. Secondly, identify the key risks to your company – for example, if you needed to be without something for 48 hours, or if you lost a dataset, what would be the impact to your company? Thirdly, get a cyber liability insurance policy not as the solution, but as a bridge until you get your plan in place, you have started to mitigate your risks, like with auto insurance, in case the worst happens.

7.4 COVID-19 brings new cybersecurity threats

Alice Williams FAICD | "COVID-19 brings new cybersecurity threats", *Company Director*, September 2020, AICD.

It is predicted by **Cybersecurity Ventures** that cybercrime will cost the world US$6 trillion annually by 2021, up from US$3 trillion in 2015. It will be more profitable than the global trade of all major illegal drugs combined, with more than 800 websites sharing stolen information on the dark web.

The World Economic Forum Global Risks Report of 2019 identified data fraud/theft and cyber attacks as two of the top five global risks. The COVID-19 pandemic has further heightened these risks, with most employees and third-party suppliers working from home on systems with variable security arrangements.

Interpol's COVID-19 Cybercrime Analysis Report, released in August, revealed a significant target shift from individuals and small businesses to major corporations, governments and critical infrastructure. "Increased online dependency... is also creating new opportunities, with many businesses and individuals not ensuring their cyber defences are up to date," said the report.

Well-resourced "nation-state actors" (individuals working for a government to disrupt or compromise target governments, organisations or individuals to gain access to data or intelligence) and international crime organisations are seeking to capitalise on this uncertain environment. There has been a shift from military hardware to a global information war and companies need to proactively manage risks.

Cybersecurity governance

As a fundamental aspect of risk management, boards should regularly undertake reviews of cyber risk governance.

Key aspects to be covered in a cyber risk review include:

- Develop an understanding of the critical business systems, networks and data.
- Triage risk appetite based on the CIA triad model. This assesses risk on the basis of three elements of cyber risk: risks to confidentiality, integrity and availability of systems, networks and data.
- Develop an understanding of the key threat actors for your industry and company.
- Review the governance framework for the management of cyber risks.
- Assess the cybersecurity culture of the company.
- Assess leadership roles in the cybersecurity governance framework.
- Undertake regular staff training on cyber risk. This includes phishing and distributed denial-of-service (DDoS) exercises requiring full system back-up, recovery and working from the remote Disaster Recovery Plan (DRP)/Business Continuity Plan (BCP) site.
- Review third-party service provider arrangements and contractual obligations for cyber risk management and response.
- Review software as a service (SaaS) and cloud service provider contractual arrangements regarding cybersecurity.

Data commodity

Data is an asset the World Economic Forum has called the world's new natural resource, providing a basis for competitive advantage and transforming industries. Companies are increasingly reliant on technology – an environment ripe for cybercrime.

Think about these example factors: the collection of sensitive/valuable data; reliance on multiple third-party suppliers; the internet of things; the current work-from-home environment. Boards have an obligation to assess sources of risk, risk controls and mitigation measures. As a consequence, many board risk registers have incorporated cyber risk as a key corporate risk, with an inherent risk rating of high to extreme. Once companies undertake risk-mitigation actions, the residual risk still tends to be high, as it is extremely difficult to mitigate cyber risks given the disproportionately large surface area that companies seek to protect and the online connectivity of operational systems.

The transition to outsourcing and extension of supply chains can result in companies having a high reliance on digitally connected third parties for services. These third-party suppliers often have access to corporate systems and data, which creates another avenue for cybersecurity risk. The 2013 hack of US retailer Target is a one example. An international criminal organisation accessed the company's payments system via an air-conditioning subcontractor's systems access. Around 110 million customers' credit card details were compromised through a memory-scraping malware attack. Target incurred more than US$150m in remediation costs as a result. The industries most at risk of cyber attack tend to be those with valuable, internationally tradeable data, critical infrastructure, and vulnerable open systems architecture.

Equally, boards should not discount insider threats, given the capacity for employees and contractors to move relatively undetected within systems. Edward Snowden's release of sensitive National Security Agency (NSA) material in the US is a good example. Snowden had administrative access privileges, which enabled him to have relatively free access across all sensitive data. Following the breach, the NSA

undertook a privilege audit and revoked 90 per cent of users' high-level access powers.

Cybersecurity obligations for companies, directors and management are high from a legal and regulatory perspective – particularly with regard to the security and privacy of data, and breach reporting requirements. Companies that do not report breaches to affected parties and regulators in a timely manner face fines and risk severe reputational damage. This damage can be pervasive, impacting a company's brand, customer loyalty and, ultimately, a listed company's share price and credit rating. For example, Yahoo's valuation in its merger with Verizon was reduced by US$350 million following the 2014 security breach of more than one billion customer records by an alleged nation-state actor.

Key risk management strategies*

- Audit employees' IT systems privilege access. Use the least-privilege principle – only provide employees with password access to systems/ data they require for their specific job responsibilities – and limit administration access privileges. Employee awareness training on company and industry specific cyber threats.
- Review cybersecurity expertise within the organisation – does the skill set match the company's needs and inherent risks?
- Assess integration of physical security and cybersecurity across the organisation.
- Ensure systems restoration procedures are regularly updated and tested as systems and networks evolve.
- Ensure third-party providers have contractual obligations for cybersecurity, including breach reporting obligations that meet the company's legal requirements. Transparency is maintained by those with access to your systems and where the data is domiciled.
- Cloud service provider contracts must include termination provisions that specify data transfer arrangements and proof/certainty of data destruction.
- Cybersecurity spend should represent about eight per cent of overall IT budget. IT security is a corporate asset.
- Assess the adequacy and appropriateness of cyber risk insurance and how this cover interacts with broader corporate insurance policies.

* Strategies collated from the Australian Cybersecurity Centre, NYU, Harvard, US Department of Defense.

Skill base

Historically, boards have tended to comprise individuals with deep experience in law, finance and accounting, as well as former CEOs with broad commercial experience. Boards have typically viewed cybersecurity as an IT responsibility and relied on advice from the company's chief information officer and assurances from external IT specialists on technology related matters.

Boards do not necessarily need to include IT professionals among their ranks, but as a consequence of the accelerating frequency of cyber attacks and cybercrime, directors need greater depth of understanding of these risks. The fourth edition of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations highlights the requirement for directors to regularly assess the skills, knowledge and experience required to deal with new and emerging business and governance issues. Cybersecurity should be one of these key issues.

Professional development opportunities range from formal tertiary courses to webinars offered by major accounting and consulting organisations. This further education will enable directors to explore the subject of cybersecurity and ask probing questions. In instances where a cyber incident or breach has occurred, directors will be equipped to review material outlining the incident, understanding if fraud or a breakdown of an entity's risk controls has occurred, and the lessons learned.

Beware of false assurance

Companies often seek to test the robustness of cybersecurity systems through periodic penetration-testing exercises, and use external technical experts to undertake the test. However, assurance gained through ad hoc penetration-testing exercises is insufficient and can lead to a false sense of cybersecurity assurance. Because penetration testing is periodic, it only incorporates a limited number of scenarios across what can be a very large digital surface area – and it does not tend to involve a whole-of-company response.

Protection is offered by antivirus software, but it is critical this software is updated in a timely manner. The cyber attack of the UK National Health Service (NHS) in 2017 is an example of the consequences of poor software patching. The NHS could not undertake medical procedures due to a Microsoft patch not being updated on release and computer systems being inoperable due to a malware attack. However, there are limitations with antivirus software as it is only effective for known viruses and malware threats. Given the constantly evolving cyber-threat landscape, antivirus software is always playing catch-up with threat actor approaches, so timely patching cadence is crucial.

Firewall selection and configuration may also be false assurance because it may not adapt to create appropriate boundaries as the complexity of the networks and systems grow. Assurance may also be gained through data encryption, but this must be applied to data at rest, in motion and in use, and regularly reviewed for currency and security.

In this high-risk environment, management and directors need to be acutely aware of the risk of cyber attacks. Every cyber attack, major or minor, should be investigated. Often, a minor cyber breach is a precursor to a more significant attack as they enable low-lying systems access over an extended period of time, allowing cybercriminals to develop an understanding of systems architecture prior to a major cyber attack or data breach. The risks to a company's brand, customer relationships, regulatory penalties and market capitalisation of a major cyber attack can be material – active oversight is the best risk mitigant. As former ASIC chair Greg Medcraft stated at the World Economic Forum in 2017, "[Cybersecurity] preparedness must be a long-term commitment that has to be embedded in a company's very culture."

7.5 Managing a data breach: Ten oversight questions for directors

Patrick Fair GAICD | "Managing a data breach: Ten oversight questions for directors", *Director Tool*, 2020, AICD.

A data breach of scale can be a crisis. If it is not well-managed, it can cause substantial damage to a company and its directors both financially and in terms of reputation. It can also have serious regulatory implications.

Like any crisis, the breach, or the realization that a breach has occurred, can arise without warning. The response of management can be reactive rather than strategic. The role of the director is to see the wider implications associated with the incident including to identify and oversee steps that will help to mitigate damage in the medium and longer term.

This director tool provides as list of questions to help identify issues that can arise in the context of a data breach. It aims to assist you to provide governance oversight with appropriate care and diligence should the need arise. This is not a list for management of all steps that might be necessary or desirable.

1. Is the investigation independent?

The natural response of company management to a cyber incident is to ask the head of IT or the chief information security officer (if the company has one) to investigate and report. However, it is most likely that these officers and their departments had primary responsibility for preventing the breach. Accordingly, any report they produce might be challenged for lack of objectivity or completeness. For any serious incident with implications for existing systems and processes the company should obtain an independent report.

Recommendation: Have a senior officer other than the head of IT or chief information officer engage a third-party IT forensics specialist to investigate and report. Have the investigator primarily engaged by an officer outside the IT and IT security teams.

2. Is evidence being preserved?

A common challenge with data breach investigations is the existence of evidence. Steps taken to prevent a breach that is underway, and/or to shut down a system that is part of a compromise, can erase evidence regarding the time, manner, source and/or other characteristics of the attack. In addition, the steps taken by IT personnel, including the time they were taken and the order in which they occurred, can be relevant to interpreting information relating to the breach when circumstances allow.

Recommendation: Raise the issue of record-keeping and evidence with the management team. Make sure the independent forensic investigators get to the system as soon as possible and take an image. Ask that a record of the state of the system at the time of the breach is retained and that procedural steps are being recorded and reported.

3. Will the investigation produce documents or conclusions that may be used against the company?

There is a risk that those investigating the breach or reporting on the breach will include in their communications or reports, conclusions regarding cause and responsibility. Documents containing conclusions of this kind can be damaging in subsequent legal proceedings or regulatory investigations. As a procedural matter, it is better for the investigators to focus on identifying facts associated with the cause of the breach and allow evaluative assessments to take place subsequently as part of the company governance process.

Recommendation: Ensure that investigators focus on identifying and reporting factual information. Separate assessments of responsibility can be the focus of a subsequent governance process. Have the general counsel of the company, or an external law firm, engage the forensic investigators for the purpose of providing legal advice and restrict circulation of the forensic report to those making decisions regarding the legal interests of the company. If the forensic investigation takes place for the purpose of preparing legal advice it will be protected from disclosure to third parties by legal professional privilege.

4. Have we identified all categories of information that have been compromised and the associated stakeholders?

A data breach can impact a discrete data set such as a list of names and addresses or a dataset with mixed subject matter. A common data breach of the second kind is where an email of a company employee has been compromised. Depending on the role of the employee and the frequency with which email is archived or deleted, personal information that is sensitive in nature might be found in employee performance reports, medical and sick leave reports, customer complaints, industrial incident reports payroll and bonus information. Strategic and confidential information might be contained in customer requests, IT architecture and security frameworks and financial information associated with sales and profitability. Minimizing the damage that arises from a data breach requires rapid identification of each category of compromised information and its associated stakeholders. Generally speaking, the sooner the parties who may be adversely affected are advised of the incident, the more likely they will regard your management of the incident as competent and candid.

Recommendation: Make sure there is a rapid review and analysis of potentially compromised information, including the extent to which the information gives rise to contractual or regulatory obligations, and identify the extent to which any key stakeholder relationships may be at risk

5. Have we considered the best ways to limit the possible damage?

A common data breach remediation involves calling the recipient of a misdirected email and asking them not to open but to delete the contents of the message sent in error. In other cases, lost or compromised devices can be locked or wiped remotely before information is lost. It is reasonably common practice to change all the passwords and require all users to re-authenticate when there is a possibility that access credentials have been compromised There is also a common situation where the information lost is not sensitive or particularly useful – perhaps comprising only a name and address or a name and a phone number – but it is suspected that the information is in the hands of a criminal operation that may use it for phishing or a phone scam. In this situation a warning note to the individuals concerned to be on guard in relation to unsolicited contacts may help to prevent harm.

Recommendation: Turn your mind to practical steps that might mitigate or prevent potential harm arising from the compromise. Foremost among these is advising and warning the data subjects that they may be at risk.

6. Has the company breached applicable regulatory obligations? Should we be in touch with the regulator?

All Australian companies with revenue of more than $2 million per annum are subject to Australian Privacy Principle 11 , which requires such steps as are reasonable in the circumstances to protect personal information from misuse, interference, loss unauthorized access, modification or disclosure. Does the data breach indicate that company failed to take reasonable steps in the circumstances? Financial services companies regulated by the Australian Prudential Regulatory Authority are subject to CPS 234 and are obliged to notify the regulator if an incident may compromise a core system.

It may be prudent to contact the regulator even where there is no notification obligation in order to ensure the regulator learns of the incident from the company, has an understanding of the steps being taken to address the issue and, perhaps, to forestall adverse public comment. Consideration should also be given to contacting the Australian Cybersecurity Centre (ACSC) to report the attack, obtain assistance and possibly additional information regarding the associated malware and oblique or the experience of other companies.

Recommendation: Be proactive in communicating with regulators and take advantage of the cyber attack defence expertise provided by the ACSC.

7. Has the company breached applicable contractual obligations?

A data breach can seriously damage commercial relationships with customers and suppliers and may give rise to breach of contract. The most obvious cases are where the attack targets intellectual property that may be licensed or shared with a venture partner and where the subject matter compromised by the breach is subject to contractual duties of secrecy. If your company's business is to provide a platform for the use of third parties or the processing of third-party information the breach may give rise to a claim by customers under their contracts for supply. In some cases, a service will be supplied directly into the information system of your customer and/or the information that has been compromised includes the security architecture of a customer or partner. Consider whether you have provided any customers with responses to data security questionnaires or statements regarding your security posture which might be inconsistent with or at least brought into question by the data breach.

Recommendation: Consider how news of the data breach will impact your relationships with your customers and any contractual obligations may have been breached.

8. What is your communications strategy?

A major data breach is newsworthy. Information can reach the media if news of the breach is communicated broadly within the company, if there is a leak from a supplier, because compromised information has been published, a customer system was down, and/or an ill-considered public explanation given that suggests that the company has suffered an attack. Uncontrolled communication regarding the data breach can be as bad as the data breach itself.

If the subject matter of the data breach and the risk of harm to data subjects is such that you are obliged to notify under the mandatory data breach notification scheme and the Privacy Act 1988 (Privacy Act), or you elect to contact affected individuals so they have the opportunity to prevent potential harm, the breach will become generally known as a result of your communications.

Recommendation: Consider a strategy to take control of information regarding the incident. Prepare to handle enquiries and the substance of the information to be communicated. Take steps to ensure that key stakeholders are advised by you rather than finding about it from public sources.

9. Make sure the report is complete

If the data breach involves personal information and is likely to result in serious harm to any individual, the mandatory data breach notification provisions of the Privacy Act require notification of the Office of the Australian Information Commissioner and the data subject soon as practicable. However, the notification must include a description of the data breach including the kind or kinds of information concerned. Where a data breach is likely to be notifiable a key part of the investigation must be aimed at learning enough about what has happened to enable the company to accurately describe the data breach and the kind or kinds of information concerned in accordance with this requirement.

Having a good understanding of what has happened is also necessary for assessing whether or not serious harm is likely to be suffered by any data subject. Your assessment of the likelihood of serious harm changes substantially if you believe you have a sophisticated organized criminal attacker and/or that information was exfiltrated from your system at scale.

Recommendation: Make sure your forensic investigator provides a clear picture of the information available about the following issues:

- the method of attack;
- whether any harmful code was used in the attack;
- whether any social engineering was used in the attack;
- the date and time the attack first occurred;
- each step taken as part of the attack and the date and time of each step;
- the systems and information accessible to the attacker and the period during which each was accessible;
- any evidence that information was deleted, modified or exfiltrated from the system and your conclusion on that evidence;
- any evidence that a system or software was deleted, modified or exfiltrated from the system and your conclusion on that evidence:
- any evidence or inference regarding the identity of the attacker;
- any evidence or inference regarding the reasons for the attack;
- all available information regarding the information that was or is suspected to have been compromised;
- if a back-up was used to re-establish operations, the period for which data has been lost and a description of the subject information;
- whether or not personal information was compromised, your assessment of the likelihood of serious harm to any data subject;
- whether you are confident that the compromise has been remediated including whether all ongoing means of access to the system by the attacker (including access accounts and passwords) have been updated and checked; and
- the recommendation to prevent a recurrence and when these steps will be complete.

10. Has the company taken steps to ensure that lessons arising from the incident have been captured and appropriate action taken?

If your company has a data breach response policy, and/or follows any of the standard guidelines, review, remediation and adaptation following the incident will be prescribed. This process is often focused on improving the security architecture or defensive arsenal maintained by the business, improving logging of incidents reporting of breaches and the resources and time devoted to security. The incident will also expose gaps in the allocation of responsibilities, gaps in mechanisms for communication and coordination between different stakeholders and highlight information and issues that should be monitored and reported. The latter are procedural governance issues where directors can provide valuable insight and oversight.

Recommendation: Remain engaged with the debriefing and remediation process following the breach with a view to improving monitoring, reporting and oversight of the cybersecurity framework maintained by the company

8 How should boards respond to social change: BLM, #MeToo and more

8.1 How one director started the conversation on sexual harassment in the workplace

Denise Cullen | "How one director started the conversation on sexual harassment in the workplace", *Company Director*, November 2020, AICD.

James Fazzino, chair of Manufacturing Australia, explains how he came to be a champion of gender equality and diversity in the boardroom.

I was CEO of Incitec Pivot, a global diversified industrial chemicals company, for eight years. Early in my tenure, I noticed that 50 per cent of the graduates we were bringing in were women. But a couple of years later, they'd be leaving. So in 2012, I sat down with them and asked, "What's it like to be a woman working for us?" I learned it was pretty difficult to be a woman in the company I led.

That made me aware of everyday sexism and stereotyping of roles. Even if women were the most senior people in the room, they'd be minute takers, they'd have to pull the plastic wrap off the sandwiches, they'd clean up afterwards. They sound like small things, but they're not if you encounter them every day. The system was structured to make it far easier for men, rather than women, to be promoted. I recognised this was unacceptable and committed to make the necessary changes. I became involved in the Male Champions of Change coalition in 2015, when the Melbourne group was formed.

When you have a partner who's a trailblazer, you also tend to pick up on unwritten rules. My wife, Helen, was the first female partner in the Melbourne office of a multinational accounting firm (PwC). In 1999, she was invited out to a business lunch at one of Melbourne's male-only clubs. The client who organised it just assumed that partner couldn't possibly be a woman. They had to clear the whole floor just so she could have lunch. It was awkward. At the same time, she was mentored by a number of outstanding senior male partners and so I learned the power of men stepping up beside women to drive change.

If you've got a culture where everyday sexism is present, you've probably got harassment too, because it's the same culture that does both.

I worked with Kate Jenkins, Sex Discrimination Commissioner and co-convener of the Male Champions of Change group. Kate released the landmark **Respect@Work** report in March, based on the findings of the National Inquiry into Sexual Harassment in Australian Workplaces she led. That really bore out two things for me. Number one, harassment is prevalent in Australian workplaces, even if you think it's not. Secondly, what we've done up until this point hasn't worked. We need to do something radically different.

Changing culture

The Male Champions of Change coalition has just released a roadmap for changing how we manage sexual harassment in the workplace. **Disrupting the System – Preventing and Responding to Sexual Harassment in the Workplace** identifies that harassment has traditionally been treated as a grievance procedure or a dispute resolution issue. But having lawyers in every corner just results in unacceptable outcomes.

Typically, it's women who are harassed and men who do the harassing. The woman would leave after a payout and a non-disclosure agreement and the man would stay. We propose that, due to the harm it causes, harassment is a workplace health and safety issue.

The prevention of sexual harassment should be a key accountability for boards, CEOs and executive teams. Boards need to own this issue; to take a leadership position and say, "Look the standard's going to be zero tolerance of harassment. The way we operate as a board will reflect that and we'll hold the CEO accountable."

Treating harassment as a safety issue really does liberate your thinking, because organisations already have processes in place to manage health and safety. You don't need to reinvent the wheel. In safety, we regularly report incidents, look for the systemic factors that drive the incidents and don't accept under-reporting. It's the same for harassment.

If you can discover harassment early, you can do something about it. The comment made in a meeting or the inappropriate behaviour – address it then and there, as in most cases women just want the behaviour to stop. That way, you prevent the major case that's going to hit the headlines. Men need to speak up because it's exhausting for women to have to do so continuously. It's easier to call it out if you're the CEO or you sit on a board. That's why leadership really matters – you doing it allows others to do it.

Driving diversity

My role with Manufacturing Australia has further reinforced the power of diversity, even in non-traditional areas such as the shop floor. Diversity is Australia's growth edge. If you compare the proportion of women in the workforce, in senior roles and generally in business with the number of women in society, there's a significant gap. Particularly in the COVID-19 environment, we need to push with every competitive advantage we've got. I've found that more diverse teams have productivity improvement of about 20 per cent, and better customer service, safety, financials, leadership and engagement. More diverse teams are better at solving adaptive problems.

Incitec excluded women from leadership positions in "non-traditional areas" such as manufacturing or on mine sites by defining the key leadership competency as years and years of technical experience. So in 2014, we totally changed our leadership model. We said, "We want great leaders, not technical experts". This allowed us to double the number of women in operations and drive productivity.

We've got to drive system change. There is a group who want the status quo to continue, but the vast majority of men, when you make them aware of harassment and everyday sexism, are actually horrified and want to change. All of these issues are connected. The culture in an organisation that says everyday sexism is OK is exactly the culture that says harassment is OK.

The reason I'm so interested in gender is if you can get that right, it pulls through a lot of other diversity elements – age, cultural background, sexual orientation, all abilities. If you're an organisation that embraces all women, it's not a huge step to say, "Let's be an organisation that values employees for the different perspectives and experiences they bring." Because then we're fully embracing the gift that is diversity.

8.2 What's your board doing to raise awareness on workplace sexual harassment?

Jane Southward | "What's your board doing to raise awareness on workplace sexual harassment?", *Company Director*, September 2020, AICD.

A recent report by the Australian Human Rights Commission underscores the need for director education on sexual harassment in the workplace. The report – **Respect@Work: Sexual Harassment National Inquiry Report (2020)** – recommended the AICD and the Governance Institute of Australia, in consultation with the Workplace Sexual Harassment Council, develop education and training for board members and company officers on good governance in relation to gender equality and sexual harassment. The commission encourages boards to consider sexual harassment as an important 'non-financial risk'.

The inquiry examined the nature and prevalence of sexual harassment in Australian workplaces, the drivers of this harassment and measures to address and prevent sexual harassment. From September 2018 to February 2019, the commission conducted 60 consultations as part of the inquiry, with more than 600 individuals participating in all capital cities and some regional locations across Australia. It also held three roundtables and numerous meetings with key stakeholders. There were 460 submissions from victims, government agencies, business groups and community bodies.

"There is an urgency and demand for change across all corners of society," said Jenkins. "One in three people experienced sexual harassment at work in the past five years. Sexual harassment is not a women's issue, it is a societal issue, which every Australian and every Australian workplace can contribute to addressing."

The commission heard that the current system for addressing workplace sexual harassment in Australia is complex and confusing for victims and employers to understand and navigate. It also places a heavy burden on individuals to make a complaint. Most people who experience sexual harassment never report it.

The results of Everyone's Business: Fourth national survey on sexual harassment in Australian workplaces, conducted by the HRC in 2018, have informed the HRC findings as part of this inquiry, providing a clear picture of the pervasiveness of sexual harassment in Australian workplaces. The HRC recommended a new regulatory model, which recognises that the right of workers to be free from sexual harassment is a human right, a workplace right and a safety right. The proposed model involved the establishment of a Workplace Sexual Harassment Council, to be chaired by the Sex Discrimination Commissioner and funded by the federal government. The council would include the Fair Work Ombudsman, the Fair Work Commission, Safe Work Australia, the heads of workplace safety authorities and workers' compensation authorities, and the Australian Council of Human Rights authorities.

The 2018 HRC survey provided insights into workplace sexual harassment. When asked about the most recent incident, people who had experienced workplace sexual harassment in the past five years said:

- 64 per cent were sexually harassed by a single harasser;
- 79 per cent said one or more of their harassers was male;
- Where the most recent incidents involved a single harasser, 54 per cent indicated the harasser was 40 or older;
- Victims said the harasser was most commonly a co-worker who was employed at the same level.

8.3 Why gender diversity isn't the only diversity that matters

Denise Cullen | "Why gender diversity isn't the only diversity that matters", *Company Director*, December 2020, AICD.

It was during the second round of working from home that Ivan Ingram and his colleagues at the Australian Indigenous Governance Institute really felt the strain of COVID-19. The team had been back at work after a four-month shutdown and then, in July, two Queensland women tested positive to the virus after travelling to Melbourne, sparking new public health alerts and a shift back to remote working arrangements.

"We had a taste of engagement in person, followed by more disengagement and separation. That was the worst part of it," says Ingram, COO of the Australian Indigenous Governance Institute (AIGI). Ingram, who also chairs the Queensland Law Society's First Nations Legal Policy Committee and is a director of Digi Youth Arts, says he found the crisis "incredibly challenging".

Digi Youth Arts, which supports Indigenous young people in all forms of artistic expression, had in March "just come out of a really excruciating period of learning around finances". In response, it had recruited an accountant to the board and, with that behind them, were looking ahead to the launch of a full year's program of in-person performances and projects.

But as the threat of COVID-19 loomed ever larger, Ingram was at Perth Airport for a flight to Brisbane when he called a meeting of the volunteer board.

"We came at it from the lens that Indigenous people are vulnerable people generally... and we have the intersectionality of young people, young women, Indigenous communities and a vulnerable artistic sector as well," he explains. "So we really put that front of mind and said we would make all of our decisions in the best interests of our young people. If anything puts our young people and communities at risk, we don't do it."

A COVID-19 committee was convened to allow three of Digi Youth Arts' seven board members to address urgent issues, while funding bodies agreed that the organisation should repurpose grant monies to deliver outcomes more suited to the changed conditions. Similarly, the AIGI, which previously undertook much of its work in the community, adjusted its programs, with masterclasses placed on hold and an in-person speaker series moved online.

"Being able to do this in a much more flexible way has opened up a lot of opportunities for us, in the sense that we've had international guest speakers who we have been able to put in front of an Australian audience," says Ingram.

But he notes that it hasn't always been appropriate or possible to do things virtually in some remote areas. "You won't get the same bandwidth if you're Zooming into Doomadgee [as opposed to Sydney]."

Changing the way the organisation does business has expanded the possibilities; AIGI, for instance, has doubled in size. "We've put attention into projects that we haven't been able to tap into before because of a want of resources," says Ingram.

"For Indigenous people, when they formalise a corporate entity, it's because there is a greater need and a purpose; for example, addressing the educational needs of the community," he adds.

"That kind of mindset creates a different type of governing structure and model so that everyone is held to a particular account – not just to the organisation, but also to the community."

COVID-19 has highlighted the importance of diversity on boards, says Ingram, not just in terms of skill sets, but also considerations such as gender and age diversity and LGBTI+ representation. He has fielded several enquiries from entities seeking to recruit him to their boards because they have a clientele or service-delivery base with a focus on these demographics.

"Coming out of COVID-19, these entities realised that they struggled to effectively govern through that period because of a particular demographic they've had on their boards," he says. "Although they were able to adapt because they had the CEO model with a full complement of staff, they're reporting a disjunct between the board's ability to adapt and the organisation itself."

Ingram doubts we'll ever "snap back" to the way things were before, adding that enhanced integration and comfort with technology has reduced business costs and increases the reach, ability and effectiveness of people's time.

"I think the new normal, post-COVID environment will never be the same as before and nor should it be," he says. "The way we are doing things now, where we've prioritised staff wellbeing, is an approach that needs to stay."

8.4 Sam Mostyn on opening doors to women on boards

3 December 2020, "Sam Mostyn on opening doors to women on boards", *Membership Update*, AICD.

Board Level is an AICD podcast powered by Commbank's Women in Focus initiative. Each episode, journalist and author Catherine Fox speaks to leading female directors about their journey to the boardroom.

In **episode nine** of Board Level, Catherine interviewed Sam Mostyn, one of Australia's most experienced board directors and chairs. Across this double episode, Sam spoke about the responsibility of being a trailblazer, why she's not concerned about being a quota appointment to a board and why women should worry less about why they're asked to go on a board and think more about the skills they bring to the table.

Catherine: Sam, you took the board pathway quite early on. Tell us about that decision. How did that happen? What sort of crossroads were you at?

Sam: Well, Catherine, I was really lucky in that I was working as a senior executive at Insurance Australia Group at the time and I was approached to introduce a process to join the commission or the board of the Australian Football League. It was a time when it was the first woman appointment to that board and having sought permission from my chairman, James Strong and chief executive Mike Hawker at IAG to take on a board position while I was still an executive. I threw myself into that process and that's another story altogether, but I was the last woman standing and appointed to that board in 2005.

So I was a full time executive and then my first big non-executive role, although it was on a sports board, a professional sports organisation, but it was a big business. I was 39 when I joined the board of the AFL and it seemed to me to be the right thing to do for a number of reasons. I've been an executive in a big company, in big companies for a number of years and along comes an opportunity to help change the whole nature of governance in a sporting code that I cared about and I had permission from my bosses in my day job to do it. I threw myself at it and as a 39 year old, not quite 40, it threw me into the world of governance and the role of a non-executive director or commissioner in that case, in a way that was teaching me very early about what it meant to be a governor or a steward of an organisation as opposed to in the executive.

I spent over a decade on the commission, so I spent my entire 40s at the AFL Commission and doing my other jobs at the same time. The big decision for me then was to both put myself forward for an opportunity that I felt couldn't come again – so, backing myself in that and the second one was getting an incredible experience early about what actually happened in boardrooms, what was different to that in my experience of being in executive ranks. I learnt an enormous amount before the next board role came up.

Catherine: Was that a bit of a baptism of fire? You were the first woman into an arena that is very masculine.

Sam: If there is an organisation in the country where a woman was going to turn up, this was probably the most hyper masculine, muscular community that had always been run by men but in fact, had been propped up by women.

The then chairman of that board, Ron Evans, had the foresight to say it's women that actually create this game, support this game, half our members are women. Women make the decisions, whether they're boys at the time or come to women in sport but the boys were able to play football and he said it was an abject failure to have the governance of that game to not have any representation of 50% of the supporters of the game. So the leadership of Ron meant that they installed a process so they appointed the first woman through a effectively quota process but with ten women interviewed, reference checked, put through an enormously difficult process to find the woman to sit on that board and so when I arrived, the industry had got used to the idea and certainly the commissioners were very welcoming…

Catherine: What do you say in those circumstances?

Sam: So, yes, I advocate for quotas whenever I can. I start with the view that actually there's been a quota system in place historically for men. If you think about my appointment to the commission, there had never been a process involving a headhunter interviews and panels before I was appointed. So the quota was working a different way and clearly it was not delivering at the talent that we held as women into those rooms of power or authority.

What I say to the women who have a concern with it is we need to be at the seat at the table where decisions are made. Ruth Bader Ginsburg recently passed and one of the things she said constantly through her career was that women belong in all places where decisions are being made. We still do not have that parity in most of our industries and most of our companies. I say to the women who worry about the quota, we're not going to get into those rooms through hoping, wishing and praying. You need systems and targets and quotas to get us there. For the women who actually accept that opportunity, it's up to us to bring our best self into those rooms and open the way for others to come and not be burdened by the idea that we weren't meritorious.

Decouple the word merit from quota and know that you're being appointed because you were the best person for the job. The job is to play the role really well. I'd love women to have far greater confidence that when they are tapped on the shoulder for these moments to say yes and step up and show their great character, strength, merit, without worrying about the how they got there…

9 The NFP challenge: Delivering through a crisis

9.1 The NFP challenge and the role of corporate Australia

Robert Pradolin GAICD | Founder & Executive Director, Housing All Australians

The COVID-19 crisis highlighted the importance of many seemingly unnoticed roles within society. From healthcare workers who risked their personal health to look after those who were sick, to restaurant staff who prepared meals for those in lockdown, to supermarket workers who stacked shelves that were emptied in panic, everyone noticed and appreciated the contribution these members of our community made in helping society continue to function in extraordinary circumstances. This was highlighted by the media all through the crisis and they were rightly acknowledged as our heroes.

A less highlighted, but equally vital, contribution was also made by many not-for-profit (NFP) organisations, whose charity needed to extend to a significant number of Australians for the first time in their lives. NFPs such as the Salvation Army saw everyday couples who both lost their jobs but still had a mortgage, bills to pay and children to feed, come in to get assistance with food. These were, and still are, extraordinary times.

So how do we move forward post-COVID-19? What does recovery look like? How does the NFP sector navigate this crisis with the reality that the request for ongoing funding, from either federal or state governments, will be under pressure?

The NFP sector, with an annual turnover well in excess of $156 billion and made up of around 600,000 NFP organisations, is a significant part of the Australian economy. However, the significance of the NFP sector goes far beyond its economic contribution to Australia's GDP. There are thousands of NFPs that have been run by volunteers for decades and represent part of the social cohesion 'glue' that has manifested into our unique Australian culture of care.

While Australians have a healthy disposition and confidence to question authority, we typically have a greater commitment to fairness, equity and 'doing what is right' – albeit sometimes reluctantly – for the greater good. We have generally sought to build collective approaches to societal challenges, and our response in a post-COVID-19 world will need to be one of those. Peter Drucker famously said, "culture eats strategy for breakfast". As part of any economic recovery strategy, we would be wise to ensure our culture – with the NFP sector at its epicentre – is preserved and given the due consideration it deserves.

As significant expenditure has already been made by all levels of government – and there is a limited supply of government money – it is unrealistic to expect government to continue to do all the heavy lifting. At a time when the demand for assistance will only increase, competition for funding, from both government and philanthropy, will intensify. We therefore must create a more effective, efficient and resilient NFP sector – where some NFPs will need to merge with others, some will need to pivot to survive, and all will need to find alternative ways to create value.

The pro bono model offers the NFP sector a way to continue to create value. Pro bono is the basis on which we established **Housing All Australians (HAA)** and we are using the significant goodwill that exists in the private sector to help shelter vulnerable Australians in a way that maximises the value created (by HAA) and minimises cost (to the private sector business).

As an example, in June 2018 home builder Metricon and its suppliers helped refurbish an empty aged care facility in Melbourne. Over an 18-month period, with support provided by the YWCA, 58 women were helped to stabilise their lives. This project was done pro bono – the objective was to use minimal cash and focus on what businesses could offer in-kind or pro bono. This model is now being implemented nationally and HAA has attracted other corporates such at Norton Rose Fulbright, MinterEllison, PwC, Linen House, Collarts School of Design and others, that are donating their products or services pro bono.

Other examples of private sector businesses that are partnering with NFP organisations include: CBA aligning itself with the **Sisters of Good Sheppard** and helping vulnerable women achieve financial independence; BP Australia installing new **Changing Places** toilet facilities as they upgrade their service stations to enable severely disabled members of the community, and their families, to travel from home more independently; AfterPay aligning itself with the charity **Thread Together to distribute clothing**; GrainCorp supporting local communities in rural and remote areas by offering access to their silos as blank canvases and creating a **Silo Art Trail**; investment bankers **Tanarra** offering a free strategy advisory service for charities; lawyers Mills and Oakley launching **Everyday Justice** to help clients who do not qualify for legal aid yet cannot afford private representation; and the **Barossa Foundation's** Concordis winemaking project helping social inclusion challenges such as homelessness, mental health, domestic violence and disability.

It is most often easier for a business to create value for a cause through their business rather than through cash donations. And it is equally true that we create a better, more inclusive and economically sustainable society when individuals and organisations direct their resources into strengthening communities, increasing social and economic activity, and improving health and wellbeing.

Australian organisational leaders must focus on ensuring their businesses remain viable. Foresightful leaders take this further and realise that by aligning with an NFP that needs the products or services their business offers, they can leverage the cultural 'glue' that creates successful social cohesion and provide significant value at little cost. This way we can inspire, reinvigorate and enhance the socio-economic ecosystem that we all know is vital to a successful and prosperous country. Future generations will look back and thank us for it.

9.2 Corporate philanthropy could keep the NFP sector above water

Adam Courtenay | "Corporate philanthropy could keep the NFP sector above water", *Company Director*, December 2020, AICD.

Sarah Davies AM MAICD, chief executive of Philanthropy Australia, is sure of one thing: among the best organised big givers, no-one ever misses out. The twin crises of COVID-19 and Australia's 2019–20 bushfires had little impact on long-term donor strategies.

"I have not seen any instances where they have suspended or stopped existing programs and pivoted towards supporting response and recovery to COVID-19 or the bushfires," says Davies. "They haven't taken money away from people, projects and long-held causes – they've tended to stick to existing commitments and simply added to them as these crises arrived."

It's something the Macquarie Group and BHP foundations both agree on – that they can maintain their favoured projects while reacting to new and unexpected disasters. "We are still giving to our regular grant partners and have increased our financial support to those that need it," says Macquarie Group chair Peter Warne FAICD. "We've provided an automatic extension of funding for grants finishing this year. We've also loosened restrictions on our grant funding, as non-profits had to pivot their programming."

With the bushfires, the response was immediate and widespread. It was all about basic necessities: rescue, shelter, firefighting facilities, food, water and medicine, as well as some longer-term "strategic" donations to improve fire education and community mental health. A review of more than 100 of our top companies – public and private – revealed a contribution of more than $88m towards bushfire relief, according to Jarrod Miles, co-founder and director of Strive Philanthropy, which conducts corporate giving research in Australia and produces the annual GivingLarge report on corporate philanthropy.

Coping with COVID

The COVID-19 response has been far larger in dollar terms, but from far fewer respondents. Of the $160m recorded by Strive as of August 2020, more than 84 per cent came from just six companies. BHP established a $50m Vital Resources Fund to help support regional Australian communities in its areas of operation. Next came donations from Rio Tinto ($25m), Newcrest ($20m). Macquarie ($20m), South32 ($10m) and Woodside ($10m).

"Only about 20 of our top 100 companies have committed publicly to significant cash donations amounting to around $160m," says Miles. "Understandably, not all companies are able to secure extra funds to donate to the community, given the significant economic impact to some industries."

Simon Mordant AM, known variously as an investment banker, philanthropist and art collector – as well as executive co-chair of Luminis Partners in Sydney – says he understands why it's hard for companies to know how and where to help in this arena. "The places you can channel financial support for COVID-19 are less clear – maybe medical research, but not much else," he says. "I've not seen non-foundation companies actively engaged with this situation. But I have seen it in spades when there are bushfires, floods and national disasters."

Miles says it is happening on a micro level, which the statistics miss. It can be expressed through companies forgoing revenue on fees, products and services for the community benefit. This might include supermarkets donating food or energy companies donating gas and electricity to families in need. "It could be real estate donating space or dropping leases, banks offering interest-free loans or freezing fees and interest," he says. "Telcos might be offering free telecommunication. These are not included in the $160m, but do represent a significant contribution from companies."

It's true that giving during COVID-19, especially while the effects are still being felt, has been more strategic. The WA Chamber of Minerals and Energy brought together more than 20 state mining companies and raised over $9m to help a number of charities fight the pandemic. The beneficiaries of this corporate largesse include the University of Queensland, for its research into a vaccine, and The Peter Doherty Institute for Infection and Immunity.

The Macquarie Group Foundation's $20m response to COVID-19 has been lauded for its size relative to the bank, and its mix of short- and long-term forms of community relief. Macquarie's 2020 community investment (one per cent of its profits) was twice that of 2019. It has contributed to the Doherty Institute, as well as the Burnet Institute's study into quarantine and physical distancing.

Non-profits such as the Royal Flying Doctor Service, Lifeline, Foodbank Australia and The Smith Family have all received donations to support their COVID-19 relief work.

Codes of ethics

There are probably two factors driving corporate philanthropy around the world: the carrot and the stick. One of the best-known stick wielders is Larry Fink, CEO of global investment company BlackRock, who sends out an annual letter to CEOs, setting out the ethical standards he demands of the companies his firm invests in. "We will be increasingly disposed to vote against management and board directors when companies are not making sufficient progress on sustainability-related disclosures and the business practices and plans underlying them," wrote Fink in his 2020 letter.

Large institutional investors increasingly expect companies they invest in to behave ethically. In 2019, BlackRock – with US$6.8 trillion under management – voted against or withheld votes from 4800 directors at 2700 companies for failing to reach its expected standards of corporate citizenship.

Of course, giving isn't a given. The amount given by companies varies from year to year. It always revolves around current profitability, where and how they operate (and their need to earn a social licence) and whether the corporate gift fits in with their commercial and social strategy and culture. They may have other priorities including salaries, balance sheets and shareholder gains, but Strive's Miles says it is all about balance.

"Our largest corporate givers are not choosing philanthropy over returns to shareholders or paying workers," he says. "It's a strategic choice where they allocate a portion to the philanthropy bucket to support the community they operate in. A strategic reasoning is easy to comprehend. It's a prioritisation exercise," There is now good evidence around corporate giving benefits to corporate culture, employee morale, reputation, alignment with conscious consumers and shareholder value. The ability of investors such as Fink, who put pressure on companies to give, is also a strong part of this equation."

A company like BHP will consistently alter its community goodwill according to circumstances. When 2016 pre-tax profits dropped considerably, its "community investment" lagged and fell the year after – although it never dropped below $100m per year. By contrast, its community investment in 2020 will be over $200m.

Coles and Woolworths consistently contribute over one per cent of pre-tax profits. This makes sense, given both are consumer facing brands with a need to build a culture between themselves and their customers and stakeholders. But they, too, are prioritising as circumstances allow.

Interestingly, CSL has been the country's biggest percentage contributor to philanthropic causes, often making gifts of between 1.5–2.5 per cent of pre-tax profits. "It's all the same trend," says Miles. "When business is flourishing, they are prioritising more to the community. Building goodwill in good times makes plenty of sense."

These days, a major ASX company simply can't afford not to be a philanthropist. The big industry funds representing teachers, nurses and the media, for example, demand that the companies they're investing in give back. So, major ASX players (which rely on super money for capital) need to have a social agenda.

Whatever the motivations, there's little doubt that giving is getting bigger and more complicated. Well-intentioned (but thoughtless) largesse is out. Smart giving with strategic intent is in.

Fires, flood and natural disasters are one thing; the social and economic problems wrought by COVID-19 are quite another. Some problems have to be fixed now, others are systemic and need time. Big corporate donors tend to be oriented towards big issues and systemic problems, but they're also fatalists. To deal with the recent crises, they need to give big and give fast. They know catastrophe is always around the corner.

In early 2020, the Edelman Trust Barometer, revealed that none of the four societal institutions the barometer measures – government, business, NGOs and media – has particularly high trust numbers. By April–May, that had radically changed. Government trust amid the pandemic surged 11 points to an all-time high of 65 per cent, making it the most trusted institution across the world for the first time in 20 years of study.

But only 43 per cent of respondents believe that companies are protecting their employees sufficiently from COVID-19, while 46 per cent do not believe business is helping smaller suppliers and business customers stay afloat. CEOs fare even worse; only 29 per cent of respondents feel CEOs are doing their bit during the COVID-19 crisis, with scientists (53 per cent) and government leaders (45 per cent) outstripping them.

Putting it out there

Mordant says many businesses support and sponsor events – the arts and sports usually – but that's often where it ends. "Publicly listed corporations generally don't want to get involved outside these sponsorship areas," he says. "They've historically had a clear perception that profits belong to shareholders and have been nervous about being involved in philanthropic endeavours."

He says companies need to have a clearer understanding of their purpose. "When you build a more sustainable business, then the business becomes naturally more comfortable supporting the community." he says.

According to Ben Neville, an associate professor in management and marketing at the University of Melbourne, many corporations don't understand the new compact. "They've been arguing for smaller government and reduced taxes with the promise that business and market forces would solve everything," he says. "But the problems are still there and often getting worse. This is where corporate philanthropy needs to step in. As your profits grow, so does your responsibility."

The role of boards

David Clarke AO, the late co-founder and chair of both Macquarie Bank and its foundation, once said that as the bank is a member of the society in which it operates, it follows that "one of its important duties is to work in a multitude of ways for the betterment of society". He added: "In the long run, this is consistent with a company's duty to its shareholders."

Clarke, known for his great love of wine and support for worthy causes, believed – well ahead of his time – that goodwill was an integral part of the corporate package.

And yet the elephant still in the room in the 2020s is that too often the company's business side and the work it does for social good exist at removes from each other. The cure, as Clarke would no doubt have advocated, is to embed philanthropic thinking into the boardroom, where all the hard decisions are made.

"If I only ever eat doughnuts, I'll have heart disease. But if I'm surrounded by people who say I need protein, vegetables and good carbohydrates, there will be a different outcome," elucidates Sarah Davies from Philanthropy Australia.

The management of social policy in combination with profit policy is still in its infancy, she says. "We're not even halfway there. What has come out of the banking Royal Commission is a critical issue for boards: economic health can't happen without social and cultural health. Why concentrate on one-third of the picture for success when you really have to concentrate on the whole picture?"

Simon Robinson, a director at Corporate Citizenship – a global consulting firm that benchmarks companies' social and community investment – says there are many businesses ignoring this area, not least because they think that social good cannot be measured.

"It's seen as an afterthought and it never ceases to amaze me. Most organisations will have measurement processes for everything except this. They have yet to learn that if you can measure and be transparent about what you're doing on the social front, you can manage it," says Robinson.

Each-way bet

The problem is the Janus-like nature of corporations; they are looking both ways.

Westpac Foundation has been variously described as among the most progressive and best-organised foundations in the country – and yet Westpac as a business is suffering severe reputational damage in the wake of the banking Royal Commission and more recent revelations relating to systemic money laundering.

Rio Tinto, another company with a large and well-resourced community budget, was heavily criticised in August for its decision to blast two 46,000-year-old Aboriginal rock shelters so it could access $135m of iron ore in Western Australia's Juukan Gorge – against the will of the traditional owners.

In September, Rio sacked three senior executives as penance for destroying the site. But shareholder and Indigenous groups now expect a major overhaul of the way all mining companies operate in the region.

One of the country's biggest super funds says the departure of CEO Jean-Sébastien Jacques, head of iron ore Chris Salisbury and corporate relations chief Simone Niven won't be enough to restore investor confidence. HESTA, which has $52b under management, is demanding an independent review of all current agreements between the miner and traditional owners, and says it's talking to major global investors to join them in lobbying the Rio Tinto board.

Rio's original decision to "dead bat" all questions on board and management consequences of Juukan – and to hold fire until an internal investigation is completed – did not go down well. The public knows nothing of the company's good deeds and largesse.

"Philanthropy has to be integrated and authentic all the way through the business," says Davies. "It's not enough to have the 'good works' hanging off the side. It needs to be embedded into the culture and values of the whole organisation."

The BHP way

If anyone should understand this, it's Charles "Chip" Goodyear, CEO of BHP (2003–07) and now BHP Foundation chair. He insists that the foundation – which has been in existence for six years – and BHP must be kept distinct, even though the two arms must have an ongoing conversation.

"The BHP bulwark is aware of the foundation and its overall social value platform, but it does not impact on the foundation's decision-making," he says. "We are completely independent."

BHP the company is in charge of community welfare in the areas that it works in, explains Goodyear, but the foundation's work is far more strategic and global – and, he'd argue, even entrepreneurial in nature.

"They fund us," he says. "The decisions about our investors and programs are made by the foundation board, not the BHP board. We're closely related and we keep an eye on what they do, but the things we do can't directly impact or benefit the company."

BHP Foundation CEO James Ensor realises no charitable entity wants to be in a situation where there's a perceived dissonance between its work and the practice of the donor; for example, BHP (the corporation). Ensor admits that if the business were acting unethically, the foundation would have trouble working with the states, governments and NGOs it needs to form relationships with.

"If BHP itself wasn't demonstrating leading practice around disclosure and transparency around corruption and those issues, the [kinds] of organisation that the foundation is able to work with would be much less likely to help," he says.

There must be no dissonance, he adds. "When we get this right, the voice of the company can be a powerful advocate for the sort of reforms these NGOs and others are pushing. Congruence is really important."

9.3 2020 Not-for-Profit Governance and Performance Study: The COVID-19 Edition

5 November 2020, *2020 Not-for-Profit Governance and Performance Study: The COVID-19 Edition,* Policy Research, AICD.

The annual Not-for-Profit Governance and Performance Study is the world's largest study in NFP governance. This year's **COVID-19 edition** highlights that targeted funding is critical for the survival of many NFPs, while revealing that a large number of organisations were under threat even before the challenges of COVID-19.

Now in its 11th year, the 2020 study reveals – unsurprisingly – that COVID-19 dealt a huge financial blow to the NFP sector. However, many organisations were facing considerable financial challenges even before the crisis.

It shows that while a majority of NFP organisations expect to make a loss this financial year, almost 40 per cent of organisations had made a loss in the previous three years.

The study also highlights the disparity between the different sub sectors' abilities to navigate the crisis, with organisations in the arts, sports, health and aged care sectors seeing greater impacts than those in other sectors.

Sources of funding played a significant role in this, with those reliant on government funding faring better than those reliant on philanthropy and face-to-face fundraising.

Key findings include:

- In FY20 the number of respondents expecting to make a profit dropped to 48 per cent, with over half expecting to make a loss, break even or come close.
- 55 per cent of survey respondents noted their organisation is receiving JobKeeper payments (as of August 2020). However, more than one third of organisations were not eligible.
- With boards focused on the survival of their organisation, merger activity and discussions on mergers reduced considerably. Only three per cent of directors reported they were currently undertaking a merger, which was down from five per cent last year.
- The onset of COVID-19 brought immediate change, with 77 per cent reporting that their organisation significantly changed the way it operates.
- Directors were particularly proud of their NFP's response to COVID-19, with 90 per cent agreeing or strongly agreeing that their organisation has responded well to COVID-19.
- When asked to rate the effectiveness of their organisation in achieving its stated purpose, sentiment was higher (94 per cent) than in previous years.
- 87 per cent of directors stated they are worried about the Australian economy and there is also a high degree of uncertainty about the future.
- 44 per cent of respondents expect client numbers to increase and 45 per cent predict service volumes will increase. However, 27 per cent expect a decrease in clients.

9.4 COVID-19: Managing cash flow for NFPs in crisis

Carl Gunther GAICD | 29 April 2020, "COVID-19: Managing cash flow for NFPs in crisis", *COVID-19 Resources*, AICD.

The COVID-19 crisis presents not-for-profit (NFP) organisations in many sectors with an environment where the demand for their services is high and yet the capacity of their traditional financial supporter base is diminished. This is particularly so in the charitable sector. The arts community has been acutely impacted as a result of venue closures, as have member-based organisations who are dependent upon member gatherings and networking events.

How well NFPs respond to this crisis determines success or failure in turnaround. Many wrong decisions can be fixed, however indecision or taking too long to respond can have the most detrimental impact. Whilst there's likely to be a resumption of normal activities at some stage in the future (arguably, the date of a vaccine but even before then there will be a resumption of 'new' normal activities), organisations must plan now for coming through the other side and make decisions today in that knowledge.

Directors of NFPs operate in a similar but different environment to their 'for-profit' colleagues. Similar in the sense that traditional solvency measures, like being able to meet the payment of debts as and when they fall due, and corporations law obligations are mostly the same. Different because there is often a higher order mission that extends beyond profitability and a return on invested capital and incorporates the collective values of sponsors, donors, volunteers, members and employees.

In the context of turning around a distressed NFP, effective collaboration between the board, management and financial/non-financial supporters is paramount. Government support and accompanying regulatory reform is both allowing and requiring directors to lean into their organisations more than ever, as they focus on keeping organisation afloat, looking after employees and maintaining relationships with key financial supporters.

This director tool is an NFP-sector adaptation of COVID-19 Managing cash flow for SMEs in crisis and focuses on key tactics for NFPs in turnaround. It examines areas of priority for management, and oversight for boards, and reinforces the need for both to be resolute in their decision making and actions.

The AICD is advocating to [Government for funding reform] for the NFP and charities sector. Acknowledging that NFP directors (many of whom are volunteers) and senior management should be focused on providing services to their valuable clients, looking after their employees, volunteers and stakeholders – at a time when demand for services is up and revenues are down – the institute wants comprehensive measures to support the sector's financial sustainability and a clear and nationally consistent regulatory approach.

Horizons thinking

The federal government's current fiscal stimulus is designed to impact organisations over a six-month period (April – September 2020). NFPs materially impacted by COVID-19 not only need to consider the critical steps to survive these six months but they also need to plan now for how their organisation will resume activities – and in some cases rebuild – after this period.

NFPs should think about their organisation in the context of at least two horizons:

1. Survival – develop plans to get through the next six months;
2. Rebuild – develop plans to rebuild for the new normal.

For many NFPs materially impacted by COVID-19, their reason for existence will be restored or lost in the future rebuild. This means that decisions made now must be done through the lens of the rebuild, to avoid having nothing left when the new normal eventuates.

Boards should encourage management to do more than just survive (Horizon 1). They should encourage management to do enough so they can also invest in the rebuild (Horizon 2). This often translates when an NFP focuses on the trade-offs between competing stakeholders and financial supporters. For example, member-based organisations having to adapt to a new post COVID-19 operating model (for example, moving from face-to-face services to blended digital and face-to-face services) may have to redirect valuable sponsorship funds to digital delivery at the expense of traditional sponsorship programs suited to face-to-face delivery.

Another example of a horizons trade-off might be that operators in the arts community may determine that supporting artists financially, at the expense of a relationship with venue owners, is key because the loss of an artist would be harder to manage in the rebuild than finding a new venue in the rebuild.

How hard NFPs negotiate with sponsors and stakeholders will be driven by how much cash is required to rebuild the organisation and get it to sustainable surplus, not by how much cash is required just to survive the lock down.

It's important for the board and management to agree upfront which battles to fight when considering such trade-offs.

Guidelines for horizons thinking

It is important for board and management to apply the following mindset when developing their organisation's survival and rebuild plans:

- No one has a monopoly on the best ideas in a crisis, and staff and financial supporters will often have good ideas.
- Managing stakeholders is challenging and it is important to consider trade-off scenarios. Hoping that stakeholders will do exactly what is asked is not a prudent plan and a credible Plan B should be developed.
- Do not forget the reason for the NFPs existence. It is a very useful exercise to remind sponsors who have backed the organisation about why the organisation exists and what is being done to respond to the crisis.

- Cutting costs, improving margins, releasing cash from working capital and selling surplus assets is often cheaper and likely to be more controllable than approaching a financial stakeholder who themselves may be financially stressed.
- Consider the timing of asking a financial sponsor for funding. Right now, asking a sponsor for financial support might result in a very quick no. There is a time and a place to ask. It may not be now.
- Cutting costs is hard to do. Cutting in a way that is sustainable is even harder to do. It is rare, however, that anyone activating a critical turnaround plan regrets having 'cut too deep'.

Changing strategy takes time – changing tactics can start immediately

Strategy is important but it's very hard to develop and adopt a new strategy in the middle of a crisis. It's somewhat like building the plane when you are already in the air! It is better to first focus on tactics to respond to the crisis because the outcomes that result may be very strategic in nature.

Typically developing a tactical plan in a crisis follows three phases:

1. Identify tactical options with an emphasis on cash release or cash generation;
2. Prepare a plan encompassing all identified tactical options;
3. Deliver against the plan.

This director tool focuses on the first phase and examines the following 'levers' that can provide immediate tactical options for managing cash flow in a crisis:

- Revenue and/or margin improvement;
- Working capital release and cost reduction;
- Staff cost reduction;
- Other sources of capital or government support.

Revenue and/or margin improvement

It is harder to win new financial supporters than to retain existing supporters. This is not to say that new supporters and members are not welcome. However, when cash is tight and resources are scarce, it makes sense to focus more time on existing supporters rather than prospective supporters – and on the things that are more controllable rather than less controllable. For example, a review of traditional fundraising activities in order to identify creative/different ways of securing the same share of wallet from the same supporters can be an effective way of remaining relevant and top of mind. With the emergence of digital variations to existing face-to-face services, it may be viable to direct sponsors to support this new medium in order to differentiate their support from the old way of doing something.

Consider turning liabilities associated with pre-paid cancelled events, or already committed expenditure, into donations by asking creditors to convert a contractual refund into a donation.

Existing sponsors could be asked to offer additional non-monetary support that would enhance the NFP's offering to the member or recipient services base. This enhancement might enable the NFP to ask for payment of existing or additional service fees.

Rather than asking for a concession from a supplier, it may be viable for the NFP to provide something creative in return. For example, where a supplier has a vested interest in the long-term future of the NFP, consider converting a '2019 payable' into a '2020 investment' in the future viability of the organisation. For membership-based NFPs, programs directed towards offering existing member promotions (for example, through online services), enhanced loyalty programs and early payment options are more controllable than investing in finding new members or new services in new geographies.

Working capital release and cost reduction

A laser-like oversight of cash receipts collection is critical during a crisis and for NFPs this should be a weekly exercise. Put in place a system of escalation if any expected cash receipt is late relative to their terms or commitment date. Deploy a 13-week rolling cashflow report for all board members to understand. A 13-week cashflow restates the NFPs receipts and payment runway (over 13 weeks) and in its simplest form is a forecast of transactions likely to go through the NFP's bank account over this time. It is imperative that every board member has clear oversight of this report.

Spend time understanding what it costs to serve (CTS) customers and members. That is, costs beyond costs of goods sold (COGS) such as service and support. This enables the classification of customers/members into categories that may be ancillary to the core offering of the NFP. Whilst counterinitiative, consider letting go of certain customer/member categories or ancillary services, or charging more to provide these services or recovering more in pass through costs, in order to reset the overhead cost base (because there are less customers/members to service).

If a customer, member or sponsor was a poor payer before COVID-19, it is likely they will be an even worse payer now. In the current crisis, it's prudent to also watch traditionally good payers. The federal government's announcement of a six-month temporary relief for directors from personal liability for trading while insolvent (from 25 March to 25 September 2020) – extended to charities (enacted as part of the Government's Coronavirus Economic Response Omnibus Bill 2020) – may result in a disrupted payment pattern.

Consider the available levers to get financial supporters to pay. For example, is it possible to preference the profile of one sponsor over another because they are committing to sponsorship at a time when it is needed most? Consider offering early payment discounts – now is the time for cash, not profit.

Creditors are likely to examine your organisation in much the same way you are examining your own customers, members and sponsors. Communicate and ask for extended payment terms and reductions in cost. Keep promises and don't over commit.

Don't forget to consider closing permanently or mothballing temporarily unsustainable sites, service units or branches. Consider mergers or partnerships as a means of sharing common costs to support a wider distribution network. This can be difficult to achieve in the short term but given the horizon timelines of six months or more, measures like this can be implemented over the medium term.

It is worth noting that cost reduction programs mostly fail to achieve 100 per cent of their targets. This is especially the case for sustainable targets. With this in mind, cost reduction targets should be set to exceed what is required to survive.

The AICD webinar recording Turnround Fundamentals provides general guidance on cost out and working capital tactics.

Staff cost reduction

After the safety and wellbeing of employees (and volunteers), the most important staffing priority for NFPs is to focus on both keeping employees and finding ways to lower their cost base. These may include measures such as securing voluntary pay reductions, roster changes, freezing of new hires, winding down leave balances and managing stand downs. It is critical that employees and employers work together to find the right solution for their organisation.

If an NFP finds itself having to consider redundancies, particularly when considering rebuild (Horizon 2), it may be useful to classify full-time employees into three categories:

1. Employees most closely related to the output of product or services (for example, front line staff);
2. Employees supporting the first category;
3. Senior management and indirect functions.

Use this classification to focus redundancies away from category 1 towards redundancies in categories 2 and 3. By doing so, the organisation preserves as best as possible those FTEs most closely working with clients or on the front line. When the rebuild plan is activated, the organisation can pivot and respond because it has retained (as best as possible) the frontline workforce capacity to do so. Cut casuals before permanent staff; cut back office permanent staff (categories 2 and 3) before front line permanent staff. Some sponsors or donors may be able to offer services or idle staff for free to fill a gap in capability left by letting go of casual staff.

Finally, if you find that your organisation's operating model needs to be reset (that is, because there are less customers or members to service), identify what roles are required first and then consider who would best fulfil those roles.

Other sources of capital or government support

The federal, state and territory governments have issued a significant range of financial and operational assistance for NFPs impacted by COVID-19. They are designed to relieve some of the crisis burden and deliver some rebuild support, and cover cash flow assistance, commercial tenancies relief, business investment incentives, access to credit and working capital, relaxation of regulatory and reporting requirements and government contract extensions.

Some of the most significant cash flow initiatives to date include:

- The JobKeeper payment providing wage subsidies to employers significantly impacted by COVID-19;
- Tax-free cash flow boosts of between \$20,000-\$100,000 delivered through activity statement credits;
- Australian Taxation Office case-by-case adjustments to deadlines and payments of taxation and superannuation obligations.

The small business relief package is another potential source of government support for NFPs. It is a \$250,000 'unsecured' loan offered to by the federal government but distributed through the banks. Each bank is managing the loan scheme slightly differently. The banks have been inundated with applications and for this reason it is preferable to access the loan though an existing relationship rather than approach a new bank relationship. NFP boards should be very clear about the ability of their organisation to repay and some lenders are requiring personal guarantees, and this becomes problematic for NFP directors at the best of times let alone during a crisis.

Finally, selling and leasing back new, existing, and aged plant and equipment on a non-recourse basis might be away to release cash for an NFP.

A final note

A key consideration for NFP boards and management facing the COVID-19 crisis is to quickly establish what the survive-and-rebuild landscape look like for their organisation. Many wrong decisions are fixable, but indecision or taking too long to decide can have the most adverse impact in a crisis.

Equally important, changing strategy may take time but changing tactics can start immediately and the most immediate stabilising tactic needs to emphasise cash flow:

- Cust costs to survive and earn the right to invest for the future;
- Cash is king – sweat the balance sheet;
- Understand duty shift and when dealing with stakeholders document clearly what has been agreed.

9.5 COVID-19: Director priorities for NFP recovery plans

Kate Towey and Charles Ashton | 24 April 2020, "COVID-19: Director priorities for NFP recovery plans", *COVID-19 Resources*, AICD.

As the impact of the COVID-19 pandemic first emerged, many boards focused their attention on responding to the immediate crisis. Boards must now turn their minds towards governance for recovery and not lose sight of their overarching role and responsibility for good organisational governance, purpose and strategic direction and planning.

At this critical time, NFP boards should focus on the future. Pre-COVID-19 mission statements, strategies, operating plans, assumptions and forecasts must be assessed to ensure they remain relevant in a post-COVID-19 environment. Similarly, existing risk management frameworks, crisis management plans and business continuity plans should be reviewed and updated to capture lessons learned and reflect post-COVID-19 requirements.

Understanding how governments, regulators and key stakeholders each are responding to the crisis, and how those responses may evolve over time, will help shape the future direction of organisations. Effective boards should invest time and resources to carefully consider and understand the impacts of these responses, to position their organisations to operate effectively and in support of their purpose as society emerges from COVID-19 restrictions.

As government intervention and slowing infection rates point to a period of tentative stability, what are the key considerations and questions that boards should be asking? How can a board best position their organisation, not only to survive the immediate impact of the crisis but also to adapt to a changed environment and stakeholder expectations beyond the coming days and weeks? In this director tool, we examine some of the key areas that NFP boards should be focussing their attention on over the short to medium term.

Critically assess and update strategy, business plans and mission statement

Existing NFP strategy and business plans should be reviewed and updated to reflect the short-term impact of COVID-19 and changes to the organisation's operating environment, especially around changes in the focus and expectations of the community, members and volunteers. In many cases, the NFP operating model has been challenged, with the disruption to usual operations both exposing weaknesses in existing models and highlighting opportunities in modifying purpose and strategy. In reviewing organisational strategy, boards should consider the following areas:

Mission 'restatement'

In a post-COVID-19 environment:

- Will our existing mission statement maintain its relevance for our key stakeholders such as clients, members, employees, volunteers, donors and community partners, or will it have to be updated? Note that any changes will be constrained by the 'objects' of the organisation's constituent documents and any regulatory or tax requirements to maintain charitable status and tax exemptions that may be currently engaged.
- Will clients and members still have the same demand for our services or will their focus shift to more immediate concerns?
- How strongly will our mission statement and core values attract key stakeholders to continue supporting and contributing to our organisation?

Operating model issues

- How reliant is the operating model on the physical movement of goods and on physical contact? Can supply arrangements be restructured to diversify providers and otherwise reduce delivery times?
- What initiatives can be implemented to support and retain clients when faced with constraints? For example, offering contactless service delivery or replacing physical appointments with telephone appointments.

Workforce issues – employees and volunteers

- What can we learn from COVID-19 to support a healthier and more resilient workforce?
- How has COVID-19 shifted perceptions around what is reasonably expected in a safe workplace?
- Should flexible or work from home arrangements be utilised more regularly across the organisation to support the NFP's strategy?
- Does the organisation have the right mix of full-time, part-time and casual employees, volunteers and contractors, especially in light of changes to our operating model?
- Can reliance and spend on external consultants or contractors be reduced and the required expertise be sourced or developed inhouse from existing employees, volunteers or community partners?

Strategic mergers, partnerships or other opportunities

- Are there strategic mergers or partnerships – possibly with other NFPs or community partners – that will support and strengthen our organisation in the future? This may deliver benefits ranging from consolidating and strengthening supply chains, cost reductions and the sharing of knowledge, expertise or resources.
- Are there any opportunities to restructure the organisation? Reducing the number of ancillary services which are already better served by other NFPs or pro-bono organisations may resharpen the focus on core strategy and mission statement. Adverse client impact can be minimised by establishing referral arrangements with external service providers and holding them to the same standards that your organisation would normally provide.
- Has COVID-19 presented any opportunities or challenges unique to our sector or organisation? How can we leverage or overcome these?

Review crisis management and business continuity plans

Crisis management plans and business continuity plans should be reviewed and updated to reflect learnings from the COVID-19 pandemic. These plans should be updated on a more frequent basis, to capture new information and COVID-19 measures around sector standards, best practice and any vulnerabilities or structural changes caused by COVID-19.

- In responding to the impact of the COVID- 19 crisis, what was done well and what has been managed poorly by our organisation?
- How did the crisis management and business continuity plans respond and adapt to external factors such as coordinated responses from the NFP sector?
- Does the business continuity plan allow us to viably operate, and for our employees and volunteers to continue to contribute, remotely or offsite?

Assess risk management frameworks

COVID-19 has shown there can be significant risks to financial stability, operational capability, capacity to meet contractual obligations and commercial relationships arising from pandemics. Existing risk management frameworks should be reviewed and assessed through this lens.

- Does the risk management framework adequately cater for once in a generation events including epidemics or pandemics?
- Are there other risks that were highlighted by the impact of the COVID-19 crisis, such as supply chain, operating model, financial or personnel risks that need to be adequately addressed by the organisation?
- Can personnel health and safety policies be updated as a positive long-term shift rather than a temporary reaction to the COVID-19 crisis?

Analyse finances, fundraising and sources of funds

Consolidating the organisation's financial position is critical during times of crisis and this requires consideration around existing and future sources of funding as the economic and political climate shifts in response to COVID-19.

- What is our financial position? Are there any immediate concerns that need to be addressed?
- What is our funding mix and how has COVID-19 impacted this? What is the relative reliance on membership fees, government grants, corporate support, donations and philanthropy and event fundraising? Will support-in-kind become just as valuable as financial donations?
- Is there sufficient cash to pay costs over the short and long term? Is it prudent to cut non-essential and discretionary expenditure?
- Is it possible to move to accepting donations online or hosting philanthropy or fundraising events via video conference? Target audiences may be easier to engage through these mediums in light of the social distancing measures that are currently in place.
- Is there any government or sector support available to access now or in future? Examples include the JobKeeper program for paid employees or targeted increases in government funding to address increased demand for social support services brought on by COVID-19.

Stakeholder relations and external communications

The COVID-19 crisis has shone a light on the importance of being able to rely on continued support from key stakeholders, whether this is in the form of financial support from donors, volunteers and pro-bono partners maintaining their existing commitments or engaging in productive dialogue with government and regulators. Now more than ever boards need to be mindful of at times competing stakeholder expectations and ensure an effective communication strategy is in place.

- What are our stakeholders focused on? Does their focus align with our purpose, strategy and business plan? The answer may be different for each stakeholder ranging from the interests of clients, employees, volunteers, donors to community partners.
- Will our stakeholders be supportive of our organisation changing its focus, whether temporarily or permanently, to address the immediate needs of the wider community?
- Are all key stakeholders adequately updated on any significant changes to our organisation?
- Does the communication strategy focus both on the immediate response to the crisis, as well as longer term and post-COVID-19 purpose and strategy?
- Where relevant, are we maintaining regular engagement with key contacts within regulatory agencies – such as the Australian Charities and Not-for-Profits Commission (ACNC) or the Australian Tax Office – to ensure that any potential changes in regulatory focus do not come as a surprise?
- Are we adequately complying with new and changing regulatory responses to COVID-19 whilst continuing to comply with existing legal and regulatory requirements? For example, the ACNC has introduced a raft of measures and guidance to assist NFPs with complying with their obligations during the COVID-19 pandemic, ranging from fundraising obligations to holding virtual annual general meetings.

Digital presence, technology capabilities and cybersecurity

Government mandated shutdowns of physical services around the world and increasing social distancing measures have reinforced the importance for NFPs to have a strong digital presence and technology capability. This allows organisations to continue to engage with their clients and members, deliver services and support their clients through an online medium to overcome increasing physical barriers.

- What advantages exist online for us to adapt our service model not just to weather the COVID-19 storm, but to support strategy in the recovery period? Are we able to reach a greater audience and client base now that physical distance is no longer a limiting factor?
- Do we have a technology platform which supports remote, flexible or work from home arrangements for personnel (employees and volunteers)?
- Do we have adequate cybersecurity measures in place to protect the organisation, members, personnel and clients?
- How have client behaviours changed – or digitization trends been accelerated – as a result of COVID-19?

Focus on the road to recovery

While leadership teams and other key stakeholders have appropriately focussed their immediate attention on the short-term impacts of COVID-19, the period of stability afforded by a slowing infection rate in Australia presents an opportunity for boards to refocus their attention on their primary governance role. It is essential that boards look forward and plan the 'road to recovery', ensure their mission statement, purpose and strategic direction remains fit for purpose and maintain adequate oversight and management of key risks and opportunities for the organisation beyond COVID-19.

9.6 Financial considerations for NFP survival

Javier Dopico GAICD | 11 June 2020, "Financial considerations for NFP survival", *COVID-19 Resources*, AICD.

In her AICD webinar COVID-19: Financial considerations for NFP survival, Roslyn Jackson FAICD spoke about the urgent cashflow challenges currently facing NFPs, five immediate actions that can be put in place and boardroom considerations for forecasting and end-of-year reporting.

For many NFPs, the COVID-19 crisis has presented acute financial stress that needs to be effectively managed. Revenue sources have tightened and program obligations remain or, in some instances, have increased. Directors must ensure existing funds can service the organisation in the short term and at the same time plan for a potential pivot towards a longer-term survival scenario. Of paramount consideration is the organisation's cash position and boards need to keep a careful eye on solvency to ensure they can continue to meet financial obligations as and when they fall due.

As they consider how their organisation can come out the other side of lockdown and through the social and economic crisis, key questions NFP directors should be asking include:

- Do we have enough funding to keep operating? How much 'runway' do we need?
- What actions are we taking to manage working capital?
- What funding options have we explored, or are available?
- How comfortable are we that management has explored all avenues to maximise cash?
- How many scenarios has the business considered?
- What can we learn from our peers and competitors about managing cash in this crisis?

Current challenges: cashflow and the inability to deliver services

While 60 per cent of webinar respondents felt somewhat confident that their NFP organisation will recover from the COVID-19 crisis, almost all recognised that the uncertainty of moving out of lockdown (the next eight weeks) is likely to be more difficult to navigate in terms of client service delivery and cashflow than the recent lockdown (the first eight weeks). This is because the sector is still navigating the speed at which it needs to move out of lockdown, with vulnerable organisations more likely to move forward slowly and cautiously.

For most NFPS, the two – often interrelated – pain points are cashflow and the inability to deliver services.

Cashflow issues:

- Continued fixed and variable costs with reduced income;
- Reduced donations;
- Loss of event and sponsorship income;
- Reduced payments and co-payments from clients;
- Payback of underspends on funding agreements – this is likely to be a significant issue coming up to year-end and it is crucial for affected NFPs to be talking to their funding bodies to see if they will be chasing underspends at year-end or will allow roll overs. DFAT is allowing an up to 40 per cent roll over;
- Loss of future grants and other critical funding agreements – the GFC saw cutbacks on grants; given there's been a lot more stimulus spending in the COVID-19 crisis then it's probable that government and funding bodies will be looking at areas they can cut back.

With regards to funding body communications, Ros Jackson emphasises "If you're on the front foot talking to your funding bodies, and obviously they have their own appropriations legislation that they have to comply with, a lot of them are likely to be as flexible as possible in the current circumstances".

Service delivery issues:

- Service delivery is prevented due to lockdown – this depends on whether or not the NFP provides an 'essential service'. However even for essential services there may have been a drop off due to confidence: staff health concerns, reduced volunteers, cancellations from client groups, etc.;
- Staff concern over personal protection;
- Clients cancelling appointments;
- Reduced volunteer support;
- Incomplete delivery against service contracts – this raises the questions: will there be a requirement to payback grants? and have appointments been cancelled in fee-for-service arrangements?

Five immediate financial actions for NFPs to put in place

1. Improve business visibility on key financial indicators.

"Key financial indicators [KFI] need to be at the forefront – that we're talking about them and that they're visible for the organisation", says Ros.

It's important to have a good board discussion about what are the KFI that mean something to the organisation and then, if required, change the ratios and the metrics to better suit the organisation's business.

Typically, cash flow metrics include operating cashflow, operating cashflow v EBITDA and cashflow forecast accuracy. Working capital metrics include average days receivables (days to get paid), average days payables (days to pay suppliers), average days inventory (days inventory in stock) and current ratio.

"The motto 'what gets measured gets improved' is paramount in these times", advises Ros. "Make sure you are carefully managing cash – tracking how quickly you're receiving it and how long it is taking you to pay invoices – and that you're mindful of the impact of government stimulus packages may be creating an unsustainable reinforcement [for example, JobKeeper that is scheduled to end in September]."

2. Quickly introduce/strengthen the cash culture

Set the tone from the top and ensure cash, and its importance, becomes a part of the vocabulary at all organisational levels.

There needs to be a strong consideration of cash visibility throughout all decision making. If the organisation has a good KFI story, then this will boost confidence. If not so good, it needs to be positioned in terms of steps being taken to improve it.

Accuracy is key, as cash is less forgiving than profit. Upskill and ensure the basics are known well and reinforced and ensure there is a financial governance framework that promotes accountability – that is, who is accountable for what – noting that measuring forecast accuracy is a key enabler.

"Accounting staff can talk duration scenarios with frontline staff to reinforce the solvency landscape."

3. Be creative with service delivery

Deliver online and social distance service variants (for example, virtual rather than physical exhibitions, or carpark/drive-through congregations, or tele-health consultations).

Do not assume technical illiteracy among clients and employees – there's a lot of established online competence that makes digital communication an easy transition.

Consider lessons learned in terms on longer-term strategic directions.

4. Consider all P&L and balance sheet levers

In times of financial crisis, it's important to look at levers on both sides of the income statement and the balance sheet.

Income statement levers include:

- Diversify revenue streams:
  - consider on-sell services (expanding your offering to your client base, within funding agreements);
  - consider what will be needed first post-COVID-19 (for example, focus on physical connections coming out of lockdown);
  - explore creative fundraising (for example, online auctions or social distance events);
  - contact corporate sponsors (for example, with an alliance/partnership proposal rather than handout request);
  - consider emergency appeals (this may be a difficult area because of unprecedented 2020 drain on emergency funds);
- Identify areas to improve operating margins (for example, streamline processes, emphasise electronic processes for staff and clients, and cut printing costs and convert to digital formats);
- Reduce once-off, non-essential costs (for example, look at office environment savings, and consider trialling automatic renewals);
- Right-size workforce costs (for example, can remote working arrangements be viably bedded into the longer-term);
- Speak to funding bodies (for example, for a once-off or sustained increase in funding based on current needs); and
- Maximise the benefit of government stimulus packages (for example, cash bonus, Job Keeper and apprenticeship/trainee support).

Balance sheet levers include:

- Invest cash holdings (difficult given current interest rates);
- Collect at point of sale (POS) as a way to bolster credit collection;
- Negotiate timing of payments, and repayment obligations, with your funding bodies;
- Negotiate more favourable terms/processes of outgoing payments;
- Release liquidity from non-current assets (for example, sell the building and lease it back);
- Recalibrate the current inventory processes (for example, reset demand forecasts, introduce just-in-time stock levels, purchase in bulk through the supply chain); and
- In the long-term, strengthen balance sheet equity (for example, ensure your NFP begins to make a surplus in order to protect the organisation's future).

5. Start to plan for recovery

Following the immediate cash crisis management stage – where the focus is on survival by maintaining solvency, scenario planning and initial stakeholder management – the recovery stage takes a 4-6-month future view with a focus on remobilising.

This recovery stage includes:

- reinvigorating service delivery;
- reviewing staffing requirements;
- resetting ongoing working capital requirements; and

- improving working capital performance throughout the organisation.

The subsequent normalisation stage takes a future 12-month view and focuses on opportunities.

The normalisation stage includes:

- resetting the strategic direction for the new environment;
- optimising the most cost-effective supply chain;
- articulating the new value proposition, threading it back to your vision/mission;
- adjusting working capital to help stabilise the business; and
- consideration of sharing resources with like-minded organisations (vertically) or across the NFP sector (horizontally).

The final stage of full recovery takes on a cultural theme and emphasises the ongoing sustainability of the organisation post-COVID-19, with a focus on agility in order to deal with future 'black swan' events. In this sense, it's less of a stage and more of a constant state where:

- monitoring performance and risk becomes BAU;
- performance improvement is ongoing; and
- consideration of the M&A landscape delivers potential strategic alliances

It's important to envisage a future operational model and plan for sustainability. These plans may include delivering services differently or finding other ways to get better value for money for the organisation. However the organisation decides to pivot, it needs to ensure that it is still delivering on its mission.

Three long-term considerations for long-term planning include:

- Safeguard how you do business:
  - If there are staff shortages in your sector, are you an employer of choice?
  - Why do volunteers want to volunteer for you?
  - Are there manual backup operational processes, in case of another black swan event?
  - Are we reliant on risky overseas suppliers within our supply chains?
- Optimise efficiencies:
  - How can we continue to get better value for our dollar?
  - What strategic alliances/partnerships exist, from M&A opportunities to sharing resources through a hub with other organisations
- Strengthen the balance sheet:
  - How long can we survive if this happens again?
  - What are our total liquidation costs?
  - How can we operate with a surplus in order to increase equity on the balance sheet?

Monitoring funding contracts

"Funding bodies are being flexible and may be able to move grants around in different areas, within grant guidelines," says Ros. "This may deliver some confidence for meeting contract service deliverables this year." Equally, this does open the concern of 2021, and how rollovers from 2020 will be accounted for in 2021 in terms of how many clients are taken on and how much funding is provided.

In terms of managing funding bodies and grant acquittals, it is important for relevant NFPs to:

- monitor their service delivery against each grant received, tracking non-deliverables and underspends;
- keep the funding body informed so that they can provide assurances (in writing) that will determine your NFPs going concern status;
- understand year-end implications: what are the payback and roll over options? what costs can be incurred while not delivering against the contract? what level of admin and overheads can be claimed and acquitted? and
- be creative about delivery, as long as grant guidelines are maintained.

Cashflow forecasting and liquidity

Some of the common pitfalls with cashflow forecasts in today's environment include:

- omission of government initiatives and their timing;
- timing of customer receipts (with customers having difficulty making payments);
- timing of membership payments, if they were invited to delay their payment
- (Note that the membership payment delays may also have a knock-on effect at AGMs as only financial members can vote at it);
- more regular cashflow reporting updates may be difficult for organisations with a volunteer treasurer with limited time.

This COVID-19 crisis presents many unknowns for NFPs, which reinforces the merit of factoring the probability of success of various grants and projects to be delivered this year into cash forecasts.

Director responsibility with cashflow forecasts hinges on being able to answer end-of-year questions regarding going concern and solvency. It's important to take a holistic view of liquidity and look at different areas of the balance sheet that could be hiding cash: donations from key corporate sponsors, terms of trade, funding underspends, cash holdings, rates of collection from receivables, funding payments, and other assets that could be liquidated.

Boardroom considerations for end-of-year reporting

The following are questions directors should be asking about their organisation's end-of-year reporting.

Going concern:

- Have we accurately forecasted budgets and cashflows?
- Do we have a view on the worst-case scenario?
- Have we taken a conservative approach to our assumptions?
- Are we in communication with our key donors/sponsors?
- Can projects be deferred or ceased?
- Have we prioritised our most valuable services?
- Are we protecting staff and clients, in this sense to ensure there are no future WHS or litigation issues?

Revenue recognition:

- How have we recorded income on contracts that recognise when specific performance obligations are met? (AASB 15 Revenue from Contracts with Customers)
- How have we recorded income on contracts where we control the funds? (AASB 1058 Income of NFP Entities)
- Have we correctly recorded income for constructed and acquired assets? (AASB 1058 relating to capital grants)

Leases:

- Have leases been capitalised onto the balance sheet? (AASB 16 Leases).

Other:

- Has anything changed to deliver an asset value impairment?
- Do we have the correct allowance for doubtful debts?
- How are we reporting post balance date events?
- How are we accounting for government stimulus packages?
- If we're recording volunteer labour, are we reliably measuring its fair value?

10 Preparing for black swans: Thriving through the tail risk

10.1 Decarbonisation: A strategic and financial imperative

John O'Brien FAICD | Partner,
Energy Transition & Decarbonisation,
Deloitte Australia

With the energy transition well underway, the financial risks and opportunities of decarbonisation are now a strategic and financial imperative for boards.

Greenhouse gas emissions are primarily those from carbon dioxide produced during the combustion of fossil fuels for stationary and transport energy and from industrial processes such as steel and cement making. However, methane emissions from gas operations, coalmines, landfills and agriculture also contribute.

These emissions are categorised as either 'operational emissions' (Scope 1 if emitted on site and Scope 2 for emissions from imported energy) or as 'value chain emissions' (Scope 3). Scope 3 emissions can come from the products you buy or when your products are transported and used by others.

Global drivers

The Intergovernmental Panel on Climate Change's (IPCC) Paris Climate Agreement is key to how many companies and governments are changing. The December 2015 agreement aims to **keep global temperature rise this century well below 2 degrees Celsius above pre-industrial levels**. The average Australian temperature in 2020 was **1.15 degrees Celsius above the long-term average**. Many large corporations are already taking action, such as committing to 'net zero', to renewable energy or to joining groups such as the **Climate Leaders Coalition.**

In addition, investor pressure is increasing. The **2017 Taskforce on Climate-related Financial Disclosures (TCFD) framework** recommends large companies disclose their climate transition risk (commodity demand, carbon pricing, stranded assets) and physical risk from increasing severe weather events.

Economic risks and opportunities

The economic paradox that has gripped Australia for the past decade endures: the economic fundamentals that make Australia strong today, are equally what expose the economy to disruption and change in the future.

Looking ahead, this paradox only becomes more wicked. Some of the most significant risks to Australia's economic growth trajectory are the physical risks associated with a changing climate and the unplanned economic transition risk from the world's response to this changing climate.

Deloitte Access Economics analysis shows that the Australian industries hardest hit by the pandemic are also the most vulnerable to the effects of a warming world and climate change. Australia's agriculture, construction, manufacturing, tourism and mining sectors all feature consistently in the top industries exposed to both the risks of COVID-19 and transition to a low carbon economy.

Over the next 50 years, unchecked climate change will, in average annual terms, reduce Australia's economic growth by 3 per cent per year. Deloitte Access Economics estimates by 2070, the economic cost of this will shrink Australia's GDP by 6 per cent (AUD 3.4 trillion in present value terms) and 880,000 jobs. Under this scenario, Australia will experience economic losses on par with the COVID-19 crisis every single year by 2055, then getting bigger.

Compared to this new base case, the analysis estimates a new 'green' growth recovery could grow Australia's economy by AUD 680 billion (present value terms) and increase GDP by 2.6 per cent in 2070 – adding over 250,000 jobs to the Australian economy by 2070.

Globally, we have seen urgent and massive intervention to the COVID-19 pandemic. In total, it is estimated that the **G20 countries have so far committed USD 6.3 trillion in fiscal support, representing 9.3 per cent of their total 2019 GDP**. Delivering global decarbonisation and energy transition will require an even greater level of total investment. An **OECD analysis** has estimated that the transition will require an investment of around USD 6.3 trillion per year until 2030 – the equivalent of the COVID-19 stimulus every year.

This level investment presents huge opportunities for companies that are forward thinking.

Setting the strategic direction

The board is responsible for setting the overall strategic direction and risk management framework of the organisation. Disruption from climate change and climate action are going to materially disrupt every part of the economy. What operations are optimal and how they are delivered will change unrecognisably over the next decade.

Understanding the steps required to decarbonise operations and value chains provides the factual basis on which to build a strategy that will enable the organisation to thrive. Assessing progress against a decarbonisation roadmap provides a high-level guide to evaluate and plan out the future activities required.

Deloitte Decarbonisation Solutions roadmap

Businesses need to embark on their climate action journey to comprehensively assess and understand the business implications of a rapidly changing climate and the demands of decarbonisation.

Whilst the framework is presented as linear, in practice this will contain multiple feedback loops and iterations on the pathway to net zero. Directors wanting to initiate this process should start from the risk perspective and then move through to understand the mitigating measures needed.

- **Understand climate risk** – Conduct climate scenario analysis and explore potential futures. Under a range of current and future scenarios, how could markets, revenues, profits and the asset values be impacted? How will stakeholders react under extreme circumstances and how will this impact your operations?
- **Pathways and targets** – Consider a range of emissions pathways and abatement gaps for your company and the potential costs, liabilities and opportunities inherent in each. With an agreed pathway, the abatement challenge, portfolio risk and financial impacts can be quantified and it is possible to establish short- and long-term emissions abatement targets.
- **Projects** – If carefully considered, the practical work of developing least-cost abatement projects could also provide the greatest strategic benefits. This could include not only more obvious projects such as buying renewable energy, but also thinking through integrating into enterprise resource planning (ERP) systems and executive remuneration, enabling product traceability with blockchain or forming partnerships along the supply chain to address Scope 3 emissions.

Directors should understand that, whatever industry they are in, climate risk has the potential to have a material impact on finances. Whilst this is obvious if you happen to work in an emissions-intensive sector, all sectors of the economy will be impacted over the next few years. Diversity of thinking in its broadest sense is a critical element to ensuring the best solutions are not missed in times of disruption.

It will be critical to understand how these risks could play out for both the company and its stakeholders and how they can best be mitigated. At the same time, significant opportunities provide material upside for those that act. Decarbonisation will have financial impacts across the economy and only the informed directors with effective governance structures will be able to successfully navigate their companies through the risks and realise the significant opportunities.

Jargon buster

The jargon	Definition	Relevance
Greenhouse gas (GHG)	GHGs absorb and emit infrared radiation in the wavelength range emitted by Earth. They include water vapor, carbon dioxide, methane, nitrous oxide, ozone, CFCs and HCFCs.	This is the starting point for any organisation – what is your contribution to the problem?
Scope 1 emissions	Emissions released on site from combustion of fossil fuels, through processing or from leakage of GHGs.	These emissions are within your control and the direct result of your operations.
Scope 2 emissions	Emissions released in the generation of any energy sources imported to your site – usually from electricity production.	These emissions are effectively bought so can be managed through contractual arrangements.
Operational emissions	Scope 1 and Scope 2 emissions combined.	The focus of many current emissions reduction targets.
Scope 3 emissions	Value chain emissions emitted in the making or transport of products you buy and the transport and use of products you sell.	These emissions are mostly not within your control but require working with others to reduce them. Likely to become the focus of future targets in time.
United Nations Framework Convention on Climate Change (UNFCCC)	The UNFCCC is the main international treaty on climate change. The objective of the UNFCCC is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous human interference with the climate system.	This is the body that is guiding the global discussion and activity.
Intergovernmental Panel on Climate Change (IPCC)	Body established by the United Nations in 1988 to drive global action.	The IPCC produces reports that contribute to the work of the UNFCCC.
Paris Climate Agreement	The Paris Climate Agreement under the UNFCCC was negotiated by representatives of 196 state parties at the 21st Conference of the Parties in Paris in 2015.	This has set the standard against which your organisation will be judged – are you aiming to do your fair share of the reductions needed?

The jargon	Definition	Relevance
Taskforce on Climate-related Financial Disclosures (TCFD) framework	In December 2015, the Financial Stability Board (FSB) established the industry-led Task Force on Climate-related Financial Disclosures (TCFD or Task Force) to develop climate-related disclosures that could promote more informed investment, credit [or lending], and insurance underwriting decisions and, in turn, enable stakeholders to better understand the concentrations of carbon-related assets in the financial sector and the financial system's exposures to climate-related risks.	This provides you with the global financial framework to report risks to your stakeholders.
Transition risk	Financial risks from issues such as policy constraints on emissions, imposition of carbon tax, water restrictions, land use restrictions or incentives, and market demand and supply shifts.	The risks from changes driven from governments and markets.
Physical risk	Financial risks from issues such as the disruption of operations or destruction of property.	The risks from the physical changes in the climate.
Climate-related opportunities	Financial opportunities such as access to new markets and new technologies.	These are how your organisation can build a strategic competitive advantage from the changes underway.

10.2 Why climate change risk hasn't gone away

Sarah Barker MAICD | "Why climate change risk hasn't gone away", *Company Director*, November 2020, AICD.

A crisis of the magnitude of COVID-19 is not only one of the greatest disruptors most business leaders will ever face, it can also distract investors and other market observers from aspects of performance that are sub-par, such as the poor disclosure by the ASX 300 on their climate change risk.

Legal and consulting firm MinterEllison's analysis of FY19 annual reports indicates that only 21 (seven per cent) of ASX 300 companies had "meaningful" climate change risk disclosures, compared with 137 (45.5 per cent) of reports containing little or none.

The companies doing exemplary work on disclosing climate change risk are, in the main, larger organisations, with 17 of the 21 companies that had meaningful disclosure in the ASX 100 – leaving just four mid- to small-cap companies (that rank between 200 and 300 on the ASX) having provided meaningful climate risk disclosure.

Despite COVID-19, climate change remained an institutional priority in the 2020 reporting season and this will continue into 2021. Pressure will come from:

- **Mainstream investors:** Institutional investor expectations on corporate climate-related strategy and risk management accelerated sharply in FY2019–20 and, having done so, are unlikely to regress.
- **Net zero strategy:** Both activist investors and, increasingly, mainstream institutional investors continue to place pressure on companies exposed to the economic transition to articulate their strategy for continuing to create value in a "net zero emissions" world.
- **Regulators:** While central banks and financial regulators are moderating direct corporate engagement during the pandemic, their oversight of climate risk impacts and disclosures is continuing. Guidance from regulators – the ASX, Australian Securities and Investments Commission, Australian Prudential Regulation Authority, and Australian Accounting Standards Board (AASB) – points to the recommendations of the G20 Financial Stability Board's **Taskforce on Climate-related Financial Disclosures (TCFD) report**.
- **Narrative reports:** Regulatory disclosure requirements for narrative financial report components continue to apply. As an economic black swan event, COVID-19 illustrates the role of stress testing and scenario planning as a risk management tool – itself a central plank of the TCFD recommendations.
- **Financial statements:** Recent joint guidance issued by the AASB and Auditing and Assurance Standards Board makes clear that the reasonable and consistent application of material climate-related financial assumptions in financial statement accounting estimates is squarely relevant to financial reporting and audit.

Improve disclosure

There is significant scope for companies to improve their disclosure on climate change risk and compelling reasons to do so. The analysis suggests that the quality of disclosures from FY19 was not uniform across, or within, sectors. For example, more than 70 per cent of "meaningful" disclosures were represented by companies in just four sectors: energy, materials, financial services and real estate. Conversely, nearly 40 per cent of companies with little or no disclosure fell into just two sectors: consumer discretionary and materials.

The following framework is useful for companies to consider as they work to improve their governance on climate risk. The top five areas for consideration by corporate boards are:

1. Narrative disclosures – TCFD-aligned disclosures, including stress testing and scenario planning across the plausible range of climate futures, moves from gold standard to base expectation.
2. Strategic positioning for the transition to a "net zero emissions" global economy prior to 2050, consistent with targets set out under the Paris Agreement.

3. A roadmap for corporate emissions reductions goals over short- and medium-term time horizons, in pursuit of the longer-term "net zero emissions" target.
4. Valuation and impairment – relevance of climate change-related assumptions to financial reporting and audit.
5. Governance, executive remuneration and their relationship with climate change strategy.

Our analysis into climate risk disclosures in 2019 is a wake-up call for companies that have not improved their disclosures in 2020.

10.3 Climate change now an opportunity, not a threat: AICD roundtable

Shelley Dempsey | 22 January 2021, "Climate change now an opportunity, not a threat: AICD roundtable", *Membership Update*, AICD.

Climate change was once seen by energy companies and others as a threat to business. Now, according to senior directors who spoke at a recent AICD roundtable hosted by The Australian, the tide has shifted and many companies see it as an opportunity. The wide-ranging discussion also covered issues such as the adverse trading environment with China and a cautiously positive outlook in terms of pandemic recovery.

In the past four and a half years that director Guy Cowan MAICD has sat on the board of Santos, he has seen the energy company transform its treatment of climate change in a major way.

"In that time, I think we've gone from seeing climate change as a threat to an opportunity. In terms of our current strategy, it's all around investing in carbon capture. We're now moving into hydrogen feasibility. We can produce hydrogen and we can transport it. But obviously, we need infrastructure to catch up."

Santos mainly produces and supplies natural gas, and Cowan says the new strategy is attracting clients, due to the more environmentally friendly focus.

"Now we're increasingly getting LNG buyers coming to us saying, look, we'd like to purchase more of your gas because you're heading towards carbon neutrality."

The company also announced recently "after a lot of deliberation at the board", that it has a clear target to be carbon neutral by 2040, with zero net-emissions. "So it's been a huge change, and there has been some resistance I have to say on the way, to a position where we now are embracing it. It's been an exciting and an encouraging journey and of course, gas is a natural transition fuel for renewables. So we are well-placed."

The issue of climate change has had a major impact on the business scene so far, and business is in fact ahead of government when it comes to energy, where it has been pushing hard for some time, according to Penny Bingham-Hall FAICD, who also spoke at the roundtable and sits on the boards of Blue Scope Steel and Fortescue Metals Group. This is partly due to pressure from shareholders.

"Business is playing a really pivotal role and has been pushed to some degree, particularly by international investors, but also by the Australian super funds to say, "We expect you to move ahead of this. We want to understand how you're thinking about climate risk, but also how you're transitioning to renewable energy."

Pandemic accelerates awareness

The COVID-19 pandemic has accelerated this trend and stimulated innovation, she adds. "People are saying we need to move to a safer planet in a way. And so I think there's a lot of acceleration in investment exploration and innovation technology around renewable energies." This applies to areas she is involved with through her boards, such as iron ore and steel making, where there are big emissions.

"There's a lot of work going into thinking about technology around steel. It's not easy. A few years ago everyone said it was 50 years away. But now we have seen vaccines suddenly being [developed] in a year. So I suspect technology around steel will be quicker than everyone thought."

Considerable investment and innovation are being directed towards hydrogen and renewable energy. "I think Australia is really well-placed to be able to export renewable energy to Asia in particular."

In terms of the property sector, the news is also positive. "From a sustainability perspective, I think the Australian property sector is leading the world," says Bingham-Hall, who also sits on the board of the Dexus property group. In terms of real estate, there has been a huge amount of work done in Australia to ensure that our buildings are energy efficient and water efficient. "The latest thing everyone's really looking at is air quality. That was parked by the bushfires, but COVID-19 has really pushed us to the next level in thinking about how we keep air quality in buildings."

Companies working towards a lower carbon future

ASIC has signalled that climate-related disclosure remains a key focus. In its **latest corporate plan to 2024**, the regulator says it will conduct surveillance to assess the extent to which listed companies have adopted appropriate governance structures to identify and manage climate-related risks and take other measures to enforce disclosure.

Banks are supporting businesses that are transitioning to a lower carbon future, according to Graeme Liebelt FAICD, who sits on the board of ANZ. "At ANZ, along with all the banks actually, we're recognising the risks inherent in this transition and trying very hard to support those who are transitioning to a lower carbon future and ultimately a net zero emissions future. And that's a very active program and ANZ particularly is coming for some flack politically because of that. But the reality is that it's just a normal part of business. It's what we do for a living and it's risk management."

The challenge is also seen as an opportunity for his other board, packaging firm Amcor. "The climate challenge or the planetary challenge, if I can call it that, is quite different," says Liebelt. "It's all about sustainability with respect to plastics. We are a plastics and packaging company, and many of our conversations, perhaps even the majority of our conversations are really around how we stop the pollution of the planet via plastics, how we generate recyclable products, how we get the circular economy working. And that's very front and centre. In fact, we see that as an opportunity, but one that's got tons of challenges ahead of us."

The China challenge

On the question of other challenges facing boards, the issue of Chinese trade tensions is seen as one that will need to be managed carefully both by business and governments in 2021 and beyond.

Cowan sits on two boards with major Chinese shareholders, including Santos and the Buderim Group. "Those relationships (with China) have to be maintained. On the other hand, certainly on my private board where we import a lot from China, we've been trying to assess the risk and thinking that if we can diversify supplies, that would be prudent. Because I don't think this geopolitical issue will be solved. Maybe (new US President) Biden will stabilise the relationship, but yes, it'll be with us for a while."

However, Cowan also sees supply chain constraints as a major issue going forward.

Other 2021 challenges

Organic growth is another challenge, especially for both Amcor and ANZ, according to Liebelt. "The outlook for the banking industry is that credit growth is not going to be very strong. And Amcor, frankly, is in industries where there is relatively slow growth. In order to get that organic growth going, I mean, M&A is always available, so we can do that. But in order to get organic growth going, we have to innovate effectively."

In terms of global operations, the combination of major expansion and COVID-19 will be a challenge, says Bingham-Hall. "Blue Scope Steel has global operations," she says. "You can do all the safety protocols and COVID-19 issues in the world, but when the contractors on site go home and go to the pub with their mates and get COVID-19, you can't stop that."

Cautious optimism for the future

Despite these issues, the directors who spoke at the roundtable expressed cautious optimism, with most of their companies seeing positive results.

Liebelt says "Amcor has come through really well. Business is strong and we've managed to hold the supply chain together." He also said the outlook for ANZ "looks to be playing out more favourably than we would have assessed six months ago".

Bingham-Hall is also increasingly optimistic saying "Blue Scope Steel has done incredibly well on the back of government stimulus, alterations and additions, and people spending more time at home. So the volumes particularly here in Australia, but across Asia as well have been really strong. So, it's surprised on the upside. And at Fortescue, obviously iron ore is going gangbusters."

She says one favourable trend to emerge has been the cooperation across business and government. "I think one of the positives to come out of this is that a lot of businesses have worked very closely with the government to support smaller businesses and the community. But obviously it's tough."

10.4 UK and NZ lead way on mandatory climate risk disclosures

Christie McGrath | 20 January 2021, "UK and NZ lead way on mandatory climate risk disclosures", *Membership Update*, AICD.

In recent months the UK and NZ governments have announced regimes for mandatory climate-related financial disclosures, with the Biden administration expected to follow suit this year in the US. These international developments are likely to be instructive for both Australian regulators and Australian companies grappling with climate risk disclosures, especially those with international operations.

New UK rules pave way to mandatory climate risk disclosures

In November last year, the UK's Financial Conduct Authority (FCA) announced new climate risk reporting rules for the UK's 'premium listed companies' (those companies that comply with the highest standards of regulation and corporate governance). Under the new rules, companies will be required to make better disclosures about how climate risks affect their business under the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). In essence, the TCFD's aim is to promote reliable and consistent disclosures by companies facing risks related to climate so that market participants will be better prepared to evaluate and manage risks and opportunities.

Initially, the new UK rules will be on a "comply or explain" basis, requiring companies to include a statement in their annual financial report which sets out whether their disclosures are consistent with TCFD, and to provide an explanation where they have not done so. The FCA has said it will consider shifting to mandatory TCFD disclosure in the future. The rules apply to accounting periods beginning on or after 1 January 2021.

The rules are accompanied by **guidance** to help listed companies determine whether their disclosures are consistent with TCFD recommendations. The FCA specifies that this should be informed by a detailed assessment of the company's disclosures which takes into account certain specified TCFD materials.

The FCA has also announced that it aims to bring in TCFD reporting obligations for asset managers, life insurers and pension providers in 2022, and will look to bring in disclosure requirements for private companies.

Along with other regulatory measures, these announcements pave the way for the UK government to deliver on its stated ambition for the UK to be the first country in the world to make TCFD disclosures mandatory across the economy by 2025.

Other international developments

In September last year, New Zealand became the first country in the world to announce that it will make TCFD climate risk reporting mandatory for banks and major asset managers and insurers from 2023, capturing around 200 large financial institutions in total. Like the UK, the reporting standard is to be developed in line with TCFD recommendations. While the disclosure requirements will not directly apply to non-financial corporates, it is expected to put pressure on them to increase their disclosures so that their financial sector shareholders can meet their obligations.

In the US, President Biden has pledged that he will "require public companies to disclose climate risks and the greenhouse gas emissions in their operations and supply chains". Although it is unclear how the Biden administration will implement mandatory climate change disclosures, experts anticipate that the SEC will be directed to make climate disclosure mandatory for public companies.

Late last year, Hong Kong financial regulators also announced that financial institutions and listed companies will have to disclose the financial impact of climate change on their businesses by 2025 (with some sectors required to comply earlier). Like the UK and NZ, Hong Kong companies will need to share information in line with TCFD recommendations.

What are the TCFD reporting recommendations?

In 2015 the Financial Stability Board (FSB, an international body that monitors and makes recommendations about the global financial system) established the TCFD with the goal of developing a set of voluntary disclosure recommendations for use by companies in providing decision-useful information to investors, lenders and insurance underwriters about the climate-related financial risks that companies face.

The TCFD issued its final report in 2017, setting out 11 recommended disclosures to help companies produce information that is useful for investors, including general and sector-specific guidance on implementation. The TCFD recommendations are now widely considered international best practice for climate-related financial reporting and are already being used in Australia by 58% of ASX100 companies (up from just 16% three years ago). Around 60 of the world's 100 largest public companies either support the TCFD, report in line with the TCFD recommendations, or both.

Will the TCFD become the global standard?

Relatedly, the International Financial Reporting Standards Foundation (IFRS Foundation) has recently consulted on a global set of internationally recognised sustainability reporting requirements, supporting comparability and consistency. The AICD responded to the consultation and considers the establishment of a Sustainability Standards Board (SSB), drawing on existing international governance and frameworks, a positive development in order to consolidate the disparate frameworks and bodies.

If the SSB is to be initially climate focussed, as seems likely, the AICD is of the view that it should look to adopt the TCFD recommendations, given the degree of market and regulatory acceptance globally. Importantly, entities that have already gone to significant effort to report against TCFD should not be required to commence that work again under a new standard. International regulators and organisations have also supported the IFRS Foundation's proposals.

What have Australian regulators said about climate risk reporting?

While Australia is yet to mandate specific climate risk reporting, regulators including APRA and ASIC have increased their focus on climate-change risks. APRA expects financial institutions to report on the risks under existing prudential rules and has endorsed the use of the TCFD framework.

ASIC has highlighted climate-related risk as a systemic risk in the Australian market and, like the ASX Corporate Governance Principles and APRA, recommended the TCFD framework to listed companies.

Although these measures may encourage listed Australian companies to report and disclose meaningful climate risk disclosures, practice suggests Australian companies are not doing so. A 2018 review of climate change disclosures by ASIC found that there were fragmented disclosure practices. Law firm MinterEllison's analysis of FY19 annual reports indicates that only 21 (seven per cent) of ASX 300 companies had "meaningful" climate change risk disclosures, and 137 (45.5 per cent) of reports containing little or none.

MinterEllison's assessment notes that the companies doing "exemplary work on disclosing climate change risk are, in the main, larger organisations, with 17 of the 21 companies that had meaningful disclosure in the ASX 100 – leaving just four mid- to small-cap companies (that rank between 200 and 300 on the ASX) having provided meaningful climate risk disclosure."

In 2020 ASIC undertook a further surveillance of climate risk disclosure by listed companies with the results yet to be released. It is unclear whether the Commonwealth government will look to mandate climate risk disclosures. Notably, while the Commonwealth government welcomed the TCFD recommendations in 2018 it did not consider law reform to mandate reporting was necessary. Undoubtedly, the Commonwealth government, ASIC and others will be following international developments closely as climate change risk continues to be a priority for institutional investors, activist investors and the wider community.

The AICD intends to release a resource to assist directors with climate governance later in 2021.

11 National COVID-19 status and the path to recovery

11.1 NCCC members on action needed to drive recovery

Narelle Hooper MAICD | "NCCC members on action needed to drive recovery", *Company Director*, February 2021, AICD.

In the period since the members of the National COVID-19 Coordination Commission (NCCC) started work, there has been no shortage of bright ideas to counter the collapse in output and secure recovery. From building transcontinental gas pipelines to quantitative investing, regulation-busting initiatives, social housing and a "Green New Deal" – rightly or wrongly, the hopes and dreams for Australia's future prosperity have been piling up on the NCCC's doorstep.

"We've been inundated with pleas for assistance and offers of help," says NCCC chair Neville Power MAICD. "We're getting ideas and suggestions, and a lot of businesses are looking from the angle of how they can be part of the recovery. It's in that innovation and entrepreneurial spirit for us to find every opportunity."

The chair of Perth Airport and the Royal Flying Doctor Service Federation Board, and former CEO of Fortescue Metals Group, who pilots his own jet, has become a household name since Prime Minister Scott Morrison asked him to serve on the NCCC.

Established on 25 March, as reports of COVID-19 infections escalated and fears were at their height, the commission was created in crisis, built on the run and has played a crucial, if controversial, role as conduit between politics, bureaucracy and business. The NCCC has rapidly transitioned through the first two phases – from damage control and workarounds during the shutdown to helping businesses get back to work, deal with IR issues and develop "COVIDSafe" work plans. Now comes the next most strategic phase – restoring economic activity and developing a roadmap for the longer term.

Power has a consistent message: this needs to be a reset. "It's critically important," he says. "It won't be business as usual. The crisis provides opportunities for businesses to rethink, to be more efficient, more productive and better address the markets they have. My take is that businesses are looking at this through the lens of: how do I change my business and what are the barriers and enablers to make that transition quickly?"

Seizing opportunities

Power says Australia has a once-in-a-generation opportunity to get things moving and he thinks we're up for it. "The key thing is, we can't just treat this like a one-off where it's going to go away and we can get back to normal," he says. "We need to think about the longer-term impacts. I'd encourage directors and executives to think of this as a business shock – whether it's a market shock, regulatory shock or a natural event. You assess the impact and think about risk management – the risk and opportunities out of that – and how you can nimbly reconstruct and reconfigure business around that. We want to restore consumer and business confidence, but maintain the very strict discipline."

The recovery is going to be nuanced, says Power. "We know there are areas of the economy that can come back quite quickly and operate effectively – mining and construction, for example. They can integrate safety into their workplaces and their businesses."

However, customer-facing businesses will take longer to restore some sort of normality, and anything international will take even longer. One of Power's focus areas is tourism, one of the sectors most affected by the pandemic and economic recession. "Hospitality and tourism are down 65 per cent and that [sector] is not going to come back quickly, but there are other parts of services and trades where it is coming back quickly."

He sees the restrictions on international travel as an opportunity to attract Australians to holiday at home.

"We are not going to have [the chance to visit] the Trevi Fountain any time soon," he says.

Power's priority is what can be done fast; the reforms that can be made to remove barriers for business, and approval processes that are "quicker, simpler and provide more clarity – not cutting corners". After that, it's about jobs – transitioning people into areas of the economy that need those jobs and rapidly reskilling – and underpinning that with a concerted effort to lower the cost of energy to spur local manufacturing and improve competitiveness.

Regaining confidence

NCCC deputy chair David Thodey AO FAICD emphasises the urgency of returning confidence and helping business and employees get back to work. "The most important thing is we get people back to salary and get household income going," he says. "We have more than 4.9 million people receiving government support – 1.64 million receiving JobSeeker payments and Youth Allowance, and 3.29 million on JobKeeper. Fifty-five per cent of employees work for small businesses. By September–October, the bank guarantee and JobKeeper will end. We need to help them transition and make sure small business receiverships are minimised."

Asked about expectations and opportunities for a reset, Thodey says there is fragility, but also opportunity. "You have to be pragmatic, but within that there are opportunities – be it regulatory reform or policy reform. We've already seen that with telehealth."

Also on Thodey's list of reform priorities are retraining and micro-credentialing so employees can more quickly build skills to align with where long-term value creation needs to be; digital enablement across all production – from food and agriculture to traditional manufacturing. "Everything has to be digitally enabled," he says. "There is a big opportunity to upscale the VET sector and universities will play a critical role. Getting all those levers right is critical."

In a 29 May National Press Club speech, the prime minister said it is not only about getting Australia "out of the ICU" and "off the medication before it becomes too accustomed to it". It is also about "making the boat go faster", setting up Australia for economic success over the next three to five years.

"We now have a shared opportunity to fix systemic problems and to realise gains as a matter of urgency to get more people back into work," the prime minister said.

The government's reform agenda is familiar to those who have been frustrated at complacency and Australia's declining performance – skills, industrial relations, energy and resources, higher education, research and science, open banking, the digital economy, trade, manufacturing, infrastructure and regional development, deregulation, federation reform and a tax system to support jobs and investment. Skills and industrial relations reform are near-term priorities. Between now and September, Attorney-General and Minister for Industrial Relations Christian Porter will chair five working groups on issues ranging from award simplification and enterprise bargaining to casual workers, compliance and greenfield projects – which will include representatives from employers, unions, business and community.

The recovery efforts involving the NCCC join a concerted collaborative effort across the broader business, union, government and NFP community. For example, organisations such as the Business Council of Australia (BCA) have working groups addressing issues such as corporate governance, digital economy, energy and climate change, health, housing, regional development, major projects, tax and workplace relations – with input from the likes of RBA board member Prof Ian Harper AO FAICD and former NAB chair Dr Ken Henry AC.

Investment mindset

Alison Watkins FAICD, group managing director of Coca-Cola Amatil, who co-chairs the BCA's COVID-19 economic recovery working group, says there has been "a fantastic spirit of collaboration – collaborative, but fast-tracked".

"This stage is the time-critical one," she says. "We have a cliff approaching where, as an economy, we've bought ourselves time with JobKeeper and interest deferrals. Those [programs will] come to an end. We need to make sure we've got positive momentum back before then, otherwise the multiplier effect will cause more damage."

Watkins' priorities are improving the ease of doing business, finding opportunities to rectify weak business investment of the past decade and improving project planning and approvals. "There may be a case for ongoing support for individuals; to have a skills account for people to draw on," she says.

Accessible, affordable childcare is another priority. "In a recessionary environment, it's impacting women disproportionately, and younger people, so both of those cohorts are often challenged with family responsibilities," says Watkins. "If you take an investment mindset, you can think about things differently – if it helps us build earning capacity, it has broader benefits."

Governance and conflicts of interest

Power and other members of the NCCC emphasise they are not a decision-making body, but advisory. The aim is to bring their experience and networks to bear, working between the politics, the bureaucracy and business.

Amid headlines implying the NCCC was championing gas development rather than renewables as part of recovery and criticisms of conflicts of interests, Power fronted a Senate inquiry in June. He said to avoid perceived and actual conflicts of interest, he had not attended a board meeting of Strike Energy since his NCCC appointment. However, he stood by his view that we should be looking at competitive gas supply for its potential as a raw material for existing and new manufacturing industries to preserve and create jobs.

"Australia has an abundance of energy sources and I agree with the chief scientist, whose view is there is a role for gas in firming up renewables as we transition to lower emissions."

Declarations of interest have subsequently been lodged and he says there are processes to check in for any conflicts of interests. Power stresses the NCCC was started when the number of infections was rising daily. "It was a crisis and everyone did everything they could to put things in place, but the number-one priority was saving people's lives." He notes each commissioner is there because of their experience.

Success, he says, will be "the economy back running better than it was before, more people in jobs and for us to have taken every opportunity to use the crisis to come out stronger. The PM said six months, I'd say we're on track for that."

11.2 Driving infrastructure reform in the post-COVID era

Romilly Madew AO | 24 November 2020, "Driving infrastructure reform in the post-COVID era", *Membership Update*, AICD.

Directors have called for a continued focus on infrastructure to guide Australia's COVID-19 recovery. Infrastructure Australia, who are due to release their 2021 Australian Infrastructure Plan mid-next year, have expanded their role in response to COVID-19 and are working to provide reform recommendations and an implementation pathway that delivers better services, drives productivity, and supports Australia's governments in navigating the uncertain times ahead.

It was heartening to read in the Australian Institute of Company Directors latest **Director Sentiment Index** that directors want to see a major policy reset and continued focus on infrastructure to guide Australia's COVID-19 recovery. This is exactly what Infrastructure Australia's 2021 Australian Infrastructure Plan will deliver.

Due for release mid-2021, the next Australian Infrastructure Plan will champion pragmatic reforms to drive productivity, sustainability and quality of life for all Australians. The Plan will include sector-specific analysis of reform opportunities across transport, energy, water, telco and digital, social infrastructure and waste, as well as cross-sectoral recommendations on place, resilience and sustainability, and industry productivity and innovation.

It aims to be one of the world's most comprehensive plans for infrastructure in the post-COVID era.

COVID-19 has shown we need to think differently about how we plan for times of uncertainty. Beyond capital projects and the need for short-term stimulus that has rightly been prioritised in the 2020-21 Federal Budget, we need to focus on reform to shape Australia's long-term recovery response.

Our reform agenda needs to support Australia's economic recovery, but it must also deliver flexible, agile and resilient infrastructure services that better respond to changing and diverse community needs. We must embed sustainability into our infrastructure planning, and show leadership in innovation and digital delivery to provide better services and improve health, education and environmental outcomes.

Before the pandemic, Infrastructure Australia's **Australian Infrastructure Audit 2019** had already highlighted that we were facing a future of unique uncertainty. Back then, few could have imagined the collective impacts of drought, floods, bushfires, cyber risks and COVID-19 on our communities.

However, the fundamentals were already shifting and COVID-19 in particular has only accelerated the path of change. This includes changes in the way we use infrastructure, impacting work practices, settlement patterns, activity in our CBDs, public transport use, demand for active transport infrastructure and the value placed on green space, as we shift even further towards digitisation and remote service delivery.

Understanding the impacts of COVID-19

As Australia moves into the recovery phase, understanding the impacts of COVID-19 on our infrastructure needs to be a priority. To support this, Infrastructure Australia's role has been expanded to enable us to provide detailed reform and investment advice in support of the infrastructure-led recovery.

With additional resources, we have been able to substantially expand the scope of the 2021 Australian Infrastructure Plan to respond to COVID-19 and lead new research on the capacity of the infrastructure sector to deliver the current investment pipeline.

Delivering annual analytical assessments of infrastructure market capacity, this research brings together Commonwealth, State and Territory and industry data to support better decision-making around infrastructure investment and reform.

Quality project selection remains crucial to meet our current challenges and set us up for the future, which is why over the last 12 months we have also been focused on improving the efficiency of our business case assessments. In an extension of that work, we are pleased to have the opportunity to conduct a major reset of the Assessment Framework, which is our methodology for assessing proposals for inclusion on the Infrastructure Priority List.

Harmonising and streamlining our Assessment Framework with State and Commonwealth guidelines will be a key focus of this project, as we look to support better business case development and enable publicly funded projects to come to market as quickly as possible.

Collaboration is crucial

A detailed implementation pathway will be delivered as part of the 2021 Australian Infrastructure Plan, informed by extensive engagement with industry, sector experts and thought leaders across government including the Productivity Commission, ACCC, CSIRO and Bureau of Meteorology.

We are pleased to have had the opportunity engage with many AICD members who have provided valuable feedback, sharing their expertise and regional knowledge to help us understand the impacts of COVID-19 and the reforms that should be prioritised to provide the best outcomes for all Australians.

Our success in seeing Australia through the current economic challenges and towards a prosperous future relies on collaboration across government, industry and the community. This is an absolute priority for Infrastructure Australia as we work to develop to develop pragmatic, evidence-based reform recommendations that deliver better services and support Australia's governments in navigating the uncertain times ahead.

12 Nowhere to hide: Shareholders, stakeholders and the role of the board

12.1 Investors put boards on notice over stronger social governance

Shelley Dempsey | 22 December 2020, "Investors put boards on notice over stronger social governance", *Membership Update*, AICD.

Recent cases such as Rio Tinto and AMP show that managing stakeholder interests has never been more challenging for boards, especially in terms of social governance and meeting the demands of investors, says Brunswick Group Partner Pru Bennett GAICD. Bennett, who points to Brambles, AGL and Lendlease as companies benefitting from integrated reporting, says that all boards need to lift their game and secure more data and targets around ESG.

In a year where staff wellbeing has taken centre stage and investor power has ramped up to put Environmental and Social Governance (ESG) issues in the spotlight for boards, Pru Bennett, former Managing Director at Blackrock Asia Pacific and Chair of the National Foundation for Australia-China relations, is hearing loud and clear from investors that ESG remains a key focus.

"I've been talking with investors over this period of time and it is clear that the S (Social) of ESG has really come to the forefront. The treatment of human capital as a risk management issue as well as an opportunity, and the way boards and senior leadership teams have approached this, has also become a critical area. My conversations with investors show that the way management and boards have managed these issues during COVID-19 has been a litmus test of board and management quality."

As we transition to a low carbon economy, boards also need to identify the risks and opportunities that a transition may afford companies, she told AICD in an interview. "We need to see more data and targets around ESG, so investors have some idea of progress, and how that relates back to ESG strategy."

Following is an edited transcript of the question-answer interview.

Are there any companies managing ESG particularly well, in your opinion?

Generally Australian companies do manage ESG well and the standard of reporting has continued to increase. The next step is to look at ways of integrating ESG into the business, and at integrated reporting. There are a number of companies that have adopted integrated reporting, Brambles and AGL being two. And it's not just the reporting that's important, it's the integrated thinking that integrated reporting generates. I have spoken to a director of Lendlease, which is another company that has adopted integrated reporting. That director talked about the change in the conversation around the board table as a result of integrated thinking. This type of thinking is better for investors and other stakeholders over the long term as boards are more focused on the six capitals, where the value of the company lies and on value creation.

How important is ESG this year for corporate reporting, given the year that we've had?

In Australia, I believe reporting has generally been quite good. I work in the Asia Pacific region, so when I look at Asian companies, Australia is well ahead. However, our country is probably not as advanced as many European countries, even though Australia has had a big focus on occupational health and safety for a long time. So health and safety is managed and communicated well, but boards are going to have to lift their game in other areas, particularly when it comes to human capital and climate change.

When we look at the valuation of listed companies, and particularly service companies that are listed on the ASX, a big component of the market cap is human capital. Employees arrive or log in in the morning, then they log out or go home in the afternoon. If they're not logging in or coming into work the next day, that business doesn't exist. So how human capital is managed and reported, and disclosing the appropriate data to investors to demonstrate good practice, is vital information for investors. It's not just about providing a description. Investors are trying to assess the quality of management.

You said recently there's never been a more challenging time to manage the interests of stakeholders. Why?

We have recently seen a couple of cases where there has been a very big focus on profit and returns that have been at the expense of stakeholders. In one instance, the board decided to impose a financial penalty on management, and that really didn't go down well with stakeholders. In another situation, we saw the loss of three senior leaders.

It is so important for boards to really understand who their stakeholders are, and how their strategy impacts society. There tends to be a focus on privatising profits and socialising costs. In some cases, operational costs are being socialised at the expense of society when they really should be internalized.

COVID-19 has been a real challenge for boards. While most boards would have had business continuity plans in place, I don't think any of those plans would have anticipated a significant portion of the workforce working from home for six months plus. That raised issues around employees, furloughed employees and how they are treated, and the mental health of employees.

Are you seeing any gap between the walk and the talk on the ESG issue?

There are gaps where the process is qualitative and there is a lack of data and targets. Once the data and targets come in, that demonstrates the walk, and without that, there is a gap between the walk and the talk.

So how can investors and boards put real muscle into the ESG approach?

Boards need to know what their investors are saying. It's not that the whole board should be meeting with investors, but it is important for the chairman, or for the lead independent director to engage with investors and take those views back to the board. The management team also has to understand what's top of mind for investors.

It is also important to understand the views of the different types of investors. In addition to index investors and active investors, asset owners are also a very important component of this equation. Asset owners' funds are being managed by asset managers, yet asset owners are taking a much more active role in voting and they are much more focused on longer term issues such as ESG issues. It is important for boards to be aware of what those issues are. What's top of mind for asset owners at the moment? What's top of mind for active managers? How are their expectations changing?

So what do companies really need to consider when they're providing market guidance after the year that we have had?

I think, honesty, and that is quite difficult to communicate when you don't know what lies ahead. If you don't know something, you need to come out and be honest about that. I think investors will have more trust in a company that is honest in their reporting. And they will pick that up in the quality of reporting as well.

Is assurance an increasing concern? How can we have confidence that what's being claimed for ESG and reporting is actually being followed up and carried out?

Well when it comes to reporting, it's about materiality. If the risk is material, as a director, you would want to see assurance of the process and data. Such an approach will provide a level of comfort that ESG risk is being managed well. There are other issues with ESG disclosures that aren't material but may be important to stakeholders and therefore should be reported. Such information would require a lesser level of assurance.

You're the chair of the National Foundation for Australia-China Relations. So what is the board attempting to achieve?

The foundation is in a very unique position. First of all, it has a very diverse board, which I think is good. It's a board of 14 - so it is large. Members come from academia, the arts, local communities and business. My role as chair is to gather the experience and expertise of the people on the board, to ensure we are providing sound advice to the CEO of the Foundation and to the Foreign Minister. The foundation funds activities from a very broad range of activities, so we need to make sure we are funding the right projects that have good outcomes for both China and Australia. We are looking for projects that have mutually beneficial outcomes for both China and Australia, but also for our very large Australian Chinese diaspora.

Our focus is on driving positive outcomes, so this is a good time, when the foundation can actually make a difference and help business. We need to keep that relationship between Australia and China going, given the importance of China to the Australian economy and our local communities. I think it probably has a more important role now than it has had in the past. Because I have a governance background, my role is to bring in a whole new governance process around approvals. We are not there to replicate what other agencies are doing but to fill the gaps, provide initiatives and partner with appropriate agencies.

12.2 How does directors' best interests duty compare around the world?

Jason Harris and Grace Borsellino | "How does directors' best interests duty compare around the world?", *Company Director*, November 2020, AICD.

COVID-19 has not only resulted in a major decline in economic activity as large parts of society began to enter lockdowns, but has also caused companies to focus on making challenging decisions about how to best allocate financial resources during the crisis. Many companies have been concerned about the effect of the pandemic on their workforce, suppliers and customers. Many have offered financial support for their customers, creditors and employees through measures such as shortening payment of invoices to provide cashflow or making financial accommodations on debt outstanding. Some companies have also decided to reduce or defer dividends and other capital returns to shareholders.

These measures raise the question of whether such decisions may be criticised as overriding the interests of shareholders – particularly decreasing short-term returns to shareholders – in favour of other stakeholders, and whether this will raise any liability concerns for directors of boards.

The duties of directors to act in good faith and in the best interests of the company under Australian corporate law are similar to those in other comparable common law countries such as Canada, Hong Kong, New Zealand, Singapore, the United Kingdom and the United States. Case law decisions demonstrate that directors have considerable discretion under the law when exercising managerial power. This discretion is not constrained to purely act in the short-term interests of shareholders, nor are directors legally required to make shareholder interests paramount (the so-called "shareholder primacy norm"). The determination of what interests are relevant to promoting the success of the company, and how those are to be balanced, is to be made by the directors and not by the courts reviewing good faith business decisions.

What does this mean in Australia?

The best interests duty is found in s181(1)(a) of the Corporations Act 2001 (Cth). The statutory duty operates in parallel with the general law duty.

The courts have adopted a variety of formulations over the years:

- "Bona fide in the interests of the company"
- "For the benefit of the company"
- "For the best interests of the company"
- For "the company as a whole"

The courts have clearly and repeatedly stated that the determination of what lies within the company's best interests is a matter for the board. It is not for the courts to determine where the best interests of the company lie.

While the courts have recognised that "directors must act in the interests of the company as a whole and that this will usually require those persons to have close regard to how their actions will affect shareholders", there is also case law that supports the "general principle that a director's fiduciary duties are owed to the company and not to shareholders".

This is consistent with the general principle that the board has management discretion and shareholders cannot usurp that by directing the board by a majority resolution.

In summary, directors are not required to focus only on shareholder returns when discharging their duties and making decisions in the best interests of the company. It is not a breach of directors' duties to exercise management power to consider the interests of employees, customers and creditors, even where the current shareholders might have different views.

Comparative perspectives

United Kingdom

In the UK, the best interests duties of company directors are stated in s172(1) of the Companies Act 2006 (UK). That section requires the directors to act to promote the interests of the company, and in so doing to have regard to a variety of stakeholder interests (such as employees, creditors and customers).

The requirement to promote the best interests of the company is stated to be "for the benefit of its members as a whole", but the decision as to how to balance these stakeholder interests is left to the board to determine.

New Zealand

The best interests duty is found in s131 of the Companies Act 1993 (NZ).

New Zealand company law requires directors to act in what they consider to be the best interests of the company. As to how the stakeholder interests should be balanced, this is left to the board to determine so long as it is focused on benefiting the company and not acting under a conflict of interest.

Singapore

In Singapore, the duties of company directors are stated in broad terms in s157(1) of the Companies Act 1967 (SG). Singaporean company law does not require that directors only act in the interests of shareholders, or that the interests of the company be equated only with the interests of shareholders.

Hong Kong

The best interests duty in Hong Kong is derived from the general law and remains uncodified. Hong Kong courts have largely followed UK law on this duty, so that the duty is subjectively assessed on what the directors believe is in the best interests and not merely what the court may believe is in the best interests.

Canada

The best interests duty is found in the Canada Business Corporations Act 1985 (Can) s122(1)(a) and in the Business Corporations Act 1990 (Ont) s134(1)(a).

Both of these provisions state the duty as requiring directors to "act honestly and in good faith with a view to the best interests of the corporation". The federal statute was recently amended to allow directors to take into account broader constituencies (including employees, retirees, pensioners, creditors, consumers and governments) – s122(1.1) – but these are merely permissive and not mandatory. This change was introduced to codify the recognition that Canadian courts have shown over many years in allowing directors the flexibility to balance the interests of different stakeholders.

United States

Corporate law in the US differs from state to state, although Delaware is the most influential corporate law jurisdiction. Many states have adopted some or all of the American Bar Association's Model Business Corporation Law (MBCL). The MBCL requires "directors to act in good faith and in a manner the director reasonably believes to be in the best interests of the corporation".

In Delaware, the Delaware General Corporate Law does not provide a detailed code on directors' duties, but the courts have strongly endorsed shareholder primacy.

In the leading decision in Revlon Inc v MacAndrews & Forbes Holdings Inc (1986) 506 A2d 173, the court said, "Although… considerations of non-stockholder corporate constituencies and interests may be permissible, there are fundamental limitations upon that prerogative. A board may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders." US law also clarifies that directors may take into account stakeholder interest through the use of constituency statutes. These are found in more than 40 states in the US where corporate law is state based, although not in Delaware.

Conclusion

The review of common law countries reveals a consistent approach to the best interests duty of company directors. This is that the duty is owed to the company, and gives the board discretion as to which stakeholder interests are considered and how they are to be addressed by making decisions to promote the long-term success and sustainability of the company. Outside of Delaware in the US, the shareholder primacy norm is not a guiding principle of directors' duties under corporate law.

12.3 Directors must face the challenge of serving all stakeholders

Clare Payne | 22 December 2020, "Directors must face the challenge of serving all stakeholders", *Membership Update*, AICD.

It's interesting that the recent 50-year anniversary of **Milton Friedman's famous New York Times essay** declaring 'the social responsibility of business is to increase its profits' came at a time when many leaders of the day are saying just the opposite. In the same month as the anniversary, Blackrock warned that **ignoring sustainability undermines fiduciary duty**. Just over a year earlier, 181 CEOs of the **Business Roundtable** committed to leading their companies for the benefit of all stakeholders. But do their actions match their words?

The statement of the Business Roundtable, whilst often referenced, was also met with scepticism. Simon Sinek declared himself supportive of the sentiment but sceptical of the sincerity. When BlackRock CEO, Larry Fink, first vocalised his support for sustainable investment, people called for action leading to a subsequent announcement in January this year that Blackrock would divest from thermal coal, however environmentalists remain wary. Edelman summed up the situation in May when they declared a moment of reckoning for business as the promise of stakeholder capitalism is tested by COVID-19.

There is certainly some way to go in ensuring integrity between words and actions, and research from **Harvard Law School** indicates that board approval is crucial to businesses achieving a genuine shift in how they operate.

Easy decision making isn't always good decision making

Some claim that blaming Friedman for the way shareholder primacy took hold is giving him too much credit. Apparently, his essay reflected the mood of the day (notably different to that of today). However, taken as a doctrine it obviously appealed. As a decision-making framework it could be seen as 'easy', allowing for swift, clear and non-negotiable decisions. Perhaps it's no wonder people took to it and have been reluctant to let it go.

By elevating one stakeholder (the shareholder) with one outcome (financial profits) complexities could be pushed aside. Leaders could, and in many cases felt they were obliged to, limit their thinking. In an ethical sense, they could turn a blind eye – and feel justified in doing so. Hence under this decision-making method business models that externalise costs to society and privatise profits, exploit the vulnerable and pollute the planet have flourished.

However, leaders are selected for the very opposite decision-making skills – they are promoted for their ability to wade through complexity, to exercise good judgement, for their rounded experience – qualities and skills that should mean they are able to make complex decisions that consider the ethics of trade-offs and seek to balance the interests of all stakeholders.

Fiduciary duty evolves to support a new doctrine

It's not just the words of business leaders that have evolved, the law, or more rightly the interpretation of the rules that determine director's obligations, have evolved as well – and they increasingly support an expanded notion of fiduciary duty with obligations to achieve more than just financial returns.

For years, Sarah Barker, Head of Climate Risk Governance at law firm Minter Ellison, has advised directors of their fiduciary duties and **highlighted the risks of narrow interpretations of these obligations**, particularly around climate. She is a regular speaker at the Cambridge Institute for Sustainability Leadership course hosted annually in Melbourne.

In our book, A Matter of Trust: The Practice of Ethics in Finance, Professor Paul Kofman and I cover in detail the evolving nature of fiduciary duty, both in Australia and globally. It's already 5 years since the UN-backed Principles for Responsible Investment, based in the financial hub of London and led by Australian Fiona Reynolds, published **Fiduciary Duty in the 21st Century**. In the first report they stated that fiduciary duty is not an obstacle to action on environmental, social and governance factors, and in the last (released in October 2019) they referred to 'modern fiduciary duty' concluding there have been fundamental changes in the expectations of fiduciaries.

The rise of legal cases, particularly class actions against boards, stand as a warning to directors of the expectation of an expanded notion of fiduciary duty. By the same token, the lack of cases against directors who have removed tobacco and are seriously incorporating ESG into investment portfolios, indicates such decisions can be made whilst maintaining director obligations.

A slow advance

For many, and particularly those in the responsible investment community, the move away from shareholder primacy is considered long overdue. Advances have stretched over decades – from the espousing of company values in the 1990s, to more serious corporate social responsibility (CSR) programs that moved beyond donations to impact, the championing of shared value, then 'purpose' and more recently the rise of ESG, leading to what the **Financial Times** has declared an intense battle to recruit ESG specialists.

Even in the face of a global pandemic, demand for Certified B Corporation status, the formal certification that verifies social and environmental performance with legal accountability to balance profit and purpose, has increased and **is considered by some as critical to a COVID-19 business recovery**. For those concerned about the viability of businesses under a new doctrine, Andrew Davies, the CEO of B Lab Australia and New Zealand, states, "B Corps around the world have developed successful business models by developing an impact-first approach and making binding commitments to consider wider stakeholders in their decisions and actions." He welcomes a new generation of consumers, managers and increasingly owners who are developing this new doctrine which focuses on accountability to all stakeholders.

The financials

It would seem the tide has turned and even the singularly financially driven will find it difficult to keep a narrow lens. 1 in 4 US dollars is now invested under a socially responsible mandate, and responsible investment is positioned as mainstream in the latest report of the **Responsible Investment Association of Australasia**. If we turn to the markets, the **S&P 500 ESG Index** has shown resilience during COVID-19 with excess returns against the benchmark index and the **Financial Times** reported that sustainability-themed funds have seen record inflows.

The final step – verifying practices and disclosures

Leaders have done well in mastering the language of stakeholder engagement, but now they must follow through by turning words and good intent into practice and then disclosing their progress. If not, they risk being called out, not just by reporters and activists but by those who control investment.

The process we are now seeing, where formal consultation is underway to define ESG criteria and standards to improve ethical governance, is an important step. EY Global Chairman, **Carmine Di Sibio**, recently declared, "The time is now for companies to broaden their engagement with stakeholders," as EY, along with the other big corporate accounting firms and partnered with the World Economic Forum, endorsed a **new reporting framework** for environmental, social, and governance standards. We've long relied on accountants to verify financial statements, now we will rely on them for much more – and everything, including the planet, will rely on it.

13 Turbulent times for the aviation and tourism sectors

13.1 What happens to governance when the world stops?

Darrell Wade | Chair and co-founder, Intrepid Travel

In the first few days of February last year, Intrepid Travel's CEO James Thornton updated the board on January's results. It was a record month with the best ever sales. Profitability was outstanding, client feedback the best ever and staff engagement through the roof. Our travellers were thoroughly enjoying our brand of sustainable, experience-rich travel in 120 countries around the world, having come from over 40 different source markets from Beijing to Brixton, Boston to Brisbane. But January was not a blip – we'd had five record years in a row averaging over 20 per cent compound growth. Our global team was on fire delivering growth with profit and purpose. Life was good.

Less than four weeks later I got a call from James recommending we pause our entire global operations and commence repatriating thousands of clients back to their respective home countries. The world was about to stop.

In just a few weeks, COVID-19 had gone from rumour of an obscure sickness in a Chinese market to a global phenomenon. Everyone was impacted, but arguably the travel industry was impacted more than most. And it felt like we were at the epicentre.

So what is a chair to do? There is, after all, no manual for a pandemic. Or is there? We had very experienced staff, outstanding leadership and a board that was aligned behind the mission of the business. Beyond that we had operational health and safety manuals an inch thick, a risk management framework and a strong balance sheet. We would be okay surely?

Well, yes and no.

To be honest some of that first month is now a fog. Events happened at a scale and speed that was daunting. For all the experience, training and procedures we'd had, nothing really prepared us for this reality.

The board essentially decided to focus on four things.

Staff and traveller safety

Getting people home and keeping them safe was paramount. With the world literally closing down in a global health crisis, this was not easy. Every hour there were transport providers, hotels and airlines closing their doors. Conversely, regulatory issues, health and border controls became harder every day, making repatriation much more difficult. It took us five weeks to get the last of our travellers back home to Germany from Bolivia. But overall, we did very well all things considered. I will be forever indebted to our team who went above and beyond to make it happen. For the first time ever, I imagined how Churchill felt when he saw the fleet of tiny boats returning from Dunkirk. It may sound melodramatic but I feel like lives were saved by ordinary people doing extraordinary things.

Cash management

Historically, Intrepid have always had a strong balance sheet and operated conservative financial policies, so we never really focused on cash all that much. We knew we were okay in the short term. But for how long? With zero revenue, cash pouring out of the business and no idea when travel would return, we knew that cash management with multi-scenario modelling needed to become a core competence very quickly. We knew things would probably get worse before they got better, so we paid all our staff their bonuses from last year's record results while

we still could. We knew we might need to draw on this goodwill in the months ahead. Otherwise, we took the decision to act hard and early on expenses, cutting everything we could to preserve cash. We let go over 100 staff members from our Melbourne office alone, many more from our offshore offices. Staff who had worked long and hard for us and had done nothing wrong. March was a very, very tough month. There were a lot of tears.

Business preservation

When Alan Joyce took the decision to park all of Qantas A380s in the Californian desert for three years, the board realised we were being too optimistic about the resumption of business. What if our business did not return for three years? What if our travel agent partners did not make it through? What if the hotels, guest houses and transport companies we used did not make it? What if customer buying patterns were forever changed due to emergence of online shopping, QR codes and Zoom? What were the new business opportunities that had arisen and what were the old cash cows that would be forever sent out to pasture? How were we to respond? Our board decided to do two things: refresh our 2025 strategic business plan that had only been signed off a few months earlier; and do a capital raise to ensure that our refreshed strategic plan had the resources to be implemented in full, so that our 2025 was as good or better than we had always planned, even with the disruption of a pandemic. Both items became all-consuming. The strategic plan was signed off in November. The capital raise was signed on New Year's Eve. I can honestly say we are more confident about the future than ever before, despite the remaining uncertainties of COVID-19.

Stakeholder communication

Intrepid is a benefit corporation, so we understand the importance of stakeholder communication. Our future prosperity rests on successful engagement and alignment with our staff, shareholders, customers and supply chain. It is an interdependent relationship; we cannot do without each other. So, whilst we ramped up our communication generally during the pandemic – especially with our staff – we really failed badly with one particular group. At the height of the crisis in March and April we pretty much ignored our future travellers – people who had paid us money for a holiday but had had that holiday cancelled due to the pandemic. For about four weeks we effectively went AWOL. It was poor. I would like to say we were too busy on other things, but really there is never an excuse to not talk to your customers. Fortunately, we realised our errors, wrote a genuine note of apology to our customers and the vast majority of them have kept their money with us and will travel the future.

And so, 12 months into a pandemic, things look very different to what they did. And yet, now they seem somehow familiar again. The chaos has gone, even as large questions remain. Our audit and risk committee met just two days prior to writing this piece in early February, and a fly on the wall might not have noticed very much difference to the same meeting 12 months or so ago. Reports were issued, policies were approved, risks were reviewed and performance was acknowledged. The atmosphere was collegiate and productive with one eye in the mirror and one to the future. A sense of orderly governance had returned. But in a funny kind of way, despite all the turmoil, stress, pain and chaos, I do not think it ever really left.

Good governance ensures that great companies remain great. They endure and prosper, managing risk and engaging with opportunities. But having said all that, I would not wish a pandemic on anyone. Even for those of us who were safe and healthy, we could all have done without last year!

13.2 Charting the flight path to recovery

Rob Gurney | CEO of oneworld Alliance

When the global onset of COVID-19 began impacting air travel in the first quarter of 2020, the immediate priority of the airline industry was the health and well-being of customers and employees. Safety has always been the number one priority of the industry and the core tenet of everything we do, regardless of the environment we are operating in. At the start of the pandemic, oneworld member airlines moved quickly to implement health and safety measures throughout the customer journey. These include enhanced and increased cleaning of aircraft and customer touchpoints, introducing the use of masks and face coverings, expanding contactless check-in and baggage processes and adjusting inflight service procedures to reduce contact.

As the number of COVID-19 cases grew around the world, the airline industry saw a collapse in demand. Latest statistics from the International Air Transport Association (IATA) show that international passenger traffic from January to November 2020 fell 75 per cent compared to the year before. Airlines took steps to bolster their liquidity and conserve cash, with IATA warning that global airlines are expected to burn through US$ 77 billion in cash in the second half of 2020. Almost all airlines have undergone some form of restructuring and rightsized their fleets to align to the new demand levels.

The approval and distribution of COVID-19 vaccines is an extremely positive development. However, with a rapid increase recently in COVID-19 cases particularly in the northern hemisphere, further government entry and travel restrictions have been implemented or are being considered. At the present time, it is not clear when these restrictions will be eased, resulting in further uncertainty for both travellers and airlines.

Being an industry where safety is the key pillar of our operations, we will never advocate for the resumption of travel absent appropriate safety mechanisms in place. As an industry, we have actively advocated for the use of pre-departure testing, which we believe can substantially mitigate the spread of COVID-19. In November 2020, we launched a joint testing trial with member airlines on select flights from the US to UK, and we look forward to sharing key learnings from the trial with governments and stakeholders.

As global travel resumes, health credentialling platforms will play an important part in the restart, with an increasing need to validate the COVID-19 test results of travellers in an accurate and efficient manner. As vaccines are deployed globally, these platforms may also be used to validate vaccination status. The potential of health credential platforms extends beyond air travel, since the validation of test and vaccination status will likely also be required in other scenarios including sporting events and concerts.

While COVID-19 has brought outsized challenges to the airline industry, we firmly believe that we are resilient. Pent-up demand for travel is evident, may it be to meet in person with our business partners, to reunite with our families and loved ones or to take that long-overdue vacation. We may be able to look up photos of the travel wonders of the world, but wanderlust cannot be satisfied through a virtual tour. Digital tools may have allowed us to connect remotely during the months of lockdown, but no amount of virtual connection will ever replace the ease and chemistry of face-to-face interactions with the people in our lives.

As an industry built on connecting the world, we have no doubt that this will always remain so and that clearer skies will ultimately prevail.

13.3 Boost your strategy with tech and data

Beverley Head | "Boost your strategy with tech and data", *Company Director*, February 2021, AICD.

Tech-driven customer data provides rapid insights that can guide marketing, product and service development, strategy and supply chain decisions. For these organisations, information is power.

Organisations harvest customer data, they leverage artificial intelligence (AI), use customer relationship management (CRM) software, install chatbots, scour the internet of things (IoT) to understand what the customer needs and how to best engage them. Success comes from using vast swathes of customer data to secure fast insights to steer marketing, product and service development, strategy and supply chain decisions.

In the clouds

Oneworld, the global airline alliance, operates a data hub to support both its partner airlines and international travellers.

Australian Rob Gurney is the New York-based CEO of global airline alliance oneworld. It uses data to connect its members so they can create streamlined customer experiences. "Our remit is to focus on how we provide the best customer experience we can as customers traverse the networks of our airlines," says Gurney, whose team has been challenged in the disrupted times in global air travel during the pandemic.

He says data is critical – knowing who is travelling where, when, on which airline, as well as their loyalty program memberships. "Data and digital enablement are not things that are standalone on a business plan," says Gurney. "These things need to be at the heart of pretty much every business, consumer-facing or not."

At oneworld, the combination of digital technologies and data has allowed travellers using multiple airlines belonging to the alliance to check in online – using one airline's app from start to finish. Oneworld does not store customer data, but has set itself up as a data hub where partner airlines can share their data in order to create and deliver new customer services. "We built the capability to be able to do that," says Gurney. "The airline would only have to integrate once to the platform and they control permissions about releasing boarding passes."

For the eight million passengers (pre-COVID-19) who each year complete legs of their journeys on different oneworld airlines, it strips friction from check in. And if data streamlines check in, the alliance wondered whether it might streamline other customer experiences as COVID-related restrictions ease.

Trade between the UK and US is worth about $402b a year and airlines play a critical role. But by November 2020, the 111 weekly London-New York flights operated by oneworld members American Airlines and British Airways had plunged to just 14.

Gurney considers quarantine a "blunt instrument" for ensuring passenger safety, instead championing a COVID-testing trial for transatlantic passengers. It involves a nasal swab from a passenger 72 hours before their flight (passengers collect this themselves, following online instructions), which is submitted for testing. If negative, that data clears them for flight and they will be re-tested on arrival. "We are running the trial to show that a single pre-departure test is a significant risk mitigator to allow governments to consider removal of quarantine," says Gurney.

If the trial is successful, he hopes the testing data could be available directly to customers, with their negative test results allowing access to other services such as sporting venues on game day. It's an example of Gurney's belief that data needs to be embedded in enterprise DNA to deliver long-lasting value.

14 Turning a crisis into an opportunity

14.1 COVID-19: Governing for incremental recovery

John Macpherson | 4 June 2020, "COVID-19: Governing for incremental recovery", *COVID-19 Resources*, AICD.

[Success in the near future] will be defined by how organisations operate in a heightened and prolonged state of market uncertainty. The objective is not to return to normal but rather to, as much as possible, stabilise and incrementally redefine a steady state of business. In leading their organisation through incremental recovery, boards should focus on pressure-testing scenarios, recalibrating their organisation's risk appetite and resetting supply-chain strategy for the short-to-medium term.

As Australia emerges from lockdown, governments, business, media, economists and strategists are shifting the narrative to focus on recovery. While management teams focus on the easing of government restrictions, the impact of temporary stimulus packages and how to implement the gradual re-opening of workplaces, boards are turning their attention to strategy and structure in a post-COVID-19 world. But the long-term economic, social and political impact of this pandemic remains unknown and boards are being challenged to lead their organisation's recovery with little certainty.

While it's a relief to [focus] on recovery – to begin to reimagine a world of high growth, newfound digital efficiency and the return of global travel – leadership teams need to approach with caution. Progress in the months ahead will likely be incremental. For some, perhaps more realistically, it will be disjointed and painstakingly slow.

There is no such thing as a 'return to normal'

It is now generally accepted that we cannot expect the rapid V-shaped return to high growth that characterized the post-SARS period, where the virus did not have nearly the global impact of COVID-19. The best-case scenario to be planning for now is one of 'uneven global rebound':

- Developed markets bring the pandemic under control, albeit at different times. Authorities will move to rapidly isolate and contain localised outbreaks to avoid a return to more widespread lockdowns. Ongoing disruption triggered by local border, workplace and school closures will be the norm.
- A gradual global easing of travel and movement restrictions. Government-to-government negotiations for international travel will scrutinise infection rates, abilities to test and contact trace, and set expectations for reciprocity – but also be prone to politication.
- A controlled return to businesses re-opening. However, differences in demand through the recovery curve will result in excessive unfilled capacity in some sectors and undercapacity in others.
- Elevated geo-political and security risks in developing markets. For businesses that rely on stability in global trade, or those more likely to feel the impact of geo-political shocks, particularly with China, [the short-term future] will remain unpredictable and challenging.
- Global GDP is expected to begin to rebound in Q4. Some sectors will rebound faster and stronger than others.
- Federal and state governments around the world continue to be faced with the enormous challenge of balancing risk to the economy versus risk to public health.

The worst case scenarios are less likely but should not be discounted: second and third waves of pandemic infection, a delay in the development and distribution of an effective vaccine, corresponding waves of further large scale lock down, supply chain disruption, and geo-political and security challenges.

Three areas of board focus for incremental recovery

When the world does recover, it is unlikely to be business as usual. We will be recovering from a period of extreme operational, financial and societal change, uncertainty and upheaval. Businesses that will accelerate their recovery will be those that can rapidly analyse, adapt and remain agile in the post-COVID-19 landscape.

Success will be defined by how organisations operate in a heightened and prolonged state of market uncertainty. The objective is not to return to normal but rather to, as much as possible, stabilise and incrementally redefine a steady state of business amidst continuing global disruption. In leading their organisation through this incremental recovery, boards should focus on pressure-testing scenarios, recalibrating their organisation's risk appetite and resetting supply-chain strategy for the short-to-medium term.

1. Align clear actions to scenario planning and monitoring

The ability to remain agile and adapt to rapid changes in the next six-to-nine months relies on the strength of the organisation's scenario planning and the ability to monitor and forecast changing conditions. Boards need to ensure there are dedicated resources and advanced planning in place, which align with clear trigger points and actions. Without stepping into the role of management, reviewing and war-gaming operational plans will be an especially critical role for the board this year. Recovery and resumption planning should take a risk-based approach and directors should ensure their management:

- Operationalise scenario planning into the following four priority areas: clients and customer demand; operations, including the re-opening of facilities, offices and supply chain; employees; and investors and stakeholders. For each priority area, the scenarios and actions that need to be planned over the next six-to-nine months should be identified. Include scenario plans that consider the best case (prolonged disruption) but also the worst case (second and third waves of pandemic infection throughout 2021). Aligning actions with financial forecasts and closely monitoring trends in demand and cost control is going to be a key component of this phase. In order to maintain proactive agility, it is important to have access to data analytics that can help forecast risk velocity and trends (both business/financial and pandemic).
- Have detailed risk mitigation measures in place in order to get ahead of the curve and create certainty and control. Use state government guidelines on re-opening facilities and hazard assessments as a minimum requirement upon which to build best practice. Test the assumptions behind plans. Assume the organisation will continue to operate at reduced capacity for the remainder of the year, that there will be COVID-19 cases amongst employees, and that there'll be divergent reactions from stakeholders.
- Understand that the tone from the top needs to reflect a culture of reciprocal duties and responsibilities. The organisation should demonstrate that it will take care of employees and play an important role in containment and contact tracing within local communicates. Employees, in return, must respect new guidelines and behaviours that may seem inconvenient and uncomfortable.

2. Get ahead of the changing risk landscape

The next six-to-nine months is going to change risk environments and expose hidden vulnerabilities that will delay recovery. One of the early lessons from COVID-19 is the need for a more agile and data driven risk management process that allows organisations to rapidly adapt risk mitigation measures and response plans. Here are some of the challenges to the risk landscape that are likely to impact organisational risk frameworks:

- A potential increase in disgruntled employees and third parties. Organisational restructures may lead to cutting back staff, rolling back supplier contracts and potentially reorganising supply chains. This internal disruption will be compounded by an uncertain external economic and public health environment and may require careful planning and risk mitigation.
- Exposure to cybersecurity vulnerabilities. The current risk landscape has seen a significant increase in phishing, ransomware and malware attacks targeting the vulnerabilities inherent in a sudden shift to remote working. Increased training and awareness to ensure best practice cyber mitigation measures are in place may prevent a scenario of wide-scale system outage, especially as the organisation returns to full operations.
- A potential increase in compliance, fraud and disputes. It is not uncommon to experience an increase in fraud in an economic downturn but the added pressure to recover sales as quickly as possible, the prevalence of conflicts of interest in supply chains and the shortage of critical supplies and services are likely to exacerbate the current risk.

Prudent boards will be actively reviewing risk registers now, rather than waiting for the annual cycle of internal audit. Establishing a specific COVID-19 risk register that outlines vulnerabilities in the core categories of financial, legal, operational, people, security and continuity risks and receiving regular updates on monitoring, trends and risk mitigation measures in place, will ensure the board is effectively discharging its risk management obligations.

3. Restore supply chains in the short and medium term

Directors may be tempted to begin looking at a long-term strategic restructure of their organisation now, particularly when it comes to supply chains. For many organisations this may already have been on the radar with the advent of the US-China trade war, but COVID-19 has sharply focused attention on the challenges of a global just-in-time way of operating. Boards may need to reset key performance indicators for supply chain management, with resilience becoming a key metric alongside efficiency.

Notwithstanding this, there is an immediate challenge for the next six-to-nine months to focus on continued supply and logistics throughout long periods of unpredictable disruption. The first order of business for boards re-evaluating supply chains is to manage the short term.

The value of an 'in-flight' review.

Finally, throughout the next six-to-nine months many organisations will be capturing lessons and incorporating them into continuous improvement planning. Given the prolonged nature of the COVID-19 crisis, there is tremendous value in conducting in-flight reviews now, in order to course correct and apply ongoing improvements to optimise recovery and position the organisation for true resilience.

From recovery to resilience

As the first step to a full recovery, boards should be focused on the incremental resumption of business and finding that steady state of operations amongst ongoing uncertainty and disruption. In a normal crisis this would be an operational priority that would be delegated to management. However, given the scale and complexity of COVID-19 this step demands the full and active attention of the board.

Once this incremental recovery is in full swing, the board's role in accelerating a full recovery will set the agenda for long-term strategic planning that includes defining the organisation post-COVID-19, changing routes to market, developing a clear digital strategy, redefining competitive threats and understanding current regulatory impacts.

However, the COVID-19 crisis should also compel boards to focus on resilience as a key metric of performance and valuation. COVID-19 has arguably exposed a critical failing in the current approach to risk management. Corporate risk registers largely stopped rating pandemic as a risk scenario and most of the world was underprepared for the complexity and impact of the current crisis. Preparing for worst case scenarios – unpredictable and unforeseen 'black swans' – is a marker of organisational resilience. And with the next round of black swan events potentially in areas such as cybersecurity, climate change, geopolitical tensions with China or activist investor groups, boards that thrive in recovery post-COVID-19 will be those that take the opportunity to build a truly resilient culture within their organisations.

14.2 COVID-19: Boardroom oversight of recovery strategies

Kate Towey and Charles Ashton | 20 April 2020, "COVID-19: Boardroom oversight of recovery strategies", *COVID-19 Resources*, AICD.

Boards must judge when to step back, to allow their management teams to get on with daily business operations and managing COVID-19 impacts and to reset expectations on materiality of matters requiring board attention.

At this critical time, boards should ensure they maintain a focus on the future. Existing risk management frameworks, crisis management plans and business continuity plans should be reviewed and updated to capture lessons learned and reflect post-COVID-19 requirements.

Understanding how governments and key stakeholders are responding to the crisis, and how those responses may evolve over time, will help shape the future direction of organisations. Effective boards should invest time and resources to carefully consider and understand the impacts of these responses to position their organisation for success as society emerges from COVID-19 restrictions.

As government intervention and slowing infection rates point to a period of tentative stability, what are the key considerations and the questions that boards should be asking? How can a board best position their organisation, not only for survival but also success, for a horizon affected by COVID-19 that extends beyond the coming months?

Critically assess and update strategy and business plans

Existing strategy and business plans should be reviewed and updated to reflect the short-term economic impact of COVID-19 and changes to the organisation's operating environment, especially around changes in customer demand and any supply chain security. In many cases, the operating model has been challenged, with the disruption to usual business operations both exposing weaknesses in existing models and highlighting opportunities in modifying business practices. In reviewing organisational strategy, boards should consider the following areas:

Supply and value chain issues

- How reliant is the supply chain on the physical importation of offshore goods? Can supply arrangements be restructured to reduce import risks, to diversify providers and otherwise reduce delivery times?
- What initiatives can be implemented to attract or retain customers when faced with supply chain constraints? For example, can pre-order incentives be offered?
- Can delivery times be improved to deliver goods the 'last mile' from warehouse or storefront to the end customer instead of relying on external sources?

Workforce issues

- What can we learn from COVID-19 to support a healthier and more resilient workforce?
- How has COVID-19 shifted perceptions around what is reasonably expected in a safe workplace?
- Should flexible or work-from-home arrangements be utilised more regularly across the business to support the organisation's strategy?

- Does the organisation have the right mix of full-time, part-time and casual employees and contractors, especially in light of changes to supply and value chains?
- Can reliance and expenditure on external consultants or contractors be reduced and the required expertise be sourced or developed inhouse from existing employees?
- While sometimes unavoidable, redundancies or stand downs can negatively affect employee morale and organisational reputation. Have the impacts of workforce changes been adequately addressed and managed?

Emerging opportunities and challenges

- Has COVID-19 presented any opportunities or challenges unique to our industry or organisation and how can we leverage or overcome these?
- Foreign government lockdowns have exposed weaknesses in relying on an offshore workforce. Does the organisation have a contingency plan in place for when an entire offshore business unit goes offline?
- Should we maintain a core onshore unit or train back-up personnel who can come online quickly to fill the gaps?
- Is now the time to think and act locally? Given the strong government measures and responses in Australia and New Zealand leading to lower COVID-19 infection and fatality rates compared to other countries, does it make sense to refocus on the Australasian market?

Strategic acquisitions or divestments

- Are there strategic acquisitions that will support our business model in the future? This may deliver benefits ranging from consolidating and strengthening supply chains, to cost reductions and production synergies.
- Are there any business units that we should divest? These potential divestments might not fit within reshaped strategic or business plans, or may be an appropriate means of shoring up capital or provide the opportunity to re-deploy capital into a more effective investment.

Review crisis management and business continuity plans

Crisis management plans and business continuity plans should be reviewed and updated to reflect learnings from the COVID-19 pandemic. These plans should be updated on a more frequent basis, to capture new information and COVID-19 measures around industry standards, best practice and any vulnerabilities or structural changes caused by COVID-19.

- In responding to the impact of the COVID- 19 crisis, what was done well and what has been managed poorly by our organisation?
- How did the crisis management and business continuity plans respond and adapt to external factors such as any competitor or coordinated industry-wide responses?
- Does the business continuity plan adequately cater for flexible or work-from-home arrangements?

Assess risk management frameworks

COVID-19 has shown there can be significant risks to financial stability, operational capability, capacity to meet contractual obligations and commercial relationships arising from pandemics. Existing risk management frameworks should be reviewed and assessed through this lens.

- Does our risk management framework adequately cater for once-in-a-generation events including epidemics or pandemics?
- Are there other risks that were highlighted by the impact of the COVID-19 crisis, such as supply chain, financial and market risks that need to be adequately addressed?
- Can workplace health and safety policies be updated as a positive long-term shift rather than a temporary reaction to the COVID-19 crisis?

Analyse cash flow, financing and capital structure

Consolidating the organisation's financial position is critical during times of crisis and this requires consideration around cash flows, revenue, liquidity, existing finance, availability of future finance and capital structure, but boards should not lose sight of what comes next.

- What is our financial position? Are there any immediate concerns that need to be addressed?
- What is our capital structure? Will the market or financiers be supportive in the event we need to raise debt or equity? Would it be advantageous to have a reserve of undrawn debt or capital for the recovery phase of the economy which can spur growth either organically or through strategic mergers and acquisitions?
- What is our liquidity profile? Is there sufficient cash to pay costs over the short and long term? Can we service existing debt? Is it necessary to defer or cancel an upcoming dividend payment?
- Will there be an increase in bad debts from customers? Is there mutual benefit in lengthening repayment terms or providing a discount for upfront payments? Conversely, are suppliers causing a cash squeeze by shortening their payment terms?
- Is there any government or industry support available to access now or in future?

Stakeholder relations and external communications

The COVID-19 crisis has shone a light on the importance of being able to rely on continued shareholder support for both publicly listed and privately held companies, whether this is in the form of financial support through capital raisings or equity injections or informal support for a board's COVID-19 response plan. At the same time, government, financial systems and key sections of the market have embraced the principle of 'sharing the burden' in dealing with the economic impacts of the COVID-19 response, bringing into focus community expectations of business. Now more than ever boards need to be mindful of at times competing stakeholder expectations and ensure an effective communication strategy is in place.

- What are our shareholders focused on? Does their focus align with our strategy and business plan?
- Will our shareholders be supportive of our organisation helping to 'share the burden' and support the wider community rather than focussing on pure corporate and shareholder profits? For example, deferring or cancelling an upcoming dividend payment or reducing short term margins.
- Are all key stakeholders adequately updated on any significant changes to our organisation?
- Does the communication strategy focus both on the immediate response to the crisis, as well as longer term and post-COVID-19 strategy?
- Where relevant, are we maintaining regular engagement with key contacts within regulatory agencies to ensure that any potential changes in regulatory focus do not come as a surprise?
- Are we adequately complying with new and changing regulatory responses to COVID-19, whilst continuing to comply with existing legal and regulatory requirements?

Digital presence, technology capabilities and cybersecurity

Government mandated shutdowns of physical stores and services around the world, falling brick and mortar foot traffic and increasing social distancing measures have reinforced the importance for organisations to have a strong digital presence and technology capability.

- What advantages exist online for us to adapt our business model not just to weather the COVID-19 storm, but to support the business strategy in a prolonged recovery period?
- Do we have a technology platform that supports flexible or work from home arrangements for employees?
- Do we have adequate cybersecurity measures in place to protect the company, employees and customers?
- How have consumer behaviours changed or digitization trends been accelerated as a result of COVID-19?

Focus on the 'road to recovery'

While boards and other key stakeholders have appropriately focused their immediate attention on the short-term impacts of COVID-19, the period of stability afforded by a slowing infection rate in Australia presents an opportunity for boards to refocus their attention on their primary governance role. It is essential that boards look forward and plan the 'road to recovery', ensure their strategic direction remains fit for purpose and maintain adequate oversight and management of key risks and opportunities for the business beyond COVID-19.

15 How have small and medium enterprises grappled with COVID-19?

15.1 Australian SMEs recovery critical to economic bounce-back

Kate Carnell AO FAICD | Australian Small Business and Family Enterprise Ombudsman

2020 was one hell of a year – the toughest in living memory for many Australian SMEs.

Like a one-two-punch, natural disasters such as catastrophic bushfires were followed by a global pandemic, during which necessary government-imposed restrictions forced many SMEs to close their doors – some for months on end.

The true impact on the small business sector and the economy more broadly won't be fully understood for some time and the recovery of SMEs will be patchy.

While some SMEs are now well and truly back on their feet, others – particularly those in heavily impacted industries such as tourism, events or the arts – have a long way to go.

At the peak of the COVID-19 crisis, the challenges SMEs faced were enormous. CreditorWatch data showed payment times had deteriorated. Small businesses were being paid on average 37 days overdue – an increase of more than 200 per cent compared to 2019. Ongoing late payment times have had a devastating impact on SMEs, particularly those hardest hit by the COVID-19 crisis.

Deloitte Access Economics released modelling in June, estimating 240,000 small businesses were at risk of failure. This was before the second extended lockdown in Victoria and the restrictions and border closures following the Northern Beaches outbreak over Christmas.

A range of measures taken by the government – most notably JobKeeper and the cash flow boost – and the banks moratorium on loan repayments certainly cushioned the blow for SMEs. The mandatory commercial tenancy code helped small businesses manage their rent during shutdown and reduced trade.

ASIC statistics showed insolvencies for the year were roughly half that of 2019 levels, indicating the extent to which government stimulus and protection measures kept businesses on life support, including some businesses that had not been viable for some time.

Over the coming months, these measures will be phased out and many economists are predicting this will be the trigger for a wave of small business insolvencies.

Given we have experienced the worst economic conditions since the Great Depression, the federal government's record Budget spend was the appropriate response, playing a significant role in the nation's avoidance of a hard landing.

While the federal government made great strides in a number of areas important to SMEs, there were some missed opportunities along the way.

The government successfully overhauled the insolvency framework, achieving several decades of progress in just a few months. Legislation is now in effect, allowing small business owners to turnaround their operations or alternatively wind up while still remaining in control of the business. However, the government could do more in this space by helping small businesses make the critical first step to sit down with their trusted adviser for a viability assessment.

My office – in coordination with the national peak accounting bodies – has been calling for the establishment of a small business viability program, where small business owners facing financial stress can obtain professional support valued at up to $5,000 to access tailored advice on the state of their business. Unfortunately small businesses with cash flow issues, compounded by falling revenue, may not seek out professional advice because it's deemed to be unaffordable. Sadly, this could imperil their future.

As government support measures continue to be phased out and bills start flowing in again, access to capital could be the difference between life and death for SMEs, particularly for those that haven't fully recovered from the COVID-19 crisis.

With banks subjecting small business borrowers to onerous credit assessment processes, rent relief ending and the imminent withdrawal of JobKeeper, comes a perfect storm scenario.

That's why my office is urging the federal government to establish a revenue-contingent loan scheme for otherwise viable small businesses to provide them with the cash flow they need to get through the next 12 months.

The loan program would operate similar to HECS, requiring borrowers to repay when their turnover reaches a designated level. Loans would be government-funded and capped at a percentage of the small business' annual revenue. Applicants would need to satisfy a viability test conducted by an accredited adviser to be eligible. This would give SMEs the confidence they need to seek funding, so they can survive and employ again. This is essential to Australia's economic recovery and a measure my office will continue to advocate for in the lead up to the 2021 May Budget.

As we emerge from this difficult period, the government has a golden opportunity to commit to prioritising Australian SMEs in the tender process. The total proportion of Commonwealth Government contracts by value awarded to SMEs in 2018/19 was 26 per cent. Given that 94 per cent of total Government contracts are valued under $1 million with 59 per cent below $80,000, it is clear our SMEs should have a larger slice of the pie. The establishment of a small business procurement panel would go a long way to achieving this.

In addition to government assistance, larger businesses share the responsibility to support SMEs. They too should be procuring more work from Australian small businesses and building professional relationships. Fostering these partnerships can offer small businesses the support they need to grow.

Big businesses need to do the right thing by their small business suppliers by paying on time and ensuring they are complying with the Payment Times Reporting Scheme which came into effect on 1 January 2021.

Business-to-business e-invoicing could be a significant part of the solution to poor payment times. As the major small business cloud accounting platforms become e-invoice enabled, there's no reason why it shouldn't be mandatory – particularly for ASX-listed companies. With 1.2 billion invoices exchanged in Australia every year, making the switch to e-invoicing would add an estimated $28 billion to the Australian economy over 10 years. For SMEs, e-invoicing streamlines productivity and improves cash flow with reduced admin and faster payments.

Among the lessons to come from the COVID-19 crisis has been that digitally enabled SMEs have fared better on the whole than those that continue to rely on older business models with no online presence. It is imperative that digitisation – and its many applications - is embraced by government and the business community so SMEs can realise the benefits of a digital economy.

15.2 6 strategies for SME survival

Jessi Towns GAICD | "6 strategies for SME survival", *Company Director*, August 2020, AICD.

There is no doubt that off the back of the coronavirus lockdown many businesses are struggling. The small business sector, in particular, has been hit hard, suffering twice the impact with regard to job losses as big business, according to data released by accounting platform Xero. The Small Business Insights research, based on aggregated and anonymised data from the platform's almost one million Australian users, examines a number of indicators, including employment and revenue.

Data released in June shows the number of casual jobs in the small business sector fell by a quarter over March and April, while the total number of jobs (including full and part-time) fell 13 per cent. The sectors worst affected were hospitality, which recorded a fall of 40 per cent in employment; and arts and recreation, with a 29 per cent fall. The most resilient sectors were construction (one per cent fall), transport (three per cent) and professional services (four per cent).

Analysis of revenue from March and April shows an 11 per cent decline in revenues year on year, with hospitality falling the most at 51 per cent, and arts and recreation down 49 per cent. Some businesses, though, are thriving.

Trent Innes MAICD, managing director of Xero in Australia and Asia, says the businesses that have continued to perform strongly and are well positioned for the future are the e-commerce, digitally-based businesses, and those that have reoriented their business model to access and engage new audiences outside of their traditional customer base. Businesses were already on the journey to digitisation, he says, but COVID-19 has accelerated this.

Innes says many boards and business leaders will be re-evaluating their business models to ensure they remain relevant and can support the next phase of the business. The organisations that will thrive are the ones that can find clarity in the uncertainty and successfully manage the factors they do have control over. He outlines what business leaders can do to improve the resilience of their business for the post-COVID world.

1. Invest in technology and tools

A recent Small Business Insights report, based on pre-COVID data, showed the impact of technology spending on small business outcomes, with businesses that adopt and invest in technology being 68 per cent more likely to see growth. However, only one per cent of small businesses were investing their turnover into tech.

Australia has enjoyed good times for a long time and the impetus to innovate and invest has not been there, says Innes. However, during the crisis, tech solutions have helped businesses stay in touch, pivot and access new customers and markets. He believes tech investment will increase and that small business is much better placed than big business to access and deploy new technology quickly.

While online conferencing tools such as Zoom have been a lifeline for businesses of all sizes, more small businesses are starting to appreciate available tools that can help them run their business more effectively. From managing cashflow, simplifying bill payments, enabling the digital signing of documents, automating approval processes, recovering debt, completing compliance work, onboarding new clients, and acquiring and engaging new customers, the implementation of the right technology can help small businesses increase revenues, lower costs, improve payments times, streamline processes, improve efficiency and meet the demands of a remote workforce. Xero's platform also connects users to an app marketplace with more than 800 third-party apps. Machine learning is being used to suggest appropriate apps based on the information provided by the user.

We are heading towards a tipping point, says Innes. Where previously a lot of these things were a "nice-to-have", they're now becoming a "have-to-have", where you really must be on a digital platform to interact

with your customers, government agencies, your staff and the people who support your business. At a time when many businesses are considering de-prioritising technology projects as they deal with the more immediate threats of cashflow, cost management and business survival, those that do invest are more likely to set themselves up for future success.

2. Ensure clear oversight of your financial position

Businesses with clear insight into their financial position can make adjustments quickly, says Innes. When your revenues suddenly become unknown, you need to be able to manage your expense items and cashflow gap as best you can.

In the three years since Xero began tracking, data shows that on average, 50 per cent of businesses are cashflow-positive in any given month. In times of prosperity, it's fine to operate month to month, says Innes, but in scenarios such as this pandemic, many businesses have come under a lot of pressure. With economic uncertainty looking set to continue, having accurate financial information available in real time makes it a lot easier for businesses to control their cash and recognise the levers available to them.

3. Prioritise values over culture

In a similar way to profit (or loss) being an output of the business' activities, culture is an output of all the small moments of truth in an organisation, says Innes. "People try to manufacture culture, but culture is an output of purpose, behaviours and values. Values don't need to be explicitly stated, but they do need to be explicitly demonstrated," he says. The values of the business must be reflected in the behaviours of its leaders and its people.

Unlike rules and procedures, which may not scale and can damage employee engagement, values can scale as the business grows. "If you get employees engaged and believing in your values and living the values, they'll make good values-based decisions about your customers, themselves and the business."

Innes, who joined the company seven years ago when it had 30 staff and has overseen its growth to more than 700 employees, says if you look at the companies doing well, a disproportionate number have a great workplace culture. One of the key factors, he says, is hiring for the right fit in terms of attitude and values. He believes this also leads to a diverse and inclusive environment. But while it takes time to build a strong culture, this can be killed very quickly, and when a business starts running culture workshops, it can be a sign that it has lost its way. When the culture is not where it needs to be, leaders should reflect on whether the organisation's values are being modelled and rewarded effectively.

4. Trust and empower your people

People have adjusted quickly to new ways of working and many won't want to go back to the way things were. Where business leaders may have previously been doubtful their workforce could be productive and accountable working remotely, COVID-19 has proved it can be done. Given we are now better connected than ever before, this represents a significant opportunity to redefine the way we work. Innes is a strong believer that if you empower people, most will pay you back. The large majority of employees want to be productive and contribute. Those who don't will get found out. Businesses looking to attract and retain good employees will need to trust employees and be flexible in their approach to the work environment.

5. Re-evaluate your strategy

No matter what size business you are, you need a clear and articulate strategy for the future.

"Strategy at the end of the day is about making choices," says Innes, "about where you invest your capital, be that money or time. Then it comes down to whether you have the right people who can articulate what you want to achieve and execute on it. Strategy, people, execution."

He says that while many businesses will not survive, it may be the case their business model wasn't right and COVID-19 has exposed this more quickly. "It's a great time to reflect and ask, 'Is my business model suitable and sustainable for the environment we now find ourselves in?' And to have an honest look at whether you need to pivot, not just for COVID times, but for the rest of time."

Off the back of any period of uncertainty, it is critical for directors and business leaders to clarify what's important and review how they want to take the business forward.

6. The next generation of small businesses

There will be a contraction in the sector. "The reality is that a lot of small businesses disappear each year anyway, and a lot get created, it's a net/net effect," says Innes. But the small business sector is resilient and Innes is confident we will see a huge wave of innovation off the back of the crisis.

Historically, after an economic downturn, there is a spike in business creation. In 2008, in the middle of the GFC, new business creation dropped to 10,000 businesses. The year after, it jumped to 65,000. Innes says that given we've never seen anything like the scale of this coronavirus pandemic, he expects to see a huge jump in business creation over the next 12 months and is fascinated to see the innovation that will be spawned.

"The quickest way back to economic prosperity in this country is going to be through small business. We need to get confidence back up and support [the sector] as best we can. Small business is where true innovation, the next generation of jobs and economic prosperity comes from – and it's also [part of] the Australian culture deep down. We can play a massive part in helping with the recovery."

15.3 What SME directors need to know about new insolvency reforms

Christie McGrath | "What SME directors need to know about new insolvency reforms", *Company Director*, October 2020, AICD.

One of the first economic measures announced by the government in response to the COVID-19 crisis was six months' temporary relief for directors from personal liability for trading while insolvent. This temporary relief was designed to give directors the confidence to make urgent decisions regarding incurring debt and continue to trade through the crisis without pressure to enter into administration if potentially insolvent.

The relief has been extended beyond the initial six-month period, to 31 December. The move follows calls by the AICD for an extension in light of the ongoing economic uncertainty. The expiry of the relief coincides with the introduction of the government's significant insolvency reforms intended to support small business (see below); these are due to take effect from 1 January 2021.

Safe harbour protection

As the temporary relief comes to an end, directors facing insolvency should be aware of the safe harbour provisions that predated the temporary COVID-19 moratorium. Introduced in 2017, the safe harbour was intended by the government to drive cultural change among company directors by encouraging them to keep control of their company and take reasonable risks to facilitate the company's recovery.

Like the temporary relief, the safe harbour can be used by directors to buy time and allow the company to keep trading through the COVID-19 crisis instead of immediately tipping into voluntary administration. Directors who are concerned about potential solvency in 2021 should be considering whether they will be able to use the safe harbour provisions going forward.

How does it work?

Under section 588GA of the Corporations Act 2001 (Cth), a director will not be liable for the company's insolvent trading where the director starts developing and – within a reasonable period – implements a course of action that is reasonably likely to lead to a better outcome for the company.

To benefit from the relief, directors must ensure their organisation has paid all employee entitlements, complied with tax reporting obligations and kept up-to-date records.

When assessing whether the course of action will lead to a better outcome, directors do not need to

contemplate every eventuality and compare that to the appointment of an administrator or liquidator. However, they do need to take action based on the information that is available.

The legislation provides guidance for directors seeking to rely on the safe harbour, and suggested steps for directors to consider. These include:

- Undertaking a thorough assessment of the company's financial position.
- Preventing any kind of misconduct by officers and employees of the company, which may include assessing compliance and monitoring systems.
- Obtaining advice from an appropriately qualified adviser.
- Developing or implementing a plan for restructuring the company to improve its financial position.

These factors are a guide, and it is critical that directors continue to monitor the performance of the company and the viability of the course of action adopted.

The safe harbour legislation recognises that not all restructuring attempts or turnarounds will succeed. However, should a director later be subject to an allegation of insolvent trading, they will need to show evidence of a reasonable possibility that their course of action would have led to a better outcome.

Crucially, the safe harbour is not a "free pass" for directors. Corporations Act duties continue to apply, including that of directors to exercise their powers in good faith with care and diligence in the best interests of the corporation. Notably, under the best interests duty, directors are required to take into account the interests of creditors where a company is insolvent or nearing insolvency.

Insolvency reforms support small business

On 24 September, the government announced significant reforms to Australia's insolvency regime for small business. Drawing on key features from the United States, the reforms are intended to help more small businesses restructure and survive the economic impact of COVID-19. Where a restructure is not possible, the reforms aim to provide access to a simplified winding-up process.

Key elements of the reforms, which will require legislative amendment, include:

- The introduction of a new debt restructuring process for incorporated businesses with liabilities of less than $1 million.
- Moving from a rigid one-size-fits-all "creditor in possession" model to a more flexible "debtor in possession" model, which will allow eligible small businesses to restructure their existing debts while remaining in control of their business.
- A rapid 20-business-day period for the development of a restructuring plan by a small business restructuring practitioner, followed by 15 business days for creditors to vote on the plan.
- A new and simplified liquidation pathway for small businesses to allow faster and lower-cost liquidation.

The AICD and other stakeholders are examining what further insolvency reforms will be needed to encourage Australia's economic recovery, including the thresholds for imposing director liability.

15.4 New insolvency law reforms for SMEs

Zilla Efrat | "New insolvency law reforms for SMEs", *Company Director*, February 2021, AICD.

The most significant reforms in insolvency law in almost 30 years kicked in on 1 January – the day after the temporary safe harbour relief (aimed at supporting directors during COVID-19) ended. While the changes have been generally welcomed, a host of concerns and uncertainties exist. The reforms introduce a single, simpler, faster insolvency process for small businesses and draw on some "debtor in possession" aspects of the US Chapter 11 bankruptcy protection model. They should also reduce situations where directors are "too broke to go broke" because of the high costs of liquidation.

The government says the reforms will cover about 76 per cent of businesses subject to insolvencies today, 98 per cent of which have fewer than 20 employees. They are limited to businesses with liabilities of less than $1m, although Paul Apáthy, a partner at Herbert Smith Freehills, says it's not yet clear how this is to be calculated.

For the first time, they give smaller businesses an additional option when it comes to insolvency or administration. Treasurer Josh Frydenberg has described the reforms as "the most significant changes to Australia's insolvency framework in 30 years", which will "help more small businesses restructure and survive the economic impact of COVID-19".

KPMG restructuring services partner Gayle Dickerson believes the reforms could be just a toe in the water for insolvency reform. She sees potential for the reforms to be expanded to larger and institutional corporates and says it's possible the threshold will creep up. "This model aligns more closely to overseas jurisdictions such as the US, Singapore and recent UK changes," says Dickerson. "The UK has moved very quickly to implement new restructuring reforms, which have not been limited to small business. Virgin Atlantic was one of the first companies to take advantage of this."

Dickerson says directors of bigger companies should be developing their awareness and considering how they will respond if companies they deal with start using the new process.

Potential predators

As part of the regime, eligible small businesses will be able to approach a new broader class of small business restructuring practitioners (SBRPs) for advice. SBRPs will help determine if a small business is eligible for the process, help the company develop a restructuring plan, certify the plan to creditors and manage disbursements once the plan is in place.

John Winter, CEO of the Australian Restructuring Insolvency & Turnaround Association (ARITA) worries this will allow lower-qualified advisers to run the insolvency processes.

"For the past decade, successive governments have required higher levels of training and standards of insolvency practitioners – and we've met and exceeded those standards," says Winter.

The AICD considers it crucial that a broader range of appropriately qualified persons be available to help companies and their directors restructure. This will increase access to the proposed regime given the large number of small businesses that may avail themselves of this process, relative to the number of liquidators. Ensuring SBRPs satisfy certain criteria (such as being a member of a reputable professional association) will help ensure "dodgy operators" aren't able to take on the role.

Who's in control and who's protected

The changes allow distressed companies to remain in business while the restructuring plan is developed over a period of 20 business days. During that time, companies will be permitted to trade in the ordinary course of their business.

However, as Craig Shepard, a partner at advisory and investment firm KordaMentha, notes: "The objective states that control of the company remains with the directors, but a lot of the draft legislation contradicts this, such as the small business restructuring practitioner having to consent to

certain transactions and having the ability to impose conditions on transactions."

He says there's also uncertainty as to what protections are available for creditors who continue to trade with a company while the plan is being developed (see breakout). "These creditors are not currently provable in any subsequent liquidation and they don't have the protection of the practitioner being liable for them, like they do in a voluntary administration," he says. "Another question is whether secured creditors will be prevented from freezing bank accounts, which would stifle a company's ability to continue to trade through offset provisions. Also, there are no details about the requirements of the restructuring plan or how the plan will be enforced."

According to the CreditorWatch Business Risk Review for September 2020, Victoria had the highest number of businesses entering into administration in September, compared to other states. Victoria's number rose 23.8 per cent, compared to 11 per cent for the whole of Australia.

Guidance for directors

- Get advice early, so there's a better chance that there's something left to save in your business.
- Insolvency laws are complex; don't think you can navigate them on your own.
- Ensure you meet the eligibility criteria for "safe harbour" from 1 January; don't assume you will automatically be eligible.
- Ensure you hold regular minuted board meetings.
- Ensure you receive up-to-date and accurate financial information, including cashflow forecasts.
- Ensure all off-balance-sheet payment plans are included in the adjusted indebtedness and payment forecasts.
- Test assumptions and how different scenarios will respond to an evolving landscape.
- Keep on top of your market disclosure requirements.
- Review any opportunities to raise capital, recut agreements (such as rent) or reduce employee numbers.
- Engage openly with credit providers so they can become part of the solution.
- Avoid overly complicated plans; simple plans will be best understood and are most likely to garner support.
- Ensure the business has sufficient post-restructure liquidity to thrive.

Other uncertainties

Shepard says the new regime envisions greater use of technology. Voting, submissions of proof of debt and communications will be done online. While welcome, he says the technology isn't widely used or developed as the Corporations Act 2001 (Cth) hasn't allowed it until recently. "Available industry software generally requires a unique code to be issued to each creditor to access the portal, which is currently mailed," he says. "The current industry software doesn't have online voting because it is not permitted under the Corporations Act, although we understand at least one of them is close to releasing a version with online voting. And not all practitioners use the industry software."

Clint Joseph, the WA lead of KPMG's Working Capital Advisory Practice, says companies will need to continue to comply with their Australian Taxation Office and employee obligations to participate in the new process. But he notes that the small businesses in distress are often not up to date in these areas and may not be able to participate. He adds that it isn't clear whether the restructuring period ends when the restructure plan is approved (in which case, a period of plan administration might follow) or whether it ends when the plan requirements are fulfilled. "The two periods need to be clearly established," says Joseph. "It's also not clear what happens when the restructuring period ends without a restructuring plan being approved."

Creditors' view

Without the right settings applied to the government's insolvency reforms, creditors worry that their ability to support viable businesses will be reduced when these start to show signs of potential insolvency.

Nick Pilavidis GAICD, CEO of the Australian Institute of Credit Management, is also concerned that despite good intentions, the details of the new insolvency regime may have adverse consequences for creditors and the companies they support.

So is Grant Morris, national credit manager at Southern Steel Group, the largest privately owned steel distributor in Australia. He is particularly concerned about the lack of details on how the new insolvency regime for small businesses will treat preference payments.

The government announced that the regime would reduce circumstances in which a liquidator can seek to clawback an unfair preference payment from a creditor that is not related to the company. But the legislation has one line noting that the regulations will determine the circumstances where preference claims will be pursued.

"The appointment of a restructuring adviser is deemed to be an automatic act of insolvency which then puts us as creditors on immediate notice that any assistance provided, and payments subsequently received, would be attempted to be clawed back as 'a preference' by a liquidator should the restructuring fail," says Morris. "Many strong businesses like ours are in a position to assist with a temporary extension of payment terms or repayment arrangements, but again face the prospect of preference claims should the customer not trade out. This reduces our ability to support the businesses that most need it as we need to mitigate against the risk of preference claims, which may not be made for three years. It isn't fair that businesses like ours that do everything we can to support our customers are penalised for accepting repayment arrangements, when other businesses don't provide support through repayment arrangements or generous payment terms."

Pilavidis and Morris are uneasy about the new broader class of SBRPs. "Creditors need to have confidence in the process," says Pilavidis. "If the adviser isn't of a high standard and creditors aren't comfortable that the adviser will be looking out for their interests, they will naturally have a bit of hesitation and are thus less likely to support a restructuring plan."

"Only a qualified insolvency practitioner should be the restructuring adviser to provide the confidence to suppliers or financiers to support any reasonable proposal, adds Morris.

"Unlike a voluntary administration, advisers are not responsible for any debts incurred during their appointment, and the confidence of suppliers or financiers is therefore paramount. The risk is that they support and provide further credit only to see it diminish in the proposal, which may see a return to creditors of just a few cents in the dollar – this includes the exposure made during the supporting period."

15.5 Growth opportunities for SMEs

Shelley Dempsey | 6 August 2020, "Growth opportunities for SMEs", *Membership Update*, AICD.

Conducting a $230 million capital-raising during a pandemic could well be seen as a disaster in the making for most start-up entrepreneurs, and as too great a risk. But not for SME-focused Judo Bank, launched last year by co-founder Joseph Healy.

He and the board saw the COVID-19 crisis as an opportunity. "As with everything that we've done with Judo, we've taken a medium to long term view, rather than getting fixated on the short term," Healy said during an interview with the AICD.

"Clearly with the onslaught of COVID, there were some directors that said maybe we should postpone things...but we have very strong support from our investors and a board that sees the opportunity in both in stepping up and being available for SME businesses in the eye of the COVID storm. But also that COVID will go. And that it will be a different world that we will operate in post-COVID."

Judo now has a $2 billion lending book to the SME community in Australia, with another $1 billion in the pipeline, says Healy, a former head of business banking at National Australia Bank. So it is constantly assessing where opportunities for SMEs lie going forward.

"I see across the landscape lots of examples of businesses that have reinvented themselves in a way that showed great agility and adapted to this environment, and will come out of COVID significantly stronger as a result," he says.

As an example, one restaurant in Melbourne that is a Judo client and previously held a traditional approach to dining-in, had been forced to change its business model as a result of the crisis and is now making $60,000 a week from home delivered food.

He sees opportunities in the digital delivery of services such as education, health and fitness, nutrition, telehealth, and restaurant and grocery home delivery. "I think generally that wherever services are required, be it dining, be it fitness, be it other service-based industries, I see that those businesses will find new channels of revenues and new customers."

Online retail ordering has also "gone through the roof". "I think the move to online purchasing was already very much in place pre-COVID but it has really accelerated.

There was a certain segment of the community that was kind of reluctant or not as confident in using online purchasing, but is now doing that quite naturally," says Healy.

Education is another example of rethinking taking place. "People felt traditionally that education had to be a face-to-face experience, but because of COVID, people have been forced to look at online delivery of lectures and online tutorials. And I see that as an industry that's going to grow and grow and also make the whole education opportunity much more accessible to people."

Warning on mounting debt

The problem for many SMEs is mounting debt and he advises extreme caution. Judo has compiled analysis which estimates that by the end of September this year, there will be an increase in liabilities due to SMEs to about $25 billion, which will increase to about $40 billion by the end of March 2021.

This includes new loans, deferred interest payments, deferred rent and tax and other payments.

In order to combat this problem, Healy has lobbied the federal government and Treasury for a small business rescue package to be offered by the government and private enterprise. Talks are "ongoing", says Healy. This plan would temporarily convert some of the debt into equity for businesses with a viable future. The business could later buy back the equity stake upon meeting financial targets, or replace it with debt when they recover financially.

The important element is to strike a balance between caution and risk, says Healy. "I think it's time to be cautious. I know that some SMEs will borrow just to stay alive and I understand that. They need to rein in costs and try to keep the business alive, because you don't want to close the business down. And JobKeeper helps enormously," he says.

"The key right now in my mind is to be cautious, but also to use this as an opportunity. We've said this to all of our SME customers – use this as an opportunity to think about the future. In the hustle and bustle of daily life, you find yourself on the crowded dance floor trying to just get by. What COVID has done is create an opportunity to get off the dance floor and out onto the balcony, to think strategically about the future."

Healy has four pieces of advice for SMEs battling the crisis:

1. Discover your customers' unmet needs
2. Evaluate the risks and costs
3. Test new products/services with customers
4. Invest in innovation

Launching a global business during the pandemic

One SME which launched in mid-2019 and has prospered during the crisis by reading the changing market correctly is Lyre's Non-Alcoholic Spirits, a sophisticated drinks brand that has forged a successful global footprint in unlikely circumstances.

Three factors worked in their favour – partnering with Amazon, switching to an e-commerce focus and focusing the new brand on a wellness trend which capitalises on healthy living and a consumer preference surge towards non-alcoholic beverages.

Lyre's co-founders Carl Hartmann and Mark Livings took part in the Amazon Australia Launchpad program, which gives Australian startups access to the platform's retail expertise and infrastructure so they can grow their businesses. The program is designed to help Australian startups and entrepreneurs bring innovative and unique products to local customers.

"Signing up to the program gave us access to Amazon's online retail expertise, infrastructure and consumers so we could grow our business at pace," Livings told the AICD in an interview.

When launching your own e-commerce channel, a considerable investment of time and money goes into attracting customers to your brand, he adds. "So, for a new brand like ours, it's just so much easier if you can take your products to a marketplace where customers are."

The sudden closure of bars and restaurants following lockdown restrictions worldwide greatly impacted the business, says Livings. "Fortunately, having launched with a strong focus on e-commerce, we were able to quickly divert our resources to grow via e-commerce to maximise growth through this period."

The crisis also delivered new potential customers seeking healthier lifestyle choices. Digital marketing campaigns showing customers on video and via Zoom masterclasses how to make cocktails using recipes have been popular and translated into sales.

"More than ever, all the signs across the world indicate people are looking for better options and getting back to a less intense life. We play a role within that consumer shift as we don't come from the angle that "thou shalt not drink", but rather that you should have a high quality, credible alternative to alcohol.

"We have people who are sober curious, looking for a way to change the way they drink and then we have people who are not even aware that non-alcoholic spirits and Lyre's even exists. I believe all SMEs should think about what role their product plays in this new emerging world, as I have heard said often through this period "the future isn't what it was going to be"."

The global company has transactional sites in Australia, New Zealand, the US and UK, with sites in Europe and Asia on the way.

SMEs are innovating

Lyre's is one of many Australian businesses that have pursued innovation during the crisis, according to the Amazon Launchpad Innovation Report, released in July this year.

The research shows 28 per cent of SMEs innovated for the future during lockdown, while 35 per cent refreshed their business plans. The survey of Australian business owners reveals 92 per cent of SME businesses feel optimistic for the future, despite the challenges they face. Around 38 per cent reported a heightened focus on creativity during the shutdown, with a quarter of SMEs also exploring new revenue streams or launching an online channel during this time.

During COVID, products were also revamped, with one in six SMEs innovating by creating new products or transforming their existing ones. Meanwhile, one in five planned for or built a new business or product strategy moving forward, the Amazon research says.

The e-commerce giant, which launched in Australia in 2017, is now offering 125 million products across 30 different categories. Amazon Australia partners with local SMEs through the Amazon Launchpad Innovation Grants program.

New Australian Business Growth Fund

In terms of federal government assistance for SMEs, a $520 million growth fund to provide patient equity capital for small and medium enterprises has been announced. The Australian Business Growth Fund will be launched in 2020 and be funded by $100 million from the federal government and from each of the "big four" local banks, as well as by $20 million from HSBC.

Established Australian businesses will be eligible for long-term equity capital investments of between $5 million and $15 million, where they have generated annual revenue between $2 million and $100 million and can demonstrate three years of revenue growth and profitability.

The fund's investment stake will be between 10 and 40 per cent, allowing small-business owners to maintain control. The funding will be provided over a five-year period.

16 Mindful leadership: Governance and mental health

16.1 The grand challenge of creating a mentally healthy workplace

Peter Joseph AM FAICD | Chair, Black Dog Institute, The Ethics Centre

> **There are decades where nothing happens and weeks and months where decades happen.**
>
> – Vladimir Lenin

We are living in such revolutionary times. Not the kind that Lenin was describing but disruptive and discordant nonetheless. COVID-19 has certainly created a time like none other and is affecting every aspect of humanity. Combined with automation (AI and robotics) and long-term trends in climate change, directors have plenty to think about in regard to both the impact on our companies and our workforces. As leaders and learners, we are expanding the very nature of governance of the ever-adapting corporation.

We could argue that with the right mindset and perspective and as leaders and learners, we should venture further into the unknown and explore the nature of "place" in relation to where and how we live and where and how we work. How will this translate for our physical and mental wellbeing as well as our economic wellbeing? A grand challenge and opportunity for leadership if ever there was one. I dare say there would not be a think tank anywhere in the world that is not reflecting on the future of work and what the workplace might look like in the future. A kind of second Industrial Revolution.

Take healthcare as an example. In 2019 in the US approximately 12 per cent of the population had some experience of Telehealth. In the first three quarters of 2020 that figure had jumped to 52 per cent. The technologies and companies to enable this are growing dramatically. We will continue to embrace these opportunities to reinvent health systems including the treatment of mental illness - a rising challenge for us all.

A good example in the mental health space is at the **Black Dog Institute**, based on the UNSW/Prince of Wales Hospital campus. At Black Dog there is terrific impetus for mental health applied research and digital technologies that are revolutionising how we act and think about every aspect of mental illness. The Black Dog mantra is Science – Compassion – Action.

Black Dog has come a long way in a very short time. Only eight years ago the Institute had 30 people, today there are 200 and another 200 volunteers. Within five years those numbers will likely double again.

To provide some context, we have only been able to adequately explore the living brain for about 20 years since the genome project and decent magnetic resonance imaging. We have learnt more about the human brain in the last 30 years than in all of human history. And in many respects, it remains unexplored territory. It was only in 2013 that US President Barack Obama issued a grand challenge (with big dollars to back it up!) when he launched the Brain Initiative Alliance saying, "Here we are doing wonderful things exploring outer space. We have never explored inner space and now we need to do so." Black Dog Institute is very much part of that grand challenge.

It is estimated that at any point in time 1 in 6 Australian workers will be suffering from mental illness. A further one-sixth of the population will be suffering from symptoms associated with mental illness, such as stress and fatigue which, while not meeting criteria for a diagnosed mental illness, will be affecting their ability to function at work. Mental illness is one of the leading causes of absence and long-term work incapacity in Australia (and globally) and is one of the main health related reasons for reduced work performance. Research shows that absenteeism, reduced work performance, increased turnover rates and compensation claims as a result of mental illnesses, such as depression and anxiety, cost Australian businesses up to $12 billion each year. And that was three years ago! Employers and workplaces can play an active and significant role in supporting the health and wellbeing of their workers as well as assisting in recovery from mental illness. Every dollar spent on effective mental health actions returns $2.30 in benefits to the organisation.

A framework of how to create a mentally healthy workplace can be organised around five broad strategies:

1. designing work to minimise harm;
2. building organisational resilience through good management;
3. enhancing personal resilience;
4. promoting and facilitating early help-seeking; and
5. supporting recovery and return to work.

The economic case for getting things right is a no brainer – pardon the pun. But it goes much further for us as directors if we are truly going to change the game and not simply pay lip service to mental health reform in the workplace. In many ways we are bigger regulators on corporate governance than the regulators themselves. This can be because of fear of being sued (often well founded) or a hunger for certainty in an uncertain world. From a culture of compliance and box ticking, we are now required to be more mindful leaders.

The Ethics Centre in Sydney has long argued that if organisations are ever to reach their full potential, the technical competence of management needs to be reinforced by the art of leadership – which is, actually a form of ethical practice. The Ethical Advantage requires strategic vision and moral courage. Seeing vulnerability as a strength and opening the door to humanity, humility and learning. There is a demonstrable link between high levels of organisational trust, wellbeing and prosperity for the nation. The potential benefits are huge and I can highly recommend following this **link** and seeing the evidence from the report done for the Ethics Centre by Deloitte Access Economics.

We all have personal and professional reasons to pursue this work, myself included. Fifteen years ago, I lost my best mate, my son Michael, to suicide at the age of 30 after an intermittent battle with mental illness over 17 years. For me, Black Dog is his legacy.

Professionally, as a director and a chair, you wish deep down to change things for the better in the workplace of any kind. Together we can accept the grand challenge of the mind to help solve the grand challenge of where and how we work and create and leave a legacy for those that follow us. Times like none other. Leaders and learners all!

16.2 How directors can protect employee (and their own) psychological wellbeing in the COVID-19 era

Dr Rob McCartney | Chief Medical Officer, Woolworths Director, Resile

Mental health disorders can impact on an individual's ability to safely and effectively perform the inherent requirements of their job. Certain workplace hazards will increase the risk of employees developing mental health disorders.

As an occupational physician, I specialise in medicine at the interface of health and work. Increasingly, my time is focused on assisting organisations to maximise the mental health and safety of their workforce thus realising secondary productivity gains.

This has become more of an imperative in the COVID-19 era, as we are experiencing worsening mental health concerns amid the pandemic.

Decisive leadership is essential and directors are well-advised to devote appropriate resources to ensuring their employee's (and their own) psychological wellbeing.

Mental health and work

One in five of us will experience a mental illness (such as depressive, anxiety and/or substance use disorder) in any given year and this is most likely to occur during our working years. Mental illnesses are the largest single cause of disability in Australia, accounting for over a quarter of the burden.

The COVID-19 pandemic has worsened the mental health risks with increased anxiety, depression, uncertainty, isolation and financial stress.

Work-related psychological injuries are increasing in number and cost across most industry groups and protracted musculoskeletal injuries (for example, low back or neck pain) usually have a contributing mental health component.

The associated human cost and diminished productivity (from insurance costs, unplanned absences, staff turnover, withdrawal, presenteeism, and diminished work quality) necessitates evidence-based risk management.

The good news is we now have the medical evidence to manage this.

We know work-related stress is caused by certain occupational hazards (for example, poor support and workplace relationships, low role clarity, poor organisational change management, perceived organisational injustice, remote or isolated work, excessively high or low job demands) and we know that protracted stress can increase the risk of anxiety and depression. Around 90 per cent of workers' compensation claims involving a mental health condition were linked to such stress.

Risk management

Work health and safety (WHS) regulations oblige directors to ensure the mental health and safety of their workers, so far as is reasonably practicable. Psychological hazards can be managed using the same risk management process applied to physical hazards. The most effective way to do this is by:

- identifying the workplace psychological hazards;
- reviewing tasks, systems, workplaces and leadership to minimise the health risk;
- assessing and monitoring the health of workers; and
- consulting with employees.

Early intervention is essential where a manager has identified a psychological risk or stressed employee, as such primary prevention is the most cost-effective. Managing work-related mental health condition claims requires specialised assistance to ensure best outcomes.

Increased vigilance about employees' psychological safety is needed and a review of all support programs is well advised. Referring to an employee assistance program (EAP) service provider may be necessary but is often insufficient on its own. Given the necessity for remote working in the pandemic, management need to help reduce stigma, isolation and loneliness.

Understanding the links between team culture (specifically psychological safety and wellbeing) is important and evidence-based psychosocial risk assessment tools are available to help organisations identify hazards, manage risk, implement and evaluate management strategies. Systemic team and individual leader behavioural coaching may be indicated in some organisations.

As with all business improvement, leadership is the key. Directors and executive must start the process (develop the workplace mental health strategy), be a good example and articulate the corporate strategies, clearly and frequently.

Your well-being

The mental health toll of the pandemic on company leaders has been high. This is on top of the already high levels of psychological pressures of the job.

The statistics on mental illness prevalence apply to directors and executives who may even be at higher risk than their employees. They have relationship, emotional, and psychological problems on a greater level due to their unique life stressors.

Unfortunately, individuals in positions of power often do not want to admit vulnerability and may even consider diminished mood or increased anxiety as weakness. Many high-level professionals do not feel it is okay for them not to be okay. While all are reporting increased stress, some recent research suggests up to half of directors and C-suite executives have been struggling with their mental health.

There is anecdotal evidence that high-level professionals (like doctors) may (due to lifestyle and personality reasons) avoid seeking effective treatment and instead use workaholism (hiding behind success) or self-medication (such as vintage fine wine).

Such mismanagement of a serious medical problem often worsens the situation. Mental illness takes an egalitarian approach and will eventually cause emotional distress and loss of normal function in all of us.

Deterioration in mental health will impact on executive functions with neuropsychological deficits in working memory, processing speed, inhibitory control and cognitive flexibility. This impairs the capacity to manage cognition, behaviour, emotions, and direct the response to established goals. Such functional deterioration can put their organisation at risk.

Many directors and executives devote themselves to managing external situations and other people while ignoring their thoughts and behaviours. Their self-sufficiency and self-reliance (which has held them is such could stead with career advancement) may act against them in recovering from mental illness and addiction which requires the support of medical experts, family, and colleagues. Unfortunately, for high-level professionals, a problem may not be recognised until a time of crisis when they may be at high risk for suicide or other destructive behaviour.

The mental health toll of the COVID-19 pandemic has increased this risk with nearly three quarters of directors and executives reporting deteriorating mental health during this time.

Directors and executives must address their own stress levels and assess their mental illness risk by talking to their doctors or their company's chief medical officer.

It's time

The pandemic is not abating and the nature of virus mutation continues to be problematic. While the vaccine rollout is very encouraging, we must accept this problem is long-term.

This makes it more challenging to manage psychologically. To use a medical analogy, most of us can manage quite high levels of physical pain when we know it will soon go away (for example, a fractured wrist) but chronic pain (even mild) is difficult to cope with.

We humans (like business itself) do not thrive with uncertainty and that is what the pandemic will continue to bring us.

The looming mental health crisis arising from these extraordinary times is real and will impact on your organisation for a long time.

It is time to implement evidence-based strategies now, for you and your employee's health, wellbeing, safety and productivity.

16.3 Why leaders must talk to staff on mental health

Shelley Dempsey | 14 September 2020, "Why leaders must talk to staff on mental health", *Membership Update*, AICD.

The year 2020, where many of us were feeling fragile, will go down in history as one of the most challenging for mental health at work and at home, due to the COVID-19 pandemic. As insurance claims for work-related mental health conditions escalate, many important actions can be taken at the workplace level to promote better mental health, including training for business leaders in how to manage staff concerns.

[In 2019], there was a staff suicide on site at a large multinational company in Melbourne. That prompted the company to enrol 180 of its managers in a training workshop to help them recognise signs and symptoms, and to sensitively talk about the incident and mental health in general with staff.

"The feedback from that was really positive and they felt much more empowered to be able to deal with the situation," Health@Work CEO Kristina Billings told the AICD in an interview. The benefits of talking publicly in the workplace in the right way about mental health are many. Managers who do the workshops report that they feel more equipped to be able to support their staff, as well as deal with their own mental health and specific crisis issues such as the suicide that occurred at that particular workplace, says Billings.

The **Health@Work** training workshop Leading Mental Health: A Framework for Australian Leaders, which is conducted both virtually and now also face-to-face in some states, has run for a number of years in different forms and has trained business managers all over Australia in how to promote positive mental health in the workplace.

Managers learn how to identify signals of mental health issues and warning signs of suicide, how use the right language with staff at work and have quality conversations on mental health, how staff and teams can develop a cohesive language around mental health, how to develop healthy return to work practices and how to offer guidance on what to do and what not to do.

Pressures ramp up with COVID-19

The pressures of COVID-19 have seen advice from experts change in some cases, so it is important to keep up to date with evolving practice in the mental health area. As an example, this year the advice from experts on talking about suicide at work has changed. Previously, managers were encouraged to be open, but due to increased pressures from COVID-19, they are now advised to immediately refer staff to get professional help. "You're not to discuss suicide with them now because of the increase in suicide and suicidal tendencies because of COVID-19. That's already a change we've had to make in the program this year," says Billings.

Levels of anxiety, depression and suicide are forecast to rise further this year, and demand for the leader workshops has escalated dramatically since June, according to Billings. "We're now getting five to 10 inquiries a week, which we have never had before. Previously, I got 15 inquiries in the last six months. So it's really encouraging that companies will have this training and that workforces will be supported in their mental health." Demand is coming from not just Melbourne, which has endured one of the longest lockdowns in the world, but from all over Australia. Lately it is not-for-profits in particular that are seeking training. Recently, Health@Work has signed three new clients – two government departments and another not-for-profit operator.

"Every client that I'm speaking to at the moment says the big focus going forward over the next two to three years is mental health. I think the impact and the fallout we're going to see from COVID-19 in the workplace, which is the community, is going to be really in businesses needing to develop robust, holistic programs to support both managers and employees," says Billings.

In Australia, talking about mental health at work is seen as difficult and so developing common language around the subject is important, she adds.

"What we know about Australian workplaces is in the past they don't like talking about mental health. The attitude is: 'everything will be okay mate'.

"So a lot of the language we use is very Australian and the data we use is also around Australian workplaces."

Mental health insurance claims forecast to rise

Mental health is a huge risk area for boards and directors should be aware of increasing risks in this area, exacerbated by COVID-19, says Billings. "There is a huge increase in mental health claims in workplaces."

Recent life insurance data from the Australian Prudential Regulation Authority (APRA) shows that mental health claims are increasing. Nick Kirwan, life insurance senior policy manager at the Financial Services Council, said this year has already seen a "surge in the number and duration of claims, especially for mental health conditions. We expect mental health claims to increase in the months and years ahead from the effects of the COVID-19 pandemic on the economy, exacerbating people's isolation and financial hardship".

However, many of these mental health claims are not expected to surface until the early part of 2021, because unlike claims for most other conditions, customers typically take over a year to report claims for mental health conditions, says Kirwan.

The life insurance industry posted a net loss after tax of $179 million for income protection insurance losses for the June quarter 2020, largely driven by higher mental health claims.

Over the longer term, a joint study by KPMG and the Financial Services Council released in June found the number of mental health claims had doubled over the past five years, with mental disorders now the third most common cause of disability income claims, ahead of cancer and behind accidents.

The study shows life insurers paid out $750 million in mental health claims to almost 7,000 Australians in 2019. This was the highest number of claims in the Total and Permanent Disability area, with 24 per cent of men and 27 per cent of women making a mental health claim. It follows a 53 per cent rise in mental health-related disability income payouts worth $4.9 billion in the five years to 2018.

More than three-quarters of Australians say their mental health has worsened during the first period of the COVID-19 crisis, one study found. That was from analysis conducted in late March and early April, in the first 'wave' of coronavirus. The Black Dog Institute at the University of New South Wales surveyed more than 5,000 people about how they coped during the outbreak's first phase. Four out of five respondents felt "very uncertain" about the future and 78 per cent reported a deterioration in their mental health.

Australians are also turning to crisis hotline Lifeline more than ever before, with calls increasing by 25 per cent compared to last year. Tragically, more than 1,200 people have died by suicide in Australia since March this year and modelling from the University of Sydney predicts suicides could rise by 25 per cent annually for the next five years. Professor Ian Hickie, co-director of the Brain and Mind Centre at The University of Sydney, said that equates to around an extra 750 extra deaths by suicide a year.

"National surveys of anxiety and depression both via the Australian Bureau of Statistics and (academic) studies show increasing rates of psychological distress since the pandemic began," Professor Hickie said. "Initially, I think there was a high degree of anxiety about health, but I think the deep and ongoing anxiety is about people's economic future."

Wellbeing as a corporate strategy

Corporates and other organisations are increasingly dealing with health and wellbeing as a core part of business strategy. For example, Woolworths has appointed a Chief Medical Officer to deal with overall health issues for both customers and staff during COVID-19 and beyond. Dr Rob McCartney will act in a specialised and technical leadership role within the Woolworths Group, providing direct input into the Woolworths Board and its relevant sub-committees, as well as the Group Executive Committee.

Many other organisations run Employee Assistance Programs that address mental health. EAPs are employer-sponsored programs that help employees cope with issues that can adversely impact their productivity and the organisation's performance. These issues may stem from alcohol and substance abuse; marital/family/relationship turmoil; medical, financial, and legal issues; and mental health problems.

Dr Amanda Rischbieth PhD FAICD, chair of the National Blood Authority Australia, and a Harvard Advanced Leadership Fellow, says health and wellbeing must be core to any business strategy in a post COVID-19 world. Organisations must incorporate health and wellbeing into corporate strategy, she says. Individuals, employers and their organisations, and governments at all levels, have a moral and dutiful obligation to contribute to addressing the health of our communities. COVID-19 has demonstrated that response demands involvement from every sector of society, including business, she writes in an article published in JAMA Network. Work in the US by Harvard professor John Quelch also promotes the concept of a Culture of Health (COH) as a business leadership imperative.

How employers can promote positive mental health

Communicate with staff – Engage with employees during this period, communicate regularly, and keep them informed as much as possible. With many still working from home, this may be through regular staff briefings or, for larger companies, a multi-level communication strategy. It is also important to improve mental health awareness.

Provide access to support – Many companies offer employee assistance programs, which generally include free access to private and confidential counselling. A mental health first aid officer could be appointed or an online dashboard that can be accessed by staff can also be useful, as offered by Health@Work.

Prevention and intervention – There are many ways in which workplaces can improve mental health awareness:

- E-health/online programs
- Mental health screenings
- Workplace health promotions
- Mental health return-to-work programs
- Manager mental health training

16.4 Why staff wellness needs investment as part of a board risk strategy

Shelley Dempsey | 13 November 2020, "Why staff wellness needs investment as part of a board risk strategy", *Membership Update*, AICD.

Staff wellbeing and mental health are important board risk areas that requires planning, measurement and management under a specific strategy in the same way as other areas of the business, says Jono Nicholas, Managing Director of the Wellbeing Outfit consultancy who spoke at a recent AICD virtual event.

"Boards need to go beyond just receiving the culture survey and really look at this issue in terms of a human performance strategy, just as you would look at a strategy for supply chain management or asset management," he said.

Boards need also to be very actively engaged in issues that align human wellbeing to performance, he added. "I think that's really the question for the board. Do they have the right advice given to them? Do they have advice on and expertise on human behaviour, just as they would have advice on legal matters and financial matters?"

These requirements are important so directors can properly align questions for their executives and support them under the right framework, he said. Boards need to hold the executive team accountable for the wellbeing of their people. Boards also need to treat wellbeing as a risk area and examine their strategy around human performance, to see how they measure performance in the business,

and look at whether the business is seeing people who are under stress and anxiety, as measured by culture surveys.

In recent times, a number of boards have failed to recognise risks around human behaviour and have suffered consequences as a result, said Nicholas. "So I think as a board you have a deep responsibility here to look at it through your traditional lens of risk and strategy," he said at the October event, titled 'Is mental health and wellbeing your organisation's competitive advantage?'

Board members need to get personal

This year many boards have taken a more personal hands-on and involved approach with staff and this may need to continue for some time, said Kate Carnell AO FAICD, Australian Small Business and Family Enterprise Ombudsman, who also spoke at the event.

She sits on the board of Beyond Blue, the Melbourne-based mental health and wellbeing support organisation. "I think it's never been a more important time for actual leadership and that's from the board as well," said Carnell.

Staff at Beyond Blue have been working from home since March, which has been very challenging. "We've heard lots of times that this suits some people, but there's a whole lot of people that it really doesn't suit at all."

From a board perspective, the organisation has adopted an approach where board members are now dropping into team meetings to say hello and to talk about how much they appreciate what staff are doing. In October, the board also sent gift cards to all of their staff and the CEO to say: "Look, we know it's tough."

This year's challenges have been especially difficult for smaller businesses, which often have no HR resources or support, she adds.

"Leadership in these organisations is really pretty unsupported," she said. Her message to small business owners is to look after their own mental health as a priority, as well as the mental health of staff members.

"You know, they have the weight of the world on their shoulders. Regularly, the credit line for these businesses is secured against the family home, so if they lose their business, they may lose their home. Many businesses have been closed for a long period of time, certainly in Melbourne."

Travel, hospitality and the arts are doing it particularly tough, with 80 per cent of businesses doing worse than last year. Half of those "are in a world of pain" Carnell said.

Kate Hillman, EY Oceania People Partner, People Advisory Services QLD, says the current crisis is largely an unknown quantity, which is why many organisations are finding it difficult to navigate.

"No-one knows what this looks like. No-one knows where we're going to be in 12 months' time. It's incredibly stressful for management, the CEO, and sometimes the CEOs are the owners as well."

The board's role is to act in a support capacity to help guide and ask questions that relate to issues such as the management of people returning to work in the office, says Hillman.

EY undertook a number of initiatives with a mental health focus as a result of the pandemic, she added. These included mapping the different phases of the pandemic, bringing in the right public health advice and starting the conversation about anxiety early with their people. A frequent and regular communication cascade from the outset also ensured all staff were kept well informed.

EY's response included mapping the workforce as a community of individuals with differentiating work-from-home and personal circumstances rather than by job title, regular staff surveys and using the results to inform the wellness strategy, and the provision of PPE equipment, care packages and meal vouchers to the Melbourne team during lockdown.

After-school digital programs and dine-online dates where staff could eat together proved popular across all geographies.

"Those types of concerns and issues were really important to address if we wanted to continue to be productive as a workforce, because we're relying on people's cognitive capabilities," says Hillman.

Staff respond better when they understand that shared sacrifice such as the reduction of hours and commensurate pay cuts which occurred at EY generate shared benefit for the whole organisation, she said. "Throughout the journey we've taken staff on, we've been lucky we've not had to have any corporate redundancies."

Leaders are now more exposed

No matter what the size of the business, all leaders are very exposed at the moment, and are on display more due to weekly Zoom announcements and communications of different kinds, says Nicholas.

"We only have to look at the strain on our political leaders having to do daily stand-ups and have very high accountability, to know the strain that happens every day."

There are certain protocols required of leaders now of which they need to be aware, he says.

"What your people want from you is authenticity ... they want to feel as if you understand them, and that you are also honest and transparent with them about what's going on."

Boundaries between personal and professional lives have shifted during the pandemic, he says. "I think they've definitely shifted in an incredibly positive way." However some leaders had found this really challenging.

Leaders still have a role and that role has a mask, so leaders don't need to reveal every part of their personal lives. But they do need to be careful and considerate in their dealings with staff.

"What we've seen certainly and what I've been advising and helping a lot of leaders through is when you bring your authentic self to work, you expose yourself as vulnerable. Then what your people do is they see some of themselves in you."

That also means being careful about what others are going through, however. It would not be appropriate, for example, to mention on a Zoom call that the internet connection is unstable at the leader's second house, when some staff are still working off their kitchen tables.

"What it does mean is you need to treat every meeting with your staff, in a way that recognises that it is a performance that people are looking at and where they are examining your behaviour."

16.5 Employee wellbeing: A director's duty of care

Julie Robotham | "Employee wellbeing: A director's duty of care", *Company Director*, April 2020, AICD.

News reporter "YZ" was awarded $180,000 in damages in the County Court of Victoria in March 2019. The court heard she had been among the first on the scene at dozens of violent crimes and fatal accidents. YZ was threatened by criminals and attended court hearings in harrowing rape cases. Her exposure to trauma was high and, after a decade as a journalist at Melbourne's The Age, she had developed post-traumatic stress disorder (PTSD).

Judge Chris O'Neill concluded her job, "brought with it distress and discomfort at such a level that it was no great leap of logic to conclude [it would cause] significant psychological injury." Further, "there was no great expertise needed to understand that exposure of the plaintiff could result in something far more substantial than simply tears and stress after a particularly difficult story."

The damages award, which The Age's owner Nine is contesting, marks what is thought to be the first time a court has ordered a payout for the mental health effects of a journalist's work – not just in Australia, but worldwide. It is sending shockwaves well beyond the media, through organisations whose staff are on the front line of human distress:

those that employ health workers, social workers and lawyers as well as the military, police, fire and rescue, and paramedics.

Jennifer Wyborn, a partner in the workplace relations, employment and safety (WRES) practice at Clayton Utz, says the judgement "is putting employers on notice that there's an expected minimum. Especially in the context of what would be regarded as a large employer, you should have an [employee assistance program], you should offer opportunities for debriefing. The risk of mental health injuries in particular professions is well known and must be proactively managed."

The YZ case is part of "a trend in the legal community to want to make employers accountable [for foreseeable harm]", says Wyborn. While it was brought under common law, directors should be mindful of their individual liability for mental health injuries under WHS and fair work legislation.

Careful directors would be asking questions about psychological risk and following up on the responses, she says. "Directors don't have to personally fix things, but the test [under WHS laws] is one of due diligence and there has to be some level of inquiry and challenge." Employers are on notice: they cannot turn a blind eye and let their people carry the consequences of psychologically dangerous work. And the pressure is not only from the courts.

Two decades of campaigns to reduce mental health stigma by Beyond Blue and other advocacy groups such as the Black Dog Institute have heightened awareness of bullying, burnout and other psychological risks, and many more people are ready to call out "toxic workplaces".

Flip that proposition, though, and you reveal a much more positive opportunity for companies: by promoting good mental health at work they can keep people well, reduce sick leave, and build reputation, loyalty and performance.

Questions for all directors

- What are the 'reasonably foreseeable' psychological risks in your industry and organisation?
- How does your organisation mitigate the impact on individuals of workplace change, workload demands, interpersonal conflict and other stressful situations?
- What is your organisation doing to ensure employees (and contractors and volunteers) can recognise and act on mental health symptoms in themselves and others?
- Should you do more to ensure your organisation's risk management framework appropriately accounts for mental health risk?

Dr Toby Ford GAICD, founder and CEO of Queensland corporate health and wellbeing firm Ford Health, says business leaders are used to thinking about, and investing in, employees' health as an engine of productivity and performance. For older, executive workers, Ford uses a balance sheet metaphor. "We ask them, 'Is your health in such a state that it's a liability... that you're trading insolvent?' "But now a new driver is emerging: the effect of workplace mental health and wellbeing on business reputation. In an era of shorter role tenures and rapid social media feedback – through platforms such as Glassdoor, Seek and Indeed – employers need not only to care for their workers, but also be seen to care for them. Younger people, especially if they join a company to complete a particular short-term project or as lower-skilled casuals, are unlikely to be restrained by loyalty from publicly commenting on their experience, says Ford. This group – Gen Y and the Millennials – appreciate value-adds such as workplace health programs, especially when the individual benefits may last beyond their time at the company.

Ford Health's most intensive program offers six-monthly check-ups, referrals and advice to employees. Based on this information, it provides anonymous, aggregate data to its corporate clients about the mental and physical health risks of their workplaces – and advises how to prioritise and manage these.

The workplace is a key focus of the Productivity Commission's current inquiry into mental health. Its draft report, released in October 2019, estimated mentally unhealthy workplaces cost Australia up to $12.8 billion a year (2015–16) – in absenteeism, lowered productivity and workers' compensation payments, which cost on average three times as much per claim as physical injuries. Among workplace risk factors the commission nominates, only a few – such as the exposure to trauma considered in the YZ case – go to the fundamental nature of the sector in question.

Most psychological risks are linked to the design and expectations of particular roles, and to organisational culture, putting them at the heart of directors' responsibilities. Workers are most at risk when their job or workplace:

- Makes high emotional or cognitive demands, but offers little control over how to do the work.
- Does not provide appropriate reward, financially or otherwise.
- Is insecure, and the person feels powerless to address this.
- Is unfair or inequitable.
- Does not create a reasonable balance between productivity and workers' wellbeing.
- Makes it hard for people to seek help early for an emerging mental health issue.

Risk mitigation

Carolyn Davis is an independent consultant, past member of Safe Work Australia and a former director of Work Health and Safety and Workers Compensation at the Australian Chamber of Commerce and Industry. She says organisations should conduct risk assessments to deeply understand – as Lendlease and SCA did – which aspects of their business present psychological risk to workers. Then they need to do whatever is reasonable to mitigate those risks, remembering their primary duty of care extends beyond employees to contractors, subcontractors, apprentices, trainees and volunteers.

In a draft recommendation, the Productivity Commission calls for psychological risks and mitigations to be spelled out in detail in model national WHS legislation – as is the case for physical safety.

Davis is not a fan of further regulation. The model law, developed by Safe Work Australia and adopted by nearly all states, already clearly affirms "health means physical and psychological health," and Davis is unconvinced extra legislation will produce lasting behaviour change. "It's much more complicated with psychological issues," she says. "You get unique responses from different people. Some respond really well to high work demands, some don't. And what determines an individual's health can also come from outside the workplace."

For these reasons, practices established for physical hazards may not translate well to psychological risk. "With noise, for example, it's easy to measure, assess and control the risk. There is a number above which it's not acceptable," says Davis. "I worry about how you can apply those processes to psychosocial issues. I'm concerned [employers will] use or abuse numbers or results in screening processes, which could then exclude people from workplaces just for being potentially vulnerable to psychological risk."

Davis points out that directors' responsibility for mental health is not contained only within WHS laws – fair work, anti-discrimination and privacy legislation all apply. Rather than new laws, she says, "We need a lot more education and more knowledge about how we can meet the needs of the people we work with. We also need to know what programs are effective for the long term. The question for directors is, 'Is it reasonably foreseeable that the way our organisation operates could cause some sort of an issue? Is there a foreseeable risk?' It's just a fundamental part of managing your business well."

16.6 3 tips to support employee wellbeing after coronavirus

Denise Cullen | "3 tips to support employee wellbeing after coronavirus", *Company Director*, July 2020, AICD.

As Australians cautiously venture back to work, a nagging sense remains that although one catastrophe has been averted, another one looms. Although we have been spared the soaring death rates of other countries, COVID-19 has nonetheless created layers of population-wide trauma and disruption arising from the abrupt shutdown in March – and the associated social isolation, illness fears, burnout, financial stress and job insecurity.

Australian Bureau of Statistics data reveals about 600,000 Australians lost their jobs in April. Some hospitals report a sharp increase in significant injuries related to domestic violence, and Monash University research says 31 per cent of its respondents are experiencing severe psychological distress. The Monash study – of more than 1100 people in a range of industries either working from home, working less or who had lost jobs – also found a high proportion had turned to alcohol to cope. All of this suggests that lurking beneath our "back to normal" bonhomie, there is a dark twin beginning to stir, a shadow pandemic of mental health problems that will only coalesce as the adversities mount and stressors multiply.

The anxiety levels of many people are increasing rather than decreasing as lockdown restrictions ease, says Christine Morgan MAICD, CEO of the National Mental Health Commission.

"We're living with a heightened level of uncertainty, all of us," she says. "Some people are resilient to that and some people are not."

Morgan points out that individuals who demonstrated resilience over the short term might still buckle under the strain of burdens imposed over six to nine months or longer. "What that does to our mental health and wellbeing is a really significant thing we need to look at," she says.

Continuous disclosure

For executives, COVID-19 has piled new pressures onto existing ones, says Dawn O'Neil AM FAICD, managing director of Dawn O'Neil & Associates, ambassador for Fisher Leadership's executive wellbeing program and a former CEO of both Beyond Blue and Lifeline Australia.

While it is an under-researched area, 2018 Bupa Global research revealed that 64 per cent of senior business leaders have suffered from mental health conditions, including anxiety, stress and depression – work often cited as a contributing factor. Because executives are used to being in the driver's seat, they can tend to have an "overinflated view that they can manage their stress... or they're very sacrificial in their approach and put themselves last", says O'Neil.

The study found more than half of business leaders identified that it was difficult to discuss mental health problems. Factor in pandemic pressures and continuous disclosure requirements and it becomes all the more imperative that boards keep an eye on how executives are functioning. Cultivating a climate in which it is safe to disclose mental health vulnerabilities is critical. "We know that if people are able to get support, and get help early, they're absolutely able to maintain high-demand, high-output jobs," says O'Neil.

Peter Joseph AM FAICD is chair of the Black Dog Institute and The Ethics Centre, and a director of Tonic Health Media and the Mindgardens Neuroscience Alliance. He says that habits such as living in the present and letting go of elements outside one's control are key for leaders during this time. He is hopeful the COVID-19 crisis may serve to destigmatise mental health issues.

"There's a much greater embrace of the need to help people," says Joseph. "The data on depression and mental illness and, sadly, suicide, is such that we cannot ignore them."

Clear communication boosts trust

National mental health charity SANE Australia brought staff into planning discussions early, after projected fundraising losses placed many positions in peril. "We actually decided to go to staff at that point in time and tell them, 'You know what? It could be really bleak'," says SANE Australia CEO Jack Heath MAICD.

An overwhelming number of employees came forward with proposals to bring forward leave or reduce hours significantly, including the management team. The introduction of JobKeeper and additional COVID-19 funding has since buoyed the organisation.

Chair Marg O'Donnell AO says that the dividing lines between board and management have never been more blurred, with a degree of "enmeshment" necessitated by novel circumstances. She says board members have continued to play the role of "sounding boards, encouragers and questioners", in terms of framing broader questions, and seeking evidence to support what management proposes to do. "It's then about management coming up with the ideas and plans, and executing them," she says.

Checking in

Morgan notes that while employers and directors differ in their capacities to absorb significant changes and offer flexible work options, most had done so and were demonstrating genuine concern about how their people were adjusting to radically changed circumstances. "It does seem to me that there is a more open discourse happening," says Morgan. "I hear from many people that meetings start with, 'How are you? How are you finding it? How are you coping?' We've had almost a legitimisation that it's stressful and difficult. The silver lining for this is that it is an opportunity for us to look at each other with slightly gentler eyes – to recognise that our mental health and wellbeing is critical."

As we enter what may turn out to be a more challenging phase of this crisis, the simplest solutions may be most effective. Leadership, for instance, is a common domain shared by board members and executives – and should not be underestimated, says Morgan. Connectedness between chair and CEO also served to amplify a collective sense of security. "It's that sense of 'we're in this together with you, but we're leading from the top'," she adds. The enormity of the problems faced, and those that lie ahead, are such that few people would not be "stressed, stretched and distressed" – so leaders should normalise those feelings. "Being able to say, 'We get that, we feel it too, it's OK, it's normal – reach out for help and look after yourself' is an incredibly important thing," says Morgan.

Staying positive

One task for boards and management will be to maintain positivity as new pressures emerge. Joseph says there is considerable "imagineering" going on in boardrooms around the country as companies grapple with matters such as workforce mobility, staff entitlements and obligations. Also being reshaped is the world of work. In the future, this may well feature remote working arrangements, isolation rosters, reduced travel and frequent technology-mediated meetings. "It's blown away the old ways of doing things," says Morgan.

Directors should lead discussions on the pros and cons of working from home. What are the benefits in terms of greater flexibility and agility? What has been the impact on the culture of people not having incidental corridor conversations?

"This is a great place for boards to get alongside with the CEOs and their executive teams in envisioning what it could and should look like when we have been able to let go of some of those fears and constraints about people needing to be in workplaces," says Morgan.

Both employers and employees could benefit by using this pause to construct a culture and an operating model that best fit the business or organisation, she adds. "We need to look at how we create mentally healthy workplaces – whether that be in the workplace or at home."

17 What should Australia and the world expect from the Biden administration?

17.1 What a Biden win means for the world

David Uren | "What a Biden win means for the world", *Company Director*, December 2020, AICD.

It is tempting to see the election of veteran American congressman and former Vice-President Joe Biden as the resumption of normal transmission after the static of the past four years. Biden's victory will certainly see an end to government-by-tweet and the revolving door of senior appointments that made President Donald Trump's inner circle look like candidates on his reality TV show The Apprentice.

Biden will bring a return of orthodox government, with stable staffing of key positions in the administration. He will also usher in more normal relations with the nations of the world, including stronger commitments to allies and a greater preparedness to work with multilateral institutions.

He inherits a resilient economy that is performing better than most other advanced nations, despite the continuing ravages of the coronavirus pandemic. But the forces of economic nationalism that helped propel Trump to the White House in 2016 are undiminished and the challenge of dealing with a resurgent China has become far more acute.

As [this edition] Company Director went to press, Trump had yet to concede defeat, raising the possibility of a contested transition, while the Biden administration may have to deal with a hostile Senate.

Two run-off Senate elections will be held in the state of Georgia in January, but even if the Democrats were to win both – which would deliver an evenly divided chamber – it's unlikely they would be able to legislate either Biden's radically redistributive social program or his proposed multitrillion-dollar investments in a carbon-neutral United States.

Increases in the company tax rate from 21 to 28 per cent and additional taxes on high-income earners, intended to help pay for the promised largesse, are unlikely to gain approval from an obstructionist Senate.

Many of these policies became part of the Biden pitch after more radical presidential candidates – Bernie Sanders and Elizabeth Warren – dropped out of the race, and were calculated to keep their supporters onside.

Shorn of these ambitions, a President Biden will lead a cautious administration. He was selected as the Democrats' presidential candidate in part because he was seen to have the best chance of recapturing the white working-class voters in the Midwest manufacturing states, who were lost to Trump in the 2016 election. His success in winning back Pennsylvania, Wisconsin and Michigan from the Republicans underlines the extent to which he will have to adhere to the same defensive approach to US manufacturing taken by Trump.

He will remain wary of trade deals and continue to prosecute a global campaign against China – like Trump's stance, it will reflect not only the interests of American industry, but also the deep strategic concerns of the defence and national security establishment. A Biden administration will possibly also reflect more concern for human rights.

The rupture between the US and China in 2020 will echo in the years ahead. What began as a conflict over the US trade deficit has morphed into a much broader strategic contest. There is little prospect of Australia's fractured relationship with its major trading partner being repaired while the superpower tussle continues.

One far-reaching consequence of rising economic nationalism is a loss of confidence in the ability of multilateral forums to resolve international tensions. One of the dividing lines in the US election was between Trump's "America First" and Biden's expressed belief that the US had to re-engage with global forums. However, Trump's unilateralism was responding to emerging problems in key multilateral institutions.

Trade – for so long the driver of global prosperity – is vulnerable amid swelling global payments imbalances. One of the drivers of the destructive polarisation in US politics has been the impact of Chinese competition in traditional manufacturing districts where the middle political ground has disappeared.

Governments across the world have responded forcefully to the pandemic – as they did following the global financial crisis – with large spending packages to support households and business.

A big change in the aftermath of the financial crisis is that governments no longer see the increase in debt as an aberration to be corrected by austerity measures as conditions improve. Instead, there is a growing belief that much larger debts can be sustained.

The break with China

The past year brought a ceasefire in the trade war between the US and China, following a trade deal struck in December 2019. However, tension has escalated, with the Trump administration defining China as a threat to freedom worldwide. "If we don't act now, ultimately the Chinese Communist Party [CCP] will erode our freedoms and subvert the rules-based order that our societies have worked so hard to build," declared US Secretary of State Mike Pompeo in July.

A Biden administration is less likely to press for regime change, but the national security concerns about China are bipartisan. Biden has characterised the Chinese oppression of Muslim minorities in Xinjiang as "genocide" and declared that a Biden administration would "put values back at the centre of our foreign policy, including how we approach the US-China relationship". Democrats in Congress were responsible for legislation imposing sanctions on Chinese officials over Xinjiang and China's security crackdown in Hong Kong.

The US has progressively tightened its restrictions on both the export of US technology to China and the use of Chinese technology on home soil. Again, there has been bipartisan support over plans to ban the popular Chinese short-video application TikTok, as well as the Chinese social media and payments platform WeChat. The US has, with some success, lobbied Western nations to ban China's Huawei from participation in building 5G internet infrastructure.

Chinese officials have responded cautiously to the US, maintaining that the complementarity between the two economies creates opportunities on both sides. China's government has liberalised foreign investment in the financial services sector, attracting a number of major US institutions. China has focused retaliation against what it perceives as an increasingly hostile stance in the West on US allies – notably, Australia and Canada. The Biden administration would be in a position to ease Canada's troubles with China by abandoning the US extradition request for Huawei finance director Meng Wanzhou, but there is no obvious US reset for Australia's problematic relationship. Chinese officials have constantly said it is up to Australia to heal the breach, while providing no clue about what a remedy would look like.

Both the US and the Australian relationships with China have been heavily influenced by emerging nation security concerns, which have outweighed economic considerations in matters such as foreign investment, infrastructure development, technology access and data integrity. These concerns will be continuing sources of aggravation in dealing with China.

US efforts to block the supply of technology to China and encourage American firms to repatriate their supply lines to the US has prompted a reciprocal stance in China. In October, the country's leader, Xi Jinping said: "In order to ensure China's industrial security and national security, we must build a self-developed, controllable, safe and reliable industrial and supply chain. We should strive to have at least one alternative source for important products and supply channels to form a necessary industrial back-up system."

There is an enormous investment in global supply chains; US firms have committed around US$400 billion to their operations in China, employing 1.75 million staff. They are not readily unravelled, but the pressure to do so will intensify.

Multilateralism

Trump's withdrawal from the Paris Agreement on climate change, which he'd announced in June 2017, took formal effect on the day after the brutally contested US election. It was among a series of international agreements and organisations that the Trump administration walked away from, including the Trans-Pacific Partnership trade deal, the World Health Organization, the Iran nuclear deal, UNESCO, the Intermediate-Range Nuclear Forces Treaty and the United Nations Human Rights Council (UNHRC). Trump threatened to withdraw from the World Trade Organization (WTO), drafting legislation to do so, and also considered withdrawing from NATO.

Biden – a long-time member of the US Senate Committee on Foreign Relations – has promised to re-engage with the global community. "The fates of nations are more intertwined than they ever have been," he said during the election campaign. "Climate change, nuclear proliferation, international and transnational terrorism, cyber warfare, disruptive new technologies, mass migration… none of them can be resolved by the United States alone or any nation acting alone."

The multilateral architecture (including the UN, WTO, G20, International Monetary Fund and the World Bank) is predominantly a US creation, though the unilateralism of the Trump administration was a response to its growing inadequacies.

Biden's embrace of multilateralism will be welcomed around the world, but it is not a panacea for global tensions. The UN is increasingly a proxy field for the contest between the US and China, with the latter having successfully marshalled the numbers to have Chinese officials appointed to lead four of the 15 UN agencies. When Hong Kong's national security legislation was debated in the UNHRC, China won the support of 52 nations, soundly defeating critics of the measure led by the United Kingdom, which was able to rally only 27.

The G20 was a decisive force in the immediate aftermath of the global financial crisis, but proved ineffective in providing any coordination of economic or trade policy during the pandemic beyond limited debt relief for the poorest nations.

More fundamentally, the pledge to avoid raising trade barriers, which all G20 members signed in the wake of the financial crisis, has been widely ignored. According to the Global Trade Alert database, the share of the world's exports subject to barriers from quotas, subsidies and tariffs rose from 40 to 72 per cent over the past 10 years, before the pledge to avoid protectionism was finally jettisoned.

Biden has said he will cooperate with China in areas where there are mutual interests, such as climate change. He can rejoin the Paris Agreement by executive order, without requiring congressional assent and says he will formally take that initiative on his first day in office. However, the increasingly entrenched rivalry will make joint action of any sort difficult. Biden's vision of multilateralism does not embrace rivals. He has proposed a global Summit for Democracy to rally US allies and friends in a concerted approach to China and Russia.

The US under Biden: What directors need to know

- A Biden-led administration has promised to re-engage with the global community and has signalled its intention to rejoin the Paris Agreement on climate change and restore relationships with the World Trade Organization, the Trans-Pacific Partnership on trade and the World Health Organization.
- Like Trump, Biden will continue to prosecute a global campaign against China around strategic concerns over defence and national security. Plus, the new president will add a concern for breaches of human rights.
- The US will battle the coronavirus pandemic well into 2021. However, its economy has proven more resilient than expected by institutions such as the International Monetary Fund and OECD, and is likely to outperform many other advanced nations.
- With world trade volumes shrinking in the wake of COVID-19, the growing trade imbalances are likely to become a heated political issue over the year ahead.

Trade tensions

While remaining a member of the WTO, the Trump administration brought its ability to resolve disputes to a standstill by vetoing all judicial appointments to its appeals panel until it lost its quorum. In a final affront to the organisation, the US responded to a WTO ruling that US tariffs on China were illegal by lodging an appeal to the non-existent panel.

Trump argued that globalisation was giving the Chinese a free ride into US markets, telling the UN in September that "for decades, the same tired voices proposed the same failed solutions, pursuing global ambitions at the expense of their own people".

Research by eminent Massachusetts Institute of Technology economist David Autor shows Trump was at least partly correct: competition from China since its admission to the WTO in 2000 caused long-lasting job losses, lower wages and reduced labour force participation in traditional US manufacturing districts.

Autor also revealed that the economic shock had major political effects, with research released before the election showing support for extremes on both the right and left becoming greater in the affected manufacturing areas than in the rest of the country. Trump tapped the disaffection of the white working-class.

A Biden administration would be expected to re-engage with the WTO and break the impasse over the appeals panel. It is possible it may accept the WTO's rejection of US tariffs on Chinese goods, withdrawing the Trump administration's appeal as part of a negotiated easing of the trade war. However, dissatisfaction with the multilateral framework and its inability to deal with the dominant role of the Chinese state in its economy runs deep on both sides of US politics.

The tensions over trade are likely to be inflamed by a rise in global payments imbalances. China's rapid recovery from the pandemic brought a return to economic growth and a surge in its exports. Council on Foreign Relations economist Brad Setser predicts a Chinese trade surplus reaching US$300 billion for the year – the highest since 2008.

While the US trade war with China has brought a reduction in its bilateral deficit, it has really only succeeded in pushing the imbalance to other trading partners, with the overall US deficit also the deepest since the onset of the financial crisis. With world trade volumes shrinking in the wake of the pandemic, growing trade imbalances are likely to become a heated political issue in the year ahead.

Debt and deficit

Increased government debt is one change locked in for 2021. According to consultancy Fulcrum Asset Management, gross government debt is expected to rise from a 2019 average of 114 per cent of GDP among the major advanced economies to 141 per cent in 2021 as they respond to the pandemic.

Central banks are playing an increasing role in financing that debt. The share of advanced country debt held by central banks is expected to rise from 21 per cent in 2019 to 36 per cent by 2021.

No government has formally accepted the central tenet of Modern Monetary Theory, which holds that inflation is the only constraint on spending by governments that control their own currency. However, research by former IMF chief economist Olivier Blanchard – showing economic growth has exceeded interest rates in most nations across most of the past 70 years – suggests countries can and do grow their way out of debt without necessarily burdening taxpayers. As former US Treasury Secretary Larry Summers has commented, “Countries that borrow in their own currencies and run independent monetary policies have substantial latitude on fiscal policy.” Summers adds that the latitude is not unlimited, but is far greater than conventionally thought.

18 Relations with China: Unsettled ties with Australia's biggest trading partner

18.1 Australia's trade dependency on China highlights our vulnerability

Mark Thirlwell MAICD | "Australia's trade dependency on China highlights our vulnerability", *Company Director*, July 2020, AICD.

Crises often serve to accelerate trends already apparent before the crises hit. In the case of COVID-19, an example of this is the increased strain on an already-stressed global trading system.

The travails of world trade have become a familiar theme. Last year, the US-China trade and technology war, compounded by the Brexit saga, roiled financial markets and drove policy uncertainty to record highs. As a result, international trade suffered its weakest performance since the global financial crisis (GFC).

This year, the enormously disruptive impact of COVID-19, the increasingly decrepit state of the international trade architecture and a renewal of hostilities between Beijing and Washington are threatening a dramatic deterioration in the outlook for cross-border commerce. Closer to home, Australia faces the challenge of managing an increasingly troubled relationship with its most important trading partner.

In an example of the "slobalisation", the International Monetary Fund (IMF) estimates that world goods and services trade volumes grew by a meagre 0.9 per cent last year. Nevertheless, in January, the IMF anticipated a modest recovery in 2020, predicting trade growth of almost three per cent. But the devastating economic impact of the pandemic and the associated public health measures meant that when the IMF released new forecasts in April, it was predicting world trade volumes would plummet by 11 per cent. For its part, the World Trade Organization (WTO) worries merchandise trade could contract by anywhere between 13 and 32 per cent this year.

Actual trade data are very much a lagging indicator in the current environment, but there are early signs of the feared downturn. In March 2020, world trade volumes fell by 4.3 per cent over the previous year in their worst result in more than a decade. Forward-looking indicators – such as new export orders from multiple national purchasing managers' surveys along with measures of sea and airborne freight and of port traffic – suggest the trade decline is poised to steepen over the second quarter in line with slumping global economic activity.

The coronavirus crisis hasn't just been making itself felt in the volume of trade. It's also been reshaping economic policies and attitudes as the early months of this year saw more than 80 countries respond to COVID-19 by introducing a range of export restrictions on medical and related equipment. Granted, some have since reversed course and eased restrictions. But in the meantime, many policymakers may have concluded that more national self-sufficiency is required in a post-COVID-19 world. Policymakers and businesses are considering applying that same lesson to global supply chains in general. Last year's trade wars had already highlighted the case for diversification and localisation, or at least regionalisation, in building greater resilience. COVID-19 and the consequent disruption to China-based supply chains

has amplified that message, prompting calls for the replacement of an efficiency-focused "just in time" approach to supply chain management with a potentially more robust – but also more costly – "just in case" one.

These changing incentives come in the context of an international trading system in growing disrepair. The WTO has been in trouble since its failure to deliver the Doha Round undermined its role as a vehicle for trade liberalisation. But until recently, it had retained a vital function as an overseer of the existing rules and an adjudicator of trade disputes. Now that role is also defunct, thanks in large part to a decision by the US administration to block any appointments to the seven-member Appellate Body that oversees the WTO's appeal system (claiming bias against the US). By the end of December last year, Washington's strategy had left the WTO with too few arbiters to staff the body. Now, either side of a trade dispute can appeal to an effectively non-existent Appellate Body and thereby dispatch the case down a legal black hole, rendering the dispute settlement mechanism ineffective.

Compounding the narrative of a system in deep trouble, WTO director-general Roberto Azevedo announced in May that he will step down a year early. Although Azevedo has denied his decision signals the WTO is failing, declaring, "the ship is not going down", in the same interview he also conceded, "We are doing nothing now – no negotiations, everything is stuck. There's nothing happening in terms of regular work". Hardly a ringing endorsement of the health of what was once a key pillar of the international economic architecture.

Although there are multiple and, in some cases, long-standing explanations for the WTO's demise, the organisation has also been collateral damage in the geo-economic struggle between the US and China. Here, too, COVID-19 appears to have upped the ante, with both sides trading in competing conspiracy stories about the origins of the virus and Beijing recently warning of the onset of a new Cold War. Meanwhile, and despite the ongoing implementation of the "phase one" trade deal agreed between the two superpowers, the US has continued its economic decoupling from China. In late May, the US Senate approved legislation designed to make it difficult for Chinese companies to list on US stock exchanges, while the US Department of Commerce added another batch of Chinese companies and universities to its blacklist while further tightening the screws on Huawei.

Further exacerbating this already challenging trade environment for Australian business is a deteriorating bilateral relationship between Canberra and Beijing. Rising tensions have disrupted Australian meat and barley exports and are raising depressingly familiar questions about ongoing vulnerability to geo-economic pressure at the hands of our largest trading partner.

Australia's relatively high level of dependence on China as an export market has long been viewed as a source of potential vulnerability, although originally this was mostly couched in terms of our exposure to any sudden downturn in Chinese growth. But as Beijing has become more assertive, and increasingly willing to deploy economic pressure to secure its political and foreign policy objectives, that focus has widened to include China's ability to wield market access as a strategic tool. Such concerns have been raised again after Chinese authorities imposed swingeing tariffs on Australian barley exports and introduced an import ban on four Australian abattoirs. The measures have been seen by some as a punitive response to Canberra's calls for an inquiry into the origins of COVID-19, which incurred Beijing's displeasure, although both sides have denied that this is the case.

In theory, these might be just the kind of circumstances under which a country such as Australia would turn to the WTO to seek some recourse. Unfortunately, there is now a problem with that option.

19 Industry on a knife's edge: How will the hospitality sector recover from the pandemic?

19.1 The hospitality reform to-do list

Martin Osborne and Amy Leonard | "The hospitality reform to-do list", *Company Director*, November 2020, AICD.

Potential industrial relations reforms in the restaurant sector are on the horizon as early as next year. Their extent and the impact they might have on the industry's recovery and sustainability remains to be seen.

JobMaker working groups

In a briefing to the National Press Club on 26 May, Prime Minister Scott Morrison described the current industrial relations system as "not fit-for-purpose, especially given the scale of the jobs challenge that we now face as a nation". He announced the government's JobMaker initiative, which included five working groups chaired by Attorney-General and Minister for Industrial Relations Christian Porter and comprised of representatives from employer organisations and unions.

The working groups were tasked with examining the following areas:

- Award simplification
- Enterprise (or collective) agreement-making
- Casuals and fixed-term employees
- Compliance and enforcement
- Greenfields agreements for new enterprises.

The goal of the working groups was to develop a practical reform agenda for Australia's industrial relations system through discussion, negotiation and ideally agreement, although either way the PM has said the government will take forward a "job-making" reform agenda from the process.

Limited information has been available about the group discussions, with the members being subject to confidentiality restrictions. Key areas for the restaurant and hospitality industry are discussed below.

Navigating the award system

The area of award simplification will be of particular interest to the restaurant and hospitality industry, given the high number of small to medium-sized businesses and the heavy reliance on modern award terms rather than collective bargaining.

In response to the COVID-19 pandemic, flexibility provisions in relation to matters such as hours of work and leave were inserted into the Hospitality Industry (General) Award 2020 (Hospitality Award) and Restaurant Industry Award 2020. However, the operation of these schedules was time-based and expired at the end of September.

Porter identified the Hospitality Award as a particular focus, stating that it "has 61 classifications for adults, all of which have 14 potential hourly rates for each of the 61 classifications and there are further rate classifications for casuals and junior employees and apprentices", and "it makes sense to sit down in a room and try and work out how you might simplify that particular award because those industries are in such severe distress".

There are reports of proposals within the working group for a small business award, or small business provisions in industry awards (including hospitality), which would allow employers to pay employees a single higher loaded rate rather than having to calculate a multitude of pay rates, penalties and allowances. These proposals may reduce the risk of underpayments and the compliance burden.

Compliance and wage theft

The issue of underpayments and compliance is also key for the industry. An audit undertaken by the regulator, the Fair Work Ombudsman (FWO), between April 2018 and March 2020, included 272 businesses in the accommodation and food services sector, of which 61 per cent were assessed as non-compliant. The audit was part of the FWO's Workplace Basics campaign, and assessed compliance with obligations for base hourly rates, penalty rates, overtime, record-keeping and pay slips. The FWO has identified "fast food, restaurants and cafes" as a priority sector for 2020–21.

There have been a number of high-profile instances of underpayment in recent years, including in the restaurant and hospitality industry. This has led to calls for tougher penalties, and the introduction of "wage theft" legislation in Queensland and Victoria, which imposes criminal penalties for deliberate underpayment of wages. Similar legislation is before the WA parliament, and is also in place in the ACT. It is expected that a national response to the issue will be considered as a result of the working group discussions.

Casuals

The industry has a high concentration of casual employment and any reforms in this regard will be an area of interest.

The recent Full Federal Court decisions in *WorkPac Pty Ltd v Rossato [2020]* FCAFC 84 and *WorkPac Pty Ltd v Skene [2018]* FCAFC 131 highlight the risk of employers facing claims for paid leave and paid public holidays, where employees purportedly engaged as casuals work regular and predictable hours over a sustained period. They also highlight the uncertainty as to whether a casual loading is able to be brought to account in such claims to prevent "double dipping". The Rossato decision is before the High Court and awaiting confirmation of whether special leave is granted for an appeal.

It has been reported that the working group considered a proposal, with draft legislation, that regular and systematic casuals could choose to convert to permanent employment after nine months and lose their casual loading, and if they refused, could not retrospectively claim permanent entitlements.

Where to next?

The working groups' deliberations wound up at the end of September, with Porter stating that the government "will take away and consider where there has been agreement, where there hasn't been agreement, where there's been disagreement inside the business and employer community which has arisen on some issues, and we'll try and kind of synthesise all of that into a product in each of the five streams".

A spokesperson for Porter has said that he hopes to introduce legislation into Parliament by the end of the year, with a view to securing passage early next year. The Attorney-General appears to be targeting 1 February 2021 as a date for reforms regarding the simplification of awards in distressed industries such as hospitality, as this is the delayed date on which the national minimum wage rise will take effect in those distressed industries.

It remains to be seen what the government reform agenda will ultimately look like as a result of the discussions, and whether it will be able to secure agreement to pass those reforms. That said, the restaurant and hospitality industry has been specifically recognised as a distressed industry that would benefit from simplification, and so there is the prospect of reforms that may assist both its recovery and survival.

19.2 Chef Matt Moran on the hospitality sector's path to recovery

Jane Southward | "Chef Matt Moran on the hospitality sector's path to recovery", *Company Director*, November 2020, AICD.

The date 21 March is etched on chef Matt Moran's memory. Saturday night bookings at his two-hatted restaurant Aria, with its million-dollar views of Sydney Harbour, dropped from 200 to 70 as restaurants started shutting down due to COVID-19, diners became cautious and overseas tourists began disappearing. Moran, who owned nine venues with Solotel director Bruce Solomon, knew he was in trouble.

"We had a board meeting in mid-March and we talked about what could happen if revenues dropped 25 per cent," says Moran. "Then someone joked that we should look at what would happen if we dropped 50 per cent. We were trying to work out what would be the scenarios. I don't think, in that meeting, anyone thought we would lose 100 per cent of our revenue and no-one expected things would move so fast. Twelve days later, we were closed and I was in panic mode."

Eight months later, all but one of Moran's restaurants, Little Big House in Brisbane, which has been closed permanently, have reopened, albeit on limited trading. Opera Bar, for instance, reopened in September for 300 guests with social distancing (a far cry from the 1800 crowd pre-COVID-19). Barangaroo House, with its three levels of bar, restaurant Bea and outdoor venue Smoke, on the top floor overlooking Darling Harbour, has reopened on reduced hours.

Moran says millions have been lost in revenue yet he fears the worst is yet to come, saying Easter 2021 will be crunch time, depending on the government's decisions on whether to continue JobKeeper and other support measures.

As for the hardest aspect of a pandemic and economic crisis, Moran doesn't hesitate. "Not knowing what is going to happen," he says. "Not knowing if it will come back, not knowing whether you'll be able to employ everyone that you used to employ. I don't know whether there's going to be a vaccine. Or if it will go away. I think the hard time is going to be after Easter in 2021 when JobKeeper and all that might go. It's going to be very hard for us to survive if JobKeeper goes and we're still restricted on space."

He says he hopes he doesn't haven't to close venues, but adds, "It's a reality, yes."

Wes Lambert MAICD, CEO of the Restaurant & Catering Industry Association of Australia (R&CA) since 2019, says Moran isn't alone as his team grapples with establishing the new foundations of the business. Lambert predicts up to one in four restaurants won't make it through COVID-19 and with Victoria's lockdown and restrictions, he estimates that figure could exceed one in three in that state.

Research by IBISWorld found an estimated 441,000 Australian hospitality jobs vanished virtually overnight, with its report Failure to Lunch predicting a 25.1 per cent decline in revenue for Australian restaurants in 2019–20 and $5b wiped from the bottom line. "Restaurants and cafes have taken a hiding, but in all states they are crawling on all-fours to get back on their feet," says IBISWorld founder Phil Ruthven.

"We don't see our standard of living returning to near-2020 levels [before COVID-19] until 2025."

He points to "nervousness this year" and "limited discretionary spending money in 2021–23 as a result of government overkill and a $360b debt spree" as an explanation.

R&CA, which represents 47,000 restaurants, caterers and cafes, has been calling for increased caps on numbers for weddings and business events, and a relaxation of social distancing rules to allow more people in venues.

"The downturn has certainly been quite a shock to an industry that had been growing at a reasonable rate every year since the Olympics in 2000," says Lambert.

"As Australia remains in a sawtooth recovery of up-and-down restrictions, we hope for it to be just a drop of 25 per cent and no further during the crisis and early stages of recovery. We expect it will take two to four years for the industry to get back to its 2019 revenue levels."

Lambert describes the challenges of 2020 as "the perfect storm" that will have ramifications for the sector well into 2021. "We've had industrial relations issues, then drought, then bushfires, which severely affected regional restaurants," he says. "Then the floods and the pandemic. That is more than a typical industry association might deal with in a decade. And we've dealt with all of those in a year."

Justine Baker GAICD, who works with Moran as CEO of the Solotel, says the group, with its 27 venues, including those part-owned by Moran, had to stand down almost all 1680 staff, leaving a tight team of eight. Of the 1680, 470 were salaried, one third eligible for JobKeeper and in mid-September, only half were back working.

Baker commends the federal government for implementing support measures so fast. She says managing JobKeeper required almost daily calls to the Australian Taxation Office. "The global financial crisis taught us a lot and we thought hospitality was recession-proof, but it clearly is not pandemic-proof," says Baker. "COVID-19 has been a tragic tale for young people. Most of our staff are aged 20–30 and they are the generation hardest hit. Personally, standing down and stopping work for so many people has been the toughest aspect of COVID-19."

Baker agrees with industry estimates that a large part of the hospitality industry will not survive, saying 25 to 40 per cent of venues nationally will fall over. She says the CBD venues are facing the most challenges and that trade has changed as so many people continue to work remotely. "It will be a very long time before the CBD occupancy rates recover," she says, adding there are expectations things won't be back to normal until after September 2021.

South of the border

The scene is different in Victoria, of course, with government restrictions limiting dining to mostly outdoor settings (maximum 50 diners with one person per two square metres) and indoor dining resuming on 28 October but limited to 20 people and with one person per four square metres. Ben Shewry, owner of Attica, one of Australia's highest-rated restaurants, known for its $310 degustation menu, has been doing takeaway and deliveries on his bicycle in Melbourne since March when Attica closed its dining room. Shewry has taken a philosophical approach about operating during the pandemic. "I came to Australia [from New Zealand] with nothing and this is all I have and it's why I am determined to fight for it so hard," he says.

Shewry says he has been working harder than ever, often clocking up 120-hour weeks. His motivation? "Just to survive to retain all of my team. I have 20 workers on visas who have nothing to fall back on if their jobs go."

On Attica's books are 42 full-time staff, including 25 chefs. In some ways, he says, doing takeaway has been easier. "Lockdown was actually easier than restrictions as in-dining won't work with 20 diners – we need 60," he says.

Shewry notes hospitality has always been "a free-spirited industry" with a diverse group of people. "We operate on slim margins, we are not run by boards, I have no major investors," he says, adding that he has no plans to resume in-dining at Attica. "We decided not to reopen for in-dining when the restrictions eased and that's been a wise decision."

As for advice for other operators, Shewry says, "Just keep going. Those that get through will be stronger for it in the future." Asked what support he would like from government policies, he says, "We never get asked that question about what policies we need. With so many jobs going, anyone with a job should be grateful for it."

Small business lifeline

In the biggest changes to bankruptcy law in decades, Treasurer Josh Frydenberg announced in September that business owners with liabilities of less than $1m, such as many restaurants and cafes, will continue to control the business while a restructuring plan is developed – a debtor in possession model – as opposed to an external administrator taking over.

The measure, supported by R&CA, will come into effect, if passed by federal parliament, on 1 January, when millions of employers and their workers are due to lose the JobKeeper subsidy.

''By enabling owners to remain in control, businesses will be more open to enter into the insolvency process sooner, providing them with an opportunity to restructure and increasing their chances of surviving the COVID crisis,'' says Frydenberg. "This… process is in contrast to the current regime where owners effectively lose control of their business, with an administrator being placed in control and determining any restructuring plan to be put to creditors.''

Under the policy, a small business operator facing financial distress can seek advice from an insolvency practitioner on developing a restructuring. The operator, working with the adviser, will have 20 days to develop the plan, which would include restructuring debt and preparing a case for creditors to consider.

Creditors will then have 15 days to vote on the plan, during which time the business can continue to trade, but must lodge any outstanding tax returns and pay out any employee entitlements. If half of the creditors accept the plan, it is approved and all unsecured creditors are bound by it. The business can then continue to trade under what will be known as a ''debtor in possession model'', meaning it can keep trading under the control of its owners.

Frydenberg says thousands of companies have fended off insolvency or liquidation under a temporary regime announced in March and extended until 31 December. The government claims a 46 per cent fall in the number of companies that went into administration from March to July compared to last year.

Reshaping the sector

Lambert says there's been a shift in spending habits towards home delivery nationally, with 8.7 million Australians now having a delivery app on their phones, compared with four million pre-COVID-19, according to R&CA figures. He says smart restaurateurs switched to takeaway and delivery fast – and the smarter ones remain committed to it. Pre-COVID-19, takeaway accounted for eight per cent of restaurant and cafe business, and Lambert estimates it will settle at 25–30 per cent. "Customers will demand it and businesses are embracing these diverse revenue channels."

The hospitality sector is deeply connected to international tourism and the impact of closed borders. The Australian Bureau of Statistics reports that inbound international tourism brings $60b to the economy and Lambert says 30 cents of every international tourism dollar is spent on accommodation and food services. "The expectation is that international travel will not return until the middle of 2021 on any large scale," he says. "Everyone who comes to Australia has to eat at least three meals a day – and those meals are all provided by a business that's in accommodation or food service. These restrictions cut deep. That's $18b over the year, which is $1.5b in losses a month."

However, Lambert says the pandemic has also revealed pre-existing flaws within the industry that have exacerbated the current crisis. "COVID-19 exposed many weaknesses in the industry that had been talked about, but not fully exposed – such as industrial relations issues, high rents and a shortage of local staff.

"We're working closely with the government on things like the Restaurant Award, and ultimately the property values that will reset rents. CBD restaurants will remain depressed as long as international companies and large domestic companies keep their CBD buildings closed or severely understaffed," he adds.

Lambert predicts a future where delivery and takeaway become a much larger part of dining, as well as bespoke experiences. "Restaurants have been so innovative already and will continue to have to think outside the box."

Suburban revival

CBD cafes and restaurants may be eerily quiet, but trade in some suburbs has been strong as people work from their home offices.

In Sydney's Naremburn, Rob Forsyth owns Forsyth Coffee and Tea. He says business (all takeaway) increased by 50 per cent in March and April and continues to run 30 per cent higher than pre-COVID.

"So many people are working at home around here. They are buying their coffees in the suburbs rather than near their offices," says Forsyth. "When schools were closed, parents were coming in for milkshakes for their children as well. It certainly is a boom time."

In NSW, overall cafe spending was 18 per cent higher than the pre-crisis norm in the week of August 17–23, according to a spending tracker developed by Accenture-owned analytics firm AlphaBeta, and credit bureau illion. In suburbs such as North Sydney, Mosman and those in the Blue Mountains, per capita spending in cafes has increased by more than 90 per cent while spending in the city's east and west increased by more than 50 per cent, according to the data.

Regions outside Sydney have also seen significant increases, with the Wollondilly local government area to the west of Campbelltown recording the biggest increase in the state – 103 per cent – between November and July. However, the growth is inconsistent, with cafe spending in some suburbs going backwards, including a 28 per cent decline in Rockdale and a seven per cent decline in the Inner West.

In Melbourne, the report found people were still frequenting local cafes, with wealthier areas such as Bayside showing a 40 per cent increase in cafe spending. But coffee consumption almost halved in a Monash local government area devoid of students, and along St Kilda Road, home to large offices, spending dropped 25 per cent.

"People are on Zoom call after Zoom call and are desperate to get out and have a coffee, just as they would be if they were in the office," says AlphaBeta director Andrew Charlton.

He says cafes in business districts and areas near the airport have experienced some of the biggest losses.

20 Resolve and resilience: Leading during a crisis

20.1 How to build organisational resilience

Deborah Tarrant | "How to build organisational resilience", *Company Director*, February 2021, AICD.

Shane Fitzsimmons was sceptical when informed he'd be heading an organisation called Resilience NSW. "When the government first approached me, it was actually about taking on an organisation focused on disaster and emergency management," recalls the former commissioner of the NSW Rural Fire Service (RFS). "Then this word 'resilience' crept in, right at the end when it was all announced."

Fitzsimmons was upfront. "I said, 'No one's going to bloody understand what that means. If it's about disaster, let's call it that."

The current NSW Australian of the Year, at time of publication, Fitzsimmons was a favourite for the 2021 national Australian of the Year award. After 35 years in the RFS, the past 12 in the top job, Fitzsimmons signed off as chief on 30 April 2020 and the next day took up the role as commissioner of the new executive agency within the NSW Department of Premier and Cabinet. With the move came a massive remit encompassing the gamut of natural, accidental and manmade emergencies – from prevention to recovery.

In the hectic months since, he's been juggling multiple responsibilities – devising a strategy and a structure for the new whole-of-government agency, while simultaneously working with communities still grappling with the impact and recovery from the 2019–20 bushfires. The fires came on the back of one of the worst droughts in memory, which broke with storms and flooding. Encompassing all was the confounding impact and uncertainty of the COVID-19 crisis. "A lot of NSW communities have experienced all four," says Fitzsimmons. Along the way he's learned that "everyone has a view and an interest in resilience".

Setting up

As the first sparks of the 2020–21 bushfire season flew, Fitzsimmons had secured an operating budget, a strategy on a page, priority governance elements and an organisational structure for Resilience NSW, although much of the detail was still to be ratified.

Ads for senior executive team members to oversee five broad directorates – strategy, policy, programs and service delivery, operational management and partnerships – to action the state's emergency and disaster management framework were posted in December. The balance of the agency's teams, totalling around 200 employees, is expected to be in place by midyear.

A critical part of Resilience NSW's role is about cohesion, he says. "Our role is to make sure resilience has been factored into everything, from planning decisions and new land releases – where do we allow communities to establish and grow? – through to investment decisions around open and community spaces, large buildings, infrastructure, pipelines, bridges, telecommunications and data, power…"

The agency is also the primary conduit for connecting nationally with Home Affairs and the Australian Defence Force, along with other states and territories. Much time has been spent looking at the work of statutory bodies, existing partnerships, agreements and engagements across government and with industry, business, not-for-profits and charitable organisations "to determine if they are competing or creating gaps".

"How do we leverage existing government networks, like Service NSW, the state's interface to millions of citizens through online and face-to-face services, and not replicate or duplicate effort?"

Five essentials for cut-through communication

A systematic approach to communications can help organisations effectively during crisis communications – and it starts with telling it straight.

- Give the most accurate and up-to-date information you possibly can.
- Be clear about what you know and what you don't know.
- Explain what you are doing about the event or issue and why you are doing it.
- Detail what you want others to do to be part of the solution.
- Show humility, empathy and care for those impacted and the welfare of your people, customers and the community.

Governance imperative

Governance has been a priority from day one for dealing with the welfare and performance of people in stressful, difficult operating environments, and particularly around the finance and investment delivery processes.

"We're responsible for the distribution of a record amount of grants and recovery support – about $4 billion in bushfire assistance alone – so one of the first things we did was set up audit and risk committees to review basic operating policy constructs for service delivery on a scale we haven't seen before. So we can assess the effectiveness and probity of delivery of programs and how our people are working," says Fitzsimmons.

Stakeholder feedback has uncovered "a wonderful opportunity" to be an organisation that builds resilience through local empowerment via councils and local communities. "The best planning, response, recovery and rebuilding will be locally led."

Determining priorities could be mind-boggling, but Fitzsimmons' background has prepared him. "Priorities matter differently to different parts of the community," he says.

In continuing natural disaster recovery efforts, for instance: "There are levels of consistency across the state around the commonality of challenges resulting from damage and disruption and despair and tragedy, but everybody's individual circumstances, business circumstances and community profiles differ from place to place," he says. Our policies and programs have to be nuanced and flexible enough to accommodate those differences."

Countering complacency

The biggest challenge in upscaling resilience is complacency, according to Fitzsimmons and he calls out that familiar Aussie saying: "She'll be right, mate. No worries."

In disaster-affected communities, research shows that people know they live in high fire-prone areas, he says, but then are surprised when they're actually impacted by a fire. The same is true in flood-prone areas. "We have to bust down this lethargy," he says. Organisations and individuals need to take assessing and personalising our risk assessments, vulnerabilities and exposure to impacts and disruptions seriously. Boards and businesses, in particular, must focus on dependence on power and data networks.

A standout example materialised as bushfires burned in the first days of January last year and tens of thousands of people were evacuated from the NSW South Coast. Media headlines announced many towns had run out of fuel. "There was lots of fuel in the ground," says Fitzsimmons. "But service stations had no contingency or back-up plans to operate the bowsers in a power outage." The RFS supported bringing in generators, but the crisis compounded when almost no-one could pay because ATMs failed to work.

Fitzsimmons keeps his messaging straight-forward. Have scenarios. Share your plan. Document that plan. And, importantly for businesses, know what leadership will do in the event of uncertain times or tragedy.

He believes the pandemic may have been helpful in bringing home that message. "COVID-19 has forced us all to think about how we connect and how processes work in a restricted environment. Forward thinking from that should translate into how we plan and prepare ourselves."

Leadership lessons

Fitzsimmons stayed longer at the RFS than expected to head the state's long bushfire emergency effort – a role that earned him widespread respect and recognition as a straight-talking, tireless presence in the face of shocking adversity. Having lost his firefighter father, George, in 2000 when a hazard reduction burn in Ku-ring-gai Chase National Park got out of control, Fitzsimmons' authenticity was arresting in his personal distress as he announced loss of lives – 26 in total, including frontline volunteers and firefighters – and in publicly admitting his disappointment and frustration when the prime minister failed to communicate, ahead of a media announcement, that army reservists were being deployed to help with the crisis.

Lessons in leadership are everywhere, insists Fitzsimmons. "Every time you have an experience or observe others, you instinctively look for what you admired, liked or how it made you feel. The key for me is to identify those positive traits and work out how to apply them in my own way."

Looking beyond inspiring examples is also helpful, he says. "There's a scorecard of the positive things you want to emulate and the other side where you say I'm going to do my damnedest to make sure I don't do that."

Being part of an emergency volunteer organisation since his early teens, where "domineering, arrogant, obnoxious, authoritative leadership won't cut it", was fertile territory for learning about diversity, consultation, collaboration, engagement and teamwork. "[Volunteers have] a remarkable ability, if they don't feel valued, included or listened to, to tell you to get stuffed, and give their time where they feel they better belong".

Above all, leaders must make decisions and take action, he concludes. Inaction is a huge demotivator. "People are happier with decisions they don't like, but that are explained, than no decision at all. Paralysis through analysis is a real thing. And the pursuit of perfection, in forming a decision, comes at the expense of progress."

20.2 What key directors have to say about risk and resilience

AICD-FM Global roundtable, "What key directors have to say about risk and resilience", *Company Director*, December 2020, AICD.

COVID-19 erupted after a record drought and savage bushfires had already disrupted businesses across the country, with the successive crises making demands that few could have predicted or prepared for. The experiences shared by the Rethinking Risk roundtable participants point to the ability of companies with well-prepared risk and crisis management plans to respond with agility, minimising not only the damage to business operations, but also any consequent loss.

St Vincent's Health Australia was on the front line when the pandemic hit and, according to CFO Ruth Martin GAICD, while regular risk profiles had been prepared for the board, they hadn't routinely rated a "pandemic" as "highly likely". Said Martin, "What's interesting is that while you have all the planning in place, sometimes it can be a little dusty."

The organisation learnt three important lessons under pressure from the crisis: the need to respond with agility from the board down; being prepared to hear bad news to enable quick responses; and having business fundamentals in good order, including cash reserves. Insurer FM Global helps companies minimise

risk to mitigate against losses, but it also came under pressure with the shutdowns. Onsite assessments, critical to its underwriting, were threatened.

While the company had occasionally used remote engineering servicing for this purpose, after border closures the technology had to scale up quickly, said operations manager Lynette Schultheis. "This past six months, we've applied it 13,000 times. In theory, it was in place, but to be that agile and nimble to enact it so quickly, there were some growing pains." The climate and virus disasters came at the same time as Australian-listed global energy company Worley was dealing with other significant changes: integrating a new CEO, the energy transition, geopolitical tensions and falling energy prices.

Worley managed the situation by establishing a dedicated project management office to respond to the COVID crisis.

"We had to move more than 40,000 people around the world to work from home as our pandemic response plan kicked in," explained senior group director Tony Frencham MAICD. The priorities were staff safety first, then business continuity, followed by customers' needs. Frencham said the company's robust risk culture was vital. "You have to have your core values, purpose, systems and beliefs in place before a crisis. You can't be tinkering with those things when the crisis happens."

Risk muscle

Penny Winn GAICD, a director of Coca-Cola Amatil, Goodman Group, CSR and Ampol, said some companies honed their risk culture in the years after the banking Royal Commission and other high-profile regulatory cases. "I call it 'risk muscle' because, effectively, it is something you build up, just as an athlete practises for the Olympics."

Winn said the duration and multiple layers of disruption, all interconnected, were a big test in 2020. "What it brought to bear was about 10 risks all at once: economic risk, health risks, operational risks, etc." She said her boards relied on their risk muscle to get them through, with Coca-Cola Amatil convening weekly instead of monthly and stepping up information flow.

Risk adviser Peter Deans GAICD developed an open-source framework, called 52 Risks, to help organisations identify, assess and manage their risks. He said 2020 has accelerated many trends and jolted companies that didn't have a deep understanding of risk in their business: "They will look back now and say, 'One of the lessons to come out of this difficult period is that an investment in risk management does actually pay off.'"

Company self-harm

Several high-profile companies suffered enormous reputational damage and business losses in 2020, escalating the importance of identifying and governing risk. Serious problems – such as those exposed by the casino licence inquiry into Crown Resorts, Westpac's breaches of anti-money laundering laws and Rio Tinto's destruction of a sacred Indigenous site – have rippled through the nation's boardrooms.

Deans said it comes down to "a complete breakdown of the governance of risk management, despite having the resources and some good people in the chain".

Winn likened the failures to the "boiling frog" fable – the temperature in a pot of water rises from lukewarm to boiling without the frog noticing until it's too late to jump out. "In a lot of cases, there is a culture of acceptance of small breaches and these breaches then build up and you get the Westpac situation," she said. "In isolation, none of them seem extreme and management will say, 'We've got it all under control'. But that's where boards need to sweat the small stuff. Boards have a responsibility to review, to see, to question and to dig their heels in and say, 'We are not good enough'... I think that's critical."

Climate change risk

The disruptive forces of climate change threaten a new era of uncertainty and, warned Schultheis, it's a mistake to lose sight of this. "Climate change can be just as big an issue for a client as a pandemic.

If you were to lose a location, if a cyclone takes it down, then your competition is more than happy to just step in and take your place."

There are many low-cost practical measures that can mitigate against catastrophe, she added "Just very basic things for a bushfire, such as removing your ignitable liquids to a safer area and elevating your expensive equipment in a flood."

The climate challenge risk varies for different businesses and requires specific responses. Alongside planning for extreme weather events, companies need to think in broader strategic terms, said Deans. "Does my business look the same? Do my consumers and customer segments look the same in three, five and 10 years, and what should we do strategically to respond to that?"

He cited the Australian Prudential Regulation Authority's new requirement, in 2021, for banks to complete financial vulnerability assessments to evaluate the impact of climate change on their business. "That will be a wake-up call, I think, for many banks. There is a question around business model sustainability. That should be the strategic discussion company directors are having right this minute."

According to Winn, assessing future business sustainability raises a forensic transition risk. "[Ampol, for example] can mitigate the climate change risk, but at the expense of lowering demand and lowering our viability in the longer term," she said. "It's really hard to do both, but it is critical that boards do have that longer-term view."

Frencham said climate risk mitigation has been a key focus at Worley. "Even though we've been going through all these crises, we've accelerated our climate change position statement to be net zero by 2030 and our customers have all done the same thing," he said. "It's the right thing to do, the science is compelling and the stakeholders expect it. It has been highly energising in a very anxious year for our people and it's allowed us to get on the front foot… with customers who you'd think would be distracted. But it's front of mind for them, too."

Cyber attack

When the COVID-19 shutdowns forced health services online, relocated workforces to their homes and revolutionised meetings via videoconferencing, it reinforced that all businesses are now dependent on technology. No company can make, supply, deliver or market products or services efficiently without it. And the risk of cyber attack has multiplied.

Malicious cyber activity is one of the most significant threats impacting Australians, according to Australia's Cybersecurity Strategy 2020. Released in August, the report states that 2266 cybersecurity incidents – at a rate of almost six per day – were referred to the Australian Cybersecurity Centre in the 2019–20 financial year.

Deans said spending on mitigating the risk of cyber attack is no longer discretionary. "I think those days are over," he said, pointing to severely disabling hacks experienced in 2020 by Toll and Travelex. "The downside risks are quite high – potentially catastrophic financially – and the reputation will take years to recover. So, it's really just a case of getting the experts in and spending some money, and probably spending a little bit more."

Schultheis said directors also need to consider the risk to plant and equipment from cyber attacks, with most machinery computer-controlled and connected to the internet. Hence, FM Global's cyber assessments now include software security. "I don't want to say hackers are smart, but they're smarter than we are most of the time," she said.

With more people working remotely, computer network security risks have increased. Worley's Frencham said there's the added complexity of being hosted by different systems on multiple customer sites. "We have to meet their standards and protect their assets, people and systems, and then also do the same for us."

The health sector has become a target for cyber attacks, with data worth a fortune on the dark web, which is why St Vincent's Health employs an ongoing testing regime. "Cyber risk is huge in health – health is the new banks. That's a big issue for us…" said Martin, noting that cybersecurity reports are prepared for every meeting of the board's audit and risk committee.

"Our first and best line of defence is our people," she added. "We send out dummy phishing to see who will actually click on the link, then notify that person and instruct them to do training."

Boards need digital technology capability and directors who can educate themselves on the threats, said Winn. "It's a matter of being connected. Directors' roles are not just about looking inwardly to the organisation, but also scanning the environment and learning from the incidents.

You have to make sure management has the people, capability and resources to do it correctly, and that you know enough to ask the right questions."

Opportunities and resilience

There are significant lessons to take forward, noted Frencham. "I think the biggest risk in 2021 is not taking up the opportunities. We've moved a decade in the past year in terms of a lot of improvements. It's very clear that sustainability, energy transition, climate change and circular economy are front and centre. and we have to lean in to those. Yes, digitalisation has been accelerated and we have to continue that progress. The one area of risk among all that, that we're concerned about, is our people. We [need] new pathways to develop our people."

Martin said the culture of leadership is evolving, allowing more flexible decision-making where appropriate. "I think leadership is changing and having people that can make decisions in more agile working groups has been something other companies could potentially learn from."

The pandemic has also brought home the fact that companies operate in a society that depends on them to function well. A focus on maximising shareholder value now seems to be broadening to include the health and resilience of the company.

"Reputation is very slow to be earned, but very fast to be lost," said Winn. "In the digital world, it's on hyperdrive… effectively, the customer is in control. Reputations have been hooked into what's happening on social media and it's so important."

According to Frencham, in 2020, Worley relaunched the company's purpose and values after holding more than 100 workshops around the world with its employees.

"It all goes to culture, and the culture certainly comes from leadership," said Martin, recognising the value of independent, questioning voices.

"It is accountability and clarity of roles and responsibilities," agreed Winn. "It's become apparent that the board is ultimately accountable and has to be very comfortable with the risk profile, and make sure that management accountabilities are fully understood throughout the organisation. This will be one of the learnings out of the last couple of years, with some of these governance failures."

20.3 Time for resolve

Angus Armour FAICD | "Time for resolve", *Company Director*, December 2020, AICD.

The year 2020 will be recorded as a year of upheaval. The tragedy of a global pandemic is our history, the sacrifices of healthcare and essential workers and volunteers, the impact on the strength and structure of the global economy, the advent of Keynesian fiscal responses from governments around the world, and the dramatic consequences for employment and how we work.

History will record a US election with a nostalgic echo from the 1800s, with partisan passion and wilful fabrication now amplified in the fashion of 2020 – endlessly liked, looped, shared and repeated across social and conventional media. Media reporting from this period will be seen to emphasise the uncertain future of democracy, the loss of trust in our institutions, the loss of faith in capitalism, and the desire for a just and equitable society.

The geopolitical transformation we have experienced this year will be stark in retrospect. It marks a turning point in economic and soft power, and an experience of hard power projected in new ways. The year 1989 was seen as a similar turning point in Western historical narrative, but the economic and political momentum vanished in serial crises. The economic and political momentum driving the world in 2020 is from one perspective coherent, purposeful and stronger.

The innovation in business models and technology that sustained us through the pandemic continues to reshape our economy and society, but the implications over the medium term are poorly understood and policy leadership and coherence is missing. We lack a shared understanding of how the work of the future may evolve – and the industrial relations frameworks to respond to those changes.

These are immediate and compelling issues as we enter 2021, but some of the challenges we face are long-standing.

We have experienced a long period of partisan politics, without genuine economic reform. The AICD's Director Sentiment Index (DSI) continues to identify the tone of policy debate as a significant concern. The spirit of collaboration in our federation that contributed to Australia's success in fighting COVID is more subdued, precisely when the looming challenges are shared. And oversight mechanisms at federal and state levels continue to fall short of public expectations and good process.

For the past four years, the DSI also has elevated energy and climate change as policy priorities for the Commonwealth. During that period, changes in technology and the expectations of shareholders and investors have outstripped policy progress. The growing risk of natural disasters and associated cascading effects is self-evident from the past bushfire season. Bushfires and the pandemic warn us of the need to build national resilience and planning.

Our progress in reconciliation, particularly from the perspective of economic equality and health, has fallen short.

And while we have made significant progress in gender diversity in ASX 200 boardrooms, beyond that our progress is mixed. Beyond gender diversity, the strength of the Australian community in culture, innovation and science is tremendous, but poorly represented in our boardrooms.

We are midway through a global pandemic and economic crisis, and the environment will remain challenging for a long period. To tackle these challenges requires resolve.

Firstly, we must re-establish trust in our institutions. Confidence and trust in our institutional settings and governance is fundamental to restoring the faith of the community that we seek a fair and just society. That faith is fundamental to the strength of our democracy, community support for our economic model and the resolve to tackle our long-term challenges.

We need resolve to tackle the challenges we will confront in our economy in 2021. While we may emerge from recession on the back of fiscal stimulus, the future of our economy relies on grappling with our poor productivity performance. As stimulus effects fade and temporary measures are withdrawn, we will face a difficult period of adjustment as organisations assess their viability, particularly those that rely on travel and permanent or temporary immigration. Viable organisations will continue a relentless focus on costs and innovation, including accelerating the adoption of new technologies, with implications for the structure and capabilities of our workforce.

Finally, we should approach public debate as Australians, acting as individuals with the national character we claim is uniquely Australian. We have witnessed the dissolution of political debate in the US, and we have seen the consequences when enmity is encouraged for short-term political gain. These tactics will have long-term implications for the strength and focus of US public policy and national cohesion, well beyond the Biden administration. The challenges Australia must overcome will be insurmountable if we create more barriers to resolving our way forward.

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