boardroom

DEC / JAN 2020

5

The top five issues for directors in 2021

Institute of DIRECTORS NEW ZEALAND

boardroom

Boardroom is published six times a year by the Institute of Directors in New Zealand (IoD) and is free to all members.

Boardroom is designed to inform and stimulate discussion in the director community, but opinions expressed do not reflect IoD policy unless explicitly stated.

EDITOR
Aaron Watson
+64 4 470 2647
aaron.watson@iod.org.nz

Please contact the editor for any advertising queries.

INSTITUTE OF DIRECTORS IN NEW ZEALAND (INC)
Mezzanine Floor, 50 Customhouse Quay
PO Box 25253, Wellington 6146
New Zealand
Tel: 04 499 0076
Fax: 04 499 9488
mail@iod.org.nz
iod.org.nz

The Institute of Directors has staff based at the National Office in Wellington, an office in Auckland and eight branches. For National Office, phone 04 499 0076

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A note from the editor

It's good to be back in print. Especially since this will be the final *Boardroom* under the bi-monthly model.

Boardroom will be relaunched in 2021 as a quarterly publication, and with an enhanced digital presence at **iod.org.nz**

During the hiatus from print initiated by the lockdown, we received positive feedback from many readers on the digital-only version of the magazine but also a number of requests for a return to hard copy.

From March 2021, you will receive *Boardroom* in an expanded quarterly format and see an enhanced website model that will enable us to deliver more of what members want, in the way they want to read it.

The print magazine will be weightier, both literally and figuratively. It will contain more articles, will be less time bound and will be built around in-depth exploration of governance issues, challenges and trends rather than driven by the news cycles.

Online, the print articles will be available. However, the digital presence will be built around a governance current affairs approach – driven by key current events and issues. This will include expert commentary, member views and articles that support the resources, education and advocacy work of the IoD for members – and for good governance in New Zealand.

So it is goodbye for now, happy New Year, and we will see you in reimagined format in 2021.

Aaron Watson
Boardroom editor

Institute of DIRECTORS NEW ZEALAND

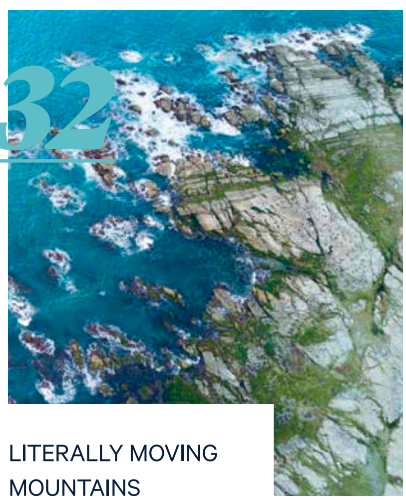
Boardroom is the magazine of the Institute of Directors in New Zealand **iod.org.nz**

The Agenda

DEC / JAN 2020

BUILDING YOUR PROFESSIONAL BODY FOR THE FUTURE

THE TOP FIVE ISSUES FOR DIRECTORS IN 2021



LITERALLY MOVING MOUNTAINS

Looking forward to 2021

KIRSTEN PATTERSON
CEO, INSTITUTE OF DIRECTORS

Tēnā koutou katoa

Looking back on 2020, I decided I would rather look forward to 2021. So here are three of the things that will be on my radar when we get back from the Christmas break.

REDESIGNING THE IOD'S GOVERNANCE STRUCTURES

The first topic in our "Top Five Issues for Directors in 2021" (p16) is to revive, rethink and redesign our organisations following the disruption of COVID-19.

That will also be the first item of business for us in the new year as we review the IoD's Rules and governance structures. Having grown from an organisation with a few hundred members to an organisation with many thousands of members, it is incumbent on us to ensure that the way we operate – and are governed – delivers the best value for members it can.

Formal consultation on the review will begin in February and our President Alan Isaac explains the rationale and approach in "Building your professional body for the future" (p12).

HELPING BOARDS TO ADAPT

The wizards in our Governance Leadership Centre say boards that are adaptable – able to incorporate new thinking, new technology and new imperatives – will be the successful governance practitioners of the future.

For us, that means finding new ways to assist boards to be successful in a fast-changing environment.

We have put significant effort over 2020 in understanding what today's members want from our education offering, and also into reimagining our courses and support to deliver on what the governance community needs. The changing needs of members have also been a driver of thinking in our Governance Services team, which helps boards assess their skills gaps and identify opportunities to improve board performance.

Supporting boards' adaptability and their ability to effectively take on new ideas and technology are going to remain a priorities for us throughout 2021 as the impact of the pandemic continues to be felt.

WATCHING CYBERSPACE

No, I don't mean binging on Netflix (although there may be a little of that over the break). I mean keeping a close eye on trends in cybersecurity and the cyber threatscape. This is increasingly important to directors as privacy laws get stronger and organisations become more reliant on digital technology.

We had a brush with cyber-attackers in 2019 and the widely-publicised attacks on New Zealand companies during 2020 have only made understanding the risks - and mitigation strategies - more vital. We were lucky to have a good team and good technology partners when we were attacked. This meant that the disruption to our operations – while certainly felt – was not as significant as it might have been. As we note in the breach report, your cyber security is only as strong as your people are, because human error is the most significant risk. Keeping cyber security front of mind is something directors need to lead on and filter down through their organisations.

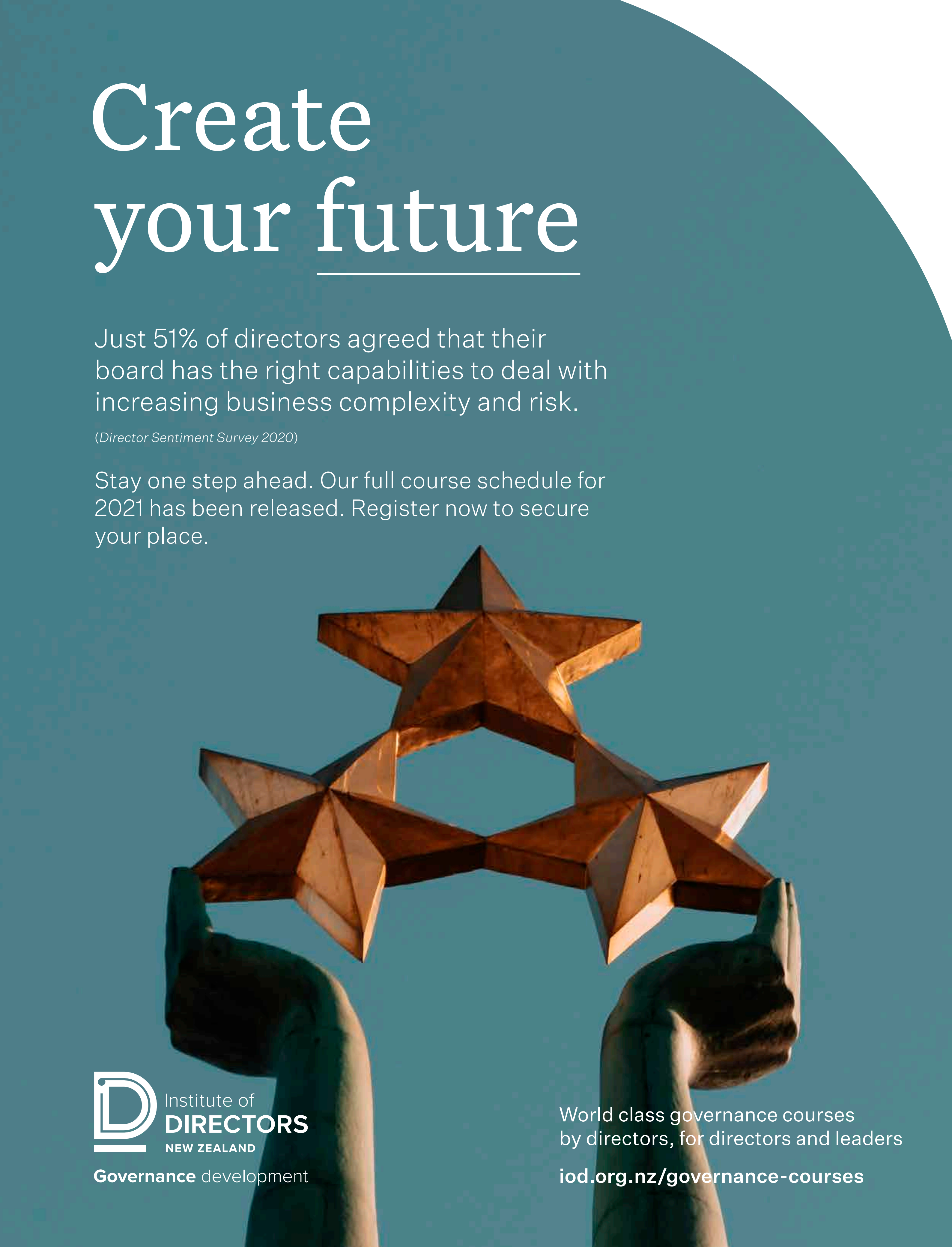
THANK YOU

Lastly, I would like to acknowledge the support and assistance we have had from so many members this year. Thank you to those who gave their time and shared their expertise in our workshops and webinars, to those who made the effort to give thoughtful responses to our *Director Sentiment Survey* questionnaire (see p28), to those who brought the governance community to life at our branch events, and those who offered me their thoughts and advice at gatherings up and down the country. A heartfelt thank you to you all.

We are a professional body that operates on the enthusiasm and passion our members have for good governance. We do it for you, and we couldn't do it without you. I also give very special thanks to our members who serve on Council and branch committees and who do important work for their local governance communities.

Kia ora to you all and have a happy New Year.

Ngā mihi,
Kirsten (KP)


Create
your future
Just 51% of directors agreed that their board has the right capabilities to deal with increasing business complexity and risk.
(Director Sentiment Survey 2020)
Stay one step ahead. Our full course schedule for 2021 has been released. Register now to secure your place.
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DIRECTORS
NEW ZEALAND
Governance development
World class governance courses
by directors, for directors and leaders
iod.org.nz/governance-courses

UpFront

Aotearoa Circle's *Roadmap for Action*

Aotearoa Circle's Sustainable Finance Forum (SFF) released its Roadmap for Action Final Report in November. The report sets out how New Zealand can build a sustainable financial system by 2030.

The Roadmap for Action covers three main themes – changing mind-sets, transforming the financial system and financing the transformation. Under these themes are 11 priority areas which set out where change is required. Detailed recommendations are then provided to support each area.

The 11 priority areas set out in the report are:

Changing mind-sets:

Responsibility: Explicitly require financial system actors to consider, manage and account for environmental and social risks and opportunities and real-world impacts.

Capability: Raise capability in sustainable finance through education and training.

Governance: Improve public and private sector governance for sustainability.

Transforming the financial system:

Data: Improve data and information quality and availability, including through the use of FinTech.

Disclosure: Improve and extend external reporting and disclosures.

Coordination: Establish and fund a (mandated) agile and independent Centre for Sustainable Finance to oversee and coordinate implementation of the Roadmap.

Value: Integrate environmental, social and cultural outcomes into investment decisions to ensure we operate within planetary and societal boundaries.

Inclusiveness: Recognise that financial services and products are a utility and create an inclusive financial system.

Government leadership: Develop a whole-of-government strategy for sustainable finance.

Financing the transformation:

Resiliency: Improve prudential regulation over environmental risks.

Standards and pathways: Develop standards and pathways that encourage investments which deliver positive environmental, social and economic outcomes.

The recommendations in each priority area are presented in three waves, depending on whether they require immediate, short-term or medium-term action. The next step for the SFF is to advocate and work towards implementation of the recommendations.

APPOINTMENTS

Mark Darrow
Chartered Fellow, has been appointed a director and chair of the board of wine and gin producer Invivo & Co.

Rob Ellis
Member, has been appointed to the board of insurer Cigna.

Rebecca Keoghan
Member, has been appointed to the Timaru District Holdings Limited board.

Phil Norman
Chartered Member, has been elected the independent chair of Just Life Group.

Marcus Porter
Member, has joined the Skylight board via the IoD's Director Vacancies service.

Mark Rogers
Chartered Member, has been appointed to the Timaru District Holdings Limited board.

Anne Urlwin
Chartered Fellow, has been appointed to the Queenstown Airport Corporation board.

Brian Yee
Member, is the new chair of the Basketball New Zealand board.

Exploring New Zealand's **post-pandemic future**

The "jolt" of COVID-19 could help start much-needed conversations about New Zealand's economic and social future, says Sir Peter Gluckman, former chief science advisor to the Prime Minister and president-elect of the International Science Council.

"COVID-19 has brought an appreciation of things we have long taken for granted and jolted our consciousness around what we need and want as a country. The world has recently taken notice of this small southern nation, but can we live up to our current glowing external reputation over the long term? Can we be an example society committed to environmentalism, social justice and fairness, but also committed to individual freedoms and a market economy?" Gluckman asks.

The question is discussed in *The Future is Now: Exploring the post-pandemic direction for Aotearoa New Zealand*. Co-authored by Gluckman and Dr Anne Bardsley, it was launched in November by **Koi Tū: The Centre for Informed Futures** at the University of Auckland.

Koi Tū Chair Bridget Coates CMInstD says the report is critically important and was intended as a national conversation starter.

"It lays out many challenges we face yet we – as a country – have tended to leave in the too-hard basket including constitutional, social, environmental and economic issues," Coates says.

Cybercrime *hits home*

Two thirds of New Zealand businesses would pay a ransom to retrieve data after a ransomware attack, according to research commissioned by Aura Information Security.

Aura's *Cyber Security Market Research Report* found more than half of businesses have been successfully targeted by a ransomware attack in the past year, and one in five businesses estimate their organisation is affected by 16 or more ransomware attacks per quarter.

"Not only that, but one in five hacked businesses say it caused serious disruption to their operations," says Aura General Manager Peter Bailey.

"Unfortunately, this is just the tip of the iceberg. Over the past year we've not only seen New Zealand businesses get pummelled by ransomware, we've also seen a big resurgence in distributed denial-of-service attacks. While there's a general belief that much of the cybercriminal world is still focused on the United States, there's nothing stopping these hackers from shifting their focus towards New Zealand and, quite frankly, most of our businesses aren't prepared."

Director Vacancies

Director Vacancies is a cost-effective way to reach our extensive pool of talent. We will list your vacancy until the application deadline or until you find a suitable candidate. A full list of vacancies can be viewed at iod.org.nz

Basketball Auckland
Location: Auckland
Role: Board members
Applications will remain open until the position is filled.

Life Education Trust North Shore
Location: Auckland
Role: Trustee
Applications will remain open until the position is filled.

Otago University Students' Association
Location: Otago
Role: Advisory Board Members
Closes: 15 January

Six questions with...

Helen Stewart MInstD
Bay of Plenty Committee

Why did you join the IoD?

I was living in a small town and had been asked to sit on some small boards and trusts. I was working as an executive director but felt I wanted and needed to know more about this type of role. My board chair was great, but some board members weren't totally familiar with how an executive role worked either. They were, however, really supportive of me joining the IoD to learn more.

I really benefitted from my learnings and the courses I attended and found joining certainly increased my knowledge. Plus, the networking it provided was particularly helpful coming from a small-town environment.

How did you find yourself on a branch committee?

The branch committee felt it was important that it had a good spread in terms of sectoral and geographical representation. Working in the Eastern Bay of Plenty region, with a not-for-profit background, and experience in start-up ventures, they felt I'd help provide the balance they were looking for. I was elected to begin with and am now in my second stint after being seconded on.

Why do you feel it is important to give back to the IoD?

It's about sharing knowledge really. Being on a committee has enabled me to network with, and support, other people and in doing so help them become better directors. It's also a great way to bring new ideas to the front and to help people build great leadership skills.

If you had one tip for a person interested in a governance career, what would it be?

Two words – due diligence. People need to properly check out the boards they're considering joining or may be being asked to join. You need to be aware of what your passion is and then identify an industry or organisation that's of interest to you and that you can add value to. It's easy to do the "right thing" and agree to help out, but accepting a nomination from the floor doesn't always work out.

What's the most significant change for directors as a result of the COVID crisis?

I think it's made more people aware of the need to be mindful of how staff, and indeed other directors, are managing. In recent months, I've been seeing much more interest in people's wellbeing, at all levels. Really good leadership means you've got to develop an awareness of what's happening with all your people and have some understanding of the issues they might be facing.

What will your branch look like in 2023?

It'll be bigger, that's for sure – we just seem to keep growing. And much of that's due to the great work of our branch manager. But it'll also have a greater focus on events and content for members – more marketing, if you like. I see more of the support functionality being centralised and our branch spending even more time on providing what members in the BoP region want and need.

Welcome

Congratulations to our newest Chartered Fellows and Chartered Members and welcome to our new Members and Associates.

Chartered Fellows

Jane Cartwright
Bev Gibson
Murray Taggart

Chartered Members

Rachel Afeaki-Taumoepeau
Kate Bromfield
David Downs
Lynne Hayman
Warren Kilham
Mark Rogers
Brian Ropitini
Ben Sutton
Vicki Sykes
Steven Yin

New Members

AUCKLAND

Adriana Valbuena
Amanda Gunn
Amanda Livingstone
Andrea Nelson
Anthony Wilson
Antony Wyborn
Api Talemaitoga
Arama Prime
Ben Lawrence
Brent Pattison
Caleb Watson
Chris Harris
Dane Tatana
Danica McPhee
Daniel Schultz
David Robb
Dene McKay
Dipti Desai
Elena Kazemi
Freddie Kuhn
Gavin Hunt
George Gordon
George Norris
Glenn Teal
Grace Wong
Graham Hill
Grant Lemin
Greg Whaiapu
Heather Anderson
Henare Walker
Hiria Cameron
Hui Li
Janine Roberts
Joe Milich
Joel Clements
John Knox
John Chapman
Julia Chambers
Julian Darby
Juliet Hull
Karen Pickford
Karl Budge
Kevin Blyth
Leah Davis
Lisa Hopkins
Lisa Stone
Liz Halsted
Logan Wedgwood
Mahsa McCAuley
Mairi Orr
Malindi Maclean
Manjula Bartholomew
Marihi Langford
Mark Powell
Mark Prenter
Mathew Tucker
Matt Sutcliffe
Matt Wilkins
Matt Hulett
Matthew Ren
Megan Firkin
Mona Aziz
Ollie Hill
Orion Tiatia
Paul Wilcox
Paul OBrien
Rene Bros
Richard Park
Richard Donnelly
Rick Leckinger
Rod Penna
Roger Shakes
Sam Noon
Sarah Nathan
Scott Mitchell
Shane Oerder
Shane Price
Simon Hobbs
Stan Yan
Staverton Kautoke
Steve Allan
Steve Killeen
Stewart Imrie
Stuart Wilson
Subha Rajanaidu
Sue Plowman
Sue Dow
Tony Kemp
Tony Mockford
Vanessa Gascoigne

BAY OF PLENTY

Alan Withrington
Brian Dillon
Caleb Armstrong
Chris Ennor
Claire Isham
Daniel Birnie
Dave Flett
Dudley Maritz
Elly Sharp
Ian Piebenga
James Truman
Linda Flegg
Lindsey Webber
Lorraine Anderson
Maria Watchorn
Matene Blandford
Mike Stott
Philippa Jones
Rachel Pinn
Rich Bennetts
Sharon Macquarie
Stephen Boyle
Tracey Goodall
Tracy Brown

CANTERBURY

Alli Copland
Amanda Rooney
Andrew Rodwell
Andrew Rawstron
Barry Donaldson
Brian Mills
Bronwyn Bindon
Colin Hogg
David Martin
Dea Majstorovic
Deb Francis
Dinghy Pattinson
Geoffrey Sullivan
Janine Holland
John Creagh
John O'Dea
Julie Tweedie
Lloyd Steward
Lucy Taylor
Lydia Matthews
Mandy Cronin
Mandy Kennedy
Marcus Murdoch
Mark Leggett
Michele Pasco
Nick Brooks
Paco Uybarreta
Philip Royds

Richard Wilson
Sam Johnson
Scott Johnstone
Simon Boyd
Steve Alexander
Tejada Stark
Tyrone Campbell

NELSON MARLBOROUGH

Matt Griffin
Mike Scott
Rebecca Clarkson
Stephen Broad-Paul
Terry Duff

OTAGO SOUTHLAND

Bob King
Bobbi Brown
Danny Luke
David Bainbridge-Zafar
Erika Harris
Erin Howes
Geoff Douch
Greg Delaney
Hamish Hargest
Lisa Baillie
Mark Smith
Matt McLennan
Mike Brummitt
Pauline Smith

TARANAKI

Desiree Bond
Herman Visagie
Paul Veric
Russell Petrie

WAIKATO

Barnaby Pace
Brian Hanna
Chelsea Smith
Chris Flatt
Christine Hall
Claire van der Most
Elaine Preston
Geoff Peake
Hanlie du Plessis
John Hepburn
Julian Williams
Kate Searancke
Katrina Robertson
Mitch Mace
Nic Greene
Nigel Watson
Richard Petersen
Rob Rope
Waikaremoana Waitoki

WELLINGTON

Alex Semprini
Alison Rudzki
Amanda Malu
Andrew Brown
Angharad George
Barry O'Sullivan
Belinda Tuohy
Brad Olsen
Brendon Oakley
Chelsea Cain
Colin Jacobs
Craig Ward
Craig Catley
Daniel Cook
Daniel Reid
David Turner
Dinah Kennedy
Emmeline Rushbrook
Grant Hockings
Hank Optland
Jenny Cameron
Jenny Beale
Jeremy Hunt
Jim Dryburgh
Joe Bishop
John Ong
Kaarin Gaukrodger
Kath Cook
Laura Keenan
Lisa Rossiter
Madeleine Setchell
Mark Patchett
Martin Macdonald
Mischa Mannix-Opie
Natasha Possenniskie
Neil Chittock
Pat Turley
Pip Rudhall Hyett
Raniera Albert
Rhiannon McKinnon
Richard George
Ruth Tolise
Sandra Kirby
Susan Easton
Venessa Kate Cherrington
Veronica Pitt
William Beetham
Willow Sainsbury

OVERSEAS

Andy Burner

Associates

AUCKLAND

Andrew Cooper
Anna van Paddenburg
Brent Kendrick
Danica Holgado
Darryl Scott
Georgia Houlker
Heather Kingsley-Thomas
Himani Shah
Jen Fromén
Jerome Deperrois
Justin Fox
Karen Gibbons
Kirsty Hughes
Maricar Donila
Mike Jamieson
Monika Lacey
Nic Johnson
Paul Clews
Penny O'Hara
Roger Hudson
Roger Wakelin
Simon Hoole
Siyu Liang
Tatum Crisp
Warren Beard

BAY OF PLENTY

Adrian Barr
Logan Charters Leahy
Ryan Thompson

CANTERBURY

Andrea Furniss
Danny Wilson
Hayden Robinson
Katherine Snook
Lee Gardiner
Marc Brakenrig
Mark Appleman
Matthew Wiles
Matthew Robinson
Miranda Gray
Morgan Walker
Nina Greenman

NELSON MARLBOROUGH

Julian Clark

OTAGO SOUTHLAND

Courtney Nimmo
Ross McKenzie
Sanel Tomlinson
Spencer Ho

TARANAKI

Justin Post

WAIKATO

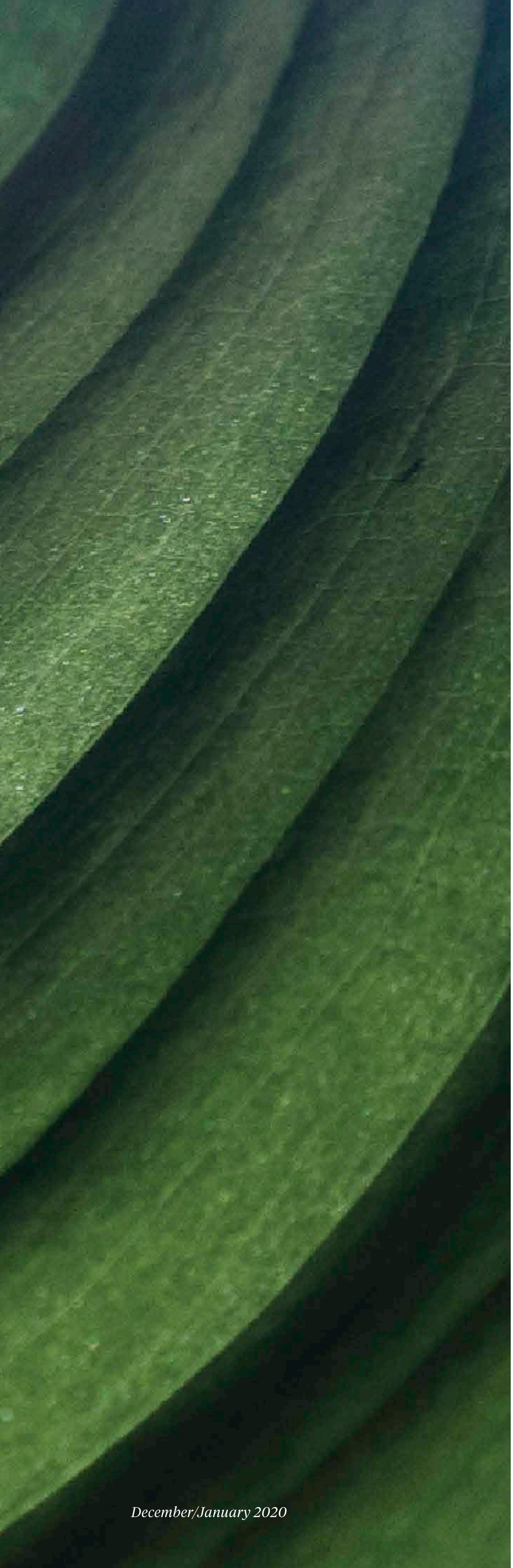
Aimee Tupaea
Kerry Cain
Nise Williams
Ruby Tew

WELLINGTON

Adam Gresham
Mel Blake-Palmer
Michelle Palmer
Mornay Durant
Nicolette Luke
Paul Waite
Tania Gerrard
Terry Meikle

Building your professional body for the future

Reviewing the IoD's Rules and strengthening our governance structures.



AUTHOR
ALAN ISAAC CFINSTD, PRESIDENT OF THE INSTITUTE OF DIRECTORS NEW ZEALAND

This year much has been said about change. Even before COVID-19 brought its very own brand of high-speed and high-impact change to New Zealand. Here at the Institute of Directors, the Council was also thinking about changes that would help set the organisation up for the future and keep us in line with best-practice governance.

The IoD has been at the heart of New Zealand's governance community since the early 80s, as a branch of the IoD UK. In 1989, we became an incorporated society in our own right in New Zealand. Over time, the IoD's focus on best-practice governance has remained – and it still stands. But how we deliver and how we operate has moved with the times. As with any organisation we need to continue to evolve to remain relevant, useful – and viable. With that in mind, we have reviewed our Rules and have some proposals to share with our members. We are seeking feedback before we finalise our proposals which will go to vote at our AGM in June 2021.

There is initial information available on our **website** and we will be providing further information and you will have the opportunity to ask questions and provide feedback. If you aren't able to attend an event an online presentation is available and you can email us with your questions and feedback at **RulesReview@iod.org.nz** We will be engaging in a variety of ways from December through to 14 March 2021.

The two key areas of change proposed are:

- revising IoD's governance arrangements
- enhancing IoD's standards framework.

WHY CHANGE?

These changes have a range of benefits for IoD members and our professional body. We have grown over the years from a small organisation, with 500 members in 1989, to one today with more than 9,200 members. In that time, we haven't changed our governance arrangements. It is time to take the opportunity to review how we are set up and to ensure that our model is fit for the future. As the professional body for directors and governance in New Zealand, we need to make sure we are walking our talk in terms of best-practice governance. We have a strong reputation and it is essential for our members – and the good of the organisation – that we continue to uphold it, following our own guidance and reviewing how the organisation operates and is governed.

Some of the proposed changes will create opportunities for more members to participate in IoD's governance helping to build diversity, plan for succession and share the load. And we believe it will create a strong and well-defined structure and clear and succinct rules making it easier and simpler to engage.

REVISING IOD'S GOVERNANCE

In terms of revising the governance of the IoD one thing to note is that we are not proposing change to our branch committees or their structure. Our branch committees are vital to the IoD and provide a strong point of connection for our members to each other and the organisation. They are part of the IoD's DNA and this won't change.

What we are proposing, however, is that we retain a Council but also have a governing board.

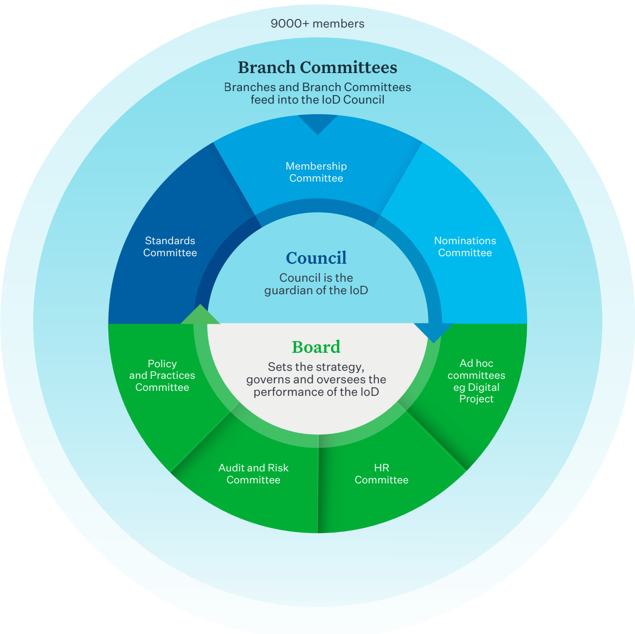
The Council will be the guardian of the IoD and will sit at its heart. The role of Council will include:

- appointing and overseeing a new governing board
- ensuring the IoD delivers on its purpose
- holding the board to account for the performance of the IoD
- appointing the Nominations Committee, receiving and considering the board evaluations and setting up the Membership and Standards Committee.

We propose that the Council will be made up of representatives of each branch committee and will be responsible for appointing the Council President and Vice President.

The new governing board will consist of between five and seven appointed directors who would:

- set the organisation strategy
- govern and oversee the IoD's performance
- hold management to account for delivering strategy
- hold legal responsibility for the IoD.



We would see this new structure starting to come into play in 2022 with a robust change management process to help us get there. It's important to note that this new structure has minimal additional operating costs and all roles remain unpaid.

> "It's important to say that we don't see the organisation as a frontline regulator for breaches of directors' duties but we are proposing to address some of the limitations we have currently in terms of addressing member misconduct and decisions regarding terminating membership."

STANDARDS FRAMEWORK

The second focus for our proposal for change is to update and refresh the standards framework. This framework has been in place for 20 years and has served us well but it requires review.

The review will include how we manage entry to membership and enforce standards. I've had many conversations with IoD members about some of these matters and this is a real opportunity to modernise our Rules and ensure they meet requirements now and in the future.

It's important to say that we don't see the organisation as a frontline regulator for breaches of directors' duties but we are proposing to address some of the limitations we have currently in terms of addressing member misconduct and decisions regarding terminating membership. The overall goal is to create clearer and more robust procedures for enforcing standards of conduct for our members. Something important for the reputation of the organisation and our members.

HAVE YOUR SAY

We want to hear from you. For more information visit **iod.org.nz** and remember to check in with your branch to see when a session is running. We welcome your feedback and questions. Our formal consultation period runs from 1 February to 14 March. This is when we will respond to questions or queries. However, you are welcome to contact us at **RulesReview@iod.org.nz** to provide input or feedback at any time up until 14 March.

We will provide a summary of feedback and the final proposals by the end of May.

Key dates

December – March 2021 engagement and consultation
- Formal consultation period 1 February to 14 March

April to early May member feedback analysed and considered

Early May summary of member feedback and final proposals developed for vote at AGM

End of May a notice of motion will be sent to members with details of proposed changes and Voting by proxy will open
- Return of proxy deadline 12 pm Sunday 27 June 2021

29 June 2021 Annual General Meeting, votes will be taken at that meeting

Vote result announced after AGM

The top five issues for directors in 2021

AUTHOR
FELICITY CAIRD,
GOVERNANCE LEADERSHIP CENTRE AND MEMBERSHIP GENERAL MANAGER

Kia kaha, kia māia, kia manawanui.
Be strong, be brave, be steadfast.

There really has been no better place to be in 2020 than in Aotearoa New Zealand. Although it has been a tumultuous and difficult year there have been many things to be proud of – not least how our nation joined forces to combat the coronavirus pandemic.

Dealing with and recovering from the global pandemic is paramount but we cannot take our eyes off the growing climate crisis. As kaitiaki and stewards of your organisations, board leadership and adaptability are now more critical than ever to create and innovate for a sustainable future.

1 Revival: rethink and redesign

COVID-19 has been the ultimate disruptor but also the catalyst to rethink and redesign our future and build back better and more sustainably.

2020 has been a rollercoaster – global uncertainty, economic challenges, innovation and opportunity. It has also put a spotlight on the rise of societal and environmental challenges. As economies restart, the World Economic Forum is encouraging the embedding of greater societal equality and sustainability into the recovery to build back better *(COVID-19 Risks Outlook, A Preliminary Mapping and its Implications)*.

Koi Tū's *New Zealand's Economic Future: COVID-19 as a Catalyst for Innovation* sets out three goals:

- To grow the economy, diversify the economic base, and increase productivity while recognising the expectation of greater resilience, sustainability, and social justice.
- To expand the weightless (intangible/digital products and services) economy.
- To promote technology adoption and reduce the environmental footprint of the primary sector.

In 2020 boards were focused on protecting the health of their people as well as the health of their organisations. Many had to navigate periods of financial stress. In our *2020 Director Sentiment Survey,* 29% of directors said their boards had solvency concerns at some point since the first national lockdown. But for some there was a silver lining, as although the majority (60%) of directors said their organisations were adversely affected by COVID-19, one in five directors reported it had a positive impact on the performance of their organisation.

New Zealand's reputation has never been stronger on the global stage. Our unified approach and success in combatting the pandemic is envied by many. Strong leadership with a collective call to action to unite against COVID-19, and to be kind, resonated with the nation. Our strong national brand provides a competitive advantage now to many sectors and industries in a world still battling the pandemic. The returning Kiwi diaspora also brings international talent and huge potential as New Zealanders return home and others defer leaving.

KPMG's *Reset: A Thought-Starter for the Future of New Zealand After COVID-19* highlights the opportunity to shift from telling the world to visit us as tourists to telling the world to move their high-tech businesses, talented people and capital to New Zealand.

The Productivity Commission's report *New Zealand Boards and Frontier Firms* provides insights on how boards can help "lift the eyes" of firms to drive innovation and success, including on a global stage. It confirms that high-performing boards have the right diversity of thinking, skills and experience. Other key insights include:

- matching board composition to a company's life stage and strategy
- using internationally-experienced directors to help firms avoid common missteps when expanding overseas
- emphasising how directors with the appetite for calculated risk-taking can spur growth and innovation
- promoting the importance of long-term investment horizons and tolerance of failure.

As Silvana Schenone (partner at MinterEllisonRuddWatts) succinctly states in the Oct/Nov issue of *Boardroom*: "Now is the time to be bold, take calculated risks, reset strategy if it's no longer fit for purpose and act at pace."

Understanding the business is a key step in reinventing the future and in a rapidly changing and complex operating environment this may need turbo charging in some boardrooms. Boards need to ensure they're getting the right information from management to dig into areas that may not have previously received sufficient attention. For example exploring the organisation's intangible assets, which are more often than not underrepresented on the balance sheet. Data, brand, design rights, computer code and business knowledge can all provide strategic opportunities to innovate and grow.

POINTERS FOR 2021:

- Review your business model. Be bold and innovative and look beyond the horizon to long-term sustainability.
- Focus on intangible assets to unlock value in a digital world.
- Protect your social licence and corporate reputation. Always consider the impact of your actions on the environment and society.

How can we lift the performance of boards?

Productivity Commission Chair Murray Sherwin CMInstD fronted a panel discussion of IoD members on the topic of good governance and how it helps our productive "frontier firms" outperform New Zealand's sometimes "laggard" firms.

The panel included Bridget Coates CMInstD, Mark Cross CMInstD and Whaimutu Dewes CFInstD and the discussion can be viewed at **iod.org.nz**

Sherwin says the *New Zealand Boards and Frontier Firms* report aims to provide a "small window" into the governance of successful New Zealand firms.

"To get a peek at what directors think about firm performance and levels of ambition within firms and around the board table. And the challenges that are faced as firms set out to pursue a growth strategy - perceptions of risk and how that is managed," Sherwin says,

This may indicate policy levers that may help, or reveal obstacles that may inhibit, the flow of "good stuff" from the leaders to the laggards, he says.

"How does the good stuff from the leading firms, the frontier firms, get diffused from those leaders back to the laggards? What inhibits the flow of the good stuff that produces high performance? And where are the policy levers that might help us get there?"

2 Climate urgency

Go beyond compliance on climate reporting and proactively consider climate-related risks as part of your strategic thinking and opportunities.

Responding to the coronavirus crisis was the all-consuming task of 2020. But climate change and its effects were also with us – including mega fires and extreme weather events. While unsurprising, it is still worrying as we see the effects of climate change getting worse at speed.

Urgent action is needed to protect our species, and others, from serious harm and possible extinction. Sir David Attenborough's 2020 witness statement states that the next few decades represent our final opportunity to ensure our future on the planet.

Individual and collective action is the only way forward. Boards have a critical role to play in taking action on climate-related issues reducing the environmental impact of their organisations – and in turn building a sustainable future for them.

Significant developments in relation to corporate climate-risk include a legal opinion on director duties and the September announcement that mandatory reporting on climate-related financial risks will be introduced. While these developments won't affect all organisations and sectors initially, it is likely that they will expand in future years.

The Aotearoa Circle Sustainable Finance Forum's (SFF) legal opinion in 2019 determined that directors' fiduciary duties of due care and diligence require them to consider climate-related financial risks when making decisions and factor them into risk management and strategy. Globally, court rulings on climate change considerations are on the rise, for example the English Court of Appeal quashed plans for a third runway at Heathrow Airport in February 2020 (this is now under appeal in the UK Supreme Court).

In September 2020 the government announced that climate-related financial disclosures will become mandatory – on a "comply or explain" basis – for publicly listed companies and large insurers, banks and investment managers (around 200 entities). New Zealand is the first country to introduce mandatory reporting of this type, although others are following suit with the UK announcing a similar move in November 2020.

The new reporting regime will be based on standards issued by New Zealand's External Reporting Board (XRB) developed in line with the global Task Force on Climate-related Financial Disclosures (TCFD) framework. The Ministry for the Environment is developing guidance on technical aspects such as scenario planning. Reporting is expected to be required in 2023. This is a short timeframe and means getting ready now.

In the *2020 Director Sentiment Survey* 13% of directors (42% for publicly-listed companies) said their organisation had included disclosures on climate-related risks and/or the impact of climate change on their organisation in their latest annual report. Current reporting is under a range of frameworks and there is a wide spectrum of maturity in terms of thinking, analysis and reporting. As a new regime is introduced it's critical that reporting is relevant and meaningful and doesn't just become a compliance, tick-box exercise.

Developing standards is a significant opportunity for the XRB and New Zealand to lead and influence sustainability reporting and promote consistent and comparable reporting. The IFRS Foundation is also consulting (until 31 December 2020) on whether an international Sustainable Standards Board should be established.

The stakes are rising rapidly for directors. But, there is also on opportunity to create value and gain a competitive edge. This rests on the board driving climate disclosure and transparency, and building the climate competency of their organisations.

Early adopters, such as Meridian, which has now produced two reports using the TCFD framework, expound the value of embedding climate into corporate strategy and long-term thinking. As well as growing public interest in corporate climate transparency, investors are also driving change. In November 2020 Meridian disclosed the beginning of a substantial holding by BlackRock (the world's largest institutional investor) in Meridian as part of BlackRock's ESG portfolio. The opportunity for growth and development through access to global capital is a real and present opportunity.

POINTERS FOR 2021:

If you haven't started yet – start now:

- Assess board skills, knowledge and experience and appoint or upskill to build climate understanding and competency on the board.
- Identify and assess the top two or three climate-related risks for your business.
- Don't wait for the mandatory clock to chime – report early. Tell a meaningful and relevant climate story and seek to improve each year, not just for public interest and greater access to capital but for the sustainability and reputation of your organisation.

Roadmap for action

The Aotearoa Circle Sustainable Finance Forum *Roadmap for Action* (released in November 2020) sets out a vision for a more resilient, inclusive, robust and agile financial system that incorporates environmental, social and economic consideration in financial decisions. Recommendations are grouped under three themes:

1. **Changing mind-sets**
2. **Transforming the financial system and**
3. **Financing the transformation**

3 Adaptive boards

Courage, innovation and learning in the boardroom will power future-fit boards.

Boards have tremendous impact on the success and wellbeing of New Zealand. Successful boards mean thriving organisations, and a flourishing economy and society. Board leadership is more important now than ever. The board represents the power of the collective by bringing together a range of skills, expertise and diverse perspectives to help drive the success and wellbeing of organisations. Smart, adaptive boards have a key role in driving innovation, growth and a sustainable future for businesses and communities.

Our 2019 paper *Always on Duty – the Future Board* (developed with MinterEllisonRuddWatts) asked boards to consider how technology and innovative practices could transform their operations and contribute to future effectiveness. Little did we know that within a year COVID-19 would emerge as an ultimate disruptor – including in the boardroom. The way boards met and operated changed dramatically. There was a major shift to conducting virtual board and committee meetings, and in many cases board meetings became more frequent and nimble, meeting as and when needed.

In the 2020 *Director Sentiment Survey* 83% of directors reported that their board was more flexible/adaptive in the way it operates compared to the previous year. And, 80% of directors said their board will continue to use virtual meeting technology in the future.

It is essential that boards build on the 2020 crisis experience and capture the benefits and value from some of the positive shifts in how they operated.

Taking some time to perform a post-mortem now to reflect and assess what worked well is highly recommended. Especially to capture what could work better and to ensure you have the right practices and protocols in place. For example, some boards may prefer all participants to join via an online meeting platform in preference to having a hybrid model (in-room and some online) which might impact the meeting dynamic. Some boards may find online is best for committee meetings and in-room for some or all full board meetings. It's a question of thinking through what works best for each board.

Board leadership in a crisis requires courage, high standards of ethical conduct, commitment and continuous learning and development. In the *2020 Director Sentiment Survey* 25% of directors said the capability needs of their board had changed due to the impact of COVID-19 on the operating environment. A strategic approach to new appointments and developing existing board members, will enable boards to have the diversity of background, skills, experiences and perspectives to keep up with rapid changes in the operating environment to govern now and for the future.

Questions for boards seeking to enhance effectiveness:

- How could your board and committees meet more effectively now and in the future?
- How can board papers (and other reporting from management) be improved?
- Can board agendas and annual work plans be restructured for effectiveness and efficiency?
- Does the chair (or committee chairs) need extra support?
- Can board members be utilised in different ways, for example, sharing the load and taking the lead on certain agenda items?
- Is there a role for virtual on-boarding of board members including with due diligence and induction?
- How else can technology and innovation help your board work more effectively and efficiently?
- What can your board do to support more effective communications and relationships with stakeholders?
- How can the board be more visible and accessible to staff and stakeholders? For example, are there opportunities to attend significant staff meetings?

POINTERS FOR 2021:

- Build on, don't lose, the gains in boardroom practices during 2020 – review board practices, use of technology and effectiveness to help the board to work smarter.
- Lead with courage, commitment and high standards of ethical conduct.
- Embrace continuous learning and development in the boardroom – upskill or step down to ensure the collective capability is future fit.

A view on adaptability from Sheridan Broadbent CMInstD

The pandemic has shown boards that we can change. Moving to online meetings, for example, was successful for most boards. In some cases, the quality of engagement via video conference or webcast has been to a higher standard than traditional face-to-face meetings.

We have been able to do things in new ways via the constitution or simply through changes to our practices. If there is the will, we can transform the structures that tend to define governance and the manner in which we do things.

We can be adaptable.

What's really exciting, from my perspective, is that we can make the world a lot smaller with online tools. With one early-stage company I work with, we are thinking that, rather than wait a year or two to find international board members, we might reach out now. Traditional face-to-face meetings provide significant inertia when you are looking at international board members. It is a big deal getting people to come here.

By being flexible, you are still able to maintain very effective oversight of a business. While previously you might have one full day a month together, we were having three-hour board meetings then perhaps next Tuesday a one-and-a-half hour session on this major project's approval, and then on Friday a get together to review the risk appetite.

We were able to get into a rhythm of addressing all the critical issues on the board calendar, maintaining at least the same level of risk oversight and became much more open to having targeted meetings at different times.

The adaptable board can split its board calendar, appreciating the fact that board members are much more likely to be able to schedule things into their diaries at short notice because you are not having to fly down and not spending a whole day. It really is an hour and a half.

I strongly believe the adaptable board is going to be the successful board of the future.

One thing I believe is that we are not doing a great job in New Zealand of creating integrated, properly diverse boards that have got "establishment" people, with years of experience, who keep a sage hand on the tiller, and a similar proportion of directors with a more diverse experiences and backgrounds. With a proportion of directors who have a contemporary focus on future sustainability and growth.

Adaptable and genuinely diverse boards will be able to create greater levels of future optionality for their organisations, with governance teams that are contemporary to the opportunities and risks they are governing like, say, tech shift.

The role of a board is changing and directors need to be active participants in the future success and growth of that business. A lot of the "establishment" board processes and structures are based around compliance and risk avoidance rather than around compliance and growth. So to turn our minds towards a nimble, adaptable success-oriented focus is going to require a changing of the mind-set or the guard.

Having board meetings tied to month-end close and the availability of the financials is holding us back. We need to rethink the purpose of the board and the purpose of its committees. To move away from the idea that there will be one bumper board meeting that will cover every purpose.

We need to be hip to the jive of the best thinking about leading and governing businesses and there is change afoot. We need to adapt. The adaptable board is the one I would want to join.

4 Prioritising people

Continue to focus on your employees in the short-term and the future.

People have been front and centre in responding to COVID-19. Most organisations have their own story to tell about how their people pulled together in trying times. There are many powerful and positive examples of courageous leadership and collective action.

Boards also stepped up their focus on people in many areas. This is reflected in the 2020 *Director Sentiment Survey*, which shows that 81% of directors (up from 62% in 2019) discussed workplace mental health and wellbeing issues. The impact on people has been significant. And it won't simply disappear with the advent of a new year. Boards will be conscious of this in determining strategy and overseeing risk.

Labour quality and capability is a perennial issue for directors. Closed borders and a constrained market has added to the burden and some industries are doing it tough in trying to access critically skilled workers. While the government is under tremendous pressure in relation to immigration settings and border restrictions, organisations can control some elements. For example, boards can ensure priority is given to their people and culture strategy to help retain, motivate and attract workers. Organisations will also be competing to capitalise on new opportunities as a result of the pandemic such as accessing returning Kiwis and remote workers globally.

The rise of the "S" in ESG was a key governance trend in 2020 and is set to continue with the increasing need and expectation for boards to focus more broadly on social issues, including workforce-related matters such as diversity and inclusion, and training and reskilling workers.

The future of work just got real, including the momentous change in attitudes to working from home. This presents significant opportunities to do things differently. The World Economic Forum's 2020 *Future of Jobs* highlights the views and expectations of business leaders including in relation to:

- technology adoption
- the impact of automation
- desired skills and skill groups and learning and development.

The government also has workers firmly in its sights with employment and workforce reform on the agenda. Labour's election manifesto includes:

- increasing sick leave entitlement and the minimum wage
- strengthening and simplifying the Holidays Act
- introducing fair pay agreements
- addressing the exploitation of migrant workers (with a focus on exploring implementation of modern slavery legislation).

There have been recent amendments to the Pay Equity Act and various changes are on the way for whistleblowers. A range of other significant culture and conduct reforms are also in progress, including the Financial Markets (Conduct of Institutions) Amendment Bill, currently before Parliament, and a new "accountability regime" that is being developed for directors and executives of banks and insurers that will cover conduct matters.

POINTERS FOR 2021:

- Continue to prioritise health and safety including overseeing the mental health and wellbeing of workers.
- Ensure appropriate attention is given to people and culture strategies to help retain, motivate and attract workers.
- Stay current with key government workforce reforms and the impact that they may have on your organisation.

5 Cyber resilience

Increasing digital dependency is amplifying cyber vulnerability.

While digital infrastructures allowed many organisations to keep operating under challenging conditions this year, they also posed more cyber risk than ever.

The reliance on online technology and many more people working from home increased the risk of data privacy breaches, fraud and cyber attacks. Cyber resilience means being prepared for a cyber attack, being able to keep a business operating, and able to quickly respond to and recover from an attack. Boards need to:

- manage the risks strategically
- use a recognised cyber security framework
- ensure a strong cyber security culture
- consider how their organisations might work together with their partners and supply chains.

A board's role in data governance includes big data, analytics, data privacy, the Internet of Things and artificial intelligence. These all provide opportunities but also require cyber resilience to fully capitalise on benefits. Only 35% of directors in our *2020 Director Sentiment Survey* said their board had the right capabilities (skills and experience) to lead their organisation's digital future.

There have been several high profile cyber attacks in New Zealand and Australia this year, including on the NZX, Toll, Lion, and MetService. CERT NZ reported a 42% increase in the number of incident reports during the first six months of 2020, compared to the same period in 2019. Aura Information Security's *Cyber Security Market Research Report* 2020 reported that more than half of the businesses they surveyed had been successfully targeted by a ransomware attack in the past year, with one in five businesses saying the attack caused serious disruption to operations. Cyber-attacks are constantly evolving and boards need to remain vigilant.

Boards can expect to see a greater focus on cyber security in 2021. In New Zealand some regulatory authorities are making it clear that boards need to take responsibility for overseeing their organisation's cyber security. In October, the Reserve Bank released its draft guidance on what regulated entities should consider when managing cyber resilience, stating that the board was ultimately responsible for the cyber-resilience of the organisation. The FMA's report (July 2019) on *Cyber Resilience in FMA-regulated Financial Services* also notes that an organisation's governance arrangements must include board and/or senior management ownership and visibility of the cyber-resilience framework.

Recently the Australian Securities and Investment Commission took action against a company for contravening its obligations as a financial services licensee by failing to have adequate cyber security measures in place. This raises the possibility that similar action could be taken in New Zealand.

Most boards should already have appropriate policies and processes in place to comply with the new Privacy Act 2020. As the new Act introduces mandatory notification of privacy breaches we expect to see a significant increase in reporting in the coming months. Australia had a 712% increase in notifications in the first 12 months after mandatory reporting was introduced.

POINTERS FOR 2021:

Ensure there is sufficient digital capability on your board to stay on top of emerging technologies, risks and opportunities – and to hold management to account.

Embed a culture into your organisation where staff at all levels understand that cyber security and data privacy is a priority. Ensure adequate training.

Review the information the board receives to ensure it is comprehensive and timely.

Pointers for not-for-profits:

Put cyber security on your agenda

- Approach cyber security as a risk for the whole organisation, not just an IT issue.
- Discuss your organisation's data with management (and/or IT experts) so you understand what data you have, how it is used and the infrastructure, policies and processes you have in place to protect it.
- Develop your board's digital capability and seek expert advice if needed.

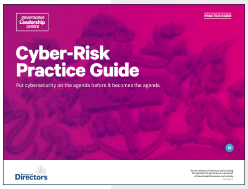
Focus on people - culture and training

- Make sure your staff know that cyber security and data privacy is a priority at all levels of the organisation. Provide regular reminders.
- Invest in training for your staff or make use of the free training available online.

Measure and report

- Ensure your board gets comprehensive and timely reporting from management about cyber security and risks.

IoD guides:



Cyber risk practice guide

Reporting cybersecurity to boards

Confidence amid uncertainty

Directors are more confident than not in their ability to lead their organisations out of the pandemic but concerns remain about the general economy, according to our *2020 Director Sentiment Survey*, produced in association with ASB.

Current outlook

BUSINESS CONFIDENCE

50% of directors surveyed expect their organisation's performance to improve in the next 12 months, up from **47%** in 2019. But those in the pessimistic camp also rose from a year earlier - **22%** (up from 14%) expect a decline.

ECONOMIC PERFORMANCE

24% expect economic performance to improve in the next 12 months, up from **11%** in 2019. Conversely, **63%** (up from 55%) expect a decline.

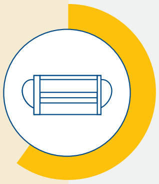
It is often the case that directors' expectations for their own organisations are more upbeat than for the wider economy. Similar to last year, the collective view of directors was that the economy would deteriorate over the next year, yet within that weaker environment organisations were expected to experience a lift in performance – to, in effect, outperform the economy.

Directors of state-owned enterprises were the most optimistic about their organisation's outlooks, with 67% expecting improved performance.

Directors of publicly-listed companies were the most cautious, with 38% anticipating improved performance. Government organisations, not-for-profits and medium-to-large private companies all had close to 50% of directors optimistic about the outlook.

> "During alert level 4, ASB estimated around 67% of normal business activity was possible, rising to 88% under alert level 3."

IMPACT OF A GLOBAL PANDEMIC



60% said their organisation was adversely affected by COVID-19. Conversely, **22%** said it had a positive impact on their organisation.

The pandemic has had a diverse range of business and economic impacts. In particular, through New Zealand's initial March-June lockdown, whether or not an organisation was deemed "essential" made a material impact on the ability to trade.

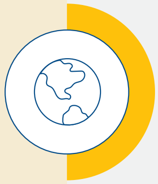
During alert level 4, ASB estimated around 67% of normal business activity was possible, rising to 88% under alert level 3.

Those businesses linked to tourism, events and hospitality have faced considerable headwinds from the border closure and social distancing requirements. In contrast, retailing has generally recovered to pre-pandemic spending levels.

The variable impact can be seen in the sector responses. Compared to all sectors (22%) more directors of medium-to-large private companies (27%) and of government organisations (26%) saw a positive impact on operations during the pandemic. Compared to all sectors (60%), more directors of publicly-listed companies (70%) and government organisations (67%) reported a negative impact on their organisations.

Fewer directors of small companies (57%) and medium-to-large private companies (55%) reported a negative impact.

GLOBAL ECONOMIC UNCERTAINTY



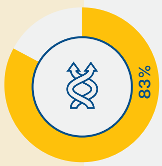
50% believed global growth/uncertainty was one of the biggest impediments to national economic performance, up from **31%** last year.

This reflects the majority view (55%) that COVID-19 impacts will continue to be felt for some time.

Concerns about labour supply (as border closures and lack of quarantine capacity constrain the ability to bring in people to fill skill shortages) remained.

Board activity

ADAPTIVE BOARDS



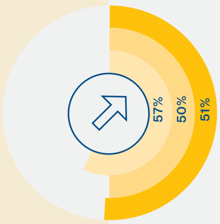
83% said their board was more flexible/adaptive in how it operates now than a year ago.

Not-for-profits rated above average here (91%) while small companies came in lower (76%) in terms of self-assessed adaptability.

It is not surprising to see that a strong majority (85% up from 77% in 2019) of boards had discussed how to operate more effectively, for example by using online meeting platforms.

FUTURE CAPABILITY

51% thought their board had the right capability to deal with increasing business complexity and risk, in line with last year.

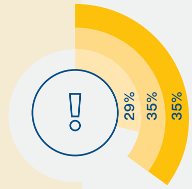


The confidence was weaker with regards to technology challenges with just 35% (up from 33%) feeling their board had the capability to lead their organisation's digital future.

But there was a lift in the proportion of directors (77% up from 68% in 2019) who said their boards have the right capability to comply with director obligations under the Health and Safety at Work Act. This was higher for medium-to-large private companies (83%), state-owned enterprises (83%), and publicly-listed companies (80%), than not-for-profits (67%).

ACTION ON CLIMATE STALLED

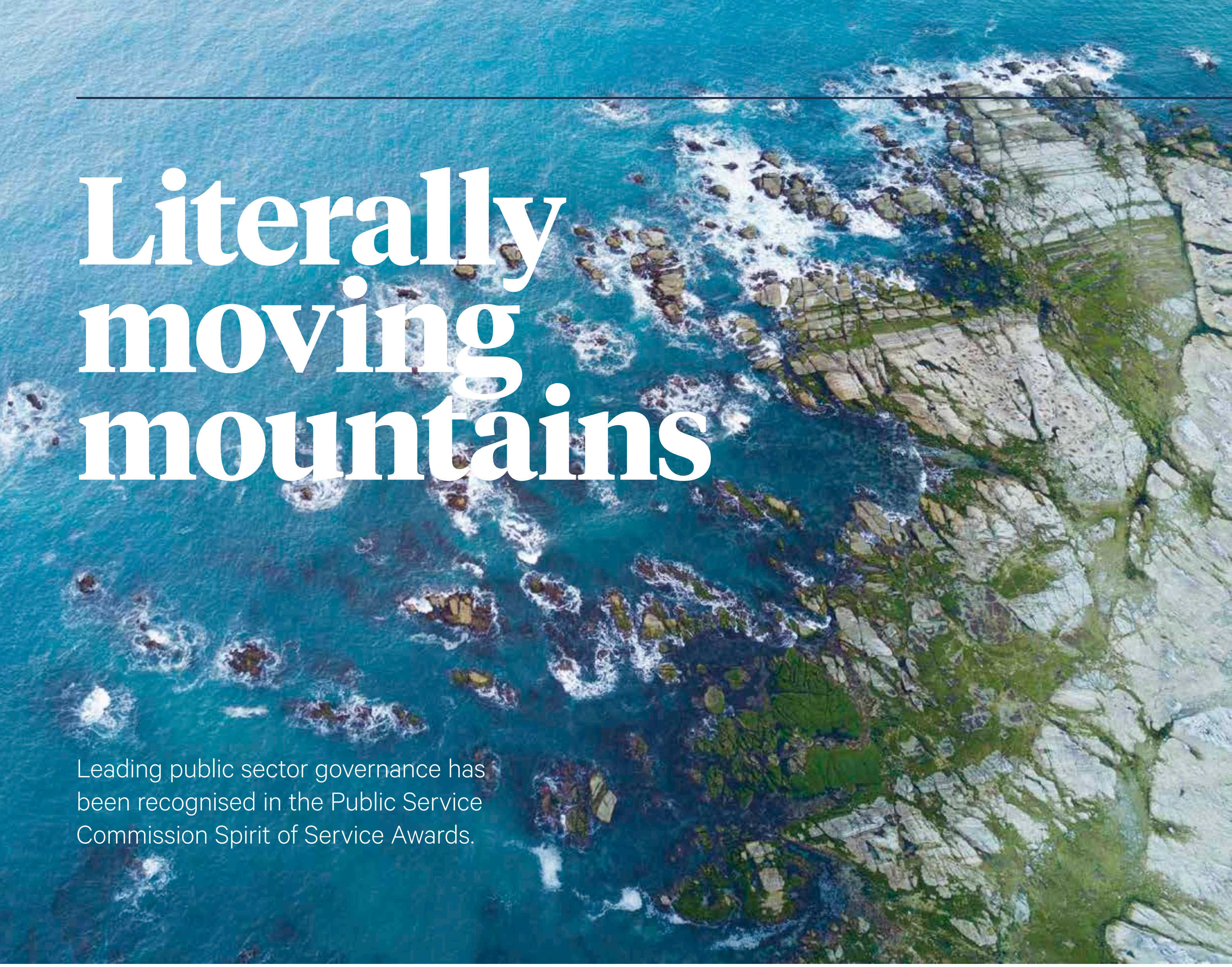
35% said their board was actively engaged on climate change, the same proportion as last year.



Climate change is one of the key issues of our time, however just 35% of directors agreed their board is engaged and proactive on climate change risks and practices in their business. This is significantly higher for publicly-listed companies (52%), but lower for not-for-profits (30%)

Thirteen percent of directors said that their latest annual report included disclosures on climate-related risks and/or the impact of climate change on their organisation. Again, this was significantly higher for directors of publicly-listed companies (42%), but lower for not-for-profits (7%).

Download the full report at **iod.org.nz**



Literally moving mountains

Leading public sector governance has been recognised in the Public Service Commission Spirit of Service Awards.

More than a million cubic meters of rock and debris came down onto the road and rail links of the eastern South Island when the Kaikōura earthquake hit in November 2016.

The 7.8 magnitude earthquake devastated Kaikōura's transport networks. State Highway 1 was closed, as was the rail line, and there was substantial damage to road, rail and harbour infrastructure.

It took a collaboration between multiple agencies - Waka Kotahi NZ Transport Agency, KiwiRail, the North Canterbury Transport Infrastructure Recovery Alliance, Te Rūnanga o Kaikōura and more – to reopen access to the region.

The Moving Mountains Kaikōura infrastructure project that they worked on won the 2020 Leadership in Governance Award in the Public Services Commission Spirit of Service Awards in November. The project also won the overall Prime Minister's Award, selected from the winners of four award categories.

Spirit of Service judge Gregor Coster DFInstD says the single biggest governance challenge the project faced was to bring together the leadership of different organisations so that the project could proceed in a joined-up way. The project board was praised for bringing public and private sectors partners together successfully, adopting a people-first approach and focussing on results that delivered value for money.

"The winners demonstrated the ability to bring together a governance structure that provided excellence in governance and leadership. They were also able to engage the community and iwi," Coster says.

> “Very early on in the piece we talked about what success would look like. This provided us with value statements that drove us to think about how we could include multiple stakeholders while working in a crisis at incredible speed.” — *Steve Mutton*

“Coordination of key areas such as health and safety, timing and working towards a shared goal – albeit working in different ways – were managed well. In regard to large projects, this is an excellent model. I would encourage any future large projects to take a leaf from this book.”

North Canterbury Transport Infrastructure Recovery Alliance Board Chair Steve Mutton says a three-tiered approach to governance was integral to the success of the Moving Mountains project.

“Very early on in the piece we talked about what success would look like. This provided us with value statements that drove us to think about how we could include multiple stakeholders while working in a crisis at incredible speed,” Mutton says.

Project governance was managed in the three spheres of 1) delivery against goals, 2) stakeholder input and management, and 3) oversight of budgets and the broader goals of the government, who was the funder.

“Winning the awards was amazing, and humbling, recognition for the project - but really for 9,000 people who put their lives on hold for four years to literally move mountains to reconnect communities,” Mutton says.

Also among the three finalists in the governance category was the Peke Waihanga - Artificial Limb Service, which provides amputees and those at risk of deteriorating health and disability conditions with services that help them live independent and productive lives.

Chief Executive Sean Gray says good governance is critical to the success of the organisation, and therefore the improved quality of life among the people it helps.

“In healthcare, the importance of good governance is critical to ensure we make good decisions for individuals’ health and ensure limited resources are used in the best way for our country. The decisions that get made in this area have a direct impact on people’s lives, and there are significant competing priorities,” Gray says.

“If you don’t get that right, it has a flow-on effect to the rest of the organisation that creates an inability to act with confidence and conviction. Good governance has a trickle-down effect that gives the team confidence to make decisions and get on with the job at hand.

Gray says having the right people around the board table “empowers the people we care for”.

The third finalist was a coalition of government organisations that had collectively worked towards achieving 50% representation for women and promoting diversity and inclusion on state sector boards. This included the Ministry for Women, the Treasury, Ministry of Business, Innovation and Employment, Department of the Prime Minister and Cabinet, Department of Conservation, Ministry of Transport, Ministry for Pacific Peoples, Office of Ethnic Communities and the Tertiary Education Commission.

In June 2018 Cabinet set a target of 50% women on state sector boards and committees, to be met by 2021. This was achieved in June 2020.

Do you understand your D&O insurance?

New legal decisions, the risk of class actions and directors' personal risk profiles were canvassed at a Directors and Officers (D&O) Workshop in November, co-hosted by the IoD, AIG and Marsh.

It's one of the ironies of COVID-19 that as the government offered assistance and encouraging words to struggling businesses, and the cost of borrowing dropped to near zero, the Debut Homes court case threw previous assumptions about trading out of trouble into doubt.

The case was much discussed at the Leading Directors' D&O Workshop, co-hosted by the IoD, AIG and Marsh in November. The workshop brought directors, insurers and lawyers together to share perspectives on recent legal developments, the rise of class actions and pressure on insurers that has seen the D&O insurance market described as the hardest in memory.

D&O insurance is a protection mechanism that is meant to help directors take difficult decisions in the best interests of their organisations. But attendees agreed the market for D&O insurance is the most volatile and restrictive it has ever been. Premiums are rising and coverage is shrinking as insurers try to put D&O insurance on a sustainable footing against a background of increasing uncertainty around directors' liability.

In this environment, how can directors in struggling businesses or NFP providers protect themselves as they seek to guide their organisations through the ongoing impact of COVID-19?

DEBUT ISSUE

Our *Under Pressure – D&O Insurance in a Hard Market* report (produced with MinterEllisonRuddWatts and Marsh) identified legal risk as one of the main drivers of increasing D&O premiums in Australia and New Zealand.

While that paper focussed on the rise of securities class actions in Australia, and perceptions they may emerge more strongly in New Zealand, attendees at the workshop were keen to explore the implications of a very recent case in the New Zealand Supreme Court.

It was suggested *Debut Homes Limited* (in liquidation) *v Cooper* (Debut Homes) has upended the general legal tenet that troubled companies can seek to trade back to profitability (without formal or informal insolvency procedures) so long as this does not make the situation worse.

The Supreme Court ruled a director breached his duties (and ordered he pay compensation to the company) for allowing Debut Homes to continue to operate while technically insolvent. The Court decided that in taking on new debt the company was "robbing Peter to pay Paul" and found this to be reckless trading, irrespective of whether the outcome was to increase or decrease total debt when the company was eventually wound up.

For directors of companies hit hard by COVID-19, the case is a warning to seek legal advice should they believe they may be at risk of breaching their duties under the Debut Homes definition of recklessness.

WHAT IS COVERED?

Our *2020 Director Sentiment Survey* found 79% of New Zealand organisations provide D&O insurance to their directors.

However, the scope of D&O insurance is shrinking even as premiums are rising. Insurers and brokers at the workshop identified this as part of a global trend that has seen insurers reduce their exposure in the D&O market.

It was suggested the total D&O premium pool for New Zealand – at around $50m – could be wiped out by one large successful court action. And if a small market like NZ produced a major loss for insurers, global providers could cease funding D&O insurance here entirely.

For more information see *Under Pressure - D&O Insurance in a Hard Market* at **iod.org.nz**

A further pressure on insurers is the growth of litigation funding, through which third parties cover the cost of a suit on behalf of plaintiffs and take a percentage of any settlement or award. While this model can provide access to justice for plaintiffs who may otherwise not be able to afford to go to court, it also provides an incentive for targeting organisations with substantial D&O cover.

In Australia, where there have been a number of class actions, insurers have often settled out of court rather than taking on expensive litigation and the risk of damaging awards. This has had the unintended consequence of encouraging further class actions targeted at companies with large D&O policies, where there is a reasonable expectation the suit will be settled rather than end up in court.

WHAT CAN DIRECTORS DO TO ENSURE THEY ARE COVERED?

It was widely agreed that directors need to look closely at the D&O cover purchased by their organisations. Good questions to ask include:

- What is excluded from the policy?
- Are investigation costs in response to a regulator enquiry covered?
- To what extent does the D&O policy cover defence costs?
- Is the cover adequate?
- What happens in the case of insolvency?

D&O insurance is no longer something that can be left to the management team to put in place. Directors need to ensure they understand what they are covered for, and what they are not covered for.

Securing appropriate coverage is likely to come at a cost. However, insurers suggested that better insurance premium outcomes may be possible through directors meeting directly with insurers or brokers to provide transparency about the culture and prospects of the business beyond balance sheet information.

There was some scepticism of this from leading directors, but insurers said they want to understand the boards they cover in greater depth in order to understand D&O insurance risk. This may mean seeking to meet with directors to assess their attitude to risk areas such as #METOO and climate change and to understand the organisation's governance culture.

Climate risk and cyber risk are also areas of interest to insurers, who are closely watching trends in these areas in order to understand what liability may apply to directors in the future.

There was a divide between what the insurers perceive the D&O class action risk is, and what directors and lawyers think. The insurers are prepping for a doomsday event – a "stock drop" class action based on little more than a fall in share price (which have occurred overseas). Directors and lawyers view share-price/stock drop class action claims as being challenging to get off the ground in New Zealand. Lawyers, in particular, viewed event-driven incidents as more likely to drive potential claims over things like reckless trading, climate impact, ESG, cyber breaches or privacy breaches.

Given the above, there is much more work to be done between all interested parties to ensure D&O cover remains fit for the purposes of all interested groups.

What is side A, B and C cover?

D&O policy

Side A cover
insures directors and officers for losses not indemnifiable by the company.

Side B cover
reimburses the company for amounts paid to its directors and officers as indemnification (eg legal defence costs, settlements or judgments).

Side C cover
insures losses incurred by the company resulting from securities claims (made against the company for its own liability in relation to its securities).

A year of long tails and shop windows

The direction of travel in M&A activity and litigation in 2021.

AUTHORS
CORPORATE PARTNER MARK STUART, AND DISPUTE RESOLUTION AND LITIGATION PARTNER NICK FRITH, MINTERELLISONRUDDWATTS

Coming to the end of what can safely be described as an unprecedented year, we look ahead to 2021, alive to the fact that predictions are, at best, difficult.

While we are currently sailing in relatively calm waters, with economic indicators better than predicted, most commentators agree that a storm is approaching. We simply do not know when or how it will hit.

MERGERS AND ACQUISITIONS

Mergers and acquisitions (M&A) will be driven by sector and business fundamentals plus a need for good returns.

When making predictions it is first worth looking at what is happening at present. Solid businesses – either export-driven or domestically focused in areas not hit by the pandemic – are still performing relatively well.

Logistics is a good example of a sector that was already on an upward trajectory before COVID-19, as online shopping had sharpened the focus onto the rapid distribution of goods. Pandemic lockdowns have put the sector under a spotlight as manufacturers and producers of goods, as well as retailers, become more responsive to customer demands and work to get closer to the point of consumption.

Manufacturers of essential products – such as Fisher & Paykel Healthcare – have been growing at speed to meet demand in New Zealand and overseas. IT businesses across a range of sectors have also been of interest to investors.

Interest in buying businesses in these more COVID-proof sectors has risen due to several well-known factors such as historically low interest rates, market stimuli and the current lending climate. Government stimulus packages are ongoing, procurement is pushing ahead at pace, and private equity firms, especially in New Zealand, are active with a number having recently raised new funds.

Furthermore, we predicted in our 2020 M&A forecast that we saw good-quality assets attracting

MinterEllison RuddWatts

international attention as there was still plenty of capital looking for a home in New Zealand. This was backed up by Shamubeel Eaqub, who said: “The world is still awash with easy money. Weight of money globally provides a positive backdrop to deal-making.” This still holds true to an extent.

At a time when financing is relatively cheap, and New Zealand’s attractiveness as a haven for international investors has risen due to our country’s global prominence this year as a relatively safe, well-managed place, we can expect M&A interest and activity to rise into 2021. However, it won’t be all plain sailing for international investors – they will face stiff competition from local investors, have to deal with the Overseas Investment Office regulations, and have to deal with conducting due diligence from a distance for the time being.

We’ve already seen this creating issues for offshore investors where they cannot “kick the tyres” or “eyeball management”. There’s only so much due diligence you can do over a Zoom call.

What appears clear is that M&A activity is less likely to be driven by insolvency as some first thought. Acquisitions are likely to continue with businesses and investors looking to consolidate or expand through acquisition, aligned with clear business strategy. This gives directors the opportunity to look at acquisitions of complementary businesses to strengthen their market position.

Our message to directors in this environment – particularly directors of businesses that are likely acquisition targets – is that you need to be ready. Ensure that your shop window is clean and clear so you are best able to explain to any potential acquirer how the current circumstances have impacted your business, describe future plans and demonstrate how the business is an attractive proposition.

LITIGATION TURNED UPSIDE DOWN

Class actions, climate change and increasing pressure on directors were emerging litigation risks before COVID-19 came along. While these issues remain top

> "The pandemic has generated a wide array of disputes arising from allegedly frustrated contracts, reliance upon force majeure and material adverse change clauses."

of mind, and topics that demand continued attention at most board tables, COVID-19 has forced other issues to the top of the agenda.

The pandemic has generated a wide array of disputes arising from allegedly frustrated contracts, reliance upon force majeure and material adverse change clauses.

However, with limited exceptions, we have not yet seen many of these civil disputes in the public eye as many are making their way through mandated or voluntary private mediation, or are dealt with in confidential arbitrations with court action likely a last resort due to the time and cost involved.

In the construction industry there was concern that lockdown delays could drive parties into litigation mode over costs relating to extensions of time. Thankfully, most COVID-19 claims were dealt with outside formal processes, and by and large the parties came together to resolve differences rather than litigate. However, on some bigger infrastructure projects, COVID-19 claims remain unresolved and various dispute resolution processes will likely be employed. These will bleed into next year.

It has also become apparent that there is likely to be a longer lead up to the predicted wave of insolvencies following the 2020 COVID-19 lockdowns. This is due in the main to better than expected economic conditions, government stimuli and other regulatory and reputational impediments to lenders taking action in respect of defaulting customers.

Predictions vary from an uptick in insolvency activity from Q1 2020 to as far out as 2022/2023 following the more typical trend of two to three years after the first signs of a recession.

Continued low interest rates, further government stimuli and a less severe economic experience may well result in fewer insolvencies than initially feared. On the other hand, the Supreme Court's recent decision in Debut Homes is likely to cause directors themselves to reach more quickly for formal insolvency or restructuring options when deciding whether to trade businesses on in the face of difficult trading conditions.

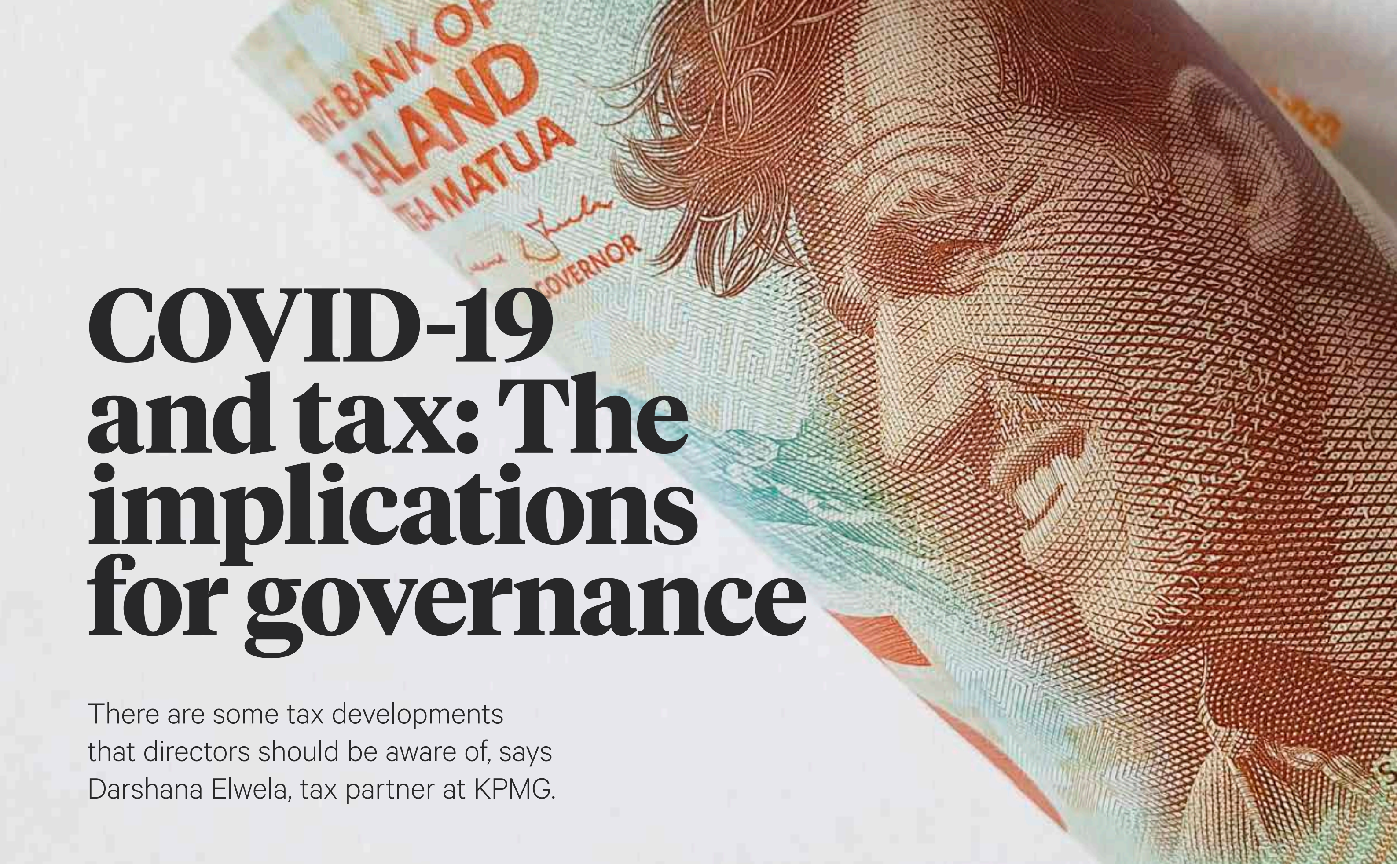
One thing is for certain, directors' risk profiles have increased.

We also expect continued interest – and growth – in class (or more accurately "representative") actions. While class actions have historically been relatively uncommon in New Zealand, they may increase in line with the Australian experience. Particularly following the Supreme Court's decision in Southern Response v Ross, which upheld the Court of Appeal's decision permitting opt-out class actions under New Zealand current procedural rules. An "opt-out" class action is where all prospective claimants are automatically included in a proceeding unless they expressly opt out.

Further, as we predicted in our 2020 Litigation Forecast, the Law Commission has again picked up its Class Actions and Litigation Funding project. With terms of reference and further progress predicted soon. The outcome of that project ought to provide guidance on next steps in regulating (or not) this space, which will impact on the number and frequency of cases.

We also continue to expect an increase in securities actions, regulatory involvement from the increasingly active Financial Markets Authority and a further hardening of the D&O insurance market as a result.

As directors are likely to be targets in class actions and regulatory involvement, our message is to ensure you are attuned to your risk profile and that your insurances are appropriate and in place. Directors should also be aware of the options, and when to employ them, if businesses are facing headwinds in terms of trading conditions.



COVID-19 and tax: The implications for governance

There are some tax developments that directors should be aware of, says Darshana Elwela, tax partner at KPMG.

AUTHOR
DARSHANA ELWELA,
TAX PARTNER AT KPMG

There are COVID-19 support measures for businesses that involve the tax system or are administered by Inland Revenue.

Two cash-flow examples to illustrate this are the government allowing businesses to carry-back their tax losses to get refunds of past tax paid, while Inland Revenue administered the Small Business Cashflow Loan scheme to make additional funding available to SMEs. Even the now-expired wage subsidy had tax dimensions where Inland Revenue had to clarify the tax treatment for employers (non-taxable on receipt) and employees (taxable, so subject to PAYE).

It is now trite to say that using different government COVID-19 measures (or not) may have reputational and governance consequences. Directors should not lose sight of these wider consequences.

There are several further tax changes expected which aim to help businesses that may need new capital, or require structural change, due to COVID-19.

If significant new capital is required in the business, resulting in new shareholders, tax losses may be extinguished. A "same or similar business" test has been announced to preserve those losses. A permanent tax loss carry back mechanism is also in the works. These may affect how companies look to raise new capital and/or adapt to new market opportunities.

One issue that COVID-19 has brought to the fore is the case of "stranded employees" – what happens if key employees, or especially directors, are stuck in New Zealand or other countries? This could end up creating or changing tax obligations for the company. While many countries, including New Zealand, introduced temporary COVID-19 concessions to remove the risk of unintended tax consequences, these are premised on border restrictions and the inability to travel. With such restrictions easing, the tax position may become more uncertain.

ELECTION TAX POLICY IMPACTS

The Labour Party has formed the first MMP majority government so its election tax policies are worth a closer look.

Most of the attention has been on the proposed 39% marginal tax rate for individuals earning over $180,000. This will also have implications for companies. No change to the 28% company tax rate has been signalled (nor is a change to the 33% trust tax rate proposed).

An 11-percentage point difference in rates may look attractive, but we expect there to be a razor focus by Inland Revenue on ensuring that any tax arbitrage opportunities are minimised. While we expect most of the attention to be on privately-owned companies there will be some implications for larger, including listed, companies.

Directors will need to consider dividend policies and how to manage shareholder expectations.

Directors should also keep an eye open for a possible Digital Services Tax (DST) for an impact on their business as a DST remains on the table.

Whilst ostensibly targeted at foreign multinationals' New Zealand sales, this has much wider reach. The proposal may also apply to some large New Zealand companies and not just companies operating in the digital space. Potential application to local companies is necessary to ensure that New Zealand is not seen to be targeting foreign companies with what is effectively a tariff (as a DST applies to sales, rather than income). This in turn raises concerns around how other countries may react, in particular the United States, which has already threatened trade sanctions against France for introducing a DST.

The government's preferred alternative is an OECD taxing solution that has wide global support. This, too, is not without risk. Consensus has not been, and may not ever be, reached on the question of how the global tax "pie" should be shared.

The downside risk is that New Zealand companies with a global reach may become easy targets under whatever solution emerges. Directors of exporting companies should pay close attention to where these international tax developments are heading.

Beyond these policies, wealth and capital gains taxes have been ruled out, as have further changes to income tax during this term of government.

INLAND REVENUE'S APPROACH AND EXPECTATIONS

Inland Revenue has worked alongside business, as one of the lead government agencies involved in delivering financial support during the pandemic. As we've moved down the COVID-19 alert levels, a more business-as-usual focus has emerged from the tax authority.

Risk reviews and tax audits are returning. And with this comes questions about tax governance: Do you understand the tax risk profile of the company you are a director of, its tax strategy and importantly how management is executing this?

It may surprise some directors to find that Inland Revenue has published guidance on its expectations. This ranges from developing a tax risk control framework for larger companies (Inland Revenue's definition of a large company, for enhanced review purposes, is one with turnover of at least NZ$30 million) to expectations that all directors will have, at a minimum, considered the following questions:

- Is there a documented tax strategy and has it been kept up to date?
- Have effective systems, procedures, and resources been put in place to manage tax risks and, if so, is a clear statement made in the annual report to that effect?
- Is annual reporting sufficiently transparent such that all stakeholders have the capacity to analyse and effectively interpret the information provided on taxes paid?

We are increasingly seeing a more sophisticated approach being taken by Inland Revenue. Its new IT and systems upgrade will add to the sources of information available to it to determine and benchmark the tax risk for different taxpayers.

While COVID-19 may have provided a temporary reprieve, with pressure on the government's coffers, we expect Inland Revenue to have little sympathy for poor tax outcomes due to a lack of effective governance on tax matters.

Out & **about**

Otago
Clare Kearney received her Chartered Fellow certificate at the annual Chartered Member and Chartered Fellows Dinner at the Dunedin Club.

02

01

Otago
01 Clare Kearney, Trish Oakley.
02 John Gallaher, Sir Eion Edgar, Warren Leslie.
03 John Gilks, Bill Baylis.

03

Taranaki

Rob Campbell was the guest speaker at Taranaki Branch's Annual Dinner, at which Brian Ropitini received his Chartered Member certificate.

Taranaki

07 Anita Scott, Brian Ropitini.

08 David Walker, Sam Tyson, Lee Tyson.

09 Graham Wells, Nick Jackson, Tash Jackson, Steve Waiteaki.

10 Guy Roper, Tim Barrett, Richard Handley.

11 Kevin Rolfe, Rob Campbell, Cathy Clennett, Andrew Clennett.

12 Philip White, Elizabeth White, Aaron Murphy, Bridget Murphy, Garry Butler, Rustica Lamb, Naomi Harris.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Waikato

Members at various events over the past few months.

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Waikato

04 Craig Fisher, Jo Cribb, Rachel Afeaki-Taumoepeau, Nic Greene.

05 Phil Caffyn, Robyn Hallam-Reid, Dr Linda Rademaker, Stephen Stafford-Bush.

06 William Durning, Hon Grant Robertson, Kiri Goulter.

Miscellaneous

There were good turnouts at the Nelson Marlborough AGM and KPMG Breakfast in Wellington.

Wellington

13 Lou Sanson, Department of Conservation, speaks at a Wellington branch KPMG series event.

Nelson Marlborough AGM

14 A full house at the Nelson Marlborough AGM.

13

14