boardroom

ARP / MAY 2020

Kicking back against COVID-19

Reset, rebuild, recover

Institute of DIRECTORS NEW ZEALAND

boardroom

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FROM RESPONSIBLE SOURCES

A note from the editor

Many businesses will be kicking off a new way of working this week as we emerge from lockdown into alert level three.

At the IoD, we are adapting to physical distancing requirements that have seen our face-to-face activities postponed and a rapid shift to online delivery of support and services to members.

This issue of *Boardroom* reflects that trend. It is the first time we have produced a digital-only edition (printers have been closed during lockdown). I hope that our new enhanced magazine reader capabilities make it as easy to read and accessible as our traditional print magazine.

With COVID-19 the key issue facing businesses – and societies – we have focused the issue on the concepts of resetting, rebuilding and recovering from the recent lockdown. Many of the commentators herein note that this could be just the beginning of a long period overshadowed by the impact of the virus and global recession.

But we also feel it is important to recognise that governance is never a single-issue game. So there are also articles on new privacy rules, the enforcement plans of the Commerce Commission and other topical subjects including three interrelated views of not-for-profit-sector activity.

As we kick back against COVID, I wish you a safe and successful reset from lockdown.

Aaron Watson
Boardroom editor

Institute of DIRECTORS NEW ZEALAND

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

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KIRSTEN PATTERSON
CEO, INSTITUTE OF DIRECTORS

TENĀ KOUTOU KATOA

I hope this digital-only edition of *Boardroom* finds you and your families safe and well.

As I write this from my family bubble, I am very aware of the importance of good health and a strong economy to the wellbeing of our entire community – now and in the future. As leaders, we carry a heavy responsibility at this time.

You are all no doubt facing difficult decisions that will profoundly influence the shape of the organisations you oversee. And the success or failure of your organisations will in turn affect the ability of our country to recover in a weakened global economy. Has there ever been a situation in which the power of good governance was more important?

At the IoD, we are seeking new ways to continue to support members as they lead their organisations through this crisis. As physical distancing continues to impact on face-to-face meetings, we are ramping up our digital provision of courses, information and guidance. These include webinars, courses and a new "Thinking out loud' series of video interviews with directors.

Our call centre remains open (albeit working remotely) and we are constantly updating our COVID-19 information hub at **iod.org.nz**

Over recent weeks we have successfully lobbied government to implement a temporary insolvency relief package that will assist some businesses as they seek to restart their operations. Sue Sheldon CFInstD offers a personal perspective on how this may benefit organisations on page 10.

As we go to print (can you say that when you are a digital edition?) the lockdown has been lifted and the country is operating under alert level three. But physical distancing rules remain in place, many people are working from home and life is still far from normal. While we in New Zealand have been spared some of the tragic impacts of COVID-19 witnessed in other parts of the world, the economic impact will be profound and long-lasting.

Your thoughts are likely focussed on business recovery. I hope some of the ideas in this issue can help you navigate your own recovery challenges – whether that be the view from Singaporean director Su-Yen Wong (who has experience of recovery from pandemic), the three possible scenarios for April 2021 outlined by the ASB economist Nick Tuffley, or perhaps the reminder that directors have – somewhat open ended – responsibility for mental health in their organisations.

The IoD is not immune from the business impact of COVID-19. We are working closely with our council to ensure the organisation reminds financially viable and continues to be a strong voice on behalf of good governance.

Thankfully, we can reflect on how lucky we are to have a government that took this crisis seriously and acted early. The worst potential health outcomes of the virus appear to have passed us by.

Now, we look to all our country's leaders, with directors foremost among them, to help us chart a path forward that protects lives and livelihoods in an uncertain world.

Ngā mihi

Kirsten (KP)


Is your board at its best?
Great boards don't just happen – they are created.
Harnessing the skills, input and experiences of each of your board members will help build strong results for your organisation.
With directors spending more time than ever on their board roles, at times you may need help from someone you can trust.
The IoD has a range of governance services to help ensure your board is at its best.
So if you need to:
EVALUATE and fine tune your board performance
TRAIN together for your unique needs
FIND the right skills and experience for your board
MOTIVATE and RETAIN your directors
SOLVE specific challenges
Let us help you find the solutions
iod.org.nz/services-for-boards
Institute of DIRECTORS NEW ZEALAND
Governance services

UpFront

New talent to boost start-ups

OnBoard is a one year programme, connecting high-potential talent to start-up board observer roles and delivering workshops on key governance fundamentals.

Aotearoa's start-up sector has been given a boost in superpower from those eager to begin their governance journey with the launch of OnBoard.

Developed by Cassie McAdams with support from the Institute of Directors, New Zealand Trade and Enterprise, New Zealand Growth Capital Partners, DLA Piper, BoardPro and Angel Investors, the programme helps start-ups find talent with the right mix of experience and enthusiasm to help fledgling companies develop into potential world beaters.

Debra Hall CMInstD ran a workshop for the first OnBoard inductees in March, alongside Greg Sitters. Hall says governance in the start-up sector may not be for everyone as the risk of failure is high and the pressure can be intense.

The first OnBoard intake with Debra Hall (front left), IoD Membership Programmes Manager Stella Kotrotsos (rear, second from left) and OnBoard Programme Director Cassie McAdams (front third from left). See the names of all of the cohort **onboard.nz/cohort-2020**

"There are definitely unique challenges. The first is the challenge of finding the right directors. Then they face a much higher risk of failure. The perception of director risk is much higher because start-ups do fail," Halls says

Fledgling businesses need directors who will not "weigh them down in process", Hall says. But they also need to help the business remain compliant.

"The struggle for boards is in asking 'are we solvent'? That is top of mind for many of these boards. Do you have investors ready to invest in the next round?"

While the future of the organisation remains the focus of start-up boards, they are typically not focussed on the business for dividends or even profitability. Hall describes a board's role as managing "the length of the runway" before the start-up can take off.

"These boards spend much more time on strategy than most boards and not as much time on compliance and accountability. It is something that some directors revel in but some are freaked out by.

"It's not often you see that one of the board's priorities is how to sell the company, or get liquidity for early investors."

Boards must also find ways to assist and take the pressure off the founder, who is vital in getting a start-up off the ground.

"The biggest risk in many tech companies is the mental health of the founder," she says.

Hall enjoys working in start-up governance because "these are the types of companies that are more likely to change the world", she says.

"For me it is being part of growing great companies that are born in New Zealand but have the potential to take on the world. It's the thing I do that has an impact on whether my children and grandchildren can have good jobs here, should they choose to stay. Or we become like Fiji – old people live here but the young just visit.

"OnBoard is bringing new talent, people who may not have thought about governance before but who have something to add to these boards."

APPOINTMENTS

Director search

Rachael Dean
Member, was appointed independent chair of Westland District Council's Audit and Risk Committee via the IoD's Director Search service.

Steve Grave
Member, was appointed to the board of Buller Holdings Limited, via the IoD's Director Search service.

General

Tony Allison
Chartered Member, has been named chairman of Otago Polytechnic's board of directors.

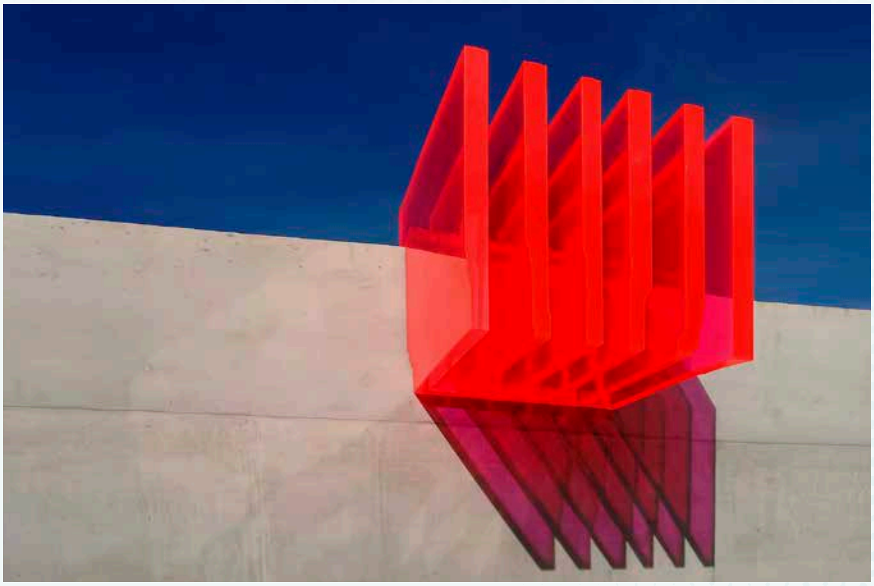
Laurissa Cooney
Chartered Member, has been appointed chair of the Tourism Bay of Plenty board.

Andrew Coster
Member, has taken over the role of the Commissioner of Police.

Jim Mather
Member, has been appointed chair of the InZone Education Foundation board.

Samantha Sharif
Chartered Member, has been appointed to the board of the New Zealand Shareholders Association.

Clare Swallow
Member, has been appointed as a trustee of the Tourism Bay of Plenty board.



COVID-19 governance hub

To ensure members can access the support they require during alert level three, we are constantly updating our COVID-19 governance hub at **iod.org.nz** on the courses, webinars and webcasts we are delivering online. It also includes links to useful material from our IoD partners.

This section of our website brings together information for our members, guides and resources, coaching and mentoring opportunities and information

Key topics covered include crisis management, legal and regulatory compliance, health and wellbeing and board practices.

Thinking out loud

We have launched a Thinking out Loud collection of thought leadership videos. In the first series on culture and governance, hear insights from Traci Houpapa, Mavis Mullins, Tino Pereira and Caren Rangi.

Watch the first video, featuring Traci Houpapa MNZM CFInstD talking about the unique characteristics and challenges for Māori governance.

Five questions with... **Suse Reynolds**

WELLINGTON BRANCH COMMITTEE

Why did you join the IoD?

Honestly. None of us create success on our own. I'm a huge believer in the power of connections and helping each other. Governance is fundamentally about helping people and organisations to be the very best they can be. Who wouldn't want to be part of that?!

How did you find yourself on a branch committee?

The wonderful Jim Donovan was standing down from the Wellington branch committee and he put me forward. We both share a passion for high-tech, high-growth ventures and the impact good governance can have on the creation of exponential value.

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

To repeat my earlier point, none of us create success on our own. Spending time with an incredible group of driven, committed, likeminded people organising educational and networking events to support others to become effective directors is super rewarding and fun. There are very few New Zealand organisations which wouldn't benefit from more effective governance.

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

One of the key functions of a board is to manage risk. My tip is that, as well as managing risk to ensure regulatory and legal compliance, you should look at risk in the context of reward. Take appropriately-managed risks to ensure you are maximising value and rewards for stakeholders and shareholders.

What's the one gadget you find indispensable?

I love my garlic crusher. A FlyBuys gadget and it's THE bomb!

Director Vacancies

Director Vacancies is a cost-effective way to reach our extensive pool of membership 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**

» Contact us on 0800 846 369

Unless otherwise stated, the following positions will remain open until filled.

BUILDING COMPLIANCE GROUP LTD
Location: Auckland
Role: Independent Director
Closes: Application will remain open until the position is filled

GREYHOUND ADOPTION PROGRAMMES TRUST
Location: National
Role: Board member
Closes: 29 May

HOUSE OF SCIENCE NZ
Location: Canterbury
Role: Board member
Closes: 30 April

MOANA NEW ZEALAND
Location: National
Role: Board member
Closes: Application will remain open until the position is filled

NEURO CONNECTION FOUNDATION
Location: Auckland
Role: Board member
Closes: Application will remain open until the position is filled

Welcome

New Chartered Members

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Stuart Burgess
Johnathan Chen
Wendy Edwards
Nicola Faithfull
Barbara Imlach
Matthew Payton
Scott Pearson
Shelley Ruha
Stephen Selwood
Penny Sheerin

BAY OF PLENTY

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Barrie Clark
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Sue Walbran

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Wayne Mu
Kath Murphy
Paul Nickels
Malcolm Paul
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Graham Pryor
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Stefan Ruegg
Rachael Regan-Paterson
Robert Reid
Adrienne Roberts
Mike Roberts
Howard Smith
Aaron Smith
Melanie Smith
Richard Stannard
Jenny Stiles
Sharon Stoakes
Kirti Suman
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Morgan Jones
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Danny Loughlin
Trevor Preston
Paulina Roach
Greg Stebbing
Krissy Thompson
Ben Van den Borst
Te Taru White
Peter Williams
Lesley Wilson

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

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Martyn Cook
Brent Dawson
Jeremy Dixon
Jaz Dosanjgh
Catherine Dwan
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Shane Epiha
Charles Fergusson
Philip Goodman
Nichola Hiatt
Alister James
Bridgette Jennings
Jake Lane
Glenn Livingstone
Steve Macdonald
Irihapeti Mahuika
Kerry Mayes
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David Meates
Heath Milne
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Katrina Hopkinson
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Hugh Lawrence
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WAIKATO

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Armin Guttke
Toni Kennerley
Sandra Preston
Karen Price
Kerry-Lynn Sorrell
E-Lyn Tan

Safe harbour to aid business recovery

Sue Sheldon CNZM, CFInstD presents an initial opinion on proposed changes to the Companies Act aimed at helping businesses avoid collapse due to the impact of COVID-19.

AUTHOR:
AARON WATSON

The government has announced changes to the Companies Act it hopes will enable more businesses to continue trading amid the impact of COVID-19.

The moves follow a petition from the Institute of Directors for relief for directors from potential personal liability when an organisation might be trading while insolvent (subject to reasonable limitations and ensuring creditor interests are taken into account).

The IoD argued that the risk of large compensation awards could force directors to place organisations into liquidation at this time of constrained cash flow. In turn, this could see the collapse of businesses that might otherwise be viable again once the crisis has passed.

Legislation is currently being drafted that will:

- provide directors with a safe harbour from duties under the Companies Act that are relevant when an organisation is trading while insolvent
- enable organisations affected by COVID-19 to place existing debts into hibernation (subject to agreement with 50% of their creditors) for six months
- provide for extended deadlines, electronic signatures and temporary relief from constitutions or rules where COVID-19 makes this necessary.

SAFE HARBOUR

The government announcement is encouraging and the provisions will be backdated once the legislation is passed, says Sue Sheldon CFInstD.

“The safe harbour will be effective for six months, if the directors, in good faith, consider it more likely than not that the company will be able to pay its debts as they fall due within 18 months,” Sheldon says.

“Directors need to make decisions now so it is hoped the government will move with urgency to put this legislation in place, otherwise there wouldn’t be a point in doing the initial work on it.”

> “In times of crisis like this it is actually cash that is king rather than profitability, per se. Profitability is always important but having the cash flow is what is going to see businesses through.

In the meantime, she advises directors to look closely at the proposals as there may be an opportunity to maximise the benefit of short-term cost reductions and position organisations for a quicker recovery once restrictions on trading are lifted.

“I think the safe harbour provisions are useful if a company can immediately downsize. If directors see their organisations coming out of this in a smaller position then the downsizing exercise will have already started,” Sheldon says.

Businesses will also want to see an immediate return to income and cash flows, she says.

“In times of crisis like this it is actually cash that is king rather than profitability, per se. Profitability is always important but having the cash flow is what is going to see businesses through. You have to be able to see how you can move out of the safe harbour regime.

“At the end of the time period for the safe harbour, will your business be solvent? If the issue is just moved from now out to six or 18 months’ time then directors will have to think about the positon they will be in then. If they are still in a position of limited trading and therefore constrained cash flows, it is likely that their company will be in a worse position rather than a better position.

“If they are in a worse position then losses will be greater and you would imagine that creditors will be in a worse position.”

WHICH BUSINESSES?

If a business can downsize and see a reasonably immediate return to income and cash flows once the lockdown ceases (Sheldon considers this alert level 2, not level 3), the changes may be useful, Sheldon says.

“I was trying to get my head around which businesses those might be? Life is going to be particularly difficult for some industries – you can think immediately of tourism, travel and all types of personal services. Supply chain disruption for manufacturers will continue, for example. Hospitality will remain difficult for as long as we need to maintain social distancing. Access to retail will have similar constraints to hospitality, although not as severe. There are many more.

“Then we come to the issue of who are the customers? The ultimate customer should be considered the consumer. Will they have cash to enable businesses to restart?

“Directors will be thinking through all of these issues with respect to their own particular position and basing their decisions as to whether the safe harbour is helpful to them on those initial conditions that I talked through.”

Takeaway food outlets are one example of a business that may benefit from this regime. They might, with a stringent health regime, reopen relatively quickly and be subject to consumer demand, she says.

“The general question of how easy it is to come out of lockdown is what is challenging most directors at the moment. What levels of business will they have? What revenues will result from that? Will they be able to get supplies? Will their employees be available?”

DEBT HIBERNATION

The other major plank of the Companies Act changes is the opportunity to hibernate debt, with the agreement of 50% of creditors, for six months.

“But you would also imagine that creditors will have a need for any accommodation to be short term. It moves the cash flow issue further up the supply chain, I guess. If everybody is in the same position, will creditors be in a position to agree to these arrangements whereby 50% of debt or some other proportion is deferred for a period of time? Creditors may see that as giving up their rights to force insolvency of businesses they see as not being able to survive.”

Sheldon offers the example of where a creditor is also a large supplier to a business as a situation in which debt hibernation might be agreeable to all parties.

“You may consider that the supplier is able to make that provision off their own balance sheet in order to keep in place a business that is their customer.”

But there will be practical challenges in negotiations with creditors during a time of social distancing, she warns.

“Normally that would be done by way of calling a creditors meeting. Online meetings will be challenging if a large number of creditors want to attend and it is difficult to judge the mood of the room in those circumstances.

“I think the theory is good but, again, at the end of that time you may have just postponed an insolvent position out by that time period.”

Directors will look to their own industry and make an assessment of what restart looks like before taking advantage of the opportunities, Sheldon says.

“Everybody has been involved in crisis management. Lockdown really focusses the mind on where your business is going to be.”

Our economy in April 2021

ASB Chief Economist Nick Tuffley shares three possible economic recovery scenarios for New Zealand over the next 12 months.

AUTHOR:
AARON WATSON

If there was ever a time to do a lot of business planning, this is it, says ASB Chief Economist Nick Tuffley.

With the country moving to alert level three this week, more buisness are able to resume trading (albeit under social distancing restrictions). However, the economic environment businesses emerge into is likely to be very different after our five-week lockdown. Tuffley says businesses need to think about how they will do things differently - people are likely to behave, work and spend in very different ways to those which we were accustomed to, he says.

In mid-April, Treasury released modelling of the impact of COVID-19 that showed how an extended period in lockdown (Treasury modelled level four for six months, level three for six months) could see GDP shrink by nearly a third and unemployment reach 26%.

A shorter time in lockdown and the potential for the government to put more money into the economy improved the predictions, but even Treasury's best-case saw $15b shaved off GDP and unemployment rising to around 13%.

At a global level, the International Monetary Fund predicts negative growth this year and a recession "at least as bad as during the global financial crisis", according to IMF Managing Director Kristalina Georgieva.

Behind the gloomy outlook looms the prospect of a raft of business failures that make economic recovery difficult.

"The more that we can do in the near term to keep businesses afloat and to help them with their recovery phase the better," Tuffley says.

"How well prepared people are at a time when they have been under a lot of pressure will be really, really important."

> "We are all learning how to work very, very differently to what we did just weeks ago. Our shopping habits are going to be very different. How we entertain ourselves is going to be very different. There are a lot of businesses that will need to adapt to those sorts of changes."

BEST CASE – QUICK EMERGENCE FROM LOCKDOWN, VIRUS UNDER CONTROL, MINIMAL BUSINESS FAILURE, UNEMPLOYMENT DOUBLES

"An ideal outcome is that we get past lockdown fairly quickly and finally, and we get as little damage as possible to the economy. By that I mean as few business failures as possible and as small a lift in unemployment as possible," Tuffley says.

"It all comes down to where we are with the virus. If we are able to really contain the virus so that we are able to open up the economy, start social interaction again, then that would be a situation where we could go back to a reasonable amount of the behaviour that we had before."

Under that scenario, he says much of the economy could start to function "more normally" and unemployment could merely double to around 7% .

"That's still going to be quite a challenging situation – even just a five-week lockdown will do quite a bit of damage to cash flow.

"When a number of businesses start up again, they might be operating in quite a different environment. Some won't see much in the way of change but for others, when you are involved in tourism, or anything involving people being close to each other, a lot of changes are going to be evident quite quickly.

"Even retail is likely to look quite different for some period. We may all want to keep our distance for some period of time, or be required by the government to keep our distance for some period of time."

Under a best-case, emerging from lockdown is likely to be a staged process, he says.

"It will probably be a gradual relief. But if it is done relatively quickly and we preserve as many businesses and jobs as possible then that lift – the rise back out of the deep hole that we are in at the moment - will be relatively quick. And we won't lose too much of the economy along the way."

Under this scenario, our borders will remain closed and Tuffley describes the possibility of an effective vaccine being developed within the year – a precondition for any return to full normality - as "quite a lot to ask".

"We are all learning how to work very, very differently to what we did just weeks ago. Our shopping habits are going to be very different. How we entertain ourselves is going to be very different. There are a lot of businesses that will need to adapt to those sorts of changes."

Where opportunity may emerge is in the IT sector as the online world has become increasingly important to our economic and social lives. Organisations that adopt technology and use that to create new markets or to reconnect with their customers in a new way will be better off, he says.

"It's not an easy world that we are going to be opening up into. It is amazing what a difference a fairly long-term border closedown and even just closing business for four-plus weeks can make. It makes a massive difference."

MEDIUM CASE – LONGER IN LOCKDOWN, SOCIAL DISTANCING RESTRICTIONS LINGER, VIRUS COULD RE-EMERGE IN SOME PLACES, BUSINESS FAILURE AND UNEMPLOYMENT HIGHER

Tuffely describes this as the most likely scenario and what we are starting to see take place: a lockdown that is removed progressively through alert levels; parts of the country operate under level three or level four alerts at some times.

"That is still very restrictive in terms of the activities that can be undertaken. It means that the process of getting more businesses up and running will take longer. With that comes all the risk of more businesses failing along the way and higher unemployment coming through."

For some businesses, it could be several months before they are able to reopen and begin trading again.

"The challenge with this scenario is that time makes quite a difference to business survival. The longer a business has to remain closed, or operate under very constrained conditions, the more risk there is that it will fail."

Business leaders should be mindful there is a risk, under this probable scenario, that there will be more containment action required.

"There is always the possibility that we start flitting – as a nation – between level three and level four at times (or in some regions) as we need to keep containing the virus. There is a risk of more disruption coming through with our attempts to keep on top of the virus."

New Zealand's borders would remain closed and, as with scenario one, the emergence of an effective vaccine within 12 months remains unlikely.

"One of the encouraging things from a New Zealand point of view is that China does look like it is recovering. It has removed the lockdown in Wuhan and much of the rest of the country is also in recovery mode.

"China, our single biggest trading partner – particularly for goods, which is where over the next couple of years we will be earning a lot of our money – is the key driver of prices for a lot of our commodities and it is remaining open and recovering."

WORST CASE – WE STRUGGLE TO CONTAIN THE VIRUS, LOCKDOWN IS EXTENDED, WIDESPREAD BUSINESS FAILURES, UNEMPLOYMENT SKYROCKETS, ECONOMY SHRINKS MARKEDLY

If we see a re-emergence of the virus the government is likely to revisit lockdown and the exit from it would be very gradual. Businesses, and society in general, would operate under restrictions for an extended period of time.

"That means more harm in terms of business failures, higher unemployment, added debt both for government and businesses… it all becomes a lot more harmful to our longer-term growth prospects."

Under this scenario, Tuffley suggests there would be a much bigger overall drop in the size of the economy. That, in turn, would inhibit recovery. Unemployment would be in double digits. Businesses – and the government – would be further indebted.

"Over the next year, under that scenario, we are probably still trying to build ourselves a path out of the impact of lockdowns," he says.

This scenario could also see a range of undesirable social consequences emerge, he says.

"We run the risk of seeing a variety of social impacts if the lockdown goes on for a long time and the economy is heavily impacted by it. Mental health issues, the potential for higher rates of suicide. Lifting people out of poverty will be set back as well. The longer this goes on the more mental health issues you get in the short term, with people being isolated. And the higher that unemployment gets then the higher the stresses and anxieties around unemployment."

He suggests that it could take three years, under this scenario, for the economy to get back to the size it was before the outbreak.

"That's quite a lot of lost opportunity in terms of wealth creation, in terms of more people without jobs, weaker wage growth… "

Plan now

Whatever the economic recovery looks like, businesses need to be prepared, Tuffley says.

"Think about how things might be different. Make sure you have got your finances lined up so you can fund a recovery. Figure out how you need to reconnect with customers. Do you need different processes? How will distancing in the workplace affect you, for example?

"Many businesses will only have one shot at staging a recovery after the lockdown. They may not have the resources to try again if they do not get it right the first time."


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Just 50% of directors agreed that their board has the right capabilities to deal with increasing business complexity and risk.
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Su-Yen Wong's **view from Singapore**

Su-Yen Wong, an independent director based in Singapore, offers a personal perspective on the impact of COVID-19.

ABOUT SU-YEN WONG

Su-Yen Wong is a professional speaker and Singapore-based independent director who serves on the boards of several public, private, membership and not-for-profit organisations in Australia, India, Indonesia, Myanmar, Singapore, and the United States. She is a Fellow and vice chair of the Singapore Institute of Directors and an active member of Women Corporate Directors and the Young Presidents' Organization.

The Singapore Institute of Directors and Institute of Directors New Zealand are members of the Global Network of Director Institutes, which seeks to share perspectives on global governance issues.

Having been through the SARS outbreak, COVID-19 has had an air of familiarity to many in Singapore's business community. At a personal level, I was based in Hong Kong which was the epicentre of the SARS outbreak at the time, and remember clearly the halt that it brought to business operations. Within a very short period of time, virtually all of my clients in the region - that I would typically meet with in person - politely said, "don't come!"

As for recovering from the impact, based on our experience with SARS, the sobering reality is that the economic fallout is likely to last for far longer than the health toll. We also learned that "health vs economy" is a false dichotomy... Without getting the virus under control, there can be no economic recovery.

The order of magnitude [of COVID-19] has made all the difference. SARS resulted in around 8,000 cases across 26 countries, whereas with COVID-19, there are more than three million cases across 210 countries and territories to date, and numbers are continuing to climb. Clearly the travel restrictions and lockdowns around the world are unprecedented.

Top of mind issues for directors will vary according to the circumstances faced by each company. For those classified as essential businesses (including healthcare, public transportation, utilities etc), a key concern is ensuring the health and safety of their staff in the midst of ongoing operations. For others, it will be about business continuity and sustainability.

Another issue that is top of mind for directors is the conduct of AGMs. The regulator SGX has put in place provisions for AGMs to be deferred. However, with the current restrictions around gatherings, companies will need to explore virtual alternatives, which is uncharted territory for most. An AGM involves a bit more complexity than the standard Zoom call with issues such as identity verification that need to be addressed, for example.

As the saying goes, never let a good crisis go to waste. Certainly, we need to get through the short term and it's imperative to be focusing on cash flow, funding lines, and organisation stability. However, if we think of this as a temporary blip, and look forward to when things get back to "normal", we will likely have missed a significant opportunity to reflect on what this means for our organisations in the longer term. Areas that some of the boards I'm serving on are focused on include rethinking our offerings, delivery models, work processes, and people practices.

> "Areas that some of the boards I'm serving on are focused on include rethinking our offerings, delivery models, work processes, and people practices."

> "Many companies are placing a great deal of focus on diversifying their supply chains as a way to hedge their risks"

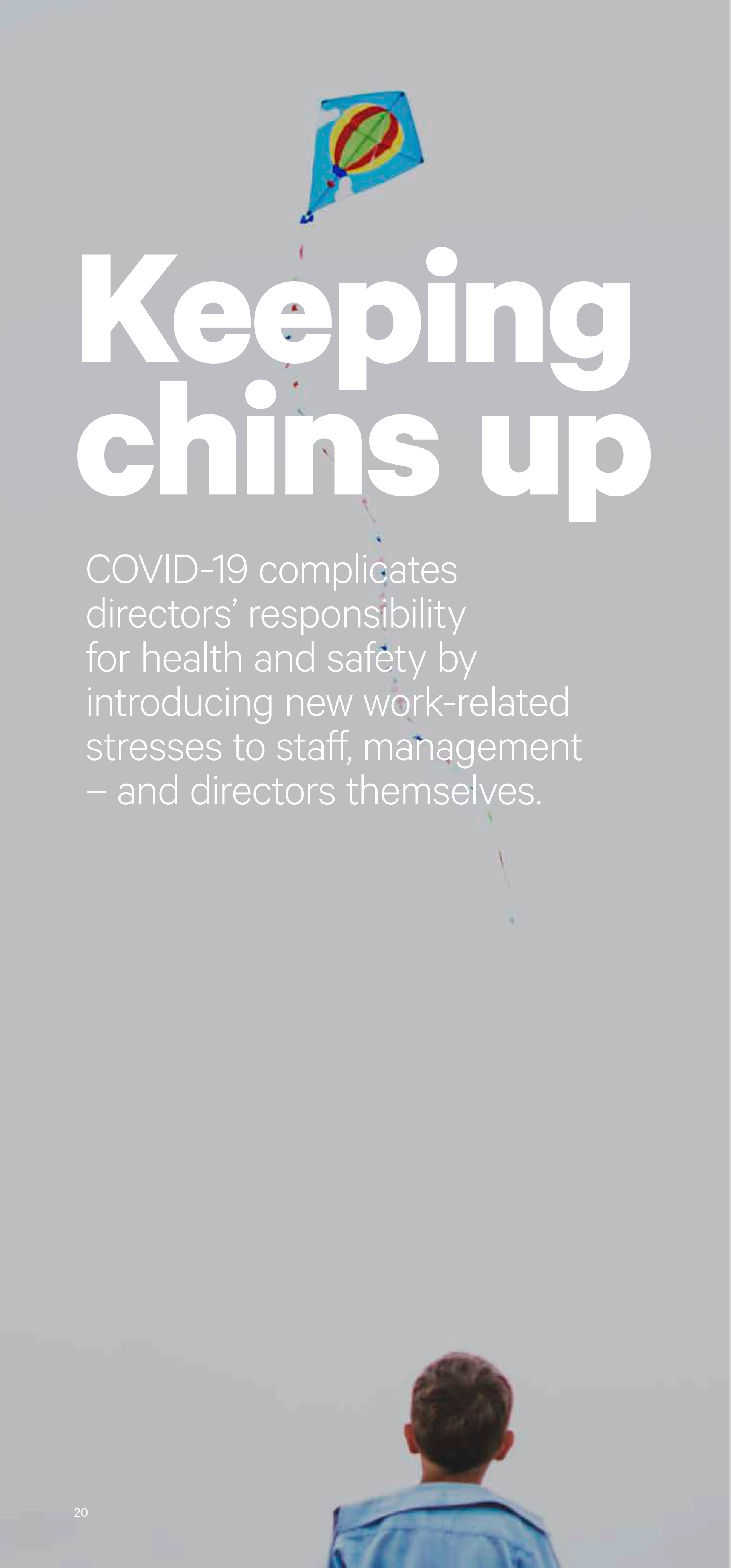
Singapore has a very open and, hence, connected economy. Consequently, while measures are being taken by the government to help businesses and individuals alike, such as temporary relief from legal action (eg in the event a business or individual is unable to fulfil contracts), wage support, and so on, we are inevitably subject to global economic conditions.

Many companies are placing a great deal of focus on diversifying their supply chains as a way to hedge their risks. I expect this to continue for the foreseeable future, with increasing emphasis placed on factors beyond cost, and a shift away from hyper optimisation.

The health situation needs to be stabilised in order for the economy to recover and even in countries that have done a good job so far, there is a need to guard against complacency. Until every person and country is safe, no one is safe. The hyper-connected world that we live in suggests it would be prudent to prepare for a long tail.

Keeping chins up

COVID-19 complicates directors' responsibility for health and safety by introducing new work-related stresses to staff, management – and directors themselves.



Lost income, a sudden move to working from home or being required to work in an environment of potential exposure to COVID-19 are all taking their toll on the mental health of New Zealand workers.

A survey by Kantar at the end of March found that apprehension about the mental health of family and friends was high among 43% of New Zealanders, a more widespread concern than falling ill themselves (34%).

The crisis impacts on each person in a different ways. Some may be enjoying the lockdown as a respite from work pressures. Others may face increasing stress around health and income issues, or simply adjusting to life solely in their "bubble", says Clinical Psychologist Gaynor Parkin.

The founder and CEO of wellbeing advisory service Umbrella says the mental health impacts should not be underestimated.

"People are finding it really tough because financially they are under pressure with their work or their businesses," Parkins says. "Generally, this is increasing people's stress."

More stress can be felt as general anxiety or just feeling unsettled. People may become irritable, angry or sad. Motivation can suffer. Even daily activities may seem pointless or unusually difficult.

These reactions are not unusual, Parkin says.

"It would be normal to be finding it tough right now. It is important to acknowledge that this is hard, while also looking for the positive experiences in this lockdown."

ROLE OF DIRECTORS

Directors have responsibilities for mental wellbeing in their organisations under the Health and Safety at Work Act 2015 but the extent of those responsibilities has yet to be clarified in the courts, says health and safety expert Allister Rose.

Rose, consultant with Comply Health and Safety, says Worksafe NZ has yet to take a prosecution under the Act.

"It is not something that is thoroughly understood in New Zealand, in part because Worksafe has not undertaken any prosecutions. This means it can be difficult for directors to be sure where their responsibilities begin and end," Rose says.

Nevertheless, the law is clear that health and safety "isn't just physical', Rose says.

"It does cover mental health as well, and it's important that directors understand this."

For example, Rose says, with many employees currently working from home there is a new risk they may feel isolated or unsupported and that this may impact their mental wellbeing.

"In this instance an organisation needs to develop flexible policies that can fit a range of different personality types. My son in London has little communication with his work. He is happy just to keep doing his work. That would not work for me – I need to interact with people."

Directors should ask how their organisations are meeting the needs of different personality types and encourage management to maintain open lines of communication with all staff.

"The board may also have to look at the budget for health and safety and see if it is fit for present circumstances."

Even where boards feel that the events impacting their organisations are out of their control, they still have responsibilities and should be prepared to show that they are seeking to discharge those responsibilities, he says.

"The law defines it as taking 'reasonably practicable' steps. You should be able to show you have undertaken a risk assessment and put in place appropriate policies based on that."

He recommends director review Worksafe's "Health isn't just physical" update (at worksafe.govt.nz) or the international guidance in ISO 45001 Occupational Health and Safety for ideas on how to manage mental health in the context of their own organisations.

"Worksafe's guidance can help boards understand their responsibilities. ISO 45001 is a good standard that provides a pathway for businesses to comply with their health and safety responsibilities. And it goes without saying that directors also need to make sure they are looking after themselves."

Mental health support toolkit

The government has launched a website of mental health resources developed by All Right?, a wellbeing organisation based in Canterbury. It's top tips include:

- Find ways to connect.
- Find ways to be active.
- Find ways to keep learning.
- Stick to your routine (or start a new one).
- Limit the amount of news you follow.

For more information see *allright.org.nz*

Nine ways to support your wellbeing

1. Acknowledge your anxiety
2. Separate what is in your control from what is not
3. Ration your news intake
4. Foster a challenge rather than a threat mindset
5. Challenge yourself to stay in the present
6. Keep your sense of humour
7. Be kind
8. Stay connected
9. Reach out if you need more support

Source: Umbrella

Vigilance is critical

Cyber criminals never let a crisis go to waste. Directors must take the lead as working life enters a new normal.

AUTHOR
PETER BAILEY, AURA INFORMATION SECURITY GENERAL MANAGER

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While companies are focussing on the unprecedented challenges presented by COVID-19, we are seeing opportunistic cyber-attacks around the world taking advantage of vulnerabilities and striking while attention is diverted to more pressing matters.

Cyber criminals will never play by the rule book – It's simply not in their DNA. Their hacking is almost always driven by the opportunity to make money whenever that presents itself, and they have a callous disregard for plain decency in pursuing that goal.

Among the more disturbing hacking attempts in recent weeks have been attacks on the World Health Organisation, the US Health and Human Services Department, and a hospital in the Czech Republic.

Companies should take no comfort in an alleged pledge from some hackers that they'll stop attacks on healthcare facilities while the world struggles to manage the current coronavirus outbreak. I almost guarantee healthcare facilities, like all institutions, will remain a target. Remember, if you're online, you're vulnerable.

That is why, in times of crisis, maintaining cyber vigilance is absolutely critical. Unfortunately, when you are under pressure and your guard is lowered, you can suddenly find yourself falling into an avoidable trap.

In New Zealand we are already seeing the emergence of sophisticated coronavirus-themed phishing emails, ranging from purported communications from the IRD to fake requests from health providers or other authorities.

CHANGING WORK LANDSCAPE

The changing work landscape is presenting a new set of cyber-security risks companies need to urgently think about. While for many companies working from home has long been an option, it is now the new normal, at least for the short term.

> "The more likely scenario is that flexible working arrangements will become a permanent feature of the work environment in the post-COVID-19 world..."

The more likely scenario is that flexible working arrangements will become a permanent feature of the work environment in the post-COVID-19 world, and this means significant numbers of workers might spend much less time working in the office.

We are already seeing some leading technology firms adapting to the practice. Twitter's head of human resources Jennifer Christie explains: "People who were reticent to work remotely will find that they really thrive that way. Managers who didn't think they could manage teams that were remote will have a different perspective. I do think we won't go back."

From a cyber security perspective this has huge implications for how systems are configured, accessed and hardened. Chances are that right now many systems will be particularly vulnerable, given the race that many companies took to set up their remote working solutions.

Along with that haste to get up and operating quickly, standard processes may have been bypassed. Many companies are likely using workarounds like personal email addresses, Dropbox or OneDrive folders instead of their usual approved and secure methods of accessing, using and sharing information.

POSITIONING FOR A NEW NORMAL

If this is the new normal, a re-examination of how to protect systems and data is required and directors must take the lead. This includes re-examining your overall risk strategy and how you extend your current cybersecurity measures and practices into the homes of your employees.

Good information technology security policies must start with a focus on people first. Employee understanding and buy-in is the critical first line of defence in maintaining cyber security, but now that homes are essentially part of the work environment for growing numbers of employees, we need to ask how we ensure the buy-in extends out of the office and into the living room.

Process also requires attention. Take the time to re-examine how business policy and procedures apply to remote workers en masse and ensure you have the technology components to keep all these remote connections secure.

FRAGILITY AND RESILIENCE

COVID-19 is causing major disruption to business and will make many organisations more fragile than usual, increasing the risk of successful cyber-attacks occurring. Acknowledging this can help you prepare.

Resilience relies on adjusting your defences accordingly. A useful starting point is scenario planning to test your vulnerability in this new environment. Make sure you include understanding the potential cost of an attack. This helps to clearly quantify the risk to your organisation and provides the justification for appropriate mitigation strategies.

Be honest. The emergence of reporting successful attacks (notifiable breaches) in Australia serves as a good example that

> "If the worst happens, it's important to have a clear strategy in place to help you navigate the pathway forward rather than starting with a blank sheet of paper..."

successful recovery depends on being forthright not only with authorities but also with your teams. Put plainly, the best approach for a successful recovery from an attack is openness.

It's important to include recovery in your planning. If the worst happens, it's important to have a clear strategy in place to help you navigate the pathway forward rather than starting with a blank sheet of paper. Your recovery plan should include contingency measures for remote working, as well as good backup support and restoration systems, and potentially communications and legal support.

WHAT SHOULD THE BOARD ASK OF THE CISO

Directors should be asking their executive team, and the chief information security officer (CISO) in particular, to define the actions that will be taken if your business is breached. Agree on what metrics the CISO should present when reporting back to the board and define how the business will quantify whether the situation is being well managed.

Third-party risk must also be examined. The CISO should conduct robust, independent testing with partners, customers and suppliers you have strong links with to help determine where they may also have security flaws. A regular table-top simulated exercise with the board will help build team strength and resilience in preparation for an attack.

Remember, cyber criminals do not play by the rule book. The best you can do right now is prepare up front, and ensure your systems are secure while employees work from home. While an attack may be unavoidable, you can minimise the impact with a good, well-planned response.

Leveraging technology in times of crisis

AUTHOR
ANDREW CARRICK, VICE-PRESIDENT OF CUSTOMER SUCCESS AT DILIGENT

Technology is critical during a crisis like COVID-19 to enable secure communications, remote access to data, virtual meetings and support business continuity.

From cyber security breaches to natural disasters to worldwide pandemics, the nature of a crisis is vast and unpredictable. Board members and management teams are responsible for developing decisive yet flexible response plans that can accommodate a wide variety of scenarios.

When crisis response plans are triggered, cascading actions are set into motion across the business. Executives must trust the plans they put in place. Board members must stand ready to support business continuity. In the end, the impact of a crisis is rarely determined by the crisis itself, but rather the quality of the organisation's response.

Technology is a critical enabler during times of uncertainty. Crisis response teams must have secure channels of communication. Data must be accessible. Sensitive documents must remain protected. Virtual meeting technology must keep teams connected.

In the simplest terms, company leaders must have the right information at their fingertips to make the right decisions. This article explores two primary components of crisis response – preparedness and agility – and the technology structures that support them.

FOR BOARD MEMBERS

Activate your experience. Boards possess unique sets of experiences and lessons learned that they can draw on in times of crisis. Directors should stand ready to galvanise their network of contacts and resources in response to the needs of management.

Be available. Make it clear that the board is on call – ready and willing to engage. Support management in carrying out the crisis plan. Think twice about probing into areas that don't support the task at hand – ask whether an issue warrants distracting executives from addressing crisis priorities, or whether those issues could wait for another day?

Stay focused on the long term. As management attends to day-to-day crisis response, how can board members ensure a stronger organisation emerges on the other side? From supply chains to employee relations, organisations can't miss the opportunity to become more flexible, sustainable, and resilient.

FOR MANAGEMENT

Communicate early, often, and with transparency. Even if you don't have all the answers, the importance of communication is elevated during crisis times. Consider each stakeholder group (employees, shareholders, investors, suppliers, exchanges, government, etc) over both a short- and long-term horizon. How are their fears and uncertainties shifting and how must your message evolve in the weeks ahead? Connect and engage often with purpose and humility.

Be decisive, yet flexible. Identify the areas that need attention and allocate resources accordingly, but have plans for pivoting quickly, as needed. The crisis response team should include diverse members who gather the insights required for better decision-making.

Delegate authority. A CEO cannot lead alone during times of crisis. Empower leaders across the company to step up and support the executive team with consistent actions and messages. Open lines of communication are critical to ensure alignment.

Preparation and response

Organisations don't always have the luxury of advanced preparation. Even when they can draw on existing crisis plans, boards and management teams must remain nimble, focused, connected – and uncompromising on safety and security. Here's what that workflow could look like:

- Contact response teams using secured channels.
- Establish process for meetings & information flow.
- Communicate with all stakeholders.

Crisis response planning is a crucial exercise by the board and management team. Organisations must anticipate a range of crisis scenarios that could negatively impact the business, and they must establish the company's response strategy spanning stakeholder communication, operational contingencies, and board involvement. Here's what that process could look like:

- Anticipate crises and develop response plans.
- Build a rapid response infrastructure.
- Monitor systems for red flags.

As the pandemic continues to unfold, the most important priority is keeping the situation on the front burner and leading in a timely, thoughtful, and empathetic fashion. In the words of Betsy Atkins: "How you behave in a crisis is what people will remember."

For more information, visit **diligent.com**

Holding the government to account

AUTHOR
MALCOM MCKINNON, ADJUNCT RESEARCH FELLOW AT VICTORIA UNIVERSITY OF WELLINGTON

Thanks to the fellow historians and former officials who kindly answered many questions for this piece.

Parliament's new Epidemic Response Committee is a unique governance initiative for New Zealand. What can it reasonably be expected to achieve?

The government set up the Epidemic Response Committee (ERC), with the support of all political parties, on March 25, the day before the COVID-19 lockdown came into effect. Parliament was adjourned to 28 April consequent on the suspension of the government's regular legislative programme for the duration of the lockdown.

With Parliament adjourned, it cannot play its monitoring role. The ERC is meant to provide that scrutiny, which is critical given the extraordinary powers the government has assumed to deal with the crisis under the *Health Act 1956, the Civil Defence Emergency Management Act 2002* and the *Epidemic Preparation Act 2006*.

The ERC comprises 11 MPs, from all parties, and is chaired by the Leader of the Opposition. Though Opposition MPs chair other select committees, this committee is unusual in having a majority of Opposition MPs. Moreover, it has powers to require information of ministers and departments that most select committees lack.

> "No such committee has ever before been established in a national emergency and that includes the only other major health emergency, the influenza epidemic of October-December 1918..."

No such committee has ever before been established in a national emergency and that includes the only other major health emergency, the influenza epidemic of October-December 1918, which killed 9,000 New Zealanders (that would pro rata to 37,500 deaths in 2020), with especially severe death rates among Maori and in New Zealand-occupied Samoa.

WHAT THE ERC CAN DELIVER

How do we evaluate such an innovation in Parliamentary practice?

Some might say it assures a more effective political process than a Parliament often mired in procedural matters, point-scoring and other time-wasters.

Certainly, it is well-suited to scrutinise and hold to account the actions and policies of the government through this emergency. But it is completely unsuited to substituting for the multiple purposes for which Parliament exists – to form governments and to monitor, finance and debate all a government's legislative programme and policies.

Others are apprehensive that the adjournment of Parliament, and its substitution with the ERC, endangers parliamentary democracy. But neither the specifics of the present situation nor the historical record, suggest this.

Parliament does not sit every week of the year, and of the five weeks of adjournment between March 25 and 28 April, two were scheduled for recess anyway.

And while Parliament could have convened virtually (as the ERC is doing), it makes sense to use the adjournment to explore the modalities of that and to secure cross-party-support if it is to proceed.

21ST CENTURY GOVERNANCE SOLUTION

As for the past, many national emergencies saw too little rather than too much Parliamentary scrutiny.

During the wars of the 1860s it was the governor, the military commanders and the ministries of the day that oversaw and fought the war. Parliament played little role – thus during the crucial Waikato War of 1863-64 it only met for eight weeks.

Through the colonial era and into the 20th century Parliament was habitually summoned only halfway through the year and from the time of Premier Dick Seddon (1893-1906), select committees did little to fill the gap. Most devoted their time to hearing petitions from private individuals.

Parliament was in session through the influenza epidemic, not to hold the government to account over it but because it had not met (barring six days in April) any earlier in the year. After two MPs – Alfred Hindmarsh, the leader of the Labour Party, and David Buick, a Manawatu member – died from the influenza, and with another 18 MPs of the 80-strong house sick, PM Massey adjourned Parliament for a week.

During the toughest winter of the Depression – 1933 – Parliament, after having passed a raft of measures in the first ten weeks of the year (a continuation of the 1932 session), did not assemble again until mid-September.

During the Second World War, Parliament met in eighteen secret sessions. But while MPs were informed about the course of the war, public scrutiny was absent.

Through the five months of the 1951 waterfront dispute neither Parliament nor any substitute forum was summoned.

The preference for mid-year openings of Parliament persisted into the 1980s. The final session of the 40th Parliament (1982-84), during Muldoon's controversial wage and price freeze, did not meet until 31 May 1984.

If there has been a golden age of Parliamentary accountability, it has been in recent not earlier times and the ERC is a variant of it.

Muldoon's concentration of power fostered arguments for restoring the influence of the legislative arm of government, a case ably made by then law professor Geoffrey Palmer in *Unbridled Power* (1979).

As Leader of the House, and deputy PM in the Fourth Labour government of 1984-90, Palmer introduced year-round sittings of Parliament and enhanced the role of select committees.

Ironically the controversial nature of many radical economic measures of that government strengthened the case for such oversight; the MMP electoral system introduced in 1996, which makes it difficult for a single party to have a parliamentary majority, contributes to that. As now does the ERC.

AN ERC FOR BUSINESS?

Would an ERC-type arrangement be valuable or viable in the business world? Are directors of companies analogues of Cabinet ministers and shareholders analogues of MPs?

This writer is no expert on such matters but observes that shareholders mostly play a more passive role in the conduct of the affairs of a company than do MPs in the business of government. The question may therefore be not whether the ERC is a model for company governance in exigent times, but whether parliamentary democracy is a model for company governance in normal times.

Malcolm McKinnon is a Wellington historian, who also teaches in the School of History, Philosophy, Political Science and International Relations at Victoria University of Wellington. He is the author of *Treasury: the New Zealand Treasury 1840-2000 (2003)* and *The Broken Decade: Prosperity, depression and recovery in New Zealand, 1928-39 (2016).*

Second wave

Navigating the cycle of a pandemic for directors and boards.

AUTHOR
STEVE WALSH, CHIEF CLIENT OFFICER, MARSH NZ

COVID-19 has changed our entire world and is affecting businesses in New Zealand in unique and nuanced ways. No matter how well prepared a business is through business continuity planning to respond to pandemic; the reality is things change and move quickly at critical points. Many businesses have found themselves playing catch up at different points as the pandemic's growth and impact hijacks the usual risk management framework and protocols. How an organisation responds to COVID-19 will not only depend on its preparedness and resources but also on what stage of the pandemic lifecycle it is operating in.

As we transition into loosening lockdown and other restrictions the next wave of considerations, including duty of care and business operational shifts, will become the focus of board conversations.

For directors, navigating the pandemic lifecycle means continuing to drive strategic risk management issues while their executives manage the day-to-day response.

There are also personal obligations to discharge their responsibilities as directors.

BALANCING THE STRATEGIC WITH THE TACTICAL

The enormity of facing multiple issues at once (including employee health and wellness, declining operating revenues, tough economic trading environment, and supply chain interruptions) will put pressure on the most seasoned businesses, boards and directors. The role of the board will be critical for challenging and supporting a robust framework to follow.

Understanding where you are in the lifecycle of the pandemic is critical to ensuring resources are focused in the areas that matter the most.

Our guide Navigating the Pandemic Response Lifecycle highlights each phase of the pandemic and the specific characteristics. Marsh has mapped the stages of the pandemic against the challenges that you may face and actions you can take in each area to better deal with each situation.

CHALLENGES AND OPPORTUNITIES

Cost Savings: Through insurance rebates, different insurance selection tactics and using cash flow vehicles such as premium funding or surety bonds. There are many steps that businesses can explore taking to proactively managing the preservation of cash and balance sheet risk.

Employee wellbeing and productivity: Ensures the continued functioning of the business and/or the ability to pick up again when things turn. Response required is different at each stage of the lifecycle and based on maturing of the organisation or the industry. For those businesses classified as essential services, there is a particular focus on employee wellbeing and work in what can be described as difficult operating environments.

Changing risk profile: Is the risk profile up to date on light of change and what insurable risk identification and gap analysis should be undertaken to develop confidence in right approach? In particular interest to directors, is the changing profile of your liability, relevant to the temporary provision of the Companies Act, referred to as the safe harbour and debt hibernation provisions?

Risk management: Whether the business is an essential service or not, we are already seeing businesses and directors pursue opportunity to manage risk in a different way. Employee health and wellness is a current top priority, but also risks such as, managing unoccupied premises, cash flow risk, Directors & Officer's liability, movement of goods, imports/exports, supply chain are all areas, that you are likely to need a different solution during and post COVID-19.

QUICKLY ASSESSING YOUR BUSINESS ABILITY TO MANAGE IMPACTS

Have you responded to protect the core business and people?

How does the business recover and emerge as a stronger operator?

When moving at pace to respond, many organisations have found themselves in the moment. Simple tools can give the board and directors a quick overview of areas that have been covered and those requiring attention. Using the Marsh checklist, will give your executive team and board an easy guide to traverse the risk and insurance landscape right now. The line between managing the risks of your business versus those as a director can become blurred at times of crisis, so it is vitally important that the principles of good governance are upheld and that you can discharge your directorial duties in a meaningful and professional manner.

Read our checklist of operational impacts.

Four priorities for NFP boards

IoD insights about not for profits from the 2019 *Director Sentiment Survey.*

AUTHOR
AMELIA VELA, RESEARCH ANALYST AT THE IOD'S GOVERNANCE LEADERSHIP CENTRE

Just over half (51%) of IoD members serve on not-for-profit boards. Their workload and level of responsibility has increased markedly over recent years in line with increased compliance obligations and challenges facing the sector including:

- intense competition for limited resources
- securing reliable funding
- competing entities providing similar or overlapping services
- traditional reluctance to partner, enter joint ventures, collaborate or merge
- attracting, motivating and retaining board members and staff
- adapting to technological change.

Irrespective of size the expectations for boards working in the not-for-profit sector are similar to other sectors. Our 2019 *Director Sentiment Survey* (undertaken in association with ASB) found that the majority of not-for-profit boards were focusing on the future and assessing how they can strengthen their organisations.

They regularly discussed innovation and strategic opportunities (85%), how they can operate more effectively (76%), long-term value creation and their role as stewards of the organisation (79%), boards composition/renewal and the skills/experience they need now and for the future (81%).

These are areas that all boards should be discussing and it's encouraging that they are regularly on the agenda of many not-for-profit boards in New Zealand.

However, the *Survey* also found areas where not-for-profit boards needed to focus to help make their organisations stronger and more resilient in the future.

For example, just 56% of not-for-profit boards had discussed crisis management plans in the previous 12 months. With the COVID-19 lockdown upon us, that 56% may be glad that they did.

Four key focus areas for NFP boards and share some ideas on how to improve outcomes.

1 ORGANISATIONAL CULTURE

The board's role in governing organisational culture has been in the spotlight in recent times with increased scrutiny of the way that boards assess and monitor culture. The majority of not-for-profit directors were consciously and actively setting the tone and modelling their values for organisational behaviour (70%), and monitoring and regularly discussing the culture of their organisation (77%).

However, just 48% of boards had discussed workplace bullying in the past 12 months, while just 26% had discussed sexual harassment.

Having the processes and systems in place to allow cultural issues and misconduct to be reported is critical to ensuring that management is aware of potential issues. This includes ensuring that the organisation has whistleblowing policies and speak-up provisions in place. However, just 25% of not-for-profit boards agreed that they had discussed

> "However, just 48% of boards had discussed workplace bullying in the past 12 months, while just 26% had discussed sexual harassment"

whistleblowing and how the organisation makes speak-up provisions effective in the last 12 months.

Further to this, just 47% had received comprehensive reporting from management about ethical matters and conduct incidents, and the actions taken to address them. Having the right information from management is vital to allow the board to effectively assess and monitor culture and all boards should take time to consider what information they need and whether their board is receiving comprehensive reporting from management regarding culture and conduct.

Points for boards to consider:

- Take the time to consider what sort of culture is needed to support the successful delivery of the organisation's mission/purpose.
- Take active steps to ensure that there is a common understanding between the board and management about the desired culture, including through the establishment of clearly defined values and principles.
- Review the organisation's structures, policies and practices to ensure that they are supporting the culture that you are trying to embed.
- Regularly monitor culture and conduct (eg through reports, site visits, market feedback) and the way that management is embedding culture within the organisation.
- Ensure the decisions the board makes and the actions of the board send signals to staff and volunteers about what is acceptable.

2 OVERSEEING CLIMATE RISKS

Climate change is part of the governance landscape now and climate-related risks are increasingly being considered by organisations of all sizes across all sectors. Just over a quarter of not-for-profit directors (27%) said their board was engaged and proactive on climate change risks and practices in their organisations. The majority (75%) said their board considers environmental and social issues are very important to their business.

Demonstrable sustainable practices may become increasingly important when securing funding and donations in the future.

Points for boards to consider:

- Invest in developing an appropriate level of understanding of climate-related risk at board level.
- Take the time to assess whether climate risk is present within your organisation.

- If climate risk is present within your organisation, consider what information the board needs to monitor and oversee this risk.
- Question whether there are more sustainable ways to undertake your mission and purpose – it could become a competitive advantage.

3 MITIGATING CYBER-RISK

Cyber-attacks are a real and constant risk facing organisations globally. However, less than a quarter (21%) of not-for-profit directors thought their board had a clear picture of the organisation's overall cybersecurity strategy and how it relates to industry best practice. While just 34% said their board regularly discusses cyber-risk, and are confident that their organisation has the capacity to respond to a cyber-attack or incident.

No organisation is immune to cyber-attack. It is vital that all boards regularly discuss cyber-risk and what they can do to build cyber resilience. This has become increasingly important as more organisations shift to remote working due to COVID-19.

Points for boards to consider:

- Take time to consider how your organisation uses and relies on digital technologies to operate.
- Ensure that the board as a whole understands the legal implications of cyber-risk as they apply to the organisation's specific circumstances.
- Consider what cybersecurity expertise you need and how you can access it if needed
- Establish an enterprise-wide cyber-risk management framework.
- Engage with management to categorise any cyber-risks that are present. Include identification of which risks to avoid, which to accept, and which to mitigate or transfer through insurance, as well as specific plans associated with each approach.

4 DATA GOVERNANCE AND PRIVACY

Data governance and privacy should be a priority for all boards, not only because of the considerable harm beaches can have, but also to prepare for the introduction of new privacy legislation, expected in 2020. However less than half (48%) of not-for-profit directors agreed that their boards regularly discussed data governance and the use of data analytics to drive performance and strategic opportunities. Further to this, only 34% agreed their board receives comprehensive reporting from management about data breach risks and incidents, and the actions taken to address them.

It is vital that all boards ensure that there are processes, systems and frameworks in place to effectively oversee the data practices of the organisation, including the collection, storage and use of data. In addition to this, taking time to think about how the organisation can get the most value out of accessible data can lead to new avenues of value creation.

Points for boards to consider:

- Develop board digital capability to meet the board's current and future data governance needs.
- Prioritise privacy, understand your data and ensure that there are processes facilitating the transparency about how data will be used.
- Ensure the board is getting comprehensive and timely reporting (good and bad news) from management (and other sources) about cybersecurity and risks.
- Take the time to understand the implications of the incoming privacy legislation on your organisation.

It gives me energy

World Vision board member Matthew Prichard reflects what he has learned in three years of not-for-profit governance.

AUTHOR
MATTHEW PRICHARD, KPMG AUDIT PARTNER

I remember having two worries about joining the board of World Vision. Would sitting at the board table be too removed from the fieldwork to give me a sense that I was contributing? And would there be enough challenge to make it interesting enough? I was pretty silly to worry on either score.

In the end it was the calibre of the other board members which made it a no-brainer. I was approached by Jon Hartley, a quiet giant of New Zealand governance, who has recently become chairman of Kiwibank. His passion for World Vision's purpose and our work runs deep, and I wanted the experience of being on a board with him and the other excellent board members.

Now in my third year, there are some myths I sometimes hear about not-for-profit (NFP) governance that are worth exploding.

MYTH 1: IT'S A GOOD PLACE TO LEARN TO BE A REAL DIRECTOR

My World Vision board role is only my second board role (both NFPs). Everyone has to have a first. But I do not at all subscribe to the view that governance of NFPs requires less experience or skill than commercial roles.

The World Vision board I joined has enormous experience and we're using all of it to navigate the challenges and opportunities the organisation faces. While that board is a fantastic learning environment for me, but it definitely would not work to have a whole board of people with their trainer wheels on.

Which leads on to...

MYTH 2: IT'S NOT AS COMPLEX

At World Vision, we commit to 10 to 15-year programmes of work in the world's poorest communities. We fund most of that work by appealing directly to the generosity of ordinary New Zealanders annually. Failing to achieve our revenue could mean having to walk away from people who are desperately reliant on the support we give them.

We're also confronted and disrupted by changes in technology. Our core offering was developed in the last century and relies on a relationship with a sponsored child through letters, cards and photos. Today, we suddenly live in a world where people are used to having a "friend" on the other side of the planet, and can see online what that friend had for breakfast and how they're feeling right now. We're having to completely rethink how we can safely deliver a relationship that meets this completely new "market" expectation.

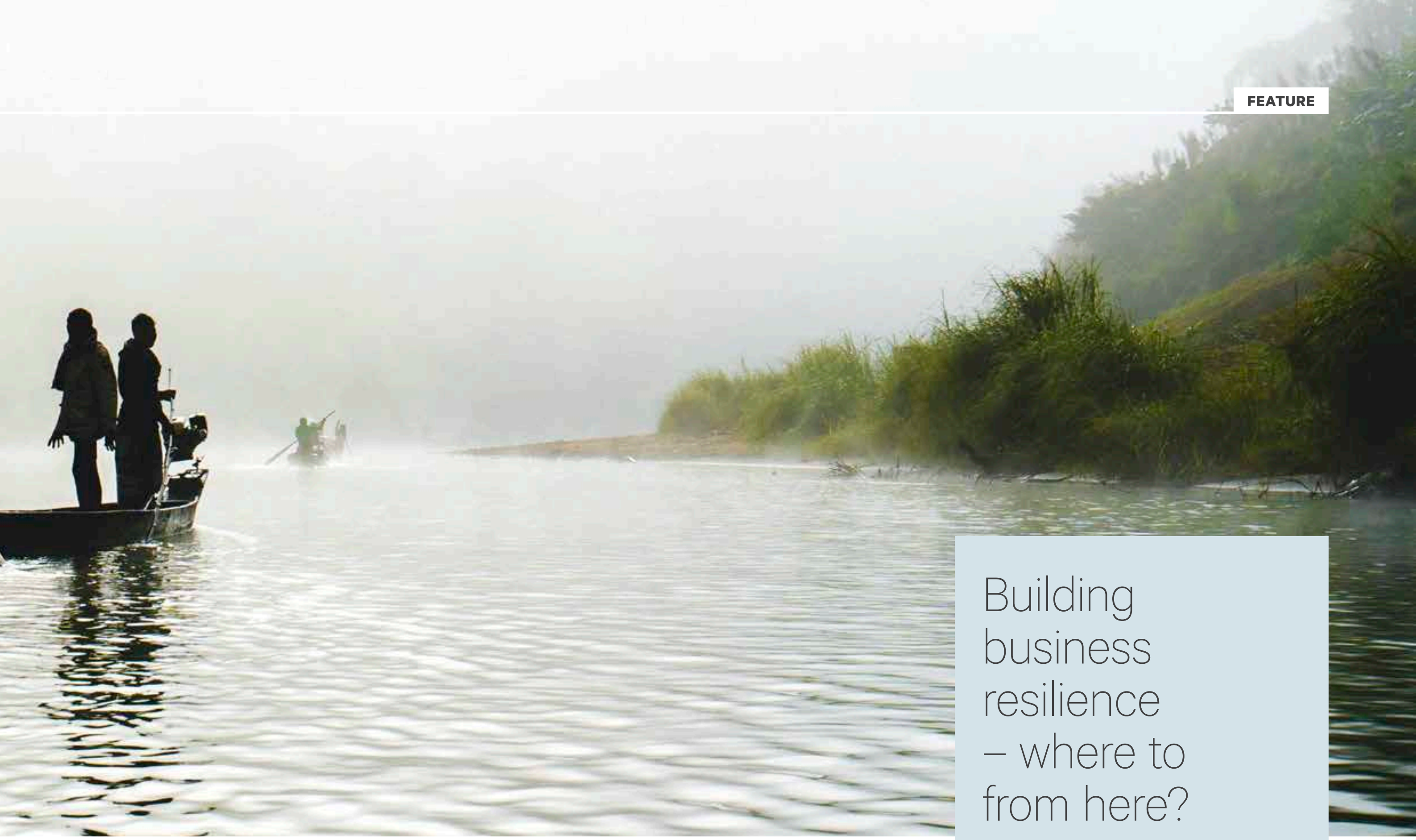
Our people work with multiple governments. They negotiate the sensitivities of a range of religions. They oversee large-scale, enormously complex and subtle field programmes. All this must be achieved within the most frugal cost structures so that the maximum amount possible is delivered direct to the children and their communities.

In my experience so far, the strategic and governance challenges of not-for-profit organisations can be just as complex and serious (if not more so) as the commercial organisations I work with.

MYTH 3: IT'S NOT AS DEMANDING ON TIME

The World Vision board are all volunteers. That has no impact on their commitment to putting in the hours to do a great job of governance.

We have five board meetings each year. They're at least half days, usually full days. We're starting to meet for dinner the night before, to strengthen board relationships



and warm up discussions before the board meeting the next day. I chair the Risk and Audit Committee, which meets four times per year and has a full agenda. We have a board strategic retreat each year that runs from a Sunday to Tuesday. It's certainly not a light meeting agenda.

Outside of that, it's just as important in a not-for-profit, as it is in a commercial organisation, that board members get out and about and understand the work in the field.

At World Vision New Zealand, our policy is that board members go to a field office every three years.

I just spent a week with two other board members in Bangladesh. Bangladesh has 170 million people in a country the size of our South Island. We saw the work being done in the slums of Dhaka, the rural poverty around Nilphamari and the desperation of the Rohingya refugee camp on the border with Myanmar - all supported by money given by New Zealanders. If I'd never seen the cleverness and effectiveness of that work, I couldn't properly do my role on the board in New Zealand.

PURPOSE

The real difference in most NFP roles is the clarity and depth of purpose.

I'm a KPMG partner and I am highly motivated by our firm's purpose of "Fuelling New Zealand's Prosperity". But it's hard to compete with the motivation I get from my World Vision role: "For every child, life in all its fullness."

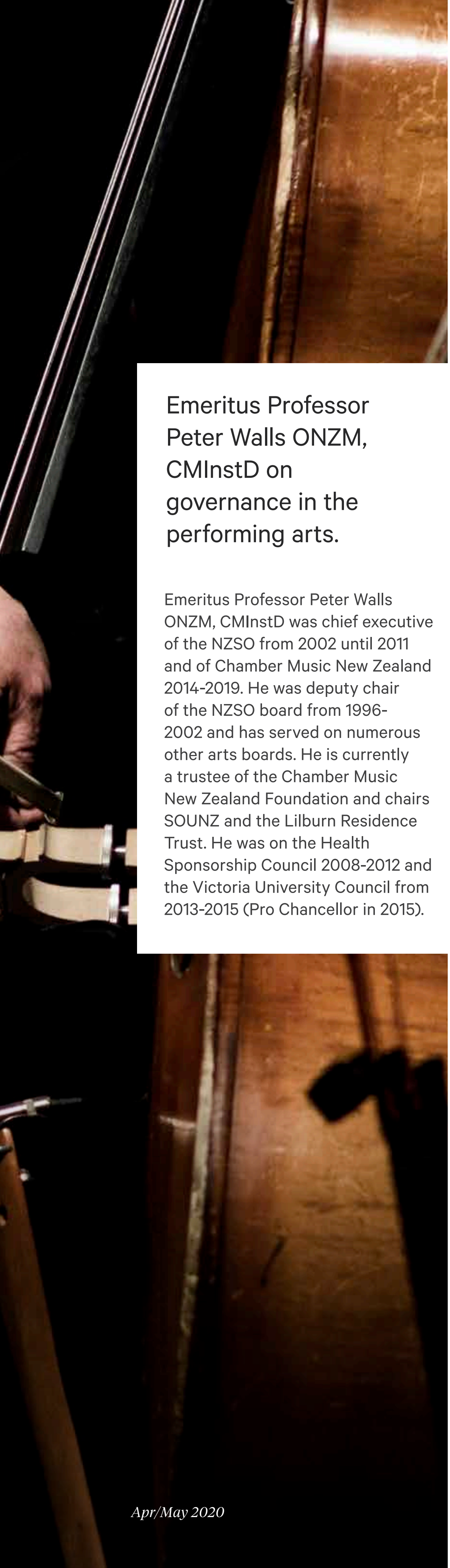
This purpose brings a sharpness to our work as a board. The consequences of us failing to deal with the challenges, or maximise the opportunities to raise funds in New Zealand, would be felt by some of the world's most vulnerable children.

NOT FOR THE FAINT HEARTED

I find my not-for-profit governance role to be enormously rewarding. Although it requires time and focus, it gives me energy rather than consuming energy.

This sector needs all the talent and experience that New Zealand directors can give it. The flipside is the fulfilment we all can receive from working on a purpose that can light us up with energy for our broader roles.

For love or money?



Emeritus Professor Peter Walls ONZM, CMInstD on governance in the performing arts.

Emeritus Professor Peter Walls ONZM, CMInstD was chief executive of the NZSO from 2002 until 2011 and of Chamber Music New Zealand 2014-2019. He was deputy chair of the NZSO board from 1996-2002 and has served on numerous other arts boards. He is currently a trustee of the Chamber Music New Zealand Foundation and chairs SOUNZ and the Lilburn Residence Trust. He was on the Health Sponsorship Council 2008-2012 and the Victoria University Council from 2013-2015 (Pro Chancellor in 2015).

A board appointment in a performing arts company can bring satisfaction of quite a special kind – but with that come distinctive challenges.

Performing arts companies are not-for-profit (NFP) organisations. The idea of "for purpose" is gaining ascendancy over "not for profit" since, quite properly, it puts the focus on non-financial outcomes – the good works achieved by the company.

I want to put "for purpose" to one side for a moment and face up to the stark financial reality of being an NFP. As a broad class, NFPs encompass very different business models. A humanitarian charity raises funds and distributes them. Performing arts companies, on the other hand, operate as businesses – but businesses with no margins. A zero bottom-line is a relief, not a disappointment. The ideal year-end result is a modest surplus achieved by keeping three interlocking income streams in balance: sales; sponsorship/community grants/donations; and government funding.

A focus on healthy sales is where performing arts companies most resemble other businesses with a retail dimension. Incidentally, concerts – certainly symphonic concerts – cannot be sustained by box office alone. Sir Selwyn Cushing, a former NZSO Chair, used to joke that orchestras work by reverse business logic – the more you do, the harder it gets.

Sales are crucially important. The revenue matters in itself, but it also provides reassurance to government funders of demand for the outcomes that they support and is a critical tool in persuading sponsors that their funds are well invested – that through their sponsorship they can engage with a sufficient and relevant market.

A lot of work goes into calculating expected audience levels – but this can't be an exact science.
A spectacular example of miscalculation occurred on my watch with NZSO. We'd engaged Burt Bacharach for a tour that would begin with what was to have been the first concert in Auckland's Vector Arena. There were construction problems so we had to move to the Aotea Centre. Next, Bacharach had to withdraw because of an injury. We booked Dionne Warwick but sales flatlined. We ended the tour $30,000 short of target. In this case, there was a happy ending. Our first classical subscription tour that year was with Dame Kiri Te Kanawa as soloist. Kiri's tour ended $30,000 ahead of budget.

I learned a lot from it – mostly not to risk your shirt on activity that might be perceived as not central to the organisation's mission.

The difference between sponsorship and philanthropy is perhaps not well enough understood. Sponsorship involves a business transaction in which the sponsor offers cash and/or contra (sponsorship in kind) to the arts company in return for a range of benefits (such as brand exposure, ticket allocation, hosting opportunities for clients plus a few intangibles such as the chance to make connections with other sponsors or the government as funder). The value placed on the benefits offered to the sponsor should be at least be equal to the value of the sponsorship itself.

A happy alignment between a sponsor's interests and the arts company can be the catalyst in creating something new and immensely valuable. In the early 2000s, Wrightson's (rural services providers) were principal sponsors of the NZSO. The "Wrightson's Tours" allowed the NZSO to visit regional centres and, for their part, Wrightson's got better engagement with their clients

> “Such a scenario means that the financial responsibilities of arts company boards require sound judgement and steady nerves. Sailing close to the wind is built into the no-margins business model.” — *Peter Walls*

than through some of their rural event sponsorships thanks to the appeal of symphonic concerts to farmers' wives. The synergies were surprising, perhaps, but very real.

A marketing sponsorship with a substantial contra element commits the organisation to allocating a fixed amount of its marketing budget to the sponsoring organisation. If, for example, the percentage of the marketing budget that must be committed to, say, a newspaper group increases, that effectively reduces the flexibility to alter the balance between one marketing channel and another.

All arts companies depend on gaming trusts. These trusts make great things possible. The gaming trust system is, however, ridiculously inefficient. Every arts company in New Zealand invests human resource in just keeping up with the treadmill of applications (and reconciliations) – many for small grants that will, nevertheless, make the difference when it comes to staying on the right side of zero at year end.

What concerns me more than the inefficiency of the system is the fragility of this funding in the medium term. Gaming trusts are grappling with sinking-lid policies being adopted by local authorities. Such policies recognise that pokies are a contributor to problem gambling.

From a governance perspective, there are two issues here. The first is a practical one. How do we ensure that development funding for the arts company does not decline? But the second is ethical. How do we feel about the arts being so reliant on gaming?

The final component of development funding is philanthropy – generous people who support the arts, sometimes through their private trusts and foundations (such as the Wallace Arts Trust, the Adam Foundation, the Turnovsky Endowment Trust, and the Deane Endowment Trust). We couldn't do without them. One private donor regularly covers the cost of bringing children from low-decile schools to Chamber Music New Zealand's education concerts. There are countless examples of this sort.

Government funding comes with an expectation that it will supplement earned revenue and development funding at appropriate levels. Such a scenario means that the financial responsibilities of arts company boards require sound judgement and steady nerves. Sailing close to the wind is built into the no-margins business model.

Acting as custodians of an important art form, encouraging innovation, and promoting diversity are all complicated by the constraints of the financial model. It is worth noting in passing the extent to which arts companies are price takers: venue costs, marketing costs, and people costs rise inexorably at rates that cannot be wholly recovered through adjustments to ticket pricing.

Arts companies are answerable to two masters: their boards and their core government funder. Each of these imposes significant reporting requirements. While there is overlap, the governing body and the funder have distinctly different interests and strategic priorities. It would be fair to say, by and large, that the starting point for board members is an appreciation of the intrinsic value of the art form while the Ministry of Culture and Heritage or Creative NZ begin with a desire to maximise the social benefits of the art form. There is no conflict between the two, but there is nevertheless a kind of natural tension.

A typical board member needs no convincing of the importance of the art form and its capacity to enrich lives. They are not embarrassed about their love for classical music and they are strongly supportive of education and outreach programmes that unlock this for young people regardless of cultural or ethnic background. Almost all will have been invited to join the board because of critical supporting expertise – financial, perhaps, or connectivity in the business world that can be so valuable in nurturing sponsorships. One of the important things about classical music is that it is not the property of any single culture or ethnicity. It crosses boundaries – happily. Some of its greatest exponents are not ethnically from the Western tradition: Seiji Ozawa, Lang Lang, the Palestinians in Barenboim's East/West Divan Orchestra, Wilma Smith, Jonathan Lemalu, Kiri… the list could go on. But the capacity of what looks a conservative art form to transform young New Zealanders' lives and horizons does not appear to be front-of-mind for government funders. It is becoming harder to argue the case for classical music, opera, ballet.

We need to recognize vulnerabilities in the current model for sustaining arts organisations in Aotearoa.

1. What if there were a failure (even a temporary failure) of government resolve to support quality professional classical music, or if the need to prioritise other kinds of artistic endeavour restricts government funders' capacity to continue this support at the levels required?
2. What if ethical concerns over problem gambling were to lead to diminished, or even eliminated, of funding from the Lotteries Board and from gaming trusts?
3. What if a downturn in business confidence were to further reduce the contribution of corporate sponsorship to the arts?

These are questions that will be in the minds of arts company boards. All arts company boards see ensuring long-term sustainability as a primary responsibility.

A call for action in the construction sector

AUTHORS:
CHRIS ALDERSON AND JOHN HARPER-SLADE

Significantly reducing the number of construction fatalities in New Zealand is totally achievable.

The New Zealand Construction sector's rate of fatalities per 100,000 workers is twice that of Australia and almost four times that of the UK.

Although construction makes up 8-10% of the workforce its accounts for 25% of workplace fatalities here. In the year to December 2019 the construction sector had 15 fatal incidents – people who will not be going home to their families, leaving many children now growing up without a parent.

Construction is inherently risky. This is due to the nature of the work, the environment that the work is carried out in and the interactions between both. Risks can change quickly due to environmental conditions such as weather, light, ground conditions, and through interaction with third parties such as members of the public (eg traffic).

It can be a highly-volatile risk environment. And this means the controls and checks in place must include a wide safety margin that allows for mistakes and other process variations without a serious injury or fatality occurring.

LEADING CHANGE

The Health and Safety at Work Act has a special focus on officers – including directors – and puts special duties on their shoulders.

Directors involved in the construction sector should take the time to understand the drivers behind serious injuries and fatalities (SIFs) in their industry and where leaders can focus and invest to make the required change.

Three focus areas relate directly to SIF elimination.

1. Awareness, recognition of and respect for the construction risk environment and the underlying work conditions that make up the risk profile.
2. Improving the level of performance and reduction in the variability of construction work processes through better investment in frontline leaders.
3. Investment in appropriate and resilient controls that widen the safety margin.

The officers of an organisation have the greatest ability to influence the investment in the control environment. They also need to understand the work activity and its related inherent risk profile in order to make the right decision on what the appropriate control strategy and investment should be.

Those with the least influence over the control environment are, unfortunately, usually the workers, who are often the ones blamed for safety incidents.

Build in wide safety margins

As an example, one of New Zealand's most prevalent sources of construction workplace fatalities is working close to traffic or construction vehicles (known as mobile plant).

The most effective control in protecting a vulnerable road user, construction worker or member of the public is - without doubt - closing the road while work activity is carried out.

However, we often rely on stop/go type controls which provide a much narrower safety margin – it is somewhat inevitable that over time these lower value controls will not be enough to eliminate the possibility of a fatality.

PEOPLE CAN REDUCE FATALITIES

Reducing workplace fatalities requires companies to invest in training for their staff, especially supervisors. Supervisors have the key role in constantly monitoring the work environment, recognising the risks that work and site conditions bring and adapting plans and guiding teams to take account of the constantly evolving risk environment.

As an industry we need to invest more in developing our supervisors and front line leaders to make safety inherently part of the way they work with their teams.

All workers should be trained and competent in understanding the inherent risks of a construction site. A heightened sense of awareness for all on site, treating high risk activity as it should be, is a vital collective mindset.

Directors should support a strategy that includes increased investment in leading hands, foremen and supervisors with the right safety mindset to support teams and individuals keep within safe work process limits is vital. These men and women need to be given the time, resource and skillset (gained through experience and training) to undertake more direct and indirect supervision rather than be on the tools themselves.

WE CAN DO BETTER

Significantly reducing the number of construction fatalities is totally achievable given the right focus, investment and mindset of those who procure construction services, those who design and those who construct. Investment in supervisors is key as they are the gatekeepers of the work processes, schedule and plan work and maintain the control environment.

So often fatal and significant safety events are associated with the need to find and apportion blame, usually with an individual who, like all of us, may have deviated from the process or not seen and reacted to a change in the risk environment.

True accountability in these types of events sits with those with the most influence over the investments in the control environment and the quality of supervision on site.

A potential resource for all businesses in New Zealand, big and small on what good controls look like are the construction risk cards, developed by ACC and WorkSafe. These are available at riskcards.acc.co.nz. The industry has recently provided guidance on minimum levels of training, competency and supervision – this is available at **chasnz.org**

ABOUT THE AUTHORS

Chris Alderson is the CEO of Construction Health and Safety New Zealand (CHASNZ) and chair of Mates in Construction NZ. CHASNZ is a Charitable Trust dedicated to improving the health and safety performance of the New Zealand construction sector. He previously headed up the safety consulting businesses at PwC and led Fonterra's health and safety transformation programme globally.

Jon Harper-Slade is one of New Zealand's most experienced construction health and safety professionals. He leads CHASNZ's innovation and safety programs as well as sitting on the lead team of the New Zealand Institute of Safety Management.


SAFETY ISN'T A CHECKLIST.
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MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Cartel criminalisation and directors

From April 2021, cartel conduct could result in a prison sentence.

AUTHOR
COMMERCE COMMISSION HEAD OF COMPETITION KATIE RUSBATCH

With cartel laws recently amended to introduce prison sentences for cartel conduct, the Commerce Commission wants to raise directors' awareness of what has changed and how to avoid and identify cartel conduct.

Some directors might not be aware they or the company are engaging in cartel conduct. But there can be serious consequences for businesses and directors.

Being alert to competition law risks and knowing what to do if your business has been involved is key for directors.

WHAT IS A CARTEL?

Cartels happen when business rivals get together and agree not to compete against each other. They may agree to fix prices, divide and share customers or markets between them, restrict output of goods or services, or rig bids for contracts so they decide who wins.

Cartels cause both consumers and businesses to pay more for goods and services, and can undermine New Zealand's ability to compete internationally. They also make it difficult for other competing businesses that aren't part of the cartel to survive and grow and can reduce choice and quality.

As New Zealand's competition authority, the Commission has powers to investigate cartels and bring proceedings for penalties and, from April next year, criminal penalties against both individuals and companies.

CHANGES TO THE LAW

In April 2019 the *Commerce (Criminalisation of Cartels) Amendment Act* was passed into law. It will come into force on 8 April 2021. The Act makes existing civil cartel prohibitions under the Commerce Act criminal offences.

This means that, in addition to the existing civil penalties, individuals convicted of cartel offences face up to seven years imprisonment.

It will be a defence to the criminal offence if the defendant believed on reasonable grounds that an exception applied to the alleged conduct. “Reasonable grounds” does not mean a mere assertion that an individual believed the conduct was exempt. There must be a credible basis for the belief.

Exceptions include collaborative activities such as a joint venture between competing firms.

> “Some directors might not be aware they or the company are engaging in cartel conduct”

WHAT ARE THE CONSEQUENCES?

The consequences for individuals, including directors, are severe:

- Individuals who engage in cartel conduct can go to prison for up to seven years and face penalties of up to $500,000 per breach.
- Individuals who do not directly engage in cartel conduct can still be a party to the offending by aiding, abetting or inciting and liable for imprisonment under the Crimes Act.
- For civil proceedings, individuals can be fined of up to $500,000 per breach.
- Companies are not permitted to pay their employees’ penalties.
- Directors may be disqualified from acting as company directors for up to five years whether the case is prosecuted on a civil or criminal basis.
- Directors who engage in, or permit, cartel conduct may be in breach of their directors’ duties.

Businesses involved in a cartel face a penalty of up to $10 million, three times the commercial gain of the behaviour or 10% of turnover per annum of the conduct, whichever is higher. This applies to civil and criminal prosecutions.

Not all investigations end up in court proceedings. Sometimes the Commission may issue public warnings.

COMMISSION ENFORCEMENT

Detecting and taking action against cartels is a priority for the Commission.

Our published Enforcement Guidelines details how the Commission makes enforcement decisions against companies and individuals. Factors taken into account around whether to commence a prosecution include public interest and whether the conduct is deliberate.

Any decision taken to commence criminal proceedings will also have regard to whether the evidence is sufficient to provide a reasonable prospect of conviction.

The Commission frequently brings proceedings against individuals and directors. Recent examples of price fixing where a director was ordered to pay a penalty include:

- a director in the real estate industry being involved in the formation of an agreement between competitors to pass on increased advertising costs to customers
- a director in the livestock industry being part of industry association discussions and the formation of agreements between competitors to set new fees to cover work required by government legislation and increase existing surcharges to cover these fees.

The Commission will continue to take action against individuals involved in cartels under the new criminal offences.

When deciding to take action against individuals, the Commission will take into account the individual’s role in the conduct and their role in the business. The conduct of an individual, including a director, may also be a factor in the amount of any penalty imposed on a business by the courts. For example, was the director in a position to stop the conduct at any stage during its duration?

DIRECTORS NEED TO TAKE ACTION

You should:

- know what is happening in your business and make sure you have a culture of compliance, led from the top down
- lead by example – know the principles of competition law and make sure your staff do as well
- have a system to flag up any suspected illegal practices within your business
- immediately take action to stop any anti-competitive practices and obtain independent legal advice – the Commission offers a leniency policy, so those that come forward first can avoid penalties or prison sentences.

Encourage and facilitate reporting. Identify an independent, trustworthy person in your business for staff to report concerns to such as the company secretary seek independent legal advice if you have a competition law concern.

More information on the Commerce Commission’s approach to cartel conduct, its leniency policy and its Enforcement Response Guidelines is available at **comcom.govt.nz**

Bringing data breaches into the open

Organisations will have a new duty to report serious data breaches from 1 November 2020, says Privacy Commissioner John Edwards.

With the rise digital models, more and more businesses are trying to extract value from the data they collect.

This has prompted new concerns about what data is collected, and how it is kept secure, says Privacy Commissioner John Edwards.

“We are seeing an increasing consumer and citizen sensitivity about how that data is protected and used. That in turn has led to a regulatory response, right around the world, where the liabilities for directors and companies are increasing,” Edwards says

In New Zealand, new obligations under the Privacy Act will come into force in November 2020 that require organisations to inform the Privacy Commissioner and affected individuals if they experience a data breach that puts individuals at risk.

“This year, we are seeing a whole new Privacy Act. It keeps the core principles of the 1993 legislation but adds some new obligations – on directors and companies,” he says.

“Probably the most important new initiative is that when a company loses control of personal information in a way that could cause some serious harm they will have an obligation to notify my office and the affected individuals. That’s called mandatory privacy breach notification rules.”

Failure to notify the Privacy Commissioner could result in prosecution.

“We are also seeing enhanced enforcement powers for my office,” Edwards says.

> “they should ask, who in our company has completed the privacy commissioner’s online training modules? And if they don’t get a satisfactory answer they could be liable themselves.”

“For the past 26 years the Privacy Commissioner has operated with moral suasion and a dispute resolution model. Now if we see a company not complying with the Privacy Act we will be able to issue compliance notices and those can be enforced in the Human Rights Review Tribunal.”

Edwards says directors need to ask their chief executives:

- What are we doing to comply?
- How are you keeping us safe from liability in this area?

“My priority as privacy commissioner is implementing the new Privacy Act in a way that reduces the cost for industry. We are producing a whole lot of materials. That means there should be no excuse for chief executive not to have a good answer when the chair of the board asks, are we complying with the new Privacy Act?”

Directors should also ensure that management is putting trained personnel in place, he says.

“They should ask, who in our company has completed the privacy commissioner’s online training modules? And if they don’t get a satisfactory answer they could be liable themselves.”

From Edwards’ vantage point, the new responsibilities add a layer of risk management to the role of directors.

“Directors are very good at looking at the balance sheet of the company and understanding the profit and loss, and the risk. The biggest and increasingly most important asset of the company that doesn’t feature in the accounts is the personal information.

“Directors need to be surfacing that, making it visible and making sure they are treating it properly. If they are not, they are going to suffer in share value, suffer from consumers choosing other options and they may experience regulatory interventions as well.”

Ask an expert

Trends in board appointments

Kelly McGregor MInstD manages the IoD's suite of board appointment services which includes Director Search and Director Vacancies offerings as well as additional recruitment support. She regularly advises clients in regards to their search and selection of new board members providing independence and guidance throughout the selection process. McGregor has been providing these services to IoD members for more than a decade.

WHAT HAVE YOU SEEN CHANGE IN THE BOARD APPOINTMENTS AREA IN RECENT YEARS?

There has been a significant shift in the skills and experience that boards are looking for when searching for new board members.

Ten years ago, we were regularly searching and advertising mainly for the more traditional areas of expertise, such as legal and finance. This has definitely changed. Boards are far more aware of the evolving needs of their organisations and the varied skills and experience they need to optimise and grow their businesses.

I've also noticed an openness to considering directors at various stages of their governance careers. Traditionally, most clients would only consider candidates with at least five years' board experience, often with an organisation of similar size and industry. Now, more often boards are not only open to those with less experience but are actively seeking those emerging directors, recognising the currency and energy they can bring to the board table.

Diversity and inclusion is now widely, and genuinely, recognised for the ways a more diverse board can add value to an organisation.

Above all, we're seeing a strong commitment to following good governance practices – through robust, transparent and independent processes. We've seen this across all of our governance service offerings, whether it be finding new board members, deciding on levels of director fees or when evaluating board performance.

HOW ARE BOARDS ASSESSING THEIR NEEDS?

Boards are not only thinking more about the make-up of their board, they are implementing sound systems and processes in order to get the mix their board needs to achieve its long-term strategic objectives.

They are having more robust discussions around the board table and identifying what skills and experience are needed. They are also using skills matrices to help identify where the gaps are and what to focus on when looking for new board members and/or succession planning.

> "Boards are not only thinking more about the make-up of their board, they are implementing sound systems and processes in order to get the mix their board needs to achieve its long-term strategic objectives."

Regular board evaluations help boards in this regard.

WHAT DOES A STANDARD BOARD APPOINTMENT PROCESS LOOK LIKE?

I work with a range of organisations including in the SME, listed, not-for-profit and public sectors. All have slightly different approaches and their appointment processes will depend on the situation and their constitution or governing law.

Also, it can depend on the stage or organisation type – whether they are establishing a new board, succession planning for a family owned business, filling a vacancy and/or adding an additional independent member to an existing board.

Generally, the appointment process includes the following stages:

- Reviewing and documenting the skills and experience currently on the board, through a skills matrix.
- Identifying gaps and what skills and experience are needed for the board to perform well, in line with the strategic plan.
- Agreeing on and finalising key criteria before searching for new board members.
- Conducting advertising and/or search based on key criteria identified.
- Shortlisting for interviews.
- Interviews and due diligence –from both organisation and candidate.
- Offer of appointment.
- Induction.

There has been a noticeable change over recent years. Many organisations are investing more in the first three stages – taking time to evaluate and review their boards' current make up and future needs.

Organisations often engage with specialists in this area to help guide a board though the process. This can provide board members with confidence and a degree of rigour and independence around a process that traditionally relied more heavily on a board's existing networks and connections.

HOW DO YOU THINK COVID-19 WILL AFFECT BOARD APPOINTMENTS

I think it may accelerate some of the changes we have seen to date. For example, interviews are already often held online and this will become more common while the world faces travel restrictions and other disruptions.

> "Both organisations and candidates will need to be even more thorough with due diligence, extensive reference checking and asking more questions about communication and boardroom style, which is sometimes harder to get a feel for via your laptop screen."

As we become more comfortable with this format, we also get better at it. It can be the simple things like having the camera at the right angle and treating the interview like we're all in the same room (rather than checking your phone half way through, out of camera shot).

But, in reality, virtual interviews are not quite the same as face-to-face meetings in the same room where conversations flow more freely. Both organisations and candidates will need to be even more thorough with due diligence, extensive reference checking and asking more questions about communication and boardroom style, which is sometimes harder to get a feel for via your laptop screen.

Kiwis will adapt, we always do. We find ways to make the best of situations and I'm sure board appointments will be no exception.

In & **about**

Online connections

The emergence of physical distancing rules has changed the way we meet, learn and network. So rather than the usual “out and about” event shots, this issue we have pictures from contemporary get-togethers – a “virtual coffee cart” for Taranaki members and a “gathering” of the IoD’s regional managers.

Thank goodness for technology!

We are continuing to roll out opportunities for members to connect, train and share thinking with one another. See the latest event listings at **iod.org.nz**

(All photos clockwise from top left.)

01 Suzanne Kargar, Sharynn Johnson, Ian Stronach, Philippa Murrell, Jill Steffert, Pauline Prince.

02 Barbara Kuriger, Craig Hattle, Johnathan Young, Scott Wilson.

03 Theresa Cayley, Shaan Davis, Shane Coleman, Murray Seamark , Neil Holdom, Adam Harris.