boardroom

OCT / NOV 2019

Magazine of the Institute of Directors in New Zealand

Always on duty: the future board

D&O liability: three areas to watch

Institute of DIRECTORS NEW ZEALAND

boardroom

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A note from the editor

This issue has a focus on the future of governance. It asks what directors and their boards are likely to look like, and be focussed on, in light of changes happening today.

A major theme is that directors are becoming busier, and are likely to be asked to do more in the future as part of their roles as concepts of governance evolve. They are being asked to give more time to their organisations, develop a deeper understanding of their organisations' markets and operations, and to hold their executive teams ever more closely to account.

This suggests that a professional approach to governance – with an ongoing commitment to learning, upskilling and adapting to new technologies and challenges – will continue to be a core part of a successful director's arsenal.

The IoD believes that good governance has the power to transform the future and build stronger businesses, organisations and communities. We remain a champion of governance as a profession and work to ensure the value of directors is understood as widely as possible.

Whatever the future holds, we will need to evolve alongside our members to support them to go beyond compliance and reach for the highest standards of governance. As the world becomes more complex and interconnected, the value of good decision making in the face of uncertainty will only increase.

Aaron Watson
Boardroom editor

Institute of DIRECTORS NEW ZEALAND

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Looking ahead

KIRSTEN PATTERSON
CEO, INSTITUTE OF DIRECTORS

Tēnā koutou katoa

If you want to know what the future of governance looks like, take a closer look at the present.

Questions about culture and conduct, the impact of technological disruption, increased complexity, and more demands on directors' expertise and time are not new challenges, but responding to them will shape the way boards operate for many years hence.

These are among the areas of threat and opportunity highlighted in our new research paper *Always on Duty: The Future Board*, produced with MinterEllisonRuddWatts. A *Boardroom* article based on the paper begins on page 9, kicking off this "future of governance" issue.

How much any of these things may already be impacting your board will vary. (As author William Gibson has said: "The future is already here – it is just not equally distributed.") But the overall theme of the paper – that demands on directors will continue to increase – is strongly suggested by the international trends reviewed and in feedback from IoD members. Take a closer look at Always on Duty at iod.org.nz and you may just catch a glimpse of your busy future.

WHERE THE BUCK STOPS

Another future/present point to note is on remuneration. What was once a private matter for boards and their execs is increasingly considered a public resource, information to which shareholders (and other stakeholders) have a right. Boards will need to consider the process by which they assess CEOs and reword them with this new trend to transparency in mind. Particularly as social pressures increase to ensure equal pay for women and men at all level of an organisation.

NGO WAY FORWARD

In New Zealand's $20billion-dollar NGO sector, moves are afoot to address future challenges through a focus on governance capability.

The Centre for Social Impact has produced a report, *What is the Future for NGO Governance?* that recommends an increased focus on governance expertise, tools and best practice as key drivers of future success among our charities, not for profits and community organisations. Many of these are governed by volunteers and the report notes that a community of expert NGO directors is needed.

The Centre is currently developing a national strategy for community governance that will be launched at an event hosted by the Institute of Directors in December.

PEOPLE POWER

Identifying trends and building strategies is only part of the solution to building sustainable businesses, organisations and communities. The other – perhaps the key – part is getting the right people.

What will the governance professional of the future look like? *Always on Duty* offers some clues: they will be more engaged with the businesses they govern; they will be learners for life; and they will be comfortable with the real-time decision making possibilities afforded by new technology.

On page 11 of this issue, Australian Institute of Corporate Directors Fellow Elizabeth Johnstone helps flesh out that picture, suggesting directors of the future will be astute, good communicators, and able to move beyond the thinking patterns of their previous professional training.

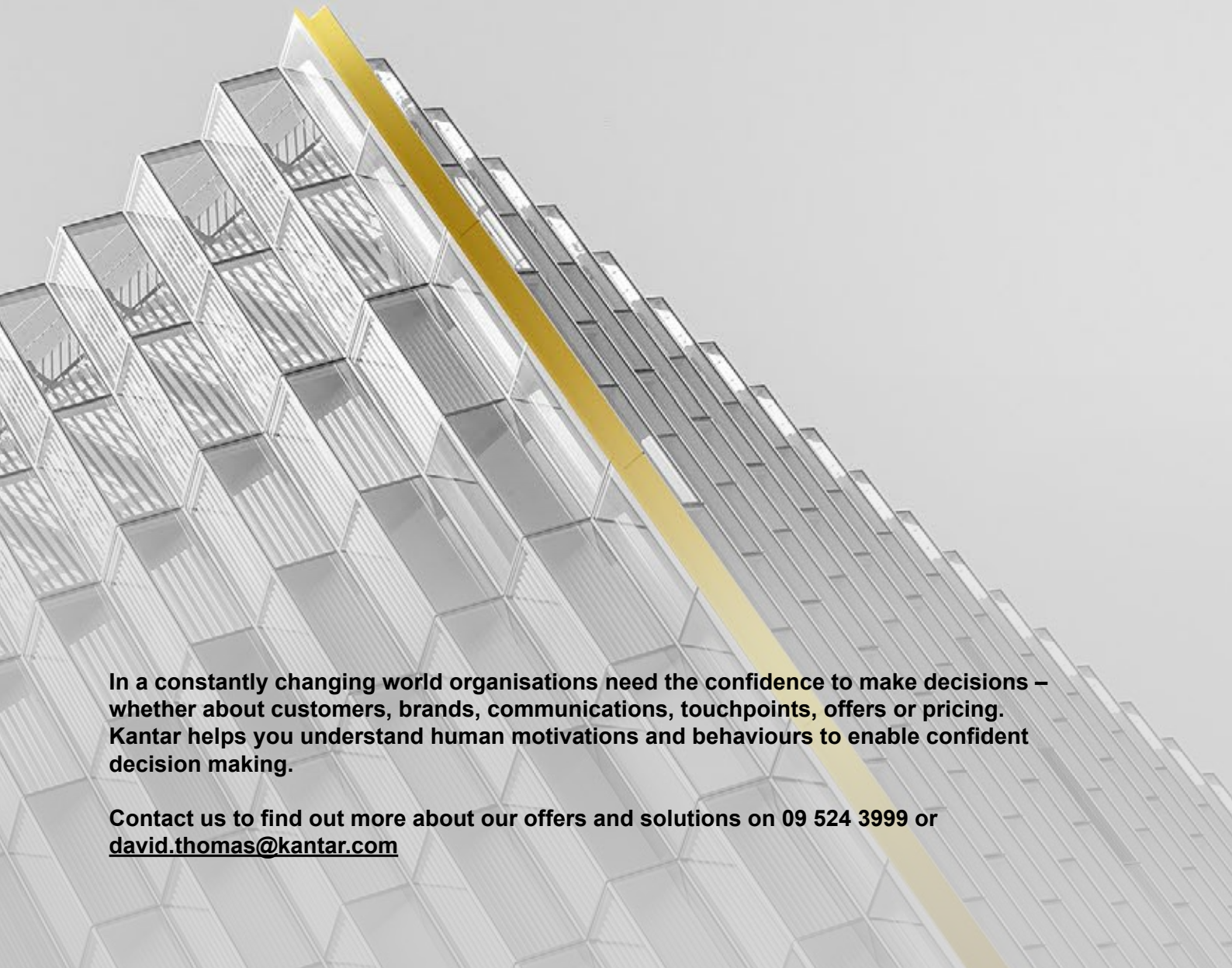
The present reflecting the future again?

Ngā mihi

Kirsten KP

KANTAR

Providing confidence to act in a constantly changing world



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Director Vacancies

DirectorVacancies is a cost-effective way to reach our extensive membership pool of director talent. We will list your vacancy until the application deadline closes or until you find a suitable candidate. Contact us on 0800 846 369.

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

EMPLOYABLE
Role: Board trustees
Location: Nelson
Closing date: 12 November

STEENS
Role: Advisory board member
Location: Tauranga
Closing date: 12 December

Question: What legislation prohibits insider trading in New Zealand?

A. *Companies Act 1993*

B. *Financial Markets Conduct Act 2013*

C. *Financial Reporting Act 2013*

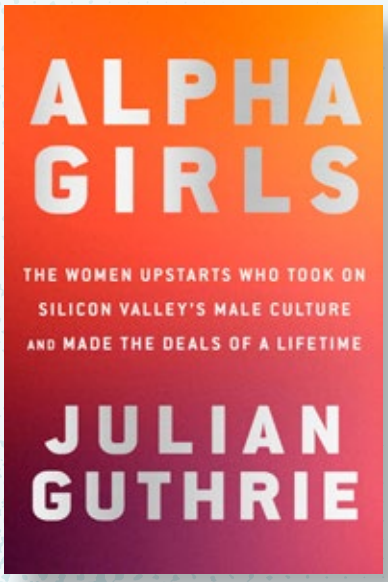
D. *Companies Act 1993 and the Financial Markets Conduct Act 2013*

E. *Financial Reporting Act 2013 and the Financial Markets Conduct Act 2013*

Q&A

ANSWER

D. *See also the IoD's Code of Practice for Directors and section 4.4 (director shareholdings and insider trading) in The Four Pillars of Governance Best Practice.*



Book Review

Alpha Girls *the women upstarts who took on Silicon Valley's male culture and made the deals of a lifetime.*

by Julian Guthrie (2019)

Award-winning journalist Julian Guthrie explores the lives of four women who made it to the top of the venture capital game in Silicon Valley. From financing and helping to build some of today's foremost companies (eg Facebook and Salesforce) to juggling raising a family with being a high-profile career women, the book lays out the realities of making it in a cut throat (and male-dominated) environment. It provides a window into one of the most exclusive sectors while highlighting the critical need for more diversity around the table of investing partners (only 7% are women).

4.5/5

Reviewed by Amelia Vela, research analyst at the Governance Leadership Centre

APPOINTMENTS

Director Search

Ian Fitzgerald
Chartered Fellow, has been appointed to the World of Wearableart (WoW) board.

General

Dr Nicola Crauford
Chartered Fellow, has been appointed to the board of Pioneer Energy Limited.

Claire Evans
Member, has been appointed to the board of Christchurch City Holdings Limited.

Bevan Killick
Chartered Member, has been appointed chair of the Defence Employer Support Council.

Mike Schubert
Associate, has been appointed to the board of ProCare Network Limited.

New Zealand a governance leader

New Zealand has topped the 2019 global competitiveness rankings for corporate governance.

The *Global Competitiveness Report*, published by the World Economic Forum, places New Zealand first for corporate governance due to the strength of our auditing and accounting standards, conflict of interest regulation and shareholder governance approach.

New Zealand was ranked 19th overall.

Singapore topped the rankings, followed by the United States and Hong Kong.

Honour for Lindsay Price, MInstD

The IoD would like to congratulate Lyndsay Neill Price QSM, MInstD, who was awarded the Queen's Service Medal in the Queen's Birthday Honours list for services to the community.

He is a former Kaiapoi Borough and Waimakariri District councillor and served as a member of local trusts that worked on Canterbury heritage projects, including the Te Tohaka O Tuhaitara Trust and the MV Tuhoe Kaiapoi Rivertown Trust.

Price has been president of the Canterbury Justice of the Peace Association and patron of the Kaiapoi Brass Band.

His QSM was mistakenly omitted from Queen's Birthday Honours list previously published in *Boardroom*.

Welcome

Welcome and congratulations to the newest members of the Institute of Directors.

New Members August–September

AUCKLAND

Jayne Alldred
Don Allerston
Nimesh Amin
Darryl Andrews
Paul Auckbarally
Mike Baird
Laura Bell
Andrew Berry
Allan Birch
Bryan Cartelle
Jonathan Chambers
Naisi Chen
Rachael Child
Andy Corbett
Elizabeth Drayton
Wayne Dyer
Joanna Ewenson
Barry Fisk
Jenny Green
Henry Hawkins
Mike Hendriksen
Ash Hill
Mike Impey
David Jenkinson
Stuart Jennings
Jaco Joubert
Erena Kara
Sarah Kember
Aidan Kenealy
Steven Knight
David Linehan
Peter Loeffen
Dale Lovell
JJ Luo
Brendan Lyon
Tom Mackenzie
Marc Malone
John Marsh
Phil Martin
Lyn Mayes
Rachael McGregor
Chris McIntosh
Richard Menzies
Gina Mills
Wi Pere Mita
Rob Morgan
Mark Nalder
Bill Newson
Blake Noble
Patrick O'Reilly
Jodie O'Sullivan
Hema Patel
Sally Paterson
Richard Pearce
Hohepa Rauputu
Dusten Renshaw
Chris Robb
Anya Satyanand
Arun Sebastian
Geoff Sinclair
Mike Smith
Justine Smith
Aliesha Staples
Judith Stewart
Susie Stone
Kristin Sutherland
Alison Taylor
Edward Timmins
Elizabeth Tremlett
Adriaan van de Wetering
Charlotte Vandermeer
James Warren
Gillian Wess
Wayne Yarr
Peter Young

BAY OF PLENTY

Errol Brain
Tracey Coxhead
Simon Everitt
Emma Gardiner
Matt Glenn
Chris Greenlees
Whakarongotai Hokowhitu
Mihirangi Hollings
Sam Jones
Ian McBride
Russell Menezes
Warwick Morehu
Sumit Oza
Mark Scott
Kylie Smallman
Eru Tuhakaraina

CANTERBURY

Tracy Ahern
John Benn
Nicola Benzie
Sam Brock-Smith
Jamie Cairns
Tamsin Chittock
Chris Cluse
Tanya Cooke
Richard Cox
Ben Davidson
Nicole Hague
Karen Hamilton
Sioban Hartwell
Rebecca Hodges
Camille Hughes
Gareth Innes
Gary Jensen
Kathryn Jones
Penny Kibblewhite
Lance King
Susy Mannall
Michael Meehan
Damian Miller
Mark Newsome
Richard North
Damon O'Brien
Steve Penny
David Rarm
Arapata Reuben
Maru Rout
Wendy Schmidt
Nigel Smith
Charlotte Sullivan

NELSON MARLBOROUGH

Scott Burnett
Andrew Clark
Alex Davidson
Rosalie Grant
Nicki Hemi
Amanda Johnson

OTAGO SOUTHLAND

Stephen Batstone
Mike Collins
Keiran Frost
Kevin Gilbert
Phillip Grey
Lisa Hayden
Francine Hore
Sanchia Jacobs
Paula Laughton
Jessica Palmer
Noel Saxon
Jason Tibble

TARANAKI

Taranaki
Dane Coppell
John Dazley
Jenny Flett
Andre Taylor
Thomas Wiseman

New Associates, August–September

WAIKATO

Mike Barr
Shelly Carden
Rod Claycomb
Linda Cooper
Clint Gulliver
Tim Hampton
Naomi Hughes
Heather McEwen
Mike McGehan
Trent Montgomery
Greg Spark
Stuart Tomlinson
Kent Weir

WELLINGTON

Tim Allen
Chris Ash
John Baillie
Gary Baird
Carl Bakker
Amanda Barclay
Robert Barry
Fiona Bartier
Chris Blunt
Jill Bond
Marie Bradley
Fiona Bradley
Heather Browning
Viv Bull
John Cantin
Brent Carey
Justan Clark
Raechel Cummins
Iain Dixon
Emma Dobson
Fiona Ewing
Diane Gamble
Louise Haywood
Katrina Henderson
Simon Howard
Mark Huttley
Paul Jonson
Barry Jordan
Susan Kosmala
Lance Lissette
Nick Lissette
Ross Lucas
Olivia Lund
Rory Matthews
Andrea McCance
Julie McConnell
Liam McLeavey
Kylie McQuellin
Malcolm Millar
Robert Monteith
Karen Morrish
Bryan Nicholson
Jaida Nicholson
Debbie Pattullo
Ben Peacey
Richard Phillips
Mark Phillips
Kerry Prendergast
Dan Quinn
John Ross
Tony Sanderson
James Shaw
Nicky Sladden
Kaapua Smith
Jason Stein
Leanne Stewart
Liz Stockley
Nathan Strong
Jonathan Tomkins
Alex Walker
Philippa Weston
Ian White
Cathy Wilson

OVERSEAS

Sam Dixon
Brian Mason

AUCKLAND

Lucy Acott
Tess Ahern
Russell Baikie
Bryan Bennett
Chris Broadbent
Kim Calvert
Jessica Gilbert
Kathie Hills
Beyond Jiao
Gregory Petersen-McNeil
Greg Simms
Lisa Small
Andrew Smith
Dudley Tate
Joey Wang

BAY OF PLENTY

Gareth Buchanan
Darryl Church
Jodi Ellmers
Allison Lawton

CANTERBURY

Shane Campbell
Stephanie Smith

OTAGO SOUTHLAND

Lindsay Breen
Brent Manning

WAIKATO

Pete Bridges
Jake Curran
Stu McLoughlin
Sharleen Nathan
Mel Pilcher

WELLINGTON

Lee Bremner
Linda Delli Cicchi
Fay Holdom
Jay Jaiganesh
Zoe Maniar
Sarah Melton
Claire Richardson
Nico Stahlmann
Andrew West

OVERSEAS

Nordin Zain

Always on duty

A fresh look at the future of governance.

AUTHOR
FELICITY CAIRD, GM OF THE GOVERNANCE LEADERSHIP CENTRE

Boards have a critical role in leading sustainable success for business and society – but they are under pressure. They have to be across a vast array of complex and diverse issues and also need to be responsive to increasing stakeholder expectations.

The legal landscape is also changing, with increasing potential liability for directors, the rise of class actions, active regulators and litigation funders holding directors to account and escalating their responsibilities.

The discussion paper *Always on Duty: the Future Board* published by the IoD and MinterEllisonRuddWatts in September explores trends, challenges and opportunities facing directors, today and into the future.

Many boards are facing a time dilemma and can be weighed down by often voluminous board papers, compliance and risk, without sufficient time to discuss and debate critical strategic and performance issues. It is vital to address these challenges to ensure the future board remains effective and drives sound governance.

The future board could look significantly different as technology and innovation help transform how boards operate.

PRESSURE ON THE TRADITIONAL OPERATING MODEL

The traditional operating model is under pressure as boards seek to adjust to the greater and broader demands and expectations. Challenges include:

- how to manage increasing demands on directors' time
- if and how boards can meet differently
- ways to maximise the use of board committees
- understanding the business – working inside and outside of the boardroom
- getting the right information – including getting bad and good news, addressing information asymmetry and ensuring quality over quantity.

THE STAKEHOLDER VOICE AND SHAREHOLDER ENGAGEMENT

There is a continuing trend for boards to connect with, and hear more from, stakeholders. Stakeholder expectations are increasing and they becoming more vocal in airing concerns and aspirations. Boards will also focus on improving shareholder engagement with stronger, deeper and ongoing communication. We should also expect shareholder meetings to continue to evolve in a digital age.

WORKING WITH MANAGEMENT

Accountability is central to corporate governance and the separation of governance and management provides clear lines of accountability. However, boards need to be sufficiently engaged with the business to adequately supervise management and meet the standard of care expected of them.

In a complex operating environment, coupled with greater stakeholder expectations and accountability for performance, it is likely that boards will be more engaged. This should not however crossover into management but it does mean that, as Mark Cross CMInstD highlights in the paper, "...the days of a governance career being a retirement option will be long gone, replaced by governance as more stage two of an active career."

TECHNOLOGY AND INNOVATION IN THE BOARDROOM

Technology has the potential to fundamentally change the way boards meet, breaking down global barriers for directors such as location and language. We don't expect that human directors will be replaced by robo directors. However, AI, virtual and augmented reality, data analytics, holoportation and other technologies will transform the way boards operate to help ensure they are well informed and equipped to monitor organisations and make decisions.

> "...the days of a governance career being a retirement option will be long gone, replaced by governance as more stage two of an active career." — *Mark Cross, CMInstD*

REPORTING REVOLUTION

With high-speed data and new technologies, there is huge potential for disruption and transformative change in how companies report, verify and communicate performance information. AI, in particular, is expected to improve efficiencies in annual report preparation through digitising and automating various finance and reporting functions. The speed of creating and making data available and new technologies will also drive more dynamic or instant auditing.

THE LEARNING BOARD AND TOMORROW'S DIRECTORS

The future board will remain responsible for the strategic and overall direction of the organisation. It will always be learning, embracing new competencies and diversity of thought and capability. Quality reflection and strengthening professionalism will be embedded into continuous development.

Board and director evaluations will evolve to help hold the board accountable and improve performance. The need to properly remunerate directors will also be important to attract experienced and skilled directors to governance roles.

FORECASTING THE FUTURE BOARD

In forecasting the future board some things are more certain than others. Boards will still have governance and stewardship at their core and be focused on creating long-term value. The benefits from technology and diversity should be embedded and future boards will be learning boards focused on professional standards and performing to their optimum.

Tomorrow's directors will be constantly learning – always on duty.

Five themes for the future-focused board

1. **Shareholder primacy and stakeholder theory**
2. **The importance of purpose**
3. **Trust and transparency**
4. **Increasing responsibilities and accountabilities**
5. **Game changing technology.**

Improve board effectiveness

The IoD and MinterEllisonRuddWatts urge all boards to set aside time to challenge how they are operating and to innovate to improve board effectiveness.

Always on Duty raises a number of issues for discussion:

- How can technology and innovative practices transform the way boards operate and help ensure directors get the right information to govern effectively?
- Does the annual report still serve a purpose and how will real-time communication evolve between boards and stakeholders?
- How are constituencies beyond shareholders being heard in New Zealand boardrooms?
- What is the next step in strengthening director professionalism? For instance, should directors commit to continuing professional development and be subject to a fit and proper person test?
- What board competencies and director attributes will the future board need?
- Does New Zealand need a stewardship code to improve governance and shareholder engagement?

It is intended that the paper will be used in IoD branch and national events in 2020 focused on the future of governance to generate discussion and debate, and lead change for the benefit of boards, organisations, communities and New Zealand.

Always on Duty: the Future Board is available at *iod.org.nz*

A good mix

Experienced Australian director Elizabeth Johnstone argues for enquiring minds in the boardroom.

The director of the future will need to be astute, experienced in business and an able communicator, says Elizabeth Johnstone, director, governance consultant, chair of the ASX Corporate Governance Council, governance consultant and Fellow of the Australian Institute of Company Directors. And they will need to make time for governance as a professional career, she says.

"Short meetings, long lunches... those days are over," Johnstone says.

"My 94-year-old mother would ask me, 'are you working, have you got work to do today?' I would say I always have work because a competent director is always turning over in their minds something for one of their boards."

Johnstone takes readings on holiday and has fitted in meetings of up to six hours.

"You do have some flexibility. If I want to read the board papers at 2am, I can read them at 2am. But there is never a time when there is not something related to one of your boards going through your mind. It is a lifestyle, and it is not for everybody."

It is not just the "lifestyle" of governance that some aspirant directors struggle with, she says, it is also the shift from relying on their professional expertise to relying on scepticism, intellect and wisdom.

"Some lawyers are quite litigious in their thinking, some accountants only look at financial risks. Some ex-CEOs find it immensely frustrating that they can't make the actual operational decision. On a board you provide strategic assistance, you don't get down and manage the company.

"Boards need people with a core set of skills. These are business people who have a good intellect so they can quickly absorb complex issues".

Beyond that "core" there are benefits to having a diverse board, although getting the benefits of diversity means thinking very carefully about the skills matrix of the board, she says.

"It is very useful to have a mix of people. You don't want a board of all lawyers or accountants. I would not join a board made up entirely of ex-CEOs. I have never been of the view that we should have a group of people whose backgrounds are identical. What we need is a good mix, a healthy mix.

SKILLS AND INCLINATION

"I'm not sure the skillset has changed. You need highly intelligent people who are very astute. They need to understand business. They need to be able to quickly come up to speed and understand the operations of a business. You have to understand the drivers of long-term, sustainable value. You have to understand the risks. You have to be a good listener. You need to have the capacity to ask well-informed, but sometimes quite difficult, questions."

The best directors can look behind data, weigh their conclusions and share their ideas effectively, she says.

"Look for issues that are not fully evident, or fully developed, or conclusions that are not fully supported by the data. And then talk about that with your peers on the board. Good directors might not say a lot but when they speak, others listen.

"You need to be able to persuade – in some cases your fellow directors, or the executives. It might be a situation where a company could do something, but should not do it.

That's a pretty complex bag of skills. And on top of that you have got to have the time. It's not a retirement job. It used to be regarded by some as a retirement job, but it never was."

Sure-footed on remuneration

Boards need to take a rigorous approach to assessing CEO performance and consider non-financial performance metrics, says governance consultant Pru Bennett.

Complacency and inadequate oversight by the board were among the key problems uncovered in the review of a series of scandals at the Commonwealth Bank of Australia.

The Australian Prudential Regulation Authority (APRA) pointed to management and board weakness in its Final Report of the Prudential Inquiry into the Commonwealth Bank of Australia (CBA).

Former CBA Chairman David Turner, whose board approved millions of dollars in bonus payments to CBA executives, declined to pay back 40% of his fees when asked to by the current board despite having overseen the bank at a time it was involved in subsequent scandals involving money laundering, excessive commissions and illegal sales practices.

These failings are now understood to have extended throughout the Australian banking sector, as documented by the Royal Commission into Misconduct in the Banking, Superannuation and financial Services Industry (Hayne Report).

With litigation ongoing, the Australian banks are still paying the price for the failure of oversight that took place.

"The failures of conduct at the CBA has cost significant amounts of money – circa A$700 million fines. If you look at Wells Fargo, the cost to shareholders of misconduct by employees was huge."

Bennett is a principal at Guerdon Associates, which provides remuneration and board effectiveness services and is also on the advisory board for Hong Kong-based asset manager, Oasis Capital. Until January, 2019, she was a managing director at BlackRock.

She notes Wells Fargo has paid out more than US$4b in fines and settlements following investigations of its account management activities.

"At Wells Fargo, employees received incentives based on the number of new accounts they were responsible for opening. For any performance metric chosen the remuneration committee should ask the question 'what type of behaviour will this drive and what controls are in place to ensure conduct is aligned with the company's purpose, values and principles?' ," Bennett says.

CEO BONUSES

Bennett says remuneration committees in the future will be more cautious about paying out large incentives to CEOs, particularly where there have been concerns around performance. This stems from the focus by the Hayne Royal Commission on incentives paid where there had been misconduct by employees and poor management of non-financial risk over several years.

> "If you look at Wells Fargo, the cost to shareholders of misconduct by employees was huge."

"What have seen changes in regulation in the UK which require significant deferral of incentives over periods of up to seven years. APRA currently has a draft prudential standard which requires a similar deferral requirements as well as application of malus," she says.

"What came out in the APRA report was that there was a level of complacency by the board and not a lot of challenge of management by directors, and also a failure to take into account non-financial outcomes when determining pay outcomes."

She says that remuneration committees need to make sure that they get feedback from the board's risk and audit committees when they make assessments of performance for incentive payments.

"While most remuneration policies refer to having provisions for clawback they, in fact, mean malus. There is no record of an Australian company seeking repayment of incentives, which is clawback. In practice, clawback is quite difficult to implement. A court process and judgement is usually required, and this can generate unfavourable news reports, significant cost and there is no certainty that the executive will have the ability to repay any money determined by the court."

A better solution is to take a more rigorous approach at the time pay outcomes are assessed and apply malus to unvested performance-based pay when information comes to light which was not available at the time performance outcome was assessed, she says.

SOUND PRACTICES

So what can remuneration committees do to improve the effectiveness? Bennett has some practical advice. This includes:

- Have a combination of return measures – financial, market, risk return measures and time frame for the total remuneration aligned with strategic intent of the company eg expansion into Asia at what cost, risk etc.
- Have a balance of financial and non-financial performance measures that are aligned with the company's purpose, values and principles.
- management understand what a zero incentive outcome looks like.
- Seek and document information from other committees such as audit, risk, nomination when assessing remuneration outcomes.
- Avoid over-reliance on key management individuals and seek advice independent from management when required.
- Undertake an effectiveness review of remuneration policy.

A Canadian view

Rahul Bhardwaj from Canada's Institute of Corporate Directors reviews the governance landscape.

The focus of Canada's governance community has been fairly consistent of the past few years, says Institute of Corporate Directors CEO Rahul Bhardwaj.

"It changes but it doesn't change," Bhardwaj says.

"A lot of the issues that we are seeing play out are ones that will be familiar [to New Zealand directors]," he says, noting issues coming out of the #MeToo movement, board oversight of culture and conduct, mental health in the workplace and retention of talent as front of mind.

Shareholder engagement and social licence to operate are also current topics in Canadian governance circles – alongside technology, with data management, cyber threats and the opportunities afforded by artificial intelligence of great interest.

UNCERTAINTY AND ANXIETY

But the unifying concern across the Canadian governance community is uncertainty.

"Directors are faced with a degree of uncertainty that I don't think any of us have anticipated," Bhardwaj says. "This has increased the complexity of governance and boards are looking at how they manage risk, and how to manage the complexity of risk."

An approach to managing uncertainty and complex risk that is taking root in Canada is to review the composition of corporate boards.

"The diversity of boards has also become an issue – how that can help boards avoid risk, and perceive opportunities, for the long term?"

For Canada, business uncertainty is exacerbated by short-term political uncertainty with federal elections in October, uncertainty about its relationships with the UK and the EU due to Brexit, and questions about its relationship with its large neighbour to the south.

"The US is in a wobbly time as it relates to trade and tariffs with China, which is a big trading partner of Canada," Bhardwaj says.

The Trump administration's moves to review and replace the North American Free Trade Agreement (NAFTA), which guides trade between Canada, the US and Mexico, puts further pressure on trading companies.

"Everybody in Canada recognises the importance of our relationship with the US – the vast majority of companies that export, export to the US. They say that when the US sneezes, Canada catches a cold."

While the historical relationship with the US remains key, there has been a concerted effort to diversify the range of international business partners as a way to spread risk and ensure long-term business sustainability. In this environment, it is challenging for boards to set a strategy for international growth, he says.

NEW EXPECTATIONS

Canadian directors are also grappling with new ideas of what governance is, Bhardwaj says. Canadian case law recognises that directors' responsibility is to the corporation, not simply the shareholders, and there are ongoing developments in regards to the rights of first nations people. There is also awareness that it is important to build trust – among the capital markets, their employees and the market in general.

Loss of trust in a business can be "absolutely catastrophic" in the current market, he says.

And questions about the extent of directors' liability, particularly in a world where the impacts of climate change are beginning to be felt, are being asked.

"There is uncertainty as to where these thing play out, in terms of liability. It will show up through the common law and the courts."

"There is no doubt the uncertainty directors are dealing with is increasing anxiety for directors. But there are boards that realise there have always been causes for concern – it is the speed or rate of change that is different now."

Need better data security to help take your business to the next level?

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Ready, set, NGO

A report on New Zealand's NGO sector identifies governance training and support as critical to the success of charities, not for profits and community organisations.

New Zealand's NGO governance capabilities need considerable investment if the organisations are to thrive in a disrupted future.

The report *What is the Future for NGO Governance?* produced by the Centre for Social Impact (CSI) in partnership with the Superdiversity Institute for Law, Policy and Business, released in September, identifies good governance as key to the success of local charities, not for profits and community organisations.

Citing digital disruption, new community expectations and changing patterns of giving and volunteering, it recommends NGO boards – often volunteers with little formal governance training – seek to upskill their members now in the basics of good governance practice.

It suggests a community of expert NGO directors is needed, and that NGO chairs need practical support to get the best from their boards. Those boards would benefit from access to tools (such as self-appraisal and stakeholder mapping) to enhance their performance.

"NGO's in New Zealand generate an estimated $20 billion in annual income," says researcher and report author, CSI associate, Dr Jo Cribb.

"These NGOs touch the lives of New Zealanders in many ways. They provide services to the elderly, youth, and vulnerable families and whānau. They deliver much of what holds our communities together, such as sports, arts, environmental and cultural programmes. They employ around 100,000 people (nearly 5% of the workforce) and contribute nearly 3% to GDP.

"If the work of volunteers is included the contribution to GDP rises to 6 percent each year. It is in all our interests that they are well-governed."

Cribb's research identified board members as playing important roles in developing strategy and securing funding for the organisations they oversee. But it also found a lack of governance training and support was available to those board members.

"Few of them have had any formal governance training, and many receive limited support in these roles."

Governance innovation at the Sisters of Mercy

One of New Zealand's longest-serving NGOs, the Sisters of Mercy has an unusually long-term view of governance.

The organisation wants its ministries to continue doing good work for many generations.

"The Sisters are very mindful that there is a need to ensure that their ministries continue despite a declining Congregation of Sisters," says Astrid Lambert, group administrator of Nga Whaea Atawhai o Aotearoa Tiaki Manatū, Sisters of Mercy Ministries New Zealand Trust. "They want to ensure that they set up their ministries for as long as there is need."

Tiaki Manatū Ministries NZ Trust is the single shareholder of all the incorporated societies of the Sisters of Mercy. The organisation has varied portfolio of interests that include schools, community development, spirituality support, healthcare and aged care facilities, and affordable accommodation. Each of its ministries is a limited liability company with its own board and chief executive.

"Most of our directors are volunteers," Lambert says. "What people like is the opportunity to give something back to the community."

Where possible a ministry board has a Sister of Mercy on it, but board composition is based on getting a balance of skills and honouring the treaty partnership, which means that boards are diverse and not all directors are necessarily Catholic. When directors come onto a board they undergo an introduction to "Whanau Mercy" and the principles that underpin the Sisters of Mercy's work. Tiaki Manatū supports its boards to upskill through a planned programme of professional development supported by the Institute of Directors.

This is a "two-way street", Lambert says. On the one hand it ensures that Mercy boards are as capable as they can be. On the other, it provides professional support for the volunteer directors, who can develop their governance experience and expertise with an eye to expanding their governance portfolio in the future.

National strategy for community governance

The Centre for Social Impact is working with a number of organisations including community trusts, service providers and umbrella groups to develop and implement a strategy for community governance that aims to enhance the value, and support best-practice governance, of New Zealand's NGO organisations. The strategy will be formally launched at an event in December, hosted by the Institute of Directors.

New Zealand's NGO Sector

114,000 *NGOs*

100,000 *Employed Persons*

$20 Billion *Annual Income**

The sector includes a wide variety of organisations from informal committees to incorporated societies to charitable trusts to social enterprises.

27,000 *Charities* *supported by around* **230,000** *Volunteers*

Source: What is the Future for NGO Governance?

*estimated figure

Revolt against slavery

Mark Devadason works with businesses in Asia to identify and eliminate slavery in their supply chains.

AUTHOR
AARON WATSON

If you are a company that is global, or is part of a global supply chain, there is a likelihood that you will be caught up by the Australian Modern Slavery Act, the UK Modern Slavery Act or the California Transparency in Supply Chains Act.

That's the warning from Mark Devadason, a board member of anti-slavery group the Mekong Club, a Hong Kong not-for-profit organisation that works with the private sector to fight modern slavery in Asia.

Devadason, who notes that anti-slavery legislation is also being considered in Hong Kong and New Zealand, says the trans-national legal risk to businesses is now very real. But it's not the main reason for boards to take a closer look at their supply chains. That reason is simple – slavery is wrong.

"It is just an ugly crime, right? If you are an ethical board and you are responsible for the culture of your company it is quite an easy decision – this is not to be tolerated."

WHAT IS MODERN SLAVERY?

The concept of modern slavery includes forced labour, child labour, debt servitude, low or no pay, threats of violence or actual violence, human trafficking and domestic slavery.

"The indications of slavery can be withholding of wages, restricted movement (on a boat, or even shackled), threats of physical or sexual violence, threats to their families, the taking of identity documents, migrant workers paying an agency to get work and often borrowing to get work.

"Somewhere between 6 and 10 million people in slavery are potentially associated with the modern supply chain – the clothes we wear, the food we eat, some of the goods that we consume. Slavery figures are at an all-time high in human history, which is a function of the size of mankind at this point, but which is also an unacceptable statistic," Devadason says.

"When surveyed, 77% of companies believe there may be some slavery in their supply chain. It is not an academic issue."

The complexity and length of modern supply chains makes it very difficult to be certain that a product has been produced without slavery somewhere along the line. Devadason says if you see a product at a price that is too good to be true, there is a reasonable chance that slavery in the supply chain is the secret cost-cutting ingredient.

IDENTIFYING PROBLEMS AND LIABILITY

Devadason's Mekong Club provides tools and advice to businesses to help identify and reduce slavery. The Mekong Club has 37 member businesses including high-profile names such as The Walt Disney Company, Skechers, KPMG, EY, Adidas and Hallmark Cards.

Modern slavery:

$150 BILLION

Estimated annual profits from modern slavery

Asia-Pacific

This region accounts for 62% of the world's slaves

40.3 MILLION PEOPLE

Enslaved across 167 countries

16 MILLION PEOPLE

Are in forced labour

Manufacturing, Fishing, Construction, Sex Work

Are industries known to have high levels of slavery

In July 2017, the Mekong Club launched The Business Pledge Against Modern Slavery, which provides a mechanism for companies to monitor and improve their anti-slavery activities. The Pledge includes recommendation to publicly commit to fighting modern slavery, to ensure this commitment is captured in a code of conduct that is signed off at board level, and to conduct audits of suppliers that include questions on modern slavery.

Devadason knows of one high-profile international manufacturer that discovered debt-slavery in one of its factories in China after a supply chain review. While reluctant to name the corporation, he says they resolved the issue by paying off the debts of the factory workers "so that wages were actually going to the workers rather than to debt".

"We are finding that companies that dig deep in their supply chains find opportunities to do better."

The Mekong Club encourages boards to commit to eliminate modern slavery and to ensure their companies report on what they are doing to ensure the scourge is reduced. But in complex global markets, how far down the chain does a company's responsibility reach?

"At what point does our liability, our responsibility, start and stop? To be honest, that is one for the conscience of the board. It addresses the values of the company."

OPPORTUNITIES AND RISKS

There is an increasing expectation that businesses will accept some responsibility for what flows up through their supply chains, Devadason says.

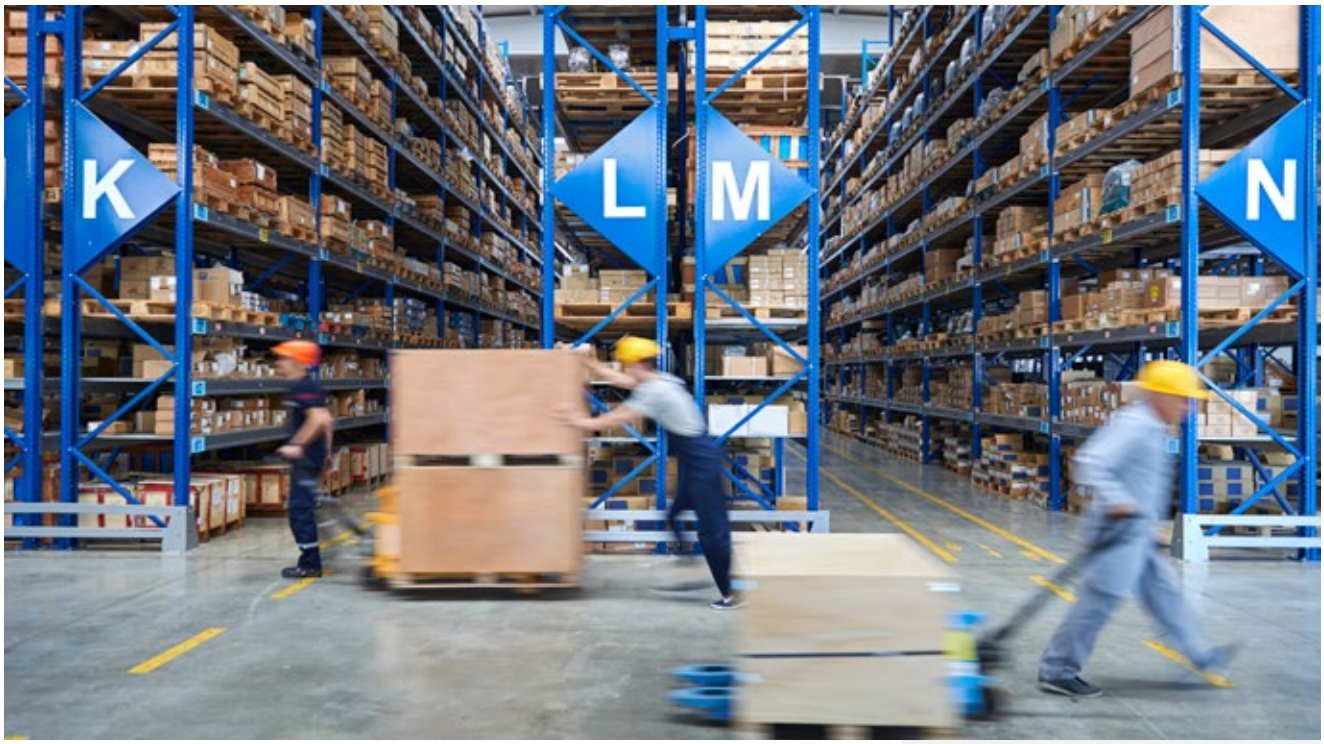
Times have changed since the 1996, when Nike founder Phil Knight dismissed images of children sewing Nike brand footballs as not Nike's responsibility. In fact, it was the backlash against Nike – now a leader in ESG efforts (and marketing) – that helped to kickstart the modern anti-slavery movement in the West.

"Phil Knight of Nike asked 'What's that got to do with us? That's not our company.' Basically the whole world said you can't be the owner of a supply chain and not feel responsible for what happens."

But Nike came around to the prevailing world view and sought to reduce the slavery in its supply chain, including through introducing a supplier code of conduct. When a similar story broke in 2006 – Pakistani children sewing Nike footballs – the company sacked the supplier outright.

Devadason says this type of approach can benefit a company in many ways. Firstly, good companies attract good staff.

"There are statistics that suggest over 70% of staff expect to see companies have some form of purpose. Being on top of this issue will attract better people."



Secondly, it can reduce the risk of scandal.

"The millennial generation are approaching 40 years old. They are the bulk of your workforce and also make up an increasing part of your customer base. That generation, and the younger generation, are very socially [media] active. If they see a scandal, or are unhappy that your company is exposed, they could set up a major social media campaign that could destroy your reputation."

The rise of socially conscious investment is also a consideration.

"A larger and larger portion of that investment base is looking to see ESG practices and looking to see socially responsible businesses. You cannot be associated with slavery and slip under the radar."

It could even impact a company's ability to raise finance. Devadason has background in banking – country CEO of Standard Chartered Bank in Japan, then Thailand, before finishing his time at the bank as global head of sustainability – and says the banking industry is becoming very cautious about exposing itself to anti-money laundering regulations.

Modern slavery is a US$150b problem. Every single dollar of that US$150b is by definition the proceeds of crime. Which therefore means that if it has flowed through a regulated banking system, that bank is exposed to the risk of prosecution. So banks are becoming alert to this issue. It is inconceivable that some of those proceeds are not flowing through regulated banks.

"Banks are cautious lending to companies that may be exposed to ESG legislation or money laundering."

WHAT CAN A BOARD DO?

"It's one for a board to debate and it's really important," Devadason says.

"You don't really want to be part of an organisation if a scandal blows up. Do you really want to put your staffing at risk, your customer base at risk and your reputation at risk? It's not worth it.

"No one wants the title 'chief slavery officer', but companies need to resource this issue if they are serious about this. Companies that have deep, core values of doing the right thing will not find this too challenging."

Anti-slavery governance tips

Appoint a dedicated human resource or team to the company's **anti-slavery strategy implementation**, for example an ethical trading/global sustainability team.

Establish a **"modern slavery task force"** to bring company members across different sectors and locations together in a collaborative effort

Assign **specific responsibility** to key company departments, such as internal audit, compliance.

Update and escalate **modern slavery strategy-related decisions** to the company's top level such as the executive management team, the CEO or the board.

Create a **responsible committee** at the board level.

Source: The Business Pledge Against Modern Slavery, published by the Mekong Club

Strong ideas about rural New Zealand

Sponsoring the Farmstrong wellbeing initiative for rural New Zealanders gives FMG insurance the opportunity to put its corporate values into practice – beyond its customer base.

AUTHOR
AARON WATSON

Why would a company sponsor a health programme and not put its name on it?

FMG insurance is a key sponsor of Farmstrong, a rural health wellbeing initiative run in association with the Mental Health Foundation. But you wouldn't know it from the Farmstong website.

Along with the other sponsors, FMG is almost invisible on the site. You have to scroll to the very bottom and then click through to "partners" to find the brand.

"It's not about FMG. We insure 50% of the farmers and growers, but there's another 50% that we don't insure," says FMG CEO Chris Black. "This is as applicable to them as it is to our members."

Farmstong is a wellbeing programme that aims to help rural people become more mentally and physically resilient in order to better handle the inevitable ups and downs of farming. It's an "upstream" preventative initiative, complementing the good "downstream" support people can already access once mental health issues manifest themselves, Black says.

Farmstrong is a give-back from FMG and provides information and advice on how to manage stress, how to avoid burn out, how to eat well, exercise well and maintain social connections. These are summarised in the idea of "five ways to wellbeing" (see below).

For Black, the programme is a natural fit with the values that underpin the mutual's culture which the FMG board has signed off. These are doing what's right, in it together, making things happen and proud of who we are.

"FMG is a mutual. It is owned by its member farmers and growers. While it's profit-making, it does not pay dividends. Profits are reinvested back in the business and used to keep premiums fair and affordable. As an organisation we have a very clear enduring core purpose of 'giving rural New Zealand a better deal'. We are a people and values-driven organisation here for the good of the country."

That means the mutual's concept of stakeholders extends beyond clients to include the rural community and a social purpose. Its ESG in action, from a time before ESG was a concept.

"It is actually about the broader community fabric and making a positive difference on behalf of the rural sector. That's a core part of it. This aligns extremely well with our vision of 'helping to build strong and prosperous rural communities'. And that's not every second farmer, that's every farmer."

'We talked about it with the board and they didn't hesitate getting right in behind it."

Five ways to wellbeing

SOURCE: ADAPTED FROM FARMSTRONG.CO.NZ

Connect

People with strong social connections are happier, healthier and live longer.

Give

When you give your time, your words, your presence to others, not only do they benefit, but it makes you feel a lot happier too.

Take Notice

Remember the simple things that make you happy. Paying attention to these, even for a few moments, can help you feel calm and relaxed.

Keep Learning

Embrace new experiences, see opportunities, surprise yourself.

Be Active

Make physical activity a habit, aim for at least 30 minutes of movement a day.

D&O liability: three areas to watch

AUTHOR
SARAH DOWNEY, D&O PRODUCT LEADER AT MARSH, USA

Emerging trends in the US are likely to have an effect on New Zealand's D&O insurance market, and the world.

The risks for businesses are constantly evolving and the pressures on company boards and officers are growing. Gone are the days when the main concerns of directors and officers were related to company mismanagement and misrepresentation claims.

Chief among potential risks that boards must now deal with are: emerging technologies, cyber-risk issues and ever-expanding litigation against companies and their boards. Given the emergence of these three threats, it is imperative that board members review their directors and officers liability (D&O) insurance for any lapses in coverage.

EMERGING TECHNOLOGIES

Technology is advancing like never before, and businesses are using innovative technological tools to revamp everything from back-office processes to the products and services they deliver to customers. But with the excitement of new and arguably better solutions come a lot of unknowns.

Although artificial intelligence, blockchain technology, digital assets and quantum computing are all emerging technologies with business value, each also presents potential exposures that must be understood and addressed. These new innovations can give rise to exposures that are now only being discovered by courts of law and insurance companies alike, whether that is due to lack of regulation, the evolution of existing regulations to keep up with new technology, a company's inability to keep up with the times or a board's failure to properly disclose associated risks or costs.

For example, the failure to adequately disclose the potential risks associated with the implementation of AI or misrepresentations about those risks could lead to a D&O insurance claim.

CYBERSECURITY AND PRIVACY-RELATED ISSUES

In the short history of cybersecurity exposure, boards have generally considered cyber-related loss to be a top risk for companies. The threats these incidents can pose to organisations, directors, and officers are becoming more apparent. The threats include an increase in:

- securities class-action filings as stock drops associated with data breaches continue
- derivative lawsuit filings against directors and officers for alleged mismanagement or false or misleading statements related to cyber incidents.

Over the past year, we've seen greater regulatory scrutiny and activity in the cyber exposure space, and it is not limited to civil litigation. The Securities and Exchange Commission (SEC), for example, has settled enforcement proceedings arising from matters such as a company's purported material misstatements and omissions regarding a large data breach and alleged failures in cybersecurity policies and procedures surrounding such a breach that compromised the personal information of thousands of customers.

We expect that the SEC and other regulators will continue to focus on cybersecurity threats and breaches going forward. In addition to breaches, privacy regulations – such as the General Data Protection Regulation in Europe – are a priority for all boards and a major area of focus for regulators.

For example, the Federal Trade Commission's recent acknowledgment that it has the ability to penalize individuals for their respective companies' privacy law violations is a reminder that individuals are not immune to these types of exposures.

In addition to liability concerns, cyber- and privacy-related issues can cause reputational harm. A rating agency recently downgraded its outlook on a company in large part because of breach-related issues. The impacts of cyber- and privacy-related exposures on companies and their directors and officers are only beginning to play out.

The market has seen 14 years of generally soft conditions, however over the last few quarters, we've seen a dramatic switch.

LITIGIOUS ENVIRONMENT

One need not look far to find significant litigation risks for businesses and their boards of directors. According to an analysis by NERA Economic Consulting, 83% of completed company mergers are met with litigation, and one in 12 publicly traded companies are expected to be sued in a securities class action suit this year.

What's more, following the March 2018 US Supreme Court decision in Cyan, Inc. v. Beaver County Employees Retirement Fund, companies going through initial or secondary public offerings are now more likely to be met with litigation in both state and federal court than before.

The world of corporate governance has changed. Business decisions are now closely scrutinized by the public. The use of email among company individuals forever preserves a record of discussions that once might have remained private. And actions taken in the public eye – including those through social media – can expose a company and its officers and directors to some form of liability.

Plaintiffs' attorneys, meanwhile, become more resourceful every day; even those firms that were previously not feared have turned filing lawsuits into a factory business. And smaller to midsize companies that once barely caught the eye of the plaintiffs' bar are now squarely in their crosshairs.

THE RISE OF SECURITIES CLASS ACTIONS

According to NERA, 441 new securities class actions were filed in 2018, the most in any year since the aftermath of the 2000 dot-com crash. 2018 was also the fourth consecutive year of growth in the number of filings, exceeding the 434 filings in 2017. In the first quarter of 2019, 118 securities class actions were filed; that puts us on track for 472 class actions this year and a fifth consecutive year of growth.

The heightened pace and total of securities class action filings that has continued into 2019 is, in part, attributable to the growing number of follow-on, event-driven securities litigation filings, as opposed to cases involving accounting misrepresentations and financial restatements that have historically made up the bulk of securities litigation.

Event-driven litigation occurs when some adverse event at a company triggers a securities claim — based either on a stock drop following the announcement of such an event or in the form of a derivative action thanks to an alleged breach of fiduciary duty. In addition to cyber-, privacy-, and sexual harassment-related, event-driven litigation, an array of other incidents have led to securities claims, including mass torts, product defects, product recalls, food safety issues, anti-corruption scandals and the California wildfires. These types of risks are difficult to predict.

THE COST OF LITIGATION

The cost of litigating even a baseless case that is dismissed or settled early on can be significant, which has not gone unnoticed by D&O insurers. The more litigious environment coupled with years of falling premiums and expansions in coverage have brought the D&O market to a crossroads.

The market has seen 14 years of generally soft conditions, providing buyers with favorable premium pricing and broad coverage enhancements. Over the last few quarters, however, we've seen a dramatic switch. Premium increases are now commonplace, and policy negotiations have become more difficult as insurers face pressure on primary, excess, and Side-A – or personal asset protection – differences in condition pricing.

With the risks for directors and officers constantly becoming more numerous and complex, insurance is more important than ever. It's vital to consult closely with your insurance and legal advisers to ensure the companies you serve have robust D&O insurance programs that protect both corporate and personal assets against these – and other – potential threats.

This piece was first published on the NACD Boardtalk. For more information contact Steve Walsh, chief client officer at Marsh New Zealand, stephen.walsh@marsh.com

The NACD and the IoD are both members of the Global Network of Director Institutes.

The gathering storm – and how to prepare

"On the one hand, good governance should intrinsically include effective climate governance... On the other hand, climate change is a new and complex issue for many boards that entails grappling with scientific, macro-economic and policy uncertainties across broad time scales and beyond board terms."

– World Economic Forum, January 2019

AUTHOR
LLOYD KAVANAGH, PARTNER AT MINTERELLISONRUDDWATTS

With the evolution of climate change from an "environmental" issue to one with clear financial risks, directors are becoming more aware of climate-based threats and opportunities that may have a material impact on their business's performance, position or prospects. The challenge is to find specific tools relevant to the business they govern.

Three types of climate change impacts on business are now emerging more clearly, and more quickly than expected.

PHYSICAL RISKS

In January 2019, the World Economic Forum (WEF) identified seven of the eight top economic risks by likelihood and impact as climate change-related: extreme weather events, failure of climate-change mitigation and adaptation, natural disasters, biodiversity loss and ecosystem collapse, man-made environmental disasters and water crises.

These physical risks will directly affect many New Zealand businesses. For example, the agriculture, horticulture and fisheries sectors are likely to be impacted by more volatile weather or warmer seas. As the climate shifts, so do viable land uses and fish availability – and the increased risk of bio-incursions (introduction of exotic pests) is a particular concern. In addition, tourism and businesses with coastal property and infrastructure investments may be affected.

Physical implications will also flow through those with second-tier exposure to the frontline (eg lenders and insurers) and impact the price or availability of finance and insurance.

TRANSITION RISKS

Transition risks are being felt by businesses already, and these can either be negative or positive for particular businesses. There are the indirect impacts arising from regulation, investor and customer reactions, stranded assets and changing business models.

MinterEllisonRuddWatts

NEW REGULATION

The Climate Change Response (Zero Carbon) Amendment Bill is currently before the New Zealand Parliament and is expected to be enacted by the end of 2019. It proposes to:

- set greenhouse gas emissions reduction targets to net zero by 2050 *(except biogenic methane – where the target is 24-47% of 2017 levels by 2050)*
- set emission budgets as stepping stones to the long-term target
- require government to implement policies for climate change adoption and mitigation
- establish a Climate Change Commission to monitor and advise.

The United Kingdom's Climate Change Act 2008 shows it is possible for legislation of this type to significantly reduce emissions while growing an economy – and that the legislation shifted the competitive balance for many companies.

In addition, the New Zealand Government's agreement, in August, to act on recommendations from the Task Force on Climate-related Financial Disclosures will likely create further transparency for investors and others on the climate change impacts for listed companies, banks and insurers in particular.

INVESTOR AND CUSTOMER REACTION

Consumers are already asking questions about the carbon footprint of the goods and services they buy, and for some it goes to the social licence to operate. One example is the "flygskam" (flight shame) movement in Europe.

These consumer concerns are likely to spread to other markets as climate consciousness increases. However, the transition will not all be downside risk.

We have already seen advertising promoting the benefits of paper from sustainable forests processed using geothermal power.

Investors too are changing their priorities. For example, the NZ Super Fund has reallocated close to a billion dollars away from companies with high exposure to emissions and reserves into lower-risk companies, to make its portfolio more resilient to climate change.

Green bonds are also emerging as lower-cost lines of finance with Auckland Council, Contact Energy and Westpac NZ having made successful issuances this year.

STRANDED ASSETS AND CHANGING BUSINESS MODELS

These changes shift the value of businesses and assets. A 2015 study published in Nature magazine estimated a third of global oil reserves, half of gas reserves, and more than 80% of known coal reserves would remain unused if targets under the Paris Agreement are met.

LIABILITY RISKS

One of the latest trends is the use of litigation by activists to raise the profile of climate change, in New Zealand and overseas.

In August 2019, Mike Smith, chair of the Climate Change Iwi Leaders Group, filed High Court proceedings against eight high-profile New Zealand businesses alleging the companies' carbon emissions constitute a public nuisance and that failing to address them constitutes negligence or breaches other duties.

In 2018, in Australia, Mark McVeigh claimed against his superannuation scheme provider, REST, for failing to have, and failing to disclose, strategies to deal with climate-related risks relevant to his retirement savings.

The case is a prompt for New Zealand licensed fund managers and supervisors to reflect on their duties under the Financial Markets Conduct Act, both of disclosure and prudence.

The public sector, too, is not immune to the risks, with New Zealand QC Jack Hodder issuing a paper in March 2019, warning that "there are local indications that, in some form, climate change litigation will get real traction" against local authorities.

Directors' liability risk could be personal, too. Leading New South Wales barrister Noel Hutley SC argued, in opinions issued in 2016 and 2019, that Australian company directors who fail to consider and disclose foreseeable climate-related risks could be held personally liable for breaching their duties under the Corporations Act. Hutley warned that it is "only a matter of time before we see litigation against a director who has failed to perceive, disclose or take steps in relation to a foreseeable climate related risk".

We expect to see a similar opinion commissioned by the Aotearoa Circle in New Zealand soon, given the Companies Act contains a similar duty "to exercise the care, diligence and skill of a reasonable person in the circumstances".

What should directors do?

Whether driven to act by their understanding of the underlying economic drivers at play, or by the concerns of governments, and corporate regulators, mainstream director sentiment is shifting from "why would this be relevant to our business?" to "what are the implications for our business, how should we strategise and manage them, and what should we disclose to the market?"

These are not easy questions. While the direction of travel is clear, the timing, magnitude and location of impacts is uncertain.

The WEF's *How to Set Up Effective Climate Governance on Corporate Boards – Guiding principles and questions* provides one approach. It sets out eight principles, each with guiding questions to help identify and fill gaps.

PRINCIPLE 1
Climate accountability on boards
Climate change should enliven directors' governance duties as with any other issue presenting financial risks.

PRINCIPLE 2
Command of the subject
Boards should be composed of directors who collectively have sufficient awareness and understanding of how climate change may affect the business.

PRINCIPLE 3
Board structure
A board should determine how to most effectively embed climate into its board and committee structures.

PRINCIPLE 4
Material risk and opportunity assessment
The materiality of climate-related risk and opportunities in the short, medium and long term should be assessed at the company and understood by the board.

PRINCIPLE 5
Strategic and organisational integration
Once a board is aware of the extent climate change might drive material risks and opportunities for its operations, it can integrate climate-change considerations into the organisation's strategy.

PRINCIPLE 6
Incentivisation
A board should ensure that executive incentives are aligned to promote the long-term prosperity of the company, including climate-related targets and indicators.

PRINCIPLE 7
Reporting and disclosure
A board should ensure that material climate-related risks, opportunities and strategic decisions are consistently and transparently disclosed to all stakeholders – particularly investors and, where required, regulators.

PRINCIPLE 8
Exchange of ideas
Boards should maintain regular dialogue with peers, policy makers, investors and other stakeholders to share methods and stay informed about the latest climate-relevant risks, regulatory requirements, etc.

Turning cyber security into a growth driver

Companies are moving from a focus on cyber risk to a focus on cyber opportunity.

AUTHOR
PHILIP WHITMORE, CYBER SECURITY SERVICES PARTNER, KPMG

For the past few years, we have seen companies sharpen their focus on cyber security as a top priority, but this year KPMG's 2019 Global CEO Outlook survey also revealed that top CEOs want to turn their cyber investments into a strategic advantage and a revenue driver. That's a large, positive shift in sentiment, but it begs the question, just how do you achieve it?

SEEING OPPORTUNITY IN CYBER SECURITY

According to the survey, companies are assuming a more optimistic view of their cyber expenditures, with 7% of CEOs stating they see information security as a strategic function and a source of competitive advantage. This reflects a dramatic change in opinion from what we've heard in the past, when companies largely viewed cyber security as a risk mitigation measure.

The change is positive, however here in New Zealand, only 44% of New Zealand CEOs see cyber security as critical to building and maintaining trust with stakeholders. We have a long way to go in New Zealand to catch up with the rest of the world, with the survey also identifying New Zealand as the least prepared country for a cyber-attack.

> "Companies are seeing first-hand how under-investment in cyber security can constrain their growth."

This new growth-focused mindset can be attributed to several factors. For one, senior leaders realise that the latest technologies can do more than improve the back office. They can also transform the front office and enable a company to introduce more customer-centric business models. Now, if companies embed cyber security in product or service design, they can deliver a customer experience that yields greater revenue.

Second, companies now appreciate that they can bolster their brand and increase customer loyalty by building 'digital trust' with customers. For years, the banking sector performed extensive outreach to convince consumers that the bank has their back and they are dedicated to protecting their data and privacy. As a result, what this has demonstrated is the connection between a company's reputation for solid information security capabilities and loyalty among its customers. Now we're seeing other industries, from the auto sector to energy and natural resources, boosting their transparency since they see digital confidence as a means to strengthen brand trust, and ultimately enhance customer loyalty.

Third, companies are seeing first-hand how under-investment in cyber security can constrain their growth. Increasingly, companies are asking their prospective B2B partners for cyber security assurances and a number of governments have added cyber security requirements to their procurement contracts. Even bond ratings agencies are signalling that they will begin to factor cyber security into their analyses, enabling investors to tangibly price the value of a company's cyber preparations.

HOW TO TURN PROTECTION INTO PROFIT

Based on observations of leading companies that view cyber security as a strategic advantage and a centre of growth, here are a few notable practices:

Start at the top: Directors must take a leadership role, by championing their companies' cyber security initiatives. The good news is that most corporate leaders are ready to follow their words with action.

Empower your CISO: Ensure your chief information security officer has direct reporting and working relationships with the chief risk officer, CIO, CEO or the board. Empower this individual to tackle big picture threats and demand that they avoid being buried in technical minutia. They should be more involved in strategy development, investment decision-making, and mapping the customer journey from a security point of view. The CISO can then adopt the same laser-focused mind-set that organised crime groups exhibit in their relentless attacks.

Embed cyber security enterprise-wide: The cyber security function must be integrated across the organisation and involved in new service models and business process design. Security should be part of each stage of the development process rather than trying to retrofit security controls later.

Educate customers and employees: Engage proactively with your customers and ecosystem partners to keep them informed about cyber risks and safe consumer practices. In a hyper-connected digital world, customers' actions can result in significant cyber security risks. Remember to also educate your employees, since they are the first level of protection, and internal errors are a frequent cause of breaches. It is important to build a culture of awareness and respect for cyber security.

Make it easy: Customer and employee behaviours are key to your defences. Make it easy for them to report suspected threats and be part of the solution, not the problem. Companies must offer a simple process for constituents to report cyber abuse.

Do the right thing in your customers' eyes: Since a cyber-attack is likely a case of when, not if, it's critical to prepare to do the right thing by your customers following an incident. While many companies have invested heavily in prevention, fewer have dedicated the necessary resources to create and exercise their response strategy to a larger scale disruptive scenario. Clearly define how you would manage the response required to minimise reputational damage to your company and harm to your customers.

Support industry collaboration: Finally, you should not take the concept of 'cyber security as a competitive advantage' to the extreme. Companies in the most mature industries share information on cyber threats and their remediation work. This healthy collaboration will add credibility and challenge to your individual efforts to build trust with stakeholders. It can also reduce the cost of managing cyber risks in a sustainable manner.

Of course, it's not easy to undertake all of these tactics when today's ever-shifting cyber threats keep your security teams busy enough. The reality of cyber security is that you must continue to do more today than you did yesterday, just to stay in the same place.

However, by incorporating these approaches to form digital trust, companies can achieve their vision of turning cyber expenditures into strategic advantage. Cyber security can pay real dividends, by bolstering your brand, strengthening customer loyalty and driving meaningful business growth.

GLC Update

FELICITY CAIRD
GENERAL MANAGER,
GOVERNANCE LEADERSHIP
CENTRE (GLC)

Capital Markets 2029

The report *Growing New Zealand's Capital Markets 2029*, initiated by the FMA and NZX, was published in September. The report sets out a number of recommendations aimed at improving capital markets including changes to KiwiSaver, financial capability, regulation, public sector assets and infrastructure, market development, new listings, tax, and technology. Recommendations relating to regulatory change include:

- simplifying disclosure requirements for regulated offers (including a review to consider how much information should be contained within the product disclosure statement)
- removing the requirement to provide prospective financial information for IPOs
- undertaking a review of continuous disclosure liability and aligning other liability settings. It was also suggested that New Zealand should not follow Australia's approach in relation to shareholder class actions, relevant to the Law Commission's impending review of litigation funding and class actions
- establishing a centralised process for AML compliance which market participants can rely on across Australasian capital markets.

The report recommends the establishment of an advisory group to support capital market regulation. It is critical that directors are represented in this group to ensure they are at the heart of the design of our capital markets.

See the IoD's media statement welcoming the release of the report and calling for greater involvement of directors in determining the way forward for our capital markets at iod.org.nz

Formal responses by the FMA, NZX and other parties to whom the report makes recommendations are expected.

Ngā mea waiwai o te tūranga whakataka, The essentials of being a director

In partnership with the FMA, we have released a te reo Māori translation of the popular guide *The Essentials of Being a Director, Ngā mea Waiwai o te Tūranga Whakataka*. It covers key directorship matters such as:

- due diligence before taking up a directorship
- working with other board members and management
- decision making
- conflicts of interest
- solvency
- signing off financials
- what happens if things go wrong.

A new Trusts Act

After several years in the making, New Zealand now has a new Trusts Act. Our DirectorsBrief issued in August 2019 *What's changing for trusts?* sets out some of the key features of the Act that trustees need to understand such as:

- trustee duties
- limitation of liability
- provision of information to beneficiaries
- retention of core trust documents
- dispute resolution and court powers.

Bank director attestation regime and the Reserve Bank's governance arrangements

The second of three rounds of consultation within Phase 2 of the Reserve Bank Act Review focused on the Reserve Bank's role in financial policy including how it should be governed and its tools, powers and approach.

A key topic under consideration was the current attestation regime which creates a form of director accountability for registered banks by requiring individual directors to attest to the bank's compliance with Conditions of Registration and systems of risk management. In our submission, we supported an 'enhanced status quo' option including increased supervisory engagement by the Reserve Bank (noting that this should be done in a manner that encourages high quality directors to remain involved in the sector and which includes a process to audit or verify attestations by the Reserve Bank). In relation to the Reserve Bank's governance arrangements, we emphasised that it is essential that the Reserve Bank retains sufficient independence from Government. There are opportunities for greater independence from the current model including by ensuring:

- board members are non-executive directors
- the Governor/CEO is not a member of the board
- the board is responsible for appointing and managing the Governor/CEO.

We also encouraged Treasury who is undertaking the review to recognise the designation of Chartered Membership by directors in their disclosures as an effective measure to support their attesting to their ongoing suitability as a director. There is also an opportunity when appointing new board members to the Reserve Bank board to include Chartered Members.

The Productivity Commission's draft report into local government funding and financing

The Commission's draft report makes a number of findings and recommendations for how local government funding and financing can be improved. Recommendations to improve financial governance and decision-making include:

- the Department of Internal Affairs, Local Government New Zealand (LGNZ) and the New Zealand Society of Local Government Managers should work together to improve elected council members' governance skills and knowledge
- LGNZ should increase participation by elected members in their ongoing professional development
- all local authorities should have an audit and risk committee (or equivalent assurance committee):
  - with an independent chair, ideally with at least one other external expert
  - with appropriately skilled and qualified independent members
  - councils should use the existing good practice guidance and resources already available to develop and run their committees
- council participation in existing performance reviews and improvement initiatives, such as CouncilMARK, should be encouraged with an emphasis on learning for continuous improvement.

In our submission, we strongly endorsed the Commission's recommendations to help build local government governance and financial capability. We supported the Commission highlighting that the IoD has a ranges of resources and services that can assist elected members and we offered to help improve governance and financial capability in local government. We encouraged elected members' ongoing professional development including membership of the IoD. We also highlighted that there is an opportunity when appointing new members of audit and risk committees to include IoD Chartered Members.

Ask an expert

Workplace mental health and wellbeing – are you playing the full field?

WITH ***FRANCOIS BARTON***
EXECUTIVE DIRECTOR OF THE BUSINESS LEADERS' HEALTH AND SAFETY FORUM

Q: What does workplace mental health and wellbeing include?

We all have mental health. Everyone is somewhere on the mental health spectrum – it is not an absolute but a continuum. It is a dynamic state that can deteriorate or improve at any point in time. Our mental health is shaped by individual life circumstances, resilience levels and environmental factors – including work.

In 2016, one in four adult Kiwis reported medium or high levels of psychological distress. Conversely, protecting and nurturing the mental health and wellbeing of workers has proven benefits for engagement, presenteeism, absenteeism, return to work and stay at work rates, and productivity – all contributing to the bottom line.

Under the Health and Safety at Work Act (HSWA) organisations are required to provide a balanced framework to secure the health and safety of workers and workplaces by protecting workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work.

This includes mental health.

Q: What's the board's role in relation to workplace mental health and wellbeing?

Work can be both good and bad for people's mental health and wellbeing. Businesses have an obligation to protect workers from both physical and mental harm and support those that are experiencing harm. They also have an opportunity to foster wellbeing and encourage people to restore their wellbeing.

This is a joint responsibility of the individual and the organisation.

Research shows that a wide range of work factors impact on a worker's health and wellbeing (both positively or negatively) such as work demands, scheduling, role clarity, autonomy levels or organisational justice.

As officers under HSWA, the board has a duty to understand the hazards and risks of the organisation – including mental health risks. Get curious about how well you understand your business through that mental health risk lens – and ask, how is the organisation managing those risks?

Build your understanding of the work factors in your organisation that impact on workers' health and wellbeing, such as work demands, role clarity, or autonomy levels.

Part of that officer duty is also to verify the provision and use of controls to manage those risks. This could include bringing a mental health focus to existing site visits, discussing with management the outcomes of psychosocial risk assessments, the effectiveness of any key policies such as bullying and harassment, or reviewing the impact of workload assessments.

Q: How can the board ensure that it is effectively leading and overseeing mental health and wellbeing in the workplace?

To unlock a workforce's true potential, a mental health and wellbeing strategy should aim to both protect workers from harm and include activities to foster and support wellbeing. This requires both proactive and reactive interventions.

Distilling the best of international and New Zealand research and expertise, the Business Leaders' Health and Safety Forum with Dr Hillary Bennett developed a sense-making framework outlining the full mental health and wellbeing playing field. It sets out four key areas for an organisation to meet their obligations to prevent harm as well as harness the opportunities to thrive.

This framework includes simple questions and examples for senior leaders and boards to review and assess their current activities against, to identify strengths and areas for development. Effective and successful organisations play the full field of mental health approaches.

Q: How can the board effectively measure developments in workplace mental health and wellbeing?

There are some common sources of insight that can help executive teams and boards track the state of mental health and wellbeing of their people such as engagement surveys, sick leave, turnover, fitness for work assessment data as well as high-level thematic results from your employee assistance programme provider.

However, monitoring the effectiveness of your organisation's approach to mental health is not one-size-fits-all. It needs to flow from a clear understanding of the specific factors that impact mental health in your business.

If your organisation has high rates of internal secondments for example, we know this can impact negatively on some workers due to poor change management, role conflict and uncertainty. In this case, one reasonable way of tracking how well this risk is being managed could be to understand how many of your people have been in a secondment for more than six months. Importantly, this could in turn inform discussion about what is driving the need for this level of secondments as well as how the organisation is supporting people in those roles.

Boards have a crucially important role to ensure their organisation is meeting its obligations to prevent harm, but also the exciting opportunity to harness the opportunities to thrive.

"To unlock a workforce's true potential, a mental health and wellbeing strategy should aim to both protect workers from harm and include activities to foster and support wellbeing."

Out & **about**

Canterbury

Intangible assets were the focus at the "Hidden trillions: governing what you can't see" event in September. Also at the event, Helen Andrews and Cory Bedford were presented with their Canterbury Emerging Directors Awards.


01


02

Canterbury

01 Mads Moller, Julian Newman, Graeme Crombie.

02 Terry Paddy, Ben Reid, Dennis Parker.

03 Helen Andrews, Mark Andrews, Bridget Palmer, Jason Palmer.

04 Philip McKendry, Nick Carter.

05 Geordie Hooft, Cory Bedford.


03


04


05

Waikato

The Honourable Grant Robertson drew a crowd to lunch in August, at an event where the Waikato Emerging Directors Award was also announced.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Taranaki

06 Linda McConnell and Damien Sicely.

07 Maria Robinson, Sharon Muller, and Melissa Shaw.

08 Vanessa Williams, Michelle Baillie and Jan Gatley.

09 Bridget Smith and Ashley Best.

Auckland

Members gathered at the Viaduct to hear tips from Pip Greenwood, Leonie Freeman and Mark Darrow on how to establish their governance careers.


10

Auckland

10 Danny Chan, Richard McLean.
11 Peter Loeffen, Peter Batcheler, Matt Sale.
12 David Mair, James Sclater, Steve Smith.
13 Fiona Woolley, David Mills, Maurine Talpin, Peter Lee.
14 Carol Cheng, Karl Slifer.
15 Danielle Grant, Peter Rudd.
16 Paul Brabin, Pete Bernhardt.
17 Leonie Freeman, Clayton Wakefield.


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Events**diary**

For more information visit **iod.org.nz**, contact the director development team or contact your local branch manager.

November

4 Tauranga
Fellows-only dinner with Margaret Devlin, chair of Watercare

5 New Plymouth
How to build your board career

6 Wellington
New members welcome lunch event

6 Hamilton
Not-for-profit summit

7 Waitangi
How governance adds value in a high growth business

13 West Auckland
Tips to make your governance CV work for you

14 Hamilton
The four-day week – a simple idea on a global stage

14 South Auckland
Next Generation Director evening workshop

14 Wellington
Annual dinner, with Linda Clark

25 Dunedin
Insights on public sector governance with Controller and Auditor-General, John Ryan

27 Auckland
Rugby World Cup – the aftermath with chair of NZ Rugby Union, Brent Impey

27 Whakatane
Communicate with confidence

29 Palmerston North
Economic snapshot from Shamubeel Eaqub

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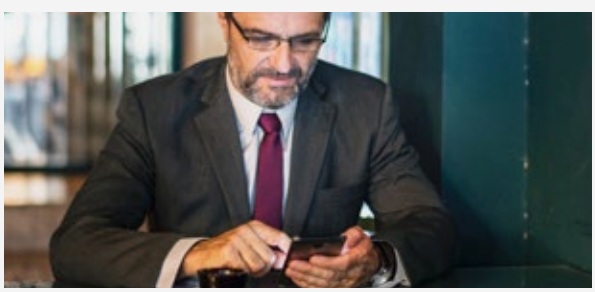
BRANCH EVENTS

For information on member events in your area, see **iod.org.nz**



Online Learning

Any time, anywhere. Offering convenience and flexibility, our self-paced courses provide focused online learning. Progress through the course slides, interactive diagrams, videos and reflective exercises at your own pace.

Health and safety governance
3 CPD points

Ethics – how directors do business
3 CPD points

Directors' and Officers' insurance
2 CPD points

Not-for-profit fundamentals
3 CPD points

Cybersecurity
3 CPD points

19-20
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