

DIRECTIONS 2021

YOUR REFORM AGENDA

Policy priorities for prosperity and growth

May 2021

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Survey result highlights

The issues top of mind



Cyber risk is now clearly the No. 1 “top of mind” issue for directors and senior business leaders, being a key concern for over 60% of respondents. Maintaining an appropriate corporate culture, and protecting brand and reputation, continue to be key.

Tax reform



Nearly 50% of respondents are willing to pay a higher rate of GST if it would enable the elimination of state taxes, such as stamp duty and payroll taxes.

COVID-19 vaccination



An overwhelming majority (80%) of respondents believe employers should be able to require employees get vaccinated against COVID-19 in at least some circumstances.

Employee relations



Award and enterprise bargaining complexity tops the list of areas that need urgent attention.

Climate



Over half of respondents think it is very important that the Federal Government implement a national emissions reduction policy, including transitional targets for reaching net zero emissions by 2050.

Foreign investment



Acknowledging the politicisation of foreign investment, 1/3 of respondents favour separation of FIRB (Foreign Investment Review Board) decisions from Treasury, under a model which would see non-national security related investments considered by Austrade, and security-related matters by the Critical Infrastructure Centre.

Financial services regulation



Businesses want to work with regulators to simplify compliance: nearly ½ support a taxation office-style “ruling” regime for verifying their systems comply with obligations in principles-based legislation, such as anti-money laundering.

Critical infrastructure



The proposed Security of Critical Infrastructure legislation is confusing for many. The majority of respondents (69%) are not sure if their organisations will be captured, or how they'll be impacted. Only 17% were not comfortable with the government having a right to “step-in” in the case of a cyber-incident.

Merger control



Less than 1/3 of respondents support the ACCC's desire to strengthen merger control laws.

In the spirit of “never waste a good crisis”, our 2021 Directions survey, completed in April 2021, explored the views of directors and senior business leaders regarding their top reform priorities in key areas such as taxation and industrial relations, as well as “newer” issues such as vaccination policy and critical infrastructure.

In addition to our regular pulse-check on the top matters of concern, this report features the results from those reform-focussed questions, and includes insights from KWM experts on key regulatory reform issues, as Australia looks ahead to the “new normal”.

Setting the scene

As a nation, Australia has done remarkably well in responding to the challenges posed by the COVID-19 pandemic and the associated impacts of Government mandated shutdowns of non-essential services and border closures.

Compared to most other countries, the Australian community is now able to live relatively (new) normal lives, subject to limits on international travel beyond the bubble with New Zealand, “checking in”, quarantine arrangements for overseas travellers, and short-term shutdowns in response to localised cases of community transmission.

However, the full impacts of the “once in a century” pandemic, significant Government stimulus and other measures are still being digested, and many Australian industries such as education, tourism and hospitality remain gravely impacted. Elsewhere, businesses that fared reasonably well (or better) are still actively monitoring and managing the effects of the tapering of Government support and the “catch-up” in activity.

In that context, most Australian businesses are looking to leverage the positives from their “new normal”, and are actively considering what longer term benefits can be garnered from the disruption and mindset shifts triggered by the COVID-19 pandemic. A respondent to our previous survey – conducted last August – captured it neatly:

“There is an emerging opportunity to re-write Australia's regulatory, tax, and industrial relations systems to more modern structures, designed so that Australian businesses are encouraged to be globally competitive – this will provide the greatest opportunity for the most people over time.”

Taking the pulse – what is top of mind in 2021?

For the first time **managing IT/cyber risks** is now the outright top issue of concern, followed by **maintaining an appropriate corporate culture**, and **protecting brand and reputation**. We expect that this re-ordering of issues reflects the increased focus on:

- Technology and digital tools and applications to facilitate remote working and support broader business operations.
- The general acceleration of digitisation strategies including digital ‘go-to-market’ strategies, cyber-resilience and security, including protection of data.

This is in line with this issue’s steady rise in prominence. In [Directions 2020](#) it was equal top priority alongside maintaining corporate culture. In that survey, conducted at the height of Australia’s pandemic uncertainty, we observed that “boards were more concerned about everything”, while in [Directions 2019](#) corporate culture was the number one issue, followed by cyber.

In 2021, respondents are also comparatively more focussed on:

- The twin regulatory-related topics of lack of Government vision and courage to tackle necessary reform, and excessive regulation and red tape – perhaps reflecting a strong desire to see a continuation of the constructive approach to reform issues, and fears that there will be a reversion to the “bad old days” of division, politicking and uncertainty, which will hamper future business investment.
- ESG issues and climate risks – perhaps reflecting the broader impetus for clarity of policy in that area, and in light of a dramatic resetting of US policy under the Biden Administration.

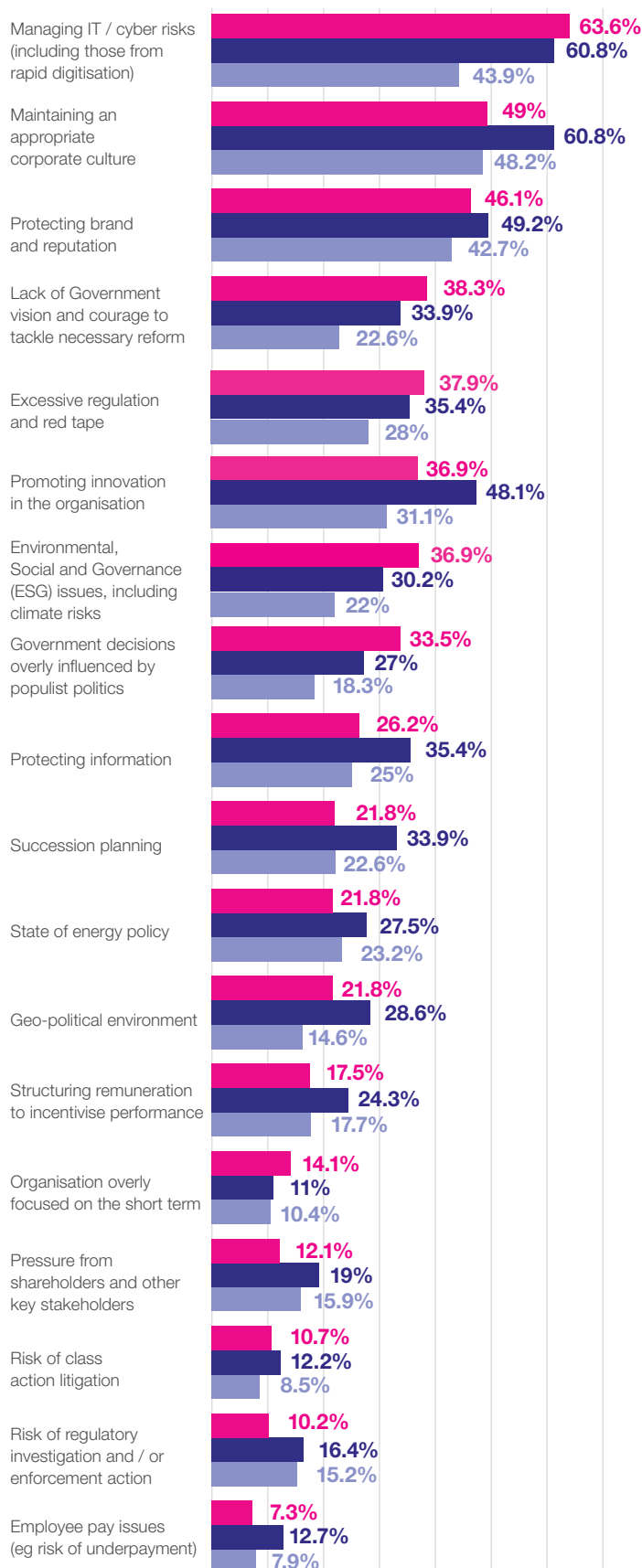
Directors and senior leaders are calling for a continuation of the positives – the tiers of Government and regulators working constructively together, and with businesses, to resolve issues and find beneficial solutions to assist Australia to prosper and grow in the 21st century.

It is hoped that constructive leadership, vision and resolve can now fuel a “burning ambition” to search for constructive responses and solutions to the ever-present challenges of needing to achieve productivity improvements in order to support future growth in the Australian economy, which in turn will support our standard of living and future prosperity.

There has also been a call for a continuation of the “intentional governance” and culture change that strongly emerged following the Hayne Royal Commission, and that arguably facilitated much of the strong and beneficial responses to the COVID-19 pandemic in 2020.

% of respondents for whom issue ‘is of material concern’

● 2019 ● 2020 ● 2021



Looking back. A recap from Directions 2020 - the hope for a more ambitious reset

In [Directions 2020](#), we reported on:

- How corporate Australia responded to the crisis, and the focus of Australian business leaders on scenario planning, adjusting strategic priorities and cyber-resilience.
- A COVID-19 policy wishlist, and the hope that the experience of Government and business stakeholders working collaboratively and constructively together would continue beyond the crisis, and pave the way for “big ticket” regulatory reform to tackle some of the more challenging issues that had been lingering for many years, and to implement more permanent policy and regulatory improvements to positively resharpe the Australian business landscape.

Looking forward. Policy priorities for prosperity and growth

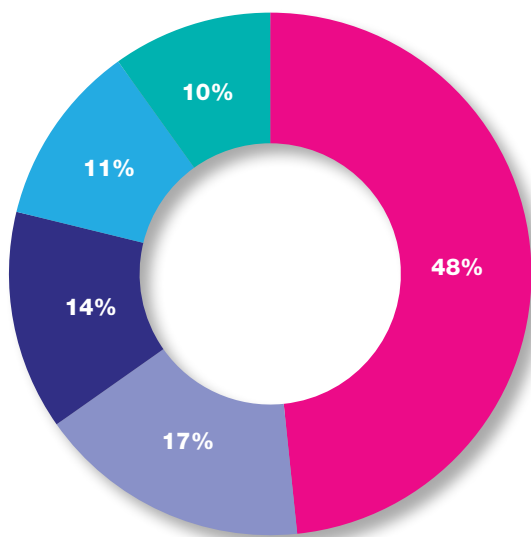
The following sections outline the results from our reform-focussed Directions 2021 survey questions, and include insights from KWM experts on key regulatory reform issues in the key areas of taxation, employee relations, emissions reduction, merger control, foreign investment control and security of critical infrastructure.

2020 → 2021

Tax Reform

Presented with a list of reform options, nearly half (48.4%) of respondents told us that they wanted state taxes such as stamp duty and payroll tax reduced or removed – and that they would be willing to pay a higher rate of GST to make that happen. This was significantly more than the next most-popular option – reducing personal income tax rates – favoured by 16.9% of respondents. Expanding tax concessions to encourage R&D was supported by 11.3% of respondents and reducing the corporate tax rate was supported by 9.9% of respondents.

Some respondents also identified the potential to use tax as a tool to achieve social and environmental objectives – such as deductions to increase child care options and directing pollution taxes to climate change mitigation efforts.



Of the following taxation reform options, which would you most like to see implemented?

- Reducing or removing remaining State taxes (eg: stamp duties and payroll taxes) and replacing with an increased GST
- Reducing personal income tax rates
- Other Ideas
- Expand tax concessions to encourage R&D
- Reducing the corporate tax rate

Expert Analysis

Our survey results make it clear that Australian businesses consider such growth is linked to a more efficient, simple and fairer tax system and consistent with recent global trends, it is tax reform, not merely tax reduction, that is the key. In particular, there was strong support for widening the GST base and/or increasing the GST rate at the expense of less efficient taxes. That there is public support for a trade-off should send an important signal to policymakers that tax cuts by themselves just won't cut it.



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Respondents' other ideas

"I think it is a priority to tax global companies - to rebalance our tax system to support the vulnerable, and to tax carbon emissions"

"Tax deductible child care including in house care (Nannies, etc.)"

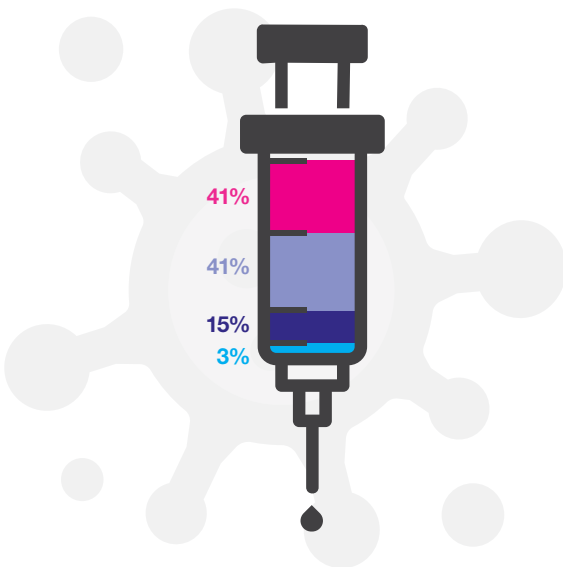
"Taxing climate pollution and allocating revenue to climate solutions / tax on carbon"

Further thinking

[NSW stamp duty reforms could distort the property market](#)

Employee Relations – COVID-19 Vaccination

An overwhelming majority (81.6%) of respondents support employers having the right to mandate COVID-19 vaccinations for employees in at least some circumstances, but were split on the circumstances in which it could be acceptable. Of the respondents in support of employers having the ability to require employees to be vaccinated against COVID-19, half thought that employers should have this right in all circumstances, and half thought that only employers in high risk industries such as healthcare should be able to mandate COVID-19 vaccinations.



Should employers be permitted to require that a COVID-19 vaccination be a mandatory condition of employment, irrespective of the industry or nature of work performed by their workforce?

- Yes
- Only if they operate in high-risk environments for coronavirus (for example, health care or food handling)
- No
- Unsure

Expert Analysis

The issue of mandatory COVID-19 vaccination is a complex legal, political, moral and societal issue. The Directions results are an interesting mirror to this and reflect the real divide within the community about the position to adopt in response to this question. However, the Directions results certainly suggest there is a groundswell of support for the notion of mandatory vaccination requirements as a condition of employment. This view is currently at odds with the position adopted by the Fair Work Ombudsman and Safe Work Australia which contemplate there are limited circumstances where an employee could be required to be vaccinated by their employer. This is certainly a space to watch as organisations increasingly look to encourage employees to return to the workplace and create new COVID-normal working conditions.



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Respondents' other ideas

"It would be 'yes' but needs easy access to this so we can fund at office etc"

Further thinking

[Mandate to vaccinate: can employers make employees roll up their sleeves for the COVID-19 vaccine?](#)

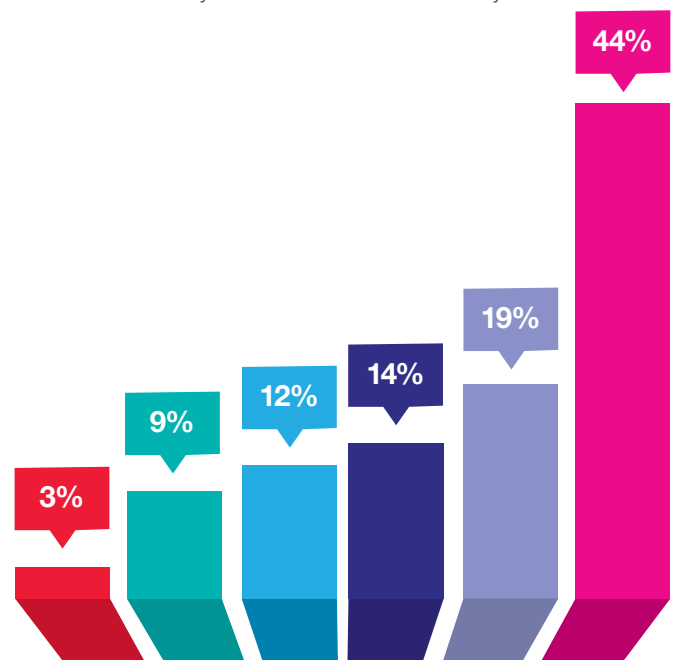
[Follow up: The Federal Government's perspective on an employer's mandate to vaccinate](#)

Employee Relations – Wages and Bargaining

Respondents identified the complexity of modern awards and enterprise bargaining agreements as the most problematic area in the employee and industrial relations space, with 43.9% of respondents listing it as their most pressing concern. That was more than double the number of respondents (19.3%) who identified incorrectly-characterised contractor arrangements as their top concern. Respondents also noted the lack of a safety net for gig and casual workers as other key issues for workforce security.

What is the most pressing legal or regulatory concern for you/your organisation(s) in the employee and industrial relations space?

- Complexity of modern awards and enterprise bargaining agreements
- Incorrect characterisation of independent contractor relationships and risk of exposure to employee entitlements
- Wage underpayments and consequential reputational and business damage
- Incorrect characterisation of casual employees and the lack of clarity in respect of an employer's ability to set-off payment of casual loadings in lieu of permanent employee entitlements
- Other Ideas
- Meeting the technical requirements to negotiate and have an enterprise bargaining agreement approved



Expert Analysis

Wide ranging and fast paced regulatory change is a feature of the landscape of industrial relations in Australia that impacts employees and employers alike. It is significant, although perhaps not unsurprising, that it appears from the Directions results that out of all of these issues, the complexity of modern awards and enterprise bargaining agreements remains the most pressing legal and regulatory concern for many organisations. The increasingly convoluted and often impenetrable drafting of these instruments is genuinely impacting employers - both small and large alike - in a period where there is a real need for businesses to be agile and to adapt to changing and novel circumstances. The challenges of the current system not only present serious compliance and productivity concerns for organisations but let down the rights and interests of Australian workers who rely on their terms to provide a minimum floor of terms and conditions of employment. This issue has and will continue to be an ongoing trend until the underlying framework of the system is tackled head on by the Federal Government.



Respondents' other ideas

*"How about reforms to support casual workers?
Reforms to support migrant labour"*

*"(There is a) lack of safety net for low paid
or gig economy workers"*



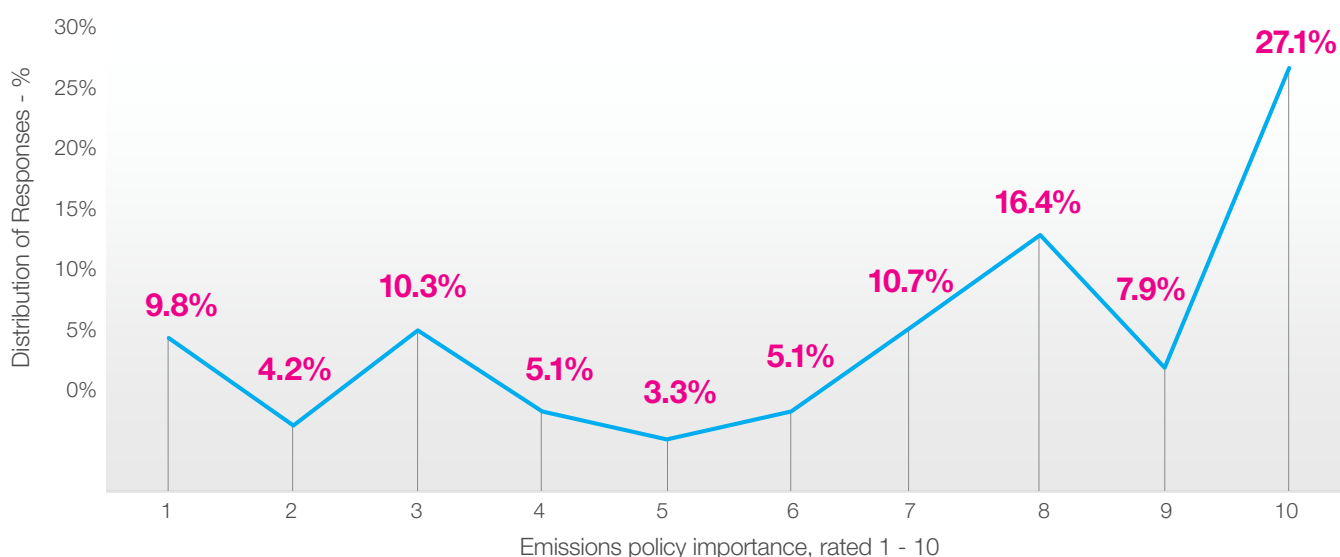
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Emissions reduction policy

Over half of our respondents considered it very important to their organisation(s) that the Federal Government implement a policy (which includes transitional targets) to reach net zero emissions by 2050. We asked respondents to rate the importance of this issue on a scale of 1 – 10, and the responses were quite polarised:

- Over 60% rated the importance of the issue to their organisation(s) at 7 or higher
- A quarter (24.3%) rated the issue as of minimal importance to their organisation(s) – rating between 1 – 3
- Only 3.3% rated the importance of the issue to their organisation(s) as 5 out of 10, suggesting that the vast majority of respondents are not sitting on the fence regarding this issue.

How important is a federal policy to reach net zero emissions by 2050 to business?



Expert Analysis

The survey results show strong support in the corporate sector for a nationwide commitment to carbon reduction targets. This is consistent with the many Australian corporates taking steps to achieve levels of carbon neutrality at either an organisation or product level. The Federal Government will be under continued pressure, both domestically and internationally, to introduce a carbon reduction profile and related measures to achieve it. While a national emissions trading scheme or tax seems unlikely in the near term, there is likely to be other Federal and State measures introduced. It appears that business would like the certainty of a coordinated and overarching framework. (In the energy industry - 66% of respondents rate emissions policy 7 out of 10 important or higher). Further, we expect more scrutiny will be applied to carbon neutrality claims as their importance increases and they become a business differentiator.



Respondents' other ideas

Respondents are thinking about how to fund climate initiatives. In our tax reform question, "Taxing climate pollution and allocating revenue to climate solutions / tax on carbon" was the most-popular respondent-generated suggestion.

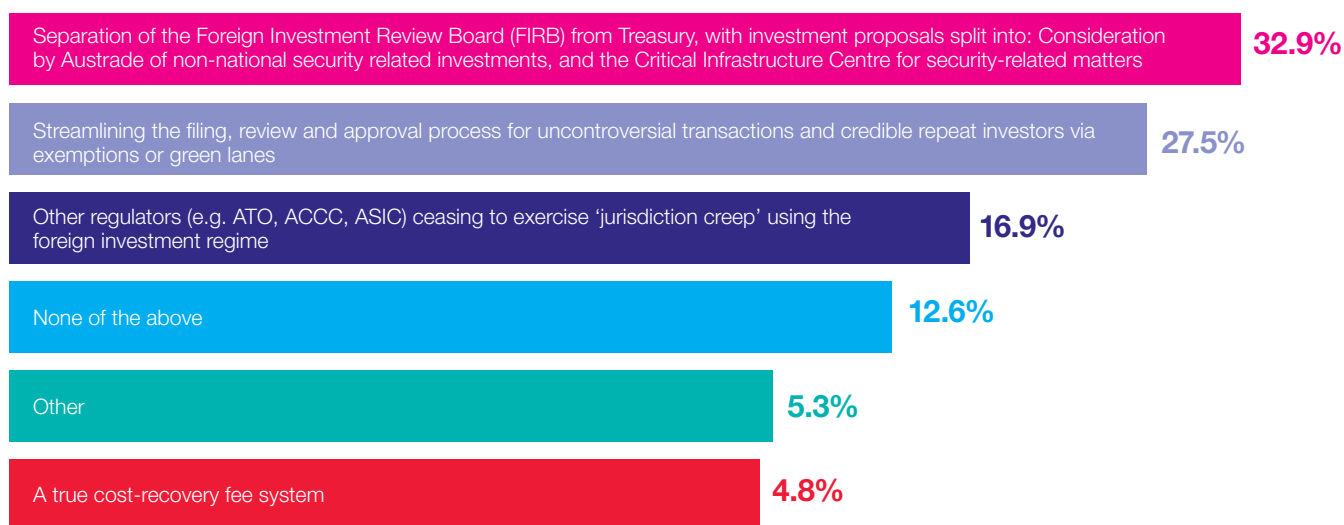


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Foreign Investment controls

The reform proposal that was most popular with our respondents in this contentious area seeks to de-politicise investment approval decision-making. One-third of respondents support separation of FIRB from Treasury, so that non-national security related proposals are considered by Austrade, and security-related proposals are considered by the Critical Infrastructure Centre. The next most sought-after reform proposal was streamlining filing, review and approval processes for uncontroversial transactions, prioritised by 27.5% of respondents. Interestingly, 16.9% of respondents were concerned about other regulators encroaching into the approvals process. This perhaps indicates how highly applicants value transparency in relation to the issues and policy underpinnings that will inform the assessment of foreign investment proposals.

Which of the following changes to Australia's Foreign Investment regime would you most like to see implemented?



Expert Analysis

Unsurprisingly, the majority of respondents agree that the foreign investment review process should be reformed to facilitate uncontroversial investments. The most popular suggestion to place non-national security related investments with Austrade really means taking these decisions out of the Treasurer's political hands and away from the spooks. This separation would also serve to release pressure on the Treasurer, who would no longer need to defend periodic criticism that electoral considerations may impact investment decisions. The second most popular suggestion to streamline the process for credible repeat investors recognises that some investors have proven themselves to be long term partners of Australia. Foreign investment can be an emotional issue for many, but not everything is about politics and national security. The Government continues to state public support for uncontroversial foreign investment. The reform options canvassed here represent a clear opportunity for policy makers to take effective action in support of those statements.



Respondents' other ideas

A number of respondents suggested that they would like to see a 'further tightening' of investment controls.

Further thinking

Major reforms to Australia's foreign investment framework coming in 2021: National security trumping national interest?



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Effective Financial Services regulation

Nearly half (47.9%) of our respondents support the implementation of a 'ruling' system, which would allow businesses to seek regulatory verification that their systems comply with obligations under principles-based legislation, such as the 'reasonable steps' requirement under anti money-laundering for example.

Of the following financial services law reform options, which would you most like to see implemented?

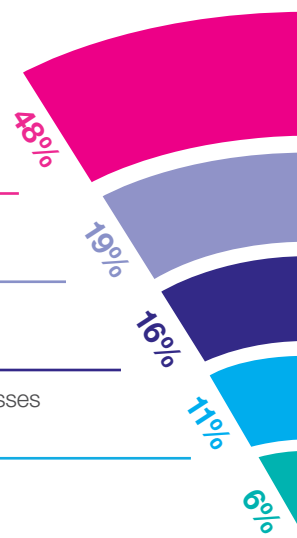
Where regulation (such as anti money-laundering for example) requires entities to satisfy principle-based criteria such as taking 'reasonable steps', the government should introduce a ruling system (similar to that used in relation to tax regulation) which would allow entities to verify that their measures meet relevant regulatory requirements

None of the above

Decisions of the Australian Financial Complaints Authority being made subject to judicial review

The Federal Government reintroduce a regulatory passport which would allow financial services businesses domiciled in jurisdictions such as Hong Kong or Singapore to operate in Australia

Other



Expert Analysis

The outcomes here show the value of certainty in financial services regulation. Often, market players prize definitive outcomes and guidance more than points of substance in the regulations themselves. The shift to principles-based regulation often improves compliance and regulatory outcomes for regulators as organisations 'self-police' and adopt positions they hope align with the spirit of regulations. However, the Financial Services Royal Commission and the 'Wagyu and Shiraz' case show the approach gives rise to considerable problems in practice. Interpretations differ and can change over time. Organisations are having to build compliance regimes based on interpretations of sometimes quite generic regulatory guidance. There is always a trade-off between regulation detail and the need to cover the huge variety of activity in financial markets. So rather than a 'why not litigate' approach, the answers here show the overwhelming vote for a ruling or 'no action'/exemption system which would allow organisations to get a steer on regulatory expectations in given contexts before the problems arise (or before a change is implemented). Binding guidance to remove uncertainties would save considerable cost especially in areas requiring massive

investments in IT, training and product review. For example, the introduction of DDO raises threshold specific questions for some issuers and distributors who must invest substantial resources implementing the new regime without a ruling system to get ASIC input on specific questions.

Obviously, a level playing field is also key. Such a system would need to make public the determinations (and enable others to take the benefit or rulings on difficult issues). Given how fast things are moving in Fintech, cross border AML, consumer protection, crypto/other asset classes, a more dynamic ruling system would help market players apply regulations with some certainty to new situations. The responses show the appetite to reduce regulatory risk as far as possible including if this requires the market to seek regulator sign off on uncertainties from time to time.



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Security of Critical Infrastructure

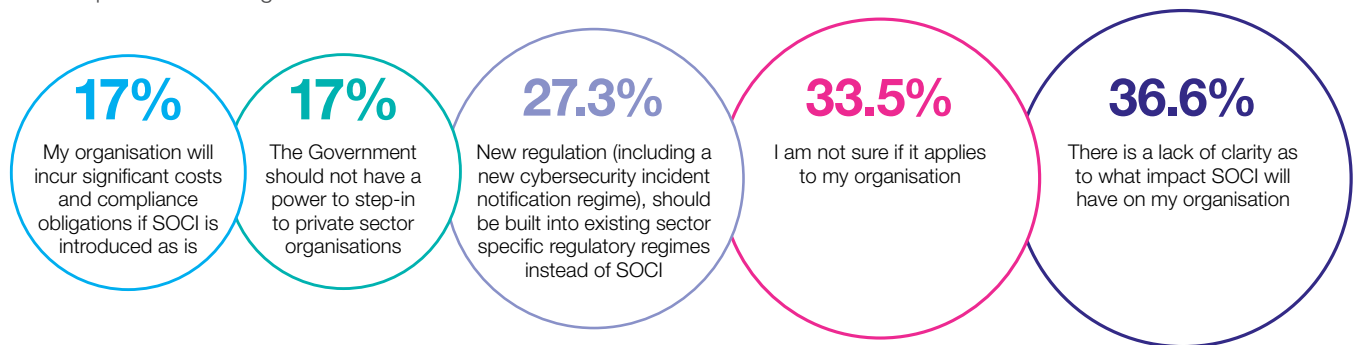
The majority of our respondents (69%) were not sure if or how proposed changes to the Security of Critical Infrastructure Act will impact their organisation(s).

Security of Critical Infrastructure (SOCl) Legislation currently before Federal Parliament expands the definition of critical infrastructure to include the transport, utilities, energy, food and grocery, data and technology, communication, higher education and research, health care and medical, financial services and markets, space technology and defence sectors under which some businesses within these sectors will be required to:

- Provide and update ownership and operational information
- Comply with a new mandatory cybersecurity incident notification regime
- Comply with risk management and mitigation obligations
- Be subject to government direction and possible intervention, if they suffer or are likely to suffer a cybersecurity incident
- If they are Systems of National Significance, be required to comply with enhanced security obligations which require close cooperation and information sharing with government.

Are proposed critical infrastructure legislation changes understood?

% Of respondents who agree with this statement



Expert Analysis

There is clearly a need for affected organisation/s to understand and to educate their Boards on the impact of this legislation, particularly given the proposed requirement for the Boards of affected organisations to approve an annual report on their infrastructure risk management program. It is also significant that more than a quarter of respondents (27.3%) thought that new cyber security regulation should be incorporated into existing sector-specific regulatory regimes rather than into an expanded Security of Critical Infrastructure Act that would apply across industries. Finally, it was interesting that a relatively low number of respondents (17%) thought that the government should not have a right to 'step-in' to private sector organisations. There are several possible explanations: because it is still unclear whether it will apply to respondents' organisations; it is seen as necessary for the greater good if an organisation does not have the capability to protect itself, or respondents think the more expansive rights of government actors (to hack back, for example) might actually be necessary in some instances. This is something we will need to explore further.



Further thinking

[Exposure draft of the Critical Infrastructure Bill 2020 provides some answers, questions remain.](#)



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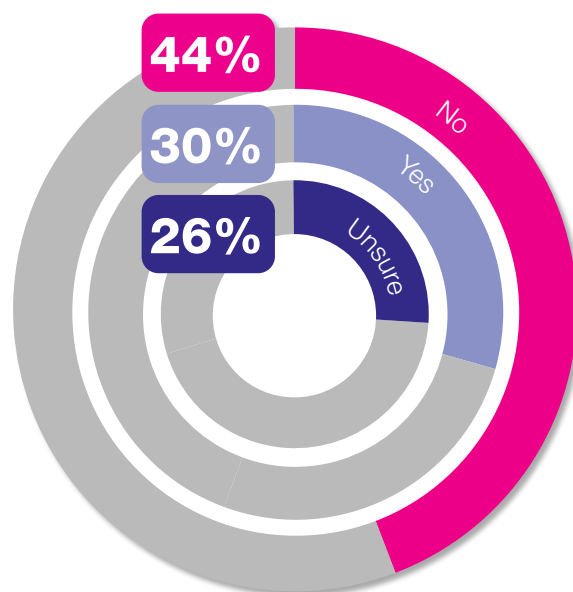


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Merger control

The Chairman of the Australian Competition and Consumer Commission, Rod Sims, has outlined his intention to pursue reform of Australia's merger control laws due to concerns that the current tests risk overlooking anti-competitive effects of a merger. Explaining the ACCC's 2021 priorities earlier this year, Mr Sims articulated the concern that the merger control regime is no longer fit for purpose and doesn't achieve the balance required to ensure good outcomes for consumers and the economy. In particular he mentioned too much focus on the counterfactual by merger parties and courts, which he considered susceptible to manipulation, as well as over-reliance on the factors in section 50(3), both of which risk overlooking anti-competitive effects of the merger. The ACCC is exploring merger law reform options in 2021 to rebalance the test so that it is no longer in favour of mergers being cleared. As specific reform proposals are yet to emerge, we asked respondents a general question - whether they thought Australia's merger competition laws need strengthening to stop more acquisitions, as advocated by the ACCC? 26.2% of respondents agreed, but nearly half (44%) did not agree and nearly a third (29.6%) were unsure.

Do Australia's merger competition laws need strengthening to stop more acquisitions, as advocated by the ACCC?



Expert Analysis

These results suggest that the need for change is in the eye of the beholder. Corporates who have had their deals cleared by the ACCC may be less likely to believe change is needed. However, those who have objected to those same deals may have a strong contrary view. The large 'unsure' group is an accurate reflection that the issues being debated are not necessarily clear - or clear cut. But, they are clearly not going away. Recently, the ACCC, its UK and German counterparts released a shared statement describing effective merger control as 'pivotal'. ACCC chairman Rod Sims is concerned a bias towards approving mergers feeds market concentration, and in the Australian context sees the 'substantial lessening of competition' test and court focus on the counterfactual as part of the problem. He argues the focus needs to be on what competition will be lost. The ACCC is expected to release the details of its reform proposals in mid-2021. Stay tuned!



Further thinking

[Not just digital platforms: ACCC announces 2021 Compliance and Enforcement Priorities](#)



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