

DIRECTIONS 2020

RESPONDING TO CRISIS; WHAT LIES AHEAD?

The pandemic pulse-check

RESPONDING TO CRISIS; WHAT LIES AHEAD?

In a year like no other, KWM's Directions team took corporate Australia's pulse through a COVID-19 focussed survey of directors and senior leaders.

Having weathered the initial shocks of the COVID-19 pandemic, Australian businesses have, for the most part, demonstrated resilience and agility in responding to the crisis. Government, regulators, corporate Australia and the community have shown a capacity and willingness to collaborate and adapt, and to offer support and solutions to the challenges triggered by COVID-19. But there is a mammoth task ahead, and the road out remains uncertain.

With an eye to a "new normal", Australia's business leaders are focused on seeking to address that uncertainty; through scenario planning, adjusting strategic priorities and doubling down on cyber-resilience.

Key takeaways from our findings:



The way forward involves an increasing and accelerated digital focus – including strategies for mitigating cyber risk, without losing sight of the importance of culture and brand.



Government has an ongoing key role – further macroeconomic stimulus, tax reform and targeted investment spending top the policy "wish list".



Directors and senior leaders are seeking more clarity in order to have the confidence to make big decisions. That includes cutting red tape and reigning in securities litigation risks and spiralling D&O insurance costs.



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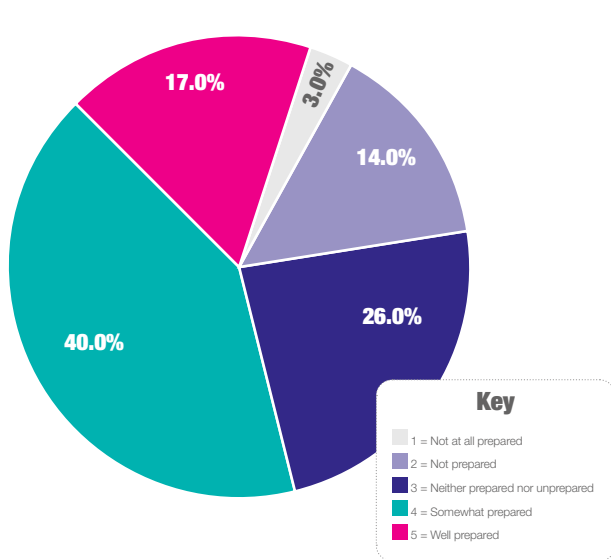


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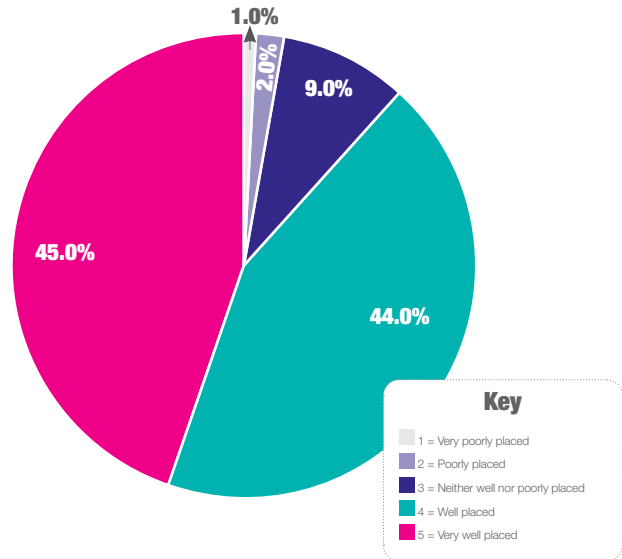
Preparedness for COVID-19

Asked to rate the preparedness of their organisations in March 2020 for the disruptive impacts triggered by the COVID-19 pandemic, a majority of survey respondents (57%) rated their organisations as being well or very well prepared.

Interestingly, having dealt with the immediate impacts of the health crisis in early 2020, including the effects of Government-mandated shutdowns of non-essential services and border closures and, in many cases, dramatic changes in day-to-day “operating rhythms”, 89% of survey respondents rated their organisations as well or very well placed in August 2020 to transition to a “new normal”.



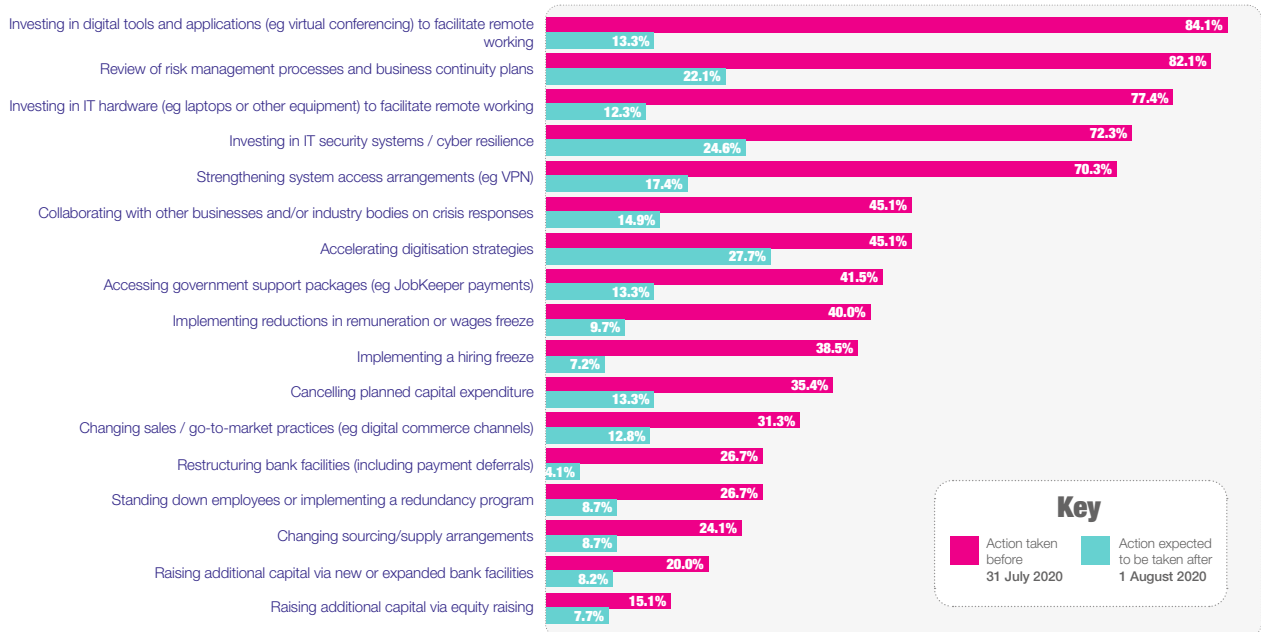
In March 2020, how well prepared were you for COVID-19's impact?



In August 2020, how well placed are you to operate in a 'new normal'?

These findings highlight corporate Australia's agility and capability when faced with a “one-in-a-hundred-year” crisis. The findings also suggest that although most of us may not have been able to predict or appreciate the full gravity and extent of the rolling disruptions and shutdowns triggered by COVID-19, most organisations appear to have had the leadership, resources and culture to enable them to effectively mobilise and respond, at least in the short term.

What was done, and what needs doing?



Has your organisation(s) undertaken, and/or is your organisation(s) planning to undertake, any of the actions listed in response to, or as a consequence of, the COVID-19 pandemic and its associated impacts on your organisation(s)?

In response to the question regarding what actions had been undertaken, or were planned, in response to or as a consequence of COVID-19 and its associated impacts on their organisations, four of the top five responses related to investing in and strengthening the technology and digital ecosystems necessary to ensure business continuity and the enablement of employees (especially when working remotely). More specifically:

- investing in IT hardware, digital tools and applications; and
- strengthening access arrangements and security systems to enhance cyber resilience and mitigate the cyber-security perils associated with more remote collaboration and sharing of information over public Wi-Fi and home networks.

100% of survey respondents indicated that their organisations had reviewed, or would review, their risk management processes and business continuity plans.

Looking forward, 27.7% of survey respondents indicated that their organisations plan to accelerate digitisation strategies - no doubt prompted by the opportunity (and in some cases, necessity) to adapt to changes in how they engage and transact with their employees, customers and suppliers.

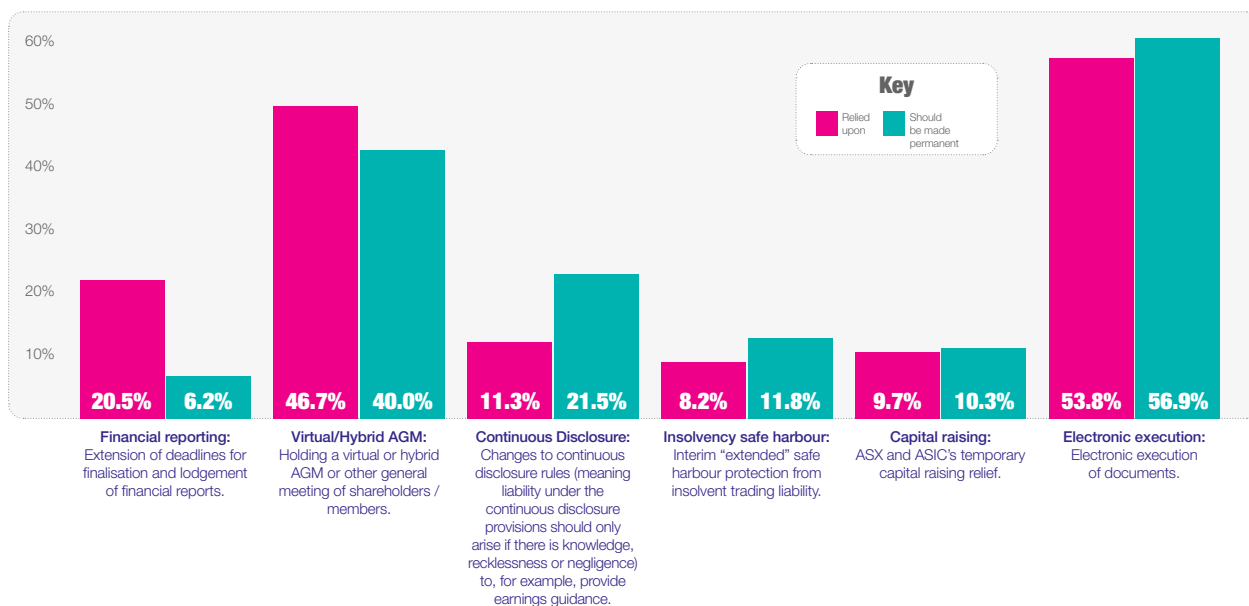
“We will never go back to 2019 normal.”
“The company has completely changed how it operated.”

Unsurprisingly, short-term cost reduction and cash preservation measures, and accessing Government support packages, also featured strongly.

Interestingly, some survey respondents felt that their organisations were well-prepared for the pandemic (dealing with the health crisis), but not the Government’s response and the associated impacts on their businesses and the broader economy: *“Our business was 100% prepared for the pandemic, but totally unprepared for the response.”*

Survey respondents also recognised the role of wellbeing and culture in employees’ ability and willingness to adapt and persevere through recent months: *“Agility was key, then resilience for the long haul. Surprising how much some unexpected people have stepped up.”*

Has regulatory relief helped?



Have or will you or your organisation(s) (as applicable) rely upon or take advantage of one or more of the following temporary relief measures put in place in response to COVID-19? Please also indicate whether you think any of the temporary relief measures should, in substance, be made permanent.

While approximately 80% of survey respondents indicated that their organisations have invested in remote and virtual capability to maintain productivity and enhance IT security and cyber resilience, it appears that fewer survey respondents have observed their organisations taking advantage of technology in their governance processes. Just over half of our survey respondents (53.8%) indicated that their organisations executed documents electronically, and just under half of our survey respondents (46.7%) indicated that their organisations had or were contemplating a virtual or hybrid meeting of shareholders/members. However, there were comparable levels of support for making these COVID-19 inspired changes permanent, and we are hopeful this will be the case.

Survey respondents indicated less reliance on other temporary relief measures, most likely reflecting that a number of these measures have been more directed to assisting listed entities. Approximately 11% of survey respondents indicated that their organisations had relied upon temporary changes to the continuous disclosure rules (potentially underscoring the shortcomings of those relatively narrow reforms against the broader backdrop of Australia’s continuous disclosure regime). Approximately 10% had utilised ASX and ASIC’s temporary capital raising relief to help shore up liquidity and balance sheets. On the other hand, 8% of survey respondents indicated that their organisations had relied upon the extended safe harbour from insolvent trading liability.

The COVID-19 Policy “wishlist”



What is on your COVID-19 policy initiative wish list?

Further macroeconomic stimulus, targeted investment incentives, direct Government support (e.g. the targeted and tapered JobKeeper), and tax reform are the key areas where survey respondents are looking to Government to help pave the way for recovery.

Reflecting the current state of the D&O insurance market (particularly for side C cover), half of our survey respondents are also seeking measures to address the cost and scope of D&O insurance coverage – which will clearly be a key ingredient to help facilitate (or at least mitigate the risk of corporate Australia not pursuing) appropriate entrepreneurial risk-taking in seeking to rebuild and grow businesses and raise capital.

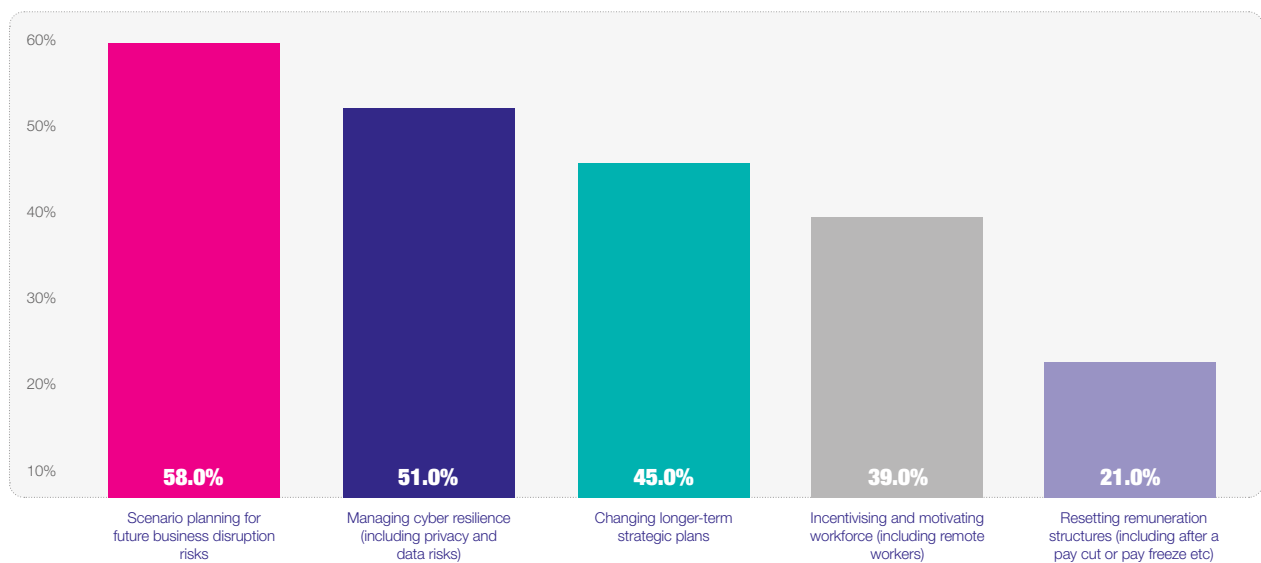
Several survey respondents noted the rare catalysing opportunity of COVID-19 to potentially reshape the Australian business landscape. “Cut red tape” and “overhaul of our awards schemes,” two respondents urged. Another provided a comprehensive outline of the possible future if appropriate action is taken: “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.”

These survey responses highlight a distinction between an organisation’s capacity to respond to the immediate effects of a crisis (reasonably within their control), and the ability and willingness of Governments and other stakeholders across Australia to tackle some of the more challenging reform issues that have been lingering for many years, and to implement more permanent policy and regulatory improvements.

It is hoped that key stakeholders will be able and willing to leverage the more mature and collaborative environment facilitated through National Cabinet and other constructive approaches taken by regulators such as ASIC, the ACCC and ASX, to realise some of these goals.

An eye to the “new normal”

What the future holds – in light of COVID-19, and thereafter - is clearly a question on the minds of directors and senior leaders across corporate Australia.



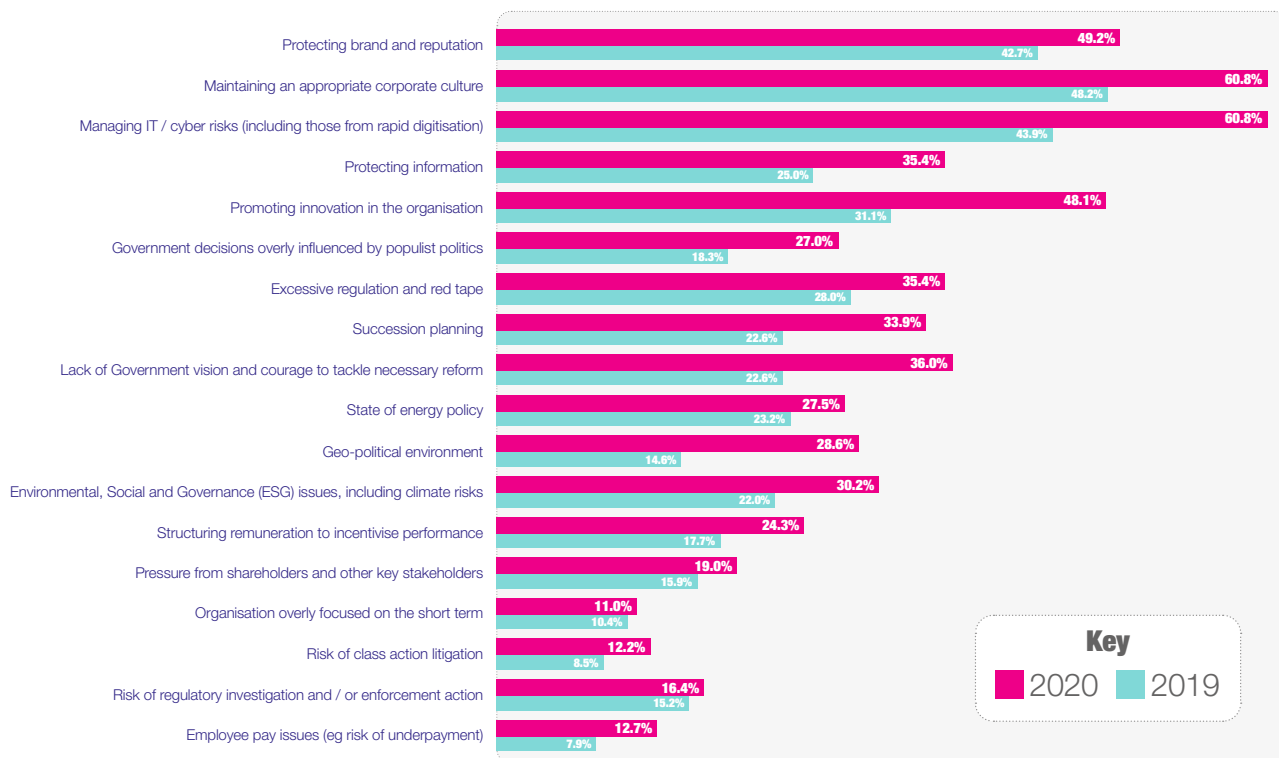
Of the issues listed, which do you consider currently represent the material area(s) of concern for your Board(s)? **COVID-19 specific.**

As noted above, nearly 90% of survey respondents indicated that they believe that their organisation is either well or very well placed to transition to a “new-normal”.

The responses to our question regarding the material areas of concern in light of COVID-19 provide some insights into areas of focus and action which may underpin that confidence. There is a clear intent to face into the current uncertainties - through scenario planning for future business disruption risks, managing cyber-security resilience and the risks associated by increasing reliance on digital technology, and changing longer-term strategic plans.

In 2020, boards are more concerned about everything

Many of the responses and sentiments expressed through our pandemic pulse check survey are consistent with the overarching themes identified in our last *Directions* pulse check survey, which was conducted in November 2019, but in many cases amplified. Now as then, maintaining an appropriate corporate culture, protecting brand and reputation and managing IT/cyber risks remain the top priorities.



Of the issues listed, which do you consider currently represent the material area(s) of concern for your Board(s)? **Business as usual.**

Emphasising the centrality of cyber resilience and cyber security to modern corporate stewardship, the proportion of survey respondents who rated managing IT & cyber risks (including those from rapid digitisation) as a key concern was approximately 61%, up from 44% last November. As a result, managing IT & cyber risks ranked as being of equal importance to maintaining an appropriate corporate culture. Protecting brand and reputation was ranked third (49%).

Innovation remains the next highest priority, and is on the minds of a significantly greater proportion of survey respondents (approximately 48% vs approximately 31% last November).

The ongoing focus on maintaining an appropriate corporate culture suggests boards and senior leaders are thinking deeply about the role of culture within an organisation to support the ongoing response to issues and challenges raised by COVID-19 – in particular operating in the current environment, supporting the ongoing adaptation and implementation of strategic plans and building digital and organisational resilience.

This suggests there is a heightened focus on what boards *can* seek to control, in the context of an operating environment where there are a number of dynamics which simply cannot be controlled (including the next phases of the pandemic, as well as geopolitical risks).

The “step-up” moment

Finally, we thought it would be worth noting the general sentiment that, perhaps contrary to what might have been expected at the beginning of 2020, stakeholders across Government, regulators, corporate Australia and the community have collectively “stepped up” to the challenges posed by COVID-19 and demonstrated a capacity and willingness to collaborate and adapt, and to offer support and solutions.

This can be contrasted to our sense, drawn from our Directions pulse check conducted in November 2019, that business was at that time still “searching for trust”. As part of that survey, respondents commented on the Hayne Royal Commission’s negative impact on public attitudes towards business, observing that the community wanted to “*apply very specific findings for the financial services industry to the business world at large*”.

Now, Australia’s political and business leaders approach a mammoth task with greater public goodwill and an appreciation of their respective roles and contributions in supporting and rebuilding the nation’s prosperity. The immediate response of banks and others to help alleviate some of the burdens, and solve some of the problems, triggered by COVID-19, has clearly played a role in re-establishing and building the trust of the community. The challenge now is building the road out.

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About the survey

King & Wood Mallesons' Directions survey was conducted between 5 – 23 August, 2020.

The results discussed in this and the accompanying articles are drawn from the responses of 195 director and senior executive clients.



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