ON BOARD

Current issues for non-executive directors

SPECIAL EDITION

KING&WOOD MALLESONS
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Trust has peaked as the most essential intangible asset of a business, and for CEO's, building trust is the top priority. However, in recent years, trust in all institutions has decreased.

How is the concept of trust affecting Australian companies and Boards?

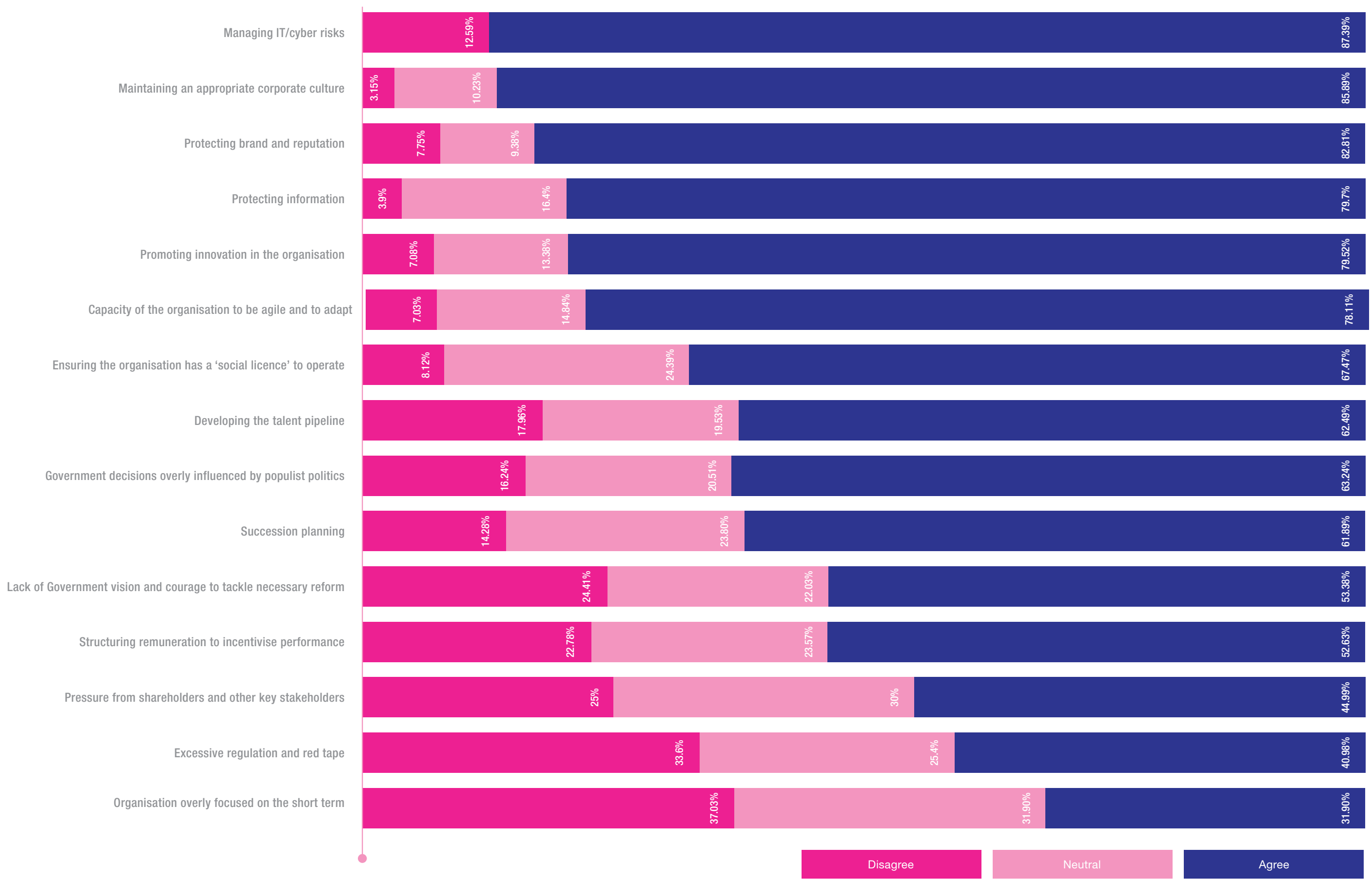
FINGER ON THE PULSE
SEARCHING FOR A NEW RECIPE FOR TRUST?

In our latest Directions survey which was conducted earlier this year, we asked directors and senior executives to indicate the top issues of concern to the Boards of their organisations. The issues of greatest concern were:

1. Managing IT / cyber risks
2. Maintaining an appropriate corporate culture
3. Protecting brand & reputation
4. Protecting information

This result is markedly different from our Directions survey results from prior years.

Of the issues listed below, which do you consider represent the material area(s) of concern for your Board(s)?



For example, as reported in our 2016 Directions Report, the top issues of concern at that time were:

1. Maintaining sufficient focus on strategy and performance over compliance matters
2. Identification and assessment of opportunities
3. Capacity of the organisation to be agile and adapt
4. Access to funding and cash flows
5. Developing the talent pipeline / succession planning

In prior years, there was a strong recurring focus on, and sense of frustration in relation to, regulatory burdens and red tape.

At a time when digital technology is rapidly transforming capabilities to capture, analyse, use, store and share data, and organisations of all kinds are being challenged to "disrupt or be disrupted", and to "innovate or die", it is hardly surprising that the dual dilemmas of managing IT / cyber risks and protecting information are top of mind.

More interesting is the predominance of maintaining an appropriate corporate culture (a concept that was first introduced in the early 1950's and became more widely known and used in the 1980's and early 1990's) along with protecting brand & reputation.

What is trust and why does it matter now?

At its simplest, trust (defined as "reliance on the integrity, justice, etc., of a person, or on some quality or attribute of a thing", or "the obligation or responsibility imposed on one in whom confidence or authority is placed"[1]) has become a "critical strategic asset of a business."[2]

This is reflected in business valuations globally, which show an increasing portion of a business' value residing in intangible assets (such as brand, market position, business systems, knowledge), increasing from 30% in the 1950's to now closer to 62% globally.[3]

A business' success in each of these areas is closely linked to how well the business is trusted by its various stakeholders. Trust has become an increasingly important asset as people have become displaced by digital technology and automation – "digitalisation has distanced us even further from the human face of business"[4].

Although trust is intangible, it translates into tangible value for the business in the following ways:

- if employees trust their employer, they will contribute greater discretionary effort, and be more creative, innovative, productive and efficient – this translates into better and more competitive products and services, lower costs and lower employee turnover;
- if customers and suppliers / distributors trust the business, they will remain loyal, even at difficult times, because they value their relationship with the business – it is not merely another transaction; and
- if the community grants the business a social licence to operate - this translates into low(er) and less frequent conflict between the stakeholders and the business, which helps the business to attract talent more easily, enhances the social standing of its people, and facilitates a better standing with regulators[5].

Conversely, a "trust deficit will eventually result in slow long-term growth prospects regardless of favourable macro indicators"[6]. This is why building trust should be the key priority for CEO's and their organisations.[7]

The current state of trust

As reported in the 2018 Edelman Trust Barometer[8], there has been an observed decline in trust across institutions in recent years, with Australia having one of the most anxious and least trusting populations across the 28 countries included in the survey.

Furthermore, a lack of confidence in media, particularly the platforms that service the 24 hour news cycle, is increasing scepticism about the truthfulness and underlying ideology of the content. It is increasingly difficult to navigate the "white noise of the twittersphere", and to verify the accuracy of what we are being told.

This lack of confidence in the media is undermining trust in government and business. Across a wide range of organisations, brand and reputation and the closely connected concept of trustworthiness have become casualties in the face of:

- concerns about governance oversight, failures in compliance, and unethical behaviour – regulation and traditional governance practices do not appear to have kept pace with, or adapted to, the new technologies and business models that have emerged from the disruptive opportunities presented by digital technology. It is becoming increasingly apparent that some of these new players are using a different playbook;
- heightened scrutiny by "the crowd" – we demand and share more information and opinions, but the mode of engagement is more likely to be via the "echo chambers" of social media and other technology platforms, rather than through human interaction; and
- overriding uncertainty about the truthfulness of information and the integrity of the players who are creating or disseminating it.

Interestingly, while organisations are no longer trusted, "voices of authority" such as technical experts, academics and CEO's are regaining some credibility, and CEO's have more credibility than Boards (although still less credibility than the person next door).

Lessons from the humanising influence of the CEO (and other leaders)

While CEO's are typically a member of the Board, they tend to be the (corporate) face of the organisation. In Australia, CEO's have recently received credit for being more front-footed in publicly acknowledging and responding to poor conduct by their organisations, and taking a genuine stance on public issues such as marriage equality. This has added a humanising dimension that has assisted customers, employees and the broader community to better identify with those organisations and what they stand for.

Trust is no longer about trusting the "institution", but rather trusting the individuals within the institution - "the more individualised and personalised the interaction, the more they are trusted ... In contrast, the more institutional the interaction, the less they are trusted".[9]

A leadership that is perceived as trustworthy by the community, and a business strategy that focuses on creating a connection beyond an individual transaction are at the foundation of this new trust.

It is vital that Boards, directors and other leaders are trusted, given that the Board has a key governance function to oversee and supervise the business and affairs of an organisation.

It is also important to recognise and harness the multi-faceted touchpoints between an organisation and its customers, suppliers and the community which can contribute to a "distributed trust"[10]. Trust is not merely a top down relationship.

Our new recipe for trust

What is required now for companies and businesses to be and remain successful in the longer-term, in the face of increasingly complex social and environmental challenges and continuing technological change, is to offer something more than just products and services to customers, jobs to employees and returns to shareholders. The average Australian believes that organisations should contribute to the community in which they operate, and expect organisations to act "ethically" and put the customer before profit.

"Trust and social cohesion are necessary ingredients for the long-term success of capitalism… the next step is a consensus between companies and investors on a common path of action that will lead to restored trust..."[11]

In addition to protecting information, safeguarding privacy, and managing IT/cyber risks, companies and businesses will need a well-defined and genuine purpose (or statement of what the organisation stands for) which is communicated clearly to enable the creation of deeper connections with customers, employees, investors and the community that transcend a single transaction or interaction.

This approach should facilitate greater loyalty and personal attachment through the identification of common values and expectations. Its merit is illustrated by the Earned Brand Survey in Australia which showed that 58% of respondents falling under the millennial group make their purchasing decisions based on a business' stance on social and political issues.[12]

Trust would be further enhanced by the CEO's, Chairmen and other leaders, on behalf of their organisations, being seen to personalise and articulate the purpose and values of their organisations, explain how the purpose and values apply to the decisions and actions of their organisations, and demonstrate empathy and accountability when things go wrong.

In the following articles, we examine:

- the role of culture to facilitate good conduct and to address poor conduct – key ingredients to winning and keeping trust
- the role of corporate social responsibility (CSR) initiatives to demonstrate an organisation's values, purpose and trustworthiness.

1] Macmillan Publishers Australia, Macquarie Dictionary (at 27 March 2018) <https://www.macquariedictionary.com.au/features/word/search/?word=trust&search_word_type=Dictionary>.
[2] Deepa Prahalad, 'Why Trust Matters More Than Ever for Brands', Harvard Business Review (online), 8 December 2011 <https://hbr.org/2011/12/why-trust-matters-more-than-ev>.
[3] Prahalad, above n 2.
[4] Greg Medcraft, Chairman, Australian Securities and Investment Commission, 'The importance of trust in a digital world' (Speech delivered at the Stockbrokers and Financial Advisers Conference , Sydney, 25 May 2017.
[5] Leeora Black and Sara Bice, Defining the Elusive and Essential Social License to Operate (22 August 2011) Australian Centre for Corporate Social Responsibility <http://accsr.com.au/defining-the-elusive-and-essential-social-licence-to-operate/>.
[6] Prahalad, above n 2.
[7] Richard Edelman, 2018 Edelman Trust Barometer (2018) <https://cms.edelman.com/sites/default/files/2018-01/2018%20Edelman%20Trust%20Barometer%20Global%20Report.pdf>.
[8] Ibid.
[9] Interview with Steve Spurr, Chief Executive of Edelman Australia (Joanne Gray, 'Trust in CEOs climbs, but trust in business slides further: Edelman Trust Barometer, 5 February 2018).
[10] Rachel Botsman, 'We've stopped trusting institutions and started trusting strangers' (Speech delivered at the TedSummit, Banff, 29 June 2016).
[11] "Some Thoughts for Boards of Directors in 2018", Martin Lipton, Steven A Rosenblum, Karessa L Cain, Sabastian V Niles, Vishal Chanani and Kathleen C Iannon, 30 November 2017 at 8.
[12] Joanne Gray, 'Alan Joyce, Twiggy Forest and Mike Cannon-Brookes won't be last activist CEOs', Australian Financial Review (online), 12 January 2018 <http://www.afr.com/opinion/joyce-forrest-and-cannonbrookes-wont-be-our-last-activist-ceos-20180108-h0f54e>.

A FEW BAD APPLES?

Managing corporate culture has been top of mind for Boards, management and regulators in recent years. The global financial crisis showed that failures in corporate culture can undermine trust and confidence in organisations and in the financial system. In addition, in light of some recent high profile corporate scandals, the corporate culture debate has increasingly been linked to how companies conduct their business and whether they are meeting the broader ethical standards expected of them in order to maintain their "social licence" to operate.

Identification and development of subcultures

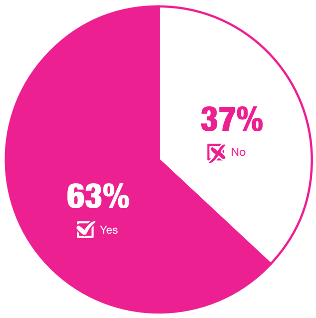
Corporate culture, as a concept, is difficult to define. There is no "one size fits all" model for determining what is a "good" corporate culture — "culture, like beauty, can be in the eyes of the beholder". [13] ASIC defines culture as the "mindset of an organisation" and the '"unwritten rules" for how things work'.[14] Colloquially, corporate culture has been described as "the way we do things around here".[15]

Subcultures, on the other hand, are a distinct set of shared values and behaviours within an organisation which are noticeably different from those in other areas of the organisation.[16] A recent study shows that culture may vary at the business-unit level or even within a business line.[17]

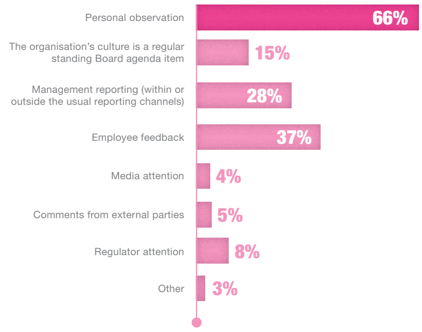
It goes without saying that all organisations will have subcultures, and it is expected that in large organisations subcultures will naturally develop and should be welcomed if they are consistent with an organisation's desired culture. ASIC ascribes the development of subcultures to the fact that employees' behaviour is more likely to be influenced by the conduct of direct managers and /or top performers in their business unit than it is by directors or other senior leaders of the organisation.[18] Of those we surveyed, 63% had identified subcultures within their organisation, with the existence of subcultures coming to our survey respondents' attention largely through personal observation (66%), employee feedback (37%) and management reporting (within or outside the usual reporting channels (28%)).

An organisation's culture is its set of shared values or assumptions that support the underlying mindset of the organisation.

Have you identified any sub-cultures within the organisations of which you are a director/executive?



If yes, how did this sub-culture come to your attention?



Inconsistent subcultures

The orthodox view is that Boards are ultimately responsible for defining and overseeing an organisation's corporate culture, with management responsible for implementing and monitoring the desired culture, as set and defined by the Board. A subculture only becomes problematic if it does not align with the desired overall organisational culture.

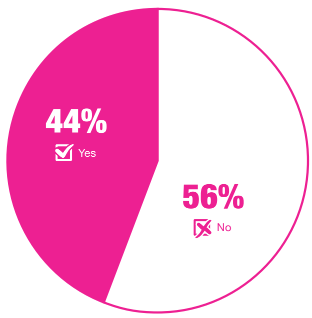
Recent corporate culture failures have been blamed on the prevalence of inconsistent subcultures within organisations (as opposed to an identified failure of an organisation's overall culture). That is, the failures have been blamed on a "few bad apples".

How inconsistent subcultures arise will vary from organisation to organisation. It may be as a result of an organisation putting significant focus on getting the tone right at the top, but failing to realise that by the time it gets to the middle it has become "white noise".[19] A standing Board agenda item on managing corporate culture is of little value if there are ineffective processes in place within the organisation to ensure that the desired culture is being communicated and supported throughout the organisation. For example, management may not be effectively communicating the desired culture that has been set by the Board, or there may be a failure in human resources functions or misalignment in remuneration structures and incentives. These are key in shaping, reinforcing or changing an organisation's corporate culture.

For those organisations who conduct internal and/or external audits to assess how culture is being managed, there may be a failure to "correct" cultural issues identified during these audits — 56% of our survey respondents noted that their organisations did not have any formal mechanisms in place to identify and address inconsistent subcultures.

An organisation's culture is its set of shared values or assumptions that support the underlying mindset of the organisation.

Are there formal mechanisms within the organisations of which you are a director/executive to identify/address inconsistent sub-cultures?



Assessing accountability

Who should be accountable if an inconsistent subculture results in a poor outcome for investors and/or consumers? Should regulators step in and "punish" Boards and/or senior management, or should the blame primarily lie with the "rogue" individual(s) responsible for the conduct in question?

As the concept of corporate culture is an inherently slippery and subjective concept that cannot readily be objectively measured, Australian regulators have repeatedly stressed their unwillingness to impose "black letter law" on culture. However, regulators will not turn a blind eye, and if organisations do not respond (or are not seen to respond) appropriately to cultural issues, regulators may feel compelled to step in. An example is the current focus of Australian regulators on the financial services sector, evidenced by:

the proposed Banking Executive Accountability Regime, set to commence on 1 July 2018 for large authorised deposit-taking institutions (ADIs), which among other things, will seek to strengthen the responsibility and accountability framework of ADIs by making senior executives expressly responsible for specific activities of the bank, and requiring bonuses to be deferred in certain circumstances. This regime will also give APRA new powers to investigate potential breaches, and to disqualify accountable persons for breach; and

the Hayne Royal Commission, which is currently inquiring into misconduct in the banking, superannuation and financial services industry.

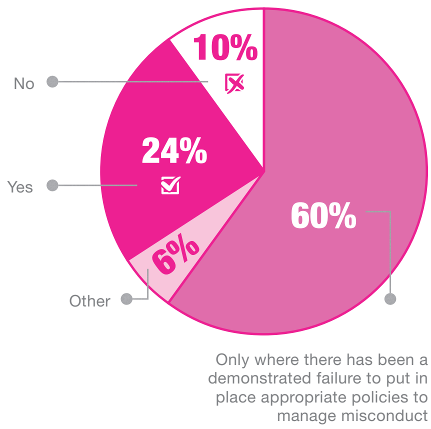
There are differing views as to whether regulatory intervention is a good thing or bad thing. While some studies conclude that regulation is, theoretically, one of the few means to prevent cultural failings in sectors such as the financial services sector,[20] others suggest that stakeholders are more likely to respond positively to cultural improvements that are championed and implemented at an organisational level.[21] This latter view is endorsed by the new ASIC Chairman, James Shipton, who in the context of the banking industry, has said that, while he will continue to keep pressure on banks to improve their conduct (as was done by his predecessor, Greg Medcraft), he "prefer[s] the industry to self-regulate and 'not wait for regulatory catalysts'".[22]

The risk with regulation is that regulators may not always get it right, particularly where the regulators are acting on different mandates. In Australia there appears to be a perceived overlap between regulatory jurisdictions in some areas — for example, while APRA targets "risk culture", which is focused on attitudes towards risk in the financial services sector and its implications for systemic stability, ASIC, on the other hand, is concerned with "conduct risk", where culture motivates misconduct that is directly harmful to consumers and investors.

Nevertheless, recent regulatory focus on corporate culture, particularly in the financial services sector, puts all other sectors on notice, and may be a catalyst for organisations to take the lead on proactively improving corporate culture. As noted above, there is increasing support for the notion that each business needs to establish and maintain a "social licence" to operate, with organisations expected to maintain trust and the ongoing approval of key stakeholders, such as investors and customers. This expectation creates an opportunity for savvy businesses to compete on grounds of culture. Through cultural leadership, market participants can avert the need for regulatory intervention by demonstrating their ability to proactively address risk and promote healthy cultures within their organisations. Such a focus has the potential to provide private enterprises with the flexibility to operate, innovate and compete creatively, which in turn will have positive outcomes for consumers, employees and investors.

When it comes to personal accountability, our survey respondents had mixed views as to whether an organisation's directors or senior management should be held personally accountable for an employee's misconduct if the misconduct can be directly attributed to an organisation's corporate culture. 24% of our survey respondents agreed, 10% disagreed, while 60% were of the view that directors or senior management should only be held personally responsible where there has been a demonstrated failure to put in place appropriate policies to manage misconduct. We asked a similar question in our survey for our 2016 Directions Report, and the sentiment appears to have changed since then, in that fewer survey respondents are now of the view that directors or senior management should be held personally responsible in these circumstances.

Do you believe that an organisation's directors or senior management should be held personally accountable for an employee's misconduct where such misconduct can be directly attributed to the organisation's corporate culture?

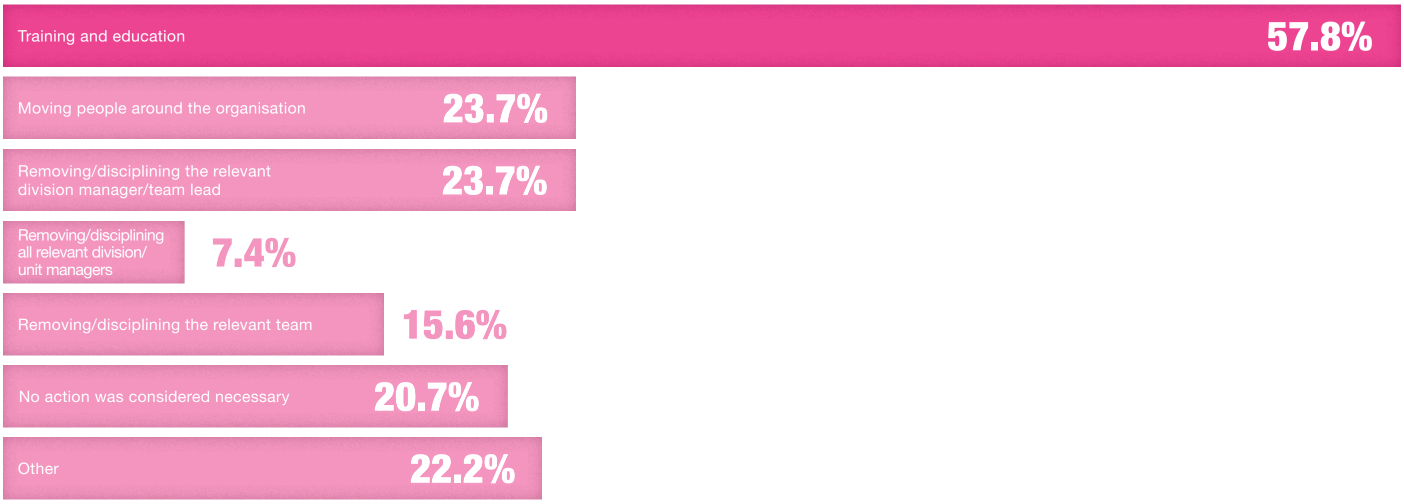


From a stakeholder perspective, media coverage of high profile cultural failings suggests that while the public expects the Board and management to take responsibility for wrongdoing within the organisation, the strict legal implications of that response are often of secondary importance from a reputational perspective. It is more likely that the community will respond favourably to the Board and executives "owning mistakes" through a proactive personal response from them.

Survey results also indicated that "training and education" is the most common method of addressing cultural inconsistencies within organisations. This reveals a strong preference for constructive and collaborative approaches. Other methods identified by our survey respondents included moving people around, and removing/disciplining the relevant division manager/team lead. Some survey respondents also suggested that staff should be invited to help shape cultural change through open discussion. In fact, one respondent objected to choosing any category narrower than having an “honest discussion”, with another suggesting that there needs to be “constant communication”. Other survey respondents also felt that identifying the root cause and considering the precise ways in which the cultural inconsistency was causing harm is a crucial first step.

These responses suggest those on the ground are cognisant of the risk of inconsistent subcultures and understand that redress needs to be tailored to meet the specific circumstances. This may also explain the shift in survey responses, when compared to our survey for our 2016 Directions Report, in assessing whether an organisation’s directors or senior management should be personally accountable for an employee’s misconduct where it is linked to poor organisational culture.

Where an inconsistent sub-culture was identified, how was this addressed?



Where to from here?

Corporate culture is more about people than it is about rules. Ensuring a healthy culture within an organisation should not mean mountains of red tape and/or armies of compliance staff. As the tone from the top will not automatically resonate throughout an organisation, the leaders at different levels will need to adapt and translate the tone as it is communicated throughout the organisation.

Boards and management also need to be cognisant of the subcultures that may exist within their organisations, and embed processes to address any behaviour that does not align with the overall organisational culture and values. At the same time, Boards and management need to balance this oversight with promoting appropriate autonomy and innovation.

This multi-faceted approach should allow positive subcultures, consistent with overall entity level culture, to emerge in order to accommodate and support individual employee strengths and immediate customer demands, and specific business unit/team objectives. This approach should in turn promote a greater trust and loyalty among stakeholders, translating to positive business outcomes and shareholder value.

[13] John Price, ‘Outline of ASIC’s Approach to Corporate Culture’ (Speech, AICD Directors’ Forum: Regulators’ Insights on Risk Culture, Sydney, 19 July 2017).
[14] Greg Medcraft, ‘The Importance of Corporate Culture’ (Speech, AHRI Senior HR Directors Forum Luncheon, 17 June 2017).
[15] John Price, ASIC Commissioner, ‘Outline of ASIC’s Approach to Corporate Culture’ (Speech, AICD Directors’ Forum: Regulators’ Insights on Risk Culture, Sydney, 19 July 2017).
[16] Governance Institute, Managing Culture: A Good Practice Guide (December, 2017) 16.
[17] Elizabeth Sheedy and Barbara Griffin, ‘Risk Governance, Structures, Culture, and Behaviour: A View from the Inside’ (2018) 26 Corporate Governance International Review 4.
[18] Greg Medcraft, ‘The Importance of Corporate Culture’ (Speech, AHRI Senior HR Directors Forum Luncheon, 17 June 2017).
[19] James Thomson, ‘ASIC’s Greg Medcraft Says Bank “Subcultures” Failing to Get the Message’, Australian Financial Review (Sydney, 2 January 2017).
[20] André van Hoorn, ‘Organizational Culture in the Financial Sector: Evidence from a Cross-Industry Analysis of Employee Personal Values and Career Success’ (2017) 146 Journal of Business Ethics 451.
[21] See Greg Medcraft, ‘Directors’ Duties and Culture’ (Speech, Law Council of Australia, Business Law Section, Corporations Workshop, Gold Coast, 19 June 2016); John Price, ‘Culture, Conduct and the Bottom Line’ (September 2015) <http://asic.gov.au/regulatory-resources/corporate-governance/corporate-governance-articles/culture-conduct-and-the-bottom-line/>; Greg Tanzer, ‘The Importance of Culture to Improving Conduct within the Financial Services Industry’ (Speech, Thomson Reuters’ Third Australian Regulatory Summit, Sydney, 27 May 2015), citing research by Harvard Business School and Forbes.
[22] Jonathan Shapiro and James Eyers, ‘New Corporate Cop Shipton Pledges to Close “Trust Gap”’, Australian Financial Review (Sydney, 19 March 2018).

THE IMPORTANCE OF CSR IN **BUILDING TRUST**

More than ever, it is of utmost importance that organisations are able to demonstrate that they are trustworthy. But how can organisations do this?

One of the key ways that organisations can demonstrate their trustworthiness to stakeholders is to utilise corporate social responsibility ("CSR") initiatives. "By attending to the interests and issues of a wider set of stakeholders, corporations can maximise their intangible assets such as relationships, goodwill, reputation, trust and opportunities for innovation".[23]

What is CSR?

CSR is difficult to define precisely but "includes the recognition by companies of their impact on all stakeholders (including social, environmental and employee related impacts) and the creation by companies of mechanisms to respond to those impacts effectively".[24] The International Organization for Standardization's Guidance Standard on Social Responsibility defines CSR as "the responsibility of an organisation for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour".[25]

CSR can be viewed as an economic necessity which creates public value at the same time.[26] Companies successfully engaging in CSR adopt a stance of "proactive stewardship" and "factor into their forward strategies activities that manage the challenges and risks to the community and capture the opportunities that community engagement can bring. To be valid, these activities must deliver benefits both to the community and the shareholders of the corporation."[27]

Whilst different stakeholders have different CSR focuses, all stakeholders have an expectation that the behaviour and responsibilities of an organisation go beyond the provision of jobs, and delivery of products and services.[28] Ultimately, stakeholders want to know what an organisation stands for or, essentially, what its purpose is - this must be broader than the organisation's immediate business mission.

How can organisations utilise CSR to demonstrate their purpose (and ultimately their trustworthiness)?

1. Reporting

Organisations are able to demonstrate their commitment to particular CSR goals by utilising reporting regimes (such as those mandated for particular organisations under the Corporations Act 2001 (Cwlth), the ASX Listing Rules and The National Greenhouse and Energy Reporting Act 2007 (Cwlth)). Whilst companies and other organisations have statutory obligations to report against various criteria, some entities are increasingly going beyond what is statutorily required to be disclosed and are voluntarily disclosing information such as membership of industry bodies and the basis for determining that membership, fees paid to industry bodies, and passive investment strategies. For example, some entities now disclose how their policies on climate change differ from those industry bodies of which the entities are a member[29]and some entities report when they have divested themselves of particular securities if those securities are issued by organisations which are actively involved in the fossil fuel industry (even though those securities are held as a passive investment).

It is clear that some stakeholders see a close link between the nature of reporting and trustworthiness. For example, some large investment managers have been reported as saying that they will vote against resolutions if "company disclosure, practice and board governance structure were found to be inadequate…. [but] abstain on resolutions if companies have demonstrated progress or are receptive to .. feedback during the course of engagement."[30]

2. Codes of conduct

Organisations are also able to demonstrate commitment to particular CSR values through the adoption of, and compliance with, appropriate codes of conduct and policies (such as sustainable supply chain codes of conduct and anti-bribery policies). However, stakeholders have become increasingly wary of lip-service. This is particularly the case where organisations continue to act in a different way to their publicised codes of conduct and policies. However, an effective code of conduct or policy can be a useful way to demonstrate that an organisation is "walking the talk" and therefore trustworthy.

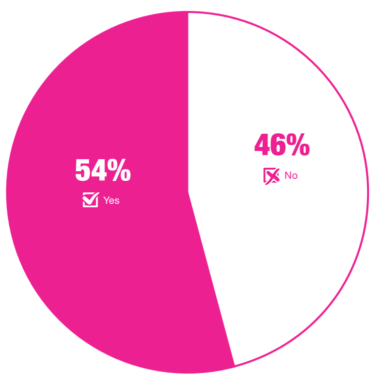
The corporate affairs function has become increasingly important in this period of waning trust. An effective corporate affairs function can be invaluable to an organisation seeking to demonstrate trustworthiness by developing a "proactive corporate narrative".[31]

3. Responding to information requests and requisitions

An organisation's response to information requests is another important way that it can demonstrate its commitment to CSR, and its broader purpose and trustworthiness. In particular, if an organisation's response to a request for information indicates that it shares the stakeholder's concern in relation to that issue, the stakeholder may be more likely to trust the relevant organisation.

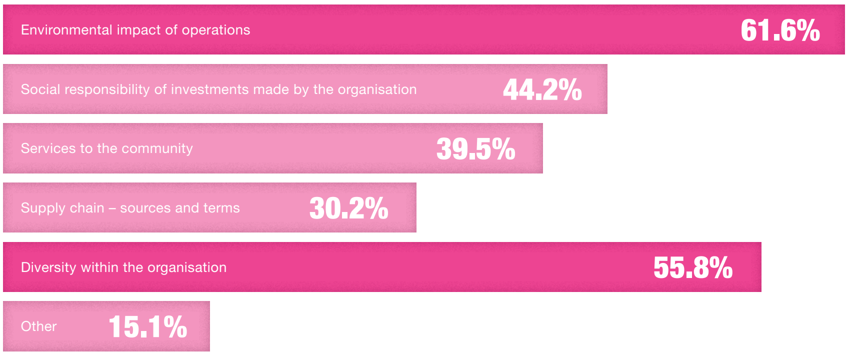
There are more requests for information being received by organisations.[32] 54% of our survey respondents indicated that their organisations had received requests for information from stakeholders in relation to the organisation's commitment to CSR.

Have any of the organisations of which you are a director/executive received any requests from their shareholders/members and/or other third parties to provide more information in relation to the organisation's commitment to corporate social responsibility (e.g. seeking further information on environmental policy or supply chain logistics)?



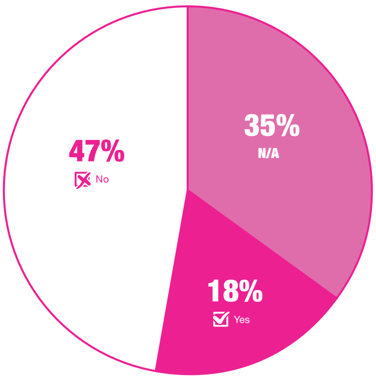
61.6% of those information requests related to the environmental impact of the organisation's operations. Our survey respondents indicated that as a whole their organisations respond to information requests either personally or at the AGM.

If your organisation has received requests for additional information, what has this related to:

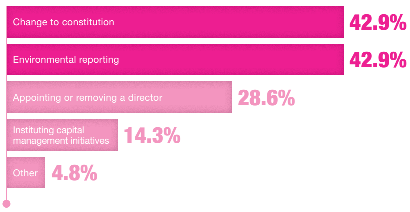


During the 2017 AGM season, there was a large increase in the number of requisitions received relating to CSR matters. 18% of our survey respondents indicated their organisations had received a requisition from shareholders/members with 42.9% relating to each of environmental reporting or changes to the constitution.

If any of your organisations hold AGMs, have any of the organisations received any requisitions from shareholders/members?



If yes, what was the content of the requisition?



If so, how did your organisation respond to the requisition?

47.4% of those requisitions were put before the relevant AGM.

Further a number of other listed companies such as, Commonwealth Bank of Australia, Woolworths Limited, BHP Billiton Limited, Oil Search Limited, Origin Energy Limited, Santos Limited and Downer EDI Limited, were served with requisitions in relation to their 2017 AGMs. The movers of these requisitions have been a mix of interest groups and the requisitions mainly relate to CSR issues (such as supply chain issues and environmental issues).

None of these resolutions were passed and a number were withdrawn prior to the meeting. However, it is worthwhile noting that:

- a comparatively larger number of votes than expected were cast in favour of these resolutions: 10% of votes were cast in favour of the resolution requisitioned at the BHP AGM with 5% abstaining, 20% of votes were cast in favour of the resolution requisitioned at the Oil Search AGM and 14% of votes were cast in favour of the resolution requisitioned at the Origin AGM; and
- the shareholders supporting these resolutions included some of the larger industry funds such as CBUS and HESTA, as well as Deutsche Asset Management, Morgan Stanley and CPPIB.[33]

This demonstrates that CSR resolutions are being supported by a larger number of influential shareholders and can no longer be discounted as the realm of a small "fringe". For example, Deutsche Asset Management has commented that if a proposal is "transparency related, and helps reduce environmental and social risks, then we support it".[34] This trend is similar to what is occurring in the USA, where certain requisitions are being supported by increasing numbers of shareholders, including large institutional investors such as Black Rock and Vanguard.

We consider that there will continue to be an increase in information requests as stakeholders seek to be able to test and assess the broader "purpose" (and ultimately, the trustworthiness) of organisations. Demonstrating an understanding of, and an aligned values system in relation to, important social and environmental matters should assist with this, and therefore strengthen stakeholders' support and engagement.

23] Australian Centre for Corporate Social Responsibility, What is CSR? <http://accsr.com.au/what-is-csr/>.
[24] Business Council of Australia, Submission to the Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into Corporate Responsibility and Triple-Bottom-Line Reporting, October 2015, 7.
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