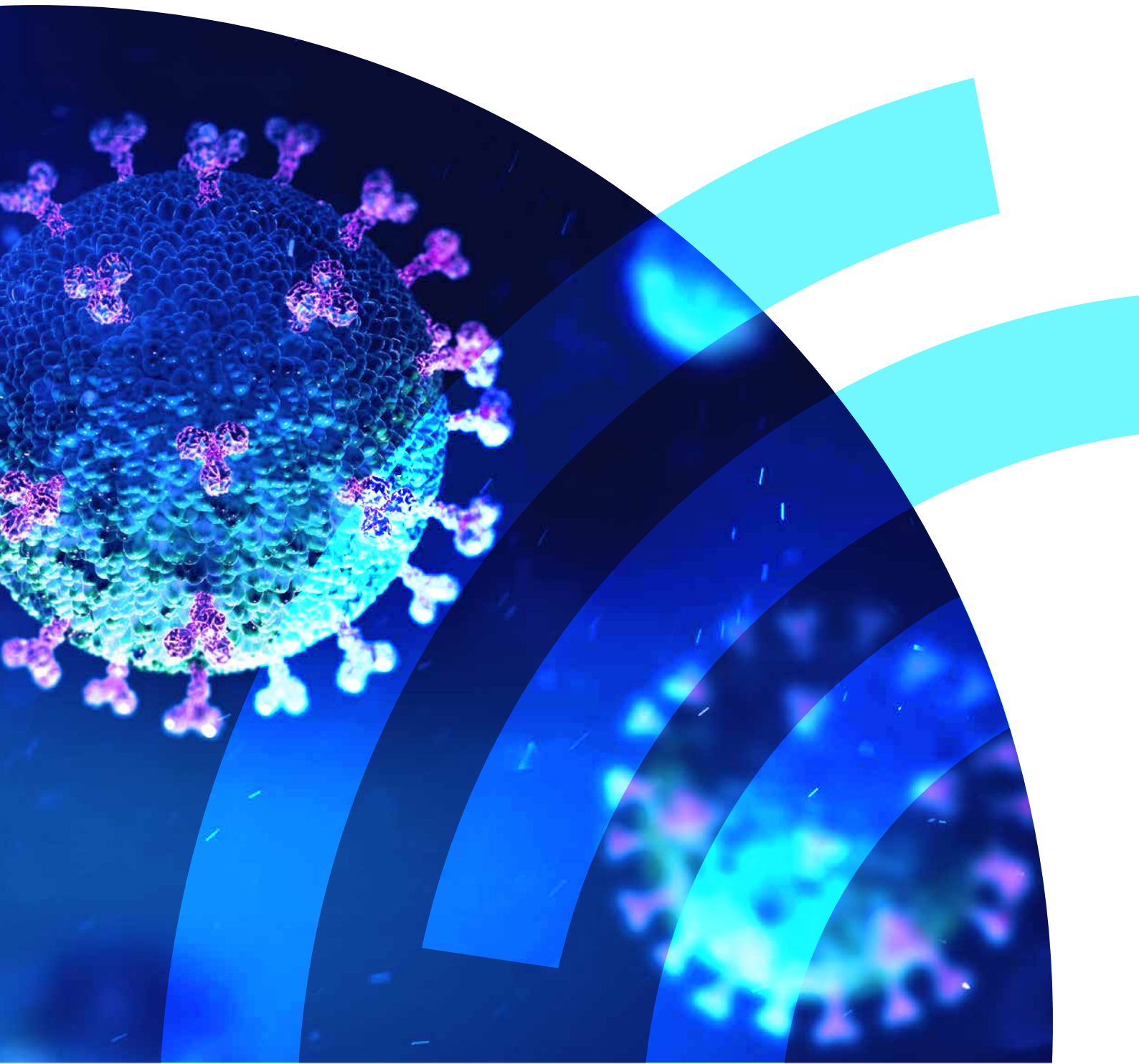# Chartered Governance Institute

The impact of Covid-19: a multi-jurisdictional assessment

October 2022

About The Chartered Governance Institute

The Chartered Governance Institute is the premier global qualifying organisation for professionals aspiring to become a Chartered Secretary and/or a Chartered Governance Professional. With over 130 years of history, we assist company secretaries, governance advisers, non-executive directors and others in the development of their skills, knowledge and experience. The Institute is an international organisation with nine national institutes in its network and 30,000 members living and working in over 80 countries. Most importantly, it brings its influence to bear on international trade bodies, governments, regulators, non government organisations and companies to represent the views and current thinking of those involved in governance.

The Institute's mission is to be the best explainer, the best advocate, the best educator and the most active organisation in the promotion of good governance internationally. Our members hold positions of responsibility in the field of governance across a wide range of entities. All of our members share a common interest in the promotion of excellence in governance.

The impact of Covid-19: a multi-jurisdictional assessment

Thought Leadership Committee members

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- Catherine Maxwell (Australia)
- Rosanne Howard (New Zealand)
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- Gertrude Takawira (Policy Advisor)

President's Foreword

The Thought Leadership Committee (TLC) of the Chartered Governance Institute (the Institute) has observed the dramatic challenges stemming from COVID-19. The impact has been profound but has also demonstrated that the Institute's members and their local Divisions have had different experiences during the pandemic. Our members have been affected to varying degrees in terms of their lifestyle, their interaction with friends and family, and how they and their organisations have developed new ways of working.

In governance terms, these include regulatory changes resulting from COVID-19, which have emerged in different countries, in different timeframes and different ways, for example, in relation to how we conduct company meetings. As a global governance body, the Institute, through its nine Divisions, decided to track these emerging developments to provide some perspectives on what is happening on the ground. While it is too early to tell what the full impact of the pandemic will be on the way we and our organisations work, there are enough examples around the world to have a sense of what the future will look like.

This review paper summarises the practical and very real changes that have occurred in a number of the Institute's nine Divisions. The paper is structured under 10 areas namely: a ban on public gatherings, virtual or hybrid meetings, flexible work, career development, gender balance, fairness, technology, culture, staff retention and attitudes towards risk.

On a positive note, it was observed that the general responsiveness of governments, organisations and individuals to a large extent upheld the fundamentals of good governance. However, the impact of COVID-19 on gender balance was particularly concerning in settings characterised by an unequal gender sharing of domestic and family responsibilities, with women having to attend to household and family chores and office demands simultaneously. The dangers of digital exclusion and its negative impact on governance tenets, such as upholding fairness, were also evidenced in many

jurisdictions particularly for those economically disadvantaged.

I welcome the new members of the TLC. They will strengthen the Committee and their appointment underlines the importance that the Institute attaches to the TLC's work. While the new members had limited opportunity to contribute to this paper, I very much look forward to their future contributions. I thank the staff in our Divisions and the members of the TLC for playing a role in developing this paper, which is a perfect example of what a global organisation such as the Institute can provide. I hope it adds a perspective to what has happened where you live and work, as well as some guidance as we look to the future.

Jill Parratt
International President
The Chartered Governance Institute

Table of contents

Introduction

The implications of COVID-19 for governance will be substantial, long-lasting and of universal impact. In the broad world of governance, as with much else, the post-pandemic world will not be the same as before. While there are many definitions and interpretations of 'governance', at its roots, governance involves the multiple interactions and relationships within a business, or for that matter any organisation, between individuals and groups, be they employees, managers, directors, shareholders (or owners in any form) and all other internal and external stakeholders. In the past those interactions and relationships have been conducted predominantly in the form of physical meetings (whether formal or informal), within a physical place of work, typically an office, and with some demarcation or distinction between the work and domestic spheres. All those elements arose from a number of factors: legal or regulatory (such as the requirement for physical general meetings or physically signed documents), availability of technology, practicality, human nature and force of habit. Post-pandemic these factors will not regain their previous importance, but the extent of change is still to be determined.

It is therefore important for governance professionals to consider how to prepare for and, as far as possible, respond effectively to these changes. The Chartered Governance Institute (Institute) identified 10 areas of relevance to the governance professional: ban on public gatherings, virtual or hybrid meetings, flexible work, career development, gender balance, fairness, technology, culture, staff retention and attitudes towards risk. We then reached out to our nine Divisions to understand how their regions were responding to the challenges of these areas in a post-pandemic world, and indeed how the Divisions themselves were assisting in this response. This review paper presents, and provides insights into, our findings.

Ban on public gatherings

Physical meetings have been integral to governance processes for most if not all of our professional lifetimes and those of the generations before us. The ban on public gatherings because of COVID-19, coincided with the AGM season across the business world. This triggered immediate changes to laws, regulations and practices on how businesses interact within and outside organisations. Responsiveness of stakeholders to the sudden ban on gatherings, upheld the fundamentals of good governance systems, both as temporary measures and an introduction of long term effects. What are some of these responses and subsequent effects?

The 2020 AGM season will be remembered for pandemic-induced disruptions, specifically due to the ban on public gatherings. For example, companies with scheduled annual general meetings had to wait for announcements by governments and regulatory bodies on whether their meetings would be allowed or not. These announcements were constantly changing, which meant that companies were reluctant to make long-term arrangements such as hiring of public venues. Timing of annual general meetings and deadlines for submission of annual reports are regulated by law, which vary from jurisdiction to jurisdiction. In the UK, for example, public listed companies are required to hold meetings within six months following the financial year end, whereas the law in Singapore requires listed companies to hold their AGMs within four months after the year end. In respect of the 2020 AGM season, the Singapore Exchange Regulation granted a waiver to listed entities with a 31 December financial year-end, granting them a further two months to hold AGMs (to 30 June 2020).[1] A comparison of global measures for holding AGMs in different jurisdictions, which was undertaken by a law firm Mayer Brown[2] in September 2020, reported temporary measures to mitigate the impact of COVID-19 on holding of AGMs. The report showed that ten out of twelve countries across Europe, the Americas, Asia and Dubai extended the deadline for holding AGMs as a temporary measure. Some companies responded to these temporary measures and extended their AGMs, other organisations introduced the holding of virtual general meetings and had no need to delay their meetings.

In Australia, when the COVID-19 pandemic first unfolded, many Australian companies were heading directly into the mini-AGM season. This prompted significant confusion about how to organise and hold a shareholder meeting in accordance with the law as well as COVID-19 distancing requirements. Many organisations were also scrambling to execute hard-copy legal documents while faced with strict 'stay-at-home' orders. The Governance Institute of Australia (GIA) lobbied actively for temporary changes to the *Corporations Act 2001* (Cth) to enable virtual and hybrid meetings as well as digital execution of documents and electronic communication with shareholders. The Treasurer made a temporary determination enabling these changes which allowed the 2020 AGM season to proceed. The temporary amendments were extended and for months GIA advocated strongly for them to be made permanent. To further the advocacy campaign, GIA made five submissions in 2021 on various drafts of legislation relating to the use of technology for meetings, execution of documents and communication with shareholders.

The Chartered Governance Institute UK and Ireland (CGIUKI) brought together a working group including the Department for Business, Energy and Industrial Strategy, the Financial Reporting Council (FRC), the Investment Association, the Investor

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1   See Norton Rose Fulbright, 2020, *COVID-19: What Does This Mean for AGMs?*, www.nortonrosefulbright.com/en-zw/knowledge/ publications/316de106/covid-19-what-does-this-mean-for-agms.
2   See Mayer Brown (2020), COVID-19 A comparison of global measures for the holding of AGMs https://www.mayerbrown.com/-/ media/files/perspectives-events/publications/2020/11/covid19a-comparison-of-global-measures-for-the-holding-of-agms.pdf

Ban on public gatherings

Forum, the City of London Law Society and the Quoted Companies Alliance and, with the support of these groups, published four sets of guidance on how companies could comply with COVID restrictions and the law surrounding general meetings.[3] In March 2020, the CGIUK warned companies planning their AGMs to consider contingency plans in light of the spread of the pandemic. These guidelines also encouraged companies to check relevant provisions of the articles of association, to coordinate with registrars and venue providers, and for each company to consider its own circumstances.

Many companies across the world until the ban on public gatherings had only experienced general meetings in a physical form. Limitations and uncertainties caused by the ban led many governments, regulators and companies to consider for the first time laws and regulations enabling virtual or hybrid meetings.

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3   See Slaughter and May and The Chartered Governance Institute, 2020, *AGMs and Impact of COVID-19*, www.cgi.org.uk/assets/ files/pdfs/guidance/agms-and-impact-of-covid-19-web.pdf, www.cgi.org.uk/assets/files/pdfs/guidance/agms-and-impact-of-covid-19-supplement-web.pdf, The Chartered Governance Institute, 2020, *Shareholder Meetings under the Corporate Insolvency and Governance Act 2020*, www.cgi.org.uk/knowledge/resources/share-meet-insolvency-govact2020/smciga20-sign-up and The Chartered Governance Institute, 2021, *2021 General Meetings and the Impact of COVID-19*, www.cgi.org.uk/knowledge/ resources/2021-general-meetings-and-the-impact-of-covid-19.

Virtual or hybrid meetings

While virtual meetings were available pre-pandemic, the lockdowns accelerated the use of this technology. 'Zoom' and other virtual meeting platforms have to varying extents across various jurisdictions replaced physical meetings. Will post-pandemic meetings return to being face-to-face, particularly when legislation has been amended to allow for hybrid or virtual meetings? Visual or physical 'cues' that characterise physical meetings are absent in virtual meetings. How does this impact members or participants?

In Australia, the Corporations Act was amended in February 2022 to enable companies to hold hybrid meetings, if required or permitted under the entity's constitution and consented to by shareholders/members. In addition, constitutions can now be amended to allow for virtual-only meetings. In 2020, GIA released a joint guide with the Australian Institute of Company Directors (AICD),[4] which includes insights into how boards have adapted to virtual meetings, including AGMs. GIA also released several versions of joint guidance with the AICD, the Australasian Investor Relations Association and the Business Law Section of the Law Council of Australia, to reflect the changing regulatory landscape during the pandemic. This guidance highlights the need for companies to ensure shareholders have a reasonable opportunity to participate in AGMs, including opportunities to ask questions, make comments and vote, and also provides tips and suggestions for holding meetings and communicating with shareholders using technology.

The Hong Kong Chartered Governance Institute submitted recommendations to their government for the enactment of emergency regulations for virtual meetings during the pandemic, which ultimately became unnecessary with the easing of the restrictions, but which demonstrated the Institute's relevance to regulators through engagements with them. In Malaysia in early 2020, the Securities Commission and Bursa Malaysia (the Malaysian stock exchange) issued Guidance Notes and Frequently Asked Questions (FAQs) to public companies on the conduct of virtual meetings and provided regular updates. The Companies Commission of Malaysia and Registrar of Societies also gave concessions at the start of the pandemic. Thus, all Malaysian organisations, whether public or private, companies, associations or societies, now have the flexibility to conduct meetings in different formats.

However, South Africa was already well advanced in this area prior to COVID-19. *The Companies Act 71 of 2008* (SA) provides for online shareholder and board meetings, and requires notices of meetings to include the availability of online meeting participation, details on accessing the online meeting and that online access is at the expense of the shareholder or proxy.

United Kingdom law does not generally make provision for virtual meetings. Emergency legislation in 2020 permitted virtual and hybrid meetings, but this ceased in March 2021. The CGIUKI has suggested to the UK Government that the law around virtual and hybrid meetings should be clarified at the earliest opportunity. The CGIUKI has also supported the FRC in the development of good practice guidance for company meetings,[5] published in July 2022, which looks at a number of these issues in more detail.

As frameworks for co-existing virtual and physical meetings become established around the world, entities are seeking to identify what works best for their stakeholders. Governance professionals should therefore encourage flexibility within entities so they can uphold the values underpinning good governance, such as trust, effective communication and balance, while providing flexible ways of attending meetings.

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4   Australian Institute of Company Directors and Governance Institute of Australia, 2020, *Governance Through a Crisis*, www.governanceinstitute.com.au/advocacy/thought-leadership/governance-through-a-crisis-september-2020.
5   Financial Reporting Council, *Good Practice Guidance for Company Meetings*, www.frc.org.uk/getattachment/3501347c-2394-4ec4-94c8-9cd62b62d1fe/FRC-Good-Practice-Guidance-for-Company-Meetings_July_2022.pdf.

Impact of virtual or hybrid meetings

In Australia, the *Corporations Act 2001* requires companies wanting to hold fully virtual shareholder meetings to specifically provide for this in their constitutions. The Act also provides that members should have a reasonable opportunity to participate in meetings, and that meetings must be held at a reasonable time and place or method. During the 2020 Australian AGM season investor groups, including the Australian Shareholders' Association (the retail shareholder representative group), largely accepted the reality of virtual meetings as the only viable format. However, as draft legislation to make these changes permanent was released for comment during 2021, these groups expressed strong opposition to fully virtual meetings, and several companies withdrew proposals for constitutional amendments from their 2021 AGM notices following investor and proxy adviser opposition.

In South Africa, virtual platforms have proved to be relatively effective and in larger meetings, such as AGMs, software is often used such as that offered by companies like Lumi or Convene, which makes managing the voting process easier and secure. In managing on-screen airtime, chairs are increasingly calling on all participants to switch on their cameras and to individually participate. This is to ensure that conversations are not dominated by a select few.

The Hong Kong Chartered Governance Institute noted that the Financial Services and the Treasury Bureau was more cautious during the pandemic: meetings should be postponed, where possible, and only the most essential meetings should be held. Even where listed issuers need to conduct meetings, the physical participants were to be kept to the minimum required. However, company secretaries of listed issuers, under section 2.3 of the Exchange's 'Guide on General Meetings' are advised that meetings should be held at a place and a time convenient for the largest possible number of shareholders to attend and the use of technology (for example, a webcast or video conference) should be used to, among other things, help maximise shareholder participation.

In Malaysia during the pandemic, advocacy materials were shared by the Securities Commission to assist shareholders in matters relating to corporate governance and to prepare shareholders for effective participation at AGMs. This is very much aligned with the Securities Commission's advocacy for shareholder activism and this has been well received by the public at large.

Issues remain with virtual meetings from both the company's and its shareholders' perspectives. For example, some shareholders fear that virtual meetings can impact their right and ability to ask questions before and during meetings, so companies should look at employing strong Question and Answer (Q&A) tools to help address these fears. However, at a broader level, many corporate governance codes, such as the *King IV Code* in South Africa, are yet to be updated for guidance on virtual AGMs. Therefore, the Institute and its Divisions have an important role to play in the evolution of guidelines and regulations for the effective management of hybrid or virtual meetings.

Networking

Prior to the pandemic, most employees who could work in an office did so rather than work from home. This provided visibility of employees, which was important, for example, from a health and safety perspective and to monitor productivity. In addition, being in the office was important from a team-building and mentoring perspective. It facilitated face-to-face and spontaneous interactions and it was beneficial for the physical and mental wellbeing of employees. How important is a return to physical interactions, including a return to the workplace but also conferences and in-person team-building? And how have organisations and individuals been responding?

Following the easing of lockdown rules, South Africans have been returning to the workplace. Some companies are employing an optional work-from-home policy or a hybrid working policy, where workers work from home some of the time and go into the workplace on other days. Some employees have expressed a preference for working in their workplace, at least for some of the time. However, often the companies which can afford or for which it is practical to adopt hybrid working or work-from-home policies, are those made up of higher income professionals, and organisations in other sections should look to offer this flexibility, not least for staff retention as discussed below.

The Australian Workplace Gender Equality Agency (WGEA) reports an overall upward trend in the number of organisations of all sizes with flexible working policies in place. WGEA cites flexible work as being beneficial for both employers and employees, offering an opportunity to improve gender equality in the workplace and the home.[6] Many employers have adopted more flexible alternatives to requiring staff to return to office-based work on a full-time basis. For example, GIA has adopted a policy of requiring office attendance for a minimum of two days per week. Many professional services firms, such as lawyers and accountants, have adopted similar policies as part of their talent attraction and retention strategies.

In the United Kingdom, as in Australia, there is no longer a legal requirement to work from home, because of the pandemic. The governments of England and Wales, and Scotland each have different laws pertaining to health and safety in the workplace. However, working from home can still be considered as part of normal working arrangements, flexible working arrangements or an individual request. The Advisory, Conciliation and Arbitration Service (ACAS) advises employers:

- to develop a policy for working from home or hybrid working
- to update any related policies or procedures, regularly review policies and check whether there is a need to improve on them
- to consult employees and their representatives
- to check whether there is a need to make changes to employment contracts.

As governmental and organisational policies continue to evolve following the COVID-19 pandemic, so will work environments and human capital interactions, whether that is working in the office, at home, a hybrid or working in serviced offices located conveniently to the employee which some employers are now offering their staff. Legislative requirements will of course determine the flexibility and extent to which organisations and individuals can choose their work location, but as many stakeholders have been acknowledging, there is value in maintaining face-to-face contact with colleagues and others, both for professional reasons and for the general wellbeing of individuals and organisations.

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6   Australian Workplace Gender Equality Agency, 2021, *Flexible Work Post-COVID*, www.wgea.gov.au/publications/flexible-work-post-covid.

Career development

Career development 'involves the process of conversion of [a] personal career plan into action in order to achieve career goals'.[7] It involves designing and implementing goals, plans and strategies to enable an organisation to satisfy their employees' career needs. The pandemic removed key elements which both the employee and the employer needed to progress an individual's career path. One such element is a shared workspace. Until recently it might be said that no one was ever promoted virtually or remotely – 'you had to be seen if you wanted to be promoted'. Employers and employees need to either find a way (such as by structured and formalised testing and measurement) of assessing individual performance, capability and potential on the basis of virtual observation, or recognise that in-person contact either through a return to the workplace or elsewhere is an essential tool in assessing and progressing employees.

For some the pandemic has provided excellent career development, such as those working in science including doctors and researchers, and those involved in IT. However, this is not the experience of many. A PwC survey report stated that 72% of South Africans are concerned that their jobs will be at risk due to the increase in automation that the pandemic has accelerated; 59% are of the view that 'traditional employment won't be around in the future'; 67% believe stable long-term employment will not be an option for most; while only 37% said that they have the necessary skills to work successfully in the current environment. Having said that, 94% have said that they are prepared to learn new skills or completely retrain in order to remain employable in the future. Many younger workers, such as new graduates for instance, have struggled to enter the work force. This is, at least in part, because they have lost out on the invaluable face-to-face training they

receive and an 'induction' into work culture and expectations. This makes a strong case for a return to the workplace.

Organisations need to be aware that workplaces are now more diverse than ever before and that the Employee Value Proposition (EVP) will differ from one employee to another. In Australia, a PwC study in 2021 showed that workers value different things and preferences are guided by the individual's culture and upbringing, their stage of life, caring and financial commitments, socio-economic status, as well as a whole range of other factors.[8] Consequently, the EVP for any given employee is not only different for every employee but changes over the course of their career. Beyond that, the EVP is affected by the nature of the work and the characteristics and values of those who will be attracted into an organisation. For example, historically men tend to value more traditional incentives like lifestyle subsidies and travel opportunities, while women are more attracted by the right culture, wellbeing support and flexible ways of working. A further example is that Gen Z tends to rank work-life balance as a top priority, whereas Gen X prefers to work alongside good co-workers.[9]

According to an ACAS survey in the UK, half of employers expect an increase in demand for flexible forms of working from employees. However, there is growing evidence to suggest that there remains a significant mismatch between employees' preferences towards different types of flexible working and employers' offerings, potentially leading to workplace conflicts at a time when unemployment is low and staff are sometimes hard to find.

7   'Career development in HRM', www.economicsdiscussion.net/human-resource-management/career-development-in-hrm/31801.
8   PWC Australia, *The Future of Work What Workers Want: Winning the War for Talent*, 2021, p 15 www.pwc.com.au/important-problems/future-of-work/what-workers-want-report.pdf.
9   PWC Australia, *The Future of Work What Workers Want: Winning the War for Talent*, 2021, p 15 www.pwc.com.au/important-problems/future-of-work/what-workers-want-report.pdf.

Gender balance

Gender balance is when there is an equitable balance of life's opportunities and resources between women and men, including equal representation. Working from home, virtual meetings and participation might be seen as being positive for gender equality. Are we not all equal on a screen? Surely any gender can work equally from home? And doesn't working from home mean that there is no need to reconcile domestic arrangements with travel to and from, or within, work? In addition, it could be argued that certain 'male' behaviours, such as alpha male attitudes, physical dominance etc, are reduced in a non-physical setting, facilitating greater gender balance. However, experiences are suggesting that, in settings characterised by unequal gender sharing of domestic and family tasks, women have to attend to household and family chores as well as office demands simultaneously, and in greater numbers than men.

Research carried out during COVID-19 and reported by Australia's WGEA showed that women are more likely than men to request flexible work arrangements to accommodate unpaid care responsibilities.[10] Conversely, men are more reluctant to request flexible work arrangements due to the perceived or actual impact on their career progression, and when they do request flexible work arrangements, they are more likely to be refused. This perpetuates the entrenched association of flexible work with unpaid care responsibilities, which is assumed, by some, to be 'women's work'. The pandemic changed the way families cared for their children. As a result of COVID-19 restrictions, 43% of Australians caring for children reportedly spent more time on childcare activities than before. This was probably due to children staying home from school during the COVID-19 lockdown, which impacted approximately three quarters of Australians who care for children (76%), and a need for some parents to school their children in that situation. In order to care for children at home, parents or carers engaged in a range of flexible work arrangements including working from home, working reduced or changed hours, or taking leave. Despite the increased rate of both women and men working from home, many studies suggest that women continued to undertake most unpaid care responsibilities throughout this time. These statistics suggest that, despite a broad shift to working from home for all employees, cultural assumptions about who should be engaging in care work remain firmly entrenched. There is some evidence that this is exacerbated in certain societal demographics.

The Deloitte survey also mentioned that six out of ten South African women feel less optimistic about their career prospects than before the pandemic. Statistics South Africa has also reported that the labour market in South Africa is more favourable to men than to women, with women more likely than men to be doing unpaid work and the unemployment rate among women being higher than among men. It has been reported that women suffered disproportionately when compared to men as a result of the pandemic, particularly because women are more likely to have jobs that require face-to-face engagement, with more than two-thirds of jobs lost due to COVID-19 having been held by women. It has also been reported that women bore the brunt of unpaid work, such as childcare, during the pandemic, since children were forced to stay at home. Caring not only for children, but also vulnerable adult parents has also added to the demands on South African women. All of this has resulted in more South African women slowing down their careers, thus reversing some of the gender equality gains made pre pandemic. It has been reported that there has been an increase in physical and mental illness in women, who are burnt out from the increased responsibility brought on by the pandemic.

In Malaysia, there are no preferences of females over males in relation to working from home

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10   Workplace Gender Equality Agency, 2021, Flexible Work Post-Covid, www.wgea.gov.au/sites/default/files/documents/Flexible%20 work%20post-COVID-factsheet-2021.pdf.

options – all are treated equally. However, on 8 March 2022, International Women's Day, the government announced some initiatives (not legislated), which included a policy allowing women, whose husbands had recently passed away, to be allowed to work from home for an appropriate period. A joint study report by UNWomen and United Nations Population Fund (UNFPA) on Eastern and Southern Africa stated that the pandemic will impact and delay the realisation of most of the sustainable development goals (SDG) targets relating to gender, including SDG 5: 'achieve gender equality and empower all women and girls.' With pandemic lockdowns, domestic violence multiplied across the world, in what UN Women termed the 'Shadow Pandemic'.[11] According to a 2020 UN Women press release,[12] statistics of gender-based violence increased dramatically. For example, in Argentina emergency calls for domestic violence increased by 25%, and helplines in Singapore and Cyprus registered an increase in calls of more than 30%. Organisations should ensure that workplace guidelines and regulations continue to support gender balance.

'... experiences are suggesting that, in settings characterised by unequal gender sharing of domestic and family tasks, women have to attend to household and family chores as well as office demands simultaneously, and in greater numbers than men.'

Fairness

Fairness is one of the core pillars of good governance, but whose strength in organisations has been tested under COVID-19. Beyond the difficult health and economic decisions being made by the leaders of organisations, there are also decisions made which affect fairness, for example in relation to work location or technology. It may be unfair where employees do not have the same quality of or ease of access to technology or do not have a home setting which provides adequate space, safety or light, noise or air quality, to ensure that WHS standards are being met. For multinational organisations it may also be unfair for those at the wrong end of a time zone spread for an international online meeting (which has been noted in Malaysia), and for some there may be unfairness in the demarcation between work and home being blurred or eliminated (unless this is a clear condition of the job, properly communicated, remunerated and equally applied). In the post-pandemic world, the importance of the Institute and its members upholding, communicating and implementing the pillars of good governance, including fairness, is all the more important.

South Africa is an emerging economy and is described by the World Bank as one of the most unequal countries in the world. The country's development focus has been on the creation of skilled jobs and to unlock the full potential of its labour market, but the disruptions caused by COVID-19 have exacerbated inequalities and unfairness in South Africa's businesses, for example, through the digital divide – the gap between those who have access to digital technology and those who do not. Millions of South Africans do not have access to the proper technological infrastructure to be able to work from home.[13] In a study examining the inequalities associated with the ability to work from home, it was found that the ability to work from home is 'pro-rich' and that factors influencing the ability

to work from home include race, housing type (many South Africans live in informal settlements in small township houses) and the level of education reached. Further, a number of South Africans do not have basic work from home necessities, such as computers or laptops, or an internet connection. While working from home was relatively easy for higher income individuals who live in well resourced houses and have the means to obtain the necessary equipment, most South Africans do not have this luxury. This highlights the need in South Africa for the majority of the work force to return to the workplace. South Africa's digital story is echoed across many developing nations, including Zimbabwe.

Zimbabwe's internet penetration rate stood at 62.3% in 2021[14] and this was mainly through smartphones. Most households with access to the internet are in the urban areas, where only about a third of Zimbabweans live. The government through its ICT agency, the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ), is addressing the digital gap by building community information centres, through the provision of computers to schools and hospitals, and by upskilling communities. However, the ICT agency's medium- to long term strategies involve the setting up of community networks. The Computer Society defines community networks (CNs) as:

> ... networks built in a collaborative, bottom-up fashion by groups of individuals who develop and manage new network infrastructure as common goods. CNs are created by communities or organized groups that decide to share a telecommunications service through their own network. Their infrastructure is built, managed, operated, and administered by a community-driven organization or by a community itself by pooling their existing resources and working with partners to start-up and scale their activities.

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13   C Nwosu, U Kollamparambil and A Oyenubi, 2021, *Socioeconomic Inequalities in Ability to Work from Home During the Coronavirus Pandemic; The Case of South Africa*, National Income Dynamics Study, https://cramsurvey.org/wp-content/uploads/2021/07/9.-Nwosu-C-Kollamparambil-U.-Oyenubi-A.-2021-Socioeconomic-inequalities-in-ability-to-work-from-home-during-the-coronavirus-pandemic-The-case-of-South-Africa.pdf.

14   L Sengere, 2022, Connectivity problems in your area? The govt to help you solve them yourselves through community networks', www.techzim.co.zw/2022/05/govt-potraz-to-help-solve-connectivity-problems-through-community-networks.

Fairness

While CNs are a driver of digital inclusion for communities, including support for working from home, they are also a business opportunity for ICT entrepreneurs.

The digital divide in Australia is discussed in the Australian Digital Inclusion Index, which uses survey data to measure digital inclusion by access, affordability and digital ability.[15] The index looks at four categories: highly excluded, excluded, included and highly included. It found that the percentage of highly excluded Australians decreased between 2020 and 2021 from 17% to 11% of the population. It also showed that in 2021, the number of highly excluded Australians was substantial, equalling 28% of the national population. The Index also found that digital exclusion is strongly correlated to lower levels of education, low household income, single person households, disability, unemployment and non-participation in the workforce. The authors of the index observe:

> ... with the ongoing COVID-19 pandemic requiring greater reliance on online technologies to manage daily life, digital inclusion is more important now than ever before and will be important to gauge the pace of change in the future.

Maintaining fairness during and post-pandemic is an increasing challenge for governance professionals, whether in the context of working from home, access to technology (which is explored further below) or other areas.

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15 2021, *Measuring Australia's Digital Divide Australian Digital Inclusion Index: 2021*, https://h3e6r2c4.rocketcdn.me/wp-content/uploads/2021/10/ADII_2021_Summary-report_V1.pdf.

Technology

The COVID-19 pandemic has accelerated the implementation of the Fourth Industrial Revolution (Industry 4.0). Technological applications are fast taking over means to social and economic development. Traditional pillars and boundaries of good governance, such as fairness discussed above, are now steeped in digital technology. To contribute equally and to be treated fairly, supporting technology must be equally available and of the same quality and reliability for all. It is therefore important to recognise that there is a digital divide, as illustrated above in many countries, including South Africa and Australia. Further, it is primarily the responsibility of the organisation not the individual to ensure there is technological parity among its workforce, whether that is internet access, hardware or software. These digital advances, highlight the need for ethical governance in organisations, as the post-pandemic world technology is quite simply, a tool of the job. There are other aspects of technology which need to be considered. One of these is security, be it in terms of cybersecurity or the restriction of access to virtual meetings to those entitled to attend, such as shareholders. Another aspect of technology is record-keeping, information storage, access, sharing and retrieval. While these all existed pre-pandemic, COVID-19 has accelerated our reliance on technology whether for our customer interactions, marketing strategies, or banking and other financial needs.

A UK report by Accenture,[16] *The Digital Divide Report* (2022), stated that 7 million people (14% of the UK population) face some form of digital exclusion, with 3% of UK citizens saying that they do not use the internet at all. In the UK, a digital divide has arisen from a combination of the lack of access to technology and the confidence to use it. This means that some digitally excluded persons may have full access to the tools but choose not, or are unable, to utilise those tools. This is corroborated in a US survey report by the Pew Research Centre,[17] which stated that not all digital technology is helpful to all people.

This is in contrast with the experience of South African companies, where confidence is not a significant concern. These companies mainly use 'Zoom' or 'Microsoft Teams' for remote working. These technologies have proven to be relatively reliable, but there have been poor connection issues at times. This is a particular problem in South Africa where there are periodic power cuts (loadshedding), which affect individuals' ability to connect. In such cases, companies have had to make the necessary adjustments, for example, to reschedule meetings if possible or excuse certain persons from meetings. This can of course be very disruptive and risks resulting unfairness. In some companies, not all employees had access to the technology required to work from home pre-pandemic. These companies have had to adapt quickly to make sure that employees can work from home. For example, 'AnyDesk' has been used which allows workers to access workplace desktops from home. Companies have also had to make sure that employees have enough data to connect from home and that they have laptops. Unfortunately, equipping people to work from home was simply not feasible for many companies.

Reasons for digital exclusion certainly differ according to location, with the impacts of COVID-19 making the exclusion more serious. Increasingly larger segments of populations are relying on digital connections for work, education, healthcare and daily commercial transactions and social interactions, making digital inclusion essential. If the digital divide widens and the highly connected and tech-savvy move faster than those less connected, then any form of exclusion from the digital economy will present major social and economic challenges for future generations.

16   C Drejer and M Jenning, 2022, *The Digital Divide Report*, www.accenture.com/_acnmedia/PDF-177/Accenture-UK-Digital-Divide-Report.pdf.
17   J Anderson, L Rainie and E Vogels, 2021, 'Experts say the "new normal" in 2025 will be far more tech-driven, presenting more big challenges', www.pewresearch.org/internet/2021/02/18/experts-say-the-new-normal-in-2025-will-be-far-more-tech-driven-presenting-more-big-challenges.

Technology

An Australian report on technology highlights that out of the 600 skills classifications in Australian industry, more than 75% of them require at least one technology aspect, illustrating how important the ICT sector is to society. Attaining the full benefits of digital technology will require policy designed to promote investment in digital technology and skills.[18] Given the increased amount of global online activity during the pandemic combined with the recent escalation in global conflict, the number of cyber-attacks has increased exponentially. Consequently, Australian organisations and their boards have a heightened focus on this risk. The Australian Securities and Investments Commission (ASIC) has issued good practice guidance for financial services firms encouraging activity to promote cyber resilience which also serves as a useful starting point for organisations in other sectors.[19]

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18   Deloitte, 2021, *ACS Australia's Digital Pulse: Future Directions for Australia's Technology Workforce*, www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-australias-digital-pulse-2021-160621.pdf.

19   ASIC, 2021, 'Key questions for an organisation's board of directors', https://asic.gov.au/regulatory-resources/digital-transformation/cyber-resilience/key-questions-for-an-organisation-s-board-of-directors.

Culture

A sound culture, with a common and mutual respect of values and ethical behaviour, is essential to good governance. No set of governance policies and procedures, no matter how well written, can function in the absence of the right culture. In a post-pandemic world, where colleagues do not always share a workplace or even meet in person, it is unclear how the right culture can be developed. To a certain extent, culture comes from shared experience and observed example. A challenge for organisations in the post-pandemic working environment is to have the means to promote and build the desired culture and ethics.

There is a range of commentary from consulting firms and in publications such as the *Harvard Business Review* about how to create and maintain a good culture with staff working remotely. The Australian Productivity Commission notes that cultural decay emanating from the increase in remote working and the associated reduction in social interaction and affiliation is a concern to many employers and this may cause organisations to curtail work from home practices, or designate days on which it is compulsory for employees to attend the office (to increase social interaction). At this stage it is difficult to predict what will emerge as 'best practice' for maintaining a healthy workplace culture and avoiding cultural decay. PwC has challenged organisations to critically question themselves and:

> ... given the clear preference around working with good co-workers, [consider how they] sell the people and culture of [their] organisation in talent attraction and selection processes so that candidates get to see the people they'll be working with.[20]

Although virtual meetings and applications like WhatsApp were the main modes of staying in touch and engaging with colleagues during the lockdown periods, academics and commentators in Malaysia acknowledge that meeting virtually certainly cannot take away the advantages of face to face meetings and interactions.

Managing culture in South Africa has been a significant challenge during the pandemic. Employees largely learn the culture of an organisation from interacting directly with their colleagues and managers. Those managers struggling to instil good corporate culture in their teams when they do not have face to face contact with them has been one of the factors necessitating a return to the office, which as mentioned above the majority of South African workers have done.

COVID-19 restrictions and the resulting working from home have removed demarcations between society and economics, and home and work, such that some organisations found themselves having to invest in the home security systems of their employees, so as to secure laptops and other devices used for work, now being used in their employees' homes.

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20   PwC, 2021, *The Future of Work – What Workers Want: Winning the War for Talent*, p 17, www.pwc.com.au/important-problems/future-of-work/what-workers-want-report.pdf.

Staff retention

With the onset of the pandemic, many workers returned to their country of origin, employees became reluctant to change jobs in a time of uncertainty and the disease itself took people out of the workforce, albeit temporarily in most cases. Staff retention (and recruitment) has therefore become a challenge for many businesses. So how should governance professionals seek to assist their organisations with the preservation of their most important asset?

In Australia, it has been suggested that 'employers should seek to understand the demographic composition of their workforce and dial up the relevant Employee Value Proposition (EVP) levers and initiatives to deliver a more compelling proposition'.[21] PwC advises that 'there are obvious opportunities for employers to entice key segments if they have targeted strategies. For example to increase female participation, or attract younger or older or workers'.[22] According to the International Labour Organisation (ILO), during the pandemic (in 2020) youth employment fell by 8.7% compared to 3.7% for adults in middle-income countries, indicating an opportunity for organisations with the ability to attract the youth sector.

Given the changing nature of the workforce and the fact that the EVP is different for each employee, there may need to be less focus on progress up the career ladder and increasing status and seniority, as was the traditional path, and more on the value of a role to the individual employee. PwC observes that attraction trumps retention and that:

> ... above all, organisations must ensure they deliver on their EVP. They need to make sure that the experience they promise is the experience they deliver, because a failure to do so is a breach of the psychological contract with employees, which

is why six in 10 (61%) of people who have left an organisation in the past year are looking to leave their current organisation in the next 12 months.[23]

Australia currently has low unemployment rates and significant skills gaps in many industries and, as a consequence, organisations are increasingly being forced to consider these issues.

Baker Tilly Staples Rodway state in their article[24] that immigration rules in New Zealand are being amended so that the country can attract workers with the right skills to cover labour shortages and to address exploitation of temporary migrant workers. This highlights for both governments and employers the importance of the need to retain quality employees in whom they can invest, hopefully for the long-term.

Conversely, unemployment and poverty are high in South Africa and so most workers willingly returned to the workplace once the lockdown restrictions were eased, as they cannot afford to lose their jobs. Sustenance, rather than work-life values, determine the level of flexibility for employees in less wealthy nations. The average South African does not have the luxury of choosing to move jobs simply because another job allows them to work from home, which in itself is often impossible as outlined above.

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21   EVP is a set of monetary and non-monetary benefits provided by an organisation to its employees in return for the skills, capabilities, and experience they bring and the contributions they make to the organisation.
22   PwC, 2021, *The Future of Work – What Workers Want: Winning the War for Talent,* p 17, www.pwc.com.au/important-problems/future-of-work/what-workers-want-report.pdf.
23   PwC, 2021, *The Future of Work – What Workers Want: Winning the War for Talent*, p 18, www.pwc.com.au/important-problems/future-of-work/what-workers-want-report.pdf.
24   Baker Tilly Staples Rodway, 2022, 'Employee recruitment and retention in the time of COVID-19', https://bakertillysr.nz/news/employee-recruitment-and-retention-in-the-time-of-covid-19.

Attitudes to risk

COVID-19 is still with us and is predicted to be so for the foreseeable future. Its impact is unprecedented in modern times in that it was global, with no country, economy, organisation or individual spared the social and economic consequences, albeit to varying degrees. Uncertainty and risks have become part of our day to day decision making at every level of society. Our attitude to risk is now different from pre COVID-19. As state procurement checks and balances were removed to facilitate urgent provision of health and protective supplies to citizens, incidents of corruption also increased. Previously organisational leadership could localise, assess, treat, monitor and evaluate risk, within strategic timeframes, but it is hard to localise the risks and the effects of the pandemic. Perhaps the most profound lesson from COVID-19 is the unpredictability of life. Yet, organisations must continue to exist, plan and make decisions for the future. What are their attitudes now towards risk and how have they changed?

With regards to COVID-19 state procurement, countries worldwide introduced extraordinary measures to protect the health and wellbeing of their populations. The United Nations' Human Rights Commission published guidelines for emergency measures during the COVID-19 pandemic which, among other things, required states to provide support to their populations for employment and livelihoods, housing, food, education, social protection and health.[25] Transparency International has stated that the urgency of the COVID-19 pandemic has demanded rapid disbursements of public funds, quick decision making and unprecedented public health interventions.[26] Consequently, governments around the world have responded to this emergency by loosening their procurement checks and balances.

The declaration of a National State of Disaster due to COVID-19 in South Africa prompted the implementation of emergency procurement measures by National Treasury. The emergency procurement measures implemented during COVID-19 has had the effect of loosening strict adherence with generally applicable laws. On the strength of allegations of widespread corruption in COVID-19 related procurement by state institutions, the President of South Africa undertook to initiate a probe by a Special Investigating Unit on any allegations relating to the misuse of COVID-19 funds across all spheres of government. This investigation made adverse findings against individuals and institutions suspected of having exploited a moment of national vulnerability to enrich themselves as well as those public officials with whom they colluded in the abuse of public resources.

COVID-19 has had the effect of weakening governance protocols in the public procurement space, thereby rendering it vulnerable to corrupt collusion between public employees and private business players. It is notable that South Africa has not been alone and other jurisdictions have experienced similar challenges. Price rigging and gouging, especially with regard to essential goods and services, has been reported in various countries such as the United States, Germany and Brazil, among others.[27]

Digital security risk has been heightened by the COVID-19 pandemic as individuals, organisations and governments increasingly rely on the internet for their business' success. The OECD[28] issued a warning at the onset of the pandemic in 2020 that 'coronavirus-related scams and phishing campaigns are on the rise' as well as 'cases of ransomware and distributed denial of service (DDoS) attacks targeting hospitals'. Governments

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25   United Nations Office of the High Commissioner of Human Rights, 2020, *Emergency Measures and COVID-19*, www.ohchr.org/sites/
      default/files/Documents/Events/EmergencyMeasures_COVID19.pdf.
26   Transparency International, 2021, *For Whose Benefit? Transparency in the Development and Procurement of COVID-19 Vaccines*, www.
      transparency.org.uk/sites/default/files/pdf/publications/For%20Whose%20Benefit%20-%20Transparency%20International.pdf
27   Transparency International UK, 'COVID-19 has created conditions in which corruption in health procurement can flourish. here's how
      open contracting would help', www.transparency.org.uk/covid-19-has-created-conditions-which-corruption-health-procurement-
      can-flourish-heres-how-open.
28   OECD, 2020, 'Dealing with digital security risk during the Coronavirus (COIVD-19) crisis', www.oecd.org/coronavirus/policy-
      responses/dealing-with-digital-security-risk-during-the-coronavirus-covid-19-crisis-c9d3fe8e.

were advised to 'raise awareness, monitor the threat landscape and publish easily accessible guidelines for digital security hygiene, in particular to vulnerable groups such as the elderly as well as, small- and medium sized enterprises (SMEs)'. Later, in November 2020[29] the OECD shared the following seven lessons:

Lesson 1 – Digital security risk increases during crises because stressed organisations are more vulnerable to attacks.

Lesson 2 – During a crisis, organisations should continue to responsibly manage rather than neglect digital security risk.

Lesson 3 – Exceptional circumstances call for agile digital security processes to enable business continuity.

Lesson 4 – Digital security preparedness is key and should be part of broader business continuity planning.

Lesson 5 – During a crisis, the government needs to extend its reach beyond operators of critical activities to key actors in their supply chain.

Lesson 6 –There is a need for proactive policies to improve digital security in the healthcare sector and for SMEs.

Lesson 7 – During crises, information sharing on risk is crucial and often relies on a pre-existing ecosystem of trusted partners.

ASIC wrote to all Australian companies advising them that the Australian Cyber Security Centre encouraged them to urgently adopt an enhanced cyber security position.[30] The Australian Prudential Regulation Authority (APRA) has also written to all APRA-regulated entities about boards' 'need to strengthen their ability to oversee cyber

resilience'. It expects that 'boards [should] have the same level of confidence in reviewing and challenging information security issues as they do when governing other business issues'.[31] An understanding of cyber risk is, increasingly, a must have for Australian directors. In Malaysia, organisations have been reviewing their own cyber security requirements and putting in place technical solutions depending on budget constraints or other factors.

Deloitte has said 'the biggest enemies of good decision-making in times of crisis are neither uncertainty nor ambiguity; they are, rather, over-confidence, procrastination, and incomplete or biased data'.[32] Procrastination comes from fear according to a psychology article,[33] which understandably was experienced by many during the pandemic and also led to anxiety, depression and other mental health issues. Organisational attitudes to mental health and support of their workers will therefore be critical for any organisation requiring sensitivity and innovative thinking.

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29 OECD, 2020, 'Seven lessons learned about digital security during the COVID-19 crisis', www.oecd.org/coronavirus/policy-responses/seven-lessons-learned-about-digital-security-during-the-covid-19-crisis-e55a6b9a.
30 Australian Cyber Security Centre, 2022, '2022-02: Australian organisations should urgently adopt an enhanced cyber security posture', www.cyber.gov.au/acsc/view-all-content/advisories/2022-02-australian-organisations-should-urgently-adopt-enhanced-cyber-security-posture.
31 APRA, 2021, , www.apra.gov.au/news-and-publications/improving-cyber-resilience-role-boards-have-to-play.
32 Deloitte, 'COVID-19: Confronting uncertainty through and beyond the crisis', www2.deloitte.com/global/en/pages/about-deloitte/articles/covid-19/covid-19--confronting-uncertainty-through---beyond-the-crisis-.html.
33 H Doganulku et al, 2021, 'Fear of COVID-19 led to procrastination among Turkish university students; The mediating role of intolerance of uncertainty', https://bmcpsychology.biomedcentral.com/track/pdf/10.1186/s40359-021-00681-9.pdf.

Conclusion

The COVID-19 pandemic has affected the ways in which people, governments, businesses and other organisations interact with each other. Interaction is an essential feature of good governance. Both for professional and personal reasons, stakeholders have shown the importance of maintaining contact with others. Digital technology is re-defining governance boundaries to be more people centred and responsive. Through submissions in this paper, we see efforts by governments, regulators and other decision-makers to safeguard good governance standards, for example, changes in laws and regulations facilitated safety, fairness and reasonable participation of stakeholders. On the other hand, the same changes weakened governance protocols such as in the public procurement space, thus facilitating abuse of public resources.

Most encouraging though, was how regulators and other decision-makers collaborated with the Institute's Divisions and our members in fashioning governance responses to the pandemic. These include, the provision of guidance and recommendations by The Hong Kong Chartered Governance Institute as well as the coordination of a working group to publish COVID-19 guidelines for companies by the CGIUKI among others.

We do not know the shape of the post-COVID world; we only know it will be different. But we do know good governance will form part of that world and that the Institute and its members will be leaders in this area by providing a proactive influence. In practice that means that across all the areas discussed in this paper the Institute and its Divisions must understand implications of the post-COVID times at all levels.

Further reading

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