

Forward Governance Agenda

Results of Member Consultation
Issued August 2019

About us

The Australian Institute of Company Directors (AICD) is committed to strengthening society through world-class governance. We aim to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. Our membership of more than 44,000 includes directors and senior leaders from business, governance and the not-for-profit (NFP) sectors.

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JOIN OUR SOCIAL COMMUNITY

Foreword

Thank you to all our members who have taken the time to contribute to the Australian Institute of Company Directors (AICD) Forward Governance Agenda consultation.

When the AICD's chair John Atkin FAICD and I launched the Forward Governance Agenda at the 2019 Australian Governance Summit, I spoke about the importance of the AICD's vision – strengthening society through world-class governance – in the context of current governance debates and challenges.

As the peak body focused on building the capability of Australian directors, the AICD must lead the changes needed to lift the practice of governance and restore community trust.

We sought your help in testing our views on areas where the AICD should do more, or do things differently, to support improved governance practice and outcomes.

I am delighted by your response to the consultation and grateful to everyone who has contributed their views and guidance.

Along with our consultation paper, John and I attended events around the country talking with members about challenges and opportunities in governance. We took some clear messages from these discussions.

First, our members are committed to high standards in the practice of governance – and expect the AICD to promote these standards in its own membership and the broader director community.

Second, there is a clear expectation that the AICD will take a leadership role in contemporary governance debates – and a call for the AICD to avoid being complacent or defensive in our approach.

Over the coming months, the AICD will launch targeted initiatives under each of our Forward Agenda themes – from a full review of our Member Code of Conduct, to better cut-through on the role of the board, to more practical tools and resources on directors' duties and the governance of culture.

Now is the time for us to work together towards greater trust in our system and practices of governance.

There are many perspectives across the AICD's diverse membership. You can see that in the data, and we have sought to reflect in the comments that range of member perspectives fairly and transparently in this report.

I look forward to continuing our dialogue with members as we implement this exciting program.



Angus Armour FAICD
Managing Director & CEO,
 Australian Institute
 of Company Directors

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Executive summary

About the Forward Governance Agenda

In April 2019 the AICD released a consultation paper on its Forward Governance Agenda – a program of work seeking to respond to current debates on governance practice and standards.

Recent inquiries, including the Financial Services Royal Commission and the Royal Commission into Institutional Responses to Child Sexual Abuse, have put governance practices under the spotlight.

Our Forward Agenda consultation sought member views on areas where the AICD should increase its focus or change its approach to strengthen governance practice.

The Consultation Paper is available at aicd.com.au/forwardagenda.

What Members Told Us

Over 1,200 members responded to the consultation paper through an online questionnaire, providing feedback on the following Forward Agenda themes:



Standards and professionalism

Members support a revised AICD Member Code of Conduct with a focus on clear standards of practice, and increased Director Professional Development obligations.



Duties and stakeholders

The AICD should lead debate on directors' duties, engage with directors, stakeholders and legal experts on the best interests duty and increase resources for members.



Demonstrating accountability

Only a third of members consider existing director accountability mechanisms to be 'adequate'.



Culture and remuneration

Culture is a high priority for directors. Members want practical guidance on the governance of culture and remuneration.



Voice of governance

The AICD must be a clear and leading voice on good governance practice.

Consultation results by Forward Agenda theme are set out in further detail in the report.

Next Steps – Forward Agenda Actions

Taking into account the views from members, the AICD will develop targeted initiatives under each Forward Agenda theme to bring the Forward Agenda to life. Over coming months, our actions will include:

- Commencing a review of the AICD Member Code of Conduct, focusing on standards of practice
- Strengthening Director Professional Development (DPD) obligations to require all members to invest time on priority topics
- Engagement with stakeholders to increase understanding of the role of the board
- Leading debate on directors' duties and engagement with stakeholders

- Expanding AICD resources on the governance of culture and remuneration, engaging with experts and undertaking further research (*The AICD recently released a short guide on culture, available at aicd.com.au/culture-tool*)
- Investing in research and guidance on accountability and annual director elections
- Highlighting relevant stakeholder perspectives in AICD member communications.





Read more about our next steps in the report below.

Members can stay up to date on our progress by visiting the Forward Governance Agenda section of the AICD website at aicd.com.au/forwardagenda

Contact the AICD at policy@aicd.com.au with Forward Governance Agenda comments or questions.

Consultation results - at a glance

Fig 1: Consultation proposals and responses

	We asked members:	Members told us:
 <p>Standards and professionalism</p> <p>Action One We will review and strengthen our Member Code of Conduct.</p> <p>Action Two We will amend our DPD framework to mandate a focus on ethics.</p>	<ul style="list-style-type: none"> • What should a new Code include? • How should we handle breaches? • Should we mandate a focus on ethics in Director Professional Development (DPD)? • Should we require a focus on other areas? 	<ul style="list-style-type: none"> • Members support a revised AICD Member Code of Conduct that sets clear standards on governance practice. • DPD should be strengthened, mandating a focus on ethics and duties.
 <p>Duties and stakeholders</p> <p>Action Three We will lead a conversation on directors' duties to test application of the best interests duty in practice.</p>	<ul style="list-style-type: none"> • How do you apply the best interests duty? • How does your board bring stakeholder voices into governance decisions? • Should the AICD lead a conversation with legal experts, directors and stakeholders on duties? 	<ul style="list-style-type: none"> • Members generally balance the interests of stakeholders in governance decisions. • The AICD must lead debate on duties, and lift understanding of the role of boards. • Strong member demand for AICD guidance, roundtables and research.
 <p>Demonstrating accountability</p> <p>Action Four We will help boards adapt to evolving community and stakeholder expectations, and guide good practice with practical resources.</p>	<ul style="list-style-type: none"> • How do you apply the best interests duty? • How does your board bring stakeholder voices into governance decisions? • Should the AICD lead a conversation with legal experts, directors and stakeholders on duties? 	<ul style="list-style-type: none"> • Only a third of members feel that current accountability mechanisms are adequate. • Most respondents (60 per cent) sit on two or less boards. • Views are split on annual director elections.
 <p>Culture and remuneration</p> <p>Action Five We will drive the adoption of practical frameworks on culture in AICD's education and resources. We will develop resources to support constructive challenge of management by directors and boards.</p> <p>Action Six We will work with members and stakeholders on principles to support the governance of remuneration.</p>	<ul style="list-style-type: none"> • Is culture a priority on your current board(s)? • How are you measuring culture? • Should the AICD develop governance principles on remuneration? • What practical guidance should the AICD prioritise for members? 	<ul style="list-style-type: none"> • Culture is a priority for a majority of members in their current board roles. • Most respondents feel culture is well-understood by their boards. • Members support more practical guides on governance of culture and remuneration.



Key results
by Forward
Governance
Agenda theme



Standards and professionalism

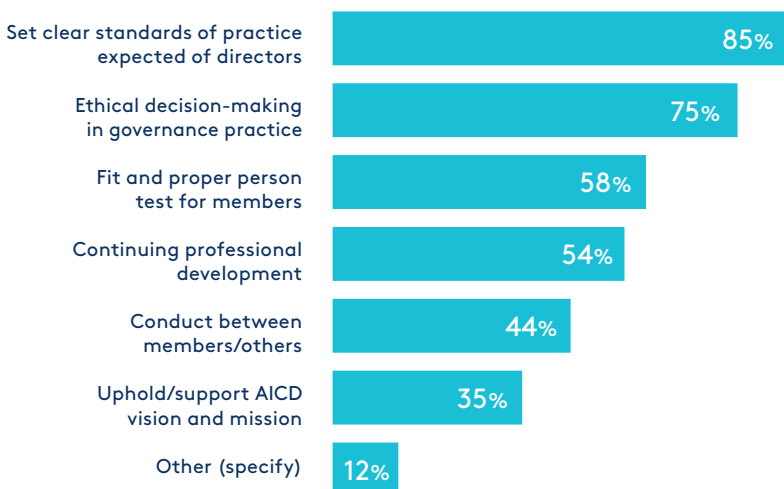
The AICD sought member views on two proposed actions:

- Reviewing the AICD Member Code of Conduct; and
- Strengthening member Director Professional Development (DPD) with mandated topic areas.

Code of Conduct

There was strong support (85 per cent) for a review of the Code of Conduct to focus on clear standards of conduct and practice expected of directors – including a positive statement of fiduciary and legal duties and engagement with stakeholders. Ethical decision-making and a fit-and-proper test also had support.

Fig 2: What areas should the AICD consider in a review of the Code of Conduct? n=1,212

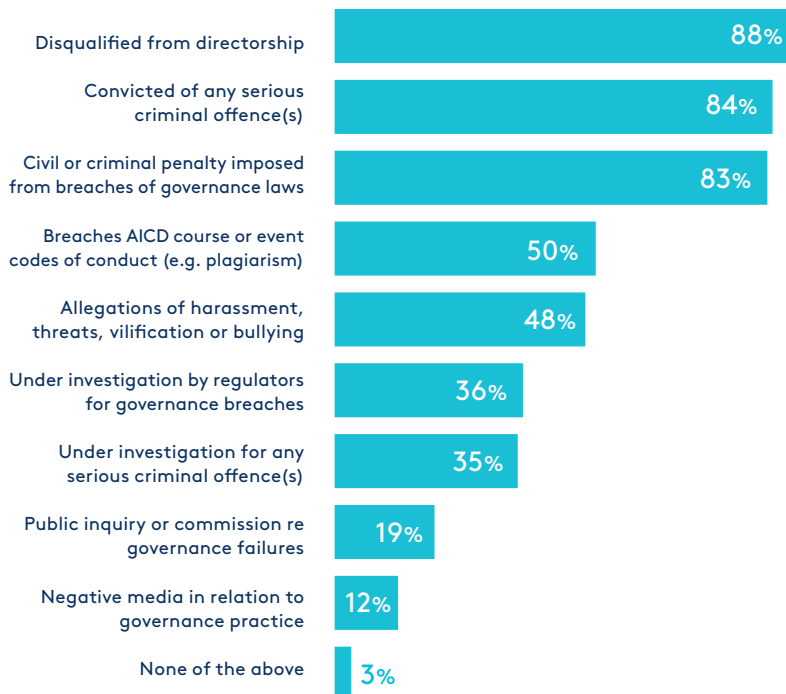


“The AICD needs to be more than an educational institute. The role should include setting standards and holding its members to these standards.”

- Member comment

A small majority of members (53 per cent) supported a process for complaints for potential breaches of the Code. Due process (71 per cent) and confidentiality (61 per cent) were strongly supported. Members set a higher bar for conduct that might constitute a breach of a revised Code of Conduct, with limited support for negative media coverage, appearing before a public inquiry and being subject to investigation.

Fig 3: What circumstances would you consider appropriate as future Code breaches? n=1,129e



In comments, a number of members also warned of the risks of moving the AICD too far down the path of enforcement and compliance – important considerations for any Code review.

“Some of the areas raised are moving towards the AICD becoming a regulator - I do not see this as a positive development.”

– Member comment

Other members, however, urged the AICD to adopt a stronger professional mindset.

“For the AICD to retain its standing as a meaningful designation of professional directors, there need to be higher standards required for members to demonstrate their capability...”

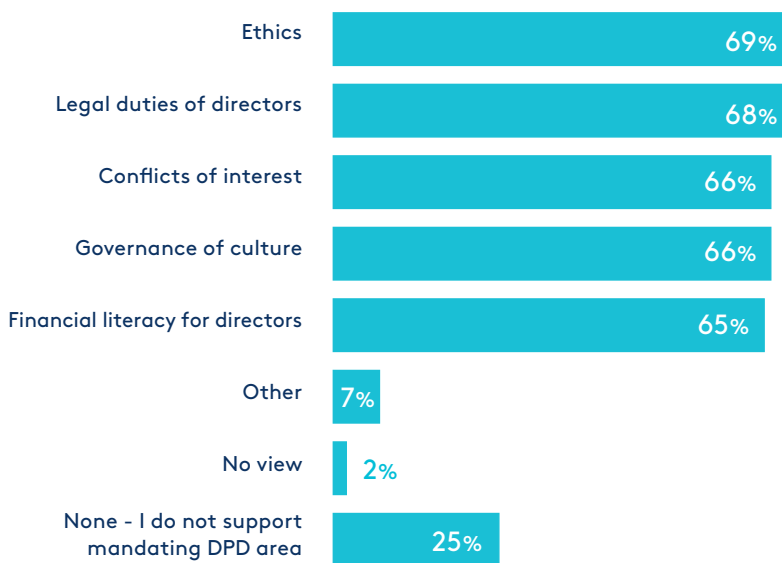
– Member comment

Director Professional Development (DPD)

In a sign of members' commitment to professional development, 87 per cent of respondents agreed to some degree with the statement that "meeting the AICD's (existing) Director Professional Development (DPD) requirements demonstrates their commitment to the quality and currency of their directorship skills".

The proposal that the AICD mandate a focus on specific areas as part of overall member Director Professional Development (DPD) obligations was broadly supported, with only 25 per cent of respondents opposed.

Fig 4: Total support (any selected, not ranked by priority) for mandated DPD topic areas, n=901



Sector Insights

- Ethics and legal duties ranked in the top three responses for 51 per cent and 49 per cent of respondents.
- Listed company respondents were less supportive of the AICD mandating areas of focus (46 per cent do not support).

Overwhelmingly, members preferred that any new requirements be incorporated as part of the current three-year Director Professional Development (DPD) cycle, with just 9 per cent of respondents supporting annual requirements.

Members sent a strong message that any new Director Professional Development (DPD) obligations should be accompanied by quality AICD resources to meet new requirements, at no additional cost to members.

“I trust that AICD’s Paper is geared to the improvement of governance, rather than the improvement of AICD’s reach, CPD and training revenue!”

– Member comment



Duties and stakeholders

The AICD sought member views on one proposed action:

- Lead a conversation on directors' duties to test application of the best interests duty in practice.

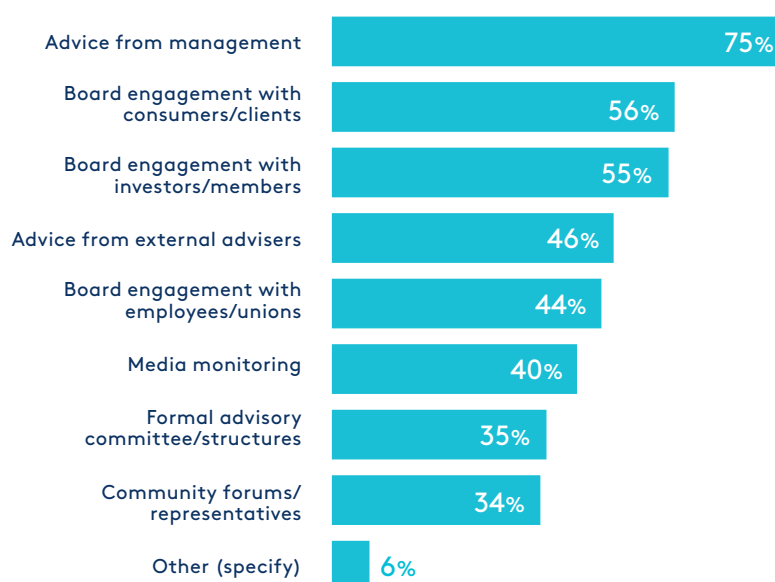
Members support the AICD leading debate on directors' duties and, to that end, want the AICD to deepen the quality of debate and engage with stakeholders and experts.

There is also strong demand (91 per cent) for further AICD guidance on duties and stakeholder engagement.

Asked about how they approach the best interests duty in practice, members report that they balance the interests of shareholders and stakeholders (49 per cent) when fulfilling the best interests duty. 16 per cent of respondents consider the interests of shareholders as a whole, while 32 per cent (for listed company respondents, 44 per cent) consider stakeholder impacts as relevant to the interests of shareholders as a whole (this latter formulation being the more generally accepted understanding of the legislative duty).

Respondents provided insights into the different ways in which their boards engage stakeholders.

Fig 5: What approaches does your board currently use to capture stakeholder impacts and considerations?



Sector Insights

- NFP respondents were less likely to nominate engagement with employees/unions (38 per cent).
- Listed sector respondents were less likely to nominate engagement with customers/clients (46 per cent), and more likely to engage with investors/members (79 per cent).
- Public sector directors were far more likely to nominate community forums (72 per cent).
- Private company and NFP sector respondents were less likely to draw on media (34 and 36 per cent).
- Overseas directors largely reflected listed sector responses, with higher union/employee engagement (72 per cent).

Members also want the AICD to do more to improve understanding of the role of the board (61 per cent of respondents rate this as a priority action).

“It is clear that many Australians, including parts of the media, do not have a firm grasp of the difference between management and governance.”

– Member comment

In August 2019 the AICD issued a joint statement on board minutes, with supporting legal opinion, with the Governance Institute of Australia. This followed a focus on minute-taking at the Financial Services Royal Commission.

View here at aicd.com.au/advocacy/research/minutes-statement

The consultation also showed strong support for the AICD updating duties guidance (ranked in the top 3 responses by 87 per cent of respondents), holding stakeholder roundtables (71 per cent), and commissioning papers/arranging events with legal experts (60 per cent) to test and improve practice and understanding.

“There should be more focus on educating directors on what stakeholders expect of directors and less emphasis on educating stakeholders about the role of directors.”

– Member comment



Demonstrating accountability

The AICD sought member views on one proposed action:

- Help boards adapt to evolving community and stakeholder expectations, and guide good practice with practical resources.

Under this theme, the Forward Agenda invited member views on practice and policy/guidance options.

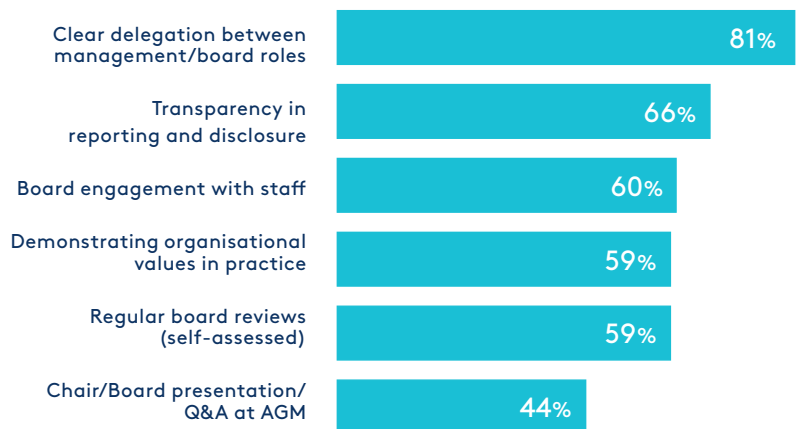
Results show that members are concerned about director and board accountability – only 32 per cent of respondents consider existing accountability mechanisms to be ‘adequate’. This suggests that a greater focus on board and director accountability, along with improved understanding of community expectations, is an important area for greater AICD focus.

“Accountability must be meaningful. Too often of late in the press are senior people quoted as saying they take full responsibility but it means nothing...”

– Member comment

The consultation paper asked members to indicate the ways in which they currently demonstrate accountability as directors.

Fig 6: How do you hold yourself, and fellow directors, accountable in practice? N=962



Sector Insights

- Listed directors were more likely to nominate AGMs (77 per cent), board reviews and board renewal (53 per cent, versus 42 per cent overall).
- Private company directors were less likely to nominate AGMs (33 per cent), board reviews and board renewal (34 per cent, versus 42 per cent overall).
- NFP directors were less likely to nominate peer-to-peer director feedback (37 per cent) and formal board engagement with stakeholders (34 per cent) than public and listed sector respondents.

Members were asked about 'over-boarding' and their total number of board commitments, with most respondents (60 per cent) sitting on two or less boards. A majority of respondents (57 per cent) supported the AICD investing in guidance on the number of board commitments directors hold, although this was a lower priority for listed company directors (35 per cent).

A proposal to review the merits of annual listed director elections split the membership - 37 per cent of responses indicated support for a review of the merits of annual elections, while 35 per cent were opposed. There was a high number of 'unsure/no view' responses (combined 27 per cent). Significantly, only 23 per cent of listed company respondents supported review of annual director elections.

“Not convinced of merits of annual elections but interested to see it reviewed and interested in review of existing accountability mechanisms.”

– Member comment



Culture and remuneration

The AICD sought member views on two proposed actions:

- Drive the adoption of practical frameworks on culture in AICD's education and resources. We will develop resources to support constructive challenge of management by directors and boards.
- Work with members and stakeholders on principles to support the governance of remuneration.

The quality of board oversight of culture is clearly a priority for directors.

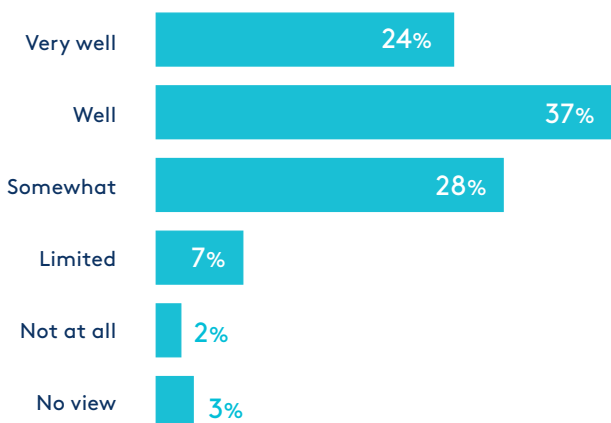
Members report that culture is a significant focus (23 per cent), an ongoing focus (30 per cent) or an evolving focus (27 per cent) for their boards, and a limited focus for just 15 per cent.

Members identified people metrics (75 per cent), risk (both financial and non-financial, 75 per cent), and performance management, learning and ongoing development (63 per cent) as the top metrics on which their boards rely in assessing culture.

Interestingly, innovation metrics were highlighted by just 37 per cent of respondents. While the results were largely the same across sectors, listed company directors were much more likely to nominate remuneration (79 per cent) as a key culture metric than other sectors (45 per cent for respondents overall).

Notwithstanding the strong boardroom focus on culture, respondents were generally confident that their boards have a good grasp of the culture of their organisation.

Fig 7: How well is your organisation's culture understood by your board? n=935



Sector Insights

- NFP directors were slightly less confident in their assessment, with 59 per cent reporting 'very well' or 'well', compared to 67 per cent for respondents from listed and private companies, and 66 per cent for public sector directors.

There was strong member appetite for additional culture resources to support directors, including a short-form aid with questions (ranking in the top three of requested resources by 77 per cent of respondents), practical case studies demonstrating good practice (70 per cent) and formal diagnostic tools (59 per cent).

New AICD Culture Tool

In July 2019 the AICD released a complimentary tool to help board's shape their approach to governing culture. It is intended as a practical guide for directors of any entity on governing culture, and includes practical questions to support director practice.

View here at aicd.com.au/culture-tool

While 60 per cent of respondents supported the development of principles-based guidance on remuneration governance, that number dropped to 54 per cent amongst listed members. The top three topics identified for coverage in remuneration guidance were: roles and responsibilities (73 per cent), performance assessment (70 per cent) and culture 'consequences' (67 per cent).

In a topical finding, just 33 per cent of respondents reported that their boards link CEO variable pay to factors relevant to organisational culture – though that jumped to 56 per cent amongst the listed member segment.



Further comments

Member comments were, in general, supportive of the Forward Governance Agenda consultation and themes.

“This is a worthwhile and timely process, essential if the AICD is to maintain its credibility and relevance”

– Member comment

Most comments reflected the consultation findings discussed above. Several commentators noted the complexity of governance issues and encouraged the AICD to maintain a measured approach.

“Great discussion in interesting times... Like all things, there needs to be a balance to all of the reactions.”

– Member comment

The importance of the AICD guiding and supporting members, rather than adopting a prescriptive approach, was noted. However, others argued for a more proactive approach to standard-setting.

“The AICD needs to recognise its role as an adviser and not as an entity to enforce laws.”

– Member comment

Less common, but strongly expressed, dissenting views warned of the risk of over-reach by the AICD. Some members felt that the AICD could be 'over-stepping its role', including in the area of culture.

“The AICD is drifting into soft areas and encouraging a new suite of directors to blather on about culture while ignoring the tough pointy end of good governance.”

– Member comment

In contrast, other members encouraged the AICD to be more ambitious on Forward Agenda themes.

“Let’s be on the right side of history and lead the debate.”

– Member comment

Some respondents raised issues with the limited scope of the consultation and questions, encouraging further research and engagement with experts. Several members also provided feedback on AICD services (positive and negative), amongst other matters.

In roadshow events held in capital cities in April and May 2019 feedback largely reflected the consultation findings. The importance of the AICD promoting professionalism in the practice of directorship and demonstrating high standards in its own governance arrangements were recurring themes.

Next steps

Bringing the Forward Agenda to life

In June 2019 the AICD Board considered the consultation results and endorsed the development of workstreams under each Forward Agenda theme. Implementing the Forward Agenda program will be a priority for the AICD through 2019/20. Targeted initiatives by theme are summarised below.

Forward Governance Agenda themes

The AICD recently issued two new guides relating to the Forward Governance Agenda themes:

A director tool on governing organisational culture.
View here at aicd.com.au/culture-tool

A joint statement (with the Governance Institute of Australia) providing guidance on board minutes.
View here at aicd.com.au/advocacy/research/minutes-statement

Standards and professionalism



- Commence a formal review of the AICD Code of Conduct, to include consideration of standards of governance practice and options for compliance frameworks.
- Revise the AICD's Director Professional Development (DPD) scheme to require a focus on priority topic(s) as part of each 3-year DPD cycle.

Duties and stakeholders



- Refresh AICD resources on directors' duties to reflect contemporary practice, within the current framing of the best interests duty.
- Support debate with greater stakeholder engagement and new research.
- New guidance on bringing stakeholder voices to the board.
- Increase the prominence of stakeholder views in AICD communications.

Demonstrating accountability



- Increase focus on stakeholder and community understanding of the role of the board and non-executive directors.
- Consider non-prescriptive guidance on board commitments.
- Further research annual director election models and impacts.

Culture and remuneration



- Develop new resources to support members in the governance of culture.
- Engage proactively on expectations on the governance of remuneration, promoting appropriate framing of the board's role with stakeholders.
- Consider scope for good practice guide on governance of remuneration.

The AICD will update members on further Forward Agenda initiatives and consultation opportunities through our member communication channels. Members can stay up to date by visiting the **Forward Governance Agenda at aicd.com.au/forwardagenda**.

About the Forward Agenda Consultation

- The Forward Governance Agenda was launched by Angus Armour FAICD, AICD MD & CEO, and John Atkin FAICD, AICD Chair, at the Australian Governance Summit in March 2019. The 'Forward Governance Agenda: Lifting Standards and Practice' Consultation Paper was issued in early April 2019, with feedback via an online questionnaire requested by mid-May.
- 937 members completed the full online questionnaire, with approximately 550 members answering some of the 26 questions. The majority (85 per cent) of respondents had a current directorship and 99 per cent of respondents were AICD members.
- Respondents were broadly representative of the AICD's overall demographic profile with the following exceptions:
 - AICD Fellows participated at a higher rate than overall membership profile (24 per cent of responses from FAICD grade members, compared to 11 per cent of total membership – offset by a lower response rate from MAICD grade members).
 - NFP directors (primary role) participated at a higher rate than overall membership profile (34 per cent of responses, compared to 22 per cent of total membership - offset by a lower response rate from private sector (unlisted) members).
- Capital city roadshows discussing governance findings from the Financial Services Royal Commission and Forward Agenda themes were held during April and May, with over 850 members registering.
- AICD Division Councils and policy committees provided feedback during the consultation period. The AICD also held discussions with targeted stakeholders on Forward Governance Agenda proposals.

Thank you to all members who provided
comment on the AICD's Forward
Governance Agenda consultation.

If you have further questions or comments
Contact policy@aicd.com.au

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