MINDFUL RISK

FEBRUARY 2021

Emerging Business Risk Issues

Discussion Paper

ethicsinsight

About
The Mindful Risk Group

The Mindful Risk Group is a Risk Research and Advisory firm specialising in Risk Management services to organisations in highly regulated sectors such as Mining, Indigenous Affairs, Insolvency, Charities, and Health/Aged Care.

Founders James Ritchie and Bronwyn Smart have more than 40 years of combined operational and executive experience in the Mining and Banking sectors and are supported by a hand-selected team of analysts, designers, and legal professionals to deliver outcomes to organisations in these sectors.

www.mindfulrisk.com.au

About

ethics insight

Ethics Insight was founded by Rupert Evill to address the need for agile, simple, and cost-effective ethics & compliance advice and support, leveraging technology. Rupert has 20 years of global experience across more than 50 countries. He has deep expertise in managing frontline risks, delivering immersive training, conducting intelligence-gathering operations, investigations and managing acute crises.

Rupert has augmented this experience with a Postgraduate Diploma in Behavioural Analysis and Investigative Interviewing, and is a Certified Fraud Examiner.

https://ethicsinsight.co/

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Authors

James Ritchie FGIA
Bronwyn Smart CAHRI, FGIA
Rupert Evill CFE

Introduction

In 2020 the world changed for everyone. The COVID-19 pandemic has caused a sharp shift in how we view the world and has caused us to reconsider the organisations we interact with or choose to work with or work for.

How we work and where we do it has ceased to be an issue - flexible work is here. Sustainability, social responsibility, and 'stakeholder over shareholder' expectations have become executive and boardroom priorities and now shape how organisations attract and retain staff and clients.

What do we do with the future and how do we prepare our organisations for this state?

Failure to recognise and respond to evolving conditions may see some organisations left behind and unable to capitalise on opportunities as they present themselves. Change and a proactive response to these conditions is not only possible; it is now a competitive advantage.

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Flexible Working Practices

#WFH

Where are you reading this paper? For most of us, the office is now a very different concept. Remote working, flexible working, and the ubiquitous hashtag, #WFH, are now part of the global vernacular.

Working From Home has become accepted globally as a common workplace practice.

Will we go back to the traditional office? If we do, how will we do this?

What does current evidence and emerging trends suggest as we enter the 2nd year of the global pandemic?

Organisations who have been able to adapt and implement flexible working practices, for the most part, will achieve competitive advantage over organisations that have not adopted this approach.

In developed countries, flexible working practices have been around for some time, however, there have been varying degrees of implementation.

It may have been something that organisations had previously only been able to accommodate for short periods or only for certain roles.

The COVID-19 pandemic forced a change with a majority of organisations required to have workers at home for a significant period of time.

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Some organisations have viewed flexible working as a temporary change while other organisations have embraced it as a permanent change. There has also been an observable trend in organisations choosing to adopt a hybrid approach to the return to the workplace, where a mixture of both arrangements is negotiated on an individual and/or team basis. The potential benefits and competitive advantage achieved by implementing flexible workplaces practices include:

✓ **Highly skilled and talented workers wanting to work with organisations who have a firm belief and commitment to flexible working arrangements – so being able to recruit the "best of the best";**

✓ **A highly engaged workforce who feel that the organisation trusts them to deliver on objectives rather than being managed to work according to defined start and finish times - with highly engaged workforces achieving higher productivity and efficiency outcomes; and**

✓ **Highly engaged workforces often result in lower levels of absenteeism and presentism as well as significantly reduced staff turnover levels – reducing financial impacts including recruitment costs, oncosts and lost productivity.**

While the outcomes of flexible working practices have been examined and extensively analysed, including through studies such as the 2014 study, **"Impact of Flexible Working Hours on Work-Life Balance" (1)** flexible working practices have now become a defining feature of the global workplace, with organisations being forced to make choices.

**How organisations choose to respond will be a key differentiator.**

1. Sussanna Shagvaliyeva, Rashad Yazdanifard, "Impact of Flexible Work hours on Work-Life Balance". TheThe American Journal of Industrial and Business Management, 2014.

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#WFH

A recent report from Global Workplace Analytics (2) suggests the possible impacts of the trend for flexible working practice could include:

1. ***In general,*** *trust that employees will do their jobs even if not supervised has increased;*

2. ***Business travel costs*** *will unlikely rebound to previous levels;*

3. ***Office rental space*** *will fall on average 30%, applying the brakes to urban renewal programs in many developed market cities;*

4. ***Suburban and rural areas*** *will benefit as people previously commuting from these areas remain there, and urbanites leave overpriced and under-serviced city centres; and*

5. ***Almost one-third of the workforce*** *will be permanently located in Work From Home environments by the end of 2021.*

2. https://globalworkplaceanalytics.com/state-of-telecommuting-in-the-us
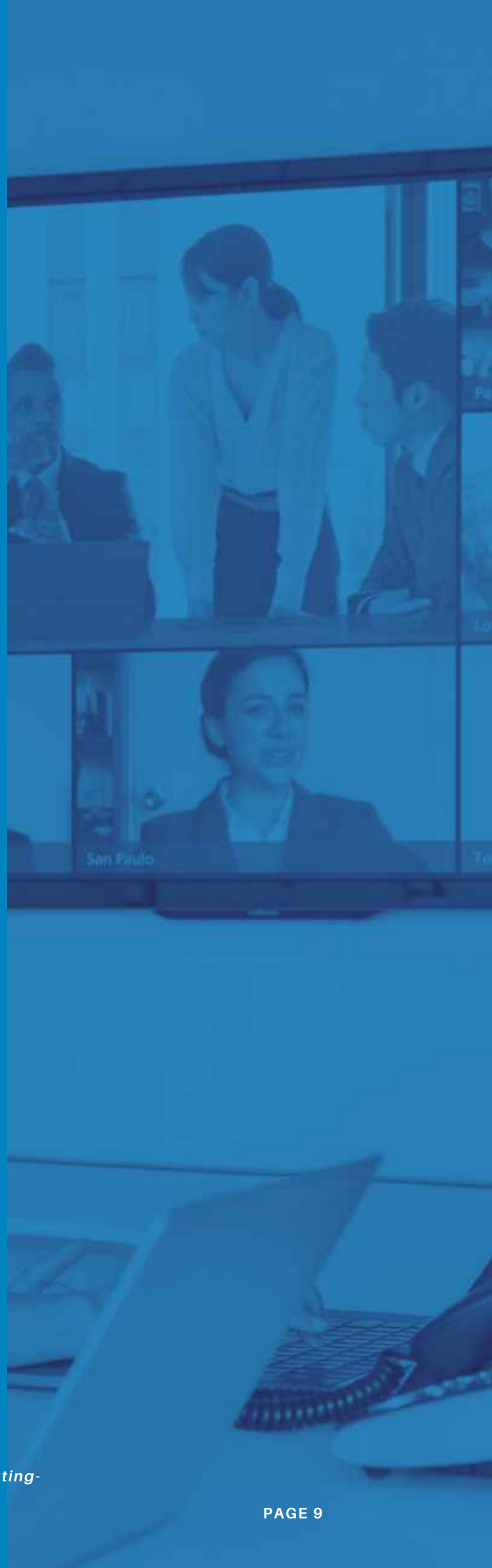
Emerging Business Risk Issues

While embracing flexible work practices can offer considerable benefits, it has also created or accelerated risks with potentially serious consequences for organisations if not properly managed and mitigated.

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Information Technology and Cyber Risk

The COVID-19 Pandemic spurred a marked rise in worldwide cyberattacks. Managing these issues, while not infringing on privacy expectations (including surveillance) of #WFH employees will continue to pose a challenge for many businesses, and may involve additional financial outlay and resources related to training programs, policy development, and monitoring programs.

A recent report by the Australian Cyber Security Centre (3) indicated that despite many Australian workers and consumers falling victim to cybercrime, they continue to embrace online technologies for work, shopping, leisure, and entertainment.

For businesses, the major issues are establishing and maintaining relevant security protocols relating to devices and workplaces that are private or at least blended business-private usage.

Again, this will require organisations to develop and implement planned actions to mitigate the associated risks.

A recent report by the Australian Cyber Security Centre which covers the period *July 2019- June 2020* indicated a *57%* increase in incidents between March and April 2020 coinciding with the nationwide lockdown in Australia.

3.https://www.cyber.gov.au/acsc/view-all-content/reports-and-statistics/acsc-annual-cyber-threat-report-july-2019-june-2020

57%

The percentage increase in Cyber Crime incidents reported to The Australian Cyber Security Centre (ACSC) between March and April 2020

2,266

The total number of Cybercrime Incidents reviewed by the ACSC to June 2020

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Fraud Related Risk

Studies – including those by the Association of Certified Fraud Examiners (ACFE), Deloitte, Access Economics, and KPMG – all point to an adaptation in fraud (including corruption).

Trust may have risen, as noted in some studies, but senior Australian executives indicate that employee and/or supplier fraud is a major concern. As businesses rush out new products, services and offsite processes the necessary Risk Management controls and fraud safeguards may either be lacking or not fully tested.

As the recent KPMG (4) survey of ASX-200 Australian executives indicated, 42% said that the pandemic had impaired their ability to conduct fraud and corruption investigations. 27% said that fraud and corruption prevention programmes had also been impaired.

These areas, which were already challenging before the pandemic, will remain so because:

1. *Investigations require access. Not just to people, but physical access. For example, how might you investigate allegations of worker mistreatment, counterfeit, malicious tamper, or contamination - all requiring some element of physical observation and testing - at a key supplier's facility if they are based overseas?*
2. *Cross-border data transfer was already challenging as data-nationalism and stringency of laws increased in the past five years. These challenges have increased as travelling to the site to investigate is impaired.*

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3. *Surveillance of employees poses considerable ethical challenges in a designated workplace. With WFH it opens a whole new area of complexity. As the ACFE note, in many jurisdictions there are what is termed 'intrusion upon seclusion' considerations, where the law protects areas where people might have a 'reasonable expectation of privacy'.*

4. *Ethics & compliance programmes, which cover anti-fraud and anti-corruption, have traditionally relied on access and participation. Access to train people, monitor, conduct audits, speak to those raising concerns, and access to leaders who set the crucial tone. These issues – especially with advances in technology – are easily surmountable in the WFH era, but they require a pivoting from traditional techniques and providers.*

5. *Ethics & compliance remains crucial to managing accountability. The workload for professionals in this space is not getting any lighter, yet many businesses still view the function as a cost-centre rather than a brand differentiator - or at least, the first line of defence.*

4. https://home.kpmg/au/en/home/insights/2020/11/asx200-corporate-reporting-trends-2020.html

Work Health & Safety Risk

Work Health and Safety legislation in most developed countries requires organisations to provide a safe place of work for workers regardless of location. This includes home based workplaces. The intent of this legislated requirement is to provide a physically and psychologically safe work environment in order to prevent work related injury. The burden of this requirement predominately rests with the organisation and/or employer to provide a safe workplace. This includes the responsibility on the organisation to ensure that appropriate and fit for purpose spaces and resources are available for workers including items such as desks, chairs, computer software and hardware, equipment and stationery. This can contribute to increased costs for the organisation through the provision of these resources for home based working.

To effectively implement this, organisations need to have appropriate supply and procurement processes as well as organisation policies and procedures. Without these formal structures in place, organisations are exposed to the risk of inconsistent applications and unsafe workplaces due to the rapid transition to a working from home environment. This should include but be not limited to :

- *The Completion of Working from Home Checklists and Risk Assessments*
- *The provision of fit for purpose and ergonomically appropriate office furniture*
- *Consideration of the safety of electrical apparatus as well as fire safety, first aid resources, and emergency evacuation*
- *Systems of communication and interaction*
- *Appropriate temperature control and indoor air quality*

An additional emergent risk issue that may affect organisations and should be considered is the WHS risks associated with COVID-19 Vaccine programs. There is no doubt that these will become an emergent risk issue in 2021. While full details of government policy are currently being drafted, the risk issues associated with the COVID-19 vaccine may interact with enterprise agreements, performance management frameworks, and discipline and complaint processes as well as Workers Compensation Insurance schemes.

A failure to proactively consider the WHS risk issues associated with flexible working practices could impact organisations in both direct and indirect costs as well as lost productivity.

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People Risk

While the adoption of flexible working practices has the potential to yield significant benefits to people and organisations, if not managed and implemented effectively it can lead to conflict, workplace disharmony, and an organisational drift toward "siloed" operations – something many organisations have worked hard to breakdown.

The concept of a siloed approach to organisational operations is not new. Removing silos has been the substance of many business improvement publications, including the book "Silos, Politics and Turf Wars" (5). The COVID-19 pandemic has created distance and segregation that may see this silo mentality remerge in previously well-functioning organisations.

Workplace conflict could arise as a result of perceived inequitable access to flexible working practices, physical isolation, as well as an inability to collaborate consistently and effectively at times and in ways that suit the organisation. Furthermore, the reduction in physical and informal interaction, including "water cooler" discussions could also contribute to these negative outcomes.

In an article published by the Harvard Business Review in 1998 titled "The Alternative Workplace: Changing Where and How People Work" (6), the benefits of informal or "water cooler" discussions as a way of improving team relationships and problem-solving were outlined.

The direct and indirect costs of this people risk issue are significant. It may be felt in adverse impacts on organisational culture, resulting in elevated costs associated with negotiating workplace industrial agreements. It may also be felt in decreases in customer service standards, elevated incidences of complaint, and overall reduced performance and staff productivity. Organisations should embrace formal change management processes to support the mitigation of these risks as highlighted by Change Management Expert Friska Wirya, "Change - especially one as disruptive as the manner in which people work during and post-COVID - does not occur by itself. It needs a structured approach, active leadership, and reinforcing mechanisms to inspire and sustain it".

5. Lencioni,Patrick, Silos, Politics and Turf Wars, John Wiley & Sons Inc (US), 2006
6.https://hbr.org/1998/05/the-alternative-workplace-changing-where-and-how-people-work

"CHANGE - ESPECIALLY ONE AS DISRUPTIVE AS THE MANNER IN WHICH PEOPLE WORK DURING AND POST-COVID - DOES NOT OCCUR BY ITSELF. IT NEEDS A STRUCTURED APPROACH, ACTIVE LEADERSHIP, AND REINFORCING MECHANISMS TO INSPIRE AND SUSTAIN IT"

FRISKA WIRYA

Psychosocial Risk

A survey recently published in the Medical Journal of Australia(7) of people 18-years old and older confirmed that mental health issues are rising. The causes are manifold:

1. **Employment uncertainty**: Those facing redundancy, furloughing, loss of income, or insecure sectors (e.g. the gig economy) are most at risk
2. **Social isolation**: Those living alone, or those living with others whom they do not share a close bond
3. **Conflict environments**: Those living with domestic violence and relationship conflict

So what risks does this pose to organisations?

Psychological health conditions appear to becoming more prevalent in the community in general in most developed countries. Because the COVID-19 pandemic has blurred the boundaries of work and the home so significantly, this can create an elevated potential for personal psychological conditions to impact on productivity. In addition, the potential for workers being unable to "turn off" from work can elevate the risk of burn-out and psychological injury.

In a number of developed nations, particularly Australia, New Zealand, Canada and the United Kingdom, Workplace Health and Safety legislation specifies that organisations owe duties to workers to provide both a physically and psychologically safe place of work as far as reasonably practicable. Failing to do so can result in elevated instances of work related claims of psychological injury and increased insurance costs for organisations along with lost productivity and absenteeism. Organisations should consider their approach and process for ensuring a psychologically safe workplace, especially should workers feel isolated as part of the working from home program.

7.https://www.mja.com.au/journal/2020/mental-health-people-australia-first-month-covid-19-restrictions-national-survey

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Ethics, Accountability and Sustainability Risk

Stakeholder expectations of organisations from both a consumer and worker perspective continue to evolve rapidly. Current evidence and trends suggest that the pace of this evolution accelerated during the pandemic and we anticipate that this trend will continue once the pandemic has been controlled.

Consumers are increasingly likely to consider and change their spending habits based on organisational ethics and values, sustainable practices, and corporate accountability. We'll call this collectively 'ethics, accountability and sustainability'.

similarly from an organisational perspective, as Gen-Z and millennials enter the workforce, these generations place a higher value on an organisation's ethics than previous generations did.

An Accenture study in April 2020 (8) of 3,000 consumers in 15 countries across five continents suggest that **45%** of consumers said they're making more sustainable choices when shopping and will likely continue to do so.
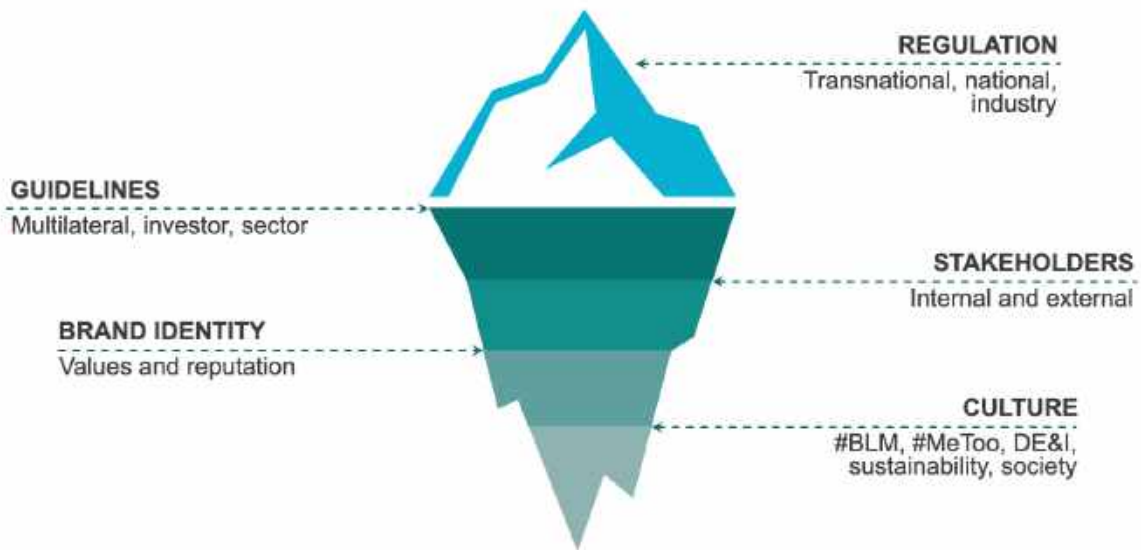
Analysis of commercial virtues and organisational willingness to embrace ethical and sustainable practices is not a new concept. Studies over the last two decades indicate (10) companies that have truly embraced ethical business practices have out-performed 'good to great' companies.

However, there remains a gap between what we collectively say we want and how we behave as individuals. Most of us report a desire to live more sustainably, but don't always exhibit these behaviours in purchasing and employment decisions.

8. https://newsroom.accenture.com/news/covid-19-increasing-consumers-focus-on-ethical-consumption-accenture-survey-finds.htm

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Societal context: Compliance, meet ethics

REGULATION
Transnational, national, industry

GUIDELINES
Multilateral, investor, sector

STAKEHOLDERS
Internal and external

BRAND IDENTITY
Values and reputation

CULTURE
#BLM, #MeToo, DE&I, sustainability, society

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The acceleration in change may therefore expose generational tensions as those currently leading organisations adapt to new generations joining the workforce. The younger generations are, in many ways, better equipped to exploit the flexible working conditions, having grown-up in the age of connectivity.

This also occurs at a time when diversity, equity, and inclusion have transitioned from lip-service to a boardroom issue. 'Pale, stale, and male' is no longer accepted as the norm in Board membership, and balance is becoming a demand. This accelerated trend, partly a function of the pandemic, partly as a result of sustained, broader social movements (including #MeToo and #BLM), is led by Millennials and Gen Z and is not going away.

Ethics and sustainability make business sense. 85% of S&P top 500 companies now file sustainability reports and $23 trillion is now generated using ESF guidelines – which is more than the GDP of the US economy. Whether these companies are genuinely embracing ethics and sustainability will continue to be debated and challenges remain in how best to measure outputs. Just as laws in common law jurisdictions evolve with the times, so too will the sophistication of measurement and accountability systems.

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The Role of Legislation and Regulation

What about regulation then? The US has led the way in extraterritorial enforcement (prosecution of wrongs beyond its borders), acting as the global police on matters of ethics and sustainability, especially corruption, trade sanctions, anti-competitive behaviours, and money laundering.

This will remain the case, but other countries are taking note. This includes European nations but increased enforcement measures, some legitimate, and some politicised, have also been observed from Brazil to China to Malaysia, to name a few.

Australia's extraterritorial enforcement, outside of money laundering, remains patchy, but there is considerable pressure for change, especially around anti-corruption and the Modern Slavery Act.

To illustrate the spread of regulation, in 2010 California signed into law the California Transparency in Supply Chains Act. In 2015 the UK introduced the Modern Slavery Act, and Australia's version arrived in 2018. France's Corporate Duty of Vigilance law was squeezed between the two, in 2017.

As we write, guidance and legislation is being tabled, debated, and passed in markets including Switzerland, Singapore, and the Netherlands, focusing on areas including human rights, environmental impact, and child labour due diligence.

Not all will be enforced with the same resources and vigour, but the trend is clear: the regulatory movement is gaining momentum as the social movement (and social media) lead the way.

Organisations who wait for enforcement to ramp up before changing culture and implementing controls are like those who look for the flash of newly installed traffic cameras and then slow; never an advisable strategy.

Conclusions

Based on the evidence presented and observable trends, due to the pandemic, flexible work arrangements will now be necessary for an organisation to efficiently adapt to the global economic landscape post-pandemic. Similarly, workers will have an expectation that flexible work arrangements will be available in all organisations for most roles.

Organisations that do not or are not equipped to support flexible working arrangements will experience a reduced ability to attract and retain skilled staff. Flexible working practices also introduce the potential for a significant range of risk issues which if not proactively mitigated will result in cost and productivity impacts for organisations.

The growing expectations of stakeholders and the community in relation to ethics and sustainability will become hard for organisations to ignore. Leaders must therefore make the decision: get on board or focus on dwindling demographics and markets where expectations are lower.

Five Steps to Respond Proactively

1. ***Embrace*** and embed flexible working practices within your organisation, supported with formal policies including procurement and WHS - where the WHS component considers both physical and psychological safety;

2. ***Ensure*** your organisational change has leadership support underpinned by a formal change program;

3. ***Implement,*** formalise and monitor your cybersecurity program, updating it regularly as conditions evolve. Ensure staff receive training on the program, especially any working from home or personal device security requirements;

4. ***Review*** your compliance program, ensuring risk controls and safeguards are in place and regularly tested for effectiveness; and

5. ***Build*** reputational risk as an underlying consideration into everything you do. Regulation may catch-up, but do not wait for that, get ahead of the curve.

And don't forget to complete our Post-Pandemic Risk Management Scorecard at the end of this report

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Post-Pandemic Risk Management Scorecard

Choose the score (1-3) on the table below, if you score:

12-15: Review risk management plans as a priority.

8-11: Review the priority areas within 6 months

5-8: Keep on, review this scorecard quarterly

RISK ISSUE	1 POINT	2 POINTS	3 POINTS	YOUR SCORE
Flexible working and WHS are...	On agenda, physical & psychological	A work-in-progress	We intend to go back to the old normal	☐
Our change management journey is best described as...	A formal & supported change plan	Informal plan but leadership support	No change plan just yet	☐
Information technology issues (including cybersecurity) are now...	Monitored with controls evolving	Starting to implement WFH controls	Unchanged from pre-pandemic	☐
Our compliance program is...	Monitored, updated, holistic	A work-in-progress	Unchanged from pre-pandemic	☐
Reputational risk is...	A key focus, including social changes	Mainly driven by regulation	Mainly driven by enforcement	☐

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References and Acknowledgments

References

1. Shagvaliyeva, Sussanna & Yazdanifard, Rashard, "Impact of Flexible Work hours on Work-Life Balance". TheThe American Journal of Industrial and Business Management, 2014

2. https://globalworkplaceanalytics.com/state-of-telecommuting-in-the-us

3. https://www.cyber.gov.au/acsc/view-all-content/reports-and-statistics/acsc-annual-cyber-threat-report-july-2019-june-2020

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5. Lencioni, Patrick, Silos, Politics and Turf Wars, John Wiley & Sons Inc (US), 2006

6. https://hbr.org/1998/05/the-alternative-workplace-changing-where-and-how-people-work

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Additional References

Association of Certified Fraud Examiners (ACFE)