
Pink Water Dripping by Anthony Ponzo

DIRECTIONS 2024

Driving productivity growth in a highly charged environment

KING&WOOD MALLESONS
金杜律师事务所

KWM'S DIRECTIONS REPORT 2024

In 2024, Australian businesses are searching for business and investment opportunities and productivity growth in a challenging and highly charged environment.

This is reflected in the continuing focus on pursuing and maintaining profitability (against the backdrop of market volatility and inflationary pressures), and the increased focus on developing new business models to deliver products / services to customers and / or deliver business outcomes. Compared to prior years, these 2 factors have overtaken previously top ranking areas of focus, including managing cyber risks, attracting and retaining skilled labour, maintaining an appropriate corporate culture and protecting brand and reputation.

In addition to reporting on what is 'top of mind' for directors and senior leaders in 2024, *KWM's Directions Report 2024* explores:

- Views on stakeholder activism and public pressure for greater corporate and personal accountability.
- The level of engagement and cooperation between the Australian business community and Government, and other key stakeholders.
- The key barriers and solutions to improving Australia's rate of productivity growth.

Our report reflects the results of our 2024 Directions Survey, which was conducted in June 2024 against a backdrop of newly announced reform and policy change, including the 'Closing Loopholes' industrial relations reform, the overhaul of Australia's merger regime, the strengthening of Australia's foreign investment framework, and the 'Future Made in Australia' policy.

Directors' and senior leaders' areas of greatest opportunity or concern in the next 3 – 5 years

1. **41%** Developing new business models
2. **33%** Managing cyber risks
3. **32%** Responding to and managing excessive regulation and red tape

Respondents were asked to select up to 5 answers from a list of 21 options provided
Survey results have been rounded to the nearest whole number

HOW DID WE GET HERE?

Although unemployment remains low, persistent inflation and (comparatively) higher interest rates have dampened confidence and consumer spending, and fuelled demands for wage increases (often decoupled from productivity gains) to mitigate cost of living pressures.

These factors have contributed to perceptions that Australian businesses are unfairly profit-taking at the expense of their employees, suppliers and customers. Of course, businesses too are facing higher funding and compliance costs, while investors – including those responsible for investing and managing superannuation contributions to fund Australians' retirements – continue to demand appropriate returns on their investments.

This 'us versus them' mentality is accompanied by heightened stakeholder activism and demands for greater personal accountability. It is therefore hardly surprising that politicians and commentators can readily gain headlines, and broader traction in the community, by:

- criticising corporate Australia for failing to balance the competing (and often conflicting) interests of their stakeholders; and
- demanding greater accountability from boards and senior leaders when 1 or more stakeholders feel aggrieved.

Against this backdrop, attention has rightly turned to Australia's faltering rate of productivity growth (1.2% over the last 20 years, compared to 2.1% from the 1990s to mid-2000s),[1] and opportunities to achieve productivity improvements and 'grow the pie' in order to sustain our standard of living.

> *"Sustainable, long-term wage growth can only be realised by securing productivity gains… While a record number of Australians had jobs, employers didn't invest in the equipment, tools and resources that are needed to make the most of employees' skills and talents. Further capital investment would help turn our strong employment growth into strong productivity growth… The pandemic 'productivity bubble' has well and truly burst."*
>
> **Alex Robson,**
> Deputy Chair of the Productivity Commission[2]

Improving productivity is key for Australian businesses to remain competitive and enable stakeholders to obtain their 'fair slice of the pie' in a low growth environment. Standing in the way are the complexities and burdens of the regulatory environment and red tape – which respondents see as the biggest impediment. On a positive note, significantly more of our business leaders are seeing opportunities for dealing with these challenges – embodying the notion that 'standing still' and waiting for improved business conditions or a relaxation in stakeholder expectations is simply not an option.

About the *2024 Directions Survey*: King & Wood Mallesons' survey was conducted during June 2024. The results discussed in this report are drawn from the survey responses of 251 director and senior executive/executive clients.

1 Australia's experience is consistent with declining labour productivity growth across other OECD economies (from 2.01% in 1995 to 1.4% in 2023).
2 'New insights into Australia's productivity problem', Productivity Commission Media Release, 29 February 2024.

WHAT IS TOP OF MIND IN 2024?

Our 2024 Directions Survey results find directors and senior leaders grappling with the need to innovate and develop new ways to deliver products and services, to pursue profitability and find growth.

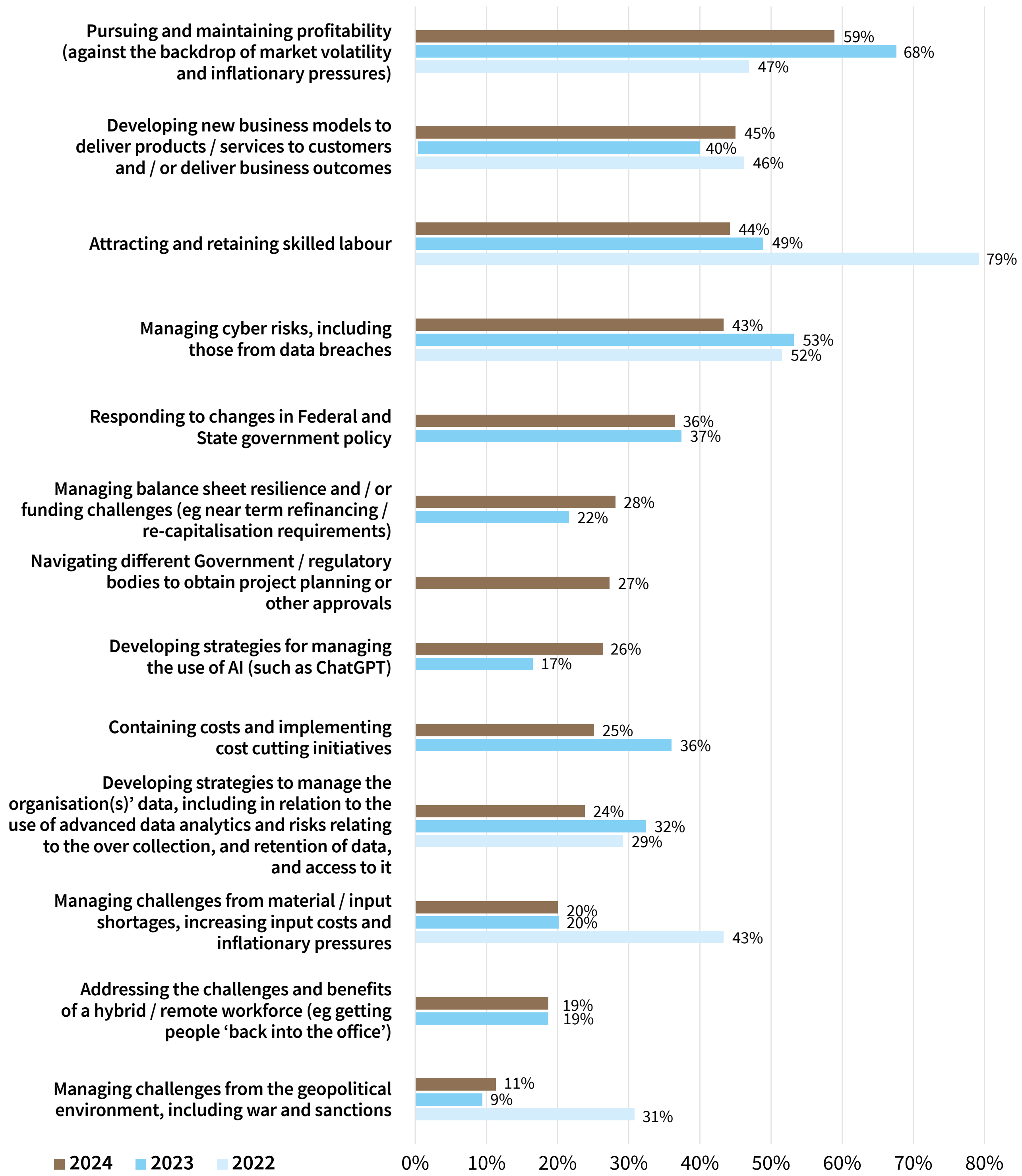
KEY FINDINGS

- Over the short term (next 6 months), pursuing and maintaining profitability (against the backdrop of market volatility and inflationary pressures) remained the top ranking issue (59% in 2024, compared to 68% in 2023).
- Developing new business models to deliver products / services to customers and / or deliver business outcomes climbed to the 2nd highest ranking concern over the short term (45% in 2024, up from 40% in 2023) and when viewed over the medium term (next 3 to 5 years) was the top ranking concern (41% in 2024, down slightly from 43% in 2023).
- Managing cyber risks, including those from data breaches and the use of generative AI, was the 2nd highest ranking issue over the medium term (33% in 2024, down from 42% in 2023, remaining the 2nd ranking issue). This year cyber risks were less front of mind in the short term (43% in 2024, compared to 53% in 2023), potentially reflecting a sentiment that many businesses have doubled their efforts to increase their cyber resilience in the wake of recent high-profile cyber breaches and are now at a more mature stage in terms of response readiness.
- There was increasing concern over the medium term about responding to and managing excess regulation and red tape, including responding / adapting to the changing regulatory landscape (eg new reporting obligations) (32% in 2024, compared to 26% in 2023), pushing this to the 3rd highest ranking medium term issue.

Attracting and retaining skilled labour (44% in 2024, compared to 49% in 2023), being the top ranking short term issue in 2023, continues to weigh on the minds of directors and senior leaders in the short term, ranking 3rd in 2024 but moving down to 6th highest ranking over the medium term.

In the short term, directors and senior leaders are worried less about implementing cost cutting initiatives (25% in 2024, compared to 36% in 2023) but are more concerned about maintaining balance sheet resilience and / or funding challenges (28% in 2024, compared to 22% in 2023).

What are the areas of greatest opportunity or concern in the short term (next 6 months)?



Respondents were asked to select up to 5 answers from a list of 13 options provided
Survey results have been rounded to the nearest whole number

Other key themes emerging from our *2024 Directions Survey* results include:

- Increasing concern about responding to and managing excess regulation and red tape, including responding / adapting to the changing regulatory landscape, with that issue moving from the 8th ranking area of concern over the medium term in 2023 to being the 3rd ranking area of concern in 2024.

  These concerns were expressed against a backdrop of impending reforms in the areas of industrial relations, merger controls, the foreign investment framework and the 'Future Made in Australia' policy, as well as a potential nearer term Federal election.

  Against this, managing risk of compliance failure, regulatory investigation and / or enforcement action fell slightly, ranking 12th on the list of medium term concerns in 2024 against an 8th ranking concern in 2023.

  Our survey results reflect a continuing concern about the potentially stifling impact of regulation and red tape on business innovation at a time when boards and management teams are looking for improved profitability and growth. Directors' and senior leaders' concerns may well be justified when we look at the impediments that red tape is having on the speed of the energy transition in this country. Unsurprisingly, these findings come against the backdrop of nearly 70% of survey respondents seeing room for improvement in how they work with government (more on this below).

- Developing strategies for managing the use of AI (such as Chat GPT) moved up from the 11th ranking short term concern in 2023 to the 8th ranking short term concern in 2024, and from the 10th ranking medium term concern in 2023 to the 7th ranking medium term concern in 2024. Directors and senior leaders continue to monitor developments in digital technologies and how they might be harnessed in the quest to develop new business models in the medium to long term, no doubt conscious of not wanting to be left behind despite uncertainties remaining over how such technologies will evolve and what opportunities will eventuate. Generative AI continues to be looked at by business leaders both in the context of being a risk to entrenched business models as well as an opportunity for improvement.

- Maintaining an appropriate corporate culture fell from the 3rd ranking medium term concern in 2023 to the 4th ranking medium term concern in 2024. Similarly, protecting brand and reputation fell from the 6th ranking medium term concern in 2023 to 11th place in 2024. These results continue a gradual decline in rankings for each of these concerns since *KWM's 2019 Directions Report* where, following the outcome of the Hayne Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, maintaining an appropriate corporate culture was the top ranking issue (48% in 2019, compared to 32% in 2024) and protecting brand and reputation was the 3rd ranking issue (43% in 2019, compared to 23% in 2024). Nevertheless, the fall in ranking for protecting brand and reputation surprised us given the recent issues facing sectors such as banking, groceries, aviation and consulting which have demonstrated the difficulty in repairing brand damage.

Directors' and senior leaders' areas of greatest opportunity or concern in the next 3 – 5 years

1

41% Ranked 1st in 2024 and 2023

Developing new business models to deliver products / services to customers and / or deliver business outcome

2

33% Ranked 2nd in 2024 and 2023

Managing cyber risks, including those from data breaches and generative AI

3

32% Ranked 3rd in 2024 Ranked 6th 2023

Responding to and managing excessive regulation and red tape, including responding / adapting to the changing regulatory landscape (eg new reporting obligations)

4

32% Ranked 4th in 2024 Ranked 3rd 2023

Maintaining an appropriate corporate culture

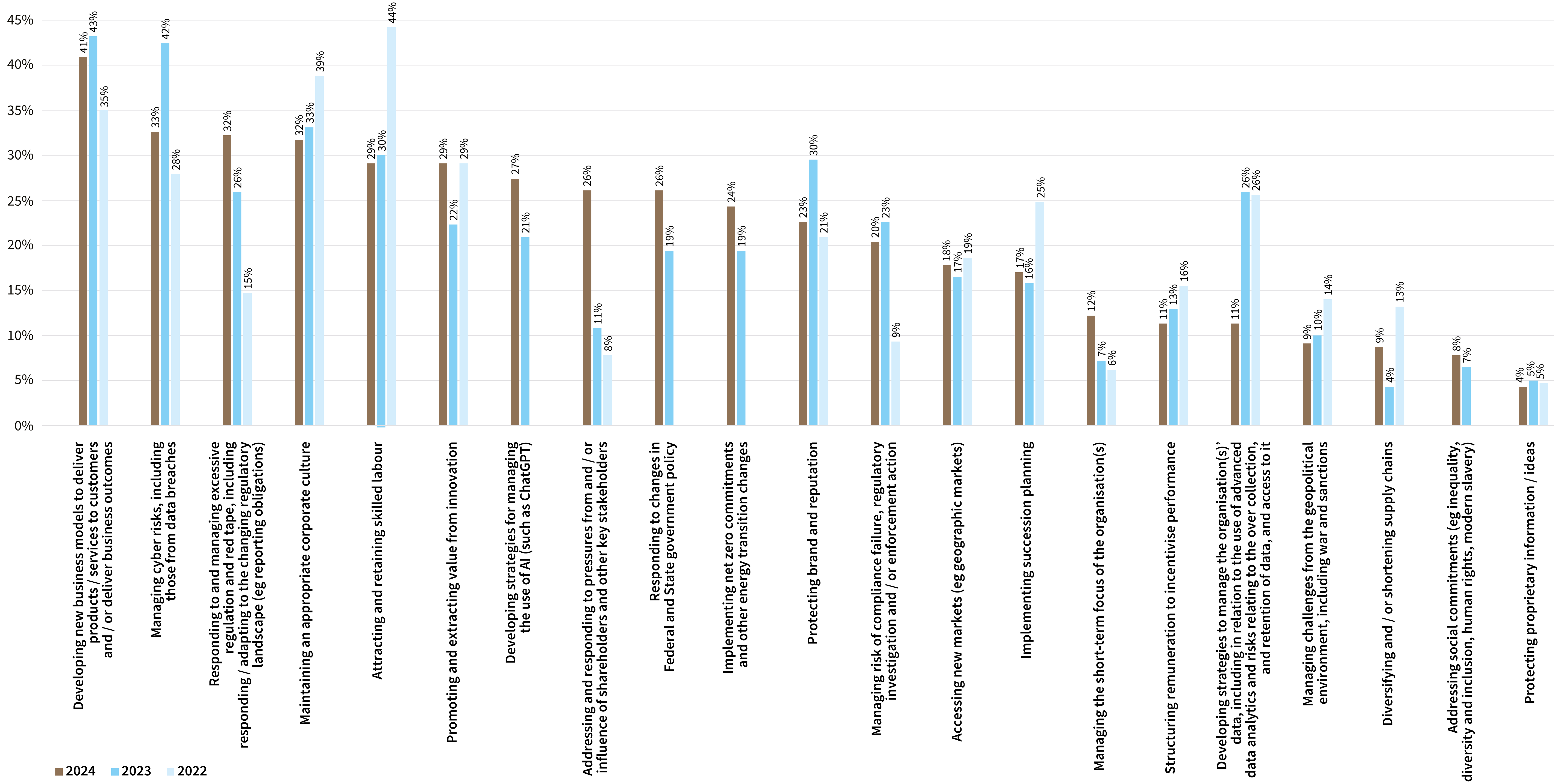
5

29% Ranked 5th in 2024 Ranked 9th 2023

Promoting and extracting value from innovation

Respondents were asked to select up to 5 answers from a list of 21 options provided
Survey results have been rounded to the nearest whole number

What are the areas of greatest opportunity or concern in the medium term (next 3 – 5 years)?



Respondents were asked to select up to 5 answers from a list of 21 options provided
Survey results have been rounded to the nearest whole number

OPERATING IN A HIGHLY CHARGED ENVIRONMENT

There is broad consensus that the 'tone is set from the top' in cultivating corporate culture, and that having the right culture plays an important role in protecting brand and reputation, as well as managing risks of compliance failures – these things being inextricably linked.

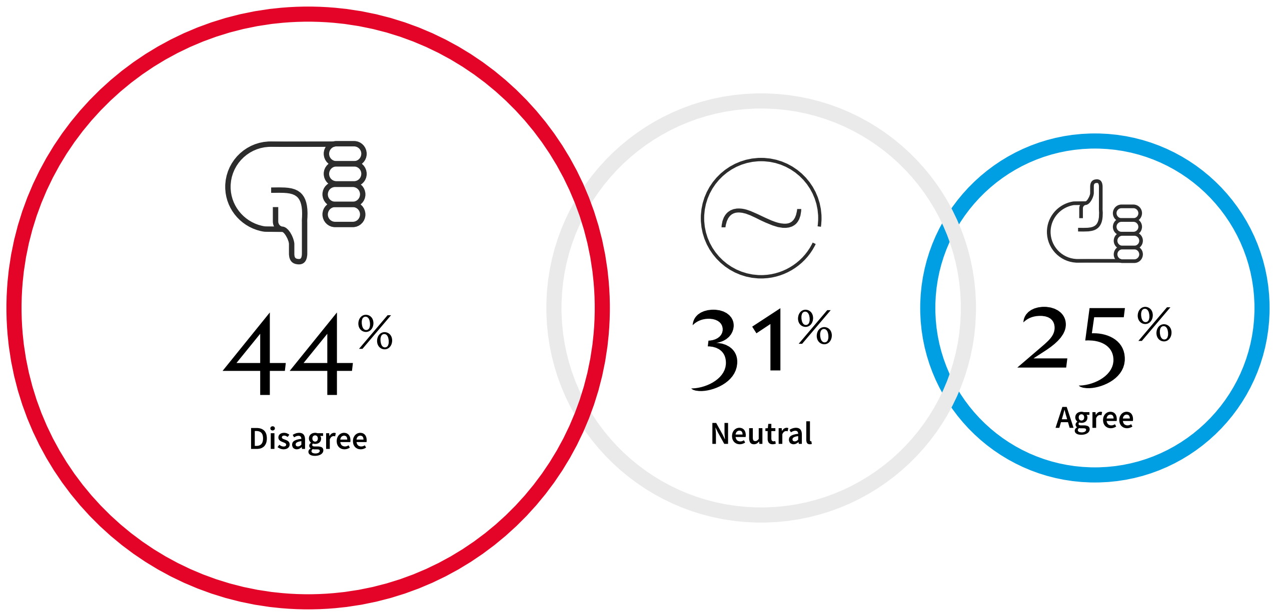
This year, cost of living pressures in a low growth environment have contributed to a heightened scrutiny of business, particularly around perceptions of profit-taking and strategic direction and outlook. There is less tolerance for management and compliance failures.

This more highly charged environment, amplified by an aggressive media and activist investor settings, has led to a greater level of 'turnover' at the upper echelons of management at many organisations, which can make delivering on a cultural agenda (to reform or otherwise) more challenging.

This reactionary posture is reflected in the increased concern over the medium term about the pressures and influences of shareholders and other key stakeholders, which begs the question – is this intensity of stakeholder activism (and by extension, demand for accountability to those stakeholders) driving better business outcomes?

It appears our survey respondents think not – with an overwhelming 44% of respondents disagreeing with the statement that stakeholder activism is positively impacting their organisations' business objectives and strategy implementation.

Is stakeholder activism having a positive impact on business objectives and strategy implementation?

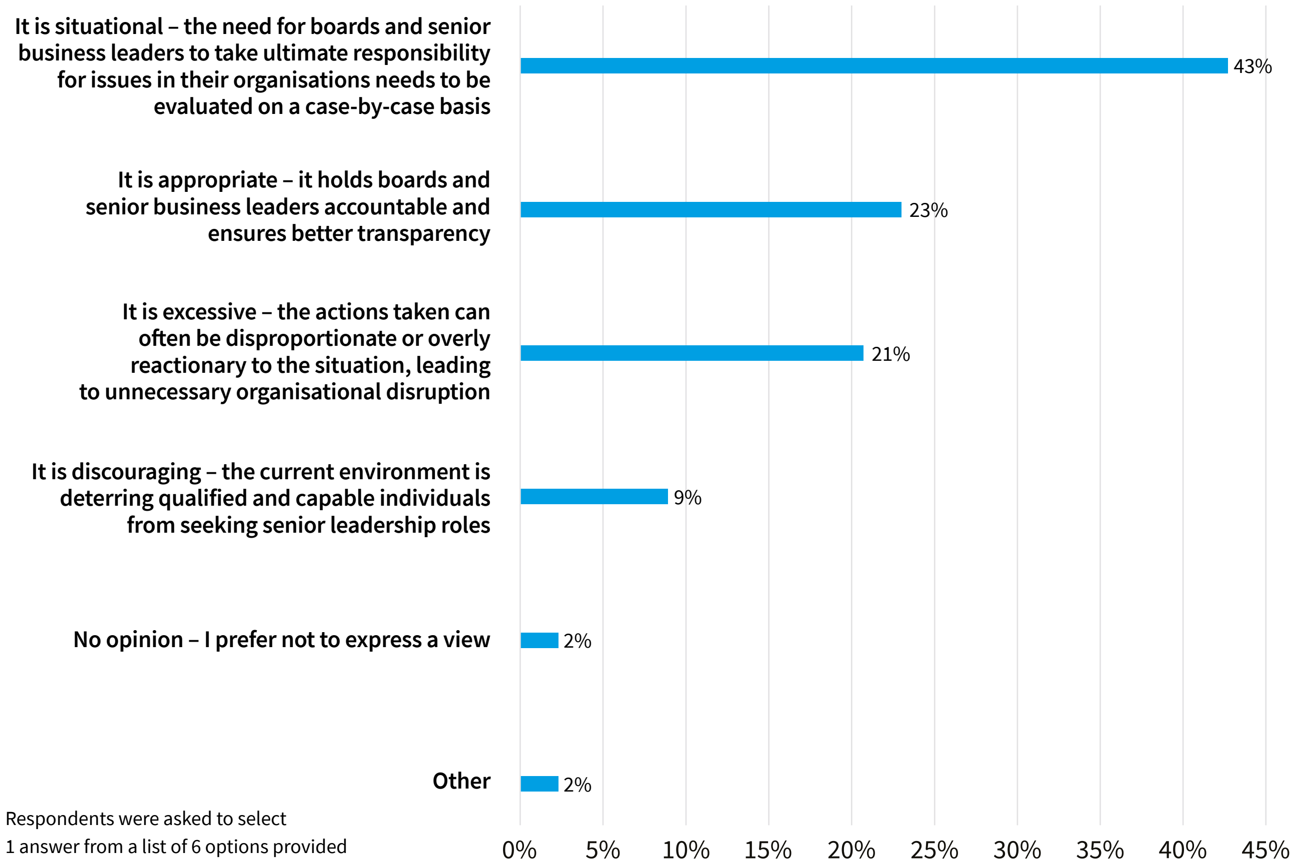


In the context of increasing stakeholder influence and increasing public pressure for greater corporate and personal accountability, we were curious to test whether the balance in the current environment is about right.

In this regard, our survey results point to a dynamic which has been manifesting for some time – which is the increasing imposition of regulatory and accountability obligations on individuals (see our discussion of this in the context of mandatory climate reporting in our reform section) – signalling a move away from the concept of a corporation as a separate legal entity with limited liability, to a paradigm where there is a higher degree of personal responsibility and accountability for corporate fault. While the corporate veil has perhaps not yet been pierced, it certainly seems to be thinning.

On this topic, our survey respondents gave a balanced view. When asked how public pressure for corporate accountability is manifesting in corporate Australia, nearly 43% of respondents said it was 'situational' – in other words, the need for boards and senior business leaders to take ultimate responsibility for issues in their organisations needs to be evaluated on a case-by-case basis. Only one-fifth thought the current dynamics were 'excessive' (ie disproportionate or overly reactionary to the situation, leading to unnecessary organisational disruption) with even fewer holding the view that the current environment is deterring qualified and capable individuals from seeking senior leadership roles (which anecdotally is a sentiment we hear often, at least for publicly listed entities).

How is public pressure for corporate accountability manifesting in corporate Australia?



Respondents were asked to select 1 answer from a list of 6 options provided

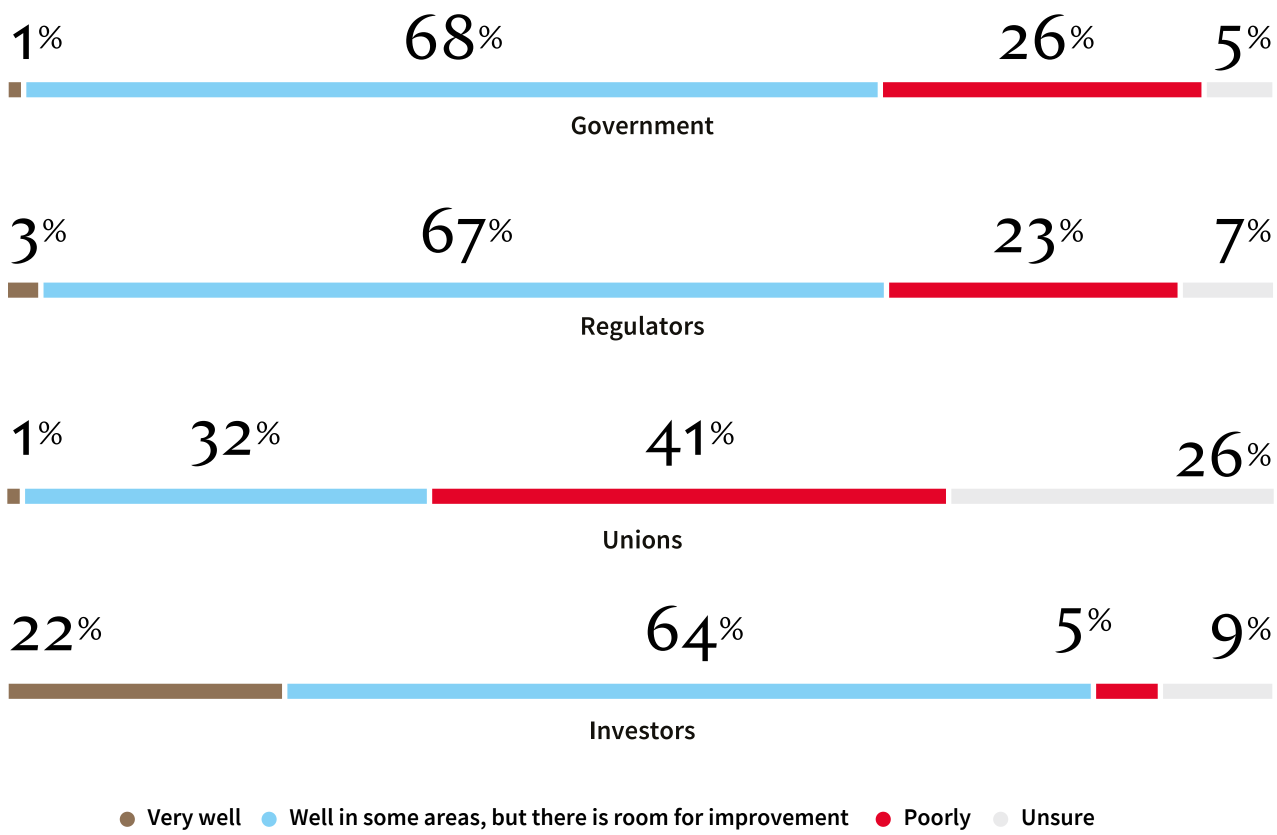
Noting the elevated focus on stakeholder engagement, the majority of respondents saw room for improvement in how business works with government and regulators, with only 1% and 3% respectively thinking that those relationships are working ‘very well’. Investor relationships were viewed more positively, with over 20% considering they are working ‘very well’. Over 40% of respondents said that the working relationship with unions was poor (the survey was conducted prior to recent revelations regarding the CFMEU).

How is corporate accountability manifesting in corporate Australia?

“In some areas, it is appropriate – for instance, calling our poor culture and cover-ups by senior people. But the political stuff around Gaza, and environmental causes, as an example, tend to be driven by the loudest voices but not necessarily the most vested stakeholders.”

Survey respondent

How well is the Australian business community working with the following stakeholders?



Over 64% of respondents said that there needs to be better coordination between different parts of government. A similar proportion advocate for improved consultation processes on policy issues and proposed law reform (including longer minimum timeframes for consultation and improved transparency).

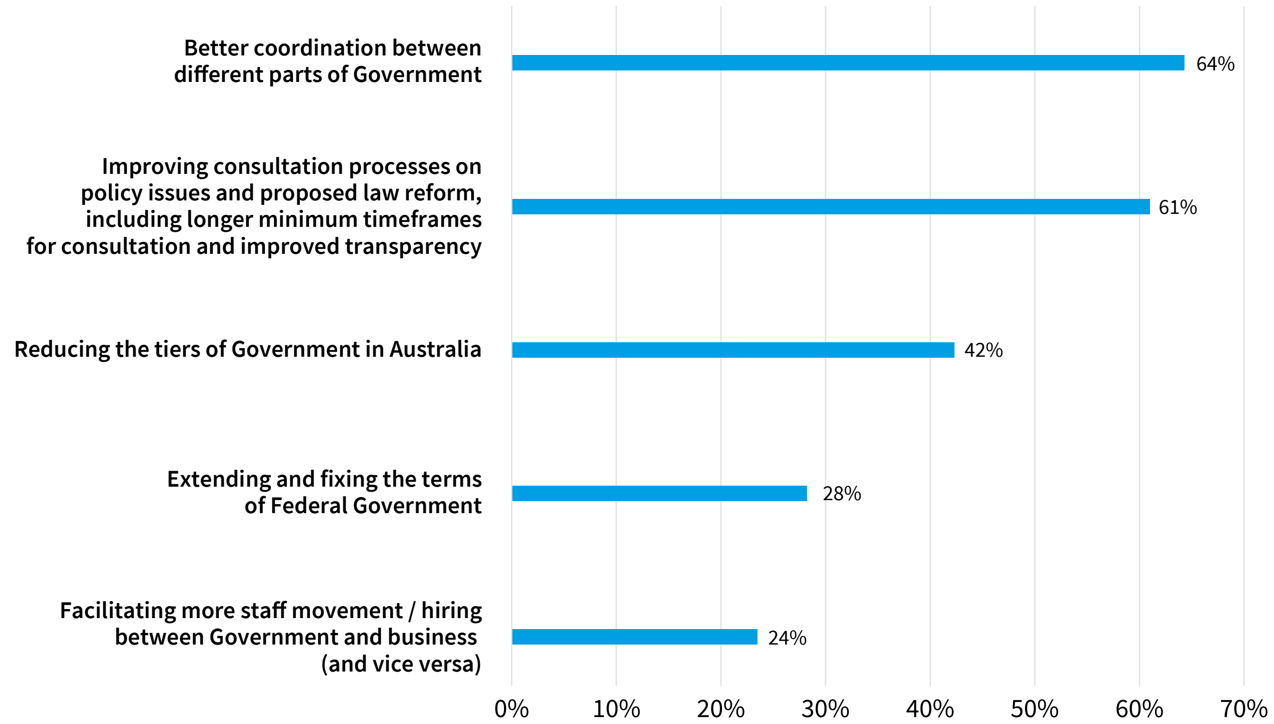
The counterpoint of course to these sentiments is that this is a ‘two-way street’. For government to help, businesses need to be coming up with potential solutions and articulating how government can play a role.

What does good look like when it comes to working with Government?

“It’s about building bridges with government before you need them.”

Gabrielle Upton
Former Attorney-General of New South Wales and KWM Consultant

What could improve the level of engagement and cooperation between the Australian business community and Government?



Respondents were asked to select up to 3 answers from a list of 5 options provided

CHALLENGES AND OPPORTUNITIES FOR ACHIEVING PRODUCTIVITY GROWTH

As highlighted above, in 2024, Australian boards and senior leaders continue to be particularly focussed on pursuing and maintaining profitability. Improving productivity can make a valuable contribution to this task.

At its simplest, productivity is about seeking more efficient production and delivery of goods and services from the same commitment of resources in order to produce more income to:

- cover increasing input costs, and funding and compliance costs;
- fund wage increases and bonuses, and offer better benefits and working conditions, to attract and retain skilled labour;
- deliver returns to shareholders; and
- make investments.

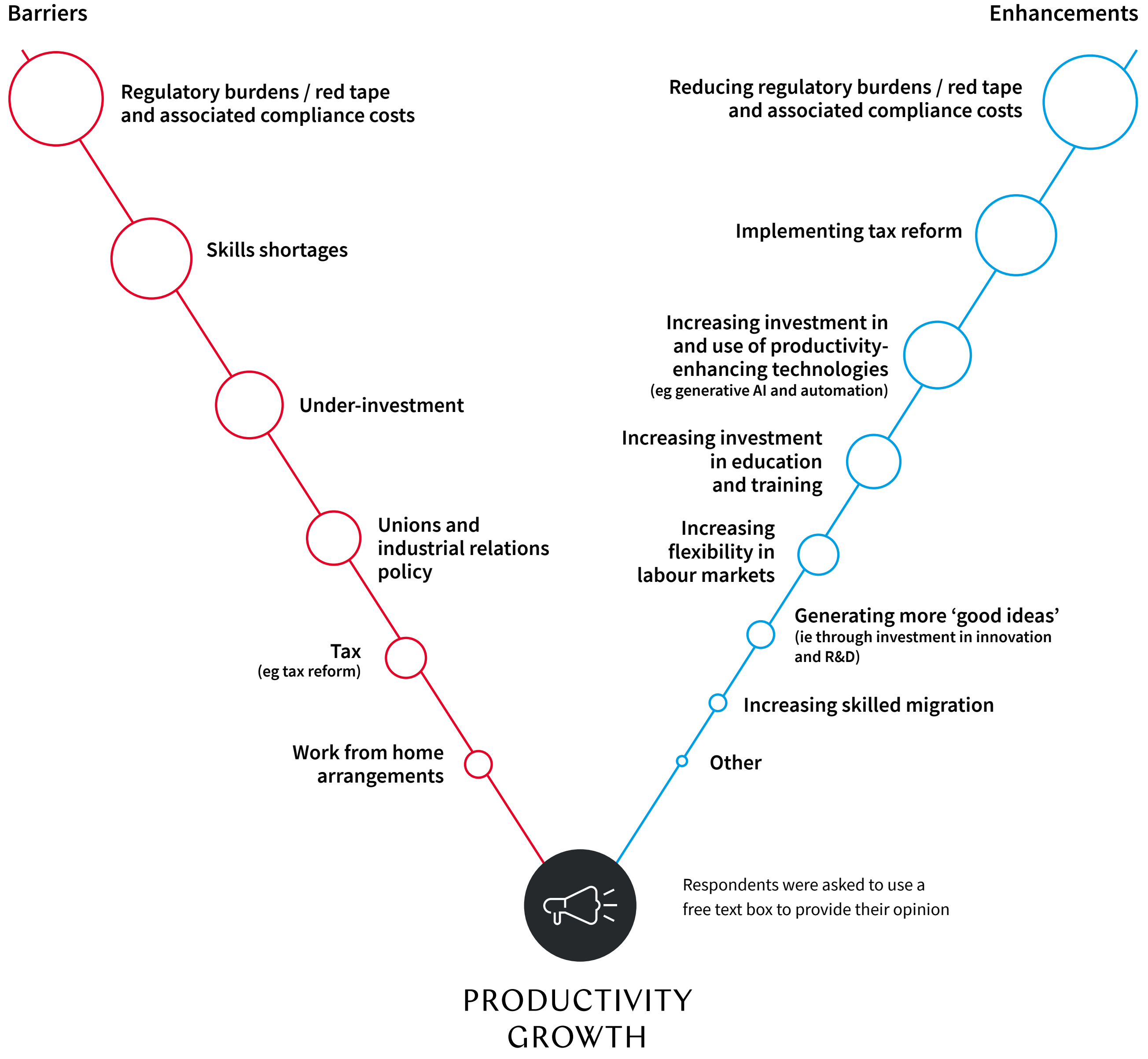
This is particularly important in the current environment. Enduring upwards pressure on prices and supply chain challenges, and opportunities for growth remain constrained due to broader economic / market factors, including limited population growth – there has not been a 'reset' to pre-pandemic conditions.

According to Federal Treasury analysis, Australia's labour productivity growth in the decade to 2020 was the slowest in 60 years. This echoes the experience in other advanced economies, and reflects the absence of a significant technological step change since the significant investment in IT hardware, software and the internet that, together with increasing globalisation and supportive government policy, led to strong productivity growth in the 1990s.

This year, we asked survey respondents to identify what they consider to be the greatest barrier to improving Australia's rate of productivity growth, and suggested factors such as skills shortages, under-investment in productivity enhancing technologies (eg generative AI), and regulatory burdens / red tape and associated compliance costs.

> *"With digital, if you get it right, you get a tremendous data upside. And then you are ready to get some really significant productivity gains through artificial intelligence."*
>
> **Victor Dominello**
> Former NSW Digital Minister[3]

What is the greatest barrier to productivity growth in Australia, and what would enhance Australia's productivity growth?



3 'Five projects to fix Australia's productivity woes', AFR, 1 August 2024.

Interestingly, regulatory and compliance issues were most prominent in responses, suggesting that this is a key impediment to businesses taking other actions to improve productivity and competitiveness. This included issues such as excessive regulation, the uncoordinated administration of regulation, and a lack of consistency across different regulators and Government agencies.

Survey respondents also identified short termism, ‘small target’ political agendas to support re-election and a lack of bi-partisan support on key areas of reform, as they contribute to ‘fiddling rather than reform’ and increasing regulation that requires ‘more time reporting than doing’. Business leaders are looking for ‘long term commitments by government to create [a] secure investment environment’ and ‘stabilising policy so business can respond during the investment timeframe’.

Skills shortages was also identified as a barrier to productivity growth, however survey respondents were divided as to whether this should be addressed by increasing skilled immigration or increasing education and training domestically.

Under-investment, such as in technology, research and development, and education and training, was also raised by survey respondents as a barrier to Australia achieving greater labour productivity growth.

What did survey respondents see as the greatest barriers to improving Australia's rate of productivity growth?

Regulatory and policy issues

“Regulatory burden and absence of policy coordination between regulators and different govt ministries …”
“Increasing regulatory burden in an ad hoc and uncoordinated way”
“Short term political agendas, inefficiency and duplication in Government …”

Skills shortages

“Skill shortages … Need for more localised population focus for sourcing labour and not relying on migration …”
“Lack of focussed investment nation wide in non-academic jobs training. Devaluing of tertiary education due to funding structures that force universities to pursue revenue at the cost of achieving excellence comparatively fewer areas.”
“Skilled labour shortages and housing is impacting the ability to attract high calibre candidates to the local market”

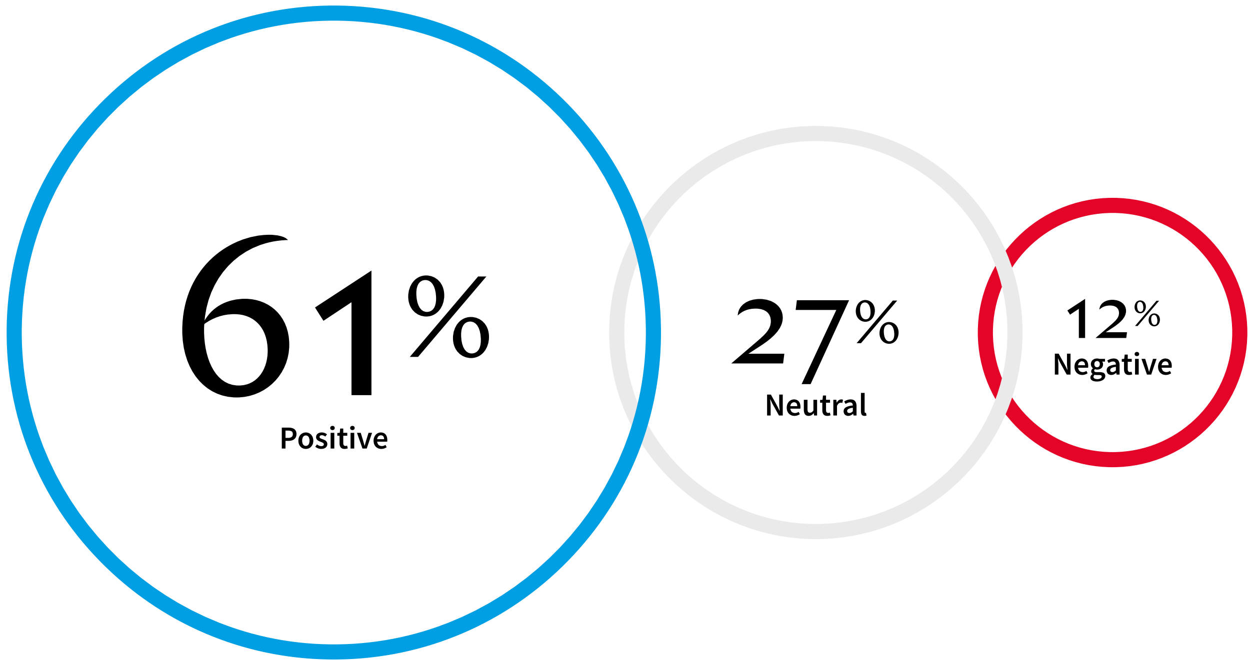
Under-investment

“Under investment in labour, training, and technology; lack of taxation reform at both corporate and personal level; workforce inefficiency”
“This could be addressed by ‘[g]reater investment in R&D with government supporting it. A greater focus on emerging technology opportunities and a move away from dependency on the resource drug that we feed off today”

Encouragingly, in response to our question about current attitudes towards pursuing growth opportunities and risk taking, 61% of survey respondents said that their organisation is more positive compared to 12 months ago. Only 12% of survey respondents said that their organisation is more negative compared to 12 months ago. This attitude stands in stark contrast to our survey results from 2023, where only 36% of survey respondents said their organisations were taking risks.

However, given the current environment, this result may just reflect the urgent need for businesses to do what they can to pursue growth opportunities (and therefore take risks) – there is no prospect that conditions will become less challenging and ‘standing still is not an option’.

Compared to 12 months ago, what is your organisation’s attitude towards pursuing growth opportunities and risk taking in the next 12 months?



We also asked survey respondents to nominate factors that they considered would best enhance Australia's rate of productivity growth in the medium term (next 3 – 5 years).

Consistently with the responses to the 'barriers to productivity' question, reducing regulatory burdens and / or red tape was the top ranking answer (62%). Multiple respondents chose to elaborate further (as extracted in the box beside).

The other top ranking responses were:

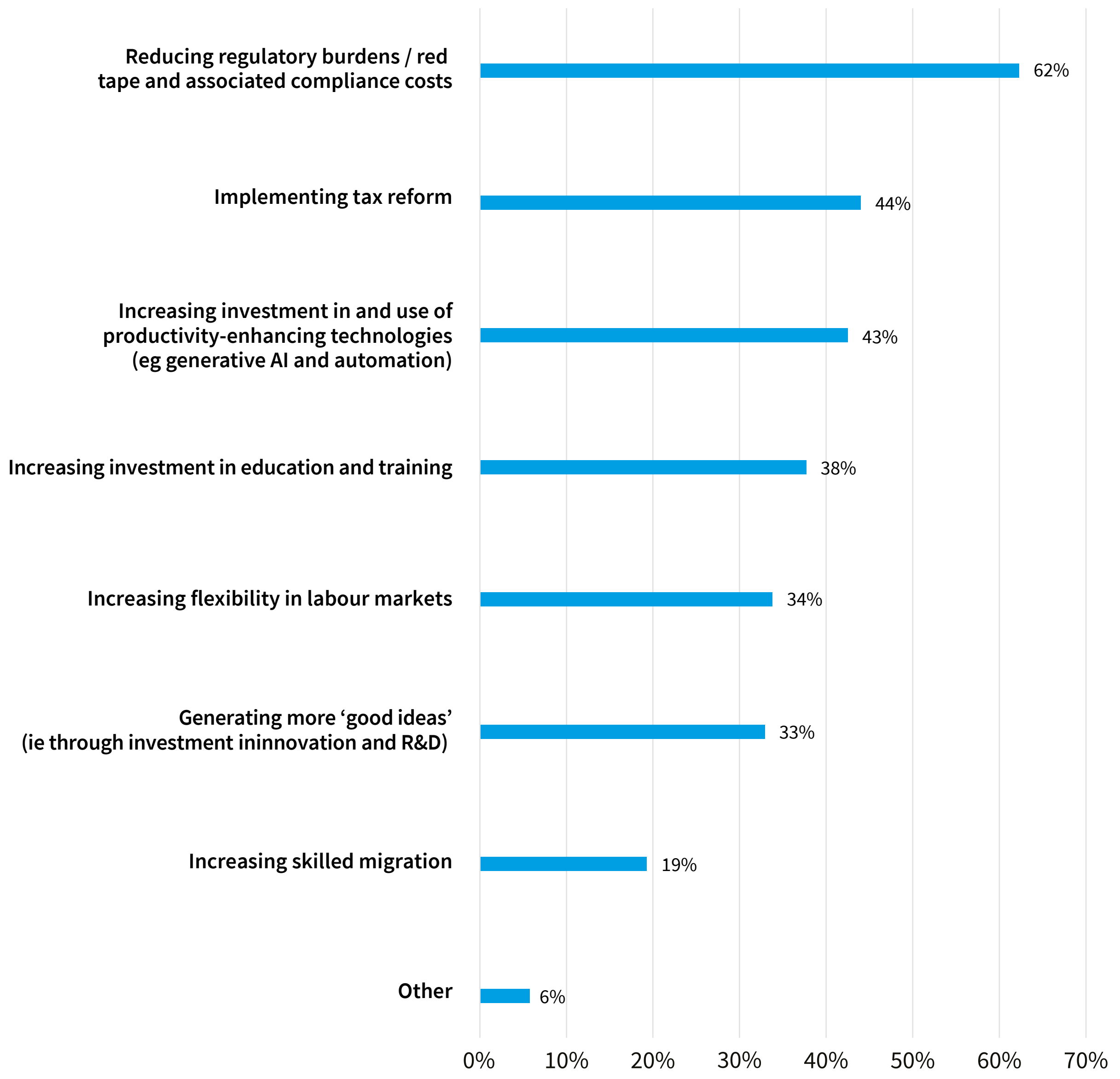
- implementing tax reform, with 44% of survey respondents selecting this option;
- increasing investment in and use of productivity-enhancing technologies (eg generative AI and automation), with 43% of survey respondents selecting this option; and
- increasing investment in education and training, with 37% of survey respondents selecting this option.

Australia's rate of productivity growth in the medium term would be best enhanced by:

- *"Long term commitments by government to create secure investment environment"*
- *"Stabilising policy so business can respond during the investment timeframe"*

Survey respondents

What would best enhance Australia's rate of productivity growth in the medium term (next 3 – 5 years)?



Respondents were asked to select up to 3 answers from a list of 8 options provided

REFORM AGENDA

For business enduring a long winter of bleak productivity growth, reform may be the metaphorical spring – promising transformational change and better times ahead. We wanted to test respondents' views on a perennial-if-elusive favourite – tax reform – as well as merger reform and climate reporting.

So, what did our respondents think?

TAX REFORM

Taxation's influence on employment, investment and consumption decision-making means change is extremely difficult to agree on, yet must continue to be pursued as few areas offer similar scope for productivity gains.

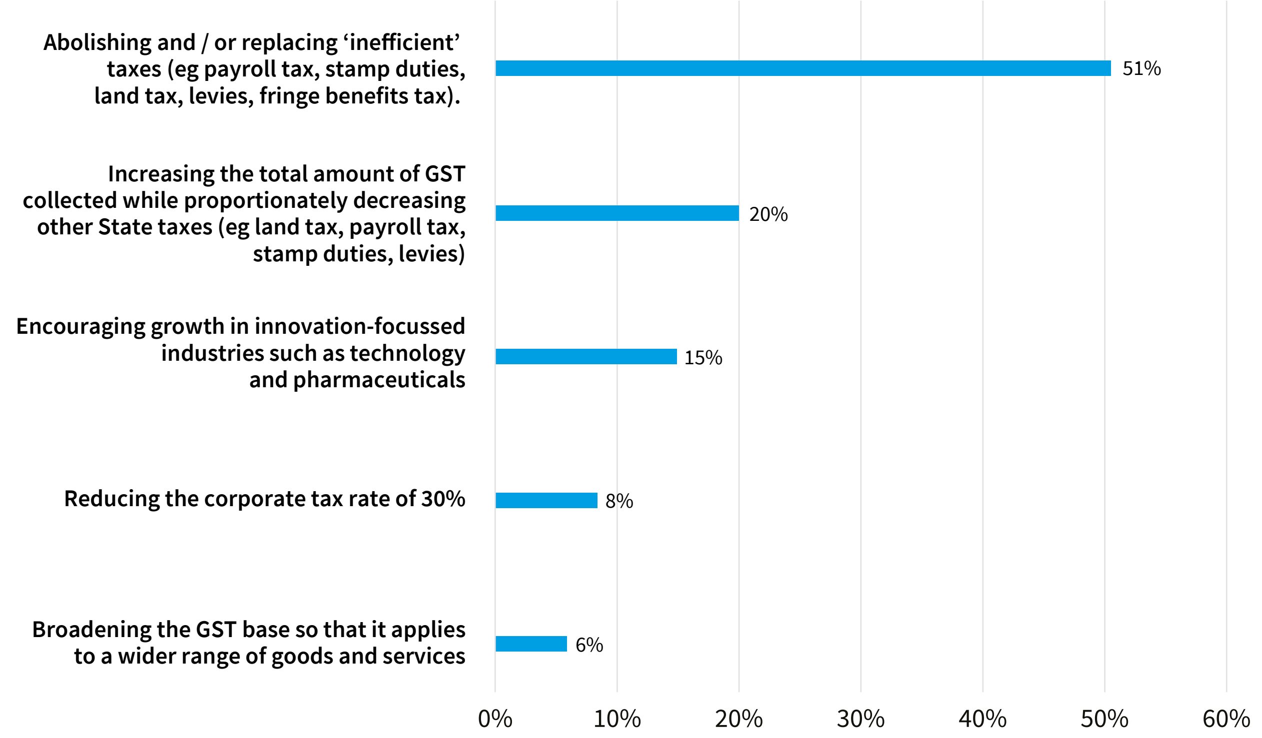
> *"When I look at the 'why' for tax reform, I look at firstly, productivity and growth. Ken Henry noted recently that if we had historical rates of productivity rather than the really low rates of productivity recently, we would be $80bn better off in the budget. It's huge. Tax has fundamental implications for productivity, and we really need to look at it because we're absolutely in the doldrums now."*
>
> **Allegra Spender MP**
> during a KWM tax reform event
> in November 2023

It was therefore unsurprising to find that implementing tax reform was identified as the 2nd most effective pathway to productivity growth enhancement, behind reducing regulatory burdens and red tape. Next, we asked which tax reforms they would support. The clear favourite (51%) was abolishing / replacing 'inefficient' taxes, like payroll tax, stamp duties, levies and fringe benefits tax.

Attitudes towards GST also reflect the hunger for reform that would deliver efficiency dividends. Provided that any additional tax take is offset by reducing state taxes or other inefficient taxes, respondents are supportive of increasing the total amount of GST – this was the 2nd most popular option. In contrast, broadening the base of the GST (with no offset elsewhere) was the least popular option, with just 6% support.

This is abundantly clear in responses to our optional question – which sought suggestions to improve the efficiency and effectiveness of Australia's tax system. Increasing or expanding the GST was the most prevalent theme in responses, very closely followed by the recommendation to simplify or streamline the tax system. Perhaps surprisingly, there was comparatively little support for reducing corporate tax in either question. It ranked 4th out of the 5 suggested reforms and respondents who mentioned suggestions for tax system improvement often did so in the context of ensuring better tax system integrity.

Which tax reforms would you support?



Respondents were asked to select all options that applied

Our survey respondents suggested the following ideas to enhance the efficiency and effectiveness of Australia's tax system:

Increase / expand GST

"Broaden the base of GST and increasing the rate to abolish all state-based taxes (land taxes, stamp duties, payroll tax, etc) and reduce tax rates across the board".

"Making the GST broader in its scope and increasing its rate enough to allow Government to meet its financial obligations while at the same time being able to abolish many other taxes that impede efficient resource allocation".

Simplify tax system / flat tax

"Simplify, simplify, simplify".

" Reduce complexity".

"Radically simplify it – remove GST exceptions. Reduce personal income tax. Close loopholes which mean multinationals don't pay their fair share of tax. Massively reduce government spending".

Reduce personal income tax

"Moving the burden from companies to individuals may increase the tax base, but is a disincentive to productivity. Need to consider the tax burden on younger generations vs corporates to ensure fairness for next decade".

"Make tax system more equitable, decrease tax disincentives to work, review negative gearing and capital gains tax".

"Personal Income Tax bracket creep needs to be overhauled; wages are going backwards in real terms during increasing cost of living pressures, and employees that do not feel properly compensated will be less productive or engage in quiet quitting or other practices".

Eliminate / reduce inefficient taxes

"Radical simplification GST on everything at 20% minimum maybe 22% Highest individual and corporate tax rate 26% Remove payroll tax, stamp duty, FBT etc Tax capital gains on the personal residence if a person has not lived there for greater than 5 yrs".

"Removing State taxes, dropping corporate tax and individual tax rates and broaden and increase GST".

Reduce corporate tax

"I don't agree with the mainstream idea of reducing corporate tax and increasing GST. Resource rent taxes, particularly on offshore LNG needs to addressed".

"Consider what the effective corporate tax rate is as to simply rely on a concept that corporates are taxed at 30% when many reduce their liability significantly through various structuring that is available begs the question of whether corporates should be contributing more".

Reduce stamp duty

"Tax the multinationals who operate in Australia but who pay little tax. Drop top marginal tax rates. Abolish stamp duty or reduce rates to ensure housing affordability".

"For housing, remove stamp duty to increase liquidity, remove CGT discount / negative gearing to cool investor demand. Also consider land tax on primary residences so people downsize".

Move to a flat tax system

"Adopt the Hewson model: 30% flat tax on all earnings, 15% GST; along with the removal of all other taxes, in particular CGT".

"A flat tax for business and personal at 35% for all".

MERGER REFORM

The proposed changes to Australia's merger regime would see Australia move from the current voluntary regime to one where transactions that meet certain thresholds would need mandatory clearance from the ACCC and could not proceed without it. For deals that are denied clearance, the avenues of appeal would be restricted to a 'limited merits review' in the Australian Competition Tribunal.

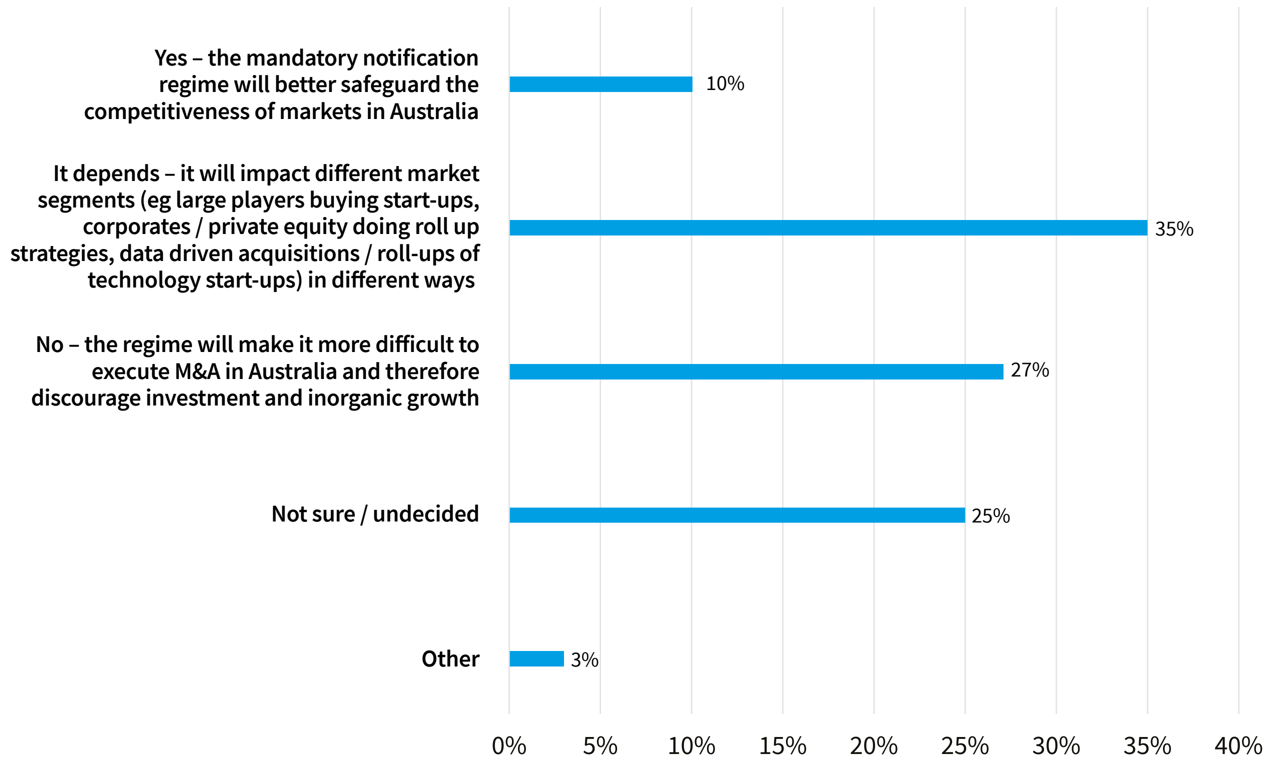
Given the prominence of the debate around the proposed reforms, we asked whether the proposed reforms would achieve their stated policy objective of boosting competition and productivity in the Australian economy.

There is a significant degree of uncertainty among respondents as to the likely impact. Only 10% of respondents thought that the regime will better safeguard the competitiveness of markets in Australia; reflecting a scepticism amongst the business community as to whether the reforms will deliver meaningful productivity improvements.

27% of respondents believed the changes will make M&A more difficult to execute in Australia, suggesting a concern about investment competitiveness, notwithstanding most other jurisdictions already have some form of mandatory regime in place.

A large cohort (25% of respondents not sure / undecided) tended towards the position that 'any change brings uncertainty' and that judgment as to the ultimate effectiveness of the new regime will be reserved for some time. But the largest cohort (35% of respondents) ultimately thought the reforms will impact different market segments in different ways, which reflects that determining appropriate clearance thresholds that only captures what really does need a competition regulator's ruler run over it will be a difficult task.

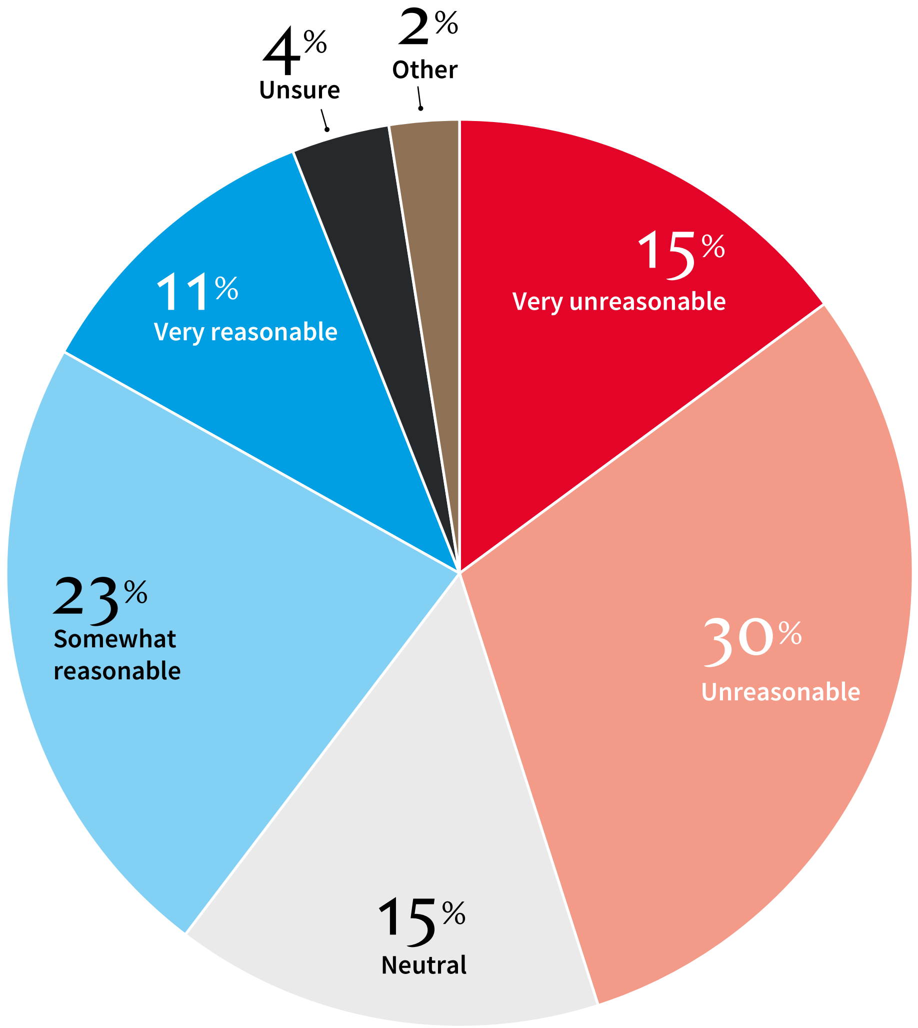
Will the merger reforms achieve their policy objective of boosting competition and productivity in the Australian economy?



Respondents were asked to select 1 answer from the list of 5 options provided

Under the proposed mandatory climate reporting system, directors will be required to declare that their entity's sustainability report complies with the Corporations Act (including the Sustainability Reporting Standards). Reporting will be phased in from 1 January 2025. However, reports for financial years commencing before 30 June 2030 are not required to be fully audited.

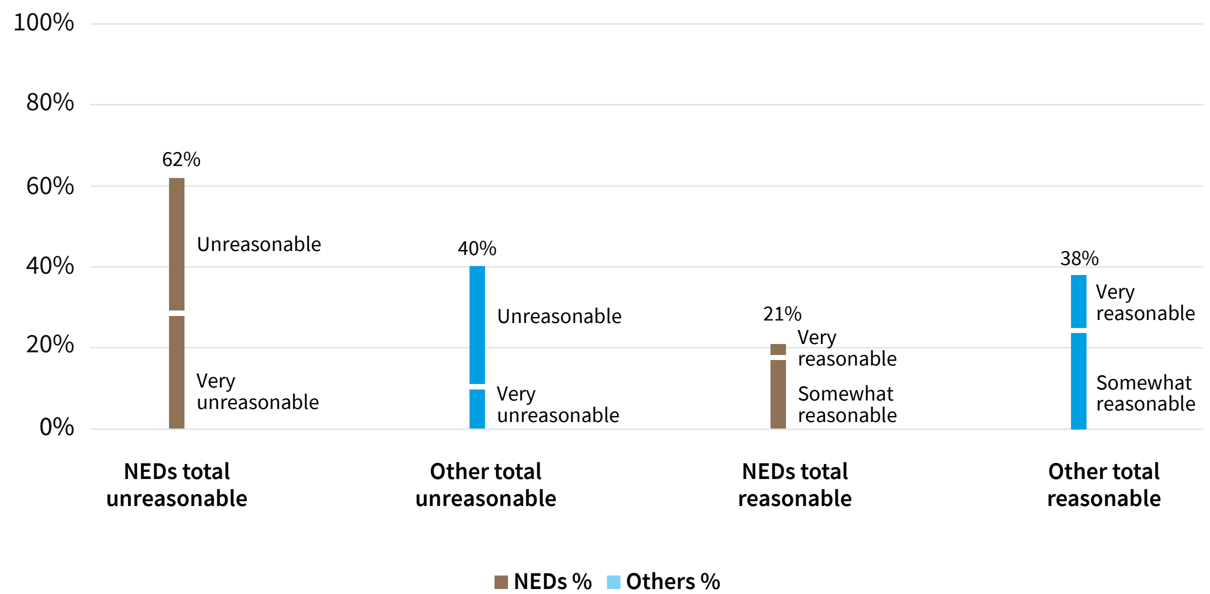
Is it reasonable for directors to certify sustainability reports when those reports are not otherwise required to be audited?



On directors declarations: Views were almost equally divided on the proposed requirement for directors to give a declaration effectively certifying that mandatory climate reports comply with the applicable law and sustainability standards, even though there is no requirement for a full audit of those reports until 2031.

Treasury has agreed to allow the assurance profession 6 years to develop the resources and capability to audit mandatory climate reports, and yet it has maintained a proposed requirement for directors who are largely non-executive, part-time directors with no expertise in climate science to give this declaration, albeit in a qualified form for the first 3 years of the regime. Almost half of respondents who expressed a view thought that it was reasonable for directors to certify climate reports without the benefit of an expert audit (and, unlike the case for financial reports, directors will not have the benefit of certification of climate reports by an expert executive either).

Is it reasonable for directors to certify sustainability reports when those reports are not otherwise required to be audited?

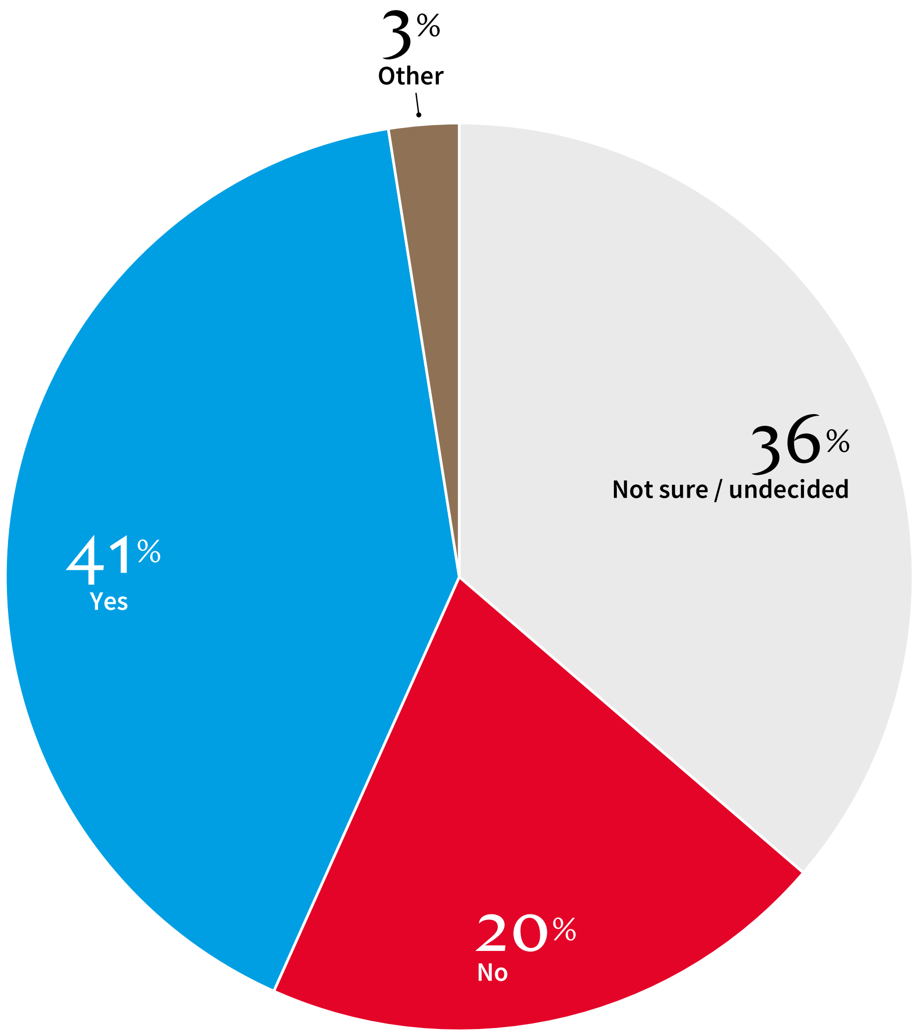


However, as the chart above demonstrates, when responses are split between directors and respondents who are not directors, a material divide emerges: 62% of respondents who are directors thought that the requirement to give a declaration in these circumstances was unreasonable, whereas only 40% of non-directors thought so. Only 21% of directors thought it was reasonable to give this declaration, but 38% of non-directors thought it was reasonable. There is a clear and predictable divide when it comes to expectations of personal liability for directors, between those on whom the liability will fall and those who are not faced with personal liability.

This is another example of law reform imposing increasing personal burdens and liability on individual directors in relation to the obligations of their companies. Placing responsibility on individuals for unaudited reports on matters as vague and uncertain as the effects of climate change on companies, many with global businesses worth billions of dollars, is to unfairly disregard the fundamental concept of limited liability that drives investment in private enterprise in Australia.

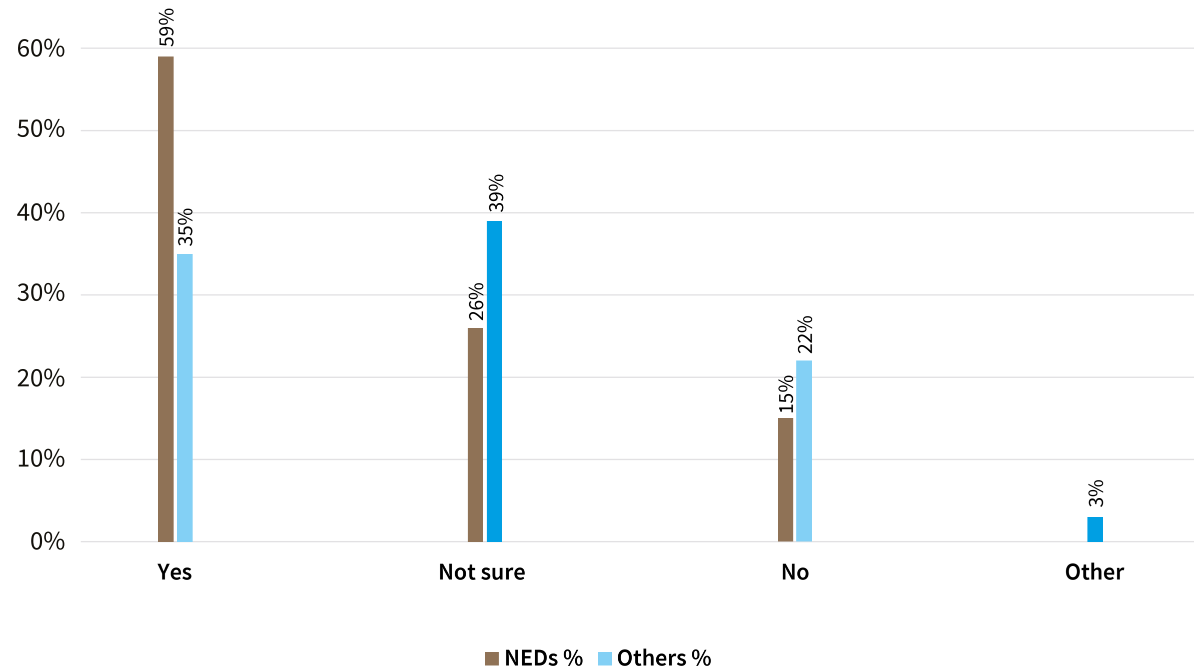
On Scope 3 emissions: There is significant resistance to mandatory reporting of Scope 3 emissions – the carbon emissions of customers, suppliers and employees related to the business. More than twice as many respondents opposed than supported the inclusion of Scope 3 emissions, although there was a large group of 'undecided' respondents.

Should scope 3 emissions be excluded from the proposed mandatory climate reporting system in Australia (as has been done in the USA)?



Interestingly, the chart below shows that respondents who are directors were materially more likely to have formed a view on this issue (either way) than those who are not directors, and directors were also more likely to oppose the inclusion of Scope 3 emissions in mandatory reporting than those who are not directors.

Should scope 3 emissions be excluded from the proposed mandatory climate reporting system in Australia (as has been done in the USA)?



We don't know the reasons for this opposition, but it is likely to stem from the difficulty and cost of calculating Scope 3 emissions with any degree of accuracy. As a result, standard industry models will probably be used to estimate Scope 3 emissions. It is also likely that there is a view that mandatory reporting should focus on the Scope 1 and 2 emissions of the relevant business, which are within the business' control. Opposition to reporting of Scope 3 emissions has prevailed in the USA, where the SEC has excluded Scope 3 emissions from mandatory reporting requirements.

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