

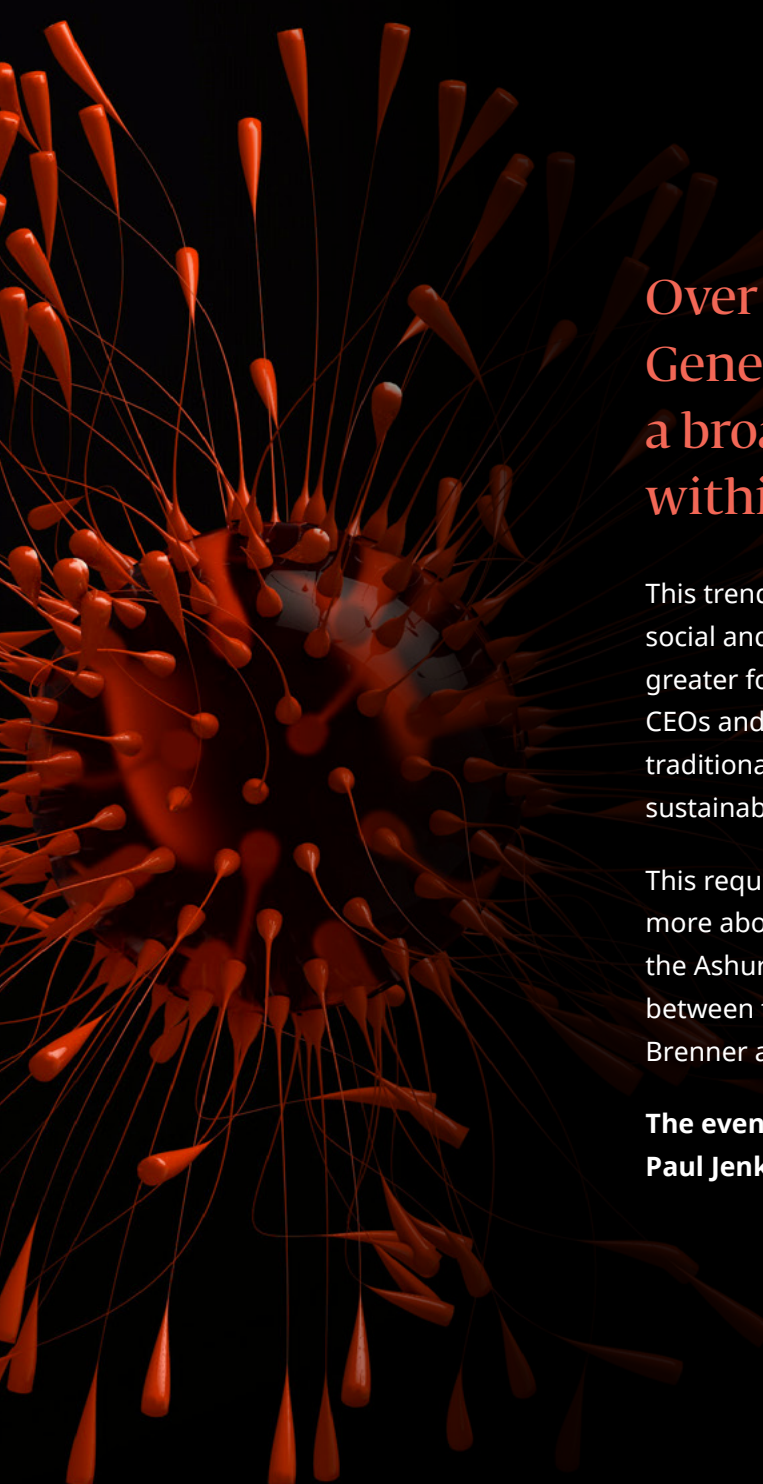


Ashurst

How to thrive
with the board:
Six tips for General Counsel
Ashurst Leadership Centre



Outpacing change



Over the past 10 years, many General Counsel (GC) have taken on a broader and more strategic role within their companies.

This trend has been accelerated with the rise of environmental, social and governance (ESG) issues and organisations' greater focus on purpose. In this new operating environment, CEOs and boards alike want their GCs to support them in traditional risk management and compliance and in achieving sustainable growth.

This requires GCs and boards to operate in new ways. To learn more about how companies are approaching this challenge, the Ashurst Leadership Centre recently convened a discussion between two of Australia's most experienced directors, Catherine Brenner and David Gonski AC, and a select group of ASX-100 GCs.

The event was facilitated by Ashurst's Global CEO, Paul Jenkins, and Head of Risk Advisory Australia, Phil Hardy.

1

Embrace the role

According to the group, the GC occupies a unique position that enables them to offer significant value to boards. GCs have visibility across the business, a necessary level of independence and impartiality, and an understanding of the views and needs of varied stakeholders. And while they might be running large internal teams, they don't have P&Ls.

"We're a bit like Switzerland," said one GC.

Another noted that they considered both legal and ethical issues, so had "moved on from only offering legal advice on what you can do, to also advising on what the company should do". One GC added that they were initially uncomfortable with being the company's "moral compass", but had come to see that the GC was well positioned to play the role.

Catherine Brenner said she had seen GCs change from providing binary opinions that often had a "chilling effect" on board deliberations to making a significant contribution to boards across strategic, commercial and legal issues. She also appreciated their ability to synthesise issues, offer insights and have the foresight to see how issues could unfold for those "who might be around the boardroom table in 10 years".

A former lawyer himself, David Gonski welcomed the larger role being played by GCs and noted he had always believed they should offer more than straightforward legal advice. "What I wanted was for the General Counsel to actually be counsel," he said.

2

Be in the room – and active outside it

While GCs are advising boards more often, there is wide variation in how often they attend formal board meetings and meet with chairs and other directors, and in agreement on whether they should participate in informal and confidential meetings at the board level.

Gonski believes GCs should enjoy a high level of direct interaction with the board. "I see the GC as incredibly important," he said. "Any company that doesn't invite the GC to sit through at least the non-in camera elements of board meetings is missing out."

Gonski added that chairs and CEOs should be prepared to "share" the GC and that ideally, chairs would meet regularly with GCs – even allowing an hour a month for the meetings.

One GC reported that they routinely attended board meetings and was given time to raise any current issues or highlight items that could come up in the future. Other GCs said they attended board meetings and met individually with their chairs. Some also met individual directors, but noted that their chairs and CEOs liked to be informed if that occurred.

“A high level of transparency and interaction between the GC, CEO and board often reflects a healthy corporate and boardroom culture, but where the culture is off, things can become more challenging in those interactions.”

Paul Jenkins, Ashurst Global CEO

3

Deliver foresight

One reason boards like to hear directly from GCs is that they are well placed to warn directors about potential issues. This requires courage and often comes from the GC's ability to join dots across the business and to discern trends or issues that others – including directors, who are removed from day-to-day operations – might find difficult to see.

“People often assume the board knows everything, but often the board is the last to know,” said Brenner. Gonski added that a key part of the GC's role was, “listening and alerting [the board] that the train is coming”.

More broadly, GCs were seen to be well placed to look beyond the company and offer a wider perspective on its affairs. This made them similar in some ways to non-executive directors.

4

Lean in on strategy

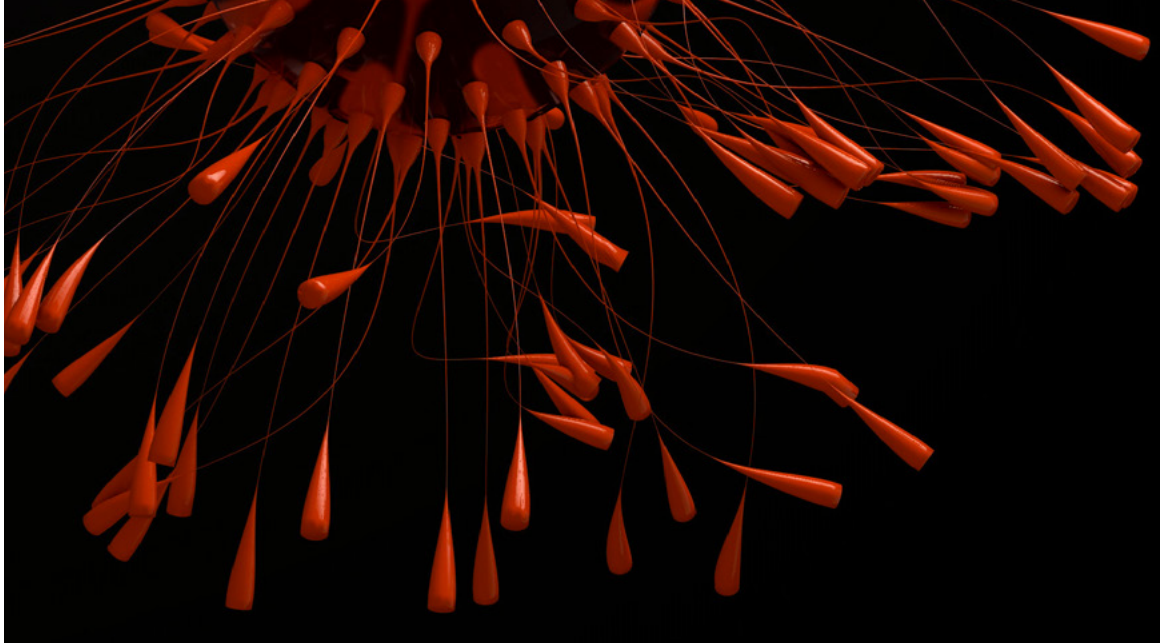
According to Phil Hardy, corporate strategy boils down to conducting analyses, formulating options and making choices. He said GCs were well placed to advise on or add to all three steps in a balanced way.

A number of GCs said they relished the opportunity to make a direct contribution to company strategy. This included being involved – directly or via their teams – in early discussions and proactively advising on the potential upsides and downsides of proposals.

One GC noted that their team could only play this role after building trusted relationships with business units, and even then, had to take up that right. “You need a seat at the table to be able to contribute,” they said. “But you do need to use that seat.”

Another said they felt that when it came to strategy, GCs had the right role and training to distill what was important and then to communicate that with impact to the board or others.

Gonski welcomed GCs contributing to strategy but noted it didn't always sit easily with their legal training and focus on risk mitigation. “I think you can do it, but you need an openness of mind, not to take defeats to heart and to choose your battles,” he said.



5

Advise on board practices

The group believed that if GCs had a good relationship with their chairs and enjoyed the confidence of other directors, they may be able to advise on board practices. “The GC is an incredible bridge to other experiences of what we can do around the board table,” said Gonski.

GCs could comment on meeting formats and be a conduit for directors to raise issues or suggestions with management or the chair. They could also recommend how directors might work through complex legal or ESG-related issues and educate the board or help arrange for others to do so, especially on emerging or technical issues such as cloud computing and artificial intelligence.

6

Be a good leader

GCs need sound values to advise companies on the “right” thing to do in a complex world where issues regularly span ethical, social and environmental concerns.

Paul Jenkins commented that the relationship between a GC and a company’s leadership can reflect its culture. “A high level of transparency and interaction between the GC, CEO and board often reflects a healthy corporate and boardroom culture,” he said. “But where the culture is off, things can become more challenging in those interactions.”

“You’re looking for a good person as a GC,” Gonski added. “Why? Because you’re looking for that strong ethical leadership.”

Learn more

To understand more about the Ashurst Leadership Centre, curated programs for boards and executives, please visit <https://www.ashurst.com/en/who-we-are/ashurst-leadership-centre/> or contact Maja Akimovic, Ashurst Leadership Centre program manager (details on final page).

Biographies



Catherine Brenner

Catherine has extensive financial services and business experience and has held executive and non-executive roles across many sectors. Catherine is currently Chair of Australian Payments Plus (BPAY, eftpos, New Payments Platform, ConnectID) and a Non-Executive Director of Scentre Group, the carbon ratings business Emmi, The George Institute for Global Health and Australian Schools Plus. Catherine was previously Non-Executive Chair of AMP Limited and a Non-Executive Director of a number of ASX-listed companies including Boral Limited and Coca-Cola Amatil Limited.

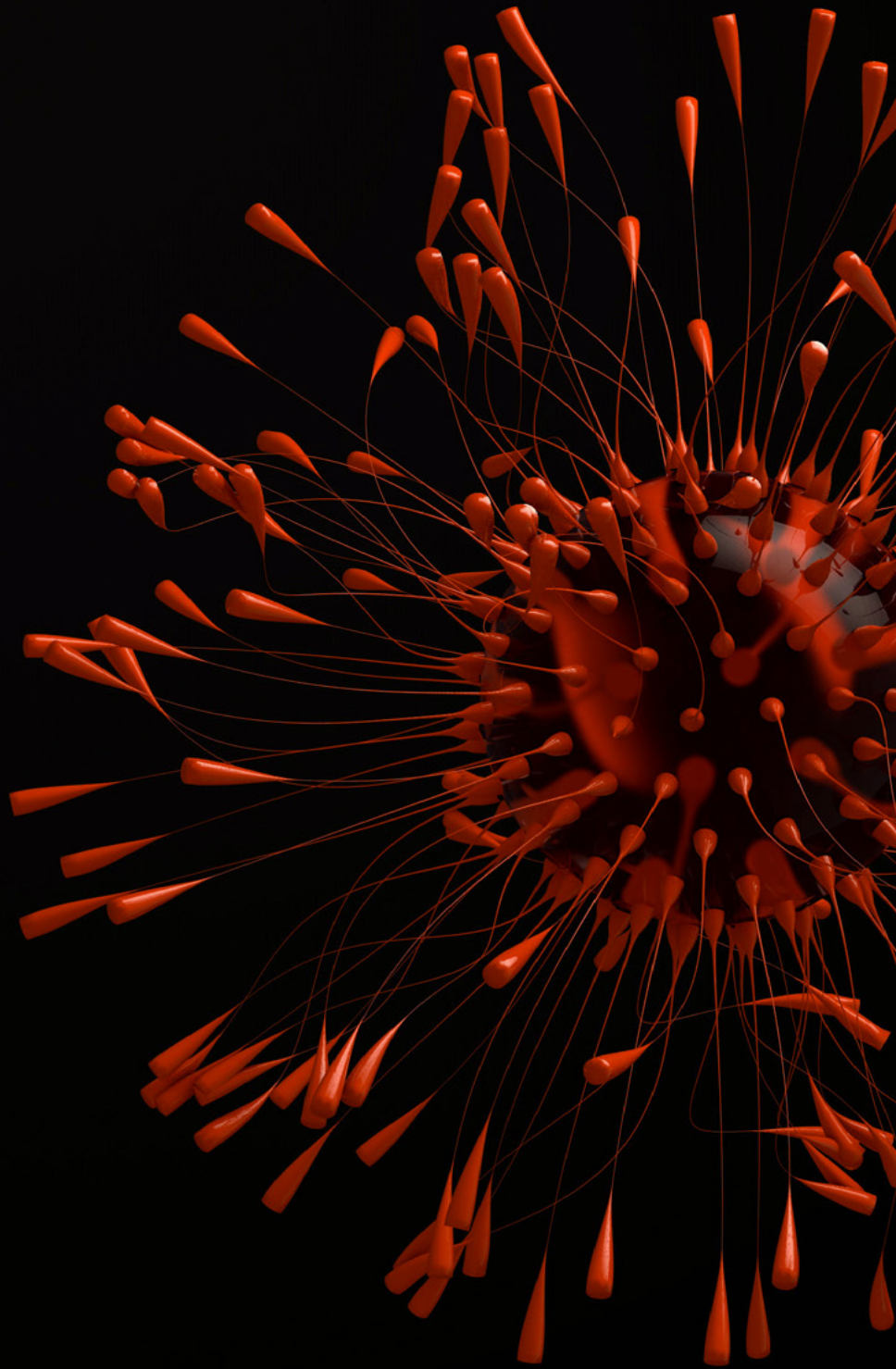
She was also a Trustee of the Sydney Opera House Trust and the Art Gallery of NSW, a member of the Takeovers Panel and a senior investment banker at ABN AMRO and BZW. Catherine is a member of Chief Executive Women and a Founding Panel Member of Adara Partners.

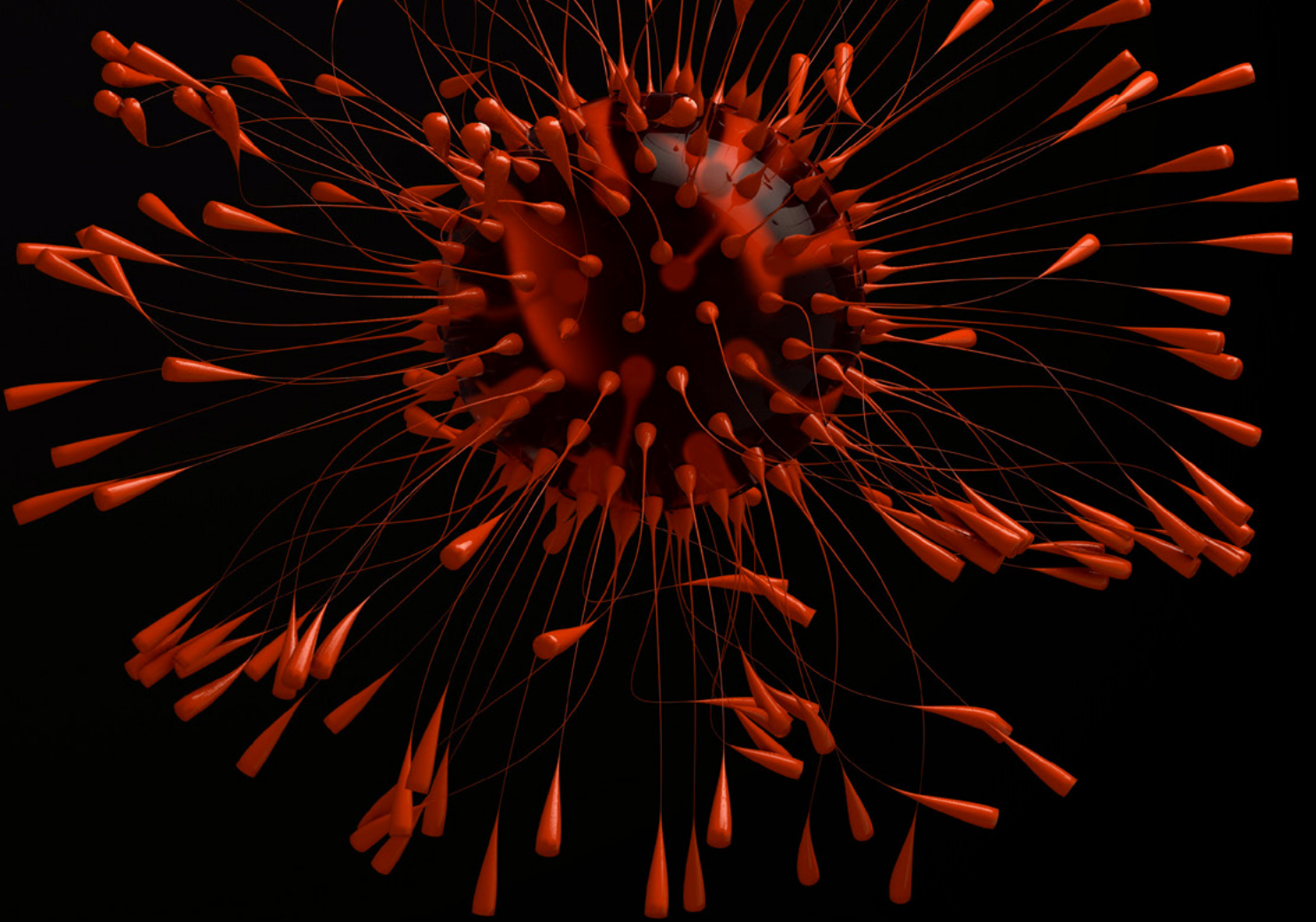


David Gonski AC

David is Chancellor of the University of New South Wales and Chairman of the UNSW Foundation Ltd. He is President of the Art Gallery of NSW Trust, Non-Executive Chairman of Barrenjoey Capital Partners Group Holdings Pty Limited, Chairman of Sydney Airport and Chairman of Levande Living. He is also a member of the Board of the Lowy Institute for International Policy, a Non-Executive Member of LeapFrog Investment's Global Leadership Council, a Patron of the Australian Indigenous Education Foundation and Raise Foundation, and a Founding Panel Member of Adara Partners.

He was previously Chairman of the Australia and New Zealand Banking Group Ltd and Chair of the Review to Achieve Educational Excellence in Australian Schools for the Commonwealth Government of Australia. He was also a member of the Takeovers Panel and the ASIC External Advisory Panel; a Director of Singapore Airlines Limited, the Westfield Group and Singapore Telecommunications Limited; and Chairman of Coca-Cola Amatil Ltd, the Australian Securities Exchange Ltd, the Sydney Theatre Company, the Guardians of the Future Fund, the Australia Council for the Arts, the Board of Trustees of Sydney Grammar School and Investec Bank (Australia) Ltd.





Contact



Maja Akimovic

Ashurst Leadership Centre Program Manager

maja.akimovic@ashurst.com

T +61 2 9258 5700