ETHICS AS A RISK MANAGEMENT STRATEGY: THE AUSTRALIAN EXPERIENCE

Professor Ronald Francis

Centre for International Corporate Governance Research

Victoria University

PO Box 14428 Melbourne City Mail Centre

Melbourne 8001

Australia

Email: ronald.francis@vu.edu.au

Telephone 61 3 9248-1212

Fax: 61 3 9248-1064

Professor Anona Armstrong

Centre for International Corporate Governance Research

Victoria University

PO Box 14428 Melbourne City Mail Centre

Melbourne 8001

Australia

Email: anona.armstrong@vu.edu.au

Telephone 61 3 9248-1315

Fax: 61 3 9248-1064

Running Headline

Ethics as a risk management strategy: the Australian experience.

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Ronald Francis is Professorial Fellow in the Centre for International Corporate Governance Research at Victoria University in Melbourne. He is qualified in psychology and criminology, and has had an extended academic career, with outside experience as a professional expert. He is the author of a number of books, including three on ethics. His experiences include membership of several ethics boards.

Anona Armstrong is the Deputy Director of the Centre for International Corporate Governance Research, and is Professor in the School of Management at Victoria University in Melbourne. Her current research interests include evaluation, public sector management, ethics, leadership, corporate social responsibility, and corporate governance.

Ethics as a risk management strategy:

ABSTRACT

This article addresses the connection of ethics to risk management, and argues that there are compelling reasons to consider good ethical practice to be an essential part of such risk management. That connection has significant commercial outcomes, which include identifying potential problems, preventing fraud, the preservation of corporate reputation, and the mitigation of court penalties should any transgression arise. Information about the legal position, examples of cases, and arguments about the potential benefits of ethics are canvassed. The orientation of this article is essentially Australian. It is hoped that it may provide some insights of value to other countries.

INTRODUCTION: ETHICS RELATED TO RISK MANAGEMENT

Ethics has often been seen as something outside normal business practice – something that is good and proper, good to have, but something of a luxury in the turmoil and competitive environment of the business world. It is also clear that only a genuine commitment rather than a public relations veneer will work. More important activities were those that can be costed and seen to add value to the bottom line. Managing risk is about managing the threats posed by such things as changes to government legislation (such as industrial and commercial work cover insurance or equal opportunity employment), or responding to the public outcry from technological collapses (as happened in the ESSO plant in Victoria, Australia; and the Exxon oil spill in Alaska).

With the collapse of major business corporations, such as ENRON, OneTel and WorldCom, due not in small part to the pervasive influence of corporate cultures devoid of ethical principles and conduct, stakeholders of major corporations ~~are wondering~~ whether implementation of risk management strategies (including ethical principles) may have alleviated if not avoided some of these collapses.

Risk entails a threat posed by the failure of corporate decisions: the exposure to such issues as economic or financial loss or gain, physical injury, or delay as a consequence of pursuing or not pursuing a particular course of action. BHP's losses in Bougainville, Shell's in Nigeria and CRA's in New Guinea were due to loss of local support because of a failure in relationships with local communities. Managing risk is about the application of policies and procedures to the tasks of identifying, analysing and assessing risks, determining the degree of exposure to risk that organisations can accommodate, and taking appropriate steps to avoid litigation, loss of reputation or injury.

There are at least two aspects to risk management: management of resources, and management of stakeholders. The former refers to such matters as corporate management (for example, managing investment, diversification, production of new products, relationships with the external political/legal/social environment in which the organisation operates), administrative systems (debt management), technology (information systems), or human resources (loss of skilled personnel).

The latter issue, decisions about stakeholder relations, are about the interests and well-being of people, (such as customers, suppliers, employees, affected communities and others who have an interest in the performance of a company). This paper argues that there are compelling reasons to consider good ethical practices to be an essential part of risk management. It discusses what ethics means in an organisation context, two ethical risk management strategies (compliance and building internal infrastructure), and illustrates some of the consequences of an effective ethical risk management strategy. The approach here is that of exemplars and of legal determinations rather than the empirical studies of the connection between financial and ethics measures, or of strategies that do not directly address ethics, such as the issue of growth outlined by Hamel (1999), in which he argued that there are as many stupid ways to grow as there are to cut. He advocates the value of growing by changing the basis for competition by inventing new industries or by a dramatic reinvention of existing industries.

The information presented in this paper derives specifically from Australia, but the principles that are addressed are instructive for other times and other places, and may afford a valuable comparison base.

ETHICS IN AN ORGANISATIONAL CONTEXT

Business ethics is concerned with the moral philosophy, values and norms of behaviour that guide a corporation's behaviour within society. Ethics concerns formalised principles and codes of conduct as well as value systems that guide how we behave and apply to ethical situations that may arise in doing business.

Francis (2000) describes seven ethical principles that might act as a guide to ethical behaviour. *Dignity* refers to treating each individual as an end rather than a means. This means respecting the interests of other. This principle, for example, guides actions taken in the interests of others, customers in product recalls, employees in safety practices, and small less powerful business by offices of fair trading. It implies the avoidance of ruthfulness, callousness or arrogance. *Equitability is* being just, fair and even-handed in decisions. *Prudence* requires people to exercise a degree of judgement that makes a situation no worse, and applies when decisions must be made about recalling products that cause illness or are unsafe. Prudence also applies to decisions where harm may outweigh the good. An example is the convention that, when faced with a tied vote, a chairman will cast a vote in a cautious and prudent manner, voting for the status quo, and defeating the motion. *Honesty* is reflected in straightforwardness, truthfulness and avoidance of lying, cheating or stealing. *Openness* is about not concealing that which should be revealed. In the public sector it encompasses the public interest and the public's 'right to know' and a duty not to unnecessarily invoke the 'commercial in confidence' clause to disguise business dealings. The converse side of openness is a respect for the privacy of individuals. *Goodwill* is about concern for others reflected in kindness and tolerance. Essential aspects of goodwill in business are altruism, philanthropy and corporate social responsibility. The latter affects decisions about a variety of actions as diverse as paying a just share of taxes, handling health and safety for employees or concern for the communities in which they operate. *Avoidance of suffering* supports the view that pain and suffering should be prevented and alleviated arises in decisions about for example, the level of care and expense that should be invested in avoiding oil spills, avoiding production for chemical or biological warfare, or avoiding investment in some industries such as the tobacco industry.

These principles are valued when they are seen as important. Companies may also have other values (such as customer first service; excellence: being the best in what we do; integrity: when we say we will do something we will do it) that are also seen as important. Professional and other associations also promote their own value systems. For example, in addition to the above values The Australian Institute of Company Directors expects Board members to support values of independence and equality of shareholder opportunity.

Many of the pressures to give adequate consideration to ethical issues come not from the traditional concerns of strategic management but instead from concerns about social issues (Prahalad and Hamel, 1994). Among them is an appreciation that successful corporate performance depends on the competitive advantage offered by managing issues that affect various stakeholders. These range from employees and customers to government departments and communities and changing expectations of business reflected in the emergence of mutual obligation and corporate social responsibility (CSR). CSR is the social, cultural, and environmental responsibilities that a business, a corporation, or an organisation has to the community in which it seeks to operate, as well as economic and financial ones to shareholders or immediate stakeholders.

The World Business Council for Sustainable Development (WBCSD: 2001) noted the wide opportunities for companies to '… to drive profitable growth by providing products and services that improve people's lives in both the developed and especially in the developing countries'. This amounts to an argument that the ongoing commitment to ethical behaviour contributes positively to economic development as well as to the improvement of quality of life of all.

In 1997 Waddock & Graves argued for a reformulation of the hypothesized relationship between socially responsible performance and financial performance. Their conclusions were that '… the quality of management of a company's stakeholders –owners, customers, employees, communities, and the environment – reflects the quality of its social performance'.

While the evidence is not always unequivocal there is increasing support for the proposition that investing in stakeholder relations is a positive risk management strategy. The above discussion suggests that organisations and their stakeholders profit when commitment to ethical principles and values guide decisions. As Hillman & Keim found (2001, p.126) managing stakeholder relations leads 'to customer or supplier loyalty, reduced turnover among employees, or improved reputation', and go on to nominate those valuable assets as likely to '… lead to a positive relationship between stakeholder management and shareholder value wherein effective stakeholder management leads to improved financial performance'. It is worth noting that this conclusion is based on empirical data from 500 companies in the Standard & Poor list.

An ethical risk management strategy concerns the infrastructure that promotes ethical conduct, that is, the directives and supports that both manage risks associated with lack of ethical practices and provide incentives to promote ethical conduct. These can include conformance with externally mandated legal and legislative requirements as well as internal supports and expectations.

COMPLIANCE WITH LEGAL AND LEGISLATIVE REQUIREMENTS

Compliance may be comprised of different content areas; and will include, for example, environmental management systems, defamation, regulatory, reputational, financial, occupational health and safety, competition issues, consumer issues, privacy, and intellectual property.

Over the last three decades there has been a strong move to formalise compliance rules. Among the bodies exerting a powerful influence are the Australian Competition and Consumer Commission (ACCC), the Australian Securities and Investments Commission (ASIC), and the Australian Stock Exchange (ASX).

A report reviewing the 25 years of the ACCC (ACCC. 25 Years of the Trade Practices Act, 1998-1999) noted that the Trade Practices Act of 1974 (the benchmark Act) has become '... part of the economic fabric of Australia'. In essence the ACCC monitors competition and consumer issues by both administering the Act, by less formal dispute resolution, and by prosecuting errant behaviour. Its high profile ensures that appropriate publicity is given to exemplary cases to be certain that the message is driven home. Indeed, one can well see that adverse publicity is expensive in both financial and reputational terms. This Commission is now part of the fabric of Australian economic activity such that it takes some thought to imagine the standards that would prevail were it otherwise.

The case of ACCC v Real Estate Institute of Western Australia Inc. (1998) has widened the scope of trade practices compliance programs under section 80 of the Trade Practices Act (see also Farmer, 1999). The court held that it had a power to order respondents to undertake a program that ensures that the organisation understands what legal compliance is necessary. This is a broader approach by the court than that previously applied, for example in the *Z-Tek* decision in which the Federal Court held that Z-Tek Computers, in advertising the price ex-tax without also advising potential customers the tax-inclusive price, was in breach of the Trade Practices Act of 1974 (Australian Competition and Consumer Commission [ACCC 1998]

Work available on the ACCC website deals with legal aspects rather than corporate governance or ethics, but still contains valuable guides to establishing a risk management strategy that ensures compliance with government regulations. A guide to AS 3806 Compliance Programs (*What are the essential elements of an effective compliance program,* ACCC, 2001) outlines the important elements and may be used to assess an organisation's compliance system when considering complaints under the *Trade Practices Act. The Australian and Securities and Investments Commission* have adopted these as benchmarks for the *Managed Investments Act of 1998*. The guide notes available resources, and how they may be used to help decide on the risks to be covered. There is a useful risk management guide.

The Australian Stock Exchange now requires Listed Companies to include in their annual reports their policies on corporate governance practices. In an example of what such reporting could cover, the ASX includes procedures to ensure openness and transparency of board decisions and management of risk that include disclosure of:

appointment of non-executive directors; procedures, responsibilities and rights of the audit committee; the board's approach to identifying areas of significant business risk and to establishing procedures to manage those risks; and the company's policy on the establishment and maintenance of appropriate ethical standards (Stapledon & Taylor. 1998).

Central to the notion of good ethics is the issue of transparency. Kensicki (2000) makes that point in connection with disclosure to underwriters; and Veysey (2000) makes it about the lack of transparency leading to reputational risks. Stapledon and Taylor went on to report (p.395) that in a review of the top 100 companies many companies 'revealed an imperfect understanding of the underlying issues' involved in corporate governance. If corporate governance policy is to be more than window dressing, and to have real utility, it could well consider including an ethics audit on every major policy decision implemented during the year under report. Such reporting would enhance its reputation for taking a big view of its decisions and provide a proactive defence against criticism.

While it is clear that legal compliance must have primacy that is not to say that ethical compliance does not complement that process. Where the law quite rightly sets minimum standards, ethics may set aspirational ones; where the law seeks sanctions, ethics may seek flexible and creative solutions. On first principles a court will consider a Code of Ethics as of substantial relevance.

Ethical self-regulation is a complement to the law. Ethics seems to be more effective when it is positive rather than punitive; similarly, a solution orientation rather than a punitive orientation is itself an ethical response. Given that ethics does not have the firm prescriptions that the law has it affords an opportunity to be creative in its approach.

The trend to self-regulation has much to commend it. This proposal applies just as much to other organisations (such as aid organisations, bureaucracies, and professional bodies) as it does to business. Where self-regulation fails there is little doubt that the law will intervene. Whatever the basis of the code disclosure of compliance is a major issue.

A recent example is that of Baring's Bank. One of the traders for Baring's Bank (Nick Leeson) deceived the Bank by reporting huge profits while actually incurring huge losses. No responsible person seemed to have checked what was going on, although with the wisdom of hindsight there were indications of unlawful acts.

The Bank's collapse was sudden and total. The point here is that there are danger signs and the need for supervision – and that organisations ignore them at considerable risk (Drummond, 2002). This highlights what can happen when compliance checks are not kept firmly in place. Illegal decisions occur when employees, no matter how senior, have considerable control over profit goals, and when employee's opportunity for abuse is unchecked and uncontrolled. We must conclude that external controls are important.

INTERNAL INFRASTRUCTURE

Most textbooks on strategic management have a chapter on the influence of values and organisation culture on strategy. As Thompson and Strickland (2001) noted, the culture of an organisation is comprised of its beliefs, practices, views, and traditions. The stronger the culture the increased probability that it will affect its strategic decisions. Those authors go on to say the importance of organisational culture, and highlight how it might be used advantageously to construct meaningful strategies. This view is reflected in the recent emphasis on strategic management on the construction of meaningful strategies that emphasise core values to which employees and stakeholders can relate – as is implied in such studies as Waddock and Graves (1995 and 1997).

Starting with Board composition and conduct, committees and ethical decisions, the leaders of organisations send a clear message to employees about an organisation's culture and behavioural expectations. Many studies (for example, Waddock and Graves, 1997, Francis and Armstrong, 2000) have found that good social performance is positively correlated with financial performance. Others have shown the advantages of ethical climate and good social performance. Studies of corporate climate (Cockerell and Armstrong, 1999) found that a lack of ethical climate was associated with higher incidences of fraud .

The KPMG Fraud Surveys (KPMG Australia. 1997 & 1999) showed that poor internal controls, and employee/third party collusion ranked of high importance in allowing fraud to occur (poor internal controls, at its highest, was rated at about 58%). Lack of controls by directors ranked distinctly lower in importance (about 3-5%). It is instructive to look at the responses that see a code of conduct as a step which might be taken to reduce fraud. In 1993, fraud, in companies who took steps to reduce fraud by a Code of Conduct, was 69%; in 1995 it was 51%; in 1997 it was 51%; and in 1999 it was 59%. It will be seen that a Code is perceived to occupy a key role in fraud prevention. The measures used to prevent and detect fraud are given in some detail. It will be borne in mind that these are directors' perceptions. The surveys obtained responses gathered with a questionnaire sent to a large sample of Australia's largest businesses.

It will be noted that these responses represent the perceptions of the most senior staff within companies, and that the response rates vary from the low 20% to a notably higher rate of 37%. A particularly valuable part of the KPMG work is its ongoing nature, allowing us to gain a better temporal perspective.

One of the most effective tests of sincerity of commitment is that implementation of a good whistleblower policy, as is the need to have an appropriate audit procedure to monitor those most responsible or at risk where breaches might occur. With this goes the need to keep complete records. An independent audit of this whole compliance process makes its sincerity of commitment transparent. For a fuller discussion of this compliance issue see Dee (1999).

Wood (2002) in a study of the top companies in Australia confirmed that the appropriate infrastructure to support an ethical culture included a code of conduct. As Wood pointed out, an inclusive approach is essential for any ethical infrastructure. The imposition of ethics from the top down is unlikely to be successful. Among the aspects of ethical infrastructure is not only a code but also a committee to develop and exercise the code, some form of training, and regular open reporting.

A risk management strategy starts with commitment from the top of an organisation for an ethical culture supported by appropriate policies, a code of conduct, and procedures and systems in place to reward ethical conduct and censure inappropriate actions.

DOES AN ETHICAL RISK MANAGEMENT STRATEGY PAY DIVIDENDS?

The motivation of performance and building social capital through good relationships with stakeholders is an integral part of good risk-management. This helps ensure a more rigorous basis for strategic planning as a result of a structured consideration of the key elements of risk. Other advantages are that ethical behaviour is likely to help avoid litigation: if litigation does occur there may be mitigation of penalty if a sincere commitment to ethics is able to be shown.

There are a number of compelling reasons for Australian companies to avoid disputes. While recognising that there are sometimes legitimate reasons for dispute it does seem that many such disputes are both un-necessary and counter-productive. Informal dispute resolution has the several merits of producing flexible outcomes, retention of confidentiality, time and cost savings, and reputational enhancement. These points are endorsed by the Australian Competition and Consumer Commission. Indeed, that ACCC has a paper entitled '*Benchmarks for dispute avoidance and resolution'* . Complementary to this is the publication *'Unconscionable conduct in commercial transactions'* (ACCC, 1998). (See also Zumbo, 1998). It is here that that ethical principles have persuasive power.

There are new laws having an impact on a directors' responsibility to understand new legislation and to ensure that compliance procedures are in place. Kole & Lefeber (1994) noted that … the single biggest factor in making prosecutorial discretion work toward the goal of avoiding risk is the existence of any regularized, intensive, and comprehensive environmental compliance program'.

The absence of risk management opens opportunities for litigation. The risks here might be extended to the management of public outrage. Watts, (1998) has discussed this issue in some detail. His point is that there is a significant danger in ignoring public ire: the way that risk is '... perceived by companies and the way that it is perceived by external stakeholders'. There is even a reference to a windows based program to '... help companies to predict and manage public outrage'.

Laufer (1999) has drawn our attention to the risk of being too compliance oriented. As he puts it ' … corporations that purchase only the amount of compliance necessary to effectively shift liability away from the firm encourage moral hazards'. We argue that this compliance, and perhaps, minimalist orientation draws our attention from the distinct benefits to be derived from observing the ethical canons at the highest level. Organisations that take only the minimum compliance position do, as Gentile (1998) noted, '… effectively shift liability away from the firm encourage moral hazards'.

In the US context Butler (1997) noted that 'As corporations we live at the sufferance of the public. If we do not behave well we can be sued... and every day it seems that another company is the subject of 'the wrong kind of story' in the Wall Street Journal'. Butler goes on to recount arguments concerning the adverse publicity that stems from allegations of environmental pollution, anti-trust infractions, sexual harassment, illegal payments, and racial issues.

An analysis of litigation, given by Francis, Philbrick and Schipper (1998), noted that companies that were the targets of earnings-based litigation 1983 - 1993, had steep earnings decline that management attributed to poor sales. Those firms also had higher operating leverage and greater sales volatility than comparable companies that were not sued. Those writers support the idea that litigation prone industries and companies have operating environments that make them susceptible to earnings surprises. One has to recognise that earnings surprises may stem from other sources, such as sales surprises, Indeed, it might be argued that earnings surprises had little to do with ethical behaviour but Francis *et al* did note that the litigation was based on managers' withholding of relevant information from investors – clearly an ethical matter.

None of that vitiates the view that in recent times there have been several exemplary cases of what happens when a disaster strikes. The bad press, the reputational loss, and the legal and commercial difficulties are well illustrated by such cases as the Union Carbide disaster at Bhopal in India; the Exxon Valdez oil spill, and difficulties that BHP encountered over the OK Tedi mine in Niugini. In this latter case the company, Australia's largest, was engaged in a mining operation at OkTedi in Papua Niugini, seeking to extract gold and copper. They were extracting 180,000 tons of rock per day in order to get 80,000 tons of ore from which to extract the minerals. There were tailings of rock, powder, silt and water, together with some treatment chemicals, which needed to be disposed of. A dam was built to accommodate these tailings and to try and deal with them in an environmentally friendly way. Landslides destroyed the dam and so the fine tailings were dumped in the river. While there were elements of financial prosperity brought to the region the long term effects on health, education, social, and recreational needs were not being met. The poisoning of the river, the destruction of habitat, and the absence of a long-term plan for living are viewed detrimentally. This case was the subject not only of litigation but also of wide media coverage in Australia. While BHP had taken certain steps to rectify the situation, including setting up a trust, the reputational damage was substantial (see (Hanson & Stuart, 2001 for a fuller discussion).

There are salutary lessons about handling disasters well: the poor handling of the Bhopal disaster is contrasted with the excellent handling by Johnson & Johnson's recall of Tylenol following allegations of criminal poisoning of the product.

MITIGATION OF PENALTIES FOR NON-COMPLIANCE

With a proactive compliance program, in a case of non-compliance courts might well be more willing to mitigate penalty, and thus a prior commitment to an ethical stance could become a proactive strategy to limit penalty risks. While the proactive strategy does not necessarily imply a genuine desire to behave in an exemplary fashion it also points to the need not to feel and to be saintly, but rather, to behave well.

From an enforcement point of view, companies will be particularly interested in remedies and defences. The *Australian Trade Practices Reporter* (CCH,2001), writing on compliance procedures noted that '... compliance programs serve a preventative function in relation to strict liability offences and inferential function in relation to other types of conduct in that the existence or lack thereof may assist a court to assess the purpose behind a company's conduct'. That source also went on to say that '... the existence of a compliance program in relation to Pt IV will not provide a defence but will merely be taken into account in mitigation of penalty, it will still be an influential factor (and then cited the cases in demonstration) (ATPR. V2. 12,463 / 18-575).

Courts have taken a sincere commitment to recognising appropriate behaviour as evidence, and have varied the penalties where it can be shown that such a commitment was genuine. In order to mount such an argument it is necessary to gather evidence about the existence of ethical infrastructures, corporate governance, contrition where breaches have occurred, and of a genuine commitment to improve. No matter how constant the vigilance it would be hard to believe that some occasions of complaint will never occur. An effective ethics policy, and an aspirational Code will both minimise the risk of such occurrence and provide an aid to defence should a transgression occur. The existence of a properly maintained and run ethical infrastructure is an indicator of an appropriate corporate *mens rea*.

The idea that the courts could take genuine ethical commitment into account has been set out in the Goldberg Test for Compliance. This landmark case was ACCC v Australian Safeway Stores Pty Ltd. (1996) *Australian Trade Practices Reporter*

(ATPR. vol 2. 12-305 / 18-365) Mr Justice Goldberg indicated that one needs to look at the company's compliance program in two ways: whether or not there has been a substantial compliance program in place, and actively implemented; and whether or not the compliance program was successful (Dee, 1999).

His Honour did not set out the detail of compliance, but that seems already to be found in the Australian Standard on Compliance Programs (AS 3606-1998). Among the salient considerations is that compliance be 'top-driven', and there be the appointment of someone senior with direct responsibility. All of this commitment needs to be adequately resourced. The court found that a compliance program was not successful in that the failure was not an isolated one '... but had occurred on different occasions and with different officers.'

It was noted there that the courts have been inclined increasingly to the view that an effective compliance program 'can be useful in mitigating penalty'. One of the first cases in which this became an issue was in the *Trade Practices Commission versus CSR Ltd*. Here the court looked at the substance of the compliance program. In the judgement it was noted that the '… failure of CSR to offer any indication of, *inter alia*, revitalisation of its compliance program was regarded as a matter of criticism'. Although not all criteria may be binding, they are highly persuasive in court when it comes to assessing penalty. These were set out by Justice French in the *Trade Practices Commission v CSR Ltd* case. The criteria are:

1 The nature and extent of the contravening conduct.
2 The amount of loss or damage caused.
3 The circumstances in which the conduct took place.
4 The size of the contravening company.
5 The degree of power that it has, as evidenced by its market share and ease of entry into the market.
6 The deliberateness of the contravention and the period over which it extended.
7 Whether the contravention arose out of the conduct of senior management or at a lower level.
8 Whether the company has a corporate culture conducive to compliance with the Act, as evidenced by educational programs and disciplinary or other corrective measures in response to an acknowledged contravention.

9 Whether the company has shown a disposition to co-operate with the authorities responsible for the enforcement of the Act in relation to the contravention. (ATPR: vol 2. 12-304 / 18-365

It seems obvious that not all of these principles will be applied with the same force regardless of circumstance. Judges are more likely to take these factors and consider to what extent they are applicable to the case, and to what degree. To this we might add that there is a useful guide to 'What have the courts said about compliance programs' (ACCC).

In the US, Dalton *et al* (1995), with a consistent finding, wrote of the courts as having provided a new set of compulsory sentencing guidelines. Among these factors which '... mitigate or aggravate sanctions for offenders'. That is to say that good reputation is taken into account.

Another dimension may be added to this issue, that of using creative solutions that are both novel and ethical - an issue has been well addressed by Jones (1992). For example, the American Environmental Protection Agency assessed a substantial penalty for pollution against one company. The financial was reduced to less than half on the understanding that the company would invest the remaining penalty sum installing pollution-reduction equipment. Other instances are the requirement of environmental restoration

ENSURING A SAFE AND HEALTHY WORK ENVIRONMENT

Legislation has been one of the effective ways of motivating corporate decision makers to ensure a safe and healthy work environment, Not only is this a corporate social responsibility but the threat of company director prosecution for not preventing an unsafe workplace make compliance imperative. Not only prosecution but the penalties of over 100% rises in Worksafe premiums when accidents occur are motivators in themselves.

Gallagher (1999) has suggested that another way of convincing decision makers to reduce risks would be to appeal to their values and morals. He recognises the companies are profit oriented, and holds that making a moral challenge to safety professionals is the right thing to do. It could well work.

ETHICAL JUDGEMENT

Ethical judgements fall on a continuum. At one end are the legally certain (you may not discriminate on the grounds of colour of skin): of more dubious nature is that of executives getting pay rises when other staff are being laid off: thornier ones here involve the collision of sincerely held belief systems. (eg. a Roman Catholic nurse who refused to hand out condoms and the contraceptive pill). Grensing-Pophal (1998) aptly calls the article ‘Walking the tightrope: balancing risks and gains’.

One of the issues of significant concern is that of preserving confidentiality of individuals and of commercial secrets. If privacy safeguards are not provided, ethical compliance may be seen as a deterrent; too diligent a publication of all adverse findings has the same effect. Another fundamental issue of what policy and procedures to adopt to accommodates those who would blow the whistle.

Ethical programs need several features that act in concert; the absence of any one is likely to negate the benefits of the whole, and render the ‘good intention’ defence inoperable. The significant features are the formalisation of a Code of Conduct; a properly constituted ethics committee that meets regularly; periodic and transparent reporting; and an involvement by representatives from all levels of the organisation.

CONCLUSIONS

This paper has argued that an essential a risk management strategy is a commitment to ethics in an organisation. Risk management in this context addresses the threats posed by unethical decisions in relation to an organisation’s stakeholders. An ethical organisation is one where ethical conduct is promoted by the organisation leaders, where systems and procedures are in place to reward conformance to ethical behaviour and discourage unethical practices. The evidence presented above suggests that not only does this contribute to the quality of life of all stakeholders but it has positive outcomes for the organisation, contributing to profits, reducing fraud, avoidance of litigation, mitigating legal penalties for lapses in legal compliance and ensuring a safe and healthy environment.

There is a case for a synthesis between legal compliance and ethical compliance through aspirational self-regulation. This beneficial symbiosis would need to be accompanied by some form of reward system that has a direct outcome of benefit to the company, to stakeholders, and to society. Self-regulatory is better than externally imposed sanctions in that it is well informed by those expert within the industry sector. A well-informed code of conduct that optimises the commercial function of an organisation - thereby improving profits – provided self-regulation is not seen as a means of subverting the basic principles of ethics. The most advantageous combination would be that of seeing them as complementary aspects of regulatory control.

Whether or not regulatory authorities should use the carrot or the stick is irrelevant in the light of the knowledge that complying with both legal and ethical requirements is in an organisation's self-interest. The recent innovations of the Australian Stock Exchange that requested listed companies to disclose on a range of corporate practices - including corporate governance, and ethics. If nothing else, this requirement will sensitise the business community to the need for the ethical dimension in business.

An aspirational code of ethics as an expression of the intent of the law. The existence of a properly maintained and run ethical infrastructure is an indicator of an appropriate corporate *mens rea*. No matter how constant the vigilance it would be hard to believe that some occasions of complaint will not occur. An effective ethics policy, and an aspirational Code will both minimise the risk of such occurrence and provide an aid to defence should they occur.

Risk management might consist, *inter alia*, of a means of trying to predict the probability of future risk: perhaps, more importantly, and be considered a strategy for obviating some risk for the reasons outlined above. It is hoped that the Australian information and outlook provided in this article will be of value in other countries.

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