

# The necessity of embracing the compliance culture in Australian business

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## **Why is it increasingly important for Australian business to embrace a culture of compliance in their activities?**

### **Introduction**

In understanding the culture of compliance requires being able to understand two segments, what is culture and what is compliance? An organisational culture is most often understood as a socially constructed concept in which organisational members behave according to the expectations of shared values, norms and standards that is consistent with organisational success. It would be foolish to adopt a static and simplistic view of culture because culture itself is a multi-layered concept that is shaped by a variety of exogenous variable (industry, nature of regulations) and organisational variable (size, leadership).

An organisation with a strong culture of compliance is one in which regulatory obligations are translated effectively into organisational rules, policies, procedures and codes for which employees are expected to abide by. It moves beyond the approach of minimum compliance and into a self-regulating approach whereby compliance becomes a capability and an asset rather than a burden. This approach ensures that regulatory compliance is embedded into the firm's overall business strategy and is expressed in the daily operations of the firm. However, for most Australian businesses, the reality is that we operate in a highly regulated environment, where uncertainty in the legislation and insufficient court precedents has resulted in corporate functions whose full-time mission is to decipher and unravel the maze of legal requirements.

It is insufficient to be contented with such minimalism approach which only seeks to do the bare minimum in order to avoid penal enforcements, rather organisations should strive for a more sustainable and long term solution where an ethical framework is deeply rooted into the corporate culture and is evident in the way the organisation conducts business. An organisation with a deeply rooted ethical framework will not only able to avoid harm imposed by the breach of regulations, the organisation will also be able to establish good corporate governance within the organisation. Alternatively, an organisation without an effective compliance program faces the need to constantly monitor and control organisational behaviour due to deteriorating ethical dilemmas, resulting in a series of negative findings caused by misunderstood regulations and lack of ethical integrity.

Adopting an ethical framework in organisational culture is not a new idea, yet why do businesses still fail to recognise or is reluctant to embrace such approach? Cost remains one of the biggest deterrent for companies. Companies would often rather spend their money elsewhere rather than investing on a compliance departments that appear to serve no purpose. However, these businesses fail to understand that, oftentimes, consequences relating to a legal breach are often higher than the cost of implementing the program. Additionally, Leaders fail to recognise importance, subsequently organisation itself will naturally fail to recognise as well.

Lastly, many businesses still adopt the utilitarian approach to ethics. This theory implies that the firm and the individuals (agents) who work for it have

but one single driver and goal, which is to maximise the wealth of stockholders. When profit becomes the focus, manager's behaviours and actions becomes justifiable as long as it produces the most profit for the shareholders. They will operate without clear limit and the legal framework will only serve as the limit to their behaviour. With such approach, governance will only be seen as a limitation rather than an opportunity to differentiate and obtain competitive advantage from competitors. In the long term, such mentality will result in social damage and is detrimental to the company's reputation and its role as a corporate citizen.

## **Good Corporate Governance and Leadership**

CEOs and Board of directors play a leading role in corporate governance and any significant reforms usually start from the place of authority. Ethical leadership goes beyond being satisfied with fulfilling the legal requirements but rather, strive to establish an ethical culture in the organisation whereby expectations are clearly embedded in the core and fundamentals of a business to ensure survival and competitiveness in the long run. Leaders should strive to maintain a culture where ethical issues are freely discussed, ethical behaviour rewarded and values incorporated into strategic decision making. Without presence of good leadership, organization will most likely miss out on the opportunity to utilise this core capability and competitive advantage to differentiate its corporate image and reputation in being an ethical leader in the market. Organisation will most likely benefit from greater employee commitment and loyalty from consumer, which is essential for the long-term stability and growth in the market.

## Increased Regulations

As the number of legislations increases, it becomes increasingly important for businesses to be aware of relevant legislation to ensure that legislation is clearly communicated to all levels of the organisation. The failure to do so may attract significant penalties, in both monetary forms as well as damages inflicted on the firm's reputation. Under the Criminal Code Act 1995 s. 12(3), organisation can be made criminally liable for an offense committed by an agent (employee) that is " expressly, tacitly or impliedly permitted"[footnoteRef: 10] by the organisation. This implication of this statement suggests that there must be evidence on organisation's effort to create and maintain a corporate culture that requires compliance.

Given that corporations are vicariously liable for the acts of their employees, it is integral to ensure culture of compliance is consistent throughout the whole organisation. If everyone is aware of the expectations, they are less likely to commit an offence. It is simply inadequate to conclude a presence of a corporate culture with evidence of a list of compliance policies and procedures, rather, organisation must also demonstrate the enactment of these policies and procedures in the way in which its activities and practices are conducted. This way, no one will be able to accuse organisation of " entertaining and permitting the commission of the offense".

In the court judgement of ASIC v Chemeq Limited [2006], the defendant company was unable to prove the presence of a " degree of awareness and sensitivity to the need to incorporate regulatory requirements to be part of corporate decision making"[footnoteRef: 12] which eventually resulted in a

hefty penalty. It is noted by Justice French that a well-drafted set of compliance policies would be of little meaning if it is not accurately reflected in the measures adopted and applied by the corporation [footnoteRef: 13]. The implications of having a well-developed compliance program is important because it can act to reduce the penalties imposed by the court during litigation, given that there is acceptable evidence that policies and procedures are understood and applied well, and that contravention will not be repeated again.

Aside from monetary harm, business's reputation will suffer badly from negative publicity flowing from an investigation or legal action. Such negative publicity as a result of unethical behaviour will result in broken trust between stakeholders, reduced stock prices and negatively affect consumer's perception on the company. Given that trust and reputation is a business's greatest asset, substantial money and effort will be spent to counter this negative publicity. As a result, it is likely that company will redirect its resources from core business functions to manage this crisis, thereby impairing company's ability to operate normally and generate profit. Once again, these drastic consequences can be easily avoided by implementing an effective compliance program.

## **Persuasive Conclusion**

A culture of compliance is more than just the fulfilment of the law in order to avoid penalties, rather, it is defined as an " active organisational engagement with legal and regulatory requirements". It is most evident in organisations where their commitment to an ethical framework can be

reflected in the members of the organisation and the way in which they make their decisions. In relation to the law, the law recognises the social benefit of such corporate culture by punishing any offences made that contravened the law. Penalties for offences will be allocated accordingly depending on the presence or the lack thereof of a corporate culture .

Yet many organisations fail to see the necessity of having a well-developed compliance program. It is often seen as a burden rather than an opportunity to improve the organisation's corporate reputation, which will act to improve performance and the relationship with stakeholders. Organisations are encouraged to realise the benefits of a compliance program, rather than just treating it as a necessity to avoid monetary penalty. Such benefits include being able to promote ethical behaviour by encouraging a culture of compliance, as well as to enable organisations to complete their role as a good corporate citizen, thereby enhancing the organisation's good will and reputation.

## **References:**

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