

May 2024

Fostering ethical corporate culture and whistleblower protections

REGULATIONS

RULES

STANDARDS

POLICIES

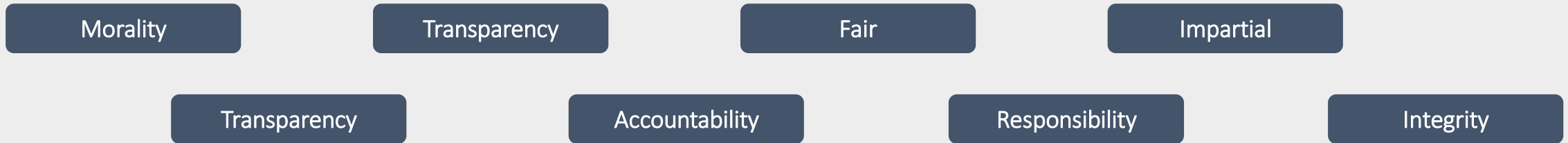
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Agenda

1. What is ethical culture?
2. Macro trends – ESG Consideration & Australian superannuation and pension capital
3. Role of the Board
4. Corporate policies and procedures
5. Importance of reporting and monitoring – board, executive reporting, and employee surveys
6. Whistleblower – why it exists and how it operates

Ethical Culture Matters

- Standards or set of values that govern actions of people
- Ethical conduct - Its about doing the doing the right thing, in the right way and at the right time
- More than just complying with law, standards, and policies – that’s the minimum
- Its contextual and informed by societal expectations and standards
- May change over time

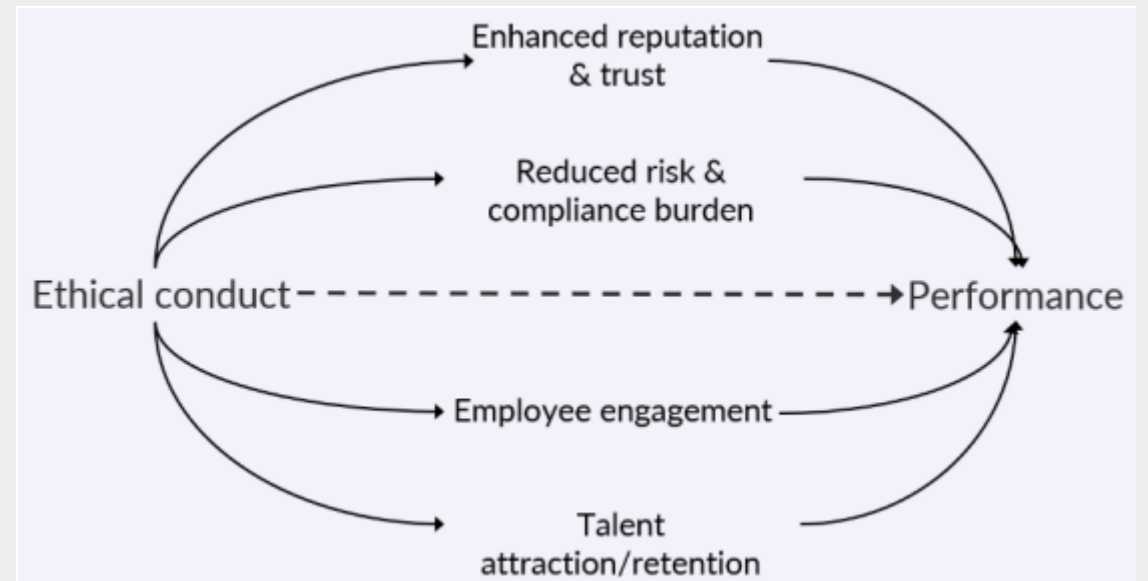


A hot tip for CEOs – reputation counts for everything

Woolworths, Qantas and AMP are among once-loved brands that have faced customer ire. Now they've added reputation metrics to executive pay calculations.

Why Ethical Culture Is Important

- Meeting **societal expectations** – entities have explicit/implicit license to operate. Companies are increasingly required to meet non-profit standards (ESG) that are ethically driven
- **Financial = Empirical** evidence ethical companies outperform reflecting better outcomes of economic owners and customers
- Employee **engagement** is higher



Source: Australian Council of Superannuation Investors

Hayne Royal Commission into Financial Services 2018

highlights unethical corporate behaviour continues to occur

Hayne unleashes on NAB boss and chairman

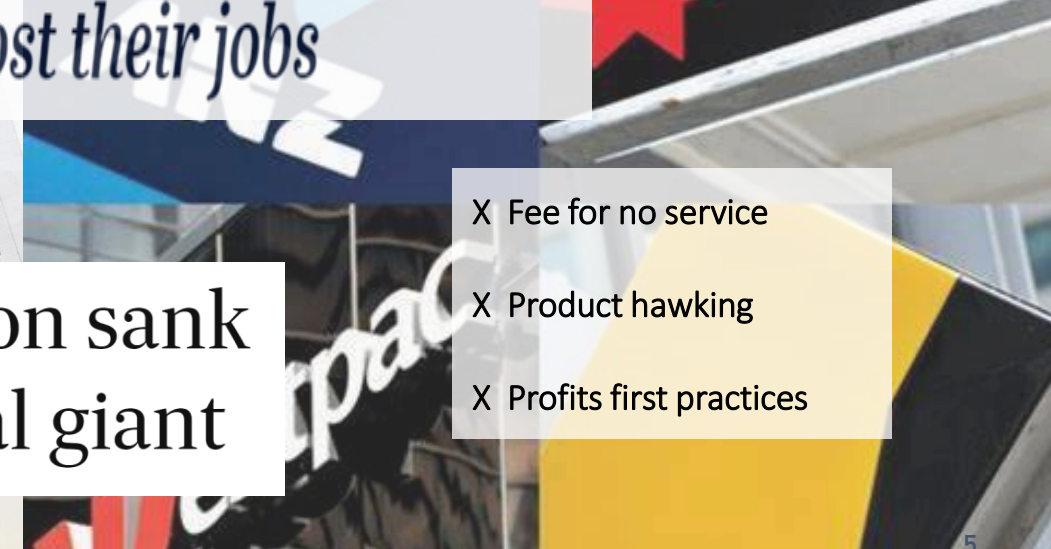
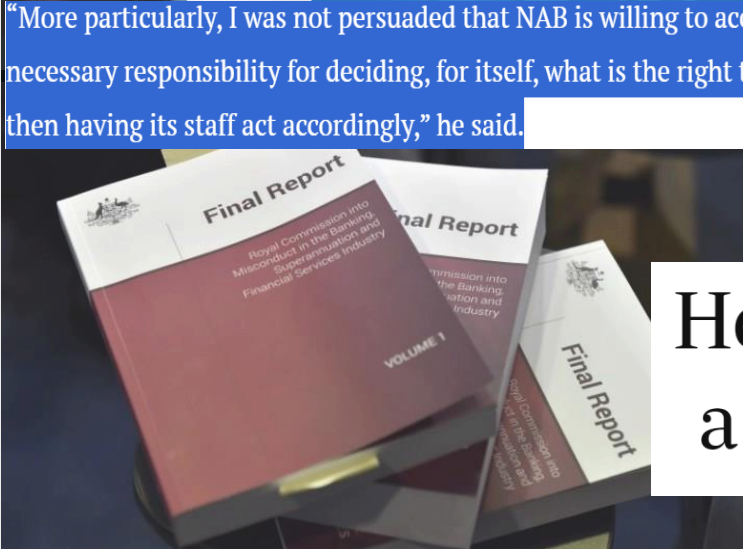
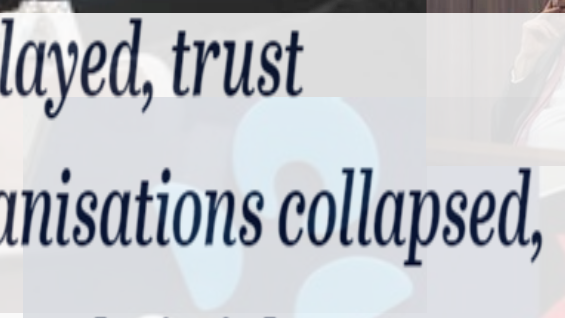
The report highlights that "failings of organisational culture, governance arrangements and remunerations systems, lie at the heart of much of the misconduct examined in the Commission".

Reputations were slayed, trust battered, some organisations collapsed, senior executives lost their jobs

"More particularly, I was not persuaded that NAB is willing to accept the necessary responsibility for deciding, for itself, what is the right thing to do, and then having its staff act accordingly," he said.

How a royal commission sank a 175-year-old financial giant

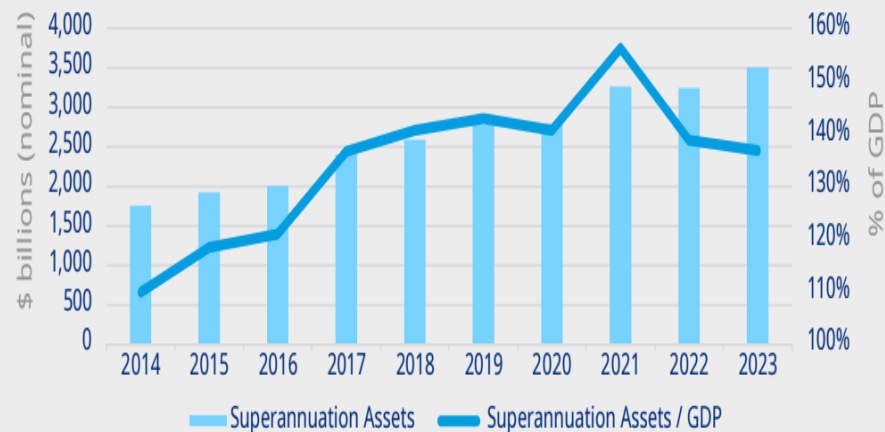
- X Fee for no service
- X Product hawking
- X Profits first practices



Major institutional capital owners are demanding ethical conduct – Australian pension capital example

Australia has one the largest (4th) pension capital pool in the world

Figure 3.2: Superannuation and the economy (source: Mercer, APRA)



Australian superannuation funds significant owners of ASX listed entities

According to research house Rainmaker, super funds own about 38 percent of the Australian bourse and this is expected to only grow to 41 percent by 2030. Back in 2019 Deloitte was predicting super funds would own more than 60 percent of the ASX by 2040. However, Deloitte has since revised its forecast to only 43 percent.

- ESG is important to superannuation funds. ESG considerations are aligned to driving ethical conduct
- **Environmental** – focus on the environment particularly climate change
- **Social** - relationships of a company with its employees, customers, the communities it operates in, and more. Workplace health and safety, product safety and quality, and consumer protection are some of the many social metrics that are considered.
- **Governance** - how the company is run, includes board composition, compensation and oversight of corporate executives, honoring shareholders rights, and more.
- SPS 515 APRA Prudential Governance Standard

Superannuation funds share activism and corporate influence driving ethical behaviour

Lack of sufficient progress on climate policy

Big US pension funds, Aware want Richard Goyder off Woodside board

Inappropriate Remuneration

Last year a record 13 per cent of ASX300 companies received a strike against their remuneration reports, up from 9 per cent in 2018, according to The Reward Practice, a remuneration specialist. In 2023, [18 of the top 200 companies suffered such a fate.](#)

Executive Misconduct

Super Retail CEO and former exec accused of undisclosed relationship

Carrie LaFrenz
Senior reporter
Apr 26, 2024 - 10:15am

Listen to this article
3 min

Super Retail Group chief executive Anthony Heraghty and former head of human resources Jane Kelly were accused of having an undisclosed intimate relationship by former staff at the retailer in a workplace dispute that is headed to court.

The [company behind Rebel and Supercheap Auto](#) is expected to be named along with the board, the CEO and other senior executives in a soon-to-be lodged legal claim by Harmers Workplace Lawyers, according to Super Retail. Super Retail is defending the action and said the allegations were without merit.

Super Retail, which has hired Allens, expects the employees to jointly claim \$30 million to \$50 million, spanning loss and damages.

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Scentre shareholders deliver first strike against CEO's \$5.5m pay

Legislative and regulatory compliance is critical but a minimum for ethical standards

Corporations Act	Corporate business regulation including governance, financial products, licensing and conduct
Anti-money Laundering and Counter Terrorism Financing Act	Regulation to prevent money laundering by criminals and counter terrorism financing
Competition and Consumer Act 2010	<ul style="list-style-type: none"> • Business must not engage in misleading, deceptive or unconscionable conduct • Businesses must not engage in anti-competitive behavior
Others	Employment Law (Fair Work Act – fair and safe conditions for employees) Anti-Racial Discrimination Act – promotes racial, gender, age etc. equality

- Regulators charged with responsibility to ensure compliance



Public Sector Entities specifically focused on promoting ethical conduct

- **Public Sector Ethics Act 1994 (Qld)** – sets out ethics principles fundamental to good public administration. It requires public service agencies and public sector entities to develop and implement a code of conduct based on these ethics principles:
 - integrity and impartiality
 - promoting the public good
 - commitment to the system of government
 - accountability and transparency.
- **Financial Accountability Act 2009 (Qld)** - principles to ensure proper financial administration and accountability
 - achieving reasonable value for money by ensuring the operations of the department or statutory body are carried out efficiently, effectively and economically [?]
 - establishing and maintaining appropriate systems of internal control and risk management [?]
 - ensuring annual financial statements are prepared, certified and tabled in Parliament in accordance with the prescribed requirement

ASX Governance Principles requires listed entities to ensure ethical standards

- Applicable to listed entities on the Australian Stock Exchange which must be adhered to
- 8 central principles to promote good governance
- Principle 3 – listed entity should instill and continually reinforce a culture of acting lawfully, ethically and responsibly
 - Disclosure of corporate values
 - Requirement to have and disclose a code of conduct
 - Have and disclose a whistleblower policy
 - Have and disclose anti-bribery and corruption policy
 - Ensure appropriate monitoring and reporting against the above policies

Board of Directors have a critical role in establishing an ethical base

- The board is responsible for the overall governance, management and strategic direction of the organisation and for delivering accountable corporate performance in accordance with the organisation's goals and objectives. (AICD)
- Board is responsible for culture including ethical conduct
- ✓ Assuring a **prudential and ethical base to the organisation's conduct** and activities having regard to the relevant interests of its stakeholders;
- ✓ Ensuring that the organisation's affairs are **conducted with transparency and accountability**; and
- ✓ Overseeing the design, implementation and periodic review of appropriate and effective **policies, processes and codes for the organization..., with respect to ethics, values, conduct**, securities trading, disclosure of securities' price sensitive information, employment, remuneration, diversity and otherwise....

Executive leaders must lead by example and also help create and embed ethical culture

- **Tone from the top** – executive shadows are large and impactful
- **Leading by example**
 - Ethical leadership
 - Actions must be consistent with stated policies and procedures
 - Living the corporate values
 - Create trust and confidence – organizational justice
- Setting **clear expectations** of others
- **Supporting employees** – provide appropriate resources for ethical decision making



Corporate policies are critical to embedding an ethical culture

Compliance with corporate policies on an ongoing basis must be a condition of employment

Code of conduct

- Mandates that employee/directors act in a particular way. Promote ethical standards and a culture of integrity. Some typical terms to embed an ethical culture:
 - Commitment to meet the highest ethical standards in the conduct of activities
 - Workplace behaviour – treating others with courtesy, respect even if they have differing views; ensuring safe work environment (is inclusive, free from harassment and ensuring health and safety of those around you)
 - Use of corporate resources – ensure appropriate use and that resources are used efficiently and economically
 - Decision making – transparent, objective, impartial and balanced (free from bias)
 - Avoid conflicts of interests –(refer below)
 - Accountable and accept accountability for actions
 - Compliance, agree to adhere to applicable rules, regulation and policies

Corporate policies are critical to embedding an ethical culture

Conflict of interest policies

- Avoid conflict of interests and disclose conflicts where unavoidable to ensure ethical behaviour
 - **Actual** – direct conflict between employees personal interests and corporate interests
 - **Potential** – conflict could arise in the future
 - **Perceived** – it could appear that employees personal interests may improperly influence/impact corporate interests (eg gift from a potential vendor)
- Disclosure of conflicts

Examples:

“Your company is in discussions with a IT service provider that is listed on the local stock exchange. The contract is material to the Service Provider. You own shares in the service provider”

“Third party IT provider is keen to secure the corporate business of the company you work for. They take you to, and pay for, a fancy lunch. During the lunch they are asking about the company and company’s needs. They end up winning the business”

Ransomware Attack – Ethical Dilemma

ABC Co is under a cyber attack from a state sponsored criminal organization. They have encrypted critical software which allows ABC Co to function including undertaking daily activities for its customers. Both access is now blocked to all staff members and all data has been encrypted. Management of ABC Co received the following message:

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Important systems on your network are ENCRYPTED and now they have
"quhyiouy" extension. In order to recover your systems you need to
follow instructions below.

>> CAUTION
DO NOT MODIFY SYSTEMS YOURSELF.
DO NOT USE THIRD PARTY SOFTWARE TO RESTORE YOUR DATA.
YOUR DATA IS STRONGLY ENCRYPTED, YOU CANNOT DECRYPT WITHOUT CIPHER
KEY.

>> RECOVERY PROCEDURE
Follow instructions below to complete payment.

1) Download and install Tor Browser from https://torproject.org
2) Navigate to http://75gwhy59yq0kuuy743v0.inion?access-
key=543415

If you do not pay we will DESTROY CIPHER Key.

We are reasonable people. Delays in payment will increase the cost
and consequences. We do not want this to go further than it has to.
Time is money.

BlackCat.
```

Blackcat demands - -USD \$10m to be paid into account

Consideration

- They have gained access to critical sensitive data, which if released could be very reputationally damaging
- ABC Co Board has a policy position not to pay demands of criminals
- Anecdotally, there is evidence that Blackcat generally don't release data if ransom is paid

Corporate values are also important

Corporate values should signal importance of ethical conduct and behaviour

INTEGRITY

Act with integrity and uphold strong ethical and professional standards

RESPECT

Be inclusive, embrace diversity including differences of opinion and treat each other with respect

ACCOUNTABLE & RESPONSIBLE

Take responsibility for your actions

TRANSPARENCY

Open, honest and impartial

Remuneration policies and framework can have a significant impact on the behaviour of employees

Some principles

- Avoid employees, goals, and objectives which could (unintentionally) promote unethical behaviour (avoid conflicted remuneration)
- Ensure remuneration practices (e.g. short-term incentive plans) take into account both outcomes achieved and how they were achieved (i.e. reward both behaviour and outcomes)
- Balance between fixed and non-fixed remuneration is important
- Remuneration frameworks and policies should promote diversity and inclusion (e.g. gender pay gaps, diversity targets) etc

Whistleblower laws are designed to encourage reporting of misconduct and illegal behavior protections

Australian law provides statutory protection for whistleblowers. Applicable to listed large private companies and superannuation funds. Examples of conduct that can be reported:

fraud, money laundering or misappropriation of funds

offering or accepting a bribe

financial irregularities

failure to comply with, or breach of legal or regulatory requirements

illegal conduct such as theft, dealing or use of illicit drugs, violence or criminal damage to property.

Protections offered

1. Whistleblower's identity is confidential - no one can disclose identity or information that can lead to identification
2. Protection from detrimental conduct including dismissing an employee, discrimination, changing duties or role, impacting reputation etc.
3. Compensatory rights – compensation if whistleblower suffers loss or damage due to disclosure or there's failure to protect the whistleblower
4. Other legal protections civil liability (e.g. any legal action against the whistleblower for breach of an employment contract, confidentiality or another contractual obligation);
 - criminal liability (e.g. attempting to prosecute the whistleblower for unlawfully releasing information); and
 - administrative liability (e.g. disciplinary action for making the disclosure).

Whistleblower Policy

Key provisions

- Process for making a whistleblower complaint – internal and external avenues (best practice 24-hour availability);
- Information about whistleblower protections, including who can benefit from these protections and the kind of disclosures that are protected. **Important to ensure statement that retaliation is not acceptable;**
- How the company will support and protect whistleblowers;
- Process of investigating any allegations;
- Ensuring natural justice and fair treatment including those mentioned in the disclosure; and
- How the policy is made available.



Board reporting and monitoring

- Regular Board reporting is critical to promote appropriate ethical culture and behaviour;
- Board reporting should cover, *inter alia*
 - Employee misconduct – including any breaches of code of conduct, fraud and corruption, and whistleblower complaints
 - Material conflict of interest questions
 - Executive remuneration matters including remuneration design and KPIs
 - Specific initiatives e.g. embedding values and behaviours
- *What gets measured and reported gets attention*



Thank you!