

Miles and Dowler, *A Guide to Business Law 21st edition*

Study Aid – Chapter summaries

Chapter summary – ch 24 – ethics in the business world

What is ethics?

Defined by the *Macquarie Dictionary* as a “system of moral principles...”.

Is unethical behaviour, illegal behaviour?

Not always, but often what starts as unethical behaviour, sometimes borders on negligent or reckless behaviour, which in turn has serious legal consequences.

The HIH collapse in August 2001 indicated poor corporate governance. Whilst the Royal Commission appointed by the Howard Government to investigate the HIH collapse did not find fraud or embezzlement to be the reason for the collapse it did find significant mismanagement “in the area of its core business activity”.

In his personal perspective, the Royal Commissioner noted that, whilst regulation is necessary, he thought “all those who participate in the direction and management of public companies, as well as their professional advisors, need to identify and examine what they regards as basic moral underpinning of their system of values.”

One.Tel

The One.Tel collapse in May 2001 resulted in civil proceedings taken by ASIC against four key persons in that company: Jodee Rich and Brad Keeling (the original promoters) and Mark Silbermann and John Greaves. ASIC alleged serious lack of due diligence and failure to advise the board of the exact financial position of the company. Excessive salary and bonus payments to Rich & Keeling had also taken their toll.

Greaves and Keeling settled with ASIC out of court, but the civil proceeding against Rich & Silbermann continued for four years. In November, 2009, ASIC lost the case with the presiding Judge expressing concern about the large weight of evidence presented by ASIC to prove the many alleged breaches of the Corporations Act.

ASIC announced in February 2010 that it would not appeal the decision.

If anything is to be learned from this it is that Corporate Boards need to monitor the financial position of the companies they control much more closely and that higher standards of due diligence and accountability must be delivered by corporate executives.

Government regulation

Although many Australian organisations and corporations have their own codes of



practice, government regulation is still required to ensure high standards of compliance and accountability are maintained. Organisations which monitor and regulate industry performance in key areas of the Australian business sector are ASIC, ACCC and APRA.

Industry codes of conduct in Australia

Mandatory codes of conduct are contained within the *Competition and Consumer Act 2010*, administered by ACCC. Mandatory codes are the Franchising Code, Oilcode, Horticulture Code and the Unit Pricing Code.

Breach of these codes gives a right of redress using the remedies available under the *Competition and Consumer Act 2010*.

Self-regulating codes of conduct

Many industries have developed codes of conduct to maintain high standards within their particular industries. These codes are regularly reviewed, often by Peak Industry bodies. An example is the Banking Code of Practice (<http://www.bankers.asn.au>).

International aspects of ethics

Australia is a signatory to the *United Nations Convention against Corruption*. ASIC works with the OECD to adapt their *Principles of Corporate Governance* into practice in Australia.

Australia is also a signatory to the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (the Convention). Australia has introduced legislation to require compliance with the convention with passage of the *Criminal Code Amendment (Bribery of Foreign Public Officials Act 1999*.