

# Developing Codes of Ethics

## Why codes of ethics fail

- Introduction: a hypothetical
- The first spring: excesses of the 1980s
- The second spring: rapid change and the search for certainty
- Why codes fail
- Code of conduct or code of ethics?
- How the Ethics Centre can help

### Introduction: a hypothetical

Imagine the following scenario: a minor official in the Department of Foreign Affairs and Trade is enjoying a private conversation with a colleague who, in an unguarded moment, reveals that she has discovered some important news affecting the shape of international trade. It appears that, in two weeks' time, there will be an announcement of such importance that the operation of markets throughout the world will be changed forever. It goes without saying that early possession of such information could be sold to interested parties for a small fortune.

It so happens that the official is due to address a local service club on the topic of *Trade and the New World Order*. Thinking that his recently acquired information might be of passing interest to his audience, he decides to reveal the facts during the course of his address. However, in order to protect himself (and his source of information), the man decides to impose on his listeners a rule stating that they are, without exception, forbidden to discuss his revelation with anyone until such time as the decision has been published by the government.

Having locked the doors, he then asks all of those present to sign an undertaking to abide by this rule. Those who refuse to sign are ejected. The remainder are party to the extraordinary news that he imparts.

Now what are the chances of this fictional official's strategy working? Is he reasonably able to rely on the confidence being kept?

At the very least, these actions would seem to be those of someone who is incredibly naive. Why, for example, should any of the listeners care what happens to this man if the rule is broken? He is a total stranger, and it is difficult to see a foundation for the expression of loyalty. What is the basis for this relationship that he might be said to presume to exist?

And who is he to be making rules of this kind anyway? What authority does he have to establish a framework for how his listeners should deal with the information that he imparts to them? Even more to the point, why should any of those present trust him enough to believe that his revelations are not just part of an elaborate hoax? And even if the information is true, why believe his contention that it needs to be kept secret. What if this is just a stalling tactic so that he can sell the exclusive rights to this story to the highest bidder in the media?

Finally, what would the members of the club make of the official's unilateral decision to place the audience in the invidious position of having to respect a confidence that almost certainly creates a conflict of interest? Would it not have been better if he had explained the situation at the beginning and then given them a chance to contribute to the process of working out a rule that would suit all concerned?

It was noted above that the official's strategy could justifiably be considered as incredibly naive. Yet this is not dissimilar to the approach taken by many organisations in the development and implementation of variously named codes of ethics, conduct, practice and so on.

If this is so, then why might it be that so many managers fail to adopt realistic and effective policies for the management of values.

### **The first spring: excesses of the 1980s**

In answering such a question one needs to examine the community's response to what has been called 'the decade of greed', the 1980s. While it is true that there were excesses during this now infamous period, it is almost certainly false to claim (as some do) that the 1980s saw an unprecedented flowering of opportunity for the greedy and rapacious. Although no justification (and certainly no consolation), the excesses of the 1980s have their parallels in other periods and other cultures. Indeed, much of the world is now struggling with the problem of how to lance the boil of endemic corruption.

It should also be said that there is a growing 'myth' that the villains of the period can be counted on one (or maybe) two hands. Again it is true that there were some notable individuals who seemed to personify all that was wrong with individual and corporate behaviour in the period of concern. However, Australians would be less than honest if we did not admit that these same people were the subjects of popular adulation during the time of their fleeting success.

Henry Bosch has pointed out that the principal actors were supported by a cast of thousands. There, in the wings, were the professional advisers who made it all possible, the journalists who knew of the ill deeds but led the cheer-squad and, behind them, the great throng that offered the sincerest form of flattery - through imitation.

It is sometimes interesting to speculate about how we would treat the principal actors if their audacious plans had succeeded. Would we still be concerned to condemn their lack of business and professional ethics? The 'paper entrepreneurs' deserve to be condemned for the means that they employed and the victims that they left behind, but we should realise that if there is to be blame, then it should be shared.

Mind you, none of this has limited the extent to which the community has called for vengeance against the patently unscrupulous. As the former Chairman of the Australian Securities Commission, Tony Hartnell (1992), has observed, there is a certain amount of blood-lust about. Apart from manifesting itself as a desire for prosecutions, there is the additional call for 'someone' to do 'something' to ensure that the worst of the excesses do not recur.

Such calls are easily registered by governments that seldom need much encouragement to act. Not surprisingly, when faced with the prospect of increased regulation and surveillance, people in business and the professions respond by taking pre-emptive action; for example, by instigating programmes of self-regulation. Combine this with a desire to be seen to be making an appropriate response to community concern and a certain amount of 'trend-surfing' and one begins to glimpse the first spring from which the various codes have flown.

While recognising that 'the decade of greed' has bequeathed a legacy of real economic and social harm, it is important to look a little deeper for an explanation as to why Australian companies have, up until now, adopted such a superficial response to the challenges of integrating ethical concerns into the management of organisations.

## **The second spring: rapid change and the search for certainty**

In his book, *Reinventing Australia* (1993), the noted social researcher, Hugh Mackay, advances the thesis that there is a continuum of social development leading from the late 1950s and early 1960s until the present. The defining characteristic of this continuum is the increase in the rate and scope of change.

Mackay argues that the Australian community is confused and unsettled by all this change and now seeks refuge in strategies that are thought to increase the amount of certainty and predicability in the world.

There is an attendant motive force at work within the world of business and the professions. This manifests itself in a tendency to adopt fairly simplistic explanations of 'what went wrong'. Not surprisingly, simplistic explanations lead to simplistic solutions. All of this is quite understandable in circumstances where a certain degree of comfort is associated with relief from complexity. There is, then, a search for the familiar in both form and substance.

One of the forms most familiar to our generation is that provided by the paradigm of technology. It is the characteristic response of modernity to try to find a 'technological' solution to any pressing problem. This type of solution places a premium on rational systems of response and control. Here is the second spring from which the various codes have flowed.

It is no great insight to observe that one of the most obvious examples of a social system designed to regulate human behaviour is to be found in the operation of the law. Hence, the

attraction of a quasi-legal system of organisational control based on the development and application of rules and regulations.

So to summarise, a desire to respond to popular concern in the market place is combined with a strategic decision to take remedial action of one's own (lest the prescribed cure be a harsher medicine).

All of this may seem to be unduly clinical and even a little cynical. Bearing this in mind, one might concede that the move to develop codes of ethics and conduct may be a response to a heartfelt concern to instantiate appropriate values in an organisation's culture. That is, one might reasonably be prepared to accept that the whole movement towards the introduction of codes is motivated by the best and most noble of reasons.

However, having conceded this point, there is still room for concern that the actual processes being applied are based on a fairly deep-seated misunderstanding of what is required.

## **Why codes fail**

Putting it bluntly, even well-intentioned people are committed to the folly of developing codes as an alternative to the active and creative management of an organisation's culture.

The development of a code is an understandably attractive alternative. At first glance the solution seems to be relatively cheap and efficient. In fact, it is regrettably common for the following process to unfold:

- Refer the matter of 'ethics' to Corporate Counsel, Human Resources or a consultant
- Have the appointed individual draft an appropriate document (usually based on earlier attempts by others)
- Publish the code (occasionally with a 'sign off' requirement)
- Activate the internal monitoring / enforcement regime
- Sit back and relax

This is, of course, something of a caricature. However, when it comes to addressing the 'problem of ethics' most companies look for a cheap 'off the shelf' solution. What is more, those who seek such a solution do so in the face of compelling evidence that solutions of this type may be superficially efficient - but almost totally ineffective.

A moment's reflection about the thought experiment outlined at the beginning of this chapter will begin to suggest some fairly obvious reasons for why codes might fail when developed or applied in such circumstances.

For example, it is clear that there needs to be a level of trust within an organisation sufficient to ensure that people are prepared to believe claims by management et al that rules are designed to prevent a serious mischief or promote a worthwhile good. In a similar vein, one recognises that the range and quality of relationships that underpin an organisation's culture

need to be such that a sufficient degree of loyalty is felt to be owed to the institution and its defining ends.

Recourse to a 'quick fix' has a further disadvantage. At first glance the error might seem to be quite trivial. However, there is considerable significance to be found in the fact that so many organisations set out to develop a Code of Ethics and instead produce a Code of Conduct (or some sort of hybrid).

The significance of this goes beyond the issue of mis-description. Rather, the confusion is evidence of the phenomena described above - phenomena in which the broader issue of ethics is set aside in favour of the 'hard science' of specifying types of behaviour that, in defined situations, are to be prescribed or proscribed.

## **Code of conduct or code of ethics?**

The discussion above has alluded to a difference between Codes of Ethics and Codes of Conduct. What are these differences? The difference between the two alternatives is relatively easy to describe.

A Code of Ethics expresses fundamental principles that provide guidance in cases where no specific rule is in place or where matters are genuinely unclear.

A well drafted Code of Conduct will be consistent with the primary Code of Ethics, however, it will provide much more specific guidance. In comparison to a Code of Conduct, a Code of Ethics will tend to:

- be more general
- contain fewer principles
- be expressed in terms of 'ought' or should (and not 'must')
- be directed to all persons affected (and not just to 'employees')
- provide general guidance in those cases where a Code of Conduct is silent, ambiguous or unclear

Bearing this in mind, a Code of Ethics might include provisions such as:

- that our actions should be based on a recognition of the essential dignity of each and every person
- that we should have an active concern for the wellbeing of the community and the environment
- that we should provide a challenging and safe workplace in which people can flourish

...and so on. Naturally enough the principles need to be amended to take into account the distinctive ends that an organisation might seek to achieve.

On the other hand a Code of Conduct will have a number of discreet headings which cover specific instructions. For example:

## **Gifts & benefits**

Employees must:

- not demand or accept any unauthorised gifts, rewards or benefits because of the employee's status
- disclose to their manager any gift, reward or benefit offered or suggested to them in connection with their duties

## **Conflicts of Interest**

Employees must:

- ensure that there is no actual or apparent conflict between their personal interests and the performance of their duties
- identify, and fully disclose in writing to their manager, possible conflicts of personal or financial interests

At first glance, it may seem that far more use can be made of a Code of Conduct. After all, such a Code provides clear and unambiguous direction about appropriate standards of behaviour. However, further examination of the issue reveals that the less specific Code of Ethics is the more significant document.

Despite (or some would say because of) its 'fuzzy' form, a Code of Ethics is the better vehicle for ensuring long-term commitment to important values.

This is because a Code of Ethics demands something more than mere compliance. Instead, such a Code calls forth an exercise in understanding that is linked to a requirement that people exercise judgement and accept personal responsibility for the decisions that they make. As a North American manager observed to Fortune Magazine:

Today life is fired at us point-blank. People don't have time to refer to the company handbook. You've got to have all that internalised.

A Code of Ethics should be a document that expresses an organisation's underlying values. It is therefore essential that the document ring true for those to whom it applies. And this means that Codes of Ethics need to be devised in consultation with the people most directly affected by its application.

In other words: everyone who's going to have to live with the statement should get a chance to put his or her two cents in.

Codes of Ethics and Codes of Conduct are not 'magic bullets' that solve an organisation's problems. And the fact that an organisation has a written Code will not guarantee that its personnel are especially ethical. But good managers will realise that, if approached with the proper degree of care and sophistication, the very process of developing these codes can have a profoundly positive effect on the culture of an enterprise.

If it is not already clear, let it be stated directly that organisations should be looking to develop both types of code. Indeed, serious consideration should also be given to the

suggestion that there be an additional level of documentation outlining the responsibilities owed to stakeholders. The idea is to create a series of 'nested' and logically related documents each of which contributes something different to the process of reinforcing the ethos of the organisation.

## Developing codes

### Some thoughts on how to make codes of ethics work!

- Introduction
- Map the baseline
- Involve everyone
- Aim for short development cycles
- Build in a process for review
- Managers don't need to surrender responsibility
- Aim for authenticity rather than homogeneity
- See the process as an investment
- Conclusion
- How the Ethics Centre can help

### Introduction

Having undertaken a cursory explanation of the difference between the two types of code and bearing in mind the **earlier discussion** about the ways in which common approaches to developing these codes can lead to failure, what can be said by way of advice about the appropriate way to proceed?

To many, the following observations will seem blindingly obvious. The only thing that might prevent them from being labelled as the fruit of common sense is the fact that they are so uncommonly applied in practice.

#### Map the baseline

It is interesting to note that very few organisations take the trouble to assess the culture that they seek to reinforce or change. Anecdotal evidence or a kind of 'group memory' may provide a fecund source of assumptions that are seldom tested. At the very least, this opens one to the risk that the ideals of an elite come to form the basis for developing an approach to the organisation's ethos. In the same vein, it is possible that a 'mythical' culture can emerge from the minds of idealistic enthusiasts. It is possible to avoid such pit-falls by the relatively simple expedient of conducting a 'values audit'.

In its simplest form such an audit will seek to establish three things:

- think to be its most important values?
- believe to be the ideal level of presence of each of these values?
- believe to be the actual level of presence of each of these values?

Such a survey will help to identify what people think to be important. But more importantly this exercise will begin to identify what has been called 'the values gap'. It is an obvious step

beyond this point to involve the workforce in suggesting the means to close the gap. In addition to this the audit will provide a base-line against which progress (such as in closing the gap) can be assessed.

## **Involve everyone**

Although becoming something of a cliché, it is still important to observe that people are more likely to apply rules that they have had a hand in developing than those which have been handed down - as if from 'on high'. At a fairly basic level it is easy to understand how it is that a degree of ownership of a process can create an acknowledged prima facie obligation. This naturally works to the advantage of those who look for compliance.

An additional practical reason for ensuring a broad base of involvement in the development and implementation of the codes is that this will increase the likelihood that the resulting documents will be relevant to the daily experiences of those to whom they apply. Beyond this, widespread involvement will help to ensure that codes don't call for one kind of approach while custom and practice demand another.

However, there are more important reasons for involving everyone. The foremost of these is that such a policy can be an effective expression of the principle that all people are owed respect. The fact that a company chooses to encourage all of its people to participate in defining its ethos indicates that personnel are regarded as being more than mere means for securing the organisation's ends.

An open culture in which each person is encouraged to contribute to the process outlined above is one that is likely to be one in which trust can be engendered. It is likely to be a culture with the underlying resilience to cope with periods of rapid change. When value questions are reserved for the judgement of the few (lest the public airing of such issues cause dissension), then the foundations of an organisation can be undermined by hidden pockets of unresolved difference. Cracks are papered over until the degree of tension increases to an unsustainable level.

Finally, it is important to understand that the requirement to involve everyone suggests that the process should be extended from the board-room to the factory floor. In a similar vein, the various codes ought to apply to all members of the organisation, and if there are to be differences, then these will need to be justified.

## **Aim for short development cycles**

Some organisations accept the importance of consulting their employees. But there is less of a concern to provide timely reports of the findings. Such practices can lead to a serious erosion in the level of morale within an organisation. People become cynical and easily develop the perception that the entire exercise was nothing more than a 'gesture' by management.

On the practical front, the quicker the turn-around, the greater the likelihood that positive reinforcement can be achieved.

### **Build in a process for review**

It is important to avoid circumstances in which codes come to be seen as stale or 'set in stone'. It does not take many generations before unreconstructed codes lose their immediacy and relevance. Should this happen, then the code is likely to fail in its application. This is not to suggest that companies need constantly to be reinventing the wheel. It may be that despite being regularly (and fairly frequently) reviewed, the code(s) will continue, unchanged for years.

However, the development of a review process will help to ensure that the documents remain relatively fresh and relevant. Indeed, the process of keeping the code(s) before people as living documents can prove to be an extremely effective 'handle' for those who have responsibility for developing strategies for the effective management of values.

### **Managers don't need to surrender responsibility**

Much of the above suggests a commitment to principles of workplace democracy. Many managers will object to this implied orientation. Bearing this in mind it should be stressed that none of the above is meant to suggest that managers ought to surrender their prerogative to manage. An important part of the process will be to define and articulate the various spheres of responsibility. It is perfectly reasonable for managers to specify that while they are genuinely interested in consulting their colleagues they will, in the end, have to accept responsibility for making the final decisions.

Having said this, there may be separate reasons for managers to extend the decision-making process so that it involves their colleagues. Such a decision might be part of a process of evolution away from the technical paradigm of management towards the less precise art of leadership. But that is another topic.

### **Aim for authenticity rather than homogeneity**

Some people labour under the false impression that there is just one type of culture that can be described legitimately as possessing sound ethical characteristics. The prevalence of this sort of belief may be a contributing factor to the tendency (noted above) to gravitate towards generic products that can be bought 'off the shelf'. There is also a level of comfort that flows from adopting positions that are similar to the existing norm.

Yet there is no need for homogeneity in the cultures and codes of organisations. In normal circumstances one would expect individual differences flowing from the existence of variations in defining ends, personnel and so on, to lead to natural variety in the types of ethos to be found in distinct organisations.

All the same, there is no essential virtue in variety. One would not be too surprised to find organisations sharing a number of commitments and values. However, the key feature to be sought is an authentic expression of what people hold to be important and right.

## **See the process as an investment**

One can mount convincing arguments to support the claim that there are ethical grounds for encouraging broad participation in the process of developing codes. Yet one needs to recognise that no matter how attractive and convincing these arguments, it is almost certain that organisations will focus on the 'bottom line'. And they will do so with the clear recognition that the 'quick fix' is the cheaper option. To follow the recommendations outlined in this chapter would be to commit a significant investment of resources - especially resources of time and personnel. So why make such an investment?

Many would accept that the rational approach is to invest in ways that lead to the generation of continuing benefits. Given the pervasiveness of the ethical dimension in all that we do, organisations cannot afford to sacrifice the additional effectiveness that flows from this process for the sake of achieving false efficiencies.

There are a number of other points that could be made touching on subjects such as the need for codes to be in plain English, to use inclusive language and so on. Any observations in these areas would be largely self-evident.

## **Conclusion**

As noted, much of the discussion can be accounted for as the expression of simple common sense. Yet the context in which these comments have been made is one in which there is likely to be resistance to the element of uncertainty that lies at the heart of the recommendations. This element flows from the fact that although most people are attracted to the fields of certainty, it is an unavoidable aspect of the human condition that we inhabit an ethical landscape that is inherently imprecise.

A decision to adopt an effective approach to the development of codes will require managers to recognise and accept that they are engaging in a task that requires them to 'explore' rather than control the cultures they inhabit and share. So why surrender a capacity to control in favour of a far less predictable process?

The answer to this question may be as old as history itself. Aeons have passed since legislators embarked upon the task of devising tools to curb the impulses of human beings. The scribes have used gallons of ink in the drafting of black-letter law. When alienated from its provisions, people experience the law as a yoke to be cast off as soon as it is safe to do so.

That is why codes will fail unless situated in a culture where the individual is respected as the ultimate source of value.

