

Does compliance generate responsibility?

There was much discussion back in 2006 about the then new modifications to the Companies Act in the United Kingdom, which broadened the legal responsibilities of Directors to include objectives that looked very like social responsibilities.

Section 172 deals with the “duty to promote the success of the company” and defines that responsibility in the following terms:

- (1) A director of a company must act in the way he (sic) considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to:
 - the likely consequences of any decision in the long term;
 - the interests of the company’s employees;
 - the need to foster the company’s business relationships with suppliers, customers and others;
 - the impact of the company’s operations on the community and the environment;
 - the desirability of the company maintaining a reputation for high standards of business conduct; and
 - The need to act fairly as between members of the company.

Traditionally, companies had been required by law to work only in the interests of the shareholders, and this was assumed to be the profit maximisation required by what were assumed in economic theory to be utility maximising shareholders. The British law includes the benefit of stakeholders such as employees, the community and the environment.

All good as far as it goes, said some, but there are no hard and fast requirements against which you could tell if a Director had met these requirements. In Australia, the national government put together a high level committee to consider and report on a similar broadening of responsibility in the Australian Companies Act. It considered the idea, recommended against, and the then Treasurer quietly shelved the idea.

In 2013, the Indian Government legislated changes, which have been in force since 2014, to direct company behaviours. Large companies, defined by objective financial metrics, must have a CSR committee of the Board. The committee composition is defined, the amount they must spend is defined and the activities that they can invest are scheduled.

This guarantees investment in worthy social objectives, but is it really “responsibility?” The United Kingdom’s law leaves the where, when and how to the organisations? There is scope for the organisation to conduct its own internal dialogue about what responsibility means and, in so doing, develop a corporate culture that includes a wider sense of responsibility.

The Indian Government initiative will guarantee compliance. However, what remains to be seen, and what would be a worthy field of investigation by researchers, is whether companies consider this contribution a tax that they must levy upon

themselves and then spend within a bounded choice of activities: that is, a tax that is administered by the company rather than the government.

In the early 1990s, the Government of Australia legislated the “Training Guarantee”, which required large companies to spend an amount equivalent to 1.5 per cent of payroll on training for their employees. This was a well-intended measure that was designed to lift both their own productivity and the standard of living for employees who would use the enhanced skill level as a basis for higher wages. However, when the Government changed in 1996, the new Government repealed the legislation because it had become clear that companies were seeing the money as a compliance burden rather than an opportunity. They were sending their executives on junkets to tropical islands instead of lifting the standard of working on the shop floor. This raises the question as to whether a responsibility imposed is really just a set of incentives towards perverse behaviours. Responsibility at its heart is an act of volition. We try to impose upon it a rational basis, showing how attention to stakeholders enhances the sustainability of the organisation, but the reality is you have to want to be responsible.

In his *Treatise on Human Nature*, David Hume argues that it is not possible to build a moral case from a rational premise. The moral case, for that is what responsibility is, derives from the passions. It is an emotional response to circumstances. None the less, the Indian Law is a bold assertion of what is needed. It will be interesting to see whether Indian managers respond more responsibly than Australian managers did when required to invest in their employees.

Grant Jones

Head of the School of Business, Australian Catholic University, Sydney, Australia