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Niall Coburn
Thomson Reuters

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IMPACT ANALYSIS: ASIC IS FIRM ABOUT PSYCHOLOGISTS IN BOARD ROOMS

NIALL COBURN*

INTRODUCTION

The Australian Securities and Investments Commission (**ASIC**) Chairman, Mr James Shipton, has “dug his heels in” and is moving forward on his experimental plan to place psychologists into board rooms, on a “voluntary basis”, despite mounting criticism from regulators and behavioural experts. A similar program was used by the Dutch Central Bank and, while short-comings were evident, overall it was seen as a success.

IS PLACING PSYCHOLOGISTS IN BOARD ROOMS A GOOD IDEA?

The Royal Commission into Misconduct into Banking, Superannuation and Financial Services Industry made 76 recommendations, and in a bid to end financial misconduct, concentrated the major themes around culture, governance, and management accountability. It went as far as to say that all organisations in the sector could improve their culture and act more effectively in the interests of consumers. However, the people who are responsible for setting the “tone at the top” are Directors, the CEO and senior management. In order to improve culture and “tone” ASIC is looking left field to see what else can be done to make needed improvements in a short time frame.

ASIC is asking the important question; if board’s and directors’ behaviour cannot be regulated, how do you ensure that there is change across the boards of many financial services companies? How will ASIC or even Boards know if there is real change to culture that addresses the serious issues raised by the Royal Commission and how will society know when those changes occur? In a recent conference ASIC Chairman James Shipton says having psychologists’ in boardrooms needs to be put in place as “it would be short-sighted to ignore such an important dimension of corporate culture and a source of valuable data.”

UNDERSTANDING BEHAVIOURAL TRENDS

In 2011, the UK Financial Reporting Council indicated that bias in the board room exists and used the phrase “distorted judgement” in order to acknowledge that flawed decisions can be made with the best intentions and that confident individuals may believe they are making sound decisions when they are not. Australia has witnessed countless examples before the Royal Commission of “distorted judgment” where boards and CEOs knew that their organisations were breaching ethical and regulatory rules and even acting illegally - in

* Governance, Risk and Compliance, Thomson Reuters.

the case of “fees for no service”- yet did nothing about it and belligerently confronted the regulators at every turn.

It is fair to say that the Royal Commission exposed a culture or attitude towards consumers in Australia, which is not new, and has taken place in the US and the UK. Mr Shipton said, “Understanding behavioural trends was fundamental to ASIC’s role as a regulator”.

THE PROS AND CONS OF PLACING PSYCHOLOGISTS IN BOARDROOMS

Despite ASIC’s firm view that the program of placing psychologists in board rooms needs to occur, there is very little material about the “pros and cons” of such a program and whether it will work in Australia.

There appear to be four advantages that support the argument for psychologists in the board room:

- to understand an important dimension of corporate culture, and a valuable source of information for regulators to allow feedback to organisations, so they can improve their conduct in the marketplace.
- to ensure diversity in the board room, and the need to build greater dynamics to enable cultural shifts within organisations.
- to assist boards of directors to be fully equipped to build or “re-build” a dynamic that helps the group govern more effectively and ensure that senior management engage in some internal development processes that changes culture.
- to assist boards to become high performing and provide tools to prosecute its mandate. Key processes such as improving how the boards communicate, make decisions, interface with the organisation, needs to be evaluated and honed. Boards may be assisted to implement a strategy to improve culture, by bringing in experts to support boards of directors with this process; and is worth considering if it can maximise board effectiveness.

On the other hand, there have been several criticisms, by regulators and psychologists, that relying on collaboration instead of supervision, is not sustainable. Additionally, others argue placing someone in a board room, taking notes, is likely to influence the behaviour of participants and that such behavioural observations have limitations as people are known to distort their behaviour when observed.

From a practical point of view, it is not clear how helpful psychologists can be as they may have to step outside the room on a number of occasions, for instance, when price sensitive information is discussed. There is no indication on how long the program of embedding psychologists in board rooms may take or what the “end game” will be.

End Note

ASIC is trying to fix a broken financial culture and rebuild consumer trust. Understanding the behaviours of people on the board and the senior executives, and how they think and

solve problems, is seen as an important part of that process. The challenge for the ASIC, is to ensure that board rooms enhance the quality of their decision-making and ensure that culture is improved and address weakness in their organisations immediately. It is worth at least a pilot program to see what the outcome is and whether any left field insights may assist. We might be surprised!

****About the Author***

Niall Coburn is the Regulatory Intelligence Expert at Thomson Reuters in the Asia-Pacific region. Prior to joining Thomson Reuters, he was the Regional Managing Director at FTI Consulting, responsible for leading its regulatory and forensic investigation practice in Australia. Niall was also a Senior Lawyer and Specialist Adviser at the Australian Securities and Investments Commission. In this role he led high-profile investigations into complex corporate crime cases. He has also worked internationally, being part of a team that created the regulatory structure for the Dubai International Financial Centre (DIFC). He is a Barrister of the High Court of Australia and a member of the Queensland Bar Association and the International Bar Association.