

CHAPTER 2

THE BILL

Part 1 - Preliminary

2.1 The Bill provides that its objects are:

- (a) to impose environmental, employment, health and safety and human rights standards on the conduct of Australian corporations or related corporations which employ more than 100 persons in a foreign country; and
- (b) to require such corporations to report on their compliance with the standards imposed by this Act; and
- (c) to provide for the enforcement of those standards.¹

Background

2.2 The Bill expressly provides that it has extraterritorial operation.

Part 2 – Corporate Codes of Conduct

2.3 A corporation, to which the Bill applies, will be required under Part 2 of the Bill to:

- take all reasonable measures to prevent its activities causing “any material adverse effect on the environment” and monitor the environmental impact of its activities;²
- promote the health and safety of its employees;³
- not benefit from forced labour;⁴
- not benefit from the labour of children under 14 years of age;⁵
- pay its workers a “living wage”;⁶
- not dismiss workers for reasons of illness or accident;⁷

1 Corporate Code of Conduct Bill 2000, subclause 3(1).

2 Corporate Code of Conduct Bill 2000, subclause 7(1).

3 Corporate Code of Conduct Bill 2000, clause 8.

4 Corporate Code of Conduct Bill 2000, subclause 9(1).

5 Corporate Code of Conduct Bill 2000, subclause 9(2).

6 Corporate Code of Conduct Bill 2000, subclause 9(3).

7 Corporate Code of Conduct Bill 2000, subclause 9(3).

- allow workers to associate and bargain collectively;⁸
- allow workers to submit complaints to “independent authorities”;⁹
- observe minimum international labour standards;¹⁰
- except under certain circumstances, such as government sponsored policies to promote “greater equality”, refrain from discriminating against persons in relation to employment on the basis of
 - race, colour, sex, sexuality, religion, political opinion, national extraction or social origin;¹¹
- observe the tax laws of each country in which it operates;¹²
- ensure that its products meet the “required standards for consumer health and safety” in Australia and, simultaneously, the standards required in the overseas jurisdictions in which the corporation is operating; and¹³
- refrain from “misleading or deceptive conduct”.¹⁴

Part 3 – Reporting

2.4 Part 3 of the Bill specifies the reporting required of the corporations to which the Bill applies. Each of these corporations will have to submit annually a comprehensive Code of Conduct Compliance Report to the Australian Securities and Investments Commission.¹⁵

2.5 Each Code of Conduct Compliance Report would require details of all of the following:

- the corporation’s financial and operating results for the previous year;
- the members of the corporation’s board of directors and their remuneration;
- the corporation’s five “most significant executive officers” in each country the corporation operates in, except Australia, and the remuneration of these executive officers;
- the shareholders of more than 5% of the issued capital of the corporation;

8 Corporate Code of Conduct Bill 2000, subclause 9(3).

9 Corporate Code of Conduct Bill 2000, subclause 9(3).

10 Corporate Code of Conduct Bill 2000, subclause 9(3).

11 Corporate Code of Conduct Bill 2000, clause 10.

12 Corporate Code of Conduct Bill 2000, clause 11.

13 Corporate Code of Conduct Bill 2000, clause 12.

14 Corporate Code of Conduct Bill 2000, clause 13.

15 Corporate Code of Conduct Bill 2000, subclause 14(1).

- the number of employees of the corporation in each country in which it operates, except Australia;
- the total remuneration paid to the corporation's employees in each country the corporation operates in, except Australia;
- the environmental impact of the corporation's activities in each country that it operates in, except Australia (the contents of this environmental impact section would be "prepared by an independent auditor");
- "foreseeable risk factors" that might arise as a result of the corporation's activities in each country it operates in, except Australia;
- the corporation's contraventions, if any, of standards or laws relating to the environment, employment, health, safety and human rights in each country in which the corporation operates, except Australia;
- the corporation's social, ethical and environmental policies; and
- "any other matter" relevant to the corporation's environmental, employment, health, safety and human rights standards.¹⁶

2.6 If a corporation already has provided in another mandatory report to the Australian Securities and Investments Commission information that is required to be included in a Code of Conduct Compliance Report, then such information may be omitted from that corporation's Code of Conduct Compliance Report.¹⁷

2.7 Any corporation which, "without reasonable excuse", does not lodge a Code of Conduct Compliance Report is "guilty of an offence punishable on conviction by a fine not exceeding 2000 penalty units".¹⁸

2.8 Where an executive officer of a corporation knew that, or was "reckless or negligent" regarding the fact that, the corporation would not submit its Code of Conduct Compliance Report, and this executive officer could have influenced the corporation to submit its Code of Conduct Compliance Report but failed to do so, then that executive officer is guilty of an offence and "liable, on conviction, to pay a fine not exceeding 1000 penalty units".¹⁹

2.9 The Bill, if enacted, would require the Australian Securities and Investments Commission to prepare an annual report on compliance with the provisions of this Bill and forward this report to the Treasurer by the end of each calendar year so that the Treasurer may table the report in each House of the Parliament.²⁰

16 Corporate Code of Conduct Bill 2000, subclause 14(2).

17 Corporate Code of Conduct Bill 2000, subclause 14(3).

18 Corporate Code of Conduct Bill 2000, subclause 14(4).

19 Corporate Code of Conduct Bill 2000, subclauses 14(5) and 14(6).

20 Corporate Code of Conduct Bill 2000, clause 15.

Part 4 - Enforcement

2.10 The Bill provides that an Australian corporation operating overseas, and to which this Bill applies, which contravenes Part 2 of the Bill will be “liable to proceedings for the recovery of a civil penalty”.²¹

2.11 The Bill also provides that where an executive officer of a corporation knew that, or was “reckless or negligent” regarding the fact that, the corporation would contravene Part 2 of the Bill, and this executive officer could have influenced the corporation to submit its Code of Conduct Compliance Report but failed to do so, then that executive officer also will be deemed to have contravened Part 2 of the Bill.²²

2.12 The Treasurer, the Attorney-General and the Chairperson of the Australian Securities and Investments Commission, within six years of a corporation or person contravening Part 2 of the Bill, will be allowed under the Bill to apply on behalf of the Commonwealth to the Federal Court of Australia for an order that the contravening corporation or person pay the Commonwealth a pecuniary penalty not exceeding 10,000 penalty units.²³

2.13 The Bill also would allow persons, both natural and corporate, who have suffered loss or damage, or who are “reasonably likely to suffer loss or damage”, or who are acting on behalf of persons who have suffered, or are likely to suffer, damage, from the activities of Australian corporations overseas, to bring actions in the Federal Court seeking injunctions and/or compensation.²⁴

2.14 The last clause of the proposed Bill is a standard clause which would authorise the Governor General to make regulations for the “carrying out or giving effect to this Act”.²⁵

21 Corporate Code of Conduct Bill 2000, subclause 16(1).

22 Corporate Code of Conduct Bill 2000, subclause 16(2).

23 Corporate Code of Conduct Bill 2000, subclause 16(3).

24 Corporate Code of Conduct Bill 2000, clause 17.

25 Corporate Code of Conduct Bill 2000, clause 18.