Senator Andrew Murray: Australian Democrats

Minority Report on the Corporate Code of Conduct Bill 2000

1. Evidence and submissions gathered during the Committee's inquiry into the Corporate Code of Conduct Bill 2000 represents a diversity of opinion. There were both strong supporters and strong opponents of the Bill. However many improvements to the Bill were suggested.

2. Whilst accepting that the issue is controversial and there is disagreement on whether the Bill is necessary, workable or wise, the Report gives more weight to those opposing the Bill.

3. This Bill was always going to be controversial because it introduces a concept that is not universally accepted as requiring legislation. In her second reading speech Senator Vicki Bourne referred to other instances of similar attempts to introduce such legislation, which while seen as inevitable by some, is still being developed.

4. The debate was always destined to polarise opinion. Mr Maitland outlined what was at stake when he made the following comment to the committee

> As Australian legislators, it is within your power to act to safeguard and improve the lot of workers and communities dependent on Australian companies and safeguard and improve the environment in which Australian companies operate. We can make the world a better place to live. The question for the committee is whether it chooses to assist or frustrate the process.[1]

5. This minority report attempts to assist the process of review by providing balance to the debate as presented in the Report and also to give consideration to some of the suggestions made to improve the content of the Bill.

Examination of Evidence

Overview of the inquiry

6. The majority of the Committee believes that the Bill is impracticable and unwarranted. I conclude that the Bill cannot proceed without amendment; however, I disagree with rejecting the Bill outright. I intend recommending to the author of the Bill that amendments that recognise valid suggestions

[1] Mr Maitland, Hansard, Thursday 15th March 2001, Page CS 102.

and criticisms should be made. I believe there are difficulties with the Bill, as it stands, but not that the Bill itself is unwarranted.

7. The inquiry into the Bill identified a diversity of views. Businesses are seldom leaders in progressive policy in my experience, not because individual business people are not progressive, but because collectively businesses understandably fear regulation and consequent costs. Therefore as expected business interests were vehemently against the Bill in its entirety whereas other organisations and individuals, including NGOs, academics and lawyers were supportive in the whole, in part or with technical changes.

8. Mr Bosch (paragraph 3.4) believed the Bill should be abandoned because of increased costs to Australian business, which would disadvantage them. However a submission from the Castan Centre, whilst acknowledging the Bill must not amount to "protectionism", stated that

> It is not a legitimate competitive advantage for human dignity to be sacrificed to such an extent that corporations can be attracted by wage rates which are far below a living wage….[2]

9. It was also clear from some evidence that some in the Australian community have an expectation that companies should be held responsible for their activities. Mr Cameron from the AMWU said in evidence that

> In Australia only eight percent of those polled said that the role of companies should be to make profit, pay taxes, create jobs and obey all laws. Forty Five percent of Australians said companies should set higher ethical standards and help build a better society, and 43 percent said companies should operate somewhere between the two positions. Unfortunately many of our key politicians and political parties adopt the view of those polled in Kazakhstan where 48 per cent say a company's role is to make profits and only 18 per cent say they should set higher ethical standards.[3]

10. Others expressed views similar to Mr Hogan from Amnesty International who supported the Bill and said that it was necessary to legislate

> [B]ecause the influence of companies, as we all know, has really accelerated over the last few years and we all need to say that every actor in society has an obligation for human rights protection.[4]

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[2] Castan Centre for Human Rights Law submission, p2

[3] Mr Cameron, Hansard, Thursday 15th March 2001, Page CS 97.

[4] Mr Hogan, Amnesty International, Hansard Thursday 15th March 2001, page CS81.

Objects of the Bill

Imposition of Standards

11. The issue of whether the Bill would impinge on the national sovereignty of other nations and whether it is an unwarranted imposition of Australian values on others was clearly an important issue in the debate.

12. The Report gives significant weight to those who saw the Bill as paternalistic. However other evidence submitted to the committee strongly disagreed with this point of view. This evidence acknowledged that the standards being imposed are underpinned by International Conventions and are universal values. Community Aid Abroad referred to the legitimacy of the Universal Declaration of Human Rights and said

> International Human Rights instruments represent a set of fundamental and universal rights over which there is broad international consensus transcending political, cultural and religious interpretation.[5]

13. It is true that Australia possesses no ascendancy in the matter of standards, particularly in relation to labour rights (paragraph 3.8). The author of the Bill recognised the possibility of Australian legislation failing to meet international obligations and the Bill states that a corporation

> … is not required to take any action to meet the requirements of its operations in a foreign country that it would not be required to take in respect of its own operations in Australia.[6]

14. Evidence was given that supported the view that the standards and human rights the Bill seeks to uphold are universal and not peculiar to Australia. Dr Wansborough in evidence spoke about her experience in Asia and asserted that basic labour rights are very much an issue for the Asian women with whom she works through a journal called "In Gods Image". She said that

> What comes through in that, certainly from the women who provide material and the women they work with, is that women are saying they think labour standards matter.[7]

15. Dr Wansborough also drew attention to comments she attributed to the General Secretary of the National Council of Churches in the Philippines, who made comments to the effect of

> You've got to do something about it. It is not good enough that you let Australian Companies operate in our country in a way that treats us

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[5] Community Aid Abroad submission, p7

[6] Corporate Code of Conduct Bill 2000, clause 3:2

[7] Dr Wansborough, Hansard, Thursday 15th March 2001, Page CS 86.

like this, that damages our environment and treats employees badly and so on.[8]

Scope of the Bill

16. The Report raised several issues concerning the scope of the Bill (paragraph 3.109). There followed a useful explanation of the some of the problems associated with the definitions used in the Bill, which it noted are issues not confined to this Bill.

17. Of greatest difficulty is defining the scope of the Bill, particularly as it relates to foreign corporations and holding companies. The author of the Bill has advised me that the Bill was not intended to regulate foreign companies operating in foreign countries. As the Report suggested this was a drafting error (paragraph 3.17).

18. It is not clear from evidence given that there is a clear option, however I do not concur with the conclusion reached in the Report that because there are difficulties we should not legislate at all (paragraph 3.27). Of course as legislators we have a responsibility to ensure legislation is unambiguous, but this does not excuse us from taking decisions just because finding the right definition is difficult.

Recommendation: I recommend that Senator Bourne seeks further advice on this issue.

Corporations with 100 employees and the issue of subcontractors

19. Convincing evidence was provided that the threshold of 100 employees would not provide sufficient safeguards. Several submissions suggested lowering the threshold to 50 or 20 employees. I think it needs to be consistent with other legislation. For that reason 50 is probably a desirable threshold.

20. The Report identified that subcontractors would not be subject to the provisions of the Bill (paragraph 3.35). Several submissions also identified this as a problem and commented on the need to deal with the issue of subcontractors. This is an important omission from the Bill and needs to be addressed.

21. To be effective responsibility must be extended down the supply chain to subcontractors. Tim Connor in his submission suggested defining subcontracting by using a definition used by the Fair Labor Association in the US. That definition extends to

[8] Dr Wansborough, Hansard, Thursday March 15, Page CS87.

> any contractor or supplier engaged in a manufacturing process, including cutting, sewing, assembling and packaging, which results in a finished product for the consumer.[9]

22. The Report concluded that the cost of including the subcontractors was substantial (paragraph 3.36). No factual evidence was presented to the Committee, which supported this assumption.

Recommendation: I recommend to Senator Bourne that the employee threshold is lowered to 50 employees and that the Bill should be extended to include subcontractors.

Extraterritorial Operation

23. The extraterritorial nature of this Bill is significant and rightly requires close attention. I commend the Committee on the section in the Report on the Development of Extraterritorial legislation (paragraph 3.43). It is a most useful and informative section. However the analysis of the importance of the extraterritorial application of the Bill failed to include crucial evidence provided to the Committee.

24. Those in favour of the Bill asserted that, in this case, extraterritorial legislation simply implements Australia's responsibilities under various treaties.[10]

25. Many of those who claimed that the extraterritorial application of the Bill was most problematic and paternalistic did not present factual evidence to substantiate this claim. For instance the Australian Institute of Company Directors in their submission said, "to mandate standards that are not required by the citizens of a nation is a form of economic and political imperialism."[11]

26. When questioned by the Chair of the Committee as to whether any attempt had been made to find out whether foreign governments do object to the legislation, Mr Hall, CEO of the Australian Institute of Company Directors replied "We have not had any direct feedback about that …."[12] Mr McLaughlin, Member of the Corporations Law Committee, Australian Institute of Company Directors continued

> It is up to the proponents of the Bill to demonstrate why this would assist those countries. For example, is there any evidence that the

[9] Tim Connor, Submission No 2, page 3

[10] Environmental Defender's office Ltd, Submission no. 14, p3.

[11] Australian Institute of Company Directors, Submission 30, page 3.

[12] Committee Hansard Thursday 15th March 2001, pCS121

> operation of foreign companies in developing countries has caused the poor to be worse off?[13]

27. Proponents of the Bill did cite several examples, which evidenced the necessity of the Bill. I also raised the question

> Does this bill merely balance up the drive by Australian Corporations to support globalisation in other economic areas such as copyright laws, capital movements and international tax harmonisation – those sorts of things?

28. Ms Burrow agreed and added that if people had access to their basic rights such as freedom to bargain collectively then

> they themselves will set the appropriate labour costs in the context of economies and affordable rates within the specific industries. That is the basis. It is about human rights and labour standards, along with environmental standards. It is not about us dictating that there should be a common minimum wage or whatever the other fallacies are that people like to promote.[14]

29. Instructive direct foreign evidence relating to the necessity of the Bill was from witnesses from Papua New Guinea. These witnesses gave unequivocal support for such a Bill. They found that Australian companies operating in PNG were practicing "double standards".[15]

30. Ms Koma, PNG NGO Mining Coordinator, NGO Environment Watch Group, PNG, said

> It would be very good if a corporate code of conduct was encouraged so that Australian companies working in Papua New Guinea were able to do what they practice overseas in their own country if our legislation is weaker than theirs.[16]

31. Mr Ase, PNG NGO Mining Coordinator, NGO Environment Watch Group, PNG, said

> In Australia they would not dump waste or tailings into the river system or the marine system. But in PNG that is not the case because our government is not able to enforce the laws, so the companies are dumping waste into the river system.[17]

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[13] Committee Hansard Thursday 15th March 2001, pCS121

[14] Burrow, Committee Hansard, Wednesday 14th March 2001, Page CS13

[15] Committee Hansard, Wednesday 14th March 2001, p CS56

[16] Committee Hansard, Wednesday 14th March 2001, pCS56

[17] Committee Hansard, Wednesday 14th March 2001, pCS56.

32. It was disappointing that the Committee decided not to proceed with an arranged phone hook up to Ms Zsuzsanna Kocsis-Kupper from the Hungarian Prime Minister's office. Ms Kocsis–Kupper is the lawyer involved in preparing the case for the Hungarian Government's legal action in Australia on the Esmerelda issue. (It is particularly regrettable that Ms Kocsis–Kupper was inconvenienced as it was 5.00 am in Romania where she was waiting for the call).

33. In addition the Committee commented that insufficient evidence was presented which either expressed a need for the legislation or that satisfied them that Foreign Governments would not be concerned about the Bill impinging on their sovereignty. Yet when the Committee was presented with an opportunity to hear evidence from a Foreign Government they declined. [18]

34. The Report expresses a concern that this Bill could interfere with the political and legal processes of other countries (paragraph 3.72). However I still believe what I said at the hearing is apposite

> it merely requires them to ensure that people are paid properly, that they are in a healthy and safe environment and that they are not discriminated against as employees on the grounds of gender, race or ethnicity – those sorts of things. It is not asking Australian companies to become participants in the political process of a foreign country.[19]

35. Notwithstanding the complexity of the issue of extraterritoriality, there does seem to be some inconsistency with the Government's previous stance on extraterritoriality in this instance. The Centre for International and Public Law at the ANU in their submission discussed the issue of extraterritoriality and referred to comments made by the Attorney General Mr Daryl Williams in his second reading speech on the Slavery and Sexual Servitude Bill 1999. They said,

> Importantly, the Attorney General also made reference to the fact that the Bill if passed would be furthering Australia's obligations to prevent slavery in persons as contained in the UDHR, CEDAW and the Convention on the Rights of the Child.[20]

36. This Bill is based on the same principle of furthering Australia's obligations under the International Instruments as listed in the Bill. The Report also concluded that implementing International Documents such as the Universal Declaration of Human Rights is superfluous (paragraph 3.71). This conclusion fails to take into account some very real problems some

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[18] Committee Hansard, 15th March 2001, Page CS 134

[19] Senator Murray, Hansard, Wednesday 14th March 2001. Page CS 51

[20] Centre for International and Public Law, ANU, Submission No. 35, page 46.

countries may have with implementing international conventions due to lack of resources.

37. Evidence from the witnesses from PNG highlights the problems that some host countries have, for a variety of reasons, in implementing, monitoring or enforcing their own laws. [21]

38. Mr Divecha, from the Minerals Policy Institute, commented on the lack of resources, which he said make it very difficult for some countries to take action to implement the laws. He said that

> If you go and visit the environment department in Papua New Guinea you will see it comprises a few people on one floor and you have trouble getting copies of information because they are afraid the toner in their photocopier is going to run out.[22]

39. The Committee also commented that previous legislation that applied extraterritorially was far more confined in its scope, i.e. it usually had only one subject as its object, for example bribery and corruption (paragraph 3.77). BHP also raised concerns about the more generic nature of this Bill (paragraph 3.78). In response the Report gave weight to Mr Pragnell's view that the Bill should be redrafted to focus on specific behaviours which would overcome BHP's concerns about the current bill not being workable in practice (paragraph 3.81). I make the obvious point that this Bill was not designed to target one sector or indeed one company such as BHP.

Current Australian Case Law on extraterritoriality

40. The analysis of the current Australian case law on extraterritoriality in the Report usefully places the Bill in context. In addition the discussion of the principle of the *forum non conveniens* was very useful (paragraph 3.95). Establishing the appropriate *forum* has been central to many of the cases brought against multinational corporations around the world. Senator Bourne refers to several examples of these cases in her second reading speech.

41. For completeness the Report should acknowledge the limitations to the ability of foreign citizens to bring action in Australia. The Report says "existing case law provides avenues for foreign plaintiffs to seek redress for wrongs committed by Australian Corporations overseas" (paragraph 4.50).

42. This conclusion fails to acknowledge the practicalities of the current state of affairs. Claimants have to bear considerable cost and power imbalances in trying to prove that Australia is the appropriate forum to hear the case. As commented elsewhere in this report, often those who are victims of

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[21] Committee Hansard, 14th march 2001, p60

[22] Mr Divecha, Hansard, Thursday 15th March 2001, page CS 129

environmental degradation and human rights abuses simply do not have the resources to bring their cases to Australia and first have to prove that Australia is the appropriate forum for the case to be heard.

Local Law Defence

43. Some questions were raised about what would happen if local laws conflicted with requirements of the Bill - which would prevail, or would companies face duplicate fines in different jurisdictions? Professor Kinley explained that the "local law defence" could prevail. He said in evidence that

> It is only where, with respect to certain human rights the local law requires it – where obligatory for the corporation to limit or curtail a particular human right. If they are then to continue to invest in that country they must say that they recognised this was a compulsory local law, but they must disclose the fact that they are continuing because this law is compulsory.[23]

Recommendation: I recommend to Senator Bourne the addition of a "local law defence" clause to the Bill.

Standards to be imposed by the Bill

General Comments on standards

44. Some people put to the Committee that companies would move off shore to avoid such onerous obligations as they implied this Bill would engender. Mr Colley in evidence suggested that other factors such as access to the global capital markets would play a far greater role as would "political stability, access to resources, good geology, a skilled work force and so on."[24]

45. Another issue was that of cost. Mr Ross Cameron commented that because of the onerous costs involved the effect of the Bill would be to "change the operators in the environment, and those who would be removed will be the Australians". [25]

46. However Mr Colley queried Mr Ross Cameron's argument by asking,

> Are you saying that the competitive advantage of Australian Companies operating in China is that they succeed by not paying a

[23] Committee Hansard, Wednesday 14th March 2001, page CS 2.

[24] Mr Colley, Hansard, Thursday 15th March 2001, CS106.

[25] Mr Cameron, Hansard, Thursday 15th March 2001, Page CS110.

> living wage and by not respecting human rights, and that is essential for their competitive success?[26]

47. Ms Burrow also raised the issue of companies moving off shore and relocating to export processing zones, claiming,

> that will raise all sorts of questions about safety, treatment and access to International law, whether it concerns human rights or labour standards that we know are breached everyday in those export processing zones. So this is a very important piece of legislation for us because it will provide a basis at least for transparency and prosecution where companies are not behaving as they should in this country.[27]

48. Mr Redden in evidence commented that in his dealings with corporations he was being told by these corporations that they are already meeting the requirements and in some cases exceeding them. He said "…we are working with business and transnational corporations and they do not see this Bill as an issue in terms of discouraging investment."

49. Senator Gibson expressed concern that legislation could be a blunt instrument and that it would set a low standard, which would encourage companies to retreat to the lower standard.[28] Professor Braithwaite in response referred to analysis by Michael Porter from Harvard Business School who asserts that the companies who are securing competitive advantage are

> those companies keeping up with the kinds of demands that sophisticated markets are making on things like consumer protection, health standards, environmental protection and so on, have a philosophy of continuous improvement of environmental standards.[29]

50. Professor Braithwaite encouraged the adoption of a clause, which requires continuous improvement.

Recommendation: I recommend to Senator Bourne a clause seeking continuous improvement.

Health and Safety Standards

51. The Report criticised the Bill for being too vague. The intention of the author of the Bill was to provide principles rather than prescriptions.

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[26] Mr Colley, Hansard, Thursday 15th March 2001, Page CS110.

[27] Ms Burrow, Hansard Wednesday 14th March 2001, CS 11

[28] Senator Gibson, Hansard, Thursday 15th March 2001, Page CS117.

[29] Professor Braithwaite, Hansard, Thursday 15th March 2001, Page CS118.

However I accept concerns that these standards could be too vague to be reliable for business.

Recommendation: I recommend to Senator Bourne further consideration of the Report's comments on health and safety standards.

Environmental Standards

52. The Committee considers that requiring a corporation to take all reasonable measures to prevent any material adverse effect on the environment is superfluous as the Common Law of negligence would be adequate (paragraph 3.112).

53. Without adequate legal advice either in the Report or from evidence this is difficult to ascertain. Some evidence did however identify unacceptable vagueness in the clause. Suggestions were made to strengthen and clarify the clause. The submission by World Vision Australia summarises the concerns of many submitters. It claims that the Bill should specify the following international agreements:[30]

- Convention on Biological Diversity
- Montreal Protocol on Substances that Deplete the Ozone Layer
- United Nations Framework Convention on Climate Change
- Kyoto Protocol to the 1992 UN Framework Convention on Climate Change
- United Nations Convention to Combat Desertification
- Basel Convention on the Control of Trans-boundary Movement of Hazardous Wastes and Their Disposal
- Convention on Persistent Organic Pollutants
- Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

54. Other evidence suggested that requiring the implementation of a comprehensive environmental management system should strengthen the environmental requirements. [31]

[30] World Vision, Submission No. 37, page 10

[31] Australian Conservation Foundation Submission No. 33, page 3.

55. The EPA suggested in their submission that Sub clause 7(f) of the Bill is too vague in its wording.[32] They suggest setting basic minimum standards using the best practice requirements in the National Environmental Defenders Office Network's submission on the consultation paper issued by Environment Australia: "Regulations and guidelines under the EPBC Act 1999".

56. Other suggestions made by the EPA include changing the wording in sub clause 7(g) rather than stating companies should "have regard to the precautionary principle," it should state a requirement to "act in accordance with the precautionary principle". [33]

57. It was also suggested that penalties for breaches should come into line with Australian domestic penalties for such offences. ACFOA also suggested that penalties be in line with Australian Competition Law.[34]

Recommendation: I commend these suggestions to Senator Bourne and suggest their incorporation through amendments.

Employment standards

58. There was significant debate during the hearings about employment standards.

59. The Australian Manufacturers Workers Union made the point that Corporations who pay low wages in order to maintain their competitive advantage are

> … demanding that working people in Australia should be competing with workers who are getting paid one, two or less dollars an hour, and at the same time are driving down the wages and conditions of workers here.[35]

60. The impression that some witnesses gave is that it would be difficult time consuming and expensive to determine what the "living wage" was in foreign countries and the suggestion of the Australian Manufacturers Workers Union that "purchasing parities" be used to define a "living wage" only serves to evidence the definitional difficulty.

61. In evidence Ms Wriley from the Fairwear campaign drew attention to the difference between a living wage and a survival wage, she said

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[32] EPA Submission no 14, page 5.

[33] EPA, Submission No 14, Page no. 5.

[34] ACFOA, Submission No. 38, Page 13.

[35] AMWU submission No. 9, page 9

> apart from a roof over your head and food, we know that there is a lot more to a living wage and good quality of life.[36]

62. Community Aid Abroad who suggested that the reporting requirements should include a requirement for corporations to produce

> a statement of whether the rate at which employees are paid in each country, other than Australia, is consistent with a living wage in that country.[37]

63. Mr Hobbs also made the point in evidence that the process of identifying a living wage is important. He said

> If labour is coerced into below acceptable standards that is clearly in contravention of the human rights standards that we referred to.[38]

64. Without detracting from the need for a more definitive concept, I accept that the definition of a "living wage" is too rigid and would not lead to a practical outcome. Mr Sean Cooney offered an alternative in his submission called Ratcheting Labor Standards, which allows a more flexible standard with transparent monitoring. [39].

Recommendation: I recommend to Senator Bourne further investigation of the "Ratcheting Labor Standards" form of wage setting. In addition I recommend seeking further advice on a workable definition of a living wage.

65. World Vision also recommends that ILO Convention 182 on the Worst Forms of Child Labour should be added. [40] It was always intended to include this Convention and its omission was an error.

Recommendation: I recommend the inclusion of ILO Convention 182 by amendment.

Human Rights Standards

66. Some submissions criticised the Bill for not referring directly to human rights instruments. The author of the Bill agreed that the Bill should make

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[36] Wriley, Hansard Thursday 15th March 2001, Page CS85.

[37] Ensor, Hansard, Wednesday 14th March 2001, Page CS 47.

[38] Hobbs, Hansard, Wednesday 14th June 2001, Page CS 51.

[39] Sean Cooney, Submission No. 20, page 5.

[40] World Vision Australia, Submission No. 37, Page 10.

explicit reference to and require compliance with the following human rights standards[41]:

- Universal Declaration of Human Rights 1948
- International Covenant on Civil and Political Rights 1966
- International Covenant on Economic, Social and Cultural Rights 1966
- The Convention on the Elimination of Racial Discrimination
- The Convention on the Elimination of All forms of Discrimination Against Women
- The Convention on the Rights of the Child

67. The Committee gave detailed consideration to the submission from Falun Dafa, which made the claim that the Bill would not apply to persecution of Falun Dafa practitioners because they are not a religion. In the paragraph above it is stated that direct reference to other Human Rights Charters should be more explicit, which would protect Falun Dafa practitioners.

68. The Report explains, in response to Falun Dafa concerns, that the Bill should not be amended to include 'non religious spiritual practice' as that would be incongruous with Australian Law (described in paragraph 3.127). However to then conclude that sovereign nations assert the right to suppress movements that are deemed "dangerous" (paragraph 3.129) and so therefore Australia should not legislate because it is in conflict with that right, is not acceptable. This Bill seeks to reinforce universal human rights and Australia should not resile from the promotion of such rights.

Tax Laws

69. This clause should be removed. Whilst adherence to taxation laws is essential, it is not the main focus of the desired outcome of this Bill.

Recommendation: I recommend that section 11; duty to observe tax laws is removed.

Duty to observe consumer health and safety standards

70. I agree with the Report that there is a fundamental defect here.

[41] Amnesty International Submission No. 7, World Vision Australia, Submission No. 37, page 11.

Recommendation: I recommend to Senator Bourne that she seek further advice on this clause.

Duty to observe consumer protection and trade practices act

71. The majority of the Committee finds itself unable to recommend legislation which might dramatically increase the caseload of Australian courts with corporations suing other corporations in order to gain a commercial advantage. I do not agree with the Committee's assumption that Australian courts would be 'swamped', no evidence having been offered to justify that conclusion.

Reporting

72. The Committee makes the claim that the reporting requirements are amongst the most contentious issues (paragraph 3.146). They are also the most essential part of the report. The aim of this Bill is to make corporations more transparent and accountable.

73. The Bill as it stands does not clarify its intention to make the reports public. International best practice in reporting is public reporting which allows a greater degree of transparency (paragraph 3.150).[42] The timing of such public reports must be consistent with present reporting cycles. International best practice indicates that a biannual reporting cycle should be achievable.

Recommendations: I recommend to Senator Bourne that the reporting requirements be amended to require corporations to make reports available directly to the public. I also recommend a biannual reporting cycle that coincides with existing Australian reporting cycles.

74. With the proviso of the above, the views put by several opposers of the Bill that the reporting requirements would be too onerous and expensive are not accepted. In fact I found the argument inconclusive as no real evidence other than opinion was presented. Many opponents from industry representatives claimed that Australian companies are already achieving these standards so therefore legislation is irrelevant.

75. If these standards were already in place, then reporting on them would not be onerous and would in fact facilitate the companies' competitive

[42] AMWU, Hansard, Thursday 15th March, Page CS99.

advantage by presenting to the public the high standards that they already achieve.

76. I also believe that the community is willing to bear some costs. As I said

> successive governments of whatever persuasion have agreed that those standards are appropriate for Australia. That obviously affects our exporting costs and our ability to compete with importers who might come from lower standard countries. I would think it logical given our acceptance as a society that we be prepared to accept a cost for higher standards.[43]

77. Mr Divecha stated in evidence that

> On one hand the companies say, 'we already report to a far higher degree than is contained in this bill,' on the other hand they say, 'this is going to impact on us with an unacceptable cost regime,' they cannot have it both ways.[44]

78. It should also be remembered when talking about costs that the costs in failing to perform to proper standards may be higher in the long run, but the benefits may not show up on the bottom line immediately.

79. Obviously companies are cognisant of the benefits of high standards. The CFMEU summed up the argument concisely in their evidence when they state that many companies are already claiming high standards. Thus

> if these statements by the (mining) industry are true and their reports are genuine, then the additional requirements sought by the Bill are minor.[45]

80. I also accept criticism that there is a lack of detail with regard to social auditing in the Bill. For instance as Ms Wriley stated in evidence "there is a complaint mechanism for workers, but in the reporting there is no request for that to be provided in a document stating the policy for complaints mechanisms for workers."[46]

81. Mr Connor suggested in his submission that the reporting requirements should be extended so that companies must reveal the addresses of production facilities and offices. This would facilitate independent investigations into the conditions of such facilities.[47]

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[43] Committee Hansard, Wednesday 14th March 2001, CS12.

[44] Mr Divecha, Hansard, Thursday 15th March 2001

[45] CFMEU Submission no. page 178

[46] Ms Wriley, Hansard, Thursday 15th March, Page CS85.

[47] Tim Connor, Submission No, 2, page 3

Recommendation: This is accepted and the Bill should be amended to require this.

82. ACFOA also suggested in their submission that the reporting requirements should be extended to specify a compliance report for every country in which the company operates and that they should be compiled by an independent auditor.[48]

Recommendation: This is accepted and the Bill should be amended accordingly.

83. The Committee found that the extra regulation required by the Bill would constitute an unacceptable burden for the Australian Securities and Investments Commission. I dissent from this view and think that an amended bill can address some of the criticisms concerning the practicality of regulation in this field. I do not agree that any 'burden' being placed on the Australian Securities and Investments Commission is a reason not to support the Bill, and think that parliament has never flinched from increasing the workload of regulators if it considers that in the national interest.

Independence

84. The Bill fails to give a definition of independence as pointed out in Mr Connor's submission. Mr Connor offers the following definition:

> Independent auditing refers to audits conducted by organisations selected by a body set up for the purpose of accrediting and selecting monitors. Such a body should include majority representation by non profit organisations whose main purpose is the promotion of labour rights, human rights and/or environmental standards. Those non profit organisations should not be funded by the industry for which they will be selecting monitors and should receive no more than ten per cent of their funding from corporate donors.[49]

85. ACFOA in its submission suggested that ASIC should set up a tripartite committee of government, business and NGO representatives to hear complaints.[50]

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[48] ACFOA, Submission No, 38, Page 13.

[49] Mr Conor, Submission No, 2, page 4.

[50] ACFOA submission no, 38, page 12

Recommendation: A workable definition of independence should be included in the Bill and ACFOA's suggestion should also be accepted.

Incentives

86. Some of those who gave evidence suggested that the Bill lacks enough incentive for companies. This criticism is accepted. Ms Plahe suggested that companies who are compliant with the Bill should get preferential treatment from Government Agencies when awarding contracts.[51]

87. The Victorian Council for Civil Liberties also supported this point of view in terms of preference, but also said

> if a company repeatedly violates the rights of citizens of foreign countries it should not receive tax-payer funded assistance or government endorsement.[52]

Recommendation: The Bill should be amended to reflect these suggestions.

Australia's Reputation and Extraterritoriality

88. The majority of the Committee concludes that the Bill will be viewed overseas as "arrogant".[53] I disagree with this judgment as a sweeping generalisation and predicating a uniform viewpoint by foreigners. As in Australia where opinions vary widely, foreigners have as many differing opinions, and many can be expected to view the Bill positively based on its pursuit of universal values.

Conclusion

89. The majority of the Committee concludes that there is no demonstrated need for the current Bill. I disagree and believe that, while the current Bill needs amendment, there is a demonstrated need for it.

Senator Andrew Murray

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[51] Plahe, Hansard, Wednesday 14th March 2001, Page CS48

[52] Victorian Council for Civil Liberties, Submission No. 23, page 5.

[53] Committee Hansard, 8 May 2001, p 159.