

Submission to the Senate Committee Enquiry into the Corporate Code of Conduct Bill 2000

Submitted by:

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Relevant Expertise

Since 1998 I have been working full-time on a doctoral thesis on the effectiveness of Corporate Codes of Conduct in protecting workers' right to freedom of association. I am enrolled at the school of Geosciences at the University of Newcastle and my thesis comes under the sub-discipline of economic geography.

Since 1995 I have been the coordinator of Community Aid Abroad – Oxfam Australia's NikeWatch campaign (refer www.caa.org.au/campaigns/nike).

This submission is a personal one. It does not necessarily reflect the views of Community Aid Abroad – Oxfam Australia or the University of Newcastle.

An urgent need

My ongoing research regularly makes me aware of the pressing need for legislation which will effectively regulate the environmental and human rights standards of corporations operating at a supra-national scale.

My focus on the sportswear multinational Nike Inc. is particularly relevant because Nike has put in place a number of self-regulatory measures, including a code of conduct and 'independent' monitoring system, which purport to improve respect for labour rights standards in Nike's supplier factories. Nike claims to be a world leader in the area of corporate self regulation.

Despite this, egregious human rights violations continue to take place in Nike contract factories.

Most recently:

- In October 2000, unionised workers at Nike supplier Thai Iryo in Thailand lost their jobs when the owner closed their factory and moved the production to non-unionised facilities, undermining workers' right to freedom of association. The fired workers attempted to deliver a letter to Nike-sponsored sports hero Tiger Woods, appealing to him for help (refer www.cleanclothes.org/companies/nike00-11-14.htm).

- In the same month the BBC's flag ship documentary program Panorama uncovered sweat-shop conditions at Nike supplier June Textiles in Cambodia, including forced overtime and full-time wages which were too low to meet workers' basic needs.
- In September 2000 Community Aid Abroad – Oxfam Australia released a report based on my research into conditions in Nike contract factories in Indonesia (see <http://www.caa.org.au/campaigns/nike/association/report.html>). The report was based on direct interviews with workers from three Nike contract factories. It revealed that workers who take part in independent union activity in their factories:
 - have been called away from their work and subjected to aggressive and threatening interrogation by factory supervisors and managers, with warnings that if they do not resign the factory will hire thugs to attack them.
 - in one case, has received an anonymous threatening phone call indicating that if he valued his life he should cease publicising conditions in his factory.
 - have been told by supervisors that if they hold demonstrations or strikes or publicise conditions in their factory then it will result in orders being cut and that production being moved to countries where independent unions are illegal.

Workers interviewed also reported that:

- wages for a standard working week are well below what workers say they need to meet their basic needs. When workers work 60-70 hours per week then the additional overtime pay brings the income of childless workers up to a point where they are able to feed, clothe and house themselves and save a small amount. Those workers with children are in a dire financial position even with overtime pay.
- although female workers are legally entitled to menstrual leave each month, if they want to claim it then they must subject themselves to a humiliating physical examination by factory doctors. As a result very few workers take this leave.
- workers at one factory are commonly shouted at by their supervisors if they work too slowly with epithets such as "dog", "monkey" or "pig".
- workers are often required to work more than Nike's 60 hour per week limit. In one factory workers who refuse overtime are humiliated in front of other workers, by being made to clean the toilets or stand in front of other workers during work-time.

These conditions are by no means unique to Nike contract factories or to factories based in Indonesia, Thailand and Cambodia. My research suggests that egregious labour practices are standard practice in clothing and footwear factories producing for export in Asia and other parts of the developing world. It is likely that a considerable proportion of clothes and shoes exported to Australia are produced in similar conditions, including those clothes and shoes bearing the labels of Australian based companies.

Concerns with the Bill

The Corporate Code of Conduct Bill is an extremely welcome initiative and Senator Vicki Bourne and the Australian Democrats deserve praise for introducing it. A particularly attractive aspect of the bill is that there is scope for individuals who suffer loss as a result of companies failing to meet the standards laid down in the bill to seek redress in the Federal Court.

Nonetheless I have number of concerns with how the bill is currently drafted.

Scope

The bill as currently drafted only covers the activities of companies employing 100 or more workers in a particular country. This will allow a great many companies who could afford to meet the code's requirements to escape regulation. The figure should be reduced to a more reasonable limit in the order of twenty employees.

The Bill does not cover the activities of suppliers of Australian Companies. This creates the danger that Australian companies will avoid the legislation by outsourcing production. Factories currently owned by Australian clothing labels in China, for example, could be closed and the production shifted to Chinese factories owned by companies registered in other countries.

International attempts to regulate the overseas operations of corporations have recognised the importance of extending that regulation to cover suppliers. Thus the Fair Labor Association in the US (a joint industry/NGO body set up to regulate labour practices of US companies sourcing production overseas) includes within its jurisdiction contractors and suppliers of participating companies. The definition extends to "any contractor or supplier engaged in a manufacturing process, including cutting, sewing, assembling and packaging, which results in a finished product for the consumer." (refer <http://www.fairlabor.org/html/amendctr.html>).

Reporting

The bill only requires independent auditing of the company's environmental impact. This should be extended to require independent auditing of the company's labour and human rights practices. Independent auditing should also be required of suppliers who produce "finished products for the consumer" for Australian companies.

The bill includes no requirement that companies reveal the addresses of production facilities and offices. Such a requirement is desirable in order to facilitate independent investigations into conditions in those facilities by interested organisations. Currently the addresses of most factories producing for companies like Nike in developing countries are kept secret on the grounds of "commercial confidentiality". If the bill were extended to cover suppliers of Australian companies then reporting should include the level of orders from each supplier and the addresses of suppliers' facilities producing for the company.

Independence

Although the bill requires independent auditing of environmental impact, the bill provides no definition of independence.

It has become common for corporations to employ for profit “social auditing” firms to conduct monitoring programs which companies claim are independent. In the field of labour rights all independent research indicates that these audits are anything but adequate. Recently Dara O’Rourke, a professor from the Massachusetts Institute of Technology in the US, conducted an observational study of social auditing by the firm PriceWaterhouseCoopers, which is the market leader in providing this sort of auditing. He concluded that PwC’s monitoring methods are significantly flawed and that they paint a false impression of labour conditions (refer <http://web.mit.edu/dorourke/www/>)

The Bill should include a clear definition of independence. I would recommend the following phrasing:

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.

I would urge the government to work with non-profit organisations to set up a body for the purpose of accrediting and selecting monitors.

Transparency

It is not clear in section 14(1) that Code of Conduct Compliance Reports lodged with the Australian Securities and Investment Commission will be made available to the public. Such reports should be made public to increase public pressure on Australian companies to improve their environmental and human rights performance.

Conclusion

The Code of Conduct Bill addresses a pressing issue and is an important initiative. Nonetheless it includes significant shortcomings, listed above, which should be addressed before the Bill becomes law.