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6 October 2000

Senator V Bourne
Spokesperson on Foreign Affairs
Australian Democrats
GPO Box 36
SYDNEY NSW 2001

Dear Senator Bourne

CORPORATE CODE OF CONDUCT BILL 2000

Members of The Chamber of Minerals and Energy undertake 90% of minerals production and exploration in this State. I would like to comment on their behalf on the Democrats *Code of Conduct Bill 2000*.

In your press release of 6 September (*Democrats seek to regulate Australian Multinational Corporations*), you state that the Bill is the result of months of consultation with a wide variety of non-government organisations, academics and unions. Unfortunately, it appears that your consultation process has excluded much of the minerals and energy industry.

In the Chamber's view, your objectives from the Bill are reasonable. The Australian minerals and energy industry seeks the highest standards of performance from its members, wherever they operate. Examples of poor environmental and workplace management create negative perceptions of the entire industry.

That said, the implication of your Bill is that most Australian companies perform poorly overseas. Clearly, this is not the case. In fact, many Australian companies are introducing new and better standards of management into other countries. Unfortunately, such 'good news stories' rarely grab the headlines.

Of much more concern to us, however, is the fact that your draft legislation is both inappropriate and unworkable from an industry perspective. In particular, we are concerned that:

- a. the Bill is patronising in its assumption that Australian environmental, safety and other standards are inherently better than those of other nations, and that Australian standards are more suited to the unique socio-political

environments experienced by other nations than their own;

- b. it is not clear how the Bill will be enforced, to whom it will apply, how it will deal with joint ventures and who will pay for and police enforcement; and
- c. a better approach would be to negotiate and agree appropriate international standards with other countries, rather than trying to impose our own on them.

Imposing Our Standards on Others

Environmental, employment and safety regulations are matters for sovereign governments. Each country has a unique natural environment, working culture and industry base, and Australian standards will often be inappropriate.

Unilaterally imposing one nation's standards on another is not only condescending, it is also inconsistent with the provisions of the World Trade Organisation. The corollary of the Democrats' Bill is that one country can ban imports of a product from another because it has different environmental, health and social policies. This would create a dangerous precedent for protectionist abuses and would conflict with the main purpose of the multilateral trading system – to achieve predictability through trade rules.

Enforcing the Bill

Extensive administrative resources would be required from both industry and government to enforce this Bill. Leaving aside the very onerous corporate reporting requirements envisaged, the Bill would require ASIC to become an expert on environmental performance, human rights, workplace health and safety and a myriad of other issues in order to assess the reports it received. It is not clear where funding for this significant expansion of responsibility would come from. The ability of foreign parties to take legal action in Australia also raises concerns about frivolous litigation and the capacity of our legal system to take on such a workload.

Furthermore, it is not clear how the Bill would deal with:

- the international joint-venture partner(s) of Australian companies involved in projects (a common feature in today's industry), or whether the Democrats propose that in such joint ventures, each partner would have to operate under completely different standards (possibly rendering joint ventures with Australian partners relatively unattractive); and
- the fact that in practice it would apply to a very small number of companies, as most major multinationals do not constitute Australian 'corporations' under

the definition in the draft Bill, hence punishing those truly 'Australian' companies by putting them at a competitive disadvantage.

Moreover, another (presumably unintended) consequence of the Bill is that companies would be able to avoid coverage by shifting their headquarters overseas, with a consequent loss of Australian jobs.

A Better Approach

In our view, Australia can make an important contribution to global corporate performance and the protection of the environment and human rights by working toward the identification of appropriate global standards, and building capacity in other countries. To this end, the Chamber in cooperation with the West Australian and Federal Governments has assisted governments from several other countries to develop regulatory regimes that foster development while protecting the environment.

I would welcome the opportunity to discuss any or all of these issues with you further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Satchwell', with a stylized flourish extending from the end.

Ian Satchwell
Chief Executive Officer