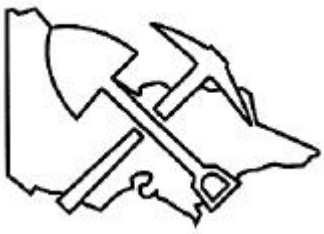

VICTORIAN CHAMBER OF MINES Inc

SUBMISSION TO THE

PARLIAMENTARY JOINT STATUTORY COMMITTEE ON CORPORATIONS AND SECURITIES

ON THE

INQUIRY INTO THE PROVISIONS OF THE CORPORATE CODE OF CONDUCT BILL 2000

Introduction

The Victorian Chamber of Mines welcomes the opportunity to make comment on the Corporate Code of Conduct Bill introduced by Senator Vicki Bourne into the Senate on 6 October 2000.

The Victorian Chamber of Mines is an industry association that represents the corporate minerals industry of Victoria. There are more than 70 members who are engaged in mineral processing, mining, exploration, or the provision of services to the industry.

We have had the opportunity to examine the Bill and attending a presentation by Senator Bourne in Melbourne on 23 November 2000.

We are sympathetic to the general principle that Australian companies operating in overseas countries should adopt high environmental and workforce standards and respect the human rights of the people of the communities in which they operate.

However, we have grave concerns with the detail of the Bill and believe it to be an inappropriate and unworkable instrument to achieve the improvements sought.

If passed, as proposed, the legislation would do little, if anything, to reduce the risk of Australian companies being involved in serious environmental catastrophes or gross violations of human rights. We believe that it would be instructive to test the validity of the Bill against the outcome of a recent overseas incident involving an Australian company. Such a test could be applied to the tailings spill at the Baia Mare operation

in Romania, which is understood to be one of the catalysts to the preparation of the Bill. It is expected that the test would clearly demonstrate that the application of the Bill would not have prevented the incident. With such an outcome the Bill is unwarranted.

Our Assessment of the Bill

The stated aim of the legislation is to regulate the activities of Australian companies overseas in the areas of human rights, environment, labour and occupational health and safety.

In assessing the detail of the Bill our particular concerns include:

1. The proposed legislation will impose standards over what is the sovereign right of other nations to manage;

2. It is assumed that Australian environmental, safety and other workplace standards are inherently superior than those of other nations and are valid in all other environmental and cultural settings;

3. Extra-territorial legislation cannot be properly enforced without the full agreement of all parties involved;

4. Experience has demonstrated that heavy-handed regulation is not the most effective way to improve performance. Instead market forces and self-regulation initiatives, such as voluntary codes, are more appropriate vehicles; and

5. Finally, the legislation suffers from being 'euro-centric' and if implemented could very well lead to a perception by our near neighbours that Australia is behaving in a colonial manner.

Imposing Australian Standards

The imposition of Australian law on companies operating in other countries impinges on the national sovereignty of those nations and is patronising, paternalistic, and possibly dictatorial, especially when applied in third world countries.

Environmental, employment and safety regulations are matters that should be addressed by sovereign states. It is impractical and inappropriate for companies to function under a different regulatory regime to others established in the countries in which they operate.

Further, the Bill assumes that Australian standards are more suitable for the unique environmental, social, political and geographical situations experienced by other countries than the domestic standards. This assumption is not valid. Moreover, it appears to require a totally inappropriate investigation by Australia authorities and courts about such nebulous matters as for example the 'living wage' in any and all countries where Australian companies operate.

Operational Aspects

Companies that operate overseas are rightly concerned about the practicalities of complying with extra-territorial laws. In particular, the process for dealing with conflicts between the legal obligations of both the Australian and local laws is uncertain.

Also, many of the compliance reporting requirements are unnecessarily onerous and will impose an unwarranted burden on Australian industry. The requirements are also very subjective which is a problem for ensuring the results reported have value.

Enforcement

The examination, recording and enforcement of the legislation will require considerable government resources. If government did not provide these resources then there would be little value in the whole exercise. The Australian Securities and Investments Commission would require people with specific skills in assessing environmental, human rights and safety reports in a context of any jurisdiction in which Australian companies operate. Skills that they do not possess at present.

The minerals industry is particularly concerned with the provisions of Clause 17(6), which provides for private persons to initiate legal action on the grounds of 'the public interest'. Such a provision could expose companies operating overseas to vexatious and frivolous legal actions brought by single interest groups or individuals with a social or political agenda.

Other Options

A more effective means for successfully raising standards in other countries is with self-regulation mechanisms. Self-regulation encourages companies to treat legislative requirements as bare minimum standards, and to strive for higher standards as a competitive advantage for that company. Self-regulation through voluntary codes also provides the necessary flexibility to ensure that the regulations are relevant to the particular issues associated with different operations in a wide range of different situations.

In addition to the promotion of voluntary codes there are a couple of alternative options that we believe should be explored by the Australian government:

- provide assistance to developing countries for capacity building to enable the further development of local regulations. Such a program should target the countries and industries where such help is welcome; or

- support the development of a multilateral treaty in relation to minimum standards in terms of employment, environment, health and safety and human rights.

Conclusion

The Chamber of Mines does not condone poor standards of performance in environmental and community issues. All of our members are bound by our code of conduct, which is a public document. A copy is attached.

The minerals industry code for environmental management provides very well respected voluntary process for improving the environmental performance of the industry. The code is widely endorsed by Australian mining companies and has been instrumental in lifting standards of performance in Australia. The work of the Minerals Council of Australia in promoting the code is well appreciated by industry.

In addition to the environmental code the Minerals Council and the Chamber provide leadership to the industry in promoting safer mine sites. Through numerous safety programs, standards have improved and all members are committed to a culture of providing healthy and safe work places.

The Chamber supports the initiatives of the Minerals Council of Australia and believe that the most appropriate method of advancing the environmental, work place and human rights in other countries is through self-regulation and the continued support for the leadership programs initiated by the industry.