Parliamentary Joint Statutory Committee on Corporations and Securities

Inquiry into Corporate Code of Conduct Bill 2000

Submission by Jill Murray, University of Melbourne

1. My name is Jill Murray[1], and I work as a Research Fellow at the Centre for Employment and Labour Relations Law at the University of Melbourne. I hold a doctorate in labour law and masters degrees from the Universities of Melbourne and Oxford. I am currently working on an Australian Research Council-funded project, together with Mr Sean Cooney and Professor Richard Mitchell, which is examining the use of corporate codes of conduct in the Asia-Pacific region.

2. The Corporate Code of Conduct Bill 2000 (the Bill) attempts to hold Australian corporations accountable for their actions in other countries by requiring them to adhere to a wide number of standards in the environment, labour and human rights fields. I believe it is useful to differentiate between the two important principles inherent in the Bill : the accountability of corporations for their actions abroad, and the requirement that they adhere to certain standards. In my view, these two issues can be dealt with separately, and while there is some controversy over the content of the proposed standards to which corporations must adhere, there is no valid argument against the immediate implementation of the Bill's transparency proposals.

3. Concerns about transnational corporations (TNCs) have existed for many years. In particular, over the past 30 years or so the regulatory problem created by these organisations has been examined.[2] In the 1970s, a Group of Eminent Persons reported on the issue to the United Nations : that Group recommended a range of measures be adopted to ensure that TNCs did not use their power and capacity to re-locate across national borders to put downward pressure on labour standards.[3] That Report represents a high point in the policy prescriptions recommended to States about the regulation of TNCs. For example, the Report recommended a liberal approach be taken to legal limitations on international trade union solidarity action, that TNCs be required to provide a range of information to host countries (including a TNC's occupational and health and safety standards in its operations in the home nation), that TNCs be prevented from entering countries which violated workers' rights unless they obtained permission to apply international labour standards to their own workforce, and so on.[4]

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[2] See, for example, K W Wedderburn, "Multinational Enterprises and National Labour Law", *Industrial Law Journal*, 1, 1972, 19.

[3] 13 International Legal Materials 800 (1974).

[4] For a discussion of the history of corporate codes of conduct and business regulation, see, for example, Jill Murray, "Corporate Codes of Conduct and Labour Standards", in R Kyloh (ed.), *Mastering the Challenge of Globalisation*, ILO, Geneva, 1998, 60.

4. The fact that these recommendations, and similar calls for greater accountability, transparency and adherence to standards, have not brought about appreciable change in the actual regulation of TNCs is largely a result of the "visceral" opposition of international business to binding regulation, particularly of its labour practices. A number of instruments were developed in the last decades of the twentieth century in response to calls for reform, but these remain essentially voluntary.[5]

5. In more recent years, attention has been focused on the possibility of controlling TNCs by encouraging them to engage in self-regulation, backed up with independent monitoring and verification. Some empirical work has been done which suggests that the mechanism of self-regulation is not fully successful : not all companies have codes of conduct, those which do may have codes which are vague or unrelated to well-known international standards, and apparently many do not actually alter their employment practices in light of their code.[6] It is expected that the Australian Research Council project the Centre for Employment and Labour Relations Law, University of Melbourne, is currently undertaking into the use of corporate codes of conduct to secure international labour standards in the Asia Pacific region will contribute to our empirical knowledge of the effectiveness of voluntary codes.

6. I wholeheartedly support the Bill's attempts to make Australian-incorporated TNCs more accountable by legislating for the annual reporting of certain crucial pieces of information about their off-shore activity and labour practices. I believe that the provisions of Part 3 of the Bill would provide valuable information for shareholders, consumers, non-governmental organisations and other interested parties in the exact location and nature of a particular TNC's operations in another country. The requirement for greater disclosure would have a number of positive effects on Australian economic and social life. It would contribute to a higher quality of public debate about international trade and its effects in this region and elsewhere in the world. It would enable individual and institutional investors to make informed decisions about their investment choices, and to re-evaluate these choices in the light of contemporary developments. Such disclosures could lead to a strengthening of consumer awareness about the origins of certain products and the conditions under which they were produced. This in turn would permit market forces to act more effectively to shape the ethical behaviour of firms. At the moment, this virtuous circle of improving conditions is hampered by a lack of pertinent information.

7. I support the use of legislation to ensure that Australian corporations have and implement codes of conduct in respect of their operation in other countries. I approve of the Bill's methodology in seeking to tie the content of these codes to certain well-respected international standards.

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[5] See for example, the ILO's Declaration on Multinational Enterprises and the OECD's Declaration on International Investment and Multinational Enterprises.

[6] A high profile failure to abide by a corporate code and the subsequent failure of the monitoring system is the case of NIKE, as documented by Christopher M Kern, "Child Labor : the International Law and Corporate Impact", *Syracuse Journal of International Law*, 27, 2000, 197 – 189.

8. However, there appear to be some issues raised by the drafting of the Bill's provisions in terms of the content it proposes for corporate codes of conduct. First, the requirement that all "employees" (as defined) receive "a wage sufficient to meet the basic needs of a family of two adults and three children residing in the country or region they are resident in" places a higher obligation on international operations than is applied by Australian labour law for firms operating in this country. Further, it is possible that the Bill's definition of employee would extend to sub-contractors, which raises the difficulty of applying the Bill's wages rule in circumstances where the component of work done for an Australian company may be only part of the overall work of a particular employee.

9. Secondly, the Bill would be strengthened by direct reference to a number of agreed international texts which most national governments have supported (often including Australia). The International Labour Organisation's 1998 Declaration on Fundamental Rights and Principles at Work is an important case of a broad consensus about what standards should apply irrespective of level of economic development.

10. Thirdly, however, consideration should be given to the fact that these international labour standards are (by and large) addressed to States, not individual firms. For example, it is the member States of the ILO themselves which are required to provide for freedom of association. An individual TNC in complying with this international standard will need to adopt many "micro-standards" to give effect to this broad international principle. People who are concerned to learn about what a TNC is actually doing will need to know, for example, if representatives of workers are allowed into the workplace, if time during working hours is given for representational issues, whether or not discrimination in employment on the grounds of trade union activity is countenanced, and so on. I would therefore advocate that firms be required to report in some detail on the key elements of these international principles, rather than simply assert that the broad principle has been met.

11. Fourthly, if TNCs are to be used to disseminate good labour practices wherever they operate, part of the obligation on them should relate to the information they give to workers and others *in the host country*, as well as their obligations for transparency at home. I therefore believe, for example, that the UN Eminent Persons Group's recommendation that firms provide host nation workers with information on the home standards in areas such as occupational health and safety would be a simple, cheap and effective way to advance transparency in transnational business.

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