

**Minerals Council of Australia, Australian Industry Group
and Business Council of Australia**

JOINT 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 Minerals Council of Australia, the Australian Industry Group and the Business Council of Australia welcome the opportunity to provide comment on the provisions of the Corporate Code of Conduct Bill 2000, as introduced into the Australian Senate by Democrats' Senator Vicki Bourne on the 6th September 2000.

Australian industry is committed to continual improvement in its environmental and workplace management, and to open dialogue with the community about this and other aspects of its performance.

The aforementioned industry associations share the concerns about human rights, the environment, labour, and occupational health and safety that the Bill seeks to address. However, we do not support legislation that proposes to regulate the overseas activities of Australian companies in these areas. Rather, we consider that a framework of local laws and voluntary industry measures, coupled with international covenants and agreements, together with negotiated agreements between companies and local communities, are much more effective in bringing about real change and improvements in these areas.

We consider that the complexities involved in implementing and enforcing extraterritorial laws require a great deal more consideration. How would an Australian corporation operating overseas reconcile any likely conflicts between the laws and legal obligations of the host country, and those generated by the provisions of this Bill?

We would be pleased to discuss further any of the matters covered in this submission. Should you wish to do so, our contact officer on this matter is:

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AIMS OF THE BILL

The aims of the Corporate Code of Conduct Bill have been expressed in the second reading speech of Senator Vicki Bourne as “to regulate the activities of Australian companies overseas in the areas of human rights, environment, labour and occupational health and safety.”

The industry associations and their members who are parties to this submission are committed to seeking high levels of corporate performance in the areas covered by the Bill. However, we consider that the proposed legislation is both inappropriate and unworkable from an industry perspective.

In particular we note that:

- The Bill imposes Australian standards over what is the sovereign right of other nations to manage.
- The Bill assumes that Australian environmental, safety and other workplace standards are inherently better than those of other nations.
- Extra-territorial legislation does not work effectively – it can’t be properly enforced without the full agreement of all parties involved, and there are potential adverse implications for Australia’s relations with other nations.
- The Bill would create conflict between Australian and local laws, thereby seriously affecting the ability of Australian companies to function overseas. This would be particularly complex in situations involving a joint venture between an Australian company and a local company.
- Formal mechanisms already exist to protect the rights of communities potentially impacted by the activities of Australian companies operating overseas. In particular, there are several international covenants and agreements in place to protect the rights of citizens.
- Unilateral legislative action by Australia will not be successful in raising standards in other countries.
- Market forces and industry led initiatives, such as voluntary codes, are more effective vehicles than legislation in leading to improved performance. The proposed legislation could actually reduce the flexibility of companies to determine their own measures to improve performance.
- Legislation of this nature may actually encourage good companies to move offshore, or not set up headquarters in Australia, in order to avoid risking being in breach of the legislation.

- The Bill discriminates on the basis of the size of the operation. The arbitrary classification at 100 employees or more implies either a policy bias on behalf of the advocates of the Bill against larger enterprises, or the perception that smaller firms would be unable to meet the objectives of the Bill.

IMPOSING AUSTRALIAN STANDARDS ON OTHER NATIONS

Industry considers that extra-territorial application of Australian law impinges on the national sovereignty of other nations and is patronising and paternalistic, especially when the developed world seeks to apply them to developing countries.

Environmental, employment and safety and health regulations are matters which should be addressed by sovereign governments, both independently and collectively through organisations such as the United Nations. We consider that it would be impractical and inappropriate for Australian companies to function under a different regulatory regime to those established in the countries in which they are operating.

To do so would entail the imposition of Australian standards, implying that local standards are inferior, inadequate or somehow inappropriate. It could cause difficulties for Australian companies operating locally to be seen as sanctioning the Australian government's actions on issues for which the host government has primary responsibility.

The Bill presumes that Australian standards are more suitable for the unique social, political and geographical environments experienced by other countries than their own domestic standards. This assumption that a 'one size fits all' model can be applied to all countries takes no account of the particular circumstances of individual countries.

In addition, by imposing Australian standards and judgements, the Bill negates the rights of sovereign countries to determine how their natural or industrial resources are to be used, and how their societies are to benefit from the development of those resources.

COMPLIANCE WITH THE BILL

From an operational perspective, industry is concerned about the practicalities of complying with laws which have an extra-territorial application. The process by which a company operating overseas deals with any conflicts which may arise between the legal obligations of both the Australian and host country jurisdictions is not clear from the provisions of the Bill.

In addition, Australian industry considers that many of the compliance-reporting proposals are unnecessarily onerous in the burden that they would impose upon business, and are so subjective as to make compliance impractical.

We would also consider that the reporting time frame, established as 31 August each year, is out of step with mainstream reporting processes and is highly impractical from a business perspective.

ENFORCING THE BILL

Enforcement of the Bill would require extensive administrative resources from both industry and government. It would require the Government to provide substantial additional funding to the Australian Securities and Investments Commission so that it can become expert in monitoring environmental, human rights and labour standards, to enable its assessment of annual compliance report returns.

We oppose the provisions of clause 17 (6), which provides standing for private legal persons, in whatever form, to initiate legal action on the grounds of “the public interest”. Leaving aside the amorphous nature of this concept, Australian industry sees this as providing an opportunity for the exploitation of Australian law for the purposes of advancing narrow social or political agendas. The ability of a foreign party to undertake legal action in Australia raises the real prospect of frivolous litigation.

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 modern industry; and
- The fact that in practice the Bill would only apply to a small number of companies, as most major multinationals do not constitute Australian ‘corporations’ under the definition in the Bill, thus risking a competitive disadvantage for Australian companies.

PROTECTION OF COMMUNITY RIGHTS

Australian industry is opposed to discrimination of any form and to the abuse of human rights. We consider that formal mechanisms to protect the rights of communities potentially impacted by the activities of companies already exist.

Several international covenants and agreements have been put in place to protect the rights of citizens, for example the United Nations Declaration of Human Rights, and the International Covenant on Economics, Social and Cultural Rights.

We do not consider that it is appropriate for Australian law to attempt to duplicate the role of these agreements through the extra-territorial application of Australian standards. It is also possible that a company that breaches the intent of an international convention may be punishable under both the local domestic law established to give force to the Convention, as well as via the Corporate Code of Conduct Bill.

It is also questionable whether an Australian based legislative mechanism would be effective in dealing with those issues which are of a culturally specific nature.

In addition many companies operating overseas, particularly those operating in developing countries, already work closely with existing community networks as well as government and non-government organisations. In these circumstances, statutory requirements are treated as the minimum standards for compliance. The project proponent and community interests then negotiate on those matters which involve social and environmental issues to achieve mutually agreed outcomes which are directly related both to the nature of the project, and the unique cultural and geographic environment in which it operates. The likely effect of the Bill, if implemented, would be to stifle these positive relationships with local communities.

ENVIRONMENT

Australian industry supports the principle of sustainable development - development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

We note that the approach to environmental standards as prescribed in Clause 7 (1) is consistent with the environmental management practices employed by Australian industry. However we consider that the proposed standards are not appropriate measures to encourage industry to improve the environmental performance of its overseas operations.

Australian industry supports the disclosure of environmental performance by corporations, but does not support mandatory reporting that is beyond the numerous terms and conditions already prescribed by licensing arrangements. We consider that where firms elect, on a voluntary basis, to publish additional information on their environmental policies and performances, that this provides an area for company distinction and the possibility of a competitive advantage. Mandatory reporting requirements shift the focus towards basic compliance and away from innovation and stakeholder engagement.

In addition, Australian industry opposes the inclusion of the precautionary principle as a basis for decision making on the grounds that it may not allow for the use of sound science, proper risk assessment and consideration of economic and social factors in the decision making process. We consider that established scientific criteria have sufficient rigour to ensure that appropriate risk management strategies can be developed. In any event, the definition of the precautionary principle used by the Bill is not consistent with Principle 15 of the Rio Declaration.

HEALTH AND SAFETY

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15 December 2000*

Australian industry recognises the employer's responsibility, under a general duty of care, to provide a safe and healthy workplace for all employees. In our view all businesses should comply with the laws relating to consumer health and safety in the countries in which they operate.

Australian industry considers that regulation in the area of safety and health should be relevant, effective and practical and focus on performance outcomes. There must be balance between allowing for flexibility in achieving the outcomes and prescribing certain actions or processes where necessary. Such flexibility would encourage companies to respond to regulation as a minimum requirement, rather than see it as the extent of their safety and health obligations.

The application of the provisions of the *Code of Conduct Bill 2000* would see a reduction in the flexibility available to companies in determining the appropriate health and safety measures for the unique environments in which they operate. This would likely stifle the innovation and leadership which is currently being demonstrated by Australian industry in these areas.

OTHER ISSUES

Several other issues have also been identified in relation to the suitability of the provisions of the *Corporate Code of Conduct Bill 2000* in meeting its stated aims.

Enactment of the Bill will not lead to improved standards in developing countries. Indeed it may discourage Australian firms from engaging in trade and commerce with developing countries – thus restricting development in those countries.

Moreover, another consequence of the Bill is that companies would be able to avoid coverage of the Bill by relocating their headquarters overseas, with a subsequent loss of jobs in Australia. Other methods, which could be employed to avoid the legislative requirements, would include creating smaller business units to ensure that the Australian company does not employ more than 100 persons in a foreign country.

Australian industry believes that the combination of adherence to local laws and voluntary industry measures that seek to drive continually improved performance provide the most effective framework for Australian companies operating overseas.

In this way, companies are encouraged to treat legislative requirements as a bare minimum, and to embark upon a journey of continual improvement in the way in which they operate, both domestically and overseas.

Furthermore, this approach provides the necessary flexibility to ensure that the practices employed are relevant to the particular issues associated with different industries operating under very different circumstances.

Australian business has been at the forefront in developing industry codes and statements covering its environmental, and increasingly, social performance. The Australian Minerals Industry Code for Environmental Management, for example, is a significant step by the industry to address its environmental performance and to encourage openness, transparency and improved accountability through public environmental reporting and engagement with the community.

The Code is the key driver for continuous improvement in minerals operations both domestically and overseas. When released in 1996, the Code was acknowledged by the United Nations Environment Program as one of the best examples of a voluntary industry code, incorporating several functions which assist the development of more sustainable operations. Further details on the Code and the minerals industry are given in **Attachments A and B**.

The Australian Industry Group endorsed in 1999 an Environment Policy which aims to foster a climate in which Australian industry is internationally competitive, economically sustainable and at the leading edge of integrating sound environmental management practice into all aspects of business operations. The Australian Industry Group's view is that the environment and Australian industry will be best served by a mix of market based approaches and self-regulation. The policy is at **Attachment C**.

The Business Council of Australia has recently released a consultation draft of the Statement of Principles on Sustainable Development. The Statement sets out the broad principles to be followed by corporations in fulfilling their contribution to sustainable development through excellence in the management of the financial, environmental and social dimensions of all corporate activities, products and services. The Statement is currently subject to an extensive consultation process with community groups, government and within business. The consultation draft Statement is at **Attachment D**.

For those who consider that voluntary industry measures are ineffective, this Bill does not provide an effective solution. Unilateral legislative action by Australia will not be successful in raising standards in other countries.

There are a number of better options that could be explored:

1. Australia could provide assistance to developing countries for capacity building to enable the further development and enforcement of local standards;

2. Australia could support the development of a multilateral treaty in relation to minimum universal standards in terms of employment, environment, health and safety and human rights; or

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Attachment A**THE AUSTRALIAN MINERALS INDUSTRY**

The Minerals Council of Australia believes that the minerals industry can bring many positive benefits to the communities in which it operates, both domestically and overseas. Benefits such as employment opportunities; economic growth; the provision of basic infrastructure such as clean water and roads; as well as assisting in the provision of health care and education services – all of which contribute to increases in the standard of living and to the reduction of poverty.

The Australian minerals industry seeks the highest standards of performance from its members, wherever they operate. We are motivated to do so for many reasons, including the understanding that examples of poor workplace and environmental management create negative perceptions of our entire industry.

Where grievances may arise in relation to the activities of an Australian minerals company operating overseas, the Minerals Council of Australia considers that the best process of dispute resolution is not one which relies on Australian legislation overriding the domestic law in a host country. Our preference is for a process where affected communities and individuals are able to bring their grievances directly to the relevant company and have their concerns dealt with in-country in a manner which is fair and satisfactory to all parties concerned.

Many Australian minerals companies have introduced new and better standards of environmental and workplace management which have been adapted to suit the unique social, cultural and political environments in which they operate. As a result, in most cases there is widespread local community acknowledgment and support for the industry's social and environmental performance in its overseas operations.

In addition, the Minerals Council of Australia is currently facilitating a number of pro-active environmental as well as safety and health initiatives – consistent with its role as an industry organisation - to address the industry's performance and public accountability.

We consider that the Australian Minerals Industry Code for Environmental Management is a significant step by the industry to address its environmental performance and to encourage openness, transparency and improved accountability through public environmental reporting and engagement with the community. We also see the Code as the key driver for continuous improvement in our operations both domestically and overseas. A copy of the Code is attached.

The Minerals Council of Australia has also established the Australian Minerals Industry External Environmental Advisory Group (EEAG). The membership of this

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group has diverse interests and is currently comprised of: Professor Michael Archer, Director of the Australian Museum, Chair EEAG; Ms Chris Burnup, CEO Australian Minerals & Energy Environment Foundation; Mr Michael Rae, WWF Program Leader – Conservation; Dr Fiona Solomon, CSIRO Minerals; Hon. Ros Kelly; Dr Mick Dodson and Ms Tricia Caswell.

The EEAG provides independent advice to the Environment Committee of the Minerals Council of Australia. It is a forum through which the minerals industry will constructively engage on industry, environmental and related social issues, with a view to continually improving industry performance by taking into account community expectations.

The Minerals Council has recently adopted a set of social principles which provide guidance for member companies in their operations, both domestically and overseas. A copy of these principles is at **Attachment B**.

By providing and fostering leadership, the Minerals Council's safety and health strategy aims to realise the vision of "an Australian minerals industry free of fatalities, injuries and diseases". The Minerals Council has also utilised numerous opportunities to take the lead on key safety and health issues.

Through its involvement in the Australian and New Zealand Minerals and Energy Council (ANZMEC) Mine Safety Taskforce, the Council contributed to the development of a national framework for mine safety management. The Council has adopted a policy on operator-contractor safety and health management, and has developed a leadership strategy on workplace health in the Australian minerals industry, which is currently being implemented.

Against this background the Council believes the best way for the minerals industry to contribute to the achievement of the aims is through voluntary measures and the continued support for its leadership initiatives.

By pursuing these activities, such as the Australian Minerals Industry Code for Environmental Management, industry can move forward in a manner which is both flexible and relevant to its activities. This process allows for benchmarking against industry performance and addressing the changing expectations of stakeholders.

Attachment B**MINERALS COUNCIL OF AUSTRALIA****Statement of Social Principles**

The Minerals Council of Australia and its member companies are committed to undertaking all of their operations and activities in a socially responsible way. They agree to endorse and apply the following social principles:

Wherever they operate, the Council's member companies will:

- Support the principles of the United Nations Universal Declaration on Human Rights.
- Adopt and apply standards that reflect their commitment to socially responsible behaviour, and comply, as a minimum requirement, with all applicable local laws, regulations and standards.
- Support and protect the rights, dignity and well-being of their employees and their families, and their local communities.
- Respect cultural diversity and protect the cultural heritage of their local communities.
- Strive to develop long term, mutually beneficial relationships with their local communities by encouraging and supporting local community development in areas such as:
 - ✓ Employment, training and business relationships, either directly or through their contractors and suppliers.
 - ✓ Community health and education standards.
 - ✓ Enhancing the local environment.

Attachment C**THE AUSTRALIAN INDUSTRY GROUP**

The Australian Industry Group represents some 11,500 companies, large and small, in every state and territory, across the manufacturing and construction industries together with the wide range of companies that service these industries including information technology, labour hire, transport and telecommunications. These member companies provide more than \$100 billion in output; employ more than 1 million people, and produce exports worth some \$25 billion.

Achieving the best operational platform for Australian industry through efficient energy and environmental management, injury-free workplaces, equitable compensation practices and risk management are key objectives for the Australian Industry Group.

The Australian Industry Group's Environment, Energy and Safety Services Division has as its charter to assist members provide environmentally friendly, energy efficient and safe workplaces. The Australian Industry Group's Environment Policy (which follows) is a practical example of this commitment.

Australian Industry Group Environment Policy

Business development and sensitive environmental management are interdependent and can result in economic progress today while safeguarding resources and opportunities for the future.

There is a growing awareness in industry of environmental management issues and a significant increase in the use of formal programs to address their implications. Many Australian companies now see improved environmental performance as a part of their corporate and social responsibility and a means to boost their competitive advantage over the long-term. As companies adapt, they are embracing the principles and opportunities of eco-efficiency by raising their output while reducing their input.

The Australian Industry Group actively supports the principles of ecologically sustainable development. We see the adoption of innovative environmental policies and practices as a key strategy for protecting our environment while enhancing the competitiveness of Australian industry.

We aim to foster a climate in which Australian industry is internationally competitive, economically sustainable and at the leading edge of integrating sound environmental management practice into all aspects of business operations. This is essential for Australian industry to discharge its social responsibility as an integral component of the community.

Core Principles in our Approach

The Australian Industry Group's approach to environmental issues is based on the following, core principles:

- Companies in the Australian Industry Group are members of the wider community and recognise that in creating wealth and contributing to employment growth they are drawing on the community's resources and having an impact on the environment.
- As an integral part of the community, industry has a responsibility to future generations to ensure that the economy and environment are managed in harmony to avoid compromising our quality of life.
- Economic growth and sensitive management of the environment are interdependent. Industry's economic sustainability will depend upon its ability to incorporate environmental considerations into all facets of business. Sound environmental management practices are an asset, not a liability.

- Ecologically sustainable development must be based primarily on a culture of industry self-regulation. Industry's approach must be dynamic and encourage change which reflects business requirements and society's expectations.
- An effective, national approach to the environment requires close integration between State and Federal environment policies, programs and processes.

The Australian Industry Group recognises that many issues in the environment agenda require active industry involvement. We believe that the keys to success in each area will be:

- Genuine and open collaboration and communication between government, industry and non-government organisations.
- A pro-active approach by industry to environmental management, and one that emphasises moving beyond simple compliance with legislation to include preventative management procedures.
- Greater, national uniformity and consistency in environmental standards, laws, regulations, programs and policies.
- Better information and a higher standard of debate on environmental issues.

Our Role in Environmental Policy and Management

The Australian Industry Group will take a proactive approach and work cooperatively with companies, government and non-government organisations to develop high quality environment policy and programs while maintaining industry's international competitiveness. This will involve a mix of market-based approaches and self-regulation to achieve environmental goals while ensuring that regulations are consistent, practical and cost-effective.

The Australian Industry Group will also work with members of the wider community to increase mutual awareness of our respective roles as responsible, integral and essential participants in state, national and international environmental management.

In partnership with member companies, the Australian Industry Group will encourage improved environmental outcomes by contributing to the development of innovative and effective environment policy and programs, providing training and education programs for industry and government, and advising on environmental management and regulations. In particular, we will:

- Identify and monitor global environmental issues to determine their potential impact on Australia, and provide an Australian industry perspective on their implications and management.

- Develop policy and disseminate Australian industry's views to influence the national environmental agenda in a positive and proactive manner.
- Identify and monitor state environmental issues.
- Raise Australian industry's awareness of world's best practice in environmental management.
- Work with comparable national bodies to share expertise and develop a team approach to key issues.

The Australian Industry Group will adopt these principles as the basis of its approach to today's most pressing environmental issues, noting that the area of environment policy is dynamic. Significant new issues arise at regular intervals and will require an informed industry contribution. The Australian Industry Group will continue to identify and monitor those environmental issues which are likely to have an impact on Australia, and provide an Australian industry perspective on their implications.

BUSINESS COUNCIL OF AUSTRALIA

Statement on Principles for Sustainable Development

*Fulfilling the corporate contribution to sustainable development through
financial, environmental and social performance and reporting*

CONSULTATION DRAFT

Draft 1, 30 November 2000

This document is provided as the basis for consultation and
discussion

The Business Council of Australia believes that the pursuit of sustainable development – development that meets the needs of the present without compromising the ability of future generations to meet their own needs – is necessary for the future prosperity and well being of the world. The corporate contribution to sustainable development can be fulfilled through excellence in the management of the financial, environmental and social dimensions of all corporate activities, products and services. The following principles provide a framework for achieving this.

1 Public Corporate Policies

Develop public corporate policies on the application of the principles of sustainable development to corporate activities, products and services.

This will be achieved by preparing public corporate policies on corporate financial, environmental and social performance objectives, in consultation with all relevant stakeholders; adopting these policies at senior management and Board levels and including performance indicators for implementing these policies in the key performance indicators of senior management.

2. Integrated Decision Making

Integrate sustainable development considerations into all aspects of business planning and operations.

This will be achieved by establishing appropriate sustainable development management systems and incorporating environmental and social considerations into business planning and decision making processes, along with conventional financial considerations; by applying risk management techniques that recognise financial, environmental and social risks; and by working to maximise financial, environmental and social contributions while minimising impacts.

3. Strengthening Relationships

Strengthen relationships with stakeholders, including employees, the community and government.

This will be achieved by being open and transparent in all dealings with stakeholders, specifically through fostering and encouraging constructive dialogue with internal and external stakeholders; by being open and transparent in communicating corporate performance, including through annual public environmental and social reports on corporate activities and performance; by working to promote a greater understanding and appreciation of business perspectives, imperatives and contributions to sustainable development; by recognising and respecting different cultural values in all relationships; and by anticipating, acknowledging and responding to community concerns, aspirations and values regarding corporate activities.

4. Continuous Improvement

Continuously improve corporate performance against the principles and objectives of sustainable development.

This will be achieved by setting and regularly reviewing environmental and social performance objectives and targets that build upon regulatory requirements and reinforce policy commitments; by monitoring performance and verifying it against established criteria; by benchmarking performance against industry best practice and changing external expectations; and by monitoring the performance of processes and products, and those of suppliers, to develop better practices and innovative technologies and services.

5. Leadership

Drive the adoption of sustainable development principles throughout the corporation and beyond.

This will be achieved by demonstrating management commitment to the principles of sustainable development, including through promoting financially, environmentally and socially responsible behaviour, allocating clear roles, responsibilities and accountabilities within the corporation and by providing the necessary information, performance targets, training, resources and management support for achieving corporate commitments.

6. Review

Review with stakeholders this Statement and performance against it.

The Business Council of Australia will join relevant stakeholders to review this Statement two years after its adoption to ensure the principles remain appropriate to the expectations of business, government and the community.