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**SUBMISSION BY THE VICTORIAN  
COUNCIL FOR CIVIL LIBERTIES TO**

**PARLIAMENTARY JOINT  
STATUTORY COMMITTEE ON  
CORPORATIONS AND  
SECURITIES**

**INQUIRY INTO  
CORPORATE CODE  
OF CONDUCT BILL 2000**

DECEMBER 2000

**Submission to the Parliamentary Joint Statutory Committee on  
Corporations and Securities**

**Inquiry into Corporate Code of Conduct Bill 2000**

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2. Context
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#### **4 Introduction**

4.4 The Victorian Council for Civil Liberties Inc ("VCCL") is an independent non-government organisation which traces its history back to the first Australian civil liberties body established in Melbourne in 1936. The VCCL is committed to the defence and extension of human rights and civil liberties. It seeks to promote Australia's compliance with the rights and freedoms recognised by international law. The VCCL welcomes the opportunity to comment on the *Corporate Code of Conduct Bill 2000* and encourages politicians of all persuasions to vote for the Bill.

#### **5 Context**

2.1 Some facts on global corporate power<sup>1</sup>:

- 4 Of the 100 largest economies in the world, 51 are corporations; only 49 are countries. To put this into perspective, General Motors is now bigger than Denmark; Daimler Chrysler is bigger than Poland; Royal Dutch/Shell is bigger than Venezuela; IBM is bigger than Singapore; and Sony is bigger than Pakistan.
- 5 The 1999 sales of each of the top five corporations (General Motors, Wal-Mart, Exxon Mobil, Ford Motor, and Daimler Chrysler) are bigger than the GDP's of 182 countries.

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<sup>1</sup> 'Top 200 The Rise of Corporate Global Power', - report by Sarah Anderson and John Cavanagh, Institute for Policy Studies, 4/12/2000 - <http://www.ips-dc.org/top200.htm>

- 6 The top 200 corporations' combined sales are bigger than the combined economies of all countries minus the biggest 10.
  - 7 The top 200 corporations' combined sales are 18 times the size of the combined annual income of the 1.2 billion people (24 percent of the total world population) living in "severe" poverty.
  - 8 Between 1983 and 1999, the profits of the top 200 corporations/firms grew 362.4 percent, while the number of people they employ grew by only 14.4 percent.
- 2.2 These statistics in conjunction with the undeniable fact that many of the activities of trans-national corporations ("TNCs") constitute less than exemplary behaviour - environmental devastation, human suffering and death through unsafe labour practices, social upheaval and economic stability - provide support for some form of regulatory system to ensure that the corporate sector behaves in a socially responsible way.
- 2.3 There is growing worldwide concern about corporate accountability and responsibility. The unchecked power of corporate Leviathans and their ability to influence governments and hence public policy, has provided some of the fuel for the well-publicised protests in Davos, Seattle, Washington, Melbourne and Prague, as well as the less publicised protests in Peru, Bolivia, Italy, France and Korea. And, it is not just the 'rabble rousers' or so categorised 'anti-globalisation' forces that are concerned, elements of the governing sector have also recognised the necessity for checks and balances on the practices of TNCs. This is evident in United Nations Secretary General Kofi Annan's 'Global Compact' agreement which requires corporations to protect human rights, labour rights and the environment. The European Parliament has also passed a Bill, *Resolution on EU standards for European Enterprises operating in developing countries: towards a European Code of Conduct*, and a *Corporate Code of Conduct Bill* was recently introduced in the US Congress by Congresswoman McKinney. The VCCL hopes that the Australian government and Opposition have the political and moral wisdom to see the merit in supporting the Australian Democrat's initiative. Should they fail to do so the next section may provide the moral or political imperative.

## 6 Mutual Obligation

- 6.4 The Industry Commission (now called the Productivity Commission) Report entitled *State, Territory and Local Government Assistance to Industry* (1996) Commonwealth of Australia<sup>2</sup>, estimated that the:

.. total Federal, State and Local Government assistance to industry in Australia amounted to over \$16 billion [per year] in financial and other assistance to industry, including subsidies, revenue foregone and market protection. This

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<sup>2</sup> Referred to in Ches Baragwanath & John Howe, *Corporate Welfare: Public Accountability for Industry Assistance*, (2000) The Australia Institute, Discussion Paper, Number 34, October 2000, p v

*figure represents over 3% of Australia's GDP. Of the \$16 billion, almost \$6 billion was comprised of State and Territory Government subsidies and revenue foregone. In particular cases of assistance, subsidies can amount to as much as \$40,000 per new job created<sup>3</sup>*

6.5 Whilst the VCCL is not opposed to the adoption of a Keynesianist approach to industry policy, initiatives or programs - indeed the VCCL recognises that in a complex post-industrial society government intervention is not only commonsense but a necessary part of good economic management - it does however believe, like the authors of the Australia Institute report, that there is a missed opportunity for governments, both state and federal to ensure that the corporate sector adopts ethical practices providing adequate public accountability and transparency. \$16 billion a year is an enormous amount of tax-payer funded assistance and makes it obligatory that the system of 'mutual obligation' applied at the bottom end of the socio-economic scale to those receiving individual government assistance/subsidies/welfare payments, should be extended to the corporate sector to those corporations/business' receiving or dependent upon tax-payer funded assistance. The system of mutual obligation applied to the corporate sector could operate in a number of ways. Baragwanath and Howe state that Government spending of public money should focus on broad notions of public good rather than the profit margins of private corporations. They suggest that:

*... Governments could ensure high labour standards by making industry assistance conditional on both existing minimum labour standards endorsed in Federal and State jurisdictions, as well as other benchmarks. Other standards that might be recognised include equal opportunity employment practices, preference for full or part-time positions over casual employment, and provision for career training in line with overall vocational, education and training goals. Preference might be given to applicants who will employ disadvantaged workers, or who are prepared to locate in economically depressed region<sup>4</sup>.*

There is nothing particularly onerous or anti-enterprise about corporate conditional subsidies or grants. As the authors point out, in the United States governments have:

*relied upon a variety of measures to ensure that subsidies and tax breaks address genuine job shortages, living standards and environmental issues. These measures include those directed to employment creation, retention and quality; targeted hiring based on affirmative action; wage and benefit standards, 'anti-poaching' and anti-relocation requirements; and environmental protection. Maryland's Job Creation Tax Credit Act 1996 requires successful applicants for the tax credit to meet certain labour standards. Applicants are required to state the number of jobs that will be created by the new investment, and the payroll for those jobs. The company is also expected to provide follow-up data regarding jobs created so that the tax credit can, if necessary be recaptured or recalculated. To qualify for the credit, a business must create at least 60 full time, permanent*

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<sup>3</sup> supra n2, p 31

<sup>4</sup> ibid, p 31

positions over two years that pay at least 150% of the US Federal minimum wage.

*Santa Clara County in California is obligated under the ordinance governing a particular tax break program to 'look more favourably' on applicant companies that engage in 'socially responsible practices'. The nominated practices include fair labour practices, workplace health and safety policies, child care for workers, employing graduates of local job training programs, locating projects so that workers can use mass transit, and policies that reduce the use of toxics and prevent environmental damage<sup>5</sup>*

- 3.3 Under conditional subsidies or assistance packages eligibility would be based on the principle of mutual obligation and, as is the case with individual welfare assistance, clawback or recapture provisions need to be implemented in the event of breach of obligation. The other alternative to 'mutual obligation' corporate welfare programs is the *Corporate Code of Conduct Bill 2000* introduced by the Australian Democrats. Either way, both are a means by which corporate welfare recipients adhere to their mutual obligation to the community who provide financial support to them through taxation in the form of subsidies, grants and various other assistance packages. In fact, the one omission from the Democrats Bill is to link corporate behaviour with tax-payer funded assistance. This may not be applicable to Australian companies operating overseas, however, should it be the case that some of these companies receive tax-payer funded assistance then the Bill needs to address that issue and provide clawback or recapture provisions.

## **7 Corporate Code of Conduct Bill 2000**

- 7.4 As is the case with many human rights organisations the VCCL recognises the necessity for a legislative response to the activities of multi-nationals. Bhopal, the Kador toy factory in Korea, OK Tedi mine, the Esmerelda mine in Romania, to name but a few, point to that necessity. The VCCL supports the Democrats' Bill, but wishes to make a few points regarding the provisions or more particularly comment on some omissions from the Bill.

- 7.5 First, in section 6 *Interpretation* there needs to be a section included above *minimum international labour standards* defining minimum human rights standards and naming the applicable international human rights conventions. The definition in Congresswoman McKinney's Bill is applicable. That reads:

*Minimum International Human Rights Standards - The term "minimum international human rights standards" means standards contained in the following United Nations instruments relating to international human rights: the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, [the International Covenant on Economic, Social and Cultural Rights], the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the*

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<sup>5</sup> *ibid*, p31

*Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, and the International Convention on Elimination of All Forms of Racial Discrimination.*

By naming the Conventions it removes any ambiguity and closes the door to legal argument based upon a lack of clarity or definition.

- 4.3 Secondly, in reference to the arguments in 3.2 and 3.3 above, in the event that tax payers money is used through government assistance schemes, there should be included in the Bill a section similar to section 4 in Congresswoman McKinney's Bill. That section titled ***Preference in Award of Contracts and Provision of Certain Foreign Trade and Investment Assistance***, states that if or when the United States Government provides exporters or companies with an introduction to contacts in foreign countries or co-ordinates trading missions with companies with a view to investment in foreign countries it should preference those companies or entities that adopt the Corporate Code of Conduct. If a company repeatedly violates the rights of citizens of foreign countries it should not receive tax-payer funded assistance or government endorsement.
- 4.4 In all other respects, the Bill sufficiently covers all the concerns of the VCCL in respect of the promotion of good corporate citizenship. And respect for human rights

## **5. Conclusion**

- 5.1 The VCCL urges the Government and the Opposition to support the *Corporate Code of Conduct Bill 2000*. The Bill does not impose unnecessary burdens on business, as pointed out by Senator Vicki Bourne in the 2<sup>nd</sup> Reading Speech, the Bill is based on international standards as found in the *EU Resolution* and other international instruments such as the 1976 OECD Declaration on International Investment and Multinational Enterprises, the latter are only guidelines however that should not excuse any government, particularly a signatory government, promoting and indeed introducing them into law.

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