

The Secretary
Parliamentary Joint Statutory Committee on
Corporations and Securities
Suite SG 60
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

INQUIRY INTO CORPORATE CODE OF CONDUCT BILL 2000

I refer to the Committee's invitation to interested organisations to lodge submissions concerning the Corporate Code of Conduct Bill 2000. This submission is provided by the Department's International (ILO) Section, as a factual brief intended to inform the Committee of factual/technical shortcomings the Department sees with the Bill. The Department is not aware of the position the Government wishes to take on the Bill, and this submission should not be seen as either supporting or opposing the Bill.

I note that the objects of the Bill are "to impose environmental, employment, health and safety and human rights standards" on corporate conduct overseas, and provide for reporting obligations and enforcement. Specific obligations for a corporation include to "take all reasonable measures to promote the health and safety of its workers" (s8); not use or benefit from "forced labour", as defined in s6 (s9); comply with "minimum international labour standards", defined in s6 as standards set down in the following ILO Conventions "as agreed under Australian law" - C87, C98, C29, C105, C111, C100, C138, C155 (s9); and not discriminate on the grounds of "race, colour, sex, sexuality, religion, political opinion, national extraction or social origin" (s10).

All of the Conventions listed in the definition of "minimum international labour standards", with the exception of Convention No 155, *Occupational Safety and Health, 1981*, are recognised by the International Labour Organisation (ILO) as 'core' labour standards. This recognition was accorded to these standards through the adoption by the ILO of its 1998 *Declaration on Fundamental Principles and Rights at Work* (the Declaration). The purpose of the Declaration is to reaffirm the commitment of ILO members to the fundamental principles of the Organisation regardless of whether or not they have ratified the corresponding Conventions. The aim is to encourage member States to respect, promote and realise these principles, recognising at the same time the ILO's obligation to help members achieve these objectives through technical cooperation and other means. Australia believes that it complies with the Declaration. A copy of the Submission Report which accompanied the tabling of the Declaration in the House of Representatives and the Senate on 8 December 1999 is attached.

It should be noted that a further Convention, No 182, *Worst Forms of Child Labour, 1999* has subsequently been accepted as falling within the ambit of “core” labour standards.

"Minimum international labour standards" as defined in s6 means standards in the specified Conventions “as agreed under Australian law”. In that regard the Australian Government has not ratified Convention No 138, *Minimum Age, 1973*, and No 155, *Occupational Safety and Health, 1981*. All other Conventions listed in s6 of the Bill have been ratified. It should be noted that countries that ratify Conventions must comply with their provisions and report on their compliance to the ILO on a regular basis (ie every two to five years in most instances). All of the ratified Conventions have been implemented in Australia through a combination of Commonwealth, State and Territory laws.

In relation to the two unratified Conventions:

- Australia complies with the spirit of Convention No 138, and certainly complies with the principles relating to the abolition of child labour, as advocated by the Declaration. However, Australia is not able to ratify Convention No 138 because no jurisdiction has a universal statutory minimum age for employment, as required by the Convention.
- At this point in time not all State and Territory jurisdictions are able to comply with Convention No 155.

In view of the fact that Conventions 138 and 155 have not been ratified by Australia it would not be appropriate for the Bill to accord them recognition as labour standards for the purposes of Australian law.

I note that the grounds of discrimination listed in s10 fully reflect those specified in ILO Convention No 111, *Discrimination (Employment and occupation), 1958* which requires ratifying member States to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating discrimination. The ground of “sexuality” is not specified by Convention No 111, however article 1(1)(b) of the Convention enables member States to determine additional grounds of discrimination for the purposes of the Convention. In this regard it should be noted that a number of additional grounds of discrimination were "declared" by the *Human Rights and Equal Opportunity Commission Regulations 1989*, including “marital status” and “sexual preference”. These additional grounds might be considered to encompass “sexuality” within the meaning of the Bill.

The texts of the ILO Conventions referred to in the Bill can be obtained from the ILO’s Internet home page at <http://www.ilo.org>

Yours sincerely

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Labour Relations Policy Branch

18 December 2000