

**SUBMISSION OF THE EQUAL OPPORTUNITY COMMISSION OF
VICTORIA TO THE PARLIAMENTARY JOINT STATUTORY
COMMITTEE ON CORPORATIONS AND SECURITIES
ON
THE CORPORATE CODE OF CONDUCT BILL 2000**

December 2000

The Equal Opportunity Commission of Victoria (EOCV) is responsible for promoting equality of opportunity under the *Equal Opportunity Act 1995 (Vic)* (“the EO Act”) by eliminating, as far as possible, unlawful discrimination and by providing redress for people who have been discriminated against. The EOCV also provides education and information to the Victorian public on the EO Act.

The EOCV endorses the Code of Corporate Conduct Bill 2000 (“the Bill”) as a measure to promote equality of opportunity for people employed by Australian companies in overseas workplaces. The Bill echoes the challenge issued to corporations by the UN Secretary General, Kofi Annan, to support the Global Compact which calls for, at Principle 6, the elimination of discrimination in respect of employment and occupation.

In Victoria, discrimination and harassment in employment is the basis of the majority of complaints lodged with the EOCV and the number of complaints is increasing¹. The Bill is a timely reminder to Australian employers that their obligation to respect equal opportunity standards overseas is underpinned by equivalent domestic obligations under the EO Act and Federal equal opportunity legislation.

Human rights and reporting provisions

¹ In the 1999/2000 financial year, 77% of complaints lodged with the EOCV were in the area of employment, up 18.5% on the previous year.

Section 10 of the Bill, promoting equality of opportunity in the workplace, is supported by the EOCV.

The EOCV furthermore recommends a more concise explanation in the Bill of the information required under sections 14(i) – (k) to ensure clear and detailed reporting by corporations of contraventions of section 10. In particular the Bill should identify what matters may be “relevant to the environmental, employment, health and safety and human rights standards observed by the corporation.”² For the purposes of reporting on the human rights standards in the Bill, relevant matters may include evidence of an equal opportunity policy, procedures for investigating and resolving complaints of discrimination by employees; and training of staff in equal opportunity.

The reporting requirements under the Bill, the EOCV submits, could also be strengthened by requiring statements of contraventions of human rights obligations to be lodged with a body with human rights expertise, such as the Federal Human Rights and Equal Opportunity Commission (HREOC). A separate report on compliance with the human rights obligations in section 10 could be produced, based on HREOC’s analysis of relevant information in a corporation’s compliance report. A separate report produced under this model could also identify best practice by corporations in the areas covered by the Bill. It is noted that the Equal Opportunity for Women Agency compiles a list of corporations that are categorised as best practice organisations pursuant to the objectives of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth). The EOCV considers that best practice in the areas of human rights and equality of opportunity should similarly be recognised and is in keeping with the objectives and spirit of the Bill.

Enforcement provisions

The EOCV considers that the Bill is a statement of public duties owed by Australian corporations to the overseas communities in which they operate. This is implicit in the wide ambit of environmental and social concerns which the Bill adopts. In view of this, it would be appropriate, in our submission, for *any* person, whether or not that

² Corporate Code of Conduct Bill 2000, section 14(k).

person suffers, or is likely to suffer loss or damage, to enforce the obligations stated in the Bill. The Commission notes there is other Federal legislation which gives standing to a person other than the person who suffers, or is likely to suffer, loss or damage, to commence proceedings for breaches of the relevant legislation. For example, the *Trade Practices Act* (Cth) provides that proceedings to apply for an injunction can be brought by the Australian Competition and Consumer Commission (ACCC) or “any other person”³. The EOCV recommends this approach to allow proceedings under the Bill to be brought on behalf of victims of corporate wrongdoing in countries where access to legal remedies is restricted or prohibitively expensive.

Victimisation

Many people who suffer discrimination may decline to lodge a complaint due to fear of reprisal, such as dismissal, demotion, or harassment in the workplace. In the 1999-2000 reporting year, nearly 10 per cent of all complaints lodged with the EOCV involved allegations of victimisation⁴ as a result of lodging a complaint. The EOCV submits the Bill should also contain appropriate sanctions for conduct which is directed at deterring a person from making or proceeding with proceedings under the Bill.

³ Trade Practices Act, section 80(1). The High Court upheld the constitutionality of section 80(1) of the *Trade Practices Act* (Cth) in *Truth About Motorways Pty Limited v Macquarie Infrastructure Investment Management Limited* [2000] HCA 11 (9 March 2000).

⁴ “Victimisation” is defined in the EO Act as subjecting or threatening to subject a person to any detriment because that person has made a complaint or brought proceedings; or given evidence or information in connection with proceedings under the EO Act (sections 96 and 97).