ACTU SUBMISSION TO THE PARLIAMENTARY JOINT STATUTORY COMMITTEE ON CORPORATIONS AND SECURITIES INQUIRY INTO THE CORPORATE CODE OF CONDUCT BILL 2000

January 2001

INTRODUCTION

1. It is well-established that the last decades of the twentieth century have seen a shift in global economic power away from nation states and towards large corporations. The globalisation process itself has resulted from the growth in the ability of these corporations to move across national boundaries relatively unconstrained by national regulation.

2. One result of globalisation has been to enable corporations to change locations in response to what they see as regulatory restrictions, including in relation to issues such as taxation, the environment, labour relations and many others.

3. The need for some transnational regulation of corporations is reflected in growing interest in codes of conduct, whether developed by international bodies such as the United Nations, the International Labour Organisation and the Organisation for Economic Co-operation and Development, or by NGOs, trade unions, business organisation or corporations themselves. In all these cases, however, compliance with codes is essentially voluntary. The ACTU has been involved in developing a number of these codes, through its membership of international bodies, including the ILO and the Trade Union Advisory Council of the OECD. The ACTU has also been active in promoting acceptance of code provisions by companies in relation to their Australian and overseas operations.

4. There is growing public pressure, including from consumers, shareholders and members of pooled investment funds such as superannuation funds, for greater accountability by companies for their actions, whether in Australia or internationally.

5. While there is some evidence that these developments have been useful in influencing corporate activity, there is a need for these to be backed by legally enforceable standards and reporting requirements.

6. For these reasons, the ACTU supports the Corporate Code of Conduct Bill 2000 ("the Bill") and urges the Committee to recommend its passage by the Parliament.

THE NEED FOR STATUTORY REGULATION OF CORPORATE CONDUCT

7. Globalisation of the economy is epitomised by capital flexibility, meaning that companies can move from country to country in search of cheaper labour or lower environmental standards.

8. The key premise of the Bill is that Australian companies with a significant overseas presence ought to conduct themselves, wherever they operate, in accordance with generally accepted standards.

9. It cannot be assumed that this is already the case. Some Australian companies operate in substandard ways in other countries, either directly or through the activities of companies subcontracted to produce their goods or to provide them with services.

10. Some examples of this kind of conduct are well-known; most probably go unnoticed, at least in part because of the lack of mandatory reporting requirements.

11. Australian companies have been responsible for environmental catastrophes:

- Rio Tinto's involvement in the Grasberg gold and copper mine and the Lihir gold mine in Papua New Guinea, both of which dump tailings into local rivers and coastal waterways;

- BHP, as majority shareholder in Ok Tedi Mining Limited, was responsible for discharging copper and other heavy metals tailings into the Fly River system, resulting in widespread environmental destruction, described by the World Bank as "the loss of fish habitat, reduced fish populations and dieback of vegetation on the floodplains";

- The cyanide spill at the Australian-owned Esmerelda mine in Romania.

12. Products which are household names in Australia are frequently distributed in developing countries where conditions mean that they are, at best, not efficacious, and at worst present serious threats to the health and welfare of people. Nestle, for example, is allegedly continuing to distribute powdered infant formula in countries where low literacy levels, poverty and lack of clean water mean that infants' health and lives are put at risk.

13. Much publicity has been given to the plight of outworkers or homeworkers in Australia – generally women carrying out small scale manufacture in their own homes, most commonly in the clothing and footwear industries, but also including other forms of manufacture.

14. In Australia there are enforceable laws to ensure minimum protection for vulnerable workers such as these, in sharp contrast to some developing countries, where many Australian companies have established their manufacturing operations and, increasingly, services such as data entry,

computer programming and call centres.

15. While it may be expected that most companies would behave ethically in their overseas operations and, at least, conform to locally applicable law, this will not always be the case. Certainly the extent of unlawfulness in relation to outwork in Australia would seem to indicate that similar attitudes by Australian companies would apply overseas.

WHOSE RESPONSIBILITY?

16. It may well be argued that it is the role of each nation to protect the interests of its citizens. While in principle this is unobjectionable, the reality for developing countries is quite different. In a world where corporations can force nations to compete amongst themselves to offer the cheapest labour or the lowest environmental standards, it is not sufficient to say that corporations' responsibilities go no further than meeting the legal requirements of the countries in which they operate.

17. it is not enough to escape responsibility by saying, as did Rio Tinto and BHP in relation to their activities in Papua New Guinea, that the Government found the conduct "acceptable".

18. It cannot be acceptable for corporations which obtain their capital and their markets in countries like Australia, and which apply reasonable standards in this country, to take advantage of Asian export processing zones where young women are required to work excessive hours under sweatshop conditions for less than a living wage.

THE LIMITS OF THE VOLUNTARY APPROACH

19. While many major corporations have been encouraged to adopt voluntary codes of conduct, or have agreed to be bound by already existing codes or accepted standards, this approach is not sufficient.

20. First, not all companies have formally adopted such a code and, although public opinion, shareholder pressure and the like can assist in encouraging companies to do so, this will not include all corporations. Compliance may well depend on a company's vulnerability to such pressure, rather than the merits of the issues.

21. Second, mere formal commitment to a code of conduct will not necessarily achieve the stated aims, for reasons including:

- Some companies adopt codes where are largely aspirational, and so may have little if any influence on actual conduct;

- Not all companies regularly audit their operations to ensure that their commitments are being met;

- Not all codes require external reporting of the corporation's compliance;

- Not all codes adequately cover the key issues of economic, social and environmental responsibility.

22. Third, although it might be hoped that the overwhelming majority of corporations would voluntarily comply with reasonable standards, this will be encouraged by the knowledge that legally enforceable requirements back up such compliance.

THE PROVISIONS OF THE BILL

Application

23. While application of the Bill to Australian "constitutional" corporations and their subsidiaries and holding companies employing 100 or more persons outside Australia is a positive initiative, there is a concern that the requirement that the corporation employ at least 100 persons in a country other than Australia could limit the operation of the Bill.

24. In many cases a corporation's overseas operations are carried out on its behalf by local companies who employ the bulk of the workforce. The use of contractors and sub-contractors is one means by which corporations are able to argue that they comply with codes of conduct and international standards. It is precisely this issue which has made it so difficult to enforce regulation of outwork in the Australian clothing industry, in that large retailers and design houses depend on a complex web of subcontractors for the production of the garments.

25. The Bill's efficacy would be greatly improved if it also required Australian corporations to take responsibility for ensuring that contractors and sub-contractors working on their behalf complied with the standards provided for in the Bill.

26. In the event that there was concern about the constitutional validity of this extension of the Bill's application, and the ACTU doubts that this would be the case, additional reliance could be placed on the international trade and commerce power and the external affairs power, in addition to the corporations power.

The codes of conduct

27. The ACTU supports the codes of conduct contained in clauses 7 to 13 of the Bill.

Reporting

28. The provisions requiring annual reporting in relation to compliance with the requirements of the Bill are crucial. Requirements to report in areas such as equal employment opportunity and environmental performance have been

shown to be effective in increasing corporate commitment in these areas.

29. In order to encourage compliance, the ACTU believes that reports made pursuant to the Bill should be publicly available.

30. While there may be some concern that these requirements put additional burdens on companies, it should be noted that only relatively large companies are likely to be affected and, in any event, the importance of the subject matter clearly outweighs any small increase in compliance costs.

Enforcement

31. In addition to the penalties provided for in the Bill, the ACTU supports the adoption of a contract compliance policy, similar to that which exists in relation to the *Equal Opportunity for Women in the Workplace Act 1999* ("the EO Act") whereby all organisations covered by the Act must comply with the reporting requirements as a condition for qualifying for government contracts for goods and services and receiving designated industry assistance.

32. This policy is linked to a provision in the EO Act giving the director of the EO Agency the power to "name" a non-complying employer, meaning that Commonwealth departments and agencies will nor enter into written or unwritten contracts for the purchase of goods and services with organisations that have been named as not complying with the EO Act, either because the organisation has failed to report or has submitted an inadequate report.

33. The ACTU submits that a similar program, involving public "naming" and subsequent sanctions, would be effective in encouraging corporations to adopt a responsible attitude to their overseas operations and should be considered in relation to non-compliance or inadequate compliance with the provisions of the Bill.

CONCLUSION

34. Australians are opposed to environmental degradation, use of child labour and exploitation of workers. These practices are prohibited, and those prohibitions are enforced in this country. Yet, in many countries, Australian corporations are able to engage in unacceptable conduct without any legal sanction.

35. Voluntary codes and public opinion can achieve a great deal, but it is not sufficient.

36. The ACTU supports passage of the Bill and congratulates Senator Bourne and the Australian Democrats for introducing it.