

**Parliamentary Joint Statutory Committee on
Corporations and Securities**

Inquiry into Corporate Code of Conduct Bill 2000

**Submission
by the Centre for International and Public Law
Australian National University**

25 January 2001

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List of Abbreviations

Amnesty International	Amnesty
Apparel Industry Partnership	AIP
Business for Social Responsibility	BSR
Convention on the Elimination of All Forms of Discrimination Against Women	CEDAW
Council on Economic Priorities Accreditation Agency	CEPAA
Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999	Slavery and Sexual Servitude Act
Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999	Bribery of Foreign Public Officials Act
Ethical Trading Initiative	ETI
European Union	EU
Global Reporting Initiative	GRI
Industrial Standards Organisation	ISO
International Chamber of Commerce	ICC
International Covenant on Civil and Political Rights	ICCPR
International Covenant on Economic Social and Cultural Rights	ICESCR
International Convention on the Elimination of All Forms of Racial Discrimination	CERD
International Convention on the Rights of the Child	Rights of the Child Convention
International Labour Organisation	ILO

International Monetary Fund	IMF
International Youth Foundation	IYF
Multinational Enterprise	MNE
Non-government Organisation	NGO
Organisation for Economic Cooperation and Development	OECD
Social Accountability 8000	SA8000
Social Accountability International	SAI
Transnational Corporation	TNC
United Nations	UN
United Nations Commission for Sustainable Development	CSD
United Nations General Assembly	GA
United Nations High Commissioner for Human Rights	UNHCHR
United Nations Office of the High Commission for Human Rights	UNOHCHR
Universal Declaration of Human Rights	UDHR
World Trade Organisation	WTO

Summary of Submission

Governments are taking an increasing interest in ensuring that business behaves in ways which are good for sustainable development, for human rights and for international cooperation. Even though states retain the primary responsibility for ensuring the protection of human rights under the human rights treaties, there is a new awareness that such responsibility entails ensuring that companies operating from or in their jurisdiction must not undermine existing human rights obligations or the international rule of law. As we move forward, it will be critical that companies continue to take the lead in developing new forms of accountability and transparency.

(Mary Robinson, United Nations High Commissioner for Human Rights)¹

Many social issues, in particular, those pertaining to human rights and environmental protection, are of global concern. Issues such as poverty alleviation, the fostering of safe working conditions and the maintenance of fresh water, do not and cannot always recognise borders. In addition, it is no longer possible to neatly separate consideration of such social issues from our understanding of private sector activity. The two are interrelated. This, combined with the reality of an increasingly globalised economy, creates the need for new and innovative regimes to address social issues. The introduction of the Corporate Code of Conduct Bill reflects this need. The Bill provides an opportunity for the Australian Parliament to acknowledge its role in regulating the social impact of offshore Australian corporate activity.

My submission supports the fundamental idea behind the introduction of the Bill. I aim to demonstrate the relevance and importance of holding offshore Australian companies accountable for actions which impact upon the social sphere. I do not intend to suggest that the provisions of the Corporate Code of Conduct Bill are without need of amendment. Obviously there exist a plethora of issues that must be further considered

¹ 'Business and Human Rights: An Update'. 2000. *United Nations High Commissioner for Human Rights*. [<http://www.unhchr.ch/businesupdate.htm>]. Accessed on 03/01/01.

before the Bill can be passed into law. However, the thrust of my submission is *that the issue of corporate social responsibility as raised by this Bill is vital to the business future of Australia, as well as to the recognition of Australia's continuing obligations to uphold universal human rights and environmental standards.*

I argue four main points. First, that the Corporate Code of Conduct Bill is reflective of a general trend world wide to recognise the importance of corporate social responsibility. This is seen through a range of recent initiatives established to address the issue. It is also reflected in current attempts by domestic governments to further regulate corporate activity. Finally, it is highlighted through contemporary instances of litigation involving corporate responsibility for the actions of subsidiaries. I outline developments in these three areas so as to demonstrate the increasing relevance of corporate social responsibility, thus the timeliness of the Corporate Code of Conduct Bill 2000.

The second major point of my submission is that voluntary regulation by the private sector is an inadequate way of ensuring corporate social responsibility. It is submitted that this is a further reason for Parliament to pass laws regulating offshore corporate activity as proposed in the Corporate Code of Conduct Bill.

Third, I contend that implementation of a legislative corporate code of conduct would actually be beneficial to Australian businesses. It would provide for a degree of certainty and legitimacy that is currently lacking in the field of corporate conduct. It would help to minimise the risk of crises, enhance Australia's corporate reputation and foster the creation of stable investment climates.

Finally, I consider several points related to the legality of the Bill. This includes a discussion of the international legal basis for corporate social responsibility, a consideration of the extraterritoriality of the Bill, and a response to the suggestion that the Corporate Code of Conduct Bill is paternalistic. I argue that the Corporate Code of Conduct Bill is in line with Australia's obligations to protect and promote human rights, labour standards and the environment.

1. An Unstoppable Trend: Corporate Social Responsibility

Big companies need to step into the breach to ensure that globalisation delivers more than a litany of dashed hopes. We must now act as co-guarantors of human rights. (Goran Lindahl, Former President and CEO, ABB).²

In the current era of globalisation, there is no doubt that the private sector is having a profound impact upon the social sphere. Almost half of the world's largest 100 economies are now corporations rather than countries.³ The actions of these companies have a great impact upon exchange and inflation rates, unemployment levels, poverty alleviation, labour standards, education and health among other factors.

Increasingly, studies and reports are showing that while globalisation has the potential to eliminate poverty, it may also 'widen the gap' between the haves and the have-nots. The 1995 Oxfam Poverty report stated that,

Trade has the power to create opportunities and support livelihoods. . [b]ut it can also cause environmental destruction and a loss of livelihoods, or lead to unacceptable levels of exploitation. The human impact of trade depends on how goods are produced, who controls the production and marketing, how the wealth generated is distributed, and the terms upon

² Lindahl, Goran. 1999. 'The business group'. *Amnesty International UK Business Group*. [<http://www.amnesty.org.uk/business/>]. Accessed on 17/01/01.

The ABB Group is an engineering and technology company worth \$30 billion globally. ABB is involved in power generation and distribution, oil, gas and industrial automation.

³ Sheehan, P. 2000. 'Leviathan Inc'. *The Sydney Morning Herald* 15 January 2000. Cited in McCorquodale, Robert. 'Human Rights and Global Business'. In S. Bottomley and D. Kinley (eds.). *Commercial Law and Human Rights* (Dartmouth, forthcoming 2001).

which countries trade. The way in which the international trading system is managed has a critical bearing on all of these areas.⁴

This comment rings true for other aspects of globalisation too.

In line with the growth in power of multinational corporations, the traditional capacity of nation states to regulate corporate activity is becoming less effective. Domestic regulation of activity occurring only on domestic soil is no longer a sufficient means of addressing the complexities of global transactions and transnational conduct. This is allowing many large corporations to exploit legal loopholes for the sake of profits, particularly in lesser-developed countries.⁵

However, developments associated with globalisation have also left the general public more aware of the effects of globalisation itself. The rise of speedy communication via the Internet, the growth of international media conglomerates and the rapid development of the international non-government sector have all aided this awareness. Consumers, shareholders and the wider community are now continuously informed about the role that the private sector plays in their society. Accordingly, they are demanding higher accountability from businesses. In this context, the concept of corporate social responsibility is gaining in prominence and relevance worldwide. Furthermore, businesses themselves have become aware of the need to demonstrate a respect for human rights, the environment and labour conditions. This is evidenced by the explosion in the number of voluntary corporate codes of conduct in recent years, including among many big name corporations.

⁴ Watkins, Kevin. 1995. *The Oxfam Poverty Report* at 109-110. Cited in 'Human rights as the primary objective of international trade, investment and finance policy and practice (Working paper submitted by J. Oloka-Onyango and Deepika Udagama)'. 1999. E/CN.4/Sub.2/1999/11. *United Nations High Commissioner of Human Rights*. [<http://www.unhcr.ch/Huridocda/Huridoc.../E.CN.4.Sub.2.1999.11.En?Opendocument>]. Accessed on 08/01/01.

⁵ Examples may include BHP and the Ok Tedi mine, the Brent Spar affair, Shell's actions in Nigeria and Esmerelda's toxic spill in Romania.

The Corporate Code of Conduct Bill is in line with a broader trend world wide to recognise the importance of corporate social responsibility, in particular in the areas of human rights, the environment and working conditions. This trend can be seen through development in three distinct areas: the growth of international initiatives that aim to implement corporate social standards, action taken by governments to develop legal regimes governing corporate conduct, and recent law suits that have considered the responsibility of parent companies for the actions of their offshore subsidiaries. The following section is not an exhaustive history of the development of corporate social responsibility. Rather, it points to recent developments in these three areas in order to highlight the increased emphasis placed upon the concept of corporate social responsibility. The developments demonstrate that it is imperative that the Australian government follow the corporate social responsibility trend and legislate to better control the activities of offshore business operations.

1.1 International initiatives

Since the 1990s, various initiatives have been established that reflect the increasing significance of corporate social responsibility. On the whole, these initiatives demonstrate that businesses, governments and civil society organisations recognise the need to work together to implement programs which ensure corporate responsibility for actions which impact upon the social sphere.

1.1.1 United Nations Action

- **The Global Compact**

One of the most significant initiatives is the United Nations-sponsored Global Compact. The idea was initially raised by UN Secretary-General Kofi Annan in January 1999 at the World Economic Forum in Davos. The Secretary-General proposed a ‘Global Compact’ in support of ‘universal values and responsible business operations’ between the UN, the private sector and civil society.⁶ He argued that the Compact would be ‘one step’ towards ensuring that ‘the global market is embedded

⁶ ‘Executive Summary and Conclusion’. 2000. *The Global Compact*. [http://www.un.org/partners/business/gcevent/press/opening_remarks_hd.htm]. Accessed on 03/01/01.

in broadly shared values and practices that reflect global social needs, and that all the world's people share the benefits of globalisation'.⁷ The first 'High Level Meeting of the Global Compact' was held on 26 July 2000.

The key purpose of the Global Compact is to 'encourage and promote good corporate practices and learning experiences in the area of human rights, labour and the environment'.⁸ Business members of the Compact are encouraged to apply and promote nine principles. The principles are based upon the Universal Declaration of Human Rights, the Earth Summit Agenda 21 principles on the environment and the Fundamental Principles and Rights at Work of the International Labour Organisation.⁹ The principles are:

1. businesses should support and respect the protection of international human rights within their sphere of influence; and
2. make sure their own corporations are not complicit in human rights abuses.
3. businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
4. the elimination of all forms of forced and compulsory labour;
5. the effective abolition of child labour;
6. the elimination of discrimination in respect of employment and occupation.
7. businesses should support a precautionary approach to environmental challenges;
8. undertake initiatives to promote greater environmental responsibility; and
9. encourage the development and diffusion of environmentally friendly technologies.¹⁰

⁷ Annan, Kofi. 2000. 'The Secretary-General Opening Remarks at High-level Meeting on the Global Compact'. *The Global Compact*. [http://www.un.org/partners/business/gcevent/press/opening_remarks_hd.htm]. Accessed on 03/01/01.

⁸ 'Issues relating to the Global Compact'. 2000. *The Global Compact*. [http://www.un.org/partners/business/gcevent/press/whatis_hd.htm]. Accessed on 03/01/01.

⁹ supra note 6.

¹⁰ 'Business and Human Rights: A Progress Report'. 2000. *United Nations High Commissioner for Human Rights*. [http://www.unhchr.ch/business.htm]. Accessed on 03/01/01.

Companies in the Global Compact agree to promote the principles of the Compact via three means:

1. advocating the Compact in their mission statements, annual reports and similar venues;
2. at least once a year, posting on the Global Compact Website specific examples of progress they have made, or lessons they have learned, in putting the principles into practice;
3. joining with the United Nations in partnership projects, either at the policy level – for instance, a dialogue on the role of corporations in zones of conflict – or at the operational level in developing countries such as helping villagers link up to the Internet, or strengthening small and medium-sized firms.¹¹

Almost fifty transnational companies from a wide array of industries are now partners in the Global Compact. These include BASF Bayer, BP Amoco, British Telecommunications, Credit Suisse First Boston, Daimler-Chrysler, Deloitte Touch Tohmatsu, Dupont, Nike Inc, Shell Group, Unilever and Volvo Car Corporation.

The Compact also recognises the role of labour and civil society organisations in fostering corporate social responsibility. The Compact acts as an avenue for dialogue and cooperation between UN organisations, the private sector, labour organisations and civil society.¹² Civil society partners of the Global Compact include Lawyers Committee for Human Rights, Amnesty International and the World Wide Fund for Nature.¹³ Business associations include the International Organisation of Employers and the International Chamber of Commerce.¹⁴

¹¹ supra note 6.

¹² supra note 8.

¹³ supra note 10.

¹⁴ supra note 6.

- **Sub-Commission on the Promotion and Protection of Human Rights**

In 1998, the UN Sub-Commission on the Promotion and Protection of Human Rights established a working group to ‘examine the effects of the working methods and activities of transnational corporations on human rights and to make recommendations in this respect’. The Working Group met for the first time in August 1999. It decided to consider developing a code of conduct for transnational corporations based on international human rights standards and also to investigate the implications of transnational corporate activities on the enjoyment of human rights.¹⁵

On 25 May 2000, Professor David Weissbrodt presented a draft human rights code of conduct for companies along with an introductory working paper.¹⁶ The documents are highly detailed and well sourced. They also reflect many of the principles expressed in the Corporate Code of Conduct Bill. The Working Group held three public meetings during August 2000 to consider the draft principles prepared by Professor Weissbrodt and other relevant information. On 28 August 2000, the Working Group produced a report of its activities during August. The report details that the Working Group intends to consider the drafting of a declaration or treaty on transnational conduct and to consider implementation procedures. The work by the Sub-Commission clearly reflects the impetus towards the establishment of authoritative corporate codes of conduct.¹⁷

¹⁵ Weissbrodt, David. 2000. ‘Principles relating to the human rights conduct of companies: working paper prepared by Mr David Weissbrodt’. E/CN.4/Sub.2/2000/WG.2/WP.1. *United Nations High Commissioner for Human Rights*. [<http://www.unhcr.ch/huridocda/huridoca.nsf/Documents?OpenFramset>]. Accessed on 08/01/01.

¹⁶ Weissbrodt, David. 2000. ‘Proposed draft human rights code of conduct for companies: Working paper prepared by Mr David Weissbrodt: Addendum’. E/CN.4/Sub.2/2000/WG.2WP.1/Add.1. *United Nations High Commissioner for Human Rights*. [<http://www.unhcr.ch/huridocda/huridoca.nsf/Documents?OpenFramset>]. Accessed on 08/01/01.

¹⁷ ‘The Realisation of Economic, Social and Cultural Rights: The Question of Transnational Corporations (Report of the Sessional working group on the working methods and activities of transnational corporations

- **Copenhagen World Summit for Social Development +5¹⁸**

In July 2000, the United Nations General Assembly convened a special session to consider progress made since the 1995 Copenhagen World Summit for Social Development. One of the key issues on the agenda in 2000 was that of corporate social responsibility. At its second session, the preparatory committee for the Summit considered a report by the UN Secretary-General, ‘Development guidelines on the role and social responsibilities of the private sector’.¹⁹ This report deals extensively with the concept of corporate social responsibility and its importance in our ever-globalising world. Further, the final report from the Copenhagen +5 session refers to the need to provide a legal, economic and social policy framework in order to promote corporate social responsibility.²⁰

- **Human Development Report 2000**

In 2000, the United Nations Human Development Report 2000 focused on human rights. The Report highlighted the need for greater public accountability of non-state actors in relation to human rights protection. It also stated that ‘global corporations can have enormous impact on human rights – in their employment practices, in their environmental impact, in their support for corrupt regimes or in their advocacy for policy changes’.²¹

on its second session)’. 2000. E/CN.4/Sub.2/2000/12. *United Nations High Commissioner for Human Rights*. [<http://www.unhchr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset>]. Accessed on 08/01/01.

¹⁸ The full title of the session was ‘World Summit for Social Development and beyond: achieving social development for all in a globalising world’.

¹⁹ ‘Development guidelines on the role and social responsibilities of the private sector (Preparatory Committee for the special session of the General Assembly entitled “World Summit for Social Development and beyond: achieving social development for all in a globalising world”)’. 2000. A/AC.253/21. *United Nations Economic and Social Development*. [<http://www.un.org/esa/socdev/geneva2000/documents/index.html>]. Accessed on 10/01/01.

²⁰ Supra note 1.

²¹ ‘Human Development Report 2000’. 2000. *United Nations Development Program*. [<http://www.undp.org/hdr2000/english/HDR2000.html>]. Accessed on 09/01/01.

- **Commission on Sustainable Development**

At the Sixth Session of the United Nations Commission on Sustainable Development in April 1998, a special segment was devoted to dialogue with industry. Two of the themes discussed at the segment were responsible entrepreneurship and corporate management tools for sustainable development. The Chairman's summary of the dialogue makes several relevant points. First, participants recognised the role of governments in promoting and ensuring responsible entrepreneurship and principles of sustainable development.²² Participants suggested that governments should 'provide regulatory frameworks and incentives to encourage industry to more widely employ corporate management tools such as environment management systems in order to improve their environmental performance.' It was further suggested that governments should 'promote fair and rigorous certification and accreditation in order to safeguard the credibility of national, regional and international standards for management systems.'²³

Second, while industry and civil society representatives acknowledged that progress had been made, more needed to be done to ensure that principles of sustainable development were incorporated into private sector operations. NGOs and trade union representatives present suggested that principles of sustainable development should be further incorporated into international agreements, including those of the WTO and the OECD.²⁴

1.1.2 Initiatives by Other International Institutions

- **OECD Guidelines for Multinational Enterprises**

After a two-year period of review, the Organisation for Economic Cooperation and Development agreed to the adoption of revised Guidelines for Multinational

²² 'Chairman's summary of the Multi-stakeholder dialogue segment on Industry at CSD-6'. 1999. *United Nations Sustainable Development*. [<http://www.un.org/esa/sustdev/volini98.htm>]. Accessed on 10/01/01.

²³ *ibid.*

²⁴ *ibid.*

Enterprises at its Ministerial meeting in June 2000. Australia is a signatory to the revised Guidelines.

The Guidelines (which form part of the OECD Declaration on International Investment and Multinational Enterprises) are ‘recommendations on responsible business conduct addressed by governments to multinational enterprises operating in or from the thirty-three adhering countries’.²⁵ As such, the Guidelines are not legally binding but are promoted by the signatory governments.

Revisions to the Guidelines included the addition of provisions regarding the elimination of child and forced labour, a recommendation on human rights and chapters on combating corruption and consumer protection. Revisions were also made to the section on the environment, encouraging MNEs to improve internal management of environmental issues.²⁶

The Guidelines are directed to all entities within a multinational enterprise, including parent and subsidiary companies. MNEs are encouraged to apply the Guidelines ‘wherever they operate, while taking into account the particular circumstances of each host country’.²⁷

²⁵ Costello, The Hon. Peter, MP 2000. ‘Statement by the Chair of the Ministerial, June 2000’. *OECD Online*. [<http://www.oecd.org/daf/investment/guidelines/>]. Accessed on 08/01/01.

²⁶ *ibid.*

²⁷ ‘OECD Guidelines for Multinational Enterprises’. 2000. *OECD Online*. [<http://www.oecd.org/daf/investment/guidelines/>]. Accessed on 08/01/01. I. Concepts and Principles, As the United Nations High Commissioner for Human Rights points out, the obligations of the host state must at least include the Universal Declaration of Human Rights, as this is now a part of customary international law. *supra* note 1. And, virtually every country in the world has signed on to at least one major international or regional human rights treaty. Additionally, the Director-General of the ILO has emphasised that all 175 member nations of the ILO ‘have an obligation to respect in good faith and in accordance with the Constitution’ the principles outlined in the 1998 Declaration on Fundamental Principles and Rights at Work, even if they have not ratified the relevant ILO Conventions. Hansenne, Michael. 2000. ‘Declaration: Presentation by the Director-General’. *International Labour Organisation*. [<http://www.ilo.org/public/english/stan.../decl/declaration/background/index.htm>]. Accessed on 19/01/01.

- **World Bank Corporate Environment Strategy**

In April 2000, the World Bank Group released a Progress Report/Discussion Draft entitled ‘Toward an Environment Strategy for the World Bank Group’. The World Bank claims that the objective of its proposed environmental strategy is to ‘improve poor people’s health and livelihoods and reduce their vulnerability to environmental risks both today and in the future – by helping to enhance environmental quality, achieve sustainable natural resource management, and maintain global ecosystems.’²⁸ The Draft states that there is an ‘urgent need to integrate environmental concerns into poverty alleviation and economic development strategies’. It claims that the 1990s witnessed a shift in thinking towards integration of environmental and development issues. The draft lists air and water quality, soil degradation, over-exploitation of coastal ecosystems and fisheries, loss of forest cover and loss of biodiversity as ways that development may have a detrimental impact upon the environment.²⁹

The Bank has invited comments on the draft from civil society organisations, development partners, borrowing countries and members of the general public. After negotiations with a wide range of stakeholders, the Strategy will be put to the World Bank’s Board of Directors for approval.

- **World Bank Inspection Panel**

The World Bank Inspection Panel (established in 1993) is considered one of the first mechanisms through which individuals can hold international non-state entities accountable for their actions. If any group of two or more people feels that it has been disadvantaged by a World Bank project, they may request the Panel to inspect the situation and make a finding.³⁰ The existence of the Panel reflects the increasing

²⁸ ‘Environment Strategy Consultation’. 2000. *The World Bank Group*. [<http://www.worldbank.org/environment/strategy/index.shtml>]. Accessed on 01/01/01.

²⁹ ‘Toward an Environment Strategy for the World Bank Group: Progress Report/Discussion Draft’. 2000. *The World Bank Group*. [<http://www.worldbank.org/environment/strategy/index.shtml>]. Accessed on 01/01/01.

³⁰ Brown Weiss, Edith et al (Eds.). 1998. *International Environmental Law and Policy*. Aspen Law & Business: New York, at 1118-1121.

trend to link business and non-state actors with environmental and human rights protection. On average, between two and three requests for inspection have been accepted by the World Bank each year since the Panel's establishment.

- **International Monetary Fund**

In March 2000, the International Monetary Fund released a paper entitled 'Social Policy Issues in IMF-Supported Programs: Follow-up on the 1995 World Summit for Social Development'. The paper acknowledged that rapid sustainable economic growth is 'not enough' to ensure poverty reduction. It expressed a commitment to ensuring the incorporation of the Copenhagen World Summit principles for social development into IMF-supported programs. The IMF is attempting to do this in a number of ways, many of which are outlined in the paper. These include closer monitoring of social indicators in relation to IMF-sponsored projects. The IMF and the World Bank are also working towards the development of a social pillar 'within the context of reform to the international financial system'.³¹

1.1.3 Other Initiatives

- **Global Sullivan Principles**

The Global Sullivan Principles were established in February 1999 by the Reverend Leon H. Sullivan, with the support of the United Nations, Amnesty International, the World Business Council on Sustainable Development and several large corporations.³² The eight principles include a commitment to support universal human rights, to promote equal opportunity for employees, to operate without exploitation of children or forced labour, to respect freedom of association, to ensure employee compensation that is adequate to meet basic needs, and to provide a safe and healthy workplace.

³¹ 'Social Policy Issues in IMF-Supported Programs: Follow-up on the 1995 World Summit for Social Development'. 2000. *International Monetary Fund*. [<http://www.imf.org>]. Accessed 05/01/01.

³² The Global Sullivan Principles are different to the Sullivan Principles, also established by Leon Sullivan in the 1970s.

Each company who signs onto the Principles must provide an annual report on its progress to ‘develop and implement company policies, procedures, training and internal reporting structures to ensure commitment to these Principles.’³³ There is also an annual meeting of supporters of the Principles.

As of January 2000, more than 50 companies have signed onto the Principles, including American Airlines, British Airways, Chevron, Coca-Cola, Colgate-Palmolive, Ford, General Motors, Hallmark Cards, Hershey Foods, Kentucky Fried Chicken, PepsiCo, Rio Tinto PLC, Shell International, Texaco and Unocal.³⁴

- **Ethical Trading Initiative**

The Ethical Trading Initiative describes itself as ‘an alliance of companies, non-governmental organisations, and trade union organisations committed to working together to identify and promote good practice in the implementation of codes of labour practice, including the monitoring and independent verification of the observance of code provisions’. The Initiative is supported and partially funded by the British Department for International Development and the Department for Trade and Industry.

The ETI established a ‘Base Code’ of labour standards. Drawn from the major ILO conventions, the Code contains labour provisions similar to others outlined in this section. Member companies of the ETI agree to implement the Base Code in part or all of their business operations, to provide an annual report on progress and to participate in ETI pilot studies. As membership of the ETI is on an annual basis,

³³ ‘Global Sullivan Principles: Implementation. 2001. *Global Sullivan Principles*. [http://www.globalsullivanprinciples.org/itoolincludes/17429.stm]. Accessed on 10/01/01.

³⁴ ‘Global Sullivan Principles Supporting Companies’. 2001. *Global Sullivan Principles*. [http://www.globalsullivanprinciples.org/itoolincludes/17444.stm]. Accessed on 10/01/01.

companies who demonstrate a lack of commitment may be denied renewal of membership.³⁵

- **The Apparel Industry Partnership and the Fair Labour Association**

In August 1996 the White House initiated the Apparel Industry Partnership. The AIP is an alliance of apparel and footwear companies, human rights groups, labour unions, consumer advocates and universities in the United States. The two key aims of the AIP are ‘to protect workers worldwide and to give consumers the information they need to make informed purchasing decisions’.³⁶

In 1997 the AIP produced the Fair Labour Association Charter Agreement. The agreement established a Workplace Code, which consists of nine principles of labour standards. The principles cover the areas of child labour, forced labour, discrimination, harassment, freedom of association, wages, health and safety, hours of work and overtime remuneration. In 1998, the AIP established the Fair Labour Association as a non-profit organisation. The function of the FLA is to monitor externally company compliance with the Workplace Code.³⁷

Companies which have affiliated with the Association and agreed to inspections of their operations include Nike, Reebok, Gap, J-Crew and Adidas. Further, nearly 150 universities have agreed to ensure that companies producing goods for them are operating in accordance with the Charter principles.

- **Global Reporting Initiative**

The Global Reporting Initiative was established in 1997 by the Coalition for Environmentally Responsible Economies with the support of the United Nations

³⁵ ‘Introducing the Ethical Trading Initiative’. 2000. *Ethical Trading Initiative*. [http://www.ethicaltrade.org/_html/about/faq/content.shtml]. Accessed on 05/01/01.

³⁶ ‘Fair Labour Association’. 2000. *Lawyers Committee for Human Rights*. [<http://www.lchr.org/lchr/sweatshop/main.htm>]. Accessed on 05/01/01.

³⁷ *ibid.*

Environment Program and various corporations, business associations and NGOs. After much negotiation, the GRI released Sustainability Reporting Guidelines in June 2000. These Guidelines aim to encourage corporate reporting on sustainability issues, so as to make sustainability reporting 'as routine and credible as financial reporting in terms of comparability, rigour and verifiability'.³⁸

- **Business for Social Responsibility**

Business for Social Responsibility was founded in 1992 as a global resource centre for businesses wanting to promote respect for the environment and human rights within their attempts at commercial success. BSR conducts business training courses and provides practical information to member corporations. At present, more than 1400 companies are either members of affiliated with BSR. These companies together have more than six million employees and earn more than \$1.8 trillion annually. Funding for BSR stems from corporation membership fees, contributions by the US Agency for International Development and the US Environmental Protection Agency and revenue from training programs.³⁹

- **Social Accountability 8000**

The Council on Economic Priorities Accreditation Agency (CEPAA) was established by both public and private interests in 1997. In 1998 Social Accountability 8000 was set up by CEPAA. The aim of SA8000 is to provide businesses with a means of demonstrating to customers that products have been produced under 'humane working conditions'.⁴⁰ Both suppliers and retailers of goods may undergo certification to become members of SA8000. In so doing, a business agrees to phase out the use of any systems (or the retail of products involving systems) which do not meet social accountability standards.

³⁸ 'About the GRI'. 2000. *Global Reporting Initiative*. [wysiwyg://8/http://www.globalreporting.org/AboutGRI.htm]. Accessed on 19/01/01.

³⁹ 'Frequently Asked Questions: Business for Social Responsibility'. 2001. *Business for Social Responsibility*. [http://www.bsr.org/faq/index.asp]. Accessed on 12/01/01.

The SA8000 standards are based upon the Universal Declaration of Human Rights and ILO Conventions. They include prohibition of child and forced labour and any form of discrimination in the workplace. They also require respect for the right to freedom of association and the right to collective bargaining, as well as the provision of a minimum wage adequate to meet basic needs, standard working hours and a safe and healthy working environment.⁴¹

- **Amnesty International’s Human Rights Principles for Companies**

In its 1998 Annual Report, Amnesty International recognised the role of the private sector and international financial institutions in the protection of human rights. It stated that both businesses and institutions such as the World Bank and the WTO have a responsibility to ensure the protection of human rights in their operations.⁴²

In line with this idea, Amnesty published ‘Human Rights Principles for Companies’ in 1998. Based upon international law standards of human rights protection, the publication is intended as a checklist for company codes of conduct.⁴³ Amnesty International UK has also established a Business Group and produces a Business Group newsletter both of which aim to inform businesses on how to implement socially responsible practices.⁴⁴

- **The Global Alliance for Workers and Communities**

This initiative was established by the International Youth Foundation in 1999 with the support of Nike, Mattel, Gap Inc, Penn State and St John’s Universities, the World

⁴⁰ ‘About SA8000 Membership’. 2000. *Council on Economic Priorities Accreditation Agency*. [<http://www.cepaa.org/membership.htm>]. Accessed on 05/01/01.

⁴¹ ‘Social Accountability 8000’. 2000. *Council on Economic Priorities Accreditation Agency*. [<http://www.cepaa.org/sa8000.htm>]. Accessed on 05/01/01.

⁴² ‘Annual Report 1998’. 1998. *Amnesty International*. [<http://www.amnesty.org/ailib/aireport/ar98/intro2.htm>]. Accessed on 03/01/01.

⁴³ *ibid.*

⁴⁴ ‘The business group’. 2000. *Amnesty International UK Business Group*. [<http://www.amnesty.org.uk/business/>]. Accessed on 19/01/01.

Bank and the John D and Catherine T MacArthur Foundation. The initiative is aimed at enhancing the possibilities for personal and economic development of young workers and their communities throughout the world.⁴⁵

The Global Alliance website claims that its specific goals include:

- identification of worker aspirations and workplace issues;
- assessment of worker/community needs;
- development and implementation of programs that respond to the identified needs;
- implementation of management training programs;
- and regular reports and updates by company and country.

Global Alliance projects involve local non-government organisations and subsidiary companies, and attempt to develop programs which would benefit the worker and community. At present, Global Alliance projects are operating only in Southeast and East Asia, though there is hope for expansion.⁴⁶

1.2 Comparative domestic examples of regulation

• United Kingdom

In 1997, the Department of International Development set up the Business Partnership Unit. The aim of the Unit is to facilitate dialogue between the Department and the private sector in order to ‘maximise the developmental impact of commercial activities in developing countries’.⁴⁷ Around the same time, the Foreign Commonwealth Office of the United Kingdom established a Global Citizenship Unit. The Foreign Commonwealth Office intends to use the Unit and the network of British embassies worldwide, to help British firms respect international standards of

⁴⁵ supra note 10.

⁴⁶ ‘About the Alliance’. 2000. *Global Alliance for Workers and Communities*. [<http://www.theglobalalliance.org/content/about.cfm>]. Accessed 05/01/01.

corporate citizenship. It must also be remembered that the adoption of the UK Human Rights Act 1998 entrenched the principles of the European Convention of Human Rights in domestic law. This may have an effect upon British corporations in the future (particularly in light of several recent lawsuits brought in English courts – see section 1.3 below).

- **United States of America**

Cynthia McKinney introduced the Corporate Code of Conduct Bill to the United States House of Representatives on 7 June 2000. On the same day it was referred to the Committee of International Relations, the Committee on Government Reform and the Committee on Banking and Financial Services for consideration. These three Committees have since referred the Bill to Sub-committees.⁴⁸ The Committees are still considering the Bill.

The US Corporate Code of Conduct Bill explicitly refers to UN Secretary-General Kofi Annan's challenge to governments to 'embrace and enact' the Global Compact. It also acknowledges that the European Parliament has made moves towards the enactment of a Corporate Code of Conduct. And the Bill makes reference to declining public confidence in the integrity of United States businesses.⁴⁹ The Bill is not without support. By September 2000, it had 32 co-sponsors.

On 19 October 2000, Congresswoman McKinney also introduced the Truth (Transparency and Responsibility for US Trade Health) Bill. This Bill aims to require US corporations operating overseas to report on their activities, including

⁴⁷ 'Government action on responsible business'. 1999. *Amnesty International UK Business Group Newsletter* Spring 1999. *Amnesty International UK Business Group*. [wysiwyg://18/http://www.amnesty.org.uk/business/newslet/spring 99/action.html]. Accessed on 17/01/01.

⁴⁸ 'HR4596: Bill Summary and Status for the 106th Congress'. 2000. *Library of Congress*. [http://thomas.loc.gov/cgi-bin/bdquery/z?d106:HR04596:@@X]. Accessed on 10/01/01.

⁴⁹ 'HR4596:Corporate Code of Conduct Bill'. 2000. *Library of Congress*. [http://thomas.loc.gov/cgi-bin/bdquery/C?c106:.temp/~c106VTVJkW]. Accessed on 10/01/01.

‘location and addresses of facilities, age and gender of employees, environmental performance and labour practices’.⁵⁰

Two other pieces of congressional activity are worth noting. On 13 April 2000, Congressman Bernard Sanders introduced a resolution to the House of Representatives entitled, ‘Expressing the sense of the House of Representatives regarding global sustainable development’.⁵¹ And a Senate Resolution was introduced on 12 April 2000 calling on all US corporations to express support for and adhere to the Global Sullivan Principles.⁵² Such actions highlight a move towards recognising corporate social responsibility by the US Congress.

- **1999 EU Resolution on EU Standards for European Enterprises operating in developing countries**

The European Union Parliament passed a resolution on standards for transnationals in January 1999. The resolution acknowledged the need to monitor European companies operating overseas whilst ensuring their continued competitiveness. The resolution asks the European Commission and the European Council to create a ‘legal basis for reaching the extraterritorial activity of European TNCs’.⁵³ The resolution also suggests that any regulation established in this regard should be based on existing international legal standards, stemming from the ILO conventions, the

⁵⁰ ‘Congresswoman Cynthia McKinney Introduces Landmark TRUTH Act of 2000’. 2000. *McKinney – News Briefs*. [<http://www.house.gov/mckinney/news/pr001019.htm>]. Accessed on 10/01/01.

⁵¹ ‘H.Res.479: Expressing the sense of the House of Representatives regarding global sustainable development, and for other purposes’. 2000. *Library of Congress*. [<http://thomas.loc.gov/cgi-bin/bdquery/D?d106:1:.temp/~bdNBVS:@@@L&summ2=m&>]. Accessed on 09/01/01.

⁵² ‘SRes290: A resolution expressing the sense of the Senate that companies large and small in every part of the world should support and adhere to the Global Sullivan Principles of Corporate Social Responsibility wherever they have operations’. 2000. *Library of Congress*. [<http://thomas.loc.gov/c/s.dll/bdquery/D?d106:6./temp/~bdNBVS:@@@L&summ2=m&>]. Accessed on 09/01/01.

⁵³ ‘European Parliament passes resolution on standards for transnationals’. 1999. *Amnesty International UK Business Group Newsletter* Spring 1999. *Amnesty International UK Business Group*. [<http://www.amnesty.org.uk/business/newslet/spring99/eruo.html>]. Accessed on 17/01/01.

UDHR and the OECD Guidelines for Multinational Enterprises. This resolution suggests that it is possible to use domestic law to promote international standards of corporate conduct outside domestic territory.

Though the Resolution has not yet been made law, it does require action by the European Commission and the European Council. It is envisaged that it will take up to three years for any formal action to be taken, following various consultative procedures. Perhaps most importantly, the resolution, which was passed by a large majority, is indicative of a substantial level of political support for the notion that corporations should comply with international standards of human rights and environmental protection.⁵⁴

1.3 Instances of litigation

In the past few years, a growing number of parent companies have been sued for the actions of their overseas subsidiaries. This is particularly indicative of the trend towards recognition of corporate social responsibility. Last year, the United Nations High Commissioner for Human Rights stated that ‘it is the new use of international law and national courts which has changed how many see the obligations of business in the human rights field. The recent settlements have been a stark reminder that the world of human rights is a world of rights and obligations and not simply a world of charity and good intentions.’⁵⁵

Below are some examples of recent lawsuits that reflect the increased expectations placed upon the private sector in relation to corporate social responsibility.

- **Cape PLC**

⁵⁴ *ibid.*

⁵⁵ *supra* note 1.

A subsidiary of Cape PLC operated asbestos mines in South Africa from 1948 until 1979.⁵⁶ In 1997, three workers and two persons resident near the South African mines brought proceedings for compensation were against the parent company in England.⁵⁷ They contended that Cape PLC, UK had ultimate control of subsidiary operations and should have ensured safe mining practices. Cape requested a stay of proceedings on the grounds of *forum non conveniens*. The matter reached the House of Lord's where Cape's request was rejected.⁵⁸

In 1999, a group of just over 1900 South African plaintiffs instituted proceedings in England in two actions against Cape PLC.⁵⁹ The plaintiffs were workers and residents in South African region of the Cape mines and claimed to have suffered injuries as a result of exposure to asbestos. They similarly contended that Cape PLC, UK should have ensured that proper working practices were used in their subsidiaries.⁶⁰ The British House of Lords allowed the group of plaintiffs to bring their claims against Cape PLC in the UK, in light of a lack of adequate funding for the matters in South Africa. The claims have yet to be decided on their merits.⁶¹

The United Nations Commissioner for Human Rights states that this action 'is expected to open the door to complaints against companies for illegal conduct committed in countries where at this stage there is no appropriate access to justice for similar large claims or class actions'.⁶²

- **Ngcobo & Others v Thor Chemicals Holdings Ltd**

⁵⁶ From 1890 until 1948, the parent company had carried out operations directly in South Africa.

⁵⁷ Meeran, Richard. 1999. 'The Unveiling of Transnational Corporations: A Direct Approach'. In Addo, Michael (Ed.). 1999. *Human Rights Standards and The Responsibility of Transnational Corporations*. Kluwer Law International: Boston, at 167-8.

⁵⁸ See *Lubbe and Others v Cape PLC* [2000] 4 All ER 268.

⁵⁹ *Afrika and 1539 Others v Cape PLC* 1999 A No. 40; *Mphahlele & 336 Others v Cape PLC* 1999 M No. 146.

⁶⁰ *supra* note 57 at 168-9.

⁶¹ See *Lubbe and Others v Cape PLC* [2000] 4 All ER 268.

⁶² *supra* note 1.

TLR 10 November 1995 (Court of Appeal)

The South African subsidiary of Thor Chemicals UK operated Cato Ridge chemical plant in South Africa from 1986. Thor Chemicals moved their activities from South East England to South Africa after much negative publicity over the level of employee exposure to mercury. Similar health and safety problems occurred in South Africa. When the level of mercury in employees became excessively high, Thor Chemicals replaced them with new workers.⁶³

Representatives of 20 comatose and dead South Africans sued the parent company in the UK for loss suffered as a result of mercury poisoning. The claim alleged negligence on the part of Thor Chemicals UK (failure to take reasonable steps against the foreseeable risk of mercury poisoning to employees). Thor Chemicals appealed the initial finding that England was an appropriate forum in which to bring the case. This was dismissed by the English Court of Appeal who allowed the case to continue. The Court decided that Thor had acceded to the jurisdiction by having filed a defence against the claim. The claim was settled for 1.3 million GBP in 1997.

Another 21 similar claims were then started in the UK. Thor unsuccessfully tried to stay the actions in July 1998. The Court of Appeal refused leave to appeal.⁶⁴ The matter has yet to be decided on its merits. There has been much delay over the issues of discovery and the production of expert witnesses. In September 2000, the Court of Appeal found that there was ‘a good arguable case’ that in entering into a particular demerger, Thor Chemicals ‘had the purpose of putting assets beyond the reach of future claimants’.⁶⁵ The Court ordered the defendants to pay 400 000 GBP into the court as a condition of continuing to defend the action.

- **Connelly v RTZ Corporation PLC [1998] AC 854**

⁶³ supra note 57 at 164-165.

⁶⁴ *Sithole & Others v Thor Chemicals Holdings Ltd and Another*, TLR 15 February 1999.

⁶⁵ *Sithole & Others v Thor Chemicals Holdings Ltd*, 28 September 2000, Court of Appeal.

The plaintiff in this case was an employee in a uranium mine in Namibia operated by a subsidiary of RTZ. The plaintiff brought an action in the UK against RTZ. The House of Lords allowed the action to proceed. Though it may otherwise have been disallowed due to *forum non conveniens*, the man would not have been able to obtain adequate funding were the case to have been held in Namibia. Accordingly, the case went ahead in the United Kingdom.⁶⁶

- **BHP v Dagi [1996] 2 VR 117 (Victorian Court of Appeal)**

The Ok Tedi copper mine in Papua New Guinea was part owned by BHP. Effluent from the mine spilled into the Ok Tedi River and affected land surrounding the mine. A group of Papua New Guineans brought actions in the Supreme Court of Victoria claiming loss suffered as a result of mine activities. Before the Court decided whether it had jurisdiction to hear the claims under general principles of private international law, the actions settled.

- **Doe v Unocal**

963 F.Supp. 880. U.S. District Court, C.D. Cal., March 25, 1997

A claim for damages was brought in the Central District Court of California relating to human rights violations by the Burmese army during construction of a gas pipeline in Burma. The Court held that a US corporation could be liable for human rights violations committed overseas under the alien torts law.

The United Nations High Commissioner for Human Rights claims that this and other similar cases in United States courts (which are ongoing) ‘serve to remind us how governmental obligations in the field of human rights are generating supplementary obligations for other actors’.⁶⁷

Conclusion

This summary of recent developments has demonstrated the continuing importance of corporate social responsibility. As the United Nations High Commissioner for Human

⁶⁶ supra note 57 at 162.

⁶⁷ supra note 1.

Rights stated last year, recent developments in this area ‘point to the fact that promises by non-state actors in the field of human rights are being taken seriously; and they demonstrate that new ways are being found to hold all actors accountable for human rights obligations’.⁶⁸

Corporate social responsibility is now a vital aspect of sustainable development and human rights protection. It is a concept which the directors of multinationals and small businesses alike can no longer afford to ignore. Just as importantly, governments must acknowledge their role in allowing for the effective implementation of corporate social responsibility schemes. The Corporate Code of Conduct Bill provides for an important means of doing so.

⁶⁸ supra note 1.

2. Voluntary Self-Regulation: an Inadequate Means of Ensuring Corporate Social Responsibility

‘Principles are easy to sign up to – it’s far harder to ensure that they are built into corporate culture and that we keep delivering real advances on the ground’.⁶⁹

In recent years, private sector, government and non-government organisations have made considerable progress in the development of standards that reflect principles of corporate social responsibility. While voluntary codes of conduct have proliferated since the early 1990s, many fall short of providing adequate protection for peoples’ rights or for the environment.⁷⁰ This section outlines several reasons why voluntary regulation of corporate social responsibility alone is inadequate.

The inadequacy of self-regulation provides a convincing argument in favour of adoption of the Corporate Code of Conduct Bill. Certainly, in passing the Crimes Amendment (Bribery of Foreign Public Officials) Act in 1999, the Australian Parliament demonstrated that self-regulation alone would be an insufficient means of eliminating offshore corruption. Similarly, Richard Howitt, the Member of the European Parliament responsible for the introduction of the 1999 EU resolution on standards for transnationals, pointed out that the inadequate nature of corporate self-regulation was a significant factor in the decision to introduce the resolution.⁷¹

⁶⁹ Quote from [<http://www.shell.com>]. Cited in ‘Business and Human Rights: A Progress Report’. supra note 10.

⁷⁰ The ILO found that there are approximately 215 corporate codes of conduct, 80% of which were initiated by multinational corporations. However, only 33% of these 215 include reference to international labour standards. ILO documents GB.273/WP/SDL/1 (Rev.1) and GB.274/WP.SDL/1. Cited in ‘Development guidelines on the role and social responsibilities of the private sector (Preparatory Committee for the special session of the General Assembly entitled “World Summit for Social Development and beyond: achieving social development for all in a globalising world”)’ supra note 19.

⁷¹ ‘Peter Frankental, project manager of the Business Group of Amnesty International UK, asks Richard Howitt MEP about the significance of the European Parliament’s resolution’. 1999. *Amnesty International*

- **No Uniformity of Standards**

Voluntary regulation cannot guarantee the application of uniform standards of protection across the private sector. For example, a survey released in 1999 by the Ashridge Centre for Business and Society showed that only 44% of private company codes of conduct made explicit mention of human rights.⁷² Yet, clearly a series of basic principles regarding corporate social responsibility should be followed if human rights and the environment are to be adequately protected.

As voluntary codes vary, it is becoming difficult for businesses to determine which codes should be complied with and what the substance of their obligations are. Mary Robinson has emphasised that the current proliferation of voluntary corporate codes of conduct has the potential to confuse or misconstrue the concepts of corporate social responsibility.⁷³

There is a great need for the guaranteeing of basic human rights and environmental protection standards in corporate activity. The Corporate Code of Conduct Bill provides a positive opportunity for addressing this issue. As Professor Weissbrodt states, ‘an authoritative human rights code of conduct for companies would ensure that these responsibilities are clear, accessible and unambiguous.’⁷⁴

- **Lack of Implementation Procedures**

While a growing number of large firms have acknowledged or are in the process of acknowledging the importance of human rights and environmental standards, many have not yet established procedures for the *implementation* of these standards. According to the International Labour Organisation, 80% of voluntary corporate codes of conduct do not include implementation mechanisms, rather are simply a

UK Business Group Newsletter Spring 1999. Amnesty International UK Business Group. [wysiwyg://15/http://www.amnesty.org.uk/business/newslet/spring99/euro.html]. Accessed on 17/01/01.

⁷² supra note 1.

⁷³ supra note 10.

⁷⁴ supra note 15.

declaration of business ethics.⁷⁵ Voluntary codes of conduct are often only guidelines, and never carry the force of law.⁷⁶ Company policies remain meaningless until they begin to take effect on the ground through implementation mechanisms. The Corporate Code of Conduct Bill provides a persuasive means of ensuring such implementation.

- **Lack of Public accountability**

Similarly, even where implementation procedures exist, very few voluntary corporate codes of conduct provide for independent review of progress. Independent monitoring of the implementation of corporate social policies is an important part of ensuring that the private sector is giving effect to the principles of corporate social responsibility. The proposed system of reporting outlined in the Corporate Code of Conduct Bill allows for a far higher degree of public accountability than any voluntary code of conduct can hope to achieve. Further, it would prevent corporations from being able to amend the substance of a code of conduct at any time, without notice. No such option would be available under a legislated code of conduct.⁷⁷

Conclusion

In the Second Reading Speech for the Corporate Code of Conduct Bill, Senator Vicki Bourne expressed hesitation about the adequacy of the voluntary regulation of corporate conduct. She stated that while such systems do have the effect of ‘raising general awareness so that at least social sustainability issues are on manager’s radar screens’, self-regulation ‘has not delivered enough tangible outcomes to the people who need them’.⁷⁸ This is a view that continues to be expressed by others also. For example, the

⁷⁵ supra note 19.

⁷⁶ Skogly, Sigrun. 1999. ‘Economic and Social Human Rights, Private Actors and International Obligations’. In Addo, Michael (Ed.). 1999. *Human Rights Standards and The Responsibility of Transnational Corporations*. Boston: Kluwer Law International, at 251.

⁷⁷ supra note 15.

⁷⁸ Bourne, Vicki, Senator. 2000. ‘Corporate Code of Conduct Bill: Second Reading Speech’. *Australian Parliament House*.

United Nations Human Development Report 2000 states that ‘many [voluntary corporate codes of conduct] fail to meet human rights standards, or lack implementation measures and independent audits’.⁷⁹ A similar concern was raised at the Sixth Session of the UN Commission for Sustainable Development.⁸⁰ And dissatisfaction with voluntary codes of conduct is also apparent in the introduction of the US Corporate Code of Conduct Bill and the EU Resolution on standards for transnational corporations. To legislate a corporate code of conduct in Australia would be to further infuse the notion of social responsibility into corporate culture. In light of the fundamental importance of human rights and environmental protection, this is a highly necessary development.

[<http://search.aph.gov.au/search/ParlInfo.../Second+reading+speeches&action=view&WC>]. Accessed on 28/11/01..

⁷⁹ supra note 21.

⁸⁰ supra note 22.

3. A Legislated Corporate Code of Conduct would be Beneficial to Australian Businesses

A clear demonstration that basic and broadly popular social values are being advanced as part and parcel of the globalisation process will help ensure that markets remain open and will truly bring the people of the world closer together.⁸¹

Many businesses are becoming increasingly aware of the value of maintaining adequate environmental and human rights standards. Corporations which fail to recognise the role that social responsibility will continue to play in their activities will fall behind the eight ball in terms of reputation, profits and investment opportunities. The Corporate Code of Conduct Bill provides the Australian Parliament with an opportunity to put our businesses ahead in the global marketplace. Outlined below are a few of the potential benefits to business of a legislative corporate code of conduct.

- **Certainty**

With the proliferation of corporate codes of conduct and the increased instances of lawsuits against parent companies for subsidiary behaviour, it has become very difficult for the private sector to ascertain what standards of activity are acceptable. Legislated guidelines for corporate conduct would allow for both uniformity and legitimacy of standards. This would establish parameters within which corporations could operate with greater confidence of meeting expectations in relation to human rights and environmental protection. This issue is particularly important in light of the recent rise in the number of lawsuits involving parent company responsibility for the actions of offshore subsidiaries.

⁸¹ Secretary-General Kofi Annan, Address at the World Economic Forum in Davos, Switzerland (31 January 1999). SG/SM/6448(1999). Cited in Weissbrodt, David. 'Principles relating to the human rights conduct of companies: working paper prepared by Mr David Weissbrodt'. *supra* note 15.

- **Enhanced Public Reputation**

The development of global media conglomerates, the spread of the Internet and the rise of non-government organisations have fostered a surge in public awareness of the impact of private sector activity on society. Consumers and the general public are increasingly demanding accountability from businesses.

The threat of negative publicity arising out of environmental accidents or human rights violations is a real one. A company may find itself suffering from a deflated evaluation of overseas assets, a drop in share prices, or a lack of finance for overseas projects if there is a perception of failure to maintain human rights or environmental standards. In 2001, many consumers are prepared to exercise choice in purchasing as a means of demonstrating dissatisfaction with corporate behaviour.⁸²

It is vital that companies acknowledge the growing awareness of the general public, shareholders and NGOs to the issue of corporate social responsibility. Compliance with legislation that recognises the human rights of all persons has the potential to greatly enhance the reputation of Australian companies generally throughout the world and in so doing to provide them with a competitive edge. This is another potential benefit of a legislative corporate code of conduct.

- **Risk minimisation**

The risk of litigation as a result of environmental destruction or human rights violation is now an ever and real concern for companies. A study by the Ashridge Centre for Business and Society released in 1999 outlined that 36% of the biggest 500 companies have abandoned proposed investment projects over human rights concerns, and 19% have disinvested from a country.⁸³ And the costs of a lawsuit for

⁸² The Centre for Ethical Concerns found that 84% of consumers would pay an extra \$1 for a \$20 clothing item if it meant that the good was produced under fair labour conditions. Wah, L. 1998. 'Treading the sacred ground'. *Management Review* 87(7): 18. Cited in Rees, Stuart and Shelley Wright. 2000. *Human Rights, Corporate Responsibility: A Dialogue*. Pluto Press: Sydney.

⁸³ supra note 1.

a company stretch far beyond that of legal expenses. With the speed of today's media, the effects on a company's share price can be just as devastating.

The implementation of policies and operations that comply with a legislative corporate code of conduct would be likely to reduce the risk of crises for Australian corporations. The prevention of potentially litigious occurrences could be beneficial for Australian corporations in the future.

- **Future possibilities**

It is also possible that new avenues for investment/operations for Australian companies may develop through the establishment of a legislative code of conduct. Future foreign business partners and governments would become aware of the potential for risk minimisation, as well as any enhanced public reputation of a company. These factors will be increasingly conducive for investment opportunities overseas in the future. At the industry dialogue segment of the Sixth Session of the UN Commission on Sustainable Development in 1998, industry representatives stated that it was in the interests of industry to promote sustainable development so as to ensure their long-term viability.⁸⁴ Professor David Weissbrodt also makes the point that an authoritative corporate code of conduct would aid in the selection of overseas business partners who are more likely to be 'ethical, well-managed and reliable'.⁸⁵

- **Stable investment climates**

The implementation of an official corporate code of conduct by the Australian private sector operating offshore may also lead to the fostering of stable local settings (politically and economically) within which to expand business. Respecting human rights and environmental standards and investing in the social development of a community will help to promote the rule of law and to encourage goodwill within the local community. The United Nations High Commissioner points out that this will

⁸⁴ supra note 22.

⁸⁵ supra note 15.

help companies to avoid social or political disruption that could impact upon business operations.⁸⁶

- **Increased worker productivity**

Finally, it is worth noting that a legislated corporate code of conduct may aid in increasing worker productivity. Contrary to the notion that overworking employees creates the greatest profit margins, the application of working conditions which reflect ILO standards could be beneficial to business. It may lead to the reduction of employee turnover rates, higher product quality and increased faith of employees in company integrity.⁸⁷

Conclusion

As shown above, the benefits to business of a legislative corporate code of conduct involve more than simply the minimisation of litigation resulting from environmental or human rights disasters. In 2001 human rights and environmental standards have the real potential to impact upon a business's bottom line.⁸⁸ Rather, than being a hindrance, a legislative corporate code of conduct could provide offshore Australian companies with a competitive edge in an increasingly globalised economy. As Former Director-General of the World Trade Organisation, Renato Ruggiero points out, 'getting ahead of the business trend towards sustainable development can actually be profitable'.⁸⁹

Corporate social responsibility is now seen as the proper approach for businesses by society at large. The issue is not going to disappear in a hurry, rather it is destined to have a profound impact upon corporate culture and activity through the world. The sooner the Australian private sector fully embraces the concept, the better. If Australia

⁸⁶ supra note 10.

⁸⁷ supra note 10.

⁸⁸ As pointed out by UN High Commissioner for Human Rights, Mary Robinson - 'Business and Human Rights: A Progress Report'. supra note 10.

⁸⁹ Ruggiero, Renao, Former DG, WTO. 1997. 'A Shared Responsibility: Global Policy Coherence for our Global Age'. *World Trade Organisation*. [http://111.wto.org/english/news_e/sprr_e/bonn_e.htm]. Accessed on 01/01/01.

can institute an official code of conduct for overseas operations, our companies may find themselves with a comparative advantage in global markets.⁹⁰ While foreign corporations struggle to decipher which of the various voluntary codes should apply to them, Australian businesses may hold themselves out as leaders in the field of corporate social responsibility through the proper application of the Corporate Code of Conduct Bill.

⁹⁰ Dr Jennifer Woodward, a consultant on Global Risk Management Solutions at Pricewaterhouse Coopers states that we are witnessing a 'shift from managing reputation crises following a media expose, to companies gaining positive competitive advantage for their good record on human rights'. In Woodward, Jennifer, Dr. 1999. 'Safeguarding reputation'. 1999. *Amnesty International UK Business Group Newsletter* Spring 1999. *Amnesty International UK Business Group*. [wysiwyg://21/http://www.amnesty.org.uk/business/newslet/spring99/reputation.html]. Accessed on 17/01/01.

4. Legalities: Possible Objections to the Corporate Code of Conduct Bill

There are international legal limits to what is acceptable and a new triangular constellation of governments, victims and businesses can be observed attempting redress and justice.⁹¹

Public international law principles and Australia's international legal obligations should not be used as a basis for arguing against the adoption of the Corporate Code of Conduct Bill. Three issues of legality are briefly discussed here – the international legal basis for corporate social responsibility, the extraterritorial application of the Bill and a response to the suggestion that the Bill is paternalistic. I do acknowledge that there are multitudes of other issues which need to be considered, but which time prevents the discussion of in this submission.

4.1 International Legal Basis for Corporate Social Responsibility

Within the trend towards recognition of corporate social responsibility is a growing realisation that international law requires non-state actors such as corporations to respect environmental and human rights standards. The Corporate Code of Conduct Bill provides an opportunity for the Australian Parliament to entrench this recognition of corporate responsibility in domestic law.

In the past, companies may have been able to avoid an acknowledgment of corporate social responsibility by relying upon the traditional assumption that international law pertaining to human rights and environmental protection was the sole responsibility of states. In particular, the now well established relationship between citizen and state has provided the framework for the enjoyment and protection of human rights since the adoption of the Universal Declaration of Human Rights in 1948. However, this view is somewhat simplistic and fails to understand the complexities of human rights and environmental protection in 2001.

⁹¹ supra note 1.

As the UN Committee on Economic, Social and Cultural Rights declared in May 1998, the realms of trade, finance and investment are in no way exempt from human rights obligations and principles.⁹² An analysis of the texts of various international treaties emphasises two points of importance. First, that corporations are not devoid of obligations to protect human rights. And second, that state responsibility to ensure that all organs of society comply with human rights in particular, could include a responsibility to regulate private sector activity where necessary.

- **Obligation on Non-State Actors**

The Universal Declaration of Human Rights, which is now part of customary international law, states in its preamble that:

As a common standard of achievement for all peoples and all nations, to the end that every individual and *every organ of society*, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States and themselves and among the peoples of territories under their jurisdiction'.⁹³

Amnesty International and the UN Sub-Commission on the Protection and Promotion of Human Rights have both suggested that the reference to 'every

⁹² 'Human rights as primary objectives of trade, investment and financial policy (Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1998/12)'. 1998. *United Nations High Commission of Human Rights*. [http://www.unhchr.ch/Huridocda/Huridoc...CN.4.SUB.2.RES.1998.12.En?Opendocument]. Accessed on 08/01/01.

⁹³ Preamble, Universal Declaration of Human Rights 1948. Adopted by GA resolution 217A(III) of 10 December 1948. (emphasis added).

The UDHR also states in Article 28 that '[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised'.

organ of society' demonstrates that corporations are not devoid of any responsibility to protect human rights.⁹⁴ A similar idea is expressed in other legal instruments. For example, the UN General Assembly 1986 Declaration on the Right to Development states that all humans have a responsibility for development.⁹⁵

David Weissbrodt emphasises that several international human rights treaties outline that individuals have both rights *and responsibilities*. These include the UDHR, the International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights 1966.⁹⁶ Whether a corporation is viewed as a legal person, or a collective made up of individuals, these treaties perhaps suggest that corporations, like other members of society should respect human rights.⁹⁷

There are also various international instruments which place obligations or responsibility directly upon individuals as opposed to (or as well as) states. These include the Convention on the Prevention and Punishment of the Crime of Genocide 1948; the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956; the Nuremburg Rules; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 and the Rome Statute of the International Criminal Court 1998.⁹⁸ Such international legal

⁹⁴ supra note 15; supra note 42.

⁹⁵ Declaration on the Right to Development. Adopted by GA resolution 41/128 of 4 December 1986.

⁹⁶ International Covenant on Civil and Political Rights. Adopted by GA resolution 2200A(XXI) of 16 December 1966; entry into force on 23 March 1976. International Covenant on Economic, Social and Cultural Rights. Adopted by GA resolution 2200A(XXI) of 16 December 1966; entry into force on 3 January 1976.

⁹⁷ supra note 15.

⁹⁸ Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by GA resolution 260A(III) of 9 December 1948; entry into force 12 January 1951. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956. Adopted

instruments highlight that it is incorrect to presume that non-state actors are without obligations with regards to human rights protection. Furthermore, these instruments and other actions such as the establishment of the Yugoslav War Crimes Tribunal, suggest that non-state actors will increasingly be held accountable for their actions in the future.

In a similar vein, it is worth noting the existence of the World Bank Inspection Panel.⁹⁹ The Panel has authority to consider requests which allege harm to a requesting group's human rights or local environment. Though the Bank's Board of Directors ultimately decides whether to accept the Panel's findings, the existence of the Panel is indicative of the trend to recognise that non-state actors should be accountable for the non-economic impact of their actions. Some regional development banks are establishing similar panels also.

Finally, Michael Addo makes the point that a lack of domestic enforcement mechanisms for the protection of human rights is not a reason for multinational corporations to avoid respect for those rights. He states, 'the entitlement to have one's rights respected is inherent in all persons regardless of an enforcement procedure'.¹⁰⁰

ECOSOC resolution 608(XXI) of 30 April 1956 and at Geneva on 7 September 1956; entry into force on 30 April 1967. International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted by GA resolution 39/46 of 10 December 1984; entry into force on 26 June 1987. Rome Statute of the International Criminal Court. Adopted by the UN Conference of Plenipotentiaries on the Establishment of the ICC on 17 July 1998.

⁹⁹ See Section 1.1 of this Submission for a brief outline of the World Bank Inspection Panel.

¹⁰⁰ Addo, Michael (Ed.). 1999. *Human Rights Standards and The Responsibility of Transnational Corporations*. Kluwer Law International: Boston, at 31.

- **Government obligation to ensure protection of human rights by other organs of society**

Perhaps an even stronger argument in favour of the introduction of the Corporate Code of Conduct Bill, is the obligation on governments to ensure that all organs of society respect human rights and the environment. Various international instruments of a binding nature contain references which are relevant. For example, the International Convention on the Elimination of All Forms of Racial Discrimination 1965, to which Australia is a party, declares that State parties are to ‘prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination *by any persons, group or organisation*’.¹⁰¹ And the International Convention on the Elimination of all Forms of Discrimination against Women 1979 requires States parties to ‘take all appropriate measures to eliminate discrimination against women *by any person, organisation or enterprise*’.¹⁰²

The UN General Assembly 1986 Declaration on the Right to Development outlines that states have the primary responsibility for ‘creating national and international conditions favourable to the realisation of human rights’. Similarly, the Copenhagen Declaration and Program of Action 1995 details the need for States to promote stability and long-term investment, ensure fair competition and ethical conduct, and harmonise economic and social development.¹⁰³ As the Commission for Sustainable Development points out, voluntary initiatives by industry ‘complement’ rather than ‘replace’ government intervention.¹⁰⁴

¹⁰¹ Article 2(d), International Convention on the Elimination of All Forms of Discrimination. Adopted by GA resolution 2106 (XX) of 21 December 1965; entry into force 1969. (emphasis added)

¹⁰² Article 2(e), International Convention on the Elimination of All Forms of Discrimination against Women. Adopted by GA resolution 34/180 of 18 December 1979; entry into force 3 September 1981. (emphasis added)

¹⁰³ Copenhagen Declaration on Social Development and Program of Action of the World Summit for Social Development. Adopted at the 14th Plenary meeting on 12 March 1995.

¹⁰⁴ supra note 22.

Whilst one of the main motivations behind the establishment of human rights and environmental law may have been to protect individuals and groups from the power of the state, an analysis of various international legal texts demonstrates that this was never intended to be the sole extent of protection under international human rights and environmental law. In addition, it is clear that globalisation requires a more dynamic response from international law in 2001 when large corporations have such influence. That corporations themselves are aware of their responsibility to respect human rights, labour standards and the environment has been demonstrated in recent time through the adoption of ethical business standards by such a vast array of corporations world wide. In light of this, whilst it may not be possible to establish an absolute and unquestionable obligation on offshore corporations to respect Australian standards of human rights and environmental protection, there is nonetheless a strong legal basis for doing so. The creation of such obligations through the adoption of the Corporate Code of Conduct Bill would seem to be in line with rather than contrary to, the Australian government's obligations under international law.

4.2 Extraterritorial Application of the Bill

The extraterritorial application of the Corporate Code of Conduct Bill appears to be complementary with the active nationality principle of prescriptive and adjudicative jurisdiction. As legal persons, Australian corporations can be considered Australian nationals for the purposes of regulating their conduct when acting outside Australian territory. Since the *Lotus* case before the Permanent Court of Justice in 1927, there has not been an absolute restriction on the exercise of jurisdiction in such instances.¹⁰⁵ As The Honourable Senator Newman stated at the Second Reading Speech for the Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999, 'there are a number of precedents for the application of Commonwealth law to Australian citizens, residents and bodies corporate who act entirely outside Australia, including the Crimes (Child Sex

¹⁰⁵ Carter, Barry, and Phillip Trimble. 1995a (2nd edn.). *International Law*. Boston: Little, Brown and Company, at 729, 731.

Tourism) Amendment Act 1994. While this approach should not be adopted as a matter of routine, it is appropriate for serious crimes which attract international concern.¹⁰⁶

The extraterritorial application of domestic laws to offshore corporations is not a new concept. Take for example the US International Emergency Economic Powers Act and the Export Administration Act and regulations. These laws are applicable to all corporations which are subject to the jurisdiction of the US. This includes foreign corporations controlled by Americans.¹⁰⁷

More importantly, the current Australian Parliament has already demonstrated a willingness to enact laws which have extraterritorial effect. For example, the Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999, which applies to Australian corporations engaging in conduct outside Australia, actually aims to regulate an aspect of corporate responsibility. Adoption of this Act demonstrated Australia's commitment to ensuring the promotion of the OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions. Therefore, to enact the Corporate Code of Conduct Bill would be to similarly acknowledge Australia's commitment to the OECD Guidelines on Multinational Enterprises.

Another act with extraterritorial effect is the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999. This Act recognises that the Australian government's obligations to protect and uphold human rights are so important that our laws must apply extraterritorially in some instances. Finally, the Crimes at Sea Act 1999 extended upon the extraterritorial application of existing legislation by removing the requirement that the Attorney General receive explicit consent from a foreign country before prosecuting a

¹⁰⁶ Newman, The Hon. Jocelyn, Senator. 1999. 'Second Reading Speech: Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999'. *Australian Parliament House*. [<http://search.aph.gov.au/search/ParlIn...econd+reading+speeches&action=view&WCU>]. Accessed on 09/01/01.

¹⁰⁷ *supra* note 105 at 763-764.

foreign national for a crime committed outside Australia's 12 mile exclusion zone. This provision was supported by the Australian Parliament.¹⁰⁸

At the Second Reading Speech of the Slavery and Sexual Servitude Bill 1999, Attorney-General Daryl Williams stated that 'the international nature of the trade in persons and the inherently evil nature of the trade satisfy me that the offences should have this application'. Importantly, the Attorney General also made reference to the fact that the Bill if passed would be furthering Australia's obligations to prevent slavery in persons as contained in the UDHR, CEDAW and the Convention on the Rights of the Child.¹⁰⁹ A similar view was expressed by The Honourable Mr Baird at the Second Reading Speech of the Bill.¹¹⁰

A further point about the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 is that it creates a direct obligation upon non-state actors and individuals to protect human rights. And individuals are obliged to respect these rights whether acting wholly or partly inside or outside Australia.¹¹¹ The standards which would be imposed upon

¹⁰⁸ See for example, Baird, The Hon. Bruce, MP. 1999. 'Second Reading Speech: Crimes at Sea Bill 1999'. *Australian Parliament House*. [<http://search.aph.gov.au/search/ParlIn...econd+reading+speeches&action=view&WCU>]. Accessed on 10/01/01.

¹⁰⁹ International Convention on the Rights of the Child. Adopted by GA resolution 44/25 of 20 November 1989; entry into force 2 September 1990.

Williams, The Hon. Daryl, MP. 1999. 'Second Reading Speech: Crimes Amendment (Slavery and Sexual Servitude) Bill 1999'. *Australian Parliament House*. [<http://search.aph.gov.au/search/ParlIn...econd+reading+speeches&action=view&WCU>]. Accessed on 09/01/01.

¹¹⁰ Baird, The Hon. Bruce, MP. 1999 'Second Reading Speech: Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999'. *Australian Parliament House*. [<http://search.aph.gov.au/search/ParlIn...econd+reading+speeches&action=view&WCU>]. Accessed on 09/01/01.

¹¹¹ Australia is a signatory to the International Convention to Suppress the Slave Trade and Slavery, 1953 Protocol to the Convention, 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, CERD, CEDAW, and the Rights of the Child Convention.

corporations under the Corporate Code of Conduct Bill are similarly in line with Australia's international obligations in the areas of human and labour rights and environmental protection. As in the case of the Slavery and Sexual Servitude Act, the adoption of the Corporate Code of Conduct Bill would demonstrate the Australian government's commitment to upholding its international human rights and environmental obligations.

The instances of litigation and the development of recent international initiatives demonstrate that corporate social responsibility is of global concern – that domestic regulation of activity having a territorial nexus is alone inadequate to ensure the protection of labour standards, the environment and human rights. As was recognised with the adoption of the Bribery of Foreign Public Officials Act 1999 and the Slavery and Sexual Servitude Act 1999, such issues of fundamental universal concern may require the extraterritorial application of domestic law. In light of this recent legislative activity, it is clear that the Corporate Code of Conduct Bill is not entirely without precedent. Not only have there been recent laws enacted which may have an extraterritorial effect, but several of these laws have covered issues not unrelated to those proposed in the Corporate Code of Conduct Bill.

I conclude this section with the words of J Starke as outlined in his *Introduction to International Law*: 'with the increasing speed of communications, the more sophisticated structure of commercial organisations with transnational ramifications and the growing international character of criminal activities, there has been a noticeable trend towards the exercise of jurisdiction on the basis of criteria other than that of territorial location'.¹¹²

4.3 Response to Suggestion that the Corporate Code of Conduct Bill is Paternalistic

It may be suggested by some that the adoption of the Corporate Code of Conduct Bill would be an imposition of Australian standards of human rights and environmental protection on other nation states. However, this viewpoint carries little weight when one

¹¹² Starke, J. *Introduction to International Law*. Cited in Carter, Barry, and Phillip Trimble. *supra* note 105.

considers the international legal basis for the standards that the Corporate Code of Conduct Bill seeks to impose.

The standards embodied in the Corporate Code of Conduct Bill are based upon fundamental principles of human and labour rights and environmental protection (the UDHR, the ILO Declaration on Fundamental Principles and Rights at Work and the Agenda 21 Principles). These standards have been accepted by a vast majority of the world's countries. They are not radical or unusual and are certainly not unique to Australia or our value system.

As the UN High Commissioner for Human Rights points out, it is well established that the Universal Declaration of Human Rights is now a part of customary international law and therefore creates binding obligations on all states.¹¹³ Further, virtually every country in the world has signed on to at least one major international or regional human rights treaty. Additionally, as the Director-General of the ILO has pointed out, all 175 member nations of the ILO 'have an obligation to respect in good faith and in accordance with the Constitution' the principles outlined in the 1998 Declaration on Fundamental Principles and Rights at Work, even if they have not ratified the relevant ILO Conventions.¹¹⁴ Similarly, the Rio Declaration and the Agenda 21 Principles on the Environment adopted at the 1992 Earth Summit are some of the most widely disseminated and accepted proclamations on the protection of the environment. In addition, the standards in the Corporate Code of Conduct Bill consistently reflect those established in various voluntary initiatives, including the UN Global Compact and the recently revised OECD Guidelines for Multinational Enterprises (see section 1 for a full outline of recent initiatives).

It is *not* an imposition of Australia's domestic standards to enact the Corporate Code of Conduct Bill. Rather, it is a display of support for and an attempt to promote *international standards* of human rights and environmental protection. Not only is the

¹¹³ *supra* note 1.

¹¹⁴ *ibid.*

Corporate Code of Conduct Bill an important step in protecting human rights and the environment, it is in line with Australia's obligations to respect same.

Conclusion

There is a political, economic and legal imperative to hold Australian corporations accountable for the impact of their offshore activities. And the Corporate Code of Conduct Bill provides an important means of doing so. This submission has raised several key points in order to support the broad issue of corporate social responsibility as raised by the Corporate Code of Conduct Bill. First, Section 1 highlighted that the Corporate Code of Conduct Bill's regulation of human rights and environmental protection is indicative of a rapidly growing trend world wide to hold the private sector accountable for the social impact of its activities. This trend is reflected in recent international initiatives, attempts at domestic regulation and instances of litigation involving the issue of corporate social responsibility. Adoption of the Corporate Code of Conduct Bill would demonstrate Australia's commitment to this worldwide trend.

Second, voluntary self-regulation is an inadequate means of ensuring corporate social responsibility. This is largely due to the lack of uniform standards, implementation measures and public accountability mechanisms among voluntary codes of conduct. This inadequacy provides a further reason for the adoption of a legislative corporate code of conduct. Third, the trend towards recognition of corporate social responsibility as reflected in the Bill may be of importance to the future of Australian business. An authoritative code of conduct for Australian companies could aid in the enhancement of reputations, the minimisation of risk and the maximisation of future investment opportunities. This may provide Australian corporations with a competitive edge in the 21st Century global market place.

Finally, and perhaps most importantly, adoption of the Corporate Code of Conduct Bill would be in line with Australia's international legal obligations to protect human rights and the environment. In light of the fundamental importance of both and the ever-increasing risk that globalisation will negatively impact upon those who most need its benefits, this is an area that requires parliamentary action.

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