

1 February, 2001

Senator Grant Chapman,
Chair,
Joint Statutory Committee on
Corporations and Securities,
Parliament House,
Canberra, A.C.T. 2600

Dear Senator Chapman,

Corporate Code of Conduct Bill 2000

Thank you for the opportunity to comment on the Corporate Code of Conduct Bill 2000.

BHP supports the objective of promoting responsible conduct by Australian companies in their activities overseas as well as in Australia. However, we do not believe that the unilateral broad-brush legislative approach contained in the Bill is either desirable or workable.

BHP has addressed the issue of consistent standards of business conduct wherever it operates through the development of the BHP Guide to Business Conduct and a new integrated Health, Safety, Environment and Community Policy. Copies of both documents are attached and, as you will see, they cover much the same ground as the proposed Corporate Code of Conduct legislation. BHP has also recently published its fourth Environment and Community Report (copy attached) detailing the Company's environmental and social performance.

Although there is general alignment between the policy positions and systems and processes employed by BHP and the requirements of the proposed Corporate Code of Conduct legislation, we cannot support the Bill.

- The extraterritorial nature of the legislation will give rise to conflicts and we believe it will prove unworkable in practice. Unilateral extraterritorial legislation on such a broad front, as distinct from legislation focussed on a specific issue such as foreign corrupt payments which is underpinned by multilateral commitments, is not warranted in principle or likely to be workable in practice.

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- The relationship between the proposed legislative standards and existing legislation in corresponding areas in Australia and overseas will lead to unnecessary uncertainty and practical implementation/compliance issues.
- The compliance, auditing and reporting obligations are potentially excessive and yet demonstration of compliance would still remain problematic and open to challenge as many of the compliance criteria are ill-defined.
- Furthermore, the provisions for penalties, and allowing individuals to initiate legal action on behalf of others in “the public interest”, are also of considerable concern given the issues of conflict, lack of certainty and scope for nuisance legal challenges.

In our view, the intent of the Corporate Code of Conduct Bill could be more effectively achieved through non legislative approaches, for example recent experience with the Australian Minerals Industry Code for Environmental Management demonstrates that voluntary initiatives can be effective.

As you may be aware, BHP is one of the founding sponsors of the Global Mining Initiative (GMI). The GMI seeks to develop a clear understanding and statement of the global mining industry’s role in the context of a sustainable future, through an independent analysis known as Mining Minerals and Sustainable Development (MMSD). An outcome of the process, which involves extensive input from industry stakeholders, will include documentation of best practice for various aspects of industry activity. The benchmarks developed by the GMI will provide an excellent basis for the extension of voluntary Codes of Conduct. It is anticipated that principles will also be drawn from existing initiatives such as the Global Sullivan Principles, the UN Global Compact and the recently released Voluntary Principles on Security and Human Rights.

External verification of environmental and social performance, and the public reporting of such processes, can be employed to encourage high standards of compliance. There is also potential for a complaints mechanism if an appropriately independent and workable model can be developed. An existing multilateral example of this is the Compliance Advisor Office for the International Finance Corporation and the Multilateral Investment Guarantee Agency, both part of the World Bank Group. Full details are on the IFC web site at www.ifc.org.

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We believe that such a compliance mechanism, taken in the context of the World Bank's/IFC's broad role and their established policy positions and performance on matters raised in the Bill, would be far more effective than the proposed unilateral national action.

In summary, we believe that the objectives underlying the Bill could better be pursued through enhancements to non-legislative initiatives such as Australian Minerals Industry Code for Environmental Management and the outcomes of the Global Mining Initiative.

Yours sincerely,

Graham Evans

Vice President External Affairs

c.c. Mr. David Creed
Committee Secretary

Att.