LAW COUNCIL
OF
AUSTRALIA

CSH.MF.LCA1574(7263)

7 March, 2001

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

Dear Sir

Corporate Code of Conduct Bill 2000

I am **enclosing** a submission prepared by the Corporations Law Committee of the Business Law Section of the Law Council of Australia in respect of the above Bill.

The Law Council would be pleased to amplify its submission in oral evidence. I understand from Mr Patrick McCormack of your Secretariat that a time slot of 3.4pm on Thursday 15 March 2001 in Sydney has been set aside for the Corporations Law Committee. I should be grateful if you would confirm this with Carol O'Sullivan at the Law Council Secretariat.

Yours sincerely

Christine S Harvey
Deputy Secretary-General

LAW COUNCIL
OF
AUSTRALIA

SUBMISSION BY THE CORPORATIONS LAW COMMITTEE BUSINESS LAW SECTION OF THE LAW COUNCIL OF AUSTRALIA

TO THE PARLIAMENTARYJOINT STATUTORY COMMITTEE ON

CORPORATIONS AND SECURITIES

CORPORATE CODE OF CONDUCT BILL 2000

February 2001

SUBMISSION BY THE CORPORATIONS LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE LAW COUNCIL OF AUSTRALIA TO THE PARLIAMENTARY JOINT STATUTORY COMMITTEE ON CORPORATIONS AND SECURITIES CORPORATE CODE OF CONDUCT BILL 2000

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TO THE

PARLIAMENTARY JOINT STATUTORY COMMITTEE ON CORPORATIONS AND SECURITIES

CORPORATE CODE OF CONDUCT BILL 2000 ("BILL")

The Corporations Law Committee of the Law Council of Australia "(the Committee") is pleased to be able to make this submission to the Parliamentary Joint Statutory Committee on Corporations and Securities ("the Parliamentary Committee") in relation to the Corporate Code of Conduct Bill (*the Bill*) sponsored by Senator Vicki Bourne.

1. EXECUTIVE SUMMARY OF CORPORATIONS LAW COMMITTEE SUBMISSIONS

Notwithstanding the commendable motives behind the Bill, the Committee is concerned that the implementation of the Bill would have a number of significant and detrimental consequences.

In summary, the Committee -

- considers the Bill to be well-intentioned but too broad and vague to be workable;
- strongly opposes the imposition of obligations beyond those applying to the equivalent business activities of corporations operating within Australia;

- strongly opposes the broad scope of civil action proposed under the Bill;
- considers that the Bill would be, from a practical perspective difficult if not impossible to comply with;
- is concerned that the Bill, if introduced, will place Australian companies at a very serious financial and competitive disadvantage with their competitors in other countries. This disadvantage will be exacerbated unless (as currently appears unlikely) such legislation is adopted throughout the world or at least in economies that are on a similar footing to the Australian economy;
- is concerned that the Bill, if introduced, will discourage corporates from establishing subsidiaries in Australia and may lead a flight of corporates from Australia or ensure that Australian-based corporates change their domicile; and
- is concerned that the compliance difficulties and penalty provisions are likely to discourage good directors from acting and render a number of the inherent risks prohibitively costly to insure against, or uninsurable.

COMMITTEE RECOMMENDATIONS -

1. That the Parliamentary Committee recommend against the Bill being enacted;

2. That the Australian Government take steps to encourage the implementation of *voluntary Codes of Conduct* as has occurred in various countries.

2. INTRODUCTORY COMMENTS

The objects of the Bill set out in clause 3 are –

(a) to impose environmental, employment health and safety and human rights standards on the conduct of Australian corporations or related corporations which employ more than 100 persons in a foreign country; and
(b) to require such corporations to report on their compliance with the standards imposed by this Act; and
(c) to provide for the enforcement of those standards.

In essence, the Bill represents an attempt to legislatively contain the activities of Australian multinational corporations (*MNCs*). As such, the Bill purports to:

- regulate the conduct of Australian companies operating overseas with at least 100 foreign employees, in the areas of environmental standards, health and safety, employment and human rights.
- impose a duty to observe tax laws, trade practices and consumer health, safety and protection standards.

The Bill would extend to any related company, notwithstanding its jurisdiction of incorporation, with disclosure to be mandated, in the form of a yearly compliance report to be lodged with the Australian Securities and Investments Commission (*ASIC*). ASIC would then be required to compile an annual summary for presentation to the Commonwealth Parliament.

Broadly, the consequences of a contravention would be:

- The company would become liable for proceedings to recover a civil penalty of up to 10,000 units ($1,000,000);
- Any executive officer who knew about, or was reckless or negligent as to the breach and was in a position to influence the conduct of the company in that area and failed to take all reasonable steps to prevent the contravention would also be in breach of the Bill.
- To the extent that any person, regardless of their residence, suffers or is reasonably likely to suffer, loss or damage, they would be able to bring an action for recovery in the Federal Court. This action may also be brought by a body corporate or association of persons whose ‘principal objects include protection of the public interest.’

3. COMMITTEE COMMENTS ON THE PROPOSED CODE OF CONDUCT BILL

3.1 General comments

The Committee recognises the importance for all Australian companies, whether native Australian companies or transnational companies but operating within Australia, to observe appropriate ethical and other relevant standards. Indeed, the provisions of the Corporations Law and various other Australian laws impose similar obligations to some of those set out in the Bill on companies operating in Australia.

The Committee considers that this is not an area that should be legislated and that rather, the Government should be encouraging the development of voluntary Codes of Conduct. Relevant Australian companies might be encouraged by appropriate mechanisms to identify in their Annual Reports the extent to which they adopt and comply with such codes of conduct.

3.2 Scope

As to the scope of the Bill, it is not clear whether the 100 persons referred to in (a) must be employed in the one country, or whether employment of 100 persons in several countries would be sufficient. This should be clarified.

3.3 Uncertainty & unworkable reporting obligations

The Committee is of the view that the vague nature of the legislation will render the Bill uncertain and unworkable. For example -

- the definition of "*environment*" which is extended beyond the already broad categories of "ecosystems and their constituent parts, including people and communities; natural and physical resources and the qualities and characteristics of locations, places and areas to also include the "*social, economic and cultural aspects*" of those things. The complexity and uncertainty surrounding native title in Australia is illustrative of some of the difficulties inherent in making these determinations.

The Committee notes with great concern the difficulties of applying this broad and vague definition to the obligations contained in Clause 7 of the Bill. The difficulties of applying this definition to the obligation are multitudinous. Query for example, the ability of any corporation to monitor, provide information to members of the public in all places in which it undertakes activities and to undertake environmental impact assessments on the social, economic and cultural aspects *of "ecosystems and their constituent parts including people and communities*".

3.4 Extension of legal standards

The Committee is concerned that the Bill attempts to impose upon corporations operating in other countries standards that are more stringent than those imposed in Australia. For example, Clause 9(3)(b) of the Bill would prevent a corporation from dismissing a worker for reasons of illness or accident, apparently whether or not that worker was capable, or ever capable of being gainfully employed again. That is certainly not the situation in Australia. The Committee submits that the Bill in this respect is excessive and inappropriate.

3.5 Operation of Act

The Committee notes that Clause 3(2) of the Bill provides that it is not intended that a corporation be required to do anything offshore that it would not be required to do in Australia. This is not the case. There are several examples of this in the Bill:

- Clause 9(3)(b) (referred to above);
- Clause 7(2): The Committee notes that there are currently not uniform laws in Australia requiring corporations to disclose to employees and the public information regarding "*actual or potential*" environmental (including social) impacts or to have regard to the precautionary principle in undertaking the various actions contemplated by this sub-clause.

3.6 Disparity in reporting obligations

The Committee is concerned that the reporting obligations in the Bill exceed in a number of respects the obligations imposed upon corporations with domestic operations: Refer Clause 14(2)(g), (h), (i) and (k). The Committee notes that Australian domestic businesses are not required to report publicly on "*foreseeable risk factors that might arise*" as a result of their activities:

- Clause 14(2)(i): The Committee notes that this calls for a statement of any contravention of any "*standards or laws*" relating to various matters. Apart from the issue of whose laws or standards are to apply to these overseas operations, the provision is vague and uncertain and far exceeds obligations imposed upon Australian domestic business activities.

The Committee notes that there are no uniform laws in Australia which impose these standards on Australian operations and submits that these provisions are excessive and manifestly inappropriate.

There are also obvious difficulties in complying with the legislation: For example, in Australia, a corporation required to obtain environmental licences from a regulatory authority to undertake certain activities will be required to comply with

the conditions of such a licence. That licence will contain terms governing the manner in which operations can be performed, and these terms invariably vary from jurisdiction to jurisdiction and project to project. It is not unlikely that there would be no similar system established in the foreign country in question.

The Committee is concerned that it will be extremely difficult to compare the activities of the corporation in Australia with its activities overseas. Is a corporation required to "guess" what the licence conditions of the operation might be if it was in Australia (or a particular part of a State or Territory of Australia)? If so, how would a corporation proceed to make that assessment?

3.7 Civil penalties

The Committee notes with concern the statutory cause of action established by Clause 17. It appears to the Committee that this has the effect of creating an actionable wrong without equivalent in Australia, regardless of whether the conduct complained of breaches laws applying to Australian domestic operations, or the laws of the country in which the operations take place. It seems to the Committee that a "global" right of action to any person purporting to have suffered loss or who is "*reasonably likely*" to suffer loss or damage (of whatever extent or nature) is entitled to institute Federal Court proceedings to obtain an injunction or seek compensation. The Committee notes that any association able to claim as "*protection of the public interest*" as one of their principal objects (or which drafted or modified their objects) would be prima facie entitled to utilise these provisions.

The Committee submits that the broad and sweeping provisions contained in Clause 17 are potentially subject to extensive abuse and are likely to cause significant financial and commercial hardship to corporations to which the Bill would apply.

3.8 Deterrent to investment in Australia

The Committee is of the view that the Bill is likely to constitute a significant deterrent to investment in Australia because of the obligations that it seeks to impose on corporate groups with any member in Australia. The Committee notes that Clause 4 of the Bill extends the operation of the Act to any corporation which employs more than 100 people outside Australia which is (a) a holding company of a trading or financial corporation incorporated in Australia or (b) a subsidiary of (a). To take an example, if General Motors (US) had an Australian subsidiary, this legislation would apply to General Motors and all its international subsidiaries simply because GM was the holding company of an Australian company.

The Committee is concerned that the Bill would, if passed, pose a significant disincentive for corporates to establish subsidiaries in Australia. It also has the

potential to lead to a flight of corporates from Australia or to ensure that Australian based corporates who have international operations change their domicile from Australia.

3.9 Unworkable and difficult to comply with in its current form

In general terms, the Committee is concerned that the even though the objects of the Bill are reasonably clear (albeit in the Committee's view, excessively broad and far-reaching) the Bill is unworkable and will, from a practical perspective, be difficult, if not impossible to comply with. This is clearly the case with a number of the obligations, Clause 7(1) and Clause 8(1) being clear examples.

3.10 Foreign Laws

The Committee is concerned that notwithstanding Clauses 3(2) and 4 of the Bill, there is a clear risk that there will be an inconsistency between the provisions of the Bill and the laws of a foreign country. In this instance the Committee submits that the laws of the foreign country should prevail and that a clear provision to this effect should be incorporated into the Bill.

3.11 Australian corporations placed at competitive disadvantage

The Committee is concerned that passage of the Bill would:

- impose significant costs on Australian companies when similar legislative initiatives have not taken by some of Australia's competitor countries.
- place Australian corporations operating abroad at a serious economic, financial and competitive disadvantage to other corporations operating in the relevant country and in respect of the relevant markets in which they are seeking to compete.
- severely damage the competitive environment which the Australian Government has been encouraging such Australian companies.

The Committee is not aware of equivalent legislation having been passed by any such nation. In essence therefore, rather than creating the positive and sustainable presence intended to be fostered by the Australian Government, Australian companies would be severely compromised if other leading industrial nations do not have similar obligations.
The Committee notes that these concerns have also been expressed by a number of Australian corporations with overseas operations.

3.12 Impact upon Directors

The Committee is concerned that the compliance difficulties and penalty provisions are likely to discourage good directors from acting on the boards of companies to which the Bill would apply. This concern is exacerbated by the

concerns that the uncertainty surrounding a number of the inherent risks (some of which are been specifically identified above) may result either in prohibitively high insurance premiums or in the imposition of exclusions, rendering aspects of a corporate's activities uninsurable.

3.13 Cost Benefit Analysis

The Committee notes that no cost benefit analysis has been undertaken in this case. The Committee predicts that if such an analysis were undertaken, the results would be negative.

4. COMMENTARY: BACKGROUND TO CORPORATE CODES OF CONDUCT

4.1 Introduction: what is a corporate code of conduct?

- Corporate codes of conduct, broadly defined, seek to encourage (voluntary) or mandate (regulatory) the behaviour of *MNCs* by reference to a set of behavioural principles.
- A recent OECD survey catalogued existing codes as pertaining to five key issue areas: (1) Fair business practices; (2) Observance of the rule of law; (3) Fair Employment and Labour Rights; (4) Environmental Stewardship; and (5) Corporate citizenship.

4.2 Origin of codes

- Various codes have been developed by all of the key players in the globalisation process. These include governments and intergovernmental groups, non-governmental organisations (*NGOs*), corporations, industry groups (see, for example the *Responsible Care* program of the international chemical industry), and other interest groups, such as human rights organisations and environmental groups.

- The question of how to contend with the rights and standards addressed in the modern codes in the context of a globalising economy can be traced back many decades. Labour rights, for example, were highlighted by the formation of the International Labour Organisation (*ILO*) in 1919. Early initiatives of global codes include the prominent 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and, earlier, the 1976 OECD Guidelines for Multinational Enterprises.

- As an example amongst the notable early codes, the 1975 *Sullivan Principles*, outlined by the Reverend Leon Sullivan, a member of the board of directors of General Motors, provided a framework for the behaviour of US corporations in apartheid South Africa.

4.3. Outline of current initiatives

Numerous national, international, industry and company initiatives are currently in operation to deal with the international conduct of MNCs. Implementing a legislative regime would be counter-productive as it would serve to duplicate existing codes. Further, new legislation may be in conflict with existing principles. Reform has been driven without legislative influence, and indeed many of the reform initiatives have been proposed and developed by corporations. Below is a brief outline of some of the main voluntary codes currently in existence. Various NGO initiatives are also in operation.

4.3.1. International Initiatives

UN Guidelines for Corporate Social Responsibility

- A review of the implementation of the objectives of the 1995 World Summit for Social Development was undertaken recently in a Special Session of the General Assembly held by the United Nations in Geneva in June 2000. The 1995 Summit in Copenhagen focused on the immediate and essential needs of individuals, and was attended by representatives of 186 countries. It provided a forum for prioritizing social progress at the international level.

ILO Tripartite Declaration of Principles Concerning MNCs and Social Policy

- The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy was adopted in 1977. It provides guidelines as to employment conditions and other industrial relations issues, and is surveyed on a triennial basis, the most recent of which was received in November 2000.

UN Global Compact

- Kofi Annan, United Nations Secretary-General, proposed the UN Global Compact at the World Economic Forum in Davos, 1999. The Compact contains nine principles in the issue areas of employment, human rights and the environment, which derive from the Universal Declaration of Human Rights, the Rio Principles on Environment and Development and the ILO's Fundamental Principles on Rights at Work. The Compact is not a code, but an agreement between key players such as corporations, labour and civil society groups to work together within the proposed framework. Nearly 50 prominent MNCs pledged to implement the principles, and initiatives are in place to expand this to 100 large MNCs within three years.

4.3.2. National / Regional Initiatives

4.3.2.1 Europe

European Initiative for Ethical Production and Consumption

- This initiative aims to assist companies in the development of good practice through training and information through the provision of a forum for idea exchange between key players. It aims to promote and encourage the implementation of corporate codes of conduct on a flexible, continuous improvement basis.

Resolution on EU Standards for European Enterprises operating in Developing Countries: Towards a European Code of Conduct

- In 1999 the European Parliament adopted a resolution to develop a code of conduct and monitoring mechanism for European companies operating in developing nations. The resolution is not law, and discussions as to the optimal nature of any possible code are currently in progress. In July 2000, the EU Committee of the American Chamber of Commerce voiced concerns to the European Parliament with regards to any blanket code, and support for the advancement of voluntary codes.

4.3.2.2. United States

McKinney Corporate Code of Conduct Bill

In June 2000 Congresswoman Cynthia McKinney introduced a bill to regulate the actions of US corporations abroad (the *McKinney Bill*). The McKinney Bill would require nationals of the US that employ more than 20 persons in a foreign country to implement a corporate code of conduct relating to areas such as employment, human rights and environmental standards The Bill has been referred to the Committee on International Relations, and in addition to the Committees on Government Reform, and Banking and Financial Services.

US Model Business Principles

- The White House and Department of Commerce in 1996 released a set of principles encouraging businesses to adopt voluntary codes of conduct covering the key areas of concern in global operations.

4.3.2.3. Company Initiatives

International Chamber of Commerce (ICC) Business Charter for Sustainable Development

- Over 2,300 companies internationally support the Charter, which whilst not prescriptive, aims to assist companies to set policies in

environmental standards. The ICC actively promotes environmental management through 16 key principles.

Fair Labour Association (FLA)

- The FLA was formed in 1998 to provide an industry code and monitoring mechanism to cause footwear and apparel companies to implement labour standards. It involves many groups, including universities, human rights organisations, companies and unions.

5. ARGUMENTS AGAINST A MANDATORY CODE

5.1 Introduction

The Committee notes that a number of interest groups are currently pressuring governments to regulate MNCs.

Lord Holme of Cheltenham, Chair of the ICC Commission on Environment, observed that there is a minority that views 'all foreign direct investment, and, by extension, the companies which make it, as malign in its consequences and possibly in its intentions too.'[1] It is important not to let the emotional debate obscure the reality, which is found in the importance of trade and corporations, as well their role in modern society.

5.2 Role and Purpose of Corporations

- The argument put forward by Milton Friedman thirty years ago that 'there is one and only one social responsibility of business - to use its resources and engage in activities designed to increase its profits.'[2] Judicial decisions on the role of the company still support this view. A recent report to the OECD noted that the mission statement of a modern corporation is the 'generation of long-term economic profit to enhance shareholder value.'[3]
- The importance of corporations in the global context is well documented. MNCs provide a mechanism for beneficial capital flows, technology diffusion and the efficient distribution of resources.
- The United States Council for International Business (*USCIB*) observed after reviewing various World Bank, OECD and ILO studies that MNCs have 'helped raise living standards around the world and have acted as engines of

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[1] ICC, 'From the relief of poverty to the creation of sustainable livelihoods- The business contribution' Speech given by Lord Holme of Cheltenham, Chair of the ICC Commission on Environment, to the Rockerfeller Foundation, 23 September 1999.

[2] M. Friedman, 'The Social Responsibility of Business Is to Increase Its Profits,' *New York Times Magazine* (13 September 1970).

[3] 'Corporate Governance: Improving Competitiveness and Access to Capital Markets' A report to the OECD by the Business Sector Advisory Group on Corporate Governance.

development and growth through the economic activity they generate, their transfer of technology and skills, and improved labour, health, safety and environmental conditions.'[4]

- Further regulation is inconsistent with both the nature and purpose of corporations, and may be counter-productive in its inhibiting influence on corporations and trade.

5.3 Role and Purpose of Trade

- The President and Chief Executive of the Business Council on National Issues, Thomas d'Aquino, put forward the case for trade. He noted that the encouragement of economic growth through trade raises standards of living, and promotes good governance and democratic ideals.[5]
- Trade and corporations play a vital role in reforming and improving conditions in developing countries. 'Economic liberalisation provides the path to political liberalisation by producing increased capital and technology for the development of democratic institutions and infrastructure.'[6] This process should not be stunted by inappropriate and unnecessary regulatory shackles.

5.4 Inappropriate use of corporations

- In a letter to Congress,[7] USCIB highlighted the unsuitability of engaging corporations as agents of political or social policy. They noted that legislative codes could endanger domestic citizens and companies by potentially forcing them to violate laws in the countries in which they operate.

5.5 Cost-Effectiveness

- Voluntary codes provide a cost-effective alternative to legislation. 'The traditional command and control model of government regulation is increasingly costly to enforce, difficult to apply across national boundaries, inflexible and inefficient. In certain circumstances, the voluntary code may offer some opportunity to reduce these costs.'[8]
- In addition, Part 3 of the Bill would require extensive and costly reporting compliance.

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[4] USCIB Position Paper on Codes of Conduct at http://www.uscib.org/policy/code1298.htm.

[5] In Gerald J. Schmitz and Corrine McDonald (1996) 'Human Rights, Global Markets: Some Issues and Challenges for Canadian Foreign Policy,' Library of Parliament at http://www.parl.gc.ca/36/refmat/library/PRBpubs/bp416-e.htm.

[6] Ibid.

[7] USCIB Letter to Congress 'China Human Rights and Democracy Act 1997 and Codes of Conduct' at http://www.uscib.org/policy/chiclet.htm (29/11/00).

[8] Bryne Purchase, (1996) 'Political Economy of Voluntary Codes: Executive Summary,' http://strategis.ic.gc.ca/SSG?ca0079e.html.

5.6 Inflexibility

- Regulatory systems are documented to suffer from a propensity to lag behind technological change, or to be subject to regulatory capture and ineffective enforcement.[9] Voluntary codes provide a flexible alternative that can cater for the particular needs of each industry.

5.7 Competition

- International voluntary codes such as those put forth by the OECD and ILO are advantageous as they allow companies access to a level playing field. Enforcing a strict mandatory code unique to Australia would be counter-productive as it would cripple the international competitiveness of Australian corporations.
- This is highly relevant in the light of strong criticism and objection by international business groups, which makes it unlikely that such regulation will become universal. The USCIB, for example, published a 'strong objection' to legislative interference in codes of conduct.[10]

5.8 Impact on developing nations

- Abraham Katz, President of USCIB, summarised the potential for difficulties in over-regulating international trade and conduct. 'No matter how high-minded the purpose they [developing countries] see such attempts as a protectionist threat, depriving them of their comparative advantage, an unacceptable interference in their internal governance and a violation of their sovereignty.'[11]
- In the context of environmental restrictions, he further points out that '[T]heir stage of development does not permit an elaborate and advanced environmental regulatory regime as in developed countries.' Such labour and environmental standards may be unattainable in the short-term, and holding corporations 'hostage' to these benchmarks would have the potential to deprive these economies of some investment opportunities and their related benefits.
- In addition, there are popular misconceptions as to the nature of these developing countries. 'Some Western environmental campaigners fall for the Garden of Eden myth in which the private commercial investor plays the role of the serpent, destroying primal landscapes and corrupting ancestral innocence. They want no change. The truth of course is that the whole world

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[9] OECD (1997) *The OECD Report on Regulatory Reform: Volumes I and II.*

[10] USCIB (1999) USCIB Statement: 'Codes of Conduct: Old Solutions to New Problems' A Policy Paper by the United States Council for International Business at http://www.uscib.org/policy/chicstat.htm (29/11/00).

[11] Statement of Abraham Katz, President United States Council for International Business, before Senate Finance Committee Washington, DC, January 28 1999 at http://www.uscib.org/policy/asken128.htm (29/11/00).

is in a ferment of change, with hardly a kampong without satellite dishes, jeans and pick-up trucks.'[12]

- Dusty Kidd (Director of Labour Practices, Nike) highlighted the hidden social costs of such regulation. 'In Vietnam, our workers are paid more than doctors. What's the social cost if a doctor leaves his practice and goes to work for us? That's starting to happen.'[13]

5.9 Effectiveness of voluntary measures

- The issue of corporate conduct in an international context is not one without merit. However, it is argued that the current available measures identified in Section 4.3 of this Submission provide an effective and flexible method of confronting the issues arising from the globalising economy.

- Voluntary codes have wide support in the business community. Corporations have adopted these codes without legislative interference, and indeed have been involved in their formulation, development and promotion. For example:
  - US business spearheaded and supported the *ILO Declaration on Fundamental Principles and Rights at Work* (adopted in June 1998).
  - USCIB US Business Community's Letter to the Senate Foreign Relations Committee: US Ratification of the ILO Convention on the Worst Forms of Child Labour (23 September 1999) expresses the support of the US business community in the treaty.

- Although Senator Bourne criticised voluntary codes based on their potential for non-compliance, this ignores the publicity that supports the efforts of organisations such as the ILO. Companies will not want to be in the 'spotlight', or to be subject to consumer or shareholder resistance to their products or securities. Today's 'CNN World' provides a powerful incentive for voluntary compliance.

- Fear of the media extends to the ability of NGOs to motivate compliance through threat of public embarrassment. Loss of reputation is a powerful motivator. The importance of reputation as a corporate asset is clear.[14]

- Shell, for example, has rewritten its business principles and an elaborate mechanism to implement them, not as a result of legislative interference, but in the wake of blows to its reputation in 1995 from its attempted disposal of the Brent Spar oil rig in the North Sea, and its failure to object to the Nigerian

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[12] International Chamber of Commerce (ICC) 'From the relief of poverty to the creation of sustainable livelihoods- The business contribution' Speech given by Lord Holme of Cheltenham, Chair of the ICC Commission on Environment, to the Rockerfeller Foundation, 23 September 1999.

[13] The *Economist* 'Doing Well by Doing Good' 22 April 2000.

[14] Charles Fombrun, Professor of Management at the Stern School of Business, (1996) *Reputation: Realising Value for the Corporate Image.*

government's execution of human rights activist Ken Saro-Wiwa, in a region of extensive operations by Shell. Rob Aram, in charge of Shell's policy development, cited, as reasons for the move, concern that there could be a long-term impact on the company and a 'sense of discomfort from our own people.'[15]

- Such prominent support and involvement would counter arguments that voluntary codes are ineffective.

5.10 Appropriateness of Voluntary Codes of Conduct for Australia

The Committee submits that the development of voluntary Codes of Conduct would provide a more appropriate means of guiding the conduct of Australian companies operating overseas.

The Committee notes that there is support for the view that voluntary codes, supported by the pressure of publicity and market forces, provide a viable, flexible and cost-effective solution to the problems faced in a globalising market. Implementing a mandatory regime would be costly, both in financial terms and in terms of the negative impact on Australian corporations.

Corporations and their shareholders stand as valuable allies (actually and potentially) in the pursuit of human rights and international standards. There is a strong view in some well informed quarters that self-interest, at the heart of neo-classical economics, should be constructively encouraged to further the plight of all economies. On this basis we, as the Australian community, should seek a 'long-term and thus an enlightened basis for self interest, but not to deny or suppress it as do some of those in international development circles.

Shared realism through robust economic development can produce practical results.'[16] A system of voluntary codes provides the mechanism for liberal development to benefit all. 'Governments and IGOs in turn must recognise that they have a powerful partner to be encouraged rather than a problem to be solved.'[17]

5.11. The Global Economy

Attempts to legislate multilateral agreements on corporate conduct are inconsistent with a free global economy, and infringe principles of economic and political liberalisation. Their implementation is likely to obstruct many advances

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[15] The *Economist* 'Doing Well by Doing Good' 22 April 2000.

[16] International Chamber of Commerce (ICC) 'From the relief of poverty to the creation of sustainable livelihoods- The business contribution' Speech given by Lord Holme of Cheltenham, Chair of the ICC Commission on Environment, to the Rockerfeller Foundation, 23 September 1999.

[17] Ibid.

that have been made in these areas in recent decades, and the beneficial effects that flow from them. In addition, shackling Australian corporations with the regulation proposed by the Bill would cripple their competitive ability in a World market. The Committee notes that concerns have been expressed that their operation could even endanger the safety of workers and corporations in certain developing countries.

6. Conclusion

The Corporations Committee strongly opposes the Code of Conduct Bill, for the reasons outlined above.

Kathleen Farrell
Chairperson
for and on behalf of the
Law Council's Corporations Law Committee