

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

Inquiry into Corporate Code of Conduct Bill 2000

**Submission by
The Institute of Public Affairs
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The Secretary
Parliamentary Joint Statutory Committee on Corporations and Securities
Suite SG 60
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The Australian Democrats' *Corporate Code of Conduct Bill 2000* 'aims to regulate the activities of Australian companies overseas in the areas of human rights, environment, labour and occupational health and safety.' In the opinion of the Institute of Public Affairs, the *Bill* is an appalling piece of legislation, which is designed to weaken the prospects of Australian multinationals operating overseas by subjecting them to standards of conduct additional to those imposed by a host country. The *Bill* will create the opportunity for Australian competitors and other interested parties to interfere in the operations of Australian multinationals. The *Bill* will not in anyway assist the supposed beneficiaries, the poor or the environment, but it will be used as a means to buy NGOs leverage in the world of corporate conduct and government rule-setting.

The Second Reading Speech of Senator Bourne is a scandal of unrelated diatribes in search of a solution to unconnected problems. To wit:

'Most people would remember the cyanide spill earlier this year at the Australian owned Esmerelda mine in Romania.'

Esmeralda no longer exists, in such circumstances of what use is the regime outlined in the *Bill*? If it did exist it would be hotly pursued by the Romanian government.

'Most people would remember the environmental devastation caused by the Ok Tedi mine or at Freeport or Kelian.'

The Bill suggests that the Australian government should legislate for the PNG or Indonesian governments, an overt piece of imperialism. What of the rights of those nations to establish their own regimes for corporates? Moreover the PNG Government is joint venture Partner in the OK Tedi Project and it has been its veto that has stopped BHP from abandoning the project. Now the Senator might disagree with the decision of the PNG Government as does clearly BHP, but that does justify a bill, which would explicitly undermine the sovereignty of PNG Government to govern on behalf of the PNG people.

It is far from clear that either the Freeport or the Kelian mine have caused 'environmental devastation'. There are a number of NGOs which the Senator is relying on which make these claims and a number of these groups have stated this directly to the Committee. There is however strong evidence from authoritative, independent sources to the contrary.

'We just have to think of Royal Dutch Shell's presence in Ogoni in Nigeria, and the Brent Spa issue.'

Does the comment about Shell in Nigeria infer that Shell should be involved in Nigerian politics but on the side of the Ogoni, or not involved at all? The Brent Spa reference perpetuates a lie. In 1995, Shell Oil was granted permission by the British Environment Ministry to dispose of the North Sea oil rig *Brent Spar* in deep water in the North Atlantic Ocean. Greenpeace maintained that there were hundreds of tonnes of petroleum wastes on board, and that some of these were radioactive. A boycott of the company cost the company millions in sales. The deep-sea disposal was abandoned. Independent investigation revealed that the rig had been properly cleaned and did not contain the toxic and radioactive waste claimed by Greenpeace.¹

'Globally there are 100 - 200 million children between 4 and 15 years old, labouring in mines, making matches, cooking, washing, weaving, sewing and working in fields, building sites and rubbish tips.'

The greatest gains in standards of living have generally been made in those regions and nations where trade, new technology and foreign direct investment have been greatest. Multinational corporations have often been the vehicles for each of these developments. The *Bill* is not predicated on the good that multinationals bring.

'7 Million children die each year as a result of the third world debt crisis. 4,723,486 child-ren have died since the start of the year 2000'.

Children die from disease, poverty or war, none of which are necessarily related to third-world debt. This is an anti-free trade agenda most often pushed by non-government development organisations.

'Corporations have a responsibility to act as good corporate citizens.'

¹ See Patrick Moore, co-founder of Greenpeace, 2000. 'Environmentalism for the Twenty-first Century.' *IPA Review*. 52(3): 3-8.

Corporate citizenship is an intellectual discourse that assumes that governments, even democratic ones, are not competent to establish rules for the conduct of the market and the protection of the environment. Corporate citizenship is not at all related to the reason that corporates are subject of interest in the first place, their ability to create wealth. On the question of the distribution of wealth generated by corporates and others, this is a matter squarely in the hands of government. The discourse of corporate citizenship (and its accompanying baggage such as Codes of Conduct) is designed to allow non-government players a tool for involving themselves in rule-setting and in the establishment of standards of behaviour that governments would never seek to impose on corporations.

‘The St James Ethics Centre recently published results from a global poll co - sponsored by Price Waterhouse Coopers. The results showed that **92 %** of Australians think that the role of large companies is to go beyond the minimum definition of their role in society, which is to employ people and make profits. They should also contribute to setting higher ethical standards and help build a better society for all.’

Is there much doubt that Australians think that any institution; government, church, schools and so on, has a role to play in contributing to building a better society? Whether the device of ethical standards will assist this worthy cause, is problematic. The IPA notes that the St James Ethics Centre is a business that sells advice on ethics to multinationals. Its job is to promote the dialogue of ethics. Moreover, it should also be noted that Price Waterhouse Coopers is more than likely to agree with the CPA Australia submission to the *Committee* that Corporate Codes of Conduct are universally a ‘good’ thing. Accountants are in the business of measuring things, for them the greater the menu, the greater the need for their skills of measurement.

‘The same study [St James] showed that one in five respondents globally avoid a company’s product if they perceive the company not to be socially responsible and 6 out of 10 consumers form their impression based upon labour practices, business ethics, responsibility to society at large, or environmental impacts.’

The issue is, who is to judge these matters? The *Bill* establishes – Part 2 – a series of standards of conduct of the most general kind. These standards are to be reported to the Australian Securities and Investment Commission and in turn to the Parliament. The real action however, occurs elsewhere, under Part 4, section 17. Civil Actions. Based on these general standards, not only will a person suffering a loss or damage because of the action of a corporation have a cause of action, ‘an association of persons whose principal objects include protection of the public interest’ may bring an action. Again, the real object is to allow NGOs to invite themselves into the fray and on the most general of pretexts.

What is the public interest in these instances? Is it an aggrieved Australian employee put out of work because of the failure of an Australian multinational to comply with Australian standards when no other competing company had to operate by the same rules? The AICD submission is clear on this issue. It would be difficult for an Australian corporation to identify the relevant legal requirements. Clause 9.3(f) of the Bill, for example, requires an Australian company to comply with minimum international labour standards. These standards are contained within numerous treaties. For example, what is

the meaning of ‘a living wage’? Such a concept has been abandoned in Australia. Goodness knows what it would mean in Pakistan!

‘Currently the activities of multinational companies are regulated through a combination of voluntary codes, usually instigated by peak bodies or representative councils, as well as international-level efforts such as the OECD guidelines, the recent European Union resolution, and regional initiatives such as the North American Free Trade Agreement's code.’

The activities of multinationals are regulated through government law, not voluntary codes. There is nothing voluntary about taxation, or contract obligations, or environmental standards and reporting. The voluntary elements tend to be agreements for example, on freeing trade and ultimately these matters rely on trust and negotiation between countries. Moreover, Australian multinationals do not operate in a ‘mythical third world’ where the ‘natives’ do as they are told. A principal problem for Australian companies operating in foreign countries is compliance with government regulation, including the corrupt application of regulations by corrupt bureaucrats. The *Bill* does not address this issue.

‘In formulating this bill we have looked to models already in existence. In particular the 1999 European Union Resolution on EU standards for European Enterprises operating in developing countries: towards a European Code of Conduct, as well as a bill recently introduced by Congresswoman McKinney in the USA.’

Presumably a EU multinational, operating in Australia, could have a complaint brought against it by an Australian based on the EU Code of Conduct. That complaint may mean that Australian taxpayers, who through their governments and laws may be sidelined by other Australians using European conventions. The result may not be in the best interests of Australians. To the extent that NGOs complain about multinationals, globalisation, and the loss of sovereignty suffered by nations, the Code of Conduct instrument may well inhibit rather than enhance national sovereignty. Again, the distinct impression is that the *Bill* is designed to deal unelected and self-appointed moral activists into the game, and deal governments out. This tactic leads to the conclusion that governments will need to know more about the integrity and organisation of NGOs. If they desire to have a role in setting standards of conduct, and standing in the complaints process then they must be subject to the same scrutiny as are corporations and governments.

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