



5 September 2005

Dr Anthony Marinac
Acting Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
Canberra ACT 2600

Dear Dr Marinac,

Thank you for extending an invitation to the Brotherhood of St Laurence to participate into the inquiry into corporate responsibility. This inquiry provides an excellent opportunity to contribute to the development of a legal framework that encourages proactive, innovative, sustainable practices that exceed the stated legislative, legal and fiduciary requirements, and contribute to wealth creation benefits in the broadest sense.

The inquiry is timely in ensuring that the impacts of globalisation, economic liberalisation, and the increasing dominance of transnational enterprises in both trade and investment do not undermine development that is socially inclusive and environmentally sustainable.

The attached submission draws on the extensive experience of the Brotherhood of St Laurence Ethical Business Unit in the area of corporate social responsibility, supply chain management and labour rights. This work has resulted in a close working relationship between the Brotherhood of St Laurence and the OECD with regard to the OECD Guidelines for Multinational Enterprises.

The submission calls for organisational decision makers to have regard for the interests of all stakeholders and of the broader community, in response to the realities of a globalised economy. It gives consideration to revising the Corporations Act and the current legal framework governing directors' duties to ensure the broadest interpretation of corporate social responsibility. In particular, it identifies two key areas for revision: greater emphasis on compliance with local laws in countries of operation and with international standards, and development of a corporate culture and processes that value and support ethical business practices.

I look forward to the outcome of this important inquiry and would be delighted to assist further if required. Please do not hesitate to contact the Brotherhood of St Laurence concerning our submission.

Yours sincerely

Tony Nicholson
Executive Director



*Corporate responsibility
and triple bottom line
reporting*

Submission to the Parliamentary Joint Committee
on Corporations and Financial Services

Brotherhood of St Laurence
September 2005

Introduction

The Brotherhood of St Laurence (BSL) is a Melbourne-based community organisation that has been working to reduce poverty in Australia since the 1930s. Our vision is 'an Australia free of poverty'. Our work includes direct service provision to people in need, the development of social enterprises to address inequality, research to better understand the causes and effects of poverty in Australia, and the development of policy solutions at both national and local levels.

The BSL is actively involved in ethical business and corporate social responsibility (CSR) in its own commercial enterprises (including Mod-Style, an optical frames importing business), with an emphasis on responsible supply chain management in China and Australia. This experience has been enhanced through ongoing research into CSR (see Holm & Lillywhite 2002; Lillywhite 2003; Lillywhite 2005), and active participation in several corporate stakeholder engagement processes, including Westpac and the National Australia Bank.

The BSL works closely with the Australian National Contact Point (Foreign Investment and Trade Policy Division, Treasury) to promote the OECD Guidelines for Multinational Enterprises and has presented at the OECD Roundtable on Corporate Social Responsibility in Paris (June 2002) and the OECD Global Forum on International Investment in Shanghai (December 2002). Additional work has included presentations at the OECD Watch International Multi-Stakeholder Roundtable in Brussels (March 2005), and the OECD Investment Committee consultations (April 2005). The BSL's Ethical Business Manager, Serena Lillywhite, is the Australian representative on the OECD WATCH Consultative Committee and in 2004 prepared a submission to the OECD Steering Committee as part of the review of the OECD Principles of Corporate Governance.

A) Current regard of stakeholder interests by organisational decision makers – what happening now?

Global context of CSR

This inquiry into corporate responsibility and triple bottom line reporting (TBL) provides an opportunity to ensure that consideration is given to revising the Corporations Act and the current legal framework governing directors' duties to ensure the broadest interpretation of corporate social responsibility (CSR) and lasting application of the Act. In particular, it identifies two key areas for revision:

- greater emphasis on compliance with local laws (including labour laws) in countries of operation and with international standards
- development of a corporate culture and processes that value and support ethical business practices.

Current international thinking places the corporate governance framework within the broader CSR framework; however, the existing Corporations Act has a narrower interpretation focused on the responsibilities and obligations of the enterprise and board of directors.

The Brotherhood of St Laurence's research and active participation in corporate/community stakeholder processes has revealed that many enterprises, particularly multinational enterprises, are increasing developing CSR practices and reports in response to global trends. This suggests that in practice, some enterprises and boards are already operating beyond the narrow requirements of the Corporations Act.

The degree to which enterprises observe fundamental principles of CSR and good governance is now an important factor in investment decisions and sustainable development objectives. In addition, CSR and TBL reporting are increasingly being included in risk management strategies

and activities, and this has necessitated consideration of broader issues such as staff training and the impact of operations on local communities. Further, the more innovative enterprise decision makers are now using a strong CSR platform to develop a competitive advantage, and recruit and retain good staff.

The term corporate citizenship is being used by some enterprises and the media in response to recent adverse corporate events (involving HHH, Enron, James Hardie, etc.) to demonstrate the business leaders' growing awareness that they have responsibilities that go beyond what is stated in the Corporation Act. The challenge for key personnel, however, is to operationalise their commitments and develop a corporate culture that values ethical business practices. As enterprises consider the social and environmental impacts of their operations, as well as the economic, it appears that environmental concerns are proving to be an easier starting point than social concerns. Measuring waste, undertaking environmental impact assessments and purchasing environmentally friendly equipment are easier to implement than addressing some of the social impacts such as the use of 'sweated labour' and human rights abuses amongst supply chains.

The international community, particularly through multilateral bodies such as the ILO and the UNDP, is also actively involved in promoting CSR. Both private and non-governmental authorities are playing an increasing role in the social regulation of business. International organisations, some commercially focused, are funding projects that enhance commercial relations, while others support civil society organisations that develop and deliver occupational and other health programs, promote empowerment and contribute to improved governance and accountability. Not surprisingly, several consultancy groups have emerged with a commitment to enhancing working conditions and understanding responsible supply chain management. A role is also being played by international lobby groups and forums that support workers' rights: these include China Labour Watch, Business for Social Responsibility, Marie Stopes International and (until its recent disbanding) Global Alliance for Workers and Communities.

Listed below are some of the current responses to CSR and issues for consideration in this inquiry. Further detail and examples can be found in the references.

Codes of conduct

Corporate social responsibility processes are most commonly implemented through corporate codes of conduct (developed, for example, by Nike, Disney, Reebok, Timberland); through factory certification instruments, such as SA 8000; and, to a lesser extent, through multi-stakeholder initiatives such as the Ethical Trading Initiative [UK] (companies such as Pentland and Sainsbury's have adopted ETI processes), the Fair Labor Association [USA] and the Fair Wear Foundation (Netherlands). There are also industry-specific standards (for example in the textile and apparel industry) and multilateral mechanisms such as the OECD Guidelines for Multinational Enterprises, the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights, the Global Reporting Initiative, and the UN Global Compact.

Corporate codes and certification standards are important, alongside national laws and international standards, in fostering core labour standards (particularly where national laws are inadequate or poorly regulated) and in identifying some problems and compliance issues. However, codes too often represent a shallow attempt to understand the real issues in transnational supply chain management or to address long-term sustainable efforts to promote fair and decent working conditions. Codes of conduct do not necessarily reflect or ensure acceptable factory and labour conditions. Codes are often developed at a distance, without involvement and commitment from both workers and managers. They are frequently poorly promoted and understood within factories, and workers are usually not given an opportunity to comment freely and without reprisal on their operation in the workplace. In addition, many codes are insensitive to local laws and customs; and they may ignore country-specific labour relations or different understandings about the role of trade unions, for example by claiming that the principle of freedom of association is honoured. A recent

report by Students and Scholars Against Corporate Misbehaviour (SACOM) documents the inadequacy of codes and audits in factories that produce books for Disney in China (SACOM 2005).

In isolation, codes cannot be relied on to protect workers' rights, nor should they be seen as alternative to national labour laws or a substitute for government ratification of international labour standards. Codes of conduct can, however, be a useful first step in harnessing an enterprise's commitment to CSR, particularly when accompanied by a meaningful and independent process of monitoring and compliance.

Monitoring and compliance

An important aspect of CSR concerns the monitoring, compliance and enforcement of Codes. This is complex and problematic. Inspections tend to be ad hoc and not necessarily undertaken by personnel skilled enough to identify falsified information (LARIC 2000). A further concern is the level of independence of the auditors. For example, it is not uncommon for multinational enterprises to engage large accounting firms to undertake factory audits in China to monitor compliance with company codes. These are often the very same firms that provide other accountancy and financial services to the enterprise and there is concern amongst some NGOs about potential conflict of interest and lack of independence.

Risk management (and the potential for 'brand damage' and consumer criticism) is currently the real driver of CSR and compliance mechanisms, particularly when the enterprise is operating in developing countries with poor labour practices (such as China) or conflict zones (such as the Democratic Republic of Congo). However, the influence of stakeholders on enterprises' corporate governance framework and day-to-day operations is increasing. These stakeholders include trade unions, non-government organisations, local communities and consumers. For example, since 2000, trade unions and NGOs have raised 100 cases against enterprises that are in breach of the OECD Guidelines for Multinational Enterprises (Feeney, in press).

Responsible supply chain management

Responsible supply chain management is a critical aspect of CSR. Within Australia's textile industry, mechanisms such as the Homeworkers Code of Practice and the Victorian Outworker (Improved) Protection Bill, and prosecution of some local garment manufacturers by the Textile Clothing and Footwear Union, have resulted in some improvement in supply chain transparency and accountability and improved conditions for home-based outworkers. This trend is set to continue with the planned introduction of mandatory legislation in Victoria.

Relatively few organisations, however, recognise that they share responsibility for labour standards and human rights abuses that occur among their suppliers of goods and services, particularly offshore.

When enterprises engage in cross-border trade, supply chain responsibility becomes more complex. Indeed, decisions to procure goods and services from countries such as China, India, Vietnam and Indonesia are often made to appropriate the benefits of cheap labour. The increased use of production networks that encompass trading houses, wholesalers and licensing agents tends to mask the factories and the conditions under which goods are made.

Nike's recent move to make available information on more than 700 suppliers is an indication that the larger enterprises are beginning to take greater responsibility for their supply chain. This assists in 'debunking' some concerns that supply chain transparency will compromise commercial confidentiality.

Training and capacity building

The more innovative enterprise decision makers are beginning to recognise the limitations of codes of conduct and of monitoring and compliance mechanisms. These organisations are undertaking small but important training programs, to build capacity offshore and develop relationships with suppliers and local stakeholders to promote CSR, encourage fair and decent working conditions, and ensure the corporate values and culture are better understood. Some companies have recognised that codes alone will not provide the ‘reputation protection’ they seek, and are introducing their own factory-based training in countries like China. In some cases (for example, Pentland, Reebok, Levi Strauss, Adidas-Salomon and Nike), they are working with NGOs and specialist consultants to deliver broader training which includes communication skills, occupational health and safety and HIV/AIDS awareness.

Stakeholder engagement processes

In addition to international training initiatives, within Australia there is a growing trend by larger enterprises, particularly banks, to establish ‘stakeholder engagement panels’. The best examples are those with a clear agenda and capacity for civil society representatives to share their expertise and feel confident that they are making a difference. Less desirable are the ‘quick fix’ short meetings which do little more than launch a triple bottom line report and seek endorsement from recognised community groups.

The key objective should be to ensure meaningful discussions and create real opportunities that will benefit all participants and will not simply appropriate community sector knowledge and language. ‘Stakeholder fatigue’ is a concern of some community participants in these programs.

B) Corporate responsibility and accountability to stakeholders – what needs to happen in the future?

Organisational decision makers need to have regard for the interests of all stakeholders in the context of a global economy. This applies to operations both in Australia and in other countries, including where goods and services are sourced. The broader obligations and responsibilities of directors and management should include promoting responsible social and environmental practices that minimise any adverse impact on the natural environment, local communities and employees, including those in non-OECD countries and conflict zones.

Business ethics and corporate awareness of CSR must be planned and implemented to protect the long-term reputation of the firm and to comply with local laws and international best practice with regard to business and human rights. However, this needs to be seen as an integral part of the governance framework, not an additional or secondary responsibility. Decision makers and directors should ensure the development of internal programs, guidance and management systems that underpin a corporate culture that is committed to good corporate citizenship, ethical procurement and good business and employee conduct. This is particularly important in non-OECD countries and developing countries that may not have a strong institutional or regulatory framework.

Management and operational systems should pay serious attention to:

- knowledge of relevant labour laws and practices in all countries of operation
- transparent supply chains, production networks, licensing arrangements and portfolio investments
- public documentation of suppliers
- environmental impact assessments
- knowledge and documentation of any adverse impact on local communities

- ethical sourcing and procurement practices
- compliance with international standards (e.g. OECD Guidelines for Multinational Enterprises)
- protection of fundamental human rights in the workplace.

Directors also have a responsibility to promote the positive contributions that enterprises can make to economic, environmental and social progress, and minimise the negative impacts. Consideration must be given to:

- sustainable development and foreign direct investment
- efficient use of capital, technology, human and natural resources
- transfer of technology
- development of human capital
- greater coherence between the social, economic and environmental objectives
- promotion of human rights.

C) Limitations of ‘directors duties’ in achieving corporate responsibility

This inquiry provides an opportunity to acknowledge the vital role of the Board of Directors in strategic thinking and planning of enterprise operations. What is required is a legal framework that encourages proactive, innovative, sustainable practices that exceed the stated legislative and fiduciary duties requirements, and contribute to wealth creation benefits in the broadest sense.

The Corporations Act identifies directors as accountable to the company, and indirectly to shareholders. In effect, the Act may discourage them from having regard for the interests of stakeholders other than shareholders and the broader community. This is inadequate and does not meet international principles of corporate governance, or contribute to a corporate culture that values responsible business practices. Further, it does not recognise the responsibilities and obligations of directors and enterprises acting in both domestic and international environments where adequate laws may not exist, particularly in developing countries and conflict zones. In the current context, directors must ensure the enterprise’s activities are consistent with international treaties and voluntary corporate social responsibility mechanisms. Further, the board’s accountability should include not only company’s auditors and shareholders, but also stakeholders and communities affected by the company’s activities wherever it operates.

Directors have community obligations to promote corporate social responsibility, create an ethical business culture, apply high ethical standards and act with due diligence and care. Directors’ responsibilities should be expanded to include oversight of:

- responsibilities to local communities in all countries, including conflict zones
- the human rights implications of business decisions
- the social and environmental implications of business decisions
- responsibilities to stakeholders other than shareholders and to the broader community
- role and responsibilities of financial intermediaries and portfolio investments
- greater disclosure on cross-border activities, including supply chain, production network and licensing transparency and accountability
- development and implementation of processes to ensure compliance with local laws and international standards
- development of a corporate culture that values ethical business practices and CSR.

D) Revision of the Corporations Act

The corporate governance framework should be developed with a view to both compliance with local laws (both in Australia and overseas) and international standards, and the development of a corporate paradigm that promotes and values an ethical corporate culture. This will necessitate considering the overall impact on local communities, and must encompass the social and environmental principles of CSR.

The links between sustainable foreign direct investment and corporate governance must be made and documented in the Act. In particular, additional reference should be made to cross-border responsibilities regarding transparent investment and capital flows and related trade and services, including supply chain management. This is applicable in both OECD and non-OECD countries. The corporate governance framework must recognise the rights of all stakeholders and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound and socially responsible enterprises.

To achieve this, the Corporations Act must identify the internationally recognised treaties, standards and mechanisms that form part of the global corporate governance framework. These include:

- ILO Declaration on Fundamental Rights at Work
- UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights
- OECD Guidelines on Multinational Enterprises
- OECD Principles of Corporate Governance
- OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions
- UN Universal Declaration of Human Rights
- Rio Declaration on Environment and Development; and
- UN Global Compact.

The commentary of the Act must be developed to promote mechanisms and incentives that require the Board to exceed their legal requirements in daily operations. Further, stakeholders need to be recognised as potential whistleblowers: accordingly, they need to be able to raise concerns and be assured of adequate protection.

The Corporations Act must ensure that timely and accurate disclosure is made to all shareholders and stakeholders on all matters regarding the corporation, including the financial situation, performance, ownership and social, environmental and human rights governance of the company. Disclosure should be consistent with the OECD Guidelines for Multinational Enterprises, to which the Corporations Act should make reference. These Guidelines have an implementation mechanism that provides opportunities for stakeholders to raise specific instances that may be at odds with the Guidelines for investigation and comment by the appropriate National Contact Point.

E) Alternative mechanisms to enhance CSR

In addition to the Australian Corporations Act, there are numerous complimentary internationally recognised instruments that are relevant to a company's decision-making processes concerning areas such as the environment, anti-corruption or ethical concerns.

Transnational corporations and other business enterprises, their offices and persons working for them are obligated to respect the widely recognised responsibilities and norms contained in the UN

treaties and other international instruments. The International Labour Organization (ILO) Declaration on Fundamental Rights at Work is often cited as the appropriate benchmark for core labour standards. However, a significant challenge for enterprises is how to interpret and operationalise these standards, which are addressed to nation states.

Although many of the international mechanisms which form the basis of most CSR standards are non-binding, they do in fact carry a degree of moral authority. The recently developed OECD Guidelines for Multinational Enterprises are currently the highest set of standards available amongst the global corporate, social and environmental responsibility instruments. They are the most important code of conduct that exists for business, and they provide for citizens to raise concerns about the practices of international companies with the home government. They are unique in that they have the support of the business, trade union and NGO sectors, although there are still significant barriers to their successful implementation. In addition, the Guidelines allow 'specific instances' to be raised, investigated and reported on.

Implementation of the Guidelines in non-adhering countries such as China is problematic; however, opportunities do exist for enterprises to pursue CSR. Complex subcontracting and supply chain arrangements make application of the Guidelines more difficult, but there is a role for home governments in supporting those enterprises seeking to do the right thing. For example, in Australia, Austrade and the Export Finance and Insurance Corporation can assist firms, particularly small and medium-sized enterprises, to understand the realities of sustainable and socially responsible investment in developing countries.

To assist companies, governments need to make the connections between human rights and international business, and to accept some responsibility for the business activities of enterprises abroad to contribute to compliance with labour and environmental standards. They can play a significant role in persuading enterprises to improve their transparency and accountability, particularly in their global production networks, licensing arrangements and portfolio investments.

Other complimentary mechanisms that must be considered include:

- UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights
- OECD Principles of Corporate Governance
- OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions
- Rio Declaration on Environment and Development
- UN Global Compact.

As outlined in section A above, the proliferation of codes of conduct (SA 8000, Ethical Trading Initiative, company-specific, industry-specific, etc.) is a direct response to a growing awareness of CSR, but is more closely linked to risk management strategies. While codes of conduct can be a useful first step in harnessing an enterprise's commitment to CSR, particularly when accompanied by a meaningful, independent monitoring and compliance, they cannot be relied on to guarantee ethical business practices.

Other more innovative mechanisms appear to be having more effect on the practices of some enterprises which have been involved in CSR, both domestically and internationally. These include:

- mapping the supply chain and documenting conditions and impact on all stakeholders
- multi-stakeholder initiatives
- training and capacity building projects
- engagement processes and partnership

- ethical procurement and purchasing strategies
- linking CSR to competitive advantage and ‘smart business’.

The significant challenge facing advocates of CSR is that the current ‘framework’ consists of predominantly voluntary mechanisms. This means that their effectiveness is limited, and civil society representatives and lobby groups are increasingly calling for enforceable intergovernmental regulation to ensure greater corporate accountability and ethical business practices. There has been a gradual hardening of approaches, moving from those that rely on corporate self-regulation to co-regulation and multi-stakeholder initiatives (Utting 2005).

In considering regulatory, legislative or other policy options, the Inquiry should give consideration to Utting’s report, *Rethinking business regulation: from self-regulation to social control*, and in particular pages 22–5, which outline the range of voluntary and legal approaches to CSR implementation and regulation.

F) Monitoring, compliance and reporting

Monitoring codes of conduct and reporting effectively are a major challenge for enterprises. As outlined in section A, it is not always easy to find suitably trained, independent auditors to monitor company codes, particularly in developing countries with poor regulatory environments and complex local laws. Regulation, monitoring and compliance remain perhaps the most challenging aspect of CSR.

There has been a slow but steady increase in the use of the Global Reporting Initiative (GRI) as a reporting tool. This has been enhanced by work of the OECD Investment Committee and representatives of GRI to ensure greater synergy between the OECD Guidelines for Multinational Enterprises and the GRI to promote CSR. The Ethical Trading Initiative also has an annual and cumulative reporting mechanism to encourage incremental improvements in CSR practices. However, the reality is that these initiatives involve only a small number of transnational enterprises (TNC) and their suppliers, and there is a great deal of work to be done to gain the involvement of more enterprises.

The number of enterprises who produce TBL or sustainability reports is relatively small. However, of greater concern is the growing trend to again produce these reports as part of a risk management strategy. BSL research (Holm & Lillywhite 2002) confirmed that many enterprises simply document their legal obligations (e.g. providing a safe workplace and training opportunities) as evidence of their capacity to meet their ‘social’ obligations. Few enterprises document their offshore activities, supply chains, conditions under which goods and services are procured and any adverse effect their activities may be having on local communities. Many such reports are little more than marketing or public relations exercises. However, like codes of conduct, they are a useful tool in harnessing an organisation’s commitment to CSR and they can begin the process of reporting on business operations beyond just financial performance.

G) A global approach to CSR

Research undertaken by the BSL suggests that the most effective way to tackle CSR is through a coordinated approach involving global collaboration between government, business, trade unions and civil society. Industry associations and professional bodies have a role to play in ensuring that organisational decision makers are meeting the needs of all stakeholders and promoting ethical business practices. The Commission of the European Communities has responded to the need for a collaborative approach. It has affirmed that ‘the recognition that sustainable economic growth goes

hand in hand with social cohesion—which implies respect for core labour standards—now underpins the strategic and social policy goals of the Economic Union’ and that ‘global market governance has developed more quickly than global social governance’ (2001, p.4).

In an operational context, long-term meaningful relationships with suppliers, encouraging discussion of CSR and opportunities to work in partnership, are most likely to facilitate good CSR practices. Further, incentive schemes that link export finance and insurance programs to good CSR practices will assist in strengthening the governance framework.

There are a growing number of innovative policy responses to promote CSR. Across the US and Canada, local governments have declared ‘no sweat’ cities or communities, ensuring that uniform and other garments are not sourced from factories with poor labour conditions. As a result, many companies publicly announced the location and complexity of their supply chain. The State of New York adopted an anti-sweatshop bill in 2002, and directed the State University of New York and City University of New York to procure their apparel from suppliers and manufacturers who comply with international labour standards (for further information, see <www.labor-religion.org>).

In Umbria in central Italy, a procurement regulation has been developed which gives priority and contracts to companies that are SA 8000 certified, and France now requires all nationally listed corporations to report to shareholders and stakeholders on corporate social responsibility issues including labour practices (for further information, see <www.maquilasolidarity.org>).

The recent report by Utting gives a good overview of the rapidly evolving CSR agenda, and of developments through both voluntary and regulatory arrangements that place greater emphasis on corporate obligations, legal frameworks and implications for non compliance. Multi-stakeholder initiatives have resulted in a small but influential shift away from corporate self-regulation to greater dialogue and collaborative regulation.

Conclusion

This submission draws attention to the international dimensions of CSR. In particular, it suggests that any changes to the Corporations Act recognise the global dimensions of business, and the fact that most companies are operating in a range of jurisdictions. This adds to the complexity of CSR and warrants a range of responses considering business impact on all stakeholders, including local communities and supply chains. It suggests this is best achieved by developing and implementing systematic business processes and a corporate culture that values ethical practices. Organisational decision makers can play a key role in ensuring this occurs, and these broader responsibilities should be acknowledged the Corporations Act.

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