amnesty international australia

Submission to the

Joint Committee on Corporations & Financial Services

regarding the

INQUIRY INTO CORPORATE RESPONSIBILITY
"Are Human Rights Everyone's Business?"

September 2005

Submitted by

Amnesty International Australia

PO Box 1708
CANBERRA ACT 2601

Phone: Rebecca Smith (02) 6202 7503
Fax: (02) 6257 7588

The global defender of human rights

Table of Contents:

Amnesty International

Amnesty International is a worldwide movement of more than 1.8 million people across 150 countries working to promote the observance of all human rights enshrined in the Universal Declaration of Human Rights and other international standards. In pursuit of these goals, Amnesty International undertakes research and action focused on preventing grave abuses of human rights including rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination.

Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Amnesty International has been at the forefront of work on the development and fulfilment of human rights standards for over 40 years. In addition to its work on specific abuses of human rights, Amnesty International urges all governments to ratify and implement human rights standards and works to create a human rights culture throughout society.

1. Executive Summary

Amnesty International Australia (AIA) appreciates this opportunity to make a submission to the Joint Committee on Corporations and Financial Services and commends the Australian Parliament on their consideration of this important issue.

In this submission, AIA acknowledges that many companies are already delivering a standard of corporate behaviour which has a very low risk of impinging on human rights and is acceptable to their stakeholders. However, other corporations are relatively more likely to take actions which could impinge on human rights and place their corporate reputations at risk in the quest for short-term profits.

While self-regulation and the effort to match one's peers is having a helpful effect for many companies, we conclude that there remains a need for general standards of corporate social responsibility (CSR). AIA believes that an appropriate, limited level of codification of CSR standards within the Corporations Act is desirable for Australian companies and for the broader community. We believe that directors' duties in particular should be modified to confirm that directors should undertake reasonable diligence to ensure corporate decisions and operations do not damage human rights. This would deliver the regulatory certainty demanded by companies and investors alike.

Amnesty International believes that the most effective international statement of CSR standards, and therefore definition of 'human rights' for this purpose, is emerging from the so-called "UN Norms on the Responsibilities of Transnational Corporations"[1].

We recommend a list of specific human rights of relevance to corporations, which are derived from the draft UN Norms. This proposal is seen to complement to the voluntary behaviour of companies performing at best practice, build on the many voluntary codes of conduct which have been created in the last decade, and provide consistency with an identified global standard.

AIA submits that the Corporations Act should be modified to specify that:

- directors should exercise reasonable diligence to ensure human rights, as defined, are not breached as part of their operations or as a result of their decisions;

- directors should undertake reasonable steps to ensure that other parties whose behaviour a company influences (such as its suppliers and outsourcers) do not breach human rights;
- companies should as part of their normal annual auditing processes complete and table to the Australian Securities and Investments Commission a simple addendum; and that
- this addendum should be made available via the company's website in conjunction with normal annual reporting, so that it can be accessed by shareholders and other stakeholder groups.

Critics of a legislative framework for CSR have charged that it would be unduly onerous on corporate behaviour. We submit that Australian businesses have variously learned to cope with range of legal instruments to protect rights, including anti-discrimination and occupational health and safety laws. In this context, an extension of corporate law to encompass appropriate standards of CSR would not place an excessively heavy burden on the activities of Australian companies.

Amnesty International believes that an appropriate, limited level of codification of corporate social responsibility standards within the Corporations Act is desirable for Australian companies and for the broader community. We believe that directors' duties in particular should be modified to confirm that directors should undertake reasonable diligence to ensure corporate decisions and operations do not damage human rights. This would deliver the regulatory certainty demanded by companies and investors alike. It would complement the voluntary behaviour of companies performing at best practice, and build on the many voluntary codes of conduct which have been created in the last decade. This addition to the Corporations Act would work best if accompanied by a strong campaign from the Australian Government to promote CSR, reward those performing well, and encourage involvement of businesses in their local communities.

2. Introduction

Many companies are already delivering a standard of corporate behaviour which is acceptable to their stakeholders – not just their shareholders and investors, but their customers, employees, and the local communities in which they operate.

Some companies are not, for reasons related to their skills, resources, their preferred level of risk-taking, and the relative importance of brand equity to their overall shareholder value. And because these firms are generally relatively less dependent on the value of their brands and/ or reputation than more brand-conscious companies, it is likely that some of them will continue to put their corporate reputations at risk. That is, they will allow themselves to be associated with human rights violations.

Since an environment of legal certainty is in the interests of all participants in a market economy and of the broader community, AIA believes that an appropriate, limited level of codification of corporate social responsibility standards within the Corporations Act is needed, particularly for those companies whose performance is not meeting the community's expectations. We believe that directors' duties in particular should be modified to confirm that directors should undertake reasonable diligence to ensure corporate decisions and operations do not damage human rights.

This would complement the voluntary behaviour of companies performing at best practice, and build on the many voluntary codes of conduct which have been created in the last decade. This addition to the Corporations Act would work best if accompanied by a strong campaign from the Australian Government to promote CSR, reward those performing well, and encourage involvement of businesses in their local communities.

3. Human Rights are Everyone's Business

Amnesty International submits that all companies should aim to meet the standards of human rights set out in the Universal Declaration of Human Rights (UDHR) as a fundamental part of doing business. The UDHR, signed on 1948 by the United Nations and ratified by over 190 countries, is one of the touchstones of international law. It clearly states that the obligations of the Declaration apply to "all organs of society". This means that not just individuals, but governments, corporations, and other unincorporated entities should be expected to respect human rights and ensure that they do nothing to impinge upon human rights in their day-to-day activities.

However, the UDHR, while providing a helpful basis for international law at a general level, tends to be perceived to conflict with the rationale for the existence of companies: to make profits and deliver those to shareholders. The corporate form is predicated on the opportunity to derive profit from lawful business activities; indeed, the aim of making money is the very essence of a company. Company directors are under a clear fiduciary duty to maximise profits delivered to their shareholders.

The real question is whether short-term profits should be maximised at the expense of long-term profits. This discussion is not a new one. Henry Ford, considered one of the greatest capitalists of all time, was sued by his own shareholders in 1919 because he had invested in new plants and increased his employees' minimum wage to $5 per day. Ford's shareholders wanted to receive immediate profits. But Ford was betting that happy employees and new factories would deliver higher profits in the long term, more than making up for the impact on short term profits. Ford lost the lawsuit, and one might say that the debate has continued ever since.

While Amnesty International is concerned with human rights specifically CRS, as a term covers considerably wider subject matter. A helpful working definition of CSR is that used by the group Business for Social Responsibility: "Operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business."[2] Amnesty International believes that companies which meet the human rights standards identified in this paper will in so doing meet the public expectations that society has of business.

In an Australian context, the comments by the Chairwoman of James Hardie Ltd, Ms Meredith Hellicar, in March 2005 show that the CSR obligations of Australian companies should be clarified. As is now well-known, James Hardie's corporate re-organisation in 2001 had the effect of potentially cutting off future compensation payments to asbestos victims. But as chairwoman of the company, Ms Hellicar suggested that the responsibility of James Hardie's directors other than for short-term profits remained unclear. She called for amendments to corporate law to permit directors to 'integrate corporate social responsibility into their decision making without fear that they are going to be sued'.[3]

Amnesty International believes that, as The Economist put it, "Political freedom tends to go hand in hand with economic freedom"[4]. That is to say, companies should comply with the UDHR not just for moral, but for practical and economic reasons too. The rule of law is intrinsic to citizens leading their lives, just as it is to running a multinational business.

Meeting accepted standards of CSR generally and human rights specifically can do much to promote a company's image as a good corporate citizen. This has positive implications for interactions with three key groups of stakeholders: investors and shareholders, employees and customers.

- Investors, particularly the growing cohort of ethical investment firms, are more likely to invest in companies with good reputations. The funds under management in superannuation in Australia is increasing, as is pressure from individuals to understand where their super is invested. The

introduction of super choice in Australia will also serve to increase the importance of having a good corporate reputation.

- Workers are more easily attracted to and retained by firms with good reputations. Many companies are aspiring to be “employers of choice”; it is difficult to achieve this without a positive corporate reputation.
- Customers are more likely to buy products from firms with good reputations. For example, Harvard Business School recently released a study across 12 countries which found that “a consistent 13 per cent of the variance in consumer preferences among global brands [is attributable] to perceptions of their corporate social responsibility.” [5]

This means companies with good reputations and responsible policies will generally deliver better financial performance that those with bad reputations. In so doing, these companies may trade off some short term profits in favour of higher long term profits. That CSR and financial performance are positively correlated is increasingly supported by hard empirical evidence. To grasp the content of a growing stream of academic research into this topic, the "study of studies" conducted by Professor Marc Orlitzky of the Australian Graduate School of Management is instructive. Professor Orlitzky and his colleagues examined 52 individual studies conducted between 1972 and 1997, a total sample size of over 33,000 observations, and concluded that there is a positive correlation between CSR performance and corporate financial performance.[6]

3. Inequalities in Human Rights Risks

If companies are already responding to consumer sentiment in favour of good corporate behaviour, why is there a potential need for changes to the Corporations Act? Simply because not all companies are behaving appropriately, and some never will. This reflects different levels of risk-taking, resources and skills across different kinds of companies, industries and geographies. While some companies are addressing CSR, other companies are more inclined to focus on delivery of profits to the exclusion of all other considerations, including the impacts of their activities on local communities and even their own employees.

Case study: Bhopal, 1984

On the night of 2nd December 1984 over 35 tons of toxic gases leaked from a pesticide plant in Bhopal, India. The plant was owned by Union Carbide India Limited, an affiliate of US-based multinational Union Carbide Corporation. In the next 2-3 days more than 7,000 people died and many more were injured. Over the last 20 years at least 15,000 more people have died from illnesses related to gas exposure. Today more than 100,000 people continue to suffer chronic and debilitating illnesses for which treatment is largely ineffective. Union Carbide, and Dow Chemical which took over Union Carbide in 2001, have consistently refused to comprehensively remediate the Bhopal site, causing health problems for local residents which continue to this day. Union Carbide, and Dow, have refused to identify in full the nature and toxicity of the gases released during the leak, making adequate medical treatment difficult. And twenty years after this tragedy, most survivors are still awaiting just compensation.

Amnesty International’s report, “Clouds of Injustice”[7], published in 2004, shows that in the years prior to the Bhopal tragedy a number of risks were taken at the Bhopal site. Appropriate safety precautions were not taken. The processes and standards observed by Union Carbide at its US facilities in West Virginia were not followed. There was no mechanism to warn local residents if an incident did occur.

It is clear that Union Carbide / Dow failed to comply with their obligations and responsibilities to prevent the gas leak and address its consequences.

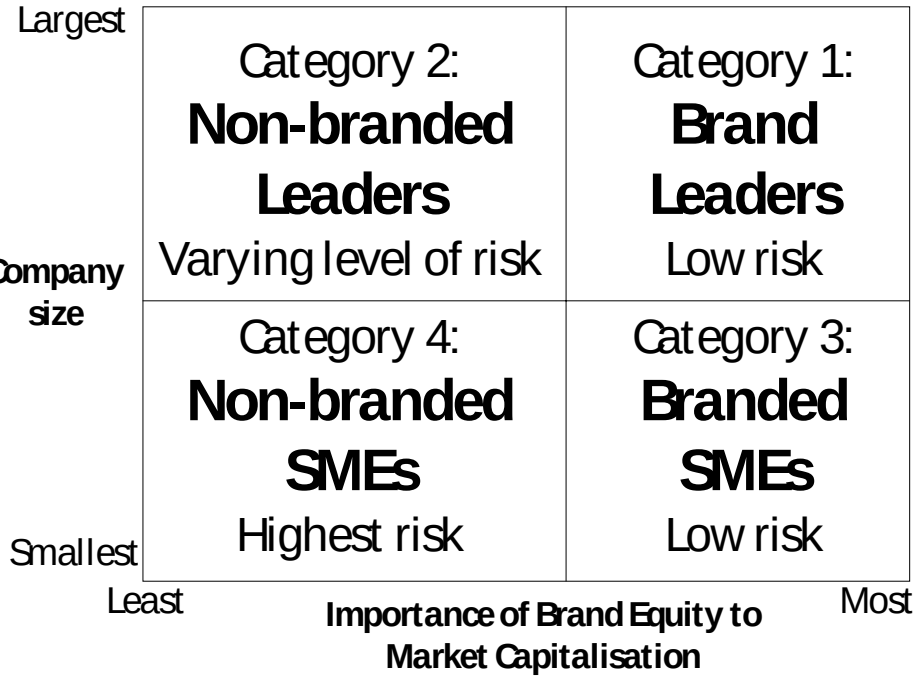
The actions of Union Carbide, and later Dow Chemical, in relation to the Bhopal tragedy provide a clear illustration that some companies do not see a correlation between responsible behaviour in the local communities in which they operate and their financial performance.

While Bhopal is an extreme example, it is not by any means an isolated one. So if a positive correlation between corporate reputation and financial performance is now fairly well-known, why are some companies hurting their reputations by not acting responsibly in the local communities with which they interact? The answer lies in understanding the different contexts of different companies.

Many Australian and overseas corporations have changed their process and policies towards corporate social responsibility, towards an approach to their business which is more sustainable over the long term. Leading Australian companies such as Westpac, IAG and BHP Biliiton are winning praise for their progressive approach to the communities in which they operate. It is plain that over time, the operations of market leaders such as these will tend to set the standard to which their peers aspire.

Amnesty International's concern is that this "rising tide lifts all boats" argument, while correct, is incomplete in that many companies do not in the short-term compete in any meaningful way with these market leaders. In the minerals sector, for example, it is clear that large, visible, heavily traded companies such as BHP Billiton and Rio Tinto will be subject to a level of market and other scrutiny much greater than the hundreds of small operators listed on the Australian Stock Exchange. Amnesty International believes that in many cases these smaller companies do not face, or believe they do not face, the business risks associated with association with human rights offences. In short, companies of different sizes and industries face differing levels of human rights risk and broader reputation risk. A summary of Amnesty International's view of which companies are at risk of involvement in situations of human rights concern is illustrated by Figure 1.

Figure 1: Different sorts of companies face varying levels of human rights risk.



Category 1: Brand Leaders:

- These companies own household-name brands, and so are highly visible to the consumers of their products.
- The value of their brands is integral to the level of their market capitalisation. They guard their brands with great care, and invest actively to increase brand equity.
- In operational terms these companies generally operate at or near best practice.
- **Example industry:** Fast Moving Consumer Goods
- **Bottom line:** Because these companies value their brands and therefore their corporate reputation highly, they are generally at low risk of human rights concern.

Category 2: Non-Branded Leaders:

- Large companies with lower reliance on consumer brand equity. While the companies themselves may be well-known to the general public, their shareholder value subsists more in "tangible" operational activities than "intangible" brand names.
- These companies often operate at best practice in their business processes.
- As these are large companies, they have well-developed skills in risk management and are often highly skilled in engaging with investors and shareholders.
- However, these companies can lack understanding of reputation risk. They may define their responsibilities very narrowly, and in particular sometimes choose not to take account of the flow-on effects of their actions on local communities and the environment.
- The visibility of these companies to the general public and other businesses makes them critical case studies.
- **Example industries:** Heavy manufacturing, minerals, oil & gas companies.
- **Bottom line:** Generally speaking these companies have few human rights concerns. However, in certain cases the relative unimportance of brand equity compared with Branded Leaders seems to encourage them to take actions which risk their reputations and can associate them with human rights violations. In short, they represent a varying level of risk of human rights concern.

Category 3: Branded SMEs (Small & Medium Enterprises):

- These are smaller companies with strongly differentiated products or services.
- They drive to protect and improve their brand name, recognising that it is critical to their business success.
- They often operate at or near best practice.
- **Example industries:** Niche manufacturing, retail and services industries.
- **Bottom line:** Low risk of human rights concern.

Category 4: Non-branded SMEs:

- Small to medium companies with low brand equity.
- Limited resources and lack understanding of reputation risk.
- Often aim for lowest cost, not best practice.
- Companies with operations or supply chains which extend to countries where human rights violations occur are particularly at risk.
- **Example industries:** Light manufacturing, smaller importers, smaller minerals companies.
- **Bottom line:** These companies have the least resources to protect their corporate reputations. In fact, they have limited reputations to protect. As such, they represent the highest risk of human rights concern.

Category 1 and Category 3 companies are those most exposed if their brands or corporate reputation are damaged. As a result, in the 21st century they are the companies most likely to self-regulate by considering the impact of their activities on their brands and reputation. Category 1 companies in particular are most likely to have learned from some of the public relations disasters of the 1990s.

Nike, a company which has in the past been criticised for the human rights performance of its sub-contractors in Vietnam and elsewhere, is clearly in Category 1. It is no coincidence that Nike has strived for some years to improve its oversight of the activities of its outsourcers, and that its corporate reputation has improved as a result. In 2005 Nike founder and chairman Phil Knight took personal responsibility for what he said were Nike's previous errors in managing its entire supply chain. He also described the considerable progress Nike has made both in terms of the working conditions of the factories its subcontractors operate, and the monitoring of these sites by independent third parties.[8]

Category 2 companies are large enough to have mature capabilities and processes for managing risk. However, because their brands and reputation are relatively less important to them than for Category 1 companies, they are more likely to undertake short-term activities which risk their long-term profitability and reputation. Amnesty International would classify Union Carbide / Dow Chemical in this category. While most companies in Category 2 display a responsible attitude towards the local communities who lives they may impact, incidents like Bhopal illustrate that some companies are willing to cut corners with disastrous results. These companies, like all "organs of society", are obliged to protect and respect human rights. More specifically, they should be required by law to take reasonable steps to take account of the interests of local communities in their activities. Category 2 companies are the ones with most to benefit from the clearer legal framework which James Hardie's Ms Hellicar requested in March 2005.

Category 4 companies have relatively little brand equity to protect, and because of their size have limited resources with which to manage risk. As smaller enterprises, many are not publicly traded. They may have limited understanding of the Corporations Act, let alone the norms of international human rights law or the UDHR. The vast majority of these companies, like Categories 1 through 3, are not in any way of concern over human rights. However, a small number of companies in Category 4 have operations or activities in countries where serious human rights violations are a daily occurrence. For these companies there is a very fine line to be walked between legitimate business activities in such countries (which Amnesty International does not in any way oppose),

and activities which may implicitly or explicitly condone human rights violations. Category 4 companies, like those in Category 2, need legal certainty around their CSR obligations, to ensure that those who behave well are not at a disadvantage to those who do not. They are also very much in need of promotion and education about standards of corporate responsibility (see page 13 below "Education as well as Legislation").

Extract from Four Corners, Australian Broadcasting Corporation, 6 June 2005: [9]

SALLY NEIGHBOUR (ABC journalist): And what about all the civilians who were killed?
BILL TURNER (CEO, Anvil Mining): I don't know … We were not part of this. This was a military action conducted by the legitimate army of the legitimate government of the country. We helped the military get to Kilwa and then we were gone. Whatever they did there, that's an internal issue. It's got nothing to do with Anvil. It's an internal government issue. How they handle that is up to them. No involvement of us, absolutely.
SALLY NEIGHBOUR: Well, except that they used your vehicles to move their troops in.
BILL TURNER: So what?

AIA sees Anvil Mining in **Category 4**. Anvil initially noted (as reported by the ABC's Four Corners) that it had provided logistical support to the military of the Democratic Republic of Congo (known as FARDC) in the Kilwa area. AIA would find the conduct of Anvil mining unacceptable if the support had been given voluntarily. However, the company in late June 2005 stated and has since reiterated that in fact its support was not voluntary, specifically that its vehicles were commandeered by FARDC forces. [10] Our understanding is that legal actions are pending in relation to the Kilwa incident, and AIA has no further comment on this at this time.

We conclude that self-regulation and the effort to match one's peers is having a helpful effect for companies in Categories 1 and 3. However, there is a need for general standards of CSR to improve in order to account for companies in Category 4 and some companies in Category 2. Since these firms have relatively less brand equity to protect, we believe they are relatively more likely to take actions which place their corporate reputations at risk in the quest for short-term profits. These companies may also feel that as fiduciary duties other than to maximise profits are absent from the current Corporations Act, they are obligated to pursue profits at the expense of other stakeholders such as local communities. In short, a codification of CSR standards into the Corporations Act would provide legal certainty and serve to improve the level of corporate responsibility of companies, particularly those in Categories 2 and 4.

4. Building a Legislative Framework for Corporate Social Responsibility

In light of the above, what specific changes should be made to Australian law to enshrine standards of Corporate Social Responsibility?

Simply, the Corporations Act should be modified to specify that:

- directors should exercise reasonable diligence to ensure human rights (as specified below) are not breached as part of their operations or as a result of their decisions.
- directors should undertake reasonable steps to ensure that other parties whose behaviour a company influences (such as its suppliers and outsourcers) do not breach human rights (as specified below).
- companies should as part of their normal annual auditing processes complete and table to the Australian Securities and Investments Commission a simple addendum. This should note that in the opinion of their duly authorised auditors they have complied with each human rights obligation specified below, for each of their relevant operations and / or geographies. And that
- this addendum should be made available via the company's website in conjunction with normal annual reporting, so that it can be accessed by shareholders and other stakeholder groups.

Precisely which rights should be included under a definition of “human rights” for the purposes of standards of corporate social responsibility? Amnesty International believes that the most effective international statement of CSR standards is emerging from the so-called “UN Norms on the Responsibilities of Transnational Corporations”[11] (UN Norms).

We recommend that the following list, which is derived from the draft UN Norms and whose specific interpretation should be based on relevant international instruments, national legislation and international human rights law, be taken to constitute human rights for the purposes of CSR compliance:

1. Right to equal opportunity and right to non-discriminatory treatment:
   - Companies should avoid discrimination based on race, colour, sex, language, religion, political opinion, national or social status etc.)
2. Right to security of persons:
   - Companies should not engage in or benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, and so on.
3. Rights of workers:
   - Companies should not use forced or compulsory labour.
   - Children should be protected from economic exploitation.
   - Employers should provide a safe and healthy working environment.
   - Workers should receive remuneration that ensures an adequate standard of living for them and their families.
   - Workers should enjoy freedom of association and should be able to engage in collective bargaining.
4. Respect for national sovereignty and human rights:
   - Companies should recognise and respect the laws, regulations, administrative practices, public interest and development objectives of the countries in which they operate, as well as applicable international laws.
   - Companies should refrain from any activity which supports corruption in the countries in which they operate.
   - They should not support, solicit, or encourage States or any other entities to abuse human rights.
   - They should seek to ensure that the goods and services they provide are not used to abuse human rights.
   - As far as is reasonable, companies should respect economic, social and cultural rights as well as civil and political rights in the countries in which they operate. Specifically, in the local communities affected by their activities, they should support local development, provision of adequate food and drinking water, standards of physical and mental health, housing, and so forth. They should refrain from actions which impede the realisation of these rights.
5. Consumer protection:
   - Companies should act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide.
6. Environmental protection:
   - Companies should carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements.

It is worth noting that this proposed approach is somewhat more simple and limited than a full “Triple Bottom Line” (TBL) reporting regime, which would require similar detailed environmental and social reporting as is currently required for financial reporting. While environmental reporting

has reached a level of sophistication which may support a TBL regime, AIA notes that reporting on social / community impacts of business activities is relatively underdeveloped. Efforts at an international level such as the Global Reporting Initiative[12] have not yet managed to agree on the format of possible future social reporting. In the context of continuing development of international reporting standards and formats, AIA believes the recommended additions to the duties of Australian company directors represent an appropriate short- to medium- term advance in domestic CSR standards..

Although full TBL reporting seems challenging at this stage, CSR compliance as suggested above must be monitored by qualified, independent third parties such as corporate auditors. Ideally, monitoring and reporting should be embedded in existing audit processes, so that any increase in "red tape" for companies is minimised. Confidence in the probity of reporting must be maximised.

Critics of a legislative framework for CSR have charged that it would be unduly onerous on corporate behaviour, even that it would stifle entrepreneurial decision-making. If suitably drafted, this would simply not be the case. Australian businesses have variously learned to cope with labour rights, anti-discrimination, environmental protection, occupational health and safety, fair trading, product safety and other laws. Despite occasional alarmism from some businesses and parts of the media, these developments have not resulted in a flight of capital from Australia, or seen businesses collapsing strangled in red tape. To the contrary, Australian productivity has risen steadily since the early 1980s. There is no reason to believe that a modest extension of corporate law to encompass appropriate standards of CSR would place a heavy burden on the activities of Australian companies.

5. Support for Voluntary Codes of Conduct and Self-Regulation

AIA welcomes and supports efforts by companies, business associations and others to describe standards of CSR and ensure they are delivered. So-called "voluntary codes of conduct" have helped to define CSR performance standards and have provided perhaps the clearest leadership on corporate responsibility from the corporate sector itself.

While AIA supports such self-regulatory mechanisms, we believe they are not in their own right sufficient. This is for several reasons, as follows:

- Firstly, voluntary codes in the absence of certainty of the legal framework tend to allow companies with high CSR standards to codify and describe their success (which is to be commended), but do nothing other than to provide general guidance to companies which are not performing so well.
- Secondly, many such codes lack clear provision for monitoring and reporting, making them non-transparent to stakeholders such as investors.
- Thirdly, voluntary codes now number many hundreds if not thousands, each specifying its own interpretation of what should be considered appropriate CSR standards. As norms of corporate behaviour become more settled, there will inevitably be a need for this fragmentation to be reduced.
- Fourthly, such codes generally have limited legal weight, with the implication that they are promises rather than firm undertakings for which those signing will be held accountable. They do not deliver the certainty of legal environment which many different market participants, as well as the broader community, is demanding.

As a result, AIA views voluntary codes of conduct as useful to the degree to which they advance the ultimate goal of ensuring national and international laws are adequate and enforced. However, voluntary codes should not, other than temporarily, be seen as means to fill gaps in the legal framework.

6. Education as well as Legislation

While AIA argues for a modest extension of the Corporations Act to codify CSR standards in Australian law, we also believe that the Australian Government should invest more in promoting good corporate citizenship.

Since 1999 the Australian Government has taken a strong stand to support initiatives like corporate philanthropy and workplace giving, through the Prime Minister's Community Business Partnership[13]. We believe the opportunity is for the Australian Government to extend the Community Business Partnership into a wider campaign aiming to improve standards of corporate behaviour.

As there are around 1.2 million small businesses in Australia, we need to assume that at the least any change to company law will need wide dissemination and promotion. But to achieve meaningful change in corporate behaviour, it would be advisable for promotional campaigns to be about much more than just legal changes. To truly deliver CSR, many businesses need to re-think their entire mode of operation, to engage with a much wider group of stakeholders and to consider their activities from a different perspective – that of long-term sustainability.

AIA also believes that the Australian Government should through Standards Australia support the concept of developing the proposed CSR standard ISO 26000[14]. However, we believe that an ISO standard is not itself sufficient to deliver the required improvements in corporate responsibility. CSR needs to be defined more widely than just in terms of an ISO standard. The proposed standard is for guidance, not certification purposes; it will be voluntary and will not include specific performance requirements.

7. Disclosure Will Improve Transparency

The Australian Stock Exchange (ASX) recommends that companies which list on the ASX adopt a corporate code of conduct setting out the company's view of its responsibilities to a range of stakeholders (including its shareholders, customers and end consumers, employees, and the community). Amnesty International believes that such a statement could be subsumed under the Corporations Act modification proposed above. However, it is also a helpful statement in its own right because it provides an understanding of a company's aspirational standards of behaviour, and the responsibilities to which it is responding.

The ASX recommendation is just that, a voluntary mechanism for companies which wish to be considered at best practice. In conjunction with the Corporations Act changes proposed above, consideration should be given to making this a mandatory statement which can be legally enforced. AIA'ss preference is to enshrine the simple list of rights listed above within the Corporations Act itself. This would ensure a single list of duties and reporting requirements apply to all Australian-domiciled companies, rather than ASX-listed companies being subject to a potential second set of requirements.

[1] Formally, the document known as the "UN Norms" is titled "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" reference: U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). The following text is adapted from Sections B through G.
[2] Source: http://www.bsr.org/
[3] Source: *Australian Financial Review.* 'Directors Need a Safe Harbour: Hellicar', Bill Phesant, 17 March 2005, p.3.
[4] Source: The Economist, April 1997.
[5] Source: John Quelch, professor at Harvard Business School, http://news.independent.co.uk/business/comment/article310079.ece (4 Sept 2005)
[6] Source: "Corporate Social and Financial Performance: A Meta-analysis", Orlitzky, Schmidt & Rynes; Organization Studies, Vol. 24, No. 3, 403-411 (2003)
[7] Source: http://web.amnesty.org/pages/ec-bhopal-eng , November 2004. Amnesty International publication: ASA 20/015/2004.
[8] Source: http://www.nike.com/nikebiz/nikebiz.jhtml;bsessionid=MBNLFP14RC1RACQCGJECF5AKAIZEUIZB?page=29&item=fy04
[9] Source: http://www.abc.net.au/4corners/content/2005/s1386467.htm
[10] See for example: http://www.asx.com.au/asxpdf/20050824/pdf/3s044tq1w3356.pdf (Company announcement by Anvil Mining, 24 August 2005).
[11] Formally, the document known as the "UN Norms" is titled "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" reference: U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). The following text is adapted from Sections B through G.
[12] See http://www.ceres.org/
[13] See http://www.partnerships.gov.au
[14] See http://www.iso.org/sr