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The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

## **Corporate Code of Conduct Bill 2000**

**No.     , 2000**

*(Senator Bourne)*

**A Bill for an Act to impose standards on the  
conduct of Australian corporations which  
undertake business activities in other countries, and  
for related purposes**



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1     **A Bill for an Act to impose standards on the**  
2     **conduct of Australian corporations which**  
3     **undertake business activities in other countries, and**  
4     **for related purposes**

5     The Parliament of Australia enacts:

6     **Part 1—Preliminary**  
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8     **1 Short title**

9             This Act may be cited as the *Corporate Code of Conduct Act 2000*.

Section 2

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1     **2 Commencement**

2                     This Act commences on the day on which it receives the Royal  
3                     Assent.

4     **3 Objects of Act**

- 5                     (1) The objects of this Act are:
- 6                         (a) to impose environmental, employment, health and safety and  
7                         human rights standards on the conduct of Australian  
8                         corporations or related corporations which employ more than  
9                         100 persons in a foreign country; and  
10                        (b) to require such corporations to report on their compliance  
11                        with the standards imposed by this Act; and  
12                        (c) to provide for the enforcement of those standards.
- 13                     (2) To avoid doubt, a body corporate to which this Act applies is not  
14                     required to take any action to meet the requirements of this Act in  
15                     respect of its operations in a foreign country that it would not be  
16                     required to take in respect of its operations in Australia.

17     **4 Extraterritorial operation**

- 18                     This Act applies outside Australia but does not apply in relation to  
19                     any corporation outside Australia unless that corporation employs  
20                     or engages the services of 100 or more persons in a country other  
21                     than Australia and is:
- 22                         (a) a trading or financial corporation formed within the limits of  
23                         the Commonwealth; or  
24                         (b) a holding company of such a corporation; or  
25                         (c) a subsidiary of such a corporation; or  
26                         (d) a subsidiary of a holding company of such a corporation.

27     **5 Application of Act to Commonwealth and Commonwealth**  
28                     **authorities**

- 29                     (1) This Act binds the Crown in right of the Commonwealth in so far  
30                     as the Crown in right of the Commonwealth carries on a business,  
31                     either directly or by an authority of the Commonwealth.
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- 1 (2) Subject to subsections (3) and (4), this Act applies as if:  
2 (a) the Commonwealth, in so far as it carries on a business  
3 otherwise than by an authority of the Commonwealth; and  
4 (b) each authority of the Commonwealth (whether or not acting  
5 as an agent of the Crown in right of the Commonwealth) in  
6 so far as it carries on a business;  
7 were a body corporate.
- 8 (3) Nothing in this Act makes the Crown in right of the  
9 Commonwealth liable to be prosecuted for an offence.
- 10 (4) The protection in subsection (3) does not apply to an authority of  
11 the Commonwealth.

## 12 6 Interpretation

13 In this Act, unless the contrary intention appears:

14 ***anti-competitive agreement*** means an agreement which if enforced  
15 within Australia would be contrary to Part IVA of the *Trade*  
16 *Practices Act 1974*.

17 ***basic needs*** means nutritious food, clothing, health care, education,  
18 potable water, child care, transportation, housing and energy.

19 ***body corporate*** means:

- 20 (a) a trading or financial corporation formed within the limits of  
21 the Commonwealth; or  
22 (b) a holding company of such a corporation; or  
23 (c) a subsidiary of such a corporation; or  
24 (d) a subsidiary of a holding company of such a corporation.

25 ***country*** includes:

- 26 (a) a colony, territory or protectorate of a country; and  
27 (b) a territory for the international relations of which the country  
28 is responsible; and  
29 (c) a ship or aircraft of, or registered in, the country.

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1                    **ecosystem** means a dynamic complex of plant, animal and micro-  
2                    organism communities and their non-living environment  
3                    interacting as a functional unit.

4                    **employees** means persons engaged to perform work or service for  
5                    an enterprise.

6                    **environment** includes:

- 7                    (a) ecosystems and their constituent parts, including people and  
8                    communities; and  
9                    (b) natural and physical resources; and  
10                   (c) the qualities and characteristics of locations, places and  
11                   areas; and  
12                   (d) the social, economic and cultural aspects of a thing  
13                   mentioned in paragraph (a), (b) or (c).

14                   **executive officer** of a body corporate means a person, whether or  
15                   not a director of the body corporate, who is concerned in, or takes  
16                   part in, the executive management of the body corporate.

17                   **forced or compulsory labour** means all work or service which is  
18                   exacted from any person under the threat of any penalty, and for  
19                   which that person has not offered himself or herself voluntarily,  
20                   but does not include any work or service:

- 21                   (a) of a purely military character exacted by virtue of a law  
22                   providing for compulsory military service; or  
23                   (b) which forms part of the normal civic obligations of the  
24                   citizens of a self-governing country; or  
25                   (c) required to be performed as a consequence of a conviction in  
26                   a court of law, provided that the work or service is to be  
27                   performed only under the control of a public authority; or  
28                   (d) required in cases of emergency, famine, war or serious threat.

29                   **industrial undertaking** means:

- 30                   (a) mines, quarries and other works for the extraction of  
31                   minerals, including oil and gas, from the earth or seabed; or  
32                   (b) industries in which articles are manufactured, altered,  
33                   cleaned, repaired, finished, adapted for sale, broken up or  
34                   demolished, or in which materials are transformed; or
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- 1 (c) the generation or transmission of electricity; or  
2 (d) the distribution of gas or water; or  
3 (e) the construction, reconstruction, maintenance, repair,  
4 alteration or demolition of any building or structure; or  
5 (f) the transport of passengers or goods by road, rail, air, sea or  
6 inland waterway, including the handling of goods at docks,  
7 quays, wharves and warehouses.

8 ***living wage*** means a wage sufficient to meet the basic needs of a  
9 family of two adults and three children in the country or region  
10 they are resident in.

11 ***minimum international labour standards*** means standards  
12 contained in the following International Labor Organization  
13 Conventions as agreed under Australian law:

- 14 (a) Freedom of Association and Protection of the Right to  
15 Organize Convention (No. 87);  
16 (b) Right to Organize and Collective Bargaining Convention  
17 (No. 98);  
18 (c) Forced Labour Convention (No. 29);  
19 (d) Abolition of Forced Labour Convention (No. 105)  
20 (e) Discrimination (Employment and Occupation) Convention  
21 (No. 111);  
22 (f) Equal Remuneration Convention (No. 100);  
23 (g) Minimum Age Convention (No. 138);  
24 (h) Occupational Safety and Health (No. 155).

25 ***overseas corporation*** means a body corporate which employs or  
26 engages the services of 100 or more persons in a country other than  
27 Australia.

28 ***precautionary principle*** means that lack of full scientific certainty  
29 should not be used as a reason for postponing a measure to prevent  
30 degradation of the environment where there are threats of serious  
31 or irreversible environmental damage.

Section 7

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2 **Part 2—Corporate Codes of Conduct**

3 **7 Environmental standards**

4 (1) An overseas corporation which undertakes any activity in a place  
5 must take all reasonable measures to prevent any material adverse  
6 effect on the environment in and around that place from that  
7 activity.

- 8 (2) Without limiting subsection (1), an overseas corporation must:
- 9 (a) at least once in every period of 12 months, collect and  
10 evaluate information regarding the environmental impacts of  
11 its activities; and
  - 12 (b) establish objectives for the measurement of its environmental  
13 performance; and
  - 14 (c) monitor and assess its compliance with those objectives; and
  - 15 (d) provide timely information to its employees and to members  
16 of the public in any place in which it undertakes activities on  
17 the actual and potential environmental impacts of the  
18 activities of the corporation; and
  - 19 (e) have appropriate policies on matters of environmental safety,  
20 including (where applicable) the handling of hazardous  
21 materials and the prevention and control of environmental  
22 accidents; and
  - 23 (f) undertake environmental impact assessments of all new  
24 developments, including providing an opportunity for public  
25 comment on the assessment; and
  - 26 (g) have regard to the precautionary principle in carrying out the  
27 actions mentioned in paragraphs (a) to (f).
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29 **8 Health and safety standards**

30 (1) An overseas corporation must take all reasonable measures to  
31 promote the health and safety of its workers.

32 (2) Without limiting subsection (1), an overseas corporation must:

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**Section 9**

- 1 (a) provide a safe and healthy workplace for its employees; and  
2 (b) provide satisfactory sanitary conditions at a workplace; and  
3 (c) not require its employees to work for more than 5  
4 consecutive hours without a break of at least 20 minutes; and  
5 (d) not require its employees to work for more than 12 hours  
6 each day; and  
7 (e) not require its employees to work more than 48 hours each  
8 week without the agreement of the employees; and  
9 (f) have appropriate policies for responding to an accident or  
10 medical emergency at a workplace; and  
11 (g) provide adequate education and training to employees in  
12 health and safety matters, including the prevention of  
13 accidents.

**9 Employment standards**

- 14 (1) An overseas corporation must not use or obtain the benefit of any  
15 forced or compulsory labour.  
16  
17 (2) An overseas corporation must not use or obtain the benefit of the  
18 labour of any child under the age of fourteen years in any public or  
19 private industrial undertaking.  
20 (3) An overseas corporation must:  
21 (a) as a minimum, pay all its workers a living wage; and  
22 (b) not dismiss a worker for reasons of illness or accident; and  
23 (c) respect the freedom of its workers to associate; and  
24 (d) respect the right of its workers to organise independently and  
25 bargain collectively; and  
26 (e) enable any complaints about conditions of labour to be  
27 forwarded to independent authorities; and  
28 (f) comply with minimum international labour standards.

**10 Human rights standards**

- 29 (1) Subject to subsection (2), in any matter which relates to the  
30 employment or occupation of a person, an overseas corporation  
31 must not distinguish, exclude or prefer a person on the basis of  
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Section 11

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- 1 race, colour, sex, sexuality, religion, political opinion, national  
2 extraction or social origin if this has the effect of nullifying or  
3 impairing equality of opportunity or treatment in that employment  
4 or occupation.
- 5 (2) Subsection (1) does not apply to any distinction, exclusion or  
6 preference:
- 7 (a) in respect of a particular job based on the inherent  
8 requirements of the job; or
- 9 (b) in connection with employment as a member of the staff of  
10 an institution that is conducted in accordance with the  
11 doctrines, tenets, beliefs or teachings of a particular religion  
12 or creed, where that distinction, exclusion or preference is  
13 made in good faith in order to avoid injury to the religious  
14 susceptibilities of adherents of that religion or creed; or
- 15 (c) in connection with established governmental policies which  
16 specifically promote greater equality of employment  
17 opportunity.

18 **11 Duty to observe tax laws**

19 An overseas corporation must comply with the tax laws in each  
20 country in which it operates.

21 **12 Duty to observe consumer health and safety standards**

- 22 (1) An overseas corporation must ensure that any goods or services  
23 which it provides satisfy the required standards for consumer  
24 health and safety for those goods or services in Australia and in  
25 any country in which it undertakes activities.
- 26 (2) An overseas corporation must take all reasonable measures to  
27 prevent any serious threat to public health in any country in which  
28 it undertakes activities which might occur from the consumption or  
29 use of products made by that corporation.
- 30 (3) An overseas corporation must take all reasonable measures to  
31 remove any serious threat to public health in any country in which  
32 it undertakes activities which has occurred from the consumption  
33 or use of products made by that corporation.
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1 **13 Consumer protection and trade practices standards**

- 2 (1) An overseas corporation must not, in any country in which it  
3 undertakes activities, engage in any conduct that is misleading or  
4 deceptive or which is likely to mislead or deceive.
- 5 (2) An overseas corporation must not, in any country in which it  
6 undertakes activities, enter into or carry out or give effect to any  
7 anti-competitive agreement with another person.

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2 **Part 3—Reporting**

3 **14 Reports to Australian Securities and Investments Commission**

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(1) Before 31 August each year, an overseas corporation (the *corporation*) must lodge with the Australian Securities and Investments Commission a Code of Conduct Compliance Report in accordance with subsection (2).

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(2) Subject to subsection (3), a Code of Conduct Compliance Report must include:

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(a) the financial and operating results of the corporation for 12 months; and

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(b) the members of the board of directors of the corporation and their remuneration; and

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(c) the 5 most significant executive officers of the corporation in each country (other than Australia) in which the corporation undertakes activities, and their remuneration; and

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(d) details of all shareholdings representing more than 5% of the issued capital of the corporation; and

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(e) the number of employees employed by the corporation in each country (other than Australia) in which the corporation undertakes activities; and

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(f) the total remuneration paid to the employees in each country (other than Australia) in which the corporation undertakes activities; and

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(g) a statement of the environmental impact, prepared by an independent auditor, of the activities of the corporation in each country (other than Australia) in which the corporation undertakes activities; and

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(h) a statement of any foreseeable risk factors that might arise as a result of the activities of the corporation in each country in which it operates (other than Australia); and

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(i) a statement of any contraventions of standards or laws relating to the environment, employment, health and safety

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- 1                                   and human rights by the corporation in each country in which  
2                                   it operates (other than Australia); and  
3                                   (j) a statement of the social, ethical and environmental policies  
4                                   of the corporation; and  
5                                   (k) any other matter relevant to the environmental, employment,  
6                                   health and safety and human rights standards observed by the  
7                                   corporation.
- 8                                   (3) If a corporation is required to lodge reports with the Australian  
9                                   Securities and Investments Commission apart from under this  
10                                   section, the corporation is not required to include in a report under  
11                                   subsection (2) any information that it has provided to the  
12                                   Commission in another report.
- 13                                   (4) A corporation which, without reasonable excuse, fails to lodge a  
14                                   Code of Conduct Compliance Report is guilty of an offence  
15                                   punishable on conviction by a fine not exceeding 2000 penalty  
16                                   units.
- 17                                   (5) If a corporation contravenes subsection (4) and:  
18                                   (a) an executive officer of the corporation knew that, or was  
19                                   reckless or negligent as to whether, the contravention would  
20                                   occur; and  
21                                   (b) the officer was in a position to influence the conduct of the  
22                                   corporation in relation to the contravention; and  
23                                   (c) the officer failed to take all reasonable steps to prevent the  
24                                   contravention;  
25                                   the officer contravenes this subsection.
- 26                                   (6) An executive officer who is guilty of an offence under subsection  
27                                   (5) is liable, on conviction, to pay a fine not exceeding 1000  
28                                   penalty units.

## 29   **15 Reports to the Parliament**

- 30                                   (1) The Australian Securities and Investments Commission must  
31                                   prepare an annual report on compliance with the provisions of this  
32                                   Act.

### Part 3 Reporting

#### Section 15

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- 1                   (2) The Australian Securities and Investments Commission must  
2                   forward a copy of the annual report prepared under subsection (1)  
3                   to the Treasurer before 31 December in each year.
- 4                   (3) The Treasurer must cause a copy of the annual report forwarded  
5                   under subsection (2) to be laid before each House of the Parliament  
6                   within 14 sitting days of that House after receiving the report.

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**Part 4—Enforcement**

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**16 Civil penalties**

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(1) Conduct which contravenes a provision in Part 2 renders an overseas corporation liable to proceedings for the recovery of a civil penalty.

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(2) If an overseas corporation contravenes a provision in Part 2 and:

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(a) an executive officer of the corporation knew that, or was reckless or negligent as to whether, the contravention would occur; and

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(b) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and

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(c) the officer failed to take all reasonable steps to prevent the contravention;

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the executive officer also contravenes that provision.

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(3) Within 6 years of a person or corporation (the *wrongdoer*) contravening a provision in Part 2, the Treasurer or the Attorney-General or the Chairperson of the Australian Securities and Investments Commission may apply on behalf of the Commonwealth to the Federal Court of Australia for an order that the wrongdoer pay the Commonwealth a pecuniary penalty not exceeding 10,000 penalty units.

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(4) In determining the pecuniary penalty to be imposed, the Court must have regard to all relevant matters, including:

(a) the nature and extent of the contravention;

(b) the nature and extent of any loss suffered as a result of the contravention;

(c) the circumstances in which the contravention took place; and

(d) whether the wrongdoer has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

Section 17

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- 1 (5) If conduct constitutes a contravention of 2 or more provisions in  
2 Part 2, proceedings may be instituted under this Act against a  
3 person or corporation in relation to the contravention of any one or  
4 more of those provisions. However, the person or corporation is  
5 not liable to more than one pecuniary penalty under this section in  
6 respect of the same conduct.

7 **17 Civil actions**

- 8 (1) Where an overseas corporation contravenes a provision of Part 2,  
9 any person who suffers loss or damage as a result may bring an  
10 action in the Federal Court of Australia.
- 11 (2) Where an overseas corporation contravenes a provision of Part 2,  
12 any person who is reasonably likely to suffer loss or damage as a  
13 result may bring an action in the Federal Court of Australia.
- 14 (3) If the Federal Court of Australia is satisfied that a person has  
15 suffered loss or damage as a result of a contravention of a  
16 provision of Part 2, the Court may:  
17 (a) grant an injunction to prevent any further loss or damage; and  
18 (b) make an order for compensation.
- 19 (4) If the Federal Court is satisfied that a person is reasonably likely to  
20 suffer loss or damage as a result of a contravention of a provision  
21 of Part 2, the Court may grant an injunction to prevent any further  
22 loss or damage.
- 23 (5) In this section, *person* means any person, whether resident in  
24 Australia or elsewhere, and includes any body corporate or  
25 association of persons.
- 26 (6) An action may be taken under subsection (1) or (2), on behalf of a  
27 person to whom either subsection applies, by a body corporate or  
28 association of persons whose principal objects include protection  
29 of the public interest.

1 **18 Regulations**

- 2 (1) The Governor General may make regulations not inconsistent with  
3 this Act prescribing all matters necessary or convenient to be  
4 prescribed for carrying out or giving effect to this Act.